
Appeal Decision

Hearing held on 12 July 2016

Site visit made on the same date

by Mrs H M Higenbottam BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23 September 2016

Appeal Ref: APP/M9584/C/16/3142986
117 Wallis Road, London E9 5LN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Shapes against an enforcement notice issued by London Legacy Development Corporation.
- The enforcement notice was issued on 14 December 2015.
- The breach of planning control as alleged in the notice is 'Without planning permission, the unauthorised material change of use of the Land from a storage and distribution use (Class B8) to a mixed use as a multi –purpose events space (Classes D1 and D2 of the Town and Country Planning (Use Classes) Order 1987 and Sui Generis).'
- The requirement of the notice is to stop using the Land (or any part thereof) as multi-purpose events space including use for live events, use as a club, rave venue, nightclub, music venue, entertainment venue, dance venue, party venue and/or for late night events including selling refreshments and alcohol and/or any use within Classes D1 and D2 of the Town and Country Planning (Use Classes) Order 1987.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and a variation.

Preliminary matters

1. The appellant withdrew the appeal on ground (f) at the Hearing. The appeal therefore continues on grounds (a) and (g) only.

The Notice

2. The enforcement notice as issued alleges a breach of planning control consisting of a material change of use, under section 171A (1) (a) of the Town and Country Planning Act 1990 as amended (the Act). However, in this case it is readily apparent that the breach of control that has actually occurred is the continuation of a use of land after the planning permission from which it benefited, which was time limited by means of a condition, had expired.
 3. The permission in question was granted on 31 March 2014, under reference no 13/00157/COU, for 'Temporary change of use (1 year) from a storage and distribution property (Class B8) into a multipurpose events space (Class D1, D2 and sui generis) with alterations to the building fabric. Operating hours: 1200 to 2200 Sunday, Monday and Public Holidays and 1200 to 2330 Tuesday-
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Saturday (Retrospective Application)'. Condition 1) reads: 'The planning permission for the temporary use(s) of the development hereby approved shall expire on 25th March 2015. On this date the use(s) of the development hereby approved shall have ceased unless minor variations are approved by the Local Planning Authority.'

4. The continuation of a use originally authorised by a planning permission granted for a limited period beyond the expiry of that period is not a change of use and not, in itself, development. The Notice as issued is therefore incorrect.
5. At the Hearing, the main parties were content that I should put the Notice in order in whatever form I considered necessary. Both parties agreed that to correct the Notice to refer to a breach of condition, rather than a material change of use, would cause no prejudice or injustice to either party. Therefore, to accurately reflect the breach that has occurred, I consider that it should have alleged a failure to comply with a condition subject to which planning permission had been granted, under section 171A(1)(b) of the Act.
6. The deemed planning application under s177 (5) of the Act, by analogy with s73A (3) (b), would be for the development originally permitted but without condition 1), with effect from the day following the date when the limited period imposed by that condition expired. Should the appeal on ground (a) succeed, I would grant a new permission on the deemed planning application, with any conditions that I consider to be appropriate. In such circumstances, the planning considerations relating to the material change of use alleged in the notice as issued, as addressed by both main parties in evidence, do not differ in any way from those relevant to a breach of condition 1) of the 2014 planning permission.
7. The 2014 planning permission included 14 individual studios for art and music purposes on the first floor level along with communal toilets and kitchen for use by the studio occupiers. These studios are occupied by individuals including DJ's and musicians who sometimes perform at events on the ground floor. The Council raised no objection to the first floor studio use continuing in the short term, although the appellant stated that the ground floor commercial event space activities cross-subsidised the rent for the studio units and were therefore tied together. However, no specific details were provided about the cross subsidy. The notice relates only to the ground floor of the building.
8. I shall therefore correct the notice by making the following changes:
 - In the unnumbered paragraph above paragraph 1, the replacement of 'section 171A (1) (a)' with 'section 171A (1) (b)'.
 - In paragraph 2, the replacement of the text in its entirety with:
'Planning permission was granted on 31 March 2014, under reference no 13/00157/COU, for 'Temporary change of use (1 year) from a storage and distribution property (Class B8) into a multipurpose events space (Class D1, D2 and sui generis) with alterations to the building fabric. Operating hours: 12:00 to 22:00 Sunday, Monday and Public Holidays and 12:00 to 23:30 Tuesday-Saturday (Retrospective Application)'. Condition 1) reads: 'The planning permission for the temporary use(s) of the development hereby approved shall expire on 25th March 2015. On this date the use(s) of the development hereby approved shall have ceased unless minor variations are approved by the Local Planning Authority.' This condition has not been complied with in that the uses did not cease on 25 March 2015 and no minor

variations have been approved by the Local Planning Authority pursuant to Condition 1). Planning permission has not been renewed’.

- In paragraph 4 the replacement of the text in its entirety with:
‘Cease the use of the ground floor for use as a multipurpose events space (Class D1, D2 and sui generis).

These corrections do not address defects so fundamental that they result in a substantially different notice and, accordingly, there is no injustice to any party in making them.

Appeal on ground (a)

Main Issue

9. The main issue is the effect of the use on the living conditions of nearby existing and future residential occupiers, particularly in relation to noise and disturbance and late night hours of operation.
10. Condition 4 of the 2014 planning permission limited hours of operation to between 12:00 and 22:00 Sunday and Monday and 12:00 to 23:30 Tuesday to Saturday. The appellant seeks in the ground (a) appeal the following operating hours:

1200 - Midnight Mondays – Wednesday
1200 Fridays – 0200 Saturday mornings
1200 Saturday – 0200 Sunday mornings
1200 -2200 Sundays and Bank Holidays.
11. These appear to be the hours generally operated since soon after the opening of the venue. However, I note that the appellant has also operated the venue beyond even these stated hours. As an example on 17 July 2015 an event was advertised starting at 2200 and finishing at 0600 the following morning. The oral evidence at the Hearing confirmed that whilst it was intended to operate the venue within the hours of operation sought, on occasion and for some limited events, it is likely that special licences would be obtained for some events beyond those hours.
12. The LPA have received on-going complaints from nearby residents about noise and disturbance. Whilst some complaints may well have been linked to an adjacent unauthorised venue known as ‘Turntables’, which is now no longer operating, it is clear to me that many of the complaints are associated directly with the appeal site operation and events held in the ground floor venue.
13. The appellant undertook an Environmental Noise Assessment and Operational Review (the Review) of the appeal premises. This included a site visit and noise surveys on one night in November 2015. The number of patrons was not known but the club appeared to be very busy and it was thought, by the author of the Review, to be a typical operating night. The Council raised no concerns in relation to how this survey was undertaken.
14. The key issues identified in the Review were the extent of music noise “break-out” from within the building; the effect of external activity from patrons; and the effectiveness of current security/management procedures in controlling noise.

15. In relation to music noise it was concluded that the club made a significant contribution to the noise climate at Leabank Square (music noise breakout), with noise levels which may be audible within those dwellings. In relation to patron noise the operation of the club was found to make a significant contribution to the noise climate at the flats at Wallis Road/Berkshire Road, particularly at the end of the night (i.e. from 1:30 to 2:30 am¹). The measured noise levels from patrons leaving the club during the night period were 65 dB LAeq and 80 dB LAMAX. The Noise Policy Statement for England (NPSE). Noise states that impact in terms of sleep disturbance may not occur until levels above 55dB LAeqT and 70dB LAMAX (these are the Significant Observed Adverse Effect Level's (SOAEL))². The Review recognised that the recorded noise levels may well lead to significant adverse effects in terms of potential sleep disturbance. Clearly the recorded noise level was significantly in excess of the SOAEL values.
16. The Review concludes that the current operating conditions are such that noise from the club would be such as to necessitate a material change in behaviour, for example residents having to keep windows closed for "most of the time" with no alternative means of ventilation, leading to a diminishing quality of life which would not be necessary if the club were not operating. The reasons for this conclusion were:
- Music noise was deemed unnecessarily high within the venue;
 - Music noise was leaking significantly from the building through door openings and poor sound insulation;
 - Noise from patrons leaving had a very significant effect on the noise climate at the flats at Prince Edward Road. This is noted as being exacerbated by the management outside the club dispersing patrons resulting in the patrons congregating in large numbers outside the flats at Prince Edward Road; and
 - The Noise Management and Dispersal Policy need updating. It is noted that the external activity at closing time had a very significant impact on the noise environment.
17. A number of mitigation measures were put forward comprising:
- a music noise limiter with an overall internal limit in the club of 100 dBA;
 - a system of improving the sound insulation of the doors leading to the smoking area which at present are left or propped open and there is a high flow of patrons through them to outside. It was proposed that these doors are kept closed and a lobby system operated by introducing security marshals to this area to control the flow of patrons through the doors.
 - New Management and Dispersal Policy.
18. The music noise limiter would be capable of being controlled by the imposition of suitable conditions and would, to my mind, provide some mitigation of music noise. The doors leading to the smoking area would be likely to open frequently as the Review recognises there was a high flow of patrons going outside. Therefore whilst it would be an improvement to sound proof the doors

¹ Night is defined as being 23:00 to 07:00 hours.

² This being the level above which significant adverse effects on health and quality of life are deemed to occur.

and have the doors controlled by security marshals it would still be likely to lead to music noise breakout.

19. The appellant has produced an Entry and Exit Management Plan and a Dispersal Policy Plan, both are dated December 2015. The Review states that it is critical to be able to implement the mitigation measures and then monitor their effectiveness and review accordingly. A temporary planning permission would, in the appellant's view, enable such monitoring to take place.
20. The Dispersal Policy Plan seeks to address the issues of patrons leaving the premises with stewards at road junctions near residential properties in the peak departure times (01:30-02:15), preferred taxi providers and a 24 hour residents helpline. Although the Review refers to implementing the new management and dispersal policies with immediate effect there was no substantiated evidence that since it had been written that there had been any monitoring of the new policies or that there had been reduction in noise and disturbance from patrons leaving the premises. I am not satisfied, on the evidence before me, that the new Dispersal Policy Plan would achieve adequate mitigation.
21. Furthermore, since the 2014 planning permission was granted the area within the immediate vicinity of the site is undergoing substantial and rapid change as part of the regeneration of Queen Elizabeth Olympic Park. The most relevant developments are:
 - A new primary school will be located within 65m of the site and will open in September 2016. The venue could be operated during hours that overlap with school hours. The school may also run out of hours uses which could be affected by the venue operation.
 - A residential development of 61 Wallis Road (reference 13/00449/FUL) for a four storey building comprising twelve residential units and ground floor commercial space has been granted planning permission. This is within 115m of the site, to the west, and the LPA expect it to be ready for occupation within 12 months. The Council consider the venue use would have similar impacts on the new residential development as those currently being experienced at Lea Bank Square.
 - A redevelopment at Eton Mission Rowing Club, 127 Wallis Road for new facilities and a studio apartment for residential use by a caretaker to the rowing club (reference 14/00326/FUL) has also been granted planning permission. Eton Mission Rowing Club is located within 50m of the appeal site to the east and the caretaker's accommodation is within 27m. The Council consider the venue use would have similar impacts on the new residential development as those currently being experienced at Lea Bank Square.
22. The appellant's evidence does not consider these new developments. The new developments will add to the number and proximity of residential or other occupiers that could be affected by the operation of the venue. Whilst some mitigation of the significant effect on the noise climate resulting from the use can be achieved, I am not satisfied that this would be adequate to overcome the significant harm to the living conditions of nearby residential occupiers, particularly in relation to patron noise, and to a lesser extent, to music noise.
23. The appeal site is within the Hackney Wick Neighbourhood Centre and within Site Allocation SA1.1 (Hackney Wick Station Area) where policy envisages

'comprehensive employment focused mixed-use development, including a significant number of new homes complemented by new retail, leisure, food/drink and community facilities.' Thus further redevelopments with additional residential units are likely within the area.

24. The appellant has referred to the planned all night running of the underground and how patrons could walk to Stratford Underground Station across the Olympic Park. This is a 20 minute or so walk. I appreciate some patrons could utilise the all night tube trains in the future, but I am not satisfied that this of itself will overcome the harm I have identified.
25. The appeal site is seen by some as a cultural hub and considered to be an integral part of the local business community. However, there is no substantiated evidence to demonstrate that either the social or economic benefit of the use outweigh the harm I have identified to the nearby residential occupiers, or the potential harm to the new school occupiers when that is completed and occupied.
26. I have considered whether or not a further trial run in the form of a further temporary planning permission would be appropriate. The Planning Practise Guidance advises it will rarely be justifiable to grant a second temporary permission on a site. Whilst I appreciate the area is undergoing significant redevelopment, the use of this site even in a short term or interim way, as proposed by the appellant, would result in unacceptable harm to nearby residents. Moreover, I am not satisfied that mitigation measures would address, in any significant way, the noise and disturbance associated with the use. I therefore consider that a further grant of temporary planning permission for the ground floor of the appeal site is not justified.
27. In conclusion, on the evidence before me, the operation of the ground floor of the appeal building as a multipurpose events space (Class D1, D2 and sui generis) results in significant harm to existing nearby residential occupiers living conditions and has the potential to harm future residential occupiers of developments under construction. This is contrary to Policies 2.4 and 7.15 of the London Plan (adopted March 2015) which require development to embody the highest achievable environmental standards and avoid significant adverse noise impacts on health and quality of life. It is also contrary to Policies B1 B3 and BN11 and SP5 of the London Legacy Development Corporations Local Plan (adopted July 2015), which require maintenance or re-provision of uses within Use Class B8, resist interim uses having an unacceptable impact on amenity or the function of the existing permanent business or residential community, contribute towards minimising the effect of noise on amenity and ensure development contributes to the health and wellbeing of those living and working in the area. Furthermore, it is also be contrary to one of the core planning principles of the Framework which is that planning should always seek a good standard of amenity for all existing and future occupants of land and buildings.

Appeals on ground (g)

28. This ground of appeal is that the time given to comply with the notice is too short. The Council has given three months to cease the use. The appellant in its appeal submissions requested a period of four months as this would provide a more realistic timeframe to honour the existing bookings without incurring unsustainable cancellation charges.

29. The appellant provided no details of existing bookings or details of contracts with anyone or details of what cancellation charges would be payable. In the light of the lack of any substantiated evidence to demonstrate potential liabilities for the appellant. In the light of the lack of substantiated evidence to support this ground the appellant agreed that three months was a reasonable period of time to comply with the Notice with respect to the ground floor venue.

30. For the reasons given above the appeal on ground (g) fails.

Formal decision

31. The enforcement notice is corrected by

- In the unnumbered paragraph above paragraph 1, the replacement of 'section 171A (1) (a)' with 'section 171A (1) (b)'.
- In paragraph 2, the replacement of the text in its entirety with:
'Planning permission was granted on 31 March 2014, under ref no 13/00157/COU for 'Temporary change of use (1 year) from a storage and distribution property (Class B8) into a multipurpose events space (Class D1, D2 and sui generis) with alterations to the building fabric. Operating hours: 12:00 to 22:00 Sunday, Monday and Public Holidays and 12:00 to 23:30 Tuesday-Saturday (Retrospective Application)'. Condition 1) reads: 'The planning permission for the temporary use(s) of the development hereby approved shall expire on 25th March 2015. On this date the use(s) of the development hereby approved shall have ceased unless minor variations are approved by the Local Planning Authority.' This condition has not been complied with in that the uses did not cease on 25 March 2015 and no minor variations have been approved by the Local Planning Authority pursuant to Condition 1). Planning permission has not been renewed'.
- In paragraph 4 the replacement of the text in its entirety with:

'Cease the use of the ground floor for use as a multipurpose events space (Class D1, D2 and sui generis).

And varied by:

- In paragraph 5 insert 'comply with Requirement 1 and twelve months after the date this notice takes effect comply with Requirement 2'

32. Subject to these corrections and variation the appeal is dismissed and 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.

Hilda Higenbottam

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Tim Waters	Renew Planning agent for the Appellant
BA(Hons) MRTPI	
Mr Kieran Gayler BSc MIOA	Sharps Gayler Acoustics LLP agent for the Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Butchers B Plan (Hons)	Planning Development Executive, London Legacy Development Corporation
Ms A Demarco	Head of Development Management, London Legacy Development Corporation
B Arch (Hons) MRTPI	
Mr Harris MSc MIOA	Arup, Consultant for London Legacy Development Corporation

DOCUMENTS AND PLANS SUBMITTED AT THE HEARING

1. Application form for 2014 planning permission submitted by the LPA
2. List of planning applications for appeal site submitted by the LPA
3. Email between the LPA and Arup (Noise Consultants) submitted by the LPA
4. Hackney Wick Central – Proposed development vision statement and application summary extract submitted by the LPA
5. Local Plan Policies Map submitted by the LPA
6. Internet adverts for events at the appeal site submitted by the LPA
7. Draft conditions submitted jointly by the Appellant and the LPA
8. Approved layout drawings for 2014 planning permission.