
Appeal Decision

Site visit made on 19 November 2019

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2019

Appeal Ref: APP/A5840/W/19/3236349

Railway Arches 224/227 and 225/228, Fielding Street, London SE17 3HD

- 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 Orbit Brewing Limited against the decision of the Council of the London Borough of Southwark.
 - The application Ref 18/AP/2482, dated 27 July 2018, was refused by notice dated 26 April 2019.
 - The development proposed is the continued use of arches 224/227 and 225/228 and the associated yard as a micro-brewery (Class B2) and ancillary taproom (Class A4), together with the installation of AC chiller units, acoustic fencing and additional storage container.
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Decision

1. The appeal is dismissed.

Background

2. The appeal site relates to two ground floor railway arch units located on the northern side of Fielding Street. The respective arches are referred to as Arches 224/227 and 225/228. Arch 225/228 was once occupied by a vehicle repair shop before the appellant company moved into the arch in 2014 after a grant of planning permission¹ to use the arch as a micro-brewery which was considered by the Council to be a B2 Use Class. In August 2014, planning permission² ('the August 2014 permission') was granted by the Council to change the use of the arch from B2 (Micro Brewery) to B2 (Micro Brewery) and A4 (Bar). The bar element was to run an ancillary taproom from Arch 225/228 alongside the brewery operations between the hours of 10:00 and 18:00 on Saturdays only. I note that the taproom operated from Arch 225/228 from October 2014 and that the August 2014 permission remains extant.
3. In September 2017 the appellant company occupied Arch 224/227 after the vacancy of an architectural metal workshop in March 2017. I understand that the metal workshop occupied the arch for over 15 years and as a result the arch has an unrestricted Class B2 use. The appellant company has confirmed that their intention was to optimise its existing micro-brewery operation at Arch 225/228 by using Arch 224/227 for storage, office space and to relocate the taproom. The relocated taproom comprises of a small bar located inside Arch 224/227, a toilet, and a small amount of both internal and external seating. It opened to the public in March 2018. As a result, there is no taproom in Arch 225/228.

¹ Council Ref: 14/AP/0813

² Council Ref: 14/AP/2055

Procedural Matters

4. The description of development set out at the start of this decision has been taken from the planning application form. I note the main parties' points about this description, but the planning application was considered by the Council and interested parties on the basis of the description of development found in part E of the appellant company's appeal form. This states: "Continued use of arches 224/227 and 225/228 and the associated yard as a sui generis mixed use, microbrewery (Class B2) and taproom (Class A4), together with the installation of a two AC chiller units, acoustic fence and additional storage container." I consider that this description best reflects the scheme before me.
5. I could see from my site visit that the use described above was in operation and development in situ in accordance with the submitted plans, save for the fence along the site's northern boundary and the extent of outdoor seating shown on plan Ref: FS.10A. Outside of and next to the respective arches are two shipping containers which provide refrigeration systems, general storage and forklift parking. I have considered the appeal on this basis.
6. Despite the appellant company's noise evidence submitted as part of the planning application, a Noise Impact Assessment report (NIA) has been submitted with the appeal. The NIA seeks to respond to flaws within the earlier evidence which the appellant company says resulted in an overly conservative noise impact assessment and the provision of an acoustic fence that was disproportionate to the nature and scale of the development, and beyond what would reasonably be required. The NIA is said by the appellant company to follow the methodology found in London Borough of Southwark Technical Guidance for Noise and The Institute of Environmental Management and Assessments' (IEMA) Guidelines for Environmental Noise Impact Assessment. The Council and interested parties have commented on the NIA, so no prejudice would be caused by my consideration of the NIA which is the basis on which I have considered the appeal.
7. As part of the scheme considered by the Council and interested parties, an acoustic fence was proposed on the site's northern boundary. The submitted plans detail this. However, in conjunction with the NIA, the appellant company proposes to reduce the height of this fence to 2.5 metres. The appeal process should normally be used to evolve a scheme. That said, the amended fence proposal would not materially alter the nature of the proposal and would, in fact, reduce the fence's height. I shall turn to the merits of the fence later in my decision, but I do not consider that by considering the fence put forward as part of the appeal that this would prejudice the Council, whom have commented on the amended fence, or interested parties.

Main Issue

8. The main issue is the proposal's effect on the living condition of occupants of properties on Sutherland Square, with regards to noise and sense of enclosure.

Reasons

9. Access into the yard area next to arches 225/228 and 224/227 is obtained from Fielding Street. There are a variety of land uses near to the site. These include residential dwellings as well as public open spaces including a local park and garden allotments. The allotments are to the west of the site. To the north-west of the site is a three-storey row of terraced residential dwellings on Sutherland Square. Both 15 and 16 Sutherland Square share a common

- boundary with the appeal site, but each property within the terraced row has rear facing windows on each level and a private rear garden. I understand that No 15 is used as a House in Multiple Occupation and that the upper floors provide living accommodation for the occupants of this property.
10. A garage, serving No 15 abuts the site's northern boundary. The Elephant and Castle to Loughborough Junction railway line is above Arches 224/227 and 225/228. A variety of industrial and business uses occupy further arches to the north and south of the site. These include: MOT testing, vehicles servicing and repairs; an automobile parts dealer; an ice cream distributor and vehicle storage. Trains travelling on the railway line pass around every 15 minutes with trains departing Elephant and Castle between around 05:25 and 23:57. Across an average weekday there are around 65 trains passing the site.
 11. During my site visit during early lunchtime, activities associated with the brewery were largely taking place indoors. The taproom was not open. The local noise environment is characterised by the residential uses to the rear, passing traffic on Fielding Street, passing trains overhead, the industrial and business uses nearby and aircraft passing overhead on their approach into London Heathrow. The extent to which these noise sources are audible varies depending on from where they are experienced, including whether you are inside or outside of a building.
 12. While there may be an ongoing planning enforcement case relating to the site, I do not have the full context of this case or its findings before me. Compliance with the conditions imposed on any planning permission is a matter for the Council in the first instance and not this appeal. In any event, my findings in a Section 78 appeal must relate to the development that has been applied for. As the appellant company have applied to run the microbrewery on Monday to Friday between the hours of 08:00 and 18:00, with the taproom opening on Saturday only between the hours of 12:00 and 20:00, I have considered the appeal on this basis.
 13. Saved Policy 3.2 of The Southwark Plan (SP) states that planning permission for development will not be granted where it would cause loss of amenity, including disturbance from noise, to present and future occupiers in the surrounding area or on the application site. Strategic Policy 13 of the Core Strategy (CS) seeks development to set high standards for reducing noise pollution and avoiding amenity problems. The Council add that their Sustainable Design and Construction Supplementary Planning Document (SPD) says that "Noise generating development, such as industrial uses, entertainment venues and commercial kitchens, should not result in an increase in background noise levels." However, LP Policy 7.15, paragraph 180 of the National Planning Policy Framework (the Framework) and the Planning Practice Guidance (the Guidance)³ are more reflective of the current approach to the assessment of noise compared to saved SP Policy 3.2, CS Strategic Policy 13 and the SPD. However, these policies still form part of the development plan for Southwark.
 14. I note that there is no dispute between the main parties about the microbrewery element of the proposal, in terms of its effect on the living conditions of neighbouring occupants. Based on the observations that I made during my site visit and having regard to the representations from interested

³ Planning Practice Guidance, Noise

parties, I agree with the main parties' view.

15. While the Council say that the taproom would not be an ancillary use, to my mind the taproom would be physically and functionally dependent on the brewery. The evidence before me suggests that the scale and nature of the taproom is akin to that granted through the August 2014 permission. The difference is that the taproom use is taking place in Arch 224/227 which focusses related activity closer to residents, and that the hours of operation would start and finish two hours later on a Saturday. Thus, I shall focus on the effect of the taproom element of the proposal.
16. Due to the shipping containers and existing storage within the yard, only the north-east corner of the site can provide outdoor seating. I note the parties' dispute over the number of patrons who could use the taproom. Inevitably there would be some fluidity of where people would sit or stand whilst visiting the taproom, especially as people would go inside Arch 224/227 to access the bar. However, the seating as shown on the proposed plans would provide a focal point. Based on the scope of the outdoor seating area shown, I consider the appellant company's estimates of 20 to 30 people outside and 20 to 30 people inside, which are based on its experience of operating the taproom, to be more credible from a practical perspective insofar as the outdoor seating area, notwithstanding the licensing restriction.
17. However, the relationship of the site to properties on Sutherland Square means that there is the potential for the living conditions of these residents to be affected through noise relating to talking, shouting, laughter, amplified music and from plant and equipment. As the appellant company accepts, defining the effect of this from the external area is difficult due to the variability of customers and the subjective nature of noise impacts on affected persons.
18. The IEMA explains that noise from people in beer gardens, terraces and other outdoor areas to licensed premises can cause significant disruption to residents. The NIA expresses a view that noise from talking, shouting, laughter is not intrusive or detrimental to the amenity of nearby occupants. However, human speech can be tonal and include short, sharp $L_{A_{fmax}}$ events as opposed to a constant noise level which would be typified by the average sound level. The audibility of $L_{A_{fmax}}$ events relates to their prominence over the background noise level. The effect of patrons talking, shouting or laughing is the concern raised by the Council and interested parties.
19. The IEMA goes on to explain that noise from beer gardens do not fall into the specific categories and/or which are not covered by existing recognised standards. In these circumstances, the IEMA states that noise assessments should include, among other things, full consideration of the impact of $L_{A_{fmax}}$ noise (for example from door slams, ball strikes, shouts or whistles); and consideration of the character of the noise and whether this may exacerbate the impact on amenity.
20. The proposal facilitates the congregation of a good number of people close to residents' boundaries. It is reasonable to expect that many will be consuming alcohol, and potentially across a Saturday afternoon until 20:00. While noise from talking, shouting, laughter relating to the taproom would be on a single day in the week, it could arise each week and, on a day, when residents would may be less tolerant to noise. I recognise that the opening hours of the taproom are not during hours in which residents typically sleep, but noise can

- have an important effect on their living conditions. There is also the potential for bedrooms to be used during the daytime by key workers such as nursing staff or by families with young children.
21. The NIA primarily focusses on assessing the average sound level (L_{Aeq}) from patrons using the outdoor seating area with sound levels recorded at the boundary of the outdoor seating area and the adjoining residential property between Thursday 21 June and Sunday 24 June 2018. This includes a Saturday when the taproom/outdoor seating area were used by around 25 patrons.
 22. The NIA explains that the highest measured value during 15:01 to 18:01 was 89dB $L_{A_{fmax}}$. While there are times when maximum noise levels are lower than the highest measured value, which would in turn result in lower maximum values outside residential properties, Figure 2 of the NIA, which also includes the period of 12:01 to 15:01, appears to have a maximum value in the mid-90's. It is unclear whether the taproom was operating during this time, but it is a distinct possibility. Looking across 12:01 to 18:01 there is a rising trend of individual noise events, but even if the taproom was not in use between 12:01 and 15:01 then the same trend is evident. This is not characterised or reasoned out by the appellant company, but it is not unreasonable to suggest that these noise events could be linked with talking, shouting and laughter which has become louder as alcohol is consumed.
 23. On the Thursday, Friday and Sunday there are noise events that exceed 80dB $L_{A_{fmax}}$, but these appear to more isolated instances rather than the clustering evident during the Saturday afternoon period. I am mindful that the local noise environment is influenced by passing trains, vehicles and aircraft, but the NIA does not analyse what the $L_{A_{fmax}}$ values measured may be caused by. I observed that the noise from a passing train or vehicle is short lived and such noises are likely to be an accepted noise characteristic of the area by residents unlike frequent tonal noise. So, while the NIA compares maximum noise events across different days, this approach does not explain the different noise characters or their potential frequency.
 24. However, the August 2014 permission already allows for a similar scale of taproom up until 18:00. I accept that this scheme relates to Arch 225/228 and the approved hours align with part of those proposed. While the taproom's position as set out in the appeal scheme is not so far removed from the extant planning permission, it would not border residents' boundaries.
 25. Compared to the extant planning permission, the NIA assesses noise from patrons in the outside seating area to be around 2dB L_{Aeq} higher to upper floor levels. This is a small change that is unlikely to be noticed by residents which falls into a 'none/not significant' category. However, it is an average noise level and even with the proposed fence, the effect would be more harmful than the August 2014 permission. In any event, given my concerns about individual noise events, the characterisation of these events and their frequency, noise relating to the taproom in arch 224/227 has the potential to be present and intrusive for residents. Although there are no details of formal noise complaints before me, and while no formal warnings and/or abatement notices may have been issued, residents explain that they can hear noise from their gardens and from the rear parts of their properties, especially in summer months. The effect of this would be likely to result in residents closing their windows for periods when the taproom is open or to cause small behavioural changes and/or attitude, and an actual or perceived change in their quality of life.

26. Framework paragraph 180 seeks to ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health and living conditions. In the round, I consider that the proposal has the potential to have an Observed Adverse Effect. That said, a range of activities are understood to have been undertaken within arch 224/227 as part of an unrestricted Class B2 use historically. However, it has not been clearly identified what the effect of this use, in terms of noise is likely to or could have been on residents living conditions. Furthermore, even if arch 224/227 could be, and was used for brewing with no restrictions, given the evidence before me, the effect of this operation is likely to be less harmful than the taproom within this arch.
27. In these circumstances, proposals should: mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development. A limiter to keep any music at a set noise level could be controlled through a suitably worded planning condition so that residents living conditions are not adversely affected through music being played on Saturdays. A planning condition could also successfully address any plant noise.
28. A revised fence along the site's northern boundary is said by the appellant company to result in lower noise levels to ground floor levels and gardens of the nearest residential properties compared to the August 2014 planning permission. However, even if the increase to upper floor rooms were to fall into a 'none/not significant' category, I do not have any plan before me of the amended fence or its specification. While a planning condition could potentially secure details of it, no such condition has been suggested either party. This is crucial in light of the NIA. As such, I am not satisfied that the proposal in this regard would mitigate and reduce noise from the proposal to a minimum potential adverse impact. I do not, however, agree with the Council's concerns about the height of this fence causing an overbearing impact on neighbouring gardens, given the variety of boundary treatments and landscaping which line this boundary. The height of the proposed fence would not be so different to these and thus, residents would not feel any more enclosed.
29. Although steady state noise levels would include human speech, a Noise Management Plan (NMP) is proposed. This would involve an on-site manager monitoring the external yard for customer behaviour; introducing a dispersal policy to ensure patrons do not congregate outside premises once the facility closes; the erection of signs requesting patrons leave quietly; providing a point of contact for residents should issues arise; and keeping a complaints record.
30. Despite the NMP's intentions, there are no clear actions to be taken should issues arise. This is important as any issues would likely to be linked to $L_{A_{fmax}}$ values as a result of louder talking, shouting and laughter. The NMP, as proposed, does not contain any clear and specific benchmarks so that all concerned clearly know when there has or has not been a breach of planning control, and so that there is flexibility within the NMP to respond to future noise or operational changes. There is no mechanism before me in the form of an appropriately worded planning condition to secure a more comprehensive NMP that would provide me with confidence that noise from the proposal could be mitigated and reduced to a minimum potential adverse impact.
31. Securing an acceptable fence design and comprehensive NMP would not, in my view, place unreasonable restrictions on the appeal scheme or unduly add to the costs and administrative burdens of running the businesses. Thus, I

conclude that the proposal, based on the evidence before me, would not accord with CS Strategic Policy 13, saved SP Policy 3.2, LP Policy 7.15 and Framework paragraphs 170, 180 and 182. Jointly these, among other things, seek to avoid amenity impacts on present and future occupiers' quality of life, and to mitigate and minimise the existing and potential adverse impacts of noise from new development without placing unreasonable restrictions on development or adding unduly to the costs and administrative burdens on existing businesses.

Other considerations

32. It appears to me that the appeal site borders the Sutherland Square Conservation Area (SQCA), but having regard to the site's previous uses, the extant planning permission and the site's surroundings, I am of the view that the proposal would have a neutral effect on the SQCA. As such, while it is not a planning benefit, the proposal would preserve the SQCA.
33. The appeal scheme would allow the existing business to continue to grow, invest and adapt within the current economic climate through a larger brewery facility and the taproom. The additional earnings from the taproom are said to be modest by the appellant company, but it would still support the brewery operation and jobs. Added to this, the proposal does offer the community a place to meet and socialise on a Saturday while spending in the local economy. Again, this is an aspect of the proposal that weighs in favour of the appeal scheme. The effective use of the appeal site also weighs in favour of the proposal, especially as it is occupied by a small business that would not only diversify the use of arch 224/227 but add to the vibrancy and vitality of the area. Modest benefits relating to patrons carrying home beer instead of beer being transported to shops weighs marginally in favour of the proposal.
34. I note the appellant company's comments about the length of time the Council took to consider the planning application and while reference is made to the provision to appeal in the event of a non-determination, the appeal follows the Council's refusal of planning permission. However, it is clear to me that the appellant company has tried to find a solution to the concerns raised by the Council and interested parties. Concerns are also raised about this loss of the business and taproom, but there is an extant planning permission in place and it would be for the appellant company to determine whether or not to apply for planning permission for another form of development.

Conclusion

35. The development plan is the starting point for decision making. The harm arising from the conflict with policies in the CS, SP and LP in so far as the proposal would harm the living conditions of occupants of properties on Sutherland Square, with regards to noise. I have, for the same reason, found harm having regard to the Framework. This harm would not be outweighed by the other considerations and the identified economic, social and environmental benefits. The proposal is not sustainable development when considered relative to the development plan and the Framework as a whole.
36. For the reasons set out above, I conclude that the appeal should be dismissed.

Andrew McGlone

INSPECTOR