



Appeal Decision

Site visit made on 24 November 2021

by Rory MacLeod BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 January 2022

Appeal Ref: APP/A5840/W/21/3279306

20-22 Camberwell Church Street, London SE5 8QU

- 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 Yucca Garden against the decision of the London Borough of Southwark.
 - The application Ref 20/AP/2936, dated 8 October 2020, was refused by notice dated 14 July 2021.
 - The development proposed is demolition of existing garden structures and replacement with a new timber shelter.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for an award of costs has been made by the appellant. This is the subject of a separate Decision.

Preliminary Matters

3. The development has already taken place. Permission is sought to retain the shelter, subject to appropriate planning conditions.
4. Planning permission was previously granted for two separate shelters at No. 20 (19/AP/7049, in February 2020) and No. 22 (19/AP/0957, in May 2019). These permissions remain extant.
5. Permission has previously been refused for retention of the present structure in part due to the lack of a noise impact report. The current proposal is accompanied by a Garden Shelter Noise Assessment (GSNA).

Main Issue

6. The main issue is the effect of the proposal on the living conditions of residents in the surrounding area in relation to noise and disturbance.

Reasons

7. The appeal relates to land at the rear of adjacent shop units within a terrace comprising ground floor commercial uses with residential accommodation over. The surrounding area is commercial in nature being close to the centre of Camberwell but includes many residences too. There are dwellings in Wren Road and Jephson Street, the rear walls to which face towards the appeal site.

8. The timber shelter occupies most of the land at the rear of nos. 20 and 22 but is structurally separate from the main building. The plans show a brick wall to the rear boundary, folding triple-glazed doors to both flanks and to the front northern end facing the main building and a flat felt roof.
9. There have been several objections to the proposal from local residents on the grounds of late evening noise nuisance, some with evidence indicating the premises has been used as a bar and night club rather than as a restaurant. The appellant asserts that the shelter is a licenced restaurant and that shisha smoking no longer takes place at the premises. My determination of the appeal has been on the basis of the lawful licenced restaurant use.
10. The appellant claims that the structure has been built to a higher specification than the previous shelters in order to contain noise. Furthermore, that the triple-glazed noise-proof doors at the front and sides will be closed from 22:00 hours. The GSNA was conducted on this basis. It states, *"noise from the trading operation within the shelter is calculated to be 10 dB(A) below the measured background noise levels in the daytime and 20 dB(A) below the measured background noise levels at night"*. The GSNA concludes, *"noise impact is low, so no additional noise mitigation measures are needed, beyond those already in place. The operation within the shelter is likely to have no significant impact on the amenity of the adjacent residents by way of noise"*.
11. At the time of my site visit, the front doors had been removed and were being stored in the front of the shop unit to no.22. This measure would provide additional ventilation for the shelter as a precaution during the coronavirus pandemic; I have no doubt that the doors could be reinstated. The shop unit at no.20 provides a passageway through to the shelter passing a bar and a serving hatch to the kitchen. The shelter provides the largest and main customer area. It is carefully decorated and fitted out with lounge seating and low tables. There are 3 steps down from the shelter's floor to the strip of unenclosed land next to the rear wall of the main building.
12. The premises are likely to be busiest during evenings including after 22:00 hours when the doors would be closed, except for access. Given the shelter's large size, it is likely that access would be required much of the time, for staff bringing food and drinks and for customers arriving or leaving the premises or needing to visit the toilets. There would be difficulty in opening the doors whilst negotiating the steps and carrying food and drink. In practice, the front doors would regularly need to be open after 22:00 and this would negate their sound-proofing qualities. Noise from the premises would be transmitted through the unenclosed land between the shelter and the main building. It would be likely to be audible from surrounding dwellings at a time when background noise levels would be low.
13. The appellant has indicated willingness to accept a planning condition requiring the folding doors to be closed after 22:00. Such a condition would fail the tests for planning conditions. It would be difficult to enforce and would not be reasonable under the circumstances in which the premises propose to operate with the bar, kitchen, entrance and toilets all in the main building.
14. The long stretches of folding doors to both sides of the shelter are clearly designed to be opened at some time, possibly during warm summer days and evenings. Any late evening opening of the side doors could also be a source on noise nuisance.

15. The unenclosed strip of land is close to the rear windows of dwellings on the upper floors of the appeal site and above other shop units along Camberwell Church Street. Residents here would be likely to experience noise nuisance from the shelter when the front doors are open. Depending on the level of noise there may be adverse impacts for residents in other roads too.
16. The proposal would be contrary to Policy D14 of the new London Plan (2021), Policy SP13 of the Southwark Core Strategy (2011) and Saved Policies 3.2 and 3.13 of the Southwark Plan (2007) all of which require the design of development to be appropriate to its context, including the need to protect the amenity of residents from undue noise impacts.
17. The appellant claims as a fallback position that the shelter could be removed and the extant permissions for smaller individual shelters implemented. These would not be as well insulated as the current shelter and so it is contended would be likely to create noise disturbance. If the appeal were to be dismissed there is the possibility that the fallback could occur. However, there has been considerable investment in the present shelter and the alternatives would not be likely to offer an improved customer experience. It is unlikely that the fallback would be significantly more harmful than the present shelter in relation to noise given operational requirements for the front doors to be regularly opened. Moreover, the shelter permitted at the rear of no.22 has a temporary permission expiring on 24 May 2022. Permission may not be renewed if noise were to become a significant problem. These reasons diminish the weight to be applied to the fallback position.
18. The National Planning Policy Framework at Paragraph 81 states, "*Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development*". I acknowledge that the shelter has enabled the restaurant to operate safely during the pandemic and would enable the business to be resilient in the future, but the economic benefits are outweighed by the proposal's environmental impacts.

Other Matters

19. The site is within the Camberwell Green Conservation Area and adjacent to Camberwell Police Station, a Grade II listed building. The proposal is not visible from the public realm. It would not adversely affect the significance of these heritage assets. It would satisfy the requirements to preserve the character or appearance of the conservation area and the setting of the listed building.
20. There is insufficient evidence before me to dismiss the proposal on planning grounds relating to other issues raised by residents including parking and anti-social behaviour.

Conclusion

21. I acknowledge that the Council took a considerable time to determine the appeal application and that the initial assessment was favourable. However, for the reasons given above I conclude that the appeal should be dismissed.

Rory MacLeod

INSPECTOR