



---

## Appeal Decision

Site visit made on 3 October 2019

**by Andrew Dale BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 21 October 2019**

---

### **Appeal Ref: APP/A5270/C/18/3212917**

### **1290 Greenford Road, Greenford, Middlesex UB6 0HH**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
  - The appeal is made by Hekmatullah Rahimi against an enforcement notice issued by the Council of the London Borough of Ealing.
  - The enforcement notice was issued on 22 August 2018 under ref. EN171161CU(1).
  - The breach of planning control as alleged in the notice is: "**Without planning permission:** *The material change of use of the premises from A1 retail to an A3 café/restaurant.*"
  - The requirements of the notice are to:  
"A. Cease the use of the premises as an A3 café/restaurant;  
B. Remove all kitchen equipment, tables and seating that facilitate the use of the premises as an A3 café/restaurant; and  
C. Remove and dispose of all resultant debris."
  - The period for compliance with these requirements is 3 months.
  - The appeal is proceeding on the ground set out in section 174(2) (a) 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 1990 Act as amended.
- 

### **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.

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

2. Reading the reasons given in the enforcement notice for its issue, I consider the main issue in deciding whether planning permission ought to be granted for the A3 café/restaurant is its effect upon the retail function and vitality of the local shopping parade along the eastern side of this part of Greenford Road.
3. The Silk Route Café at no. 1290 falls within a long parade of shops and other ground floor commercial outlets. With mainly residential units on the upper floors, the parade runs from an accountancy firm at nos 1276-1278 at one end to a sizeable Dulux decorator centre (correct address nos 1390-1398) at the other. The parade is more than of purely neighbourhood significance; rather it has the character and scale of a local centre in this northern part of Greenford.

4. The parade is bisected by Greenford Road's junction with Horsenden Lane North. Several ground floor units within the parade closest to each side of that junction fall within designated Primary Frontages under Policy 4B *Ealing Local Policy – Retail* of the Council's Development Management Development Plan Document 2013 (DPD). The other ground floor units in the parade further away from that junction are located on designated Secondary Frontages. The Silk Route Café at no. 1290 is situated within the designated Primary Frontage (nos 1290-1296) on the southern side of the junction.
5. DPD Policy 4B states that for planning decisions:  
  
*"A A1 retail uses should constitute 100% of the designated Primary Frontage at street level.*  
  
*B A1 retail uses should constitute no less than 40% of the number of units within the designated Secondary Frontage at street level. Other uses should complement and enhance the functioning of the retail area."*
6. This policy generally follows the thrust of current government advice found within the National Planning Policy Framework which explains that planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation. Planning policies should define the extent of town centres and primary shopping areas, and make clear the range of uses permitted in such locations, as part of a positive strategy for the future of each centre.
7. Part **A** of DPD Policy 4B does not refer to units or to the number of units. In the absence of any measurements of the total length of the Primary Frontages and the frontage lengths of the A1 retail uses within those designations, an assessment of the proportion of A1 retail units, as supplied by the Council, will give a reasonable approximation of lengths, so long as any very wide or double units are not counted as single units.
8. There is no dispute that with the Silk Route Café in place, A1 retail uses now constitute only about 75% of the designated Primary Frontage (nos 1290-1296) at street level, in conflict with part **A** of DPD Policy 4B. With a lawful A1 use at no. 1290, this figure would return to 100%.
9. This outcome needs to be viewed in the context of the further concerns for the retail offer or the primary shopping function of the wider parade, given that the corresponding Primary Frontage on the other side of the junction with Horsenden Lane North is currently running with about 78% A1 retail use. It will be a source of frustration for the appellant to read in the Council's statement that the unit at no. 1316 has operated as an estate agency (A2 use) for over 10 years and has therefore become immune from enforcement action by virtue of the passage of time.
10. The parties have referred to the designated Secondary Frontages. These contribute to the wider picture. For the purposes of part **B** of DPD Policy 4B, which clearly does focus on the *number of units* in such frontages, paragraph E4.B.4 in the DPD explains that a *unit* is any individual shop, even if it is a larger shop or a double unit that formerly comprised 2 separate shops.

11. Applying this interpretation to the designated Secondary Frontage to the south of and adjoining no. 1290, I find that only 20% of the units are in A1 retail use, well below the 40% threshold. This adds to my concern about the stress on A1 retail use close to the appeal site.
12. The designated Secondary Frontage to the north of the junction has a better retail offer; applying the same interpretation and discounting the 2 vacant units, 50% of the units there contain A1 retail uses. Confusingly, the Council arrives at a figure of 44% by counting 2 units at the single betting shop (William Hill, correct address nos 1350/1388) and allocating a single unit to the wide-fronted Dulux store. If the appellant's preferred approach is followed – 4 units of A1 retail use allocated to the Dulux store – the percentage of A1 retail units rises to about 58%. In any event, having one of the 2 designated Secondary Frontages compliant with the relevant policy does not justify further erosion of A1 retail uses in the Primary Frontages, whether viewed individually or together. Rather, it shows that there could be some latitude for complementary uses, like an A3 café/restaurant, to locate on this Secondary Frontage, especially bearing in mind there are currently 2 vacant units within it.
13. An A3 use at no. 1290 was first witnessed by the Council in July 2012, after planning permission had been refused for an A3 use in September 2011 under ref. P/2011/2364. The Council provides evidence from a site inspection in February 2014 - when the ground floor unit was closed and being advertised for let as an A1 lock-up shop - that an A3 use has not been continuous since 2012. Even if it had been, this would still not have made it immune from enforcement action. The Council cannot be criticized for judging the unauthorised use against its most up-to-date retail planning policy, even if that policy was adopted in December 2013.
14. DPD Policy 4B is a strong policy which is designed to control land uses over the long term. Whilst parts or even all of this parade may not have fully complied with the policy upon its adoption, the important point is that the retail offer should not be compromised through planning decisions, leading to a situation, like here, where A1 retail use is taken below the prescribed percentage for a designated Primary Frontage. In cases like this, the Council could be accused of double standards if it had granted planning permission for similar non-retail uses in either of the 2 Primary Frontages since the adoption of the DPD. There is no evidence before me to show that the Council has granted any such planning permissions.
15. The appellant indicates that A3 uses are not dominant in the parade and that his operation is not directly replicated elsewhere in the parade. It is explained that he is providing food and refreshments, along with toilets and Wi-Fi connections, to people who frequent other retail premises and to local students. I attach some weight to these considerations as they amount to benefits to the local community, even though I should clarify there have been no third party letters of support submitted in response to this appeal. That said, I know of no reason why this A3 use could not have been provided on one of the Secondary Frontages so as to accord with the Council's retail policy. I reiterate that there are currently 2 vacant units within the Secondary Frontage on the other side of the junction with Horsenden Lane North.

16. I need to bear in mind that an upheld enforcement notice could result in an empty shop. However, no marketing or other evidence has been produced to support the view that the shop would inevitably remain empty if the café/restaurant ceased trading. In this regard, I saw no evidence of vacancies at ground floor level throughout the designated Primary Frontages.
17. Reference has been made by the Council to another appeal decision (dismissed on 22 May 2017) in respect of a similar change of use proposal affecting a property on a designated Primary Frontage in Southall (ref. APP/A5270/W/17/3167392). Whilst it has been taken into account, it attracts limited weight, given that I am required to deal with this appeal on its own merits. If this appeal development before me had been acceptable in terms of land use principles, then to address the concerns raised by the third party objector, planning conditions could have been imposed to control opening hours and to limit the playing of amplified music.
18. Drawing these threads together, I find on the main issue that the unauthorised development harmfully impinges upon the retail function and vitality of the local shopping parade along the eastern side of this part of Greenford Road. There is conflict with the development plan and I find no material considerations of sufficient weight to justify a grant of planning permission. I conclude that the appeal on ground (a) should fail and that planning permission should not be granted on the deemed planning application.

*Andrew Dale*

INSPECTOR