
Appeal Decision

Site visit made on 2 December 2016

by Graeme Robbie BA(Hons) BPI MRTPI

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

Decision date: 13 December 2016

Appeal Ref: APP/V5570/W/16/3155434

London Canal Museum, No 12-13 New Wharf Road, London N1 9RT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by the Canal Museum Trust against the decision of the Council of the London Borough of Islington.
 - The application Ref P2015/5323/FUL, dated 18 December 2015, was approved on 23 May 2016 and planning permission was granted subject to conditions.
 - The development permitted is the installation of one air conditioning unit at roof level.
 - The condition in dispute is No 5 which states that: *The air conditioning unit hereby approved shall not operate outside the hours of 0900 to 1700 Tuesday to Sunday and on Bank Holiday Mondays (but not any other Monday), except on the first Thursday of each calendar month when the unit may operate between 0900 to 1930 and except in the case of a private hire event / function permitted under the terms of the unilateral undertaking from the Trustees of the Canal Museum Trust to the Council dated 23 December 2004, the air condenser unit shall not operate outside the hours of the private hire event / function as permitted by the terms of the unilateral undertaking.*
 - The reason given for the condition is: *To protect the amenities of the neighbouring occupiers.*
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Decision

1. The appeal is allowed and the planning permission Ref P2015/5323/FUL for the installation of one air conditioning unit at roof level at London Canal Museum, No 12-13 New Wharf Road, London N1 9RT granted on 23 May 2016 by the Council of the London Borough of Islington, is varied by deleting condition 5.

Application for costs

2. An application for costs was made by Canal Museum Trust against the Council of the London Borough of Islington. This application is the subject of a separate Decision.

Background and Main Issue

3. Dating from the 1860's and redeveloped in the early 20th century, the appeal property has been in use as a museum since 1989¹, and as the London Canal Museum since 1992. An application for a certificate of lawfulness of existing use as a museum with occasional private functions was approved in 2004². A Unilateral Undertaking accompanied that application, wherein the Trustees covenanted with the Council to comply with the provisions of the Canal

¹ Application Ref: 88/1448

² Application Ref: P040543

Museum Management Plan. The Management Plan sets out Commitments and a Framework of Limitations for Private Functions, setting out the range, type, amount, duration and scheduling of private functions.

4. The planning permission for the installation of one air conditioning unit at roof level which has brought about the current appeal includes a condition limiting the days and hours of operation of the air conditioning unit. The Council's statement indicates that the condition is necessary to protect the living conditions of occupiers of adjacent flats.
5. The main issue is whether the condition is necessary or reasonable in the interests of the living conditions of occupiers of neighbouring properties, with particular reference to noise.

Reasons

6. The museum building's façade is a substantial three storey building with dual-pitched roof, the ridge of which runs from side to side with the roof falling to front and rear. Behind this is large single storey building with pitched roof, the ridge of which runs perpendicular to that of the main façade building, with a small area of flat roof lying between the two main elements of the building.
7. The installation of the approved air conditioning unit is part of an air-sourced heat pump heating system to replace the museum's existing gas-fired heating system. It is stated that the new heating system, as with the existing system, will provide heating for the entire museum building. The external manifestation of the new heating system, the air conditioning unit, will be sited on an area of flat roof, between the two main elements of the building and immediately adjacent to the gable peak of the rear portion of the building. Two smaller air condenser units and three lantern-type rooflights also occupy this area of flat roof.
8. London Canal Museum is located within an area comprising a mix of both residential and commercial uses. Flanking the museum building on either side are larger, modern, four (14 New Wharf Road) and six (10 New Wharf Road) storey residential apartment buildings. The side elevation of No 14 is blank facing towards the museum building, as is the part of No 12 directly adjacent to the area of flat roof within which the air-conditioning unit would be sited. However, beyond this screen at No 12, windows and balconies at third and fourth floors of that building currently have views over the roof of the museum building and limited views towards the flat roofed area.
9. Policy DM6.1 of Islington's Local Plan: Development Management Policies (DMP) states that noise generating uses should, where possible, be sited away from noise sensitive uses and that where proposed within a residential area, applicants should demonstrate that the use will not give rise to noise nuisance. Appendix 10 to the DMP sets out relevant noise exposure categories and standards.
10. It is clear from the appellant's acoustic report³ that the air conditioning unit would, with appropriately designed mountings and acoustic enclosure, operate significantly below the existing measured background sound levels at all affected overlooking residential facades. Indeed, the level of sound would be

³ Technical Report Ref DTJ723/R1/1 – 28 November 2015. David Trevor-Jones Associates – The London Canal Museum, 12-13 New Wharf Road, London N1 9RT: Sound assessment to support proposed development

some 18dB below the lowest background sound level, satisfying and exceeding the requirements set out in DMP policy DM6.1 and Appendix 10 to the DMP.

11. The National Planning Policy Framework (the Framework) states at paragraph 203 that local planning authorities should consider whether otherwise unacceptable development can be made acceptable through the use of conditions. The Framework goes on to state, at paragraph 206, that conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects (known as *the six tests*). Planning Practice Guidance (the Guidance) advises⁴ that any condition that fails to meet any of *the six tests* should not be used.
12. In terms of whether a condition passes the test of necessity, the Guidance identifies a key question as being whether it would be appropriate to refuse planning permission without the requirements imposed by the condition. There must therefore be a definite planning reason for the condition – is it needed to make the development acceptable in planning terms?
13. On the basis of the objective analysis of background noise levels and the emissions from the proposed air conditioning unit, there would, demonstrably, be no harm to the living conditions arising from noise from the operation of the unit. The Council's Public Protection Pollution team agree. Moreover, I have not been presented with any further evidence to counter that set out in the appellant's acoustic report, or the advice of the Council's Public Protection Pollution team. There is, therefore, no dispute between the main parties that the unit would operate at sound levels, when assessed at the nearest noise sensitive receptors, significantly lower than the lowest existing daytime and night-time background sound levels at those receptors.
14. I am satisfied that conditions 3 and 4 of the planning permission provide sufficient control over the design, operation, installation and maintenance of the unit as set out in the application submissions, so as to satisfy the requirements of DMP policy DM6.1 and DMP Appendix 10. The Council argue that the disputed condition was imposed to prevent and limit any undue harm to the living conditions of nearby residential properties. However, I am satisfied that it has been objectively demonstrated that the operation of the unit would not give rise to any such harm and I have not been presented with any evidence to the contrary. Thus, for the reasons set out, I conclude that the disputed condition fails the test of necessity, as set out in the Framework and the Guidance.
15. I note that both the Council and the appellant have suggested alternative wording setting out when the air conditioning unit may be operated. However, as I have found on the evidence before me that no harm would arise, a condition, whether in the disputed form, or an alternative form, would fail the test of necessity. To therefore restrict the times when the unit may be operated would not be reasonable. As I have found that the condition fails the tests of necessity and reasonableness, it is not necessary for me to consider further the question of the extent of the hours of operation of the unit.

⁴ Paragraph: 005 Reference ID: 21a-005-20140306

Other Matters

16. As this appeal relates to a condition imposed upon a planning permission for the installation of an air conditioning unit, concerns regarding noise generated by music at events and functions at the museum building are not for me to consider at this time, and do not lead me to reach a different conclusion in respect of the main issue.

Conclusion

17. For the reasons given above, and having considered all other matters raised, I conclude that the appeal should succeed. I therefore vary the planning permission by deleting the disputed condition.

Graeme Robbie

INSPECTOR