



Appeal Decision

Site visit made on 24 June 2026

by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th July 2026

Appeal Ref: APP/Y0435/C/24/3355968

Unit Nine, 9 Bridgeturn Avenue, Old Wolverton, MILTON KEYNES, MK12 5QL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Domenico Rampello (RGS Music Limited) against an enforcement notice issued by Milton Keynes Council.
 - The notice was issued on 24 October 2024.
 - The breach of planning control as alleged in the notice is:
Without planning permission, the unauthorised material change of use from storage (Class B8) to a music venue/nightclub (Sui Generis) including the material change of use of designated vehicle parking/unloading land which is an ancillary use to the lawful use class of the site ('the Unauthorised Change of Use').
Without planning permission, the unauthorised operational development to facilitate the Unauthorised Change of Use, the erection of external wooden structures which comprise of an entrance shelter, fence, gates, and seated area ('the Unauthorised Operational Development').
 - The requirements of the notice are to:
 - (i) Permanently cease the operation of the premises as a nightclub/music venue.
 - (ii) Permanently remove the external wooden structures which comprise of an entrance shelter, fence, gates, and seated area as labelled in Appendix 2.
 - (iii) Permanently remove from the site all materials and debris that arise from carrying out steps (i) and (ii) above.
 - The period for compliance with the requirements is: 6 months from the date the notice takes effect.
 - 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 allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the material change of use from storage (Class B8) to a music venue/nightclub (Sui Generis) including the material change of use of designated vehicle parking/unloading land and the erection of external wooden structures which comprise of an entrance shelter, fence, gates, and seated area at Unit Nine, 9 Bridgeturn Avenue, Old Wolverton, MILTON KEYNES, MK12 5QL, as shown on the plan attached to the notice and subject to the following condition:
 - 1) No nightclub events, DJ events or live music events shall take place at the premises between the hours of 0800 to 1800 (Monday to Friday).

The Appeal on Ground (d)

2. An appeal on Ground (d) is made on the basis that, at the time the notice was served, it was too late to take action against the matters stated in the notice. The

onus rests with an appellant to make their case in such appeals, on the balance of probability.

3. The Ground (d) appeal is made purely in relation to the operational development. Given that the works were completed prior to 25 April 2024, the appellant contends that the operational development is subject to the “four year rule”. A photograph depicting the operational development, with an electronic date of July 2020 has been provided, which may indicate that the work was complete more than four years prior to 24th October 2024 when the enforcement notice was served.
4. However, it is long established that an enforcement notice directed at a breach of planning control relating to an unauthorised Material Change of Use (MCU) may lawfully require the land or building in question to be restored to its condition before that change of use took place. It is legitimate to require the removal of associated works as well as the cessation of the use itself – provided that the works concerned are integral to or part and parcel of the unauthorised use. That principle does not apply to works previously undertaken for some other, lawful use of the land in question, and capable of being employed for that or some other lawful use once the unlawful use has ceased. But it can extend to unauthorised changes of use where the associated works, if viewed on their own, would have become immune from enforcement under the four-year rule
5. Whilst the appellant contends that the structures were constructed in response to the coronavirus pandemic, it seems to me that they are integral to the use of the property as a nightclub, given the function of the space as a shelter to the entrance and an outdoor seating area. The modest structures serve no other purpose and are clearly ancillary to the use of the premises as a whole.
6. Thus, notwithstanding that the structures may have been constructed more than four years prior to the service of the enforcement notice, it is open to the Council to seek their removal within the 10 year period relating to the MCU. The structures are ancillary to and integral to the unauthorised use and their removal would be necessary to restore the land to its condition before the breach took place. It follows that the appeal on Ground (d) must fail.

The Appeal on Ground (a)

Preliminary Matters

7. Within its statement of case, the Council referred to three policies from the emerging Milton Keynes City Plan 2050. However, it did not provide copies of those policies, nor did it provide any information as to the state of progress of the emerging plan or whether there are any outstanding objections to the policies. Consequently it is difficult to attach any weight to those emerging policies, in line with advice in the National Planning Policy Framework (the Framework).
8. In any event, the body of the Council's case did not seek to rely upon emerging policies and the focus was on those contained within the adopted Local Plan.

Main Issues

9. From the information before me the main issues in the determination of the Appeal on Ground (a) are:

- i) The effect of the development on the local economy and the supply of employment land;
- ii) The effect on highway safety, parking provision and travel patterns.

Employment Land

10. The appeal site is located within an area identified for employment use in the Milton Keynes Local Plan “Plan:MK” (2019) (the Local Plan), where policy ER2 applies. The preamble to that policy identifies that, in order to retain sites in employment use to meet defined employment needs, the Council will require evidence that the property cannot be used for its existing employment use.
11. The policy itself is split into two sections, “A” and “B”. Part A states that planning permission will be refused for the change of use or redevelopment of any land identified for employment use or for any building used for employment purposes to another purpose, unless the applicant can demonstrate one of three things:
 - 1) That there would be no conflict with existing or potential neighbouring uses and the proposal would result in a significant reduction in the detrimental environmental impact of an existing use; or
 - 2) That the proposed use is one that cannot be satisfactorily accommodated other than in an employment area; or
 - 3) The proposed use will not significantly reduce the provision of local employment opportunities.
12. Given the use of the word “or” compliance with any one of the three would be sufficient to meet the requirements of Part A. The Council accepts the appellant’s point that the use has not significantly reduced the provision of local employment opportunities. In fact, the information provided by the appellant indicates that 43 premises were available on employment sites within a 3.5 mile radius, with an overall floorspace of 24,500sqm. Thus, there would appear to be no shortage of available employment land in the area.
13. Moreover, the appellant has provided details of a sequential search of sites within or close to town centres. Of the sites identified, many were too small for the use as a nightclub. Of the three that were large enough, two were office buildings within a mixed-use residential development which would have a clear potential for conflict with the activity as a nightclub, in terms of the impact upon the living conditions of neighbouring residents. The fact that they were office buildings would also mean that any application to use them as a nightclub would face exactly the same policy constraint as the appeal site in respect of the need to comply with policy ER2.
14. The third premises was too large for the appellant’s needs. The Council has put forward no alternative evidence of its own to indicate that any sequentially preferable sites are available within town centres. Whilst it has referred to paragraph 92 of the National Planning Policy Framework which states that preference should be given to accessible sites which are well connected to the town centre, no more accessible sites have been identified.

15. In the absence of any obvious alternative sites it seems to me that the appellant has provided enough information to demonstrate that the use cannot satisfactorily be accommodated other than in an employment area.
16. In terms of the first criteria of Part A, no conflict with neighbouring uses has been identified. In fact, no complaints from neighbouring uses appear to have been submitted and it would appear the planning department only became aware of the use after a referral from the licensing team. The Council has referred to a potential for noise in its statement, but that does not form part of its reasons for issuing the enforcement notice. In addition, if noise was an issue, one could reasonably have expected some evidence of harm to be apparent, given that the use has been operating since 2016. The Council has provided no evidence in terms of noise monitoring and it seems to me that the location is well-suited in that regard given the distance from sensitive receptors.
17. The second sentence of the first criteria requires a significant reduction in the detrimental environmental impact of an existing use. That assumes that the existing use had a detrimental environmental impact which is not clear in this instance. Thus, it seems to be a criteria which is difficult to comply with in those circumstances. However, overall, the information provided is sufficient to demonstrate compliance with Part A of policy ER2.
18. Part B of the policy requires evidence of marketing to show that there is no longer a reasonable prospect of the site being used for a designated employment use and that the use of the site for employment purposes is no longer viable. Whilst the appellant has stated that the premises were on the market for a considerable period in 2013, little direct evidence of that is provided. There is nothing before me to demonstrate that the premises would no longer be viable for employment uses, such that the requirements of Part B have not been satisfied by the evidence presented.
19. However, the interplay between Parts A and B of the policy is interesting when considered against the overall objectives of the policy which is to safeguard sufficient employment land to meet the needs of the area. As noted, the appellant has demonstrated that there is a large supply of available employment land within a 3.5 mile radius of the appeal site which would indicate that there is no shortage of supply. The Council does not dispute that evidence and is satisfied that the use has not significantly reduce the availability of employment land.
20. Having accepted those two points the obvious conclusion is that the change of use at the appeal site will not have any notable effect on the supply or availability of employment land in the area, such that there is little or no actual harm arising, when set against the principal objective of the policy. When that is added to the conclusion that no sequentially preferable sites are available, the Council's stance of suggesting that permission should be withheld because the site has not been marketed appears almost as a tick box exercise as opposed to a genuine consideration of the harm arising.
21. Thus, whilst evidence of the marketing carried out prior to occupation is limited, I am satisfied that the development complies with the aims of policy ER2, when read as a whole. It has not caused harm to the overriding objective of ensuring that a sufficient supply of employment land is available in the area.

22. I note reference to the flexibility that the Council has shown in respect of other applications to change the use of other employment buildings in the area, including Unit 11, adjacent to the site which was granted permission to be used as a gym. There was also an indication at the pre-application stage that the use at the appeal site would be considered favourably. However, it is always the case that applications and appeals must be considered on their individual merits and those matters have not, of themselves, had a significant bearing on my findings.
23. For all of those reasons, I am satisfied that material change of use of the unit from and employment use to a leisure use is acceptable in terms of the overarching aims of policy ER2 of the Local Plan.
24. Whilst not referred to within the reasons for issuing the enforcement notice, the Council also contends that the development contravenes the aims of policy DR3 of the Local Plan. That is a broadly permissive policy aimed at encouraging economic growth in the area. It seems to me that the use of the appeal site does facilitate economic growth, related to the leisure sector. The nightclub and recording studio employs 5 full-time workers, two contracted and three freelance, in addition to 20 part time staff at each event. That is not an insignificant number considering the scale of the unit.
25. The live music events in the nightclub cater for particular music tastes, such that people come from a wider area, unlike a traditional nightclub where patrons may move on from local pubs and bars. There will undoubtedly be economic benefits associated with that including knock on spend in hotels, bars and restaurants for example. In fact, the nightclub is advertised on the “Destination MK” website as a reason to visit Milton Keynes. Destination MK is a partnership between the Council, the Milton Keynes Business Improvement District and Visit Britain.
26. Whilst the appellant has not sought to quantify the economic benefit the use is clearly well-established and forms an important part of the local night-time economy, as well as providing local opportunities for artists and others who use the recording studio. Accordingly, I find no conflict with the economic aims of policy DR3 of the Local Plan.
27. The development also accords with paragraph 85 of the Framework which states that significant weight should be placed on the need to support economic growth and paragraph 86(e) which states that policies should be flexible enough to accommodate new needs not anticipated in the Plan.

Highway Safety and Parking Provision

28. Very little space is available for parking within the site itself, given that the timber structures span much of the small forecourt to the front of the unit. The remaining space would accommodate maybe 3 or 4 cars. Thus, those visiting the site are likely to need to park off-site in order access the venue.
29. The stated reasons for issuing the enforcement notice suggest that the presence of the operational development causes a problem with highway safety by causing vehicles “wait on the road, resulting in increased traffic generation and reduced parking capacity at the site”. However, the fact that there is little space to park at the site is not, of itself, an indication of any issue in terms of highway safety. Many premises operate without designated parking, relying on on-street parking or parking elsewhere without detriment to such matters.

30. Moreover, the Council has provided no evidence of parking problems or congestion in the area which is surprising given that the business has been in operation since 2016. If problems were occurring one might expect complaints which would result in site visits, street parking surveys and/or photographs depicting the situation but nothing of that kind has been submitted.
31. In fact, it seems that the decision to serve the enforcement notice, in respect of highway matters at least, was taken not directly in relation to the impact of current operations but in respect of concerns that if the use became immune due to the passage of time it would not be possible to control future parking and access arrangements in the sense that it would not be possible to attach any conditions which could regulate the use.
32. As noted in the delegated officer report, it seems that the Local Highway Authority were satisfied that the current use did not have an undue impact because the nightclub generally operates at a time when the surrounding businesses are closed – late in the evening/ early morning and at weekends. I see no reason to take a different view and the fact that the use operates at different times to surrounding units would seem to alleviate any issues in relating to parking congestion.
33. Given the nature of use as a nightclub, such events are always primarily likely to take place in the evenings at weekends and there is no reason to suppose that the parking situation would alter to any great extent in future, even without the control afforded by a condition. However, the appellant has suggested a condition to the effect that music events should be prevented between the hours of 08:00 to 18:00 (Monday to Friday) to avoid a crossover between the use and times when other units are operational.
34. It is possible that future use of the nightclub and music venue could expand to events beyond the current pattern of use and I am satisfied that the condition would prevent that from occurring, thereby avoiding likely conflict with parking related to existing uses. I am also satisfied that the restriction should only apply to music events and not the general running of the business which includes the recording studio which generates much less traffic and is of a low key nature.
35. The Council maintains that the condition would not meet the 6 tests set out at paragraph 57 of the Framework, albeit I am not clear which of those tests it considers would be breached. The concern appears to relate to enforceability and the fact that the appellant does not have control over external car parking owned by other units. However, that seems to miss the point. The aim of the condition would not be to control external parking but to restrict the time at which events can take place to avoid overlap between the nightclub use and the operation of surrounding units. Regardless of whether the appellant owns or controls surrounding parking there is no reason to suppose any highway safety or congestion issue would arise, providing the timing of events was controlled, given the absence of any evidence of harm from current operations. The suggested condition would be perfectly enforceable in relation to the timing of events.
36. The appellant has also put forward a suggested condition relating to a travel plan, the aim of which would be to encourage visits by means of travel other than the private car. It is the case that the site is not well-served by public transport but not many places are in the early hours of the morning.

37. As noted, people seemingly travel to events from a wide area, no doubt by a range of means. It may be that some stay in Milton Keynes or surroundings and get taxis to the venue in the evenings. Some may drive and leave cars for collection the day after and some may drive home after events. In the absence of any clearly identified public transport options I am not satisfied that a travel plan condition would have much impact in influencing travel modes.
38. Nonetheless, no alternative sites are available in more centrally located positions and even if they were it is not clear what realistic options would be available at 4 o'clock in the morning when people need to get home.
39. Consequently, I find no undue conflict with the aims of policy CT10 of the Local Plan with respect of parking provision. The development does not meet the Council's parking standards in terms of designated spaces but there are mitigating circumstances in respect of the nature of the use, the time at which events take place and the symbiotic relationship with surrounding uses. Moreover, there is no evidence that the provision of parking falling below adopted standards has led to any harm in relation to congestion or highway safety.
40. There is some conflict with the aims of the policy in terms of encouraging modes of travel other than the car. Similarly, there is conflict with the aims of paragraph 109(e) of the Framework in that respect. The lack of sustainable transport options is a matter weighing against the development, albeit tempered by the lack of any apparent alternatives and the specific nature of the use which makes alternatives to the car more difficult to achieve.

Other Matters

41. The Council has raised no specific issue in terms of the design or appearance of the operational development and I am satisfied that the visual impact is acceptable, given the functional nature of surrounding buildings which are of no design merit.
42. The Council state that the appellant has provided no information to demonstrate that the use as a nightclub is acceptable in relation to noise and lighting. That is unsurprising because those matters did not feature in the stated reasons for issuing the enforcement notice. Moreover, the business has been operating for a number of years and the Council has had ample opportunity to gather evidence if those issues were of concern.
43. However, no evidence has been presented to suggest the use causes any harm to surrounding uses, no complaints seem to have been made and no comments are before me from the Environmental Health department. The location therefore seems well-suited to a use which has the potential to create noise and disturbance, given the lack of sensitive surrounding uses.

Conditions

44. Beyond the suggested condition to control the hours at which music events can take place and the suggested travel plan condition, both of which are addressed above, no further conditions have been put forward by either party and there is nothing to indicate that any further conditions would be necessary to make the development acceptable in planning terms if I were to grant permission.

Conclusion on Ground (a)

45. For the reasons given above I find that the development complies with the economic aims of the development plan, having regard to the loss of the existing employment use and its replacement with a leisure use that has brought about economic benefits of its own. I find no conflict with the overall aims of policies ER2 and DR3 of the Local Plan in that respect.
46. Furthermore, no evidence has been provided to demonstrate that any harm has arisen in respect of parking provision, congestion or highway safety. Thus, there is no conflict with the aims of policy CT10 of the Local Plan in that regard. Whilst there is some conflict between the location of the site and the need to encourage sustainable modes of travel that is tempered by the lack of alternative available sites and the nature of the use which would be difficult to fully cater for in terms of public transport provision.
47. Thus, notwithstanding that limited conflict, I am of the view that the development accords with the policies of the development plan, taken as a whole. Any harm in respect of potential car parking issues can be mitigated through the imposition of a condition to limit the hours of events that take place. In accordance with the presumption in favour of the development plan, and in the absence of any obvious harm arising from the development, it follows that I shall allow the appeal on ground (a) and grant planning permission for the development.

Overall Conclusion

48. For the reasons given above, I conclude that the appeal shall succeed on ground (a). I shall grant planning permission for the development as described in the notice and the enforcement notice will be quashed.
49. In these circumstances the appeal on grounds (f) and (g) does not fall to be considered.

Chris Preston

INSPECTOR