



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: 14TH NOVEMBER 2024

Appeal Ref: APP/F5730/C/23/3326379

245A Acton Lane, Park Royal, London NW10 7NR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Hashim Siyad (New Sahrah Lounge Ltd) against an enforcement notice issued by Old Oak and Park Royal Development Corporation (the LPA).
 - The notice was issued on 23 June 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of the use of the ground floor of the building to a Shisha Lounge (Sui Generis) ("the Unauthorised Development").
 - The requirements of the notice are to:
 1. Cease the use of the ground floor of the building as a Shisha Lounge (Sui Generis).
 2. Remove internal fittings and fixtures facilitating the unauthorised change of use, including but not limited to tables and chairs, shisha pipes and paraphernalia, and the bar and beverages cooler.
 3. 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) and (b) 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 1990 Act.
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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.

Application for costs

2. An application for costs was made by the LPA against Mr Hashim Siyad (New Sahrah Lounge Ltd). This is the subject of a separate decision.

Preliminary matters

3. The appeal site is trading as 'Sahara Lounge', although the limited company on the appeal form is 'New Sahrah Lounge Limited'. According to the LPA, this limited company is an active entity according to Companies House and the appellant, Mr Hashim Siyad, is the sole Director. The current signage outside the venue spells the venue name the same as the trading name noted in Section 2 in the EN 'Sahara Lounge'.

The appeal on Ground (b)

4. To succeed on this ground, the onus is on the appellant to demonstrate that, on the balance of probabilities, the alleged change of use of the premises to a shisha lounge has not occurred.
5. Evidence of the alleged use has been supplied by the LPA in the form of police reports, neighbour complaints, officer site visit reports, images from a parking survey and copies of warning letters and notices. In addition to this, a report by London Borough of Ealing's Food and Workplace Safety Team addresses matters of indoor smoking, food registration and licensing resulting from several visits to the premises in 2023. Site visit photographs taken on 17 February 2023 and 10 June 2023 by officers clearly show the premises in use as a shisha lounge.
6. Further to this, an application for planning permission dated 17 July 2023 was submitted to the LPA. The description of development was "change of use to shisha lounge (retrospective)". The application was invalid on receipt and later withdrawn. The application form stated that the use commenced on 31 March 2022.
7. There has been no evidence supplied by the appellant to support their appeal or contradict the LPA's findings. The appeal on ground (b) therefore fails.

Ground (a) appeal and the deemed planning application

The venue

8. The ground floor of the premises covers an area of approximately 330 sqm and has been fitted out with tables and chairs for some 130 covers. There is a central bar area, a DJ booth, toilets and areas for storage. There is no kitchen in the premises and no alcohol is said to be served. While I do not have specific details of hours of operation, the evidence points to evening and late-night operation between 1800 to 0400¹. The primary use of the venue is for shisha smoking. However, the premises is considered non-compliant with The Smokefree (Premises and Enforcement) Regulations 2006 being a substantially enclosed area.

Main issues

9. The main issues are:
 - Whether the use of the premises contributes to the policy objectives of the Park Royal Neighbourhood Centre;
 - The effect of the change of use on neighbouring occupiers with particular regard to safety, security, noise and disturbance; and
 - The impact of the use with regard to parking and highway safety.

¹ Email from London Fire Brigade dated 30 September 2023

Reasons

Park Royal Neighbourhood Centre

10. The appeal relates to the change of use of the ground floor of a two-storey building which is tucked away to the rear of 245 Acton Lane. Its previous use is unclear, but historic signage above the laneway and affixed to the building suggests it may previously have been in use as a place of worship or a printworks. The appeal building is attached to No. 245 at the front, but there is no access between the units. The premises is accessed via a private laneway to the west of the building. The narrow laneway is approximately 20m in length and 3m in width. It is gated at both ends. The laneway is flanked on either side by commercial properties which front Acton Lane.
11. The site is in the Park Royal Neighbourhood Centre which is a designated neighbourhood town centre sitting at the heart of London's largest industrial estate. The character of the area is mixed-use with land to the east designated as a Strategic Industrial Location (SIL). Midrise mixed use and residential/institutional development sit opposite the site on the north side of Acton Lane. A large retail supermarket and Central Middlesex Hospital act as anchor uses, generating footfall within the centre. Other uses include supported housing and smaller services such as banks and cafes which help provide facilities for local employees, residents and visitors. The local authority boundary between Ealing and Brent runs along Acton Road and the appeal site is located in the London Borough of Ealing.
12. The Old Oak and Park Royal Development Corporation Local Plan (2022) (the ODPC LP) places great emphasis on delivering more continuous, active and/or positive and legible frontages along the key routes with well-defined building lines. Development in this area should contribute to and/or enable the delivery of high-quality public realm, healthy streets and new or improved connections to surrounding areas. The appeal site sits to the rear of frontage buildings and thus does not present an active frontage on Acton Lane or deliver a high-quality public realm. In this respect there is conflict with the aims of ODPC LP Policies P6, TCC2 and London Plan (2021) Policies D1 and D8 which, amongst other matters, seek to promote improvements to the public space and the introduction of more balanced and active/positive frontages which will aid connectivity and coherence in the Park Royal Neighbourhood Centre.

Residential amenity

13. While the area provides both residential and commercial premises, new development should avoid significant adverse impacts of noise and disturbance on the health and quality of life of those who share the space. The unauthorised change of use has resulted in a significant number of complaints which have been received by the LPA and the Police.
14. Evidence has been provided in the form of witness statements, a noise abatement notice in respect of statutory nuisance dated 30 August 2023, Police reports and complaints from neighbours. All detail those using the premises as causing nuisance through noise disturbance and anti-social behaviour in the area. Complaints refer to the venue operating routinely into the early hours of the morning and the disturbance caused at unsociable hours. The noise generated at the site is stated as being not only from amplified music but also by the large number of customers that use the venue. This is said to be

particularly so when customers congregate prior to and following their visit, and by vehicles sounding horns and revving engines. Noise from the venue is reported as being exacerbated by inadequate ventilation and the subsequent need to leave doors open to release the shisha smoke.

15. Copies of a community protection written warning² and notice³ catalogue behaviour that is having a detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality describing the conduct as unreasonable. The notice refers to behaviour including: noise nuisance including loud amplified music and raised human voices from the venue and patrons outside of the venue; patrons causing nuisance including but not limited to noise nuisance, littering of food/drink packaging, rowdy behaviour, use and littering of illegal and psychoactive substances; and causing vehicular nuisance including obstructions of the highway, parking contraventions and noise-related nuisance by beeping and revving of engines.
16. Having regard to the above and given the proximity of the appeal premises to neighbouring residential properties, the unauthorised change of use fails to provide an environment that feels safe and secure for those who occupy and use the area. The use is also considered to be detrimental to the living conditions of neighbouring residents by way of the noise and disturbance created. Accordingly, I find that the use is contrary to ODPC LP Policies EU5, SP9, D5 and TCC10 and London Plan Policies GG1, HC6, D13 and D14. The essence of these policies is that development should ensure appropriate standards of amenity and deliver a safe and secure environment and not cause unacceptable harm to the quality of life of existing and future users. It also fails to comply with ODPC LP Policy TCC10 which states that there will be a presumption that town centre uses within designated areas should close by midnight.

Parking and highway safety.

17. There are no off-street parking spaces set aside for customers or staff and limited drop-off spaces for those arriving by taxi. Within the vicinity of the premises, parking is generally restricted by double yellow lines along each side of the road. Information concerning a late-night patrol on 3 February 2023 detailed illegally parked vehicles on footways. As a direct response to this, bollards were installed in front of 245 Acton Lane. Photographs taken on 10 June 2023 at nighttime show cars parked bumper to bumper on yellow lines and blocking dropped kerbs outside the venue.
18. Reports by neighbouring residents describe unregulated parking across the zig zag road markings alongside pedestrian road crossings, cars blocking the roads and the business entrances, all of which affects the free flow of night buses and other traffic. While these incidents may not all have been attributable to the shisha premises, it is a strong indication of the pressure for spaces in the area which can cause danger to other road users and pedestrians.
19. The appeal site has a PTAL rating of 3 with fair access to public transport. Nevertheless, given the late-night hours of operation, it is likely that customers will be more reliant on private methods of transport, and the reports from neighbours seem to confirm this to be the case. The evidence documents that

² Dated 26 June 2023

³ Dated 6 November 2023

parking is problematic and this is likely to be harmful to highway safety in the immediate area. In this respect there is conflict with Policy T4 of the London Plan (2021) which specifically refers to the fact that new development must not increase road danger. Conflict also extends to OPDC LP Policies SP7 and T1 which are generally supported by Policies T1 and T6 of the London Plan (2021). These seek to help deliver an efficient transport network, that enhances accessibility and encourages and enables forms of travel which aim to reduce traffic, pollution and noise, create more attractive, accessible and people-friendly streets, and improve health and wellbeing.

Other matters

20. The appellant refers to a neighbouring premises that was granted planning permission in 2016 for a restaurant and café with outdoor shisha. The hours of operation were limited to 10:00 am - 12:00 am Monday to Sunday with all activity to cease 30 minutes after closing. The reason being to preserve and maintain the amenities of neighbouring occupiers. The LPA describe how this operation was materially different from the appeal development in hours of operation, use and location and how, at the time, it was considered acceptable in planning terms being policy compliant albeit with development plan policies that have since been superseded.

Conclusion

21. 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.

S A Hanson

INSPECTOR