



Appeal Decisions

Inquiry held on 12, 13, 14 and 22 March 2024

Site visits made on 11 and 14 March 2024

by D Boffin BSc(Hons), DipTP, MRTPI, DipBldg Cons(RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 26/04/2024

Appeal A Ref: APP/F5730/C/23/3331665

Appeal B Ref: APP/F5730/C/23/3331666

Premises known as 823 Western Road, London NW10 7LT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act). The appeals are made by Mr Hasan Hadi (Appeal A) and Bamboo UK Nights Ltd (Appeal B) against an enforcement notice (EN) issued by Old Oak and Park Royal Development Corporation.
- The notice was issued on 22 September 2023.
- The breach of planning control as alleged in the EN is: without planning permission, the material change of use of the building to a mixed use comprising a restaurant, entertainment venue and shisha lounge (Sui Generis).
- The requirements of the EN are:
 1. Cease the mixed use of the building as a restaurant, shisha lounge and entertainment venue.
 2. Remove internal and external fittings and fixtures facilitating the unauthorised change of use, including but not limited to tables, chairs, the internal kitchen, the stage/DJ booth, shisha pipes, shisha tobacco and any paraphernalia.
 3. Remove the single storey northern side extension outlined red and numbered 1 as shown on Enforcement Notice Plan 2 attached to the EN.
 4. Remove the single storey western rear extension outlined red and numbered 2 as shown on Enforcement Notice Plan 2 attached to the EN.
 5. Remove the single storey southern side extension outlined red and numbered 3 as shown on Enforcement Notice Plan 2 attached to the EN.
 6. Remove the single storey eastern front extension outlined red and numbered 4 as shown on Enforcement Notice Plan 2 attached to the EN.
 7. Make good the building fabric following removal of the extensions numbered 1-4 to the condition before the breach occurred.
 8. Remove all debris resulting from compliance with the above steps.
- The period for compliance with the requirements is: 3 calendar months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d) and (f) of the 1990 Act. 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 1990 Act. Appeal B is proceeding on the grounds set out in section 174(2)(b), (c), (d) and (f) of the 1990 Act.

Summary Decisions: The appeals are allowed and the enforcement notice is quashed.

Preliminary Matters

1. The Inquiry commenced on 12 March 2024 and was programmed to sit for 3 days. However, an additional sitting day was required to hear all the evidence, and this was held virtually on 22 March 2024. I undertook accompanied site visits on the 11 and 14 March 2024. All the oral evidence given to the Inquiry was given by sworn affirmation.

2. The appeals were originally lodged under grounds (a), (c), (d), (f) and (g). Prior to the Inquiry opening the appellants confirmed that ground (b) appeals were being made in so far as they consider that the breach of control alleged in the EN has not occurred as a matter of fact. As all parties were aware of this prior to the Inquiry opening, I am satisfied that none of the parties are prejudiced by the inclusion of this. I have thus determined the appeals on this basis.
3. On 19 December 2023 the Government published a revised National Planning Policy Framework (the Framework). The parties have had the chance to comment on whether revisions to the Framework have relevance to their case.

The ground (b) appeals

4. To succeed on this ground, the onus is upon the appellants to show on the balance of probabilities that the allegation has not occurred as a matter of fact. The appeal site contains a two-storey former industrial building that has single storey structures adjoining and generally extending from the front, both sides and rear. The northern third of the site is undeveloped and appears to be used for storage purposes. Under this ground of appeal, the appellants' primary submissions, are that: the appeal site was in a different mixed use when the EN was issued and contrary to the EN any shisha smoking and entertainment which have taken place on the site are ancillary to the restaurant use. Old Oak and Park Royal Development Corporation (the LPA)) consider that there is insufficient evidence to substantiate commercial/office uses on the appeal site. Moreover, the LPA and McLagan Investments Limited (the Rule 6 Party) have stated that even if those uses are occurring they are within a separate planning unit (PU).
5. The PU is a concept which has evolved as a means of determining the most appropriate physical area against which to assess the materiality of a change of use. Under this ground of appeal, the materiality of the change of use is not to be considered. However, the concept of the PU is useful in assessing whether there is more than one PU on the site or the use of the site comprises a mixed use. The leading case is the *Burdle* judgment¹ where Bridge J suggested three broad tests for determining the appropriate PU.
6. As a general rule and starting point the PU is the area in the same occupation or ownership because that is normally the unit in which a set of functionally and physically interdependent activities are carried out. The assessment is a matter of fact and degree. A PU in a composite or mixed use is described as an entire unit of occupation where the occupier carries on a variety of activities, and it is not possible to say that one is incidental or ancillary to the other. A composite/mixed use is where the component activities fluctuate in their intensity from time to time, but the different activities are not confined within physically and distinct units of land.
7. It may also occur that within the single unit of occupation two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes. In such a case each area used for a different main purpose, together with its incidental activities, ought to be considered as a separate PU.

¹ *Burdle & Williams v SSE & New Forest RDC* [1972] 1 WLR 1207

8. In this case it is appropriate to explore the use of the appeal site over a period of time, rather than looking at the use at a snapshot in time. Mr Hadi, one of the appellants (Appeal A), states within his written statement that since 2012 several companies have occupied parts of the building under licence. A list of companies and the dates that they rented space within the building have been provided. I acknowledge that there is no further documentary evidence from Mr Hadi such as rent/lease agreements with those companies. Nevertheless, the Google Streetview images submitted as part of the Rule 6 Party's evidence show several signs attached to the external elevation of the building. Those signs include names of companies that are included in Mr Hadi's list, corroborating that evidence. Furthermore, the Officer's Report relating to the planning application that was determined in 2016 refers to offices at one end of the building.
9. According to Mr Hadi the companies rent the space within the building from him directly as he is the leaseholder of the appeal site. Moreover, he asserts that he no longer manages/runs Bamboo Lounge, which is the name of the alleged restaurant, shisha lounge and entertainment venue. He also states that a company called Bamboo UK Nights Ltd (appellant-Appeal B) runs Bamboo Lounge under a licence from him and that he has only been an advisor to that company since 2020. No director or employee of Bamboo UK Nights Ltd made any representations at the Inquiry.
10. Mr Hadi has stated that he was a director of Seyeama Limited that has occupied an office space on the first floor from 2019 but that he resigned in 2022. H&I Development which he states has occupied an office space on the ground floor from 2022 is a company run by a director of Bamboo UK Nights Ltd according to Mr Hadi's oral evidence.
11. At the accompanied site visit on the 11 March, I observed that 3 internal doors on the first floor of the building have name plaques on them that reflect the names of the companies Mr Hadi has stated are currently occupying them. Within those rooms I noted desks and storage of general items including bird cages. The rooms were not occupied by any people at the time of my visit and Mr Hadi stated that some of the occupants were downstairs having food and drink. The room that had been used as an office, with 4 desks in, on the ground floor was being used to store food stuffs on the 11 March. Mr Hadi stated at the Inquiry that this room was licenced to Bamboo UK Nights/H&I Developments and had been an office, but he did not know whether the director of those companies was using it to store items to sell or use within Bamboo Lounge. Mr Hughes stated within his oral evidence that at the time of his first visit, February 2023, to the site that this room appeared to have been used as an office which he had considered was ancillary to Bamboo Lounge.
12. Whilst, the first floor rooms did not appear to be intensively used as office/commercial space at the time of my visit there is little to contradict Mr Hadi's assertions that rooms on the first floor were in commercial/office use prior to and when the EN was issued. Mr Hughes and Mrs McLaughlin stated at the Inquiry that they did not remember going into the first-floor rooms at their site visits in 2023. They also could not remember if the name plaques were on the doors or if the first floor's layout had altered in any way. Mr Hughes stated that he remembered the first floor being mainly used for food storage. Mrs McLaughlin stated she thought the first floor was one room. Moreover, Mr

Hughes stated that it was noisy and dark at the time of the visit in February 2023.

13. Nonetheless, the layout of the first-floor rooms appears to be similar to that shown on the existing floor plan submitted with the 2016 planning application. The main differences appear to be the access to and the size of room/s above the ground floor bar/seating area. In addition, the LPA officers did not visit during the daytime and no planning contravention notice was served prior to the EN being issued and Mr Hughes told the Inquiry that the position in relation to business rates on the premises 'was not entirely clear'.
14. Taking into account all of the above, it is more likely than not, on the balance of probabilities that 3 or 4 different companies were renting and using rooms within the appeal building for commercial/office uses prior to and when the EN was issued. Mr Hadi confirmed in his oral evidence that the individual businesses had keys to their rooms but that they had access to the communal areas including the small kitchenette on the first floor and the toilets and could use the food and drink facilities on the ground floor, within Bamboo Lounge, when it was open. The 3 first-floor rooms with name plaques on the doors are not generous in size but they would all be sufficient to facilitate a small commercial or office space. There is little evidence to indicate currently what type of businesses are using them.
15. However, there is nothing to contradict Mr Hadi's assertion that he is not presently linked to any of those businesses. As such, the commercial/office uses of the 3 first-floor rooms does not appear to be ancillary to or functionally associated with the use of the remainder of the building whether I treat that as alleged within the EN or as a restaurant as stated by the appellants. As a result, the commercial/office uses on this floor appear to be primary uses. Yet, the remainder of the first floor appears to be used for storage associated with Bamboo Lounge and access to the area above the bar/seating area.
16. The ground floor room, that Mr Hadi states had 4 desks in, appears to have been occupied since 2022 by a director of Bamboo UK Nights Ltd who he stated is also a director of H&I Development. It is not clear if that room was in use as a commercial/office space when the EN was issued. As stated above at the time of my visit on 11 March 2024 food stuffs were stored in it and it was not in use as an office. Those food stuffs may have been stored to sell separately from Bamboo Lounge. However, given that the room is occupied by a company whose director is also a director of the company that runs Bamboo Lounge it is more likely than not that some of the commercial/office use of that room has/is ancillary to and associated with the use of Bamboo Lounge.
17. The northern part of the site is used for storage purposes and Mr Hadi has stated that the structure shown as extension 1 on the EN and that northern part is licenced to a third party for an online car parts business. Nevertheless, it was clearly apparent at the time of the site visits that the majority of items stored within the structure and the northern part of the site cannot reasonably be described as car parts. From my observations, many of the items could have been associated with the use of Bamboo Lounge as they were tables and chairs. Moreover, in his written statement Mr Hadi indicates that the structure is a small stock room area. As such, based on the evidence before me it is more likely than not that prior to and at the time the EN was issued that these

parts of the building were used ancillary to and in association with Bamboo Lounge.

18. The building is served by a common exit/entrance and the stairs/landing/corridors are communal areas that all occupiers can use. The commercial/office uses are physically contained within the 3 first floor rooms but they utilise facilities such as the toilets that are shared with the other occupiers of the building. Therefore, there is an intermingling and interdependence of the uses within the building with regards to those facilities. Occupation of the whole appeal site has been by Mr Hadi since 2012, who is the leaseholder of the site. He has let out different parts of the site to various other people running their own businesses, some of whom, the evidence suggests, were known to him and he may have had connections to some of those businesses.
19. The probability is that the overall control exercised by Mr Hadi has remained constant. Little information has been provided on any licence arrangements, whether for Bamboo Lounge or the commercial/office uses. The rooms licenced out appear to have fluctuated regarding the type of commercial/office use, and the turnover in occupation are indicative of fluid arrangements. Overall, as a matter of fact and degree and based on the evidence before me, I conclude that the appeal site is a single PU and the commercial/office uses comprise part of a composite/mixed use.
20. The other elements that comprise that composite/mixed use also must be assessed on, the balance of probabilities, taking into account the written and oral evidence before me. There is no dispute that the building was being used as a restaurant, entertainment venue and shisha lounge prior to and at the time the EN was issued. The appellants assert that the entertainment venue and shisha lounge uses are ancillary to the restaurant use and they are not primary uses in their own right. To be ancillary uses they must be functionally related to the restaurant use and that functional relationship should be one which would ordinarily exist. There is no dispute that a restaurant is a primary use of the appeal site and I have no reason to disagree.
21. At the site visits I noted that the ground floor of the building is mainly one large room, when the glazed door and shutters are open, that is comprised of a series of spaces that are within the main brick building and the structures that are shown as extensions 3 and 4 on the EN. Within that room are sofas, chairs and tables arranged in bays and there are numerous speakers and televisions near the ceilings. There is a slightly raised stage area with lighting/speakers above it within extension 3. There are also large ceiling mounted heaters around the external edges of the ceiling to extension 3. There is an appreciable gap between the edges of the ceiling and the perimeter boundary 'walls'. The ceiling of extension 3 is supported by a metal frame and vertical metal posts which appear to have metal shutters between them. As such, when the shutters are up the 3 external sides of extension 3 are open to the elements. The remainder of the ground floor is in use as toilets, food and drink areas, a commercial kitchen, shisha pipe preparation and charcoal burning areas and storage.
22. I acknowledge that whether a use is ancillary to another is a functional question and not one of extent or size. Several interested parties including regular patrons of Bamboo Lounge attended the Inquiry and provided oral

evidence as to why they went and what they had seen and experienced at the venue. The overriding factor for why they went, that was cited by them, was socialising with friends and family. They also cited going to watch important sports events on the televisions such as football or boxing matches and attending or holding parties. Whilst the food and drink were referred to as being of high quality, in most accounts, it did not appear to be the main reason for going to and spending time at Bamboo Lounge. I was told by one of the interested parties that he thought Bamboo Lounge was like the equivalent of a public house with no alcohol being served. Another said he normally left by 22:00 as that is when the music started and he did not like listening to it as it was not to his taste.

23. Moreover, the social media snapshots that have been provided by the LPA and the Rule 6 party, as part of their evidence, corroborate those accounts even though they are only snapshots in time. I note that Mr Hadi considers that the social media presence of Bamboo Lounge is a form of advertising and that as a result some of the claims within that advertising may be 'exaggerated'. Nevertheless, those screenshots show advertisements for several 'parties' which appear to be live music events on various days of the week. Furthermore, some of those events are stated to be free entry but one is shown as gold £100, silver £80 and bronze £50 – all with a meal included. The slogan on the event pages is – 'Party- Never Ends at Bamboo Lounge'. In addition, the terms and conditions, which the LPA stated it downloaded, from the Bamboo Lounge website include 'Opening + Set Times'. Under that section it states that 'the venue opens daily from 3pm to 3am', that 'set times of live music are always subject to change', 'live music programme usually finishes around 12:00am' and 'if you are joining us on a Saturday night the programme will start from 12:00am to 3:00am'.
24. In combination with the presence of the stage and its associated equipment the above factors indicate, it is more likely than not, that live music as entertainment is a regular and integral part of the activities at the appeal site. In my judgment one of the main attractions for patrons attending Bamboo Lounge is to be entertained whether that is by watching a live sporting event or a live music act. Therefore, based on the evidence before me, a primary use of the appeal site is as an entertainment venue.
25. Shisha is smoked at the premises there is a specific room where the pipes are stored and prepared for use. Mr Hadi stated at the Inquiry that some of the pipes were stored for sale in an online auction/sales website. There is no evidence to corroborate or contradict that statement. Mr Hadi also explained that the type and arrangement of seating and tables has been designed to be more comfortable and encourage patrons to stay for longer. Nevertheless, I also heard from him that the structure adjoining Western Road with a large silver pipe/vent emerging from it is used for charcoal burning for the shisha pipes. Furthermore, the floor space of extension 3 makes up a large proportion of the overall floor space of the area laid out with sofas, chairs and tables. Its open sides indicates that this is an area where shisha smoking would/could take place and the stage is located within this extension.
26. The interested parties stated that there is no requirement to smoke shisha and that many people do not smoke it. They also stated that the smoke produced from the pipes has never caused any health issues for the patrons who are asthmatic. However, it is apparent from that oral evidence that in most groups

at least one shisha pipe is smoked and that for some of the patrons the smoking of shisha at this venue is enjoyed as part of the socialising with friends and family.

27. I acknowledge that the Inspector in the appeal² regarding Coronation Road determined in that case that *'the use of part of the premises as a shisha lounge is a use that could be considered incidental to the restaurant'*. Nonetheless, the evidence in that case indicated that the availability of shisha pipes was limited to the customers of the restaurant after they had purchased a meal. There is little evidence before me to indicate that the availability of shisha pipes at Bamboo Lounge is restricted in any way. Moreover, Mr Hadi stated that patrons could and had brought their own shisha pipes with them to the venue.
28. The accountant for Bamboo Lounge indicated in his written statement that the sale of shisha is 8% of the total sales. However, a screenshot of the front page of the Bamboo Lounge website dated 11 January 2024 states *'Welcome to one of the biggest and best shisha lounges in London. Bamboo Lounge is a very big with a warming atmosphere where you can enjoy over 85+ choices of tobacco flavours. We have reasonable prices and our chefs prepare the best dishes of Middle Eastern Cuisine'*. The claim to be one of the biggest and best shisha lounges may have been an exaggeration and advertising designed to draw patrons in and that claim does not now appear on the website. Nevertheless, it is further evidence to indicate that the shisha lounge and the range of tobacco available to be smoked was promoted as a reason to visit the venue. For some of the patrons the availability of and the ability to smoke shisha whilst they are socialising appears to be one of the main factors of why they visit the venue. As such, based on all the evidence before me, on the balance of probabilities, I consider that the use of the venue as a shisha lounge is a primary use.

Conclusion

29. Having regard to all of the evidence before me I therefore find, on the balance of probabilities, that the alleged mixed use of the building has not occurred as a matter of fact. This is because the building, prior to and on the date the EN was issued, was more likely than not, in a mixed use of restaurant, shisha lounge, entertainment venue and commercial/office.
30. I have considered whether I could correct the allegation in the EN without injustice being caused to the main parties. In my judgment I cannot correct the allegation in the EN to refer to a mixed use as specified above as this would have a bearing on how the ground (a) appeal has been prepared and considered in respect of Appeal A. Furthermore, there may be prejudice caused to the LPA as this would deny it the opportunity of considering, should it be necessary, underenforcing in respect of the commercial/office element of the mixed use. Moreover, there is no evidence to indicate that the occupiers of the rooms in commercial/office use are aware of the EN and they may have wanted to lodge an appeal if the allegation had cited the commercial/office element.
31. For the reason given above, I conclude that the appeals should succeed on ground (b). Since the notice cannot be corrected without injustice, the

² APP/F5730/C/22/3307752

enforcement notice will be quashed. In these circumstances, the appeal/s on grounds (a), (c), (d) and (f) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered. My decision below to quash the notice leaves open to the Council the option of issuing a further notice with a corrected allegation.

Formal Decisions

32. Both appeals are allowed and the enforcement notice is quashed.

D Boffin

INSPECTOR

APPEARANCES

FOR BOTH APPELLANTS:

Mr Paul Brown
assisted by Rebecca Sage

Kings Counsel, instructed by Mr Mehdi
Sallah of Allied Goodwin Solicitors

He called:

Mr Anor Almosoy
Mr Tariq Alzubaidy
Mr Ali Jawaheri
Mr Mohammed Rida
Mr Hashim Elkhafaji
Mr Hasan Hadi
Mr David Mason

Factual Witness
Factual Witness
Factual Witness
Factual Witness
Factual Witness
Appellant (Appeal A)
Director D M Mason Engineering
Consultants Ltd
Planning Director Lone Wolf Planning

Mr Steven Bainbridge

FOR THE LOCAL PLANNING AUTHORITY:

Mr Charles Merrett

Counsel, instructed by Old Oak and Park
Royal Development Corporation (OPDC)

He called:

Ms Mary McLaughlin

Team Leader (acting) Food and Workplace
Safety Team – London Borough of Ealing
Head of Planning Enforcement and
Compliance – OPDC

Mr James Hughes

FOR THE RULE 6 PARTY:

Mr Killian Garvey

Counsel, instructed by McLagan Investments
Ltd

He called:

Mr Matthew Petar Sobic
Mrs Karen Smith

Director Savills (UK) Limited
Associate Director Sanderson Associates
Consulting Engineers

INTERESTED PARTIES:

Bebrak Ghani
Linda Al-jaf
Dan Akram
Dijla Fahad
Khalid Mohammed
Tahmina Nawabi
Karim Ahmed
Raja Ghridou

Faris Mutar
Syed Laieeqahned
Saif Al-taee
Yousef Jarjees
Saif Haddad
Ibrahim Khadra
Safa Albatat

DOCUMENTS

Doc 1 – Signed copy of Mr Aimal Hunter’s Witness Statement

Doc 2 – Policy D3 of the Local Plan

Doc 3 – Section of the London Plan – Planning DataMap

Doc 4 – Written representation – Rasim Shera

Doc 5 - Written representation - Aanish Rasheed

PLANS

Draft Office Carve Out Plans

Scaled Floor Plans