
Appeal Decision

Site visit made on 17 December 2019

by T J Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 January 2020

Appeal Ref: APP/U5360/W/19/3235530
75 Mare Street, Hackney, London E8 4RG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Hasan Cevik against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2019/1804, dated 4 May 2019, was refused by notice dated 11 July 2019.
 - The application sought planning permission for Change of use of ground floor and basement from retail (use class A1) to restaurant (use class A3), including installation of rear extract ducting without complying with a condition attached to planning permission Ref 2018/2179 dated 28 September 2018.
 - The condition in dispute is No. 3 which states that: The A3 use hereby permitted may only be carried out between 08:00-23:00 Monday-Saturday and 10:00am -22:00 on Sunday/Bank holidays.
 - The reason given for the condition is: To ensure that the use is operated in a satisfactory manner and does not unduly disturb adjoining occupiers or prejudice local amenity generally.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. The condition over which there is disagreement relates to a planning permission granted for a change of use from retail to restaurant. The appellant seeks to vary condition No. 3 to extend the opening hours beyond 2300 to 0200 hours the following day on both a Friday and Saturday night.
3. The main issue is whether the condition is reasonable and necessary in the interests of the living conditions of the occupiers of surrounding properties having particular regard to noise and disturbance.

Reasons

4. The restaurant occupies the ground floor of a three-storey building at 75 Mare Street. The immediate area is in mixed residential and commercial use. The first and second floors above the restaurant are in residential use, while tightly packed terraced dwellings directly abut the footway on Beck Road, closely around the corner from the appeal site. St Joseph's Hospice is located immediately across Mare Street.

5. The extension of the opening hours would inevitably result in nuisance resulting from customers coming and going from the premises late into the evening and early morning on weekends. Although this is an urban location, at these times, those residing in the area could reasonably expect to sleep in relative peace and quiet.
6. The effect would be particularly pronounced for properties above the premises and for those on Beck Road, a residential side street where dwellings directly front the footway. The impacts would be further heightened during the summer when occupiers could reasonably expect to be able to open windows for ventilation.
7. The appellant indicates that the premises would operate as a takeaway only during these hours. This would lead to the likelihood of customers lingering in the area to consume their food which would be likely to create further noise and disturbance.
8. Consequently, the increase in noise and disturbance generated by the proposed extension to the opening hours of the restaurant would be unacceptable in an area which is likely to experience relative peace and quiet during these times.
9. I therefore conclude that given the proximity of existing properties to the appeal site the condition is necessary in the interests of the living conditions of the occupiers of surrounding properties. Without complying with condition no.3 the proposal would conflict with Policy 7.15 of the London Plan (2016), Policy 15 of the Local Development Framework Core Strategy (2010) and Policies DM2 and DM11 of the Hackney Development Management Local Plan (2015) which seek amongst other things, the management of noise and the protection of the living conditions of nearby occupiers.
10. Although it is suggested there are other local premises open late at night, no details have been supplied and I cannot therefore afford this matter any weight. Whilst no objections have been received from adjoining neighbours, this does not indicate an absence of harm and I note concerns from occupiers on Beck Road.
11. I acknowledge that the extended opening hours would make a contribution, albeit limited, to local economic growth and the night time economy. Nevertheless, the harm I have found would significantly and demonstrably outweigh this modest benefit.

Other Matters

12. I note that there would be no sale of alcohol during the proposed hours. I also note that a Noise Impact Assessment Report has been supplied although this relates to the kitchen extraction system, which is not identified as an area of concern by the Council in relation to the appeal.

Conclusion

13. For the reasons set out above and having regard to all other matters, I conclude that the appeal should be dismissed.

T J Burnham

INSPECTOR