
Appeal Decision

Site visit made on 2 June 2025

by **C Housden BSc(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 July 2025

Appeal Ref: APP/B5480/W/25/3361365

3 Fairview Parade, Mawney Road, Romford, Havering RM7 7HH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Erjon Lushi against the decision of the Council of the London Borough of Havering.
 - The application ref is P1324.24.
 - The development proposed is change of use class from E(a) (Pharmacy) to Mixed Use Sui Generis (Café, Drinking Establishment and Lounge).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On my visit I observed that the change of use had already taken place. However, “retrospective” as referred to in the description of development in the application form is not an act of development. As such, I have removed reference to this in the description above.
3. I am aware of two appeals which have been dismissed at the site for the construction of a front structure¹ and signage². This appeal relates solely to the change of use and does not include these two elements.

Main Issue

4. The main issue relevant to this appeal is the effect of the development on the living conditions of the first floor residential properties of Fairview Parade, with particular regard to the effect of noise, disturbance and odour.
5. The Council has not referred to the specific addresses of the relevant neighbouring properties in its reason for refusal. However, based on the evidence before me, it is clear that the properties in question are those in Fairview Parade situated directly above and adjacent to the appeal site at first floor level. In particular, the internal effect of the proposal relates to the property directly above the appeal site, and external effects relate to all the first floor properties in Fairview Parade. I have made my decision on this basis.

Reasons

6. The appeal site relates to a ground floor commercial property. It is situated within Fairview Parade which consists of a terrace of two storey properties with shops and

¹ APP/B5480/W/24/3353116

² APP/B5480/H/24/3353117

commercial units at ground floor level and residential units above. The ground floor units include a Tesco Express, two flooring showrooms and the appeal site. The character of the use of the parade at ground floor is predominantly retail. The wider area is also mixed in character with the Mawney Hotel and Eden College situated on the opposite side of the road, along with Olive Street, a primarily residential road. Further down Mawney Road are more residential properties and a school. I observed on my visit that Mawney Road was a well trafficked road and the predominant source of noise within the area was from vehicle movements along it. However, the appeal site and the properties above are set back from the road.

7. The change of use to a sui-generis cafe, drinking establishment and lounge has introduced a new use to the parade of a different character than the previous pharmacy and surrounding retail uses. The development attracts customers seeking to sit down and socialise in groups whilst drinking coffee and alcoholic drinks, early in the morning and late at night. This is distinctly different than the type of customer attending the retail units which would likely be for shorter durations and not to socialise in groups. It is proposed to control the opening hours of the premises from 06:00 – 23:00 or 22:30 Monday to Sunday.
8. As is the case with any licenced premises, there is a risk of noise and disturbance being generated from customers entering and leaving the premises. Noise could be generated through the slamming of the front door or through vehicle doors (including those of taxis), along with people congregating outside of the premises in groups. However, the Noise Impact Assessment³ (NIA) which accompanies the planning application fails to take this source of potential noise and disturbance into account.
9. The appellant considers it to be improbable for large groups to be entering, leaving and congregating at the same time given the size of the premises. However, I have insufficient information before me detailing how people entering and leaving the premises could be effectively managed by staff. Furthermore, harmful noise to the occupiers of the flats above could still be generated from just a few loud individuals, or through the cumulative effect of multiple small groups of customers. Furthermore, I have no convincing evidence demonstrating that larger groups could not enter and leave the property at the same time, particularly given the capacity of the premises shown on the floor plans.
10. The appellant has referred to a number of nearby noise sources, including the Tesco Express, Floors-2u, Mawney Arms Public House, Eden College, Mawney Foundation School and Mawney Hotel, noting that the noise generated by the proposal is unlikely be distinguishable from those uses. However, the NIA already incorporates the noise generated by these premises into the background measured noise level. It has not therefore been shown that noise generated by customers entering, leaving and congregating outside the premises would be unlikely to cause unacceptable harm to the living conditions of occupiers of the Fairview Parage flats.
11. Furthermore, the appeal proposal is not directly comparable to nearby commercial premises and their effects on the occupiers of the first floor flats. For the reasons set out above, customers use Tesco Express and Floors 2u very differently, despite Tesco having early and late opening hours. The remaining premises are located away from the residents at the first floor level of Fairview Parade on the opposite

³ By Sound Licensing Ltd dated 5 November 2024

side of the road and do not pose the same localised risk of noise and disturbance as the appeal proposal.

12. Therefore, I cannot be certain that the proposal does not result in significant harm to the living conditions of the occupiers of the flats above the appeal site in Fairview Parade by virtue of the noise and disturbance generated through people entering, leaving and congregating outside of the premises.
13. In relation to the transfer of noise between the proposed development and the residential unit above the site, the NIA states that it does not know the construction of the party floor. The NIA assumes that a double layered ceiling of wood construction is present and provides a minimum performance of 45dB $D_{nT,w}+C_{tr}$. However, this has not been tested by the author of the report, nor has any further information been provided to substantiate this claim.
14. The Council's Environmental Health Officer (EHO) suggested that a condition could be used to test the existing floor and secure mitigation in line with the aforementioned minimum performance level plus an additional 5dB to account for local requirements.
15. I have considered the condition suggested by the EHO. However, without knowing the details of the composition of the floor or the extent of the mitigation that is required, there is a risk that the mitigation may not be possible or could be impractical to achieve. Therefore, in accordance with the tests outlined in paragraph 57 of the National Planning Policy Framework (the Framework) I lack sufficient information to ensure such a condition could be reasonable, precise and enforceable.
16. I therefore cannot be certain that the appeal proposal does not result in significant harm to the living conditions of the occupiers of the flat above the appeal proposal by virtue of noise transfer through the floor.
17. Limiting opening hours to 22:30 would not address the fundamental concern that I have regarding a lack of substantive evidence relating to noise transfer through the floor and the noise generated through customers entering and leaving the premises and congregation outside the premises. Furthermore, I do not have sufficient evidence before me to conclude that the suggestions of signage, staff training and active management of the arrivals and departures would sufficiently mitigate my concerns outlined above. In any case, I do not consider it would be possible to secure the approval of and adherence to appropriate and active management of the premises and the provision of suitable staff training by a reasonable, precise, and enforceable condition. I therefore find that the unacceptable harm likely caused to nearby residents could not be mitigated by conditions.
18. In relation to odour, the appellant has confirmed that food is not cooked at the premises and all food preparation is taken place off site. This is confirmed by the plans which show that whilst there is a sink behind the bar area, there is nowhere to prepare food and there is no extraction system proposed. In relation to food, I am satisfied that there are not undue odours which give rise to materially harmful impacts to the living conditions of neighbouring residential occupiers.
19. The Council also raised concern over the use of shisha at the premises. However, the appellant has confirmed that the use of shisha was undertaken within the front extension which does not form part of this planning application. Due to the scope of

the development as a café, drinking establishment and lounge, a suitably worded condition would need to be imposed to ensure that the use of shisha was not undertaken at the appeal site. Given a condition could restrict the use of shisha, there would be no undue harm relating to odours from this source.

20. While I have not found harm in relation to odours from the site, I have insufficient information to conclude the proposal does not result in significant harm to the living conditions of the occupiers of the first floor flats of Fairview Parade through undue noise and disturbance resulting from the development. The proposal therefore conflicts with Policy 14 of the Havering Local Plan (2021). Whilst this policy recognises the importance of eating and drinking establishments, it seeks to also consider the impact on the amenity of adjoining residential accommodation by virtue of noise disturbance, amongst other matters.

Other Considerations

21. The proposal has economic benefits through the commercial use of the premises. However, whilst the Framework supports economic growth and productivity, it also seeks to create places that promote health and well-being with a high standard of amenity for existing users. The benefits of operating the premises as a mixed cafe, drinking establishment and lounge are limited accounting for the size of the proposal as a single premises and the appeal site previously benefitting from a commercial use. The benefits of the development are not sufficient to outweigh the significant conflict with the development plan through the harm I have found to the living conditions of nearby residents.

Conclusion

22. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, I conclude that the appeal should be dismissed.

C Housden

INSPECTOR