



Appeal Decision

Site visit made on 26 July 2019

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 August 2019

Appeal Ref: APP/U5930/C/18/3213633

Land at 17 Rigg Approach, London E10 7QN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by River View Lounge Ltd against an enforcement notice issued by the Council of the London Borough of Waltham Forest.
 - The enforcement notice was issued on 13 September 2018 under ref. 078538.
 - The breach of planning control as alleged in the notice is: "Without planning permission, the material change of use of the Land from an end of life vehicle facility (Use Class B2) to a mixed composite use comprising a wholesalers, shisha lounge and café (Sui Generis Use), together with the associated works to enclose a pre-existing storage structure and the erection of a single storey extension to facilitate the change of use."
 - The requirements of the notice are set out as follows:
 - "1) Cease all elements of the shisha smoking and café use associated with the mixed composite use of the Land comprising a wholesalers, shisha lounge and café;
 - 2) Remove all material, equipment and paraphernalia brought onto the Land to facilitate the shisha smoking and café element of the mixed composite use including, but not limited to, the removal of all kitchen facilities, fridges, chiller units, cooking facilities and equipment, shisha pipes, shisha tobacco, charcoal, tables and chairs and toilet facilities, as shown in photographs 'A' – 'F' attached to this Notice;
 - 3) Remove all structures and material (such as timber boarding, sheeting, flooring and supports) brought onto the Land to facilitate the shisha smoking and café element of the mixed composite use, including the single storey extension, as identified by the yellow arrows in photographs 'G' and 'H' attached to this Notice and return the Land back to its former condition prior to the change of use taking place, as shown in photographs 'I' and 'J' attached to this Notice;
 - 4) Remove all resulting materials, rubble and general detritus from the Land following compliance with steps 1) to 3) above."
 - The period for compliance with these requirements is one month.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary matters

2. When the appeal was originally lodged, it was also due to proceed on ground (g) – that the compliance period falls short of what should reasonably be

allowed. By letter dated 20 March 2019, the appellant's agent advised that the appellant had only temporarily vacated the site and requested that the appeal be progressed on grounds (a) and (f). It was confirmed that "... *the ground (g) appeal is of course no longer relevant since the appellant is not in occupation of the site.*" Like the Council's appeal statement and the appellant's final comments, I have treated the appeal on ground (g) as having been effectively withdrawn. Regardless of this appeal decision, the Council would still have the discretion to extend the compliance period, should any unforeseen difficulties arise, using its powers under section 173A (1) (b) of the 1990 Act as amended.

The appeal on ground (a) and the deemed planning application

Background, main issues and planning policy

3. This ground of appeal is that planning permission ought to be granted for the development enforced against.
4. The land edged in red on the plan attached to the notice is triangular in shape. The larger part of the site is now in use by a wholesale company. Up until recently, the remainder of the site at its north-western end was operated as a shisha lounge and café trading as the "555 Lounge". The land was formerly occupied by an end of life vehicle facility in Use Class B2. The enforcement notice does not attack the use of the land by a wholesaler.
5. River View Lounge Ltd, who ran the 555 Lounge, has a lease for a 4-year period which commenced in October 2017. The 555 Lounge apparently now has its own separate postal address of 17a Rigg Approach.
6. The enforcement notice contains 4 substantive reasons for its issue from which the main issue raised can be framed as the implications of the mixed use for the Strategic Industrial Location (SIL), the Council's waste management objectives, highway safety and the character and appearance of the surroundings.
7. Determinations are to be made in accordance with the development plan unless material considerations indicate otherwise. The development plan includes the London Plan (LP), the Council's Core Strategy Local Plan (CS) and the Council's Development Management Policies Local Plan (DMP). The National Planning Policy Framework (the Framework), last updated in February 2019, is a material consideration.

The implications of the mixed use

8. The appeal site is within the Lea Bridge Gateway **SIL**. In broad terms, LP Policy 2.17, CS Policy CS8 and DMP Policy DM18 seek to promote, protect and manage SILs as London's main reservoir of industrial land. These are strong industrial land use policies.
9. The appellant contends that the 555 Lounge is complementary to and supports the industrial uses in Rigg Approach. LP Policy 2.17 supports small scale "walk

to” services for industrial occupiers in SILs such as workplace crèches or cafes. DMP Policy DM18 says that in SILs small scale ancillary catering facilities for the needs of workers will, in principle, be supported. Having regard to paragraph 19.7 of the DMP, I interpret ancillary as being ancillary to the industrial location as a whole.

10. The 555 Lounge was a private members’ club and was mainly open in the evenings with customers using the place to relax after finishing work. This is confirmed by the letters of support signed by several nearby business operators based on Rigg Approach (Document 11 of the appellant’s statement). I agree with the Council that an enterprise aimed at the evening entertainment market and predominantly closed during the day is not one which can be logically said to be for the needs of workers or a service for industrial occupiers. That the Council noted over 100 covers for customers to dine and smoke shisha suggests to me that it would be rather far-fetched to describe the operation as being small in scale.
11. There is no evidence that the 555 Lounge was or could be made viable based solely on catering for local demand generated by staff from the surrounding industrial area frequenting the premises after working hours. Given the size of the premises, I consider that it offered a wider range of provision for a larger catchment area which should be better directed to existing centres or parades, as advised by paragraph 19.7 of the DMP. The use contrasts with the catering facilities in the Argall Business Area, part of the same SIL and only 10-15 minutes away from the appeal site by walking.
12. For these reasons, I consider that the mixed use does not fall within any of the limited circumstances that are permissible in a SIL as outlined in the planning policies mentioned. That being the case, the development compromises the industrial land protection aims of the SIL.
13. Given the former use of the site by T J Autos (UK) Ltd, the northern part of the site is designated as a **waste** site in the North London Waste Plan (NLWP) which the Council is working on jointly with other partner boroughs. Whilst the appellant says that the NLWP is at a draft stage, it is apparent that the lawful use of the northern part of the site includes a waste management function, even though T J Autos (UK) Ltd vacated the site some years ago. CS Policy CS6 seeks to safeguard such sites. This reduces the need for additional sites which are not easy to find. The SILs are appropriate locations for waste management industries according to DMP Policy DM18. The alleged mixed use does not therefore contribute to promoting sustainable waste management in accordance with development plan policies.
14. With regards to **highway safety**, the Council appears to have followed the approach taken by the Inspector under appeal ref. APP/U5930/W/17/3192259. This related to 17 Rigg Approach and to a “*change of use from end life vehicle facility (Use Class B2) to wholesale and retail cash and carry (Use Class B8/A1)*”. The appeal was dismissed on 18 July 2018 partly on highway safety grounds.
15. Given the mixed use of the site, the size of the shisha lounge and café and the limited on-site parking spaces available for that facility, the site’s rather poor public transport accessibility level and the likely reliance on private motor

vehicles for staff and customers, the limited on-street parking opportunities, the lack of any Transport Assessment or Travel Plan and a reluctance by the appellant to accept a suggested planning condition aimed at limiting the shisha lounge and café to evening use when parking and traffic movements along Rigg Approach are much reduced, I favour the approach taken by the Council.

16. It is highly likely for the mixed use to significantly increase the demand for on-street parking such that the ability of vehicles to access premises on or travel along Rigg Approach would be restricted by inappropriate parking or by vehicles seeking parking spaces. As the previous Inspector found, *"This would necessitate vehicles to undertake complex turning manoeuvres or reverse for lengthy distances increasing the risk of collisions and harming both road user and pedestrian safety."*
17. Whilst there is no evidence of accidents in the vicinity of the site, other traffic problems or complaints from nearby businesses, the shisha lounge and café was short-lived before being abandoned. There is a clear potential for adverse implications for highway safety for the reasons outlined above. I find conflict with CS Policy CS7 and DMP Policies DM13, DM14, DM15 and DM16 which seek to develop sustainable transport, coordinate land use and transport, manage private motorised transport and provide safe parking facilities.
18. On **character and appearance**, even allowing for the rather unprepossessing nature of the industrial surroundings and the original metal structure, the mixture of timber panels, plywood, trelliswork, felt and breeze blocks which have been used to either enclose or extend that structure are not attractive or durable materials. They provide for a temporary or makeshift design solution and have failed to achieve a well-designed place. The development is sufficiently visible from the public realm and adjoining private land to detract from the character and appearance of the surroundings. There is therefore a failure to respect the aims of CS Policy CS15, DMP Policy DM29 and LP Policies 7.4 and 7.6.
19. I therefore judge on the main issue that the mixed use has adverse implications for the SIL, the Council's waste management objectives, highway safety and the character and appearance of the surroundings, in conflict with development plan policies.

Other considerations

20. The appellant says that the occupation of a vacant site which would not otherwise be suitable for traditional industrial occupiers contributes to the economic vibrancy of the Rigg Approach part of the SIL. I have also taken account of the guidance at section 6 of the Framework relating to building a strong, competitive economy. However, the employment and economic activity generated by the shisha lounge and café are not the types that development plan policies seek to secure and protect in this SIL which has been designated as part of the Council's clear economic vision and strategy. Moreover, the appellant has not shown, for example through a robust marketing campaign for the site, that without the shisha lounge and café the site would necessarily remain empty.

21. I acknowledge that it is important to take a positive approach to planning for the social and cultural needs of communities in accordance with section 8 of the Framework and Policy DM17 of the DMP. Even if the shisha lounge and café can be argued to constitute an example of social infrastructure as a cultural facility, this should not outweigh the strong industrial location policies already referred to. Furthermore, I have read nothing to suggest that the appeal site is located within the community the facility is intended to serve or in an area of good public transport accessibility or in a town centre, all key factors set out in Policy DM17 of the DMP.
22. To the extent there would be business activity in the evening at the far end of Rigg Approach, this could deter antisocial behaviour and improve community safety. Even though the site's frontage is enclosed by high walls, I presume the entrance gate is left open when the shisha lounge and café is in operation. The development is likely to have influenced community safety in a positive manner and can be said to broadly accord with the general objective of improving community safety in DMP Policy DM33. Nevertheless, this matter does not outweigh my earlier findings within the main issue.
23. The business has only a 4-year lease from the landowner and the appellant would wish to see a grant of temporary planning permission to October 2021 to tie in with the lease. Such an outlook for the appellant may have influenced the choice of materials. However, leases cannot be used to override normal planning considerations. The lease is therefore a material consideration to which I attach very little weight. It is a matter for the appellant and the owners of the site. There is no clear rationale for a temporary planning permission given my findings under the main issue and the clear conflict with development plan policies. In particular, to issue a grant of temporary planning permission would send the wrong signal about the strength with which it was intended to protect strategic industrial land in the borough of Waltham Forest.

Conclusion

24. The other considerations and anything else raised in the written representations do not indicate a decision other than in accordance with the development plan. Accordingly, I conclude that the appeal on ground (a) should not succeed. Planning permission will not be granted on the deemed planning application.

The appeal on ground (f)

25. Section 173(4) (a) of the 1990 Act as amended indicates that a breach of planning control might be remedied by discontinuing any use of the land or by restoring the land to its former condition before the breach took place. An enforcement notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development, or be permitted development, or be immune from enforcement, so that the land is restored to its condition before the breach took place.

26. I considered the matter of the lease under ground (a) and found that a temporary planning permission to cover the period left on the lease up to October 2021 would not be the right way forward. The legal leasehold interest in the site cannot be used to override the normal considerations on ground (f) which is mainly concerned, in this case, with whether the steps in the enforcement notice exceed what is necessary to achieve the primary purpose of remedying the breach insofar as it relates to the shisha smoking and café element of the mixed composite use. It was the Council's choice to underenforce by not attacking the wholesale element of the mixed use.
27. No lesser steps than ceasing the shisha smoking and café element of the mixed composite use and removing all materials, equipment, paraphernalia and structures, including the single storey extension, brought onto the land to facilitate the shisha smoking and café element of the mixed composite use, would satisfy the purpose of the notice. The requirements of the notice are not excessive. The appeal on ground (f) must fail.

Andrew Dale

INSPECTOR