



Appeal Decision

Site visit made on 19 April 2024

by P D Sedgwick BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13.05.2024

Appeal Ref: APP/P4605/W/23/3328974

Edge Arts, 79-81 Cheapside, Birmingham, B12 0QH

- 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 Friction Arts against the decision of Birmingham City Council.
- The application Ref 2022/07443/PA, dated 26 September 2022, was approved on 20 April 2023 and planning permission was granted subject to conditions.
- The development permitted is Erection of first floor rear and roof extension, roof parapet, environmental whole building retrofit and associated external alterations of existing Community and Arts Centre.

The conditions in dispute are Nos 5 which states that: The uses hereby approved shall only take place between the hours of 08.00 - 23.00 Monday to Sunday, and No 7 which states that: There shall be no live or recorded amplified music, speech or sound at the premises other than background music which shall be inaudible outside the building. There shall be no speakers or external sound amplification equipment located or operated on outside the building.

- The reasons given for the conditions are: In order to define the permission and safeguard the amenities of occupiers of premises/dwellings in the vicinity in accordance with Policy PG3 of the Birmingham Development Plan 2017 and the National Planning Policy Framework; and, In order to safeguard the amenities of occupiers of premises/dwellings in the vicinity in accordance with Policy PG3 of the Birmingham Development Plan 2017 and the National Planning Policy Framework.
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Decision

1. The appeal is allowed and the planning permission Ref 2022/07443/PA for Erection of first floor rear and roof extension, roof parapet, environmental whole building retrofit and associated external alterations of existing Community and Arts Centre at Edge Arts, 79-81 Cheapside, Birmingham, B12 0QH granted on 20 April 2023 by Birmingham City Council, is varied by deleting conditions 5 and 7 and substituting condition 7 for the following condition:

7) There shall be no speakers or external sound amplification equipment located or operated on the roof of the building.

Background and main issue

2. Planning permission was granted for a first floor rear extension and a roof extension on an existing community centre, with conditions limiting operating hours and preventing amplified music in or outside the building. The centre has operated without such restrictions since 2007. The main issue is whether the conditions are necessary and reasonable having regard to the living conditions of occupants of nearby flats with regard to noise.

Reasons

3. The appeal site relates to an arts and community centre. Adjoining buildings are industrial, but there are residential flats opposite the courtyard entrance to the building and elsewhere nearby. The extension would be to the rear of the building and enable better access to the roof. The raised parapet wall would improve roof top safety. According to the Design and Access Statement, improvements are principally designed to improve access to, and within, the building. They include a lift, ramped access, better toilet facilities, and separate offices which would free up space for the centre's activities which range from art and filmmaking workshops to live music and theatre.
4. The Council's Regulatory Services raised concerns regarding the proposed use of the multifunctional space and operating hours, referring specifically to noise escape from windows in the absence of mechanical ventilation. However, mechanical ventilation is proposed and will significantly reduce the likelihood of windows being opened and thus noise escaping from the building. Also, from the appellant's evidence, it seems clear that the building has operated as a multifunctional space since it first opened. In that time, the appellant claims to have received no noise complaints from neighbours, the Council, or the police, nor has the Council indicated that it has received any complaints arising from the centre's activities. I appreciate that the proposed development would increase capacity at the centre, enabling more people to attend its activities. However, there is no indication that the nature of those activities will change because of the extension and thus lead to significant additional noise.
5. I note the Council's comments regarding other planning applications at the site indicating hours of use within the range of those specified in condition 5. However, given that the site has operated with no restrictions on hours of operation for some years without complaint, I do not consider that condition 5 is reasonable or justified and conclude that it should be deleted. Also, given that past activities have included live music and theatre, I do not consider the first part of condition 7, which prevents live or recorded amplified music or speech at the premises, to be reasonable or justified. If future events give rise to noise complaints such concerns can be adequately addressed by other regulatory provisions such as the Environmental Protection Act (1990) and the Noise Act (1996).
6. The second part of condition 7 seeks to prevent excessive noise being generated outside the building, including areas unaffected by the development. In this regard it fails to meet the requirements set out in Paragraph 56 of the Framework which requires that conditions should only be imposed where, amongst other things, they are relevant to the development to be permitted. The proposed development would, however, extend the flat roof and make it safe by extending the height of the surrounding parapet wall, thus making it useable for outside events. Amplified sound from this area would have the potential to harm the living conditions of occupiers of neighbouring flats and it is therefore necessary to replace condition 7 with a condition to specifically prevent the use of speakers and amplifiers on the roof.
7. I appreciate that regeneration has changed the mix of uses in the area since the centre first opened, including new flats across the road. However, I have had regard to the guidance in paragraph 187 of the Planning Policy Framework (2023) (the Framework), which advises that unreasonable restrictions should

not be placed on existing facilities as a result of development permitted after they were established.

8. Overall, I conclude that the removal of condition 5 and the replacement of condition 7 to specifically prevent amplified sound from the roof area would not give rise to noise levels over and above those currently associated with the building's use and thus there would be no harm to the living conditions of occupiers of nearby residential flats. Therefore, there would be no conflict with Policy PG3 of the Birmingham Development Plan (2017) or the Framework, which seek to prevent development causing noise that would be harmful to health and quality of life.

Conclusion

9. For the reasons given above I conclude that the appeal should be allowed.

P D Sedgwick

INSPECTOR