



Appeal Decision

Site visit made on 8 August 2024

by H Senior BA (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 September 2024

Appeal Ref: APP/A5840/W/24/3339358

Railway Arch 68, Ewer Street, Southwark, London SE1 0NR

- 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 Miss Tamara Kramer (The Arch Company) against the decision of the Council of the London Borough of Southwark.
 - The application Ref is 23/AP/2426.
 - The development proposed is change of use class from E(d) (indoor sport, recreation or fitness) to Sui Generis (private hire exhibition/event space and dance/fitness studio). Change to hours of operation.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposal on:
 - the living conditions of nearby occupiers, with particular regard to noise; and
 - the local transport network capacity.

Reasons

Noise

3. The appeal site is a railway arch which the appellant describes as having good structural integrity in a mixed use area including light industrial, commercial and residential uses. Although there are two accesses to the premises, the main entrance is on Ewer Street with an emergency access to the rear. It is currently in use as a dance studio. The nearest residential property is approximately 48 metres to the east along Ewer Street.
 4. The Noise Impact Assessment Report concluded that subject to certain conditions the noise from the proposed use would meet the relevant standards. This however included the use of the rear door to access the smoking area. However according to the Visitor Management Plan/Transport Plan the smoking area would be designated outside the front entrance. In addition, the environmental protection team at the Council did not consider that the noise report adequately demonstrated the impact of low frequency noise and amplified noise. No further information has been provided with the appeal. It has also not taken into account additional noise from guests using Ewer Street.
 5. The appellant has submitted a dispersal policy and visitor management plan which states that if unacceptable noise is noted guests may be asked to leave.
-

This would not stop potential disturbance occurring and may only serve to stop such guests from returning. The dispersal policy reflects a genuine desire on the part of the appellant to ensure that neighbours are not inconvenienced. But, as the plan largely addresses responses to disturbance rather than stopping it happening, harm to the living conditions of nearby residents could still occur.

6. I conclude that the proposal would harm the living conditions of nearby residents, with particular regard to noise. It would conflict with Policies P56 and P66 of the Southwark Plan, Policies D13 and D14 of the London Plan which together amongst other matters seek to ensure that development should mitigate adverse impacts caused by noise and not cause an unacceptable loss of amenity to occupiers. It would also conflict with the aims of Chapter 8 of the National Planning Policy Framework (the Framework).

Local Transport network capacity

7. The appeal site lies within a PTAL rating of 6b and is well served by public transport including buses and the tube both with a 24 hour service on Friday and Saturday nights. The nearest car park only operates during the daytime, and whilst it is likely that the majority of customers will travel by public transport, I have no substantive evidence before me to indicate that visitors to the premises would not travel by private vehicle.
8. The road outside the premises is narrow and its use by taxis in the early hours of the morning would cause congestion. There is no evidence to suggest that there is a suitable taxi pick up point in the vicinity of the premises which would not cause noise and disturbance to nearby residents.
9. I conclude that the proposal would harm the local transport network capacity. It would conflict with Policies P49 and P50 of the Southwark Plan and Policy T4 of the London Plan which together amongst other matters seek to ensure that development demonstrates that the public transport network has sufficient capacity. It would also conflict with Chapter 9 of the Framework.

Other Matters

10. 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.
11. The appellant states that in order to comply with the conditions attached to the premises licence, there would only be 12 occasions during the year when the premises would be open until 3.30am. However, if allowed, a condition limiting the use to 12 occasions per year would not meet the tests for imposing conditions in the Framework and the Planning Practice Guidance. In particular it would be unlikely to meet the tests of precision or enforceability. It could not specify when the events would take place and it would be difficult for the Council to enforce the condition as there would be no way of them knowing when and how many events take place.

Conclusion

12. 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. For the reasons given above the appeal should be dismissed.

H Senior

INSPECTOR