



Appeal Decisions

Site visit made on 7 May 2024

by **B Phillips BSc MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24 July 2024

Appeal A Ref: APP/E5900/W/23/3332611

Rich Mix Cultural Foundation, 35-47 Bethnal Green Road, London E1 6LA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Rich Mix against the decision of London Borough of Tower Hamlets.
 - The application Ref is PA/23/00719.
 - The development proposed is the provision of a new pedestrian entrance to the Rich Mix from Redchurch Street, with construction of a new single-storey entrance pavilion in the rear yard, provision of outdoor seating, parking bays and relocation of existing plant.
-

Appeal B Ref: APP/E5900/W/23/3332613

Rich Mix Cultural Foundation, 35-47 Bethnal Green Road, London E1 6LA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Rich Mix against the decision of London Borough of Tower Hamlets.
- The application Ref is PA/23/00720.
- The application sought planning permission for 'the refurbishment of existing building to provide an arts centre (for the improvement of inter-cultural understanding) including provision of music, IT education, performing and visual arts, a new 3 screen cinema together with the erection of a rear five storey building and roof level enclosures' without complying with conditions attached to planning permission Ref PA/02/00876, dated 25 March 2004.
- The conditions in dispute are Nos 7, 9 and 10 which state that:
 - Condition 7:
'The whole of the servicing and loading area shown on the approved drawings shall be provided before the commencement of the uses hereby permitted and the area shall be retained thereafter only for loading and unloading purposes',
 - Condition 9:
'None of the access doors leading out to Redchurch Street shall be used for the entrance or exit of members of the public except in the case of emergencies.'
 - Condition 10:
'All deliveries, loading and unloading of vehicles, and all other servicing carried out in connection with the permitted development shall only be carried out between the hours of 8.00am to 6.00pm Mondays to Fridays, and 10.00am to 1pm on Saturdays, and shall not be carried out on Sundays or Public Holidays.'
- The reasons given for the conditions are:
 - Condition 7:
'to prevent obstruction of the surrounding streets and to safeguard the amenities of the adjacent premises',
 - Condition 9:
'To safeguard the amenities of adjoining residents'
 - Condition 10:

'To safeguard the amenity of the adjoining occupiers and the area generally'.

Decision

Appeal A

1. The appeal is allowed and planning permission is granted for the provision of a new pedestrian entrance to the Rich Mix from Redchurch Street, with construction of a new single-storey entrance pavilion in the rear yard, provision of outdoor seating, parking bays and relocation of existing plant at Rich Mix Cultural Foundation, London E1 6LA in accordance with the terms of the application, Ref PA/23/00719, and the plans submitted with it, subject to the conditions in the attached schedule.

Appeal B

2. The appeal is dismissed.

Preliminary Matters

3. The Government published in December 2023 a revised version of the National Planning Policy Framework (the Framework). I am satisfied that no party would be prejudiced by making reference to the Framework in this decision.

Background and Main Issues

4. Planning permission was granted in 2004¹ for the refurbishment and change of use of an existing building to provide an arts centre. The permission included conditions relating to the use of the rear of the building for loading and unloading purposes only.
5. Appeal A seeks consent for a new single storey pavilion structure to the rear of the building, which would provide for pedestrian access from the rear and alter the arrangements for loading/unloading and deliveries, in addition to a new external seating area. The Council set out that Appeal B seeks to vary conditions 7, 9 and 10 of the original permission, in order to ensure the original permission did not conflict with the new proposal. Both appeals relate therefore to the same development, and I have considered them together.

6. The main issues therefore are:

Appeal A - the effect of the development on the living conditions of the occupiers of nearby properties, in particular relation to noise and disturbance.

Appeal B - the effect that varying the conditions would have on the living conditions of the occupiers of nearby properties, in particular relation to noise and disturbance.

Reasons

Appeal A

7. The application site consists of a 5-storey cinema, arts and music venue called Rich Mix. The entrance and main frontage of the building is on Bethnal Green Road, with a servicing and delivery yard which fronts onto Redchurch Street at the rear.

¹ Application reference PA/02/00876

8. The proposed extension and additional pedestrian access would be sited at the rear of the building, fronting Redchurch Street. At present the rear of the building is not accessible to the public from Redchurch Street and is solely used for servicing and deliveries.
9. This street is characterised by office, residential and commercial use, including shops, cafés and bars/pubs, and despite clearly not being a main thoroughfare like Bethnal Green Road, retains a busy vibrancy, with outdoor seating evident nearby the appeal site.
10. The proposal would increase use of the rear of the building, not only in relation to the public access but also with the provision of outdoor seating. Following advice from the Council, the occupancy levels of the proposed outdoor seating area was reduced from 60 to 30. The submitted noise impact assessment² concludes that at the nearest residential receptors, 85A (first floor), 87 and 89 Redchurch Street (first floors), at this amended full occupancy, noise level would be below the existing measured baseline, and when combined³ with the existing baseline noise levels, this results in relatively modest increase in noise evaluated in terms of decibels (3).
11. I am satisfied that the measurements were taken from an appropriate position next to the nearest receptors and accounted for windows being open as well as closed and 'noise maxima' such as shouting. I have no reason to dispute the conclusions of the Council Noise Officer who accepts the quoted figures and consider the methodology to be correct, including in relation to the shape of the appeal site and guidelines used. The Council's external assessors³ set out that they are in agreement that the proposal would result in '*relatively modest increases in noise evaluated in terms of decibels*'. However, they set out that the potential impact on the amenity of occupiers of neighbouring residential properties in terms of noise and disruption requires a more nuanced consideration than relying solely on data, given that lack of specific guidelines in respect of the proposed development.
12. The appeal site is located within a lively area, located within the Bethnal Green Road District Centre and the Tower Hamlets City Fringe Activity Area, with nearby bars (with residential uses directly above) open later⁴ than is proposed at the appeal site. As such there is a consistent background noise such as traffic, but including, I observed, a near constant audible level of human voices. In this context, the 'babble' from the proposed use, even in taking into account the layout of the yard and building, would be similar in nature and character to the sound from existing sources and would not be incongruous in this respect.
13. The submitted noise management plan⁵ (NMP) sets out a number of measures which seek to control the noise level generated by the outdoor seating area. The measures include the clearing of the outdoor area by staff at 9pm (Friday, Saturday and Bank Holidays), with no access to the area after this time, customers leaving the premises doing so via the front entrance, no music being played in the outdoor area and only seated customers allowed. Whilst I note the examples provided of previous breaches in planning control at the appeal

² Report reference J529_R03A by ALN Acoustic Design Ltd, 4 April 2023, Revision A Addendum 19 July 2023 & additional letter dated 13 March 2024

³ Vanguardia Ltd, 27 February 2024

⁴ Including Brewdog Bar, open until midnight during the week, 1am weekends

⁵ Noise Management Plan version 1.2 (15 Sept 2023)

site, I have no compelling reason to suspect that these measures would not be practical nor effective in managing the space and noise levels appropriately, even if the outdoor seating area would be used to drink alcohol.

14. The NMP sets out that the outdoor table and chairs would be selected to minimise noise and staff trained to move them quietly. The clearing away of 5-6 tables would not therefore be prolonged nor unacceptable in its level of disturbance.
15. Events within Rich Mix generally finish later than 9pm (after the rear entrance is closed), including the major live music events which account for the spike in footfall. Ticketed audiences would be directed to arrive from the Bethnal Green Road entrance and the NMP sets out that queues at the rear would be prevented. As such, the use of the Redchurch Street entrance would be limited. This would limit the potential disturbance from pedestrians and noise from waiting taxis and vehicles, and any vehicles not complying with highway regulations would be subject to the usual orders. Given the designated district centre location and other comparable commercial premises operating in the evening nearby, the limited use of the Redchurch Street entrance would not lead to an unusual or unacceptable level of noise and disturbance.
16. The relocated bin yard entrance would reduce the number of gates required for access, and the anticipated collection levels and times would be the same as existing. As such, this would not lead to additional noise or disturbance.
17. The proposed construction of the extension would require the existing air conditioning unit, currently located within the servicing yard, to be relocated to the roof of the extension. Whilst in an elevated position, the noise assessment sets out that the relocated unit, within its acoustic enclosure, would have a predicted noise level of 26dB. This would be 18dB below the background noise level, and compliant with LP Policy D.ES9, which requires new plant to be at least 10dB lower than the existing background noise level. Again, a condition to ensure that these levels are not breached would ensure that the living conditions of neighbouring residents are adequately protected in this respect.
18. The submitted delivery and servicing management plan⁶ sets out that 3 arrivals a day are expected to use the rear servicing bays, managed through timed arrivals. Conditions securing this, and restricting delivery hours to no later than 6pm Mondays to Fridays and 1pm Saturday and Sundays for both Bethnal Green Road and Redchurch Street are recommended. This would also ensure that the servicing/parking bays are also managed effectively and would not lead to any harm to living conditions through noise disturbance or additional congestion on Redchurch Street.
19. Whilst I note the concerns raised about the previous effectiveness of conditions and noise mitigation measures at this site, there is no compelling evidence before me to suggest that the Council cannot adequately enforce the necessary conditions to ensure their effectiveness. Therefore, the relationship between the occupiers of the neighbouring properties and the appeal site would be managed appropriately in the future.
20. I conclude that the development would not harm the living conditions of the occupiers of nearby properties, in particular relation to noise and disturbance. I

⁶ By Mayer Brown, April 2023

therefore find no conflict with Policies D.ES9 and D.DH8 of the Tower Hamlets Local Plan 2031 (2020) (LP), which require development to protect the amenity of existing buildings and their occupants, including not creating unacceptable levels of noise.

Appeal B

21. As set out above, conditions 7, 8 and 9 of planning application reference PA/02/00876 restricted the use of the rear of the site in order to protect the living conditions of the occupiers of nearby properties, in particular relation to noise and disturbance.
22. The suggested amended wording initially put forward by the Council (for conditions 7 and 9), made reference to planning application PA/23/00719 (Appeal A). However, these conditions would therefore refer to different plans from those set out in the approved plans list in condition 2. In addition, the development allowed under these conditions would be different from what was previously allowed and would include development such as the single storey entrance pavilion and outdoor seating which is not included in the previous original description of development⁷. Under the principles established by Finney the conditions would in effect alter the nature of what was originally permitted, which would be unlawful and go beyond the powers available under Section 73 of the Act.
23. Notwithstanding this, given their wording and referral to two different sets of plans, the conditions would not be reasonable nor precise and would not meet the tests set out in paragraph 56 the Framework.
24. An alternative wording for these conditions was subsequently put forward by the Council, which included '*In the event that an alternative planning permission for redevelopment of the servicing and loading area is implemented this condition shall no longer apply.*'
25. This wording is not clear as to what would be required if the conditions did not apply, is vague and it is not clear that the conditions, in applying until they do not, are necessary. As such, again, they do not meet the requirements of the Framework.
26. As set out above in the discussion of measures to control the noise and disturbance impact upon nearby residents, unrestricted use of the rear of the building would lead to harm to living conditions in this respect, and as such, some means of control is necessary.
27. In the absence of alternative appropriate wording/measures to adequately control the servicing and loading area and the relationship of the site with Redchurch Street, the proposal would harm the living conditions of nearby residents. The conditions therefore retain a useful purpose in ensuring that the development would meet the protection of the amenity of existing buildings and their occupants and sustainable delivery and servicing goals of LP Policies D.DH8 and D.TR4.
28. As such, I conclude that the conditions remain reasonable and necessary and fulfil the other tests for conditions in paragraph 56 of the Framework, having

⁷ As set out in John Leslie Finney v Welsh Ministers & Carmarthenshire County Council, Energiekontor (UK) Limited

regard to the living conditions of the occupiers of nearby properties, in particular relation to noise and disturbance.

Other Matters

Appeal A

29. The appeal site lies outside Redchurch Street Conservation Area (CA) but is in close proximity. Paragraph 206 of the Framework states that any harm to, or loss of, the significance of a designated heritage asset from development within its setting, should require clear and convincing justification.
30. The document Redchurch Street Conservation Area (2009) sets out that the significance of the CA is derived from its historic and architectural interest. The boundary of the CA runs along Redchurch Street but does not include the appeal building. Given the current utilitarian appearance of the rear of the building, at present it makes little positive contribution to its setting and how it is experienced.
31. The proposal would improve the appearance of the rear of the building, providing an active element to Redchurch Street. As such, the proposal would not harm the significance of the CA, and it is notable that the Council set out that *'in respect of design and public realm the proposals are welcome'*.
32. The Grade II listed 113 Redchurch Street is also located near the site. The significance of this building lies with its special architectural and historic interest as a rare and early survival of a weavers' tenement house. The proposal would form part of the mixed urban form which provides the wider context of the asset. Therefore, although it would be visible, it would have a broadly neutral impact on the setting of the asset. It would therefore preserve the setting of the building's architectural and historic significance, in accordance with Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
33. The Highways Authority have reserved the right to introduce loading restrictions on Redchurch Street if the proposals create significant additional pressure on this street. As such they request a commuted sum of £10,000 to cover this potential change in the on-street restrictions from the applicant (to be returned if not used after 3 years).
34. No such legal agreement to secure this has been submitted. However, there is no evidence at present that the displacement of vehicles would likely be a problem in terms of safety or obstruction. Based on the evidence before me and in this instance therefore, as set out above, I conclude that there is no conflict with LP Policies D.DH8 and D.TR4 and accordingly, a Unilateral Undertaking is not necessary to make the development acceptable in planning terms.
35. Any increase in commercial competition for established businesses would not be contrary to planning policy in this respect, and would not be a reason to withhold permission. Similarly, any potential alteration to the nature of Rich Mix as a charity is also not a reason to withhold planning permission. There is no substantiated evidence before me that the proposal would lead to an increase in criminal activity, nor damage tourism.

36. There is also no compelling reason to suggest that any planting would lead to anti-social activity, and the lack of effective community engagement is also not a reason to withhold permission.

Conditions

Appeal A

37. A list of suggested conditions has been provided that the Council and/or the appellants or third parties consider to be appropriate. I have considered these in light of the Planning Practice Guidance and the test set out in the Framework. For clarity and to ensure compliance with the tests, I have amended some of the Council's suggested wording. I have also considered conditions proposed by third parties.
38. In addition to the standard time limit, I have imposed a condition requiring the development to be carried out in accordance with the approved plans as this provides certainty. As set out above, conditions ensuring the development is carried out and managed in accordance with the submitted noise management plan and delivery and servicing management plan are necessary, in the interest of the living conditions of nearby residents and highway safety.
39. In the interest of the living conditions of nearby residents also, a condition restricting the number of covers for the additional seating to 30 is necessary, as is a condition setting out the hours of use of the outside seating area and Redchurch Street entrance. The hours proposed by the Council would ensure that noise and disturbance is limited to acceptable levels, and as such, shorter hours, as proposed by a third party, are not necessary. Further suggested conditions in the interest of limiting noise and disturbance such as restricting the amount of people within the outside area to 12, acoustic fencing, fixing windows shut or restricting the sale of alcohol, are not necessary.
40. Given the limited space and busy nature of the area, a construction management plan is necessary to ensure that the construction process is acceptable in terms of disturbance and highway safety.
41. The submitted design and access statement and plans includes details of the proposed materials, such as anodised aluminium doors and windows, polished brickwork upstands, fabric awning, red linseed paint, and hot rolled asphalt with inlaid chippings for the hardstanding. Given the mixed surrounding context, these details are acceptable (even if the shade of red is not confirmed) and a condition requiring further details in this regard is unnecessary. Similarly, given the level of detail already submitted, conditions requiring further architectural detailing, planting and boundary treatment details are also unnecessary.

Conclusion

Appeal A

42. There are no material considerations that indicate the development should be determined other than in accordance with the development plan. For the reasons given above and having regard to all other matters raised, the appeal is allowed.

Appeal B

43. For the reasons set out above, I dismiss the appeal.

B Phillips

INSPECTOR

Schedule of Conditions

Appeal A

- 1) The development hereby permitted shall begin no later than three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: AKA_074_L100_P00, AKA_074_L101_P00, AKA_074_L210_P00, AKA_074_L211_P00, AKA_074_L214_P00, AKA_074_L310_P00, AKA_074_L311_P00, AKA_074_L315_P00, AKA_074_L501_P00, AKA_074_L505_P00, AKA_074_L510_P00, AKA_074_L511_P00, AKA_074_L520_P00, AKA_074_L530_P00, AKA_074_L531_P00.
- 3) The hereby approved development shall be carried out in strict compliance with the noise management plan and the following sound levels (LAeq, 5min) 1m from residential habitable rooms:
 - a) Music or amplified sound shall not exceed 45dB from 1m of residential habitable room.
 - b) Noise from patrons (outside seating) shall not exceed 55dB from 1m of residential habitable room.
 - c) Mechanical plant and equipment shall not exceed 34db from 1m from the nearest residential receptor.
- 4) The hereby approved outside seating shall have a maximum of 30 covers and shall be retained as such into perpetuity.
- 5) The hereby approved development shall not be in use other than the following hours:
 - a) Redchurch Street entrance: 09:00 to 21:00, Mondays to Sundays.
 - b) Outside seating: 09:00 to 20:00, Sundays to Thursdays, 10:00 to 21:00, Fridays, Saturdays and Bank Holidays. The outside seating shall not be used outside of these times.
- 6) The hereby approved development shall be carried out in strict accordance with the approved Delivery and Servicing Management Plan dated July 2023 by Mayer Brown and retained thereafter in perpetuity.
- 7) Prior to the commencement of the hereby approved development a Construction Environmental Management Plan and Construction Logistics Plan shall be submitted to and approved in writing by the local planning authority. The submitted details should include the following:
 - a) Site manager's contact details and complain procedure;
 - b) Dust and dirt control measures
 - c) Measures to maintain the site in tidy condition, disposal of waste
 - d) Recycling/disposition of waste from demolition and excavation
 - e) Safe ingress and egress for construction vehicles
 - f) Numbers and timings of vehicle movements and access routes;
 - g) Parking of vehicles for site operatives and visitors;
 - h) Location and size of site offices, welfare, and toilet facilities;
 - i) Erection and maintenance of security hoardings;

- j) Measures to ensure that pedestrian and cycle access past the site is safe and not unduly obstructed; and
 - k) Measures to minimise risks to pedestrians and cyclists, including but not restricted to accreditation of the Fleet Operator Recognition Scheme (FORS) and use of banksmen for supervision of vehicular ingress and egress. The approved details should be implemented in full and retained thereafter for the duration of the construction phase of the development unless otherwise agreed in writing with the local planning authority.
- 8) The external surfaces of the development hereby permitted, including hardstanding and boundary treatment, shall be constructed in the materials shown within the submitted Design & Access Statement and on plans no. AKA_074_L100_P00, AKA_074_L101_P01, AKA_074_L211_P00, AKA_074_L211_P01, AKA_074_L214_P00, AKA_074_L310_P00, AKA_074_L311_P01.
- 9) Before the development is brought into use, the landscaping works/planting hereby permitted shall be carried out in accordance with the details shown within the submitted Design & Access Statement, and retained as such.

End of Schedule