



Appeal Decision

Site visit made on 27 September 2023

by P Storey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th December 2023

Appeal Ref: APP/E5900/W/23/3317800

7-9 Fashion Street, London E1 6PX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Simon Davies of Eastern Kula UK Ltd against the decision of the Council of the London Borough of Tower Hamlets.
- The application Ref PA/22/02054, dated 7 October 2022, was approved on 15 December 2022 and planning permission was granted subject to conditions.
- The development permitted is described on the decision notice as:
"Proposed Internal and external refurbishment works consisting of new entrance door and external fire exit door on Fashion Street on ground floor; replacement of UPVC windows, installation of lift lobby, fire exit enclosure and pergola on third floor, French doors onto third floor terrace; new decking, balustrade and hoop ladder to roof; free standing screen and acoustic plant enclosure on roof. Minor Material Amendments to Planning permission Ref: PA/22/00943, Dated 29/09/2022. Amendments include: Condition No.6 (Operating Hours), 6 (enter into a s278 agreement with the highway authority), 7 (9am-8pm Monday to Friday, and 10am-9pm Saturday and 10am-8pm Sunday)."
- The conditions in dispute are Nos 6 and 8, which state that:
 - 6) The proposed use of the application site hereby permitted shall operate only between the hours of 6am-10pm on Monday-Thursday & Sunday and 6am-11.30pm on Friday and Saturday.
 - 8) Access to use the roof terrace hereby permitted, other than access for maintenance reasons, is only allowed between the hours of 9am-9pm Monday to Thursday and Sunday, and 9am-10pm Friday and Saturday. No permanent furniture (including tables, chairs and umbrella) shall be erected on the terrace at any time. The terrace shall not be used for yoga at any time of the day.
- The reasons given for the conditions are:
 - 6) To safeguard the amenity of local residents and the area generally in accordance with policy D.DH8 of the local plan Tower Hamlets 2031: Managing Growth and Sharing the benefits (2020).
 - 8) To safeguard the amenities and privacy of the occupiers of adjoining properties in accordance with policy D.DH8 and D.ES9 of the Tower Hamlets Local Plan 2031 (2020).

Decision

1. The appeal is allowed and planning permission Ref PA/22/02054, described as "Proposed Internal and external refurbishment works consisting of new entrance door and external fire exit door on Fashion Street on ground floor; replacement of UPVC windows, installation of lift lobby, fire exit enclosure and pergola on third floor, French doors onto third floor terrace; new decking, balustrade and hoop ladder to roof; free standing screen and acoustic plant enclosure on roof. Minor Material Amendments to Planning permission Ref: PA/22/00943, Dated 29/09/2022. Amendments include: Condition No.6 (Operating Hours), 6 (enter into a s278 agreement with the highway

authority), 7 (9am-8pm Monday to Friday, and 10am-9pm Saturday and 10am-8pm Sunday)." at 7-9 Fashion Street, London E1 6PX, granted on 15 December 2022 by the Council of the London Borough of Tower Hamlets, is varied by deleting condition No 6, and deleting condition No 8 and substituting it with the following condition:

- 8) Access to use the roof terrace hereby permitted, other than access for maintenance reasons, is only allowed between the following hours:

Sunday 0900 to 2300

Monday 0900 to 2300

Tuesday 0900 to 2300

Wednesday 0900 to 2300

Thursday 0900 to 2300

Friday 0900 to Saturday 0000

Saturday 0900 to Sunday 0000

No permanent furniture (including tables, chairs and umbrella) shall be erected on the terrace at any time. The terrace shall not be used for yoga at any time.

Preliminary Matter

2. The site address has been taken from the Council's decision notice.

Background and Main Issues

3. A certificate of lawful development (the CLD) was granted in May 2022 for the use of the appeal site under Class E (yoga studio with cafe and ancillary facilities). Planning permission was subsequently granted in September 2022 for development described as: *"Proposed internal and external refurbishment works consisting of new entrance door and external fire exit door on Fashion Street on ground floor, replacement of UPVC windows, installation of lift lobby, fire exit enclosure and pergola on third floor, French doors on third floor terrace; new decking, balustrade and hoop ladder to roof; free standing screen and acoustic plant enclosure on roof."*
4. The planning application to which the appeal relates was submitted in October 2022, which sought to amend 3 conditions of the planning permission described above. Planning permission was granted in December 2022 subject to revised conditions.
5. Although amendments were made to all conditions cited by the application, the time restrictions imposed by the Council for two of the conditions, as set out in the banner heading, do not reflect those sought by the appellant in the planning application. This appeal seeks to vary the wording of these conditions to reflect those sought by the appellant's planning application.
6. As such, the main issues are whether the disputed conditions are relevant to the development permitted and, if so, whether they are necessary and reasonable in terms of safeguarding the living conditions of neighbouring occupiers.

Reasons

Condition 6

7. The National Planning Policy Framework (the Framework) and the Planning Practice Guidance (the PPG) advise that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
8. The Council considers that condition 6, which imposes restrictions on the operational hours of the premises as a whole, meets the tests of the Framework and PPG because the works secured through the permission would facilitate the change of use.
9. The planning permission secures various works to the building, but neither the decision notice nor the application form refer to its use. In this regard, the CLD carries some weight.
10. Other than the works to the roof terrace, which I will address separately, the works secured by the planning permission largely comprise internal and elevational changes. Whilst the works include larger windows and entrances on the ground floor elevation fronting Fashion Street, these changes are largely cosmetic and no additional floorspace is proposed. The works secured through the permission do not have any significant bearing on the functionality of the building or lend it to being used for any specific purpose.
11. The CLD establishes that the premises could operate lawfully as a yoga studio with cafe and ancillary facilities and there is no evidence before me that this lawful use would be subject to restrictions on its hours of operation. Whilst the works secured through the planning permission would subtly change the appearance of the building and deliver a slightly different experience for users of the facility, I do not consider the works would be essential, or indeed necessary, to enable such a use to take place. It seems to me that the premises could operate for the same purpose perfectly well, and lawfully, without these works having taken place. I therefore disagree with the Council's view that the works would facilitate the change of use. Accordingly, condition 6 is not relevant to the development permitted.
12. In a similar regard, because the works secured by the planning permission are largely cosmetic, it does not appear that they would, in themselves, present any increased risk to the living conditions of neighbouring properties. Accordingly, I am not persuaded that the condition meets the test of being necessary.
13. Notwithstanding that the appellant has applied to vary the wording of the condition, I do not find the condition to be relevant to the development permitted nor necessary to safeguard the living conditions of neighbouring occupiers. Accordingly, the continued imposition of this condition, even with revised wording, would fail to meet the tests set by the Framework and PPG.

Condition 8

14. Condition 8 relates specifically to the operational hours of the roof terrace as an outdoor seating area for the cafe part of the operation.

15. The evidence provides limited substantive details regarding the previous use of the roof terrace, with the Council considering this was likely used as an outdoor area for lunch breaks and smokers in connection with the former office use. It appears the area was accessible via a single door and was not formally laid out for any specific purpose. Whilst there is limited evidence to support the Council's assumptions regarding the previous use, I do not dispute they provide a likely scenario.
16. The works to the roof terrace secured through the planning permission include new French doors to create additional points of entry, larger windows to increase visibility between the indoor and outdoor areas, and a pergola to enhance the functionality of the outdoor space. Unlike the works to the remainder of the building, these works would have a direct effect on the functionality of the roof terrace. As such, based on the evidence before me, I have little doubt they would result in an intensification of its usage. I therefore find condition 8 to be relevant to the development permitted.
17. The appellant seeks to revise the condition to permit the roof terrace to be used for an additional 2 hours per night, resulting in opening hours of 0900 to 2300 Sunday to Thursday (inclusive); 0900 Friday to 0000 Saturday; and 0900 Saturday to 0000 Sunday.
18. In terms of safeguarding the living conditions of neighbouring occupiers, the appellant has provided a plan setting out the proximity of the site to neighbouring residential properties. The Council has not disputed this plan. In the absence of any specific evidence to disprove its accuracy, and from my observations at the site visit, it offers a reasonable indication of the closest residential properties. I therefore afford it some weight.
19. The closest residential properties to the west of the site all appear to sit adjacent to Commercial Street, which is a busy and traffic-heavy street with an abundance of ground floor commercial uses, some of which operate late into the evening. It therefore seems likely that these properties will already be subject to a degree of disturbance into the evening. Furthermore, the roof terrace is partially recessed behind the taller building directly adjacent to the west, which would provide a degree of acoustic screening to the residential properties. Given the distance between the appeal site and these properties, and the nature of the use which would operate ancillary to the yoga studio, it seems unlikely that the additional hours sought by the appellant would adversely affect the living conditions of these occupiers.
20. The closest residential properties to the east appear to lie approximately equidistant between the appeal site and Brick Lane, which lies further to the east. Again, there appears to be a degree of acoustic screening provided by the presence of numerous buildings and structures between the roof terrace and these residential properties. In addition, Brick Lane is a busy area with a strong evening economy, including many businesses that operate similar hours to that proposed. As such, I am not persuaded that the resulting effects of the increased hours on the living conditions of these occupiers would be harmful.
21. The Council notes that the potential effects are not just related to the immediate neighbours, but also the effects on a wider area resulting from patrons leaving the premises at unneighbourly hours. However, whilst Fashion Street may be a relatively quiet thoroughfare, it is also a short street bound at each end by comparably busier streets in Commercial Street and Brick Lane. As

such, there is already significant potential for disturbance in the immediate area resulting from patrons leaving premises in these neighbouring streets and using the thoroughfare of Fashion Street late into the evening. Due to the nature and scale of the development permitted, I do not find it would present any meaningful addition to the current level of disturbance.

22. The Council has drawn my attention to a planning application currently under consideration at the adjoining site at 3-5 Fashion Street, which also includes a roof terrace. The Council notes that the cumulative impacts should be assessed across the two sites. However, I have been provided with no substantive details of these proposals, and therefore I am unable to afford them any significant weight.
23. For the above reasons, I am provided with no compelling evidence that the proposed additional hours of operation for the roof terrace would be harmful to the living conditions of neighbouring occupiers. Subject to some minor amendments to ensure compliance with the provisions of the Framework and the PPG, including listing the opening hours for each day to provide clarity, I find the revised condition for the use of the roof terrace, as sought by the appellant, to be necessary and reasonable in these terms. The revised condition would also comply with Policies D.DH8 and D.ES9 of the Tower Hamlets Local Plan 2031 – Adopted January 2020, which seek to protect the amenity of new and existing buildings and their occupants, and to minimise noise and vibration impacts.

Conclusion

24. For the reasons given above, the planning permission should be varied as set out in my formal decision.

P Storey

INSPECTOR