



Appeal Decision

Site visit made on 22 November 2022

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 July 2023

Appeal Ref: APP/T5150/C/22/3298002

237 Preston Road, Wembley, London HA9 8PE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Ion Serdiucenco against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice, numbered E/20/0814, was issued on 25 March 2022.
- The breach of planning control as alleged in the notice is Without planning permission, the material change of use to a café/shisha café and gaming lounge. ("the unauthorised change of use") AND Without planning permission, the erection of an extension to the rear of the premises ("the unauthorised development").
- The requirements of the notice are to:
 - STEP 1
Cease the use of the premises as a café / shisha café and gaming lounge.
 - STEP 2
Demolish the extension to the rear of the premises, and remove all debris and materials associated with this demolition from the premises.
 - STEP 3
Remove all items associated with the unauthorised change of use, including the removal of all shisha pipes, tobacco, sofas, tables, charcoal burners, game/slot machines, pool table and any other items associated with the use including refuse and paraphernalia, from the premises.
- The period for compliance with the requirements is:
3 months.
- The appeal is proceeding on the ground set out in section 174(2)(a) 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 in the Formal Decision.

Formal Decision

1. It is directed that the enforcement notice be corrected by:
 - In Schedule 4 STEP 1 of the notice, delete the words 'Cease the use of the premises as a café / shisha café and gaming lounge' and replace them with the words 'Cease the use of the premises as a mixed use of café and shisha café and gaming lounge'.
 - In Schedule 4 STEP 3 of the notice, delete the words 'unauthorised change of use' and replace them with the words 'unauthorised mixed use of café and shisha café and gaming lounge'.
2. 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.

Preliminary Matters

3. The Council has confirmed that there is no objection to the use of the premises solely as a café. I have noted the Council's position in this respect, have corrected the notice's requirements as a consequence and have determined the appeal accordingly.
4. The appeal on ground (a) seeks planning permission for the matters stated in the notice as the alleged breach of planning control. This includes the extension that has been built at the rear of the premises (the 'unauthorised development'). The appellant has also described an alternative proposal at section 6.1 of his Appeal Statement (AS), together with a 'proposed ground floor plan' drawing and 'rear extension lookalike' photographs. The evidence submitted by the appellant to support the alternative scheme does not however include any proposed elevations.
5. Section 177(1)(a) of the Act enables me to grant planning permission for the whole "or any part" of the matters stated in the notice. Sections 6.1 and 7.2 of the AS describe the alternative scheme on a number of occasions as being a 'new built' [*sic*] structure and that it would replace the existing structure. Whilst it is described as being in style with the existing structure and would match elements of its existing external materials, the submitted evidence does not lead me to conclude that it would constitute being any part of the matters as stated in the notice, as required by section 177(1)(a) of the Act. As such, the alternative scheme described by the appellant would be outside the remit of section 177(1)(a) of the Act and I have not considered it further.
6. In setting out his case, the appellant refers to policies and provisions contained within the Brent Core Strategy (2010). However, the adoption in February 2022 of the Brent Local Plan revoked the Brent Core Strategy and the policies referred to by the appellant in his appeal statement carry very limited weight in the determination of this matter.

The appeal on ground (a)

Main Issues

7. The main issues are:
 - The effects of the "unauthorised development" upon the appearance of the appeal property and the surrounding area; and
 - The effects of the "unauthorised material change of use" upon:
 - the living conditions of occupiers of nearby residential properties, with particular regard to noise, disturbance and air pollution; and
 - highway safety.

Reasons

8. The appeal property is a ground floor commercial unit on Preston Road, in a mid-terrace location amongst other commercial and business premises. There are residential and office uses on upper floors of the building, and residential streets to the rear.

9. Ground levels fall away from Preston Road towards the rear of the appeal site, such that the appeal property also has a lower ground floor area within which a kitchen is located. The lower ground floor area is accessed internally from the upper ground floor (Preston Road) as well as externally via the extension at the rear of the premises from an open yard area and rear service lane.
10. At the time of my visit to the site the upper ground floor level was laid out with tables and seating and a bar and servery, whilst the lower ground floor had a further seating area, pool table and games machines, with a kitchen off. The extension, opening out from the lower ground floor area, also accommodated low-level tables and sofas, a television screen and a masonry fireplace and chimney.

Unauthorised development - appearance

11. The extension at lower ground floor of the appeal property is constructed of timber panels and roofed with a mix of timber panels and translucent plastic panels. Although outwardly similar to a timber fence in appearance in some longer views from Grasmere Avenue, the extension as a whole is actually somewhat ramshackle in its appearance when viewed from closer quarters. An internal viewing confirms this assessment, with a mix of roofing materials evident from within giving the structure very much a 'home-built' character.
12. In the context of the predominantly open rear yards, relatively low intervening fences (where such means of enclosure are present) and the generally consistent stepped form of the rear of the terraced block, the extension is somewhat incongruous. However, it stands out not so much for its overall depth but more for the nature of its construction and its ramshackle, untidy external appearance.
13. Whilst I accept that the rear of the terraced block, with its stepped levels, external stairs and varied fences and screens at higher levels is not the most attractive of aspects, the extension is nevertheless harmfully incongruous and out of keeping with the predominant materials of the block. The open aspect across the rear yards from Grasmere Avenue ensures that the rear of this block, and the extension itself, are seen clearly within and as part of the transition from commercial frontage to residential side streets and thus the contribution that it makes in this context is significantly less than positive.
14. Brent Local Plan (BLP) (2022) Policy BD1 states that all new development must be of the highest architectural and urban design quality. BLP Policy DMP1 states that development will be acceptable provided that, amongst other things, it is of a location, scale, type, materials and detailing that provides high levels of external amenity and complements the locality. Notwithstanding the extension's location at the rear of the block, for the reasons I have set out it fails to provide the aspects and detailing that BLP Policy DMP1 seeks to secure and, as such fails to provide the highest quality design sought by BLP Policy BD1. The extension is therefore contrary to these policies, and additionally fails to align with the provisions of the National Planning Policy Framework (the Framework) in achieving well-designed places.
15. I have noted the appellant's concern regarding the presence of another timber framed / timber faced extension at a neighbouring property which appears to share similar characteristics as the appellant's extension. Whilst that may be so, I have little additional information regarding its planning status or history

and it is, because of the appellant's extension, less prominent within or disruptive to the character and appearance of the block of buildings and the surrounding area. I have, in any event, considered the appellant's extension on its own merits and the presence of the adjacent extension does not provide justification either way for the appeal scheme.

Unauthorised material change of use – living conditions

16. The notice alleges a material change of use from a café to a mixed use as a café, shisha café and gaming lounge. At the time of my visit to the site the appellant's business was operating within the ground floor (Preston Road) frontage as a café with a number of patrons inside and sat outside at pavement seating / tables. A member of staff was present working in the kitchen at lower ground floor. There were no patrons in the seating areas at lower ground floor level, whether within the main body of the building or within the extension.
17. Although the levels of shisha paraphernalia and gaming equipment was not as extensive or as overt at the time of my visit as the Council's photographic records suggest, that is not to say there was no evidence of such. However, the appellant has not appealed under ground (b), and instead seeks approval for the material change of use under ground (a).
18. In the absence of a detailed breakdown of any proposed internal floorspace arrangements and any split between café, shisha café and gaming uses, it is not unreasonable to conclude that such facilities could be provided across not just the modest ground floor level but also the lower ground floor level, including the extension. In these areas, a range of sofas and low tables, a pool table, a small number of gaming units and a large tv screen remained present at the time of my visit.
19. The presence of such items suggest that these lower ground floor areas are intended to attract and cater for a substantial number of patrons in a more relaxed and informal setting than the 'table-and-chair' café above. The substantial brick-built fireplace and chimney also indicate an intention that it should do so into the evening period and at cooler times of the year. Even setting aside the presence of the extension, the large bi-fold doors that currently provide access from the main lower ground floor into the extension are clearly intended to open up the rear of the lower ground floor area to the outside. With similarly relaxed furnishings and fixtures as the extension, it is clear that the lower ground floor area would also attract patrons in a more relaxed and informal setting.
20. It is not clear whether the opening hours stated by the appellant are current opening hours or intended hours. Either way, the presence of residential properties close to, and above, the appeal premises within upper floor areas of the parade, and to the rear on Grasmere Avenue is a concern and would be sensitive to the type of noise sources likely to be associated with the mixed café, shisha café and gaming lounge. Thus, potential sources of noise such as tv sound, music, noises from the gaming units and the general chat and hubbub arising from the congregation of patrons around gaming units, pool table and shisha pipes, and upon arrival and departure of patrons, would be keenly felt by nearby residents for extended periods into the evening.
21. Moreover, the smoking of shisha generates quite distinctive aromas which, given the proximity of nearby residential properties, would be likely to be

perceptible from those properties. The nature of the current structure is such that it is unlikely to be particularly effective at inhibiting the transmission of noise or aromas from the lower ground floor area to nearby residential properties, particularly at times of the year when it is likely to be more popular and well used. Thus, particularly, but not exclusively, during the summer months when doors and windows are likely to be open, nearby residents are likely to be harmfully affected by the odour, smoke and noise typical of the nature of the use of the appeal property.

22. BLP Policy DMP1 sets out a range of criteria against which development proposals will be assessed. Amongst other factors, it states that proposals should not unacceptably increase, and where possible should reduce, exposure to noise or smells. For the reasons set out, the introduction of a mixed café, shisha café and gaming lounge to the appeal property in such proximity to residential properties results in significant noise, disturbance, smoke and odour to be harmful to the living conditions of occupants of those residential properties. This is what BLP Policy DMP1 seeks to resist and, as such, the use for which the appellant seeks permission under ground (a) is contrary to BLP Policy DMP1, and to London Plan (2021) Policies SI1 and D14 which set out a broad approach to improve air quality and avoid harmful impacts of smoke, odour and noise.
23. BLP Policy BE5 is also cited within the Council's reasons for issuing the notice. It states that shisha cafes will only be permitted outside 400 metres walking distance of an entrance / exit point to a school with a secondary school element or further education establishment. Two such establishments are referred to by the Council as being in 'close proximity' to the appeal site, albeit no walking distances are specified. Nevertheless, the appellant has not challenged the relevance or applicability of this policy, or provided an alternative measure of distance between the appeal site and the educational establishments. As the appeal site lies in a prominent frontage location close to bus and tube facilities, the relevance of the policy and its provisions are clear and, in the absence of a direct challenge from the appellant regarding its content, the alleged use is also contrary to BLP Policy BE5.

Unauthorised material change of use – highway safety

24. The Council is concerned that the mixed use creates additional on-street car parking pressure which undermines highway safety and the quality of life for local residents. However, how much pressure is not stated. Nor is it stated how many car parking spaces the use would require.
25. The site is located close to a tube station and bus stops along this part of Preston Road. It is, therefore, relatively well served by public transport. There are also on-street car parking spaces directly outside the appeal site, although Grasmere Avenue to the rear of the appeal site is subject to a matchday and non-matchday residents' parking scheme. Nevertheless, the appeal site is located in a sustainable and accessible location.
26. Any increase in parking demand, and I suspect that there will be an increase arising from the broadened range of activities sought within the appeal premises, has not been quantified by the Council. Nor has it been evidenced in its current operation by either main party to support their respective cases. On the basis of the evidence before me therefore, I conclude that the mixed use as a cafe/shisha café and gaming lounge would not have an unacceptable or

harmful impact upon on-street car parking or highway safety. As such, there would be no conflict with LP Policies BT2 or DMP1 which, together seek to avoid unacceptable or negative impacts upon existing parking and highway safety.

Other Matters

27. The role of the café within the local Romanian, and wider local, communities since 2013 has been drawn to my attention by the appellant and is noted. However, given that its position within the local community appears to have been established over a relatively lengthy period of time, I have no reason to believe that the alleged mixed use of the premises is so critical or central to its continued presence within that community that it would no longer exist should it be removed. The weight that I give to this matter in support of the appeal scheme is limited as a consequence.
28. I have also noted the appellant's comments regarding the extension utilising a vacant area at the rear of the unit that had previously been used as an area for the dumping of rubbish. However, I have no evidence to indicate whether or not the dumping of rubbish was a recognised problem in this area and, in any event, the extension as constructed fails to provide the sort of high-quality development the development plan seeks to secure. This matter does not attract sufficient weight to outweigh the harm to the character and appearance of the surrounding area arising from the extension.

Conclusion

29. There would not, I conclude, be any harmful or negative effects arising from the alleged use of the appeal property in terms of highway safety or parking pressure given the site's location conveniently situated relative to public transport options. However, the proximity of the site to residential properties above and to the rear would be such that the general hubbub of patrons, gaming machines, music and TV from the mixed use would result in undue disturbance to nearby residents. Odour and smoke from the smoking of shisha pipes would add to this material harm to the living conditions of those nearby residents.
30. Additionally, the nature of the extension at the rear of the appeal property would fail to respect the character or appearance of the appeal property. As such, it would fail to secure the high-quality form of development sought by the development plan policies set out above.
31. I recognise the role that the café plays for the local community. However, the Council have confirmed that they do not object to the café use element operating from the appeal premises and nor do I.
32. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the mixed use as a café, and shisha café and gaming lounge. The correction set out above does not prevent the resumption of the previous café use of the premises, to which the Council do not object, nor does it prejudice the appellant.

G Robbie INSPECTOR