



Appeal Decision

Site visit made on 21 February 2022

by Chris Couper BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 March 2022

Appeal Ref: APP/G5180/W/21/3280824

Buddy's Café, 28 London Road, Bromley BR1 3QR

- 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 Behaettin Solyali against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/20/05257/FULL1, dated 21 December 2020, was refused by notice dated 30 July 2021.
 - The development proposed is described as 'retrospective outdoor seating area with enclosed tent and perimeter fencing to rear'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of the development on the application form includes background information and reasons for the application, which I have had regard to in my decision. However, as that information is not an act of development, and in the interests of succinctness, I have taken the description in the banner above from the appeal form.
3. Representations were made by interested parties concerning matters such as land ownership and the terms of the café's lease, along with odour, vibration, deliveries, access, and health and safety associated with the use of the premises as a whole. However, in this appeal I have considered only planning matters associated with the outdoor seating area.

Main Issue

4. The main issue is the effect of the outdoor seating area on the living conditions of adjacent occupiers, with particular regard to noise and disturbance.

Reasons

5. Buddy's Café occupies a ground floor unit in a commercial parade, with flats above. To the rear it has an outdoor area, which can be accessed through the café's cooking area, and from an access track leading to Hammelton Road. According to the appellant this area has been used by staff on breaks since 2013, and in 2015 seating was purchased to provide an outdoor area for customers.

6. In general terms, Policy D14 of the London Plan 2021 ('LP') sets out that proposals should avoid significant adverse noise impacts on health and quality of life, and that noise management should be an integral part of proposals, but without placing unreasonable burdens on existing noise generating uses.
7. Policy 37 of the Bromley Local Plan 2019 ('BLP') takes a broadly similar stance in requiring development to respect the amenity of neighbouring occupiers with regard to matters such as noise and disturbance. BLP Policy 119 states that in order to minimise adverse impacts on noise sensitive receptors, development which is likely to generate noise will require a full noise assessment, including measured noise levels and an assessment of existing sound insulation, so as to identify issues and appropriate mitigation measures.
8. Whilst there are other nearby flats, the outdoor seating area is located directly beneath the windows in the large bay of the first floor flat at 28A London Road. Those windows, some of which can open, serve a kitchen/diner. The occupant alleges, amongst other things, that the use of the outdoor area causes her family significant noise and disturbance. The Council's Environmental Health Officer is unable to support the scheme without further information.
9. For his part, the appellant refers to the site's busy commercial context; that Buddy's café is unlicensed and does not play amplified music; the café's quick customer turnover rather than a place where people dwell to talk and socialise; and its operational hours which are from 07:00 to 16:00, with the outdoor area typically used between 10:00 and 15:00 and by a maximum of 8 customers.
10. He also asserts that there have been no noise complaints to the Council regarding the outdoor seating area despite its use by customers since 2015. He maintains that the scheme does not create noise pollution and that to require an acoustic assessment would be a disproportionate response to such a small scale scheme, and would be an unreasonable cost to the business.
11. I recognise the importance to the café of providing an outdoor seating area, particularly following the Coronavirus pandemic. Additionally, given its limited size, I consider that the outdoor area would be unlikely to be used by more than eight persons at a time. However, the business requirement needs to be balanced against the potential harm to residential occupiers.
12. I observed on my visit that London Road is a busy commercial environment with significant vehicular movements. However, notwithstanding the presence of the service track, it is not unreasonable for the residential occupants of the upper floor flats in this parade to expect less disturbance and a reasonable degree of amenity to the rear.
13. In my view, the use of this outdoor area almost directly beneath the rear facing opening windows in the flat above, with associated conversations, and comings and goings by staff and customers, some through the café's rear door which is next to its cooking and utility areas, could give rise to significant noise and disturbance to the flat's residents.
14. That disturbance could take place throughout the day, including at weekends when the occupants may typically be more likely to be at home. Additionally, whilst I have had regard to this café's business model, that could change, as could the current hours of use.

15. Although the appellant has suggested various planning conditions to minimise noise, I am not satisfied that a condition preventing groups of more than three persons sitting outside and limiting the total number of outdoor customers to six would be enforceable, and I doubt that signage requesting that customers keep noise and conversation to a minimum would have much effect. Additionally, I have no cogent evidence to demonstrate that enclosing the tents with plastic sheeting would significantly reduce noise transmission.
16. I have considered representations both in favour and opposed to the development, and I appreciate the benefits that a well-run busy café can have in attracting customers to other units in this parade.
17. However, for the above reasons, in the absence of a noise assessment, and from the limited and somewhat conflicting evidence before me, I cannot conclude that the scheme has not impacted the living conditions in nearby flats to a harmful degree.
18. As the scheme does not include a suitable noise assessment it conflicts with LP Policy D14 and BLP Policy 119, and I cannot be certain that it respects the amenity of neighbouring occupiers as required by BLP Policy 37. However, as BLP Policy 98 addresses proposals for new cafés it is of limited relevance.
19. For the above reasons, and having regard to all other matters raised, the appeal is dismissed.

Chris Couper

INSPECTOR