The Planning Inspectorate

# Appeal Decision

Site visit made on 10 September 2019

**by N Holdsworth MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 20 September 2019**

**Appeal Ref: APP/X5210/W/19/3232317**
**130 Charing Cross Road, London, WC2H 0LA**

- 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 Mr O Shalaby against the decision of the Council of the London Borough of Camden.
- The application Ref 2018/6151/P, dated 1 November 2018, was refused by notice dated 14 May 2019.
- The application sought planning permission for change of use of existing ground floor unit from retail (Class A1) to hot food takeaway (Class A5) including installation of extract duct to the rear without complying with a condition attached to planning permission Ref 2017/4541/P, dated 22 January 2018.
- The condition in dispute is No 5 which states that: The use hereby permitted shall be in operation only for the hours of 09:00am - 11:00pm Monday to Sunday.
- The reason given for the condition is: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies G1, CC1, D1, A1, A4, TC1, TC2 and TC4 of the London Borough of Camden Local Plan 2017.

## Decision

1. The appeal is dismissed.

## Background and Main Issue

2. The original planning permission approved the conversion of the ground floor unit of this building to a hot food take away. This was subject to a condition stipulating that the opening hours should be limited to 9.00am to 11.00pm daily. This planning application sought to vary this condition to allow for longer opening hours. Under the proposal considered by the Council the premises would open daily at 7.00am, and close at midnight on Sunday, 1am on Monday and Tuesday, and 4am on Wednesday, Thursday, Friday and Saturday night.

3. The main issue is the effect of the proposed opening hours on the living conditions of neighbouring residential occupants, with particular regard to noise and disturbance.

## Reasons

4. The site forms part of the ground floor of a large building in central London. The surrounding area has a mixed-use, urban character. Whilst there are late night uses including bars and nightclubs around Covent Garden and Soho which remain open past 11pm, these are not a dominant feature of this part of the

Charing Cross Road. The other units at ground floor level around the site mainly comprise retail uses, including a large bookshop, a clothing outlet, and musical instrument shops found around Denmark Street.

5. There is residential accommodation immediately above the site in the same building. The consultation responses from these residents indicates that they experience noise and disturbance from the existing premises, at the times it is open. This is through, amongst other things, groups and individuals loitering around the front of the building.

6. The application was supported by a noise assessment. This is based on automated monitoring and makes assumptions about noise levels associated with a normal voice, raised voice and shouting. From this it is argued that any additional noise associated with activity at the front of the building would broadly occur at the upper end of the spectrum of existing noise around the premises, found throughout the day and night. However, the baseline noise surveys date back to 2017[1], prior to the grant of the original planning permission. Consequently, the survey does not address the period beyond which planning permission was granted, and to which the accounts of residents appear to directly relate. It is clear from these objection letters that the current character and volume of noise arising from this use is perceived to be highly disruptive. In the absence of up to date technical evidence to demonstrate otherwise, I attach significant weight to these accounts of the existing noise environment around the site.

7. Whilst measures such as CCTV, signs asking customers to leave quietly, and the employment of security guards could reduce the risk of crime and anti-social behaviour, they would not entirely remove noise and disturbance associated with access to and loitering around the premises. Even with the management measures proposed, the business would ultimately have little control over the lawful activity of its customers on the pavement outside the host building.

8. Planning policies cited by the appellant including those in the London Plan (2016) and the Draft New London Plan (2018), together with the Camden Local Plan 2017 ("Local Plan") and the National Planning Policy Framework seek to promote economic growth, the vibrancy of town centres and the night time economy, including support for the creation of a 24 hour city. The site is located in an area where the expansion of the night time economy is particularly encouraged. It falls, amongst other things, within a designated strategic cluster of night time activity of international importance. This is reflected in recent initiatives such as the Night Tube, which service the area around the site, and the various research reports and supplementary planning guidance cited[2]. The proposal would lead to additional jobs and economic activity, to the benefit of the night time economy, whilst providing a service for residents and visitors to this part of the city. It would also create an active frontage later in to the night. These are considerations that weigh in favour of the proposal.

9. However, in this case the proximity of residential accommodation is an important planning consideration. The premises are currently open from 9am until 11pm daily. This strikes a balance between the reasonable demands of

[1] Para 4.3 of noise survey
[2] See the appeal statement, provided by the appellant.

the business, enabling it to serve the evening economy, whilst ensuring there are periods of relative quiet when residents of the same building are not subject to disturbance associated with this premises. On the evidence before me, permitting additional opening hours later in to the evening or early in the morning would change this balance, to the detriment of residential amenity. It would result in additional noise and disturbance at times when residents of the building have a reasonable expectation of being able to sleep.

10. Policies A1, A4 and TC4 of the Local Plan seek to protect the quality of life of occupiers and neighbours, requiring that the impact on nearby residential uses is considered where new town centre uses are proposed. On this occasion the proposed extended opening hours would have an unacceptable effect on the living conditions of neighbouring residential occupants, through noise and disturbance. The proposal therefore conflicts with these policies.

11. A temporary planning permission is requested. However, for the reasons set out above the extended hours proposed are unacceptable in principle. Any trial run would lead to unacceptable noise and disturbance for residents of the same building, throughout its duration. In consequence, varying the condition to permit a temporary extension to the opening hours would not be justified.

12. The appellant refers to a previous planning appeal decision at the site[3], which upheld an enforcement notice requiring the cessation of the A5 use. However, this predated the grant of planning permission by the Council, which this proposal seeks to vary. Notwithstanding this, this previous appeal decision noted the need for suitable hours of operation. My findings in this decision, which are based on the evidence before me, are therefore consistent with this previous appeal decision.

13. I conclude that the proposal conflicts with the development plan when it is considered as a whole. There are no other considerations that outweigh this finding. The appeal should be dismissed.

*Neil Holdsworth*

INSPECTOR

[3] APP/X5210/C/15/3136064