



Appeal Decision

Site visit made on 21 October 2019

by Alison Partington BA (Hons) MA MRTPI

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

Decision date: 11th November 2019

Appeal Ref: APP/B5480/W/19/3234752

41 Corbets Tey Road, Upminster, Essex RM14 2AJ

- 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 E Xhetani (Osteria Due Amici) against the decision of the Council of the London Borough of Havering.
 - The application Ref P0835.19, dated 1 May 2019, was refused by notice dated 19 July 2019.
 - The development proposed is described as the “change of use to 41 Corbets Tey Road from solely A1 to mixed A3 ancillary use during the day as a coffee shop and during the evenings as an overflow area to existing restaurant trading from 39 Corbets Tey Road.”
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The change of use has already taken place, although at the time of my visit it appeared the property was only being used as an overflow area for the restaurant rather than also as a day time coffee shop. I have determined the appeal on the basis of the ancillary uses as applied for.

Main Issue

3. The main issue in the appeal is the effect of the proposal on the vitality and viability of Upminster District Centre.

Reasons

4. The appeal property is a ground floor unit within a parade of shops that have residential properties above. It is located within the Retail Core of Upminster District Centre as defined by Policy DC16 and Annex 4 of the *Core Strategy and Development Control Development Plan Document (adopted October 2008)* (DPD). The appellant has stated that it was previously used as a hairdressers and was vacant for over a year before it was converted to provide ancillary uses to the adjacent restaurant in No 39.
5. In order to ensure a ‘critical mass’ of retailing is maintained within the core area of town centres Policy DC16 seeks to create a balance between retail and non-retail uses in these areas. Non-retail uses, that provide diversity, encourage linked trips and support the vitality and viability of the centre are encouraged in secondary areas. To this end the policy indicates that in Upminster permission for appropriate A2-A5 uses within the core retail area will

- only be supported where it would not result in a grouping of 3 or more adjoining A2-A5 uses and where it would not result in the proportion of non-retail uses within the relevant frontage exceeding 20% of its total length.
6. It is not disputed by the parties that restaurants and cafes are an appropriate use within retail centres. In the right location and the right numbers, particularly those which open during the day, can help to support the vitality and viability of the centre by encouraging linked trips and providing diversity.
 7. The unit forms part of a frontage that extends from No 33 – No 63. The change of use of this unit results in 5 consecutive units being in non-retail use and means that 7 of the 12 uses are now in non-retail use. The Council have calculated this to be 62% of the frontage, and this has not been disputed by the appellant. This is significantly greater than the 20% sought by the policy. Therefore, both in terms of the number of consecutive uses it creates, and the percentage of the frontage not being in retail use, the appeal scheme does not conform to the requirements of this policy.
 8. I accept that the percentage of the units in non-retail use was already considerably above this figure even before this change of use, but that does not justify the further reduction in the retail offer of this parade.
 9. The appellant has argued that the Council have previously approved other conversions to non-retail use within the parade, despite the percentage of non-retail uses in the frontage already being above 20%. However, I have not been given any specific examples and therefore cannot be certain whether any of them would represent a direct parallel to the appeal scheme. Moreover, I do not know how many of the non-retail uses in the parade pre-date the current policy. In any case, I have determined the appeal on its own merits and in accordance with the current development plan policies.
 10. The use of the unit during the day as well as during the evening helps to ensure that it did not create a “dead” frontage, but the reduction of A1 uses in the parade further undermines and compromises the core retail function of the centre to the detriment of its overall vitality and viability. In addition, the number of consecutive non-retail uses starts to fragment the main retail offer within the centre. This fragmentation is also to the detriment of the vitality and viability of the centre.
 11. The appellant has argued that this parade is in a secondary location. However, the DPD clearly identifies this parade as part of the core retail area, rather than the secondary or “fringe” area where non-retail uses that support the main retail function of the centre are considered more acceptable.
 12. It is indicated by the appellant that the unit was vacant for 14 months after the previous use ceased. However, I have not been provided with any information to substantiate this or to show what, if any, marketing of the unit took place during this time and the level of interest the unit generated.
 13. I observed during my site visit that the parade did not have any vacant units and that the level of vacancies within the core retail area was low. As such, it would appear that the demand for retail units within the centre is reasonable. In addition, I noticed that the centre has a significant number of small independent shops for whom small units can be attractive. Therefore, it is not

unrealistic to anticipate that a unit of this size may prove attractive to other retailers in the future.

14. Consequently, in the absence of any substantive evidence to the contrary, I am not persuaded that the unit is unsuitable for retail uses or that there is a lack of demand for units of this size within the centre
15. Overall, I consider that the conversion of this property has a detrimental impact on the retail function of Upminster District Centre and its vitality and viability. Accordingly, it would conflict with Policy DC16 of the DPD outlined above.
16. For the reasons set out above, I conclude the appeal should be dismissed.

Alison Partington

INSPECTOR