
Appeal Decision

Site visit made on 18 February 2025

by **U P Han BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22nd April 2025

Appeal Ref: APP/N5090/W/24/3353229

1 Charcot Road, Colindale, Barnet, London NW9 5HG

- 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 Erpolat against the decision of the Council of the London Borough of Barnet.
 - The application Ref is 24/2588/FUL.
 - The development proposed is the 'Retention of building with alterations to roof, windows and entrance door. Creation of outdoor seating space and associated landscaping. Proposed use of the building to Class E (b) (Café and Delicatessen shop) and Sui Generis (Takeaway)'.
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Decision

1. The appeal is allowed and planning permission is granted for the 'Retention of building with alterations to roof, windows and entrance door. Creation of outdoor seating space and associated landscaping. Proposed use of the building as Café, Delicatessen and Takeaway' at 1 Charcot Road, Colindale, Barnet, London NW9 5HG in accordance with the terms of the application Ref 24/2588/FUL and subject to the conditions in the attached schedule.

Preliminary Matters

2. The proposal was submitted with 'original', 'as built' and 'proposed' plans. The 'original' plans show the appeal site previously comprised car parking bays which were perpendicular to Charcot Road. The 'as built' or existing plans show that the appeal site is now occupied by a single storey building which does not have planning permission. At the time of my site visit, the building was partly being used as a café while the remainder was vacant. There was also an outdoor seating area in front of the café on Colindale Avenue. The proposal seeks to 'regularise' the existing building and its use as a café, including the outdoor seating area. In addition, the proposal seeks to introduce a delicatessen which would operate as one premises with the café with a shared counter and server area. The takeaway element is ancillary to the existing café and delicatessen. The proposal also includes external alterations to the roof, windows and entrance door of the building.
3. The Council's Decision Notice describes the development as follows: 'Retention of building with alterations to roof, windows and entrance door. Creation of outdoor seating space and associated landscaping. Proposed use of the building as Café, Delicatessen and Takeaway'. This is a more accurate description of the proposed development, and I have determined the appeal on this basis. The Council have included the words '(Part Retrospective)'. This phrase is superfluous as it does not describe an act of development.

4. The appellant indicates that the primary use of the appeal building is Use Class E(b). On the evidence before me and my site observations, the takeaway element is incidental to the café. Consequently, the proposal would be adequately covered by Use Class E(b).
5. The Council has confirmed that the policies from Barnet's Local Plan (Core Strategy) Development Plan Document (September 2012) and Barnet's Local Plan (Development Management Policies) Development Plan Document (September 2012) referred to in the Decision Notice have been superseded by policies from the Barnet Local Plan 2021-2036 (March 2025) (BLP). Accordingly, I have determined the appeal in accordance with the BLP. The appellant is aware of the policies and have had the opportunity to comment upon its relevance to the appeal.

Main Issue

6. The main issue in this appeal is whether sufficient information has been submitted to demonstrate that the development would not harm the living conditions of neighbouring occupiers with regard to noise.

Reasons

7. The appeal site relates to land situated close to the junction of Charcot Road and Colindale Avenue which is occupied by a single storey commercial unit currently used as a café. The site is adjacent to a pair of semi-detached two storey dwellings to the south west and a five storey mixed use building to the north west comprising commercial uses on the ground floor and residential above. The surrounding area is mixed in character with high density buildings containing commercial uses at ground floor and residential units above, along with more traditional two storey residential dwellings.
8. The appellant has submitted a Noise Impact Assessment (NIA)¹ which has assessed the proposed use as a café and delicatessen. Based on surveys of similar cafés, the NIA predicts that at worst, the internal noise level would be 75 dB LAeq but 70 dB LAeq at most times. Taking account of the proposed alterations to the roof and restrictions on the opening hours of the café and delicatessen, the NIA predicts that noise outside of the worst-affected window at 145 Colindale Avenue (No 145) would be up to 38 LAeq. The NIA explains that 38 LAeq would equate to internal noise levels of around 23 dB LAeq which is comfortably within the limits of the World Health Organisation Environmental Noise Guidelines (1999) (WHO) and BS 8233:2014 internal noise level guidelines of 35 dB LAeq,16hr (before 11:00pm).
9. The Council have expressed concern regarding the proximity of the outdoor seating area to residential dwellings. The outdoor seating area is screened from the front of No 145 by a brick rendered wall of approximately 2 metres in height. According to the WHO guidelines, as cited in the NIA, to protect the majority of people from being seriously annoyed by noise during the daytime, the sound pressure level on balconies, terraces and outdoor living areas should not exceed 55 dB LAeq for a steady, continuous noise. To protect the majority of people from being moderately annoyed by noise during the daytime, the outdoor sound pressure level should not exceed 50 dB LAeq. As outlined above, the NIA predicts that noise outside of No 145 would be up to 38 LAeq and 50 dB LAeq for dwellings in the wider area. As such, the external noise levels at the closest residential dwelling (No 145) would be

¹ Noise Impact Assessment, First Issue, Parker Jones Acoustics, 28 May 2024.

within acceptable WHO limits. In the absence of evidence to the contrary, I find that the appeal proposal would not have an adverse impact on neighbouring occupiers with respect to noise.

10. The Council's Officer Report states that the number of customers and staff have not been specified. However, while the number of staff have not been identified, the Design and Access Statement indicates that there would be approximately 40-45 seats inside the café and another 10-12 seats in the outside seating area, suggesting a maximum of approximately 57 customers. Based on the NIA, a café of around 100 people would generate a noise level of around 75 dB LAeq,1min and a café of 10-20 people would create noise levels of between 65 and 70 dB LAeq,1min. The NIA has used the worst-case internal noise level of 75 dB LAeq to predict noise emissions from the proposal. I am therefore satisfied that the NIA has taken an appropriate approach in relation to the number of people that would be within the building and is based on sufficient information.
11. For the avoidance of doubt, I have determined the appeal based on the proposed plans which shows four seats around four tables in the outdoor seating area to the café, therefore totalling 16 outdoor seats. During my site visit, there were 12 outdoor seats around four outdoor tables in the outdoor seating area. However, the outdoor area could comfortably accommodate a further four seats.
12. The Council contends that insufficient information has been submitted regarding any commercial kitchen extraction or ventilation system required. However, the appellant confirms that the café does not operate as a 'commercial kitchen' and that food can be warmed by microwave or toaster, so no extractor fan is necessary. The Council has questioned how food will remain warm without commercial facilities in between each delivery. However, how food will remain warm is generally not a planning matter. The café would predominantly serve coffee, cakes and snacks for consumption on the premises, as well as offer the sale of such items to be consumed off the premises. The delicatessen would sell specialist foods and goods, including the selling and making of cold snacks, lunches and general delicatessen goods. Therefore, it has been demonstrated that it is not necessary to submit information regarding commercial kitchen extraction or ventilation.
13. There is a minor discrepancy in the stated number of delivery of goods/ produce to the café/ delicatessen based on the appellant's submitted evidence. However, the difference between 1-2 deliveries a week and 2-3 deliveries a week is marginal and partly overlapping. Consequently, the minor increase in the estimated number of deliveries does not alter my findings above.
14. The appellant has confirmed that the proposed operating hours would be from 6.00am to 8:00pm Monday to Friday, 8.00am to 8:00pm Saturday and 10.00am to 6.00pm on Sunday. Such hours are typical for a café and could be controlled by condition in the event the appeal was allowed.
15. The Council has pointed an appeal decision² relating to a proposal for a shisha lounge at the appeal site and the then Inspector's concerns relating to noise impacts of the proposal on the occupiers of No 145. However, the appeal scheme before me is materially different to the previous appeal scheme due to the different uses and hours of operation proposed. In any event, I have determined the appeal based on its own merits.

² Ref. APP/N5090/W/20/3265924.

16. For the reasons given, I conclude that sufficient information has been submitted to demonstrate that the development would not harm the living conditions of neighbouring occupiers with regard to noise subject to implementation of the measures outlined in the NIA. The proposal complies with Policies D3 and D14 of the London Plan (March 2021) and Policy CDH01 of the BLP insofar as they require development to reduce, manage and mitigate adverse noise impacts. The proposal also complies with Policy CDH02 of the BLP which relates to sustainable and inclusive design.
17. The Council has referred to Policies HOU3 and CDH04 of the BLP. However, these policies respectively relate to residential conversions and tall buildings so are not determinative in this appeal.

Other Matters

18. Interested parties have raised a number of concerns which I have carefully considered. The majority of these concerns relate to the previous use of the appeal site as an unauthorised shisha lounge and noise and disturbance, anti-social behaviour, air pollution, parking and fire risks associated with the previous use of the premises. Given the proposal before me is for a café and delicatessen with ancillary takeaway, the concerns raised about the shisha lounge are not directly relevant to this appeal. Planning conditions could be imposed, in the event the appeal were to be allowed, to control the use of the premises and the operating hours so as to protect the amenity of neighbouring occupiers.
19. Third parties have pointed that the appeal site was originally designated as a piazza. However, no substantive evidence has been submitted with regard to the authorised planning use of the site. Furthermore, the Council has not raised that the proposal would result in the loss of a piazza. Moreover, the 'original' plans show that the site was laid out as car parking bays.
20. Comments have been raised relating to the ownership of and rights to the land at the appeal site. However, land ownership and rights to land are not in themselves planning matters.

Conditions

21. The Council has provided a list of suggested planning conditions, which I have considered against the Framework and advice contained in the Planning Practice Guidance (PPG). Where appropriate, I have amended the wording for clarity and precision.
22. The standard time condition is not necessary as the development has already commenced. The approved plans should be specified to provide clarity and certainty.
23. Condition 2 is imposed to ensure that details relating to the roof alterations, green roof, all external surfaces and arrangements for waste storage and collection are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively worded condition to secure the approval and implementation of the aforementioned matters before the development takes place.

24. The condition will ensure that the development can be enforced against if the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable
25. A condition to prevent the roof being converted or used as a balcony, roof garden or similar amenity or sitting out area is necessary in the interests of the amenity of occupiers of neighbouring residential properties.
26. Due to the proximity to residential properties, a condition requiring a construction management and logistics plan is reasonable and necessary in order to protect the living conditions of nearby occupiers during construction.
27. A condition restricting the use of the premises to Class E(b) is appropriate and necessary given the potential of other uses within Use Class E to give rise to other planning harms.
28. A condition restricting the operating hours of the premises is required to safeguard the amenity of occupiers of neighbouring residential properties.

Conclusion

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

U P Han

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved drawings and documents: CHA_PL_AB_00; CHA_PL_AB_01; CHA_PL_AB_02; CHA_PL_AB_03; CHA_PL_AB_04; CHA_PL_EX_00; CHA_PL_EX_01; CHA_PL_EX_03; CHA_PL_EX_04; CHA_PL_PR_00; CHA_PL_PR_01; CHA_PL_PR_02; CHA_PL_PR_03; CHA_PL_PR_04.
- 2) The building hereby permitted shall be demolished to ground level and materials resulting from the demolition shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision, a scheme containing the following details relating to the construction of the building and operation of the use hereby permitted shall have been submitted for the written approval of the Local Planning Authority:
 - a programme of alterations to the roof in accordance with the recommendations set out in Noise Impact Assessment, First Issue, by Parker Jones Acoustics, (dated 28 May 2024)
 - design details of the green roof including planting specification and maintenance and irrigation plan;
 - details/ samples of materials to be used for all external surfaces;
 - details of arrangements for waste storage and collection.

- ii) If within 6 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv) The approved scheme shall have been carried out and completed in accordance with the requirements of this condition and shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 3) The roof of the development hereby permitted shall only be used in connection with the repair and maintenance of the building and shall at no time be converted to or used as a balcony, roof garden or similar amenity or sitting out area.
- 4) Modifications to the roof and exterior of the building hereby permitted shall not commence until a Construction Management and Logistics Plan has been submitted to and approved in writing by the local planning authority. The approved plan shall be adhered to throughout the demolition and construction period. The plan shall include, but not be limited to the following information:
 - a. hours and days of demolition and construction works;
 - b. details of the routing of construction vehicles to the site, access and egress arrangements and security procedures;
 - c. site preparation and construction stages of the development;
 - d. details of provisions for recycling of materials;
 - e. details of an on-site storage/delivery area for plant, facilities and materials;
 - f. a suitable and efficient means of suppressing dust, including the adequate containment of stored or accumulated material;
 - g. noise mitigation measures for all plant and processors;
 - h. details of a community liaison contact for the duration of all works associated with the development.
- 5) The commercial premises hereby permitted shall be used for Class E(b) and Sui Generis (Takeaway) and for no other purpose (including any other purpose in Class E of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order, with or without modification).
- 6) The use hereby permitted shall only be open to customers between the following hours: 6.00am to 8:00pm Mondays to Fridays, 8.00am to 8:00pm Saturdays and 10.00am to 6.00pm on Sundays and on Bank or Public Holidays.

End of Conditions