



Appeal Decision

Site visit made on 8 October 2019

by Kate Mansell BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 November 2019

Appeal Ref: APP/A5840/W/19/3233026

28 and 30 Peckham High Street, London SE15 5DT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Sally Butcher on behalf of Persepolis against the decision of the Council of the London Borough of Southwark.
 - The application Ref 19/AP/0167, dated 16 January 2019, was refused by notice dated 27 March 2019.
 - The development proposed is the roof of the existing back extensions to be used as an outside seating area at first floor level.
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Decision

1. The appeal is allowed and planning permission is granted for the installation of an outside seating area at first floor level, using the roof of the existing rear extensions; new door to access terrace and balustrade around edge of roof at 28 and 30 Peckham High Street, London SE15 5DT in accordance with application Ref 19/AP/0167, dated 16 January 2019, subject to the conditions set out in the attached schedule.

Procedural Matters

2. The address given on the application form refers only to 28 Peckham High Street. However, from the plans before me, the appeal site extends to both 28 and 30 Peckham High Street, which is the address given on both the appeal form and decision notice. In the interests of clarity, I have therefore used this address in the banner heading above.
3. Notwithstanding the description of development on the application form, set out in the banner heading above, in allowing the appeal I have used the description on the decision notice and the appeal form, as this is more precise in referring also to the new door and balustrade.

Main Issues

4. The main issues are:
 - The effect of the proposal on the living conditions of nearby residential occupiers, principally through noise and disturbance;
 - Whether it would provide a suitable outdoor seating area for future users, with particular reference to noise and odours.

Reasons

Living conditions of nearby residential occupiers

5. Peckham High Street is a main arterial east-west route through Peckham Town Centre (PTC). It is aligned on both sides by buildings of a traditional vernacular, typically extending to three/four storeys and interspersed with more modern interventions. The ground floors are principally occupied by town centre uses, giving it a busy commercial character. I also observed some evidence of residential use on the upper floors.
6. The appeal site is on the southern side of Peckham High Street, on the corner with Collyer Place. It comprises a pair of traditional three storey buildings that have been combined to create a retail/restaurant use on the ground floor with residential accommodation on the floors above. To the rear of each, extending into Collyer Place, a long single storey flat roof extension has been constructed, onto which the appeal proposal would introduce an outside seating area. It would be accessed via stairs from the restaurant and enclosed by a balustrade around the roof perimeter, with an awning to provide cover. An application for a slightly larger seating area was refused in 2018¹.
7. The outdoor seating area would overlook Collyer Place. This small cul-de-sac is principally enclosed by large office buildings. The Council accept that the proposal would not affect the occupiers of these commercial premises, as it would be used primarily after the main working hours of the offices. From my observations on site, I have no reason to come to an alternative view.
8. On the east side of this cul-de-sac, I observed the closest discernible residential use beyond the appeal site, situated above a retail unit and opposite the seating area. Whilst the Council also contend that the upper floors of the appeal site are likely to have been divided into flats, I have no details of any planning permission for its sub-division. Nevertheless, from the evidence before me, they are in residential use, albeit occupied by the appellant.
9. However, Collyer Place is within the boundary of PTC. Consequently, these residential occupiers live within the town centre. Along with the appeal site, Collyer Place is also defined in the Peckham and Nunhead Area Action Plan (2014) (PNAAP) as part of the Peckham Core Action Area PCAA. The PNAAP promotes cafes and restaurants in PTC that will contribute to both the day (defined as between 7am-5pm) and evening economy (5pm-10pm). It recognises that establishing an evening/night-time (10pm-4am) economy will keep the town centre lively and safe at different times of the day.
10. On my site visit in the early afternoon, when standing within Collyer Place, the street onto which the seating area would overlook, the dominant noise source was the heavy traffic on Peckham High Street. Whilst my visit is a 'snapshot' of the prevailing environment, the High Street is a strategic road and it would not be unreasonable to assume that it remains busy for much of the day and into the evening. Ambient noise levels on Collyer Place as a result of road traffic on Peckham High Street would therefore remain high and any additional noise arising from the proposal would be diminished as a result.
11. Moreover, the appellant's statement indicates that the restaurant/cafe operates between 11am and 9pm on any day and the roof garden would also close at

¹ Council Ref: 18/AP/3235

9pm every evening. These hours would ensure that the outside seating area would cease comfortably within the period defined as constituting the evening economy within the PNAAP, which extends to 10pm. The hours of use could also be controlled by condition, which I will return to later.

12. I appreciate that a noise impact assessment has not been undertaken. Nevertheless, I consider that residents living within a major town centre would generally not expect to experience the same levels of quiet compared to areas that are predominantly residential in character. Moreover, measures to manage the operation of the seating area, such as limiting the playing of music/amplified sound, could be controlled by condition to mitigate any potential negative impacts.
13. Furthermore, whilst the roof terrace would be generously proportioned, the plans show that the outside seating would be set away from the rear elevation of the building and the ventilation equipment. Consequently, the seating platforms would not extend across the entire roof space. Whilst it would therefore provide additional capacity for the ground floor restaurant, I am not persuaded that it would result in unduly large gatherings of people on the roof.
14. Within the Officers Report, the Council also contend that the awning would limit the amount of light into the first-floor windows of the appeal premises. However, it would be a lightweight tent roof and it would stretch from a pole to affix to the rear elevation at more than one point. Consequently, it would not be a solid continuous canopy above the windows, but it would drape above them with gaps to the rear wall. I am therefore not persuaded that the amount of light reaching these windows would be substantially reduced.
15. For these reasons, subject to the imposition of appropriate conditions, I do not find that the proposal would unacceptably harm the living conditions of nearby residential occupiers, through noise and disturbance or with regard to light. I therefore find no conflict with Policy 7.15 of the London Plan (March 2016), Strategic Policy 13 of the Southwark Council Core Strategy (SCCS) (April 2011) or Saved Policy 3.2 of the Southwark Plan (SP) (2007). When read together, these policies broadly seek to protect the living conditions of residents, to avoid disturbance from noise to surrounding occupiers but also to mitigate and manage it.
16. The Council's decision notice also refers to Policies P54 and P67 of the Draft New Southwark Plan (DNSP) (2018). However, neither form part of the adopted development plan. Moreover, having regard to guidance at Paragraph 48 of the Framework, in the absence of any detailed evidence to confirm that there are no unresolved objections, I afford them limited weight at this time. In any case, they do not indicate that a different approach should be taken.

Whether it would provide a suitable outdoor seating area

17. The appeal site incorporates extraction/ventilation apparatus associated with the cooking carried out in the restaurant. Whether or not this has been installed in compliance with the approved plans associated with the original permission for the ground floor use² is a matter for the Council to enforce. In any event, whilst the outside seating area would be located in relatively close proximity to this equipment, it would be screened from it by planting.

² Council Ref: 15/AP/0145

18. Given the noise climate on Collyer Place that I have previously described, on my site visit, when the restaurant was operational, I could not hear the ventilation/extraction equipment, nor could I smell any odours emanating from the ground floor use. Moreover, the Council acknowledge that there have been no complaints about the existing equipment. Consequently, I have no substantive evidence before me to indicate that it would emit either noise, heat or odour to the extent that it would affect those seated nearby. I am therefore not persuaded that the proposal would be of such a poor quality in this regard.
19. Furthermore, along the perimeter of the roof, the seating area would be surrounded by a continuous plant box and then enclosed by a balustrade comprised of multi-coloured timber boarding and steel. The Council accept that it would be more attractive than the existing flat roof extension. It would also screen the seating from the surrounding area and provide a landscaped sense of enclosure for customers.
20. For these reasons, I conclude that it would provide a suitable outdoor seating area for future users. I therefore find no conflict with Policy 7.15 of the London Plan (2016), Strategic Policy 13 of the SCCS (April 2011) or Saved Policy 3.2 of the SP (2007). These policies broadly seek to promote high environmental standards and to mitigate and manage disturbance from noise. I also find no conflict with Policy 3.12 of the SP (2007), which promotes high quality design appropriate to the site. Nor would it conflict with guidance within Chapter 12 of the National Planning Policy Framework (the Framework) relating to achieving well designed places through, amongst other matters, developments that are visually attractive.
21. On this issue, the Council's decision notice again refers to Policies P54 and P67 of the DNSP (2018). However, for the reasons set out above, I afford them limited weight. In any case, they do not indicate that a different approach should be taken to this matter.

Other Matters

22. The site lies within the Peckham Conservation Area (CA). Although the impact of the development on the CA is not a matter that the Council considered to be an issue, Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. I observed that the proposal would introduce a means to enclose the outdoor seating area that would be visible from the wider CA but it would improve the appearance of the existing flat roof. Consequently, I find that the proposal would preserve both the character and appearance of the CA.

Conditions

23. With reference to paragraph 55 of the National Planning Policy Framework (the Framework), I have had regard to the conditions put forward by both parties. Their views have also been sought on further conditions, any response to which I have fully taken into account. Additionally, the appellant has confirmed that they would be willing to accept a pre-commencement condition, where this is essential for the condition to achieve its purpose, in accordance with Section 100ZA(5) of the Town and Country Planning Act 1990.

24. Accordingly, in addition to the standard time limit condition and in the interests of certainty, it is appropriate that there is a condition requiring that the development be carried out in accordance with the approved plans.
25. A condition in relation to the materials is also necessary in the interests of the character and appearance of the area and having regard to the site's location within the Peckham CA. For this reason, and on the basis that the plan details are non-specific, a condition requiring submission of details to the Council is appropriate at pre-commencement stage, given the limited amount of site preparation associated with the proposal.
26. A condition to control the playing of music or other amplified sound is necessary to safeguard the living conditions of nearby residential occupiers. For this reason, I have also attached a condition to limit the hours of the outdoor seating area to reflect the operation of the existing ground floor restaurant. The Council suggest that it should include a limit on the number of people that would be allowed to use the seating area at any one time to 30. However, I have nothing before me to demonstrate how that number has been established and I am not persuaded that it would be reasonable.
27. The Council have also proposed a condition requiring a noise management plan, to include the submission of information about the type of services/operatives that would take place in the external area. However, I consider the plans to provide sufficient clarity, being an outside seating area accessed from the existing ground floor restaurant. Details by condition would not be necessary. Furthermore, given the imposition of conditions relating to the hours of use and music/amplified sound cited above, I am not persuaded that further details of noise control measures would be necessary. Finally, in respect of how residents' complaints would be handled, conditions should only be used where permission would otherwise be refused, and I am not persuaded that this would be necessary in order to make the development acceptable.
28. I am mindful that the appellant proposed either a temporary planning permission or a condition that it be made personal to the current freeholders of the appeal site. These have not been suggested by the Council. With regard to the latter, the Planning Practice Guidance (PPG) also advises that planning permission usually runs with the land and it is rarely appropriate to provide otherwise³. In any event, for the reasons already stated, I find the proposal to be acceptable and consequently, I do not find it necessary to impose either condition.

Conclusion

29. For the reasons given above, I conclude that the appeal should be allowed.

Kate Mansell

INSPECTOR

³ Planning Practice Guidance: Paragraph: 015 Reference ID: 21a-015-20140306 (06 03 2014)

Schedule of conditions

- 1) The development hereby permitted shall be begun before the end of three years from the date of this permission.
- 2) The development hereby permitted shall not be carried out otherwise than in accordance with the following approved plans:

2.0 - GROUND FLOOR AS EXISTING AND PROPOSED

4.0 - PROPOSED ROOF PLAN

4.1 - SITE PLAN

5.0 - LOCATION PLAN

8.1 - EXISTING AND PROPOSED EAST ELEVATION

8.3 - PROPOSED EAST ELEVATION

9.0 - EXISTING SOUTH ELEVATION

9.1 - SOUTH ELEVATION AS PROPOSED

10.1 - WEST ELEVATION AS EXISTING AND PROPOSED

- 3) No development shall take place until details of the materials to be used in the implementation of the outside seating area have been submitted to and approved in writing by the local planning authority, to include:
 - a) Details of the canopy;
 - b) Details of the balustrade;
 - c) Details of the boarding to the perimeter of the roof to include panel widths, height and colour.

The development shall be carried out in accordance with the approved details and the installation of the balustrade and boarding specifically shall be implemented prior to the first use of the outside seating area and thereafter retained.

- 4) The outside seating area hereby permitted shall not be open to customers outside of the following times: 11:00 to 21:00 hours on any day.
- 5) No music or other amplified sound shall be played within the premises or on the outside seating area so as to be audible outside of the premises at any time.

End of Schedule