The Planning Inspectorate

Appeal Decision

Site visit made on 15 October 2019

by A Denby BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 November 2019

Appeal Ref: APP/E0345/W/19/3232415
80 Oxford Road, Reading, RG1 7LJ

- 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 A Jabarkhil against the decision of Reading Borough Council.
- The application Ref 182090, dated 24 November 2018, was refused by notice dated 5 March 2019.
- The development proposed is single storey rear extension, erection of pergola and change of use of the rear garden to Shisha Bar.

Decision

1. The appeal is dismissed.

Procedural Matter

2. Whilst I noted as part of my site visit that some works have been carried out at the appeal site, I have based my decision on the plans and details that were before the Council when they determined the planning application.

3. A revised floor plan was submitted during the application process, drawing reference '04 Rev A'. The Council have advised that this plan was received by them on 8 January 2019 and considered and consulted on as part of the application, though it was omitted, in error, from the decision notice. There is little difference between the original floor plan and the revision. The amendment being that the revised plan indicates a proposed seating area and some bin storage and bike storage. I therefore consider it is appropriate for me to take this plan into account in my determination of the appeal.

4. Since the submission of the appeal the Reading Borough Local Plan, (LP) has been adopted and as such I have had regard to it in making my decision. The LP has replaced the Reading Borough Local Development Framework Core Strategy (adopted 2008, amended 2015); Reading Borough Local Development Framework: Sites and Detailed Policies Document, (adopted 2012, amended 2015) and the Reading Central Area Action Plan 2009. The parties have been provided with an opportunity to comment on the now adopted LP. I have had regard to the most up to date development plan position as I determine this appeal.

Main Issue

5. The main issue is the effect of the proposed development on the living conditions of occupants of nearby residential properties, with particular regard to disturbance from noise and nuisance from odour.

Reasons

6. The appeal site is an existing commercial premises which is in use as a pizza takeaway and restaurant. To the rear is a paved courtyard area which can be accessed through the kitchen and storage area, or from a pedestrian footpath to the rear. The proposal to utilise the rear courtyard area as a shisha bar would introduce a new and independent commercial use, which whilst it may still have some operational connection to the hot food premises, future patrons would access it from the pedestrian footpath to the rear. Although there are a number of commercial uses in the vicinity, these are predominately daytime uses, with their main, active frontages, to Oxford Road or Chatham Place.

7. The site is closely adjoined by residential properties, which have windows to habitable rooms directly overlooking the rear courtyard area. From my site visit it was evident that the front elevations of these properties are more exposed to noise from the nearby A329 and general comings and goings along the main highway.

8. Therefore, whilst some of the windows facing the site may be secondary or high-level, occupants are more likely to utilise them, particularly for ventilation, as they are not as exposed to noise. The existing footpath is also not a main thoroughfare, and adjacent residents could reasonably expect activity levels here to be lower, providing some respite, from the busier, more commercial areas that other elevations of their properties are exposed to.

9. The smoking of shisha necessitates the use of an open or semi-open area and considering its close proximity to the existing residential properties, it is likely that occupants would be subject to increased noise. Some smells from the smoking of shisha could also drift. During summer months, the effects of odour could be even more pronounced, as the windows of these dwellings are more likely to be open to allow for ventilation.

10. The proposed pergola would be an open and lightweight structure, and it has not been demonstrated that it would provide any substantial mitigation in relation to odour or noise emanating from the use of the area. It is however acknowledged that the pergola and proposed rear extension, by virtue of their location and overall size, would have a limited visual impact on the character and appearance of the surrounding area.

11. With the above in mind, occupiers of nearby residential dwellings would be subject to harm to their living conditions. Specifically, disturbance from noise and nuisance from odour in the manner I have described it.

12. Therefore, the proposed development would conflict with Policies EN16 and CC8 of the LP which states that development will only be permitted where it would not be damaging to the environment and sensitive receptors through noise pollution, and not cause a significant detrimental impact to the living environment of existing residential properties in terms of noise, disturbance, fumes or smell.

13. It is acknowledged that some adjacent residential occupants did not object to the original planning application. It is also possible to use conditions to restrict the hours of operation and the number of tables outdoors. However, considering the proposal would create an independent commercial unit, with access from the rear, I consider the impact from increased intensity of use, and

general comings and goings, would still result in harm to living conditions. Furthermore, such conditions would not address concerns with regards to the potential nuisance from odour.

14. The appellant considers the use would have a positive impact with regards to safety and security, enhance pedestrian and cycle linkages and support town centre viability and vitality. I note that LP Policy CR12 seeks to guide improvements to the West Side Major Opportunity Area and that the National Planning Policy Framework emphasises the need to support the vitality and viability of town centres and create safe and accessible spaces. However, Policies within the LP and the Framework are also clear that residential development also plays an important role in ensuring the vitality of centres and that developments should seek to enhance residential environments.

15. The proposals do not include any additional or improved areas of open space, nor any enhancements to the existing footpath in terms of access or safety and security. The rear boundary of the site would be enclosed, offering little opportunity for overlooking or surveillance of the adjacent footpath. There would also be no benefit in relation to addressing any anti-social behaviour, beyond opening hours. Furthermore, due to its access from the rear, the use would be remote and isolated, and would not function as part of a comprehensive approach to development, or complement, the wider commercial activities. Overall, I do not consider any benefits of the proposal would be sufficient to outweigh the harm I have identified above, and the proposal would not accord with the Development Plan or Framework in the manner I have explained.

Other Matters

16. The appellant has referred to a previous planning permission for the appeal site which permitted outdoor seating. The appellant considers the current scheme would be an improvement as it does not include an extraction system, has a better roof structure and proposes less tables. Be this as it may, the previously approved scheme was for seating to be used in connection with the existing pizza-takeaway restaurant. The access, nature and intensity of the use of the outdoor area would therefore have been distinctly different. That scheme also included amendments to the internal layout of the building to permit patrons to access the rear outdoor area from Oxford Road, through the existing building. Future users would therefore also have had the option to use indoor seating and have been less likely to utilise the outdoor seating area during cold or inclement weather. That is not the case with the appeal scheme where there would be no connection between the uses, and patrons of the shisha bar could only conduct the activity outdoors.

17. In addition to the previous approval the appellant has also referred to appeal decisions for sites in London and West Bromwich. Whilst I am mindful of the details submitted, I do not know the full circumstances of those schemes. From the details that have been provided there appear to be some distinct differences between those schemes and the appeal site, such as sites appearing to be accessed from main commercial frontages, with the shisha bar element being either ancillary, or complementary, to another main use. In any event each case must be considered on its own merits and these other matters do not, therefore, lead me to a different conclusion.

Conclusion

18. For the reasons given above I conclude that the appeal should be dismissed.

A Denby

INSPECTOR