



Appeal Decision

Site visit made on 7 December 2020

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 January 2021

Appeal Ref: APP/A5270/C/20/3250853

Land at 55-57 Bideford Avenue, Perivale, Middlesex UB6 7PP

- 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 Kushal Shah against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 11 March 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the change of use of the first floor to a mixed use comprising a restaurant, shisha lounge and bar together with the construction of a timber framed first floor rear extension and external staircase.
 - The requirements of the notice are:
 - A. Cease the use of the first floor as a restaurant;
 - B. Cease the use of the first floor as a shisha lounge;
 - C. Cease the use of the first floor bar;
 - D. Remove the first floor extension;
 - E. Remove the external staircase along the northern elevation of the property; and
 - F. Remove all resultant debris from the site.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.
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Decision

1. It is directed that the enforcement notice be corrected by:
 - Deleting the wording of requirement 5A in paragraph 5 and substituting it with "Cease the use of the first floor as a mixed use comprising a restaurant, shisha lounge and bar".
 - Deleting requirements 5B and 5C in paragraph 5.
 - Re-numbering requirement 5D as 5B, 5E as 5C and 5F as 5D in paragraph 5.
2. Subject to the corrections above, the appeal is allowed insofar as it relates to the external staircase on the northern elevation of the property and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the external staircase at 55-57 Bideford Avenue, Perivale, Middlesex UB6 7PP subject to the following condition:

1. Access to the external staircase hereby permitted shall be for maintenance or emergency purposes only and shall not be used to access the first floor for any other purpose.
3. The appeal is dismissed and the enforcement notice is upheld as corrected insofar as it relates to the change in the use of the first floor to a mixed use comprising a restaurant, shisha lounge and bar together with the construction of a timber framed first floor extension and planning permission is refused in respect of the change in the use of the first floor to a mixed use comprising a restaurant, shisha lounge and bar together with the construction of a timber framed first floor extension on land at 55-57 Bideford Avenue, Perivale, Middlesex UB6 7PP on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matter

4. The Council and the appellant have referred to emerging policies in The Draft London Plan – Consolidated Suggested Changes Version, July 2019 which has subsequently been published along with further updates, and now forms the 'Publication London Plan', December 2020 (PLP). Although the emerging draft London Plan does not yet form part of the Development Plan, given its advanced stage of preparation, I am able to give these draft policies substantial weight.

Enforcement Notice

5. There is no dispute that the lawful use of the Land is as a café/restaurant. Therefore, to require the use of the first floor as a restaurant to cease, as set out in paragraph 5A of the notice, would be excessive. The breach of planning control alleged is the change of use of the first floor to a mixed use comprising a restaurant, shisha lounge and bar. I shall therefore correct the requirements of the notice so that they are consistent with that breach and require the cessation of that mixed use. The lawful right to revert to a single primary use as a restaurant would remain. I am satisfied that this correction would not result in any injustice to either the Council or the appellant as it would not alter the purpose of the notice.

Appeal on ground (a), deemed planning application

Main Issues

6. The main issues in this case are:
 - Whether the development is acceptable in principle in this location, having regard to local planning policies; and
 - The effect of the development on the character and appearance of the host building and surrounding area.

Reasons

Background

7. The premises at 55-57 Bideford Avenue benefit from a planning permission granted for use as a restaurant in 2014. In November 2016 planning permission was also granted for a small first floor rear roof terrace with brick dwarf wall and obscure glazed surround; external fire escape staircase to the

side of the building. However, it is apparent that the 2016 permission has not been implemented. The development that has taken place is not in accordance with the approved plans or the terms of the 2016 planning permission. Instead, a much larger first-floor extension has been created which is accessed by a new external staircase. The first floor is in mixed use as restaurant, shisha lounge and bar, and a new planning unit has been formed.

Acceptable location

8. The premises are situated within an area designated by the London Plan (MALP) 2016 (LP) as a Strategic Industrial Location (SIL). SILs are London's main reserves of industrial and related capacity and require protection. Policy 2.17B of the LP advises that development proposals in SILs should be refused unless they fall within one of a number of defined categories, including 2.17B (d), the proposal is for small scale 'walk to' services for industrial occupiers such as workplace creches or cafes. Draft Policies E4 and E5 of the PLP seek to ensure, amongst other things, that a sufficient supply of land and premises in different parts of London is available to meet current and future demands for industrial and related functions within designated SILs. Policies 1.1(c) and 3.2 of Ealing's Development Strategy 2026, Development Plan Document, adopted 2012 (DSDPD) seek, amongst other things, to promote and retain business and enterprise by securing and maintaining a sufficient supply of industrial land, and encouraging sustainable commercial development and improvements to access and amenity.
9. Policy 2.17B (d) of the LP makes provision for small scale 'walk in' services for industrial occupiers. Reference is made in this policy to uses including cafes, which could provide a service for those people working in the area. However, in this case the use proposed is a mixed sui generis use¹; as a restaurant, bar and shisha lounge. The appellant concedes that the busiest operating times of the premises are in the evenings, albeit I have taken into account the proposal to extend the opening hours to include lunchtimes. However, I am not persuaded that a shisha café/bar is the type of service that would be utilised by employers and employees in the middle of a working day. The extension more than doubles the size of the first-floor accommodation, and as such the development as a whole could not be considered to be small scale, as envisaged by the provisions of Policy 2.17B (d).
10. The nature and scale of this development, including the mix of uses proposed, is a form of development which is more likely to support an evening economy and is not to my mind the type of use that should be encouraged within a SIL.
11. I conclude that the development would not be acceptable in principle in this location. It conflicts with the development plan, and in particular with Policies 2.17B of the LP, Draft Policies E4 and E5 of the PLP and Policies 1.1 (c) and 3.2 of Ealing's DSDPD, the aims of which are set out above.

Character and appearance

12. The host property is a simple two-storey brick building with a tiled hipped roof. It has been substantially extended at ground floor level to the rear and there is also a front extension providing an enclosed seating area. The existing extensions appear subservient to the original building.

¹ Meaning 'of its kind' when no use classes order fits.

13. The first floor extension has been constructed from a mixture of blockwork and timber. The partially open sides, which are necessary for the operation of the shisha lounge, are covered with plastic sheeting and the roof covering is Perspex. The design of the extension, including the execution of the materials of construction is poor and does not reflect the character and appearance of the host building.
14. Although the extension is to the rear of the building, it is clearly visible as you enter the industrial estate from the south along Bideford Avenue. It is also a dominant feature when viewed from land occupied by neighbouring operators. Its scale, form and the use of materials means that it appears as an incongruous addition to the building and it has a harmful effect on the character and appearance of the area.
15. I conclude that the first floor rear extension has a significant and harmful effect on the character and appearance of the host building and the surrounding area. The first floor rear extension conflicts with the development plan and in particular with Policies 7.4 and 7.6 of the LP, Draft Policy D3 of the PDP and Policy 7.4 of Ealing's Development Management Development Plan Document, 2013, all of which seek to ensure, amongst other things, that new development complements local character, including scale, materials and detailing.
16. The external staircase is utilitarian in form and does not appear out of place or as a discordant addition to a building within an industrial setting. I appreciate that the staircase comes forward of the building's main façade, and I understand that a manhole in this location has prevented the staircase from being constructed as originally envisaged as part of the 2016 permission. However, when the external staircase is viewed alongside the existing ground floor front extension, it does not appear unduly prominent or incongruous.
17. I conclude that the external staircase does not have a harmful effect on the character and appearance of the host property or surrounding area. There is no conflict with the development plan, and in particular with Policies 7.4 and 7.6 of the LP, Draft Policy D3 of the PDP and Policy 7.4 of Ealing's Development Management Development Plan Document, 2013 the aims of which are set out above.

Planning balance and conclusions on ground (a)

18. I have found that the change of use of the first floor to a mixed use, restaurant, shisha lounge and bar is not acceptable in this location and that the first floor rear extension has a harmful effect on the character and appearance of the host building and surrounding area. The appeal therefore fails in respect of the use as being carried out and planning permission will not be granted for the change of use or for the first floor rear extension.
19. However, with regard to the external staircase which has been constructed I consider that these works are acceptable. I shall, therefore, issue a split decision in relation to this appeal on ground (a).

Other Matters

20. I have had regard to the revised plans which accompanied the appellant's appeal documents. However, the deemed planning application is for the operations and material change of use carried out. In addition, those plans would not overcome the harm that I have identified in the first main issue

above, where I have found that the use is not acceptable in this location in principle. I therefore give those plans little weight.

21. I appreciate the appellant's endeavours to ensure that his establishment does not breach health and safety requirements and understand that he believed that the use was lawful. However, these matters are not for my consideration in this appeal.
22. Although a split decision will be issued, the notice will not be amended regarding the requirement to remove the external staircase. However, in granting planning permission (in split decision) for the external staircase, Section 180(1) of the Act provides that: 'Where, after the service of a copy of an enforcement notice, planning permission is granted for any development carried out before that grant of planning permission, the notice shall cease to have effect so far as is inconsistent with that permission'.
23. Thus, the notice will cease to have effect with regard to the removal of the external staircase along the northern elevation of the property (Requirement 5C, as corrected).

Conditions

24. It is necessary and reasonable to impose a condition to restrict the use of the external staircase to use in emergencies only and for maintenance purposes. This restriction is imposed to safeguard the privacy of neighbouring occupiers and to prevent disturbance to them.

Overall Conclusion

25. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for the external staircase along the northern elevation of the property, but otherwise I will uphold the notice with corrections and refuse to grant planning permission in respect of the change of use of the first floor to a mixed use comprising a restaurant, shisha lounge and bar and the construction of a timber framed first floor rear extension. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.

Elizabeth Pleasant

INSPECTOR