



Appeal Decision

Site visit made on 24 January 2023

by G Bayliss BA (Hons) MA MA MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 7 February 2023

Appeal Ref: APP/V5570/W/22/3307307

95 Southgate Road, Islington, London N1 3JS

- 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 Englefield Estate Trust Corporation Ltd against the decision of the London Borough of Islington.
 - The application Ref P2022/2436/FUL, dated 27 June 2022, was refused by notice dated 22 August 2022.
 - The development proposed is use of the rear area for external seating in connection with the restaurant/retail unit at No. 95 Southgate Road and associated repositioning of storage shed, landscaping and acoustic screening.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the proposed development would preserve or enhance the character or appearance of the East Canonbury Conservation Area; and
 - The effect of the proposed development on the living conditions of nearby residents, with regard to noise and disturbance, lighting, overlooking and privacy, and smells and odours.

Reasons

Character and appearance

3. The appeal site is located on the western side of Southgate Road on a busy thoroughfare within an area of mixed character. It is a mid-terraced building and forms part of a small shopping parade with commercial units on the ground floor and predominantly residential uses above. To the rear of the appeal property is a garden which extends across several premises. Beyond this and separated from the appeal site by a brick boundary wall and high timber trellis, is a series of long, narrow gardens to three-storey residential properties on Cleveland Road.
4. The site is within the East Canonbury Conservation Area (CA). In accordance with the statutory duty set out in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I have paid special attention to the desirability of preserving or enhancing the character or appearance of the CA. This is a matter of considerable importance and weight.

5. The CA covers a relatively compact area of residential properties, interspersed with small parades of shops and other commercial activities. The buildings are typically mid-19th century with an attractive and harmonious blend of fine terraces and groups of properties. Given the above, I consider that the significance of the CA, insofar as it relates to this appeal, to be primarily associated with the attractive mix of commercial and residential properties on Southgate Road and their relationship with the more architecturally unified three-storey residential terraces to the rear with their narrow, linear gardens. The area has both architectural and historic interest.
6. The East Canonbury Conservation Area Design Guidelines (2002) (CADG) notes that the principal land use in the area is residential and fundamental to the character of the area, and states that planning permission will not be granted to change, expand or intensify commercial uses which would harm the residential character of the area (para 23.5).
7. The appeal proposal involves the use of part of the rear garden for external seating in connection with the restaurant/retail unit. An existing terrace alongside the indoor restaurant would be enlarged to create a seating area for 15 people. An acoustic timber fence, comprising solid, vertical cladding, would be erected along part of the boundary wall with the Cleveland Road properties as well as two shorter lengths to the north and south side of the reconfigured terrace. The acoustic fencing along the boundary wall would be set back to allow planting in the gap.
8. To the rear of 95 Southgate Road (No.95) the residential character of the area is immediately apparent, and the positioning of surrounding properties creates a residential enclave which shields the area from traffic noise and disturbance on Southgate Road. Whilst there are commercial ground floor uses on Southgate Road that back onto the rear gardens in the immediate area, the commercial activity does not appear to encroach out from the buildings, leaving the area to the rear as relatively quiet spaces predominantly used for gardens and associated residential activity.
9. The acoustic fencing would be tall, but only slightly taller than the historic brick boundary wall which has been increased in height by trellis fencing, and the proposed planting in the gap and associated landscaping could soften its visual effect. I also viewed a variety of other boundaries in the area, and it would not look out of place in this context. The totality of the proposed physical changes would be minimal in their nature and extent, and in my view, would not intrude or detract from the character and appearance of the area.
10. The area to the rear of No.95 and several adjoining properties is shared with residential flats occupying the upper floors, as well as providing restaurant storage. The proposed seating area would occupy only a small part of that shared space within a tightly defined area. Whilst the seating area has the potential to be used for prolonged periods at a time, the activity would not be of such a scale or nature to disrupt the residential character of the wider area and it would not have an intensive commercial character. In this regard I am mindful that to be judged to cause harm to the character and appearance of a CA, proposals must be judged according to their effect on the CA as a whole and must therefore have a moderate degree of prominence and effect. That is not the case regarding this appeal before me.

11. Given the above assessment, the proposed works would cause no harm to the character and appearance of East Canonbury CA. It is therefore in accordance with Policies D4 and HC1 of the London Plan 2021 (LP), Policies CS8 and CS9 of the Islington Core Strategy 2011 (CS), Policies DM2.1 and DM2.3 of the Islington Development Management Policies 2013 (DMP), the Urban Design Guide 2017 (UDG) and the CADG. It also meets Paragraph 197 of the National Planning Policy Framework (the Framework) which requires new development to make a positive contribution to local character and distinctiveness.

Living conditions

12. Several residential flats on the upper floors of properties on Southgate Road would be close to the proposed seating area with windows facing towards the site and at least two have small outdoor terraces. A number of three-storey residential properties on Cleveland Road also have rear windows and a number of balconies overlooking the appeal site, as well as narrow gardens which run right up to the boundary wall. The relatively close proximity of these residential properties to the appeal site creates a sensitive relationship, especially considering the apparent absence of other commercial activities likely to cause noise or general disturbance in this area. This sensitivity would be heightened using the site in the evening.
13. The proposed development therefore has the potential to mean that residential occupants are likely to experience disturbance and subsequent material harm to their living conditions as a result of noise and general disturbance caused by customers outside the premises. I note that this concern was identified back in 2012 when the Council, in approving the restaurant use, attached a condition to ensure that the garden area would not be used by staff or customers as an amenity or sitting out space. This was despite the proposal itself not proposing any rear outside access, indicating the importance that the Council placed on the potential for disturbance to surrounding residents.
14. The appellant's noise report assesses the proposed noise generated against the existing ambient sound levels, which is predominantly traffic noise, during the proposed hours of use. The report concludes that with the benefit of the acoustic screen as specified, the noise emissions from the proposed external seating area would be low and would not have any adverse impact on nearby residential occupants and would be below the 'No Observed Effect Level' when considered against the Framework and Noise PPG.
15. Having considered the appellant's noise report and the noise report submitted by a nearby resident, it is apparent to me that it is the character of the noise that will be emitted from the outdoor space that is important. Vocal noise from patrons such as talking and laughing is different to steady and continuous background noise and tends to have more attention-grabbing characteristics. In this regard the report notes that noise from people talking and laughing will alter the outcome of the assessment and indicates a greater impact than is shown by the numerical values alone. This noise, together with associated noise such as collecting crockery and moving chairs is unpredictable and unexpected compared to more continuous noise which may be easier to tolerate. Furthermore, the level of background noise, associated predominantly with traffic noise, is likely to drop in the evening when the outdoor space is likely to be at its busiest and noisiest. Therefore, the noise of patrons in the garden is likely to be much more noticeable. Although this is a relatively small

area of outdoor seating, in contrast to the much larger and more intensive use within the building itself, the concern is that even at the scale proposed it has the potential to cause noise disturbance.

16. The appellant's noise report does not refer to predicted noise levels to upper floors of residential properties, some of which have balconies and a line of sight to the proposed seating area and would seemingly not benefit from the acoustic fence. Furthermore, the report is focussed on disturbance to occupants within their properties and does not consider nearby residents enjoying their gardens, some of which are extremely close to the appeal site. Noise disturbance within the gardens is likely to be particularly significant on warm evenings when residents may want to relax in their gardens when more patrons may also want to sit outside the restaurant. At evenings and weekends there is also a greater expectation of relaxation in private gardens.
17. Alongside the direct noise impacts there would also be the sense of noise and disturbance, even with the mitigation put in place. Residents would not know when to expect the disturbance causing a state of anxiety. This would be particularly acute for residents living above commercial properties on Southgate Street where occupants would have the potential to suffer noise disturbance from both the front and rear of their properties.
18. I have also considered other potential likely impacts of the appeal proposal on living conditions. There are existing wall-mounted external lights and only small table lights are proposed. Any additional lighting would therefore be minimal, and any light spill would be largely contained by the building and boundary screening. With regard to smell and odour, the kitchen is already served by an extractor flue and any smoking or vaping would be well away from residential properties and in any event would not be allowed under the Management Plan. The proposed seating area would be well screened by the existing boundary treatment and planting and there would be no noticeable loss of privacy or overlooking.
19. I recognise that the appellant has addressed some of these potential concerns by scaling down the amount of outdoor seating, suggested restricting the hours of operation, proposes the acoustic fencing and a strict Management Plan would control the activities of customers and staff. I have also considered that there were no objections from the Council's Acoustic Officer, subject to recommending shorter operational hours. However, even with the measures in place, and suggestion of shorter operating hours, I do not consider that they would adequately mitigate the harm and make the proposals acceptable.
20. This leads me to conclude that due to the limited separation distances involved, the proposal would give rise to an unacceptable level of harm to the living conditions of occupiers of nearby residential properties due to noise and disturbance. I have not been provided with any material evidence to demonstrate that this harm would not arise or could be adequately mitigated. The development is therefore contrary to LP Policy D14, DMP Policies DM2.1, DM4.2, Policy DM4.3 and Policy DM6.1 and the UDG guidance. These require development to provide a good level of amenity including consideration of noise and disturbance. It would similarly fail to meet the Framework's core planning principle of securing a good standard of amenity for all existing occupants.

Other Matters

21. I recognise that the use of restaurant and public house gardens has been encouraged by national planning policy to support local businesses and contribute to the community and vitality of the area. I also note that this business has invested significantly in its premises over a number of years and strive to be good neighbours. However, whilst it is desirable to support economic activity there are also policies in place to ensure the protection of neighbouring amenity.

Conclusion

22. For the reasons given above, the proposal would conflict with the development plan, when read as a whole. Material considerations, including the Framework, do not indicate that a decision should be made other than in accordance with the development plan. Having considered all other matters raised I therefore conclude that the appeal is dismissed.

G Bayliss

INSPECTOR