



Appeal Decision

Site visit made on 9 July 2024

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 July 2024

Appeal Ref: APP/F5730/W/23/3333622

Sandflames Restaurant, Victoria Road, Acton, London W3 6UP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant planning permission under section 73 of the Act for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Umair Tahir against the decision of Old Oak and Park Royal Development Corporation.
 - The application Ref is 23/0185/VAROPDC.
 - The application sought planning permission for retention of single storey front, rear and side extensions and mixed use as a restaurant (Land Use Class A3) and sheesha lounge (Land Use Class Sui-Generis)(Retrospective application) without complying with a condition attached to planning permission Ref PP/2015/5829, dated 4 March 2016.
 - The condition in dispute is No 2 which states that: The Sheesha Lounge hereby approved shall not be used after 11 pm Monday to Sunday, inclusive of any public holidays.
 - The reason given for the condition is: in the interest of protecting nearby occupiers amenity in accordance with policies 1.1 and 1.2 of the Ealing Development (Core) Strategy (2012), policies 7A & 7B of the Ealing Development Management Development Plan Document (2013), policy 7.15 of The London Plan (2015) and the National Planning Policy Framework (2012).
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Decision

1. The appeal is allowed and planning permission is granted for retention of single storey front, rear and side extensions and mixed use as a restaurant (Land Use Class A3) and sheesha lounge (Land Use Class Sui-Generis)(Retrospective application) at Sandflames Restaurant, Victoria Road, Acton, London W3 6UP in accordance with the application Ref 23/0185/VAROPDC, without compliance with condition number 2 previously imposed on planning permission Ref PP/2015/5829 dated 4 March 2016 and subject to the following conditions:
 - 1) The development hereby approved shall be retained in accordance with the following approved plans: SF/EPB, SF/SP, SF/01, SF/02, SF/03, SF/04, SF/06 and SF/07.
 - 2) The Sheesha Lounge hereby approved shall only be used between the following hours:-
 - from 5pm on Fridays to 2am on the following Saturday;
 - from 5pm on Saturdays to 2am on the following Sunday;
 - from 5pm on Sundays to 12.30am on the following Monday;
 - from 5pm on Mondays to 12.30am on the following Tuesday;
 - from 5pm on Tuesdays to 12.30am on the following Wednesday;

- from 5pm on Wednesdays to 12.30am on the following Thursday;
and
 - from 5pm on Thursdays to 12.30am on the following Friday.
- 3) No amplified music shall be played within the Sheesha Lounge area after 10pm on any day.

Preliminary Matters

2. The development allowed under planning permission reference number PP/2015/5829 (the original permission) refers to extensions. A submitted plan shows the sheesha lounge area of the building adjoins but is separate from the restaurant and other parts of the property. I note the disputed condition refers specifically to the sheesha lounge and not to any other parts of the building.
3. In effect, the application leading to this appeal sought to vary the disputed condition to amend the hours in which the sheesha lounge can be used. I understand that the appellant seeks a revision that would allow its use between the hours as set out in condition 2 to my decision above. I have sought the main parties' view on the imposition of this condition in the event I allow the appeal and my assessment has been made on this basis.
4. The stated reason for the disputed condition refers to policies of a now revoked version of the London Plan and from the Ealing Development Core Strategy 2012 and Ealing Development Management Development Plan Document 2013. I have not been provided with copies of these policies. Instead, policies of the London Plan 2021 (the London Plan) and Old Oak and Park Royal Development Corporation Local Plan June 2022 (the LP) have been submitted. I understand these documents make up the current development plan for the area and so I have had regard to these policies in my assessment.
5. While not mentioned in its refusal reason, the Council's submissions refer to LP policy TCC10. A copy of this policy has been provided and the appellant has had an opportunity to submit comments. Also, since the appeal was lodged a revised version of the National Planning Policy Framework has been issued. I have not sought the main parties' views on the revisions as the policies most relevant to this appeal remain unaltered.

Main Issue

6. The main issue is whether the disputed condition as worded on the original permission is necessary in order to ensure satisfactory living conditions at nearby residences having regard to noise.

Reasons

7. The appeal property is a single storey building to the side of a road and next to a wooded slope that forms one side of a railway cutting. A fairly narrow walkway separates the site from Holbrook House (also referred to as Chapter Ealing), a high rise block containing student residential accommodation. The Council is concerned that noise associated with the sheesha lounge unduly affects the living conditions at Holbrook House, particularly at night-time.
8. The appellant has provided a noise impact assessment (NIA). This describes an environmental sound survey that has been carried out over a weekend to obtain a representative assessment of noise breakout from the sheesha lounge

- during the busiest period of the week. The NIA recognises the nearest noise sensitive receptor is a residential window at Holbrook House, 8m from the sheesha lounge.
9. The NIA identifies high environmental noise levels in the locality of the site due to road traffic and trains on the railway line. Also, it includes recorded noise measurements, which the appellant suggests show there is no distinct change in noise levels between when the sheesha lounge is open and when it shuts at 11pm. This conclusion is not disputed by the Council.
 10. The NIA refers to BS8233:2014 as well as DEFRA's Noise from Pubs and Clubs (Phase 2) Final Report 2006 and the acceptable noise thresholds set out therein for residences. Having regard to typical attenuation across an open window, the NIA suggests a maximum noise criterion of 45dB between 11pm and 7am when measured at the nearest external face of Holbrook House. No alternative noise threshold is suggested by the Council.
 11. Using the highest measured LAeq noise level of 61dB, the NIA sets out a calculated noise level at the nearest affected window. This is stated as being 43dB and so below the suggested night-time maximum of 45dB. As such, the NIA concludes the noise emissions from the appeal property would not have an adverse impact on living conditions at Holbrook House, even during the proposed extended hours of opening. Again, the Council has not sought to dispute these noise calculations and the NIA conclusions in these regards.
 12. In support of its concerns, the Council refers to complaints over noise from residents of Holbrook House. These primarily relate to the volume of music coming from the appeal property, including late at night. Condition 3 of the original permission only allows amplified music to be played in the sheesha lounge up until 10pm on any day. This appeal proposal includes no variation to this condition, which could be re-imposed in the event the appeal is allowed. I am sympathetic to the local residents' concerns. However, the proposal before me would make no difference to the potential effects of amplified music on living conditions at Holbrook House compared to the existing situation. Also, it is noteworthy that an additional condition of the premises licence for the appeal property states that only background music may be played in the sheesha area. As such, there is a significant doubt that the harmful noise effects experienced by local residents emanates from the part of Sandflames to which this appeal relates.
 13. As a result of the proposal, noise generated by visitors from within the sheesha lounge and on their way to and from the property would extend further into the night-time. Also, as an area where smoking takes place, the external walls to the sheesha lounge include open areas and so it is unlikely to provide significant noise mitigation. Even so, the only technical evidence before me indicates the activities associated with the lounge do not add significantly to background noise levels. As such, it is reasonable to expect the extended hours of use would not cause unacceptable disturbance to nearby residents.
 14. Holbrook House did not exist when the original permission was granted. Part of the Agent of Change principle as set out in LP policy D5 and London Plan policy D13 places the responsibility for mitigating impacts from existing noise uses on the proposed new noise-sensitive development. Moreover, part B of policy D13 of the London Plan states that development should be designed to ensure established noise generating uses can continue to grow without unreasonable

restrictions being placed on them. The appellant claims that noise emanating from the appeal property would have been considered in the design of Holbrook House. No details of soundproofing to the student accommodation has been provided but the Council has not sought to dispute the appellant's contentions in these regards.

15. LP policy D5 and London Plan policy D13 both seek to ensure that new noise generating development close to residential properties does not cause unacceptable harm to the amenity of existing uses. In this instance, the sheesha lounge is not a new development and so it is questionable whether the policies in these regards are relevant. In any case, the evidence before me indicates the proposal would avoid unacceptable harm.
16. As such, I find the disputed condition as originally worded is not required in order to ensure satisfactory living conditions in terms of noise at Holbrook House. Subject to the imposition of the suggested condition, the development would accord with LP policies SP9, D5 and EU5 as well as London Plan policies D13 and HC6. Amongst other things, these look for development to avoid significant adverse impacts on health and quality of life by reason of noise. It has been shown that the extended hours of use beyond 11pm would not harm the amenity of nearby properties and so there would be no conflict with LP policy TCC10. The Council's refusal reasons also refer to LP policy TCC1 and London Plan policy D3 but these contain no provisions relevant to this issue.

Conditions

17. The Planning Practice Guidance states that a decision notice for the grant of planning permission under section 73 of the Act should repeat relevant conditions from the original planning permission. Consequently, I have re-imposed condition 1 that sets out the approved plans as it is required in the interests of clarity. The original condition 2 is included to protect living conditions at nearby residences but it is amended in light of my findings on the main issue. Also, condition 3 on amplified music is re-imposed to safeguard local residents from the ill-effects of noise.
18. The Council has suggested that conditions 2 and 3 should make specific reference to the sheesha lounge as indicated on the approved plans. However, such revisions are not proposed and I consider such changes are unnecessary as when read together the conditions provide sufficient precision on the scope of their requirements.

Conclusion

19. For the reasons given above, I conclude the appeal should be allowed.

Jonathan Edwards

INSPECTOR