The Planning Inspectorate

Appeal Decision

Site visit made on 17 May 2022

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 May 2022

Appeal Ref: APP/F5730/C/21/3283949
Unit 6, Concord Business Centre Concord Road, Acton, London W3 0TJ

- 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 Sayid Ali against an enforcement notice issued by Old Oak and Park Royal Development Corporation.
- The enforcement notice was issued on 19 August 2021.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Property to use as a shisha café/nightclub (sui generis) ("the Unauthorised Development").
- The requirements of the notice are:
  1. Cease the use of the Property as a shisha café/nightclub (sui generis);
  2. Remove all material, furniture, fixtures, fittings, equipment, and paraphernalia that facilitate the Unauthorised Development;
  3. Remove all bathroom facilities, and associated drainage and water connections that facilitate the Unauthorised Development;
  4. Remove all kitchen facilities and associated drainage and water connections integral to and that facilitate the Unauthorised Development;
  5. Remove from the Property all signs and advertisements which promote and facilitate the Unauthorised Development; and
  6. Remove from the Property all debris resulting from compliance with the above steps.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) 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.

Decision

1. 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.

Procedural Matters

2. The Appeal has only been lodged under ground (a). However, it is clear from the substance of their appeal submissions that the appellant is also seeking to appeal under ground (b), in so far as they state that the property has been vacant since 2019 and that they are proposing to change the use to "Sui Generis (Community centre with ancillary Shisha Bar)". As the Council have provided detailed comments on the appellant's statement, I am satisfied that

neither party would be prejudiced by the inclusion of this. I have therefore determined the appeal on this basis.

3. When an enforcement notice is appealed on ground (a) and the fee is paid on time, the appellant is deemed under s177(5) to have made an application for planning permission in respect of the matters stated in the enforcement notice as constituting the breach of planning control. Whilst at the time of my site visit, there was no longer any sign of the Shisha café/nightclub, the deemed planning application (DPA) is based on the material change of use carried out, as stated in the notice. I have therefore determined the appeal on this basis.

The Appeal on ground (b)

4. To succeed on this ground, the onus is upon the appellant to demonstrate on the balance of probabilities that the allegation has not occurred as a matter of fact.

5. The appellant states that the property has been vacant since 2019, and that they are proposing to change the use to "Sui Generis, Community Centre with an ancillary Shisha Bar). This use is different to that stated in the allegation in the Notice. Therefore, it appears that the appellant considers that the allegation (the material change of use of the Property to use as a Shisha Café/Nightclub) has not occurred. However, no further evidence has been submitted by the appellant to support this claim, and the appellant's own Design and Access Statement contradicts the claim that the property is vacant, by stating that "*the existing use generates some noise from the comings and goings of members*".

6. The Local Planning Authority (LPA) own investigation of the appeal site also contradicts the appellant's claim. Photographs of the site[1], provided by the appellant, following a request from Officers in August 2020, show low chairs and tables laid out throughout the site which are particularly suited to Shisha smoking. The photographs also illustrate walls and ceiling covered with imitation plants and mood lighting, in addition to a kitchen and toilets located to the rear of the site.

7. Furthermore, a screen shot of the gallery of images taken from the Sky Lounge (the name of the company of which the appellant is director of) website during September 2020[2], shows customers smoking Shisha and Shisha pipes stored inside the property. In addition, a screen shot of a review, images, and stills of videos of Sky Lounge, captured in November 2020, and posted on Google show customers smoking Shisha and dancing inside the property, with one reviewer describing the site as a "perfect place for Shisha…".

8. The LPA have also provided copies of the promotional materials from 2020 and 2021[3]. The promotional material over this period includes advertising for a grand opening and other late night entertainment events such as live music performances, DJ sets as well as the various Shisha flavours available. The promotional material shows an entry fee of £10, doors opening at 10pm and entries allowed up to 2am.

[1] Appendix 7 of the OPDC Statement.
[2] Appendix 8 of the OPDC Statement.
[3] Appendix 14 of the OPDC Statement.

9. The LPA also advise that Officers visited the Appeal Site on Saturday 7 August 2021 at 00:20 hours and inspected the kitchen area which consisted of mainly counters and a barbeque area where coals are prepared for Shisha. During this site visit Officers observed that the establishment offered Shisha as well as hot and soft drinks. Further evidence submitted by the LPA include photographs of discarded Shisha paraphernalia[4], and complaints received regarding noise and anti-social behaviour disturbance in the early morning hours[5].

10. The LPA's evidence, and the appellant's own photographs of the appeal site contradicts the appellant's claims that the appeal site has been vacant since 2019. The LPA statements provides very clear and compelling evidence that at the time the Notice was issued the appeal site was used as a Shisha café/nightclub.

11. On the balance of probabilities, and based on all the evidence before me, I conclude that the appellant has not shown that the alleged change of use has not occurred.

12. Accordingly, the appeal on ground (b) must fail.

Ground (a) appeal and the Deemed Planning Application (DPA)

Main Issues

13. Whilst the enforcement doesn't refer to concerns regarding the effect on neighbouring business with the Strategic Industrial Location (SIL) and the adequacy of parking provision, these are included within the LPA's Statement. As these are clearly material considerations, and the appellant has had the opportunity to respond, I have determined the appeal on the basis.

14. Therefore, the main issues are:

- The effect of the change of use on the function and operation of the designated SIL;
- Whether the change of use to a Shisha café/nightclub use contributes to a safe and secure environment;
- The effect of the change of use on neighbouring occupiers of the SIL with particular regard to noise and disturbance; and
- The adequacy of parking provision to serve the Shisha café/nightclub use, and the effect of any lack of provision on surrounding businesses in the SIL and highway safety.

Reasons

Preliminary

15. Amongst other policies, the notice states that unauthorised development would be contrary to policies contained within the Old Oak and Park Royal Development Corporation Post Submission Modified Draft Local Plan, 2021 (OPDC DLP). It is noted that the LPA state that further minor modifications of the OPDC DLP were submitted to the Planning Inspector in September 2021 and that further hearings were due to be held on 11 and 12 January 2022. The

[4] Appendix 11 of the OPDC Statement.
[5] Appendix 12 of the OPDC Statement.

LPA further state that the policies relevant to the appeal development are not impacted by the modifications to the OPDC DLP or the hearing sessions that were due to take place in January. Therefore, I have attached significant weight to these policies but not the full weight of an adopted Local Plan.

16. The notice also refers to The Mayor's Land for Industry and Transport SPG (GLA, 2012) which has been revoked and is no longer supplementary to the London Plan. I have therefore not considered this document as part of this appeal.

The function and operation of the SIL

17. The appeal site relates to a warehouse/light industrial building of brick construction with metal profile sheet cladding and pitched metal roof located within the SIL. Policy 1.1(c) of the London Borough of Ealing's Development Strategy Development Plan Document, 2012 (Development Strategy) seeks to promote business and enterprise by securing the stock of employment land, encouraging regeneration and renewal and being responsive to market demands. The policy further states that, for industrial and warehousing businesses, we will seek to protect its position as one of London's premier locations. Policy 3.2 of the Development Strategy seeks to retain and attract new business development along the A40 Corridor by maintaining a sufficient supply of industrial land, and encouraging sustainable, commercial development and improvements to access and amenity.

18. These policies and aims are supported by policies E4 and E5 in the London Plan, 2021 (London Plan), and the Old Oak and Park Royal Opportunity Area Planning Framework (OAPF). Policy E4 states that "a sufficient supply of land and premises in different parts of London to meet current and future demands for industrial and related functions should be provided and maintained". Policy E5 further states that "Development proposals within or adjacent to SILs should not compromise the integrity or effectiveness of these locations in accommodating industrial type activities and their ability to operate on a 24-hour basis." The OAPF supports the protection and intensification of the Park Royal SIL.

19. The appellant's Design and Access Statement seeks permission for a proposed community centre with ancillary Shisha bar, which is a materially different to the Shisha café/nightclub use alleged in the notice. However, as the appeal fails on ground b) the DPA is for a Shisha café/nightclub use. As such, I cannot take into consideration the planning merits of the proposed community centre with ancillary shisha bar use put forward by the appellant.

20. The unauthorised Shisha café/nightclub use results in the loss of industrial floorspace and capacity within the SIL and prevents the site from being used for industrial purposes. Furthermore, the unauthorised use of is not directly connected to the needs of industry, nor does it support the continued functioning of the SIL as an industrial and commercial area.

21. I therefore conclude that the unauthorised change of use results in unacceptable harm to the function and operation of the designated SIL, in conflict with policies 1.1(c) and 3.2 of Ealing's Development Strategy, policies E4 and E5 of the London Plan and the OAPF, which seek the aforementioned aims.

22. It would also fail to comply with policies E1 and SP5 of the OPDC DLP which amongst other things states the OPDC will protect, strengthen, and intensify land within the designated SIL boundary by ensuring proposals: a) are comprised of uses suitable for broad industrial type activities…. b) achieve no net loss of industrial floorspace…., and that proposals protect, strengthen, and intensify the SIL in Park Royal and Old Oak North.

Safe and secure environment

23. The Council's statement and comments received from third parties refers to a number of incidents and complaints being reported to the Council and Police. These include a stabbing incident with a man wielding a machete, customers damaging vehicles belonging to other businesses in the SIL, and threatening behaviour towards staff at neighbouring businesses. Furthermore, the evidence submitted demonstrates that the use continued to operate during the lockdown in breach of Covid-19 restrictions with Officers witnessing over 100 people fleeing from the premises upon seeing police arrive.

24. Therefore, compelling evidence has been submitted which demonstrates that the unauthorised Shisha café/nightclub use has resulted in a number of anti-social behavioural issues at and around the appeal site.

25. Having regard to the above, the unauthorised change of use fails to provide a safe and secure environment, contrary to Policy D11 of the London Plan and paragraphs 92 and 97 of the National Planning Policy Framework, 2021 (The Framework) which amongst other things states that development should include measures to design out crime, that decisions should aim to achieve healthy, inclusive, and safe places, and that decisions should promote public safety.

26. It would also fail to comply with policies SP3 and SP9 of the OPDC DLP which amongst other things states the proposals should design and operate internal and external spaces to improve health and wellbeing and create safe and secure environment.

The effect on neighbouring occupiers of the SIL - noise and disturbance

27. The Concord Business Centre comprises a small group or warehouse units in close proximity to one another within the SIL. The appellant has not specified what the hours of use of the Shisha cafe/nightclub is, but the evidence submitted by the LPA, including promotional material of the venue, indicate it occurs late in the evening and at night. The nature of the SIL is such that many businesses are also expected to operate in the evenings and over the weekends.

28. With regard to impact on neighbouring occupiers, the appellant states that any music being played is limited to a short period and does not exceed reasonable levels of noise and activity attributed to a Class D1 use. The appellant further states that the appeal site in located in an industrial business area where noise levels are already high. Notwithstanding this, the unauthorised change of use has resulted in a significant number of complaints have been received by the Council and Police. These complaints include large number of customers visiting the site with Officers witnessing over a 100 people running from the site during the Covid-19 lockdown, loud music being played, customers dancing

on vehicles owned by other businesses, as well as customers threatening staff of other businesses[6].

29. Furthermore, it is clear that shisha smoking generates a quite distinctive aroma. Noise, smell, and smoke generated from the use of the of the premises would be particularly noticeable during summer months when neighbouring units are likely to have windows open for ventilation.

30. Therefore, based on the volume and nature of the complaints received it is clear that the unauthorised Shisha café/nightclub use is not a use which is compatible with the other businesses within the SIL. I am therefore not convinced by the appellant's argument that music is played for short periods only and that any noise could be mitigated by the submission of a sound report. Given the close proximity of the appeal site to neighbouring businesses would mean that noise would still be audible within these neighbouring units.

31. I therefore conclude that the use of the premises as a Shisha café/nightclub, in such close proximity to neighbouring businesses, results in significant noise and disturbance to neighbouring occupiers of the SIL. Accordingly, the unauthorised change of use conflicts with Policy D3 of the London Plan and Policy 7A of the London Borough of Ealing Development Management Development Plan Document, 2013 which amongst other things states that development which in the course of its operations will cause emissions of any sort must; a) not erode the amenity of surrounding uses or the site itself, and that development proposals should seek minimise negative impacts on the environment, public realm.

32. It would also fail to comply with policy D5 of the OPDC DLP which amongst other things states proposals will be required to deliver an appropriate standard of amenity.

Parking provision

33. To consider whether the unauthorised change of use is acceptable with no off-street parking spaces it is necessary to review the current on-street parking stress in the area. Incidences of parking stress may lead to increased competition for scarce spaces resulting in unnecessary travel with drivers searching for available spaces, with attention diverted to somewhere to park rather than on road conditions. Parking stress may also lead to obstructive parking to the detriment of the free flow of traffic. Staff and workers of neighbouring business units may, for example, have to park further away from their units, and there may be the potential for increased noise and disturbance arising from cars driving around searching for spaces and manoeuvring into spaces. Consequently, it is necessary to assess whether any increased demand for on-street parking arising from the current appeal could be safely accommodated without detriment to the nearby occupants of the SIL or highway safety.

34. The Council have raised an objection that parking pressure in the immediate area is already high and consider therefore that the unauthorised change of use would exacerbate this problem. The nature of the SIL is such that businesses can reasonably expect to be able to access and service their units 24 hours a day. Any additional demand for parking is likely to interfere with neighbouring

[6] Appendix 12 of the OPDC Statement.

business's ability to efficiently access and service their units, to the detriment of neighbouring businesses and effectiveness of the SIL. I also noted during my site visit, which included a walk around the area, between 12:00 - 12:30 on a weekday, that there was a very high occupancy of parked vehicles within the SIL, with relatively few spaces available.

35. Whilst the appellant states that "*gathering sessions will be kept small and will not give rise to a noticeable increase in parking"*, the warehouse unit is of a reasonable size and the photographs submitted of the appeal site shows that a significant area of the unit is allocated to customer seating. In this respect the unauthorised changed of use is likely to generate additional on-street parking demand in the vicinity of the site, in an area which already suffers from on-street car parking stress to the further detriment of nearby neighbouring occupiers of the SIL, and highway safety. My views on this are supported by the fact that the site has a public transport accessibility level (PTAL) of 1b, indicating 'poor' accessibility by public transport. In this respect, customers of the business are less likely to visit the site by public transport.

36. The appellant states that 3 cars can be comfortably parked to the front of the building without causing disruption to the highway. However, no further details of off-street parking associated with the Shisha café/nightclub use have been provided, and I was unable to see any clearly marked out parking spaces or signs for staff and visitors during my site visit.

37. The appellant also states that visitors are most likely to car share given the nature of the use and that a lockable bicycle storage 'shed' is proposed to be installed within the unit. However, I am not convinced that these would be sufficient to overcome the lack of parking available for patrons of the Shisha café/nightclub, particularly given the overall size of the unit, its location in an area with poor public transport accessibility and its late night hours of use, where many customers would be more expected to arrive by private car. Nor is it within the appellant's control how people chose to travel to the appeal site.

38. Taking into account the relevant policies, the location of the development in an area with poor access to public transport accessibility, the nature of Shisha café/nightclub use, including its late night hours of use, it has not been demonstrated that the unauthorised change of use has not resulted in an increased need for parking in area that already has limited availability.

39. I therefore conclude that the unauthorised change of use of the site, leads to additional on-street parking in the area, to the detriment of neighbouring businesses within SIL and highway safety, contrary to policies T1, T2 T4 and T6 of the London Plan and Policy 3.2 of Ealing's Development Strategy. Amongst other things, these policies seek to improve access, and state that that all development should ensure that any impacts on London's transport networks and supporting infrastructure are mitigated; reduce the dominance of vehicles on London's streets whether stationary or moving; should not increase road danger, and that car-free development should be the starting point for all development proposals in places that are (or are planned to be) well-connected by public transport.

40. It would also fail to comply with policies SP7 of the OPDC DLP which supports proposals that contribute to a high quality, safe and accessible movement network.

Other matters

41. I have had regard to all the planning policies cited by the main parties in respect of this appeal, including those cited on the various statements. However, my conclusions relate to the most relevant planning policies on each main issue.

42. I acknowledge that the Shisha café/nightclub provides a meeting place for the local Somalian community, thus promoting social interaction within their local community. However, the evidence before me does not demonstrate an essential need for these activities to be carried out in this particular location within the SIL.

43. The appellant also refers to previous planning permissions approved for the change of use of Units 1A Concord Business and consider a personal planning permission could also be granted here, which would allow the reversion of the unit back to a Class B2 use if the appellant ceases the use. However, those other planning permissions referred to relate to the change of use of the premises to academic institutions, which is materially different to a Shisha café/nightclub. As such, the impacts of those development on the SIL would be different to the current appeal development.

Conclusion on ground (a) and the DPA

44. For the reasons set under the four main issues above, the change of use to a Shisha café/nightclub is not an acceptable use within the SIL, in conflict with the development plan and the Framework.

45. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail, and the deemed planning application should be refused.

Conclusion

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

R Satheesan

INSPECTOR