

Appeal Decision

Site visit made on 25 February 2020

by Ian Harrison BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 March 2020

Appeal Ref: APP/E5330/W/19/3241388

Bentham House, 2-4 Station Way, Woolwich, London SE18 6FJ

- 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 Arthur Kwame against the decision of the Royal Borough of Greenwich Council.
 - The application Ref 19/2494/F, dated 11 July 2019, was refused by notice dated 6 November 2019.
 - The development proposed was originally described as "Change of use of ground floor of a property at Bentham House, 2-4 Station Way from A1 (Use Class) to A3 (Restaurants and Café) with mezzanine floor and extraction unit."
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Decision

1. The appeal is dismissed

Application for costs

2. An application for costs was made by Mr Arthur Kwame against the Royal Borough of Greenwich Council. That application is the subject of a separate Decision.

Procedural Matter

3. The original application form and the Council's decision notice have used different descriptions of the development which indicate that the existing use of the building is not agreed by the main parties. In this case, whilst I have had regard to the case of both parties in this respect, the description that has been used in the heading above has been taken from the original application form and should not be taken as any form of clarification in respect of the existing use. In any event, given the main issues that are set out below and the cases of the main parties, the existing lawful use of the building appears to be of minimal relevance to the assessment of the proposed use.

Main Issues

4. The main issues are the effect of the development on:
 - Pedestrian safety and convenience, with particular regard to the storage of refuse.
 - The living conditions of neighbouring residents, with particular regard to odour.

Reasons

Pedestrian Safety and Convenience

5. The appeal site consists of the ground floor of part of a wider complex of buildings that includes a variety of commercial uses at ground floor with residential uses above. The entrance to the site is adjacent to the footway of Station Way, with that elevation of the overall building complex also featuring entrances to residential properties, bin stores, car parking and other such service areas.
6. The proposed use of the building at the appeal site as a restaurant and café would be likely to generate waste in various forms. Although the appellant has not indicated how much waste would be created at the site and no details are available with respect to the capacity, in terms of customers, of the proposed restaurant and café, I have had regard to the Council's Guidance Notes¹ which suggests that a restaurant use should be served by 3 refuse containers² per 20 covers. No refuse storage is shown within the appeal site, but the appellant has identified that refuse storage areas are available at part of the building complex further along Station Way. This has been supported by communications from the organisation that manages the building complex and photographs of existing bin stores.
7. I have not been made aware of the existence of any guidelines that address the positioning of a refuse store in relation to the building that it would serve, but the remote positioning of those that are indicated to be available would require waste to be moved over a substantial distance and through the public domain. In this case, the proposed refuse stores would not be conveniently located relative to the use that they would serve. This could discourage their use and could lead to the storage of waste in alternative ways. Moreover, it has not been demonstrated that the refuse storage areas would have adequate capacity to accommodate waste from the proposed use and the other uses of the overall building complex that they serve.
8. In any event, it appears that the indicated position of the refuse stores on plan 001³ does not correlate with the location of those that already exist at the site. As such, there would appear to be no prospect that refuse stores could be provided in the position shown on the submitted plan. Therefore, whilst Planning Practice Guidance⁴ states that conditions relating to land outside of an appellant's control can be used in some circumstances, in this case it would not be possible to impose a condition that would comply with the tests of reasonableness and precision that are set out at paragraph 55 of the National Planning Policy Framework (The Framework).
9. As it is not possible to rely on the provision of off-site refuse stores, regard must be had to the appellant's other submissions which identify that waste could be kept at the frontage of the site on the day of collection. Although there is a frame feature at the entrance of the building, there is no defined gap between the building and the footway and, as such, keeping refuse at the frontage of the site would result in waste being stored on land that functions as

¹ New Developments – Guidance Notes for the storage and collection of waste and recycling materials (2018)

² 2 x 1100 litre containers and 1 x 240 litre container

³ Plan 001 – Labelled "Showing Refuse storage and access from site"

⁴ Paragraph: 009 Reference ID: 21a-009-20140306

part of the pedestrian route. This would be likely to impede the movement of pedestrians and detract from the pedestrian environment.

10. Whilst it has been brought to my attention that the Council have approved other developments subject to conditions requiring details of refuse stores to be agreed, insufficient detail has been provided to demonstrate that the circumstances of the respective developments are comparable to this proposal. As such, those examples do not alter my view that, in this case, this matter cannot be addressed through the imposition of a condition.
11. For the reasons given above, the proposal would have an unacceptable effect on pedestrian safety and convenience, with particular regard to the storage of refuse. The proposal would, therefore, conflict with policies DH1 and IM(b) of the Royal Greenwich Local Plan: Core Strategy with Detailed Policies (RGLP), adopted 2014. Those policies require that, amongst other things, on-site waste management and recyclable waste storage is provided in a manner that takes account of patterns of activity, movement and circulation and that pedestrian routes are maintained and safe. Furthermore, the proposal would not accord with policy 6.10 of the London Plan (LP), adopted 2016, which seeks to ensure that developments provide high quality pedestrian environments and emphasise the quality of the pedestrian and street space.
12. As policy 5.16 of the LP relates to the processing and recycling of waste rather than its storage at a site, it does not appear to be relevant to this issue.

Odour

13. The proposed restaurant would sit beneath 7 floors of residential properties that have windows above the front and side elevations of the building at the appeal site. Cooking food would inevitably cause odours and the appellant has indicated that such odours would be controlled through the installation of 3 filtration systems within the kitchen and the provision of an extraction discharge point at the side elevation. The close proximity of the extraction discharge point to the neighbouring residential properties indicates that there would be limited opportunity for odours to dilute or disperse before reaching a receptor and, as such, it would appear that any harmful odours would need to be substantially reduced or removed prior to their extraction.
14. The appellant's Odour Assessment (OA) has been based on the installation of a suitable commercial kitchen extraction system which would enable the extraction and dispersion of odours. The OA concludes that the nature of the use and the proposed mitigation would combine to ensure that the development does not have a significant residual odour impact. However, the OA includes no reference to the proposed filtration systems that are described within the appeal statement and does not comment directly on the mitigation measures that are shown on the submitted plans. As such, the OA does not demonstrate that the proposed installations would control the emission of odours effectively.
15. The OA identifies that, when undertaking an assessment in accordance with IAQM Guidance⁵, the categorisation of the Source Odour Potential and Pathway Effectiveness should be clarified and justified. In relation to Source Odour Potential, whilst the issue of magnitude has been addressed, the pleasantness

⁵ Institute of Air Quality Management's (IAQM) "Guidance on the Assessment of Odour for Planning" (2018)

and strength of the potential odours has not been commented on. Furthermore, it has not been clarified how the conclusion has been reached that the pathway effectiveness would be moderate, which appears to be relevant in this case due to the proximity of the extract release point to the adjacent residential properties. In these respects, the OA does not fully clarify how it reached the abovementioned conclusion.

16. For the reasons set out above, it has not been adequately demonstrated that the proposed mitigation would be sufficient to ensure that the living conditions of neighbouring residents would not be unduly affected by odour. As such, it is not certain that imposing a condition to secure the installation of the proposed mitigation would be sufficient to ensure that odours are satisfactorily controlled.
17. Another extractor exists on the same elevation of the building complex as the proposed extractor, but no details have been provided in relation to what this connects to or what use it serves. As such, the presence of that extractor does not provide grounds to conclude that this proposal would be acceptable.
18. For these reasons, the proposal would have an unacceptable effect on the living conditions of the occupiers of neighbouring properties, with particular regard to odour. The development would, therefore, be contrary to policy E(a) of the RGLP which requires that development does not have a significant adverse effect on the amenities of adjacent occupiers, especially where proposals would be likely to result in the unacceptable emission of, amongst other things, odours. The proposal is also contrary to paragraph 127 of The Framework which states that developments should create places with a high standard of amenity for existing and future users.

Other Matters

19. I have had regard to the accessible location of the site and the benefits that the appellant has indicated would be derived from the proposal including the use of a currently vacant building, the creation of jobs, the addition to the evening economy and its contribution to the vitality and viability of the locality. However, these factors do not outweigh the harm that would be caused in respect of the main issues.
20. I am aware of the appellant's complaints about the way that the planning application was determined but these matters do not overcome or outweigh the concerns raised above and I confirm that I have considered the proposal on its individual planning merits and made my own assessment as to its potential impacts.

Conclusion

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

Ian Harrison

INSPECTOR