

Appeal Decision

Site visit made on 4 October 2016

by Elizabeth Pleasant DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 October 2016

Appeal Ref: APP/H5960/W/16/3151895

3 and 5 Boundaries Road, Wandsworth, London SW12 8ET

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Stephen Foster against the decision of the Council of the London Borough of Wandsworth.
 - The application Ref 2015/3701, dated 23 July 2015, was refused by notice dated 11 December 2015.
 - The application sought planning permission for use of ground floor of 5 Boundaries Road, and basements of 3 and 5 Boundaries Road as a restaurant/take-away and extension to ground floor at rear, without complying with conditions attached to planning permission Ref S/96/0377, dated 20 February 1998.
 - The conditions in dispute are Nos.3 and 4 which state that:
 - 3) The premises shall not be open to the public other than between the hours of 09.00 and 23.30 and at no other time; and
 - 4) The premises shall be used for a restaurant/take-away, and not as a pub, wine bar or any other purposes in Class A3 of the Schedule to the Town and Country Planning Order (Use Classes) 1987.
 - The reasons given for the condition are:
 - 3) To protect the amenities of neighbours; and
 - 4) In granting this permission the local planning authority has had regard to the special circumstances of the case and wishes to have the opportunity of exercising control over any subsequent use.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Policies from the Development Management Policies Document and Core Strategy Second Proposed Submission Version, 2014 referred to by the Council in their decision notice have been superseded by the Policies from the Wandsworth Local Plan Development Management Policies Document (DPD) and Core Strategy (CS) March 2016 which have been subsequently adopted. However, the general development principles and environmental quality aims of both sets of policies are similar and both parties have had an opportunity to make representations during the appeal process, so neither party would be prejudiced.
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3. Condition No 3 attached to planning permission Ref, S/96/0377 restricted the opening hours of the appeal premises to between the hours of 09.00 and 23.30 and at no other time. The appellant is seeking to change the opening hours to allow opening: Sunday to Thursday between 10am & 0030am (the following day); Friday and Saturdays between 10am & 0130am (the following day); Bank Holidays (excluding Bank Holiday Monday's and Boxing Day) between 10am and 0100am (the following morning); New Years Eve from the end of authorised hours on New Year's Eve to the start of authorised hours on the following day; plus up to 12 unspecified events annually between 10am and 0100am (the following day).
4. The appellant is also seeking permission to expand the use of the premises to allow it to operate as a drinking establishment in conjunction with its existing use as a restaurant and take-away.

Main Issues

5. The main issue in the case is the effect of the proposals on the living conditions of neighbouring occupiers, with particular regard to noise and disturbance.

Reasons

Living conditions

6. The appeal premises are situated at the end of a short parade of shops which lie close to the junction of Boundaries Road with Chestnut Grove, and on the edge of Balham Town Centre. There is residential accommodation on the first and second floors above the premises, and a terrace of residential properties adjoins it to the west.
7. Despite the appeal premises lying within an area which is designated as Balham Town Centre, the character of Boundaries Road is predominantly one of a residential street with only the short parade of shops and The Regent Public House opposite in commercial usage. At the time of my site visit, which was midday during the week, Boundaries Road had a more tranquil environment than the busier Chestnut Grove and Balham High Road where commercial activities predominate and vehicular activity is greater. It is therefore likely that during the evening hours residents on Boundaries Road also experience a quieter environment and this would be a reasonable expectation for residents in this location, particularly later in the evening.

Condition 3

8. The premises are currently required to close at 2330hours on any one day. I understand that the appellant wishes to extend the opening hours to bring the permission in line with their premises licence. However the licensing requirement is a different regime than planning policy and controls which are concerned with amenity.
9. The appeal premises and The Regent Public House are currently the only premises on this part of Boundaries Road with late night opening. Furthermore, the appeal premises have a sensitive relationship with residential accommodation directly above and adjacent to No 5. The existing opening hours provide opportunities for customers to obtain food until late into the evening and at a time when customers of The Regent and other establishments in the Town Centre may require these services. However, these operating

hours also safeguard the living conditions of neighbouring residents. In view of the close proximity of the premises to neighbouring residents and the existing character of Boundaries Road I do not consider that it would be reasonable to extend these operating hours into the early morning hours. It is inevitable that customers who wish to buy food from the take-away business on their way home in the early hours of the morning would generate activity in the street. Such activities so close to where residents are asleep would consequently result in unacceptable noise and disturbance to them.

10. I conclude that it is reasonable and necessary to continue to impose the restrictions on opening hours set out in Condition 3 of planning permission Ref, S/96/0377, for the reason set out. To allow the appeal proposal to extend these hours would be harmful to the living conditions of neighbouring occupiers, with particular regard to noise and disturbance. Consequently the appeal proposal would conflict with Policies DMS 1 of the DPD, Policy IS 4 of the CS and Policy 7.15 of the London Plan which seek to manage noise to improve health and quality of life and ensure that development does not harm the amenity of occupiers/users of nearby properties through, amongst other things, unacceptable noise. I also find conflict with one of the Core Planning Principles of the National Planning Policy Framework which seeks to provide a good standard of amenity for all existing and future occupiers of land and buildings.

Condition 4

11. The appellant wishes to expand the use of the premises to include a use as a drinking establishment in conjunction with the restaurant and take-away business. An expansion of the permitted uses to include a drinking establishment is likely to generate a greater number of patrons than the existing restaurant and take-away business. Boundaries Road is predominantly a residential street, and the introduction of a further drinking establishment in such close proximity to existing residential properties is likely to adversely affect the living conditions of neighbouring occupiers. I believe it would be inevitable that the expansion of the business would result in more people entering and leaving the appeal premises throughout the evening, and any increased activity on Boundaries Road would lead to noise and disturbance which with a drinking establishment is likely to be concentrated when the premises close and people disperse.
12. I understand that the appellant would like to include a drinking establishment within his business even if the existing hours of operation remain unchanged. However, for the reasons given above, the increase in activity at these premises that would be likely to result from the introduction of this new use would to my mind undoubtedly increase noise and disturbance to neighbouring residents during the late evening periods currently permitted.
13. I appreciate that the inclusion of this use would give the appellant more flexibility to run his business in the way he chooses. I also understand that sound insulation has been provided and a noise limiter would be installed at the premises. However, whilst these measures may limit the amount of noise escaping from the inside of the premises, they would not limit the additional activity outside on the street. The appellant suggests that by allowing drinking on the premises it would prevent people coming to the site after they have drunk elsewhere, however there is no guarantee that this would be the case.

Moreover, it seems to me that it would increase the frequency of visits to and from the building throughout the evening period and in particular lead to a concentration of activity at closing time.

14. I therefore conclude that it is reasonable and necessary to continue to impose the restrictions on the use set out in Condition 4 of planning permission Ref, S/96/0377, for the reason set out. To allow the appeal proposal to operate as a drinking establishment would be harmful to the living conditions of neighbouring occupiers, with particular regard to noise and disturbance. Consequently the appeal proposal would conflict with Policies DMS 1 of the DPD, Policy IS 4 of the CS and Policy 7.15 of the London Plan which seek to manage noise to improve health and quality of life and ensure that development does not harm the amenity of occupiers/users of nearby properties through, amongst other things, unacceptable noise. I also find conflict with one of the Core Planning Principles of the National Planning Policy Framework which seek to provide a good standard of amenity for all existing and future occupiers of land and buildings.

Conclusion

15. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should be dismissed.

Elizabeth Pleasant

INSPECTOR