



Appeal Decision

Site visit made on 11 November 2019

by Adrian Caines BSc(Hons) MSc TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 December 2019

Appeal Ref: APP/K5600/W/19/3231540 236 Fulham Road, London SW10 9NB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Cote Restaurants Ltd against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref PP/18/07605, dated 27 November 2018, was approved on 8 March 2019 and planning permission was granted subject to conditions.
 - The development permitted is change of use from banking on part ground and basement to Class A3 (food and drink).
 - The condition in dispute is No 3 which states that: No persons other than members of staff shall be admitted to the premises between 23.00 hours and 08.00 hours Mondays to Saturdays, or between 22.30 hours on Sundays or public holidays and 08.00 hours the following day.
 - The reason given for the condition is: To prevent any significant disturbance to residents of nearby properties and comply with development plan policies, in particular policy CL5 of the Consolidated Local Plan.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The site address on the planning application form and the appeal form is 236A-236C Fulham Road, however, the appellant wrote on 2 July 2019 to request that the address that should be used is 236 Fulham Road, which is also the address used on the Council's decision notice. I have therefore used this address in the banner heading of this decision.
3. I have taken the application date from the 'removal or variation' application form, rather than the 'non-material amendment' application forms I was also provided with.
4. On 11 September 2019 the Council adopted the Local Plan Partial Review (LPPR) and thus the updated policies now form part of the development plan and supersede older policies. However, the policy referred to in the reason for the disputed condition is unchanged, and where changes have been made to other policies, these do not have any direct bearing on the appeal proposals before me.
5. I have also dealt with another appeal on this site (Appeal reference: APP/K5600/W/19/3231542), which is the subject of a separate decision.

Background and Main Issue

6. Permission was granted in 1992¹ for a change of use from banking on part ground and basement to Class A3 (food and drink) with opening hours of 1000 to 2300 Monday to Saturday and 1000 to 1030 Sunday and public holidays. Subsequently, a s73 application to 'vary' condition 4 of the 1992 permission was approved in 2004² amending the opening hours to 0800 to 2300 Monday to Saturday and 0800 to 2230 on Sundays and public holidays.
7. The permission which is the subject of this appeal was a further s73 application to 'vary' conditions 4, 5 and 6 of the 2004 permission to extend the opening hours to 0800 to 0000 daily; allow a food delivery service; and increase the maximum number of seats from 150 to 160. The Council granted permission on 8 March 2019, albeit without the opening hours applied for. The appellant seeks to amend the opening hours to those for which they originally sought permission. Although the parties have continued to refer to condition 4 of the 2004 permission, it is clear that the appeal concerns condition 3 (hours of operation) of the new 2019 permission.
8. Taking the above into account, the main issue is the effect that the proposed opening times would have on the living conditions of neighbouring occupiers, with particular regard to the potential for noise and disturbance.

Reasons

9. The appeal site is a restaurant located at the corner of Fulham Road and Hollywood Road. The customer entrance to the restaurant is located on Fulham Road. The two floors directly above the restaurant contain residential flats (1-4 Brompton Cottages).
10. In essence, the appellant seeks to extend the restaurant opening times by an additional hour Monday to Saturday, and by an hour and a half on Sunday and public holidays.
11. This part of Fulham Road is a busy thoroughfare characterised by a range of uses including restaurants, bars, shops, offices, a 24 hour gym, and the Chelsea and Westminster Hospital, which has its main entrance directly opposite the appeal site. There is also a busy bus stop outside the appeal site where people congregate and buses stop regularly. Whilst Hollywood Road has a more residential character, it has commercial uses at both ends of the road, including numerous eating and drinking establishments, with those at the top section making use of outdoor pavement seating. As such, the vicinity is subject to a high level of footfall and traffic with the associated hustle and bustle of pedestrian and vehicle noise throughout the day and into the evening.
12. The appellant's Noise Assessment (NA)³ confirms that ambient noise levels in the vicinity of the appeal site are consistently high with little reduction between 2300 hours and 0000 hours. It predicts that at the closest window of the flats above, the noise levels of customers coming and going between the proposed extended hours would be indistinguishable from the current noise character. In the absence of evidence to lead me to believe otherwise, I have no reason to

¹ TP/92/0387

² PP/04/00284/COTH

³ Report reference: 181008-R002A for Cote Restaurants Limited 18 June 2019

disagree. I also note that the Council's Director of Environmental Health had no objection to the extended opening times.

13. Nevertheless, it is evident from the Council's submissions that it is not the potential noise generating activities relating to the comings and goings of customers outside the appeal premises which has given rise to the expressed concerns, albeit that the comments of interested parties are noted. The principal noise and disturbance concerns relate to the potential for transmission of internal noise to the residential units above the appeal premises. As these residential units are directly above and physically attached to the appeal premises where noise within the restaurant could transfer through the walls, joists and ceiling, I consider this to be a reasonable concern. As such, whether other establishments along Fulham Road have similar hours of operation to those being sought has little relevance to this concern, and is therefore a matter I give very little weight. These specific circumstances require the proposal to be considered on its own individual merits, which is the approach I have taken in this appeal.
14. I note that occupiers of the flats immediately above the restaurant have questioned whether there is any sound insulation, given they can hear the activities within the restaurant. They have described this noise as 'unbearable' at times.
15. Whilst the appellant considers these concerns to be no more than anecdotal, there is no evidence before me that the premises are or can be suitably insulated to prevent internal noise transfer from the restaurant to the flats above. Furthermore, the appellant's NA did not measure or assess the internal noise levels for the flats above. I am therefore unable to conclude that the concerns raised regarding the internal noise levels are unfounded. Moreover, based on the typical internal restaurant noise levels provided in the NA, there is potential, through the proposals, for the occupiers of the flats immediately above the restaurant to be exposed to unacceptable levels of noise and disturbance into the later evening hours when they would have the greatest expectation for undisturbed sleep, notwithstanding the location of these properties within a busy District Centre.
16. In coming to this view, I recognise that the current opening hours restriction allows for some activities to continue within the restaurant beyond 2300 hours. Nevertheless, it is reasonable to expect that any associated noise and disturbance would begin to decrease towards 0000 hours, whereas under the proposals, this would only begin to decrease after 0000 hours, with activities such as cleaning up, emptying refuse and bottles taking place in the early morning hours when residents above the restaurant are more likely to be sleeping. The appellant's suggestion of a condition preventing use of loudspeakers, relay equipment and musical instruments would not overcome these concerns.
17. I also recognise that the restaurant is a successful and popular brand and that there would be some operational and economic benefits from the extended opening hours. It would also contribute to the vibrant evening economy. Nonetheless, these benefits would not outweigh the significant harm to the living conditions of neighbouring occupiers.
18. I therefore conclude that the proposed opening times would be harmful to the living conditions of neighbouring occupiers, with particular regard to the

potential for noise and disturbance. The disputed condition is therefore reasonable and necessary in its current form. As such, the proposal would be contrary to LPPR Policy CL5, where it seeks to ensure good living conditions for occupiers of existing and neighbouring buildings having regard to, among other things, increase in noise.

Other Considerations

19. The appeal site is outside, but adjacent to The Boltons Conservation Area (BCA). The effect of the development on the BCA has not been raised as a concern by the Council and I can see no reason why the proposal would adversely affect the character or appearance of the adjacent BCA given the prevailing noise character in the vicinity. I am therefore satisfied that the character and appearance of the BCA would be preserved. Nor did the Council raise any highway safety objections, and I have no reason to disagree. However, the absence of harm in these respects is a neutral factor and as such, does not alter or outweigh my findings on the main issue.

Conclusion

20. For the reasons given and having taken into consideration all matters raised, I conclude that the appeal should be dismissed.

Adrian Caines

INSPECTOR