



Appeal Decision

Site Visit made on 6 October 2020

by R Sabu BA(Hons), BArch, MA, PgDip ARB RIBA

an Inspector appointed by the Secretary of State

Decision date: 21st October 2020

Appeal Ref: APP/W5780/W/20/3245954
253 Ilford Lane, Ilford IG1 2SB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Farouq Patel against the decision of the Council of the London Borough of Redbridge.
 - The application Ref 3553/19, dated 6 September 2019, was refused by notice dated 5 November 2019.
 - The application sought planning permission for change of use of ground floor from retail (A1) to restaurants and cafes (A3) summary, without complying with a condition attached to planning permission Ref 5055/18, dated 23 January 2019.
 - The condition in dispute is No 2 which states that: Customer of the Class A3 use hereby permitted shall not be on the premises outside the following times:- 1100 – 2300 hours all week.
 - The reason given for the condition is: In order to prevent the use causing an undue disturbance to occupants of neighbouring property at unreasonable hours of the day, and to accord with Policies LP9 and LP26 of the Council's Local Plan.
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Decision

1. The appeal is dismissed.

Main Issue

2. In 2019 Prior Approval was granted for the change of use of ground floor from retail (A1) to restaurants and cafes (A3) subject to a number of conditions including Condition 2 which requires that customers of the Class A3 use hereby permitted shall not be on the premises outside the following times:- 1100-2300 hours all week. The application subject of this appeal sought the variation of this condition, to allow earlier opening times every day and later closing times on Fridays and Saturdays.
3. Therefore, the main issue is the effect that varying the opening hours would have on the living conditions of neighbouring occupiers with particular regard to noise.

Reasons

4. While the upper floor of the property may not be in residential use, there are dwellings in close proximity to the site. The later opening of the restaurant is likely to result in reasonably large groups of people using the premises late at night. Therefore, it is reasonably likely that the coming and going of such groups of people would cause a degree of noise disturbance to neighbouring occupiers.

5. I note the opening times of commercial units in the area and that it is less likely that an earlier opening time, to enable breakfast trade would result in undue noise disturbance to neighbouring occupiers. However, there is no evidence before me such as a noise impact assessment that demonstrates that the noise that would be likely to be generated by the proposed extended use of the unit would not cause undue noise disturbance to the neighbouring occupiers.
6. I acknowledge the on-street parking outside the site, and the evidence regarding customers walking or taking public transport to the site and the all night bus service. I also note the evidence regarding licensing, benefits to the night time economy of the area, the lack of alcohol sales on the premises and the request for customers to leave quietly. However, there is little substantial evidence to demonstrate that these would override or mitigate the harm identified above. As such, a condition varying the opening hours would not be reasonable or necessary.
7. While I note the evidence regarding No 72 Ilford Lane, that building is some distance from the site and limited further details are before me to enable a direct comparison with this appeal. In any event, each case must be determined on its own merits.
8. Consequently, varying the opening hours would harm the living conditions of neighbouring occupiers with particular regard to noise. Therefore, it would conflict with Policies LP10 and LP26 of Redbridge Local Plan 2015 – 2030 March 2018 which, among other things, resist development that results in the adverse impacts on the amenities of nearby occupiers in relation to noise.

Other Matters

9. I acknowledge the presumption of sustainable development as set out in the National Planning Policy Framework. However, given the conflict with the development plan identified above, this does not alter my overall decision.

Conclusion

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

R Sabu

INSPECTOR