
Appeal Decision

Site visit made on 4 December 2019

by Diane Cragg DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 January 2020

Appeal Ref: APP/W5780/W/19/3237300
361 Ley Street, Ilford IG1 4AA

- 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 OKO Lounge OKO against the decision of the Council of the London Borough of Redbridge.
 - The application Ref 1028/19, dated 28 February 2019 , was refused by notice dated 26 July 2019 .
 - The development is change of use A3 to Sui Generis (shisha cafe).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have not referred to the development being retrospective in the banner heading as being retrospective is not in itself development. However, I was able to see at my site visit that a marquee has been constructed to the rear of the property and the use as a shisha cafe has commenced. I have therefore altered the description and determined the appeal accordingly.

Main Issue

3. The main issues are:
 - The effect of the development on the vitality and viability of Redbridge Borough's town centres.
 - The effect of the development on the living conditions of the adjacent residential properties with regard to noise and disturbance.

Reasons

Vitality and Viability

4. The appeal property is located on Ley Street opposite the junction with Vicarage Lane. It is one of three properties with shop frontages facing Ley Street located between a service garage/MOT testing station and a church. These three properties are part of a wider retail parade of shops located beyond the garage and on the corner of Ley Street/Vicarage Lane.
5. The appeal site is a former cafe (Class A3) now in use as a Shisha cafe. The property is identified as part of a Key Retail Parade on the policies map of the Redbridge Local Plan 2015- 2030 (Local Plan). The adjoining shop unit is split

- into what appears to be a delicatessen and a taxi office (Sui Generis use) and the third shop is a hairdresser.
6. In accordance with Paragraph 85 of the National Planning Policy Framework (the Framework) Policies LP10 and LP11 of the Local Plan set out the approach to the growth, management and adaptation of town centres in the borough of Redbridge.
 7. Policy LP10 of the Local Plan promotes the vitality and viability of town centres. The policy supports the diversification of the range of uses in Key Retail Parades where a minimum of 40% of units are A1 retail uses.
 8. The Council have not provided any evidence that the Ley Street Key Retail Parade does not meet the 40% threshold requirements for A1 retail uses. In the absence of such evidence non-A1 uses such as the appeal proposal could, in principle, and subject to the other criteria in Policy LP10, be supported.
 9. However, Policy LP11 of the Local Plan seeks to manage the clustering of town centre uses by resisting the proliferation and overconcentration of Sui Generis uses, including shisha bars. The policy requires that Sui Generis uses are located in Metropolitan, District or Local centres, in accordance with Policy LP10, and are separated from each other by at least two non-sui generis units.
 10. The appeal is supported by a retail impact assessment (RIA). The RIA judges that the site is not well connected to a town centre. It considers that there are many suitable sites in and around the town centre and the shisha cafe would not therefore impact retail investment. However, a key aim of Policy LP11 is to direct shisha bars and other sui generis uses to town centres and to regulate their location within centres in order to manage the evening economy to create safe, clean and vibrant leisure orientated environments. There is nothing within the evidence before me that would lead me to conclude that there are no available locations within a town centre for the shisha cafe.
 11. In addition, although the appellant indicates that the site is sustainably located to minimise the need for travel and provides a community facility, there is no evidence before me that the business has specific locational requirements or that users of the shisha cafe are predominantly local people who travel to the site by other means than the car.
 12. Accordingly, I find that the development would have an adverse effect on the vitality and viability of Redbridge Borough's town centres contrary to Policy LP11 of the Local Plan.

Living Conditions

13. The wider area adjacent to the retail parade is predominantly residential in nature with terraced properties fronting Ley Street on the approach to the site from the north and residential accommodation above the adjacent shop units. Thorold Road, a residential street of mainly terraced properties, is immediately to the rear.
14. The OKO Lounge has a typical shop frontage to Ley Street. The café area is laid out with a small number of seating spaces and a server. Towards the back of the shop are the toilet facilities which lead through to the outside rear space. I observed on my site visit that the outside space encompasses the area to the rear of No 363 Ley Street and is adjacent to residential gardens to its northern

and western boundaries, the southern boundary is adjacent to the service garage.

15. A marquee has been constructed which covers much of the rear space. The marquee is open to the back boundary and the rear of the shop buildings with outside seating provided in these areas. I saw at my site visit that the marquee is of substantial construction with panels to the side boundaries sufficiently strong to support the three television screens that are placed on each side wall. The area within the marquee provides a significant number of seating spaces.
16. The appeal details confirm the opening hours of the Shisha cafe is Monday to Thursday 1800 to 0100 and Friday to Saturday 1800 to 0200 and Sunday 1800 to 0100. The supporting noise report confirms that monitoring has been undertaken. The report assesses the nearest noise sensitive development as being on Thorold Road (22 metres away), however, no assessment is made of the noise environment of the residential occupancy of the first floor living accommodation above the commercial properties facing Ley Street. These residents are located considerably closer to the site.
17. The shisha cafe is an area where people gather. The television screens, amplified music and smoking provides a reason to linger. The opening hours coincide with the likely time when adjacent residents will be at home. The music and smoking together with the voices of multiple conversations and lighting associated with the use is likely to pervade the adjacent residential spaces. These effects would be most pronounced in the summer when neighbours may want to leave their windows open and utilise their rear garden spaces. The existing fenced boundary to the rear is no more than would divide domestic properties and would not be sufficient to prevent the intensity of the use being disruptive to these neighbouring properties.
18. To the north the rear amenity space has additional protection from the location of the marquee and additional boundary treatment, however, the effects of lighting, conversation from significant numbers of people and smoke drifting over from the open spaces would not be prevented. In addition, the times of opening results in a permanent elevation to the evening noise environment at nearby properties which would not be balanced by quieter evenings or periods.
19. I appreciate that there may be measures that can be employed to reduce amplified music at the site however it is the combination of the music, conversation, lighting and smoking that would detract from the living conditions of the adjacent properties rather than a single source of noise.
20. I also accept that the appeal site is located within a retail frontage on a reasonably busy road. However, the parade itself provides a significant physical barrier to road noise and comings-and-goings at the front of the premises, and so the rear has a noticeably and distinctly different noise environment to that at the front. It is for these reasons that residents of the adjacent properties are likely to place a greater emphasis on, and significance to, the quieter nature of the surroundings at the rear of the parade.
21. Although there has not been any objection to the development despite the use already being in operation the absence of objection does not automatically render the proposal acceptable. I am not persuaded by the submitted evidence that there is reasonable certainty that the impact of the noise and disturbance

as a result of the development would not adversely affect the living conditions of the neighbouring residents.

22. Consequently, I conclude that the development would be harmful to the living conditions of the adjacent residential properties with regard to noise and disturbance in conflict with Policies LP11, LP24 and LP26 of the Local Plan which seek, among other things, to resist proposals that result in an adverse impact upon the amenity of neighbouring occupiers.

Conclusion

23. For the reasons given above, the appeal is dismissed.

Diane Cragg

INSPECTOR