



Appeal Decision

Site visit made on 24 May 2021

by Alison Scott BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 July 2021

Appeal Ref: APP/H5390/W/20/3263607

The Hampshire, 225-227 King Street, London W6 9JT

- 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 Miss Abigail Pritchard against the decision of The London Borough of Hammersmith & Fulham.
 - The application Ref 2020/01318/FUL, dated 27 May 2020, was refused by notice dated 27 August 2020.
 - The development proposed is Use of existing structure in rear garden for shisha smoking and associated alterations.
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Decision

1. The appeal is allowed and planning permission is granted for Use of structure in rear garden for shisha smoking and associated alterations at The Hampshire, 225-227 King Street, London W6 9JT in accordance with the terms of application, Ref 2020/01318/FUL, dated 27 May 2020, subject to the attached schedule of conditions.

Preliminary Matter

2. Since the time the appeal was submitted, the Council has granted planning permission to enlarge the size of the undercover outdoor drinking pergola the subject of this appeal, including other alterations. These works appear to be complete. However, I have made my assessment of the proposal on the basis of the structure shown on the drawings and details submitted with the appeal.

Main Issue

3. The main issue is the effect of the proposal on the living conditions of local residents.

Reasons

4. The Hampshire is an imposing three storey building with public house use on the ground floor and located on King Street in Hammersmith. Its large beer garden area is a typical outside drinking and eating space with tables and chairs located within two covered pergolas, and additional seating within the central core of the space. It is positioned close to residential properties although high external walls surround the site.
5. The only space to be used as the shisha smoking area is the pergola that contains a bar within, and currently operates as a semi-enclosed smoking area.

6. The noise impact assessment was undertaken over a consecutive two day period during February 2020 and assessed the background noise levels at that time, and the predicted levels of noise associated with the shisha area based on it being occupied by up to fifteen people, with a model of eight people talking simultaneously as a worse-case scenario. It concluded that the proposal would not lead to harm arising to the nearest noise sensitive receptor.
7. As pointed to by the Council, there would be an expectation that the background noise levels would be greater in the summer months particularly due to increased activity in the beer garden. However, in that case, there would be a very likely expectation that noise associated with the shisha lounge would be absorbed into the higher background noise levels.
8. Also, there is no evidence provided by the Council to demonstrate there is a limitation to the number of people who can use the beer garden area at any one time. The numbers of customers using the shisha area can be controlled by way of condition.
9. Overall, I am satisfied that the outcome of the noise assessment is robust and the effect on the living conditions of local residents would not be harmed as a consequence of the proposal, in this regard.
10. The structure has previously been used as an unrestricted smoking shelter and odour from cigarette smoke from customers would have been dispersed into the atmosphere. The smoking of shisha pipes as an activity would also generate odour into the atmosphere, usually of the fragrant variety. The submitted odour assessment has been undertaken with a considerably larger number of users to the numbers intended to use the space. It would therefore represent a worst-case scenario.
11. Whilst I appreciate personal smell sensitivity is individual to each subject, given the nature of residential occupants close to the appeal site, the odour assessment concludes that the effects of odour from the use, at the identified sensitive receptor locations, to be negligible. There is nothing before me to contradict these findings. I am of the view that its associated odours would lead to no detrimental harm to the living conditions of local occupiers.
12. To conclude, I have found that the proposal would not lead to an intensification of the use of the existing beer garden and that noise and odour levels would lead to no detriment to the living conditions of local residents. It would therefore meet the objectives of the Hammersmith and Fulham Local Plan 2018 Policies CC11 and CC13 in their combined aims for development to protect amenity from polluting uses. However, with regards to Policy HO11, I find no direct relevance to this policy as it relates to new housing development.

Conditions

13. I have considered planning conditions in light of the Planning Practice Guidance and Paragraph 55 of the National Planning Policy Framework. In addition to the standard time limit condition, a condition relating to the approved plans is necessary to provide certainty.
14. It would not be appropriate to impose a two years temporary permission for the proposal as I have found that it would be an acceptable permanent use. Further, a suggested condition in relation to no alterations to the external appearance of the public house building, or alterations to the existing pergolas

including no additional plant, is not relevant as this has no bearing on the proposal before me.

15. The number of customers occupying the area can be limited to fifteen individuals due to the size of the space and the conclusions drawn from the assessments undertaken, in the interest of protecting the living conditions of local residents.
16. The recommended hours of use by the Council are unreasonably restrictive given the existing hours of use of the beer garden, its unrestricted numbers of patrons, and the outcomes of the submitted assessments. Therefore, as it has been confirmed by the appellant that the beer garden closes one hour before the main public house at 23:00, I therefore impose the same closing hours to the shisha area with an opening time of 12:00, as suggested by the appellant.

Other Matters

17. Objectors to the proposal raise a number of other concerns. Issues regarding a raised platform within the beer garden, and that a structure can be seen from outside the site and from residential properties, are not within my scope to comment upon. Neither is other odours generated at the site and complaints regarding existing noise levels. Nor am I able to comment on whether or not shisha smoking is considered a 'pub recreation'.
18. The site may be close to the boundary with a designated Conservation Area, however there is nothing before me to suggest that the proposal would lead to harm arising to its character or appearance. Further, there is no evidence to bring me to the conclusion that pollution from traffic and smoking in the area is at a maximum level, or the bearing this would have on the proposal before me.
19. Despite an objector's concerns relating to the accuracy of the location of the closest residential properties, nonetheless, I am satisfied that I have seen the site and its surroundings during my site visit.
20. There is nothing before me to suggest that shisha smoking would encourage unhealthy behaviours within individuals, nor is there any evidence provided to say that its proximity to education or nursery centres would be problematic.
21. A letter of representation explains that the premises is intended to be changed into a different use. This would be for the Council to investigate under the circumstances.
22. The appellant raises complaints regarding the Council's service. This should be in the first place directed to them, as is not within my remit to comment.

Conclusion

23. There are no material considerations that indicate the application should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the appeal should be allowed.

Alison Scott

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1:1250 site location plan, Dwg. No:211-PROP-02 Rev A.
- 3) No more than 15 customers shall occupy the shisha area hereby approved at any one time.
- 4) The hours of use of the shisha area shall be restricted to between 12:00 and 23:00 Monday to Sunday, including Public Holidays.

End of Schedule