



Appeal Decision

Hearing Held on 22 March 2022

Site visits made on 11 March 2022 and 22 March 2022

by R Sabu BA(Hons) MA BArch PgDip ARB RIBA

an Inspector appointed by the Secretary of State

Decision date: 1st April 2022

Appeal Ref: APP/K5600/W/21/3273032

63-97 Kensington High Street, London W8 5SE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Dishoom Ltd against the decision of the Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref PP/20/03357, dated 19 June 2020, was refused by notice dated 14 October 2020.
 - The application sought planning permission for variation of condition 6 (opening hours of Class A3 use) of planning permission PP/13/01721 for internal re-modelling for retail and restaurant uses so that the restaurant premises may open between 08.00 hours and 23.00 hours throughout the week without complying with conditions attached to planning permission Ref PP/17/02524, dated 7 August 2017.
 - The condition in dispute is No 5 which states that: The Class A3 use hereby permitted shall only be carried out between 08.00 hours and 23.00 hours.
 - The reason given for the condition is: To safeguard the living conditions of nearby residential properties from unreasonable noise and disturbance.
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Decision

1. The appeal is allowed and planning permission is granted for internal re-modelling for retail and restaurant uses at 63-97 Kensington High Street, London W8 5SE in accordance with the application Ref PP/20/03357 dated 19 June 2020, without compliance with conditions number 4 and 5 previously imposed on planning permission Ref PP/17/02524 dated 7 August 2017 and subject to the following conditions:
 - 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission and shall be for a temporary period of eighteen months from the date of this permission.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 03/15
 - 3) The restaurant use shall operate only in accordance with the details of the Operational Management Plan dated June 2020 for a temporary period of 18 months from the date of this permission. After 18 months from the date of this permission, the restaurant use shall revert to operating only in accordance with the details of the Operational Management Plan approved under PP/17/02524.

- 4) No music, musical instruments, or loudspeakers shall be played or used within the premises forming the subject of this permission so as to be audible outside the premises.
- 5) Customers shall only be permitted on the premises between the following hours: 0800 hours and 2330 hours daily for a temporary period of 18 months from the date of this permission. After 18 months, the hours of restaurant use shall revert to between 0800 hours and 2300 hours.
- 6) Within three months of the date of this permission a travel plan, for the restaurant use, shall be submitted to the local planning authority for their written approval. The permitted extended opening hours shall not take place until the travel plan has been approved in writing. The travel plan shall be implemented, monitored and reviewed in accordance with any targets within the plan, and such record made available upon request by the local planning authority.

Background and Main Issue

2. A restaurant is now trading at the appeal site. The appellant wishes to extend the opening hours from those originally imposed in Condition 5 of the extant permission to between 0800 and 2330 hours every day of the week.
3. During the hearing, the Council confirmed that they do not object to the removal of Condition 4 of planning permission Ref PP/17/02524 and the use of a similar condition that refers to an updated Operational Management Plan which seeks to manage queues forming outside the restaurant. The Council also confirmed that the second reason for refusal has been overcome as the remaining issue can be dealt with by condition. I will return to these issues later in my decision.
4. Therefore, the main issue is the effect that varying the opening hours would have on the living conditions of neighbouring residents with regard to noise.

Reasons

5. Dishoom is a restaurant located in a building known as the Barker's Building. While the primary frontage of this building is on Kensington High Street, the restaurant is accessed from Derry Street. To the rear of Barker's Building lie dwellings which have a number of rear windows facing towards the site as well as windows on the flank elevation that are sited close to the pedestrian access from Derry Street to Kensington Square Gardens.
6. The proposal seeks to extend opening hours such that the closing time would be extended by half an hour. The Patron Queue Noise Impact Assessment 2 details the results of noise surveys conducted in March and December 2018 and December 2019. The weather conditions during the March 2018 survey were clement while there were poor weather conditions including wind and rain during the surveys conducted in December 2018 and December 2019. The background noise levels were therefore slightly greater during the December surveys.
7. However, the noise surveys indicate that the difference in noise levels outside the restaurant without queues in March 2018 and with queues during daytime in December 2018 and 2019 was negligible. Moreover, while the weather conditions for the December surveys were poor, with wind and rain, the noise

levels during the March survey, when the weather conditions were clement, were only marginally lower.

8. Furthermore, all three noise surveys during both clement and poor weather conditions do not indicate a significant difference in noise levels between 2300 hours and 2330 hours. Therefore, extending the opening hours of the restaurant would be unlikely to result in significant adverse effects on the living conditions of neighbouring occupiers with respect to noise or disturbance.
9. Consequently, varying the opening hours would not harm the living conditions of neighbouring residents with regard to noise. Therefore, the proposal in this particular respect would not conflict with Policy CL5 of the Local Plan, September 2019 which seeks that, among other things, the reasonable enjoyment of the use of buildings, gardens and other spaces is not harmed due to increases in noise.

Other Matters

10. The restaurant has an internal waiting area for around 70 patrons. While this reduces the number of people waiting outside the restaurant, from the evidence it has not prevented queues forming outside the restaurant. However, since the land outside the restaurant is not within the Appellant's control, it would not be possible to prevent people from queuing outside the site altogether. The Operational Management Plan June 2020 (OMP) details measures to be put in place to manage queues that would be likely to form outside the restaurant.
11. The OMP sets out, among other things, that staff would work to ensure that guests waiting outside the restaurant do so in an orderly manner and wait on the Kensington High Street side of the entrance. This would help to ensure that queues do not form in the direction of the nearby dwellings. As such, the proposed condition relating to the OMP is necessary and reasonable.
12. I note the concerns of nearby residents including the Kensington Square Residents Association. These include odour, parking and the history of the site. With respect to odour, parking and enforcement issues, these matters did not form reasons for refusal in the decision notice. In addition, given the limited extension of opening hours that is proposed, there is little substantial evidence before me to indicate that the proposal would result in an unreasonable effect on the living conditions of neighbouring residents in these respects.
13. I also note local concerns regarding compliance with the conditions attached to the extant permission. However, this is a matter for the Council in the first instance. Moreover, it is likely since Covid-19 restrictions were eased, more people would queue in the substantial waiting area inside the restaurant, reducing the number of people waiting outside. While I also acknowledge the evidence regarding the restaurant's booking system as well as anti-social behaviour, these matters have not altered my overall decision.
14. With respect to parking, there is little evidence before me to indicate that the proposal would result in an unacceptable impact on highway safety or severe impact on the road network.
15. I also note local concerns regarding future applications to extend opening hours. However, each case must be determined on its individual merits.

Conditions

16. The Planning Practice Guidance states that circumstances where a temporary permission may be appropriate include where a trial run is needed in order to assess the effect of the development on the area. The suggested conditions limiting the period of the permission for 18 months would be necessary to assess the effect of the extended opening hours and OMP on the area.
17. I have attached the condition relating to audible music as it has not been consulted upon and an application has not been made to remove it.
18. I have altered the wording of the opening hours condition to be more precise.
19. During the hearing the main parties confirmed that the financial contributions associated with the original permission were paid. Therefore, since the only outstanding item was in relation to a travel plan, a condition requiring the submission and implementation of a travel plan was agreed between the parties. Given the proximity of the site to the residential area and Kensington High Street, this condition is necessary in the interests of sustainable transport.

Conclusion

20. For the reasons given above the appeal is allowed.

R Sabu

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Robert Walton QC	Counsel for the Appellant
Brian Trollip	Dishoom Ltd
Shamil Thakrar	Dishoom Ltd
Kate Matthews	First Plan
Tito Arowobusoye	First Plan
Dean Bowden	Noise Solutions Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Catherine Nichol	The Royal Borough of Kensington And Chelsea
Derek Taylor	The Royal Borough of Kensington And Chelsea

INTERESTED PERSONS:

Will Lane	Local resident and representative of the Kensington Square Residents Association
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DOCUMENTS

- 1 Section 106 Agreement dated 18 July 2013