



Appeal Decision

Site visit made on 3 May 2023

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 September 2023

Appeal Ref: APP/A5840/W/22/3311162

The Woolpack, 98 Bermondsey Street, Southwark, London SE1 3UB

- 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 Young & Co's Brewery PLC against the decision of the Council of the London Borough of Southwark.
 - The application Ref 22/AP/2336, dated 30 June 2022, was refused by notice dated 5 October 2022.
 - The development proposed is the erection of single storey rear extension and a mezzanine terrace with retractable roof; the replacement of an acoustic screen, installation of new bin stores and external bar; updated landscaping; alterations to the fenestration on the rear elevation and the installation of 1x new chiller condenser and relocation of existing plant.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the banner heading above is taken from the appeal form. I have used it in preference to the wording originally given on the planning application form as it provides a slightly more comprehensive description of the proposal.
3. The Government published a revised National Planning Policy Framework ("the Framework") on 5 September 2023, replacing the previous version published in July 2021. The amendments made did not have any bearing on the issues in this appeal, and it was therefore not necessary to seek comments from the main parties on the updated Framework. Where I have referred to specific paragraphs of the Framework, the numbering used is that of the September 2023 version.

Background and Main Issue

4. The proposed development is a package of extensions and alterations at the rear of a public house, principally the erection of a single storey extension including a bar area and a bin store, an external mezzanine terrace, along with new acoustic screening, and the relocation of plant (as well as the installation of a new condenser unit) to an existing flat roof.
5. The decision notice issued by the Council gave two reasons for which planning permission had been refused, the first of which referred to the potential for the

external staircase to the mezzanine terrace to obstruct the safe evacuation of the pub's customers in the event of a fire. The appellant's appeal submission included additional evidence on this matter, including an addendum to the original fire statement¹. The Council stated that it was satisfied with the further detail which had been provided, and that it therefore no longer wished to maintain that reason for refusal. None of the evidence before me indicates that I should take a different stance to the Council on this matter.

6. The main issue is therefore the effect of the proposed development on living conditions for the occupiers of neighbouring residential properties at Nos 96 and 102 Bermondsey Street, No 2A Morocco Street, and No 5 Tyers Gate, with particular regard to noise disturbance.

Reasons

7. The appeal property is a long-established public house on the west side of Bermondsey Street. It is in a densely-built urban area close to London Bridge station characterised by narrow streets which host a vibrant mixture of residential, commercial and hospitality uses. The Woolpack is a three-storey building, on a relatively deep plot; at the rear there are various small extensions and outbuildings, and a beer garden which has covered seating areas. The beer garden is enclosed by neighbouring residential (or part-residential) buildings to the north and south, with those at No 96 Bermondsey Street (to the north-east), No 5 Tyers Gate (to the north), No 102 Bermondsey Street (to the south-east)², and No 2A Morocco Street (to the south) being of particular relevance to this appeal. Leathermarket Gardens, a public park, lies immediately to the west of the beer garden, from which it is separated by a high wall.
8. The proposed development would see a single-storey rear extension built into the beer garden at the rear of the pub's main ground floor bar, to provide new male toilets, a new WC for disabled customers, and a glass wash station. It would also include an outdoor bar area and a new bin store within the beer garden. The roof of the extension would be used as a terrace, along with a first-floor mezzanine level which would be erected above the existing covered seating areas on the north side of the beer garden; this would be partly covered by an opening/retractable roof, and accessed from a new steel spiral staircase within the beer garden. A new acoustic screen would be erected at the southern edge of the mezzanine, above the single-storey extension. The pub's existing air conditioning and heat dump units would be retained on or relocated to the flat roof area above the kitchen on the north side of the site; an additional condensing unit would also be installed on that roof as part of the scheme.
9. The mezzanine terrace would be able to accommodate up to 48 customers, although the proposed extension and other works would result in some loss of space within the existing beer garden, so that the scheme would lead to a net increase in capacity within the whole beer garden and terrace of around 32

¹ Firesafe Solutions (UK) Ltd – 14 November 2022.

² From the information before me, including submissions from interested parties, it appears that the flats on the upper floors of the buildings referred to separately by the main parties as Nos 102 and 104 Bermondsey Street and No 2C Morocco Street are actually within the same internally-connected development. For consistency with the terminology used by the main parties, I have necessarily differentiated between the three addresses when considering the technical noise evidence; however, my overall conclusions should be taken as applying to the entire group.

customers. The Council considers that noise from the new terrace area would have an unacceptable impact on living conditions for nearby residents due to its proximity to neighbouring flats; several interested parties made submissions to the same effect.

10. The appellants submitted reports addressing noise from patrons and plant ("NAR" and "PNAR" respectively)³, as well as two acoustic technical notes ("ATN") responding to comments from the Council's Environmental Protection Team ("the EPT") and the reason for refusal⁴. The NAR included measurements of the average⁵ and background⁶ noise levels taken in the beer garden during the pub's daytime (11.00–19.00) and evening (19.00–23.00) opening periods over a weekend. It then predicted post-development noise levels for two situations, both based on the terrace being at full capacity on a busy Friday evening; the "full occupation" scenario⁷, and a short-term "maximum scenario" which added an additional "small rowdy group" of six people shouting⁸.
11. The Council criticised the NAR's assumptions of the additional numbers of customers using the beer garden and terrace. However, the approach taken seems to me to be a reasonable one as it reflects the likelihood of the terrace being full only on the busiest evenings. Interested parties also commented that the NAR noise measurements, taken during August 2021, were not an accurate representation of the current position either as a consequence of Covid restrictions having only recently been lifted and hospitality venues still being uncharacteristically quiet, or more simply because "London empties during August". However, both the time of year and the lingering effect of Covid restrictions may well have made it more likely than at other times that pubgoers would have chosen to drink outside in the beer garden; there is therefore no substantive evidence to demonstrate that the NAR is not robust in these respects.
12. The NAR predicted noise levels at the six closest adjacent residential windows⁹ under both scenarios were compared to the Friday evening average noise level surveyed in the beer garden. The "full occupation" scenario predicted an increase in noise levels of less than 0.1dB at all six; for the "maximum scenario" the predicted increase ranged from less than 0.1dB at No 104 Bermondsey Street and No 2C Morocco Street to 0.9dB for the third-floor bedroom at No 102 Bermondsey Street. The NAR referred to guidelines produced by the Institute of Environmental Management & Assessment which advise that an increase in noise levels of between 0.1 and 2.9dBA would have a "slight impact". It also included a subjective impact assessment which indicated that a 3dB change in noise levels is generally accepted to be "just perceptible".
13. The surrounding area is one where visitors to the various hospitality operations are part and parcel of a busy evening environment. The Woolpack and its beer

³ RBA Acoustics – *Noise Assessment Report* 27 June 2022 (Reference 11237.RP01.NAR.1, Revision No 3) and *Plant Noise Assessment* 27 June 2022 (Reference 11237.RP01.PNA.0, Revision No 0)

⁴ RBA Acoustics – *Acoustic Technical Notes* 7 September 2022 (Reference 11237.ATN01.EPT.0, Revision 0) and 9 November 2022 (Reference 11237.ATN02.EPT.1, Revision 1)

⁵ The L_{Aeq} values.

⁶ The $L_{90, 15 \text{ minutes}}$ values.

⁷ The L_{Aeq} value, calculated on the basis of half of the 48 people on the terrace simultaneously talking with raised voices, and modelled with the 24 sources evenly distributed around the terrace.

⁸ The L_{max} value, calculated as for the first scenario with an additional "small rowdy group" of six people shouting, modelled with six "shouters" seated close to the nearest sensitive receptor at the rear of No 102 Bermondsey Street.

⁹ Second floor of No 96 Bermondsey Street, first, second and third floors of No 102 Bermondsey Street, first floor of No 104 Bermondsey Street, and first floor of No 2C Morocco Street.

garden are long-established features of the neighbourhood, and local residents no doubt expect some degree of noise disturbance as a result. The technical studies indicate that the development would lead to a small increase in noise levels for neighbouring residents. However, the appellants' evidence also stated that "noise levels resulting from use of the pub garden are already above the guidance internal noise levels in BS 8233"¹⁰.

14. Notwithstanding this, the appellants challenge assertion that the Council's recommended noise levels are not met. The Council's guidance, set out in its November 2019 *Technical Guidance for Noise*, has two sections which are potentially relevant. The first relates to "noise from entertainment and leisure venues" (including "noise from people drinking or smoking outside and dispersing from the premises") which sets a standard related to the background noise ($L_{90(5 \text{ min})}$) value. The second is the section dealing with "other noise sources", including beer gardens which describes an approach to acoustic assessments referring to "relevant general standards such as WHO standards and BS 8233:2014). The Council has not provided any further technical evidence in respect of existing noise levels at the site, and I note also that there have been very few recorded complaints about noise nuisance (the Council's EPT reports a single complaint in 2021, and the appellants' "final comments" refer to two within the last decade – but in any event the number is very small). There is nothing before me to suggest that the Council has taken (or even reached a point where it has seriously considered taking) any form of statutory action in respect of noise. Nevertheless, in view of the appellants' own evidence cited in the preceding paragraph it is reasonable for me to proceed on the basis that noise levels at the appeal site are already high.
15. The explanatory note to the *Noise Policy Statement for England* ("the NPSE")¹¹ states that "noise pollution depends not just on the physical aspects of the sound itself, but also the human reaction to it". The Planning Practice Guidance also advises that "where existing noise sensitive locations already experience high noise levels, a development that is expected to cause even a small increase in the overall noise level may result in a significant adverse effect occurring even though little to no change in behaviour would be likely to occur"¹²; in my view the existing noise levels at the appeal site suggest that it falls within this description.
16. The mezzanine terrace would be likely to be used most heavily, and for later into the evenings, during the summer months. This is also the time when nearby residents would be most likely to wish to have their windows (and, in those flats which have them, balcony doors) open for ventilation. While the increase in overall noise levels would be small, the siting and form of the terrace would mean that some individual voices within the garden would be closer to sensitive receptors than at present. I also recognise that the overall character of the noise generated within the appeal site would not differ substantially from the current situation, but in my view the increased proximity of (say) laughter and loud or shouting voices would be more likely to stand out against the background hubbub for the nearest affected neighbours. In these circumstances even the small predicted increase in noise could well be perceived as intrusive and disruptive. It would be likely to result in affected

¹⁰ NAR para. 7.4

¹¹ Department for Environment, Food and Rural Affairs, March 2010

¹² Paragraph: 006 Reference ID: 30-006-20190722

neighbours changing their behaviour or attitudes in response to the noise, which would represent an adverse impact on their living conditions. This would particularly affect the occupiers of the three flats at No 102 Bermondsey Street, which would be closest to the part of the terrace which is proposed to have an open pergola rather than any form of roof structure (and where therefore there would be less deflection or absorption of sounds than on the covered parts).

17. The appellant has submitted an operational management plan ("OMP") for the terrace, but while this appears to be reasonably stringent, I am not persuaded that all of the proposed measures (such as the suggestion that any remaining patrons on the terrace at closing time would be "forcefully removed") would be reasonably enforceable. Furthermore, based on my own experience of public houses, the statement that staff would "encourage the patrons to keep their talking to a reasonable level at all times during licensed hours" appears unlikely to be effective at very busy times, precisely when the situation I have described in the preceding paragraph would be most likely to occur.
18. The appellants have referred to the "agent of change" principle, set out in both the development plan and the Framework, which seeks to ensure that new development is designed so that established noise and other nuisance-generating uses remain viable and can continue or grow without unreasonable restrictions being placed on them. Reference was made to the growth of residential development in the area around The Woolpack in recent years, and in particular drew the granting of planning permission for the adjacent No 5 Tyers Gate in 2016¹³. 5 Tyers Gate was not one of the receptors considered in the NAR but the appellants' explanation as to why is reasonable; with the exception of a third floor window (which, I understand, is conditioned to be non-opening), in contrast with the other assessed properties No 5 is largely exposed to the beer garden on an external wall, and so is likely to have significantly lower noise break-in than those properties with opening windows or balcony doors close to the proposed terrace. Beyond this though, the argument seems to be turning the "agent of change" principle on its head, since the proposal before me is for a noise-generating development rather than a new noise-sensitive use.
19. The appellants describe The Woolpack's customer facilities as constrained and dated, and the proposal would no doubt enhance the pub's customer offer. I accept that the proposed improvements to toilets, food storage and preparation and suchlike might reasonably be described as necessary modernisation, and I understand the appellants' desire to safeguard that investment with an increase in space for customers (especially those purchasing meals) which would provide additional revenue. I also acknowledge that there was significant support for the scheme from some parts of the community. However, as I have already described I consider that the configuration of the terrace, with a relatively large uncovered area close to adjacent properties, would be likely to increase the impact (or at least the perceived impact) of noise on neighbouring residents. There is no substantive evidence before me to demonstrate that the scheme as proposed would be essential to securing the future of what both the appellants and interested parties describe as a busy and popular local pub. It may be that the potential conflict could be averted with an alternative scheme, but that is of course not a matter for me to address here; suffice to say I am

¹³ LPA Ref: 16/AP/0972

not persuaded that my dismissing this appeal would represent an unreasonable restriction being placed on the operation of The Woolpack.

20. The appellants drew my attention to an allowed appeal in respect of The Founder's Arms (PINS Ref: APP/A5840/W/22/3291637), also within the borough of Southwark. The proposed development in that case was the construction of a first-floor extension to provide an additional bar and terrace area. I do not know the full details of that appeal scheme, but although there are some broad similarities in the issues raised, it is also evident from the decision that there are several relevant differences between the two. Most notably, although the Founder's Arms scheme would increase the customer capacity of that pub by around 100, it did not propose any additional external customer seating areas; the Council's principal concerns in respect of noise related to the additional patrons dispersing from the pub late at night. In determining this appeal, I have taken a similar approach to my colleague in respect of the Founder's Arms in considering the nature of the proposed development, the existing noise environment context, the nature (including the type, frequency and duration) of relevant noise generation, and its relationship to nearby residents. Overall though, I consider that the significant differences in circumstances between the two appeals means that my reaching a different conclusion in this case is entirely justified.
21. In respect of the proposed rooftop siting of air conditioning and refrigeration equipment, the submitted PNAR demonstrated that plant noise at the nearest sensitive receptor – the 3rd floor flat at No 96 Bermondsey Street – would comply with the Council's criteria at all times. If the proposal had been otherwise acceptable, a condition could be imposed to ensure that the plant remained compliant. However, that this element of the proposed development would be acceptable would not mitigate or outweigh the other harm which I have found.
22. Both the development plan and the Framework recognise the importance of providing people with good living conditions, and their significant influence on health and wellbeing. It is therefore appropriate to adopt a precautionary approach when considering proposals which may have an adverse effect in these respects. For the reasons I have set out above, I find that the proposed development would not ensure satisfactory living conditions for the occupiers of neighbouring residential properties, having particular regard to noise disturbance.
23. I therefore conclude that the proposed development would conflict with Policy P56 of the 2022 Southwark Local Plan, and with Policy D14 of the London Plan 2021. Together, and among other things, these policies seek to ensure that development is not permitted where it would cause an unacceptable loss of amenity to present or future occupiers or users, including as a result of noise impacts. I also find that there would be conflict with the provisions of the Framework, notably the requirements of paragraphs 130 (that development should create places with a high standard of amenity for existing and future users) and 185 (that development should mitigate and reduce to a minimum the potential adverse impacts resulting from noise from new development).

24. I find no conflict with Policy D13 of the London Plan 2021 which sets out the “agent of change” principle, for the reasons I have set out in paragraph 18 above. This does not alter my overall conclusion on the main issue.

Other Matters

25. The appeal site lies within the Bermondsey Street Conservation Area, and I therefore have a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.
26. The appeal scheme includes a number of physical alterations to rear of The Woolpack. The ground floor extension would be of masonry construction, with some parts clad in brick and others with timber. The mezzanine would be of steel frame construction with timber floors. The location of the development at the rear of the pub means that it would not be prominent in public views, although parts of the mezzanine frame would be visible in some long views from or across Leathermarket Gardens. The new structures would be seen from the windows and balconies of neighbouring buildings, but in my view the form and design of the proposed development, including the materials chosen, would be broadly appropriate for the mixed traditional and modern townscape which surrounds the rear part of the appeal site.
27. Any detailed matters in respect of the outward appearance of the building arising from the proposal could have been addressed by conditions had the proposal been acceptable in all other regards. I am therefore satisfied that the appearance and character of the Conservation Area would be preserved, though this does not alter my overall conclusion on the main issue.

Conclusion

28. The proposed development would provide new customer, catering and associated facilities for The Woolpack, and would preserve the character and appearance of the Bermondsey Street Conservation Area. However, it would not ensure acceptable living conditions for neighbouring occupiers in respect of potential noise disturbance. It would therefore conflict with the development plan taken as a whole.
29. I have considered the benefits of the scheme which have been put to me, but there are no material considerations, including the Framework, which indicate that the decision should be made other than in accordance with the development plan. For the reasons given above, the appeal is therefore dismissed.

M Cryan

Inspector