



Appeal Decisions

Site visit made on 12 August 2020

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 September 2020

Appeal A: APP/Z5060/C/19/3239460

Land and premises at Cafe, Creekmouth Industrial Estate, 57 River Road, Barking, Essex IG11 0DA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Samuel Kitone against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
- The enforcement notice was issued on 17 September 2019.
- The breach of planning control as alleged in the notice is Without planning permission, the unauthorised change of use of the property to a mixed use bar (A4) and function rooms (Sui Generis).
- The requirements of the notice are Cease operating the premises as a mixed use bar (A4) and function rooms (Sui Generis); Remove all alterations and fixtures related to the mixed use bar (A4) and function rooms (Sui Generis); Remove all consequent waste material from the premises.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (b) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Appeal B: APP/Z5060/W/19/3238983

57 River Road, Barking IG11 0DA

- 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 Samuel Kitone against the decision of the Council of the London Borough of Barking & Dagenham.
- The application Ref 19/00968/FUL, dated 3 June 2019, was refused by notice dated 16 September 2019.
- The development proposed is "Retrospective application to use of property as mixed use bar (A4) and function rooms (Sui Generis) and external staircase to the rear elevation."

Summary of Decision: The appeal is dismissed.

Procedural Matter

1. At the site visit the appellant explained that his use of the premises was restricted to part of the ground floor area of the building only, and that he did not have a right of access to the first-floor area, this being used by a different occupier. The site visit was therefore undertaken in relation to the part of the ground floor area in question.
2. However, from the appellant's statement and the plans submitted with the application, the proposed development relates both to additional parts of the ground floor area and to the first-floor level of the building, as identified on the

site location plan. My decision is therefore made in this context, because deciding the matter on the basis of a different scheme may result in prejudice to one or more parties.

3. If the appellant is now proposing a reduced scale of development, in comparison to that which is the subject of the alleged breach and the previous refusal of planning permission by the Council, that is a matter that would need to be taken up directly with the Council in the first place.

Appeal A on ground (b)

4. The ground of appeal is that the breach of planning control alleged in the enforcement notice has not occurred. In a ground (b) appeal the onus of proof is on the appellant and the standard of proof is the balance of probability.
5. The appellant states that an inspection of the appeal site and property will reveal that the use has not commenced as a matter of fact. From my visit to the site, which for the reason given above, was limited to part of the ground floor area of the building, it was apparent that work to install or refurbish seating provision was incomplete and that a serving bar had been created. This would not in itself be sufficient evidence to lead to a conclusion, on the balance of probability, that the alleged mixed use had commenced.
6. However, it is evident from the description of the proposed development, as set out on the application form relating to Appeal B, that permission was being sought retrospectively. It is also explicitly confirmed on the same form that the change of use applied for was completed on 2 May 2019. Because the use for which planning permission is sought is the same as that identified as the breach of planning control, this weighs heavily in favour of the proposition that the alleged use occurred as a matter of fact.
7. Because the enforcement notice, in relation to the same development, was only issued after the Council's decision to refuse planning permission, it is therefore reasonable to conclude, on the balance of probability, that the use of the building which the enforcement notice seeks to address had commenced at the time the notice was issued. The ground (b) appeal therefore fails.

Appeal A on ground (a) and Appeal B

8. The appeals are that planning permission should be granted.

Main Issues

9. The main issues are whether i) the appeal site is an acceptable location in principle for the proposed development, in the context of the Council's development plan policies and ii) the proposed scheme would be accessible and inclusive for all.

Reasons

Location of development

10. Policy CE3 of the Barking and Dagenham Core Strategy 2010 (CS) states that the Council will safeguard Strategic Industrial Locations (SILs) such that land within these locations will not be released for other purposes. This land is recognised as forming a vital part of the capital's main reservoir of industrial capacity that must be protected.

11. The appeal site is undisputed to be part of the River Road Employment Area, which is designated as a SIL. The Council's policy position is therefore to safeguard the appeal site as industrial land. The proposed use is not industrial in nature and as such would be in conflict with Policy CE3. It follows that the proposed use cannot therefore be regarded as part of an appropriate mix of employment uses and as such would also be in conflict with Policy CE4 of the CS.
12. The appellant has set out that the appeal site has been vacant for two years; is adjacent to a bus depot in 24-hour use; sufficient car parking spaces are available, with more available due to the night time operation of the use; 19 jobs would be created; there would be community benefits without causing harm to any living conditions.
13. However the appellant does not dispute that the official planning Use Class of the property is B1 (which would include office and light industrial uses). Furthermore, no persuasive evidence has been presented to the effect that the appeal site could not be used for industrial purposes, including any unsuccessful efforts that have been undertaken to re-let the vacant premises, so as to justify departing from the development plan policy in this case.
14. In addition the proposed bar and function room uses would, in my view, be consistent with the definition main town centre uses, in the context of national planning policy¹. Policy CE1 of the CS seeks to consolidate and support the Borough's town centres by adopting a sequential approach to the location of new retail and other town centre uses, meaning that locational opportunities for such uses within the town centre must be fully explored before considering sites outside this area.
15. This approach is consistent with the National Planning Policy Framework, which states that main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered². I have not been provided with any evidence indicating that such a sequential test has been undertaken.
16. Accordingly the proposal would be in conflict with Policy CE1.
17. I therefore conclude that the appeal site would not be an acceptable location in principle for the proposed development.

Accessibility

18. Policy BP11 of the Barking and Dagenham Borough Wide Development Policies Development Plan Document 2011(DPD) states amongst other things that the layout of new development should provide accessible and inclusive features so that all potential users, regardless of disability or age can use them easily.
19. The Council's concern in this regard is that the internal layout does not provide suitable arrangements in respect of lift access and accessible WCs. The appellant states that given the configuration and floorspace that provision can be made to accommodate access requirements and that this can be made the subject of a suitable condition.

¹ See National Planning Policy Framework Annex 2; Glossary – definition of main town centre uses.

² See National Planning Policy Framework paragraph 86.

20. However I have not been provided with any evidence to support this statement in respect of the ground floor WCs. In addition to this, due to the apparent constraints regarding areas of the building the appellant is permitted to use, as discussed above, I have not been able to take into consideration the access arrangements for the first-floor level of the building at all. In these circumstances, where I cannot be certain of the possibility of suitable access arrangements being achieved, it would not be reasonable to proceed to impose the suggested planning condition.
21. I am unable to conclude that the development would be accessible and inclusive for all. I therefore find conflict with Policy BP11 of the DPD, insofar as it seeks to provide accessible and inclusive features.

Planning Balance

22. The appellant claims that the development would result in the creation of several jobs. Whilst this is clearly a positive factor, the rationale for safeguarding this location as an industrial site is also about job creation and economic development. In addition, whilst the development may result in community benefits, I am not persuaded that the development must take place in this location for such benefits to be realised. I therefore give limited weight to these considerations.
23. I acknowledge that the Council has not opposed the development based on parking provision and servicing issues or living condition concerns. However such lack of harm would only carry neutral weight in the overall planning balance. I note that the appellant has been granted a premises license by the Council. However this is a separate regime of control and is not relevant to my considerations in this case. I therefore find that these factors do not outweigh the negative considerations that I have identified above.

Conclusions

Appeal A

24. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Appeal B

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

Formal Decisions

Appeal A

26. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

27. The appeal is dismissed and planning permission refused.

Roy Merrett INSPECTOR