



Appeal Decision

Site visit made on 11 February 2020

by J Gibson BUEP MPIA

an Inspector appointed by the Secretary of State

Decision date: 14 May 2020

Appeal Ref: APP/X5990/W/19/3240074

84 Edgware Road, London W2 2EA

- 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 Palm Palace Restaurant Limited against the decision of City of Westminster Council.
 - The application Ref 19/05882/FULL, dated 26 July 2019, was refused by notice dated 25 September 2019.
 - The application sought planning permission for the refurbishment of basement and ground floors for restaurant use (Class A3), including erection of full height extract duct on rear wall and alterations to shopfront without complying with a condition attached to planning permission Ref 05/03603/FULL, dated 6 October 2005.
 - The condition in dispute is No 1 which states that: *You must not open the restaurant premises to customers, and you must not allow customers on the premises, outside the following times: between 08.00 and 23.00.*
 - The reason given for the condition is: *To protect the environment of people in neighbouring properties as set out in SS 13 of our Unitary Development Plan, STRA 11A(B), STRA 14 and ENV 6a and 6b of our Pre-Inquiry Unitary Development Plan.*
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The policies under which the original planning permission was granted, and conditions reasoned, have been replaced by the City of Westminster Unitary Development Plan (UDP) (adopted January 2007) and the Westminster's City Plan (CP) (adopted November 2016). The appeal proposal has been assessed against the most up to date policies under the UDP and CP accordingly.

Background and Main Issue

3. The appeal site is an established restaurant along Edgware Road, referred to as "Palm Palace Restaurant", located at the ground floor and basement levels. Residential flats are located above the appeal site and have been identified as falling within the Edgware Road Stress Area.
4. The appellant is seeking to revise the opening hours of the restaurant for customers to extend later into the evening. The hours proposed would extend from 0800-0100, seven days a week. The original condition only allowed customer access between 0800-2300, seven days a week. This condition was

imposed to protect the living conditions of occupants at nearby residential properties within the Edgware Road Stress Area.

5. On this basis, the main issue is the effect that varying the opening hours would have on the living conditions of residential occupants within the Edgware Road Stress Area, with regard for noise and disturbance.

Reasons

6. Edgware Road is a busy main road characterised by a variety of businesses at ground level including shops, cafes, restaurants, bars, casinos and supermarkets, many of which operate late into the evening. There are residential flats located above these ground floor premises, of which this pattern of development is generally repeated along the length of Edgware Road and surrounding area. It is this relationship between entertainment uses and residential development that has informed the designation of the Edgware Road Stress Area.
7. Policy TACE 8 of the City of Westminster UDP identifies Edgware Road as a "Stress Area" which means that there is a harmful concentration of entertainment activities, including restaurants, that are detrimentally affecting the residential environment for occupants in the area. The policy subsequently seeks to protect the living conditions of residential occupants from any direct or cumulative harm, such as noise and disturbance, which may result from activities associated with entertainment uses, particularly those that would operate late at night. These local characteristics are further recognised, and objectives upheld, under Policies S8 and S24 of the Westminster's CP. A condition controlling the opening hours of the restaurant therefore remains necessary, relevant and reasonable.
8. The appellant has identified that there is a concentration of entertainment and other uses within the immediate vicinity of the appeal site that are operating into the late hours of the evening, as proposed under this appeal. Whilst this is intended to serve as justification that the appeal proposal would be acceptable, along with the suggested reduction in the number of licensed premises along Edgware Road since 2011, it highlights the continued relevance of Policy TACE 8 under the UDP and Policies S8 and S24 of the CP. This is particularly evident when noting the numerous residential properties identified by the Council close to the appeal site. Having regard to these characteristics, and my observations during my site visit, I am satisfied that these policies remain up to date and that there is still a demonstrated need to control entertainment uses within the Edgware Road Stress Area.
9. The appellant has carried out an anecdotal survey of pedestrian and vehicular traffic in front of the appeal site during the proposed extended hours from 2300 to 0100. As part of these observations the appellant compares the level of activity in front of the appeal site with those occurring on the opposite side of Edgware Road, in front of restaurants which currently operate during hours up to 0100. Of note, the appellant identified that the existing restaurants operating until 0100 were subject to higher levels of pedestrian and vehicular traffic between 0000 and 0100 than in front of the appeal site. It logically follows that should the appeal site remain open during the proposed hours of operation a higher level of pedestrian and vehicular traffic would likely occur in front of the appeal site, increasing the potential noise and disturbance levels experienced by residential occupants.

10. It has been suggested by the appellant that this increased level of activity would not amount to an audible level of noise or disturbance in relation to existing levels along Edgware Road. However, in the absence of a noise impact assessment which measures the existing ambient levels, the anticipated levels generated during the extended hours, and details what effect this may have on residential occupants both directly and cumulatively, I cannot be certain that this is the case.
11. I note the availability of public transport as a means of quickly dispersing customers leaving the appeal site late into the evening. Nevertheless, the behaviour of customers once they leave the premises and how quickly they move on cannot be guaranteed, either by condition or a management strategy, and as such could still amount to an unacceptable increase in noise and disturbance late in the evening, when the living conditions of residential occupants are most sensitive. This is highlighted by the objections made by a nearby residential occupant against the appeal proposal, though I note that neither the presence nor absence of objections outright determines the appropriateness of a proposal.
12. I appreciate that there is an existing licence over the premises for the proposed hours of operation with conditions intended to limit the impact the restaurant has on the nearby residential environment. However, licencing is a separate process to planning, with each process guided by different policy objectives and subject to different assessment considerations. From a planning perspective the appeal proposal is assessed against the Council's adopted plans and policies along with any other material considerations, and on this basis must satisfy the decision maker that development is appropriate. I therefore give this consideration little weight in the appeal.
13. Accordingly, it is my view that it has not been adequately demonstrated that the varied opening hours would not detrimentally harm the living conditions of residential occupants within the Edgware Road Stress Area, with regard for noise and disturbance. It would therefore conflict with Policies TACE 8, ENV6, ENV7 and ENV13 of the City of Westminster Unitary Development Plan (adopted January 2007), and Policies S8, S24, S29 and S32 of the Westminster's City Plan (adopted November 2016). Collectively, these policies seek, amongst other things, to protect the residential environment from adverse effects such as noise and disturbance associated with late night entertainment activities, particularly along Edgware Road.

Other Matters

14. The appellant has suggested that they intend to combine the appeal site with the neighbouring property at 82 Edgware Road, known as "Palm Palace Café", to form a single restaurant, but that the current planning and licencing permissions on each site restrict this. The described proposal falls outside the scope of the appeal before me and as such has not informed my determination.

Conclusion

15. For the above reasons given I conclude that the appeal should be dismissed.

J Gibson

INSPECTOR