



Appeal Decision

Inquiry Held on 30 and 31 July 2019

Site visit made on 31 July 2019

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 11 September 2019

Appeal Ref: APP/B4215/C/18/3209377

Land at First Floor, 108 Wilmslow Road, Manchester M14 5AJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Khalis Ibrahim against an enforcement notice issued by Manchester City Council.
- The enforcement notice was issued on 26 July 2018.
- The breach of planning control as alleged in the notice is without planning permission the material change of use from a restaurant (A3) to a shisha smoking place (*sui generis*).
- The requirements of the notice are to cease the use of the land as a shisha smoking place and remove all shisha pipes, tobacco and associated paraphernalia from the land.
- The period for compliance with the requirements is seven days.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (d) and (g) of the 1990 Act as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Application for costs

1. An application for costs has been made by Mr Khalis Ibrahim against Manchester City Council. This application is the subject of a separate Decision.

Preliminary Matters

2. During the second day of the Inquiry, the question arose as to whether the Council had authority to serve the Enforcement Notice in the form in which it was served. My attention was drawn to a report to the Head of Planning, Building Control and Licensing (Head of Planning, BC and L) dated 17 July 2018 in which the breach alleged was described as - "without planning permission the material change of use from an unauthorised mixed use comprising a restaurant and a shisha smoking place (*sui generis*) to a shisha smoking place (*sui generis*)". This does not mirror the alleged breach set out in the notice.
3. The appellant indicated that a notice issued without proper resolutions or authority or otherwise 'ultra vires' should be considered a nullity, since in those circumstances it cannot be an enforcement notice. In the first instance, I have had regard to *Britannia Assets*¹, which suggests the proper course is to make such complaints by way of Judicial Review.

¹ *Britannia Assets (UK) Ltd v SSCLG* [2011] EWHC 1980 (Admin).

4. However, I am referred to an appeal decision² in which the Inspector accepted an argument that a notice issued without proper authority must be ultra vires and a nullity. In that case the Inspector found, just because it could be the subject of a Judicial Review, did not mean it could only be raised in that way. If there was clearly no authority for the notice, it could not stand.
5. I have had further regard to *Koumis*³, in which the Court of Appeal stated that the *Miller-Mead*⁴ approach to nullity should be confined to those cases where the failure to comply with the requirements of section 173 of the 1990 Act as amended is apparent on the face of the notice itself. The matters at issue in this case could not fall within the scope of what can amount to a nullity argument as defined in *Koumis*, as they involve the examination of delegated reports and related documents.
6. Recent case law takes the matter further. In *Beg*⁵, the allegation that the person who had issued a planning enforcement notice had not had the authority to do so was not an allegation of an error on the face of the notice, since resolving it required looking at outside material. Therefore, any such error would not result in the notice being a nullity. The appellants' arguments went to the issue of the notice's validity. This is because they are points which could have been pursued before a planning inspector on an appeal against the enforcement notice to the Secretary of State, if such an appeal had been issued in time. Alternatively, they could have been pursued by an application for Judicial Review in the High Court.
7. Thus, I consider that nullity arises via s173 of the 1990 Act as amended, comprising non-correctable errors on the face of the enforcement notice. Invalidity arises by way of such matters as are before me. I have, therefore, considered whether the notice is invalid because there was no authority to issue it.
8. As set out above, the alleged breach described in the 17 July 2018 report to the Head of Planning, BC and L does not mirror the alleged breach set out in the notice. The report was signed by Mr Lennox as Senior Development Compliance Officer, who has since left the Council, and countersigned by Mr Adam Neil on behalf of the Head of Planning, BC and L.
9. The Council has subsequently sought to explain the apparent discrepancy. It is stated that the report of 17 July 2018 was submitted in error as that report was superseded. A further report has been provided dated 20 July 2018. Apart from punctuation corrections and the date, this is identical to the first except for the section entitled "breach alleged", which sets out the alleged breach as it appears in the notice. The appellant has expressed concerns because the Council did not offer this explanation during the Inquiry.
10. I appreciate that one of the signatories has since left the Council, but the report was countersigned by Mr Adam Neil who was present throughout most of the Inquiry. No explanation is offered as to why the existence of a second report was not raised at the time, and it is not clear why the breach alleged was re-worded having been countersigned.

² APP/N1920/C/15/3005612 (lead) dated 10 November 2015.

³ *Koumis v SSCLG* [2014] EWCA Civ 1723.

⁴ *Miller Mead v MHLG* [1963] 2 WLR 225.

⁵ *Beg and ors v Luton BC* [2017] EWHC 3435 (Admin).

11. Nonetheless, the second report has been submitted to the Planning Inspectorate by the Council's Principal Solicitor and, while further explanation would have assisted, there is no evidence that its validity is questionable.
12. Under the Council's Scheme of Delegation to officers, as set out in the constitution, authority to issue an enforcement notice is delegated to the Head of Planning, BC and L. The postholder, Ms Julie Roscoe, has in turn authorised officer(s) to exercise delegated powers, acting on her behalf in accordance with the Council's Scheme of Delegation.
13. According to the sub-delegation schemes on behalf of the Head of Planning, BC and L, dated May 2015 and October 2018, the Development Compliance Manager, among others, was given powers to issue an enforcement notice. I am told that the sub-delegation scheme applicable to the relevant period cannot be found, although it is uncertain whether the May 2015 scheme remained in force. The Council argues that it is clear from the documents available that the scheme has not materially altered in relation to the officers authorised to issue an enforcement notice. The authorisation is assigned to a post, rather than a named individual, and this is consistent over the period covered by the two schemes.
14. In this case, the authorisation report was signed by the Development Compliance Manager, Mr Adam Neil, for the Head of Planning, BC and L. This authorised the issue of the notice, which was duly signed by the Head of Planning, BC and L, in accordance with the Council's Scheme of Delegation to officers, as set out in the constitution. I am satisfied on the balance of probabilities that Mr Neil had the relevant authority to authorise the issue of the notice as served. Furthermore, when Ms Roscoe signed the notice, I am satisfied she had the relevant powers to do so.
15. The appellant extends his argument to question the motives of the Council. It is claimed that the Council is attempting to use any means at its disposal to remove shisha smoking places, such as the appeal site, from Wilmslow Road.
16. Having regard to *Wicks*⁶, where the motives of the local planning authority are challenged, then such matters are unsuitable for decision by a planning inspector. This is because they would involve complex assessment and investigation of the background to the commencement of enforcement action. The question of whether a power has been exercised correctly can be distinguished from the situation where a notice is a nullity, or invalid, because there was no power to issue it at all. Therefore, I have not considered this matter further. Expediency is ultimately a matter for the Council.
17. For the reasons given above, I conclude that the notice is not a nullity, or otherwise invalid, and I have proceeded to consider the grounds of appeal as set out below.

The appeal on ground (d)

Preliminary Matter

18. In 'legal' grounds of appeal, the onus of proof is firmly upon the appellant with the relevant test of the evidence being the balance of probabilities. The applicant's own evidence does not need to be corroborated by independent

⁶ *R. v Wicks* [1998] A.C. 92; [1997] J.P.L. 1049.

evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided his evidence alone is sufficiently precise and unambiguous.

Main Issue

19. The main issue in this case is whether the appellant has shown on the balance of probability that there was a material change of use of the premises from a restaurant (A3) to a shisha smoking place (sui generis) on or before 26 July 2008 and that this use then continued for 10 years after the date of change without any significant interruption.

Reasons

Evidence

20. The appellant relies on sworn evidence in the form of four Statutory Declarations. While this evidence has not been tested by cross-examination, it can be given substantial weight as solemn declarations made under the Statutory Declarations Act 1835. All the customers state that the Blue Mist Café [at 110 Wilmslow Road], and under its previous trading name the Pink Garlic Restaurant, has been used as a shisha bar for an uninterrupted period in excess of 10 years.
21. K O'Shaughnessy states she remembers that it was March 2008 when she started smoking shisha at the property. She has visited nearly every weekend since that date and knows that there has been consistency in the use of the property as a shisha bar. T Khan lives near the Blue Mist Café and visits regularly in the evenings. It is stated that the bar was called Pink Garlic in March 2008 and has been a shisha bar since then.
22. N Ilyas makes weekly visits to the Blue Mist Café and has done so since February 2008, also confirming that it has been used for shisha smoking since then. C Entwistle remembers it was late 2007 when he started smoking at the property. He has visited regularly since then and knows there has been consistency of use since late 2007.
23. The appellant also refers to a 'FLARE Report'⁷, which I understand was produced from a Council database. This indicates the Blue Mist Café was brought to the attention of officers in April 2010 for shisha smoking.
24. The Council has sought to provide evidence of its own to contradict that of the appellant. A Street View image dated September 2008⁸ shows signage stating that the premises was available for weddings, conferences and as a function hall. No reference is made to the smoking of shisha on the signage, in contrast with other shisha smoking establishments⁹. A later image dated May 2011¹⁰, shows signage advertising the Blue Mist Café as a shisha smoking place.

⁷ Hearing document 7.

⁸ Appendix 2 of Council's Statement of Case.

⁹ Photographs at Appendix 2 of the Council's Proof of Evidence by M Kilsby.

¹⁰ Appendix 4 of the Council's Statement of Case.

25. The Council states that Pink Garlic was visited on 8 August 2008, when food hygiene offences were observed which were subsequently prosecuted. A related newspaper article says the restaurant was required to close for three days for cleaning¹¹. A premises licence received 1 November 2010 describes the use as regulated entertainment and the serving of food and drink¹². A planning application for alterations to the front of the premises, dated 7 June 2015, describes the use as a café¹³.
26. I have also had regard to the comments made by the interested people who gave evidence at the Inquiry. Councillor Akbar explained he was elected to the Council in 2010. When canvassing throughout 2009, he spoke with residents of Eva Street who mentioned the appeal premises, and other establishments, in the context of discussing the challenges associated with shisha cafés. Cllr Akbar went on to state that Pink Garlic was a restaurant at that time. Councillor Rowles pointed out that Pink Garlic was not a shisha bar when it was fined for food hygiene offences. Ms Madron and Councillor Lovecy both stated that the Blue Mist Café was one of the first shisha smoking places.

Analysis

27. The Council argues that the principal activity taking place is the preparation and sale of shisha to be smoked within the premises, with the ancillary provision of a limited range of food and drink. This is consistent with what I saw on site and is not disputed by the appellant. Thus, it is necessary to establish when the primary use of the premises changed from a restaurant to a shisha smoking place.
28. It is agreed that the Blue Mist Café was formerly known as Pink Garlic Restaurant, but the nature of the activity taking place at Pink Garlic is in dispute. The appellant claims that the property has been used as a shisha smoking place since 4 October 2007. The date provided is specific but there is no contextual information to explain why it has significance in respect of the change of use.
29. The Statutory Declarations confirm that shisha smoking took place on the premises from late 2007/early 2008, when it was known as Pink Garlic. All say the premises "...has been used as a shisha bar for an uninterrupted period of 10 years". However, the scale of the activity is not apparent. The comparison with other shisha establishments in the vicinity does not confirm that all were similar in nature, only that the customers preferred the appeal premises for its ambience and customer service. The customers travelled relatively long distances but, again, this does not show the scale of the shisha smoking was substantial, only that it took place and the entertainment on offer justified making the journey.
30. The food hygiene offences reported by the Council strongly suggests that the preparation, sale and consumption of food at the premises, at that time, was a primary use. The Council states that the date of the officers' visit to Pink Garlic Restaurant was 8 August 2008, the corresponding press article was dated 20 April 2010. Furthermore, there is an extensive enforcement history related to smoking on the premises dating from March 2011¹⁴. This shows the

¹¹ Appendix 3 of the Council's Statement of Case.

¹² Appendix 10 of the Council's Statement of Case.

¹³ Appendix 11 of the Council's Statement of Case.

¹⁴ Appendix 4 of Appellant's Proof of Evidence.

Council was not actively monitoring shisha smoking at the premises before that date.

31. I have considered the signage changes at the premises which, together with the FLARE report, show rebranding took place sometime between September 2008 and April 2010. The signage, and the name itself, indicates that the Blue Mist Café was being promoted as a place for shisha smoking. This does not show that shisha smoking was not taking place previously, but suggests it was not a primary use at that time.
32. The evidence from interested people corroborates the appellant's account to a certain extent. It seems that shisha smoking was taking place around 2009, but the extent of that activity is unclear. In any event, this is after the relevant date for the purposes of the ground (d) appeal.
33. On the basis of the evidence presented, I am not satisfied that the material change of use occurred prior to 26 July 2008. I accept that shisha smoking took place when the premises was known as Pink Garlic, but the evidence strongly indicates the primary use was a restaurant. I consider it likely that the scale of shisha smoking increased incrementally and, for a time, there may have been a mixed use operating. However, the evidence supports a finding that the material change of use to a shisha smoking place occurred at the time of the re-brand, when Pink Garlic became the Blue Mist Café.

Conclusion

34. I conclude that the totality of the evidence presented does not show, on the balance of probabilities, when the material change of use occurred and how the premises has been used as a shisha smoking place for a continuous period of at least ten years. Therefore, the appeal on ground (d) fails.

The appeal on ground (a)

Preliminary Matters

35. The Council maintains that the use constitutes indoor smoking and, as such, is unlawful under the Health Act 2006. It is claimed that it would be irrational to grant planning permission for a use which, if carried out, would lead to the commission of a criminal offence. Moreover, it is argued that public health is a material consideration attracting substantial weight as it relates to the use and development of land¹⁵. In response, the appellant refers to other Inspector's decisions, where it was found that it is not the role of the planning system to duplicate or to impose more stringent controls on activities regulated under other legislation¹⁶.
36. I accept that, unlike other environmental permitting regimes, there is no parallel licensing regime which applies to this use. However, there is a distinction to be drawn between the contravention of the Health Act and the public perception of risk. Although shisha smoking cannot be conducted lawfully at the appeal premises, I concur that it is not the role of the planning

¹⁵ *Stringer v MHLG* [1970] 1 W.L.R. 1281.

¹⁶ Appendices 1 and 2 of Appellant's Proof of Evidence, APP/P4605/C/11/2150281 dated 2 September 2011, APP/X5990/C/18/3195960 dated 19 March 2019 and Hearing document 11, APP/B4215/C/18/3212030 dated 5 August 2019.

system to duplicate or to impose more stringent controls on activities regulated under other legislation.

37. I am mindful that the Courts have held the fear of adverse effects on health can be a material consideration¹⁷, and the weight to be given to such considerations is a matter for the decision maker¹⁸. Also, promoting social objectives can be a material consideration in the planning context, where these relate to land use¹⁹, as set out in the National Planning Policy Framework (the Framework).
38. The Council and the residents who spoke during the Inquiry expressed fears about the impact of the development on public health, primarily due to the adverse health related impacts of smoking. While I do not doubt the impact of shisha smoking on the health of the customers and staff, there is limited evidence to support the assertions that the use of the appeal premises normalises and promotes smoking across the wider community. Consequently, in my judgement, this consideration carries limited weight.
39. In addition to the policies cited in the notice, the main parties also referred to Policies C1, C5 and T2 of the Manchester Core Strategy (2012) and saved policies DC12, DC26 and E3.3 of the Unitary Development Plan (UDP) (1995). I have had regard to these policies in this decision.
40. The appellant also relies on the Council's Hot Food Takeaway Supplementary Planning Document (2017), which refers to the Rusholme District Centre as a centre to serve the night-time economy, as described below. This document relates to hot food takeaway uses, as opposed to shisha smoking venues. It has limited relevance to the matters before me and carries little weight.

Main Issues

41. The main issues in this case are:

- The effect of the development on the living conditions of neighbouring occupiers with regard to noise and disturbance, and odour;
- The effect of the development on the character of the Rusholme District Centre.

Reasons

Living Conditions

42. The appeal site is in part of the Rusholme District Centre known as 'The Curry Mile'. It is situated on the first floor of the building, within a parade of restaurants, cafes and hot food takeaways. Wilmslow Road is predominantly commercial in character, however, there are residential properties above some of the commercial units in the vicinity. Importantly, there are residential streets close to the rear of the premises, characterised by modest, two-storey terraced housing.
43. The Blue Mist Café is a popular shisha smoking place which opens from midday to 4am daily. It occupies an extensive area on the first floor with its

¹⁷ *Newport BC v SSW & Browning Ferris Environmental Services Ltd* [1998] Env. L.R. 174.

¹⁸ *Trevett v SSTLGR* [2002], EWHC 2696 Admin.

¹⁹ *R. (oao Copeland) v Tower Hamlets LBC* [2010] EWHC 1845 (Admin); [2010] L.L.R. 654; [2010] 6 WLUK 201 (QBD(Admin)).

main access from Wilmslow Road. There are two fire escapes which lead onto an alley running along the rear of the premises.

44. The main parties agree that the Curry Mile is recognised as an area where the streets are busy into the early hours of the morning. I was also told that there are several establishments that operate under historic permissions and remain open until the early hours. While the Council disputes this assertion, my attention was drawn to a delegated report²⁰, written in respect of No 72 Wilmslow Road, in which the planning officer advised that opening hours extending to 01:00am and 02:00am would be in line with similar consents in the Rusholme District Centre.
45. The enforcement notice specifies concerns about noise outbreak from the site and increased noise from comings and goings in the evening and at night. I heard from several residents who described noise and disturbance associated with the venues that stay open into the early hours of the morning, seven days a week. The Platt Claremont Residents Association attributes much of this to the shisha smoking venues in the area and the Blue Mist Café in particular. I am aware that there are several such establishments in the vicinity with late or unrestricted opening hours, which may also be contributing to the issues described by the residents. However, it is logical to attribute some of the noise and disturbance to customers of the Blue Mist Café, as it is a large and popular venue.
46. Background noise on Wilmslow Road is dominated by passing traffic and sound from the daily hustle and bustle of life. I accept that, in this urban location, it is reasonable to expect that residents already experience a high level of noise and disturbance. Nevertheless, that is not necessarily a strong enough reason to permit the development. Crucially, I noted that noise levels are significantly lower on Eva Street, Ravensdale Street and the other residential roads, away from the junctions with Wilmslow Road. In these areas, noise associated with people coming and going to the premises would be audible and likely to be a nuisance, especially during the times of the day when people expect to relax in their homes.
47. I appreciate the entrance is away from the main residential areas. However, due to the venue's popularity, which attracts people from a relatively wide area, it is probable that a proportion of customers would arrive by car. The premises can accommodate many people, and if a proportion drive, the number of cars is likely to be significant which generates demand for parking. While some people may choose to park in one of the two public car parks nearby, it is highly likely that there would be demand for parking on the residential streets close to the café. This would draw activity from the entrance into the residential areas, which would impact on neighbours' quality of life. I understand that the area is well-served by public transport but the appellant conceded this would be limited during the night-time. Car parking restrictions are not in place and there is no guarantee that a Traffic Regulation Order would be imposed, despite the Council's current ambitions.
48. The level of sound emitted from car doors closing, engines starting and vehicles manoeuvring, people talking on their way to their vehicles, car stereos and disturbance from headlights is likely to be particularly noticeable at times of the day or night when nearby residential occupiers expect to enjoy

²⁰ Appendix 7 of the Appellant's Proof of Evidence.

the comfort of their own homes. This would result in general disturbance to neighbours, especially the occupants of Eva Street and Ravensdale Street. In my opinion, the absence of alcohol will do little to assist in mitigating this impact, due to the extent and type of operations at the premises.

49. The appellant indicated that a planning condition to restrict the hours of opening from midday to 02:00am on Sunday to Thursday and midday to 03:00am on Fridays and Saturdays would be acceptable. This would be an improvement on the current situation but, in my view, would not be sufficient to address the planning concerns identified.
50. The appellant has provided a response to a request made under the Environmental Information Regulations 2004, which confirms that no complaints from residents relating to noise outbreak nor comings and goings were ever made to the Council²¹. There may be several reasons why residents did not make formal complaints and this does not show there is a lack of nuisance. In contrast, I heard from local councillors who explained that they had received general complaints.
51. I appreciate that the Inspector who determined the appeal at 117 Wilmslow Road²², which concerned a change of use to a shisha smoking place, found that the additional comings and goings of customers would be unlikely to be significant in the context of the acknowledged late night 'vibrancy' of the locality. However, the floorspace of that building is considerably smaller, and its relationship with residential streets is different. Consequently, the assessment is not comparable with the appeal before me.
52. I have considered the fallback position that the premises could operate as a restaurant. While this would generate demand for parking and associated activity, I consider that this is less likely to impact on the residents' quality of life due to the nature of the shisha café. Although it is argued that the use attracts families, it is highly likely that a restaurant use would be more family orientated. People, especially families, do not tend to visit a restaurant during the early hours of the morning on a regular and frequent basis.
53. In relation to noise break-out, I heard about incidences of staff using the rear fire escapes for access to the bins and/or simply congregating there during the early hours. The Council also referred to reported incidents of anti-social behaviour on Wilmslow Road²³. I accept that such activity would be disturbing and a source of concern and annoyance to the neighbours, but these occurrences are less likely to be regular and persistent. I saw that there are several wall mounted television screens in the venue and I understand that music is played, but the evidence to support concerns about noise emanating from within the premises is limited.
54. A further issue, raised by the Council, relates to odour. I am referred to an appeal decision in which the Inspector commented that shisha smoking might affect air quality and give rise to concerns about odours²⁴.
55. During my site visit I walked along Wilmslow Road and the alley at the rear of the premises, and around the residential streets nearby. I was conscious of

²¹ Appendix 8 of the Appellant's Proof of Evidence.

²² Hearing document 11, APP/B4215/C/18/3212030 dated 5 August 2019.

²³ Appendix 5 of the Council's Statement of Case.

²⁴ Appendix 9 of the Council's Statement of Case, APP/X5990/X/16/3153284 dated 4 August 2017.

odours from cooking and shisha smoking but this could not be attributed to the Blue Mist Café, as there was no smoking or food preparation taking place at the time of my visit. I also saw that the brazier is connected to a flue which discharges onto the roof, not into the alley as described by the Council. There are no rear windows, although it is possible that some smoke may filter down the fire escapes, if the doors are open as they were on my visit. While odour would be a source of nuisance, I find the evidence to support claims of significant odour emanating from the premises to be limited.

56. I note the appeal decision at 130 Wilmslow Road²⁵, insofar as that related to the impact of odour on living conditions. However, the site-specific circumstances were different in that case as the shisha smoking would most likely take place in an open or semi-open area to the rear of the site.
57. I have considered additional concerns about bins and the disposal of refuse. The Blue Mist Café has its own commercial bins which, at the time of my visit, were located partly within a designated bin store. I accept that the bins may not always be kept there, not least because the size of the store is limited. If bins are left blocking footpaths or are sited close to the houses on Eva Street, this would be a nuisance and a likely hazard. However, the main parties agreed that this matter could be controlled by a planning condition.
58. To conclude on this issue, I consider that the level of noise and disturbance arising from the likely number of customers coming and going to and from the shisha café is likely to have an adverse effect on the living conditions of neighbouring occupiers. The development conflicts with Policies SP1, DM1 and C10 of the Core Strategy (2012) which, among other things, seek to make a positive contribution to the health and wellbeing of residents and ensure residential amenity is protected, and Policies DC12 and DC26 of the UDP insofar as they seek to protect residential amenity. The development does not provide car parking and conflicts with Policy T2 of the Core Strategy. However, the policy is aimed at accessibility as opposed to residential amenity, hence, the conflict carries limited weight.

Character of the Rusholme District Centre

59. The Curry Mile has a reputation for providing Asian and Middle Eastern cuisine and refreshments to both the local and wider population of Manchester. It also functions as a tourist attraction with a unique and vibrant multi-cultural offering. The Council considers that the development contributes to a negative perception of the area due to high levels of crime and anti-social behaviour. It is considered that the proliferation of unauthorised shisha smoking establishments is eroding the distinctive character of the Curry Mile to the detriment of the vibrancy of the District Centre.
60. I heard from residents, many of whom have lived in the area for some time, who explained that the area's character is changing. The residents and local councillors spoke persuasively about anti-social behaviour and a fear of crime, along with concerns that the District Centre no longer serves the local community but attracts a different and transitory clientele. However, it was acknowledged that the issues described could not be solely attributed to the appeal premises as they relate primarily to the cumulative impact of the shisha smoking establishments.

²⁵ Hearing document 4, APP/B4215/W/19/3226481 dated 9 July 2019.

61. The Council advises that there are around 13 shisha smoking places within 200m of the appeal premises. It is considered that this concentration is detrimental to the character of the area as it limits the ability of the District Centre to serve the local community. Hence, a balance of uses is sought.
62. I saw that there are a number of shisha smoking places in the parade, which equates to about 30 percent. Although this is a relatively high concentration of one particular use, I am aware that the majority are not authorised uses and the Council has commenced enforcement action. In view of this, it is likely that the establishments may not endure in the short to medium term.
63. Shisha smoking appeals to a particular sector of the community and I accept that shisha lounges are less likely to appeal to families or serve the local community in the same way as a shop, restaurant or traditional café would. While the change of use has resulted in the loss of an A3 use, it has not led to the removal of smaller, street level units that are more likely to provide retail/service uses that benefit from a street frontage. In addition, shisha smoking forms part of the evening/night-time economy that attracts customers and brings activity to the area. Overall, I am not persuaded that the use detracts from the character of the District Centre.
64. I note that this finding accords with that of the Inspector who determined the appeal at 72 Wilmslow Road²⁶, insofar as that related to the effect of that development on the character of Rusholme District Centre.
65. The fear of crime is a relevant consideration to which I have had regard. However, there is limited information that relates this perception to the appeal before me. I note the reported incidents referred to by the Council, but these incidents do not equate with the wider public perceptions described by the Council and residents.
66. To conclude, I find that the development does not have an adverse effect on the character of the Rusholme District Centre. The development accords with Policies C1, SP1, C5 and C10 of the Core Strategy, which seek to enhance district centres as a focus for local communities and promote a balanced and socially inclusive leisure and evening/night-time economy. The development meets the aims of the Framework insofar as it seeks to ensure the vitality of town centres.

Other Matters

67. The Council states that the solid shutter at the entrance to the premises is detrimental to the visual appearance of the thoroughfare and contrary to Policy E3.3 of the UDP. The doorway is seen within the context of the wider parade, which comprises varied shop fronts and an array of signage. I find its visual impact to be minimal and not in conflict with Policy E3.3.
68. Concerns about the venue's accessibility for people with limited mobility, to which Policy DC12 of the UDP refers, would apply equally to the former use as a restaurant. This consideration carries limited weight.
69. The appellant claims that members of the community are being unfairly targeted by the Council. The inference being that a particular section of the

²⁶ Appendix 3 of the Appellant's Proof of Evidence, APP/B4215/W/18/3217729 dated 23 April 2019.

population with protected characteristics requires this type of development where people can gather and socialise due to specific cultural reasons.

70. Having regard to the Public Sector Equality Duty, I have borne in mind the need to eliminate discrimination; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and foster good relations between persons who share a relevant protected characteristic and persons who do not share it. I do not consider a particular section of the community would suffer a disadvantage if planning permission is refused. There is nothing before me to indicate that this type of operation can only occur on this site, or that the perceived social and cultural need for this type of shisha café/social club cannot be met elsewhere.
71. I conclude that the development materially harms the living conditions of nearby residents and to this finding I attach significant weight. The case in favour of planning permission has been elegantly and forcefully put. Nevertheless, in my planning judgement, the considerations advanced by the appellant in support of this ground (a) appeal do not, on balance, outweigh my findings on this main issue.

Conclusion

72. For the reasons given above, the appeal on ground (a) fails. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed planning application.

The appeal on ground (g)

73. It is necessary to consider whether the specified compliance period, one week, falls short of what should reasonably be allowed. The appellant is seeking six months to allow the submission of a planning application, indicating that he would be seeking something different from the deemed planning application. The ground (a) appeal considered the use of the premises as a shisha smoking place, which the appellant says is integral to the business. There is no further information to explain why a further planning application would be necessary.
74. No physical works are required to comply with the requirements and the use could cease within this short period of time. I appreciate there will be an impact upon a business and a slightly extended period would assist. Contrary to the Council's submissions on this matter, I consider one month is reasonable and appropriate. This is a just and proportionate response to the circumstances presented and strikes a fair balance between the competing interests of the wider public and the appellant.
75. Therefore, to this limited extent, ground (g) succeeds.

Conclusion

76. For the reasons given above, I conclude that the appeal should succeed on ground (g) only. I shall uphold the enforcement notice with a variation and refuse to grant permission on the deemed planning application.

Formal Decision

77. It is directed that the enforcement notice is varied by the deletion of the words "seven days" in paragraph 6 and their replacement with the words "one month".
78. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Debbie Moore

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr David Hardy of Squire Patton Boggs (UK) LLP

He called:

Mr Darren Pomfret

FOR THE LOCAL PLANNING AUTHORITY:

Ms Constanze Bell of Counsel instructed by Ms Juliet Mbam of Manchester City Council Legal Services

She called:

Mrs Janine Renshaw-Livesey

Mr Matthew Kilsby

INTERESTED PERSONS:

Cllr Rabnawaz Akbar (Local Councillor)

Cllr Emily Rowles (Local Councillor)

Cllr Jill Lovecy (Local Councillor)

Cllr Ahmed Ali (Local Councillor)

Ms Natalia Maximova (Rusholme and Fallowfield Civic Society)

Ms Anne Tucker (Platt Claremont Residents Association)

Ms Susan Madron (Local Resident)

Ms Linda Foley (Local Resident)

DOCUMENTS SUBMITTED DURING THE INQUIRY:

1. *Trevett v SSTLGR* [2002], EWHC 2696 Admin
2. *R. (oao Copeland) v Tower Hamlets LBC* [2010] EWHC 1845 (Admin); [2010] L.L.R. 654; [2010] 6 WLUK 201 (QBD(Admin))
3. *Newport BC v SSW & Browning Ferris Environmental Services Ltd* [1998] Env. L.R. 174
4. Appeal decision APP/B4215/W/19/3226481 dated 9 July 2019
5. Closure Order: Suede, 110 Wilmslow Road, Manchester dated 7 June 2019
6. 'Street View' photographs dated Sep 2008 and Nov 2010
7. Summary 'FLARE' report No 64
8. List of suggested planning conditions
9. Roof photograph dated 31 July 2019

DOCUMENTS SUBMITTED AFTER THE INQUIRY BY AGREEMENT:

10. Appeal decision APP/N1920/C/15/3005612 dated 10 November 2015
11. Appeal decision APP/B4215/C/18/3212030 dated 5 August 2019
12. Extract from Council constitution
13. Schemes of Delegation May 2015 and October 2018
14. Delegated Report dated 20 July 2018