



Appeal Decision

Site visit made on 17 July 2023

by M Ollerenshaw BSc (Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 August 2023

Appeal Ref: APP/E5900/W/23/3314911

37 Coate Street, London E2 9AG

- 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 Daniel Harris of Iron Works Ventures Limited against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref PA/21/01201, dated 19 May 2021, was refused by notice dated 25 July 2022.
 - The development proposed is construction of a roof extension, change of use of first floor and part of ground floor from office (Class E) to Residential (Class C3), to provide 1 x 2-bedroom unit, and 2 x 1-bedroom units, recycling and waste and cycle stores. Ground floor refurbished to continue to provide commercial (Class E) accommodation.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. An amended scheme was submitted during the Council's consideration of the application which reduced the number of residential units to three, with commercial use on the ground floor and a communal residential entrance on Coate Street. I have taken the description of development from the appeal form, which is effectively the same as that used in the Council's decision notice, as this accurately describes the revised proposal.

Main Issues

3. The main issues are whether the proposal would provide satisfactory living conditions for future occupants with particular regard to noise, disturbance and overheating; and the related effect on the operation of the nearby public house.

Reasons

4. The appeal site concerns 37 Coate Street, a two storey building located on the southern side of the street which is predominantly residential in character. The building was last used as offices but is currently vacant. 37A Coate Street, a mixed-use building with commercial and residential accommodation, is located to the west; and to the east lies the Sebright Arms. Sebright Passage, a narrow alleyway, runs between the appeal building and the Sebright Arms.
5. The proposed dwellings would occupy the first and second floors of the building. They would contain windows on the eastern elevation of the building facing directly towards Sebright Passage and the side elevation of the Sebright Arms. The windows at first floor would serve the open plan living/dining rooms and kitchens, and there are also bedroom windows at second floor level on this side.

6. The Sebright Arms is a public house with ancillary residential accommodation above. A live music venue, I understand that it hosts such events on three to four nights a week. It currently opens until 11pm on Sundays to Wednesdays, midnight on Thursdays, and until 1.30am on Fridays and Saturdays, though it has a licence until 2am on Fridays and Saturdays.
7. Part of Sebright Passage is owned by the Sebright Arms and, at the time of my site visit, was partly occupied by associated outside seating which could potentially accommodate a relatively large number of patrons. The passage is also used by smokers and by pedestrians walking between Coate Street and Hackney Road. The public house includes an entrance door on Coate Street and a side entrance onto Sebright Passage. My understanding is that the side door onto the passage is the focus for the comings and goings of patrons in order to draw activity away from the residential setting of Coate Street.
8. The public house is a source of noise and there is potential, given its proximity, for that noise to be transmitted to the first and second floors of the appeal building through the building fabric and through the window openings. In addition to noise arising from within the building, including live music, I consider that activity and noise around the outside of the premises, caused by patrons using the outside seating area or smoking and when dispersing around closing time from the side door, would have the potential to result in significant noise disturbance to future occupiers of the development given the proximity to the side windows. This would be particularly the case during the summer months when the outside seating is likely to be used more intensively and later at night.
9. The appellant's noise assessment indicates that acceptable internal noise levels would be achieved within the new units, subject to the mitigation measures proposed, including a Mechanical Ventilation and Heat Recovery System (MVHR). However, there is no indication that the use of the outside seating area has been taken into consideration. The noise surveys were carried out in early March and may not be fully representative of noise levels during the busier summer months when the outside area would be more actively used.
10. Furthermore, the recommendation in the noise assessment for a proposed robust glazing specification to provide noise attenuation appears to be contradicted by the submitted drawings, which indicate that the existing first floor windows would be retained subject to condition and security. Moreover, for the MVHR to be effective in relation to noise mitigation, future occupiers would need to keep their windows closed. The windows would not be fixed shut but would be openable, including for the purposes of purge ventilation. There is no certainty that occupiers would keep the windows closed. Indeed, I consider that the need to keep windows closed in order to avoid exposure to unacceptable levels of noise would create an oppressive internal environment for the future occupiers and be harmful to their living conditions. Residents would have a reasonable expectation that they would be able to open their windows without being subjected to unacceptable noise. Consequently, the noise assessment does not provide sufficient clarity and robustness to enable me to conclude that living conditions for future occupiers would be acceptable.
11. Therefore, the condition suggested by the appellant to ensure that the windows installed facing the Sebright Arms are non-openable would not be reasonable. Based on the evidence before me, I cannot conclude that the proposal would

have an acceptable effect on the living conditions of the future occupiers of the proposed dwellings in respect of noise and disturbance from the public house.

12. In accordance with the Guidance¹, the appellant argues that the noise impacts would be partially offset as the western side of the appeal building would provide 'a relatively quiet façade' as it is oriented away from the Sebright Arms and the private amenity spaces would also be located on this side and as far away as possible from the noise generating use. It is also stated that there are public open spaces within close proximity which future occupants could use.
13. The first floor habitable rooms would not contain windows to the western side of the building. Whilst the bedrooms on the second floor would include windows on the western side, these rooms would also contain windows on the eastern side, where I have identified that noise from the adjacent public house is likely to be a source of significant noise and disturbance. On that basis, and due to the proximity of the public house, I do not consider that the proposal would provide a relatively quiet façade. Given the relationship of the appeal building to the public house and its outside seating area, I am not persuaded that the private amenity areas would be relatively quiet even if these would be on the opposite side of the building. Consequently, these factors would not sufficiently offset the harm arising from the noise impacts that I have identified.
14. Although future residents of the development would be aware of the proximity of the Sebright Arms, there is no certainty they would be more accepting of a higher level of noise. Therefore, this does not justify the creation of dwelling units which do not provide acceptable living conditions for residents.
15. Whilst the appellant argues that other existing residential properties on Coate Street coexist with the Sebright Arms, these have a materially different relationship to the public house and there is no substantive evidence before me to suggest that noise levels within those properties are acceptable. The appeal property has a particularly close relationship with the public house and the majority of the habitable room windows of the dwelling units would face directly towards it and the outside seating area with very little separation. The existing residential properties on Coate Street therefore do not justify the compromised living conditions that would result from the appeal proposal.
16. Had I been minded to allow the appeal, a condition could have been imposed to require submission and implementation of a Construction Management Plan to minimise noise disruption during the construction phase of the development. However, such a condition, and the other conditions suggested by the appellant to secure noise mitigation, would not overcome the harm I have identified.
17. I note the Council's objections regarding overheating. Nonetheless, the thermal model in the appellant's overheating report demonstrates that with the inclusion of the MVHR and a cooling coil system, all rooms within the development would comply with thermal comfort guidelines. As such, the Council's concern about overheating would not warrant dismissal of the appeal, although this reasoning does not override my other findings in respect of living conditions.
18. Policy D13 of the London Plan (2021) sets out the 'Agent of Change' principle which places the responsibility for mitigating impacts from existing noise and other nuisance-generating activities or uses on the proposed new noise-

¹ CD-G3, Paragraph 011 Reference ID: 30-011-20190722

sensitive development. It also seeks to ensure that established noise generating uses, including public houses, remain viable and can continue or grow without unreasonable restrictions being placed on them.

19. Given my conclusion in respect of noise and disturbance and the effect on future occupiers' living conditions, it is not possible to ascertain whether the proposed development would result in any future restrictions on the use and operation of the adjacent public house through justifiable complaints from its occupants. Such complaints could lead to enforcement action restricting activities at the public house.
20. For the above reasons I conclude that, notwithstanding the revisions to the scheme, the proposal would not provide satisfactory living conditions for future occupiers, having particular regard to noise and disturbance. The continued operation of the public house could be threatened with a possible consequential impact on its long-term future. The proposal would conflict with Policies D.DH8 and D.ES9 of the Tower Hamlets Local Plan 2031 (2020), which, amongst other things, require that development protects and where possible enhances the extent of the amenity of new and existing buildings and their occupants, and minimises noise impacts. It would also conflict with London Plan Policies D13 and D14 and paragraph 187 of the National Planning Policy Framework (the Framework), which place the responsibility for mitigating impacts from existing noise generating activities or uses on the proposed new noise-sensitive development and not to put unreasonable restrictions on existing businesses.

Other Matters

21. I note the appellant's concerns with the Council's handling of the application and the pre-application advice provided. However, that is a procedural matter which does not impact on my assessment of the planning merits of the case.
22. I have had regard to the benefits of the scheme, including the provision of three new dwelling units to the Council's housing supply, the re-use of an under-utilised and previously developed site, and retention of employment use on the ground floor. The employment opportunities created during the construction phase of the development and spending in the local area by future occupiers also weigh in the proposal's favour. Given the modest scale of the development, I give these matters limited weight. I share the Council's view that the proposal would have an acceptable impact on highway safety and on the character and appearance of the Hackney Road Conservation Area, though lack of harm in respect of these matters is effectively neutral rather than weighing positively in the proposal's favour. I am satisfied that despite the limited benefits summarised above, that these would be outweighed by the adverse impacts.

Conclusion

23. The proposal does not accord with the development plan as a whole and there are no other considerations, including the Framework, that indicate that I should take a different decision other than in accordance with this.
24. For the reasons given above, I conclude that the appeal should be dismissed.

M Ollerenshaw

INSPECTOR