



Appeal Decision

Hearing Held on 14 August 2019

Site visit made on 14 August 2019

by Thomas Hatfield BA (Hons) MA MRTPI

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

Decision date: 2 October 2019

Appeal Ref: APP/U5360/W/19/3219881

Basement and Ground Floor, 129 Stoke Newington High Street, Hackney, London, N16 0PH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Charles Bakker against the Council of the London Borough of Hackney.
 - The application Ref 2018/2318 is dated 25 June 2018.
 - The development proposed is described as *"Use of the ground floor as use class A3 restaurant, with acoustic fencing around rear garden to allow external dining. Proposed hours for Premises: 10:00 to 00:00 (midnight) Mondays to Thursdays, 10:00 to 01:00 (1am) Fridays and Saturdays, and 12:00 to 00:00 (midnight) Sundays and Bank Holidays. Proposed hours for garden use: 10:00 to 21:00 Mondays to Thursdays, 10:00 to 21:00 Fridays and Saturdays, and 12:00 to 21:00 Sundays and Bank Holidays"*.
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This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 10 September 2019.

Decision

1. The appeal is dismissed and planning permission is refused.

Application for costs

2. An application for costs was made by Mr Charles Bakker against Council of the London Borough of Hackney. This application is the subject of a separate Decision.

Main Issue

3. The main issue is the effect of the proposal on the living conditions of neighbouring occupiers with regard to noise and disturbance.

Reasons

4. The appeal premises forms part of a shopping parade on the western side of Stoke Newington High Street. It has a yard area at the rear which is in close proximity to a number of residential properties and gardens.
5. The proposal would introduce an outdoor dining area into the rear yard that could stay open until 21:00, 7 days a week. At present, this yard is not intensively used, and it functions as an open storage area for the restaurant.

In this regard, any noise arising from its current use is likely to be occasional, and at the hearing local residents stated that it had not resulted in any significant disturbance. In contrast, the proposed outdoor dining area could be used for 11 hours on Mondays-Saturdays, and 9 hours on Sundays, which would generate sustained periods of noise throughout the afternoon and into the evening. This would result from raised voices, laughter, the clearing of tables, moving of furniture, and other associated noise, in close proximity to the boundaries with neighbouring properties. This noise would be irregular in character and would vary in its level depending on the individuals/groups present or the number of people in the dining area.

6. Over prolonged periods, this type of noise would be both intrusive and annoying to users of neighbouring garden areas. In this regard, the Noise Impact Assessment (NIA) commissioned by interested parties¹ identifies that the predicted sound pressure level in the rear garden of No 121 Dynevor Road would be 62 dB. Whilst that assessment assumes a 2 metre high timber fence rather than the 3 metres that is proposed, this is partially offset by the assumed patron height of 1.5 metres compared to the 1 metre assumed in the appellant's NIA². However, even if I were to assume the figure of 50 dB quoted by the appellant³, that would still be at a level that would result in '*moderate annoyance, daytime and evening*' according to the WHO Guidelines. Moreover, the outdoor dining area would be likely to be most heavily used during the evenings and at weekends, which are the same times that neighbouring residents would be most likely to be enjoying their gardens. At present, the surrounding gardens areas are relatively tranquil spaces and background noise from Stoke Newington High Street is of a distant and regular character that is not intrusive. In my view, the level, duration, and character of the noise that would arise from the proposal would significantly harm the enjoyment of these areas and would not provide the degree of tranquillity that could reasonably be expected in a back garden area. This effect would also be compounded by the relatively small size of those gardens, as occupiers would be unable to move further away from the source of noise.
7. The appellant's NIA states that nearby first floor windows should not be regarded as noise sensitive receptors during daytime hours (07:00–23:00). In this regard, it asserts that these rooms would not normally be used by the average person during the daytime. However, Nos 119, 121, and 125 Dynevor Road are 3-4 bedroom dwellings that could reasonably be expected to be occupied by families. Accordingly, some of the first floor rooms to those properties are likely to be used as children's bedrooms. The use of the outdoor dining area until 21:00 would therefore be likely to disrupt younger children trying to sleep at this time. This would be particularly the case if those windows were left open during warmer weather. The interested parties' NIA identifies a predicted sound pressure level at the outside façade of first floor bedroom to No 121 Dynevor Road of 59 dB. Whilst that assumes a direct line of sight that did not appear to exist at the time of my site visit, this figure would still be significantly in excess of the 45 dB that would result in sleep disturbance according to the WHO guidelines. Similarly, the appellant's figures indicate a level of sound that would be likely to disturb younger children who were trying to sleep. Separately, as I observed during my site visit, Nos 119,

¹ KP Acoustics Ltd (Ref 16447.NIA.02) dated 06/08/2018

² Sound Licencing Ltd (Ref 129 STOKE NEW HIGH ST N16. NIA) dated 30/05/2018

³ 'Review of Noise Impact Assessment – KP Acoustics (Report 16447.NIA.02)', Sound Licencing Ltd

121, and 125 Dynevor Road all have rear facing home offices that are used for home working. Noise and disturbance generated before 21:00 would therefore result in additional disturbance and annoyance in this regard.

8. At the hearing, the appellant stated that the appeal premises benefits from a licence to use the rear yard area until 22:30. However, licencing operates under a separate regime that is underpinned by other legislation. I therefore attach little weight to the premises licence in the determination of this appeal.
9. It has been put to me that the maximum number of diners permitted to use the outdoor area could be reduced from 56 (as currently proposed) to 25, which could be secured by condition. There is no analysis before me regarding the effect this would have on the level of noise produced, although it was KP Acoustic's view at the hearing that it would only reduce by around 3 dB. In any case, given the proximity of neighbouring gardens and bedroom windows, I am not persuaded that this would overcome my concerns, as set out above.
10. My attention has been drawn to several nearby examples of gardens serving existing restaurants and public houses. However, the full details of those examples are not before me, and it unclear whether those gardens are in comparably close proximity to residential properties. Moreover, a number of the public houses highlighted are long established and are likely to predate current planning controls. With regard to permission Ref 2018/0054 at 147 Stoke Newington High Street, a condition attached to that permission in fact prevents the use of the rear garden of the premises by members of the public. Accordingly, I have therefore come to my own view on the appeal proposal rather than relying on the examples highlighted by the appellant.
11. The views of the Council's Environmental Health section regarding the proposal were discussed at the hearing. In this regard, several emails are before me that pre-date the submission of this appeal. Whilst the Council's Environmental Health section were originally open to discussing a potential condition, their final view was that "*there may be too many non-enforceable variables in order to grant permission*". Concern was expressed that the apparent discrepancy between these responses may indicate that the planning department sought to influence their views. However, there is no evidence before me to support this contention and so I attach little weight to it.
12. For the above reasons I conclude that the development would significantly harm the living conditions of neighbouring occupiers with regard to noise and disturbance. It would therefore be contrary to Policy 7.15 of the London Plan, Core Strategy Policy 15 of the Hackney Core Strategy (2010) and Policy DM11 of the Hackney Development Management Local Plan (2015). These policies seek to ensure that proposals for evening and night time economy uses take account of residential amenity.

Other Matters

13. The appeal site is located within the Stoke Newington Conservation Area, which comprises a well preserved, mostly nineteenth century, suburb. The effect of the development on the character and appearance of the conservation area was not a reason for refusal, and the Council do not object on this basis. The proposal relates to the use of the building and rear yard only and there would be few external alterations to the property. In these circumstances I am

satisfied that the proposal would preserve the character and appearance of the conservation area, in accordance with national policy.

14. At the hearing, a recording was played of noise associated with the beer garden to the Rochester Castle Public House. However, that premises operates as an A4 drinking establishment and is therefore not directly comparable to the currently appeal proposal.
15. I understand that the appeal premises previously generated noise complaints when it was used as a pool club, under different ownership. However, that has no bearing on the current appeal proposal which is for an A3 restaurant with an outdoor dining area.
16. The food hygiene rating of Stokey Bears has been raised by interested parties. However, this is not a planning consideration.

Conclusion

17. For the above reasons, I conclude that the development would significantly harm the living conditions of neighbouring occupiers with regard to noise and disturbance. Whilst it would facilitate the expansion of a business, and would generate some modest economic benefits, that does not alter my view that the appeal should be dismissed.

Thomas Hatfield

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

T Healy	Planning Consultant
J Papouskova	Planning Consultant
C Bakker	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

G Livett	Senior Planning Officer
S Milczarek	

INTERESTED PERSONS:

D Green	KP Acoustics
G Lemos	KP Acoustics
J Holmstock	
S Boyce	
E Himmelfarb	
J Stannard	
S Shannon	
B Yendle	

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Recording of noise associated with the Rochester Castle Public House
- 2 Decision Notice and Officer Report for application Ref 2019/0598