



Appeal Decision

Site visit made on 16 September 2019

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 October 2019

Appeal Ref: APP/T5150/C/18/3217508 53 Lonsdale Road, London NW6 6RA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Chris Wyles against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 24 October 2018.
 - The breach of planning control alleged in the notice is failure to comply with conditions Nos 3, 4 and 5 of a planning permission Ref 16/5237 granted on 25 May 2017.
 - The development to which the permission relates is: Change of use from vehicle repair garage (B2) to tap room (A4) at ground floor and first floor level. The conditions in question are Nos 3, 4 and 5 which state that: No 3: The outdoor seating area shall not be used except between the hours of 1000 hours and 2200 hours Mondays to Saturdays 1000 hours and 2100 hours Sundays and Public Holidays and at no other time whatsoever. Reason: To protect acceptable local noise levels and neighbouring amenity No 4: The premises shall not be used except between the hours of:- 08:00 hours and 23:00 hours Mondays to Fridays, 10:00 hours and 00:00 hours Saturdays, 10:00 hours and 23:00 hours Sunday and Public Holidays and at no other time. Reason: To ensure that the proposed development does not prejudice the enjoyment by neighbouring occupiers of their properties. No 5: No music, public address system or any other amplified sound whatsoever shall be audible outside the premises. Reason: To safeguard the amenities of the adjoining occupiers. The notice alleges that the conditions have not been complied with in that: No 3: It appears to the Council that the outdoor area has been used after 2200 hours No 4: It appears to the Council that the premises has been open after 2300 hours Mondays to Fridays and after 0000 on Saturdays No 5: It appears to the Council that the public address system or any other amplified sound is audible outside the premises.
 - The requirements of the notice are: STEP 1 Cease the use of the premises as pub/tap room (A4) and remove all items, fixtures, fittings and equipment associated with this use from the premises. OR STEP 2 Comply with all the details and conditions as approved under planning permission ref. 16/5237 dated 25/05/2017.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b) and (f) of the Town and Country Planning Act 1990 as amended. Since the appeal been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld with variations.

Applications for costs

2. An application for costs was made by Mr Chris Wyles against the Council of the London Borough of Brent. An application for costs was also made by the Council of the London Borough of Brent against Mr Chris Wyles. These applications are the subject of a separate Decision.

The ground (b) appeal

3. For the ground (b) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that the alleged breaches of planning control have not occurred as a matter of fact at the time the enforcement notice was issued.
4. The Council has provided evidence of recurring breaches of the requisite conditions which includes, amongst other things, a late-night site visit¹, photographs, and complaints/correspondence from neighbouring occupiers.
5. The appellant's case is largely based upon what the Council may or may not know. He is also critical of certain accounts for having not been verified. To my mind however, this is largely an unsatisfactory approach which fails to demonstrate that the alleged breach has not occurred.
6. In any event, based upon the Council's evidence the appellant now admits² to a breach of conditions 3 and 4. I am however also satisfied, on the basis of the available evidence which includes the Council's late-night visit, that there has been a breach of condition 5.
7. On the balance of probabilities, the appellant has therefore not substantiated that the breaches of planning control alleged in the enforcement notice have not occurred as a matter of fact. Consequently, the appeal on ground (b) fails.

The ground (a) appeal

8. The deemed planning application is for change of use from vehicle repair garage (B2) to tap room (A4) at ground and first floor level without compliance with conditions 3, 4 and 5. However, the appellant does not dispute condition 3 and so I have no need to consider it. The main issue is therefore the effect on the living conditions of neighbouring occupiers arising from later opening hours and amplified sound audible outside of the premises.

Reasons

9. The site is situated along Lonsdale Road which is characterised by commercial premises. To the immediate rear of the site are residential properties accessed from Hartland Road.
10. The site itself consists of a two-storey mid-terraced building with a small cobbled area to the front. On the ground-floor is a bar with seating as well as toilets and on the first-floor, with vaulted roof-space, there is a smaller bar area with informal seating. There are no windows to the sides or rear of the building aside from two roof lights which serve the vaulted roof-space. To the front of the building are traditional windows, single glazed, as well as a roller shutter door. The building is finished internally by exposed brick work.

¹ On 9 February 2018

² Appellant's Response to Local Planning Authority's Statement of Case, 10 September 2019

11. The operation of the premises is governed by both the planning and licensing systems. It is not necessarily the case that these will correspond, as the planning system holds a wider responsibility and is concerned with protecting living conditions, as opposed what may constitute a statutory nuisance. I am therefore satisfied that planning conditions are necessary in the interests of protecting the living conditions of neighbouring occupiers.
12. On this basis, the appellant seeks to extend the opening hours/use on Sunday to Wednesday from 2300 to 0000, on Thursday and Friday from 2300 to 0100, and on Saturday from 0000 to 0100. Seasonal variations include Sundays preceding a Bank Holiday until 0030 and all night on New Year's Eve. This would correspond with the hours granted by the Council pursuant to the Premises Licence. It also seeks to relax the strictures of condition 5 to enable amplified sound to be audible outside of the premises.
13. The proposal therefore results in extending the hours of use by between 1 and 2 hours depending on the day of the week. The notable exception to this is during New Year's Eve. Neighbouring commercial uses in the area are not late-night opening hour businesses and there are habitable rooms of residential properties along Hartland Road, to the rear, which are in close proximity of the site. Nevertheless, the Council has granted planning permission for the use and with it some change to the character of the area has consequently arisen.
14. Based on the available evidence, it is however not specifically the opening hours that have brought about complaints, or indeed other planning harms, but rather the music and amplified sound which emanates.
15. I am mindful that the building includes little in the way of internal sound attenuation measures, given the exposed brickwork, and single glazed windows. The way the use operates, with evidence that the roller shutter doors have been open, will also have a significant effect on the transmission of noise from the building and the impact this has, irrespective that residential properties are located to the rear of the site. Noise attenuation measures as well as the way the use operates, in terms of its policies, therefore require careful consideration and control.
16. I am therefore not persuaded that the submitted noise control measures³ address all of my concerns, such that I can be satisfied that living conditions arising from noise would be adequately mitigated based solely upon the suggestions contained therein. The appellant has also offered to make a considerable investment in upgrading the sound insulation infrastructure of the premises, but there is little further detail before me as to what precisely is proposed.
17. I consequently conclude there is a harmful effect on the living conditions of neighbouring occupiers arising from later opening hours and amplified sound audible outside of the premises. This contravenes Policy DMP1 of the London Borough of Brent Local Plan, Development Management Policies, November 2016, which requires, amongst things, there to not be an unacceptable increasing exposure to noise. For the same reasons it would fail to comply with the living conditions objectives of the National Planning Policy Framework.

³ Big Sky Acoustics Ltd, 19 August 2019

Other Considerations

18. I am mindful that longer opening hours, and the appellant's perceived shortcomings in respect of condition 5, could be considered further if the appellant were to seek to address my concerns by means of submitting a planning application. Whilst this would then be a matter entirely for the Council, it is within my discretion to consider extending the period for compliance if I believe it would be a proportionate response.
19. To this effect a period of 4 months would enable the appellant, should he wish, to submit a planning application pursuant to conditions 4 and 5 to the Council which would also allow third parties to make representations on the contents therein. I do not consider that an additional period of 3 months would be disproportionate, or otherwise unnecessarily or harmfully perpetuate the breach of planning control.

Conclusion

20. For the reasons given above I conclude that the appeal should fail on ground (a).

The ground (f) appeal

21. The purpose of the enforcement notice is to remedy the breach of planning control. Therefore, for an appeal on ground (f) to succeed it would be necessary for the appellant to explain why the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control and propose alternatives.
22. In this regard the appellant contends that Step 1, which requires the use to cease, exceeds what is necessary to remedy the breach and therefore only Step 2, which in the alternative, requires all details and conditions of the planning permission be complied with, is necessary.
23. The Council has granted planning permission for the use of the site as a pub/tap room and having served an enforcement notice directed at a breach of condition it implies they must have been satisfied that the planning permission had been implemented. The notice can do no more than require compliance with the conditions in question.
24. In this case planning permission exists and has been implemented. Step 1 of the notice would effectively revoke the planning permission and given the requirements of Step 2, in the alternative, remedy the breaches of planning control, I am satisfied that Step 1 is excessive.
25. Accordingly, the appeal on ground (f) succeeds.

Conclusion

26. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the deemed application.

Formal Decision

27. It is directed that the enforcement notice be varied by:

- the deletion of '*STEP 1 Cease the use of the premises as pub/tap room (A4) and remove all items, fixtures, fittings and equipment associated with this use from the premises. OR STEP 2 Comply with all the details and conditions as approved under planning permission ref. 16/5237 dated 25/05/2017.*' and their replacement with the words '*STEP 1 Comply with all the details and conditions as approved under planning permission ref. 16/5237 dated 25/05/2017.*'
 - substituting '*4 months*' as the period for compliance.
28. Subject to these variations, the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Paul T Hocking

INSPECTOR