



Appeal Decision

Site visit made on 20 January 2020

by Jillian Rann BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2020

Appeal Ref: APP/G5750/W/19/3240211

135-139 Balaam Street, Plaistow, London E13 8AF

- 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 Mohamed Maayuf against the decision of the Council of the London Borough of Newham.
 - The application Ref 19/01061/FUL, dated 6 April 2019, was refused by notice dated 5 June 2019.
 - The development proposed is change of use from A1 (pet shop) to A3 (restaurant) use class. Single storey rear extension to create additional toilets for occupants.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposed development on:
 - the vitality and viability of existing town and local centres,
 - the Council's spatial goals, including with regard to regeneration, housing delivery and mixed and balanced communities;
 - the living conditions of the occupants of nearby residential properties with regard to noise and disturbance; and
 - the safety and convenience of highway users in the vicinity of the site.

Reasons

Background

3. The appeal relates to a ground floor commercial unit. The site is not within a designated town or local centre. However, it is part of a terrace of properties, and close to another similar terrace, which have commercial uses on their ground floors.

Vitality and viability of centres

4. Policies 2.15, 4.7 and 4.8 of the London Plan: The Spatial Development Strategy for London Consolidated with Alterations Since 2011, March 2016 (the London Plan 2016), and Policies S1, S6, SP1, SP3 and SP6 of the Newham Local Plan 2018 (the Local Plan) seek to support a competitive retail sector and strengthen town and local centres as the main focus for commercial

development, as community foci and as vibrant and valued components of local neighbourhoods. Local Plan Policies J1 and INF5 state that town centre uses will be directed to designated centres first, consistent with the sequential approach in the National Planning Policy Framework (the Framework), and encourage the consolidation of existing commercial uses into defined centres.

5. The proposed development would create a new A3 unit, defined in the Framework as a main town centre use, in a location not within an existing town or local centre. However, whilst currently vacant, it is agreed by both main parties that the appeal premises have an A1 use presently. Therefore, the change of use of those premises to a restaurant would not result in the creation of an additional main town centre unit in an out-of-centre location. It would simply replace one main town centre use with another.
6. I have not been directed to any restrictions on the area of the appeal premises which may be used as retail floor area and, consequently, have no reason to conclude that a seating area of the size proposed would result in an increase in commercial floorspace compared with the property's existing use. A small extension is proposed to provide toilet facilities. However, that small ancillary area would not represent a material increase in commercial floorspace.
7. Therefore, and having regard to the range of commercial functions which could be carried out at the property within the scope of its existing A1 use, I conclude that the proposed change to a different main town centre use would not have additional implications for the vitality or viability of existing town or local centres, compared with that existing use.
8. Consequently, whilst there may be some technical conflict with aspects of those development plan policies set out above insofar as they require new town centre uses to be located within existing centres, overall I conclude that the proposal would not conflict with or undermine the strategic aims of those policies in seeking to maintain the vitality and viability of existing centres.
9. In reaching my conclusion I have also had regard to emerging Policies SD6 and E9 of The London Plan: The Spatial Development Strategy for Greater London, Draft for Public Consultation with Minor Suggested Changes 2018 (the Draft London Plan), the aims of which are similar to those development plan policies in seeking to support diverse and competitive retail and promote town centres as the primary locations for commercial activity.

Spatial goals, regeneration and housing delivery

10. Policy 2.9 of the London Plan 2016 and Policies S1, S6, SP1, SP2 and SP3 of the Local Plan refer to development supporting and sustaining successful, balanced communities, and contributing to genuinely mixed-use areas with an integrated range of living accommodation, community facilities and workplaces. Local Plan Policy SP7 refers to consolidating ribbon developments of commercial and community uses into defined Local and Town Centres. My attention has also been drawn to part of the supporting text to Local Plan Policy INF5, which refers to a presumption that shops outside of a defined centre will convert to residential use.
11. The appeal site is within an area of mixed character, which already includes a range of living accommodation and community facilities such as open space and places of worship, as well as the existing commercial uses in the same

terrace as the site and nearby. In that context, whilst not within a defined centre, the proposed restaurant use would maintain the already mixed character of the site's immediate surroundings and, I consider, would not conflict with the Council's strategic aims in that regard. The evidence before me does not lead me to conclude that the ongoing commercial use of the site would have significant implications for housing delivery, compared with the site's existing commercial use. Nor, as I have already concluded, would it have implications for the vitality or viability of existing centres.

12. The appellant owns other commercial units within the parade. However, those properties are not within the scope of this application, all appear to be occupied, and there is nothing before me to suggest that they are available for any alternative use or redevelopment at this time. In any event, I have nothing substantive before me to indicate that the so-called 'piecemeal' change of the appeal property into an A3 unit would compromise or prejudice any future potential to redevelop or convert the wider terrace for an alternative use should circumstances change, or have implications for any future regeneration proposals in that regard, compared to its existing A1 commercial use.
13. Therefore, notwithstanding some technical conflict with the development plan policies above insofar as they refer to consolidating commercial developments in defined centres, overall I conclude that the proposed development would not have adverse implications for the Council's spatial goals, including with regard to regeneration, housing delivery and mixed and balanced communities. The proposal would therefore not conflict with the strategic aims or requirements of those development plan policies set out above or the Framework, in seeking to sustain inclusive, balanced communities with a mix of uses. In reaching my conclusion I have also had regard to emerging Policies D1 and D2 of the Draft London Plan, which require proposals to facilitate inclusive environments and deliver high quality design and place-making.

Living conditions

14. The appeal property is a relatively large A1 unit which does not appear to have any existing restrictions on its hours of use. Although vacant at present, the property could be brought back into use for a variety of commercial purposes within the scope of that existing A1 use, and could generate relatively high levels of customer comings and goings in that event. The site is also part of a wider parade which includes other commercial units, such as a convenience store and a hot food takeaway, that may open on an evening. The flats above and adjacent to the appeal site are therefore likely to experience a degree of background noise and disturbance from activity associated with those nearby commercial units during the day and into the evening at present, including that which could arise if the appeal site were brought back into A1 use, as well as from vehicular and pedestrian traffic on Balaam Street, which is identified as a Key Movement Corridor.
15. The restaurant would generate comings and goings to and from the site and could lead to customers congregating on Balaam Street for short periods, including on an evening. However, whilst restaurant customers may be on the premises for longer than those visiting an A1 unit, I have no substantive evidence before me to indicate that the restaurant would generate greater levels of customer activity on Balaam Street overall than those which could arise were the property to be brought back into A1 use. Therefore, and in the

context of other commercial activity on Balaam Street nearby, I consider that the occupants of nearby dwellings would not experience significantly greater levels of noise and disturbance as a result of activity on Balaam Street in association with the proposed use compared to the existing use of the site.

16. The flats above and adjacent to the appeal premises also have windows facing into the site's rear courtyard. That rear yard appears to be used as a service area in association with some of the ground floor units currently. However, at present it is accessed only by a handful of service and fire escape doors, and the levels of activity in that area are likely to be relatively limited.
17. It is not clear from the details before me whether that rear courtyard would be available for customer use. However, it would be accessible directly from the restaurant via bi-folding doors proposed in the rear part of the building and, although no external seating is indicated, its use by customers as a smoking area for example has not specifically been ruled out. Any use of the courtyard by customers could generate significantly higher levels of activity in that area than the existing use, including on an evening. As a result, the levels of noise and disturbance experienced by occupants of the first floor flats would also increase, in what is likely to be a relatively quieter area of their properties at present, compared to the rooms which face Balaam Street.
18. In any event, even if the rear courtyard were not available for customer use, the sound of customers and staff talking and moving around within the restaurant itself would spill out into that external courtyard area if the wide bi-folding doors proposed in the rear part of the restaurant were open. Such sound is likely to be audible within the rear rooms of the flats above and adjacent to the appeal premises very close by, particularly if they also had their windows open in warm weather for example, and would not be mitigated by the provision of acoustic insulation within the building itself. Therefore, on the basis of the particular proposal before me, I consider that the activities of restaurant customers and staff within the building would result in a significant increase in the levels of noise and disturbance experienced by the occupants of those neighbouring properties compared to the existing use.
19. There is a large church to the rear of the site, the access and parking areas of which adjoin part of the site's rear boundary. However, if the restaurant's bi-folding doors were open, sound emanating from the rear part of the restaurant into the rear courtyard could continue persistently for protracted periods and late into the evening, and in much closer proximity to those neighbouring first floor windows than any activity associated with the church. It would thus have a greater effect on the living conditions of neighbouring residents than is likely to be associated with that existing adjacent use.
20. For the reasons given, on the basis of the evidence before me and my own observations, I therefore conclude that the proposed development would have an adverse effect on the living conditions of the occupants of nearby residential properties with regard to noise and disturbance. The proposal would therefore conflict with Policies 7.1, 7.4, 7.5 and 7.6 of the London Plan 2016 and Policies SP1, SP2, SP3 and SP8 of the Local Plan which, amongst other things, require developments to achieve good neighbourliness, to not cause unacceptable harm to the amenity of surrounding land and buildings, to avoid problems related to 'bad neighbour' uses and to attend to the environmental impacts of economic development, including noise.

21. Those policies are consistent with the Framework, which requires developments to create places with a high standard of amenity for existing and future users. In reaching my conclusion I have also had regard to Policy D13 of the Draft London Plan, the aims of which are similar to those of the development plan policies referred to, in requiring development proposals to manage noise and avoid significant adverse noise impacts on quality of life.

Safety and convenience of highway users

22. With a Public Transport Accessibility Level (PTAL) rating of 5, the site has very good access to public transport, and many staff and customers may travel to the site by means other than the private car. However, the possibility of some staff and customers arriving by car could not be ruled out and, in the absence of any parking provision within the site, the use could therefore lead to vehicles parking on-street in the vicinity at certain times.
23. There are parking spaces on Balaam Street close to the site, and on other nearby streets. Existing parking restrictions, including a Residential Parking Zone (RPZ) which covers Sewell Street and part of Balaam Street to the north of the site, would restrict or prevent customers or staff parking on those nearby streets during the day. However, the restaurant would open late into the evening and on Sundays, beyond the hours of operation of the RPZ and those other restrictions. I have very little information before me comparing the proposed use to the existing A1 use in terms of anticipated vehicle movements and parking demand. However, it is likely that the average length of visitor stays associated with the restaurant would be longer than those associated with the unit's existing A1 use, even if the vehicle movements were similar overall. Consequently, the proposed use could lead to parking bays being occupied by customers, and thus unavailable for use by local residents, for longer periods than the existing use would.
24. Therefore, given the restaurant's relatively large size, and in the absence of substantive survey evidence to demonstrate sufficient capacity on nearby streets to accommodate on-street parking associated with it, I consider that there is an unacceptable likelihood that the development would lead to an increase in the amount and duration of on-street parking in the vicinity of the site outside the hours of the RPZ compared with the existing use. On that basis, I consider that the development could lead to parking stress and to greater inconvenience for residents at those times, who may have to park further from their homes as a result. Furthermore, having regard to the somewhat limited width of some nearby streets, additional on-street parking could also increase the likelihood of obstruction to the free and safe movement of vehicles in the vicinity of the site, as a result of vehicles circulating or waiting for spaces to become available for example.
25. Little detail has been provided regarding the intended delivery and refuse collection arrangements. However, I have nothing substantive before me to suggest that the delivery or refuse collection arrangements associated with a restaurant would differ significantly from those associated with the existing commercial use with regard to their frequency or duration. Therefore, I consider it unlikely that the development would have significant additional implications in that regard. Although no cycle parking is indicated on the submitted drawings, the existing commercial unit does not appear to have any

cycle parking provision at present, and its absence does not warrant the withholding of permission in this case.

26. However, for the reasons given, on the basis of the limited evidence before me, I cannot be certain that the development could be accommodated without exacerbating parking stress, or associated adverse effects on the safety or convenience of highway users in the vicinity of the site. The proposal would therefore conflict with Policies 6.3 and 6.13 of the London Plan 2016 and Policies SP1, SP2, SP3, SP8 and INF2 of the Local Plan. Amongst other things, those policies require the submission of sufficient detail, and the impacts on the transport network to be fully assessed. They also require that an appropriate level of car parking is provided, and state that change brought about by development must not cause problems for existing lawful neighbours, and that proposals should minimise parking stress.
27. Those policies are consistent with the Framework, which states that parking and other transport considerations are integral to the design of schemes, and require development proposals to create places with a high standard of amenity for existing and future users. In reaching my conclusion I have also had regard to Policies T1, T3, T4, T5 and T6 of the Draft London Plan, the aims of which are similar to those of the development plan policies referred to above in, amongst other things, requiring impacts on London's transport networks to be mitigated, and that proposals are integrated with current capacity.

Other Matters

28. I have been referred to an appeal decision elsewhere in the Borough relating to a change of use to create retail, office and hot food takeaway uses¹. From the very limited information before me, whilst there appear to have been some similarities with regard to the out-of-centre location of the site, it does not appear that issues regarding living conditions or the safety or convenience of highway users were identified in that case. Therefore, it does not appear that the circumstances in that case were directly comparable to those in the current appeal which, in any event, I have determined on its own planning merits.

Planning Balance

29. For the reasons given, I conclude that the proposed development would result in harm to living conditions and to the safety and convenience of highway users. I have not found harm with regard to the vitality or viability of existing centres, or to the strategic spatial objectives of the Council. However, the absence of harm in those regards is neutral, rather than a factor weighing in favour of the proposal.
30. I have not received any objections to the proposal from interested parties. However, the absence of such objection does not, in itself constitute a reason to grant permission. The proposal would bring a vacant unit into use, providing an active street frontage and creating some employment opportunities. However, the benefits arising in that regard from a single commercial unit would be modest, and do not outweigh the significant harm I have identified.
31. Accordingly, I conclude that the proposal would conflict with the development plan, and that conflict is not outweighed by other material considerations. The

¹ Appeal reference: APP/G5750/A/14/2216552

proposal would therefore not comprise sustainable development as defined in the Framework.

Conclusion

32. For the reasons given, and having regard to all other matters raised, the appeal is dismissed.

Jillian Rann
INSPECTOR