
Appeal Decisions

Site visit made on 23 July 2019

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 July 2019

Appeal A Ref: APP/L5810/W/19/3229216 130 High Street, Teddington TW11 8JB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mrs Alex Camilleri-Lloyd against the decision of the Council of the London Borough of Richmond-upon-Thames.
 - The application Ref 18/2336/VRC, dated 11 July 2018, was refused by notice dated 12 April 2019.
 - The application sought planning permission for use of the premises as an A3 restaurant/café without complying with conditions attached to planning permission Ref 17/1755/FUL, dated 11 September 2017.
 - The conditions in dispute are Nos U29737 and U29745 which state that: U29737 Sound Limiting Device - A sound limiting device shall be fitted to/used by any in-house or peripatetic musical amplification system/s used at the venue and set at a level that will achieve the entertainment music noise criteria detailed in the table 2 below. The limiter shall be set and secured so that it cannot be overridden by performers or DJ's or other persons other than house engineers or other appointed sound system engineers. The limiter shall not be altered without prior agreement of the Local Planning Authority. An acoustic assessment and report shall be submitted to and agreed by the Local Planning Authority, within 8 weeks of the date of this decision notice which demonstrates how the sound limiting device has been set in order to achieve the requirements of the entertainment noise control criteria below. Table 2: Entertainment Noise Limit Levels. Time of Day Day/Eve External Criteria Entertainment Noise level (EN) Leq,5min shall be no greater than the (WEN) residual noise by more than 3dB(A) Day/Eve Internal Criteria Entertainment Noise level (EN) Leq,5min shall be no greater than the Noise Rating Level NR 20 (Leq,5minutes), and
 - U29745 Music/Entertainment Noise Control Condition - The continuous equivalent sound level (LAeq,T) from music and/or entertainment noise emanating from the venue, as measured (1 metre from the facade) (within a habitable room) of representative neighbouring noise sensitive premises to include; o High Street Teddington o Udney Park Rd, Teddington or when measured elsewhere and calculated to said locations, shall not exceed the following limits detailed in Table 2 below;). Table 2: Entertainment Noise Limit Levels. Time of Day Day/Eve External Criteria Entertainment Noise level (EN) Leq,5min shall be no greater than the (WEN) residual noise by more than 3dB(A) Internal Criteria Day/Eve Entertainment Noise level (EN) Leq,5min shall be no greater than the Noise Rating Level NR 20 (Leq,5minutes).
 - The reasons given for the conditions are: To safeguard the amenity of the surrounding area and occupants of neighbouring residential properties.
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Appeal B Ref: APP/L5810/W/19/3229208 130 High Street, Teddington TW11 8JB

- The appeal is made under section 78 of the Town and Country Planning Act 1990

against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.

- The appeal is made by Mrs Alex Camilleri-Lloyd against the decision of the Council of the London Borough of Richmond-upon-Thames.
 - The application Ref 18/1536/VRC, dated 8 May 2018, was refused by notice dated 12 April 2019.
 - The application sought planning permission for use of the premises as an A3 restaurant/café without complying with conditions attached to planning permission Ref 17/1755/FUL, dated 11 September 2017.
 - The condition in dispute is No U29719 which states that: Use of rear yard - The rear yard shall at no time be used by customers as a seating/eating area.
 - The reasons given for the condition is: To protect neighbour amenity.
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Decisions

1. Appeal A is dismissed, and Appeal B is dismissed.

Background and Main Issue

2. Planning permission was granted for use of the premises as an A3 restaurant/café in 2017 (17/1755/FUL). Further applications have been subsequently submitted to discharge and/or amend conditions on that permission, including those subject to these appeals.
3. I note comments by the main and third parties in relation to breaches of the disputed conditions subject to these appeals and time periods referred to in the conditions themselves. Nonetheless, at the time of my site visit the outdoor area was not being used by customers and it is not clear to me that other conditions are currently being breached. As I cannot be sure that breaches for all conditions occurred prior to the application being made, I have dealt with the appeal under Section 73 of the Town and Country Planning Act 1990.
4. The appellant's appeal statement refers to potentially different hours of use of the rear yard than those originally sought during the application. The Council determined the scheme on the hours identified in the application form and this was also the basis upon which consultation took place.
5. In the interests of fairness I have considered the proposal in the same way. Not to do so could potentially prejudice the interests of interested parties as I have insufficient evidence to suggest that the implications of such a change to the scheme have been fully considered. Notwithstanding that some respondents would appear to be aware of the proposed change, I cannot be entirely certain there are not interested parties who did not comment on the basis of them being content with the scheme as submitted and are unaware of the proposed change.
6. The reason for imposing the original conditions, and the reasons for refusal, relate to the amenity of nearby residents. Therefore, the main issue of both appeals are the effects that varying the conditions would have on the living conditions of occupiers of nearby properties, with particular regard to noise and disturbance.

Reasons

Appeal A

7. At the time of my visit, noise arising from the playing of music and other activities within the building were not significant. However, I acknowledge that my visit was only a snapshot in time and during the day when the premises were not full.
8. Even if the conditions are not typical of this kind of establishment and residential use above commercial premises are not unique to the appeal site, this does not indicate their imposition for a restaurant is inappropriate.
9. A condition limiting playing of musical instruments or operation of sound amplification equipment has been imposed. Nonetheless, this does not prevent noise and disturbance from other sources including from any sound system. Without a sound limiter there would be a reliance on manual control of any sound system. I note that insulation measures have been agreed by the Council. However, the details before me indicate that noise from the premises has still been an issue at certain times at the residential property above. The use of a limiter on any in-house or peripatetic musical amplification system would ensure it was controlled in a manner that prevented it contributing towards noise that would breach the levels specified in the conditions.
10. There has been no compelling evidence presented to me to indicate why the upper limits in the conditions are unnecessary or what alternative levels would be appropriate. In the absence of the disputed conditions there would be no upper limit on the noise emanating from the site experienced at nearby properties.
11. Therefore, I conclude that the disputed conditions continue to serve a useful purpose and remain necessary as the proposal would cause harm to the occupiers of nearby properties in regard to noise and disturbance. It would fail to accord with Policies LP8 and LP10 of the London Borough of Richmond Upon Thames Local Plan (Local Plan) and the Supplementary Planning Document Development Control for Noise Generating and Noise Sensitive Development (SPD). These seek, in part, to ensure there is no harm to occupiers of noise sensitive buildings from noise and that mitigation measures are required where noise needs to be controlled and managed.

Appeal B

12. At the rear of the appeal site I noted that there was some noise from plant machinery associated with the various commercial properties in the parade and existing residential properties above. Nevertheless, the rear of the site is not subject to the same level of noise as High Street where there is noise from the far greater levels of vehicle and pedestrian movements. Therefore, the properties above the site are currently subject to less noise and disturbance than their fronts. The site is only separated from the residential properties on Udney Park Road by a narrow lane which is also considerably quieter than High Street.
13. While not large in size, the use of the yard would introduce an additional source of noise. Due to the lack of noise from similar areas in the row, it would generate noise of a different nature to that currently experienced. As a result of the proximity of the yard to residential properties, even if conditions were

imposed to restrict the use of musical instruments and amplification equipment in the yard, the use of it by customers would generate considerable noise and disturbance. This would adversely affect the living conditions of the occupants of nearby properties.

14. No mitigation for the noise from the yard has been put to me. While the use of it during daytime hours would be typical of retail premises, no examples have been put to me where commercial premises have customer areas at the rear in close proximity to residential properties. Therefore, the proposal would give rise to noise from an unexpected location.
15. I conclude that the disputed condition continues to serve a useful purpose and remains necessary. The proposal would cause harm to the occupiers of nearby properties in regard to noise and disturbance. It would be contrary to Policy LP8 and LP10 of the Local Plan and the SPD. These seek, in part, to ensure there is no harm to occupiers of noise sensitive buildings from noise.

Other Matters

16. The appeal site is in the High Street Teddington Conservation Area (CA). The area includes a busy commercial street which has retained many of the traditional shopfronts with more varied residential streets off it. No external alterations are proposed to the building and no suggestion has been made by the Council that the proposed development would harm the character or appearance of the CA. I have also found this to be the case. The proposal would therefore preserve the character and appearance of the CA.
17. I acknowledge that national and local policy seeks to support economic growth and town centres. Notwithstanding this, there has been no convincing evidence presented to me that the dismissal of the appeals and requirements of the conditions would lead to significant impacts on the viability or vitality of the premises or the area.
18. The appellant has referred to the presumption in favour of sustainable development which is set out in the National Planning Policy Framework. However, I have concluded that the scheme would be contrary to the development plan and there is no convincing evidence that the relevant policies are out of date.
19. I note the level of support for the scheme. Nonetheless, support for a development in itself is not a ground for refusing or granting planning permission unless founded upon valid planning reasons.

Conclusion

20. For the reason set out above and having regard to all other matters raised, I conclude that both Appeal A and Appeal B should be dismissed.

Stuart Willis

INSPECTOR