

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

STATEMENT ON BEHALF OF THE APPELLANT

SITE AT 66 JOEL STREET NORTHWOOD HILLS MIDDLESEX HA6 1LL

APPELLANT: MR NAYAN CHANDI

APPEAL AGAINST IMPOSITION OF CONDITION 4 OF PP 23334/APP/215/471

LPA: LONDON BOROUGH OF HILLINGDON

LPA REF: 23334/APP/215/471

PLANNING INSPECTORATE'S REFERENCE NO. APP/R5510/W/15/3129003

SUBMITTED BY: SUCHA SINGH BASUTA MA DIP TP MRTPI

1.0 THE APPEAL SITE AND SURROUNDINGS

- 1.1 The appeal site is situated on the west side of Joel Street within a commercial area. The site is occupied by an existing historic public house/restaurant. The forecourt of the property is used for parking. The Northwood Hills station is on the opposite side of the road to the northeast. The railway line running substantially below the road level adjoins the north side of the appeal site. The surrounding area in Joel street mainly comprises shops with flats over and residential properties to the rear of the site. The application site lies within the designated Northwood Hills Town Centre.
- 1.2 The property was built as a public house and there are no planning conditions restricting the hours of operation relating to the building as originally constructed. There are no trees of significant nature within the site. There is a tall row of conifer trees along the western boundary of the site along the residential gardens of the properties in York Road / West Way and along the railway line on the north side of the site. The site is neither a listed building nor situated within a conservation area.
- 1.3 A selection of photographs of the appeal property is attached as Document 1.

2.0 CENTRAL GOVERNMENT POLICY AND GUIDANCE

- 2.1 National Planning policy Framework (NPPF) came into operation on 27 March 2012. The purpose of the NPPF is to promote sustainable development through competitive economy, vitality of town centres, promotion of local economy, housing, tackling climate change and safeguarding environment etc. Paragraph 2 emphasises to determine planning applications in accordance with development plan unless material conditions indicate otherwise and making easier to create jobs in cities, towns and villages (Paragraph 9). Local authorities should draw up to date plans and where development plan is absent, silent or relevant policies are out of date granting permission unless any adverse impacts of doing so demonstrably outweighs the benefits when assessed against the policies as a whole. The appeal proposal accords with the government's objectives of promoting employment at sustainable locations.
- 2.2 Paragraphs 18 to 21 of the NPPF indicate that the government is committed to

promote economic growth to create jobs and additional houses. The planning system should not impede sustainable growth. This is further emphasised to promote competitive environment to facilitate range of retail, eating and drinking, leisure, commercial, tourism cultural, community and residential development through planning policies to ensure town centres remain attractive and competitive. The above noted advice is further endorsed by the Planning Practice Guidance 2014.

- 2.3 Sections 38(6) of the Planning and Compulsory Purchase Act 2004 and 70(2) of the Town and Country Planning Act 1990 lay down the basic rules for determining planning applications. Section 38(6) states that:
“If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise”. The government is committed to a plan led system of development control and this is given statutory force by section 54A of the 1990 Act. The objective of the plan led system is to ensure, among other things, rational and consistent decisions and reducing misconceived planning applications and appeals.
- 2.4 Local planning Authorities should deal with planning applications in a positive way to foster delivery of sustainable development to improve economic and social conditions. This is elaborated in detail in paragraphs 186 to 206 of the NPPF emphasising discussions with applicants, use of appropriate planning conditions and to take into account material planning conditions relevant to each planning application. The LPA imposed the relevant condition without giving due consideration to the material considerations relevant to the appeal application and without the consent of the appellant.
- 2.5 Planning Practice Guidance 2014 aims to streamline the planning system and among other things provides detailed guidance about the use of conditions in planning. This guidance supersedes many previous planning circulars including Circular 11/95 regarding the Use of Conditions in Planning. The Planning practice guidance lays down the basic tests of detailed guidance for the imposition of conditions. It is the appellant’s view that the condition subject of

the appeal does not bear the tests of the guidance and fails to take into account the material circumstances of the case. Reference will be made to the document in the detailed justification of the appeal.

3.0 RELEVANT LOCAL PLAN POLICIES

- 3.1 The development plan for the borough comprises; Hillingdon Local Plan Part I – Strategic policies, saved and adopted UDP policies, draft Hillingdon Local Plan Part 2 and the London Plan published by the Mayor in 2012. The Hillingdon Local Plan Part I (Core Strategy), part of the Local Development Framework, was adopted in 2012. This document sets out the strategic policies for the borough from 2011 to 2026. The Council are still working on the Hillingdon Local Plan Part 2. Appendix 5 contains a list of UDP policies which have been saved and incorporated or intended to be incorporated in the Local Plans.
- 3.2 Borough's DPD policies are proposed to be included in the Local Plan Part 2 which is going through the public consultation and the statutory process. These policies will be used for development control purposes after the adoption of the document. As the Local Plan part 2 has not been adopted yet, it does not carry the same weight as adopted policies. Local plan Part1 and adopted / saved policies of the UDP are therefore particularly relevant for this appeal.
- 3.3 Adopted and saved UDP policies BE13, BE15, BE19 and BE21 indicate that new development shall harmonise with surroundings / existing building, complements or improves the amenity / character of the area, and their siting and scale should not harm the amenity of nearby occupiers. The appeal development is situated on the north side of the building adjacent to the railway line and away from the residential gardens on west side of the site. Therefore the appeal development does not prejudice any of the policies noted above.
- 3.4 Saved UDP policy OE1 aims to safeguard character / appearance or amenity of surrounding properties from inappropriate siting, traffic generation, noise and disturbance caused by development proposals unless sufficient measures are taken to mitigate the environmental impact. This is endorsed by saved policy OE3 which states buildings or uses which have the potential to cause noise annoyance will only be permitted if the impact is mitigated within acceptable levels by engineering, lay-out or administrative measures. The appellant would

rely on the relevant extracts of the saved Built Environment policies of the UDP supplied by the Council. Relevant extracts of UDP chapter Other Environmental Considerations are attached as Document 2.

4.0 RELEVANT PLANNING HISTORY

4.1 The site has no significant relevant planning application.

5.0 THE APPEAL APPLICATION

5.1 The appeal application was submitted on 9 February 2015 for Installation of outdoor smoking lounge (retrospective). The application was accompanied with the following drawings:-

- Location Plan
- Drg No. 01
- Drg No. 02

5.2 The Council consulted the Environmental protection Department who suggested to impose planning conditions restricting the use of amplified music and a restriction on hours of operation. On 2 April 2015 the Local Planning Authority approved the application subject to the following conditions:-

1. There shall be no music or amplified sound emanating from the area occupied by the extension hereby approved at any time.

REASON

To safeguard the residential amenity of the occupiers of adjoining and nearby properties in accordance with Policy OE3 of the Hillingdon Unitary Development Plan

2. The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers 01 and 02 and shall thereafter be retained/maintained for as long as the development remains in existence.

REASON

To ensure the development complies with the provisions Hillingdon Local Plan: Part Two Saved UDP Policies (November 2012) and the London Plan (July 2011).

3. The rating level of the noise emitted from the area occupied by the

extension hereby approved shall be at least 5dB below the existing background noise level. The noise levels shall be determined at the boundary of the nearest noise sensitive premises. The measurements and assessment shall be made in accordance to the latest British Standard 4142, 'Method for rating industrial noise affecting mixed residential and industrial areas'.

REASON

To safeguard the amenity of the surrounding area in accordance with policy OE1 Hillingdon Local Plan: Part Two Saved UDP Policies (November 2012)

4. The area occupied by the extension hereby approved shall not be used except between 0800 and 22:00 hours Sunday-Thursday and between 0800 and 23:00 hours Friday and Saturday.

REASON

To safeguard the residential amenity of the occupiers of adjoining and nearby properties in accordance with Policy OE3 of the Hillingdon Unitary Development Plan.

- 5.3 This is a retrospective planning application for the smoking lounge located to the north side of the existing public house/restaurant adjacent to the railway line. The smoking lounge is situated 11.5m from the rear boundary of the garden of the nearest residential property (block of flats) in West Ways. The building measures 7.15m in depth by 13.1m in length and has a flat roof construction measuring 2.85m high. The low level single storey structure measures 100 square metres. Rear garden of the property is used as an outdoor drinking area. Planning Officer's delegated report is attached as Document 3.
- 5.4 As noted above the existing building was built as a public house. There are no restrictions on hours of operation on the use of the existing building as originally constructed. The appellant accepts condition nos. 1, 2 and 3, however as there is no restriction on the hours of operation of the existing use including the rear garden; condition no. 4 restricting hours of operation of the built smoking lounge within the specified timing is unduly restrictive / onerous and does not bear the

tests for conditions noted in the Planning Practice Guidance. This appeal is against the imposition of this condition 4, which is sought to be deleted.

6.0 PLANNING ASSESSMENT

6.1 Principle of the Development

The smoking lounge is open on east (front) and north side to comply with health and safety legislation for a smoking shelter. The building is closed on the west and south sides. There is a tall / thick row of conifer trees along the rear boundary of the site with residential flats in West Way and northern boundary with the railway line. The structure has no material impact on the street scene or the character of the area. Its open ended design on north and east sides and its siting are appropriate for the smoking shelter. The appeal proposal accords with saved policies BE13, BE15, BE19 and 21 of the UDP.

6.2 Impact on Living Conditions of Neighbouring Occupiers

The reason for imposition of condition no. 4 is to safeguard the residential amenity of adjoining and nearby properties. It should be noted that no property adjoins the smoking lounge. The upper floor of the appeal site are used as ancillary accommodation. The nearest residential block in West Ways at the rear is 20m+ from the smoking shelter. In addition the beer garden and a tall row of trees separate the approved smoking lounge from the residential block. The smoking lounge is sealed on west and south sides. As a result any noise emanating from the smoking lounge would be subsumed by customers' noise in the beer garden. It is therefore highly unlikely that any noise from the smoking lounge would pass through the solid western wall of the lounge and the thick row of tall conifer trees along the boundary. There is therefore no material impact of noise from the smoking lounge on the nearby residential properties on west side. There has been no known complaints against the smoking lounge since June 2014 when it came into operation after its completion.

6.3 Material Planning Considerations

It should be noted that there is no planning condition restricting hours of operation of the appeal property. The site, including the rear beer garden, could be used unrestrictedly and this has been going on since the building was originally constructed. It is a strange situation where the entire building and the

rear garden can be used without any planning restriction on the hours of operation whereas the use of the approved smoking lounge is restricted between 0800 and 22:00 hours Sunday-Thursday and between 0800 and 23:00 hours on Friday and Saturday. These material planning considerations have not been taken into account while assessing the impact of the proposal and imposition of the relevant condition.

- 6.4 Whilst there is no planning condition restricting the hours of operation of the principal building as originally constructed, there are other restrictions on sale of alcohol, live music and opening hours imposed by the Environmental Health Department under the Licensing Act 2003. The premises are licensed to operate between the following times:-

Sunday-Thursday and between 0700 and 12:30 hours

On Fridays and Saturdays between 7:00 and 02:30 hours on the following day

In addition to the hours detailed above:-

On Christmas day, Boxing day and Fridays, Saturdays, Sundays and Mondays of Bank holidays between 02:30 hours on the days following.

On New Year's Eve between 07:00 to 07:00 on New Year's day.

On no more than 12 occasions per year between 07:00 to 02:30 hours subject to that the Met Police to be given not less than 10 working days advance notice in writing when an event day is planned.

Clearly the existing hours of operation imposed by the Licensing Authority have also not been taken into account. The relevant planning condition is disproportionately restrictive. A copy of the current premises licence issued by the Environmental Health Department is attached as document 4.

6.5 **Justification for Deletion of the Condition**

The condition subject of the appeal does not serve a valid planning purpose and is therefore redundant. The purpose of the smoking lounge is to provide an all-weather facility for customers. The restriction imposed by the condition requires customers to move into the open beer garden for smoking after 22:00 or 23:00 hours depending on the day of a week where they can stay until 02:30 hours in the morning. This is not only uncomfortable for customers in winter but also brings the source of any potential noise or smell close to the residential garden

of the flats in West Way. For these reasons the subject condition does not serve a valid planning purpose.

- 6.6 Hours of operation of the premises are controlled by restrictions imposed by the Licensing Act 2003. The premises (excluding the approved smoking lounge) can operate for longer hours than the hours stipulated in the planning condition. This means the smoking lounge has to be kept closed whereas rest of the premises continue to operate for longer periods. The customers move into the main building or the beer garden of the premises. This shows the condition is redundant, unworkable and unreasonable. The condition is therefore unnecessary / superfluous and serves no valid planning purpose.
- 6.7 Planning Practice Guidance 2014 provides detailed guidance about the use of planning conditions. The disputed condition does not bear the tests noted on pages 2 to 4 of the guidance. In short a condition should be necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects. In some cases a condition is clearly unnecessary where it would repeat provisions in other conditions imposed on the same permission or conditions imposed by other regulations. The condition 4 imposes an unjustified control rather than to tackle specific problem which can be achieved under the Licensing Act.
- 6.8 The powers to impose planning conditions are derived from sections 70, 72, 73, 73A and Schedule 5 of the Town and Country Planning Act 1990. However, power to impose conditions must be interpreted in light of material factors such as National planning Policy framework and relevant case laws. The conditions should be fair, reasonable, practicable and should not impose unnecessary controls or burden. The condition subject of the appeal is not only unduly restrictive but also represents duplication of controls imposed by the Licensing Act 2003.
- 6.9 The purpose of the condition is to safeguard the amenity of the adjoining and nearby occupiers. Residential properties are only on the west (rear) side of the premises which are at a considerable distance (20+m) from the approved smoking lounge. There is no evidence of any noise, disturbance or smell emanating from the approved smoking lounge has an effect on the amenity of

the residents in West Way. The approved lounge has been in use for more than a year and there are no complaints from any of the nearby occupiers as a result of the development. Even if there are any complaints, action could be taken under the licensing Act 2003. The condition is therefore, unnecessary and serves no valid planning purpose. The objective of safeguarding amenity can be achieved by other regulations in this case.

- 6.10 By unduly restricting the hours of operation of the approved smoking lounge, the condition is proving onerous. Whilst the rest of the premises can operate for a significant longer hours, shutting the smoking lounge earlier than the licensing hours results in financial loss to the appellant who spent a considerable amount to build the structure for the specific purpose. The customers are forced to move into other parts of premises including the beer garden which can be used for a longer period thereby making the condition redundant. As the condition prohibits the use of the approved structure to an optimum level, the condition is proving onerous and hindering optimum use of the building.
- 6.11 The most evident potential source of noise emanating from the approved structure would be from the amplified music. Condition no. 1 attached to the permission prohibits the use of amplified music / sound emanating from the structure. The appellant considers that this condition obviates the need for any further control to safeguard the amenity of adjacent residents. In addition condition 3 specifies noise rating level emitted from the area occupied by the extension to be at least 5dB below the existing background noise level. These two conditions are sufficient to safeguard the amenity of nearby residential occupiers. If there were any evidence of the breach of these two conditions, the Council have powers to enforce in the interests of amenity. The condition subject of the appeal represents duplication of controls and is therefore superfluous. The purpose of safeguarding amenity has been achieved by these condition nos. 1 and 3 attached to the permission.
- 6.12 The Council appear to have imposed the subject condition on the recommendation of Environmental Health. However, no regard has been given to the material planning considerations discussed previously and the existing controls in situ under the Licensing Act 2003. Planning applications and

appeals are considered on planning policies and relevant material planning considerations. In the circumstances little weight has been given to the material planning considerations. The condition is not justifiable and sustainable on planning grounds.

- 6.13 Planning applications and appeals are decided on balance having regard to current local and national policies and all other material planning considerations. No regard appears to have been given to the material planning considerations regarding the current use and existing hours of operation and other controls applicable under the Licensing Act. The Council appear to have not followed this established practice.

7.0 THIRD PARTY REPRESENTATIONS

- 7.1 One neighbouring occupier objected the application on noise grounds. The smoking lounge has been in use for more than a year. There has been no complaints since the use came into operation. The proposal has no material impact on the amenity of any of the neighbouring occupiers. If there was any noise issue, it could be resolved by strict enforcement of condition nos. 1 and 3 attached to the permission. The objection on noise grounds is not sustainable on planning grounds.

8.0 COMMENTS ON COUNCIL'S STATEMENT OF CASE

- 8.1 The Council's prime reason for the imposition of the condition is presumed impact on residential amenity. The appeal proposal would have no material impact on residential amenity. This has been dealt with in detail in the paragraphs noted above and need not be repeated here.

9.0 CONCLUSION

- 9.1 It has been shown that the site is situated within a shopping centre at a sustainable location. Given the material planning considerations and the contradiction between the longer hours of operation imposed under the Licensing Act 2003 and the shorter hours of operation imposed by the appeal condition, the relevant condition is unnecessary, onerous, superfluous and serves no valid planning purpose. In the event of any potential noise issues, condition nos. 1 and 3 attached to the permission can be enforced to safeguard

residential amenity. Action can also be taken under the licensing Act. The condition is contrary to the advice given in NPPF and Planning Practice Guidance 2014.

- 9.2 Inspector is respectfully requested to take into account the material circumstances referred to in this statement and to allow the appeal by deleting the condition.

LIST OF DOCUMENTS

1. Selection of Photographs of the Appeal Property
2. Extracts of Relevant Environmental Protection Policies
3. Officer's Delegated Report
4. Premises Licence issued by Environmental Health Dept.