



Appeal Decision

Site visit made on 21 October 2019

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 November 2019

Appeal Refs: APP/A5840/C/19/3222174, 3222175, 3222176, 3222177, 3222178, 3222179 & 3222180

Reformed Christian Church of God (RCCG), House of Praise, 254 to 268 Camberwell Road, London SE5 0DL

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Pastor Andrew Adeleke of the Redeemed Christian Church of God, Mr Olukayode Olawode, Mr Solomon Adegoke, Mr David Makoyawo, Mr Babatunde Sofowora, Mr Olakunle Falodun and Mrs Olayemi Adeleke against an enforcement notice issued by the Council of the London Borough of Southwark.
 - The enforcement notice was issued on 8 January 2019.
 - The breach of planning control alleged in the notice is failure to comply with conditions Nos 4 and 5 of a planning permission Ref 11/AP/3181 granted on 15 March 2012.
 - The development to which the permission relates is described as "Change of use from use class D2 (bingo and social club) to use class D1 (place of worship) and use class D2 (assembly and leisure)(part retrospective)".
 - The conditions in question state that:
 - 4 The use hereby permitted for D1 (place of worship) and D2 (assembly and leisure) purposes shall not be carried on outside of the hours 09:00 to 23:00 on any day.
 - 5 The L_{fmax} noise level from amplified music and speech shall be no greater than the existing L_{90} 1m from the façade of the nearest noise sensitive premises at all octave bands between 31.5Hz and 8kHz.
 - The notice alleges that the conditions have not been complied with in that:
 - i) The carrying out of activities and operations outside of the permitted hours prescribed in condition 4. and
 - ii) The emission of noise both within and outside the permitted hours of operation in excess of the specified noise level prescribed in condition 5.
 - The requirements of the notice are:
 - i) Cease the use of the premises between the hours of 23:00 and 09:00.
 - ii) Cease the creation of amplified music or speech from the premises for which the L_{fmax} noise level exceeds the existing L_{90} 1 metre from the façade of the nearest noise sensitive premises at all octave bands between 31.5hz and 8Hz.
 - The period for compliance with the requirements is in respect of requirement i) one week and in respect of requirement ii) within four months.
 - The appeals are proceeding on the grounds set out in section 174(2)(b) and (f) of the Town and Country Planning Act 1990 as amended (the Act) and the appeal by Pastor Andrew Adeleke (3222174) is also proceeding on the grounds set out in section 174(2)(a) of the Act.
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Decision

1. It is directed that the enforcement notice is varied at section 5:

- By deletion within requirement ii) of “8Hz” and its replacement with “8kHz”
2. Subject to the variation, the enforcement notice is upheld.

Background

3. Planning permission (ref `11-AP-3181`, the planning permission) was given in 2012 for the change of use of the former cinema building subject to 9 conditions including those which are referred to in the notice.
4. The appeal site is located in a busy urban area which contains a mix of commercial and residential properties. Camberwell Road runs along the front of the site which leads between Camberwell to the south towards Walworth and Elephant and Castle to the north. Medlar Street runs along the south side of the site, leading to the car-park to the rear of the building.
5. The large building has a high ceiling within the main part of the auditorium with a mezzanine around the edges. There are smaller ancillary rooms around the periphery of the building that has a clear remaining character of a traditional former cinema building. The building is used as a place of worship but also as a music venue which is allowed for within the scope of the planning permission.

The Appeals on ground (b)

6. To succeed on this ground, the onus is upon the appellants to demonstrate that the matters as alleged have not occurred, as a matter of fact. The appellants have confirmed that this ground of appeal relates only to part ii) of the allegation, that the emission of noise has exceeded the noise level prescribed by condition 5.
7. Condition 5 explicitly refers to measurements of sound levels and frequencies. The Council has not provided sound measurement figures at noise sensitive premises. The appellant has provided a noise assessment by SLR Consulting Ltd (the SLR assessment) and this does refer to the condition being stringent and robust but also hasn't involved measurements taken at the positions defined by the condition. The SLR assessment states that compliance with the condition should effectively mean that noise generated by the development is almost imperceptible to the majority of residents.
8. As well as making reference to complaints from nearby residents, the Council has referred to a report that was prepared following a review of the PA system when the Council investigated the alleged breaches. The report includes reference to noise pollution to the exterior of the building that it states would definitely be noticeable from the surrounding high rise flats. The character surrounding the site has changed to some extent since planning permission was granted. The surrounding high-rise flats may not have existed when the permission was granted but would now constitute noise sensitive premises close to which the limitation of the condition should not be exceeded.
9. There is a lack of monitoring of the sound levels by the Council but s172 of the Act which provides the power to issue an enforcement notice and this states that a notice can be issued where it appears that there has been a breach of planning control. The SLR assessment states that demonstrating compliance with the condition is difficult and cannot be done purely through monitoring at

the noise-sensitive receptors (NSRs), without additional noise calculations and modelling. However, the onus of proof is clearly on the appellant.

10. I therefore consider that, on the balance of probabilities, it appears that the alleged breach of the noise limiting condition has occurred. The appeals on ground (b) therefore fail.

The Appeal (3222174) on Ground (a) and the deemed planning application

Main issue

11. Under this ground of appeal, planning permission is sought for the development as originally approved in 2012 without compliance with conditions 4 and 5. Alternative conditions have been suggested by the appellants. The planning permission was subject to other conditions as well but it is not open to me to formally review the ongoing appropriateness of any of the other conditions. Guidance on planning conditions is contained within paragraph 55 of the National Planning Policy Framework (the Framework) which states that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
12. The main issue is whether the current hours restriction (condition 4) and sound limitations (condition 5) comply with this advice and in particular whether they remain necessary and are reasonable, in the interests of the living conditions of nearby residential properties.

Reasons

13. When the planning permission was granted, a noise impact assessment was prepared by KR Associates (the KR assessment). This identified that the nearest noise sensitive properties were those on the opposite side of Camberwell Road which it was confirmed at my site visit are the flats referred to in the submissions as 'Lamb House'. The more recent SLR assessment refers to how the surrounding area has changed in the intervening years. I saw the flatted developments that have been developed close to the north-western side of the site and there are what appeared to be recent developments to the south, on the opposite side of Medlar Street. More noise sensitive premises exist and are physically closer to the appeal site than was previously the case.
14. The SLR assessment acknowledges that the stage and auditorium at the back (west) of the building are closest to the flats that have been constructed since the original planning permission was granted. I also noted that the fire door leading from the auditorium to a rear 'green room' or changing room faces towards these properties and could lead to some leakage of sound during events. Performers walking into and out of the building would need to open the side fire door enabling some sound leakage. The development of the flats nearest to the site has produced a more noise sensitive environment than was envisaged when planning permission was originally given.
15. The Framework stresses the need to ensure that existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. The adjoining developments have been approved and developed with the current conditional

controls in place. It is not for me to revisit how that decision was reached. It is however reasonable for the nearby occupants to expect the degree of protection from noise and disturbance given that they may have occupied the site with the expectation of current controls being in place and enforced.

16. Although not subject to these appeals and the deemed application, condition 9 that was also imposed on the planning permission requires, amongst other things, adherence to a "visitor management plan" (VMP) that was submitted with the planning application. Visitor departure in particular is aimed at safeguarding disturbance to residential properties on the other side of Camberwell Road rather than the properties that have been constructed since that time. As a consequence, it requires use of the rear entrances or the Medlar Street entrance which are all closer to residential properties than the main front entrances. Rather than this condition making the conditions in dispute unnecessary, in my view given the change in the built environment close to the site, it means that other conditions may be even more important in order to ensure that the VMP can be adhered to whilst not causing noise and disturbance for nearby residents that may not have been previously envisaged.

Hours of use

17. The appellant would like the hours of use restrictions (condition 4) to be extended and suggests the following wording:

The use hereby permitted for D1 (Place of Worship) and D2 (Assembly and Leisure) shall not be carried on outside the hours of 08:00am to 00:00am Sunday to Thursday and 08:00am to 02:00am on Friday, Saturday, public holidays and such other dates where religious worship services are proposed and agreed in writing with the local planning authority.

18. The existing hours of use condition (condition 4) and the above suggested alternative would only control the use taking place within the building and not activities of potentially large numbers of people coming and going to and from events. There will inevitably be a lag time between events stopping and people leaving the venue. The VMP and condition 9 are a way of attempting to control those matters but the plan has terms that lack precision and was drafted when circumstances were different. I consider that this would not on its own satisfactorily prevent these factors causing harm to living conditions within some of the nearest residential properties.
19. The SLR assessment indicates that background noise levels do not vary considerable after 23.00 hours, the current terminal time, and the requested extended times of operation. However, if events go into the late evening and early morning there is far more likelihood that disturbances from comings and goings of those who have attended events as well as post event ancillary activities from those running the events, may occur when nearby residents are sleeping and resting. Such noise may be outside at the rear where the sound may reverberate between the high building and neighbouring buildings. There is clear potential for this to disturb nearby residents in a manner not control in other ways through the planning permission.

Noise limitation

20. Turning to the noise limiting condition (No 5), this unlike the external noise and

disturbance, is directed at prevent leakage of sound created inside the building to an extent that would have adverse impacts upon nearby noise sensitive properties. It seems likely that the limits set by condition 5 are comfortably satisfied when considering the NSR to the east of Camberwell Road, which were originally the nearest receptors when the planning application was made in 2011. The situation is more problematic with respect to the newer residential developments nearby, particularly those to the immediate north-west of the appeal site.

21. The Council is of the view that the identified problems that have been reported are due to the controllable sound from the public address system and on some occasions when those appearing have brought their own amplification. It is not clear whether the appellants seek to control the use of external systems when they are not running the events themselves in order to try and stay within the sound limits set by the planning condition.
22. The appellants within the SLR assessment consider that the present condition is overly stringent given that ambient noise levels are already high in the area. Furthermore, that where ambient noise levels are high, a noise pollution condition should be based upon average noise levels whereas the existing condition relates to maximum sound levels.
23. The suggested change to the restrictions on sound level (condition 5) is requested to be:

The LAeq, 5mins at a position of 1m from any façade of any residential properties, with events taking place, should not exceed the LAeq, 5mins by more than 3 dB, when measured at the same position and over a comparable period, without events taking place. In addition, the Leq in the 63 Hz octave band should show no increase with events taking place, compared to when no events are taking place, when measured in the same position, inside the living room of any noise-sensitive premises, over a comparable period.

24. The SLR assessment refers to the difficulty in determining precise maximum noise level contributions (L_{AFmax} or L_{fmax}) due to events within the premises as required by Condition 5, in part at least due to the octave band contributions from trains nearby. The Thameslink mainline is located alongside the rear of the car-park therefore close to the appeal site. This can cause short bursts of noise. However, this is based upon measurements taken not 1m from the façade of the noise sensitive premises but a significant distance away within the appeal site with the results being assumed. Given the difference of the survey location as well as the height and position of the nearby apartments, it is not clear whether those background sounds will have the effects suggested on maximum levels.
25. There is no definitive noise standard that should apply to venues such as this and I accept that generally, the quoted advice such as that within the Good Practice Guide on the Control of Noise from Pubs and Clubs, March 2003 which sets out example conditions advising average sound pressure levels and frequencies. However, I am concerned that the evidence does not demonstrate that with the suggested revised condition in place there would be adequate prevention of the risk of short spikes in noise from the appeal site, causing a disturbance for nearby residents.

26. Those properties to the north-west are further away from the main source of background noise, Camberwell Road and the stage and auditorium area within the building is also at the rear and will be the main source of sound. As the SLR report confirms, there is a lack of a buffer between noise breaking out of the rear wall of the building from events. In my view, that would be contributed to by opening and closing of the rear fire-door access to access the 'green room'.

Conclusion on main issue

27. The Southwark Plan 2007 (SP) Policy 3.2 states that planning permission will not be granted where it would cause a loss of amenity including disturbance from noise, to present and future occupiers in the surrounding area. The Southwark Core Strategy adopted April 2011 (SCS) Policy SP13 requires high environmental standards including reducing noise pollution, avoiding amenity and environmental problems that affect how the environment is enjoyed. The London Plan adopted March 2016 (LP) Policies 7.15 requires development proposals to manage noise by avoiding significant adverse impacts on health and quality of life, improving and enhancing the acoustic environment and where it is not possible to achieve separation of noise sensitive development and noise sources, potential adverse effects should be controlled and mitigated through the application of good acoustic design principles.
28. I am not persuaded that the other existing planning conditions or the satisfactory control or levels of sound coming from inside the building from events would obviate the need for a condition controlling hours entirely, or that the extended hours suggested by the appellants would adequately safeguard the living environment for neighbouring residents. The VMP was clearly agreed when circumstances were significantly different and in my view, widening the terms of the hours of operation condition could lead to disturbance of nearby residents at times when they are generally trying to rest and get to sleep. Furthermore, whilst the noise limiting condition does not conform with the advice of the most relevant guidance, based upon the evidence provided, I am not persuaded that a move to average noise levels is appropriate given the likelihood of spikes or bursts of noise which would be noticeable and disturbing for nearby residents.
29. In relation to the main issue, based upon the submitted evidence the current hours restriction (condition 4) and sound limitations (condition 5) are necessary and reasonable in the interests of the living conditions of nearby residential properties. The alternative conditions suggested would not achieve compliance with SP Policy 3.2, SCS Policy SP13 or LP Policy 7.15. These policies are consistent with the Framework which requires policies and decisions to ensure that developments, amongst other things, will function well and add to the overall quality of the area.

Other matters

30. Other premises, the 'Tiger Pub' and 'The Old Dispensary', have been referred to by the appellant in order to argue that the current restrictions are unreasonable. My reasoning relates to the specifics of this case, the location of the site and the evidence that has been submitted. Even if those other premises are competing for similar business and are subject to more liberal

controls, it does not justify the potential for harm to the living conditions of residents near to the appeal site.

31. I do not consider that the current restrictions unreasonably impact upon use of the building by members of the wider community. The facility clearly provides social, recreational and cultural facilities that are encouraged by the Framework.
32. I have also had due regard to my duties under the Equality Act 2010 and the Public Sector Equality Duty. A church group such that in occupation of the building have relevant protected characteristics under this legislation. I do not consider however that, even taking these statutory duties as well as the above other matters, into account, that there would be public benefits sufficient to outweigh the harm that I have identified in relation to the main issue.

Conclusion on ground (a)

33. For the reasons given above and having regard to other matters raised, the appeal on ground (a) and the application for deemed planning permission fail.

The Appeals on ground (f)

34. The notice has been issued in order to remedy the breach of planning control by making the development comply with the terms of the planning permission.
35. The Council concedes that the notice at section 5 erroneously refers to a requirement to not exceed 31.5 Hz to 8Hz whereas condition 5 states 31.5Hz and 8kHz. The notice requires variation to make the requirement match the alleged breach. To that extent, the appeals on ground (f) succeeds.

Conclusion

36. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

A Harwood

INSPECTOR