

Protecting theatres for everyone



Ref.: TC

13 July 2022

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Stratford-upon-Avon
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CV37 6HX

By e-mail: planning.applications@stratford-dc.gov.uk

Application: 22/01580/FUL & 22/01581/LBC

Site: Coxs Yard Bridgefoot Stratford-upon-Avon CV37 6YY

Proposal: Change of use of first floor of theatre to two-bed guest house and holiday apartment and associated internal alterations.

Remit:

Theatres Trust is the national advisory public body for theatres. We were established through the Theatres Trust Act 1976 'to promote the better protection of theatres' and provide statutory planning advice on theatre buildings and theatre use in England through The Town and Country Planning (Development Management Procedure) (England) Order 2015, requiring the Trust to be consulted by local authorities on planning applications which include 'development involving any land on which there is a theatre'.

Comment:

Thank you for consulting Theatres Trust on these applications for planning permission and listed building consent which seek change of use and conversion of part of Cox's Yard from theatre to short-term holiday accommodation.

Cox's Yard was formerly a timber yard with warehousing which was opened in 1839 by J. Cox and Son Timber Merchants, although the warehouse is believed to have been constructed earlier than this in 1816. It is now a leisure complex with a large pub, café and theatre. The warehouse building subject to this application is a Grade II listed heritage asset; it contains the Attic Theatre at second floor level. The first floor below is also within theatre use (Sui Generis) having functioned as storage and a workshop but its operator has now vacated.

The Attic Theatre is a small 'fringe' theatre operated by a local company, Tread The Boards Theatre Company, which was founded in 2009. It produces its own shows as well as hosting external productions. It is an important and valued arts, cultural and social facility for Stratford-

Theatres Trust

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Chair Dave Moutrey **Director** Jon Morgan

Trustees Paul Cartwright, James Dacre, Suba Das, Stephanie Hall, Annie Hampson, Richard Johnston, Gary Kemp, Lucy Osborne, Jane Spiers, Truda Spruyt, Katie Town

The National Advisory Public Body for Theatres

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upon-Avon and its surrounding communities, contributing to the diversity of the local offer, supporting emerging works and artists, and providing opportunities for local people to develop their skills. Paragraph 93 of the NPPF (2021) seeks planning decisions to plan positively for facilities of this nature and to avoid unnecessary loss.

There are two primary elements to this proposal from the perspective of our remit and role which cause us concern. These are firstly the impact of the proposed development on the Attic Theatre and the risks it would cause to its ongoing operation, and secondly the loss of theatre function.

Agent of change

The applicant is seeking to convert the first floor of the building into short-term lets. This would mean a form of residential development directly underneath the Attic Theatre. This follows a previous proposal, for which the Trust was not consulted, which was withdrawn.

Development of this nature is of great concern to the Trust because residential uses and noise-generating cultural venues such as theatres are not necessarily compatible, even where not for permanent residents. This is due to transfer of noise and vibrations along with other disturbance from legitimate activities such as delivery and removal of sets and equipment potentially late at night. This gives rise to challenges of sub-optimal living conditions for residents and in turn potentially harmful restrictions on the operations of venues should complaints be made by new neighbours. At worst this can result in the complete closure of venues, something which has occurred in the past prior to policy in this respect being introduced. Therefore our general position is to object to such development unless there are compelling circumstances to the contrary and sufficient mitigations are in place which extinguishes all reasonable doubt.

The Attic Theatre is now quite long established and as alluded to above is highly valued by its users and the wider community. It helps contribute to the town's cultural offer and its visitor economy. Policy at local and national level is clear both that such uses should be supported and protected and that development should be refused where acceptable living conditions cannot be reached.

Paragraph 187 of the NPPF (2021) seeks to ensure that new development can be effectively integrated with existing facilities and that unreasonable restrictions should not be placed on them. It also makes clear that obligations to make development acceptable must fall to the applicant/developer. Policy CS.9.B.8 of the Council's Core Strategy (2016) protects occupiers from unacceptable levels of noise

It is clear that residential uses below an active theatre gives rise to strong risk of acoustic breakout between the two uses and therefore acceptable living conditions cannot be met without significant intervention and expense by way of sufficient acoustic protection; the nature of this building as a heritage asset would further add complexity. The applicant has provided an acoustic report but as noted by the Council's Environmental Health officer this is inadequate; they have also objected to this development. As well as disturbance to occupants from the

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theatre, there is also the potential for the theatre's activities to be disrupted by noise from the holiday lets.

We would note there are now a number of decisions and judgements in favour of protecting the interests and operations of existing venues over introducing potentially incompatible development such as this. Examples include:

- The Trust participated in an Inquiry in late 2020 (APP/Q3115/W/20/3249052 & APP/Q3115/Y/20/3249055) which upheld refusal of planning permission and listed building consent by South Oxfordshire District Council for residential development adjoining Wallingford Corn Exchange.
- In 2019 an appeal at 20 King St, Wakefield was dismissed where the appellant sought to overturn refusal of Prior Approval under Class O of the GPDO. The sole issue was whether the proposed development would provide acceptable living conditions for future occupants with regard to noise. The appeal site was next to the Inns of Court public house, licensed to host live music every night. It was concluded by the Inspector that there was a realistic prospect of the proposal disadvantaging an existing business due to complaints of statutory noise nuisance from residents.
- The Wakefield case reflected the outcome of a larger Prior Approval scheme for twenty-one residential units above the 1000 Trades music venue in Birmingham two months previous.
- In 2020 an appeal at 6 Eagle Parade in Buxton was dismissed, relating to a full planning permission for change of use to residential at the rear of the Coco Nightclub. The unit subject to planning condition itself only became vacant as a result of noise complaints from an adjoining residential property. As with the Wakefield case, the Inspector concluded living conditions would be unacceptable due to noise and disturbance.
- A noise abatement order was served against the Star Inn by Guildford Borough Council following complaint by the developer of residential units next door. The order was subsequently quashed at Guildford Magistrates Court on July 1st 2019 but in the meantime the venue could not operate as it should have been able to.
- Relevant examples to go before the Courts are Cemex (UK Operations) Ltd v Richmondshire District & Anor [2018] EWHC 3526 (Admin), albeit that case related to industrial noise rather than from a cultural venue, and Obar Camden Ltd v LB Camden [3] in relation to notable music venue and former theatre Koko.

These examples should afford the Council confidence that refusal of these applications on the basis of noise and 'agent of change' concerns can be justified and defended.

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Change of use

We also have significant concerns around the loss of theatre (Sui Generis) use to the first floor. The Vision for Stratford-upon-Avon within the Core Strategy includes expansion of the town's cultural offer. Policy CS.25 is consistent with the NPPF in setting an expectation that community and leisure facilities will be retained; the document's glossary of technical terms is clear that cultural facilities are defined as falling within this topic. This proposal conflicts with both of those positions. The change of use would itself reduce rather than expand cultural provision and this would be exacerbated should the remaining Attic Theatre's activities be compromised as outlined above. The applicant has not substantiated by way of evidence or marketing that the space is no longer required. Whilst the space had not been open to the public previously that is not to say that it could not be opened up by a subsequent operator.

From a heritage perspective neither is it clear how the proposed use constitutes the optimal viable use of this space particularly as sub-dividing it will cause harm to its historic industrial character and function which to an extent can currently still be appreciated.

It appears from the plans that the Attic Theatre utilises parts of the first floor, for example this appears to be the location of WCs and passing through this level provides means of escape. These must be maintained.

Concluding comments

We strongly object to this proposal and recommend refusal of planning permission and listed building consent because it is contrary to relevant policies and has failed to demonstrate compatibility with the theatre in terms of noise, vibrations and appropriate living conditions for occupants. Therefore it would jeopardise the future operation of the Attic Theatre as a community, cultural and social asset and there are insufficient grounds to reassure that appropriate mitigations could be put in place.

In the event the Council is minded to grant permission against our advice despite such clear conflict with policy, please notify the Trust in advance of a decision notice being issued and communicate any date for Committee if relevant. It is essential that robust conditions are attached requiring approval of sufficient acoustic and design protections. There must also be limits on the maximum consecutive duration of occupancy by a single party. The Trust can advise and work with the Council on appropriate wording.

Please contact us if we may be of further assistance or should you wish to discuss these comments further.



Tom Clarke MRTPI
National Planning Adviser

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