



Town and Country Planning Act 1990

# London Borough of Hillingdon Appeal Statement

**Appeal By:**

SLI UK Real Estate Fund  
Agent – Mr Peter Waldren

**Proposal:**

To confirm whether the host site falls within Use Class E and that the proposed tanning salon can lawfully occupy the unit (Certificate of Lawful Development for a Proposed Use).

**Appeal Site:**

Former Frankies and Bennys Unit, 5 Old Dairy Farm Lane, Ruislip, HA4 0FY

Our Ref:  
Your Ref:

72422/APP/2021/3867  
APP/R5510/X/22/3290784

## 1. Introduction

- 1.1 This Appeal Statement is submitted by the London Borough of Hillingdon, as the Local Planning Authority (LPA), in respect of the appeal against its refusal to grant a certificate of lawful development (proposed use) at Former Frankies and Bennys Unit, 5 Old Dairy Farm Lane, Ruislip, HA4 0FY to 'confirm whether the host site falls within Use Class E and that the proposed tanning salon can lawfully occupy the unit (Certificate of Lawful Development for a Proposed Use).' The LPA refused the application on 13/12/2021, for the following reasons (as stated on the decision notice):

1. **The proposal involves a change of use from restaurant (use class E as detailed in The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020) to tanning salon. Insufficient evidence has been submitted by the applicant to demonstrate that a tanning salon would fall within use class E of the Order. Therefore the Local Planning Authority considers that a tanning salon would fall within the sui generis use class. As such, the proposal is considered to constitute development as defined by Section 55 of the Town and Country Planning Act 1990 (as amended) and the proposed change of use is not one which is permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Furthermore, the proposal would result in the subdivision of a planning unit that would be considered to constitute development under Section 55 of the Town and Country Planning Act 1990 (as amended). The proposal therefore requires full planning permission.**

- 1.2 The LPA's case is set out in the Planning Officer's Delegated Report, which should be read in conjunction with this statement. A copy of the Delegated Report was provided at the time of the submission of the Questionnaire.
- 1.3 This statement will not repeat the Planning Officer's Delegated Report and will focus on addressing matters raised in the Appellant's Statement of Case.

## 2. LPA Comments on Appellant's Statement of Case

- 2.1 Section 1 (page 2) of the Appellants Statement of Case is the Introduction. Section 2 (page 3) sets out the background of the subject appeal application. Section 3 (page 4) discusses the Site and Surrounds. It should be noted under paragraph 3.1.1 that the Appellant implies the 'commercial unit to be known as Unit 5A.' The submitted site location plan includes the red line around the entire 'Unit 5' (lawful site) but the submitted 'Lease Plan' – drawing no.EFE-01 shows a red line around 'Unit 5A.' Planning permission has not been granted to sub-divide the unit (as mentioned in the Planning Officer's Delegated Report) and no evidence in any case has been demonstrated that any sub-division would fall within the same planning use class. The Local Planning Authority (LPA) clearly considered any sub-division would require planning permission as evident under a non-material amendment application (refused scheme) which proposed to sub-divide Unit 5 – ref:66819/APP/2021/1206. The Appellant quotes this application under Section 4 (pages 5-6). The LPA would like to highlight that under paragraph 4.17 of the Appellant's Statement of Case that the Appellant considers the host site to be 'Unit 5A' although it is clearly just 'Unit 5' as per the Site Location Plan. Whilst the Appellant considers that the internal sub-division works would not constitute development, the LPA considers that the resultant creation of a new planning unit would require planning permission. This is further addressed at paragraph 2.6 (below).
- 2.2 Section 5 (pages 6-10) of the Appellant's Statement of Case discusses use classes. The Appellant under paragraph 5.1.4 sets out that the Council have not disputed that the use of the host site – Chiquito's Restaurant falls within use class E. The Council has confirmed that

the use as the lawful restaurant does fall within use Class E, but the proposed and intended use as a Tanning Salon is considered to fall within Sui Generis and thus needs planning permission. The Appellant under paragraph 5.1.8 lists the uses within Sui Generis and under paragraph 5.1.9 says that tanning salons are not in the above list. Whilst this is the case, it is similarly the case that tanning salons are not specified as being a Class E use. This would appear to be deliberate and as a result, a judgement is necessary in order to determine whether the proposed use falls within the following criteria which defines Class E (c):

(c) for the provision of the following kinds of services principally to visiting members of the public—

- (i) financial services,
- (ii) professional services (other than health or medical services), or
- (iii) any other services which it is appropriate to provide in a commercial, business or service Locality.

- 2.3 The LPA considers that such a judgement must have regard to the particular circumstances of the case and the nature of the proposed use. However, very little information has been submitted by the Appellant regarding how the use would function and operate, therefore there is nothing substantive to support their claim that the proposal would fall within section (C)iii of Class E. Conversely, the LPA considers that from the limited and generic information provided by the Appellant, the nature of the use is akin to a beauty salon use. The LPA notes that recent appeal decisions appear to accept such uses as continuing to be Sui Generis uses (appeal decisions APP/W1095/W/21/3276929 and APP/C5690/C/21/3270217 appended). Furthermore, an appeal decision dated 21 September 2021 is appended whereby a 'tanning salon' is referred to as a Sui Generis use (appeal reference APP/H5390/W/21/3274992). These appeal decisions support the Council's refusal to grant the lawful development certificate.
- 2.4 In relation to whether the proposed use is 'appropriate to provide in a commercial, business or service locality', the Appellant's comments regarding the location of some established uses (page 14 of their statement) are considered irrelevant. The existence of a use does not demonstrate its acceptability in a particular location. The LPA notes that a tanning salon use is unlikely to have an active frontage, and would largely or exclusively be appointment based, with limited footfall due to the nature of these appointments. As a result, it is likely to be a destination-based business, rather than one which a passing customer would 'pop in' to. As such, it may detract from the vitality and viability of commercial, business or service localities and no substantive evidence has been provided to demonstrate otherwise. Taking all of the relevant factors into account, on the balance of probability the proposed use would be a Sui Generis use.
- 2.5 Section 6 (pages 11-12) of the Appellant's Statement of Case refers to Grounds of Appeal. The Appellant discusses the submitted appeal decision at 'The Tanfastic' of which commentary has already been provided by the LPA within the Planning Officer's Delegated Report. This appeal decision is a single example where a Local Planning Authority has considered a tanning use to fall within Class E. The appeal Inspector was silent on this matter as it was not the substantive issue in the appeal. In any event, as has been stated in paragraph 2.2 of this statement, it is necessary to form a judgement regarding whether a use falls within Class E taking account of the facts and circumstances of the case, therefore the view of one LPA in one specific example does not set a precedent for determining the use class in this current appeal. Furthermore, as noted at paragraph 2.3 of this statement, other appeal decisions support the LPA's case that the proposed use is a Sui Generis use.
- 2.6 The LPA strongly disagrees with the Appellant's view that the subdivision of the unit does not require planning permission. In relation to this, the LPA would respectfully draw the Inspector's attention to the advice contained within the Planning Practice Guide which states:

***'Is planning permission required to sub-divide a building?'***

*Planning permission may not be required to sub-divide a building where:*

- sub-division does not involve physical works that amount to development;*
- the use of any newly formed units after a building has been sub-divided falls within the same use class as the building's existing primary use before it was sub-divided, or there is a permitted development right allowing the new use; and/or*
- the sub-division does not involve converting a single dwelling house to contain more than one residential unit.*

*Paragraph: 013 Reference ID: 13-013-20140306*

*Revision date: 06 03 2014'*

- 2.8 As has already been explained, it is the LPA's firm view that the proposed use would not fall within the existing use Class E and the change is not one that is allowable under a permitted development right. Consequently, the LPA contends that the subdivision in this case clearly requires planning permission.

**3. Conclusion**

- 3.1 For the reasons set out in the Planning Officer's Delegated Report and this statement, the LPA considers a lawful development certificate should not be granted. The Inspector is therefore respectfully requested to dismiss the appeal.

**Appendices**

Appeal decisions referenced in section 2.3 of this statement.