



Appeal Decision

Site visit made on 10 December 2024

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 17 January 2025

Appeal Ref: APP/F5730/C/23/3328458

860A Coronation Road, London NW10 7PS (Trading as Elite Lounge)

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Akram Al-Jubouri against an enforcement notice issued by Old Oak and Park Royal Development Corporation (the LPA).
 - The notice was issued on 28 July 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of part of the ground floor, the front mezzanine floor and the top floor of the building to a mixed use as a restaurant, shisha lounge and night club (Sui Generis) ("the Unauthorised Development").
 - The requirements of the notice are to:
 1. Cease the use of part of the ground floor, front mezzanine and top floor as a mixed use of a nightclub, shisha lounge and restaurant.
 2. Remove the fittings and fixtures facilitating the unauthorised change of use including but not limited to table and chairs, top-floor kitchen (including piping and drainage), the DJ booth, and shisha pipes and paraphernalia.
 3. Remove the front stairwell and mezzanine male and female toilets and restore the building to its configuration before the breach occurred.
 4. Remove the commercial signage linked to the unauthorised use and restore the building frontage 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) and (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. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

2. A new version of the National Planning Policy Framework (the Framework) was published on 12 December 2024. Except for paragraph numbering, the parts of the Framework most relevant to this appeal have not been substantively changed from the previous version. Therefore, it has not been necessary to refer to the parties for further comments concerning the updated document.
3. The appeal form notes in the facts and grounds section for Ground (a) that "the development does not include a shisha lounge." As this use is included within the allegation, it seems that there should have been an appeal on ground (b), that part of the breach of planning control, as alleged, has not occurred. Accordingly, and as the LPA has referred to those matters in its

appeal statement, I shall deal with this as a hidden ground of appeal. Given the evidence before me, I can consider this without injustice to either party.

The appeal on ground (b)

4. The appeal on ground (b) is that the matters comprising the alleged breach of planning control *have not occurred* as a matter of fact. It concerns the circumstances leading up to, and at the time when the notice was issued. To succeed on this legal ground, the onus firmly rests with the appellant to show that, on the balance of probabilities, the use of the premises as a shisha lounge as stated in the notice has not in fact occurred.
5. From the LPA's evidence, the venue has been in use since spring 2023. A late-night visit by an LPA Officer on 10 June 2023 observed the venue operating as a nightclub, shisha lounge and restaurant where live music provided entertainment. Photographs from the visit form part of the LPA's submissions. The mixed use as alleged is also consistent with online marketing of the venue on social media platforms such as Instagram. Details of which have been provided by the LPA. The hours of operation were noted as being advertised as Sunday to Thursday 4pm to 12am and Friday to Saturday 4pm to 2am.
6. A witness statement from the LPA Officer following a late-night visit by officers on 1 September 2023 describes observing shisha being consumed within the venue by customers and the storage of pipes and associated paraphernalia. Photographic evidence of the visit forms part of the LPA's submissions.
7. In the absence of evidence from the appellant to support their claim, this ground of appeal should fail.

The Appeal on Ground (a) and the Deemed Planning Application (DPA)

Main Issues

8. The main issues are:
 - The effect of the change of use on its location within a designated Strategic Industrial Location (SIL);
 - The adequacy of parking provision to serve the mixed use as a restaurant, shisha lounge and night club, and the effect of any lack of provision on surrounding occupiers and highway safety; and
 - The effect of the change of use on neighbouring residential and business occupiers with particular regard to noise and disturbance.

Reasons

Location within the SIL

9. The appeal relates to the change of use of a two-storey industrial building with a footprint of approximately 462sqm. The building contains a printworks on the ground floor. An upper floor was installed several years ago, previously being used as storage space for the printworks and now mostly occupied by the unauthorised use. The two internal spaces within the building have been separated and each space is accessed via its own doorway on the frontage of the building.

10. Within the building, the restaurant kitchen is on the ground floor next to the entrance. From the entrance foyer, a wide staircase leads to the upper floor which is laid out with tables and chairs. There is a bar and a further kitchen and storage area and toilets. From this level, stairs provide access to the front mezzanine area where there is seating space which overlooks the main venue space below. It is estimated that the venue provides approximately 220 covers.
11. 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 to 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.
12. 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.
13. 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 mixed use of the appeal premises as a restaurant, shisha lounge and nightclub 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.
14. While I acknowledge that in 2016 planning permission was granted for a sandwich bar¹ within part of the building, this involved a significantly smaller area of the ground floor which has subsequently been incorporated into the alleged mixed use. The area with planning permission measured 55sqm and the use was considered policy compliant in that it would not compromise the integrity or effectiveness of the SIL due to the small scale and minimal loss of the B8 use and because it would cater for local businesses.
15. Overall, I find that the unauthorised development is an incompatible use in the designated SIL. While the industrial use of most of the ground floor has been retained, the use of the upper floorspace, which had previously been installed within the premises and had previously functioned as associated space to the

¹ LPA ref: 1607840PDFUL Change of use of showroom (Part of Use Class B8) to sandwich bar (Use Class A3) and associated internal alterations: installation of retractable (sic) awning to front elevation.

printing business, results in a loss of floor space capacity and undermines the integrity and effectiveness of the SIL and its ability to support capacity for a variety of SIL compliant uses. Therefore, there is conflict with policies E4 and E5 of the London Plan (2021) and policies E1, P5 and SP5 of the ODPC LP and the Old Oak and Park Royal Opportunity Area Planning Framework (OAPF). 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

16. The appeal premises has on-site parking provision to the front of the venue limited to about 3 spaces. Along the street there are parking bays and parking restrictions. At the time of my visit, although only a snapshot in time and during late morning when the venue was closed and when industrial units were operating, I saw there was very limited space available to park along the street. Vehicles were parked on both sides of the road with many obstructing the pavements and with some parked on double yellow lines. With several vehicle repair garages within the vicinity, it was likely that many of the parked vehicles were associated with those premises. Neighbours and the LPA evidence reports parking to be problematic, often resulting in parking over pavements and obstructing pedestrians and traffic flow. The use of the venue is said to exacerbate the inadequate parking provision in the area and as a consequence, effect the safety of highway users in the immediate area.
17. A parking survey, commissioned by the appellant, was undertaken on Wednesday 20 September 2023 at 12:00 and on Saturday 23 September 2023 at 21:30. It recorded 118 parking spaces along the road some 400m to the east of the venue, 200m to the west and some 540m along Sovereign Park, a road to the south of the venue which appears to have parking restrictions in place for most of its length. While showing that parking stress was found to be at a level of 119% during daytime hours, at 21:30 which was stated as being peak time of the operations at the appeal venue, the level was shown to be at 72%, with 32 available on-street spaces.
18. While there are clearly parking and highway safety issues that negatively affect the area during the daytime, the survey shows these are reduced in the evening/nighttime, and parking spaces are available. However, the survey extends a significant distance from the venue and while there may well have been spaces available, there is no indication where these were located and no photographic evidence to support the claims. Spaces that are some distance from the venue are naturally going to be much less desirable to those on a night out and furthermore, there is no reference to how many customers were at the venue on the evening of the survey. Thus, I am not confident that the findings clearly represent the impact of the nighttime use of the premises in this location.
19. Notwithstanding this, to increase parking availability near the venue, there is said to be an agreement with the neighbouring site, Maximum Car Care, to use their forecourt and area to the side of the property for customers. While that would significantly bolster parking provision, there is nothing to support the claim that 26 spaces are made available in the neighbouring premises, or

where those spaces are and, from what I observed at my visit, I am doubtful that such provision would be achievable.

20. The appellant has also presented a travel plan which aims to reduce the reliance of customers on private transport. The appeal site has a PTAL rating of 2 and there are some connections to public transport links with bus networks and Park Royal underground station within proximity. However, there is little to suggest that alternative options would be attainable and there is limited information to show that public transport would be a customer preference at this location. Notwithstanding the aspirations of the travel plan, given the late-night hours of operation, I consider that it is likely that customers will be more reliant on private methods of transport.
21. For these reasons, 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. There is also conflict with the general aims of London Plan (2021) policies T1, T2, T4, T5 and T6 and OPDC LP policies SP7, P5 and T1 which, amongst other things, seek the successful functioning and operation of the 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.

Impact on residents and business occupiers

22. The appellant commissioned a Noise Impact Assessment (NIA) dated 28 November 2023 which reports that noise from the appeal site is within the target criteria and Local Authority requirements. The report concludes that 'breakout noise levels due to the normal operations and activities at the premises will be within the criteria required by OPDC and are likely to have No Observed Effect on the nearest noise-sensitive receptors'.
23. The hours of operation were stated as being between 18:00 and 23:00 and the noise impacts were concluded as being acceptable on this basis. Licensing applications and evidence gathered previously show that the venue has operated into the early hours of the morning. There is clearly inconsistency with the appellant's evidence. Concerns have been raised by local residents about the late-night noise from music playing inside the venue and also from customers outside the venue and their cars. With reports of noise carrying on until 03:00 or 04:00, local residents have voiced their concerns about the disturbance caused during unsociable and unregulated opening hours.
24. For these reasons, I consider that the evidence to support the appellant's contention that there is no detrimental impact on the living conditions of residential and business occupiers in the locality of the area is limited. It seems to me that the activities at the premises are likely to cause noise and disturbance particularly during unsociable hours. Therefore, the mixed use as alleged is contrary to policy D3 of the London Plan (2021), policies SP3, D5 and EU5 of the OPDC Local Plan (2022).

Other Matters

25. It is noted that a previous agent consulted the LPA in July 2022 (before the development took place) for confirmation on whether planning permission was needed for the works. The LPA advised that 'internal alterations do not require planning permission'. No reference is made to the site's industrial location and the importance of retaining an industrial use. While this is unfortunate, the summary of the enquiry is vague in its detail and refers to a requirement 'to have a sitting area for his business' which is described as A3. While the ground floor had planning permission for use as a sandwich bar, it is questioned whether the use was implemented and there is no evidence to support that it had been used as such. Nevertheless, what subsequently occurred was a change of use of a significantly larger area to a mixed use and one which does not fall within a use class, being a 'use of its own'. Thus, the use of the premises bears little resemblance to the nature of the enquiry.

Conclusion on Ground (a) and the DPA

26. For the reasons set out above, the development conflicts with the development plan taken as a whole and there are no material considerations to indicate that a decision should be taken otherwise. 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 (g)

27. An appeal on ground (g) is that the period specified in the notice falls short of what should be reasonably allowed. The appellant requests a period of nine months which would allow sufficient time to undertake remedial work, remove fixtures and fittings and find new premises.
28. Having observed the nature of the fixtures and fittings in the venue and I note that the removal of the ground floor kitchen is not required, I have no reason to consider that 3 months is an unreasonable amount of time to undertake the works or to search for suitable premises.
29. The appeal on ground (g) therefore fails.

S A Hanson

INSPECTOR