



Appeal Decision

Site visit made on 6 January 2026

by **L Fern BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25 February 2026

Appeal Ref: APP/U5930/W/25/3360432

389 High Road Leyton, Leyton, Waltham Forest E10 5NA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Florenc Sadiku against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref is 242858.
 - The application sought planning permission for construction of new boundary wall at rear garden, use of rear garden as a seating area and installation of retractable roof at ground floor rear elevation without complying with conditions attached to planning permission Ref 222226, dated 16 August 2023.
 - The conditions in dispute are Nos 6 and 7 which state that: the enclosed area hereby approved shall only be open to visiting members of the public between the hours of 7am and 9.30pm daily. It must not be accessed by customers of the venue outside of these times; and no live or recorded music shall be played in the enclosed area at any time.
 - The reason given for the conditions is: in the interests of protecting residential amenity particularly in terms of noise and disturbance.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant's name was incorrectly spelt on the application form, and on the Council's decision notice as a result. The spelling used in the banner heading above has been confirmed as correct by the appellant.
3. It was observed during my site visit that the approved development¹ is in situ and has been undertaken broadly in-line with the approved plans. Whilst it was difficult to ascertain on my site visit whether the roof, as built, is retractable, it forms an important element of the approved development, as articulated in both the description of development and on the plans, which could be implemented later if not already undertaken. The potential for the roof to be retractable must therefore form part of my appeal deliberations.
4. I note that the appellant submitted late supporting evidence. However, the Council confirmed in writing that they had sight of it and had the opportunity to comment on it in their appeal statement of case. I am therefore content that they have not be prejudiced by its late submission.

¹ Council Ref 222226.

Background and Main Issue

5. The appellant requested Condition 6 be amended to extend the hours of opening of the enclosed area to the public by an additional 2 and a half hours per day from Sundays to Thursdays and an additional 3 hours per day on Fridays to early Sunday mornings. The hours of opening would be from 07:00 to 00:00 on Sundays to Thursdays and from 07:00 to 00:30 on Fridays to early Sunday mornings. I have assessed the appeal on this basis.
6. The appellant also requested the removal of Condition 7, which would have the effect of allowing music to be played in the enclosed area.
7. The main issue is the effect of the proposal on the living conditions of the occupants of neighbouring dwellings regarding noise and disturbance.

Reasons

8. The appeal property is located within Leyton District Centre (LDC), which was observed during my site visit to be a particularly busy and predominantly commercial area with many nighttime uses such as pubs and restaurants. The ground floor of the property, including the single storey enclosed area to the rear, is currently being used as a restaurant. The closest residential dwellings are located on the upper floors of the front part of the appeal property and to the rear of the appeal site, beyond Kensington Path, a lane to the rear of the properties fronting onto High Road Leyton.
9. The works undertaken to enclose the rear area of the property are substantial and due to the robustness of wall and roof construction are more akin to a building extension, creating what is effectively additional internal restaurant space. However, the approved development does include provision for the roof being retractable, with no restrictions in its operation.
10. Despite being located within a busy commercial setting, residents are entitled to quiet surroundings to enable enjoyment of their living space, especially at unsociable nighttime hours such as those proposed under this appeal. Noise associated with customer activity and music, even that which is pre-recorded, has the potential to severely effect the living conditions of neighbouring residents and should therefore be thoroughly assessed.
11. At the time of my site visit the roof was closed, there were a small number of customers within the rear restaurant area and recorded music was being played at a moderate volume. Although I observed that both customer activity and the music were inaudible externally from either Balmoral Road that runs along the side of the property or from Kensington Path to the rear, I am conscious that my visit was during daytime hours when background noise is likely to be greater and the restaurant was not busy.
12. An Acoustic Assessment Report for Planning² (AAR) has been submitted by the appellant. I find no reason to doubt its conclusions that the cumulative restaurant noise levels would be only marginally above existing background levels and would be within a tolerance level that is generally considered to be imperceptible. However, the assessment was based on the roof being closed, which, due to its robust construction, would provide significant noise attenuation. Furthermore, I note

² Ref 14008.RP01.AAR.0, dated 7 November 2024, prepared by RBA Acoustics.

that there is no reference within the AAR to the roof of the approved development being retractable and I am therefore not convinced that the AAR has been prepared with this element in mind.

13. I acknowledge that the AAR has been undertaken by a reputable and sufficiently qualified consultancy and that the Council's Environmental Health team, despite not issuing a formal consultation response, indicated they were satisfied with the general acoustic assessment methodology used in correspondence with the appellant. However, I am not convinced that a thorough assessment has been undertaken to account for times when the roof is open, which would leave minimal acoustic protection between the noise source and the close noise sensitive receptors on the upper floors of the appeal building.
14. It is also noted that the Council's Air Quality and Environmental Protection team undertook proactive visits and confirmed that no noise from the premises was audible outside of the property. However, there is no substantive evidence to confirm whether the roof was open or closed during the investigations.
15. The appellant asserts that planning conditions could be used to control music volume levels and prevent live music for example, which is more unmanageable. However, in the absence of a thorough assessment that takes account of the approval of a retractable roof, I am unable to ascertain whether such mitigation measures would be effective in this case. Regardless, no specific details in relation to volume control have been provided.
16. For these reasons, the proposal would have an unacceptable effect on the living conditions of the occupants of neighbouring dwellings regarding noise and disturbance. Consequently, the proposal would be contrary to Policies 44 and 57 of the Waltham Forest Local Plan Part 1 (2024), which, amongst other things, encourage proposals for evening and night-time economy uses where there is no significant individual or cumulative adverse effect on surrounding residential amenity due to noise and general disturbance.

Other Matters

17. There are some economic benefits to the proposed extension of opening hours, including an increase in business revenue for example. However, this is largely a private matter and not in the public interest, which planning is mainly concerned with. The extended hours could also increase footfall within LDC, resulting in an increase in local consumer spend. However, this proposal is for a single restaurant use that already exists, and the number of additional hours of opening would be limited.
18. The appellant has directed me to examples of similar businesses within the surrounding area that operate late at night and that benefit from uncovered external areas for customer use. Whilst this may be the case, there is no substantive evidence before me to demonstrate that there are no planning restrictions in place that the businesses could be in breach of.
19. I note that no objections have been received from neighbours or statutory consultees. However, a lack of objection does not equate to a lack of harm. The appellant refers to a letter of support containing multiple signatures that was submitted with the planning application. However, it is not before me. Nevertheless, I have determined the proposal on its planning merits.

Conclusion

20. The proposal conflicts with the development plan taken as a whole, and material considerations do not indicate that the appeal should be decided other than in accordance with it. I therefore conclude that the appeal should be dismissed.

L Fern

INSPECTOR