



Appeal Decision

Site visit made on 18 January 2022

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th February 2022

Appeal Ref: APP/G5750/W/21/3277948

252 Barking Road, East Ham, London E6 3BB

- 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 C Capriglia against the decision of the Council of the London Borough of Newham.
 - The application Ref 21/00413/FUL, dated 22 February 2021, was refused by notice dated 12 May 2021.
 - The development proposed is a roller shutter and side door to side elevation.
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Decision

1. The appeal is allowed and planning permission is granted for a roller shutter and side door to side elevation at 252 Barking Road, East Ham, London E6 3BB in accordance with the terms of the application, Ref 21/00413/FUL, dated 22 February 2021, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Existing Layout (Drawing No 6821/2, dated February 2021); Planning Drawing (Drawing No 6821, dated February 2021).
 - 2) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.

Procedural Matters

2. The description of development in the banner heading and formal decision above is adapted from that used on the planning application form. I have omitted words relating to the planning application being made retrospectively, as these are not descriptive of the development. Notwithstanding this, the shutter and door for which planning permission is sought have already been installed, and I am considering the appeal on that basis.
3. The Government published a revised National Planning Policy Framework ("the Framework") on 20 July 2021, replacing the version published in February 2019. Both main parties were therefore asked to comment on the relevance of the revised Framework to this appeal, although neither chose to do so.

Main Issue

4. The main issues are the effect of the proposed development on:
- The vitality and viability of commercial centres in the Borough, having regard to development plan policy on the location of employment uses; and
 - The character and appearance of the area.

Reasons

Vitality and viability of commercial centres

5. The appeal site is a corner plot at the junction of Barking Road and Ernald Avenue. It comprises a two-storey end terrace building on the Barking Road frontage, with a part one- and part two-storey extension at the rear running down Ernald Avenue. Although the address of the entire site is 252 Barking Road, it has been subdivided into smaller units. The front unit, on the Barking Road frontage, is a restaurant or café called "Rustix"; this remains known as No 252 Barking Road. The rear part of the site, accessed from Ernald Avenue, is a first floor flat, known as 252A Barking Road, and a ground floor office known as 252B Barking Road; it is to this part of the site that the specifics of the appeal scheme relate. The appellant is seeking planning permission for alterations which have already been carried out, in the form of a new entrance door for the upper flat 252A, and a new entrance door and shopfront (with a security roller shutter) for 252B.
6. The Council considers that the alterations for which planning permission is now sought "have been designed to facilitate and pronounce commercial operation of the unit", and that this conflicts with its aims of consolidating commercial uses within local and town centres. However, the change of use to an office for the part of the site now known as No 252B was approved in 2011, by planning permission ref 11/00534/FUL. The Council's officer report in respect of the appeal scheme indicates that the development approved in 2011 "was considered to appropriately integrate with the surrounding residential nature", and that it was "discreet in terms of permitting one minimal doorway with no significant change in comings and goings resulting from the operation (for example not resulting in customers coming off the street)".
7. The appeal site is not within a local or town centre, and Policy INF5 of the 2018 Newham Local Plan ("the NLP") is clear both that town centre uses will be directed to designated town and local centres, and that the consolidation of existing commercial and community uses into defined centres of an appropriate scale will be encouraged. However there is nothing in this policy, nor any of the others to which I have been directed, which indicates that existing business uses outside of local or town centres should be actively prevented from carrying out physical improvements to their premises.
8. As the current appeal scheme has already been carried out, I am reliant on historic plans and Google Streetview images to see how the site looked previously. From these it is apparent that the new shopfront and the large banner sign above (the latter of which does not appear in the planning application) have undoubtedly given the premises a more obviously commercial appearance, so in this much at least I agree with the Council's analysis.

9. However, if the Council considers that a material change of use has taken place without planning permission, as stated in its officer report, then it is open to it to take enforcement action – such a change of use does not fall within the scope of this appeal. Although the development plan seeks to direct new business and commercial uses to appropriate centres, it does not as a matter of principle preclude alterations or improvements being carried out to premises in a lawful use simply because they happen to be outside one of those centres.
10. As the development before me does not represent a new commercial or business use, I conclude that it is not harmful to the vitality and viability of the commercial centres in the borough. I therefore find that there is no conflict with Policies S1, SP6, SP7, J1 and INF5 of the NLP, or with Policies SD6, SD7 and E9 of the London Plan 2021. Among other things, these policies seek to support and improve the vitality and viability of local and town centres, and to ensure that new proposals for employment uses are appropriately located. I also find no conflict with the provisions set out in Chapters 6 and 7 of the Framework which respectively seek to build a strong, competitive economy, and to ensure the vitality of town centres.

Character and appearance

11. Although the address of the appeal site is Barking Road, the alterations which have been carried out affect only the Ernald Avenue frontage. Ernald Avenue is a partially tree-lined street, dominated by terraced housing; for the most part it is therefore overwhelmingly residential and domestic in its character. However, in common with the neighbouring streets to the west (Gillett Avenue and Hockley Avenue) and east (Navarre Road), to varying extents the commercial uses on Barking Road wrap around into the more residential side streets. I saw for example that SJV Cash & Carry, on the opposite corner to the appeal site, has a frontage of shutters and relatively large signage extending into Ernald Avenue. As the Council acknowledges, this gives that part of the street a rather more commercial character than the rest.
12. The development plan seeks to ensure that development is well-designed and preserves or enhances the appearance of the public realm. Again, as the development has already been carried out I can only draw on the images of the site in its previous state with which I have been provided. These suggest to me that the premises were in a somewhat run-down and fairly dismal condition, and so were actively detrimental to the visual quality of street scene. While I acknowledge that the shopfront and shutter which have been installed are not what the Council would seek to encourage on a predominantly residential street, they are not at odds with the character and appearance of that part of Ernald Avenue closest to Barking Road. Indeed, in terms of their contribution to the public realm they appear to represent a marked improvement on what was there previously.
13. The decision notice indicated that the scheme conflicts with the Council's 2018 "Altering and Extending Your Home" Supplementary Planning Document, but the reasoning behind this was not set out in the officer report. Given the nature of the proposal it is not clear that that document is relevant, and accordingly I find no conflict with that guidance.
14. I emphasise again that any change or intensification of use which the Council considers may have taken place and which might represent a material change falls outside the scope of the proposal before me. However, based on all the

evidence before me I am satisfied that the physical works which have been carried out and for which permission is now sought have not harmed the character and appearance of the area.

15. I therefore conclude that the development complies with Policies S6, SP1, SP3 and H1 of the NLP, and with Policies D1, D3, D4 and D8 of the London Plan 2021. Among other things, these policies seek to ensure that development responds well to local character, and preserves or enhances the public realm. I also find that there is no conflict with the requirements of Chapter 12 of the Framework, in respect of achieving well-designed places.

Conditions

16. As the development has already commenced, a condition setting a time limit is not necessary. Conditions specifying approved plans and materials are necessary in the interests of certainty, and to protect the character and appearance of the area.

Conclusion

17. There are no material considerations that indicate the application should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the appeal should be allowed.

M Cryan

Inspector