
Appeal Decision

Site visit made on 24 October 2016

by B M Campbell BA(Hons) MRTPI

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

Decision date: 4 November 2016

Appeal Ref: APP/G5750/C/16/3152946

Land north of 15-21 Leytonstone Road, Stratford, London E15 1JA

- 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 Mr S Iqbal against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice was issued on 27 May 2016.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use to a shisha lounge.
 - The requirements of the notice are to:
 1. Cease the use of the property as a shisha lounge.
 2. Remove from the property all fixtures and fittings that solely facilitate the use as a shisha lounge including, but not limited to, the plastic sheeting enclosing the covered space, artificial grass, tables and chairs, pool tables, decking and associated partitioning, advertising sign and the bar area.
 3. Remove from the site all debris arising from compliance with step 2.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use to a shisha lounge on land north of 15-21 Leytonstone Road, Stratford, London E15 1JA referred to in the notice, subject to the following conditions:
 - 1) The premises shall not be open to customers outside the following hours:
0900 - 2300 Monday to Saturday; and
0900 - 2230 on Sundays.
 - 2) Any amplified or other music played on the premises shall be kept to a level so as not be audible at the boundary with any neighbouring residential property.

Main Issues

2. The main issues in this case are the effect of the use on the lifestyles of local people and the effect on neighbouring occupiers with particular reference to noise and disturbance and personal safety.

Reasons

Issue 1 - lifestyles

3. There is no doubt that smoking is bad for health and the Council details some of the problems and ill effects associated with smoking shisha. However, smoking shisha is a lawful activity and it is regulated by law. It is not the role of the planning system to seek to prevent an individual's choice to indulge in that activity within the bounds of the law.
4. The Council draws attention to para.3.2 of the London Plan which aims to improve health and to address health inequalities. However this is focused on strategic matters such as environmental quality, housing conditions and pollution and whilst the supporting text refers to cancer, cardio vascular and respiratory disease there is nothing to suggest that the policy is intending to get into the detail of preventing individuals from smoking. Indeed those health conditions mentioned can be associated with more widespread challenges facing the city such as pollution.
5. Para.3.10 of the Plan says the policies seek to address the main health issues facing the capital. That cannot be to prevent the personal choice of an individual to indulge in an activity that is perfectly lawful. The emphasis is on promoting healthy lifestyles by providing improved living and working environments with appropriate facilities to encourage physical exercise. Whilst, for example, it is recognised that fast food outlets close to schools could be a concern, the Plan does not suggest local policies ban them outright but rather that consideration is given to location.
6. The Council's Core Strategy policy SP2 builds on the strategic policy of the London Plan aiming to promote healthy lifestyles, reduce health inequalities and create healthier neighbourhoods. Eight contributors to health are identified and proposals which respond to them are to be supported. There is no mention of seeking to prevent lawful activities of individuals which are recognised as being harmful to health although once again the location of fast food outlets is addressed.
7. The National Planning Policy Framework (NPPF) similarly seeks to promote healthy communities but once again the emphasis is on creating an environment which facilitates social interaction and creates healthy inclusive communities by providing appropriate facilities which are safe and accessible.
8. It is not the role of the planning system to duplicate or to impose more stringent controls on activities regulated under other legislation. In this case the Department of Health introduced a country-wide ban on smoking in public places, there is an age restriction on the purchase of tobacco and tobacco advertisements are prohibited. The laws are aimed at discouraging this activity and protecting people from being adversely affected by the actions of others. They do not seek to prevent smoking entirely. The Council appears in its reason for issue to be suggesting a moratorium on shisha lounges in the Borough. Given that there is no law against the smoking of shisha, this does not seem to me to be an appropriate use of the planning system as it seeks to introduce a much more stringent control than those which have already been imposed by the relevant authorities responsible for such matters.
9. The use of the property as a shisha lounge, operating within the bounds of the law, would not have an adverse effect on the lifestyles of local people. In this

respect I find no conflict with national and local policies which are aimed at promoting healthy and inclusive environments and not preventing lawful activities or the choice of individuals.

Issue 2 – noise, disturbance and personal safety

10. Despite the address, the appeal site fronts Francis Street, a road with a mixture of uses. The site is rectangular with an L shaped building, open on the two inward facing sides to an open space surfaced with artificial grass. An inviting entrance from Francis Street has been formed with the remaining frontage secured by tall solid industrial gates (no longer used).
11. The Council says the site lies within the major centre of Stratford. Leytonstone Road, is a busy main road (A11) and close to its junction with Francis Street is the local railway station, Maryland. Amongst the commercial properties fronting that road and close to the corner with Francis Street is an off licence which is open 24 hours a day. The appeal property formerly formed part of a car pound, the remainder of which adjoins its southern boundary. I am told that vehicles that have been involved in accidents are stored there and can be delivered to that site at any time of the day or night. Adjoining to the north of the site is a church hall and on the opposite side of the road and to the south is a dance studio. The area is thus very mixed in character.
12. The nearest residential properties are a terrace of five houses to the rear of the appeal site whose short rear gardens adjoin it and a block of flats on the opposite side of the road. These properties are already exposed to activities from a variety of uses in this area and could not be expected to enjoy the same degree of peace and quiet as residents of an exclusively residential area.
13. The use of the premises is akin to that of a café except in addition to soft and hot drinks and snacks, shisha is smoked. The solid rear of the building adjoins the gardens of the terraced house such that noise emanating from the premises would be shielded by the building and, to the front, the entrance lobby and solid boundary enclosure would also provide some mitigation.
14. The use does not have such a close relationship with its residential neighbours as, say, a restaurant or bar within of parade of shops with residential above would have. Comings and goings are unlikely to be so significant as to cause any material increase in noise and disturbance over and above that generated by the mix of uses already present in the area and indeed far from increasing the likelihood of crime, it seems to me that additional activity along this road during the evening could be beneficial in increasing natural surveillance. The Appellant says he has received no noise complaints from neighbours or from the Council's Environmental Health team. There have been no representations made in response to the notification of this appeal.
15. The Council has proved a list described as "repeat complaints" but there is no indication as to whether these were from one or more persons or indeed whether they all relate to the operation of the premises. The Appellant says the use did not commence until January 2016 which would suggest the bulk, received before that date, either related to something else or were simply written in anticipation that the use would cause problems. Subsequently there appears to have been two notifications about late hours with noise associated with one of those and then a call indicating that the premises were quieter although there were still comings and goings.

16. The Appellant says the walls of the building have been treated with insulation to reduce the emission of sound and although the building is open on both sides to the internal courtyard, I could not hear the music that was being played when standing outside the site. With appropriate conditions imposed to control hours of operation and the level of music, I conclude that the use would not result in any material increase in noise levels in the area such as to damage the living conditions of neighbouring occupiers.
17. With regard to personal safety, the Council brings no evidence to demonstrate that this use has resulted in an increase in crime or antisocial behaviour other than the noise complaints referred to above and expressed "concerns" about such behaviour. That "concern" appears to have been expressed at about the time the premises first opened and could well have been in anticipation as it does not appear to have been repeated since. The Council makes generalised statements that shisha lounges bring about the congregation of large groups of aggressive young adults; large fights on public roads and the selling of illegal drugs and underage sales. In my experience in dealing with such premises, I have not before heard such damning arguments associated with shisha lounges and the Council provides nothing to substantiate its claim.
18. In generating some activity along the road from customers coming and going to the lounge, it seems to me that the road is likely to be less attractive for crime and anti-social behaviour. The Appellant says he and his neighbours have noticed a reduction in incidents since the shisha lounge has been operating. I conclude that in relation to the generation of noise and disturbance and to conditions of personal safety, with the imposition of appropriate conditions, the use has no material adverse effect on neighbouring occupiers. I find no conflict with the provisions of the Development Plan which aim to intensify development with a new local centre around Maryland Station. There is no conflict with the policies aimed at protecting neighbouring amenity or those aimed at securing safe and secure neighbourhoods.

Conclusion and conditions

19. In view of my findings on the main issues, the appeal on ground (a) succeeds and planning permission will be granted on the application deemed to have been made under section 177(5) of the 1990 Act. I have had regard to the conditions suggested by the Council and the response made by the Appellant. A condition restricting opening is necessary to prevent disturbance outside normal evening recreational hours in view of the presence of some nearby residential properties. Although I find no reason to require the premises to be closed on Sundays or Bank Holidays, an earlier closing time on Sundays would be appropriate given that this is generally the quietest day of the week.
20. Given that sound insulation has been fitted and that the building is open on two sides, a condition requiring a sound insulation scheme would not be apposite in this instance. Nonetheless I shall impose a condition to limit the level of any music played on the premises. Noise from customers talking would be comparable to an outside garden attached to a public house, which would not be inappropriate for this area of mixed character.

B M Campbell

Inspector