



Appeal Decision

Hearing Held on 25 May 2021

Site visit made on 25 May 2021

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 June 2021

Appeal Ref: APP/R5510/C/19/3234787

land at 422 Bath Road, West Drayton, Middlesex UB7 0EB

- 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 Raymond Smith (Relaxation and Leisure) against an enforcement notice issued by the Council of the London Borough of Hillingdon.
 - The enforcement notice, numbered 3E04/HS/ENF/015508, was issued on 8 July 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises from a D2 Class Use to a Sui Generis use as a naturist establishment and swingers club.
 - The requirements of the notice are to cease the unauthorised use of the premises as a sui generis use as a naturist establishment and swingers club.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) (c) (f) and (g) 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.
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Decision

1. It is directed that the enforcement notice is varied by the deletion of 3 months and the substitution of 9 months as the time for compliance.
2. Subject to the variation, 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. In the Statement of Common Ground (SOCG) it was agreed by the parties that the notice could be corrected to reflect the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, which came into force on 1 September 2020. Amongst other things this provided that Classes A1, A2, A3, B1, D1 and D2 are replaced by Class E in Part A of Schedule 2.
4. However, as the notice was issued prior to the commencement of the material period, it referred to the use classes which applied at that time. The appellant agreed at the Hearing that there were no material considerations flowing from these changes. Accordingly, the appeal will be determined by reference to those former use classes, and there is no need to correct the notice.
5. Since the notice was issued, the Hillingdon Local Plan Part 2 - Development Management Policies (LP part 2) has been adopted (January 2020). This means

that policy DMCI 1 - Retention of Existing Community Facilities is to be afforded full weight in the determination of this appeal.

Ground (c)

6. The appeal has been lodged on ground (c), that the matters stated in the notice do not constitute a breach of planning control. This is a legal ground where the burden of proof is on the appellant to make out the case that there has not been a breach of planning control.
7. The gist of the appellant's case is that the use of the site falls within the lawful D2 use (Assembly and Leisure) and therefore does not represent a material change of use for which planning permission is required. In contrast, the Council consider that the current use of the building falls outside Class D2 and is sui generis.
8. The appellant has provided some broad details about how the building has been used since the 1950s. These include a nightclub during the 1960s through to 1990s. The site was then occupied by various tenants, being used as a gym and a boxing club for a number of years. It was then vacant between 2017 until the appellant leased it in 2019. I have no evidence before me to confirm whether these uses were lawful, or how they relate to the planning history provided at Appendix 2 of the Council's Statement.
9. Although at the time of my site visit, the premises were closed due to COVID-19, the internal layout of the building was still apparent. From my site visit and the evidence, the current position is that the ground floor of the building comprises a reception area, office accommodation and storage, in addition to a sauna, steam room, a small swimming pool with associated showers and changing facilities, and a number of small 'breakout rooms' with raised mattresses/seating. On the first floor there is an open bar area, canteen style eating area, a small cinema and a large room understood to be used for games, including chess and board games. This room had a timber floor and whilst somewhat informal, is understood to be the area described as a dance floor. There are a further range of breakout rooms, with a larger separate room described and equipped, as one might imagine, as a dungeon with a small enclosed area. Amplified music from various radio stations is available throughout.
10. At the Hearing, the way the building is now used was described in some detail. Between 1130 and 1800 the building is used by naturists. All users must be members of the General Club, at an annual fee of £10 and the Kestrel Naturist Club. Additionally, on Monday and Wednesdays, the premises are operated by Heathrow AbFab and open between 1800 and midnight, and on Fridays and Saturdays 2130 to 0300. Those attending these events will require General Membership with an additional entry charge. There are currently no other organisations, or community groups using the premises.
11. Heathrow AbFab, provides a venue where like-minded adults can meet socially with the potential to engage in intimate relationships. The appellant asserts that sexual activity is not actively encouraged. Nonetheless, a number of breakout rooms and the 'dungeon' room have been made available.
12. The scope of a Class D2 use can cover a wide range of activities, including cinemas, concert halls, bingo and dance halls, swimming pools and

gymnasiums. At the Hearing the Council accepted that the use of the site for individuals wishing to socialise, swim, play board games, albeit without clothing, could conceivably fall within use Class D2. I have no reason to disagree with this view. Nevertheless, the remainder of the activities form a significant part of the overall use of the site and I do not consider that the scope of Class D2 can be interpreted to include any activity with elements of assembly or leisure.

13. Overall, whilst the layout and use of the building remains as a single planning unit, the evening activities clearly differ in character from the daytime use, with their website promoting a party like atmosphere, which is in contrast to the low key daytime naturist use.
14. I recognise that the site lies within a predominantly commercial area. However, Heathrow AbFab provides a niche, adult only party style venue over the four evenings that it is open. The opening hours mean that patrons and staff would leaving the site up to 0300 in the morning. To my mind it therefore has a significantly different character to the previous gym and boxing club use and the current daytime naturist use. The current evening use is, in my judgement, more akin to a nightclub which similarly would operate late into the night, providing music, the opportunity to socialise, dance and enjoy floor shows or entertainment.
15. Accordingly, in my judgement the current use of the building falls outside the scope of D2 and represents a material change of use for which planning permission is required. The appeal on ground (c) therefore fails.

Ground (a) and the deemed application

Reasons

16. I have had regard to the reasons why the Council issued the notice and consider that the main issue is the effect of the development on the provision of leisure and recreational facilities in the local area. It is important to make it clear that my decision relates solely to land use considerations and not in any way to any moral judgements.
17. I have already found that the development constitutes a material change of use of the site for which planning permission is required. Accordingly, I shall consider the appeal in the context of the relevant Development Plan policies. Policies DMCI 1 of the LP part 2 and C12 of the A VISION FOR 2026 Local Plan: Part 1 Strategic Policies (2012) (LP part 1).
18. These policies, when taken together, set out the Council's aim to safeguard existing viable leisure and recreational facilities, unless an alternative can be secured, or it is demonstrated that the asset is no longer needed. Where development would result in the loss of an existing community facility, it is clear that evidence must be provided to demonstrate that: The proposal would not lead to a shortfall in provision for the specific use within the local catchment area; There is either no demand for another suitable social infrastructure use on site, all the site/premises is no longer appropriate for social infrastructure uses; and any replacement/relocated facilities for the specific use, provides a level of accessibility and standard of provision that is at least equal to that of the existing facilities.

19. The Council have provided two street maps that show the availability of Class D2 uses in the area. Other than private Hotel facilities such as the Premier Inn next door, there seem to be limited leisure and recreational opportunities available for local residents.
20. The appellant submits that the style of the building plays a part in the failure of the various commercial businesses over the years. I recognise that its appearance is somewhat utilitarian, but to my mind this, in itself, does not preclude its continued use as a community venue. I also acknowledge that a proportion of the Members, live within the UB postcode with Membership open to anyone living in the locality. However, this postcode covers a considerable area and a substantial proportion of the membership live further afield. Accordingly, given the rather niche nature of the uses, I am not persuaded that it can reasonably be described as meeting the needs of the local community, including deprived groups.
21. From the evidence provided by the appellant, the site was vacant for some 2 years following the failure of the gym and boxing enterprises. I have been provided with a google street view image, understood to be dated July 2017 which shows that the freehold was for sale at that time. However, I have been provided with no corroborating evidence to demonstrate how the building was marketed, the target market or how it was valued. Moreover, I have little evidence to explain why the previous uses have failed, or whether an alternative lawful use could be viable in this location.
22. For the above reasons, I find that the change of use of the site from Class D2 to a naturist establishment and swingers club, has resulted in the loss of a leisure and recreational facility and therefore conflicts with Policies C12 of the LP part1 and policy DCMI 1 of the LP part 2.

Ground (f)

23. The appeal is that the requirements of the notice exceed what is necessary to achieve the purpose of the notice. The purpose of an enforcement notice are set out in section 173 of the 1990 Act and are to remedy the breach of planning control (s173(4)(a)) or as the case may be, to remedy injury to amenity (s173(4)(b)). In this case, the purpose of the notice is to remedy the breach of planning control by requiring the unauthorised use to cease.
24. The appellant asserts that the refusal of the Council to meet with them during their investigation of the site, meant that they were unable to try to discuss an alternative scheme that might overcome some, or all of their concerns.
25. An appeal under ground (f) provides some scope for a solution short of a complete remedy as set out above. However, any substituted scheme must be precisely defined. From the evidence I have before me, it is not clear how this could be achieved and whether any resultant adjustments would overcome the harm identified. Accordingly, there is no 'worked out alternative', whereby the notice could be varied under ground (f) with the necessary degree of precision. Consequently, the appeal on ground (f) is dismissed.

Ground (g)

26. For an appeal under this ground to succeed, it is necessary to consider whether the compliance period of 3 months is too short. The appellant has suggested

that an alternative timescale of 12 months, to comply with the full requirements of the notice would be more reasonable.

27. The development must be considered in the context of the identified harm and the time required to undertake the works. Nonetheless, I am mindful that the development provides employment for up to 30 staff some of whom may have been, or continue to be, furloughed during the current COVID-19 pandemic. I am also aware that during the course of this appeal, the appellant has extended the lease for two years from March 2021.
28. I therefore consider that additional time should be given to allow time to relocate the commercial activity and for staff to seek alternative employment as necessary. It would also give an appropriate timescale for alternative uses for the site to be discussed with the Council. I shall therefore vary the time for compliance to 9 months.
29. The appeal on ground (g) therefore succeeds to this extent.

Other matters

30. The appellant has raised, and I have considered, a number of matters in support of the development including the claimed closure of the Council's own facilities. However, I have not been provided with any numbers, or details for these sites to establish their relevance to this appeal. I also acknowledge that there may be a variety of reasons why individuals might choose to socialise at a safe premises such as this. Nevertheless, I do not consider, that any of these overcome the identified harm or lead me to a different conclusion.

Conclusion

31. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Hilary Orr

INSPECTOR

Appearances

FOR THE APPELLANT:

Ray Smith	Agent
Natasha Dykes	Operations Manager

FOR THE LOCAL PLANNING AUTHORITY:

Stephen Volley	Appeals Manager
Daniel Lord	Enforcement Officer
Natalie Fairclough	Solicitor
Desmond Adumekwe	

INTERESTED PERSONS:

None