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## Appeal Decision

Site visit made on 26 June 2017

**by Alexander Walker MPlan MRTPI**

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

**Decision date: 25<sup>th</sup> July 2017**

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**Appeal Ref: APP/Q4245/W/17/3171953**  
**183 Ashley Road, Hale WA15 9SD**

- 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 Cote Restaurants Ltd against the decision of Trafford Borough Council.
  - The application Ref 89991/VAR/16, dated 24 November 2016, was refused by notice dated 13 February 2017.
  - The development proposed is the change of use of the highway to accommodate outdoor seating (16No. tables and 42No. chairs).
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The planning application sought '*the change of use of the highway to accommodate outdoor seating (16No. tables and 41No. chairs)*'. However, the Council's decision notice changes this description to '*Removal of Condition 5 of planning permission H/25672 and Condition 2 of planning permission H/63194 to allow the use of the forecourt on the Westgate frontage as an external seating area*'. Whilst the proposal would have the same effect as removing the conditions referred to by the Council, the application was not submitted under s73 of the Act. No explanation has been provided as to why the description was changed.
3. The description of the development in the appeal form is '*Change of use of the highway to accommodate outdoor seating*' and in section F of the form the appellant has ticked the box for 'Refused planning permission of the development', rather than 'Refused permission to vary or remove a condition(s)'.
4. In light of the above, I have used the description as set out in the application submission and determined the appeal on this basis.

### Main Issue

5. The main issue is the effect of the development on the living conditions of the occupants of neighbouring residential properties with regard to noise and disturbance.

## Reasons

### Background

6. The appeal site is the subject of an extensive planning history. Planning permission was granted in 1988 for the erection of a single storey extension to restaurant, closure of existing entrance and construction of new entrance to Westgate incorporating a glazed canopy<sup>1</sup>. Condition 5 attached to this permission states that *'no tables shall be placed on the forecourt on the Westgate frontage at any time'*.
7. There are a number of applications that relate directly to the proposed development. An application to vary condition 5 attached to planning permission H/26572 requiring no tables be placed on the Westgate frontage<sup>2</sup> was refused and subsequently dismissed on appeal. Whilst the Inspector's decision is not before me, the Council has provided an excerpt of the decision, which states that *'there would be the probability of clear harm to the amenity of nearby residents in terms of noise and disturbance especially from the late night congregation of outdoor diners on warm summer evenings'*.
8. An application for the retention of a paved area to Westgate Road was granted permission in 2005<sup>3</sup>. Condition 2 attached to this permission states *'No tables and chairs shall be placed on the forecourt of the Westgate Frontage at any time'*.
9. In addition, an application to vary condition 5 of planning permission H/26572 and condition 2 of planning permission H/63194<sup>4</sup> was refused in 2007 and subsequently dismissed on appeal<sup>5</sup>.

### Living Conditions

10. The appeal site is located on the corner of Ashley Road and Westgate Road. Ashley Road is a busy main thoroughfare running through Hale and contains a number of shops, restaurants and commercial properties. Westgate Road is predominantly a residential road. The peaceful residential character of Westgate Road is in marked contrast to the busy commercial character of Ashley Road.
11. The nearest dwelling to the proposed site of the tables and chairs is No 1 Westgate Road, which is separated from the boundary of the site by a driveway serving the dwelling. A close boarded timber fence sits on the boundary and forms part of an enclosed bin storage area for the appeal site which would not contain any tables and chairs. The dwelling has a two-storey plus basement bay window to the front with windows on all of the three sides at ground and first floor level. Dwellings on the opposite side of Westgate Road also have windows in the front elevation that are within proximity of the appeal site.
12. I note that the appellant contends that the character of the area has changed since the previous appeal in 2008. The appeal property and neighbouring residential properties remain in the same use and there is no evidence of any physical changes other than the insertion of bi-folding doors. Whilst the

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<sup>1</sup> LPA Ref H/26572

<sup>2</sup> LPA Ref H/27442

<sup>3</sup> LPA Ref H/63194

<sup>4</sup> LPA Ref H/66524

<sup>5</sup> Appeal Ref APP/Q4245/A/7/2050312

proposal is slightly different to that in 2008, I am not satisfied that the character of the area has fundamentally changed.

13. The appellant seeks to address the concerns raised by the previous Inspector with regard to Appeal Ref APP/Q4245/A/7/2050312 and has commissioned an acoustic assessment, carried out by ACA Acoustics Ltd, dated November 2016. The assessment concludes that the proposal would create a level of noise 6dBA below the prevailing ambient sound level in the vicinity, and would only increase the ambient LAeq level by 1dBA and therefore would not have a detrimental impact on the amenity of nearby residential occupants.
14. The primary source of the ambient noise is the traffic on Ashley Road, as confirmed in the assessment. However, this is not a constant noise as the flow of traffic will have peaks and troughs. Therefore, whilst noise generated by patrons using the tables and chairs may well not be perceptible when conversing during times when traffic is passing, it is likely that it would be during periods when there is no traffic. Furthermore, as confirmed in the assessment, loud voices and laughter could be perceptible by the occupants of the nearby dwellings. In addition, the assessment has only appeared to have considered noise generated by people conversing. As noted by the previous Inspector, other noise would also be generated from glass breakages, furniture movement and the clatter of plates and cutlery. Whilst these noises would likely be less frequent, they would nevertheless punctuate the general ambient noise and likely be perceptible to neighbouring residents.
15. I appreciate that the proposed use would not cause significant noise levels that would amount to a statutory nuisance. However, given the proximity of the tables and chairs to the neighbouring dwellings, the culmination of the various noise sources mentioned would have a significantly intrusive effect on the living conditions of the occupants of these dwellings. This would be further enhanced during warm weather when these occupants have their windows open and the use of the outdoor seating area would likely be greater.
16. I have also considered the effect of the existing hedge and enclosed area in providing a barrier to noise. However, given the proximity of the site to neighbouring dwellings and the lightweight form of these barriers such effects would only be minimal.
17. The appellant contends that boisterous and loud behaviour at the existing restaurant would be very unlikely. However, it would be very difficult to manage the behaviour of individuals. Such management would generally be reactive to an already offending incident of loud noise. Furthermore, it does not secure the behaviour of patrons for any potential future restaurants operating under the lawful A3 use.
18. Whilst there are no restrictions on the restaurant opening its doors and windows, I do not consider that this would generate the same level of noise as the proposed outdoor area.
19. I note that appellant's suggested condition restricting the hours of use of the outdoor seating area. However, as the proposed use of this area would significantly harm the living conditions of neighbouring residents during the daytime as well as the evening, I am not satisfied that such a condition would be reasonable.

20. I have had regard to the appeal decision for Nos 214-216 Ashley Road<sup>6</sup> whereby the Inspector found that the occupants of dwellings in town centres are likely to experience some degree of noise and disturbance from commercial activity. However, the outdoor seating area for this property fronts onto Ashley Road where it is commercial in character. Therefore in such an area there is an expectation that there would be higher noise levels than in residential areas. The proposed outdoor seating area is on the side of the property, fronting onto a road that is predominantly residential in character and where noise levels are generally quieter. Therefore, whilst I appreciate that there are similarities between the two schemes, I do not find that these are sufficient to add weight in favour of the current appeal.
21. I find therefore that the proposal would significantly harm the living conditions of the occupants of the neighbouring residential properties, contrary to Policies L5 and L7 of the Trafford Local Plan Core Strategy, which, amongst other matters, seek to ensure that development does not cause adverse noise and protects the amenities of occupants of adjacent properties. Furthermore, it would fail to comply with the design objectives of the National Planning Policy Framework.

### **Other Matters**

22. The appeal site lies within the Hale Station Conservation Area (CA). The Council have raised no objection to the proposal in respect of whether it preserves or enhances the character or appearance of the area. As the proposal would not comprise any permanent alterations to the building, I find that that it would have a neutral effect on the significance of the CA and therefore would preserve its character and appearance. However, this does not outweigh the harm I have identified above.
23. The proposal would provide an area of outdoor seating that could improve the vitality and viability of the area. Whilst this weighs in favour of the proposal, I do not find that it outweighs the harm it would have on the living conditions of neighbouring residents.

### **Conclusion**

24. For the reasons given above, having regard to all matters raised, the appeal is dismissed.

*Alexander Walker*

INSPECTOR

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<sup>6</sup> APP/Q4245/A/07/2048971