

Appeal Decision

Site visit made on 14 November 2016

by Graham Chamberlain BA (Hons) MSc MRTPI

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

Decision date: 18th November 2016

Appeal Ref: APP/G2625/W/16/3156615

Earlham House Shops, Earlham Road, Norwich, Norfolk NR2 3PD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Z Wang against the decision of Norwich City Council.
 - The application Ref 16/00389/U, dated 9 March 2016, was refused by notice dated 16 May 2016.
 - The development proposed is the change of use of the ground floor retail units from A5/A1 use to A3 Restaurant use.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of the ground floor retail units from A5/A1 use to an A3 Restaurant use at Earlham House Shops, Earlham Road, Norwich, Norfolk NR2 3PD, in accordance with the terms of the application, Ref: 16/00389/U, dated 9 March 2016, subject to the conditions in the attached schedule.

Main Issue

2. The main issue in this appeal is the effect of the proposed development on the living conditions of the occupants of nearby residential properties.

Reasons

3. The appeal site encompasses Units 11 – 13 in the defined Earlham House District Centre. Earlham House is a large mixed use building with upper floor flats above commercial uses on the ground floor which are divided into separate units. To the north of Earlham House is Earlham Road, a busy thoroughfare into the city centre. The area is generally vibrant and urban in character. To the east of the appeal site is Bately Court, a residential block of flats separated from Earlham House by a service road. There is a supermarket located to the immediate west of the appeal site as well as two car parks.
 4. The proposed restaurant would not have any outside seating or garden area. Additionally, I have not been presented with substantive evidence to suggest any noise generated from within the proposed restaurant would be transmitted throughout the building to an unreasonable extent. In this respect, the Council have suggested a planning condition to control amplified music. As such, the main effects on the living conditions of nearby residents arising from the appeal scheme would be from the comings and goings of patrons and deliveries and any noise that would arise from external equipment.
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5. During my site visit I observed that the Earlham House District Centre, in combination with Earlham Road, is a busy and lively area, which at the time of my visit had a high level of associated activity and background noise. Whilst I acknowledge my visit was a snap shot in time, I am satisfied the existing noise environment at the site is such that the comings and goings of vehicles and customers using the appeal site would be assimilated into the ambience and character of the area without harm. There is no substantive evidence before me that would suggest otherwise.
6. Furthermore, the district centre includes other night time uses including takeaways and a large supermarket. Some of which have opening hours until 2300. The existing evening activity in the vicinity of the appeal site is likely to include the use of cars in the nearby car parks and the sounds of customers talking and walking. Other than some concerns regarding the use of the service road, I have no substantive evidence before me that the existing uses have adversely impacted the living conditions of nearby residents in terms of noise and disturbance. Nor have I been presented with details to suggest what the existing footfall in the centre is, what the appeal scheme would add to this, and whether the increase would be material and harmful. As a result, I am satisfied the appeal scheme would not introduce a harmful level of noise and disturbance.
7. To mitigate any potential effects on nearby residents, including those at Bately Court, the appellant has confirmed that he would not operate a takeaway service from the appeal site. As a takeaway and delivery service does not form part of the proposal before me any such activity could only be operated at an ancillary level, which by definition would be below the level of activity generated by the previous takeaway premises at the appeal site. Such a low level use is unlikely to result in a noise or litter nuisance.
8. Moreover, the appellant has confirmed that deliveries to the proposed restaurant would be restricted to between 0900 and 1700. This would ensure that the activity along the service road arising from the appeal scheme would be limited and would not encroach into the evening and night time hours. This would be a material improvement on the current situation.
9. In respect of external equipment, the appellant intends to reuse the existing extraction equipment associated with the previous takeaway. Nearby residents would be familiar with the effects of this. Again, there is no substantive evidence before me to suggest the operation of this existing equipment has harmed the living conditions of neighbours and there is no record of any complaints arising from the use of the equipment. Moreover, the Council have suggested a planning condition to control any new equipment.
10. I therefore conclude that the appeal scheme would preserve the living conditions of the occupants of nearby residential properties. Consequently, the proposal would adhere to Policies DM2 and DM21 of the Norwich Local Plan Development Management Policies Plan adopted 2014 (LP), which seek to prevent any adverse impacts on residential amenity through disturbance from noise.

Other Matters

11. The Council have confirmed that the proportion of retail units within the district centre would be 65%, which is above the 60% required in Policy DM21 of the LP. As such, the district centre would not become unbalanced towards the night time economy as a result of the appeal scheme.

Conditions

12. I have had regard to the advice in the Planning Practice Guide and the conditions suggested by the Council. In addition to the standard commencement period, it is necessary in the interests of safeguarding the living conditions of nearby residents to impose conditions requiring implementation in accordance with the submitted drawings, for details of any amplified sound and its attenuation to be approved and for the entrance and exit points, hours of operation and delivery times to be controlled. For the same reason it is also necessary for details of any extraction equipment to be approved. I have also altered the delivery times suggested by the Council to be more in line with what the appellant has proposed and to control evening noise in the service road.

Conclusion

13. For the reasons given above, and having regard to all other matters raised, I conclude the appeal should be allowed.

Graham Chamberlain
INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall commence before the expiration of three years from the date of this decision.
- 2) The development hereby approved shall be carried out strictly in accordance with the following approved drawings:
 - MJSM15022016 DRWA and MJSM14022016 DRWA
- 3) No installation of any amplified sound equipment shall take place within the application premises until details of the amplification equipment have been submitted to and agreed in writing by the Local Planning Authority.
The submitted details shall include:
 - Specification for all amplification equipment and speakers including the location of all proposed speakers and the maximum noise levels expressed in dB LAeq (5 mins), measured at a point 2 metres from any loudspeaker forming part of the amplification system; and
 - Measures to be put in place to ensure that the amplification system cannot be adjusted beyond the maximum permitted noise levels agreed in (c) above.
 - No use of the premises as a restaurant shall take place until the amplification system and any sound proofing measures as agreed have been installed and thereafter the agreed permitted maximum noise levels shall not be exceeded at any time.
 - No amplified music shall be played in the premises the subject of this permission other than through the permanently installed amplification system as agreed under this condition and no alteration of this system shall take place without the prior written agreement of the local planning authority.

The amplification system shall be designed to limit the level of noise emanating from the premises, such that the noise levels from the application premises shall not exceed 45dB at 63Hz C.B.F., 40dB at 125Hz C.B.F. and

NR30 over the frequency range from 250Hz to 8KHz as measured at a position 1 metre outside any noise sensitive premises and shall not exceed 37 Db AT 63Hz C.B.F., 30dB at 125Hz C.B.F and NR20 over the frequency range from 250Hz to 8KHz as measured inside any adjoining noise sensitive premises. Where further internal sound proofing is required to meet these levels, full details of the proposed sound proofing shall be submitted with the amplification equipment details and shall include details of its specification, location and fixing.

- 4) The doors indicated as DR09, DR10 and DR11 on the approved plans shall only be used in an emergency as fire exits or for servicing when the premises are not open to the public, trading, or has members of the public, as customers or guests, on the premises. The doors shall not be used for any other purpose.
- 5) The premises which form the subject of this permission shall not be open to the public, trading, or have members of the public, as customers or guests, on the premises between the hours of 23:00 hours and 07:00 hours on any day.
- 6) No trade deliveries or collections, including trade waste or clinical waste shall take place before 07:00 hours and after 18:00 hours Monday to Saturday. There shall be no trade deliveries or collections, including trade waste or clinical waste, on Sundays or Bank or Public Holidays.
- 7) No extract ventilation or fume extraction system shall be installed or erected on the site unless in accordance with a detailed scheme that has been submitted to and approved in writing by the local planning authority. The detailed scheme shall include the position of ventilation, fume or flue outlet points and the type of filtration or other fume treatment to be installed and used in the premises in pursuance of this permission, together with a schedule of maintenance. No use of the premises as hereby permitted shall take place until the approved scheme has been installed and is operational and thereafter it shall be retained in full accordance with the approved details and the maintenance of the system, including any flue, shall be carried out in accordance with the scheme as agreed.

End of Schedule