



Appeal Decision

Site visit made on 14 July 2025

by **A Wright BSc (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18 July 2025

Appeal Ref: APP/L2250/W/25/3361174

35-39 Grace Hill, Folkestone, Kent CT20 1HQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Christopher Udenze of Tofts Cafe Bar against the decision of Folkestone and Hythe District Council.
 - The application Ref 24/0457/FH was approved on 13 September 2024 and planning permission was granted subject to conditions.
 - The development permitted is retrospective application for the continued use of premises as a café bar (sui generis) including extraction unit.
 - The condition in dispute is No 3 which states that: No amplified music (live or recorded) shall be played at the premises.
 - The reason given for the condition is: In the interests of residential amenity.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission was granted for the use of the premises as a café bar. The appellant is seeking the removal of condition 3 set out in the banner heading above and its replacement with a condition allowing amplified music to be played until 21:30 hours each day. The condition was imposed 'in the interests of residential amenity' and the Council indicates that this relates to the impacts on the occupants of 35 and 39 Grace Hill.
3. Therefore, the main issue is whether condition 3 is necessary and reasonable to safeguard the living conditions of the occupiers of 35 and 39 Grace Hill (Nos 35 and 39), with particular regard to noise.

Reasons

4. The appeal site comprises a ground floor café bar and adjacent garage within a two storey building adjoining a busy A-road close to Folkestone town centre. There is a flat above at No 39, and a residential property to the side of the establishment at No 35. It is indicated that the proposal to play amplified music is part of the business model of the premises as a food and music venue for mature people.
5. The noise assessment (NA) considered existing background sound levels and noise generated during a live band event in June 2024. This found that noise from the event adhered to their recommended criteria up to around 21:30 hours at the external assessment location. After this time, the background sound level became sufficiently low that the recommended criteria were no longer adhered to. Thus,

from an external assessment location perspective, the NA recommended that live performances do not continue beyond this time.

6. Nevertheless, BS8233:2014 sets out desirable criteria for indoor ambient noise levels for dwellings. In terms of internal noise transfer, measurements in the upstairs first floor flat at No 39 showed that the level of noise from live and recorded music significantly exceeded the desirable daytime (07:00 to 23:00 hours) internal noise levels for living rooms and bedrooms.
7. Therefore, the NA stated that due to low sound insulation levels between the floors, occupants of No 39 would experience significant observed adverse effects should live or recorded amplified music be allowed at the ground floor café bar. This would be the case even if amplified music was only played before 21:30 hours. Whilst this flat is currently occupied by the owners of the café bar premises who have direct control over its noise levels, any future occupiers unrelated to the ground floor establishment would experience harmful levels of noise.
8. The NA indicated that no access or information regarding the adjacent ground floor unit was available. Using a plethora of assumptions to predict noise level figures at No 35, it found that the reasonable criteria for bedrooms and living rooms would be met in the daytime during a live music performance and the desirable criteria would be met when recorded music is being played.
9. These hypothetical predicted levels of internal noise transfer from the café bar did not consider the existing noise break in from Grace Hill and the local environment. For the room at No 35 overlooking Grace Hill, the level of external noise break in from traffic should provide a significant masking effect. However, for rear rooms in the dwelling closer to the live band location in the café bar, the NA considered it likely that any live music performance would be easily distinguishable against the existing internal ambient noise level. Therefore, even if amplified music was not played after 21:30 hours, there would be a significant observed adverse effect on the occupiers of this property.
10. It is indicated that the appellant has been unsuccessful in contacting the owners of No 35 and that this property has been empty for over a year, so it has not been possible to carry out a further acoustic survey. Therefore, sound proofing with high density acoustic panels on walls and ceilings has been installed, including on the wall adjacent to the neighbouring dwelling. However, no information has been submitted demonstrating the impact of this on the noise levels experienced by the occupants of Nos 35 and 39 whilst amplified music is played at the café bar.
11. I sympathise with the appellant's position, but without a recorded assessment of the impacts of amplified music on the occupiers of No 35, I cannot be satisfied that the proposed change to condition 3 would not cause harmful noise disturbance to future occupiers of the adjoining dwelling. Indeed, the NA recognises that there is insufficient information regarding this adjoined property to comment definitively on the impacts of the proposal and that access into the unit and additional testing would be required to comment more conclusively.
12. Policy HB1 of the Council's Places & Policies Local Plan September 2020 states that planning permission will be granted where the proposal does not lead to an adverse impact on the amenity of neighbours. As I have found that the proposal would cause harmful noise intrusion to the occupiers of Nos 35 and 39, it would conflict with Policy HB1.

13. Therefore, I conclude that condition 3 is necessary and reasonable to safeguard the living conditions of neighbouring occupiers, with particular regard to noise.

Conclusion

14. For the reasons given above, I conclude that the appeal should be dismissed.

A Wright

INSPECTOR