



Appeal Decision

Site visit made on 11 May 2011

by **Philip Major BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7 June 2011

Appeal Ref: APP/E5900/A/11/2147453

Unit FG-014, Block F, Old Truman Brewery, 91 Brick Lane, London E1 6QL.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for the extension to the time limit for implementing a planning permission.
 - The appeal is made by The Zeloof Partnership against the Council of the London Borough of Tower Hamlets.
 - The application Ref: PA/10/01317, is dated 17 June 2010.
 - The development proposed is the change of use to restaurant.
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Decision

1. I allow the appeal, and grant planning permission for the change of use to restaurant at Unit FG-014, Block F, Old Truman Brewery, 91 Brick Lane, London E1 6QL in accordance with the terms of the application, Ref: PA/10/01317, dated 17 June 2010, subject to the conditions set out in the schedule attached to this decision.

Preliminary Matters

2. The address above is taken from the application form, and reflects their position in the former brewery site. I note that the appeal premises are also known as 15 Hanbury Street, London E1 6QR. The appeal deals with the site as shown on the application plan, and it lies on the Corner of Hanbury Street and Ely's Yard.
3. This proposal relates to an application to extend the time period for implementation of a previous planning permission. The previous permission (PA/05/00665) was dated 27 June 2005. The current application was made on 17 June 2010, just before the expiry of the previous permission.
4. The site is within the Brick Lane and Fournier Street Conservation Area. It has not been suggested that the proposal would be harmful to the character or appearance of the area, and I concur that it would not. Hence it would preserve the character and appearance of the Conservation Area.
5. Had the Council determined the application it has indicated that it would have refused permission for the following reason:

The proposed change of use would exacerbate adverse amenity impacts suffered by neighbouring residential properties resulting from the cumulative impact of the existing number of night time economy uses (A3, A4 and A5) within the vicinity. As such, the proposal is contrary to PPS4 and PPG24, saved

policies DEV1, DEV2, S7 and DEV50 of the adopted Unitary Development Plan (1998), Policy SP01 of the Core Strategy submission document (2009), policies DEV1, DEV10, RT5 of the Interim Planning Guidance (2007) and policies 3D.4 and 4A.20 of the London Plan (2008). These policies seek to preserve the amenity of neighbouring occupiers and prevent the cumulative impact, over-concentration and unsatisfactory level of disturbances associated with A3, A4 and A5 uses, which form part of the evening and night time economy.

Main Issue

6. The main issue in the appeal is the effect of the proposed development on the living conditions of nearby residents.

Reasons

7. The appeal site is part of the wider redevelopment of the former Truman Brewery centred in Brick Lane. The redevelopment includes a mix of uses including entertainment, offices, food and drink and retail. The general area is also mixed in character, with a variety of uses in the surrounding streets. The nearest dwellings are on Wilkes Street to the south. The Brick Lane area, including the Truman Brewery site, has been classified as a District Centre in the Council's adopted Core Strategy. There is a stated intention that the area will continue to be characterised by its diverse ethnic communities and its special offer in fashion, arts and restaurants. Given this expectation I see no objection, in principle, to the proposed development.
8. I do recognise the concerns of nearby residents, however, in relation to the effect of late night noise and disturbance which can often emanate from individual premises, and concentrations of premises, which cater for uses such as bars, restaurants and takeaways. I have seen for myself the location and concentration of uses, and have visited the area at various times.
9. Some of the nearby surrounding streets, such as Wilkes Street, have fewer commercial properties and more residential premises than is common in Brick Lane or Hanbury Street. There is a recognisable core of evening and late night uses, including restaurants, along Brick Lane, Hanbury Street and in the Truman Brewery site. The appeal site would fall within that general zone, and I note that the Council has recently permitted other restaurant uses in that area, in one case in a location considerably closer to residential property. The Council has acknowledged in one recent case that the thrust of policy now remains as it did in 2005 but if anything is more supportive of this type of development.
10. Whilst I do not suggest that any other proposal should have a direct and determinative bearing on the current proposal (since circumstances on the ground differ) the principle of development is similar in those locations, and they are subject to the same policy structure. This contrasts with the situation in the appeal decision sent to me by the Council, which seems to relate to a site further north along Brick Lane, where there are fewer night time uses.
11. The appeal proposal is relatively modest in size and its entrance would be within the brewery site. There would be little incentive for those leaving the restaurant to travel along Wilkes Street because the main access to transport facilities would be via alternative routes. That is not to say that people would not use Wilkes Street, but in my judgement it is likely to be relatively few people.

12. In any event this proposal is for a restaurant. It is not seeking to be a late night bar and can be subject, by condition, to reasonable hours of use, as it was in 2005, which would help to ensure that local residents were not disturbed by patrons of the establishment. Additionally, there does not seem to be an over-concentration of such uses in the immediate locality, and this is accepted by the Council in its appeal statement. Given that the main centre of late night activity appears to be closer to Brick Lane it seems improbable that the use of the appeal premises as a restaurant would add materially to the likelihood of noise and disturbance resulting from the proposal. The Council is correct that there needs to be a balance between night time activities and the peace and quiet of residents. In this case the balance would be preserved.
13. It follows that I do not find that the proposal would be in conflict with the relevant development plan policies supplied to me which seek to ensure that the amenities of nearby occupants are not unacceptably harmed. These include Unitary Development Plan Policies DEV2, DEV50 and S7; Policies SP01 and SP10 of the adopted Core Strategy; and Policies RT5, DEV1 and DEV10 of Tower Hamlets Interim Planning Guidance. I also find no conflict with the thrust of the objectives of the London Plan and national advice in Planning Policy Statement 4 – *Planning for Sustainable Economic Growth* and Planning Policy Guidance 24 *Planning and Noise*.
14. I have taken note of the information relating to the issue of crime and disorder in the area. From the information given it seems this is related to the closing of late night bars. It therefore seems unlikely that a restaurant with controlled operational hours would contribute to the crime and disorder problem.
15. I have referred earlier to the question of operating hours. These can be controlled by condition. Other conditions on the previous planning permission also seek to safeguard the amenities of the locality by controlling details of the timing of building works, of extraction equipment and its noise emissions. These conditions are still reasonable and necessary. Additionally the requirement to provide details of refuse disposal (despite detail included with this application) is reasonable and necessary in order to ensure that adequate provision is made for these matters. Neither the appellant nor the Council has suggested any further conditions. I have reworded the conditions where necessary for precision.
16. Taken as a whole therefore, and subject to the conditions indicated, I find that the proposed development would not be unacceptably harmful to the living conditions of nearby residents. For the reasons given above I conclude that the appeal should be allowed.

Philip Major

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The building works required to implement this permission shall be carried out only between the following times:
0800 to 1800 Mondays to Fridays
0800 to 1300 Saturdays
And not at all on Sundays or Bank Holidays.
- 3) The use hereby permitted shall not be open to customers outside the following times:
0900 to 2300 Mondays to Thursdays
0900 to 0000 (midnight) Fridays and Saturdays
0900 to 2300 Sundays and Bank Holidays
- 4) Before the use hereby permitted begins, a scheme for the installation of equipment to control the emission of fumes and smell from the premises shall be submitted to and approved in writing by the Local Planning Authority. The scheme as approved shall be implemented. All equipment installed as part of the scheme shall thereafter be operated and maintained in accordance with the manufacturer's instructions.
- 5) Any new plant and any associated equipment installed shall be designed to operate at a level of 10dB below the lowest measured background noise (LA90, 15 minutes) as measured one metre from the nearest affected window of the nearest affected residential property. The assessment of background noise shall be made in the absence of all operating plant that services the premises that is the subject of this permission. In addition the plant shall be designed not to create an audible tonal noise nor cause perceptible vibration to be transmitted through the structure of the building.
- 6) Before the use hereby permitted begins provision shall be made for the storage of refuse and recycling facilities, in accordance with details to be submitted to and approved in writing by the local planning authority. The development shall be operated at all times in accordance with the approved refuse and recycling details.