



Appeal Decision

Site visit made on 24 October 2023

by Katie Peerless Dip Arch RIBA

an Inspector appointed by the Secretary of State

Decision date: 7th October 2023

Appeal Ref: APP/F5730/C/22/3307752

Premises known as Land adjacent to 858 Coronation Road, Park Royal, NW10 7QE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by HA&SH Ltd t/a Shiva Lounge against an enforcement notice issued by Old Oak and Park Royal Development Corporation.
 - The notice, numbered 22/0003/ENFOPDC, was issued on 29 August 2022.
 - The breach of planning control as alleged in the notice is the material change of use of the Property to a mixed use as a shisha lounge, entertainment venue and restaurant ("the Unauthorised Use").
 - The requirements of the notice are to: a) Cease the shisha lounge use activities. b) Cease the entertainment venue use activities. c) Cease the restaurant use activities. d) Remove all material, furniture, fixtures, fittings, equipment and paraphernalia integral to and that facilitate the Unauthorised Use; e) Remove all kitchen facilities integral to and that facilitate the Unauthorised Use; f) 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), (b), (c), (f), (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 (EN) is corrected by the deletion of the words '*shisha lounge*' and the insertion of the words '*and incidental use as a shisha lounge*' after '*restaurant*' in the allegation.
2. Subject to the corrections 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.

Site and surroundings

3. The appeal site is a former industrial building which has recently been extended. Its specific previous use is disputed between the parties, but I am told it stood empty for a number of years. It is located within an area designated as a Strategic Industrial Location (SIL) amongst a number of other buildings in industrial uses.
4. The interior had been laid out as a restaurant, bar, small stage, dance floor and a mezzanine level where further tables were sited, before a Stop Notice required the activities on the premises to cease. The upper level was also the location for a shisha smoking lounge and the external wall is partially open to the air.

Main Issues

5. I consider the main issues in this case are:

On ground (b): whether the mixed use as a shisha lounge, entertainment venue and restaurant has occurred as a matter of fact or whether the primary use is as a restaurant with ancillary uses as a shisha lounge and entertainment venue.

On ground (c): whether the alleged change of use constitutes a breach of planning control and, if these grounds fail:

On ground (a): the effect of the development on:

- (i) the integrity and effectiveness of the designated Strategic Industrial Location (SIL)
- (ii) parking availability and highway safety in the locality
- (iii) the amenity of neighbouring occupiers.

and if these grounds also fail:

on ground (f): whether the requirements of the notice go beyond what is required to remedy the breach of planning control and

on ground (g): whether the time for compliance is reasonable.

Reasons

Ground (b)

6. The appellants claim that the primary use of the building is as a restaurant and that the shisha lounge and entertainment activities are incidental to this use and do not operate as separate operations creating a mixed use. It is also claimed that the previous use of the building fell within what is now Schedule 2, Part A, Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) and, as the current restaurant use also falls within this class, a change between the 2 uses is permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). The concept of a mixed use is one of two or more primary (or main) uses existing within the same planning unit. To be considered incidental, a use must be functionally related to the primary use.
7. I consider that, in this case, the use of part of the premises as a shisha lounge is a use that could be considered incidental to the restaurant. I am told that the availability of the shisha pipes was limited to the customers of the restaurant after they had purchased a meal and, consequently, I find that it was not a separate or independent use.
8. However, turning to the entertainment venue use, although the building is closed at present, there are a number of social media posts that have been drawn to my attention that show advertisements for, and photographs of, events that previously took place there. In addition to the restaurant use, these show that activities involving live music with singers and musicians, dancing and DJ sessions were taking place. From the advertisements posted, it seems that this took place on a regular basis, seemingly 3 or 4 times a week, often into the early hours of the morning.

9. I consider that, at the times these activities were taking place, the primary use was no longer as a restaurant, as normally defined. Whilst the customers may have had to purchase food and drinks, the main reason for the operation of the business appears to have been to attract customers to enjoy the entertainment facilities on offer. In my opinion, the music, shows and dancing, continuing late into the evening, were the main feature of the business at these times. This means that the operation became fundamentally different to an establishment primarily providing food to customers; rather the use of the premises was more akin to nightclub.
10. The UCO does not include such a use within Class E (Commercial Business and Service), and live music and drinking establishments fall within a '*sui generis*' use, i.e. one that falls outside any other classification. Consequently, I consider that the use to which the appeal premises was being put was as a mixed use as a restaurant and an entertainment venue.
11. I therefore propose to correct the enforcement notice to delete the reference to a shisha lounge as an independent use but the essential complaint against the breach of planning control, that is that a material change of use to a mixed use from a single former use has nonetheless taken place. The appeal on ground (b) succeeds to this limited extent.

Ground (c)

12. Had it been found that there was no mixed use occurring and that the former use was one that now falls within Class E of the UCO, a change between a Class E restaurant and the former use would be permitted through the GPDO. However, there are no such permitted development rights that allow a change from Class E to a *sui generis* mixed use.
13. The premises is likely to be open later in the evening when the mixed use is operating and noise and the comings and goings from the property are going to be more noticeable for a longer period to nearby residential occupants, who have already made complaints about this. The change to a mixed use also has implications on the supply of industrial floorspace and I consider that there are consequently material planning implications to be considered and the development therefore requires a grant of planning permission to authorise it.
14. Even if the restaurant use was considered to be the only current use of the building, the previous use was described by the appellant in a planning application of 2020¹ as falling within use Class B2. The site was also granted a B2 use as a general car repair workshop in 2001². However, the agent for this appeal considers that the use should, in fact, have been described as being in former Class B1 (now also Class E) as it was a vehicle maintenance facility that could be carried out in any residential area without detriment to the amenity of that area.
15. However, use of a building for vehicle maintenance is generally considered as a Class B2 industrial use for which there are normally no permitted development rights for a change to Class E. Whilst the building might have been well insulated and the appellants claim that the activities were limited to light adjustments to vehicles, there is little direct evidence on the history of the site

¹ Ref: 203252OPDFUL

² Ref: AMC/TPAP17576/10

to confirm this, particularly as the last use of the building for this use was over 8 years ago and it has been extensively modified since then. I therefore find that there has been an unauthorised material change of use of the appeal site and the appeal on ground (c) consequently fails.

Ground (a)

Loss of industrial land

16. As noted above, the site lies within a SIL, where planning policy aims to ensure that industrial floorspace is kept available. This includes policies E4 and E5 of the London Plan (2021), policies E1, SP5 and TCC1 of the Old Oak and Park Royal Development Corporation (OPDC) Local Plan 2018 -2038 (adopted June 2022) (LP) and the Old Oak and Park Royal Opportunity Area Planning Framework (OAPF), which seek to ensure that a sufficient supply of industrial floorspace is maintained.
17. LP policy E1 seeks, amongst other things, to protect, strengthen and intensify land within the designated SIL boundary by ensuring that proposals are for uses suitable for broad industrial type activities, do not result in a net loss of industrial floorspace capacity and provide a mix of unit sizes including small business units.
18. The appellants cite a lack of demand for industrial sites of this size in the locality and notes that the LP and OAPF supports development that delivers new workspace and maximises and intensifies the use of land. The National Planning Policy Framework (the Framework) also encourages the efficient use of previously developed land.
19. However, it seems to me that, rather than allowing the release of land designated for industrial use through piecemeal development such as this, any change should be through a co-ordinated assessment of the availability of such land and the need for it through the Local Plan process. The LP has been relatively recently adopted and this assessment can therefore be assumed to be up-to-date. The policies within it are intended to secure the long-term aim of strengthening Park Royal in its key strategic role as the largest reservoir of industrial land in London and I see no reason to depart from this objective at such an early stage in the life of the LP.
20. I note that there is a proliferation of similar unauthorised uses that are at present subject to enforcement action by the local planning authority and consider that the unrestricted changes of use away from industrial designation could lead to a shortage of such land, contrary to the policies noted above.
21. The appellants consider that because the site is close to the boundary of the SIL, the change to a use that would serve the nearby residential development would be acceptable. However, OPDC has also introduced an Article 4 Direction restricting permitted development rights for the area and this confirms the need to prevent a change away from industrial uses where possible. Consequently, for the reasons set out above, I consider that the loss of this industrial floorspace would be unacceptable and conflict with the relevant planning policies.

Parking availability and highway safety

22. I saw at my site visit that, while there is some on-street parking available, space was limited and there were many vehicles parked on double yellow lines. I accept that this may be different outside normal daytime working hours and also note that the site is reasonably well served by public transport. However, the local planning authority report that, prior to the issue of the stop notice, 41 parking penalty notices were issued in a single evening in the vicinity of the appeal site.
23. Whilst these may not all have been attributable to the restaurant premises, it is a strong indication of the pressure for spaces in the area, which can cause danger to road users through unregulated parking. Planning conditions might be able to improve the situation but this is a large venue with over 200 covers and, whilst the appellants have suggested that they would accept a condition requiring the submission and approval of further details of parking provision, I have not been supplied with these. In the absence of a scheme showing how this could work, I consider that the lack of parking availability weighs against the grant of planning permission and conflicts with T1(e) of the OPDC Local Plan (2022) which requires development to mitigate the impact of development on the surrounding local and strategic road network.

Residential amenity

24. As previously noted, there have been complaints about noise and disturbance caused by the activities on the appeal site. The nearest residential properties are about 200m away but clearly residents have been aware of the venue, perhaps because of the late night music and other activities taking place at a time when there is not much other background noise. It is, however, possible that the planning conditions on sound levels and opening hours that have been suggested could mitigate against any adverse impacts.
25. The appellants have suggested that they would accept a temporary planning permission that allowed the use to continue until 2027 when their lease expires. However, whilst this would be of financial benefit to the appellants, it would also mean that the industrial floorspace would remain unavailable for a considerable amount of time and undermine the strategy of the LP policies for the SIL. I therefore consider that a temporary permission would not be an acceptable alternative.

Findings on ground (a)

26. The development would conflict with adopted planning policy on the retention of employment floorspace and have a detrimental impact on parking availability and highway safety. Whilst I consider conditions could overcome the harm to residential amenity, LP policy E1 specifically notes the need for a variety of size of industrial premises including smaller sites such as this and there is no specific identified need for a business of this type in the area.
27. I therefore find that the suggested benefits in terms of additional employment availability, contribution to local services and re-use of a formerly vacant building do not outweigh the impact the loss of industrial floorspace would have on the strategic aims of the SIL. Consequently, I conclude that the appeal on ground (a) will be dismissed.

Ground (f)

28. The appellants suggest that lesser steps could overcome the objections to the development, but the local planning authority has enforced against a breach of planning control and, in the situation where I have found planning permission should not be granted, the only way to address this is to cease the unauthorised mixed use. The requirements of the EN do not exceed what is necessary to achieve this and the appeal on ground (g) therefore fails.

Ground (g)

29. The appellants ask for an extended compliance period of 18 months rather than the 3 months cited in the EN. They consider this time is needed to undertake the internal works to the building, and to take account of the impacts of the pandemic and the current economic climate.

30. However, the business has not been operating for over a year due to the issue of the stop notice and the appellants must have made their workforce aware of the situation and the possibility of permanent closure of the building. They must also have been aware of the risk involved in starting to develop a business such as this before a planning application had been submitted and continuing with its operation after its refusal in December 2021.

31. The physical changes to the building required by the EN are not extensive and only relate to items and fixtures that facilitate the unauthorised use. In my opinion, this could be completed within the 3 months allowed. The appeal on ground (g) therefore fails.

Conclusion

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

Katie Peerless Dip Arch RIBA

INSPECTOR