



Appeal Decision

Site visit made on 16 August 2024

by S Poole BA(Hons) DipArch MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 September 2024

Appeal Ref: APP/U5360/W/24/3342196

63-65 Broadway Market, Hackney, London E8 4PH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Off Broadway against the decision of the Council of the London Borough of Hackney.
 - The application Ref is 2023/2850.
 - The application sought planning permission for “*use of the lower ground floor and the ground floor as an Art Gallery (Class D1) with operating hours from 10:00 hours to 16:00 hours Monday to Sunday and a Wine Bar (Class A4) with operating hours of 16:00 hours to 23:00 hours Monday to Sunday*” without complying with a condition attached to planning permission Ref 2007/3178, dated 27/08/2008.
 - The condition in dispute is No.3 which states that: *The D1 (Art Gallery) hereby permitted may only be carried out between 10:00 hours to 16:00 hours Monday to Sunday and the A4 (Wine Bar) may only be carried out between 16:00 hours and 23:00 hours Monday to Sunday.*
 - The reason given for the condition is: *“To ensure that the use is operated in a satisfactory manner and does not unduly disturb adjoining occupiers or prejudice local amenity generally”.*
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Decision

1. The appeal is dismissed.

Procedural Matters and Main Issue

2. The Council failed to determine the application within the prescribed period for doing so and has subsequently provided a putative reason for refusal. Based on this the main issue is the effect of the proposal on the living conditions of the occupiers of neighbouring dwellings, with particular regard to noise and disturbance.

Reasons

3. The appeal property comprises a 2-storey end-of-terrace building with a basement. It is situated on the corner of Broadway Market and Dericote Street and has outdoor space to the rear bounded by the latter street. Broadway Market is a busy commercial street predominately comprising a mix of shops, cafes, restaurants and bars at ground level with flats above. By contrast Dericote Street comprises terraced housing with gardens. The information before me indicates that the ground and basement levels of the appeal

property are currently in use as a bar that also provides event space. The appeal property is situated within the Broadway Market Conservation Area.

4. Planning permission was granted in 2008 for the change of use of the appeal property to an art gallery and a wine bar. Condition 3 of this planning permission limits the hours that the uses may be carried out to 1000 hours to 1600 hours for the art gallery use and 1600 hours to 2300 hours for the wine bar use, Monday to Sunday. The purpose of the planning condition is to ensure the uses do not unduly disturb adjoining occupiers or prejudice local amenity.
5. In 2010 planning condition 3 was varied to allow both the gallery and wine bar to operate between 1000 hours and 2400 hours Monday to Sunday¹. This was allowed for a temporary period to enable the Council to monitor and assess the impact of longer opening hours on the living conditions of occupiers of neighbouring properties. The outcome of this test period is not reported in the information before me.
6. The proposal seeks the variation of condition 3 to allow an extension to the hours of operation so that both the art gallery and wine bar would be able to operate between 1000 hours and 2400 hours Monday to Sunday together with a "20 minutes drinking-up time extension to 0020". As there is no evidence that an art gallery currently operates at the premises the effect of the proposal would be to allow the bar to operate from 1000 hours to 0020 hours 7 days a week.
7. In addition to the appeal property there are other night-time uses in close vicinity to houses and flats which on busy nights will result in some degree of noise and disturbance to residents in the area. Extending the operating hours at the appeal property beyond midnight would result in additional impacts in these respects due to people coming and going from/to the premises and congregating in the street. Given the very close proximity of dwellings to the appeal property, this would lead to levels of noise and disturbance that would have an unacceptable effect on the living conditions of occupiers of surrounding properties
8. For these reasons the proposal is contrary to Policies LP2 and LP38 of the Hackney Local Plan (2020) and Policy D14 of the London Plan (2021) which, amongst other matters, seek to ensure that all development is appropriate for its location and should be designed to ensure that there are no significant adverse impacts on amenity.

Conclusion

9. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should fail.

S Poole

INSPECTOR

¹ Application ref: 2010/2814