
Appeal Decision

Site visit made on 2 November 2016

by C L Humphrey BA (Hons) DipTP MRTPI

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

Decision date: 24th November 2016

Appeal Ref: APP/U5360/W/16/3155387
161 Mare Street, Hackney, London E8 3RH

- 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 George Unsworth against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2016/0257, dated 8 March 2016, was refused by notice dated 4 May 2016.
 - The application sought planning permission for amendments to approved scheme ref:2009/2415 for change of use of ground floor from professional service (A2 Use Class) to restaurant (A3 Use Class) and take-away (A5 Use Class) comprising increased size of first floor rear office extension and alterations to ground floor front elevation without complying with a condition attached to planning permission Ref 2010/1436 dated 25 August 2010.
 - The condition in dispute is No 4 which states that: The A3 and A5 use hereby permitted may only be carried out between 11:00 hours and 23:00 hours Monday to Saturday and 12:00 hours and 22:00 hours on Sunday/Bank holiday.
 - The reason given for the condition is: To ensure that the use is operated in a satisfactory manner and does not unduly disturb adjoining occupiers or prejudice local amenity generally.
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Decision

1. The appeal is allowed and planning permission is granted for amendments to approved scheme ref:2009/2415 for change of use of ground floor from professional service (A2 Use Class) to restaurant (A3 Use Class) and take-away (A5 Use Class) comprising increased size of first floor rear office extension and alterations to ground floor front elevation at 161 Mare Street, Hackney, London E8 3RH in accordance with the application Ref 2016/0257 dated 8 March 2016 without compliance with the conditions previously imposed on the planning permission Ref 2010/1436 dated 25 August 2010, but subject to the conditions set out in the Schedule to this decision.

Background and Main Issue

2. The change of use of the appeal premises permitted under planning permission Ref 2010/1436 has been implemented. The appellant wishes to extend the hours of use from those originally imposed to 09:00 - midnight Monday to Thursday, 09:00 Friday - 02:00 Saturday and 09:00 Saturday - 02:00 Sunday. No change is proposed to the permitted hours of use between 12:00 and 22:00 on Sundays and Bank Holidays.
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3. The main issue is the effect that the proposed evening hours of use would have on the living conditions of neighbouring residents with particular regard to noise and disturbance.

Reasons

4. The appeal site is located on the west side of Mare Street within a 3 storey terraced building. The appeal premises forms part of a parade which features a variety of commercial uses at ground floor level. The upper floors of the building are in residential use and there are other residential properties nearby.
5. Mare Street is a classified road and a bus route, and is well used by vehicular traffic with attendant associated noise. There are some evening uses in the surrounding area, including a public house and hot food takeaways. However, the appeal site is not located in a designated local shopping centre, district centre or town centre, and I noted during my site visit that the majority of nearby commercial premises appear to be occupied by daytime uses. Accordingly, I would expect pedestrian and vehicular activity to reduce and the area to be quieter throughout late evening and night time hours than it is during the day.
6. Noise would result from customers arriving at and departing from the appeal premises, talking and possibly congregating in groups on the footway outside. In addition, noise would arise from staff legitimately engaged in activities such as clearing away and locking up the premises at closing time. Such noise would occur directly beneath the windows of the first and attic floor residential accommodation and in close proximity to neighbouring residential properties. Even in the context of the comings and goings at other local premises, this would be more intrusive during the late evening and through the night when background noise levels would be lower and residents could expect to be sleeping.
7. The appellant makes the case that the residential accommodation located above commercial premises is occupied by young professionals who like the social life of Mare Street and support the late opening units. Although I have been provided with a letter of support from one resident, I have no evidence to support this general assertion in respect of the occupants of all neighbouring residential accommodation. Given the fairly small number of existing late opening uses in the surrounding area, neighbouring residents would have a reasonable expectation that their living environment would be quieter in the late evening and during the night.
8. My attention has been drawn to the commercial uses operating from 155A and 157B Mare Street, which have planning permission for late night opening hours. However, I do not have full details of the planning history of these premises, and note that the decisions appear to predate the London Plan and the Hackney Development Management Local Plan (DMLP). I have reached my conclusions on the appeal proposal on the basis of the evidence before me.
9. I note that the Council recently approved an application for the variation of a premises licence which would enable the appeal premises to open later, in line with the proposed hours of use which are the subject of this appeal. However, the planning and licensing regimes involve consideration of different, albeit related, matters. The licensing regime seeks to secure statutory licensing objectives, and does not take account of planning policies or objectives.

Accordingly, licensing decisions do not bind those making planning decisions. The public informative set out on the Council's licensing decision letter of 1 April 2016 states "the local planning authority should draw no inference or be bound by this decision with regard to any future planning application which may be made." I therefore give this matter little weight.

10. It has been put to me that the appeal premises currently operate as a restaurant and therefore it is not expected to generate such frequent comings and goings as a takeaway. However, I note that the premises have the benefit of planning permission for an A5 takeaway use in accordance with planning permission Ref 2010/1436. The Council's licensing decision notice also refers to takeaway use. On this basis, and although the submitted menu does not refer to takeaway food, it would appear that the premises could lawfully operate a takeaway service.
11. The appellant has provided copies of letters of support for the appeal proposal from the occupier of the upstairs residential property and customers. I have had regard to the points therein relating to the good management of the premises and the contribution that the business makes to the health of the parade and to security during the evening. I also note that there have been no complaints regarding cooking smells, anti-social behaviour and highway safety, and that the police did not object to the licensing application. However, these matters do not outweigh the harmful effect that the proposed late evening and night time hours of use would have upon the living conditions of neighbouring residents.
12. I conclude that a condition limiting the hours that the appeal premises can be used in the evening is necessary in the interests of protecting the living conditions of neighbouring residents, with particular regard to noise and disturbance. In this respect, I consider that the hours imposed by the Council are reasonable and accord with the aims of Policy 7.15 of the London Plan and Policies DM2 and DM11 of the DMLP with regard to reducing and managing noise, the evening and night time economy and amenity protection.
13. The appellant has made reference to Policy 7.4 of the London Plan in respect of the character of the area. I have not been provided with details of this policy, so I am unable to reach any conclusions as to its relevance to the appeal proposal.
14. I have had regard to the presumption in favour of sustainable development and to the core planning principles set out in the National Planning Policy Framework (the Framework). The appeal proposal would result in noise and disturbance in the late evening and night time which would have a harmful effect upon the living conditions of neighbouring residents. This would conflict with the fourth core principle set out in paragraph 17 of the Framework which states that planning should seek to secure a good standard of amenity for all existing and future occupants of land and buildings. As a result, the proposed extension to the hours of use during the late evening and night time would fail to protect the health and social wellbeing of the community and the built environment, contrary to the social and environmental roles set out in paragraph 7 of the Framework.
15. The three dimensions of sustainable development are mutually dependent, and I consider that the conflict with the social and environmental dimensions would outweigh any positive contributions that the proposed extended late evening

and night time hours of use would make towards the economic dimension. I therefore conclude that in this regard the proposal would not constitute sustainable development when assessed against the policies contained within the Framework as a whole.

16. A number of shops and other commercial daytime uses are located in close proximity to the appeal premises. The proposed earlier daytime hours of use are reasonable in this context and would not have an adverse effect upon the living conditions of neighbouring residents with regard to noise and disturbance. This element of the appeal proposal would therefore accord with the noise and amenity protection aims of the Framework, Policy 7.15 of the London Plan and Policy DM2 of the DMLP. Policy 15 of the Hackney Local Development Framework Core Strategy and Policy DM11 of the DMLP relate to the evening and night time economy and, as such, are not relevant to the proposed daytime hours of use.

Conclusion

17. For the reasons set out above I conclude that the appeal should be allowed, but only in respect of the daytime hours of use.

Conditions

18. In allowing the appeal and granting planning permission I have deleted the disputed condition and replaced it with a new condition relating to the hours of use.
19. The guidance in the Planning Practice Guidance (PPG) makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As it was not clear from my site visit whether all the operational development granted under planning permission Ref 2010/1436 dated 25 August 2010 has taken place and I have no information before me about the status of the other conditions imposed on that permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
20. I have imposed a condition specifying the relevant drawings as this provides certainty. In order to ensure the suitable appearance of the development, I have imposed conditions relating to materials and large scale details. In the interests of preserving the appearance of the surrounding area and public health I have imposed a condition relating to refuse and waste storage.
21. The provision of a level approach to the premises would be covered by Building Regulations. The installation of roller shutters would require separate planning permission. Accordingly, I have not imposed conditions relating to these matters.

C L Humphrey

INSPECTOR

SCHEDULE

CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Plan, 786/FM/PP-101, 786/FM/PP-200.
- 2) Notwithstanding Condition 1, prior to the commencement of any superstructure works on site, details of the doors, windows and shopfront to a scale of 1:20 shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 3) Notwithstanding Condition 1, prior to the commencement of any superstructure works on site, details and samples of the materials to be used in the construction of the external surfaces of the development hereby permitted shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and samples.
- 3) The use hereby permitted shall only take place between the following hours:
09:00 – 23:00 Mondays – Saturdays
12:00 – 22:00 Sundays and Bank Holidays.
- 4) Except on day(s) of collection, all refuse and waste shall be stored in sealed containers in the refuse area shown on the approved plans.