



Appeal Decision

Site visit made on 1 August 2019

by S Poole BA(Hons) DipArch MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 August 2019

Appeal Ref: APP/H5390/W/19/3221867

105 Uxbridge Road, London W12 8NL

- 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 a condition subject to which a previous planning permission was granted.
 - The appeal is made by Mr Abdi David against the decision of the Council of the London Borough of Hammersmith and Fulham.
 - The application Ref 2018/02602/VAR, dated 1 August 2018, was refused by notice dated 12 September 2018.
 - The application sought planning permission for the change of use of the ground floor and basement to a restaurant (Class A3) and erection of a ventilation duct on the rear elevation without complying with a condition attached to planning permission Ref 2008/03237/FUL dated 11 December 2008
 - The condition in dispute is No 4 which states that: *No customers shall be on the premises in connection with the use hereby permitted between 23.00 hours and 07.00 hours the following day.*
 - The reason given for the condition is: *In order that noise disturbance which may be caused by customers leaving the premises is confined to those hours when ambient noise levels and general activity are sufficiently similar to that in the surrounding area, thereby ensuring that the use does not cause demonstrable harm to surrounding residents in compliance with Policies EN21 and SH11 of the Unitary Development Plan, amended 2007.*
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposal on the living conditions of the occupiers of nearby residential properties, with particular regard to noise and disturbance.

Reasons

3. The appeal property comprises a restaurant that occupies the basement and ground floor of 105 Uxbridge Road. It is located on a busy main road close to the Uxbridge Road Key Local Shopping centre and forms part of a terrace comprising retail uses on the ground floor with predominately 3 floors of residential accommodation above. In addition, there are residential streets nearby and flats above other retail premises in the road.

4. When planning permission was granted in 2008 to change the use of the appeal premises to a restaurant, it was subject to a condition stipulating that no customers should be on the premises between 2300 hours and 0700 hours the following day. The application that is the subject of this appeal, seeks to vary the opening hours to allow the restaurant to operate between 0700 and 0100 hours Thursday to Saturday, and between 0700 and 2350 hours on Sunday to Wednesday.
5. In 2012 the appellant sought to extend the hours of operation of the appeal premises by varying condition 5 of planning permission reference 2012/02387/FUL. The application was refused and a subsequent appeal was dismissed in June 2014¹. Although I note my colleague's comments, I recognise that each application and appeal needs to be considered on its individual merits. In particular I recognise that the proposal before me seeks a shorter extension of hours than previously sought and circumstances may have changed since 2014.
6. The section of Uxbridge Road within which the appeal premises are located includes a large number of food and drink establishments. Information presented by the appellant indicates that some of these premises advertise their opening hours online as extending to 2400 hours or later. However, during my site visit I noted that the majority advertise their opening hours on their frontages as extending no later than 2300 hours. In addition, there is no information before me that demonstrates that any food and drink establishments close to the appeal premises can lawfully open beyond 2300 hours nor is there any evidence that the opening hours of such establishments have been extended since 2014 or that the number of establishments has changed since then.
7. The proposal would allow the appeal premises to be open until 0100 hours, 3 days per week and until 2350 hours on the other 4 days. There would be an inevitable increase in activity and noise in the early hours at a time when ambient noise levels are relatively low and neighbouring residents can reasonably expect relative peace and quiet, to a large extent due to people leaving and congregating outside the premises. Whilst this may occur at a different time in the early hours than would have been the case in respect of the earlier proposal, the conclusions reached by my colleague in 2014 equally apply to the proposal before me. I therefore concur with my colleague's view that the proposal would lead to unacceptable levels of noise and disturbance. There would be particular harm to the living conditions of the occupiers of the residential accommodation above the premises in this respect.
8. I note that a Night Tube service operates from Shepherds Bush Station, which is a short walk from the appeal premises, and that this service did not exist in 2014. Whilst some customers may use public transport in the early hours, it is likely that a high proportion would travel by private car or taxi. The noise generated by car doors slamming and engines starting in the early hours, both in front of the appeal premises and in neighbouring residential streets, would lead to further disturbance to local residents.
9. As there is limited evidence that other restaurants in the area can lawfully open beyond 2300 hours I do not consider that the appellant faces severe competition or that the current limit on opening hours is contrary to the overall

¹ Application ref: 2012/03453/VAR. Appeal ref: APP/H5390/A/13/2202213 dated 5 June 2014

aims of the National Planning Policy Framework (2019) which, although it supports business, also stresses a need to protect health and well-being.

10. For these reasons I conclude that the proposal would have an unacceptable effect on the living conditions of occupiers of nearby residential properties. It is therefore contrary to Policies TLC5 and CC11 of the Hammersmith and Fulham Local Plan (2018). The former states that extended opening hours may be permitted where, amongst other matters, the activities would not be likely to impact on local residents. The latter states that noise generating development will not be permitted, if it would be liable to materially increase the noise experienced by the occupants/users of existing noise sensitive uses in the vicinity.

Conclusion

11. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should fail.

S Poole

INSPECTOR