



Appeal Decision

Site visit made on 9 July 2024

by J Moore BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 August 2024

Appeal Ref: APP/H5960/W/23/3329547

9 Hildreth Street, Wandsworth, London SW12 9RQ

- 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 Mr Brook Anderson against the decision of the Council of the London Borough of Wandsworth.
 - The application Ref is 2023/2125.
 - The application sought planning permission for Change of use of ground floor commercial unit from restaurant (Class A3) to drinking establishment with expanded food provision (Class A4) without complying with a condition attached to planning permission Ref 2019/4544, dated 3 February 2020.
 - The condition in dispute is No 3 which states that: The Class A4 use hereby permitted shall not be open to customers other than between the hours of:
 - (a) [1100 - 2330] Mondays – Saturdays
 - (b) [1100 - 2300] Sundays.
 - The reason given for the condition is: To safeguard the amenities of the neighbourhood, in accordance with Council policy DMS1 of the Development Management Policies Document (adopted March 2016) coupled with the requirements of the National Planning Policy Framework 2019.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In December 2023, The National Planning Policy Framework (the Framework) was revised. The main parties have had the opportunity to comment on any implications of the revised Framework within the appeal timetable.
3. The appellant's submissions refer to Policy LP45: *Evening and Night-Time Economy* of the Wandsworth Local Plan 2023 (WLP). The Council acknowledges that this policy did not form part of its reasons for refusal. However, it is clearly relevant to the proposal, and I have therefore taken account of it in my decision.
4. The appellant draws my attention to the approved plans of the original permission Ref: 2019/4544 to indicate that the appeal premises is a small venue with seating for about 20 people inside, with further outdoor seating available during the day. However, during my visit I saw that the basement floor is not entirely in accordance with the approved plans, such that there is a function room. For the avoidance of doubt, it is not the role of an Inspector dealing with a s78 appeal to determine the lawful use of a building. I have

determined the application as submitted, with reference to the original permission and its approved plans.

Background and Main Issue

5. The original permission was granted subject to a number of conditions including one stipulating opening hours. The appellant seeks to vary this condition for opening hours to be from 11:00 until 23:30 from Sunday to Thursday, and from 11:00 until 02:30 on Fridays and Saturdays. The main issue is the effect of the proposed opening hours upon the living conditions of neighbouring occupiers, with particular regard to levels of noise and disturbance.

Reasons

6. Hildreth Street is a pedestrianised street within Balham Town Centre and the appeal site is identified as 'town centre other frontage' within the WLP. Ground floor premises along Hildreth Street include numerous cafes, restaurants and a wine tasting shop/wine bar at No 18. The Council's evidence indicates that permitted opening hours on Hildreth Street are generally consistent, ranging from 07:00/08:00/10:00 until 23:00/23:30. The exceptions to this are No 18 which has opening hours from 10:00-00:30 Monday to Saturday and 10:00 to 23:30 on Sunday; and No 20 where permitted opening hours are 08:00 to 00:00 Monday to Sunday.
7. The appeal site is a four storey mid-terraced building, to include commercial use at street level and basement level, with residential uses above. This arrangement is similar to that on the other side of the street, save for a courtyard development (Hildreth Street Mews) with an access immediately opposite, which includes some commercial uses and further residential development. Consequently, while the character of the area is predominantly commercial at street level, it also has a significant residential character within the upper storeys of both sides of the street and at Hildreth Street Mews.
8. WLP Policy LP45 supports proposals that enhance or diversify Wandsworth's evening and night-time economy, subject to certain conditions, including that they do not result in negative impact on the amenity of surrounding residential and non-residential uses, as a result of the use itself or from those travelling to and from the use, taking account of the cumulative impact.
9. The proposal would result in an extended time period of trade within which there would be levels of noise and disturbance from the arrival and departure of customers, the comings and goings of staff and from any noise spill generated by the opening of doorways. As with any licenced premises open until late in the evening and/or at night, there is a risk of anti-social behaviour as customers leave premises. However, due to the pedestrianised nature of the street, there is an increased risk of customers lingering in the vicinity.
10. Given the commercial nature of the area, I consider that some level of background noise and activity would be reasonably expected by nearby residential occupiers into the evening, and those moving into the area would perhaps be aware of opening hours. However, the proposed extended opening hours on Fridays and Saturdays would result in activities associated with the use of the premises occurring much later than at present along Hildreth Street, some 2 - 3 hours longer than other nearby premises. Consequently, the

extended opening hours would result in noise and disturbance at a quieter part of the night when surrounding and ambient noise levels would be lower than those during the day and late into the evening, and when other premises would be closed. This would not be acceptable at a time when nearby residents would have a reasonable expectation of relief from such noise and disturbance, including when they would wish to sleep.

11. The appellant suggests that the existing business has endeavoured to build up a good reputation, and that there is no good reason to suggest that customers would be inconsiderate or noisy in their behaviour whilst entering or leaving the premises during the hours of darkness or any other time. However, the Council's officer report which considered the application refers to a history of complaints, the most recent of which is related to music during the daytime. Further historic complaints are acknowledged in regard to the behaviour of customers outside the bar at night.
12. While the appellant suggests that such complaints have not been substantiated, it is clear that complaints have been made but have not been verified/witnessed by the Council's Noise Team. Furthermore, the representations of a local Councillor and interested parties suggest that numerous complaints have been made and observations reported, whereby the character and volume of noise, and the behaviour of some customers at night is considered very disruptive; and that nearby occupiers include the elderly and children. While many customers would likely be considerate, it is likely that noise and disturbance would be experienced to a much later time of night than that presently experienced.
13. The appellant suggests that the conditions suggested by the Council (if I were to allow the appeal) regarding the use of folding doors and the outdoor seating area demonstrates that the site is able to work within the proposed opening hours without causing undue disturbance. However, I note that conditions to control such matters are attached to the original permission.
14. In any event, I accept that measures such as soft close doors, management policies and procedures, staff training, complaint recording and signage raising awareness of nearby residential properties and asking customers to leave quickly and quietly would assist in reducing the risk of noise and disturbance and any anti-social behaviour. However, such measures would not entirely remove noise and disturbance associated with customers outside of the premises. The business would ultimately have little control over the lawful activity of its customers on the pedestrianised street outside. Such activity would take place at a time when nearby establishments are closed and would therefore be directly linked to the proposed extended hours.
15. The appellant draws my attention to three other establishments with opening hours until 02:00 on Fridays and Saturdays. However, the examples put forward are at some distance from the appeal site and are therefore not directly comparable as each site has its own unique context. All three examples do not face a pedestrianised street, where the risk of customers lingering is higher. Hagen & Hyde faces the highway on the main street through the town centre and nearby residential properties are well set back from its frontage. The Exhibit is at a highway junction, with a large car park opposite, and is near to a railway station. The Bedford is at a highway junction, near a railway and

occupies a corner position. Therefore, the examples are not comparable in terms of siting, looser relationships to residential form, and/or noise character.

16. I therefore conclude that the proposal would unacceptably harm the living conditions of neighbouring occupiers, with particular regard to levels of noise and disturbance. It conflicts with Policy D14 of the London Plan 2021 and Policies LP2 and LP45 of the WLP. Taken together these policies seek to ensure that development would not result in a negative impact on the amenities of neighbouring occupiers including in terms of unacceptable noise and disturbance.
17. The proposal also conflicts with paragraph 135 f) of the Framework which seeks to ensure that developments create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

Other Matters

18. The proposal would result in economic benefits by extending the window for trade, and it would provide extended opportunities for social interaction. However, the significant weight that the Framework affords to proposals that deliver economic growth must be balanced against the need to ensure proposals achieve high standards of amenity for existing and future users. As the benefits of extended trade and social interaction would be limited, this would not be sufficient to outweigh the unacceptable harm I have found to the living conditions of nearby residents.
19. The opening hours proposed are in accordance with those granted by a premises licence under the Licensing Act 2003. While this is a material consideration in the appeal before me, the licensing regulatory framework is separate from that for planning, with different considerations. Therefore, the granting of a licence does not of itself justify the grant of any planning permission.
20. Interested parties raise concerns regarding a lack of consultation on an application for a premises license. However, such matters are separate to planning and do not have any bearing on my consideration of the planning merits of the scheme. Further concerns are also raised, but as I am dismissing the appeal on the main issue, and further consideration of such matters would not alter my decision, it is not necessary for me to address them directly.

Conclusion

21. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, the appeal is dismissed.

J Moore

INSPECTOR