
Appeal Decision

Site visit made on 11 November 2015

by D J Barnes MBA BSc(Hons) Dip TP MRTPI

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

Decision date: 29 December 2015

Appeal Ref: APP/R5510/W/15/3129003

Namaste Lounge, 66 Joel Street, Northwood Hills, Middlesex HA6 1LL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Nayan Chande against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref 23334/APP/2015/471, dated 9 February 2015, was approved on 2 April 2015 and planning permission was granted subject to conditions.
 - The development permitted is a new outdoor smoking lounge.
 - The condition in dispute is No. 4 which states that: The area occupied by the extension hereby approved shall not be used except between 08:00 and 22:00 hours Sunday-Thursday and between 08:00 and 23:00 hours Friday and Saturday
 - The reason given for the condition is: To safeguard the residential amenity of the occupiers of adjoining and nearby properties in accordance with Policy OE3 of the Hillingdon Unitary Development Plan.
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Decision

1. The appeal is allowed and the planning permission Ref 23334/APP/2015/471 for a new outdoor smoking lounge at Namaste Lounge, 66 Joel Street, Northwood Hills, Middlesex HA6 1LL granted on 2 April 2015 by Council of the London Borough of Hillingdon is varied by deleting condition 4.

Main Issue

2. It is considered that the main issue is whether the disputed condition is reasonable and necessary to safeguard the living conditions of the occupiers of neighbouring properties.

Reasons

3. The appeal property is a bar/restaurant which is situated within a commercial area fronting Joel Street. To the side and rear of the property there is an extensive garden area. There are residential properties separated from the rear garden by a boundary comprising a timber fence supplemented by vegetation. Between the shared boundary and the dwellings is a parking and grassed area.
 4. The Council has granted planning permission for a smoking lounge which has been erected predominantly between the property's side elevation and the railway cutting. The design of the appeal scheme includes a wall which
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separates the lounge from the rear garden and there is also a roof. The open sides of the extension face towards Joel Street and the railway cutting.

5. The planning permission is subject to a condition that limits the hours the smoking lounge can be used. The Council imposed the condition to safeguard the residential amenity of the occupiers of adjoining and nearby residential properties. The imposition of the condition is supported by reference to Policy OE3 of the saved policies of the Hillingdon Unitary Development Plan (UDP) which refers to uses that have the potential to cause noise annoyance only being permitted where there is mitigation of the potential impact to an acceptable level. UDP Policy OE3 does not specifically refer to the effects of smoke on residential amenity.
6. This policy is consistent with the National Planning Policy Framework's (the Framework) core principle of securing a good standard of amenity for all existing and future occupants of land and buildings. The Framework also refers to planning decisions should aim to both avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development and to mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new developments, including through the use of conditions.
7. Although the hours of use condition is the subject of this appeal, the appellant has not challenged the condition which seeks to control the level of noise emanating from the smoking lounge. The noise emitted by the appeal scheme is restricted to being 5dB below the background noise level as measured on the boundary to the nearest noise sensitive development. In my judgement, such a condition meets the requirements of UDP Policy OE3.
8. I am mindful that the appellant has identified that the remainder of the use of the property is not the subject of any hours of restriction imposed by a planning condition. This lack of restriction includes the remainder of the garden, including the rear garden which is situated closest to the neighbouring dwellings. Smoking and other activities can be undertaken within the remainder of the garden.
9. Reference has been made by the appellant to the Licensing Act 2003 because the current Premises Licence provides regulatory control over the use and activities associated with the property. Amongst other matters, the Premises Licence restricts the normal opening hours to be up-to 00:30 between Sundays and Thursdays and 02:30 on Saturday and Sunday mornings. Longer opening hours apply on other specified days.
10. The National Planning Practice Guidance identifies that specific controls outside planning legislation may provide an alternative means of managing certain matters. However, although a premises licence is a material consideration, there are different considerations in determining a premises licence application and a planning application and it is legitimate for the effect of noise and disturbance on local residents to be taken into account in determining this appeal. In this case the Council claim that the smoking lounge might lead to an increase in the use of this facility by customers when compared to the remainder of the garden. Based upon the site visit, I agree with the Council

that this could well be the case but account equally needs to be taken of the design and siting of the appeal scheme.

11. By reason of the condition controlling levels of noise and the design of the smoking lounge, the imposition of an hours of use condition is unnecessary. In making this assessment account has been taken of the orientation of the open sides of the appeal scheme facing towards the road and railway and the separation distance to the nearest dwellings. Account has also been taken of the property's garden closest to the dwellings continuing to be used by customers, including those who smoke, without any planning related restrictions. In my judgement there is sufficient mitigation and protection for the living condition of the occupiers of the neighbouring properties in respect of noise matters.
12. Further, there is no necessity for the hours of use to be controlled because of concerns about smoke affecting the occupiers of neighbouring properties after the hours specified in the disputed condition. The design and siting of the lounge is such that there is an opportunity for any smoke to disperse before reaching the nearest residential properties.
13. By reason of the siting and design of the smoking lounge, the Premises Licence and noise condition, it is concluded that the living conditions of the occupiers of the neighbouring properties are safeguarded and the disputed condition is both unnecessary and unreasonable when assessed against the tests in the Framework and the Practice Guidance. It is further concluded that the development, with the removal of the disputed condition, does not conflict with UDP Policy OE3 and the Framework even taking into account the potential use of the smoking lounge. Accordingly, and taking into account all other matters, it is concluded that this appeal should succeed.

D J Barnes

INSPECTOR