



Appeal Decision

Site visit made on 15 September 2020

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 December 2020

Appeal Ref: APP/A5840/W/20/3252179 138 Rye Lane, London SE15 4RZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Miss Olga Zajac against the Council of the London Borough of Southwark.
 - The application Ref 19/AP/7345, is dated 12 December 2019.
 - The development proposed is retrospective permission for café/bar (Use Class A3/A4) over ground and first floor with ancillary manager's accommodation at second floor, and new shopfront and bi-fold doors at rear (ground floor); Hours of operation Su-Th 06:30 to 00:00, F and Sa 06:30 to 01:00 (next day).
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Decision

1. The appeal is dismissed and planning permission is refused.

Preliminary Matter

2. The conversion of the appeal property to a café/bar has already been undertaken, along with the installation of the new shopfront and bi-fold glazed doors in accordance with the submitted drawings. Accordingly, for the purposes of my decision, I have relied on the submitted drawings which reflect the development as it appears at the appeal site.

Background and Main Issues

3. Although there is no formal decision from the Council, it has considered the proposal and indicated that had it been in a position to determine the application it would have refused permission.
4. Mindful of the Council's putative reasons for refusal, the main issues are a) the effect of the café/bar use on the living conditions of neighbours and the ancillary manager's accommodation in respect of noise and disturbance; b) whether the proposed ancillary manager's accommodation would be of an acceptable quality; and c) whether the development has resulted in the loss of residential accommodation without justification.

Reasons

Living conditions

5. The appeal property is a mid-terrace, three-storey building, incorporating a rear yard which is accessed from the ground floor of the building, via the bi-folding glazed doors. Immediately to the rear of the yard is a shared outdoor

space incorporating seating and directly behind this are two rows of facing, terraced dwellings which are part of Choumert Square. There is also residential accommodation along the upper floors of the neighbouring property, 136 Rye Lane (No 136).

6. The café/bar has an open plan layout, spread across the ground and first floors of the appeal property. This includes seating areas, a large bar at ground floor (close to the rear yard) and a kitchen area on the first floor. The extent of the café/bar and activity associated with it, which would include loud conversations with sudden outbursts such as shouting from customers and the playing of amplified music, in combination with the proposed late opening hours, has the potential to generate significant noise and disturbance. Further, given the proximity of neighbours, the onus is on the appellant to show that their living conditions would be safeguarded.
7. Whilst there is commercial activity along Rye Lane, this is largely confined to the ground floors of buildings and limited to areas fronting the highway. Therefore, due to being located to the rear of Rye Lane, Choumert Square provides a relatively quiet and tranquil environment, which is particularly sensitive to noise and disturbance. Indeed, it is apparent from third party representations that during the summer of 2019, when the café/bar was operating, neighbours experienced noise and disturbance, I attach significant weight to this given its implications on health and the quality of life.
8. The appellant has confirmed that the yard would only be used for occasional access for general maintenance and the temporary storage of commercial waste and has suggested a condition to this effect. A further condition is suggested to control the opening of the rear doors and windows to avoid breakout noise. Notwithstanding this, it would be difficult to enforce the closure of the bi-fold doors and first floor window, which are designed to be opened and there is nothing before me to suggest that these would not be required for ventilation.
9. Moreover, although amplified music is only to be provided at the ground floor and is subject to a 'volume limiter' to mitigate against any potential noise nuisance, I have limited information on the thresholds this works at and more importantly whether such thresholds would be adequate, given that there is no assessment of this in relation to the upper floors of the appeal property and nearby residents. Similarly, in the absence of an assessment, it has not been shown that amplified music could be played at a volume which is suitable for the requirements of the business and would also be inaudible or meet a pre-determined sound level from outside the appeal property. On this basis I cannot be certain that such conditions, as suggested by the main parties would be reasonable and would address matters relating to noise and disturbance.
10. Turning to No 136, the area abutting the appeal site at ground and first floors is largely occupied by circulation and common areas serving 134-136 Rye Lane. Nevertheless, the main living area of the first-floor flat at No 136 shares part of the party wall with the appeal site. Within the appeal property adjacent to this party wall is a large open staircase and what the appellant has described as a 'chill out' area on the first floor. Therefore, the use of these areas would generate the type of noise and disturbance I have already highlighted along with impact noise from the use of the staircase.

11. Although the appellant suggests that the flat at No 136 faces the high street and is likely to be subject to high levels of noise from road traffic, there is no assessment to support this. The lack of complaint or objection from the occupiers of this flat is not in itself conclusive that activity arising from the café/bar would not be harmful to their living conditions. Also, the submitted 'Sound Insulation Test Report' relates to airborne wall noise from residential accommodation at No 136 and does not specifically deal with an assessment of the café/bar use on neighbours.
12. The proposed second-floor ancillary accommodation would be occupied occasionally by the manager of the café/bar to coincide with its late closing. On this basis there is unlikely to be any harm to the living conditions of any future occupant, subject to a condition controlling the ancillary nature of the second-floor accommodation, if the appeal were to succeed.
13. Nevertheless, for the above reasons and despite the appellant proposing some mitigation measures, without any adequate noise assessment, their effectiveness cannot be assessed. Consequently, I conclude that the use of the appeal property as a café/bar would harm the living conditions of the occupiers of dwellings along Choumert Square and the first-floor flat at No 136 with regard to noise and disturbance. Particularly, late at night, when neighbours would reasonably expect a degree of peace and quiet.
14. The Council's powers under environmental protection legislation, in addition to its discretionary planning enforcement powers, to enforce against any future noise nuisance, are not in themselves justification for allowing development, which fails to safeguard the living conditions of neighbours.
15. As such, I find conflict with Policy 13 of the Core Strategy (2011) (CS) and saved policies 3.2 and 4.2 of the Southwark Plan (2007) (SP). Together, these policies seek to ensure that new developments are of a high standard which safeguard the living conditions of neighbours, including with regard to noise pollution and avoiding amenity and environmental problems that affect how we enjoy the environment in which we live and work.

Quality of proposed accommodation

16. The second floor of the appeal property is only accessible via an internal staircase from the first floor of the property. Because of this and the noise and disturbance associated with the café/bar, the second floor would not be suitable for providing an independent living unit. Nonetheless, it has a gross internal area of about of 47sqm which exceeds the minimum required area of 39sqm for a 1-bed 1-person flat as per the Technical housing standards – nationally described space standard (2015) and both existing rooms are served by windows. Also, as I have already identified, the use of the second floor as ancillary manager's accommodation is unlikely to be affected by the café/bar use. Drawing on these reasons, the second floor has sufficient space and outlook to provide suitable accommodation for its intended purpose. If the appeal were to succeed, the final floor layout could be secured by a condition.
17. The Council's specific concerns in relation to the proposed manager's accommodation meeting relevant access and fire safety requirements would need to be addressed through Building Regulations.

18. In light of the foregoing reasons and subject to conditions, I find no conflict with Strategic Policy 13 of the CS, and saved policies 3.2 and 4.2 of the SP, which collectively seek to ensure that new developments are of a high standard and in particular new residential accommodation is protected from noise pollution.

Loss of residential floor space

19. Based on the Council's Strategic Housing Needs Assessment 2019, there is a need to protect residential properties in the Borough. Notwithstanding this, Policy 4.6 of the SP permits the net loss of residential floorspace in certain circumstances, this includes, where the existing standard of accommodation is unsatisfactory and improvements to overcome these problems are not possible.
20. The planning application (08/AP/1692) made in 2008, along with the sworn affidavit provided by the landlord and owner of the appeal property, confirm that the first and second floor at the appeal site comprised a single residential unit which lacked basic facilities, such as, a kitchen, toilet and central heating. Also, on the information available to me there would appear to have been no independent access for this unit. Drawing on these factors the standard of the existing accommodation would have been unsatisfactory. Moreover, the aforementioned planning application highlights that despite the owner's best intentions, efforts to secure improvements to the existing accommodation were unsuccessful.
21. For the above reasons, and in the absence of any strong evidence to the contrary, I find that the development has not resulted in the unjustified loss of residential accommodation and therefore accords with Policy 4.6 of the SP.

Other matters

22. The main parties and others have referred to a previous consented¹ restaurant/takeaway use at the appeal property. However, I have insufficient information on this to draw any meaningful conclusions.
23. Although the Council's Noise Team found no statutory nuisance in respect of a single complaint from a neighbour, this in itself is not determinative that the development would not harm the living conditions of neighbours, for the reasons I have already outlined.

Conclusion

24. I have found that the development has not resulted in the unjustified loss of residential accommodation and that the use of the second floor for ancillary manager's accommodation would be acceptable. On the other hand, the use of the appeal property as a café/bar would harm the living conditions of the occupiers of nearby dwellings. For this reason and the overall conflict with the development plan, the presumption in favour of sustainable development does not apply and I conclude that the appeal should be dismissed.

M Aqbal

INSPECTOR

¹ 13/AP/2510