



Appeal Decision

Site visit made on 16 July 2021

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 August 2021

Appeal Ref: APP/N5090/W/20/3265924

1 Charcot Road, Colindale, London NW9 5HG

- 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 Deniz Erpolat against the decision of the Council of the London Borough of Barnet.
 - The application Ref 20/4236/FUL, dated 11 September 2020, was refused by notice dated 25 November 2020.
 - The development proposed is described as: 'erection of shisha lounge (amended scheme)'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The London Plan 2021 (LonP) has been published by the Mayor during the course of this appeal. The LonP comprises the spatial development strategy for London and is now part of the development plan, to which I attribute full weight to its policies. Consequently, the policies contained within The London Plan 2016 have been superseded. I am required to determine this appeal on the basis of the development plan policies which are in force at the time of my decision.
3. Additionally, the Government published the revised National Planning Policy Framework on 20 July 2021 (the Framework), which forms a material consideration in the determination of the appeal. Both main parties have been given the opportunity to comment on the LonP and the Framework. In this instance, I will not prejudice either party, when taking the LonP and the Framework into account in the determination of this appeal.
4. The appellant has confirmed in his submission that the existing building on site does not benefit from a planning consent and that the proposed development would involve the existing building being dismantled and then its reassembly with various alterations. I have dealt with the appeal on this basis.

Main Issue

5. Since the determination of the previous appeals¹ (the previous decisions) the appellant has overcome a number of issues which resulted in the refusal of the previous planning application². The appellant has responded to the findings contained within the previous decisions and consequently issues relating to

¹ APP/N5090/W/19/3242144 and APP/N5090/C/19/3243090

² 19/3858/FUL

character and appearance and the highway network are not a consideration on this appeal.

6. The main issue of this appeal is the effect of the proposed development on the living conditions of neighbouring occupiers, particularly those present at 145 Colindale Avenue, with particular regard to noise, outlook and dominance.

Reasons

7. The appellant has provided images showing what the site was like before the construction of the existing building occurred. On the shared boundary with No 145, an advertising hoarding was located, which was closed boarded and notably taller than conventional domestic boundary treatments. Thus, given the reduction in height to the proposed building, I do not consider that the proposed development would create any significant adverse effects to the outlook afforded by the occupiers of No 145. Furthermore, there would be no significant effects of enclosure, above and beyond the previous situation when the advertising hoarding was in place. This would comply with Policy DM01 of the Council's Local Plan (Development Management Policies) Development Plan Document 2012 (DMP) and the amenity aims of the Council's Residential Design Guidance Supplementary Planning Document 2016.
8. I note the character of the area surrounding the site and the comments from the previous Inspector on this issue. I have examined the Noise Survey and Noise Impact Assessment³ (the noise survey) and the Noise Management Plan⁴ (NMP). I am not aware of all of the documents before the previous Inspector, but the evidence indicates that the Noise Survey submitted with this appeal was also submitted on the previous scheme. The noise survey concluded that noise from the site could be heard and when assessed in accordance with the Planning Practice Guidance this is considered a significant observed adverse effect and should be avoided.
9. It was also noted that local residents would have to keep windows closed most of the time because of the noise and a potential for sleep disturbance resulting in difficulty in getting to sleep, premature awakening and difficulty in getting back to sleep, with quality of life diminished due to change in the acoustic character of the area. The noise survey recommends mitigation through an NMP, which has now been submitted with this appeal. I also acknowledge the comments from the Council's Environmental Health Officer and that the only related noise complaints appear to have resulted from vehicles on the street.
10. However, it is apparent that a notable area of the building would have to be open to facilitate the shisha. Whilst the valet service may alleviate excessive noise from motor vehicles, there is little to convince me that the noise generated from the proposed development, whether it is ancillary to the main restaurant or not, would not significantly harm the living conditions of neighbouring occupiers, particularly those present at No 145. Whilst the NMP considers that No 145 will be affected to a lesser extent, I disagree with this assertion due to its proximity to the site. In the absence of any substantive evidence to the contrary, I find that the openings on the proposed development that would be required to comply with other legislation would not allow for

³ Environmental Noise Survey and Noise Impact Assessment Report, undertaken by Hann Tucker Associates dated 11 October 2019

⁴ Noise Management Plan undertaken by Simon Jones Consulting Engineers LLP dated December 2020

adequate mitigation, against any noise generated from the proposed development. I have considered the conditions suggested by the appellant and the findings within the NMP. However, in this instance, suitably worded conditions could not be imposed to ensure that otherwise unacceptable development could be made acceptable.

11. The appellant has specifically referred to an eating and smoking area in accordance with the existing consent of the restaurant and bar as a fall-back position. There is little detail surrounding the existing consent and the likelihood and merits of such a proposal are not before this appeal. Additionally, there is nothing to indicate there is a greater than theoretical possibility that the fall-back may take place. Therefore, I give the fall-back position limited weight. Even if I had come to a different conclusion on the existing consent, any such scheme would be lawful development which the appellant would be entitled to undertake and therefore is not directly comparable to the appeal proposal before me.
12. For the reasons given above, I therefore conclude that the proposed development would significantly harm the living conditions of neighbouring occupiers, particularly those present at No 145, with particular regard to noise. This would fail to comply with the amenity aims of LonP Policy D3, Policy CS5 of the Council's Local Plan (Core Strategy) Development Plan Document 2012, DMP Policy DM04, and the requirements of the National Planning Policy Framework.
13. DMP Policies DM01 and DM02 have been cited by the Council on its decision notice, in respect of refusal reason no.1. However, these policies do not specifically relate to noise and therefore I find they are not directly applicable on this issue.

Other Matter

14. Local residents have also expressed a wide range of concerns including, but not limited to the following: anti-social behaviour, crime, waste, odour, vehicle parking and character and appearance. However, I note that these matters were considered where relevant by the Council at the application stage and did not form part of the reason for refusal, which I have dealt with in the assessment above. Whilst I can understand the concerns of local residents, there is no compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters.

Conclusion

15. For the reasons given above, I conclude that the appeal should be dismissed.

W Johnson

INSPECTOR