



Appeal Decision

Site visit made on 25 August 2022

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20/09/2022

Appeal Ref: APP/D5120/W/21/3282462

The Halfway House, 188C Halfway Street, Sidcup, Kent DA15 8DJ

- 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 D Andina against the decision of the Council of the London Borough of Bexley.
 - The application Ref 21/01082/FUL, dated 30 March 2021, was refused by notice dated 29 July 2021.
 - The development proposed is erection of a single storey rear extension to provide a storage area, formation of a pergola with provision of boundary fencing and gates.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the development provided on the planning application form has been replaced by an amended version on the decision notice and in subsequent appeal documents. I consider that subsequent description to accurately represent the proposal and I have therefore used it within this decision.
3. Reference has been made to the retrospective nature of the proposal, and a pergola and seating area were in place at the time of my visit. I have proceeded to determine the appeal on that basis.

Main Issue

4. The main issues is the effect of the proposal on the living conditions of nearby residents with regards to noise and disturbance

Reasons

5. The appeal site consists of a micropub located in a retail and service area extending along Halfway Street. Despite the commercial nature of the site, the wider area is residential in character, and there are also residential uses located above some of the commercial properties.
6. The proposed pergola would create a seating area for the micropub to the rear of the building. This rear area has a close knit relationship with neighbouring properties, including a residential use at first floor level on a neighbouring site and residential properties to the rear. Although the existing commercial uses and associated activity may create higher levels of background noise, I

- observed that the area to the rear of the site is relatively secluded and quieter compared to the commercial street frontage.
7. Due to the proximity between the appeal site and nearby dwellings, neighbouring residents would be aware of noise generated by customers of the micropub using these external areas. There is a significant possibility that the level of noise and disturbance would be greater than that which nearby residents could reasonably expect. This would affect the external amenity areas of nearby dwellings as well as habitable rooms, with potentially significant adverse effects on the quality of life of residents.
 8. To address the matter of noise, the appellant has submitted a Noise Impact assessment (NIA) which refers to BS8233¹ and the WHO² Guidelines for Community Noise. The NIA is based on the effect on the nearest noise sensitive premises, identified as a first floor residential flat located to the side of the site. The NIA concludes that noise from the proposed beer garden will be 1.5dB below the upper internal noise level recommendations as provided by BS8233 and the WHO for bedroom or living room spaces used during the day time period.
 9. However, BS8233 sets out that these guidelines apply to external noise from sources without a specific character, previously termed "anonymous noise", and that only noise without character is considered in the criteria which the NIA refers to. Mindful of that, the noise generated by customers using the beer garden would have a specific character. It would be irregular enough to attract attention, and I am also mindful that the noise from customers which could reasonably be expected from a micropub seating area, such as voices and laughter, would be particularly distracting to nearby residents. On that basis, I do not consider that the guidelines of BS8233 are an appropriate basis for assessing the proposal.
 10. The NIA also refers to the IEMA Guidelines³, and concludes that the proposal would have a moderate impact on the nearby residential flat. Reference has been made to the use of measures and conditions to minimise projected noise impact, including limitations on the number of patrons, the arrangement of seating, staff checking the usage and noise levels of the seating area, signage, the prohibition of amplified music, and the provision of a contact phone number for nearby residents to contact the micropub. However, given the relationship of the appeal site to nearby residential properties and the nature of the noise generated by the proposal, I do not consider that these measures would effectively mitigate harm arising from noise and disturbance.
 11. It is also proposed to limit the hours of use of the beer garden so that it is not used any later than 20:00-21:30 depending on the day of the week. However, even with those limited times of use, nearby residents would be aware of noise from the proposal in the evenings and at weekends when they could reasonably expect to enjoy relatively peaceful use of their properties.
 12. Drawing the above together, the NIA is not suitably robust in terms of the criteria used and the effectiveness of potential mitigation measures. I am mindful that the NIA is based on a worst case scenario of the number of

¹ BS8233:2014 "Guidance on sound insulation and noise reduction for buildings"

² World Health Organisation

³ Guidelines on Environmental Noise Impact Assessment (IEMA)

customers, but this is not sufficient to outweigh my concerns in respect of the robustness of the assessment and the harm arising from the proposal.

13. Considered objectively and in context, I conclude that the proposal would lead to significant harm to the living conditions of nearby residents with regards to noise and disturbance. The proposal would therefore be contrary to policy CS01 of the Core Strategy 2012 and policies ENV39 and SH09 of the Unitary Development Plan 2004 (UDP) which together seek to provide a complementary mix of land uses which would not have an unreasonable effect on the surrounding area by reason of noise.
14. Policy SH08 of the UDP relates to late night uses in neighbourhood centres. A condition restricting opening hours could mean that the proposal would not conflict with this policy. However, this does not lead me to a different conclusion in respect of the significant harm I have identified in respect of the operation of the proposal at other times.
15. For the reasons given above, I conclude that the appeal should be dismissed.

David Cross

INSPECTOR