



Appeal Decision

Site visit made on 18 October 2022

by Hannah Guest BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11/11/2022

Appeal Ref: APP/D5120/W/22/3296268

94 Bellegrove Road, Welling DA16 3QD

- 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 Gulen against the decision of London Borough of Bexley.
 - The application Ref 21/01507/FUL, dated 6 May 2021, was refused by notice dated 7 January 2022.
 - The development proposed is single storey rear extension.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The single storey rear extension has been erected. I am therefore considering this appeal retrospectively.

Main Issue

3. The effect of the development on the living conditions of the occupants of neighbouring properties, with particular regard to noise.

Reasons

4. The appeal property is located on Bellegrove Road in Welling Town Centre. This section of the road consists predominantly of retail units at ground floor with residential units above. Frequent pedestrian and traffic movements, including buses, give the area vitality and a vibrant character. Nevertheless, it is slightly quieter than further along the road where there are two large supermarkets with more frequent comings and goings. Also, given the areas to the rear of the properties are segregated from the activity taking place along the road by the commercial businesses, in comparison they are relatively quiet.
5. The appeal property is a 2-storey mid terrace within a row of retail units with flats directly above. It comprises a restaurant and bar. The single storey rear extension is being used as a shisha lounge in association with the restaurant. I saw on my visit that the structure included large open sections in the roof with polycarbonate panels above to provide some protection from inclement weather conditions. I understand that this is to meet the terms of the Health Act 2006, which requires 50% or more of smoking structures to be permanently open. The far end of the extension, which has the largest openings in the roof, while set in from the boundary, finishes close to the boundary with 90A Bellegrove Road. First floor windows serving the flats above are also very near to the roof of the structure and associated openings.

6. I recognise that before the rear extension was constructed the rear external area was accessible and may have been used by customers of the restaurant and bar. However, the rear extension has been designed to provide a much greater level of shelter and comfort than would have been provided by this external area. It can accommodate many customers and its booth arrangement caters for fairly large groups, encouraging a greater intensity of use.
7. No technical evidence, such as a noise assessment, has been provided by either party. Nonetheless, complaints have been received relating to noise. Taking into account that the rear extension is a partially open structure, the potential for noise is high, and the character and level of noise from the ancillary use of the extension as a shisha bar is unpredictable. The noise is likely to consist of a range of sounds from muted to louder conversations and laughter, with the possibility of raised voices, shouting and other peaks associated with these types of uses. Low level background music is also played regularly into the extension.
8. The noise occurs between 15:00hrs and 23:00/00:00hrs when the restaurant is open. At these times it is likely that nearby residents will be at home trying to relax or sleep. These residents experience a certain level of ambient noise from the town centre location. However, the vibrancy of the area and associated background noise will reduce, as many businesses that trade during the day close, thus the noise coming from the rear extension is likely to be more apparent later in the day. It is also likely that the extension will be used more intensely during good weather when the windows of the flats above and other nearby properties are likely to be open. While the number of noise complaints, as well as the number of objections to the planning application, could be considered limited, I must consider the effect on future occupants as well as existing ones.
9. There are similar commercial uses nearby with comparable opening times that also have the potential to produce noise. Nevertheless, any effects are limited as most do not have external or partially open internal areas so most noise would, to a large degree, be contained within the buildings. The exception is the Bellegrove Social Club, which has a rear beer garden. However, it is likely to be used less intensely and frequently as, even if it is larger than the rear extension, based on the evidence before me, the level of shelter and comfort appears to be far less.
10. I appreciate that the rear extension is partially open to accommodate its use as a shisha lounge, which makes it difficult for any meaningful mitigation to be provided. It consists of several layers of structure, including the wooden booths that have open sides and their own fixed roofs within the main structure. Notwithstanding this, there is no substantive evidence before me demonstrating that this mitigates the resulting noise.
11. The appellant has stated that they would be willing to accept a condition, if necessary, to restrict use of the shisha lounge so that it is comparable with the opening times of other businesses in the area. However, this does not mitigate the type or level of noise being produced, which is different from other businesses in the area. The noise would still occur during the afternoon and the evening when residents are likely to be at home. The condition would therefore not address the harm that I have identified.

12. For the reasons above, the development unacceptably affects the living conditions of the occupants of neighbouring properties with regard to noise.
13. Accordingly, it conflicts with policies ENV39 of the Bexley Council Unitary Development Plan (2004), policies D13 and D14 of the London Plan (2021), which seek to ensure that noise generating development does not result in adverse noise impacts that would harm the living conditions of occupants of properties in the surrounding area. It would also conflict with the aims of chapter 12, and more specifically the requirements of paragraph 185, of the National Planning Policy Framework (2021), which seeks to ensure that new development mitigates and reduces to a minimum any potential adverse impacts resulting from noise.

Other Matters

14. The rear extension provides additional commercial space that supports the main business use and helps safeguard its future. However, while this factor weighs in favour of the development, there is no detailed evidence of how the extension alone supports the business or how the business has changed since it was introduced. The weight afforded to this benefit is therefore limited.
15. The Council have also referred to the possible detrimental effect of odour from the rear extension on the living conditions of occupants of neighbouring properties but not included this within their refusal reasons. However, as I am dismissing the appeal on the main issue for the reasons given above, I have not pursued this matter further.

Conclusion

16. The proposal would conflict with the development plan, read as a whole. It has not been demonstrated that there are any material considerations of sufficient weight to indicate that a decision should be taken otherwise than in accordance with it. The appeal therefore is dismissed.

Hannah Guest

INSPECTOR