



Appeal Decision

Site visit made on 20 June 2023

by Elaine Moulton BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th August 2023

Appeal Ref: APP/K5030/W/23/3314035

21 Widegate Street, City of London, London E1 7HP

- 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 Widegate Street Bar Ltd against the decision of City of London Council.
 - The application Ref 22/00639/FULL, dated 15 July 2022, was refused by notice dated 14 December 2022.
 - The application sought planning permission for material change of use of the Premises from restaurant (A3) and retail (A1) uses to use as a Drinking Establishment (Class A4) at without complying with a condition attached to planning permission granted on appeal Ref APP/K5030/C/18/3205199, dated 27 August 2019.
 - The condition in dispute is condition No 4 which states that: *The drinking establishment use hereby permitted shall not be open to customers between the hours of 2300 on one day and 0700 on the following day on Mondays to Sundays.*
 - The reason given for the condition (found at paragraph 33 of the appeal decision) is: *to allow residents respite from any noise arising from the premises at times when they would have reasonable expectations for quiet to sleep and relax.*
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Decision

1. The appeal is dismissed.

Preliminary Matters, Background and Main Issue

2. The application form, supporting documentation and decision notice all refer to planning permission Ref 16/00061/UWDP. The original planning permission, for the material change of use of the premises to a drinking establishment, was, however, granted on appeal against an enforcement notice issued by the Council. Ref 16/00061/UWDP relates to that enforcement notice and not to a planning permission. I have therefore included the appeal reference in the banner heading above, as it granted planning permission for the use of the premises and imposed the condition in dispute.
3. The permission was subject to a number of conditions including one stipulating that the drinking establishment should not be open to customers between the hours of 2300 on one day and 0700 on the following day on Mondays to Sundays. Under the proposal considered by the Council the premises would open 0700 to 2300 on Sunday to Wednesday and 0700 to 0130 from Thursday to Saturday including 30 minutes finishing up time.
4. The appellant has stated that the proposed extension of opening hours is to widen customer choice and better meet the needs of the whole community, who now lead more flexible lifestyles. However, the Council has raised concern

that the extended hours would adversely affect the living conditions of neighbouring residents.

5. Taking the background into account, the main issue is whether the disputed condition is reasonable or necessary in order to protect the living conditions of neighbouring occupiers, having particular regard to noise and disturbance.

Reasons

6. The appeal property forms the ground floor and basement of a mid-terrace building in central London. The surrounding area has a mixed-use, urban character, which includes public houses, restaurants, and offices.
7. There is residential accommodation immediately above the site in the same building. In addition, there is also residential accommodation above other commercial premises on Widegate Street and directly to the rear of the appeal site, at 2-3 Sandy's Row.
8. The proposal is supported by a Noise Impact Assessment (NIA), dated 14 July 2022, and by various documents setting out management policies relating to the operation of the premises and the premises license. I have also been provided with a copy of the appeal decision, Ref APP/K5030/C/18/3205199 (the previous appeal), which imposed the condition in dispute. In reaching my decision I have had regard to these documents and to the appeal decision.
9. The NIA concludes that noise from customers leaving the bar at the end of the evening will be below the existing average background noise level at night for this area. This conclusion is based on a group of 10 people outside the premises at the end of the evening of which 50% are talking simultaneously at the upper end of the normal speaking range. The appellant considers this to be a worst-case scenario.
10. There have been no formal complaints since May 2021. Nonetheless, it is clear from public comments on the current appeal proposal, and the complaints from local residents as referred to by the Inspector in the previous appeal decision, that the character and volume of noise arising from late night activity can be disruptive. Although many customers will be considerate, speak in small groups and in hushed voices as set out in the NIA, it is likely that singing and shouting would be experienced on a frequent basis. As the NIA does not assess such behaviour, I consider that it is not suitably robust as a basis to conclude that the appeal proposal would not introduce unacceptable noise and disturbance to the detriment of the living conditions of nearby residents.
11. Given the urban location and the mix of uses nearby, the occupiers of the neighbouring properties will be used to noise and activity. Furthermore, they may, where practicable, protect themselves by, for example, avoiding sleeping near open windows. Nonetheless, the residents would have a reasonable expectation of relief from noise and disturbance, particularly during the proposed additional period which is at a time when they would wish to sleep. I consider that the measures that the nearby residents could take would not sufficiently address the increase in noise and disturbance arising from the appeal proposal and, in any event, could not be secured through the imposition of conditions.
12. Whilst measures such as the operation of the dispersal and door management policies, and signs asking customers to leave quietly could reduce the risk of

crime and anti-social behaviour, they would not entirely remove noise and disturbance associated with customers outside of the premises. Even with the management measures proposed, the business would ultimately have little control over the lawful activity of its customers on the pavement outside of, or near to, the appeal building. Such activity would be at a time when other drinking establishments are closed and would therefore be directly linked to the proposed extended hours.

13. The Council have not referred to any complaint since acoustic mitigation works were carried out to the building as required by a condition imposed on the planning permission. This might suggest that a robust envelope to contain internal noise has been created within the building. Nonetheless, this would not address noise outside the premises. Therefore, even if I were to accept that such works effectively contains noise emanating from the building this does not support the proposed extension of opening hours.
14. I am aware that the application site is licensed under the Licensing Act 2003 for the hours proposed. Nonetheless, this regime, while considering the matter of public disturbance, is distinct from planning and has differing considerations. Although the license is a material consideration in the determination of the appeal, it does not mean that planning objections to the proposal on noise grounds cannot be raised. Having exercised my own planning judgement based on the appeal submissions and my observations on site, I consider that the opening hours of the premises should not be extended as proposed for the reasons set out above.
15. The appellant has suggested that planning permission could be granted for a temporary period to allow the effects of the proposal to be assessed. The Planning Practice Guidance notes that such an approach may be appropriate where, for example, a trial run is needed to assess the effect of the development on the area. However, for the reasons set out above, the extended hours proposed are unacceptable in principle. Any trial period would be likely to lead to unacceptable noise and disturbances for nearby residents, throughout its duration. Consequently, varying the condition to permit a temporary extension to the opening hours would not be appropriate in this instance.
16. I have also considered a shorter extension of the approved opening hours. It is, however, apparent from the information, that the current hours of opening are in line with other licensed premises within the area. Consequently, any extension of the opening hours would introduce noise and disturbance when other, similar, premises are closed and do not contribute to the background noise levels. Furthermore, the imposition of conditions restricting the time of last entry into the premises and the time of use of rear courtyard, would not address the noise arising from customers leaving the premises.
17. Taking the above matters into consideration, I conclude that the condition is reasonable and necessary having regard to the living conditions of the occupiers of neighbouring properties and to the likely levels of noise and disturbance associated with the use of the premises. Varying the wording of the condition as proposed would be likely to have a materially harmful effect on the living conditions of neighbouring residential occupiers. The proposal is therefore contrary to Policies DM15.7, DM21.2 and DM3.5 of the City of London Local Plan 2015. These policies require, amongst other things, that development

proposals involving evening and night-time economy uses, avoid significant adverse noise impacts and negative impacts on local residential amenity.

Other Matters

18. The site lies within the Bishopgate Conservation Area (CA). As such I have had regard to the statutory duty to pay special attention to the desirability of preserving or enhancing its character or appearance. Neither party suggests that the proposal would harm the character or appearance of the CA. Given the nature of the proposal and the area, I agree. For the same reasons, I consider the development will preserve the setting of the listed buildings at Sandy's Row Synagogue and 24-25 Widegate Street. However, the lack of conflict is a neutral factor in the overall planning balance and does not justify allowing the appeal given the harm that I have identified.
19. The proposal may provide benefits to the vitality and viability of the area, increase business activity, assist in the retention of existing employment, and create new jobs. Such benefits do not, however, outweigh the harm I have identified.
20. It has been suggested that the proposal would assist in a reduction in street drinkers, rough sleeping, crime, litter and anti-social behaviour through good lighting, CCTV coverage, litter removal and the presence of professional personnel. However, even if such benefits were to exist, they would not outweigh the harm that I have identified.

Conclusion

21. 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.
22. For the reasons given above the appeal should be dismissed.

Elaine Moulton

INSPECTOR