



Appeal Decision

Site visit made on 19 August 2025

by **L Douglas BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date 30 September 2025

Appeal Ref: APP/N5660/X/24/3341948

642 Wandsworth Road, London SW8 3JW

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Balin Ismail against the decision of the Council of the London Borough of Lambeth.
 - The application ref 23/03332/LDCE, dated 19 October 2023, was refused by notice dated 4 January 2024.
 - The application was made under section 191(1)(a) of the Act.
 - The use for which a LDC is sought is a Nightclub (Sui Generis).
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to issue a LDC was well-founded.

Reasons

3. Section 57 of the Act sets out that planning permission is required for the carrying out of any development of land. Section 55 provides the relevant meaning of 'development', which includes the making of any material change in the use of any buildings or other land.
4. Section 191(2) of the Act explains that uses are lawful at any time if no enforcement action may then be taken in respect of them and they do not constitute a contravention of an enforcement notice then in force. I have not been referred to any enforcement notice which may be in force on the land.
5. Section 171B of the Act provides that where there has been a breach of planning control other than that comprising operational development or consisting in the change of use of a building to use as a dwellinghouse prior to 24 April 2024, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
6. In this case, it is not claimed that a nightclub use of the site benefits from any planning permission, or that there has been no material change of use. Furthermore, there is no information before me as to precisely when a material change of use to a nightclub may have taken place. It is the appellant's case that the ground and basement floors have remained in use as a nightclub since 2012. Therefore, for the appeal to succeed, the appellant needs to demonstrate on the

balance of probabilities that the site had been in use as a nightclub for at least ten continuous years on the date of the application.

7. Case law confirms that the onus is on the appellant to make out their case and that their evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict the appellant's version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
8. Article 3(6) of The Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) clarifies that a nightclub does not fall within any specific use class. A nightclub is therefore described as a *sui generis* use.
9. During my site visit I noted that the ground floor appeared to be in use for storage or as a retail shop and the basement had a layout consistent with that of a nightclub, where there were open spaces, a 'back of house' area, and male and female toilets. The basement is accessed through the ground floor, so I can see how these floors may have operated together as a nightclub, although there were no obvious bar areas. No dated photographs, plans¹ or descriptions have been provided to show whether this is how those floors were laid out on the date of the application or before.
10. I have been referred to extracts from the Council's records which are claimed to show that premises licences were issued in respect of different company and trading names at the site on 23 August 2012, 28 February 2013, 16 January 2015, and 18 January 2018, and that a building control application was made for a 'new full electrical installation' on 5 November 2016. Those extracts contain very few details of what may have been authorised by these records and do not give any great insight into how the site was being used around those dates. That said, I am aware that premises licences are rarely sought unless alcohol, late night food, or entertainment such as music is provided to the public.
11. Copies of parts of premises licences claimed to date from 2020 and 2021 refer to the licensable activities authorised at the site at those times, which included live and recorded music, entertainment similar to music/dance, the provision of facilities for dancing, and sale by retail of alcohol between the hours 1000 to 0400 on Fridays, Saturdays, bank holiday weekends, Christmas eve, and new years day and eve, and between the hours 1000 to 2230 Sundays to Thursdays. These are the kind of activities and operating hours normally associated with a nightclub use, but as the documents are incomplete it is not clear when those licences were issued, or which dates they applied to.
12. Copies of various advertisements refer to late night parties and DJ events at the site on 11 and 24 February 2012, 27 April 2013, 26 December 2017, 16 November 2018, 9 February 2019, 24 July and 19 November 2022, and 27 August 2023, as well as other events where the full date is not specified. These indicate the site was in use as a nightclub on those dates, but the gaps between some of these dates are substantial. Social media posts relating to the site dated 27 November and 15 December 2021, and 30 August 2022 offer very little in support of the appellant's case in the absence of explanations of what they may show.

¹ Aside from the poorly detailed floor plans at Page 7 of the appellant's Planning Statement

13. Abel Espin's statutory declaration (SD) explains that he was the owner of the site between 2014 and 2017, when 'utility bills, rent, services and business rates were paid for the ground and basement floor at 642 Wandsworth Road to enable this to continue to operate as a nightclub...'. John Keller's SD states that Jarvis Keller Property Consultants and Estate Agents were the marketing agent for the nightclub at ground and basement floor levels at the site from 2014 'to deal with any void periods just as we would with the letting of any commercial premises'.
14. Planning permission was refused in January 2016 for development at the site described as 'Change of use of existing rear addition of the Public House (Use Class A4) at basement and ground floor levels...'². That application is dated 27 November 2015 and the officer report states: 'The ground floor of the building was last used as a bar/restaurant. The site is currently vacant while building works are taking place. The plans describe the front part of the building as a commercial unit' and 'The last use of the areas is unclear, except for part of the ground floor, which is shown on the submitted plans to be a toilet area'. I have not been provided with the full details of that application or explanations as to why these documents refer to the ground and basement floors in that manner at the end of 2015 and/or the beginning of 2016. It has also not been explained how a public house formerly falling within the A4 use class (as defined by the UCO as it was at that time) or a bar/restaurant at the site may not have been materially different to a nightclub comprising a *sui generis* use.
15. Alongside all of the above, the appellant has explained that the building was closed from December 2014 to January 2017 to allow for refurbishment works to the whole building. I note the planning permission granted for extensions to the upper floors in 2013³; however, no explanation has been provided in response to the Council's claim that Google Earth images appear to show the ground floor unoccupied and not operating in September 2014 and August 2017.
16. There is a distinction to be made between a use of land and its occupation. A nightclub does not necessarily cease to be in use as a nightclub when it is closed, in need of a tenant, or during refurbishment works. In this case, the basement and ground floor may have been unoccupied, while remaining in use as a nightclub. What is important is whether the Council would have been able to take enforcement action against an unauthorised nightclub use during the relevant period. In other words, if the Council had inspected the site at any time since 2012, would it have found a nightclub that it could have taken enforcement action against, even if it was unoccupied, closed and/or undergoing refurbishment?
17. The appellant has explained that they had no intention of abandoning a nightclub use of the site, but there is very little evidence to show how the ground and basement floors have been used since 2012 other than on the dates of the advertised events. The SDs do not, for example, explain how the ground and basement floors were in use as a nightclub at any time. The applications for premises licences support the claim that the appellant had no intention of abandoning a nightclub use, but this does not mean that the site was actually in use as a nightclub throughout the relevant period. Mr Keller's SD confirms that there was a marketing agent for the site to deal with any void periods from 2014,

² The Council's ref: 15/06848/FUL

³ The Council's ref: 13/04062/FUL

but the limited evidence suggests there were significant void periods and it is unclear why this was, other than between December 2014 and January 2017.

18. Even if I were to accept that the ground and basement floors were in use as a nightclub up until December 2014 and from January 2017, the limited evidence does not show that they remained in such use throughout the refurbishment works. For example, there is little before me to explain what refurbishment works, if any, were undertaken to the ground and basement floors, what facilities were present on those floors at any times, or why such a significant period was taken to refurbish the building when this may have resulted in the closure of a business. It has also not been explained why any construction work meant the ground floor may have been unable to operate, despite the appellant's claims that a planning permission granted in 2013 was implemented 'whilst the ground floor continued to operate as a nightclub'.
19. I accept that the appellant had no intention of abandoning any use of the ground and basement floors on the basis of the SDs and the apparent recurring applications for premises licences. However, this does not mean that any use was not abandoned, and insufficient evidence has been provided to show (on the balance of probabilities) these parts of the property were in use as a nightclub between any of the advertised event dates or at the time the application for a LDC was submitted. Furthermore, there is little to show what condition the ground and basement floors were in at any points, or what facilities they contained which ensured they were in nightclub use, especially when planning application documents from 2015/16 refer to what may have been a materially different use. In the absence of further details and explanations, those planning application documents suggest the Council would not have been able to take enforcement action against an unauthorised nightclub use at that time.
20. Overall, the evidence is not sufficiently precise and unambiguous to show, on the balance of probabilities, that the site had been in use as a nightclub for a continuous period of at least ten years prior to the date of the application.

Conclusion

21. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of 642 Wandsworth Road, London, SW8 3JW as a nightclub was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act.

L Douglas

INSPECTOR