
Appeal Decision

Site visit made on 22 November 2016

by David Richards BSocSci DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7 December 2016

Appeal Ref: APP/T5150/C/16/3149689

Casa del Leone, 210 High Street, London NW10 4SY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr A Ismail trading as The Mist against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice, numbered E/16/0097, was issued on 29 March 2016.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the premises to a shisha café.
 - The requirements of the notice are: Step 1. Cease the use of the premises as a shisha café. Step 2. Remove all the items associated with the shisha café including the removal of all shisha pipes, tobacco, chairs, tables, charcoal burners.
 - The period for compliance with the requirements is 1 week.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
-

Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Main Issue

2. For an appeal on ground (b) to succeed, the Appellant must demonstrate that the alleged change of use has not taken place as a matter of fact.

Reasons

3. The Council states that the premises was originally a shop fronting onto Harlesden High Street. A small retail unit remains at the front, with access to the appeal premises to the side of the retail unit. The appeal premises lies to the rear.
4. The use is not currently operational, the premises having been closed by the police. However chairs and tables remained at the time of my site visit, together with materials associated with shisha smoking.
5. Use as a shisha café does not fall within the Town and Country Planning Uses Classes Order 1987. Use as a shisha café is a sui generis use, and planning permission is required for any change of use from, for example, A1: Retail or A3: Use for the sale of food and drink for consumption on the premises. The Appellant does not state what the previous use of the premises was. However,

the Council state that planning permission was granted for a wine bar in 1994, and there is no record of any other intervening use.

6. The Council submitted photographs with the Appeal documentation which clearly show that the premises was being used as a shisha café, together with materials and equipment, including pipes, tobacco and charcoal. It also reports that the Appellant was fined £1500 and ordered to pay the Council's costs of £653 on 11 June 2013 for allowing smoking inside of the premises in breach of the smoke free legislation.
7. In enforcement cases where legal grounds are pleaded, the burden of proof is on the Appellant. The Appellant has not submitted any evidence at all to challenge the evidence of the Council and substantiate his case that no material change of use has taken place.
8. Accordingly I must conclude that a material change of use has taken place, for which planning permission has not been obtained.
9. For the reasons given above I dismiss the appeal, and uphold the enforcement notice.

David Richards

INSPECTOR