



Appeal Decision

Site visit made on 27 November 2024

by Tamsin Law BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th February 2025

Appeal Ref: APP/A5270/W/24/3348031

Darbar, 69 Hanger Lane, London, W5 1DP

- 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 Saeed Azimi against the decision of the Council of the London Borough of Ealing.
 - The application Ref is 240110FUL.
 - The development proposed is described as "change of use of restaurant (class E) to a restaurant and shisha bar (sui generis); erection of a veranda and installation of a privacy screen at first floor, and associated works."
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Decision

1. The appeal is allowed and planning permission is granted for change of use of restaurant (class E) to a restaurant and shisha bar (sui generis); erection of a veranda and installation of a privacy screen at first floor, and associated works at Darbar, 69 Hanger Lane, London, W5 1DP in accordance with the terms of the application, Ref 240110FUL, subject to the conditions in the attached schedule.

Preliminary Matter

2. The appellant has submitted an amended plan which details a 1100mm glass balustrade to the outdoor shisha area which was not on the plans before the Council. The amendment is minor as does not fundamentally alter the proposed development. I am therefore satisfied that no parties would be prejudiced by my taking this plan into consideration.

Main Issue

3. The main issue is the effect of the proposed development on the living conditions of nearby residents, with particular regard to noise and disturbance.

Reasons

4. The appeal site is located on Hanger Lane (A4005) a main route towards the north circular. The area has a mixed use, with commercial uses on the western side of the road and residential to the east. The appeal site, located on the western side of the road, comprises a two-storey semi-detached property. To the north lies a McDonalds, which operates 24 hours, to the west is a storage centre, and to the south is a laundrette and public house. To the east lies the A4005 (which has three lanes and a bus lane), with residential properties on Priory Gardens on the opposite side of the road to the appeal building.
5. The current operation comprises a restaurant on the ground and first floor, with a covered outside seating/smoking area to the front of the building, also

on the first floor. It is my understanding that the covered area is currently unauthorised. Apart from alterations to the first-floor outdoor terrace area, no other alterations to the restaurant element are proposed.

6. In respect of noise and disturbance, the Council's and interested parties' concerns relate to the use of the outdoor area for shisha and the noise and smoke that they consider would arise from this. The proposed shisha area would be set back from the edge of the first-floor terrace by a 1.1 metre balustrade and a 0.7 metre obscure glazed balustrade would be erected on the wall that encloses the outdoor area.
7. As part of their submission the appellant has provided an acoustic impact assessment and an odour assessment. The acoustic assessment concludes that, in a worst-case scenario, noise levels from the outdoor area would increase approximately 0.1dB above existing ambient noise levels. This assumes that the terrace is at operating capacity. Whilst this would be an increase in noise levels, it would only be a minor increase that would not lead to excessive noise levels or harm the living conditions of the occupiers of dwellings at Priory Gardens.
8. From the submissions it appears that complaints regarding noise from the first-floor terrace have been received by the Council. Through the imposition of conditions restricting the hours of operation this would ensure that the outdoor area is closed by a specific time, therefore safeguarding the living conditions of nearby residents.
9. In relation to odour, an odour assessment was submitted. As part of this a test event was undertaken and odour assessed at two locations at residential properties at Priory Gardens and near to the public house. No odour associated with the shisha terrace was perceptible. The odour assessment concluded that, due to the high number of existing odours surrounding the restaurant, including the McDonalds, public house and laundrette, the shisha smell would not be apparent. I have no evidence before me to dispute the conclusion of this assessment.
10. The appeal site is an existing restaurant with first floor and first floor terrace. The addition of an outdoor area and shisha use may increase the use of the first-floor terrace. However, the construction of glass balustrades, restriction of use of the balcony area outside the covered area and hours of operation condition would ensure that the proposed development would not have a harmful impact on the living conditions of the residents of Priory Gardens.
11. Taking the above into account, and the absence of an objection from the Council's Pollution/Health and Safety team, the evidence before me demonstrates that the proposal would not have a harmful impact on the living conditions of nearby residents, with regards to noise and disturbance.
12. The proposed development would not have a harmful impact on the living conditions of nearby residents. It would therefore comply with Policies 7.4 and 7A of the Ealing Development Management Development Plan Document (2013) and Policy 14 of the London Plan (2021). Together these seek to ensure that development do not erode the amenity of surrounding uses.

Conditions

13. The Council have provided a list of conditions and the appellant has had the opportunity to comment on these. Conditions relating to time limit and plan are necessary for certainty.
14. Conditions relating to external lighting, hours of operation/use, and restricting access to the balcony are necessary in order to safeguard the living conditions of nearby residents. I have had regard to the appellant comments regarding the setting up and clearing of the outdoor area, however adding additional time on to the hours of use could result on a creep of the use of the terrace further into the nighttime. I therefore consider the hours suggested by the Council to be acceptable.
15. The Council have requested conditions requiring the submission of an odour risk assessment, plant and machinery sounds levels and a noise, smell, and odour assessment. From reviewing the Council's reasoning, they consider these are necessary in order to protect the living conditions of nearby residents. The only physical alterations proposed as part of the development relates to the external terrace area and no alteration to the plant and machinery in use for the existing restaurant is proposed. The appellant has confirmed that no additional plant or machinery would be required for the shisha element of the proposal. As such I do not consider that an assessment of the existing plant and machinery is necessary.
16. In support of the appeal the appellant has provided a noise and odour assessment. These concluded that there would be no harm to nearby residents from the proposed development. As such, it is not necessary for additional surveys to be submitted.
17. I have amended conditions in order to comply with the Planning Practice Guidance.

Conclusion

18. For the reasons given above the appeal should be allowed.

Tamsin Law

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out strictly in accordance with the following approved plans: Location Plan, AR-011 Revision 15, AR-111 Revision 17.
- 3) No external artificial lighting shall be installed until details of any external lighting have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 4) The external terrace at first floor shall not be used other than between the hours of 10:00 am and 23:00 pm. Outside of these hours, no activity, including the sale, purchase, or consumption of shisha, on the external terrace shall occur and any doors to this external area shall be locked. No amplified music shall be played at any time on the external terrace.
- 5) No access at any time shall be granted to the area identified on plan ref: AR-111 Revision 17 as "Balcony" and "Outdoor Green Area" and the vegetation proposed in this space shall remain in place in perpetuity.
- 6) The external terrace at first floor shall not be used until the 1.1m high balustrade identified on plan ref: AR-111 Revision 17 has been installed. The balustrade shall remain in place in perpetuity.