



Appeal Decision

Site visit made on 29 July 2022

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 August 2022

Appeal Ref: APP/A5840/W/21/3285787

Suffolk House 127-129 and 131 Great Suffolk Street, London SE1 1PP

- 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 TLS (GSS) Ltd against the decision of London Borough of Southwark.
- The application Ref 21/AP/1811, dated 21 May 2021, was refused by notice dated 25 August 2021.
- The application sought planning permission for a Minor Material Amendment to vary Condition 1 'Approved Plans' consisting of minor increases in height to the buildings and the introduction of a sub station, of planning permission LBS reg no 19/AP/2198 for the partial demolition, retention and refurbishment of the existing buildings onsite and extensions to the existing building between 1 and 4 storeys to provide a total of 7,301sqm pf gross internal commercial space (Use Class B1a) and associated alterations without complying with a condition attached to planning permission Ref 20/AP/0203, dated 15 April 2020.
- The condition in dispute is No 1 which states that: The development shall be carried out in accordance with the following approved plans (plans subsequently listed).
- The reason given for the condition is: For the avoidance of doubt and in the interests of proper planning.

Decision

1. The appeal is dismissed.

Preliminary Matter

2. Since the original decision the Council have adopted the Southwark Plan (2022). This replaces the Core Strategy (2011), and saved Southwark Plan (2007) such that the policies of those plans cited on the decision notice are no longer part of the development plan and have no weight. I have therefore considered the relevant policies within the Southwark Plan (2022).

Main Issue

3. The main issue is the effect of varying the condition to allow a new roof terrace would have on the living conditions of occupants of surrounding residential properties with specific regard to noise and disturbance.

Reasons

4. The appeal property comprises a complex of buildings that is located in the area between Great Suffolk Street, Toulmin Street and Pickwick Street. At the

time of my site visit the site was being developed as part of an extant planning permission as detailed above.

5. The surrounding area contains a wide range of uses, including residential properties, offices, shops and food and drink establishments. The appeal property is adjacent to residential blocks and a primary school.
6. On my site visit that took place on a weekday morning when conditions were warm, clear and with little wind, I observed that at the location of the proposed roof terrace, the surrounding noise environment at that time primarily consisted of construction noise, from the development being undertaken, occasional distant aircraft noise, and low-level background traffic. Due to its elevated position and away from street-level, despite its dense urban setting, the noise environment was noticeably quiet, and considerably quieter than that of the nearby Borough High Street.
7. The adjacent primary school was not open at the time of my visit and I acknowledge that this would contribute to background noise levels during school times, particularly when children would be using the outdoor areas. This would however be likely to cease after around 5pm with noticeable noise being concentrated during school hours.
8. The proposed terrace would replace an area that was previously intended to house roof mounted plant and equipment. It is outlined that the terrace would be used by the office staff for a breakout space for small meetings, lunch breaks and somewhere to relax. Despite an initial suggestion it would also be used for corporate events, the appellant has subsequently stated that this is, however, not the intention. Although initial documents suggest the terrace is capable of accommodating 60 people, it is outlined that it would have a maximum capacity of 30 people, with proposed operating hours from 8am to 10pm. These hours would be the same as the consented hours of use of another outdoor area elsewhere in the complex. A screen is proposed along one side of the terrace which would act as a noise barrier. The screen proposed is 2.5m high and extends 3m past the end of the terrace at each side.
9. The terrace would be located adjacent to a residential block, where I observed there are habitable room windows in very close proximity, directly facing onto the area of the proposed terrace. I observed that on my site visit on a warm July day, that inevitably some of these windows were open.
10. It is not disputed between the main parties that through the inclusion of the screen, there would not be an unreasonable impact in relation to privacy and overlooking. In light of the evidence, and my observations on my site visit, I have no reason to form a different view.
11. A Noise Impact Assessment Report¹ has been submitted with the appeal. The report considers that the noise source is expected to be speech between localised small groups of people and at a capacity of 30 people expects that as a worst case 20 people may be speaking simultaneously. Using noise modelling, the report predicts façade incident noise levels of LAeq 46-49dB at the worst affected residential façade.
12. The findings of the report, insofar as it concludes that typical speech and conversations are unlikely to cause unreasonable harm to the living conditions

¹ CSG Acoustics – CSGA-C1949-T1Rev02 – 17 September 2021

of occupants of nearby properties, are of significant weight in the appeal. The report is nevertheless a prediction, and whilst it is a useful and significant tool, a predicted noise level can never be as accurate as a measured one.

13. The impact on living conditions from sudden impulsive noises that can occur when people congregate is not conclusive. Laughter, hand claps, occasional shouting, phones ringing, and other sudden noises would be almost inevitable. Such noises would be particularly probable on more sociable or informal meetings or gatherings including where alcohol may be served, even if the serving of alcohol was to occur in other parts of the building and not on the terrace itself as suggested. Such noise occurrences would be random, spontaneous and virtually uncontrollable. Such sudden noises, unlike continuous noise, can be significantly more intrusive and perceptible, with the potential to cause significant harm. They would not be bland or easy to ignore, particularly given that people are less tolerant of noise generated by sources which they consider as undesirable.
14. The impact of such noise occurrences would be of much greater significance, and cause the most harm, in the evening hours, which are proposed to be up to 2200. Given my observations on the existing noise environment, residents are reasonably likely to expect a quieter noise environment at this time of day. This is coupled with the situation where residents would be likely to open their windows in warmer weather (or would wish to do so), and if they did, would be subject to increased levels of noise.
15. The appellant outlines that in order to mitigate the use of the terrace, it would be limited to 30 persons, no alcohol would be served on the terrace, and it would be subject to the same time limit restriction as the extant terrace, that being 0800 to 2200.
16. In terms of the time restriction, were the appeal to be allowed, the Council have suggested a condition limiting the use of the terrace until 2000. The appellant does not consider this time limit is necessary but would be willing to accept the condition. I maintain, however, that whilst this would alleviate the most significant harm, it would not prevent use of the terrace at a time when residents may reasonably expect a quieter noise environment. I therefore do not consider that it would make the proposal acceptable overall.
17. The appellant has outlined how no amplified sound would be in use on the terrace and that this could be secured by condition. Be that as it may, it would not overcome the harm I have identified.
18. In terms of the limitation of the number of persons using the terrace, given the comings and goings that would be likely for any sociable use, for example workers going in and out of the internal part of the building, such a limitation would be very difficult to monitor and enforce. I note the suggestion that no alcohol would be served on the terrace, however, this suggestion would not extend to consumption. Were alcohol consumption to be prohibited, it would not extend to within the rest of the building and thus people having consumed alcohol would not be precluded from the terrace. Any such restriction would also be very difficult to enforce. Regardless, I do not consider such a condition would overcome the harm I have identified.
19. I note that the extant planning consent includes external roof terraces that are limited for office purposes not to be carried out outside the hours of 0800 to

2200 on any day. Pertinently however, the roof terrace on the extant consent is of a different size and in a different location to the one in the appeal. I therefore give its presence limited weight in the appeal. Regardless, it does not justify allowing the harm I have identified.

20. I therefore conclude that varying the condition to allow the proposed new roof terrace would cause significant harm to the living conditions of occupants of surrounding residential properties with regard to noise and disturbance. It would be contrary to Policy P56 of the Southwark Plan (2022) and Policy D14 of The London Plan (2021). These policies require that development should not be permitted when it causes an unacceptable loss of amenity to present or future occupiers or users, having regard to, amongst other things, impacts of noise or other nuisances; and development proposals should avoid significant adverse noise impacts on quality of life.

Other Matters

21. The appellant has outlined how the roof terrace would provide a pleasant outdoor space for future workers. Although I do not disagree, I have not been made aware of any specific planning requirement that such a space is provided for workers. Either way, this should not be at the expense of causing harm to existing residents and there also appears to be alternative provision made elsewhere in the development. Therefore, it is a matter of limited weight in the appeal.
22. The appellant has referred me to an appeal² for the extension of a public house seating area, where the main issue was the impact of the development on the living conditions of nearby residents with specific regard to noise and disturbance. The appellant outlines that in that appeal the Inspector relied upon the factual information available, that being a noise impact assessment, which showed the extended outdoor seating area did not result in any significant noise impact on residents. The appeal was allowed.
23. In that appeal, unlike the current appeal, the development had been undertaken. Although I do not have full details of the development or the appeal site to give it significant weight, it appears that the surrounding area and its noise environment was quite different to that in the current appeal. I therefore give this decision limited weight in the current appeal, which I have, in any event, determined on its own individual planning merits.
24. The appellant considers that the proposed development does not constitute a material change of use and is therefore consistent with the consented commercial use. I have determined the appeal based on the variation of an existing condition to allow a new roof terrace as before me. There is a material difference between the consented scheme and the proposed scheme which I have considered. I therefore do not agree that this difference can not be grounds for dismissing the appeal even if the site is covered by the consented commercial use.
25. The appellant has referred to the consideration of guidance in the Noise NPPG which outlines that noise impacts can be determined taking into account the acoustic environment and; whether or not a significant adverse effect is occurring or likely to occur; whether or not an adverse effect is occurring or

² APP/N4720/C/19/3234874

likely to occur; and whether or not a good standard of amenity can be achieved. I consider this has been the approach taken in considering the proposal.

26. The appellant highlights that the NPPG outlines that noise is a complex technical issue, and it may be appropriate to seek experienced specialist assistance when applying this policy. I have acknowledged the assessment by an appropriate specialist, however the circumstances of this case are such that it is necessary to form a planning judgement whilst giving the appropriate weight to the findings of the noise assessment.
27. The evidence shows that the original planning permission was subject to a s106 legal agreement. I have not been provided with a copy of the agreement. Both main parties consider that any further consent issued will remain bound by the original agreement. As the effect of a successful s73 application will be to create a new planning permission, a new planning obligation must be submitted to cover the new permission, or the original obligation must be varied to make it also apply to the new permission. If this is not done, the appellant would be able to choose to implement the new planning permission free from any planning obligations which were attached to the original planning permission. If I was to have found no harm would be caused by the proposal, there is nothing before me that would bind my decision to the original obligation. As I am dismissing the appeal however, there is no need for me to pursue this matter any further.

Conclusion

28. The proposed development would therefore conflict with the development plan and there are no other considerations, including the National Planning Policy Framework, that outweigh this conflict.
29. For the reasons set out above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

A M Nilsson

INSPECTOR