



Appeal Decision

Site visit made on 9 March 2021

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th March 2021

Appeal Ref: APP/A5270/W/20/3257512

2-4 Uxbridge Road, Hanwell, London W7 3PP

- 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 Anas Kamar against the decision of the Council of the London Borough of Ealing.
 - The application Ref 190296FUL, dated 22 January 2019, was refused by notice dated 14 February 2020.
 - The development proposed was described as 'change of use from Class A1 to Class A3 Restaurant, shop front alteration with wooden decking and glass partition and planter boxes, alteration of rear sitting area to use for out-door sitting area, erecting a rear ventilation duct at rear elevation.'
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the banner heading above is taken from the application form. However, the Council's decision notice describes the proposal as 'change of use from Use Class A1 (retail) to Use Class A3 (restaurant) facilitated by a single storey rear extension, installation of extractor flue; shopfront alterations; external alterations to provide a raised platform to the front of the premises with tables and chairs; remodelled rear garden area; and new access to the rear of the site on Grosvenor Road (part retrospective)'. This is also the description used by the appellant on the appeal form, and as I consider it a more accurate description of the proposal, I have determined the appeal accordingly. Notwithstanding the description of the proposal as 'part retrospective', I also confirm for the avoidance of doubt that I have considered the appeal on the basis of the submitted plans.
3. The appellant comments that the premises have been operating as a shisha café with front and rear seating area for over 10 years, and requests that I 'consider that the reasons for refusal of planning permission have already existed for over 10 years and so they are a lawful development'. I also note that the information before me includes evidence pertaining to the past use of the site. However, it is not for me within the context of an appeal under section 78 of the Town and Country Planning Act 1990 ('the Act') to determine whether or not a use or development has subsisted for sufficient time to become lawful. Regardless of the outcome, my determination of this appeal under section 78 does not affect the issuing of a determination under section 191/192 of the Act.

Main Issues

4. The main issues are the effect of the proposal on (i) the character and appearance of the area, and (ii) the living conditions of neighbouring occupiers with particular regard to noise, disturbance and odour.

Reasons

Character and Appearance

5. The appeal site is in a prominent location at the junction of Uxbridge Road and Broadway with Grosvenor Road, and includes a three-storey building with a distinctive double pitched roof set behind a decorative façade. Near to the site, buildings on this part of Broadway are in a mix of uses and vary in design, but they are for the most part closely related to their street frontages. In contrast, the appeal site includes a fairly deep, albeit irregularly shaped frontage, although the building behind is still set well forward of the adjacent buildings at 147 and 149 Broadway. It is also of greater height than these two-storey neighbours. As a result of these factors in combination, the appeal site and building are conspicuous in the street scenes of both Grosvenor Road and along Uxbridge Road and Broadway.
6. The appeal proposes use of the building on the site as a restaurant, and includes a number of alterations to the building and site. From the evidence before me and my visit, I am satisfied that the proposed entrance gate to the side of the building, creation of a garden to the rear and shopfront alterations would not cause unacceptable harm to the character or appearance of the area. My consideration of this main issue therefore focuses on the proposed alterations to the frontage of the site associated with provision of an external seating area; the rear extension and ventilation flue; and the addition of cladding to its side elevations.
7. The external seating to the front of the building would sit on a raised terrace with wooden panelled planting boxes and glass panels to the front and sides. Despite the use of glass, the resulting degree of enclosure to the frontage of the site would be an unusual and visually jarring feature within the street scene, and the materials would be at odds with the more traditional external finishes of the appeal and neighbouring buildings. The seating area would not occupy the entire frontage of the site, but the corner closest to 149 Broadway would nevertheless extend up to the adjacent pavement, and it would project significantly forward of this neighbouring building. As a result, the seating area would be highly visible in views along Uxbridge Road and Broadway, and I find it would be an unsympathetic and conspicuous addition which would detract from the overall appearance of the appeal building and the street scene.
8. The rear extension would be single-storey, but would fill much of the depth of the site to the rear of the building leaving only a relatively small gap remaining to the side of the neighbouring dwelling at 1 Grosvenor Road. The side facing Grosvenor Road would be very close to the street, and would comprise solid panels of fairly significant height, with planter boxes along the boundary offering little visual relief to break up the resulting bulk and mass of the structure. The projecting pitched roof section raised above open sides would further add to the overall scale of the extension, and would be an incongruous feature in the area. Taken as a whole, I find that the overall scale of the

- extension relative to the appeal building and site would be disproportionate, and that it would be dominant in views from the street scene.
9. Compounding the visual prominence and discordant nature of the development, the wooden cladding to the side of the extension and to the sides of the ground floor of the appeal building would contrast strikingly with the painted render finish above, and would be uncharacteristic in the area. Moreover, the proposed extract flue would be of considerable scale, and the stainless steel finish would stand out against the host building. The flue would be readily visible from Grosvenor Road, and given its projection above the main roof of the building, it would also be likely to be apparent in views from Uxbridge Road and Broadway, as well as from Shirley Gardens opposite. Visible flues are not a typical feature within these street scenes close to the site, and the development would as a result be eye-catching, and detrimental to the character and appearance of the host building and area.
 10. The proposal would replace an existing rear projection which has a somewhat temporary appearance, and I note the appellant's comments that the appeal building is in need of refurbishment. However, the proposed development would be of increased scale, and taken as a whole I find that it would be significantly more prominent with a much greater detrimental visual impact overall. I do not therefore consider the existing condition of the building to be a compelling justification for the appeal proposal.
 11. For these reasons, I conclude that the proposal would cause unacceptable harm to the character and appearance of the area, and find that it would conflict with Policies 1.1 and 1.2 of the Development Strategy 2026 Development Plan Document 2012 and Policy 7B of the Development Management Development Plan Document 2013 (DMDPD). Broadly, these policies seek high quality architecture and development which complements buildings and their context. There would similarly be conflict with requirements within the National Planning Policy Framework (the Framework) for well-designed places and development which adds to the overall quality of the area.

Living Conditions

12. The rear extension and external seating to the front of the building would be directly below windows serving residential occupiers within the upper levels of the appeal building, with the rear seating also in very close proximity to the side of the dwelling at 1 Grosvenor Road. Given their scale, these areas together would be able to accommodate a fairly significant number of people. It seems to me that the levels of conversation and general activity likely to result could generate a considerable amount of noise, and that this would be likely to carry given the open nature of the seating to the front and large open sections to the rear extension.
13. Moreover, the proposed seating areas would significantly increase the total number of customers who could be accommodated within the premises. Additional comings and goings associated with these customers, some of whom may congregate or linger outside of the site, would be likely to result in a further uplift in noise and disturbance from and around the site.
14. The suggested opening hours of 1000 – 2330 would result in activity at the premises extending through the evening and into the night when background noise levels are likely to be lower, and when nearby residents would reasonably

- expect a certain degree of peace and quiet and to sleep. I acknowledge that Uxbridge Road and Broadway are busy roads, and that other nearby commercial uses may add to background noise and activity. However, Grosvenor Road is a predominantly residential street, and during my visit I experienced far lower levels of traffic and noise around the rear part of the site.
15. Even if the hours of use of external seating to the front of the building were more tightly controlled, additional noise and disturbance associated with the proposal in such close proximity to residents, particularly those at the rear of the appeal building and to the rear of the site, would in my view be noticeable and intrusive. In the absence of substantive evidence to the contrary, I consider that there would as a result be significant harm to the living conditions of those residents. The appellant suggests that the seating would be used predominantly in the summer months, but that would not mitigate the harm caused during the periods that it would be used.
 16. In addition, the appellant's Odour Risk Assessment does not consider odour that may result from the rear seating area. Given the proposed restaurant use and the partly open sides to this area, I share the Council's concerns that odour could rise and reach windows above, and I am not satisfied that I have sufficiently robust evidence to determine that neighbouring occupiers would not be adversely affected as a result.
 17. I therefore conclude that the development would cause unacceptable harm to the living conditions of neighbouring occupiers by reason of noise and disturbance, and that it has not been demonstrated that there would not be further harm as a consequence of odour. Accordingly, the proposal would conflict with Policies 4C, 7A and 7B of the DMDPD which require, amongst other things that main town centre uses relate well to their surroundings and that development achieves a high standard of amenity and does not cause emissions which would erode the amenity of surrounding uses. There would also be conflict with the Framework which includes requirements that development is not adversely affected by unacceptable levels of air or noise pollution, and for a high standard of amenity for existing users.

Other Matters

18. The Council suggests that the principle of the change of use of the site to a restaurant would have a positive effect on the vibrancy of this section of the town centre, and has welcomed the removal of a car wash that has operated from the site. I have no reason to reach a different view, but do not consider that these are benefits sufficient to outweigh the significant harm that I have identified would be caused to the character and appearance of the area and to the living conditions of neighbouring occupiers.
19. The appellant asserts that outdoor seating to the front of the building and a rear extension are lawful. There is no Certificate of Lawfulness before me confirming this to be the case, but in any event, there was no seating to the front of the site at the time of my visit, and though there was a projection to the rear of the building, the proposed development is of greater size and a different form. The existing situation does not therefore offer a direct comparison for the appeal before me.
20. I note representations by interested parties including regarding existing parking pressure in the area and raising concerns over safety, antisocial behaviour and

litter. However, none of the matters raised either individually or collectively alter my conclusions on the main issues. I also acknowledge comments that the open sides to the rear extension suggest shisha use on the site would continue, but the appeal before me relates to use of the site as a restaurant and I have determined it on this basis.

Conclusion

21. For the reasons given above, I find that the proposal would conflict with the development plan when it is read as a whole, and material considerations do not indicate that a decision contrary to the development plan should be reached. I therefore conclude that the appeal should be dismissed.

J Bowyer

INSPECTOR