



Appeal Decision

Site visit made on 5 October 2020

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 October 2020

Appeal Ref: APP/V5570/W/20/3246438

1 St John Street, Islington, London EC1M 4AA

- 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 Citywide Properties Ltd against the decision of the Council of the London Borough of Islington.
 - The application Ref P2019/3173/S73, dated 23 October 2019, was refused by notice dated 10 December 2019.
 - The application sought planning permission for creation of terrace to main roof and associated structures without complying with a condition attached to planning permission Ref P2019/1976/FUL, dated 2 October 2019.
 - The condition in dispute is No 4 which states that: *The hereby approved roof terrace shall only be used between the following hours: Monday to Fridays 09:00 to 18:00 hours only.*
 - The reason given for the condition is: *To protect the amenity of neighbouring properties.*
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Decision

1. The appeal is allowed and planning permission is granted for the creation of a terrace to the main roof and associated structures at 1 St John Street, Islington, London EC1M 4AA in accordance with application Ref P2019/3173/S73 without compliance with Condition No 4 previously imposed on planning permission Ref P2019/1976/FUL, dated 2 October 2019, but subject to the conditions set out at the end of this decision.

Main Issue

2. Whether or not the disputed condition is reasonable and necessary in the interests of protecting the living conditions of neighbouring residential occupiers, having particular regard to noise.

Reasons

3. The appeal proposal is based upon a request to extend the permitted roof terrace's authorised hours of use from those set out in the disputed condition (specified above) to 0800-2200 on Mondays to Fridays, 0900-2200 on Saturdays and 0900-1800 on Sundays.
4. The appeal building contains officing to its upper floors and is in an area where there is a strong commercial presence at ground floor and to upper floor levels. Indeed, I observed various eating/drinking establishments and other office type

uses to exist in proximity to the site. It is also the case that there is some residential accommodation in place close by. Perhaps most pertinently with respect to the appeal proposal, this includes flats located to the third and fourth floor levels of No 5 St John Street (No 5).

5. It was apparent from on-site inspection that rear-facing (west-facing) window openings that serve No 5's upper floors have a close physical relationship to the appeal property's external roof area. Nevertheless, consistent with how the approved floor and roof plans are annotated, it is my understanding that these upper floor openings predominantly serve shared stairwell/landing areas and not habitable residential rooms. Indeed, upon inspection, I observed nothing to clearly indicate otherwise. I also note that no objections to the proposal have been received from any local residential occupier.
6. The roof area in question covers a limited area and, once implemented, the roof terrace would support a small number of businesses at the appeal property that are modestly sized. Any potential noise generated by the roof terrace's use during the extended hours of operation that are proposed would realistically be limited and not noticeable in the context of the various evening/night-time commercial venues that exist nearby.
7. The Council's Pollution Officer has objected to the proposal whilst noting that other office roof terrace applications elsewhere have been conditioned with hours of operation consistent with how the disputed condition is currently worded. However, I must consider the proposal before me based upon its own individual merits. Whilst the proposed varied hours would offer the opportunity for evening events to be held, these would necessarily be limited in size and, in any event, could not operate beyond 2200 hours (or 1800 hours on Sundays).
8. Considering the precise makeup of both the appeal property and the roof terrace's immediate surroundings, including the particular way in which the upper floors of No 5 would appear to be laid out (as discussed above), I am content that the intended extended hours of operation would not cause harm to neighbouring residential living conditions.
9. For the above reasons I find that the disputed condition is not reasonable or necessary in the interests of protecting the living conditions of neighbouring residential occupiers, having particular regard to noise. As such, should Condition 4 be altered in accordance with the appellant's request for extended hours of use, there would be compliance with Policy DM2.1 of Islington's Local Plan: Development Management Policies (June 2013) in so far as it requires development proposals to provide a good level of amenity including consideration of noise and the impact of disturbance.

Other Matters

10. I am content that the proposal would preserve the character and appearance of the Charterhouse Square Conservation Area and would respect the setting of, and thus preserve the special interest of, 3 and 5, St John Street, an adjacent Grade II listed building.
11. I have been made aware that a helpline that aids persons affected by mental illness operates during evening hours from an office situated opposite to the site. I am sufficiently satisfied that the proposal, which relates to extending

the hours of operation of a small roof terrace, would not prejudice the ability for the helpline to continue to operate in a calm environment.

Conclusion and Conditions

12. For the reasons set out above, I conclude that the appeal should be allowed. I will grant a new planning permission without the disputed condition but retaining non-disputed conditions from the original permission (P2019/1976/FUL). I shall also impose a new replacement Condition 4 to reflect the amended permitted hours.
13. As set out in the Planning Practice Guidance, an application made under Section 73 cannot be used to vary the time limit for implementation and this time limit is to remain unchanged when compared to Condition 1 of the original permission. In the interests of clarity and certainty, I have made slight adjustments to Conditions 2 and 5 when compared to the draft conditions list provided by the Council. Indeed, I have sought to ensure that plan numbers are not repeated.
14. Considering my reasoning with respect to the main issue in this appeal, I do not consider that it would be reasonable or necessary to impose a condition requiring the submission and implementation of a Management Plan related to the terrace's use. Indeed, the way in which the roof terrace could be used would be sufficiently controlled through the nature of the appeal property's occupation, the terrace's limited size and the hours restrictions that still apply.

Andrew Smith

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun not later than 2 October 2022.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans and documents: 1820/A0.10; 1820/A1.01/Rev A; 1820/A1.02/Rev A; 1820/A1.05/Rev A; 1820/A0.01/Rev A; 1820/A0.02/Rev A; Design and Access Statement, Project No 1820, dated 20 June 2019 Rev A.
- 3) The development hereby permitted shall be constructed in accordance with the schedule of materials noted on the approved plans and within the approved Design and Access Statement. The development shall be carried out strictly in accordance with the details so approved and shall be maintained as such thereafter.
- 4) The hereby permitted roof terrace shall only be used between the following hours: Monday to Friday 0800 to 2200 hours; Saturday 0900 to 2200 hours; Sunday 0900 to 1800 hours.
- 5) The hereby permitted balustrades shall be installed in full accordance with the details shown on approved plans 1820/A1.01/Rev A and 1820/A1.05/Rev A prior to the roof terrace's first use and shall be retained as installed thereafter.