



Appeal Decision

Site visit made on 5 March 2025

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 MARCH 2025

Appeal Ref: APP/U5360/W/24/3355167

18 - 22 Ashwin Street, London E8 3DL

- 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 Andrew Mason of Bootstrap Limited against the decision of the Council of the London Borough of Hackney.
 - The application Ref is 2023/2667.
 - The development proposed is erection of timber structures at rooftop level and use of rooftop as restaurant / bar (Sui Generis), with opening hours 1000 to 0000 Monday to Saturday, 1000 to 2200 Sundays and Bank Holidays. (Retrospective).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant's details vary between the planning application and appeal forms. I have taken the appellant's name as given on the planning application form as the right of appeal is vested solely in the original applicant.
3. The description of the development provided on the planning application form has been replaced by an amended version on the decision notice and in subsequent appeal documents. I consider that subsequent description to accurately and concisely represent the proposal and I have therefore used it within this decision.

Main Issues

4. The main issues are:
 - The effect of the proposal on the living conditions of nearby residents with regards to noise and disturbance;
 - Whether the proposal would make sufficient provision for cycle parking and waste storage; and
 - Whether the proposal would be car-free development.

Reasons

Noise and Disturbance

5. The proposed restaurant and bar would be located on a largely open roof terrace on a multi-storey building. The appeal site is located in an area which contains a mixture of uses, including residential buildings as well as evening and night-time uses such as a theatre, cafes and bars. That said, while it is located close to a

busy commercial area, the site's back-street location gives it a relatively secluded character, although I am mindful that I visited the site during the working day rather than the evening.

6. Previous temporary permissions for the use of the roof as a restaurant and bar have been granted between 2010 and 2015. The appellant submits that no complaints were made during those periods, although I am mindful of comments raised by third parties which refer to noise generated by events at the site. A copy of an Abatement Notice in respect of noise and cover letter from 2023 have also been provided to me, which refer to complaints of loud amplified music and raised voices, and that Council officers witnessed loud amplified music emanating from the premises.
7. The appellant has submitted evidence including a Noise Impact Assessment (NIA) and Technical Memorandum which indicates that the main sound system is within a covered area of the roof terrace, with other small speakers providing background sound elsewhere. The proposal would include timber structures, including a timber-framed structure with a lightweight and retractable roof over the largest bar area. The NIA refers to elements of the proposal that provide an acoustic shield function, but due to their lightweight construction and partially retractable roof I consider that the functionality of these structures for noise mitigation would be limited at most. Furthermore, due to the proposal's elevated position, this would limit the effect of noise screening from nearby buildings. Furthermore, the incongruous, elevated position may exacerbate the intrusion arising from noise emanating from the site, even allowing for its location close to a busy commercial area.
8. The NIA refers to a professional sound system with a limit set at a level that cannot be exceeded by unauthorised users, as part of a Noise Management Policy for the business. It also submits that this level will be set at a point where there is no disturbance to nearby noise sensitive premises. However, it has not been demonstrated that this is feasible, given the reasonable expectations of the operators of the proposal that amplified music through speakers would be audible to customers, whilst not creating disturbance to nearby residents.
9. The appellant sets out that they do not propose to have live music on the roof terrace, and that any recorded music would be merely background and ambient. However, even if that is the case, there is no substantive assessment of the nature and characteristics of noise from music emanating from the appeal site and the effects on nearby residents.
10. Although a maximum operating level could be agreed in respect of the sound system, there is no certainty that this would successfully prevent noise affecting nearby residents given the elevated and relatively open aspect of the appeal site, as well as the nature of music including tonal, rhythmic and impulsive characteristics. On that basis, I do not consider that this can be addressed by a planning condition as there is no certainty that this would be effective in preventing noise disturbance to residents in the area.
11. The NIA submits that operational controls, such as hours of operation and the need for a noise limiter, are more effectively implemented and enforced through the licensing process, and that the planning regime should assess the principle of the design and use of the site. However, the NIA also sets out that licensing

authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community. Given my concerns about the effectiveness of the proposed sound level limitations and the reasonable expectations of the business, I am not persuaded that reliance on licensing controls would address planning considerations in relation to noise and disturbance.

12. However, even without amplified sound, I consider that the noise from customers would be audible and intrusive at nearby residential properties due to the potential number of people and the elevated open nature of the terrace. Indeed, the NIA refers to the effect of static groups of people spread out, for example, in a pub beer garden surrounded by other talkers. Although that reference was made in the context of noise from customers leaving the premises, this emphasises the degree of noise that can be generated by customers of a bar congregating in open area.
13. The proposal would lead to an increase in the comings and goings of customers in the area. However, the NIA includes a detailed assessment of noise from patrons leaving the site, including noise from cars and taxis, which indicates that this would be below the 'Lowest Observed Adverse Effect Level' at the nearest noise sensitive premises. The appellant has also proposed a Dispersal Policy, and I saw that there are also a number of other evening and nighttime uses in the immediate vicinity of the site. Based on what I have observed and read, I consider that the increased movements of customers to and from the appeal proposal would not lead to harm to residents of the area in respect of noise and disturbance.
14. Notwithstanding my conclusions in respect of the effects of the movements of customers of the proposal, I conclude that it has not been demonstrated that the use of the roof terrace as proposed would not lead to noise and disturbance of nearby residents. The proposal would therefore be contrary to Policy D14 of the London Plan 2021 and Policy LP2 of the Hackney Local Plan 2020 in respect of amenity and noise.

Cycle Parking

15. The appellant has proposed additions and amendments to an existing cycle parking area which would cater for staff generated by the proposal.
16. This cycle parking area would not be accessible by customers. However, there is a good supply of on-street cycle parking in the immediate vicinity of the appeal site. I am also mindful that the primary demand for cycle parking generated by the proposal would be in the evening, when demand from nearby offices and most other commercial uses in the area would be at its lowest. On that basis, I consider that the existing on-street cycle parking would be sufficient to serve customers of the proposal.
17. I conclude that the proposal would make suitable provision for the parking of cycles, and would therefore comply with Policies T1, T4 and T5 of the London Plan and Policies LP42 and LP43 of the Local Plan in respect of cycling and sustainable transport.

Waste Storage

18. There is an existing waste storage area serving the building which would be available to the appeal proposal, and which I observed on my visit makes suitable

provision for the collection of waste. The appellant has provided evidence which demonstrates that this existing area has sufficient capacity to deal with waste generated by the proposal. Based on what I have seen and read the proposal would make suitable provision for waste storage and collection, and would therefore not conflict with Policy LP57 of the Local Plan in respect of the storage and collection of waste.

Car Free Development

19. The proposal does not include any car parking and the appeal site is readily accessible by sustainable modes of transport. The Council's reason for refusal refers to securing car free housing, although the proposal does not include any dwellings.
20. The proposal would be car free development accessible by sustainable modes of transport. It would therefore comply with Policy T6 of the London Plan as well as Policy LP45 of the Local Plan in respect of parking and car free development.

Other Matters

21. I am mindful of the benefits of the proposal. It would add to the facilities in this commercial area and would generate employment. However, these benefits would not outweigh the significant weight I give to the concerns about noise and disturbance.
22. The Council's officer report concludes that the proposal would enhance the significance of the appeal site, which is a locally listed building. However, the report considers that the proposal would result in visual clutter which would result in less than substantial harm to the appearance of the Dalston Lane (West) Conservation Area; although it goes on to conclude this harm is outweighed by public benefits in respect of employment and economic input into Dalston Town Centre.
23. Even allowing for the potential immunity of some of the roof structures from enforcement action and the proposed changes to the roof structures, the Council's consideration of heritage as well as design matters does not appear to be particularly robust. Had I been minded to allow this appeal then I would have considered these matters further. Nevertheless, even if I had agreed with the Council on these matters, the weight to be given to the benefits of the proposal on design and heritage matters would not be sufficient to outweigh my concerns in respect of inadequate evidence on noise and disturbance.

Conclusion

24. Notwithstanding my conclusions on cycle parking, waste storage and car free development, I conclude that it has not been demonstrated that the proposal would not lead to significant harm to the living conditions of nearby residents in respect of noise and disturbance. The proposal would therefore be contrary to the policies of the development plan when read as a whole with regards to amenity and noise.
25. There are no material considerations that indicate the appeal should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the appeal should be dismissed.

David Cross INSPECTOR