The Planning Inspectorate

Appeal Decision

Site visit made on 27 July 2017

by A J Mageean BA (Hons) BPl PhD MRTPI

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

Decision date: 10th August 2017

Appeal Ref: APP/W5780/W/17/3175076
141 Beehive Lane, Ilford, IG4 5DR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Shabul Islam against the decision of the Council of the London Borough of Redbridge.
- The application Ref 5593/16, dated 1 December 2016, was refused by notice dated 15 February 2017.
- The development proposed is continued use as Sui Generis (shisha smoking lounge) with ancillary A3 use.

Decision

1. The appeal is allowed and planning permission is granted for continued use as Sui Generis (shisha smoking lounge) with ancillary A3 use at 141 Beehive Lane, Ilford, IG4 5DR in accordance with the terms of the application, Ref 5593/16, dated 1 December 2016, subject to the following conditions:

    1) The development hereby permitted shall be carried out in accordance with the approved plans ZAAVIA/141BL/101 Issue A; ZAAVIA/141BL/102 Issue A; ZAAVIA/141BL/103 Issue A.

    2) The premises operating as shisha smoking lounge with ancillary A3 use hereby permitted shall only be open for the admission of customers between the following hours:
    1200 noon - 2300 Monday – Sunday.

    3) Within three months of the date of this decision, details of the measures to be taken to insulate and/or provide an acoustic screen from the extractor fan shall be submitted to and approved in writing by the local planning authority. The measures shall be implemented as approved and retained thereafter.

    4) Within three months of the date of this decision, details of any proposed external ventilation/filtration/extraction flues or measures to be installed at the site shall be submitted to and approved in writing by the local planning authority. The measures shall be implemented as approved and retained thereafter.

Preliminary Matters

2. The Council states that the application which is the subject of this appeal relates to an active enforcement case, and that it seeks to regularise the current use of the unit as a smoking lounge (sui generis). The application also includes the addition of ancillary A3 use.

3. The Council makes reference to the fact that the proposal does not comply with the relevant health and safety requirements for smoking establishments. However, such considerations do not come under the remit of planning control and therefore, should this proposal be acceptable in planning terms, such matters will need to be addressed separately.

4. The appellant has submitted an Acoustic Report as part of the appeal documentation[1]. The Council objects to the consideration of this report on the basis that statutory consultees and third parties have not had the opportunity to comment on this. However, on the basis of the limited comments made on the application itself and the fact that the Council has had the opportunity to comment on this report as part of the appeal process, I am satisfied that interested parties have not been prejudiced by its consideration as evidence in this case.

Main Issue

5. The main issue is the effect of the proposal on the living conditions of the occupiers of neighbouring properties with particular reference to noise and disturbance.

Reasons

6. The appeal site is located within a small centre consisting of two storey commercial units on either side of Beehive Lane, close to the busy junction with the A12, Eastern Avenue. This centre offers a range of goods and services falling mostly within A1 and A2 use classes, though some A3 and A5 uses are also present. The appeal site is a central unit within the parade on the western side of Beehive Lane. To the rear of the building a fabric covered seating area covers much of the rear garden area. As is common with other units in this parade, it has residential use at first floor level. Residential use also dominates the wider area, including on Eastern Avenue and further north along Beehive Lane.

7. The Council does not consider the loss of A1 use unacceptable in principle but has concerns which relate in part to the noise and disturbance generated by the 'comings and goings' of customers from the premises, noting the likely late night nature of this use. However this site is close to a busy road junction and I also note the presence of other uses likely to generate late night customer activity, including the hot food takeaway opposite, and the bar/restaurant associated with the hotel further along Beehive Lane. As such my view is that the noise levels generally in this area are such that the additional activity generated by comings and goings from these premises would not be significantly noticeable. Furthermore, late night nuisance could be controlled by a condition restricting closing times.

8. The rear covered seating area is located close to the first floor residential unit at the appeal site, those on either side of the site, and also the extended property located directly to the south east, No. 291 Eastern Road. As I understand that the appeal unit is currently open between 4pm and midnight the noise and disturbance generated by the use of this area for the occupiers of these properties must be considered. The Acoustic Report relates largely to the proposed extractor fan associated with the introduction of the ancillary A3 use.

[1] Technical Report No: SA 4264-ENV-1

This indicates that whilst noise levels from this addition would be excessive, modifications could be introduced which could control this issue. This is therefore a matter which could be controlled by condition.

9. It is clearly harder to control the more general background noise resulting from customers using the covered seating area. In this respect the Acoustic Report demonstrates that during the survey period of around 22 hours[2], whilst background noise levels dropped noticeably between around midnight and 6am in the morning, at other times noise levels remained reasonably consistent, with no noticeable increase from the 4pm opening time of this unit onwards.

10. I understand that the site has been occupied by the appellant for the past 7 years. Whilst no objections were received in relation to the planning application associated with this appeal, nor the appeal itself, the Council refers to objections linked to the enforcement case. The Council has not been able to provide details of this case or the specific nature of these objections, though it appears that this was not a recent case.

11. I accept the Council's point that the absence of objections does not in itself indicate the acceptability of the proposal. It is also suggested that this use has resulted in an intensification of activity at the site above and beyond that which would be expected with A1 use. However, notwithstanding the use of this unit in substantially the same form as is currently proposed for a number of years, the Council has not been able to corroborate its concerns relating to noise and disturbance with factual evidence.

12. Balanced against this is the fact that the unit has operated for a number of years without evidence of recent local concerns. This point, coupled with the facts that it is located within an area with other late opening activities, and that background noise does not appear to increase during opening hours, together suggest that this use does not cause noticeable noise or disturbance for local residents. As this is a relatively small unit it is unlikely that the introduction of food and drink consumption on the premises would alter this situation.

13. Reference is made by both parties to a previous appeal decision relating to a similar case in Ilford, where an existing shisha café with close by residential use has sought to regularise this activity through an application for change of use[3]. Each case should be determined on its own merits and I am not aware of the full circumstances of this case, however I accept that it is possible to draw some basic parallels.

14. In this previous case, whilst an objection from a local resident had been made at appeal stage, the Inspector concluded that, whilst the arguments on both sides were finely balanced, the absence of evidence from both parties about the impact of this use meant that it was appropriate to grant a temporary 3 year permission in order to provide an opportunity for review of any negative impacts.

15. In the present case the Acoustic Report partially addresses noise concerns and no recent objections have been made. Therefore, whilst the arguments in this case are also finely balanced, my view is that the evidence presented does not indicate that the continuation of the current use, as well as the introduction of ancillary A3 use, would harm the living conditions of the occupiers of nearby

[2] Between 11.44 on 21 March and 09.49 on 22 March 2017
[3] APP/W5780/W/15/3004438

properties in terms of noise and disturbance. In these respects the proposal would not be in conflict with the London Borough of Redbridge Core Strategy (2008) Policy SP3, nor the London Borough of Redbridge Borough Wide Primary Policies Development Plan Document (2008) Policies R1 and BD1, which, taken together, require development to respect the amenity of the occupiers of neighbouring properties, and that late night uses should not have individual or cumulative effects in terms of unreasonable levels of noise or general disturbance.

Conditions

16. The Council has suggested a number of conditions to which I have had regard, alongside the views of the appellant and the advice set out in the Planning Practice Guidance. I have imposed the condition specifying the relevant drawings as this provides certainty.

17. I have amended the condition referring to opening hours to include a closing time of 2300 Monday to Sunday inclusive as suggested by the appellant. I also accept the appellants request for an earlier opening time of 12 noon throughout the week as this in itself would not be likely to generate any additional noise and disturbance for local residents. This condition is required to protect the living conditions of the occupiers of neighbouring properties.

18. Finally I have included conditions requiring further details of the noise insulation of the extractor fan, and any additional ventilation or extraction requirements, in the interests of the living conditions of the occupiers of neighbouring properties.

Conclusion

19. The proposal would not be harmful to the living conditions of the occupiers of nearby properties and would comply with the development plan. As there are no material considerations that indicate otherwise, the appeal should succeed.

AJ Mageean

INSPECTOR