



Appeal Decision

Site visit made on 4 November 2020

by J Somers BSocSci (Planning) MA (HEC) MRTPI IHBC

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 18 November 2020

Appeal Ref: APP/U5360/W/20/3248149

93 Stoke Newington Church Street, Hackney, London N16 0AS

- 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 Joel Braham against the decision of the London Borough of Hackney.
 - The application Ref 2019/1190, dated 26 March 2019, was refused by notice dated 4 September 2019.
 - The development proposed is the use of the rear terrace for external seating, with limited hours of use.
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Decision

1. The appeal is allowed and planning permission is granted for the use of the rear terrace for external seating comprising 20 covers, with limited hours of use; at 93 Stoke Newington Church Street, Hackney, London N16 0AS in accordance with the terms of the application, Ref: 2019/1190, dated 26 March 2019 subject to the conditions attached as a schedule to this Letter.

Application for Costs

2. An application for costs was made by Mr Joel Braham against the London Borough of Hackney. This application is the subject of a separate decision.

Preliminary Matters

3. I note discussion within the appeal documents with regards to the number of proposed covers, and the resultant change in description of the development as a result. As such I have utilised the application description given in the appeal form and the Council's Decision Notice which omits the amount of covers and will make my decision on this basis.
4. As part of the appeal documents the applicant has submitted a noise assessment¹ and has sought that I consider this as part of the appeal. The noise assessment does not change the scheme but provides further information with regards to the main issue. In accordance with the Wheatcroft Principles² the acceptance of this assessment would be appropriate and not deprive those who should have been consulted or the opportunity of such consultation. As such, I will accept this further information and will base my decision upon it.

¹ The Good Egg External Customer Noise Assessment, Dated 28 January 2020, by Hayes McKenzie Consultants in Acoustics.

² Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

Main Issues

5. The main issue is the effect of the proposed development upon the living conditions of surrounding residents as a result of noise and disturbance.

Reasons

Living conditions of neighbouring occupants

6. The appeal property is mid-terraced and is located along the main shopping street of Stoke Newington. Many of the buildings along Stoke Newington Church Street have a ground floor 'Commercial Business and Service' use with upper floors utilised for residential use. In this particular location, the ground floor neighbour to the west is a taxi/courier use and utilises the rear area as a place to park vehicles. Neighbouring the appeal site to the east is a small residential garden with a large amount of built form to the rear in the form of a single storey building.
7. The proposed scheme would enable the use of the area to the rear of the appeal site to cater for outdoor dining, which would be restricted between the hours of 11:00-17:00 Monday to Sunday. It is noted that these proposed hours of operation of the rear terrace are different to the previously approved temporary permission³ where according to neighbouring residents, the rear terrace was being utilised until 23:00 during the trial period.
8. Noise and disturbance are subjective issues to assess, as each neighbour will have different thresholds over what might harm their living conditions. There is also the consideration that the perception of noise is more noticeable in evenings and the morning. In this particular scenario, the additional noise generated would not be constant and predominantly consist of customers talking as they have their meals, with interested parties to the appeal also speaking of bottles clanging as they are placed in the waste. I note that noise to the rear would also be generated by the taxi/courier service adjacent with cars parking and reversing in close proximity to the appeal site.
9. The submitted noise assessment was prepared in accordance with the requirements of the British Standard 4142 (BS). The noise assessment states that monitoring of noise levels was undertaken from Friday 25 November 2019 until 18 November 2019 at a height of 4.5 metres in order to present findings of noise levels to the nearest residential window at first floor level. The methodology employed in terms of projecting proposed noise levels is robust and captures likely noise, given that during the period there was monitoring of noise undertaken when diners were utilising the rear terrace.
10. The level of noise measured in the survey showed that at a worst case scenario, that the resulting use of the rear terrace would increase noise levels between 1-2 decibels, however would be within acceptable levels as per the British Standard. I acknowledge comments from interested parties with regards to the noise levels in the evening and the constant use of the rear terrace for long time periods. However, this could be satisfactorily mitigated with the proposed restricted usage between 11:00 to 17:00, which would discourage any noise being made in the early hours or evening times. Whilst I agree that there would be some noticeable difference in noise levels, this would not be a significant adverse impact. This restriction in operating hours of the terrace is

³ Hackney Council Planning ref: 2015/4252

also a suggestion made by the noise assessment and is acceptable for mitigating concerns with regards to noise and disturbance. I also note that a Customer Management Plan seeks to regulate how the terrace is operated and would further justify the acceptability of the proposal.

11. In conclusion on this matter, the proposal would not generate significant adverse impacts to the living conditions of surrounding occupiers with relation to noise and disturbance and would be compliant with the Hackney Development Management Plan Policy DM2 (which seeks that development not result in significant adverse impacts to the amenity of occupiers and neighbours); and Policy 7.15 of the London Plan 2016 which seeks that new development should avoid significant adverse noise impacts.
12. I note that policy 24 of the Hackney Core Strategy 2010 has been listed in the Reason for refusal. This policy is related to design and is not relevant to the consideration of living conditions. Equally, Policy 7.6 (Architecture) of the London Plan 2016 has also been listed in the reasons for refusal, however this policy relates to design of building causing amenity considerations to neighbouring occupiers, such as via overshadowing, loss of privacy, wind and microclimate. This policy is not relevant to the consideration of noise and disturbance.

Other Matters

13. The front of the appeal site is occupied by a Grade II listed building along with the remainder of the terrace which is also Grade II listed. The appeal site is also within the Leyton Town Conservation Area. I am therefore aware of my duty under Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to give special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses. Additionally, Section 72 of the same Act seeks that in relation to Conservation Areas that special attention is paid to the desirability of preserving or enhancing the character or appearance of the Conservation Area.
14. Whilst I have not been presented with the significance of the Conservation Area or the Listed Building, to me, the significance derives from the positive contribution that the terrace plays in informing the character and appearance of the area, the building's layout and construction materials which contribute to its former form and function. Whilst the rear of the properties along the terrace have gardens which have been built upon and some being hardscaped, they still contribute to how the terrace is experienced and form part of the significance of the buildings and the conservation area.
15. The use of the terrace will bring about change to the rear of the appeal site, particularly in how it is experienced alongside the listed building and as part of the conservation area. However in my opinion these changes would result in neutral harm to the significance of the listed building via development within its setting, and neutral harm to the character and appearance to the conservation area.
16. I note comments from interested parties with regards to their opinion on the conduct of the applicant and their disregard for previously imposed conditions as part of a customer management plan limiting how the building and its front terrace is utilised, such as queuing, and restricting smoking and customers

being noisy when leaving. There are also comments from interested parties with regards to sheds which apparently have been installed without planning consent. The previous conduct of an applicant or the use of the front terrace is not a relevant planning consideration for this particular scheme which regards the rear terrace and has not been factored into my decision.

Conclusion and conditions

17. I conclude that with regard to the proposal to change the use of the rear of the property for an outdoor seating terrace is generally appropriate and would be compliant with the development plan. For these reasons, the appeal should be allowed and planning permission granted, subject to the conditions as detailed below.
18. The Council have not provided any suggested conditions however I have had regard to the context of the Framework which advises that conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Condition 1 which specifies a time limit to commence the development and condition 2 which seeks the scheme to be constructed in accordance with approved plans is a standard condition which is required for the avoidance of doubt. Conditions 3 is regarding a Customer Management Plan which specifies the hours of operation of the terrace and other relevant considerations regarding music and the general management of the space and has been put forward by the applicant in an attempt to mitigate concerns from surrounding residents. This condition is also necessary and meets the tests of the Planning Practice Guidance.

Schedule of Conditions

1. The development hereby permitted shall begin no later than the expiration of three years from the date of this permission.
2. The development hereby permitted shall not be carried out otherwise than in complete accordance with the approved plans.
3. The use of the rear terrace shall only be open for customers between the hours of 11:00 to 17:00 on Monday to Sunday inclusive.
4. The use of the rear terrace shall be solely in accordance with the 'Rear External Seating Area Management Plan (Rev A)', March 2019.

J Somers

INSPECTOR