
Appeal Decision

Site visit made on 6 May 2021

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

an Inspector appointed by the Secretary of State

Decision date: 17 June 2021

Appeal Ref: APP/H5390/W/20/3259268

308 King Street, London W6 0RR

- 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 Mr Luca Marinoni (Coffeeology) against the decision of the London Borough of Hammersmith and Fulham.
 - The application Ref 2020/01450/VAR, dated 9 June 2020, was refused by notice dated 10 August 2020.
 - The application sought the Change of use of the premises from a Class A1 (Retail) use to a mixed Class A1/A3 (Retail/ Food and Drink) use; creation of an outdoor seating area and shelter to the rear garden; and installation of decking and a storage shed (retrospective); without complying with conditions 3 and 4 of permission ref. 2019/03159/FUL, dated 6 April 2020.
 - The conditions in dispute are: No.3 which states that: 'The use of the indoor part of the premises hereby permitted shall only operate between 07:00 hours and 18:00 hours Monday to Friday, between 08:30 and 18:00 hours on Saturdays and between 09:00 and 18:00 hours on Sundays and Bank Holidays;' and Condition No. 4 which states that: 'The external seating area hereby permitted, including the part under the external shelter, shall only be occupied and used between the hours of 10:00 to 17:00 Monday to Friday, 10:00 to 15:00 on Saturdays and at no time at all on Sundays and Bank Holidays.'
 - The reason given for condition 3 is: 'To mitigate against a detrimental impact upon the amenity of neighbouring occupants;' and the reason for condition 4 is: To ensure that the amenities of the occupiers of surrounding residential properties are not unduly affected as a result of noise and disturbance, in accordance with Policies CC11, HO11 and TLC5 of the Local Plan (2018).
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of the premises from a Class A1 (Retail) use to a mixed Class A1/A3 (Retail/ Food and Drink) use; creation of an outdoor seating area and shelter to the rear garden; and installation of decking and a storage shed (retrospective) at 308 King Street, London W6 0RR in accordance with the application Ref 2020/01450/VAR, dated 9 June 2020 without compliance with condition numbers 3 and 4 previously imposed on planning permission 2019/03159/FUL dated 6 April 2020 and subject to the conditions attached as a schedule to this Letter.

Preliminary Matters

2. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force, amending the Town and Country Planning (Use Classes) Order 1987. The effect of this amendment

in relation to this appeal was to revoke A1, A2, A3 and B1 use classes and merge them into a new Class E 'Commercial Business and Service.' Regulation 4 of the Amendment Regulations provides that an application submitted prior to 1 September 2020 referring to uses or use classes specified in the Schedule to the Use Classes Order as at 31 August 2020 should be determined by reference to those uses or use classes. Both parties have been given the opportunity to comment¹ on the changes to the use class order and I have therefore made my decision on this basis and referred to the superseded use classes within this letter.

Main Issues

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

Reasons

4. The appeal property is a single storey commercial unit which consists of a forward extension from a 3 storey Georgian building and the use also occupies the ground floor of the building and rear garden. To the immediate west is a similar commercial unit which undertakes art classes, with a further three terraced properties set back from the street adjoining this premises. To the opposite side and to the rear of the appeal site is a large apartment complex called 'Kings Court' which is a 8 storey building with a basement and above ground car park to the rear which adjoins the rear of the appeal site. Many of the buildings along King Street have a ground floor 'Commercial Business and Service' use with upper floors utilised for residential use. The surrounding uses in the area are quite mixed with a number of retail and residential uses given that the location is on the fringes of, rather than located within a designated primary shopping area.
5. Noise and disturbance are subjective issues to assess, as each neighbour will have different thresholds and tolerances over what they consider might harm their living conditions. There is also the consideration that the perception of noise is more noticeable in evenings and the morning and may be more acceptable in different environments which contain a mixture of different uses. This is perhaps demonstrated by submissions from interested parties to this appeal where some submissions comment on harm as a result of noise and disturbance, whilst other interested parties have commented that the use does not present noise or disturbance to them. I have however taken the differing views of interested parties into account in this decision.
6. In this particular scenario, the additional noise generated from the appeal site during the extended hours would not be constant and predominantly consist of customers talking as they have their meals/drinks. The layout of the indoor and outdoor areas of the appeal site is quite narrow and would not lend itself well to large parties or gatherings, with areas inside and outside currently only provided for very small groups of people.
7. Policy TLC5 of the Hammersmith and Fulham Local Plan 2018 (LP) seeks to support the local and evening economy and seeks that new food, drink and entertainment uses within areas outside of predominantly commercial areas are not open later than 23:00 which appears to be a reasonable expectation to

¹ Correspondence by email from the Planning Inspectorate to the Council and Applicant, Dated 21/05/2021.

lessen the impacts of noise to surrounding neighbourhoods. The appeal documents do not contain any assessment or monitoring of noise which would illustrate that the typical noise generated from this use at the appeal site is any different to what would be typically expected from a food and drink establishment, like many other similar uses located along this street which operate beyond the restricted times as specified by this planning permission. The surrounding environment is one of commercial mixed uses and there would be an expectation from residents that some of these uses comprise of activities within the morning and evening as well as weekends and bank holidays. As such I can see no policy from the Council's development plan which supports the Council's assertion that residents should be entitled to at least one day's break from commercial operations.

8. I am also aware of planning law, as noted by Paragraph 12 of the National Planning Policy Framework (the Framework), which states that planning applications must be made in accordance with the development plan unless material considerations indicate otherwise. As noted previously, the changes to the Use Classes Order are a material consideration. The implications for this appeal being that beyond 31 August 2020 the proposed change of use from A1 to an A3 use would no longer constitute an act of 'development.' Therefore, the A1 retail use of the unit could be lost to the A3 use today without the need for planning permission and without the number of restrictions that were previously imposed as a result of the grant of planning permission for the change of use. This further emphasises the government's approach to food and drink premises and their relationship and contribution to shopping streets.
9. Taking the above into account and in conclusion on this matter, I am not of the opinion that the proposal to vary conditions to extend the hours of operation internally and externally would generate significant adverse impacts to the living conditions of surrounding occupiers with relation to noise and disturbance. The proposed variation would therefore be compliant with the LP Policy CC11 (which seeks that new development should avoid significant adverse noise impacts) and Policy CC13 (will be no undue detriment to the general amenities enjoyed by existing surrounding occupiers of their properties).

Other Matters

10. The appeal site is located within the Westcroft Square Conservation Area (CA). I am therefore aware of my duty under Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 that seeks that in relation to CAs that special attention is paid to the desirability of preserving or enhancing the character or appearance of the CA.
11. Whilst I have not been presented with the significance of the Conservation Area, to me, the significance derives from the positive contribution that the rows of identical and symmetrical terraces around Westcroft Place which appear to date from the late nineteenth century with remnants of historic Georgian buildings, particularly along King Street. The layout, construction and materials of buildings within the area appear to highlight a form of growth in the area which contributes to its former form and function.
12. The increased use of the appeal site from the variation of trading hours will bring about change to the appeal site, particularly in how it is experienced alongside other buildings and as part of the CA. However, in my opinion these

changes would result in neutral harm to the character and appearance to the CA.

Conclusion and conditions

13. I conclude that with regard to the proposal to vary the opening hours of the premises 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.
14. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me about the status of the other condition(s) imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
15. The Council have drawn my attention to an updated list of conditions² should the appeal succeed. 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.
16. Condition 1 which specifies the approved plans is a standard condition which is required for the avoidance of doubt. Condition 2 seeks to remove permitted development rights which would enable the change of use to other uses within Class E of the Use Classes Order. The reason given is that the Council are concerned with regards to new uses and potential impacts caused by traffic generation or harm to amenity. In this particular circumstance with the surrounding residential environment, I agree that this condition is necessary.
17. Conditions 3 and 4 relate to the opening hours of the use which are amended to reflect the times as approved by this letter. These conditions are considered necessary in order to avoid noise and disturbance to the locality. Condition 5 relates to the use of amplified music or voices which is also considered necessary to avoid causing harm to living conditions of the locality. Condition 6 relates to the need for future planning or advertisement consent should circumstances arise in the future. This condition is not deemed necessary given that installation of elements as described by the condition would require planning/advertisement consent in any event and that the condition is not directly relevant to the permission being sought. Condition 6 would not meet the tests of Paragraph 55 of the Framework and is therefore deleted. Conditions 7, 8 and 9 all relate to pre-commencement conditions for cooking of hot food and the need to approve details such as flues, acoustic and odour abatement measures. As described above, such installations such as extractor flues etc for hot food preparation would require planning consent and matters as detailed in these conditions such as noise and odour mitigation would be addressed in any future planning applications. As such these conditions are not relevant to the planning approval at hand and are therefore not considered necessary. Conditions 7, 8 and 9 are therefore deleted. Condition 10 concerns the hours for deliveries which is considered appropriate to avoid detriment to the living conditions of surrounding occupiers.

² Email received from the Council to the Planning Inspectorate, Dated 27 May 2021.

Schedule of Conditions

1. The development hereby permitted shall only be carried out and retained in accordance with the following approved drawings:

KH03, KH04, KH05, KH06, KH07, KH08.
2. The premises shall not be used for any purpose other than as a coffee shop/café for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises falling within Class E (b) of the Town and Country Planning (Use Classes) (Amendment) (England) 2020. The premises shall not subsequently be used or converted into any purpose in Class E of the Town and Country Planning (Use Classes) (Amendment) (England) 2020, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.
3. The use of the indoor part of the premises hereby permitted shall only operate between 07:00 hours and 22:00 hours Monday to Friday, between 08:30 and 22:00 hours on Saturdays and between 09:00 and 22:00 hours on Sundays and Bank Holidays.
4. The external seating area hereby permitted, including the part under the external shelter, shall only be occupied and used between the hours of 10:00 to 17:00 Monday to Friday, and 10:00 to 15:00 on Saturdays, Sundays and Bank Holidays
5. Neither music nor amplified loud voices emitted from the commercial part of the development shall be audible at any residential/ noise sensitive premises.
6. No deliveries nor collections/loading nor unloading shall occur at the development hereby approved other than between the hours of 08:00 to 18:00 hours Monday to Friday, 09:00 to 18:00 hours on Saturdays and at no time at all on Sundays and Public/Bank Holidays.

J Somers

INSPECTOR