



Appeal Decision

Site visit made on 21 March 2024

By Victor Callister BA(Hons) PGC(Oxon) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th April 2024

Appeal Ref: APP/E5330/W/23/3326655
166 Trafalgar Road, Greenwich SE10 9TZ

- 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 Owen Igbino against the decision of The Royal Borough Of Greenwich Council.
 - The application Ref 23/1293/F, dated 14 April 2023, was refused by notice dated 16 June 2023.
 - The development is a change of use from restaurant/bar (Class E) to Restaurant/bar/shisha bar (Sui Generis), single storey rear extension and associated works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. This appeal relates to a development that has been implemented, therefore, the application is retrospective, and I have determined the scheme accordingly.
3. Subsequent to the decision made by the Council on the planning application to which this appeal relates, the National Planning Policy Framework has been revised. Consequently, I have made my decision with regard to the National Planning Framework (December 2023) (the Framework).
4. Also subsequent to the Council's decision, the Royal Borough of Greenwich Urban Design Guide Supplementary Planning Document (2023) (the SPD) was adopted. Amongst other matters, this replaces the design advice set out in the Royal Borough of Greenwich Residential Extensions, Basements and Conversions Guidance Supplementary Planning Document (2018). I consider that there have been no major changes relevant to the main issue in this appeal and I have therefore had regard to the adopted SPD in making my decision.

Main Issues

5. The main issues are the effect on:
 - The character and appearance of the appeal building;
 - Fire safety for users/visitors and neighbouring occupiers; and

- The living conditions of neighbouring residential occupiers with reference to noise and outlook.

Reasons

Character and Appearance

6. The appeal building is a 3 storey mid-terraced property with a ground floor commercial unit with residential above. Prior to the implementation of the development that is the subject of this appeal, the ground floor commercial unit was being used as a restaurant/bar. The appeal dwelling forms part of a retail frontage on Trafalgar Road, within the Primary Shopping Frontage of the East Greenwich District Centre, which in this part is surrounded by densely developed residential properties.
7. The single storey appeal extension to the commercial unit, builds off the back of a pre-existing single storey rear extension and fills the majority of what appears to be a rear yard to the property. This is with the exception of two narrow walkways, one that sits between the appeal extension and the rear of 29 Woodland Grove (No.29), which faces onto the appeal extension, along with a second walkway that runs down the side of the extension to provide access to the staircase to the dwelling above.
8. The appeal extension is constructed with what appear to be timber composite walls and corrugated metal roof. This does reflect the materials used at the rear of neighbouring properties and for enclosures and structures in their rear yards. However, many of these appear to be of some age or without formal approval. Similar to these existing enclosures and structures, the appeal dwelling also uses these with poor detailing, further adding to and accentuating the poor use of these materials in the immediate area. The materials used and the poor architectural detailing results in the appeal extension having a poorly constructed appearance, which contrasts with and detracts from the solidly built rendered rear of the appeal building.
9. Whilst the appellant has argued that the appeal extension would not be visible from the public realm, it is significantly overlooked from surrounding properties, including neighbouring dwellings, as well as the pedestrian access route from Woodland Grove to the rear of the appeal building and neighbouring properties. Consequently, the appeal extension appears as an incongruous and dominating addition to the appeal building in these views.

Fire Safety

10. The appellant has put forward in their statement that a condition could be applied to an approval of the development that would require details of means of escape, evacuation, assembly points, alarm systems and fire safety measures to be submitted and approved by the council. However, Policy D12 of the London Plan (2021) (the London Plan) also requires that developments are constructed in an appropriate way to minimise the risk of fire spread.
11. Fire safety forms a substantial part of the considerations and requirements of the Building Control Regulations. However, the development to which this appeal relates has been implemented, and no application appears to have been made by the appellant for the approvals required from this separate process to satisfy the Building Control Regulations, including with regard to fire safety.

12. For this reason, I find that it is not established that it would be possible to attach a condition to a planning approval for the appeal extension that would be able to satisfy the requirements of Policy D12 of the London Plan. Such a condition would not therefore meet the requirement for Conditions on Planning Permissions as set out in Paragraph 55 and 56 of the Framework. Consequently, the appeal extension constitutes a significant risk with regard to fire safety, for both users/visitors and neighbouring occupiers.

Living Conditions

13. The appellant's Environmental Noise Survey and Noise Impact Assessment Report¹ (the Report) indicates that two locations were used for making assessments of the noise levels in the unit. Figure 2 of the report indicates that one of these was in the front of the main premises near to the street frontage, and the second appears to have been in the pre-existing rear extension and not the appeal extension. Consequently, I am not satisfied that the report details the noise situation pertaining to the appeal extension.
14. From my site visit, it would also appear that the rear extension has been set up and used for live music performances. The rear extension also appears to be thinly clad, with openings in the roof and gaps in its structure, as well as between the walls and roof and external doors. The appeal extension does not, therefore, appear to have been constructed to contain the noise generated by the activities in this part of the restaurant/bar/shisha bar. Further, I note the objections received from neighbouring residential occupiers and have no reason to believe that their experience of noise from the appeal extension is not as described.
15. The appellant and the council has drawn attention to the noise generated by the beer garden from a nearby public house that appears to be generally open until midnight. Whilst the appellant has suggested a condition limiting the hours of operation of the development to match this, and to finish at midnight, the appeal extension would only add to the existing noise from this nearby beer garden, in an area closely surrounded by dwellings.
16. Whilst the Report does set out a Noise Management Plan, this is informed by the noise survey report that I do not find satisfactorily details noise as it related to the appeal extension itself. As such, the proposed Noise Management Plan does not appear to be directly related to the appeal extension and the operation of the restaurant/Bar/Shisha-Bar as constructed and applied for.
17. Given the proximity of neighbouring residential properties, I find that the Noise Management Plan, if attached as a condition on a planning permission, would not result in any significant effect on the noise from the appeal extension when in use, including by limiting the hours of operation to midnight. Such a condition would not, therefore, satisfy paragraphs 55 and 56 of the Framework, in that it would not be precise or relevant to the development to be permitted and or make an otherwise unacceptable development acceptable. For these reasons, I find that the noise generated by the development as implemented, results in a degree of noise to the extent that it is experienced as a nuisance by neighbouring residential occupiers.

¹ Quantum Acoustics: Environmental Noise Survey and Noise Impact Assessment Report QA23077/NIA, Dated 6 April 2023

18. The rear wall of the appeal extension is positioned approximately 1.3 metres from the rear ground floor windows of the dwelling at No. 29. This results in an intense sense of enclosure and loss of outlook to the occupiers of this dwelling that will be experienced as oppressive.
19. The appellant argues that the effect of the appeal extension is no worse in this regard than a previous detached storage building that was in place on the appeal site. This however, whilst this was approved in 2014, it does not appear to have been in place long and to have been demolished prior to an aerial photograph being taken in 2016².
20. Whilst I agree with the appellant that the effect of this previous building on this site would be similar to that of the appeal extension that I have identified, this does not justify the perpetuation of this effect by a subsequent building on the site. Policy DH(B) of the Royal Greenwich Local Plan: Core Strategy (2014) (the Local Plan), Policy D3 of the London Plan and Paragraph 135 of the Framework collectively seek, amongst other matters, to ensure that new development has a high standard of amenity for existing and future users. The appeal extension does not, therefore, accord with this policy objective.
21. For the reasons given above the development results in significant harm to the character and appearance of the appeal building, the safety of users/visitors and neighbouring occupiers with regard to fire risk, and the living conditions of neighbouring residential occupiers. This is contrary to the SPD, Policies DH1, DH(b) and E(A) of the Local Plan, Policy D3, D12, D13 and D14 of the London Plan and Paragraph 135 and 139 of the Framework. These collectively seek to ensure that development, including extensions, demonstrate high quality design, achieve the highest standards of fire safety, and do not undermine the quality of life of neighbouring residential occupiers.
22. Although the Council makes reference to Policy D4 of the London Plan in their decision, I find that this policy relates to the development of design policy and management by London planning authorities and is not applicable in this instance .

Conclusion

23. The appeal is dismissed.

Victor Callister

INSPECTOR

² Royal Borough of Greenwich Appeal Statement of Case Dated 12 February 2024: Figure 3