
Appeal Decision

Site visit made on 3 February 2022

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 16TH February 2022

Appeal Ref: APP/B5480/W/21/3279514
164 Balgores Lane, Romford, RM2 6BS

- 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 N Patel against the decision of the London Borough of Havering.
- The application Ref.P0645.21 dated 5 April 2021, was refused by notice dated 6 July 2021.
- The development proposed is the construction of a rear E class extension to the existing ground floor E class unit and new shopfront.

Decision

1. The appeal is allowed and planning permission is granted for the construction of a rear E class extension to the existing ground floor E class unit and new shopfront at 164 Balgores Lane, Romford, RM2 6BS in accordance with the terms of the application, Ref.P0645.21, dated 5 April 2021, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Mr N Patel against the London Borough of Havering. This application is the subject of a separate Decision.

Preliminary matters

3. The description of the proposed development in the heading above has 'new shopfront' added by the council. I have adopted this description since it more fully describes the development proposed.
4. The appellant's appeal statement notes that submitted plan 201 B shows a suggested/generic advertisement signage package, and that it is not clear from the plan if this is illuminated or else shows signage which is non-illuminated, which could be displayed under deemed consent provisions. In any event, I am informed that the appellant is clear that any advertisement signage is not a feature of this planning appeal.
5. In its appeal statement, the council refers to the adoption of a new Local Plan, and makes reference to some of the new policies. I have dealt with these in my reasoning, but where the previous development plan policies, referred to in the decision notice, have not been commented on, I have necessarily based my reasoning on those policies.

Main Issue

6. The main issue in this case is whether the location is suitable for the proposed use.

Reasons

The appeal site and its surroundings

7. The appeal site is part of a parade of commercial premises situated on Balgores Lane at the junction with Faireholme Avenue. This parade is part of the designated Balgores Lane, Gidea Park Major Local Centre in the now overtaken Core Strategy and Development Control (DPD) Policies. Following the adoption of the new Local Plan, the area is no longer specifically designated as such. The parade is occupied by 'One Click Homes' (the appeal site), which is an estate agent, and a butcher, funeral director, restaurant and chiropractic practitioner. Almost exactly opposite is Station Road, with the Gidea Park railway station. In the immediate vicinity of the site and railway station there are a number of shops and commercial premises. Aside from the station and the shops/commercial premises, the surrounding locality is largely residential.
8. The appeal site is currently occupied by the estate agent already mentioned, with a flat above on the first floor. To the rear is an open area currently used for car parking. Apart from a change to the 'shopfront', the appeal proposal is to erect a single-storey rear extension of 38.2m² for use as office and toilet. This would extend the estate agency use, or would be used as a separate office use. Both these uses are within Use Class E, (formally use classes B1 and A2). The adjoining units on each side of the appeal site have single storey extensions similar to that now proposed.

Whether the location is suitable for the proposed use.

9. The refusal reason refers to Policies DC11, DC55 and DC61 of the DPD. The import, in brief, of these policies can be set out as follows:
DC11 - NON-DESIGNATED SITES - Outside Romford town centre and the district and local centres, the Council will: generally resist changes of use to industrial and business uses where these would conflict with housing or environmental policies; and generally require the redevelopment for housing of commercial sites which become available for development
DC55 - NOISE - Planning permission will not be granted if it will result in exposure to noise or vibrations above acceptable levels affecting a noise sensitive development such as all forms of residential accommodation.
DC61 - URBAN DESIGN - Planning permission will only be granted for development which maintains, enhances or improves the character and appearance of the local area. There follows a series of criteria, to my mind the most relevant in this appeal being 'respond to distinctive local building forms and patterns of development and respect the scale, massing and height of the surrounding physical context'.
10. Dealing first with Policy DC11, since the appeal site is not a non-designated site, I do not see the relevance of the intention to "*generally resist changes of use to industrial and business uses where these would conflict with housing or environmental policies*". There are 2 important points here: i) the appeal site is not within a residential area, although it adjoins one; and ii) the refusal notice

refers to the development as an office, a former B1 Use Class, which was revoked from 1 September 2020 and now in an expanded Class E.

11. Under The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, Class E now encompasses the former Use Classes A1 (shops), A2 (Financial and professional services [which included estate agents]), A3 (Restaurants and cafes, and Class B1 (Business [which included offices other than estate agents])). For the purposes of my reasoning here I need not set out the full range of uses coming with Class E, but note that a change between any of the uses in this class is not 'development', and that they are restricted to being a use which can be carried out in any residential area without detriment (emphasis added) to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.
12. My conclusion is that Policy DC11 has no material bearing on the development proposed. In coming to this conclusion I have taken account that the council's appeal statement points out that Policy DC11 is replaced with Policy 19 in the newly adopted Local Plan. This new policy, at (iii), states that the Council would seek to direct office development specifically to Romford Metropolitan Centre and the borough's district centres as part of mixed developments; at (iv) would seek to encourage flexible business space within Romford Town Centre, not within the Borough's Local Centres; and paragraph 9.1.11 of the Local Plan states that Romford Town Centre is identified as the preferred location for office and business space. The appeal site is not located within Romford Town Centre; and the appeal proposal would not be an affordable workspace to comply with Policy 21 of the Local Plan. I do not accept that the revised policy should be taken to mean that no additional office or business space should be permitted in other parts of the borough. This is surely not intended in view of the various town centres and other office/shopping areas in the borough.
13. The council's appeal statement also confirms that the changes in policies and guidance would not have any material bearing on the Council's decision on the application. Similarly, these changes do not alter my judgement in view of the location of the site within a long established commercial parade within a distinct area of commercial uses in close proximity to the railway line and station, clearly distinct from the surrounding residential uses. The de facto situation must be recognised in making planning judgements.
14. I can deal briefly with Policy DC55 – Noise: since a use in Class E is by definition a use that can be carried out in any residential area without detriment to the amenity of that area by reason of noise (among other factors), it cannot be said in principle (as opposed to actual evidenced experience in a particular case), that the proposed use would conflict with this policy.
15. Finally, in relation to the policies quoted I note that officer's report includes the statement that *"The application site is adjacent to the southernmost extent of the Gidea Park Conservation Area and is one of six properties which together form an attractive early twentieth century terrace which displays a number of good quality period details. ... "Great weight should be given to the kinetic experience of travelling from Station Road towards the Conservation Area as visitors to the 1911 Gidea Park Exhibition were encouraged to travel by train and start their journey (Pg12 and P147 of the Exhibition Catalogue). Therefore*

the quality of the built environment is very important and must be maintained. ... "The proposed pitched roof single storey rear extension would be located to the rear of site, with an existing single storey rear extension. Full depth single storey rear extension is a common feature at the rear of properties within the terrace, therefore similar extension would not be considered unacceptable. The proposals would be considered in keeping with the character and appearance of site and surrounding area given similar scale of extensions in immediate vicinity of site, would not be harmful to the character and appearance of this 1911 Exhibition property and the garden scene and would not fail to preserve the Gidea Park Conservation Area, complies with Policies CP18, DC61, and DC68."

16. I agree with this local appreciation, noting in particular the final 3 sentences that I have quoted.

Other matters

17. I have taken account of all other matters raised, including the reference by the council that indicates that the access at the rear of the group of commercial premises, including the appeal site, is in fact an access to residential gardens of Faireholme Avenue. However, I saw nothing to suggest that this is factually accurate, and in any event, it would be a civil rather than a planning matter. I also view the likely increase in activity in this rear access way, resulting in additional noise and disturbance arising from the proposal, as being marginal and not a decisive factor. There is also reference to the amenity of the occupiers of the flat above the existing appeal premises. The occupants of such accommodation must accept that they are living over commercial premises, and the point about Class E uses being uses which can be carried out in any residential area without detriment to the amenity of that area is also pertinent.

Conclusion

18. For the reasons set out above, I conclude that there has been no demonstration by the council, either in the refusal reason, the officer's report, or the council's appeal statement, that provides a persuasive case for resisting this development. The fact that the precise use for the proposed building is not stated in the application or appellant's statement is of no consequence since the proposal is for a Class E use, the range of which I have set out above. I conclude that the appeal should be allowed.

Conditions

19. The council has indicated conditions that should be imposed on any planning permission, in addition to the standard time limit for commencement of development. The appellant has indicated that these conditions are acceptable save for suggested conditions 8 and 9. In respect of proposed condition 8 it is explained that the appellant does not own the full extent of the rear access and so can only add illumination to the scheme itself if this is needed: the condition would need to be amended to refer to the unit specifically. As to suggested condition 9, the appellant's view is that as this is a low-key use which is acceptable in a residential area, the time limit condition is unnecessary and unreasonable and would potentially frustrate the business.

20. I will apply most of the proposed conditions for the following reasons: condition 2 is required for clarity and to provide certainty as to the development that is being permitted; condition 3 is to ensure that the materials used in the development relate properly to the existing building to provide a satisfactory appearance; conditions 4 is to ensure adequate refuse and recycling facilities are provided and appropriately sited; condition 5 is to ensure that facilities for cycle parking are provided in the interests of encouraging sustainable travel; condition 6 is to safeguard the living conditions of neighbours during the construction process; condition 7 is to ensure that any previously unidentified contamination found at the site is investigated and satisfactorily addressed in order to protect those engaged in construction and occupation of the development from potential contamination.
21. As far as the contested condition 8 is concerned, I regard it as necessary to safeguard the living conditions of neighbours, but I will amend it to reflect the ownership of the site. Suggested condition 9, concerning hours of use, appears to be unnecessary and not well related to the development, bearing in mind that it is within the confines of long established buildings in commercial uses. There is no indication before me that there is any established restriction on hours of use on the host building or its neighbours. I will therefore not impose suggested condition 9.

Terrence Kemmann-Lane

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in complete accordance with the approved plans and drawings Nos.A001, A100 Rev B, A101 Rev B, A103 Rev B, A201 Rev B – Proposed elevations and proposed detail elevations and section – A202 Rev B, and A301 Rev B.
- 3) All materials to be used in the external construction of the building hereby permitted shall match the existing materials on the host property.
- 4) Prior to the first use of the site, the refuse and recycling storage of the existing uses and the proposed use shall be provided in accordance with details previously submitted to and approved in writing by the Local Planning Authority. The refuse and recycling storage shall be permanently retained thereafter.
- 5) Prior to the first use of the approved development, details of the cycle parking spaces to be provided on site shall be submitted to and approved in writing by the local planning authority. They shall be provided before first occupation in accordance with the approved details and retained permanently thereafter for the accommodation of secured cycle spaces and shall not be used for any other purpose.
- 6) All building operations in connection with the construction of external walls, and other external site works; works involving the use of plant or machinery; the erection of scaffolding; the delivery of materials; the removal of materials and soil from the site, and the playing of amplified music shall only take place between the hours of 8.00am and 6.00pm Monday to Friday, and between 8.00am and 1.00pm on Saturdays and not at all on Sundays and Bank Holidays/Public Holidays.
- 7)
 - a) If, during development, contamination is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until a remediation strategy detailing how this unsuspected contamination shall be dealt with has been submitted to and approved in writing by the local planning authority. The remediation strategy shall be implemented as approved.
 - b) Following completion of the remediation works as mentioned in (a) above, a 'Verification Report' must be submitted demonstrating that the works have been carried out satisfactorily and remediation targets have been achieved.
- 8) No use of the building hereby permitted shall commence until details of external lighting to be provided for the development hereby approved has been submitted to and approved in writing by the Local Planning Authority. The lighting shall be provided and operated in strict accordance with the approved scheme.