
Appeal Decision

Site visit made on 7 August 2017

by Alexander Walker MPlan MRTPI

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

Decision date: 29th August 2017

Appeal Ref: APP/R5510/W/17/3173662
839 Uxbridge Road, Hayes UB4 8HZ

- 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 Mr Haider Youssif against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref 71927/APP/2016/2009, dated 26 May 2016, was refused by notice dated 8 November 2016.
 - The development proposed is a rear canopy extension and mixed use (sui generis) to existing A3 use restaurant.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. At the time of my site visit the development as proposed had already commenced. Retrospective as referred to in the application form and decision notice does not constitute an act of development. I have dealt with the appeal on the basis that planning permission is being sought for a rear canopy and change of use to A3 use, which is reflected in my description of the development.

Main Issues

3. The main issues are the effect of the development on the character and appearance of the area and the living conditions of the occupants of neighbouring residential properties, with regard to odour, noise and disturbance.

Reasons

4. The appeal property is a commercial unit located within a three-storey terrace row of several similar sized properties comprising commercial units at ground floor and residential units on the upper floors. To the rear of the terrace are service yards and parking areas that appear to be associated with the commercial units. These have perimeter fencing/walls and contain various structures and paraphernalia.
5. The proposed canopy extends almost the full width and depth of the rear yard of the appeal property. I note that there was a previous canopy that was approximately half the size. Whilst the shelter is of a semi-permanent design, it provides a permanent sheltered area that includes tables, chairs, sofas, a

television, outdoor heating and shisha pipes. There is no indication that the canopy can be retracted. Viewed in conjunction with the high perimeter wall, it has a similar appearance to that of an extension. Indeed, its function is more akin to an extension than that of an outdoor seating area.

6. I note that some of the neighbouring rear yards are not particularly visually appealing and do not make any positive contribution to the visual amenity of the area. Whilst the site is well screened from Uxbridge Road, it is clearly visible from a number of private views from the neighbouring residential properties.
7. Given the size of the overall covered area and the permanence of the canopy, it fails to appear subservient to the host building. Furthermore, as it covers almost the entirety of the rear yard, it represents over development that detracts from the overall character and appearance of the area.
8. I find therefore that the proposal significantly harms the character and appearance of the area. As such, it conflicts with saved Policies BE13 and BE19 of the London Borough of Hillingdon Local Plan Part 2: Saved UDP Policies (LP2) 2012, which, amongst other things, seek to protect the amenity and character of the area.

Living Conditions

9. The canopy is directly below a number of windows serving residential properties. The use of the shisha pipes within the canopy would result in smoke and odours rising and entering these windows. As a consequence, this would significantly diminish the usability of the rooms that these windows serve, particularly during hot weather when the occupants have windows open.
10. There are a large number of chairs under the canopy. The Council suggest that up to 30 people could gather under the canopy, which based on my own observations, I find no reason to dispute. Consequently, such a large number of people would generate a significant amount of noise through conversing. In addition, the television would also generate noise. Within such proximity of the residential units above, I find that it would significantly harm the occupants' of these properties peaceful enjoyment of their homes. This would be particularly prevalent at night time as it would disrupt neighbouring occupants' sleep.
11. I have had regard to the use of conditions to restrict the opening hours to reduce the harmful effects on the living conditions of neighbouring occupants. However, whilst it would likely reduce these harmful effects during the night time, I am not satisfied that the odour, noise and disturbance from the property during the daytime would be acceptable.
12. The Noise Impact Assessment Report, dated 28 February 2017, carried out by KP Acoustics states that an acoustic screen should be installed to block the line of sight between the external area and windows directly above and therefore adequately reduce harmful noise. In the absence of any evidence before me to the contrary I find no reason to disagree with this finding.
13. In light of the above, it has been demonstrated that the harmful effects of noise and disturbance could be mitigated through an appropriately worded condition requiring the installation of an acoustic screen. As such, it would accord with saved Policies OE3 and OE5 of the LP2, which seek to prevent

cause of noise annoyance. However, this would not mitigate the harmful effects of odour as a result of the use of the shisha pipes.

14. I find therefore that the proposal would significantly harm the living conditions of neighbouring occupants, with regard to odour. As such, it fails to comply with saved Policies OE1 of the LP2, which, amongst other things, seeks to protect surrounding properties from smell pollutants.

Other Matters

15. I acknowledge that no objections have been received from neighbouring residents. However, in determining the appeal I have had consideration of the effect of the development on the living conditions of future neighbouring residents as well as existing.

Conclusion

16. For the reasons give above, having regard to all matters raised, the appeal is dismissed.

Alexander Walker

INSPECTOR