
Appeal Decision

Site visit made on 21 January 2025

by **C Rose BA (Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 February 2025

Appeal Ref: APP/Q1445/W/24/3346202

196 Church Road, Hove, Brighton and Hove BN3 2DJ

- 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 Mr Rob Cupi against the decision of Brighton & Hove City Council.
 - The application Ref is BH2024/00204.
 - The development proposed is the provision of a demountable sunshade to rear garden of Ola's Bar.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the banner heading above is taken from the application form as neither party has provided written confirmation that a revised description has been agreed.
3. During the course of the appeal, a revised National Planning Policy Framework was published on 12 December 2024. Whilst paragraph numbers have altered, any policies that are material to this decision have not fundamentally changed. I am satisfied that this has not prejudiced any party, and I have had regard to the latest version in my decision.
4. The parties agree that the proposal would preserve the character or appearance of the Old Hove Conservation Area. Given the small scale of the proposal, and its retractable nature, and having given special regard to the desirability of preserving or enhancing the character or appearance of the Conservation Area, I have no reason to disagree.
5. At the time of my site visit the development had been carried out and appeared to accord with the submitted plans. For the avoidance of doubt, I have determined the appeal based on those plans.

Main Issue

6. The main issue is the effect of the development on the living conditions of nearby residential occupiers, with particular regard to noise and disturbance.

Reasons

7. The appeal property comprises the ground floor and rear courtyard of a restaurant/bar. The wider terrace contains commercial uses at ground floor with predominantly residential uses above. The site backs on to residential properties and rear gardens of two storey residential properties on Vallance Road.
8. During my site visit I experienced that the background noise levels were relatively quiet on Vallance Road and noticeably lower than the noise level to Church Road due to its predominately residential character. As such, the living conditions of residential occupiers

on Vallance Road are sensitive to changes in noise levels and would be affected by the introduction of a more intensive or noisy use within the terrace.

9. The sunshade results in the covered part of the restaurant extending closer to neighbouring properties on Vallance Road. As advised by the appellant, the sunshade would be used in wet or very hot weather. It therefore enables a considerable increase in the number of covers for the business throughout the year. As a result, there is the potential for increased noise and disturbance to the neighbouring residential occupiers.
10. The restaurant signage states that it is open from mid-day until late into the evening seven days a week. Late into the evenings, neighbouring residential occupiers should reasonably expect a quieter living environment. Noise associated with a bar/restaurant generally includes the playing of music and customers conversing. I witnessed a television screen within the outside seating area at the time of my site visit that could generate additional noise. I also note the comments from interested parties stating that since the sunshade has been erected, noise from the property causes a nuisance.
11. I therefore find that noise generated from additional use of the outside area under the sunshade late into the evening when background noise levels are typically lower, would be intrusive and harmful in the absence of further mitigation. This is likely to be particularly harmful during spring, summer and autumn months when neighbouring occupiers are likely to have windows open and be more likely to be using their rear gardens.
12. The appellant states that the courtyard can already be used as part of the restaurant, and that as a result noise levels would remain the same. However, as stated above, the sunshade increases the likelihood that the outside seating area would be used. As such, the increased usage would increase noise levels. The lightweight nature of the sunshade is unlikely to mitigate against increased noise levels as evidenced by the comments from interested parties. This would be the case despite the re-design of the sunshade since the previous appeal on the site¹.
13. While I note the lack of objection from the Environmental Health officer, this is subject to a number of conditions. In light of my concerns above, I do not find that a condition preventing the use of the rear courtyard to customers after 23:00 would adequately reduce noise or disturbance. A condition requiring staff to monitor noise levels would not be enforceable. The provision of signage asking customers to keep noise to a minimum would not be guaranteed to be effective, and while the playing of music in the courtyard could be prevented by condition, it would not prevent noise and disturbance from customers.
14. I conclude that the development would harm the living conditions of nearby residential occupiers, with particular regard to noise and disturbance. As such, it conflicts with policies DM20 and DM40 of the City Plan Part Two Brighton & Hove City Council's Development Plan October 2022. Amongst other things, these state that permission for development including change of use will be granted where it would not cause unacceptable loss of amenity to the proposed, existing, adjacent, or nearby users, residents, occupiers, and can demonstrate they will not give rise to material nuisance and/or pollution.

Conclusion

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

C Rose

INSPECTOR

¹ APP/Q1445/W/22/3306152