



Appeal Decision

Site visit made on 25 March 2025

by **S Lo LLB M.SRA**

an Inspector appointed by the Secretary of State

Decision date: 08 May 2025.

Appeal Ref: APP/U5360/W/24/3352542

54-56 Scrutton Street, Hackney, London EC2A 4PH

- 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 Adewale (Culture Lounge Ltd) against the decision of the Council of the London Borough of Hackney.
 - The application Ref is 2024/1470.
 - The development proposed is a material change of use from restaurant (E) to a mixed use comprising Shisha Lounge (Sui Generis) and Restaurant (E) and the construction of a shelter in the rear with fixed roof.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. As set out on the application form, development has started and is now complete. Nonetheless, my assessment of the proposal is based on the plans before the Council at the time of the planning application. I will refer to the 'proposed development' throughout my decision, although certain aspects may already be completed.
3. A previous planning application¹ for the site was refused on 30th October 2023, with a subsequent appeal² dismissed on 29th April 2024. The appellant states that the current proposal differs materially from that scheme, insofar as the shelter at the rear will have a fixed roof and will not be retractable.
4. The Council has raised concerns that this may conflict with smoke-free legislation, which requires outdoor shisha areas to have a retractable or open roof. However, my attention is directed toward the specific application before me. Compliance with non-planning legislation is not a matter for this appeal, and any such issues would need to be considered separately between the parties.

Main Issue

5. The main issue is the effect of the proposed development on the living conditions of neighbouring occupiers, with regard to noise and disturbance.

Reasons

6. The appeal site is a commercial property situated in a mixed-use area comprising commercial, office, and residential properties. The proposed opening hours are

¹ 2023/0935

² APP/U5360/W/23/3333340

18:00 to 00:00 from Tuesday to Sunday, extending to 02:00 on Fridays and Saturdays. These later opening hours, particularly at weekends, have the potential to give rise to noise and disturbance later into the night.

7. The appellant's Noise Impact Assessment ("NIA") describes the garden structure, which functions as the shisha lounge, as being of typical steel construction with brick boundary walls. The maximum capacity is stated to be approximately 44 seated persons. The nearest identified noise-sensitive receptors is the first floor flat directly above the site, located approximately 6 meters from the proposed seating area.
8. The NIA identifies the potential noise breakout route to be through the proposed roof structure. It draws upon data from an unmanned environmental noise survey undertaken from a single measurement location at the first-floor level to the rear of the site. The assessment identifies patron speech as the main source of noise, assuming that no more than 22 people would be speaking at any one time in the external area. Taking into account the additional attenuation from a proposed layer of polycarbonate sheeting or single glazing either above or below the roof structure, the assessment predicts a façade noise level of 39 dB(A). This would result in an indicative internal noise level (with windows open) of 24 dB(A) LAeq,T within the nearest noise-sensitive receptor. This would fall below the desirable internal ambient noise levels set out in BS8233:2014 guidance.
9. However, there is no evidence before me that the proposed layer of polycarbonate sheeting or single glazing, which has been relied upon in the NIA for noise attenuation, has been incorporated into the current proposal. It is not shown on the submitted plans, nor has any further detail been provided by the appellant. Moreover, the NIA was produced in relation to the previous scheme, which featured a retractable roof. There is no evidence that the change to a fixed, non-retractable roof has been considered within the noise assessment, or that its potential effect on noise levels has been evaluated.
10. While the NIA concludes that noise emissions would be relatively low, this conclusion is based on assumptions about the previous design. Without clear evidence that the noise mitigation measures have been incorporated, and given the alteration in roof design, there is a significant risk that noise levels could be higher than assessed. It is inevitable that some noise will escape the structure due to the need for ventilation to operate the shisha lounge. While this may primarily arise from patron speech within the lounge itself, it would also include other associated noise sources, such as background music and the sound of patrons entering and leaving the shisha lounge area. This increase could be particularly disruptive for neighbouring occupiers, who may reasonably expect to be able to relax undisturbed. This could disrupt their domestic activities and could unreasonably require them to change their usual habits, by forcing them to close windows on warm evenings.
11. In reaching this view, I acknowledge the appellant's reference to proposed mitigation measures and the fixed nature of the structure. However, due to the lack of clarity regarding what mitigation measures will be implemented, it is unclear whether the mitigation measures will be effective in reducing noise levels to an acceptable level. As such, I consider that the NIA does not adequately address the increased risk of harm from noise and the appellant has not clearly shown that the proposed development would be acceptable.

12. In conclusion, the proposed development would have an unacceptable effect on the living conditions of neighbouring occupiers, with regard to noise and disturbance. It would result in significant adverse impacts on the amenity of neighbours, health and quality of life, contrary to Policies LP2 and LP58 of the Hackney Local Plan 2020 and Policy D14 of the London Plan 2021.

Other Matters

13. The appeal site lies within the South Shoreditch Conservation Area (“CA”). I have had regard to the statutory duty under Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the area. I find that the significance of the CA, insofar as it relates to this appeal, to be primarily associated the wide variety of building uses in the area, including shops, post depots, warehouses and residential dwellings. The proposal would not appear as an unusual addition within the visually diverse local context, nor would it exhibit any distinguishing or disruptive features that would detract from the surrounding area. The shisha lounge is located to the rear of the site, set behind the principal elevation and largely screened from public views. In this context, I am satisfied that the proposed development would not cause harm to the character or appearance of the CA. I also note that the Council did not raise objections on heritage grounds in their assessment of the application, and based on the evidence before me, I have no reason to take a different view.
14. I have considered representations regarding the economic benefits of bringing this unit back into active use and the creation of jobs. I recognise that the proposed development could promote the development of a night-time economy, adding to the overall vitality and vibrancy of the area. Nonetheless, these considerations do not outweigh the harm I have identified and the conflict with the development plan.

Conclusion

15. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, for the reasons set out above, I conclude that the appeal should be dismissed.

S Lo

INSPECTOR