



Appeal Decision

Site visit made on 25 November 2019

by Adrian Caines BSc (Hons) MSc TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2019

Appeal Ref: APP/F5540/W/19/3236692 78 Kingsley Road, Hounslow TW3 1QA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of approval subject to conditions of details required by a condition of a planning permission.
- The appeal is made by Mr S Khan against the decision of the Council of the London Borough of Hounslow.
- The application Ref 00667/78-80/P3(5), dated 27 November 2018, was approved by notice dated 8 March 2019.
- The details approved are a scheme for equipment to control ventilation and the emission of fumes and smell from the restaurant/café pursuant to condition No 5 of appeal Ref APP/F/5540/W/18/3196505, granted on 29 October 2018, for the change of use of ground floor level at no.78 from a shop (use Class A1) to a restaurant/café (use Class A3), internal alterations at ground floor level to no. 78 and no. 80 including removal of a minicab office at no. 80.
- The conditions in dispute are Nos 1, 2, 3 and 4 which state that:
 - 1) The cumulative measured or calculated rating level of noise emitted from the mechanical services plant including heating, ventilation and air conditioning (HVAC) to which the application refers, shall be 10dB(A) below the existing background noise level, at all times that the mechanical system etc operates. The measured or calculated noise levels shall be determined at the boundary of the nearest ground floor noise sensitive premises or 1 metre from the facade of the nearest first floor (or higher) noise sensitive premises, and in accordance with the latest British Standard 4142; If an alternative position for assessment/measurement is used to allow ease of access, this must be shown on a map and noise propagation calculations detailed to show how the design criteria is achieved and, in such case the details of this assessment shall first have been submitted to and approved in writing by the local planning authority before the equipment is brought into use.
 - 2) The plant shall be isolated on adequate proprietary anti-vibration mounts to prevent the structural transmission of vibration and regenerated noise within adjacent or adjoining premises, and these shall be so maintained thereafter.
 - 3) A post completion noise assessment shall be submitted for approval to the local planning authority which demonstrates the actual measured rating level of plant operating under normal conditions. All measurements shall be made in accordance with the methodology of BS4142: 2014 (Methods for rating and assessing industrial and commercial sound) and/or its subsequent amendments. The post completion report shall be both completed and submitted to the local authority within 28 days of completion of the installation for review.
 - 4) The installed ventilation system shall regularly maintained at regular intervals of three months in accordance with the manufacturer's recommended specification, including the replacement of the carbon filters.
- The reasons given for the conditions are:
 - 1) To ensure the overall environmental sustainability of the development in accordance with Policy EQ5 of the adopted Local Plan.

- 2) To ensure the overall environmental sustainability of the development in accordance with Policy EQ5 of the adopted Local Plan.
 - 3) To ensure the overall environmental sustainability of the development in accordance with Policy EQ5 of the adopted Local Plan.
 - 4) To ensure the overall environmental sustainability of the development in accordance with Policy EQ4 of the adopted Local Plan.
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Decision

1. The appeal is allowed and the approval Ref 00667/78-80/P3(5) given to the details pursuant to condition No 5 of planning application Ref 00667/78-80/P3 allowed on appeal Ref APP/F/5540/W/18/3196505 on 29 October 2018, dated 8 March 2019 is varied by deleting conditions Nos 1, 2, 3 and 4.

Application for costs

2. An application for costs was made by Mr S Khan against the Council of the London Borough of Hounslow. This application is the subject of a separate Decision.

Background and Main Issue

3. A planning application Ref 00667/78-80/P3 for the change of use of ground floor level at no 78 from a shop (use Class A1) to a restaurant/café (use Class A3), internal alterations at ground floor level to no 78 and no 80 including removal of a minicab office at no 80, was allowed and granted planning permission on appeal on 29 October 2018¹, subject to conditions.
4. Condition No 5 stated:
"Before the use hereby permitted takes place, equipment to control the ventilation, and the emission of fumes and smell from the premises shall be installed in accordance with a scheme to be first submitted to and approved in writing by the local planning authority. All equipment installed as part of the approved scheme shall thereafter be operated and maintained in accordance with that approval and retained for so long as the use continues."
5. The reason for the condition was in the interests of protecting the living conditions of neighbouring residents with regard to noise.
6. The appellant submitted details (the scheme) to discharge the requirements of condition No 5 on 27 November 2018, which the Council subsequently approved on 8 March 2019 under Ref 00667/78-80/P3(5). However, this approval was subject to four further conditions, as detailed in the banner heading. The appellant is seeking to have all four of these conditions removed on the grounds that it was not appropriate for the Council to impose further conditions having already approved the details of the scheme.
7. Therefore, the **main issues** are whether the four additional conditions referred to above meet the tests for the use of conditions contained in the National Planning Policy Framework (the Framework) and in Planning Practice Guidance (PPG); and if they do meet those tests, whether or not the conditions are reasonable and necessary to protect the living conditions of neighbours with regards to noise.

¹ APP/F/5540/W/18/3196505

Reasons

8. In accordance with the requirements of the original condition 5, the appellant submitted details including plans, technical specifications of the ventilation equipment, maintenance arrangements, details of anti-vibration mounts and a noise assessment.
9. That the Council approved the scheme is indication that it considered the details met the requirements of the condition and were acceptable. In the absence of any evidence to the contrary, I have no reason to disagree. Therefore, I consider that the requirement of condition 5 to submit a scheme for approval has been met.
10. Yet, four additional conditions were added to the Council's approval of the details. The Council's delegated report did not give any explanation of the need for these further conditions other than being recommended by an internal consultee, and none has been forthcoming as part of this appeal.
11. Paragraph 54 of the Framework states that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions. Paragraph 55 of the Framework states that planning conditions should be kept 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. I acknowledge that the four disputed conditions have arisen directly from aspects of the original condition no 5 and are relevant to planning. However, conditions 1, 2 and 4 relate to matters that formed part of the approved scheme and are therefore unnecessary. Condition 3 places an additional burden on the appellant to carry out further noise assessment work that is beyond what the original condition 5 required and has not been justified. It may be that the intention of the condition is to ensure that the scheme approved by the Council is implemented and adhered to, but the original condition No 5 already achieves this through a requirement for the scheme to be installed, operated and maintained in accordance with the approved details. In the event that the equipment is not installed or operating as intended, it would be open to the Council to take enforcement action, or to deal with any noise nuisance through other legislation. Condition 3 is therefore not reasonable or necessary.
13. Consequently, I conclude that the four disputed conditions do not meet all the relevant tests and should therefore be deleted. As such, it is not necessary for me to go on to consider the effect of the removal of the conditions that in any event relate to matters the Council considered when discharging the condition.

Conclusion

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

Adrian Caines

INSPECTOR