



Appeal Decision

Site visit made on 2 August 2022

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 SEPTEMBER 2022

Appeal Ref: APP/C5690/W/21/3287671

189 Deptford High Street, London SE8 3NT

- 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 Joseph Adebayo of 'Kick n Munch' against the decision of the Council for the London Borough of Lewisham.
 - The application Ref DC/21/121171, dated 30 March 2021, was refused by notice dated 4 August 2021.
 - The development proposed is described as "the ground floor houses the bar area. The planning application is for the use of the garden area approximately 70sqm as a shisha bar added to the main bar. The garden design attached shows 50% of the roof taken out, 5no. (1mx1m) Velux windows added for more light and ventilation. There is an alley way escape route at the back of the property in case of fire".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the heading above has been taken from the planning application form which I am normally obliged to use. Although in Part E of the appeal form it is stated that the description of development has not changed, a different wording has been entered. Furthermore, the Council also altered the description of the development contained in the decision notice. Neither of the main parties has provided written confirmation that a revised description of development has been agreed although the Council's re-description more succinctly describes what is proposed.
3. Notwithstanding the description of the development above, I noted at the site visit that the roof has been altered and several Perspex sheets have already been added to the roof, some that slide open. This arrangement appears similar to the scheme as submitted. Nevertheless, I have determined this appeal based on the information and plans before me.

Main Issue

4. The main issue is the effect of the development on the living conditions of neighbours, with particular regard to odour, noise and light.

Reasons

5. The appeal site is located on the western side of Deptford High Street, within a small terrace of three storey traditional Georgian properties. The area is mixed use with commercial/retail units located at the ground floor level, with mainly residential units located in the floors above. There are also residential

- properties to the rear of the appeal site and opposite to the west. The site is situated within the Deptford High Street and St Paul's Conservation Area (DHSCA). The appeal proposal would involve the change of use of the existing covered area at the rear, to use as a shisha bar and also includes alterations to the roof to provide retractable awnings.
6. There are a range of takeaways, restaurants and bars in the locality which are close to residential properties. Many of these also involve various food offerings. The area has a lively feel and given the close proximity of the residential properties to the appeal site, this creates a sensitive relationship. As such, existing occupiers are likely to already experience some disturbance and subsequent material harm to their living conditions.
 7. I am told that a significant proportion of garden-building's roof needs to remain open when being used as a shisha bar. The structure would therefore not be entirely enclosed leaving scope for sounds and smells from activities inside to permeate outside of the property, and I have no details to help demonstrate that acoustic and odour control measures could be effective. Both Council and interested parties' refer to the potential disturbance caused from smoke odour, noise, light and anti-social behaviour from patrons using the premises, given the close proximity of the upper floor windows located at the host property and the other upper floor units within the terrace that overlook the appeal site.
 8. The use of the building as a shisha bar has the potential therefore to cause disruption in terms of odour, noise and a perception of noise, for these nearby residents. This may mean that residents may have to keep windows closed to reduce impacts on them, with a further potential for sleep disturbance if the activities extend into the evenings. This has the potential to further diminish the quality of life for nearby residents due to the change in the acoustic character of the area.
 9. I have noted the appellant's assertion that the surrounding area is bustling and vibrant, and as such an increase in ambient noise levels may be expected in locations like this. Furthermore, I am conscious that the premises already include a bar and restaurant, and the shisha lounge will cover an existing area that can be used ancillary to this. However, the proposal will encourage more customers to congregate in that area with only a partial roof covering to retain noise. Furthermore, there is no expert acoustic or other evidence before me to suggest that noise or odours can be adequately controlled.
 10. Whilst some sources of noise and lighting may be possible to control with planning conditions such as amplified sounds, the general hubbub from increased numbers of people mingling in an informal social environment could not be directly controlled. I am not persuaded either by the submissions that the building could be adapted to sufficiently retain noise adequately without significantly altering its construction and design. Furthermore, although the appellant suggests a planning condition to limit the hours of use, planning conditions should relate to the development being permitted and this would in effect impose an hours restriction for part of the premises. This would fail the tests for planning conditions in the National Planning Policy Framework 2021 (the Framework), and such a restriction would not be enforceable or reasonable in my view.
 11. In conclusion on the main issue the development would have a harmful effect upon the living conditions of neighbours, with particular regard to odour, noise,

and light. This would be contrary to the Lewisham Local Development Framework: Development Management Local Plan adopted November 2014 DM Policy 26 and the London Plan March 2021 Policy D13 of which amongst other things, seek to mitigate impacts from noise and other nuisance-generating activities on neighbouring residents. It would similarly fail to meet the guidance in the Framework which, amongst other things, also seeks a good standard of amenity for all existing and future occupants of buildings.

Other Matters

12. The proposal involves development that affects a building which is a non-designated heritage asset which is within the DHSCA. The physical changes to the property would have a very limited impact and would be discretely located at the rear of the building and the terrace. As such the proposal would preserve the character and appearance of the DHSCA. This is a neutral matter within my overall balance.
13. I have no evidence about the likelihood of any increased anti-social behaviour or parking problems that would result from the proposal. Again, these matters are neutral factors neither weighing in favour nor against the proposal. The appellant also draws my attention to the principle of the development. However, I note the principle of the scheme is not in dispute.
14. None of the other matters raised outweigh or alter my conclusion on the main issue and that the development plan as a whole would not be complied with.

Conclusion

15. For the reasons given above I conclude that the appeal should be dismissed.

Robert Naylor

INSPECTOR