



# Appeal Decision

Site visit made on 4 July 2023

**by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 19<sup>TH</sup> July 2023**

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**Appeal Ref: APP/U4230/W/23/3315285**

**261 Monton Road, Eccles, Salford M30 9LF**

- 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 Kevin Grannell against the decision of Salford City Council.
  - The application Ref 22/80232/FUL, dated 14 July 2022, was refused by notice dated 8 December 2022.
  - The development proposed is described as 'a seating area to the rear of the bar.'
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## Decision

1. The appeal is dismissed.

## Procedural Matters

2. The Salford Local Plan: Development Management Policies and Designations (SLP) was adopted on 18 January 2023. This now forms the statutory development plan for the area, substituting the saved policies of the City of Salford Unitary Development Plan (2006) referred to in the Council's decision notice. For the avoidance of doubt, I have determined the appeal based on the current development plan.
3. At the time of my visit a section of the rear yard area had been sectioned off with a fence, laid with artificial grass and set with wooden benches, some of which were being stored. This area differs from that shown on the submitted plans. In reaching my decision I have assessed the development as shown on the submitted plans and not as built on site.

## Main Issue

4. The main issue in relation to this appeal is the effect of the proposal on the living conditions of neighbouring residents, with regard to noise and disturbance.

## Reasons

5. The appeal site relates to an end of terrace property in use as a restaurant and bar. It is located within the Monton Neighbourhood Centre which comprises numerous retail, café, restaurant and other commercial premises that cater for both a day and night-time economy. Although a snapshot in time, I observed that Monton Road is well-trafficked by both vehicles and pedestrians, producing an active character, typical of a thriving commercial centre.
6. The proposed change of use of the rear yard into an outdoor seating area would extend along part of Alfred Street, which in contrast is a quieter residential street of terraced dwellings. Being to the rear of the appeal site the existing yard area is relatively secluded and quieter when compared with the

commercial street frontage. A narrow alleyway separates the appeal site from the flank elevation of No 2 Alfred Street which contains a ground floor window. The front elevations of No's 1 and 3 Alfred Street containing living and bedroom windows are approximately 11m away on the opposite side of the road<sup>1</sup>.

7. Tolerance of noise is subjective, what may be acceptable to one person, may be unacceptable to another. It is therefore necessary in determining this appeal, to make an informed judgement based on the technical evidence provided, whilst also having regard to the site context, the nature of the noise and the degree to which it may cause disturbance to surrounding occupiers.
8. The proposed outdoor seating area would enable increased capacity for eating and drinking at the appeal premises amounting to an intensification of use but in an outdoor environment. Moreover, the purpose-built covered eating area would encourage customers to spend more time outside in the evenings and in more inclement weather, than is currently possible.
9. A Noise Impact Assessment (NIA) has been put to me in support of the proposal which suggests that it would result in a negligible change in noise levels at the closest residential receptors, that would be difficult to perceive above the existing background noise levels. I acknowledge that the NIA is based on a baseline measurement considered to be representative of the most noise sensitive period when the seating area would be operational. However, the baseline data was collected on one occasion and as such, the implications of different weather conditions on the ability for noise to travel, does not appear to have been assessed or modelled.
10. Furthermore, although the NIA considers the worse-case scenario in terms of the number of customers it appears to have been confined to assessing the impact of noise emitting from modelled normal levels of conversation. It seems unrealistic to consider that future customers would all have conversations at normal vocal levels, all of the time. Other sources of noise may also be audible such as benches being moved, the use of glasses, cutlery and crockery, the operation of the outdoor bar and pizza oven and the transference of music from inside the premises whenever the external door is opened. Whilst these might not generate significant levels of noise in and of themselves, they would contribute to the noise generating effect of the proposal.
11. The Environmental Health Officer (EHO) highlights that the noise from the outdoor seating area would not be counteracted by traffic noise during the evenings when vehicle trips are reduced. This is also likely to be the case on quieter days of the week, such as Sundays. When the outdoor seating area is at capacity, voices are more likely to be raised to counter the background level of conversation. If customers drink alcohol, voice levels are likely to be raised and singing or shouting could also occur. Such noise is likely to be more intermittent and startling as well as difficult to filter out, than the more consistent noise of road traffic. This would be particularly distracting and disconcerting to nearby residents who are likely to feel uncomfortable in their homes as a result. During summer months when windows within neighbouring dwellings may be open and when the outdoor area is more likely to be in use and at capacity, the noise impact is likely to be exacerbated. The noise and

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<sup>1</sup> As cited by the Council in their statement of case and undisputed by the Appellant.

disturbance that would arise from the proposal would thus, be harmful to the living conditions of neighbouring occupiers.

12. A Noise Management Plan (NMP) has been presented setting out suggested measures and conditions to minimise the projected noise impact, including limitations on the number of patrons, the hours of operation, staff managing the behaviour of customers, signage, and the prohibition of amplified music<sup>2</sup>. Neighbouring properties would be provided with some protection by the proposed acoustic fence and the proposed planting, subject to the height and species when implemented. Nevertheless, these measures would not provide protection in respect of the first-floor windows within the front elevation of No's 1 and 3, which would have a direct line of sight to the outdoor area. There would be no other buildings or structures in between to attenuate noise. Whilst the proposed covered area would also be set off the rear boundary and attenuated, it would nonetheless remain open sided such that noise would not wholly be contained.
13. Although the proposed seating area would not operate late into the night, nearby residents would be aware of noise from the proposal in the evenings and at weekends, times when they could reasonably expect to enjoy the peaceful use of their properties. The conclusion that the noise impact of the proposal would be acceptable relies on any additional loud noise and unreasonable behaviour being swiftly and effectively dealt with by staff. The effectiveness of this is uncertain. Prompt action by staff may limit the impact on surrounding residents, but by the time such measures are taken, disturbance will have already been experienced.
14. Notwithstanding the conclusions of the NIA or EHO, I find that given the close relationship of the appeal site to nearby dwellings, the nature of the noise generated by the proposal and the limitations of the acoustic fence, the proposed mitigation and management measures would be insufficient to adequately prevent noise and disturbance from occurring.
15. The proposal would adversely affect the living conditions of neighbouring occupiers, with particular regard to noise and disturbance. The proposal would conflict with Policies D5, EM7, PH1 and TC4(1) of the Salford Local Plan: Development Management Policies and Designations (SLP) 2023 which amongst other things, seek to ensure that new development shall minimise and mitigate pollution, such that it would not have an unacceptable impact on the amenity of other buildings and spaces. Conflict would also arise with paragraph 130 of the National Planning Policy Framework (the Framework), which requires new development to have a high standard of amenity for existing users.

## **Other Matters**

16. A number of premises along Monton Road offer outdoor seating for their customers. However, the majority are located to the front on the wide pavements where activity and therefore background noise is greater. Regardless, this proposal has been assessed in respect of the specific context of the appeal site where there are a number of dwellings in proximity, on a street that is characterised by a quieter residential atmosphere.

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<sup>2</sup> The Noise Management Plan.

17. The existing premises was granted planning permission on appeal, to operate as a bar and restaurant to which a condition was attached preventing the use of the rear yard area by customers<sup>3</sup>. Whilst additional information in the way of a NIA and NMP has been put to me that was not before the previous Inspector, it does not justify permitting a development that I have found would have an adverse effect on the living conditions of neighbouring occupiers. Furthermore, the proximity of neighbouring dwellings has not altered since the previous appeal decision.
18. This proposal has sought to positively address concerns highlighted during the consideration of a previous planning application for a similar proposal<sup>4</sup> through design changes, the submission of an NIA and NMP and a reduction in the hours of operation. I also note the Planning Officer recommended the proposal for approval, but it subsequently refused by the Planning Committee. However, considered objectively and in context, I have come to my own judgement based on the evidence before me and my observations. I find the proposed mitigation would not be sufficiently robust to prevent the proposal from exerting an adverse effect on the living conditions of neighbouring occupiers for the reasons given above.
19. Reference is made to a rear outdoor seating area at 188 Monton Road which is said to have planning conditions that provide similar control measures to those proposed before me<sup>5</sup>. Specific details of this planning permission have not been supplied, nor details of whether any complaints regarding noise have arisen such that a meaningful comparison could be made. Nonetheless, I observed the rear outdoor area at 188 Monton Road is smaller and set within a different context given the presence of the adjacent 24-hour public carpark, where there is a heightened degree of activity. The circumstances are not therefore comparable.
20. The lack of objections from statutory consultees is a neutral matter, that weighs neither for, nor against, the proposal.

## **Conclusion**

21. For the reasons given above, having considered the development plan as a whole, and all other considerations, the appeal is dismissed.

*M Clowes* - INSPECTOR

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<sup>3</sup> Appeal reference APP/U4230/W/19/3243600 in relation to planning application 19/73773/FUL.

<sup>4</sup> Reference 21/77898/FUL for the creation of a covered seating area to the rear with acoustic panelling together with new access stairs and boundary fencing.

<sup>5</sup> Planning application 20/75613/FUL.