The Planning Inspectorate

Appeal Decision

Site visit made on 6 February 2017

by Robert Parker BSc (Hons) Dip TP MRTPI

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

Decision date: 1 March 2017

Appeal Ref: APP/R5510/W/16/3158398
132 Uxbridge Road, Hayes UB4 0JH

- 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 planning permission.
- The appeal is made by Mr Gautam Chadha against the Council of the London Borough of Hillingdon.
- The application Ref 3125/APP/2016/2172, is dated 5 June 2016.
- The development proposed is part single storey rear extension to be used as Shisha Bar and change of use of existing shop from A1 to A4 use.

Decision

1. The appeal is dismissed and planning permission for part single storey rear extension to be used as Shisha Bar and change of use of existing shop from A1 to A4 use is refused.

Procedural Matters

2. The Council resolved, at its Planning Committee on 20 September 2016, to refuse planning permission for reasons relating to the effects on highway and pedestrian safety and the living conditions of local residents. I have treated this as the decision the Council would have made, had it been empowered to do so.

3. The description of development in my formal decision above is taken from the application form. However, I note from the committee report that the Council has considered the proposal as a change of use from retail (Use Class A1) to a mixed use comprising drinking establishment and single storey rear extension for use as a shisha lounge (Use Class A4/Sui Generis).

Main Issues

4. The Council has raised no objection to the proposed extension in terms of its impact on the character and appearance of the area. Given the number of similar extensions in the immediate vicinity of the site, I have no reason to take a different view. Accordingly, I consider that the main issues in this case are:

   a) the effect of the proposal on the living conditions of surrounding residents, with particular reference to noise and odour; and

   b) the effect on highway safety arising from the proposed parking and servicing arrangements.

Reasons

Living conditions

5. The appeal premises lie within a commercial parade fronting onto Uxbridge Road near its junction with Brookside Road. At the time of my visit the upper floors were being used as offices. The Council states that there are residential uses above other properties in the row. The evidence before me does not enable me to establish this with any certainty, but based on my observations it seems likely. The surrounding area to the north of Uxbridge Road is mainly residential in nature and there are a number of houses a short distance away, with gardens backing onto the area of the proposed rear extension.

6. The Council estimates that the extension would accommodate up to thirty people. It is unclear how this figure was arrived at. Nevertheless, it is apparent from the plans that the extension would add significantly to the size of the ground floor. Just under half of the new floorspace (approx. 84sqm) would be dedicated to dining and customer toilets, with the remainder (approx. 94sqm) being used as a shisha lounge. This area would have fully opening shutters along one side facing towards residential properties.

7. Officers from the Council's Environmental Protection Unit have advised that the extension would not be compliant with smoke free legislation. I can only consider the plans that are in front of me. However, it seems probable that the shutters would need to be left open whilst the premises were in use to ventilate the tobacco smoke. This would allow the general hubbub within the building and aroma from shisha pipes to transmit to surrounding dwellings and gardens, to the detriment of the occupiers of these properties.

8. Other than specifying that trading hours would be between 7pm and 11pm, the appellant has given no explanation as to how the business would be operated. Crucially, there is no information within the application as to how the above noise and odour impacts would be satisfactorily addressed. Neither have any details been provided of ventilation and extraction for the kitchen associated with the dining area.

9. Policy BE1 of the Hillingdon Local Plan: Part 1 – Strategic Policies (2012) states that all new development should seek to protect the amenity of surrounding land and buildings, particularly residential properties. Saved Policy OE1 of the London Borough of Hillingdon Unitary Development Plan (1998) (UDP) explains that permission will not normally be granted for uses and associated structures which are likely to become detrimental to the character or amenities of surrounding properties or the area generally, because of factors such as noise and smell, unless sufficient measures are taken to mitigate the impact. Saved Policy OE3 states that buildings or uses which have the potential to cause noise annoyance will only be permitted if the impact is mitigated within acceptable levels by engineering, lay-out [sic] or administrative measures.

10. In my judgement, the appeal proposal has the potential to have a significant adverse effect on the living conditions of surrounding residents by reason of noise and odour. These issues have not been addressed by the appellant and there is nothing to demonstrate that the harmful impacts would be adequately mitigated. For this reason, I find that the proposal would be contrary to the aforementioned development plan policies.

Highway safety

11. The appellant provides no reliable estimate as to the likely capacity of the ground floor premises. However, in comparison to retail use the number of persons present at any one time is likely to be considerably greater. I daresay that a proportion of these customers would arrive on foot from local residential areas. The appellant is also hoping to attract guests from the hotel directly opposite. Nonetheless, on the balance of probability some of the patrons would arrive by car – notwithstanding the appellant's anti drink-drive policy.

12. Although the premises have a large area of hardstanding to the rear, they do not benefit from any formal parking provision. Whilst the submitted plans show two parking spaces for staff and deliveries, all customers would need to park their vehicles off-site.

13. The appellant contends that there is ample parking in the nearby retail park and within the grounds of the hotel. However, these car parks are in private ownership and I have seen no written agreements relating to their use. Furthermore, both car parks are gated and therefore I cannot be certain that they would be available at the times required, particularly later in the evening.

14. The Design and Access Statement states that the owner of 126 Uxbridge Road has offered land for off-street parking. However, there is nothing in writing to verify this and it is unclear how such provision could be properly secured in the absence of a legal agreement. Moreover, I am not convinced that this would be a practical or desirable arrangement given the unsurfaced nature of the access.

15. It is also suggested that customers would be able to use local side roads. There are no parking restrictions along Springfield Road and Brookside Road and therefore this possibility cannot be ruled out. However, there is no parking survey to demonstrate that there is spare on-street capacity at the times when the premises would be open. Accordingly, I cannot be confident that indiscriminate parking would not occur to the detriment of the safety and convenience of road users and local residents.

16. The Council has also raised concerns regarding servicing arrangements for the proposed use. Deliveries would be via the lane to the rear of the parade. This is shared by other units in the row, but it is wide enough for commercial vehicles to service the appeal premises. Larger vehicles may need to reverse into the lane from Brookside Road but this would be no different to the existing retail use and would not materially impact on highway safety.

17. Notwithstanding this, there is insufficient information to persuade me that there would be compliance with Policy AM7 of the UDP insofar as it seeks to ensure that traffic generation does not prejudice the free flow of traffic or conditions of general highway or pedestrian safety.

Other Matters

18. I have taken account of the fact that the proposal would bring an empty unit back into use but consider that the harms identified above are sufficient to outweigh any economic benefits arising from the scheme.

19. I have given careful consideration to all other matters raised by local residents, including the concerns regarding vermin, crime and anti-social behaviour and the

effects on both health and the local Sikh community. However, none is of such significance or weight as to alter my conclusions on the main issues.

Conclusion

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

Robert Parker

INSPECTOR