



Appeal Decision

Site visit made on 18 October 2022

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th January 2023

Appeal Ref: APP/N5660/W/22/3298007

24-26 New Park Road, London SW2 4UN

- 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 Mr Omar Nur against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 21/05014/VOC, dated 8 December 2021, was refused by notice dated 18 March 2022.
 - The application sought planning permission for a change of use from retail (Use Class A1) to a Cafe/Restaurant (Use Class A3) and the installation of an extract flue to the rear of the property without complying with a condition attached to planning permission Ref 17/04842/FUL, dated 16 January 2018.
 - The condition in dispute is No 9 which states that:
*"Customers are not permitted on the premises other than within the following times:
07:00 Hours to 20:00Hours - Monday through to Friday.
07:00 Hours to 20:00Hours - Saturdays.
07:00 Hours to 20:00 Hours - Sundays, Bank Holidays or Public Holidays."*
 - The reason given for the condition is:
"To protect the amenities of adjoining occupiers and the surrounding area (policy Q2 and ED7 of the London Borough of Lambeth Local Plan (2015))."
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Decision

1. The appeal is allowed and planning permission is granted for a change of use from retail (Use Class A1) to a Café/Restaurant (Use Class A3) and the installation of an extract flue to the rear of the property at 24-26 New Park Road, London SW2 4UN in accordance with the application Ref 21/05014/VOC, dated 8 December 2021, without compliance with condition numbers 1 and 9 previously imposed on planning permission Ref 17/04842/FUL, dated 16 January 2018, and subject to the conditions in the attached Schedule.

Background and Main Issue

2. Planning permission was granted for a change of use from retail to a café/restaurant (LPA Ref: 17/04842/FUL – "the original permission") in 2018; that permission restricts the operating hours of the site so that customers are permitted on the premises only between 07.00 and 20.00 each day. The appellant has applied to extend the opening hours so that customers are permitted to be on the premises until 22.00 each day. The Council refused the application because it considered that noise and other disturbance arising from

the extended operating hours of the business would have a detrimental effect on neighbours' living conditions.

3. The main issue is therefore the effect that varying the opening hours of the appeal premises would have on the living conditions of neighbouring residential occupiers, with particular regard to noise and other disturbance.

Reasons

4. The appeal site is a double unit on the ground level of a three-storey building on the north-west side of New Park Road. Other ground floor units within the same block are in a variety of commercial units, while the upper two floors consist of residential flats. The site lies within the New Park Road/Brixton Hill Local Centre.
5. The evidence before me, including my observations during my site visit, indicates that a small number of other commercial units within the centre are open late at night, including some off licences, mini-markets and fast-food takeaways which trade until 11pm (and possibly later). Given the relatively limited number and type of businesses currently trading, the centre does not appear to be one in which the evening economy is particularly significant. At the same time, it would not be unexpected or unusual to find a café or restaurant trading until 10pm in a local centre in a densely-populated part of London.
6. It is inevitable that there will be some degree of noise and activity arising from late night uses but the Council acknowledges residents living close to commercial uses should reasonably expect this; I do not disagree. I note the comments submitted by interested parties (all owners and/or occupiers of flats within Courtenay House on the opposite side of New Park Road from the appeal site) that the proposed extended opening hours at the appeal site would increase noise and disturbance, changing the character of the area.
7. A closing time of 10pm as is now sought would be earlier than some of the other businesses in the centre closed and, subject to the imposition of appropriate conditions to mitigate the potential for noise and other disturbance, would not in my view be likely to lead to an unacceptable level of disturbance for neighbouring residents. It would not in itself set a precedent for other proposals within the same local centre, as each would need to be considered on its individual circumstances, and the potential cumulative effects would also need to be taken into account.
8. The Council's officer report and appeal statement have referred to conditions on the original permission, in respect of the installation of a fume extraction and filtration system and the screening of the extract flue, a Delivery and Servicing Management Plan ("DSMP"), and waste and recycling details, not having been complied with. Although details of a DSMP and waste and recycling management have since been submitted and approved (LPA Ref: 22/00205/DET), the Council considers that it would be "premature to extend the opening hours" in view of the other matters which had not been resolved at the time the appeal evidence was submitted. However, these are matters which do not directly relate to the variation in opening hours which the appellant now seeks. and they remain capable of being dealt with by conditions, as set out in the following "Conditions" section.

9. Policy ED8 of the 2021 Lambeth Local Plan ("the LLP") seeks to support the evening economy in the borough, while also ensuring that any adverse impact on local amenity is minimised. It states that proposals for evening and food and drink uses should be accompanied by a management plan and a customer management plan, a requirement which did not form part (at least explicitly) of the equivalent Policy ED7 of the previous 2015 version of the LLP under which the original permission was granted. Although this information was requested by the Council it has not been provided either as part of the planning application or the appellant's further submissions. I note that the appellant considers that there is no need for such management plans as the proposal is for "a modest change in closing hours" to an existing evening food and drink use. However, in my view extending the closing time from 8pm to 10pm each day would put the appeal premises into territory where the effect of any increase in disturbance which might arise would be much more keenly felt by nearby residents. I therefore agree with the Council that such management plans would be necessary to ensure that extended opening hours would not cause unacceptable disturbance to nearby residents.
10. In my view, the submission and approval of a management plan and customer management plan is a matter which could be satisfactorily addressed by the imposition of a condition requiring the submission and approval of such information, though this had not been included in the Council's list of suggested conditions. I have therefore sought both parties' views on the imposition of such a condition; without one I do not consider that the proposed later opening hours would be acceptable.
11. Subject to the imposition of conditions to mitigate the effects of the use of the premises as a café/restaurant (in line with those attached to the original permission) and the extended opening hours, as I have just described, I am satisfied that varying the opening hours of the appeal premises would not cause unacceptable harm to living conditions for nearby residents as a result of noise and other disturbance. The development would therefore comply with the requirements of Policies ED8 and Q2 of the LLP which, among other things, seek to ensure that development protects amenity for nearby residents.

Conditions

12. For clarity and to ensure compliance with the tests in the National Planning Policy Framework and Planning Practice Guidance ("the PPG"), I have made amendments to the Council's suggested conditions where necessary, including to their order. I have deleted the disputed Condition 9 as indicated above, and replaced it with a new condition (9) specifying the permitted operating hours for the use of the premises.
13. The PPG makes clear that decision notices for the grant of planning permission under section 73 should restate the conditions imposed on earlier permissions that continue to have effect. With the development having commenced, I have not reimposed the standard time limit (Condition 1 of the original permission) as it is no longer necessary.
14. I have reimposed the condition defining the approved plans and other information (1), as it is necessary in the interests of certainty and to define details of the permission.

15. A condition requiring the installation and operation of a suitable approved extract/ventilation system (2) is necessary to protect the living conditions of neighbouring occupiers. Given the site history on this matter I have worded it in a way which is sufficiently flexible to allow another approved scheme (such as that approved by planning permission Ref 21/05015/FUL) to be installed instead. A condition requiring the extract flue to be screened (3) is necessary to protect the character and appearance of the area.
16. There are strict timetables for compliance with Conditions 2 and 3 because permission is being granted retrospectively, and it is not possible to use negatively-worded conditions to secure the approval and implementation of an extraction system and appropriate screening before the development takes place. For this reason I was unable to use the precise form of words suggested by the Council, although the overall purpose and effect of the conditions is the same. The timescales for compliance are as suggested by the Council, although the 6-month deadlines for the submission of a maintenance plan (Condition 2) and screening (Condition 3) are followed by a 9-month cut-off for approval. The period between the submission and approval deadlines would be sufficient for the appellant to seek to secure "deemed discharge" of the conditions (should this be considered necessary) while still complying with the overall timescales.
17. As I have explained in paragraphs 9 and 10 above, I have also imposed a further condition requiring the submission, approval and implementation of a management plan and customer management plan (4), in order to ensure compliance with Policy ED8 of the LLP. This too has a strict timetable for compliance, for the same reason as Conditions 2 and 3.
18. Conditions requiring compliance with the Delivery and Servicing Management Plan (5) and waste disposal and recycling scheme (6) approved under permission Ref 22/00205/DET are necessary to protect residential amenity and (for Condition 5) in the interests of highway safety.
19. Conditions limiting noise (7 and 8) and preventing the use of the rear garden space by customers of the café/restaurant (10) are necessary to protect living conditions for residents of the surrounding area.

Conclusion

20. For the reasons given above I conclude that the appeal should succeed. I will therefore grant a new planning permission without the disputed condition 9 but substituting another, and with an additional "management plans" condition added. Other undisputed conditions which are still subsisting and capable of taking effect are restated, though in some cases (and again for the reasons set out above) this is with amended wording.

M Cryan

Inspector

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans and other information, other than where those details are altered pursuant to the requirements of the other conditions of this planning permission:
Site Location Plan; RCH/P/01; RCH/P/02A; RCH/P/03; RCH/P/04A; Flue Product Specification document by Woods; Round sound absorber for round ducts specification document; Multicarb activated Carbon Discarb Unit Specification; unnumbered External Extract Duct Section; Technical data Sheet – AF112; Technical data Sheet – AF103; Technical data Sheet – AF100; unnumbered Additional notes.

- 2) Unless the fume extraction and filtration system hereby approved (or another similar system which has been approved in writing by the local planning authority) is implemented within 4 months of the date of this decision, and unless within 6 months of this decision an ongoing maintenance plan for the fume extraction and filtration equipment is submitted in writing to the local planning authority for approval, the use of the premises as a café/restaurant shall cease until such time as a fume extraction and filtration system, and a plan for its ongoing maintenance, is approved and implemented.

If no scheme in accordance with this condition is approved within 9 months of the date of this decision, the use of the premises as a café/restaurant shall cease until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved fume extraction and filtration system specified in this condition, that system shall thereafter be retained and maintained in working order in accordance with the approved details.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 3) Unless within 6 months of the date of this decision a scheme for the screening of the extract flue (in context to the host building, including elevations) is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 12 months of the local planning authority's approval, the use of the premises as a café/restaurant shall cease until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 9 months of the date of this decision, the use of the premises as a café/restaurant shall cease until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved screening specified in this condition, that screening shall thereafter be retained and maintained for the duration of the use and the operation of the flue.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the

time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 4) Unless within 3 months of the date of this decision a management plan and customer management plan are submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 2 months of the local planning authority's approval, the use of the premises as a café/restaurant shall cease until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 6 months of the date of this decision, the use of the premises as a café/restaurant shall cease until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, the premises shall thereafter be operated in line with the approved management plan and customer management plan.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 5) The use hereby approved shall be carried out in full accordance with the details of the Delivery and Servicing Management Plan approved under planning permission reference 22/00205/DET (dated 17 February 2022).
- 6) The use hereby approved shall be carried out in full accordance with the details of the waste disposal and recycling scheme approved under planning permission reference 22/00205/DET (dated 17 February 2022).
- 7) Noise from any mechanical equipment or building services plant, as measured in accordance with BS4142:2014, shall not exceed the background noise level L90B(A) 15 minutes, when measured outside the window of the nearest noise sensitive or residential premises.
- 8) There shall be no amplified sound, speech or music used in connection with the commercial premises hereby approved which is audible above background noise levels when measured outside the nearest residential property.
- 9) Customers shall only be permitted on the premises between the following hours:
0700 – 2000 on any day of the week, including Bank and Public Holidays.
- 10) The rear garden shall not be used for eating, drinking or smoking by patrons as ancillary or in association with the café/restaurant use of the unit.