



Appeal Decision

Site visit made on 2 November 2022

by Ryan Cowley MPlan (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 December 2022

Appeal Ref: APP/W5780/W/22/3294904

1-3 Woodford Avenue, Ilford IG2 6UF

- 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 Sarfraz Shah, on behalf of Britannia Donner Kebab Ltd, against the decision of the Council for the London Borough of Redbridge.
 - The application Ref 3138/21, dated 21 June 2021, was refused by notice dated 27 September 2021.
 - The development proposed is change of use from E(b) restaurant to mixed use E(b) restaurant and sui generis shisha lounge.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has provided a noise impact assessment (NIA) which I am satisfied does not change the development to such a degree that to consider it would deprive those who should have been consulted on the change the opportunity of such consultation. In this case, the Council has had an opportunity to comment on the NIA and so would not be prejudiced by consideration of it. I have therefore determined the appeal taking into account the contents of the NIA and the Council's comments.
3. The appellant contends that the description of development set out by the Council in their decision notice has misconstrued the proposal and, instead, the description should read 'retention of restaurant use and the addition of a shisha lounge.' The appeal proposal before me does not include the formal subdivision of the planning unit however, and so the unit would become a mixed use. The description of the proposal from the application form accurately reflects this, and so it is this description I have referred to in the banner heading above.

Main Issue

4. The main issue is the effect of the proposal on the living conditions of the occupiers of neighbouring properties, with particular regard to odour and noise and disturbance.

Reasons

5. The appeal site is an existing restaurant unit within the ground floor of a two-storey terraced building, with residential accommodation above. It is located in a mixed-use area, adjacent to a large roundabout and tube station at Gants Hill. The existing unit is entirely enclosed. The restaurant entrance and

- commercial frontage predominantly face the roundabout. There are no external seating areas. Access to the rear is provided through a small service area.
6. The proposal would consist of the change of use of the unit into a mixed-use restaurant and shisha lounge. The appellant indicates that the shisha lounge would be confined to only part of the unit. The proposed plans show large openable windows/doors along the north, south, and south-east elevations of the building at ground floor. The parties agree however that given the enclosed nature of the unit, the proposal would not meet the 50% open requirement of the Health Act 2006. While this is a separate regulatory regime and so itself holds little weight in this decision, in practice this would affect how the unit can operate lawfully. As it is unlawful to smoke inside an enclosed premises, this is likely to encourage smoking in unenclosed spaces outside the unit or require windows/doors be permanently open during the hours of operation.
 7. The appellant indicates the shisha bar use would be separated from the restaurant use by a thick blanket wall, with an automatic smoke detector and extraction system. However, even if smoking were to occur indoors, there is no compelling evidence before me to demonstrate that these proposed mitigation measures would adequately extract odour from the building or prevent the breakout of odour when windows/doors are opened.
 8. The submitted NIA demonstrates that the proposed inlet and extract fans could be installed without undue noise and disturbance for occupiers of neighbouring properties, subject to mitigation measures where necessary. It also proposes sound insulation to the floor between the unit and the residence above and includes a noise management plan which seeks to discourage patrons from gathering outside the premises. However, such measures would be difficult to enforce in the circumstances. The Council has also highlighted discrepancies in some of the data in the NIA.
 9. While the site is amongst other commercial uses and opposite a busy roundabout, the NIA indicates background noise levels drop on an evening. Even if the findings of the NIA are accepted, it does not adequately demonstrate that noise and disturbance generated by patrons, audible through open windows, or from gatherings outside of the premises, would not harm the living conditions of the occupiers of neighbouring properties.
 10. I therefore find that the proposal would harm the living conditions of the occupiers of neighbouring properties, with particular regard to odour and noise and disturbance. It would therefore be contrary to Policies LP11, LP24 and LP26 of the Redbridge Local Plan 2015-2030 adopted March 2018 and Policy D14 of The London Plan adopted March 2021. These policies, amongst other things, seek to ensure proposals manage noise and do not have a significant or adverse impact on residential amenity or the amenity of neighbouring occupiers in terms of noise and odours.

Other Matters

11. Other local examples of shisha lounges or cafes approved by the Council or on appeal have been brought to my attention. Only limited details of these cases are before me however and so there is insufficient information to draw direct comparisons to the appeal proposal. It would appear from the information that is before me that one of the cases relates to a temporary permission and in another the proposal provided a covered external seating area for patrons.

These are therefore materially different to the appeal proposal. In any event, each proposal should be considered on its individual merits, and this does not provide sufficient justification to outweigh the identified harm and development plan conflict in this instance.

12. While no formal objections have been received from the occupiers of neighbouring properties, this does not in itself weigh in favour of the proposal.

Conclusion

13. For the reasons given above I conclude that the appeal should be dismissed.

Ryan Cowley

INSPECTOR