

Appeal Decision

Site visit made on 13 June, 2017

by **S. J. Buckingham, BA (Hons) DipTP MSc MRTPI FSA**

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

Decision date: 13th July, 2017

Appeal Ref: APP/X5990/W/17/3170750

41 Great Pulteney Street, London, W1F 9NZ

- 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 Mr Mark Woodford against the decision of City of Westminster Council.
 - The application Ref: 16/03788/FUL dated 25 April, 2016 was approved on 11 October 2016 and planning permission was granted subject to conditions.
 - The development permitted is *erection of a new fourth storey, plant room and perimeter railing for use as offices (Class B1) with a terrace; external alterations comprising new fenestration and painting of the facades, and alterations to the office entrance on Great Pulteney Street including erection of a fixed canopy.*
 - The condition in dispute is No 18 which states that: *the terrace area hereby approved at fourth floor level associated with the office accommodation can only be used between the hours of 08:30 and 21:00 (Monday to Sunday). You cannot use the terrace area outside of these hours other than in the case of an emergency. The use of the terrace can continue for one year from first occupation of the refurbished office accommodation on any part of the first to fourth floors. After this time you must not use any part of the roof for sitting out or for any other purpose unless permission has been granted. You can however use the roof to escape in an emergency.*
 - The reason given for the condition is: *to protect neighbouring residents from noise nuisance, as set out in S24, S29, and S32 of Westminster's City Plan (July 2016) and ENV 6 of our Unitary Development Plan that we adopted in January 2007.*
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Decision

1. The appeal is allowed and the planning permission Ref: 18/03788/FULL for erection of a new fourth storey, plant room and perimeter railing for use as offices (Class B1) with a terrace; external alterations comprising new fenestration and painting of the facades, and alterations to the office entrance on Great Pulteney Street including erection of a fixed canopy at 41 Great Pultney Street, London, W1F 9NZ granted on 11 October, 2016 by City of Westminster Council, is varied by deleting condition 18 and substituting for it the following condition:

The terrace area hereby approved at fourth floor level and associated with the office accommodation can only be used between the hours of 08:30 and 21:00 (Monday to Sunday), and cannot be used outside these hours other than in the case of an emergency.

Main Issue

2. It is not a matter of dispute between the parties that, to protect neighbouring occupiers from noise, a condition restricting the hours of use of the terrace to between 08:30 and 21:00, Monday to Sunday, is necessary. However, the use of the terrace is limited to no more than one year from the first occupation of the refurbished offices, other than for emergency escape, in order to allow for a review of the hours of use after that time. The appellant seeks to vary this condition so that the use can occur on a permanent basis.
3. The main issue is therefore the effect that varying Condition 18 would have on the living conditions of neighbouring occupiers in respect of noise nuisance.

Reasons

4. Number 41 Great Pulteney Street is a plain, brick-built, four storey building set on the north side of Brewer Street in Soho, with elevations turning the corner into Bridle Lane and Great Pulteney Street respectively. Adjoining residential properties to the rear are flats in the terrace of houses at 35 – 40 Great Pulteney Street and in John Broadwood House on Bridle Lane. These buildings are of four domestic storeys in height, and their roofs sit at or below the level of the roof terrace of No 41. The dwellings on Great Pulteney Street have small balconies to the rear, and there is a narrow strip of communal garden space in the centre of the block. No 41 also faces residential properties across Brewer Street.
5. The fourth floor to be added as a result of the application approved in October 2016 includes a small area of roof terrace set on the western side of the roof adjoining Bridle Lane, and a relatively narrow walkway skirting the edge of the roof on the Brewer Street and Great Pulteney Street sides, associated with its use as a means of escape.
6. The appellant has submitted evidence showing that there was previously a small terrace on the existing flat roof and has suggested that it had unrestricted use by office workers, although the Council contends that there is no record of any lawful such use, and evidence supplied by neighbouring occupiers indicates that this was informal. The approved drawings show that most of the new fourth floor will be taken up by built structures and plant, leaving space for a terrace larger than that formerly used for a roof terrace, but still relatively modest. It would be buffered from the communal garden and houses on Great Pulteney Street by the built elements, and from John Broadwood House by an area of green roof several metres deep and including a hedge which is to be maintained at a height of two metres, as secured by Condition 17.
7. Soho is a very busy location during the day and night, and the Council is understandably concerned to protect local residents from further noise generating uses, particularly during the night. However, given the size and location of the new terrace and its separation from adjoining residential properties, I consider that, with restrictions on its hours of use, it is unlikely to be harmful to neighbouring occupiers in terms of noise.
8. My attention has been drawn to Paragraph 9.71 of the Council's Unitary Development Plan 2007 (the UDP) which advises of "sudden impulses" and irregular noise and the potential disruption likely to arise from these. The

Council draws distinction between the noise associated with the irregular use of the proposed terrace and the more continuous noise associated with plant or equipment. However, it appears to me that any potential harm likely to arise from people using a terrace is already well understood and I am satisfied it would be managed by the time restrictions on the use of the terrace. This is not therefore convincing evidence for the need for a “trial run” for the terrace use, and I am not persuaded one would be necessary.

9. The Council has put in front of me a number of appeal decisions where noise has been a main issue, and which demonstrate the Council’s concern to protect local residents from harm from such developments. However, in the cases to which these decisions relate, it has been concluded by the Council that the proposed terrace uses are entirely unacceptable, while in the current case it has not. Furthermore, none of the decisions raise the issue of temporary permission. They do not, therefore, cause me to alter my conclusions in this case.
10. Some neighbouring occupiers have raised the issue of the past misuse of the former roof terrace, although another neighbour has stated that those using it were considerate. While this evidence is contradictory, it cannot, in any case, predict the future behaviour of those using the roof terrace in this case. The behaviour of users of other terraces in the area, similarly, cannot inform us of the likely future use of this terrace. Neighbours have also expressed fears that the use of the terrace will be intensified and therefore more likely to give rise to noise nuisance, but its hours of use would in future be controlled by condition, and would also be capable of being enforced against.
11. No technical evidence has been put before me to suggest that there is anything unusual about the way sound would travel or be amplified by the buildings to adversely affect the communal garden, as has been suggested by a neighbouring occupier, and I consider that the setback from the northern edge of the roof would in any case limit any such effect.
12. I conclude therefore that the roof terrace, with restricted hours of use but allowed on a permanent basis, would not harm the living conditions of neighbouring occupiers by generating noise at sensitive times. I note that Policy S24 refers to entertainment uses, but the proposal before me would not conflict with provisions of policies S29 and S32 of Westminster’s City Plan 2016 or with ENV 6 of the UDP in respect of noise nuisance. These policies require that development ensures a safe and healthy environment, incorporating design features to minimise and contain noise.

Other matters

13. Neighbouring occupiers have expressed concern at the potential for the use of the terrace to affect the privacy of the communal garden through overlooking, but because of the separation from the edge of the roof on that side, and the presence of the proposed hedge, I concur with the Council’s original findings on this, that issues of privacy have been satisfactorily addressed.

Conclusion

14. For the reasons given above and taking into account all other matters raised, I conclude that Condition 18 as it currently stands is not reasonable or necessary in the interests of protecting the living conditions of neighbouring occupiers from noise, and that the appeal should be allowed and use of the terrace permitted on a permanent basis. I have therefore removed Condition 18, and replaced it with a condition which restricts the hours of use of the terrace, in the interests of protecting the living conditions of neighbouring residents.

S J Buckingham

INSPECTOR