



Appeal Decision

Site visit made on 26 September 2022

by J M Tweddle BSc(Hons) MSc(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2022

Appeal Ref: APP/Z5060/C/21/3281443

Land and premises at 81 Longbridge Road, Barking IG11 8TG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Imran Khan against an enforcement notice issued by the Council of the London Borough of Barking and Dagenham Council.
- The notice was issued on 30 July 2021.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use of the property from a hot food takeaway (Use Class Sui Generis) to a mixed use of hot food takeaway (Use Class Sui Generis) and shisha lounge (Use Class Sui Generis).
- The requirements of the notice are:
 - (i) Cease operating the premises as a Shisha Lounge (Use Class Sui Generis)
 - (ii) Remove all alterations and fixtures related to the Shisha Lounge (Use Class Sui Generis)
 - (iii) Remove all consequent waste material from the premises.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) 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. It is directed that the enforcement notice be corrected by:
 - In section 5 of the notice, delete the words 'cease operating the premises as a Shisha Lounge (Use Class Sui Generis)' and replace them with the words 'cease the use of the premises as a mixed use of hot food takeaway and shisha lounge (Sui Generis)'.
2. Subject to this correction, 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.

The appeal on ground (c)

3. The appeal on ground (c) is that the matters alleged in the notice do not constitute a breach of planning control. This is a legal ground of appeal and the onus of proof lies with the appellant. The standard of proof is the balance of probability.
4. The appellant has referred me to a Lawful Development Certificate¹, issued by the Council on 5 December 2012. This confirms that the lawful use of the appeal property at that time was as a hot food takeaway. On this basis, the appellant asserts that a hot food takeaway and a mixed use comprising of a hot food

¹ 12/00841/CLU_E

takeaway and a shisha lounge both fall within the same 'sui generis' use classification, the inference being that there has not been a material change of use.

5. Sui generis is a Latin term that translates as: 'of its own kind'. In a planning context, the term is used to describe a use that does not fall within any of the use classes specified in Schedules 1 or 2 of the Use Class Order² (the UCO). The term is also used to describe a number of mixed uses that occur within an individual planning unit. Therefore, it is incorrect to interpret sui generis as an individual use class of its own, but rather a term to describe a variety of unique uses that fall outside of those classes specified in the UCO.
6. In this instance, the appellant does not dispute that the use of the premises has changed from a hot food takeaway to a mixed use comprising a hot food takeaway and a shisha lounge. Nor have they provided any compelling evidence to suggest that this change of use would not require planning permission.
7. For a material change of use to have occurred there must be some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree. The distinctive characteristics of a hot food takeaway include the preparation of hot food for purchase by visiting members of the public where consumption of that food is usually undertaken off the premises. However, the introduction of a shisha lounge within the property adds an additional activity that usually involves the storage and preparation of specialist equipment to facilitate shisha smoking by visiting members of the public potentially congregating for several hours at a time as a social activity. It would probably generate distinctive odours, and result in greater levels of noise as a result of patrons conversing, general comings and goings, and music being played.
8. Therefore, I consider that there is a significant difference in the character of a hot food takeaway and a mixed use comprising a hot food takeaway and shisha lounge. I am therefore in no doubt that a material change of use has occurred without the benefit of planning permission. Accordingly, the appeal on ground (c) must fail.

The appeal on ground (a)

9. The appeal on ground (a) is that planning permission ought to be granted for the matters stated in the notice. Accordingly, the appellant seeks planning permission for a mixed use of hot food takeaway and shisha lounge.
10. The main issues are the effect of the change of use on:
 - The living conditions of nearby residential occupants, with particular regard to noise, disturbance, odour and smoke; and,
 - Parking demand and highway safety.

Living conditions of neighbouring residents

11. The appeal property is a ground floor commercial unit as part of a two storey mid terrace property at 81 Longbridge Road, close to its junction with Faircross Avenue. The hot food takeaway operates to the front of the property, with access directly from Longbridge Road, while the shisha lounge operates from a single storey, timber-clad, extension at the rear. Access to the shisha lounge is via a rear lane

² The Town and Country Planning (Use Classes) Order 1987, as amended

leading off Faircross Avenue. At the time of my visit, the hot food takeaway business was undergoing refurbishment and therefore it was not trading.

12. Longbridge Road is a busy street comprising a mix of commercial and residential properties, with residential uses existing above commercial units. Faircross Avenue is predominantly residential in character, with a mix of flats and terraced houses which provide a degree of respite from the busy and lively character of Longbridge Road.
13. The shisha lounge comprises a bar area with tables, chairs and sofas that could accommodate up to 46 people seated. The space is also fitted out with four flat screen TVs, wall mounted heaters, fans and a sound system with a number of speakers. A large double glazed roof lantern provides the main source of natural light and ventilation. It is clear to me that the lounge area has been designed to attract a large number of patrons for the specific purpose of congregation whilst smoking shisha.
14. Potential sources of noise and disturbance associated with the operation of the shisha lounge include music, TV sound, and customers conversing, both in the venue and when leaving it. This is quite different from the levels of activity and disturbance that might be associated with the sole use of the premises as a hot food takeaway. Given the extent of the seating area, the potential for noise that could be generated by the proposal is considerable.
15. Whilst I have not been provided with any proposed opening hours, such establishments usually operate late into the evening, with the likelihood of noise and general disturbance occurring when neighbouring residents would reasonably expect peace and quiet. Furthermore, the smoking of shisha generates quite distinctive aromas, which are likely to be perceptible from neighbouring properties. The noise, odours and smoke associated with the proposed use would be particularly noticeable during summer months when nearby residents are likely to have their windows open for ventilation.
16. These effects will be most acutely experienced by the occupiers of the residential flat above the property, those to either side, and those residing in the flats on Faircross Avenue, immediately adjacent to the rear lane and entrance to the shisha lounge. I therefore consider that the use of the premises as a hot food takeaway and shisha lounge, as proposed by the ground (a) appeal, in such close proximity to neighbouring residential properties, results in significant noise, disturbance, odour and smoke that is harmful to the living conditions of nearby residential occupants.
17. Accordingly, the proposed change of use is contrary to Policy BP8 of the Borough Wide Development Policies DPD³ (the DPD) which seeks to protect residential amenity by ensuring that existing occupiers are not exposed to unacceptable levels of pollution, including noise, smoke, fumes and general disturbance.

Parking and highway safety

18. The Council is concerned that the proposed use exacerbates a shortfall of parking in the locality, as it does not provide adequate parking for the number of customers that the development caters for. Despite this, the Council has not specified the

³ Planning for the future of Barking and Dagenham Local Development Framework Borough Wide Development Policies Development Plan Document adopted March 2011

number of parking spaces that the proposal would require, and it has provided no evidence of existing parking demand in the area surrounding the site.

19. During my visit, whilst only a snapshot in time, I observed that available on street parking was well used. Indeed, I saw that Faircross Avenue is subject to a residents' parking scheme, suggesting that parking is in high demand. However, the appeal site is within a few metres of bus stops along Longbridge Road and a short walk to both overground and underground rail services at Barking Station, along with additional bus services.
20. Therefore, I find the appeal site to be in a highly accessible location with a variety of public transport options available to potential customers. I accept that there may be some additional parking demand associated with the proposed use. However, other than a single objection from an interested party, I have very little evidence to suggest that this additional demand is causing significant problems. Furthermore, the existing parking restrictions along Faircross Avenue will, to a large extent, protect residents from any additional parking demand arising from the proposal.
21. For these reasons, I conclude that the proposed use would not have an unacceptable effect on parking demand or highway safety. Therefore, I find no conflict with Policy BR9 of the DPD which seeks to secure appropriate levels of parking provision and to ensure safety for all road users.

Conclusion

22. While I have not found any harmful effects in relation to parking demand or highway safety, I have found significant harm to the living conditions of nearby residential occupants, with particular regard to noise, disturbance, odour and smoke. In this regard, the proposal is contrary to the above cited policy of the development plan and no material considerations of sufficient weight have been advanced to overcome this.
23. Therefore, for the reasons given, I conclude that the appeal should not succeed. I shall uphold the enforcement notice, with the correction set out above, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
24. For the avoidance of doubt the correction is to align the wording of the requirement with the alleged breach of planning control. The correction does not prevent the resumption of the previous lawful use of the premises, therefore correcting the notice in this way would not prejudice the appellant.

J M Tweddle

INSPECTOR