



Appeal Decision

Site visit made on 23 January 2025

by **N Praine BSc (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 07 February 2025

Appeal Ref: APP/E5330/W/24/3347129

3 Stockwell Street, Greenwich SE10 9JN

- 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 a condition subject to which a previous planning permission was granted.
 - The appeal is made by Naruter Ltd against the decision of the Council of the Royal Borough of Greenwich.
 - The application Ref is 23/3643/MA.
 - The application sought planning permission for development described as a change of use from retail unit (Class A1) on the ground floor with ancillary storage at basement level and from a residential unit (Class C3) on first and second floors to a restaurant (Class A3) on ground, basement and first floors, with ancillary office on the second floor, along with alterations to shopfront without complying with a condition attached to planning permission Ref 20/0915/F, dated 2 October 2020.
 - The condition in dispute is No 6 which states that: *The external rear yard area shall not be used for the use of tables and chairs associated with the restaurant use hereby approved.*
 - The reason given for the condition is to *safeguard the amenities of adjoining occupants at unsociable periods.*
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Since application ref 20/0915/F was granted, the Mayor of London published a new London Plan in 2021. The policies within the former 2016 version of the London Plan are therefore no longer extant. The Council have noted this in their delegated report and decision notice. They say that the main thrust of the latest version of the London Plan, in this respect, is similar to the previous version as it continues to place an emphasis on protecting nearby sensitive receptors from unacceptable noise pollution impacts. I have no reason to come to another finding and I have accordingly determined the appeal on this basis.

Background and Main Issue

3. On the 2 October 2020, the Council approved planning permission ref 20/0915/F ("the approved application") for development described as a change of use from retail unit (Class A1) on the ground floor with ancillary storage at basement level and from a residential unit (Class C3) on first and second floors to a restaurant (Class A3) on ground, basement and first floors, with ancillary office on the second floor, along with alterations to shopfront.

4. An application, ref 23/3643/MA, was subsequently made by the appellant to remove condition 6 of planning permission ref 20/0915/F and this was primarily to allow the use of tables and chairs within the external yard area associated with the restaurant use. This application was refused on the 8 January 2024 due to unacceptable noise pollution impacts to the amenity enjoyed by nearby occupiers. The refusal of application ref 23/3643/MA is the subject of this appeal.
5. Given the appeal submissions and the above background, the main issue is the effect the proposed removal of condition 6 would have upon the living conditions of neighbouring residential occupants with particular reference to noise.

Reasons

6. The appeal site features a three-storey restaurant building with a further basement level, and an external yard area sited toward the rear. The surrounding area is mixed in uses including residential units which are sited close to the appeal site.
7. The approved application considered the impact of the external yard and its use. However, it was concluded, at that time, that the use of the external yard would create unacceptable noise which would impact neighbouring residential occupiers. Condition 6 was therefore imposed to safeguard the surrounding residential occupiers. There is no evidence before me to suggest the layout of the site or surroundings have materially changed in the interim to call for the removal of this condition. However, the appellant does offer some remediation to mitigate noise generation.
8. This mitigation includes a limit of twelve people who would be seated outside. The appellant also suggests that any impacts could be further mitigated by two walls which are being built as well as a noise cancelling barrier. The appellant also proposes to close the yard area at 22:30 on Fridays and Saturdays, and at 22:00 at all other times.
9. While these proposed mitigation measures are noted, the yard would still be occupied by customers who would be dining and socialising into later evening hours close to residential occupants. I have carefully reviewed the appellant's evidence; however, it has not been clearly shown¹ whether any noise, either alone or in combination with the proposed mitigation measures, would have an acceptable effect on the quality of life of those potentially affected by the proposed development.
10. I appreciate that the external yard would provide extra space for customers aiding the income of the business. However, the impacts of noise pollution on health and quality of life are well understood. These include stress, annoyance, and sleep disturbance. It is therefore essential that the planning system balances the interests of residential occupiers with commercial concerns.
11. In this case it has not been robustly shown that the removal of Condition 6 would result in acceptable living conditions for neighbouring residential occupants with particular reference to noise. Accordingly, such harm would not be outweighed by the commercial benefits set out above.

¹ for instance, through technical noise impact assessment evidence

12. In coming to this finding, I have considered the suggestion that a neighbouring business is allowed to use their garden for customers. The Council has confirmed that the consents associated with this other business were granted some time ago before changes to the current development plan. I also do not have the full planning details of this nearby site to make comparisons to see if the schemes are identical.
13. Even if they were identical, the London Plan (2021) is clear that noise impacts should be managed to promote good health and a good quality of life. As I have found above, it has not been shown that the appeal site would achieve this. The operation of this other site, therefore, does not alter my overall findings.
14. To conclude on this issue, and based on the evidence before me, the proposed removal of this condition would have an unacceptable effect on the living conditions of neighbouring residential occupants with particular reference to noise. As a result, condition 6 is still reasonable and necessary.
15. The proposal would therefore be contrary to the relevant provisions of Policy E(a) of the Royal Greenwich Local Plan: Core Strategy with Detailed Policies (2014) and Policy D13 and D14 of the London Plan 2021. These policies, amongst other things, look to ensure a satisfactory level of amenity for occupiers of neighbouring properties.

Other Matters

16. The appellant confirms they have secured a premises licence for outdoor use. I have no reason to doubt this. However, I have not been furnished with evidence to show that noise impacts were robustly considered at this stage. This therefore has limited bearing on my overall conclusion.

Conclusion

17. For the reasons given above, having considered the development plan as a whole and all other relevant material considerations, I conclude that the appeal should be dismissed.

N Praine

INSPECTOR