



Appeal Decision

Site visit made on 17 May 2021

by Graeme Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 June 2021

Appeal Ref: APP/W5780/W/20/3252260

58 Ilford Lane, Ilford IG1 2JY

- 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 Ayub Mohammed Umer against the decision of the Council of the London Borough of Redbridge.
 - The application Ref 0327/20, dated 28 January 2020, was refused by notice dated 19 March 2020.
 - The development proposed is change of use from A1-retail shop to A3-café. Installation of new flue.
-

Decision

1. The appeal is allowed and planning permission is granted for change of use from A1-retail shop to A3-café and installation of new flue at 58 Ilford Lane, Ilford IG1 2JY in accordance with the terms of the application, Ref 0327/20, dated 28 January 2020, subject to the following conditions:
 - 1) The development hereby permitted shall be begun no later than the expiration of three years from the date of this permission.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: site location plan; ZAAVIA/58IL/201 A; ZAAVIA/58IL/202 A; ZAAVIA/58IL/203 A; ZAAVIA/58IL/205 A; and ZAAVIA/58IL/206 A.
 - 3) The premises shall only be open for customers between the following hours:
1100 – Midnight Mondays - Fridays
1100 – Midnight Saturdays and Sundays
1100 – Midnight Bank Holidays.

Procedural Matters

2. During the course of the early stages of the appeal the Town & Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (the Regulations) were laid before Parliament on 21 July 2020. The Regulations came into force on 1 September 2020.
3. Of particular relevance to the current appeal, the Regulations revoked Class A in its entirety and created a new Class E (Commercial, business and service) Use Class, within which the previous classes A1 (Retail) and A3 (café) uses were incorporated. The implication of the coming into force of the Regulations on 1 September 2020 is that changes of use within the new Use Class E no longer constitute an act of development for which planning permission is required.

4. However, paragraph 4 of the Regulations provides that: *"If prior to the commencement of the material period, a relevant planning application was submitted, or was deemed to be submitted, to the local planning authority which referred to uses or use classes which applied in relation to England and were specified in the Schedule to the Use Classes 4 Order on 31 August 2020, that application must be determined by reference to those uses or use classes."*
5. The planning application was submitted before the relevant period. Therefore, the appeal must be determined by reference to those uses or use classes which applied in relation to England on 31 August 2020. However, as the Regulations came into force during the course of this appeal, the parties have been given the opportunity to comment on the implications of the Regulations upon their respective cases. Although in response the Council has invited the appellant to withdraw the appeal and apply instead for a lawful development application [sic], the appellant has not provided any further comment and cannot in any event be made to withdraw the appeal. I have determined the appeal accordingly and taking these comments into account.
6. At the time of my visit to the site I observed that the appeal premises was no longer vacant, and was instead occupied and operating as a café. It was not, however, immediately obvious whether or not the works carried out had been done so in accordance with the submitted plans. For the avoidance of doubt I have considered the appeal on the basis of the submitted plans and therefore the plans upon which the Council's decision was based.

Main Issue

7. The main issue is the effect of the proposed change of use on the retail function of a secondary retail frontage within Ilford Metropolitan Centre.

Reasons

8. The appeal property is a ground floor commercial premises located in an end-of-terrace location within the Ilford Metropolitan Centre. Redbridge Local Plan (RLP) policy LP10 sets out the Council's approach to managing town centres and retail uses. It states that the Council will promote the vitality and viability of the borough's town centres in a number of ways. To this end, primary and secondary retail frontages, and key retail parades, are identified by the RLP.
9. No. 58 lies within a secondary frontage in the Ilford Metropolitan Centre. RLP policy LP10(c) states that in order to support diversity within these frontages, the Council will seek that a minimum of 40% of units are used as A1 retail uses. The table of uses for the frontage block comprising of 46 to 58 Ilford Lane shows that only two of six units were, at the time of the Council's determination of the application, within Use Class A1.
10. Although the appellant has not directly challenged the figures set out in the Council's table of uses, that table does not appear to include the appeal site within its scope. Whilst its inclusion would alter the starting point in terms of the percentage of retail uses, it is not contested that the effect of the proposal – the loss of an A1 unit and replacement with a non-A1 unit – would be that it would fail to retain a minimum of 40% of the units within an A1 retail use.
11. RLP policy LP10(c) states that proposals for non-A1 retail uses that do not meet this target will only be supported in the circumstances set out at RLP policy LP10(d). I have no evidence before me that the unit has been subject to

continuous marketing for an A1 retail use in the circumstances set out at LP10(d)(i), but it seems to me that the appeal site's location relative to other commercial units along Ilford Lane and to services and facilities within Ilford town centre would render it a prime retail opportunity (LP10(d)(ii)).

12. The proposal would not, however, enhance retail opportunity within the town centre more widely, or within this secondary retail frontage, whilst as another non-A1 use within the secondary frontage, it is unlikely to attract a significant number of shoppers to the centre. For these reasons, it has not been demonstrated that the proposal would satisfactorily address the requirements of RLP policy LP10(d)(i) to (v) and is thus contrary to RLP policy LP10(c).
13. The appellant has referred to RLP policy LP11 which, the appellant advises, deals with the clustering and over-concentration of particular uses, but the proposed use is not directly referred and the Council have subsequently confirmed that the proposal was not considered contrary to this policy. I have also noted that the previous occupier of the appeal property has moved to another unit a short distance further south on Ilford Lane.
14. It is a well-established legal principle that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. For the reasons I have set out above, the change of use of the appeal property from an A1 retail use to an A3 café would be contrary to RLP policy LP10.
15. However, as set out above, the Regulations came into force on 1 September 2020 with the effect of amending the Town and Country Planning (Use Classes) Order 1987. The Regulations amend the system of Use Classes and in doing so create a new 'Commercial, business and service' use class (Class E) to replace, amongst others, the Use Classes A1 (shops) and A3 (restaurants and cafés).
16. The implications of this for this appeal are that since 31 August 2020 a change of use within the new Use Class E no longer constitutes an act of development. Regardless therefore of the outcome of this appeal, the retail use of the unit could be lost and, for an example, a café use established, without the need for planning permission. This is a fallback position to which I give very significant weight which outweighs the conflict that I have found with the development plan and justifies a decision other than in accordance with the provisions of the development plan.

Other Matters

17. The Council do not object to the proposed installation of an extract flue at the rear of the property and I have not been presented with any further evidence which would lead me to a different conclusion. Similarly, no objection was raised regarding proposed opening hours or the capacity of the site to accommodate appropriate refuse storage facilities, and no compelling justification has been put forward to persuade me otherwise.

Conditions

18. I have had regard to the list of suggested conditions provided by the LPA and have considered these in the context of the Framework which advises that conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and

reasonable in all other respects. I have also considered the suggested conditions in the context of the provisions of the Regulations, outlined above.

19. For the reasons I have set out in the Procedural Matters, above, time limit and plans conditions are necessary in order to provide certainty. I have not included within the list of specified plans the plan indicating nearby parking¹ spaces as I take its content to be indicative of those spaces, rather than space over which the appellant has direct control.
20. To ensure that the development would be sensitive to the living conditions of occupiers of nearby residential properties, a condition setting out the hours of operation is both necessary and reasonable. I have revised the wording and format of the hours condition but the timings set out therein do not differ from those sought by the appellant or suggested by the Council. I have not, however, imposed the Council's suggested condition limiting use of the appeal property to a use falling within Use Class A3 for reasons set out above in respect of the Regulations.

Conclusion

21. The proposal would fail to support diversity in a secondary retail frontage in the manner set out by RLP policy LP10 and is therefore contrary to development plan policy in this respect. However, the changes to the Use Classes Order brought about by the coming into force of the Regulations on 1 September 2020 are a material consideration to which I give very significant weight and which indicates that the appeal should be allowed contrary to the provisions of the development plan.
22. Accordingly, and having considered all other matters raised, I conclude that the appeal should be allowed.

Graeme Robbie

INSPECTOR

¹ Drwg No: ZAAVIA/58IL/204 A