



Appeal Decision

Site visit made on 7 June 2022

by Jonathan Price BA(Hons) DipTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 5th July 2022

Appeal Ref: APP/A5840/W/22/3291637

The Founder's Arms, 52 Hopton Street, London SE1 9JH

- 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 Young & Co.'s Brewery PLC against the decision of the London Borough of Southwark.
 - The application Ref 21/AP/0721, dated 25 February 2021, was refused by notice dated 24 August 2021.
 - The development proposed is partial removal of existing first floor level and construction of first floor extension to provide an additional bar and dining area, installation of new plant, first floor plant enclosure and extension of existing bin store and external alterations to rear including new ramp for bin access.
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Decision

1. The appeal is allowed and planning permission is granted for partial removal of existing first floor level and construction of first floor extension to provide an additional bar and dining area, installation of new plant, first floor plant enclosure and extension of existing bin store and external alterations to rear including new ramp for bin access at The Founder's Arms, 52 Hopton Street, London SE1 9JH in accordance with the terms of the application, Ref 21/AP/0721, dated 25 February 2021, subject to the conditions set out in the annex to this appeal decision.

Preliminary Matters

2. My description of the proposal is taken from the appeal form, as this confirms it had changed from that stated in the application. This related to changes made by the Council which had referred to a 'first floor terrace enclosure'. The appellant has subsequently pointed out that this should have read 'first floor plant enclosure', as no customer terraces are proposed for the first-floor extension. I have therefore made this further amendment to the description.
3. Since the Council made the decision resulting in this appeal, it has adopted the Southwark Plan 2022 (SP). This was on 23 February 2022 and its policies replace those of the 2007 saved Southwark Plan and 2011 Core Strategy quoted in the refusal reasons. The other development plan policies relevant to this appeal remain those of the London Plan 2021 (LP). The development plan policies provide the starting point for assessing this proposal, with the National Planning Policy Framework (the Framework) a further material consideration.

Main Issues

4. Based on the Council's two reasons for refusal, the main issues in the appeal are the effects of the proposal on
 - the living conditions of the neighbouring residents of Falcon Point, with particular regard to noise, and
 - the incidence of anti-social behaviour in the surrounding area.

Reasons

The proposal

5. The Founder's Arms was built in the late 1970s and occupies a site fronting the River Thames midway between Blackfriars Station and Tate Modern. Falcon Point, the five to nine storey apartment block occupying a wider area to the rear of the public house, was constructed around the same time. Various other commercial outlets occupy the adjacent ground floor units at Falcon Point, with 110 residential apartments over these. The Thames path runs behind the Founder's Arms, between it and Falcon Point. Broader sections of this lead up to the public house from either side, containing some quite mature trees.
6. The appeal site is within a generally busy mixed-use area within London's Central Activities Zone (CAZ), as defined in the LP, and Southwark's Borough and Bankside District Town Centre, as indicated in the SP. This very accessible location has a buoyant daytime and evening economy, with significant footfall emanating from the surrounding homes, businesses, visitor attractions and transport hubs. The public house is not directly connected to a vehicular public highway, with Hopton Street running to the other side of Falcon Point, but is adjacent to the River Thames and its passing boat traffic.
7. The Founder's Arms comprises a predominantly single storey, flat-roofed building, of a lozenge-shaped plan and with partial first floor accommodation projecting within the flat roof. This first floor section provides toilets and ancillary space but it is just the ground floor area which presently contains the kitchen and bar/restaurant area. Here glazed panels open out onto an adjacent outside seating area that overlooks the river.
8. The proposals comprise the construction of a larger first floor level to provide a bar/dining area, customer toilets and additional trade kitchen. The remaining parts of the roof to the rear will be used to house new and relocated plant and a new kitchen extract and filtration system. The upper floor would be of a slightly smaller footprint to the ground floor but would change the premises from a mainly single-storey to a fully two-storey, flat-roofed building.
9. The elevations facing in the direction of the Thames would have floor to fascia height glazing, with panels opening onto a narrow external passage. This external passage would lead round to allow maintenance of the rear plant enclosure and is not intended as an outside customer terrace area. The proposal would see the capacity of the pub increase by some 100 customers, or by about 21.5%.

Noise

10. The Council's first reason for refusal is based on a risk of harm to the living conditions of the adjacent Falcon Point residents from noise. The appellant has produced noise assessments¹ addressing patron dispersal, break out noise from the extension, waste and recycling disposal (including glass bottles), deliveries and plant operation. The Council's reason for refusal over noise refers specifically to the likely harmful noise impacts resulting from the dispersal of an increased number of patrons visiting the Founder's Arms. This is notwithstanding the appellant providing an operational management plan (OMP) as a means to mitigate the proposal's impacts.
11. I must consider noise in the context of the existing environment. There is already an operational public house present. Furthermore, it serves an area which has changed over recent years and now experiences more visitors and passing trade than hitherto, due to the wider regeneration of the Bankside area and the various attractions that have resulted from this. In terms of break out noise from the first-floor addition, in the context of the ambient levels in a busy pedestrian area, any increase would have only a slight impact on the nearest receptor, even with the sliding glass door panels open. The Council takes no issue with the conclusions in this regard but seeks a condition governing closure of the upper floor sliding doors after 2200.
12. Interested parties raise concerns over the potential for noisy private parties with amplified music. However, the effects of break out noise have been assessed on the basis of the first floor being operated as a bar/restaurant with primarily seated customers and no live music. I have no reason to doubt this intention, and any permission might be conditioned to operate within the noise levels assessed, which are those likely to be generated by a busy pub rather than a live music venue.
13. Regarding waste and recycling disposal, the nearest residential occupiers had complained about existing noise, particularly from the emptying glass bottles into bins. As part of this scheme the bin storage area is to be bricked in and roofed. I believe that this measure would provide adequate mitigation for any potential noise harm and be an improvement over the current situation.
14. The appellant anticipates that the frequency, timing and size of vehicle involved in deliveries and collections would not alter. The greater amounts of stock and waste delivered and collected, commensurate with an increased capacity of the business, would involve somewhat longer loading and unloading periods. However, in respect of any increased noise, I do not consider there would be any materially greater harm to the living conditions of neighbouring flats.
15. The noise issue specific to the Council's reason for refusal is the risk of that generated by the additional patrons dispersing from the Founder's Arms. However, a finding of such noise harm is not adequately substantiated in my opinion. This is already a busy area, with groups of people of varying sizes passing through and emanating from various locations at differing times, including during the evening and late at night. There is little evidence to suggest this proposal would cause a particular increase in the incidence of the

¹ First Floor extension Noise Assessment Report Rev 2 20 April 2021 and Plant Noise Assessment 22 February 2021 – both RBA Acoustics.

late-night dispersal of large, rowdy groups, any more so than that of customers arriving or leaving in smaller, quieter numbers and at differing times.

16. In the context of the existing noise environment, it would not be feasible to isolate and predict a degree of harm attributable to this particular scheme due to the impacts from large groups of people. The operation would need to regularly attract the maximum additional clientele of 100 or so patrons, all arriving and leaving at the same time in large groups. Such an assumption is not reasonable and neither is a finding of material harm to neighbouring living conditions due to an unacceptable degree of noise.
17. Given the busy pub operation at the Founder's Arms and ambient sound levels, I consider this proposal would cause no material harm to the living conditions of the neighbouring residents of Falcon Point due to noise. It would therefore satisfy LP policies D3 (optimising site capacity through a design-led approach), D13 (agent of change), D14 (noise) and SP Policy P56 (protection of amenity), as well as those of the Framework that seek to prevent new development from contributing to unacceptable levels of noise pollution.

Anti-social behaviour

18. My reasoning over the proposal's effect on the incidence of anti-social behaviour runs along similar lines to that over the noise from the dispersal of patrons. The Founder's Arms is within a busy, well populated central London location, close to a main train station and with a high throughput of people reflective of the large numbers living, working or visiting the area. The general incidence of a level of unsocial behaviour would no doubt correlate with this. There is undoubtedly a general link between anti-social behaviour and the existence and operation of licensed premises. However, there would be a limit to how closely this might be attributable to a particular public house, in this case the Founder's Arms, or how much effect an increase in customer capacity might have. In my view, there is not adequate evidence to substantiate a high risk of anti-social behaviour resulting from this proposal.
19. A variable amount of anti-social behaviour might be indirectly attributable to a public house, depending on how it is managed and the characteristics of its location. Such impacts lie somewhat beyond the breadth of land use planning control. There are separate measures applied through the licensing regime, under which the area is within a saturation zone. However, this is not reflected under development plan policy. There are also separate provisions to police and enforce against crime, disorderly behaviour, breaches of traffic regulations and other anti-social occurrences.
20. The Council considers the proposal to be acceptable in principle in land use planning terms and I do not differ with this. There is no evidence to suggest that the Founder's Arms currently gives rise to any significant anti-social behaviour problems. The one serious incident reported appears to have been an isolated one, that might not reasonably have been anticipated. Furthermore, the appellant is amenable to a condition requiring that the extended business operates in accordance with the submitted OMP. The current operation is not the subject of this and, whilst adherence to the OMP would be insufficient to completely rule out anti-social behaviour, it would provide some assurance over the extended business being run in a reasonably neighbourly manner.

21. The proposal would not result in material harm through the risk of causing an increase in anti-social behaviour occurring in the surrounding area. To the degree this policy applies, I find there to be no substantiable conflict with SP P16 over designing out crime.

Other Matters

22. Further matters of concern have been raised by interested parties, including many of the occupiers of the adjacent Falcon Point apartments. Detailed statements and evidence were also provided by the Falcon Point Management Group.

The effects on the character and appearance of the area

23. The existing pub stands as a somewhat isolated building in the Thames path that runs east from Blackfriars train station. The additional horizontal layer, replacing existing first floor structures, would reflect the form of the main building, revitalising its slightly faded appearance. Whilst raising the flat roof to accommodate a first floor, the extended structure would still be of a relatively low-level when compared with a surrounding built environment of much larger, taller buildings and remain entirely subservient in scale. The existing mature trees to either side of the development would soften the degree of visual impact caused.
24. The proposal would not be of such a scale as to harm the general views along this section of the south bank, given the backdrop of the much larger Falcon Point. The existing building is already larger than the kiosk scale of structure one might normally expect in a broad public walkway. Nevertheless, the Founder's Arms is an existing feature in the street scene and would not become harmfully bulky as a consequence of the further storey proposed. The design would be satisfactory in views from surrounding buildings and the Thames path. The strategically important public views in this part of London, towards important landmarks such as St Paul's Cathedral, would be unaffected by this quite modest proposal.
25. The proposal would enhance the appearance of the Founder's Arms and relate well to the prevailing character of its surroundings, satisfying SP policies P13 (design of places) and P14 (design quality), LP policies D4 (delivering good design), D5 (inclusive design) and D8 (public realm), as well as the Framework's objectives for achieving well-designed places.

Other living condition issues – privacy, outlook, daylight/sunlight and odour

26. In the first-floor extension, all the unobscured and openable glazed panels would face the river, away from Falcon Point, and the external walkway to the plant enclosure would be out-of-bounds for patrons. The proposal would thus cause no material harm to the living conditions of the adjacent residential occupiers, due to being overlooked and deprived of privacy.
27. The Founder's Arms is visible from the flats at Falcon Point, which all have windows in habitable rooms facing the River Thames. The resulting size and proximity of this proposal to the nearest of these windows would not be sufficient to cause material harm to living conditions by having an overbearing or oppressive impact on outlook. The proposal would in some instances intervene in the views from windows of more distant features. Most notable would be reducing the views of St Paul's cathedral above the current Founder's

Arms for some first-floor flats, as shown in supporting photographs. However, I do not consider the changes to such views would overlap with the public interest role of planning to protect the overall character and appearance of an area. In this case, the changes to such private views would not be planning considerations that would weigh materially against this proposal.

28. The proposal was the subject of a daylight and sunlight assessment². I have had regard to this and concur with its findings. In short, these are that the extension proposed would result in no material harm to the living conditions of any of the occupiers of the adjacent apartments in Falcon Point, due to its effects on daylight and sunlight levels.
29. Regarding odour, the Council has noted that the closest receptors are approximately 20m away and so a very high level of control is required. As reported, an additional kitchen extract is proposed to the first floor and a ventilation and odour assessment statement has been submitted and reviewed by the Environment Protection Team, who concluded that control could be managed by a condition. I have had regard to the assessment and consider measures to be necessary to ensure no significant olfactory harm to neighbouring living conditions. Provided this is covered by a specific condition I find no grounds to resist the proposal on the grounds of odour.
30. With regard to privacy, outlook, daylight/sunlight and odour, my finding is that this proposal would not result in unacceptable living conditions for the adjacent occupiers. The proposal would therefore satisfy LP Policy D3 (optimising site capacity through a design-led approach) and SP Policy P56 (protection of amenity) with regard to these factors.

The effects of delivery and servicing

31. The Founder's Arms, including its outside seating area adjacent to the river, create a pinch point in the Thames path, channelling passers-by through the narrower gap to its rear. However, this is an existing and apparently lawful situation and, in that regard, this proposal would result in little change. The appellant advises that efforts are made with the siting of tables and chairs to ensure that the Jubilee Path, that runs alongside the Thames, remains accessible across the outside seating area.
32. Many interested party statements refer to the further restriction of the narrow section of the Thames path when deliveries of beer casks and other supplies are made to the rear of the public house, via the service route running through Falcon Point from Hopton Street. As there is no vehicular access up to the premises, supplies such as beer casks need to be transported manually across the Thames path having been unloaded from the parked delivery vehicles, with a temporary degree of impediment to pedestrian movement. Even on the occasions that stock, such as beer casks, are placed on the path prior to being taken into the premises, there is no evidence of a complete block to pedestrian passage. Such a situation appears little different from the numerous instances of roadside deliveries being made across footways to businesses along high streets throughout the country.

² Daylight and Sunlight Assessment on the surrounding properties at: The Founder's Arms 52 Hopton St London SE1 9JH Prepared by: Anderson Wilde and Harris Date: 18 December 2020

33. The proposal is accompanied by a Delivery and Servicing Management Plan³ (DSMP) to ensure these procedures are carried out in as orderly and unobstructive manner as possible. The appellant has volunteered to a planning condition which would require the extended public house to operate in accordance with the DSMP. Such a condition would relate to the appeal site and the future operation of The Founder's Arms, so the DSMP does not appear to me to depend on a legal agreement with other parties to become enforceable. The appellant's rights to make deliveries over separately owned land is not a planning matter relevant to this decision. A legal agreement may in some cases be required to secure a DSMP but was not sought by the Council in this instance. The offer of a condition rather than a legal agreement to secure the DSMP would not weigh against allowing this appeal. Subject to such a condition, the proposal would comply with LP Policy T7 and SP Policy P18 insofar as these establish requirements over delivery and servicing arrangements.

Covenants and leasehold issues

34. The restrictive covenants and leasehold matters drawn to my attention would be legal issues separate to planning and can have no bearing on this decision.

Planning Obligations

35. Unilateral Undertakings dated 3 May 2022, made pursuant to section 106 of the Town and Country Planning Act 1990, secure the provision of cycle hoops fixed to the river wall to either side of the appeal site. These meet the required tests set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010. I consider that the undertakings are a) necessary to make the development acceptable in planning terms, b) directly related to the development and c) fairly and reasonably related in scale and kind to the development.

Conditions and conclusion

36. The Framework requires me to consider whether an otherwise unacceptable development could be made acceptable through the use of conditions. If so, such conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. In the light of the above I conclude the proposal could be acceptable subject to conditions. Some of these are slightly re-worded versions of those suggested by the Council and others are ones I have decided are also required.
37. In addition to a condition that sets a standard three-year time limit for commencement, another is necessary in the interests of certainty that establishes the plans to be permitted. Another condition is necessary to ensure that after 2200, and then throughout the night, the first floor sliding glazed doors are to be kept shut. In the interests of preserving residential living conditions and general public amenities further conditions are needed to apply the DSMP and OMP and ensure the operation accords with the noise limits assessed. In the interests of neighbouring living conditions, a final condition requires agreement and provision of adequate odour control measures. I have

³ Delivery & Servicing Management Plan LPSL/20/5643/DSMP03 RGP May 2022

not been provided such a condition by the Council and so have employed a standard wording for one.

38. A travel plan is provided by the appellant but the site benefits from a high PTAL of 6a, and so a condition requiring adherence to this is not considered necessary in this case, nor is sought by the Council.
39. The proposal is within the CAZ and Bankside and Borough Town Centre where it would benefit tourism, increase the size of a social meeting place and contribute to Southwark's day and night-time economy. The social and commercial benefits of the scheme would gain the support of LP policies SD4 (CAZ), SD6 (town centres and high streets) SP policies SP4 (green and inclusive economy), P35 (town and local centres) and P42 (pubs), insofar as these all support the vitality and viability of this area. I consider the proposal would comply with the development plan as a whole and therefore, for the reasons given and subject to the conditions set out below, I conclude that the appeal succeeds.

Jonathan Price

INSPECTOR

Annex: Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Location Plan – 1775/14 rev A (Amended)
 - Proposed Block Plan – 1775/13 rev A
 - Proposed Ground Floor Plan – 1775/06 rev C (Amended)
 - Proposed First Floor Plan – 1775/07 rev D
 - Proposed Roof Plan – 1775/08 rev D
 - Proposed Elevations (Proposed Elevation 1 and 2) – 1775/09 rev B
 - Proposed Elevations (Proposed Elevation 3 and 4) – 1775/10 rev D
 - Existing and Proposed Cross Sections – 1775/11 rev D.
- 3) Other than in the event of an emergency, the sliding doors of the first-floor extension hereby permitted shall be shut closed between the hours 2200-0800.
- 4) The development shall be operated only in accordance with the Delivery and Servicing Management Plan dated 2 May 2022 by RGP (reference LPSL/20/5643/DSMP03).
- 5) The development shall be operated only in accordance with the Noise Assessment Report/Operational Management Plan by RBA Acoustics (ref. 10112.RP02.NAR.2, dated 20 April 2021) and within the predicted breakout noise levels assessed by this.

- 6) Before the use hereby permitted takes place, measures to control the emission of fumes and smell from the premises shall be installed in accordance with a scheme to be first submitted to and approved in writing by the local planning authority. All measures applied as part of the approved scheme shall thereafter be operated and maintained in accordance with that approval and retained for so long as the use continues.
