



Appeal Decision

Site visit made on 10 August 2021

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd September 2021

Appeal Ref: APP/G5750/W/20/3264719

87-89 Plashet Road, Plaistow, London E13 0RA

- 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 Syed of Syeda Zainab Trust against the decision of the Council of the London Borough of Newham.
 - The application Ref 20/01354/COU, dated 29 June 2020, was refused by notice dated 24 August 2020.
 - The development proposed is described as Partial change of use from B8 to A1 to ground floor only.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. At my visit there were two signs between the ground and first floor suggesting use as a furniture wholesaler and retailer, and as a café. From what I saw of the appeal site internally suggests it was most recently used as a tuition centre and community use with associated facilities. The Council's outline of the planning history suggests this is unauthorised. The application form states that the current use is 'Classified as Storage', and the Council is of the view the lawful use is a B8 use. I see no substantive evidence that would lead me to an alternative view, therefore, I have considered the appeal on this basis.
3. The appeal proposal is to change the use to an 'A1' retail use. However, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force on 1 September 2020 amending the Town and Country Planning (Use Classes) Order 1987. The amendments include the creation of a the Commercial, Business and Service use class (Class E). Class E incorporates previous use classes A1, A2, A3, B1, some of D1 and D2. I have had regard to this in considering this appeal.
4. The Council's second reason for refusal and delegated report does not identify the occupiers of specific properties in relation to noise and disturbance. Therefore, I have had regard to observations at my site visit and the evidence before me in setting out the main issues below.
5. On 2 March 2021 the London Plan (2021) (the London Plan) was published, replacing the London Plan (2016) and the revised National Planning Policy Framework (2021) (the Framework) was published on 20 July 2021. I have

given the Council and appellant the opportunity to comment upon the implications of these for their cases.

6. The Council's reasons for refusal refer to conflicts with Policies of the previous London Plan (2016). As it has been replaced by the London Plan (2021) this is reflected in my findings in relation to each main issue below.

Main Issues

7. The main issues are:

- the effect of the development upon the vitality and viability of nearby designated town and local centres;
- the effect of the development upon the living conditions of the occupiers of Nos 85 and 91 Plashet Road, with particular reference to noise and disturbance; and,
- whether the development could make adequate provision for sustainable transport modes and its effect upon highway safety.

Reasons

Vitality and viability

8. Policies in the London Plan and the Newham Local Plan (2018) (the NLP) seek to focus and support the provision of goods and services towards town and local centres to maintain a robust retail core, consolidate commercial uses within their boundaries, to strengthen, promote and enhance their vitality and viability, and, to not undermine them and reduce trade leakage. Policy SD7 of the London Plan requires the sequential test is applied for applications for town centre uses. If no in centre sites are available or expected to become available within a reasonable period, proposals should be where they can be well integrated with the existing centre and public transport. There is no substantive evidence provided to me in respect of the availability of floorspace within nearby designated centres and parades.
9. The appeal site comprises a sizeable deep two storey building, between traditional terraced dwellings that is opposite, but outside an existing parade of shops, and is not designated as a Local Shopping Parade. The existing lawful use is significantly different in character to the proposed retail and other Class E uses, as typically a B8 storage use does not generally involve the purchase or offer of goods or services on and from the site by individual customers on a frequent basis. Therefore, I do not regard it as a town centre type use.
10. The proposed retail floorspace would be nearly three quarters of the approximately 290 square metres (sqm) ground floor, resulting in a sizeable new development west of the designated Green Street District Centre, close to its 400m catchment boundary. Given the amount of floorspace, the proposed retail use would be likely to compete with and divert business from other premises offering similar goods or services that are within or adjacent to designated centres. It would be highly likely to reduce patronage and turnover of such premises, as well as reduce footfall to town and local centres due to consumers procuring goods or services at the appeal site instead of travelling to a designated centre. While there may be some other town centre uses

nearby, the proposed development would significantly increase the amount of floorspace, in conflict with the policies of the development plan.

11. The full details and evidence before the Inspector for appeal Ref APP/G5750/W/17/3179978 is not clear. That proposal was for the change of use from an A1 to A3 use so there was already a commercial town centre type use at that site (both now part of Class E). Furthermore, the Inspector described that unit as a small unit which would not detract from the use of local centres. In the context of what I saw of commercial units in the area, I do not consider this appeal site unit to be small and given its size it would be highly likely to detract from nearby centres. Therefore, that proposal is not directly comparable to this proposal and does not justify allowing this appeal.
12. For the reasons set out above the appeal proposal conflicts with the development plan strategy to focus development to support and strengthen town and local centres, and would have a harmful effect upon the vitality and viability of nearby centres. Consequently, it conflicts with Policies E9, SD6 and SD7 of the London Plan and Policies S6, SP6 and SP7 of the NLP. Amongst other things, these expect such development to be focussed towards, maintain, support, and strengthen town and local centres and to promote and enhance their vitality and viability. It would also conflict with paragraph 86 of the Framework which has similar objectives.

Noise and disturbance

13. The lawful B8 use would be likely to generate some level of activity and noise. Plashet Road is a main thoroughfare through the area with pedestrians, cyclists and cars frequently passing in front of the site and visiting the small parade of commercial premises opposite. There is also a bus stop directly outside the site which appeared to be served by frequent services. Therefore, there is a moderate level of activity, noise, and disturbance in the vicinity of the appeal site, which at the time of my visit did not appear of a level harmful to neighbouring occupiers.
14. Given the scale of the floorspace a shop or another Class E use would be likely to generate a significant footfall each day, and people would generally walk, cycle, take the bus, park or be dropped off close to the site. Therefore, the proposal would result in an element additional of noise and disturbance over the duration of the opening hours. However, there are parking restrictions and the bus stop which prevent parking on the carriageway directly outside the appeal site, and overall, additional noise from the new use is likely to be limited.
15. Furthermore, there are no hours of use specified on the application form, which could be controlled by a suitably worded planning condition. On this basis, the limited evidence before me suggests the development would not be likely to result in any discernibly greater level of noise and disturbance to the occupiers of Nos 85 and 91 above that which is currently experienced.
16. Therefore, for the reasons set out above the proposal would not be likely to result in harmful living conditions to the occupiers of Nos 85 and 91 Plashet Road with reference to noise and disturbance. Therefore, it would not conflict with Policies E9, SD6 and SD7 of the London Plan, Policies H1, SP1, SP2, SP3 and SP8 of the NLP and paragraph 130f) of the Framework. Amongst other

things these policies have the objective of ensuring development maintains acceptable living conditions for the occupiers of neighbouring properties.

Sustainable transport and highway safety

17. The appeal site is located in an area with a PTAL 4 rating. However, from the plans before me it is not clear that the space and layout of the front of the appeal site could safely accommodate adequate cycle parking. Furthermore, it is likely that not all patrons of the new commercial use would necessarily walk, cycle, or take the bus to the appeal site, and drawing trade from existing designated centres might have the effect of increasing vehicular travel.
18. The appellant advises me there is space for two commercial vehicles to enter and leave the site safely. However, how this can be achieved safely is not detailed on the plans, neither is the interaction with any cycle parking, or the pedestrian and vehicular use of the bus stop which is likely to take place from early in the morning until late in the evening. There is little evidence to suggest the likely number of potential customers and the means by which they would travel to the appeal site, or a plan demonstrating how this travel could be managed. Neither is there any assessment of the general availability of parking within a convenient distance.
19. At my visit I observed limited on-street parking in the vicinity of the appeal site, with few free spaces available. On the basis of the very limited evidence before me I cannot be certain the development would not markedly increase parking demand locally from staff and customers, to the detriment of highway safety. Furthermore, given the scale of the use and constrained nature of the appeal site, the evidence before me does not demonstrate this matter or the accommodation of further sustainable transport opportunities could be satisfactorily resolved by means of suitably worded planning conditions.
20. For the reasons set out above, I cannot be certain the development would not result in harmful effects upon highway safety, or, could satisfactorily accommodate sustainable transport use. Therefore, in this regard it would conflict with the aims of Policies T1, T5 and T6 of the London Plan, Policies INF2 and SP2 of the NLP and paragraphs 104, 110 and 111 of the Framework. In combination and amongst other things these seek to ensure that transport issues are considered at an early stage to ensure the potential impacts on transport can be adequately addressed, safe and suitable access to the site can be achieved for all users, adequate provision is made for sustainable transport modes and car parking, and development does not result in an unacceptable impact upon highway safety.

Other Matters

21. The development lies within a Zone of Influence of the Epping Forest Special Area of Conservation (SAC). The Conservation of Habitats and Species Regulations 2017 (as amended) require where a project may result in a significant effect on a European site (in this case the SAC), the competent authority is required to make an Appropriate Assessment of its implications on the integrity of the European site. It is understood that the development is of a type that is outside the scope of the Epping Forest Mitigation Strategy. However, as the development is not proposing any mitigation or benefits in respect of the SAC, and I am dismissing this appeal for other reasons, I have not investigated this matter further.

Planning Balance

22. The appellant's statement suggests the alleged harm does not significantly and demonstrably outweigh the benefits of the development. However, the policies most important to determining the appeal proposal are compliant with the Framework and are up to date. Therefore, the tilted balance is not engaged.
23. While there might be reduced travel as a consequence of the Covid-19 pandemic, given the short distance to the town centre and other nearby premises any benefits in this regard would be limited. The appeal proposal might activate the frontage and increase the vibrancy and appearance of this part of Plashet Road in accordance with some policy objectives, however, there is no substantive evidence that the effect would be anything other than limited. There is no evidence that the site cannot be viably used for the permitted use, or an alternative policy compliant use. However, if I were to share the view that it could not, the scale of this proposal would result in some moderate economic benefits. Therefore, overall, the benefits of the development would be moderate, attracting moderate weight.
24. Compliance with policies in respect of matters such as the living conditions of neighbouring occupiers is a neutral matter attracting neutral weight. However, the proposed development conflicts with the strategy to focus development to support and strengthen town and local centres and would have a harmful effect upon the vitality and viability of nearby centres. Furthermore, I cannot be certain the proposed development could make suitable provision for sustainable transport use and I cannot be certain the proposed development would not be harmful to highway safety. These are matters that attract significant weight, such that they significantly outweigh the benefits of the development. Therefore, the appeal should not succeed.

Conclusion

25. The proposed development conflicts with the development plan and the Framework taken as a whole. There are no material considerations, including the policies of the Framework, that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR