



Appeal Decision

Hearing Held on 1 October 2019

Site visit made on 1 October 2019

by Martin Chandler BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 November 2019

Appeal Ref: APP/G5750/W/18/3214971

269 High Street South, East Ham, London E6 3PG

- 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 S. A. Noor against the decision of the Council of the London Borough of Newham.
 - The application Ref 18/00236/FUL, dated 25 January 2018, was refused by notice dated 24 July 2018.
 - The development proposed is described as a new proposed entrance to improve the accessibility of the building, changes to internal layout, and a change of use from A3 restaurant to D1 community centre.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Since planning permission was refused, the Newham Local Plan (2018) (LP) has been adopted by the Council. As a consequence, the London Borough of Newham Local Plan: Core Strategy (adopted January 2012) and the London Borough of Newham Local Plan: Detailed Sites and Policies Development Plan Document (adopted 20 October 2016) have been withdrawn. Accordingly, the policies from these plans that are referenced in the Council's refusal reasons are no longer relevant to the assessment of this appeal.
3. The relevant policies within the recently adopted LP were confirmed at the hearing to be Policies S1 (Spatial Strategy and Strategic Framework), S6 (Urban Newham), SP2 (Healthy Neighbourhoods), SP3 (Quality Urban Design within Places), SP8 (Ensuring Neighbourly Development), INF5 (Town Centre Hierarchy and Network) and INF8 (Community Facilities) and I have determined the appeal on this basis.

Main Issues

4. The main issues are whether:
 - i) the location of the appeal site would be suitable for the proposed use having regard to the requirements of the development plan;
 - ii) the appeal site would be suitable for the proposed use, having particular regard to the movement of visitors to and from the proposed community facility; and

- iii) there is a local need for the proposed community facility.

Reasons

Location

5. Policy INF8 of the LP relates to the provision of community facilities and amongst other things, it establishes a sequential approach to the location of community facilities. The policy prioritises the location of such uses within town or local centres. However, the policy also accepts that such uses can be located within Community Facilities Opportunity Areas (CFOA). In addition, a number of other exceptions to the location of a proposed community facility are listed within the policy.
6. The appeal site is located within a parade of commercial uses. However, whilst it is within 300 metres of the nearest local centre, it is common ground that the proposed location is not within a town or local centre, or a CFOA. In addition, the proposal would not comply with the locational exceptions established by the policy. Consequently, despite exhibiting some traits of a commercial centre, the location of the appeal proposal is in direct conflict with Policy INF8 of the LP. This is a matter to which I afford considerable weight in my assessment of the appeal.
7. However, since the original planning application was refused, a separate application for planning permission has been approved to convert the appeal building into a D1 use¹. The approval is restricted specifically to an educational and community centre use and for no other purpose in Class D1 of Part D of the Town and Country Planning (Use Classes) Order 1987. In addition, the hours of operation are restricted by a planning condition. However, whilst the approved application was made by a different applicant, the permission is not personal to them, and it therefore runs with the land.
8. At the hearing, it was common ground between the main parties that the approved use had a number of similarities with the proposal. However, the parties also agreed that the key differences were the proposed hours of operation and the provision for Friday prayers. The provision of communal prayer is an important component of the proposed use. It would therefore be an important and material difference between the approved and proposed use. Consequently, whilst a D1 use has been approved at the appeal site, due to the differences between the two proposals, the planning permission does not represent an entirely comparable fallback position for the appellant. Accordingly, I only afford it a moderate degree of weight in my assessment of the proposal.
9. The appellant has also made reference to other facilities that are located outside of the sequentially preferred locations identified by the LP. However, I do not have the full details of these sites before me in terms of how long they have existed or whether planning permission was granted for them. Accordingly, I can only attach limited weight to their existence and, in any event, I have determined this appeal on its individual planning merits and against the most up to date development plan policies. I also note that the appellant has enlisted the services of an estate agent to identify suitable sites

¹ 19/00395/FUL: Change of use of the ground floor from restaurant to Educational Institute and Community Centre (Use Class D1) including the refurbishment to the front elevation to create autonomous entry for the existing residential flat on the first floor.

but this has not proved to be successful. Despite this, I do not have the full terms of engagement before me and consequently, I also afford this matter limited weight in the overall planning balance.

10. For the reasons identified above therefore, despite the recently approved planning permission for a D1 use as well as the existing facilities that have been brought to my attention, the conflict with the development plan is a matter of overriding concern to which I give significant weight. Consequently, I conclude that the location of the appeal site would not be suitable for the proposed use. It would therefore fail to accord with Policy INF8 of the LP, Policies 4.7 and 7.1 of the London Plan (2016) and Policy SD8 of the DLP. Taken together, these establish the locational requirements for community facilities.

Movement of visitors

11. The appeal proposal would not convert the premises into a place of worship and this was reiterated at the hearing. However, it was agreed at the hearing that potential effects in relation to this main issue would derive primarily from the hosting of communal Friday prayer. Although this would not be a principal use of the building, the appeal site would have a capacity of up to 50 people and based on the evidence before me, I have no reason to consider that this number of people would not attend for communal prayer.
12. The building only has one entrance and there is no lobby area or space between the front of the building and the immediately adjacent footpath. The entrance therefore opens directly onto the pavement which is not a wide or generous space. Therefore, although communal prayer would be an ancillary element of the overall proposal, it could result in large numbers of people arriving at and departing from the premises over short periods of time.
13. Due to the layout of the building and the limited depth of the footpath to the front of the property, the tidal movement of people arriving for and departing from communal prayer would be likely to result in large congregations on the pavement. The gatherings would be a regular occurrence and although they would naturally disperse, the likely volume of people at peak times would restrict the ability for pedestrians to use the adjacent footpath in a safe and convenient manner. Consequently, if taking place in an unmanaged way, they would be detrimental to the safety of the adjacent footpath. For this reason, both parties agreed at the hearing that it would be necessary and appropriate to manage the movement of visitors to and from the building at peak times to avoid large gatherings of people outside the building. Based on the evidence before me, I have no reason to disagree.
14. It was agreed between the parties at the hearing that it would be possible to control this matter through some form of management plan that could be secured through a suitably worded condition. However, no such condition formed part of the cases provided by the parties. In addition, no form of wording was forthcoming from either party at the hearing. As a consequence, the content and requirements of a potential condition could not be agreed. Although there was a suggestion that a rear access could be used to help with the dispersal of visitors, this exits onto an area of land outside of the red line of the appeal site. I therefore have no certainty that the rear access could be utilised.

15. Due to the absence of a specific form of wording or specific requirements, I cannot be satisfied that imposing a condition to control the movement of users to and from the site at peak times would provide sufficient certainty that the condition would overcome the acknowledged concerns. Consequently, such a condition would lack precision and therefore, it would also fail the test of reasonableness because the details for compliance would be unclear.
16. The existing restaurant use has a capacity that is comparable with the proposed community facility. However, the nature of a restaurant is that diners generally arrive and depart over the course of the day and evening. Consequently, their movements would be more dispersed and significantly less likely to result in large gatherings of people on the footpath. In this respect therefore, I am satisfied that the existing use is materially different to the proposal.
17. Concerns have also been raised by the occupiers of commercial neighbours regarding the potential barrier to customer movements as a result of large gatherings on the pavement. However, at the hearing, it was agreed that such gatherings would be unlikely to coincide with the evening trading hours of the neighbouring takeaways. The parties also agreed that a condition could be used to control the times of congregational prayer. Such a condition would comply with the tests established within paragraph 55 of the National Planning Policy Framework 2019 (the Framework). Accordingly, I am satisfied that the effect of the proposal on the trading of neighbouring commercial uses could be adequately controlled.
18. I am also satisfied that sound insulation could be installed to reduce the impact of the proposed use on the residential property directly above it. Subject to suitable insulation and control over the hours of operation, the proposal would not result in any significant harm to neighbouring occupants in terms of noise and disturbance.
19. Notwithstanding the above, in the absence of a suitable strategy to safely manage the arrival and dispersal of users, the potential tidal movement of people could adversely affect the safe functioning of the adjacent footpath. Therefore, having regard to the movement of visitors to and from the proposed community facility, I conclude that the appeal site would not be suitable for the proposed use. It would therefore fail to accord with Policies SP2, SP3 and SP8 of the LP, Policies 7.1 and 7.15 of the London Plan 2016 and emerging Policy D13 of the Draft London Plan 2017 (DLP). Taken together, these policies seek to promote good neighbourliness and fairness by avoiding negative social, environmental and design impacts, engender safe communities, promote walking, and encourage design so that the layout and mix of uses interface with surrounding land.

Need

20. Policy INF8 of the LP requires proposals to demonstrate that over 67% of the users of the proposed community facility would come from the local area. In this respect, the transport statement states that this figure would be 77% and I have no reason to dispute this. Consequently, I am satisfied that most of the users of the facility would come from the local community.
21. Despite this, the policy also places a requirement to demonstrate that existing facilities could not meet an identified need. The appellant has approached other

providers to consider the potential to share facilities. However, from the responses received, it indicates to me that such sharing would not be logistically viable. Although not all of the occupiers of the facilities responded to the request, I am satisfied that the appellant has gone as far as reasonably possible to demonstrate that existing facilities would not be capable of meeting the identified need.

22. The appeal has been accompanied by a significant level of evidence which seeks to demonstrate the significant growth of the Black, Asian, and minority ethnic (BAME) community in the area. Due to the demographic change, it is argued that the provision of community facilities is not matching demand and that consequently, there is a growing need for facilities of the nature proposed. The evidence is compelling, and clearly demonstrates the changing demographic. Consequently, this reinforces my conclusions in relation to need.
23. In addition, the planning application gained substantial support from the community and the hearing was also well attended by people in support of the proposal. Many of those in attendance clearly and persuasively articulated the social benefits that the proposal would bring. These would include the ability to foster social cohesion and promote a sense of community, the provision of a safe environment for younger people to socialise, and a location that people of all ages can easily access. Given the importance of these distinct social benefits, I afford them considerable weight in favour of the appeal.
24. For the reasons identified above therefore, I conclude that there is a local need for the community facility. It would therefore accord with Policy INF8 of the LP which requires, amongst other things, a local need to be clearly demonstrated.

Conclusion

25. I have concluded that a local need for the facility has been demonstrated. In addition, the proposal would bring with it a number of social benefits that weigh in favour of the proposal. However, the proposal would fail to accord with Policy INF8 of the LP in locational terms. It would also generate large numbers of people arriving and departing at peak times during the day and lacks the necessary management plan to safely control these movements. These latter considerations are matters of overriding concern and outweigh the identified social benefits of the proposal. Therefore, and for the reasons identified above, the appeal should be dismissed.

Martin Chandler

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Mr Umair Waheed (RIBA)

Atelier UWA Architects

Mr S. A. Noor

Appellant

FOR THE LOCAL PLANNING AUTHORITY

Sarah Odu

Planning Officer

Ella Mitton

Planning Officer

INTERESTED PERSONS

Mr Shahjahan Miah

Local Resident – in support

Abdul Haque

Local Resident – in support

Kamal Hussain

Local Resident – in support

Shalina Begurn

Local Resident – in support

B. Rahman

Local Resident – in support

Dean Armond

Local Resident – in support

Zain Miah

Local Resident – in support

Ahmed Miah

Local Resident – in support

Abdul Kazin Hadi

Neighbour – in objection

Wai Hadi

Neighbour – in objection