



Appeal Decision

Site visit made on 3 August 2021

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 November 2021

Appeal Ref: APP/W5780/C/20/3258344

Land at 251 Cranbrook Road, Ilford IG1 4TG

- 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 Sajid Khan against an enforcement notice issued by the Council of the London Borough of Redbridge.
- The enforcement notice was issued on 28 July 2020.
- The breach of planning control as alleged in the notice is: Without planning permission, the change of use of the Property to a shisha café (Sui Generis) and the erection of forecourt extension.
- The requirements of the notice are:
 - (i) Cease the unauthorised use of the land as a shisha café (Sui Generis)
 - (ii) Remove all equipment facilitating the unauthorised use, including; shisha pipes, tobacco and the signage to that relates to the Shisha café from the land
 - (iii) Demolish the forecourt extensionAND:
 - (iv) Remove all resulting materials, rubble and debris in compliance with steps (i) and (ii)
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (b) 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.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision.

Preliminary Matters

1. By a letter dated 27 July 2021, arrangements were made for me to inspect the site, accompanied by a representative of the Council and the appellant. No one attended to represent the Council. Having tried to contact the Council (via the Planning Inspectorate's case officer) to find out if a Council representative was on their way, I determined the most suitable course of action was to proceed with my visit.
2. The top of the enforcement notice is headed 'Operational Development'. But it is clear from the breach of planning control described in the notice that it concerns an alleged change of use in addition to operational development. So I have deleted 'Operational Development' from the head of the notice using my powers of correction under section 176(1) of the 1990 Act. I am satisfied this will not cause any injustice to either the appellant or the Council as both parties have addressed the change of use and the operational development in their evidence. I am also satisfied that there are no implications for the 'legality' of the notice, as has been suggested by the appellant.

3. Since the notice was issued the revised National Planning Policy Framework (the Framework) came into force, replacing a previous version of the Framework. Both main parties were given an opportunity to comment on any relevant implications of the above for this appeal and any relevant comments received have been taken into account in my reasoning.
4. My attention has been drawn to another enforcement notice, said to have been served on 26 March 2020. But this is not before me in this appeal and so I have not considered it any further.

Reasons

Grounds (b) and (c)

5. An appeal on ground (b) is that those matters stated in the notice have not occurred as a matter of fact. An appeal on ground (c) is that those matters (if they occurred) do not constitute a breach of planning control. These are both legal grounds of appeal, where the burden of proof is on the appellant (and not the Council) to make out their case, to the standard of the balance of probabilities, ie whether something is more likely than not.
6. The appellant states that the alleged change of use has not occurred. But there is no suggestion that the operational development alleged (ie the erection of a forecourt extension) has not occurred and so I have determined the appeal on this basis.
7. Pursuant to ground (b), the appellant states that the premises operate entirely as a restaurant but that the enclosed forecourt is used for the smoking of shisha. So it is not correct to say that the appeal site has not been used for the smoking of shisha. However, the appellant states that there has not been a **material** change of use to a shisha bar (my emphasis).
8. The materiality of a change of use is a point more appropriately made pursuant to a ground (c) appeal rather than a ground (b) appeal. It is my duty to ensure that the law is applied correctly to the facts found in the case and so I must consider this 'hidden' ground (c) appeal in addition to the ground (b) appeal.
9. The appeal site contains a 2 storey building with a basement. At the time of my visit, the premises were laid out as a restaurant, with a substantial number of covers spread over the ground floor and first floor. The appellant states this has been the case for almost 30 years, an assertion which has not been disputed by the Council. Associated storage was in the basement and rear yard, more seating was in the forecourt extension (covered by a retractable roof) which is accessed directly from the ground floor dining area. A staff area was at first floor level.
10. To assess the materiality of any change of use, I must determine what is the correct planning unit and what are the present and previous primary (as opposed to ancillary) uses of that unit. The planning unit is usually the unit of occupation, unless a smaller area can be identified which is physically separate and distinct, and/or occupied for a different and unrelated purpose.
11. From all of the information available, including my observations at my site visit, it seems most likely that the unit of occupation in this case is the entire building, including its rear yard and forecourt (over which the forecourt extension has been built). There is no evidence of any smaller area which, as a

matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes.

12. Given the above, in my judgement, it seems more probable than not that the appeal site is a single planning unit where the primary use was, and still is, that of a restaurant and the smoking of shisha is an ancillary use which has begun to take place in the forecourt extension. There is no evidence in this case of any significant difference in the character of the activities on the land as a result of the introduction of the smoking of shisha in the forecourt extension.
13. The Council states that the appellant had submitted a planning application for the retention of the forecourt extension and the shisha café, "confirming" the use of the property as a shisha café. But the act of seeking planning permission is not necessarily confirmation that planning permission is actually required. So the appellant having previously sought planning permission makes no difference to my conclusion on this issue in light of my findings above.
14. I conclude that the appeal on ground (b) fails but that the hidden ground (c) appeal succeeds in part in respect of the change of use only. Accordingly, I shall delete the change of use from the breach of planning control alleged in the notice, as well as requirements (i) and (ii) which directly relate to it.
15. In the notice, requirement (iv) refers to "steps (i) and (ii)", which I am deleting. So I have considered whether requirement (iv) should be deleted also. But I note that the final page of the Council's report indicates that requirement (iv) should have referred to "steps (i) and (iii)", whereas paragraph 1.2 of the Council's statement indicates that requirement (iv) should have referred to "steps (ii) and (iii)".
16. Logically, it would appear that this is an error in the notice and that requirement (iv) of the notice should refer to "steps (ii) and (iii)" rather than "steps (i) and (ii)" as currently worded. In light of the above, I have sought the views of the main parties on whether the enforcement notice may be corrected in this regard, pursuant to my powers under section 176(1) of the 1990 Act, without causing injustice to either main party.
17. The appellant has agreed that requirement (iv) should refer to "steps (ii) and (iii)" and has said that their only concern is that step (ii) requires the removal of shisha equipment etc which relates to step (i) which they maintain is not a breach of planning control. In light of this response and as I am deleting requirement (ii) in any event, I am satisfied I may correct the notice in this regard such that requirement (iv) refers to "step (iii)" only, without causing injustice to either main party.

Ground (a)

18. In light of the above, the main issue in the ground (a) appeal is the effect of the forecourt extension on the character and appearance of the area.
19. The appeal building sits within a group of buildings, a distinctive characteristic of which is that each building is set back from the footway by a forecourt. The appeal building extension which has been constructed covers the entire depth of the forecourt of the appeal site and a substantial part of its width. This does not respect the character of the area.

20. The forecourt extension is constructed of a combination of materials including black metal, glass and plastic (some of which is red in colour), on top of a pre-existing low-rise brick boundary wall. Whilst the metal colour may reflect that of the render on the host building, this arrangement of materials is unlike any other seen in this context.
21. The consequence of the above combination of the siting of the extension and the materials used is that it appears as a dominant and visually intrusive feature in the street scene. I am not satisfied that it adds interest to the street scene, as suggested by the appellant, such that planning permission should be granted for it.
22. The appellant states that neighbouring forecourts are used for parking purposes which they say is visually more obtrusive than the forecourt extension. But in my judgement, this is not a good enough reason to allow the forecourt extension in light of the harm identified above.
23. I conclude the forecourt extension harms the character and appearance of the area. As such, this does not comply with Policy LP26 of the Redbridge Local Plan 2018.
24. The appellant considers that the appeal site is in a sustainable location. Be that as it may, it does not alter my conclusion on the ground (a) appeal overall, in light of the harm identified. I conclude the ground (a) appeal fails.

Conclusion

25. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

26. It is directed that the enforcement notice is corrected as follows:
 - the deletion of "Operational Development" from the head of the notice;
 - the deletion of "the change of use of the Property to a shisha café (Sui Generis) and" from the allegation in paragraph 3 of the notice;
 - the deletion of requirement (i) from paragraph 5 of the notice;
 - the deletion of requirement (ii) from paragraph 5 of the notice; and
 - the deletion of "steps (i) and (ii)" from paragraph 5 (iv) of the notice and its substitution with "step (iii)".
27. Subject to these corrections the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

L Perkins

INSPECTOR