
Appeal Decision

Site visit made on 5 January 2017

by David Cross BA (Hons), PGDip, MRTPI

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

Decision date: 13 February 2017

Appeal Ref: APP/H5960/W/16/3159375

64 Battersea Rise, Wandsworth, London SW11 1EQ

- 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 Mrs Gina Palladino of Pizza Metro Pizza Ltd against the decision of the Council of the London Borough of Wandsworth.
 - The application Ref 2016/0718, dated 13 May 2016, was refused by notice dated 11 July 2016.
 - The development proposed is use of pavement area to Battersea Rise and Limburg Road frontages for the placement of tables and chairs.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of the development provided on the planning application form has been replaced by an amended version on the site notice, decision notice and in subsequent appeal documents which refers to both Battersea Rise and Limburg Road. I consider that subsequent description to be usefully more accurate and I have therefore used it within this decision.
3. The Council has confirmed that the plan submitted with the application was plan no. PL101B dated April 16 which formed the basis of the consultation on the planning application and the subsequent refusal of planning permission. The appellant has submitted plan no. TC_2008_DN002 dated 10 May 2016 with the appeal. I have also been provided with a copy of plan no. TC_2016_DN_BR_64 dated June 2016, which the appellant states has been approved by the Highways department. However, both of these plans differ from the plan submitted with the planning application (i.e. plan no. PL101B) as they depict variations in the location and extent of the tables and chairs.
4. Within this context I am very conscious of the Wheatcroft Principles derived from *Bernard Wheatcroft Ltd v SSE* (1982) which are further explained in the Procedural Guide: Planning Appeals - England¹. It is my firm view, in the interests of fairness, that this appeal must be determined on the basis of the plan that was submitted with the planning application and which has been subject to consultation and not the amended plans submitted with the appeal. To do otherwise could prejudice unacceptably the interests of interested people and/or consultees who have not been consulted on the amended proposals and

¹ Procedural Guide: Planning appeals – England 2016: Annexe M - Can a proposed scheme be amended?

who may have observations to make. I have therefore determined this appeal on the basis of plan no. PL101B.

Main Issues

5. The main issues in this appeal are:

- The effect of the proposal on the living conditions of nearby residents with particular regard to noise and disturbance; and
- The effect of the proposal on highway safety.

Reasons

Living Conditions

6. I saw on my site visit that Battersea Rise is a busy and well trafficked commercial road with a relatively high level of background sound levels arising from traffic and general activity. However, Limburg Road has a more residential character, and despite the proximity to Battersea Rise, the sound environment was noticeably quieter and more appropriate to this predominantly residential street.
7. In my view, the introduction of an external seating area on Limburg Road would introduce a form of activity that would lead to undue levels of noise and disturbance to nearby residents. As well as the general noise of conversations from customers and staff, there would also be noise from cutlery and the movements of chairs and tables etc. Furthermore, there would be noise from the movement of tables and chairs at the start and end of the opening hours. I consider that such noise would be readily apparent to residents along Limburg Road, and would be unduly intrusive in their enjoyment of their residential properties.
8. The appellant states that they have consent to open bifolding doors until 2100. However, whilst the opening of such doors may increase the noise levels emanating from the property, the dining area would still be located within the property and a significant degree of noise attenuation would be provided by the walls of the building. The external seating area would introduce activity onto Limburg Road with a resultant increase in noise and disturbance.
9. I conclude that the proposed development would be detrimental to the living conditions of residents in the area as a result of noise and disturbance. The proposal therefore conflicts with policy DMS1 of Wandsworth Local Plan 2016 (WLP) which states that development should not harm the amenity of nearby properties through, amongst other things, unacceptable noise.

Highway Safety

10. The tables on Battersea Rise would be located adjacent to the frontage of the restaurant. Plan no. PL101B specifies that there would be a 2 metre walkway between the seating area and the edge of the kerb. However, it was apparent at my site visit that there is a lighting column located within this 2 metre walkway which would limit the width of the footpath available for pedestrians. I also note that Transport for London (TfL) have objected to the seating area on Battersea Rise due to conflict with pedestrians and have recommended that the tables and chairs should be reduced in number and placed directly adjacent to the wall so that they are not pulled out into the path of pedestrians. Due to

the degree of obstruction and the arrangement of the tables the proposal would be detrimental to the flow of pedestrians along Battersea Rise and limit the width of the footway. This would force pedestrians nearer to the carriageway and is likely to lead to an increase in conflicts between pedestrians and vehicles to the detriment of highway safety.

11. The tables on Limburg Road would be placed directly adjacent to the kerb. The flow of pedestrians along the path would therefore be likely to be obstructed by customers and staff of the business passing from the restaurant to the seating area. The tables would also act as a barrier to pedestrians wishing to cross Limburg Road, leading to dangerous crossing strategies as highlighted by the Council's Transportation Group. I also saw at my site visit that there are on-street parking spaces on Limburg Road which would be directly adjacent to the kerb side seating area. The proposal would therefore lead to conflict between the parking of vehicles and the dining area, particularly due to the opening of car doors.
12. Furthermore, the seating areas and associated activity would be particularly detrimental to people with prams/pushchairs as well as mobility impaired pedestrians such as users of wheelchairs and the partially sighted.
13. I have had regard to the 'Licence to Place Tables and Chairs on the Highway' issued by the Council on 30 June 2016. However, I note that this is subject to an assessment of the planning aspects of the proposal. I also note that this Licence was issued on the basis of plan no. TC_2016_DN_BR_64A which is different from the plan which is the subject of this appeal.
14. I conclude that for the reasons stated above the proposed development would be detrimental to highway safety. The proposal therefore conflicts with policy 6.3 of The London Plan 2016 which states that development should not adversely affect safety on the transport network. The proposal would also conflict with policies DMT1 and DMS1 of the WLP which require a safe, inclusive and suitable access and environment.

Other Matters

15. The appellant has suggested a reduction in the number of tables and chairs as well as limiting the months and hours of use e.g. from April to September and between 11.00 to 21.00. However, I am not persuaded that the suggested times would overcome issues of noise and disturbance, as this would enable the use of the external seating area in the evening and at weekends when nearby residents could reasonably expect to enjoy the relative peace and quiet of their properties. Furthermore, the suggested months of operation of the tables would be during the summer months when nearby residents may wish to open their windows for ventilation, thereby increasing the impact of noise and disturbance.
16. I am mindful that the appellant states that the proposal would make the business more competitive, especially as similar businesses in the area offer outdoor seating areas. However, this economic benefit would not outweigh the harm I have identified above.
17. I have also had regard to the photographs provided by the appellant which depict seating areas outside businesses. However, on the basis of the evidence provided to me, these would appear to be on a main street of a commercial

nature such as Battersea Rise, rather than a residential street such as Limburg Road. Notwithstanding this, I do not have full details of planning permissions or other consents relating to these examples and so cannot be certain that the circumstances are the same as the current appeal. In any case I have considered the appeal proposal on its own merits.

18. I have taken account the objections raised locally relating to the effects of the proposal on odours, air quality, litter, light pollution, refuse storage, privacy, security and anti-social behaviour. However, consideration of these matters has not led me to a different conclusion on the appeal.
19. The site is within the Clapham Junction Conservation Area (CA). However I note that the Council Officer's report on the planning application states that the proposal would not harm the character, appearance or setting of the CA. On the evidence before me, I concur with this view.

Conclusion

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

David Cross

INSPECTOR