



Appeal Decision

Site visit made on 3 August 2023

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 27 September 2023

Appeal Ref: APP/U5360/C/22/3299635

Unit 16 Railway Arch, Bohemia Place, Hackney, London E8 1DU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Hackney Church Brew Co. against an enforcement notice issued by London Borough of Hackney.
- The notice was issued on 21 April 2022.
- The breach of planning control as alleged in the notice is Without planning permission, the installation of a plant equipment (comprising a petrol generator and fuel tank to service the unit), located to the front of the property on a private highway.
- The requirements of the notice are to: 1. Remove from the land the plant equipment as identified in Appendix 1 'Breach of planning control'; 2. Make good all damage to the Property resulting from the removal of the unauthorised works as listed above; 3. Upon completion of the above steps, remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
- The period for compliance with the requirements is: 3 (three) months.
- The appeal is proceeding on the grounds set out in sections 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended (the 1990 Act). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the 1990 Act.

Decision

1. It is directed that the enforcement notice is varied by extending the period for compliance with the notice from 3 (three) months to 6 (six) months.
2. Subject to the variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Background

3. The generator which is powered from the diesel fuel tank is in place to supplement the mains electricity supply, which is said to be inadequate when brewing is taking place. The equipment is required for a temporary period until a satisfactory electricity supply is provided for the business.
4. Planning application ref. 2021/0154 was refused on 7 April 2022 for the installation of 2 fermentation vessels to the front of the site together with the temporary retrospective installation of a petrol generator and fuel tank on the public realm opposite the front elevation.

Ground (a) and the deemed planning application

Main Issues

5. The appeal made on ground (a) is that planning permission ought to be granted in respect of the breach of planning control alleged in the enforcement notice. The main issues are whether the development preserves or enhances the character and appearance of the site, wider street scene and public realm and the effect of the development on the living conditions of neighbouring occupants in terms of noise.

Reasons

Character and appearance

6. The appeal relates to a generator and fuel tank installed to provide electricity to Hackney Church Brew Co., a small craft brewery which is open to the public for drinks and food. Both the brewery and hospitality part of the business operate from the site at Units 16 and 17 located within an area below the overground trainline running through Hackney. Bohemia Place is characterised by independent businesses such as bars, restaurants and shops, trading from former tram sheds under the railway arches. The wide roadway to the front of the businesses is a private road which, although providing access to service vehicles, is a pedestrianised thoroughfare.
7. Bohemia Place is described as a vibrant social place in the heart of the community. It is an attractive space which hosts weekend street markets and provides an outdoor area to congregate when enjoying the retail and leisure spaces during both the day and night-time. The area surrounding Bohemia Place is busy and is in a mixed use with a large supermarket, commercial and retail premises, schools and residential areas.
8. The generator and fuel tank are situated on the opposite side of the roadway facing the frontage of the appeal property. A plan provided by the Appellant shows the footprint of the fuel tank to measure 3.1m by 1.2m and the generator to measure 3.3m by 1.2m. The Council provide the maximum height of the equipment to be 1.98m¹. The equipment is positioned close to the high brick wall that forms the rear elevation of industrial style buildings which accommodate a bus depot. The equipment is of metal construction which is light grey in colour and covered with graffiti.
9. The equipment is sizeable and is an anomaly in its setting. While I appreciate that there are large commercial waste bins, wheelie bins and the occasional parked vehicle which add to the clutter along the roadway, these are moveable, and thus are not development as defined by section 55 of the 1990 Act. Although views into the area are limited, Bohemia Place is a busy, attractive hub for social activity and the equipment is clearly visible to all who use the space.
10. As part of the appeal, the Appellant has provided a plan dated 7/14/21 showing an enclosure unit in which the equipment could be screened. This plan also formed part of the application for planning permission ref. 2021/0154. The enclosure has the style of a shipping container and appears to be for a different model to that detailed in the Appellant's submissions at Appendix 3. The

¹ Council's Officer Report for planning application ref. 2021/0154

enclosure unit is shown as being partially open on the top, with a single and a double door on the frontage. Materials are noted as MDF wall assembly and stainless steel. No measurements are provided, and the plan is not to scale. Nevertheless, in order to house the equipment, it is likely to be an overtly dominant structure and is of a form that would be an incongruous addition to the street scene and the visual qualities of its surroundings.

11. By reason of its design, scale and positioning, the generator and fuel tank negatively affect the visual appearance of the railway arches, the brewery and the wider street scene. They are an unsympathetic form of development which fail to preserve or enhance the character and appearance of the site, wider streetscene and overall quality of Bohemia Place. As such, the development is considered to conflict with policies PP1, PP3, LP1 of the Hackney Local Plan 2033 (the HLP) and policies D1, D3, D4 and D8 of the London Plan (2021) (the LP). These, among other matters, highlight the importance of improving the quality and function of the public realm between buildings and the importance of attractive pedestrian routes. New development must respond and preserve or enhance the local character and avoid compromising the appearance of buildings by integrating building services equipment.

Living conditions

12. An assessment of the noise impact has been carried out using available noise data for the generator and data from an external noise survey carried out on-site. The Appellant's submissions provide that the generator operates a maximum of 4 times a month. However, as suggested in the acoustic report, this is likely to increase to 3 times per week due to the success of the brewery and the need to increase output. The generator would be in use only between the hours of 8am and 6pm on weekdays.
13. The acoustic report identified that the nearest sensitive noise receptor is 47 Mehetabel Road, which is some 80 metres away. The report concluded that the generator can be expected to have a low impact upon the nearest noise-sensitive receiver. Notwithstanding this conclusion, I note comments from a local resident within Mehetabel Road who experiences the noise disturbance from the generator and expresses how it impacts upon his family's enjoyment of their home and daily life, more so now working from home is common. It is also noted that the acoustic report refers to a different model and that noise output is marginally, around 4dB, higher.
14. The appeal site is located in a busy centre where there many other sources of noise, such as trains and traffic. The noise produced by the generator is said, by the local resident, to be a deep machine-generated vibration that is audible from gardens and even from inside the homes of the nearby residential street. When the generator is operational, the vibration hum is said to persist for most of the working day, without pause. This noise is noted as being very different from the sound of "passing trains and the like". Although the generator was not running at the time of my visit, I have no reason to dismiss these claims.
15. Furthermore, the Council's Officer Report² for the application ref. 2021/0154 states that "dB measurements taken during an inspection resulted in the (Environmental Pollution) Team proposing that an acoustic covering is required to mitigate adverse noise and disturbance impacts. The designs submitted

² Appellant's Statement of Case Appendix 2

within the application reportedly exceed the 10dB target of noise reduction.” I note that this was considered to be an acceptable solution by the Council and agreed by the Appellant. However, proposals for such enclosures were considered unacceptable in design terms by the Council and I have concluded similarly.

16. For the above reasons, I consider that in the absence of appropriate mitigation measures to reduce the noise output from the development, noise is of a level which causes disturbance that results in an unacceptable impact on living standards. As such, the development is contrary to policies LP1 and LP2 of the HLP and policies D3, D4 and D14 of the LP. These, among other things, require all development to be designed to ensure there are no significant adverse impacts, such as noise, on the amenity of occupiers and neighbours.
17. For the reasons set out above, the development conflicts with the development plan, when read as a whole and there are no material considerations to indicate that a decision should be taken otherwise. Having considered all other matters raised, I conclude that the appeal on ground (a) should not succeed.

Ground (g)

18. The Appellant’s submissions state that the brewery seeks a temporary permission to retain the equipment until such time when a suitable power supply is in place. As there is no indication as to the length of time sought for a temporary permission and in consideration of the amount of time that has passed since the siting of the equipment, I consider that this matter can also be addressed to an extent under ground (g), which is that the time for compliance is too short.
19. Information contained within the appeal submissions identifies that there is a clear intention to upgrade the power supply and that there is progression to resolve the second stage of the process as detailed in the site report carried out by Energy Connection Services in November 2021³. Since the determination of the planning application, correspondence from The Arch Company (the Landlord) has provided further certainty of future investment in the site which will assist with the upgrading of the power network. As set out in the report in Appendix 6, the work required to the external infrastructure is said to have been completed and an upgrade to the power infrastructure is now available.
20. While I find the development to be harmful in terms of character and appearance and living conditions, the generator and fuel tank are essential to the ongoing operation of the brewery. Although there was no appeal under ground (g), having regard to the needs of the business, I consider it is reasonable, in the circumstances, to extend the period for compliance to six months.
21. I am conscious of the matters raised by a local resident regarding noise disturbance, and I am also aware that this has been ongoing since around 2018. Should noise cause a disturbance, the Council has a duty to investigate whether it is a statutory nuisance and can take action by issuing a noise abatement notice.
22. Accordingly, the appeal on ground (g) therefore succeeds.

³ Appellant’s Statement of Case Appendix 6

Conclusion

23. For the reasons given above, I conclude that the appeal should succeed on ground (g) only. I shall uphold the enforcement notice as varied and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

S A Hanson

INSPECTOR