



Appeal Decision

Site visit made on 31 October 2017

by Katie McDonald MSc MRTPI

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

Decision date: 6 December 2017

Appeal Ref: APP/Q4245/W/17/3179252

42-44 Brook Road, Flixton, Manchester M41 5RY

- 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 & Mrs Ellis against the decision of Trafford Borough Council.
 - The application Ref 89558/COU/16, dated 22 September 2016, was approved on 10 March 2017 and planning permission was granted subject to conditions.
 - The development permitted is use of premises as a mixed cafe (A3 Use Class) and function room use with an ancillary children's play area in the rear outbuilding. External alterations to include a flue to the rear, replacement windows to the front and an extension to the rear outbuilding.
 - The conditions in dispute are Nos 2, 5, 11 and 12 which state that:
 - 2. The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, ref. A0.5 and A0.6 dated September 2016 and A0.4, A0.9 and A0.10, A0.13 dated February 2017.*
 - 5. The premises shall only be open for trade or business between the hours of: 08:00-19:00 hours Monday - Saturday inclusive and 09:00-17:00 hours on a Sunday.*
 - 11. There shall be no public access by users of the premises to the shaded rear yard area shown on drawing ref. A0.13 dated February 2017 and this shaded rear yard area shall not be used for sitting out and no tables, chairs or seating shall be placed in the shaded area. Prior to the use hereby approved first taking place a 1.2 metre high timber fence shall be erected in the location shown on drawing ref. A0.13 and retained in situ in perpetuity to prevent access to the shaded area of the rear yard as shown on the plan by users of the premises.*
 - 12. Prior to the use hereby approved first taking place details of the means of preventing access to the rear yard via the central internal passageway by users of the premises shall be submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented prior to the use hereby approved being first commenced and retained as such thereafter.*
 - The reasons given for the conditions are:
 - 2. To clarify the permission, having regard to Policy L7 of the Trafford Core Strategy and the National Planning Policy Framework.*
 - 5. In the interest of residential amenity having regard to Policy L7 of the Trafford Core Strategy and the National Planning Policy Framework*
 - 11. In the interest of residential amenity having regard to Policy L7 of the Trafford Core Strategy and the National Planning Policy Framework.*
 - 12. In the interest of residential amenity having regard to Policy L7 of the Trafford Core Strategy and the National Planning Policy Framework.*
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Decision

1. The appeal is allowed and the planning permission Ref 89558/COU/16 for use of premises as a mixed cafe (A3 Use Class) and function room use with an

ancillary children's play area in the rear outbuilding. External alterations to include a flue to the rear, replacement windows to the front and an extension to the rear outbuilding at 42-44 Brook Road, Flixton, Manchester M41 5RY granted on 10 March 2017 by Trafford Borough Council, is varied by deleting conditions 2, 5, 11 and 12 and substituting for them the following conditions:

- 2) The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, ref. A0.5 and A0.6 dated September 2016 and A0.4, A0.9 and A0.10 dated February 2017.
- 5) The use hereby permitted shall only take place between the hours of 0800-2200 on any day.
- 11) The use of the external courtyard to the rear of the premises for customer seating shall only take place between the hours of 0800-1800.

Application for costs

2. An application for costs was made by Mr and Mrs Ellis against the Trafford Borough Council. This application is the subject of a separate Decision.

Background and Main Issues

3. Planning permission to change the use of the appeal premise to a café and function room with ancillary children's play area included conditions to restrict opening hours and public access to the rear courtyard. The Council's statement indicates that the conditions are necessary to ensure the development would not harm living conditions at surrounding residential properties.
4. Accordingly, I consider the main issue is whether the conditions relating to opening hours and the use of the external courtyard are reasonable or necessary in the interests of the living conditions of nearby residents, with particular reference to noise and disturbance.

Reasons

5. The site is an imposing two storey building located on the corner of Brook Road and Briar Close. At the time of my visit, the café was in use at ground floor level, with the first floor undergoing renovation works. The area has a mixed urban character, featuring predominately residential properties, the appeal site and some small commercial uses to the north, comprising hairdressers, fish and chip shop, office and shops. There is also a public house to the north of Brook Road that fronts Moorside Road. Brook Road was busy with vehicular traffic, and although I could hear distant sounds from the motorway in the background, the area was not particularly noisy.
6. The appeal site is closely bounded by residential properties, sharing its rear boundary with 2 Briar Close and side boundary with 36 Brook Road. There are residential properties directly opposite the site.

Opening hours

7. Condition 5 restricts the opening hours of the café from 08:00-19:00 on Monday - Saturday and 09:00-17:00 on a Sunday. The appellant seeks to amend these hours to 08:00-22:00 every day. The site has a long standing commercial use, with the most recent uses being an 'office, storage, showroom and sales of non domestic goods' at ground floor level and a 'martial arts and

self defence studio at first floor'. The planning permission for ground floor use included a condition to restrict opening hours from 08:00-18:00 Monday – Saturday¹. The first floor use was restricted to opening hours of 09:00-22:00, and also featured a restriction on the premises being used only for a 'martial arts and self defence studio'².

8. The previous first floor use was a dance studio that reputedly played loud music until 22:00. However, this use ceased to operate over 10 years ago with the implementation of the martial arts and self defence studio. There is no restriction regarding the playing of music upon the martial arts and self-defence studio planning permission, but I note that none was generally played.
9. The Assessment of Noise Impact report³ (NIR) details that the proposal is not intended to have music playing other than for background/atmosphere, but it has been calculated that higher levels of music could be played without causing any problems. Furthermore, the appellant details that the first floor has been fitted with double sound board, insulation and double glazing. Based on the evidence before me, the Council do not refute the NIR.
10. It seems reasonable to me that a function room is unlikely to be used every night; and whilst some functions may create some noise, many functions are unlikely to generate any undue noise. Hours of opening until 22:00 is not unreasonably late and many people would not be asleep by this time.
11. Activities associated with both the café and function room use would be entirely contained within the building, which is detached from the neighbouring residential properties, and has been assessed for its noise impact with no adverse findings. Furthermore, condition 8 of the permission restricts the opening of windows and doors while amplified noise is being played.
12. The Council detail that inebriated customers leaving the premises are likely to cause noise, however, the Council also state that a license to sell alcohol has not been granted. Therefore, based on the current situation, inebriated customers are highly unlikely. However, should a license to sell alcohol be granted, the closing time of 22:00 is unlikely to result in uncontrollably inebriated customers. The use, after all, is a café and function room, not a bar or public house.
13. Customers entering or exiting the site may be increased from the former uses, however, given that the hours of opening would span 8:00-22:00, this is likely to be spread out over the day. There may be busy periods, but there are also likely to be quiet periods, and I do not find that the increase in hours of opening would lead to excessive comings and goings resulting in an adverse effect upon living conditions.
14. Moreover, any excessive or undue noise that occurred from the premises would be subject to other regulatory legislation controlled by Environmental Health. The previous use of the first floor until 22:00 was considered acceptable, and whilst the uses are different, there would still be people gathered at the building. Therefore, to use the building until 22:00 every night is not unreasonable and based on the evidence before me, is unlikely to prejudice the

¹ Application Ref: H/35010 (Granted planning permission 1 July 1992)

² Application Ref: H/52565 (Granted planning permission 2 November 2001)

³ ADC Acoustics (ARR/PPN/C/2705.01) dated 1 November 2016

living conditions of the occupants of adjacent properties by reason of noise and disturbance.

Use of the external courtyard

15. The courtyard to the rear of the site is bounded by a solid wall. Beyond the rear boundary is the gable of 2 Briar Close and to the side is the single storey garage of 36 Brook Road. Condition 11 restricts access to the rear courtyard from the main building and to access the children's play area, customers would be required to exit the building, travel around the side of the premise and enter the site through the side gate. This is unreasonable and unduly restrictive, and I note that that Council have since granted a variation to this condition to allow an access route⁴.
16. Notwithstanding this variation, the appellant wishes to use the rear courtyard as an external seating area from 08:00-18:00, and proposes to remove the restrictive nature of the condition entirely.
17. Based on the evidence presented by the appellant, the previous use of the courtyard was for storing and testing washing machines, which I am advised, could be noisy at times. Whilst I note that this use did not take place on Sundays, it did take place every other day.
18. The comments presented by the Council's Environmental Health Officer change on 3 occasions, however, the final comments present no substantive evidence why use of the external courtyard would lead to adverse living conditions. I also note the Design for Security comments provide no substantive evidence as to the effect either.
19. The outdoor courtyard is not of a substantial size and it seems reasonable to me that, unlike the former use, it would be probably not be used every day due to inclement weather conditions. Customers eating or drinking outside are unlikely to create an unacceptably noisy environment; particularly given the proposed hours of use would not be late.
20. The existing boundary treatments would ensure there was no loss of privacy, and it is highly unlikely that customers would sit or stand on tables. Furthermore, there are no external private garden areas directly adjacent to the site.
21. Therefore, based on the evidence before me, these factors collectively lead me to conclude that use for customers during the day is unlikely to lead to adverse living conditions for the adjacent properties. Furthermore, as with the hours of opening, any excessive or undue noise that occurred from the premises would be subject to other regulatory legislation controlled by Environmental Health.
22. Condition 12 seeks to restrict access to the rear courtyard, which largely duplicates the requirements of condition 11. This is unnecessary and I note that the Council has removed this condition under the same variation of condition application referred to above.
23. As a result of my conclusions on the use of the rear courtyard, Condition 2 will require amendment to remove its reference to plan A0.13.

⁴ Application Ref: 91186/VAR/17 (Granted planning permission 13 July 2017)

Other matters

24. A number of the objections refer to traffic and parking, along with a requirement for a resident's only parking scheme. These matters are not contested by this appeal and as the Council has not raised any concerns in relation to these matters, I attach them little weight.
25. The extractor fan is subject to a condition restricting its noise level and this matter would require investigation by the Council if the noise level was exceeded.
26. The first floor windows all featured obscure glazing to the lower panel and I do not consider that loss of privacy would occur from the first floor use.

Conclusion

27. Consequently the proposal with amended conditions would comply with Policy L7 of the Trafford Local Plan: Core Strategy (January 2012), which seeks to ensure developments are compatible with the surrounding area and do not prejudice the amenity of adjacent occupants. It would also be compliant with the National Planning Policy Framework, which details that decisions should aim to mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions.
28. For the reasons given, I conclude that the appeal should be allowed in the terms set out above.

Katie McDonald

INSPECTOR