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## Appeal Decision

Site visit made on 23 June 2020

**by M Heron BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 03 August 2020**

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### **Appeal Ref: APP/U5360/W/20/3246455**

### **205A, Blondies Bar, Lower Clapton Road, Hackney, London E5 8EG**

- 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 Miss Verity Cox (Blondies London Ltd) against the decision of the Council of the London Borough of Hackney.
- The application Ref 2019/1319, dated 25 February 2019, was refused by notice dated 4 November 2019.
- The application sought permission for the variation/removal of conditions following the grant of planning permission through application Ref 2015/1498 for a change of use from Use Class A2 to a mixed-use as a café (Use Class A3) and bar (Use Class A4) with rear garden external seating.
- The conditions in dispute are Nos 3 and 4 which state that:  
*"(3) The use hereby permitted may only be carried out between the following hours:*
  - 11:00 - 23:00 Mondays to Thursdays
  - 11:00 - 24:00 on Fridays
  - 10:00 - 24:00 on Saturdays and Bank Holidays
  - 10:00 - 23:00 on Sundays*Use of the rear garden by patrons of the premises in connection with the use hereby approved shall be restricted to the following hours:*
  - 10:00 - 21:00 Monday - Thursday and Sunday
  - 10:00 - 22:00 Friday - Saturday and Bank Holidays."
  - "(4) there shall be no primary cooking of food at any time at the premises or within the rear garden."*
- The reasons given for the conditions are, respectively:  
*"To ensure that the use is operated in a satisfactory manner and does not unduly disturb adjoining occupiers or prejudice local amenity generally."*  
*"To protect the amenity of local residents."*

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### **Decision**

1. The appeal is dismissed.

### **Background and Main Issue**

2. The planning permission that gives rise to the disputed conditions is application Ref. 2015/1498 (henceforth referred to as the 'previous permission'). This allowed the change of use of the appeal premises from a service (A2 use) to mixed café (A3 use) and a bar (A4 use) with a rear garden seating area. Condition 3 to this previous permission manages the operational hours of the use to between the hours shown in the heading above. Condition 4 restricts any primary cooking at the site. Both of these conditions were imposed in the interests of the living conditions of the occupants of surrounding properties.

3. This application seeks to vary condition 3 so that the premises can operate between 11:00 – 01:00 Monday to Thursday, between 11:00 – 02:00 on Fridays, between 10:00 – 02:00 on Saturdays and between 10:00 – 01:00 on Sundays. It also proposes a change to the hours that the rear garden may be used to between 10:00 – 23:00 Monday to Sunday and on Bank Holidays. Furthermore, the application seeks to remove condition 4 to allow for primary cooking at the site.
4. The main issue with this appeal is therefore whether or not conditions 3 and 4 of the previous permission are reasonable and necessary in the interests of the living conditions of the occupants of surrounding dwellings, with particular regard to noise and disturbance, odour and smoke pollution.

## **Reasons**

### *Noise and Disturbance*

5. The appeal site is located on the western side of Lower Clapton Road, within Lower Clapton Local Centre. It comprises a single storey property in use as a café and bar. This is positioned within a terrace of buildings which have ground floor commercial units and mostly residential accommodation on the floors above. There are also residential properties immediately to the rear of the site. The presence of numerous dwellings within close proximity of Blondies Bar means that this is a noise sensitive environment, in which the potential for the effect of any additional noise and disturbance must be carefully considered.
6. I appreciate that the appeal site has an existing lawful use as a small café/bar and that this has operated for several years without any noise complaints or records of antisocial behaviour. Nevertheless, the nature of this use still has the potential to generate significant noise and disturbance. This is particularly so given the proximity of dwellings to the partially open garden area and as it is proposed to operate the business into the early hours of the morning. No survey details have been submitted in relation to the existing noise levels. Neither do I have any detailed information of the soundproofing which has been installed internally. In the absence of this information, it is unclear what level of noise surrounding residents are already exposed to or whether existing soundproofing is effective.
7. I acknowledge that there would be no additional seating or the delivery of food. However, taking all of the above into account, from the limited evidence provided I cannot be certain that the extended opening hours would not significantly harm the living conditions of the occupants of nearby residents in terms of noise, or that this noise could be appropriately mitigated.
8. The Council show that nearby businesses which have opening hours managed through planning conditions do not operate beyond midnight. This is the case for Havana's Shisha Garden referenced in the appellant's evidence. My attention has also been drawn to other businesses in the surrounding area, including Dom's Place, Jimac Cars and The Clapton Hart public house. However, I do not know whether the operating hours for Dom's Place were assessed by the Council, and if so when or how they were assessed. In addition, The Clapton Hart does not operate beyond 01:00 and the noise generated by Jimac Cars (a taxi business) is not equivalent to that created by a bar/café. Taking the above into account, I am not persuaded that the operation of surrounding

businesses is directly comparable to that proposed for Blondies Bar, which I have assessed on its own merits in any event.

9. The appellant states that the existing business has a good relationship with neighbours in the immediate area, which I note includes her and her sister. However, I must also consider the living conditions for future occupants at surrounding properties. Consequently, this is not a reason to set aside my concerns in terms of noise and disturbance.

#### *Odour and Smoke Pollution*

10. In removing condition 4 of the previous permission, this proposal would allow for cooking at the appeal site. The appellant has also indicated that a wood fired pizza oven would be installed in the rear garden. The staff operating this oven would have the appropriate hygiene certificates and food would therefore be suitably stored and protected from pests. However, whilst food would be oven baked, it would still cause odour and fumes. Given the concerns raised by numerous nearby residents, it is necessary for me to adopt a precautionary approach in this regard.
11. Some particulars of the pizza oven have been provided. However, the exact details of the odours and air pollution that it would create have not. Consequently, and as it could not be guaranteed that high quality log briquettes would be used as fuel, I cannot be certain that the proposed outdoor cooking would not cause harmful impacts to neighbours in terms of odour and smoke pollution. Any such harm would add to the odours and fumes created by nearby businesses which, with regard to third party responses, already affect neighbours in this area. In addition, from the limited evidence before me, which does not clarify the effectiveness of the oven's one metre flue, I cannot be certain that the measures outlined by the appellant would appropriately mitigate any harmful impacts in this regard.

#### *Overall Findings*

12. Drawing the threads of the above assessment together, I conclude that conditions 3 and 4 of the previous permission are reasonable and necessary, having regard to the effect that varying and removing them in the manner proposed would have on the living conditions of the occupiers of neighbouring dwellings, with particular regard to noise and disturbance, odour and smoke pollution. In this respect, the proposal would conflict with Policies 4.6 and 7.15 of the London Plan, Core Strategy Policy 15 of the Core Strategy Hackney's Strategic Planning Policies for 2010-2025 and Policies DM2, DM11 and DM42 of the Development Management Local Plan. Amongst other things, these seek to suitably manage Hackney's evening and night-time economy so that adverse impacts on the living conditions of the occupants of neighbouring properties are mitigated and minimised in terms of noise, fumes and odour.
13. Turning to the National Planning Policy Framework (the Framework), this seeks to create the conditions in which businesses can invest, expand and adapt and places significant weight on the need to support economic growth. However, this should not be at the expense of creating places with a high standard of amenity for existing and future users. I am not persuaded that the proposal would achieve this.

### *Other Matters*

14. The appeal site falls within Clapton Pond Conservation Area (CA). The Council do not raise objection to the proposal's impact on this historic environment. Nonetheless, I have a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. The significance of this CA appears to derive from the use and interesting architectural quality of the buildings within it, together with the aesthetic quality of important open spaces and tree groups.
15. The proposed physical alterations to Blondies Bar would be relatively limited and would not alter the appearance of the bar when viewed from the front. Overall, the scheme would be acceptable in a visual sense and would preserve the character or appearance of the CA. It would therefore accord with policies concerning the historic environment within the Framework. However, this is a requirement of the development plan and is a neutral factor in my decision.
16. The appellant has indicated that she would be willing to accept a temporary condition of approval for one year in order to demonstrate that this proposal would not result in any unacceptable impacts. However, given my findings in the main issue and my significant concerns in terms of the scheme's impacts on the living conditions of the occupants of nearby properties, I am not persuaded that such a condition would be reasonable.

### **Conclusion**

17. For the reasons set out above, I conclude that the appeal should be dismissed and the conditions retained in their present form.

*M Heron*

INSPECTOR