



Appeal Decision

Site Visit made on 17 August 2021

by F Rafiq BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th September 2021

Appeal Ref: APP/Q4245/W/21/3274976

432 Flixton Road, Flixton, Greater Manchester M41 6QT

- 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 David Leape against the decision of Trafford Council.
 - The application Ref 99561/COU/20, dated 14 January 2020, was refused by notice dated 9 April 2021.
 - The development proposed is for a change of use from former café use to a drinking establishment (Sui Generis) with external seating area, installation of new door and bi-fold windows to front elevation and external cooler plant to rear elevation.
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Decision

1. The appeal is allowed and planning permission is granted for a change of use from former café use to a drinking establishment (Sui Generis) with external seating area, installation of new door and bi-fold windows to front elevation and external cooler plant to rear elevation at 432 Flixton Road, Flixton, Greater Manchester M41 6QT in accordance with the terms of the application Ref 99561/COU/20 dated 14 January 2020, subject to the following conditions:
 1. The development hereby permitted shall be carried out in accordance with the following approved plans: Block Plan (1:500), Front Elevation and Proposed Ground Floor Plan (including outdoor seating area) (Drawing Number: DL.DRG.004) and Rear and Side Elevation (Drawing Number: DL.DRG.005 Revision A).
 2. The premises shall only be open for customers between the following hours: 11:00-22:00 Sundays to Thursdays and 11:00-23:00 Fridays and Saturdays.
 3. Customers shall only be permitted to use the external seating area between the following hours: 11:00-21:00 on any day. The use of this space should be limited to a maximum of 10 customers at any time. External furniture used shall have rubber feet and should not be placed in the external seating area except between the following hours: 11:00-21:30 on any day.
 4. All windows and doors shall remain closed outside the following hours except for ingress and egress and there shall be no disposal of glass bottles externally outside the following hours: 09:00-21:00 on any day.
 5. The development hereby permitted shall operate at all times in accordance with the submitted Noise Management Plan (Braiden Acoustics Limited, October 2020).

Preliminary Matters

2. I have utilised the description of development from the decision notice and appeal form as this more accurately describes the proposal. The development had already been undertaken at the time of my visit and the elevation alterations reflected the plans submitted with the appeal. For clarity, I am considering the appeal based on the submitted plans.
3. A revised National Planning Policy Framework was published in July 2021 (the Framework). Whilst the paragraph numbers have changed in regard to those relevant to the main issue of this case, the substance thereof remains the same as the 2019 iteration. I have sought comments from the main parties and taken any made into consideration.

Main Issue

4. The main issue is the effect of the proposal on the living conditions of the occupiers of neighbouring residential properties with particular regard to noise and disturbance.

Reasons

5. The appeal site comprises of the ground floor of a two storey mid-terrace property. It is situated within a row that has retail and commercial units on the ground floor, with residential uses generally situated above them. Opposite the site is a car park and a play area, with the wider area to the rear of the site, predominantly comprising of residential uses.
6. The appellant's noise assessments¹ indicate that subject to recommendations set out, noise emanating from the site would be reduced and thus ensure the amenity of nearby residents. The measures put forward include ensuring windows and doors remain closed after 9pm other than for access in and egress. I consider that based on the evidence before me, subject to the recommended measures and those already undertaken on sound proofing, noise levels from within the building are unlikely to reach a level where they would cause any unacceptable disturbance. The Council's Environmental Health Officer has reviewed the submissions made within the noise assessments and raises no objections subject to conditions, although I appreciate there are differences between planning controls, the licensing regime and the test of statutory nuisance.
7. The appeal proposal includes an external seating area and noise is likely to arise from customer's use of it. From the submitted details and my site observations, the size of this outdoor area is limited and the appellant's submission indicates that no more than 10 patrons use this area at any one time. The Council state that it is not possible to prevent customers standing outside the forecourt of the appeal premises, in addition to those seated. Whilst this may be the case, they have not provided any evidence on the likelihood of this taking place. I consider that anyone going beyond the site would be limited, such as to make a mobile telephone call before returning to the site. As a result, such instances are not likely to be prevalent and thereby would not give rise to undue noise.

¹ Acoustic Survey for Planning (A4 Use) (Braiden Acoustics Ltd, 7 May 2020), Addendum for Acoustic Survey 10855 (Braiden Acoustics Ltd, 23 June 2020) and Noise Management Plan (Braiden Acoustics Ltd, October 2020),

8. The site has a premises licence allowing it to open until 11pm every day, but the external area forming part of this appeal application would not be used after 9pm and could be controlled by condition as could the removal of external furniture shortly after this time. Although this would be a further 3 hours over the previously permitted Café use, I consider the 9pm cut off time to be reasonable in a parade that contains retail/commercial uses along a classified road. The limitations on controlling customer behaviour are noted, particularly when patrons are inebriated, but with effective controls on the development, including as set out on operating hours, the use of the external area and the closure of windows and doors, I consider that these would be sufficient to prevent any unacceptable harm to the living conditions of the occupiers of neighbouring dwellings from noise and disturbance by customers at the site.
9. I have had regard to the comments by neighbours/interested parties in relation to noise and disturbance. I also note that the comments made are based on their actual experience of the noise impacts. I am not however aware of precisely how the use was previously operating or what mitigation measures were in place. Reference has been made to a complaint made to the LPA as well as a log of noise events by a neighbouring occupier, but no further details have been provided on whether these were investigated further and the outcome of the complaint. Whilst I appreciate the various concerns set out, the matters raised do not however lead me to a different conclusion in this regard.
10. Given the above, I conclude that the proposal would have an acceptable effect on living conditions of neighbouring occupiers. As such, there would be no conflict with Policy L7 of the Trafford Local Plan: Core Strategy (2012) which seeks, amongst other matters, development that does not prejudice the amenity of occupants of adjacent properties. It would also not be contrary to the Framework, which seeks, at Paragraph 130, a high standard of amenity for existing and future users.

Other Matters

11. Concerns have been raised in relation to obstruction of the pavement by patrons. The pavement outside the appeal site is wide, and the proposal would ensure that over the half the width of the pavement would remain, providing sufficient room for pedestrians to pass. I also note the concerns in relation to smoking, although I do not consider that a patron smoking on the area to the front of the appeal building would have a significant effect given the distance to neighbouring windows and doors and that smoke dissipates quickly in an external environment.
12. Although the development has been undertaken without planning permission, this is not a reason in itself to dismiss the appeal. I can confirm I have dealt with the appeal on its own merits.

Conditions

13. I have considered the conditions suggested by the Council and Greater Manchester Police, having regard to the six tests set out in the National Planning Policy Framework. For the sake of clarity and enforceability, I have amended the conditions as necessary.

14. It is necessary to impose a condition requiring compliance with the approved plans in the interests of clarity. In the interests of the living conditions of neighbouring residents, I have imposed conditions limiting the hours of use, the hours the external seating area can be used and removal of furniture. Reference has been made to a maximum of 8 and 10 customers externally and I have utilised the latter number to limit the number of customers in the external seating area. A condition requiring windows and doors to be closed is necessary as is a restriction on the timing of the disposal of glass bottles. The Council have also suggested a condition requiring compliance with the submitted Noise Management Plan (NMP) and restricting the timing of the disposal of glass bottles, which are necessary to ensure the living conditions of neighbouring residents. Although some concerns were raised on the enforceability of some of the measures within the NMP, I consider its contents, such as those relating to music levels can be monitored.
15. As the development has been completed, I do not consider any other conditions to be necessary.

Conclusion

16. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, the appeal is dismissed.

F Rafiq

INSPECTOR