



Appeal Decision

Site visit made on 10 July 2017

by Alexander Walker MPlan MRTPI

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

Decision date: 1st August 2017

Appeal Ref: APP/H5390/W/17/3173490 146A North End Road, London W14 9PP

- 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 Ramesh Versani against the decision of the Council of the London Borough of Hammersmith & Fulham.
- The application Ref 2017/00038/FUL, dated 5 January 2017, was approved on 9 March 2017 and planning permission was granted subject to conditions.
- The development permitted is the use of premises as a 24 hour radio-controlled booking office in connection with a minicab business (Class Sui Generis).
- The conditions in dispute are Nos 1, 4, 5, 6 and 7 which state that:
 1. *The use hereby approved is permitted for a temporary period until the 14th March 2018.*
 4. *There shall be no display of signage on the premises advertising or promoting the mini-cab use hereby permitted.*
 5. *No sounds from the use of communication equipment emitted from the development shall be audible at or within any residential/ noise sensitive premises.*
 6. *No sounds from the use of minicab radios emitted from the development hereby approved shall be audible at or within any residential/ noise sensitive premises.*
 7. *No vehicle engines shall be left running while vehicles used in conjunction with the development are stationary at the site.*
- The reasons given for the conditions are:
 1. *To enable the Council to assess the impact of the operation of the use on the existing amenities of the occupiers of neighbouring properties and on traffic and car parking conditions, in accordance with Policy DM J1, DM J2, DM H9 and DM H11 of the Development Management Local Plan 2013 and Policy T1 of the Core Strategy 2011.*
 4. *To ensure that customers are not encouraged to visit the premises, and thereby to minimise the potential for noise and disturbance to residential neighbours, particularly at night; and to ensure the free movement of traffic in the area, in accordance with Policy DM J1, DM J2, DM H9 and DM H11 of the Development Management Local Plan 2013 and Policy T1 of the Core Strategy 2011.*
 5. *To ensure that the amenity of occupiers of surrounding premises is not adversely affected by noise, in accordance with Policy DM H9 and DM H11 of the Development Management Local Plan 2013.*
 6. *To ensure that the amenity of occupiers of surrounding premises is not adversely affected by noise, in accordance with Policy DM H9 and DM H11 of the Development Management Local Plan 2013.*
 7. *To ensure that the amenity of occupiers of surrounding premises is not adversely affected by noise or fumes, in accordance with Policies DM H9 and DM H11 of the Development Management Local Plan 2013.*

Decision

1. The appeal is allowed and the planning permission Ref 2017/00038/FUL for the use of premises as a 24 hour radio-controlled booking office in connection with

a minicab business (Class Sui Generis) at 146A North End Road, London W14 9PP granted on 9 March 2017 by the London Borough of Hammersmith & Fulham, is varied, by deleting condition Nos 1, 4, 5, and 6.

Main Issues

2. The main issues are whether the disputed conditions are necessary and reasonable in the interests of highway safety and the living conditions of the occupants of neighbouring residential properties.

Reasons

Highway Safety

3. The appeal property has been the subject of previous planning permissions for its use as a radio controlled booking office¹. However, the details of the Decision Notices for these, including any conditions imposed on them, are not before me. Nevertheless, the fact that permission was recently granted for a development with an identical description² and that the appellant refers to their 'license' running out in 2017 prompting the need to submit a new application suggests that planning application 2015/03736/FUL was granted with a similar condition limiting the use to a temporary period.
4. The National Planning Practice Guidance states that a condition limiting use to a temporary period only where the proposed development complies with the development plan, or where material considerations indicate otherwise that planning permission should be granted, will rarely pass the test of necessity. It goes on to state that circumstances where a temporary permission may be appropriate include where a trial run is needed in order to assess the effect of the development on the area. However, it will rarely be justifiable to grant a second temporary permission – further permissions should normally be granted permanently or refused if there is clear justification for doing so³.
5. The appellant contends that the site has been operating as a minicab office for many years, which is supported by the planning history. There is no evidence that the Council has received any complaints regarding the use, particularly over recent years. Whilst I acknowledge the Council's concerns regarding the potential for mini-cabs to park on the roads surrounding the site, which could adversely affect highway safety and the living conditions of neighboring residents, such harm has not come to fruition.
6. I find therefore that Condition 1 is not necessary and provides an unreasonable burden on the appellant with them having to apply for permission every year. The Council has not provided any substantive evidence to justify granting a temporary permission.

Living Conditions

7. The appeal site fronts onto a busy road and forms part of a frontage comprising a number of retail units. A short distance to the south east is May Street, which is a small no through road which serves the rear of the adjacent public House, The Clarence and a large apartment block on the opposite side. The road has restricted parking.

¹ LPA Refs 1995/01668/FUL, 2004/00457/FUL and 2015/03736/FUL

² LPA Ref 2015/03736/FUL

³ Paragraph: 014 Reference ID: 21a-014-20140306

8. The appeal property and the majority of other properties in the row are single-storey in height. However, The Clarence is three-storeys. Whilst the ground floor is evidently the public house, it is not clear whether the upper floors are in residential use.
9. Condition 4 prohibits the display of signage on the premises in order to ensure that customers are not encouraged to visit the premises. However, Condition 2 states that any driver of any vehicle used in connection with the development hereby approved nor any customer of the business shall visit the premises for the purpose of waiting or making/taking orders and instruction, collecting clients from the premises, or for the purpose of taking refreshments or using the facilities, or for any other purpose. Therefore, without Condition 4, customers would still be prohibited from waiting or taking orders at the premises.
10. Furthermore, the appellant argues that advertisements have been on display at the premises since 1995. This is not disputed. There is no evidence to suggest that the existing advertisements have directly resulted in customers visiting the premises and causing noise and disturbance to neighbouring residents. Moreover, to prevent the business from displaying any advertisements promoting their services would likely have a significantly harmful effect on its viability. Accordingly, I find that Condition 4 is both unnecessary and unreasonable.
11. Conditions 5 and 6 ensure that no communication equipment emitted from the premises or radio equipment from the minicabs shall be audible at or within any residential/noise sensitive premises. The appellant confirms that communication with minicab drivers is done over mobile networks and the noise of the activities from the minicab administration is no greater than human speech.
12. The appeal property is some distance from the nearby apartments on May Street. Given the distance between them, it is unlikely that communication equipment used by the business would be perceptible by the occupants of these apartments and therefore would not cause them any harm. Moreover, even if the upper floors of The Clarence are used as residential units, due to the separation distance with the appeal property, it is also unlikely that their occupants would be significantly affected by noise from communication equipment. There is no indication of what other noise sensitive premises are near to the appeal property that could be affected by noise from communication equipment. I find therefore that conditions 5 and 6 are unnecessary and unreasonable.
13. Condition No 7 prohibits vehicle engines from running while vehicles used in conjunction with the business are stationary on the site. Whilst this is one of the disputed conditions the appellant seeks to remove, he has not provided any justification as to why it should be. Nevertheless, vehicles parked in front of the premises or on May Street would be within proximity of neighbouring residential properties. If engines are left running, particularly late at night, the noise generated could disrupt neighbouring residents' sleep and therefore have a harmful effect on their living conditions. I find therefore that, in the interests of the living conditions of neighbouring residents, condition 7 is reasonable and necessary.

Other Matters

14. The appeal site is located within the Barons Court Conservation Area (the CA). The Council have raised no objection to the proposal in respect of whether the removal of the disputed conditions would affect the preservation or enhancement of the character or appearance of the CA. I find that the removal of the disputed conditions would have a neutral effect on the significance of the CA and therefore would preserve its character and appearance.

Conclusion

15. I have found that conditions 1, 4, 5 and 6 are not reasonable or necessary and therefore fail the tests set out in paragraph 206 of the National Planning Policy Framework. However, condition 7 is reasonable and necessary in the interests of the living conditions of neighbouring residents.
16. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting conditions 1, 4, 5 and 6.

Alexander Walker

INSPECTOR