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# Appeal Decision

Site Visit made on 8 November 2021

**by Andrew Smith BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 26<sup>th</sup> November 2021**

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**Appeal Ref: APP/U5930/W/21/3274073**

**32 Church Lane, Leytonstone E11 1HG**

- 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 Leonard Gaxha against the decision of Waltham Forest London Borough Council.
  - The application Ref 203980, dated 23 December 2020, was refused by notice dated 13 April 2021.
  - The development proposed is described on the application form as: 'Continued use as restaurant and shisha bar and alterations to form new compliant ventilation to roof area over shisha bar. Application for formal change of use as part shisha bar at rear of building'.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. I have used the description of development<sup>1</sup> as set out on the Council's Decision Notice and the appeal form, as opposed to that given on the application form. The reasons for this include that it is concise and makes it clear that construction above an existing single storey rear extension makes up part of the proposal. Upon inspection, it was apparent that a ventilation structure (the structure) has already been erected. Notwithstanding this, it is my responsibility to consider the appeal based upon the proposed plans submitted.
3. No 32a Church Lane (No 32a) is specifically referenced in the Council's first reason for refusing planning permission. Upon inspection I did not note the presence of any formal numbering or signage related to No 32a. In the interests of clarity, for the purposes of this decision, I have taken No 32a to comprise the upper floors of the appeal building.
4. It is apparent from the evidence before me that a new draft Local Plan is in the process of emerging. However, I have seen nothing to indicate that this is currently at a stage that should attract anything more than limited weight. I shall determine the appeal on this basis.

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<sup>1</sup> Retention of single storey ground floor extension in use as a shisha bar. Construction of a ventilation structure on top of the existing single storey rear extension.

## **Main Issues**

5. The main issues are:

- The effect upon the living conditions of residential occupiers at No 31a Church Lane (No 31a) and 32a, having particular regard to outlook and light; and
- The effect upon the living conditions of nearby residential occupiers, having particular regard to the potential for noise and odours to be generated.

## **Reasons**

### *Living conditions – outlook and light*

6. It is my understanding that the design of the structure has been formulated in the interests of attaining statutory requirements with respect to ventilation. It is of open-ended and lightweight specification and rises to a relatively modest height when compared to the positions of first floor openings serving No 32a. Nevertheless, with respect to a single rear-facing window opening in place to the appeal building's rear outrigger, the effect upon available outlook would be noticeable owing to the proximity of the structure's frame and roof form. Indeed, the structure would appear as overbearing and visually obtrusive when experienced from the room served by this particular opening.
7. It has been suggested by the appellant that No 32a is used for storage purposes and not as residential accommodation. However, this assertion is inconsistent with my own on-site observations. Moreover, upon a brief internal inspection at first floor, the room contained within the property's rear outrigger could be observed to be setup as a bedroom and appeared to function as part of a wider expanse of residential floorspace. In the absence of clear or convincing evidence to the contrary, I shall proceed on this basis.
8. I am content that the structure would not have any undue adverse effect upon the availability of outlook from No 31a. This is for the most part due to the structure not being positioned directly to the rear of this neighbouring living accommodation. Furthermore, when again noting the structure's lightweight and open-ended design, as well as the ability to incorporate roofing materials of translucent specification (as could be observed upon inspection), I am satisfied that no undue loss of light for any adjacent occupier is (or would be) experienced. Moreover, in the event the appeal be successful, a condition could be imposed to ensure the installation/retention of translucent roofing materials in proximity to No 32a.
9. However, for the above reasons, having particular regard to outlook, the proposal would cause harm to the living conditions of residential occupiers at No 32a. This identified harm is specific to the occupier(s) of the room contained within the appeal property's rear outrigger and situated alongside the structure. The scheme conflicts with Policies CS13 and CS15 of the Waltham Forest Local Plan Core Strategy (March 2012) (the CS) and Policy DM32 of the Waltham Forest Local Plan Development Management Policies (October 2013) (the DMP) in so far as these policies set out that new development should ensure that outlook is maintained for existing occupants and their neighbours in their homes and gardens.

*Living conditions – noise and odour*

10. There is a strong residential presence close to the site, including to the upper floors of various properties that front Church Lane. The single storey ground floor extension already in place to the rear of the site covers a sizeable footprint and would be able to accommodate a not insignificant number of patrons at any one time. When also factoring in the part-open design of the structure, there is clear potential for the proposal to create noise to the possible detriment of nearby living conditions.
11. As was identified by the Council's Environmental Health Officer (the EHO) at application stage, the proposal is not supported by an acoustic report. Thus, a technical assessment of the local noise environment, of the likely noise effects of the proposal and of the associated potential for fit-for-purpose mitigation measures to be implemented is not before me. Whilst it has been asserted that noise levels will continue to be at an acceptable level, this has not been satisfactorily demonstrated through the submission of detailed supporting evidence.
12. The nature of a shisha bar use dictates that odours would be likely to be expelled from the site. Indeed, the risk of odour issues has been highlighted by the EHO. The appellant has referenced his intention to continue to use mechanical extraction to prevent the excessive expulsion of smoke. However, full details of this extraction system have not been provided. I am therefore unable to make a robust assessment as to whether acceptable methods of mechanical extraction are (or would be) in place for the purposes of safeguarding the living conditions of nearby occupiers. Given the importance of attaining appropriate assurances in this regard, I do not consider that this matter could be satisfactorily dealt with via the imposition of a planning condition should the appeal be successful.
13. For the above reasons, in the absence of clear evidence to demonstrate otherwise, the proposal would cause harm to the living conditions of nearby residential occupiers having particular regard to the potential for noise and odours to be generated. The scheme conflicts with Policies CS13 and CS15 of the CS and Policy DM32 of the DMP in so far as these policies require all new developments to meet appropriate environmental standards.

**Other Matters**

14. The scheme would support the improvement and diversification of an existing business that provides a facility for the local community. However, as merely a single business is under consideration, the associated contributions would be limited and would not outweigh the harms and associated policy conflicts that I have identified. The proposal conflicts with the development plan when read as a whole, and material considerations do not lead me to a decision otherwise.

**Conclusion**

15. For the above reasons, the appeal is dismissed.

*Andrew Smith*

INSPECTOR