



Appeal Decision

Site visit made on 24 January 2023

by V Simpson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 February 2023

Appeal Ref: APP/A5270/W/22/3306348

65 The Grove, Ealing W5 5LL

- 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 Roberta Amerini against the decision of the Council of the London Borough of Ealing (the Council).
 - The application Ref 217067FUL, dated 16 December 2021, was refused by notice dated 19 July 2022.
 - The development proposed is the use of the rear terrace for external seating.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the development on the living conditions of the occupiers of adjoining residential properties, with particular regard to noise and privacy.

Reasons

3. The appeal site is located within a built-up area, and is occupied by a 3-storey mid terraced property. A range of commercial businesses occupy the ground floor of most of the properties within the terrace. Together the properties form a small commercial parade fronting on to the road known as the Grove, within an otherwise predominantly residential area. Although a snap-shot in time, during my mid-week and mid-morning site visit, I observed a fairly significant level of activity within the area. This was caused by vehicle movements in the road; pedestrians travelling along the pavement to the front of the site; and customers/clients frequenting the café business within the appeal site which includes the external seating area to the front, and other businesses within the parade.
4. Occupiers of the residential apartments adjoining the commercial properties therefore experience a degree of noise associated with activity within the street below. However, this noise mainly emanates from the uses of land to the front of the buildings. In contrast, and notwithstanding the presence of the commercial kitchen to the rear of the terrace within the appeal site, land to the rear has a much quieter, more private and intimate character. It seems to me that occupiers of the neighbouring apartments therefore experience greater levels of peace and tranquillity within the rooms to the rear of the building, including those that face the proposed courtyard seating area.

5. The submitted acoustic assessment concludes that the proposal would not be detrimental to the amenity of nearby occupants, and that calculated levels of noise are below the Lowest Observed Adverse Effect Level. However, the calculations upon which these conclusions were reached were based upon 7 adults speaking simultaneously within the rear terrace area, at the volume of an adult person's typical speech. I recognise that the assessment was carried out on the basis of, amongst other matters, the proposed seating area being fully occupied, those speaking facing towards the nearest sensitive receptor, and a moderate downwind propagation to the receptors. It is also indicated that light refreshments and no alcohol would be consumed within the courtyard, and tables and chairs would be arranged to seat a maximum 2 or 3 people per table with an overall maximum of 17 seats. However, it seems to me that noise levels resulting from sources which are louder and more disturbing than that from seven adults speaking at normal volume, such as from children, or people on the same table speaking simultaneously, are likely to occur.
6. Even with groups and alcohol not being allowed and only light refreshments being served, I also have little substantive evidence which indicates that customers in the courtyard would not shout, be boisterous or speak above moderate levels. Such additional noise levels, all of which could result in sound levels exceeding the average calculated cumulative sound level, would be more disturbing to occupiers of the neighbouring residential apartments than that which has been identified within the acoustic report.
7. A Rear External Seating Area Management Plan details measures the operator of the café would implement to prevent the development from causing unacceptable harm to the living conditions of residential properties in the area. However, some of the measures identified, such as the keeping of a log of incidents on the terrace and complaints received by local residents, and the reprimanding of customers who display anti-social or challenging behaviour, would only occur after a harm has already been caused.
8. It has been put to me that some degree of noise is to be expected during the day and that outside seating areas are not uncommon in the locality. Be that as it may, the increased noise and activity levels within the courtyard resulting from the proposed development, even with the hours and customer numbers restricted as proposed, would greatly erode the quietness and relative tranquillity experienced by users of the rooms within the adjoining residential apartments to the rear of the building.
9. Having regard to paragraph 55 of the National Planning Policy Framework and relevant advice provided within the Government's Planning Practice Guidance notes, I have considered whether otherwise unacceptable development could be made acceptable by the imposition of conditions. I note comments made by the Council's environmental health department, which indicate that based upon the findings of the acoustic assessment and the imposition of a number of conditions, the proposal may be acceptable. Whilst conditions could be applied to limit the hours of use of the proposed outside seating area and the numbers of customers that would be permitted within the rear terrace at any one time, conditions requiring that only light snacks and hot drinks be served would not be reasonable or readily enforceable. Furthermore, conditions could not realistically control the volume of customers using the rear terrace. I cannot therefore conclude that any such conditions would reduce the level of noise and

disturbance to that which would not cause unacceptable harm to the living conditions of the occupiers of the adjoining residential accommodation.

10. The residential accommodation above the café on the appeal site, and at number 67 the Grove have windows at first floor level and above, which to various degrees, overlook the proposed ground floor outdoor seating area. However, due to the oblique angles between the rear terrace and these windows, views into the apartments from the rear terrace would be very limited. Furthermore, unless the occupiers of these apartments pass closely by, or stand directly in front, of the rear facing windows, their movements could not be readily observed by future users of the terrace area. The proposed development would not therefore cause unacceptable harm to the privacy of occupiers of the residential apartments at 65 and 67 the Grove. Notwithstanding this consideration, the identified harm which would be caused to the occupiers of adjoining residential properties, with particular regard to noise and disturbance, is determinative in respect of this main issue.
11. Whilst I find that no unacceptable harm would be caused to the living conditions of the occupiers of the residential apartments at 65 and 67 the Grove with particular regard to privacy, it would cause unacceptable harm to living conditions of the occupiers of adjoining residential properties, with particular regard to noise. As such, and in respect of this main issue the proposed development conflicts with the parts of policies D3, D4 and D14 of the London Plan (2021), which seek to ensure that development delivers good design which reduces, manages and mitigates noise to improve health and quality of life. It also conflicts with the parts of policies 1.1(g)(j) and 2.10 of the Ealing Development Strategy 2026 Development Plan Document (2012), and policies 7A and 7B of the Ealing Development Management Development Plan Document (2013) where they seek to protect residential character, provide a high standard of amenity for adjacent users, and reduce the environmental impact of activities by protecting and improving ambient noise levels.

Other Matters

12. When making decisions on development proposals within a conservation area (CA), section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention be given to the desirability of preserving or enhancing the character or appearance of the CA.
13. The appeal site is located within the Ealing town centre CA. The significance of the part of the CA within which the appeal site is located, is in part, informed by its mix of residential and commercial properties. The comings and goings, sound levels and general activity associated with the uses of these properties, create a sense vibrancy within the area, which contributes positively to the character of the area and towards the significance of the CA.
14. The proposed development would provide an outside seating area which would be used in association with an existing café business. The proposed use of this space would facilitate an increased level of noise and activity being generated within the appeal site. However, the type and level of activity generated would be in keeping with the vibrancy of the CA. As such, it would have a neutral effect of the character of the CA, which would preserve the character of the CA. The appearance of the CA would also be preserved.

15. The proposed development would support the continued growth of a small business, which the evidence suggests, is generally well supported within the local community, and which would support economic prosperity and growth in the area. It would occupy a currently under-utilised space, and also improve the well-being and experience of customers who would be able to sit outside, as is increasingly expected by customers and generally supported by government. In addition, I accept that the appellant has made improvements to the business premises, and installed a CCTV system which improves surveillance within the area. However, given the small scale of the development proposal, the weight that I attribute to these benefits is limited.

Conclusion

16. Notwithstanding the presumption in favour of sustainable development at paragraph 11 of the Framework, paragraph 12 of the same document confirms that the presumption does not change the statutory status of the development plan as the starting point for decision-making.
17. The proposed development conflicts with the development plan when considered as a whole and there are no material considerations, either individually or in combination, that outweigh the identified harm and associated development plan conflict.
18. For the reasons given above, I conclude that this appeal should be dismissed.

V Simpson

INSPECTOR