



Appeal Decision

Site visit made on 22 October 2024

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07th November 2024

Appeal Ref: APP/F5730/C/23/3324326

6 Standard Road, Chase Estate, Acton, London NW10 6EU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr. Sayad Al-Saraf (Cater For You – Silk Restaurant) against an enforcement notice issued by Old Oak and Park Royal Development Corporation (the LPA).
 - The notice was issued on 18 May 2023.
 - The breach of planning control as alleged in the notice is: without planning permission, the material change of use of the building to a mixed use comprising a restaurant and shisha lounge.
 - The requirements of the notice are to:
 1. Cease the use of the building as a restaurant.
 2. Cease the use of the building as a shisha lounge.
 3. Remove internal and external fittings and fixtures facilitating the unauthorised changes of use.
 4. Remove the fronting wooden cladding and raised decking area fronting the site and restore the building to its appearance and condition before the breach occurred.
 5. Remove all debris resulting from compliance with the above steps.
 - The period for compliance with the requirements is 3 (three) calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (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. 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 (d)

2. The appeal on ground (d) is that when the notice was issued, no enforcement action could be taken in respect of any breach of planning control alleged in the notice. In order to succeed on this ground, in accordance with Section 171B(3) of the Act, it would be necessary for the appellant to show that, on the balance of probabilities, the alleged mixed use of the site had commenced at least ten years before the notice was issued, that is by 18 May 2013, and had continued in such use over a ten-year period. It must be shown that there has not been any significant interruption in the use, in order to demonstrate the necessary continuity. If this cannot be shown, then the use would not be immune from enforcement action.
3. The appellant's case is that the use has been operating since 2016 and prior to that the premises was empty. The presented evidence from the LPA in its

assessment of the site history notes that in 2017 planning permission was refused for the retention of an unauthorised hot-food takeaway due to the use compromising the site's SIL designation. A further planning application to retain the mixed use comprising a restaurant and shisha lounge was similarly refused in 2017.

4. Comparative Google Streetview imagery indicates the occupation and vacancy of the site over the years by way of images of the frontage of the premises. The earliest provided images show that in June 2008, the property displayed signage which advertised the premises as a tyre shop. The images dated August 2012 and August 2014 show the property vacant with a 'to let' sign displayed on its frontage. The images dated June 2015 appear to show building works occurring with rubble and a skip to the property frontage. From April 2016 to mid-2017 the site is advertised "Al Banafsaj Restaurant and Shisha Lounge". By February 2018, the signage for Al Banafsaj had been removed and waste in the forecourt suggests the unit may have again fallen vacant. By April 2019, the building frontage had been re-clad and the signage for Silk Lounge had been installed over timber cladding to the upper face. Timber decking is shown installed in the forecourt. The LPA's submissions refer to a meeting with the appellant on 4 May 2023 when he confirmed he had operated Silk Lounge since 2019 which appears to accord with the Google Streetview imagery.
5. The appellant has not provided any evidence to dispute the LPA's review of the site's history and has not demonstrated that, on the balance of probabilities, the use of the premises has been operating, as alleged, for 10 years beginning with the date of the breach. Accordingly, the appeal on ground (d) cannot succeed.

The appeal on Ground (a) and the deemed planning application

Main issues

6. The main issues are:
 - The effect of the change of use of the premises on its location within a designated Strategic Industrial Location (SIL); and
 - The adequacy of parking provision and the impact of the use in terms of parking and highway safety.

Reasons

Location within a SIL

7. The appeal property is a single storey former industrial building, the use of which has changed to a restaurant/shisha lounge trading as 'Silk Lounge'. The building has a floor area of approximately 370 sqm and its interior is laid out with some 130 covers, a DJ booth, a bar, kitchen and storage area. There is a small mezzanine floor above for storage purposes. The submissions from the LPA state hours of operation, as confirmed with the operator, to be 1600 to 0100 Monday to Thursday and 1600 to 0300 Friday to Sunday although these may change depending on trade and time of year.
8. The site is located amongst other buildings in industrial uses within an area designated as a SIL. The area is proactively managed to protect SILs as

London's main provision of industrial and related capacity and ensure that a sufficient supply of industrial floorspace is provided and maintained for current and future demands. Protection of the SIL is further supported by two Article 4 Directions. These were introduced to restrict permitted development rights for the area, confirming the need to protect areas for industrial land use and prevent a change away from industrial uses where possible.

9. The appellant considers that planning permission ought to be granted for the use which has been 'operating without causing any complaints or objections' for some time. They say that before opening as a restaurant, the premises remained vacant and not in use for a couple of years. The premises is said to be used by neighbours and their visitors for lunch, and for early evening meals, and by people who are working late who pop in or order food, especially as many units in the locality do not provide a canteen and/or a place for their staff to eat.
10. Planning policy for SILs is intended to secure the long-term aim of strengthening the area in its key strategic role as the largest reservoir of industrial land in London. London Plan (2021) policy E5 states that SILs should be managed proactively through a plan-led process to sustain them as London's largest concentrations of industrial, logistics and related capacity for uses that support the functioning of London's economy. This is reflected in policy SP5 of the Old Oak and Park Royal Development Corporation Local Plan 2018 -2038 (adopted June 2022) (the OPDC LP) which seeks to deliver a strong, resilient, and diverse economy, that allows existing businesses to thrive and grow.
11. OPDC LP policy E1, which carries forward the requirements of policy E5 of the London Plan (2021) 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. The use of the appeal premises as a restaurant/shisha lounge in this location does not fall within any of the industrial-type activities set out in Part A of Policy E4 of the London Plan (2021). A non-compliant use such as the appeal development has the potential to undermine the comprehensive and coordinated approach to industrial identification.
12. Consequently, and while I appreciate that the venue has been operating for some years, the unauthorised development is an incompatible use in the designated SIL. The loss of industrial floorspace to the mixed use as a restaurant and shisha lounge results in unacceptable harm to the function and operation of the SIL, and conflicts with policies E4 and E5 of the London Plan (2021) and policies E1 and SP5 of the ODPC LP. The overarching aim of these policies is to protect, strengthen and intensify the SIL in Park Royal and Old Oak North. Furthermore, the use exceeds the size threshold to amount to a "walk-to" service for SIL workers and thus does not meet the criteria set out in Policy TCC1 of the OPDC LP.

Parking provision and highway safety

13. At the time of my visit, although only a snapshot in time and during late morning when the premises was not open and when industrial units were operating, I saw there was little space available to park along the one-way street where parking spaces are provided on both sides. The site currently has

no on-site parking provision and on street parking is controlled by UKPC. The property has a PTAL rating of 4 and there are some connections to public transport links with bus networks and North Acton underground station within proximity. Nevertheless, it is not disputed that customers are likely to use private transport considering the location and hours of operation and this is supported by officer findings of heavy parking when they visited the site on 17 February 2023.

14. There is a clear demand for parking within the vicinity of the premises and with an absence of evidence to demonstrate that this alters when the restaurant/shisha lounge is open, it seems to me that with some 130 covers, the lack of parking provision and its subsequent effect on highway safety could worsen to the detriment of those who share the space. Furthermore, I have not been supplied with any information as to how the venue might seek to reduce the reliance on private transport by promoting more sustainable options. Thus, on the presented evidence, there is conflict with the general aims of London Plan (2021) policies T1, T2, T4, T5 and T6 and OPDC LP policies SP7 and T1 which, amongst other things, seek the successful functioning and operation of SIL with more sustainable transport options and support for the delivery of the Mayor's strategic target of 80% of trips to be made by foot, cycle or public transport by 2041.

Conclusion on ground (a) and the deemed planning application

15. For the reasons set out above and having considered all other matters raised, I conclude that the appeal on ground (a) should not succeed, and I shall refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act as amended.

The appeal on Ground (f)

16. The appeal on ground (f) is that the steps required by the notice to be taken exceed what is necessary to remedy any breach. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. S173(4) provides that the purpose shall be either to remedy the breach of planning control or to remedy any injury to amenity. In this case it would appear from the requirements of the notice that its primary purpose is to remedy the breach by restoring the land to its condition prior to the breach taking place. For the appeal on ground (f) to succeed, the appellant would need to propose alternative steps which would remedy the breach.
17. The appellant has not provided any alternative steps and there are none that are obvious to me. Given that the purpose of the notice is to remedy the breach of planning control, this can only be achieved by discontinuance of the use of the land and its restoration to the condition it was in before the breach took place. To require these measures does not, therefore, exceed what is necessary.
18. The appeal on ground (f) therefore fails.

The appeal on Ground (g)

19. The appeal on ground (g) is that any period specified in the notice in accordance with s173(9) of the Act falls short of what should be reasonably allowed. I am mindful of the importance of striking a balance between enforcement that is intended to be remedial rather than punitive, while

maintaining public confidence in the planning system. The appellant has requested that the compliance period be extended to 12 months to enable a new premises to be found. He says that he has many staff but has not provided any more details to support or justify this request.

20. The three-month compliance period does not stand out as being patently unreasonable within which to cease the unauthorised use and undertake the various requisite physical works. I therefore have no reason to doubt that this would be a proportionate measure.

21. The appeal on ground (g) appeal therefore fails.

S A Hanson

INSPECTOR