



Appeal Decision

Site visit made on 4 February 2020

by J M Tweddle BSc(Hons) MSc(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 March 2020

Appeal Ref: APP/A5270/W/19/3241291

4 The Mall, Ealing W5 2PJ

- 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 Mr Derek McCarthy against the decision of the Council of the London Borough of Ealing.
 - The application Ref 193024FUL, dated 5 July 2019, was refused by notice dated 24 September 2019.
 - The development proposed is described as 'introduction of seating area to rear of existing premises'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council, in their formal decision notice, describe the proposal as the 'provision of an outdoor seating area to the rear in association with drinking establishment/restaurant; and associated external and internal alterations'. This description is also set out by the appellant on the appeal form and within their appeal statement. From the evidence before me, this appears to be a more accurate reflection of what is proposed and therefore I have dealt with the appeal on this basis.

Main Issue

3. The main issue is the effect of the development on the living conditions of the occupiers of adjacent residential properties, with particular regard to noise and disturbance.

Reasons

4. The appeal site comprises a three storey mid-terrace building along with its rear yard area at 4 The Mall, Ealing. The ground floor of the building is used as a Class A4 Drinking Establishment, whilst the upper floors are in residential use. The site is located with Ealing Town Centre which is characterised by a mix of typical town centre uses which combine to create a busy and vibrant urban environment. However, the area to the rear of The Mall is less busy and has a much more sedate character with rear service yards and parking areas.
5. The proposal would see the introduction of an outdoor seating area in the rear yard area of the drinking establishment with plans indicating a seated capacity

of up to 22 people and operating until 2200 hours Monday to Saturday and until 2300 hours on Sundays and Bank Holidays. The nature of the development is such that gatherings of people in this area would give rise to noise generating activities such as talking, raised voices, laughter and the movement of chairs, glasses and crockery. Such noise levels are likely to be exacerbated by customers being in high spirits and therefore levels of conversation being increasingly audible through either a number of voices being raised at any one time or louder individual voices. These effects would be particularly acute on long summer days with good weather, when the area would attract greater numbers of people for much of the day and into the late evening when neighbouring residents are likely to have windows open and therefore more receptive to noise.

6. Although the outdoor seating area would have a limited capacity and the appellant has suggested that they would accept a condition to restrict the number of customers using the space and that no amplified music would be played, I find that the nature of the use has the potential to generate a significant level of noise and disturbance. Given the proximity of the yard area to the adjoining first floor residential properties, I find that the proposal would result in harm to the living conditions of neighbouring occupiers. While I accept that these residential properties are located within a busy town centre environment, the noise and disturbance that would occur as a result of the proposal would be experienced from their rear facing habitable rooms where residents would reasonably expect lower levels of noise and disturbance. Furthermore, this level of noise and disturbance would be significantly greater than the existing low level background hum of neighbouring extraction systems or intermittent noise generated from occasional deliveries or service vehicles.
7. I am also mindful that the rear entrance to Flat 4A is via a metal staircase that leads into the rear yard area and would therefore be immediately adjacent to the proposed outdoor seating area. Consequently, when the outdoor seating area was full of people the occupiers of this flat would likely feel uncomfortable using this access and this would further diminish their enjoyment of the property.
8. In evaluating the effect of the proposal, I have borne in mind that there is already a degree of noise and disturbance caused by the existing railway station to the rear of the site. However, noise from rail traffic is of an intermittent nature and the railway lines are some distance from the rear elevations of the residential properties. The appeal proposal would represent a significant increase in noise and disturbance close to the residential properties and over a prolonged period of time into the evening when residents would expect lower levels of background noise to the rear of their properties.
9. I observed on site that there are a number of other late night uses along The Mall including several hot food takeaways that are open until 0200 hours on some days of the week and which include delivery services. The presence of these other uses means a certain amount of late evening activity already occurs in the surrounding area. However, none of these nearby uses provide an external area for the outdoor congregation of patrons and these other late night businesses are orientated to the front of the building.
10. Consequently, I find that the proximity of the proposal to neighbouring residential properties to be such that noise and disturbance from the outdoor

seating area would have a significant harmful effect on the living conditions of the occupiers of these adjacent residential properties. This is contrary to policy 7.15 of the London Plan (2016), policies 1.1(j) and 1.2(f) of the Ealing Development Strategy 2026 DPD (adopted 2012) and policy 7A of the Ealing Development Management DPD (adopted 2013). Together, these policies seek to avoid significant adverse noise impacts and to protect and improve ambient noise levels in order to achieve acceptable levels of amenity for surrounding uses.

11. There would also be conflict with the Framework which at paragraph 127 states that development should ensure a standard of amenity for existing and future users.

Other Matters

12. The appeal site is located within the Ealing Town Centre Conservation Area. There is no dispute between the parties that the proposal would preserve the appearance of the Conservation Area and I agree given the discreet siting of the seating area to the rear of the street scene where public views are limited. The appellant has also suggested that the proposal would enhance the appearance of the Conservation Area. Again, I agree that to develop the area as proposed would introduce an attractive and vibrant outdoor seating area into what is currently a functional parking and service area of limited aesthetic value. However, despite attaching considerable importance and weight to the desirability of preserving or enhancing the character or appearance of the Conservation Area, this benefit does not outweigh the significant harm I have identified to the neighbours' living conditions.
13. The appellant has cited a number of examples of other outdoor seating areas associated with drinking establishments in the wider area. But I do not have the full details of these other developments before me and cannot therefore be sure that they represent a direct comparison to the appeal proposal. In any case I have considered the appeal proposal on its own merits.
14. I note the appellant's argument that the proposal would benefit the future viability of the bar/restaurant in order to allow it to compete on an equal footing. However, I am not provided with evidence of the business's trading performance and can give little weight to this as a factor in favour of the appeal. I accept that the proposal would add to the local night time economy and would make a small contribution to the vitality and viability of the town centre, providing social and economic benefits to residents, workers and visitors to the area. However, these benefits would be limited in scale and would not outweigh the harm I have found.
15. I acknowledge the lack of objection from neighbouring residents, but this does not affect my findings on the main issue.

Conclusion

16. For the reasons I have set out, the appeal is dismissed.

Jeff Tweddle

INSPECTOR