
Appeal Decision

Site visit made on 5 December 2016

by Diane Fleming BA (Hons) MRTPI

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

Decision date: 12 January 2017

Appeal Ref: APP/A5270/C/16/3158751
91 Old Oak Common Lane, London W3 7DD

- 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 Moe Tarhini of Beirut Palace Lounge against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 12 August 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the change of use to a shisha cafe.
 - The requirements of the notice are to cease the use of the site as a shisha cafe.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected by inserting the word 'material' before the word 'change' in paragraph 3 of the notice. Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matter

2. The allegation refers to the change of use to a shisha café; however, it was clear that the notice was seeking to allege a material change of use. I will therefore correct the notice by inserting the word 'material' before the word 'change' in the allegation. There is no injustice caused to any party in correcting the notice in these terms.

The appeal on ground (g)

3. The ground (g) appeal is that the time given to comply with the requirements is too short. The appellant requests that the one month period be increased to between six to nine months. This would allow him time to obtain permission from the Council for a new use and to then refurbish the premises. To cease the use would mean the appellant would have no income to pay the rent and utility bills while he was trying to sort out a new use.
 4. The Council are of the view that a short compliance period is necessary in this case. This is because of the significant harm being caused by the operation of the café to the occupiers of the adjacent residential premises, school and church. In particular, the occupier of the flat directly above the café has set out in detail the adverse effects of the unauthorised use on his living conditions. This has included unwelcome odours permeating his flat from the shisha pipes, anti-social behaviour from users of the café as they sit at outside
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tables next to the entrance door to his flat and undue noise and disturbance as the café is open until past midnight.

5. As there is no appeal on any other ground, it has been virtually inevitable, since the appeal was lodged on 15 September 2016 that the use would have to cease. By making this limited appeal the appellant has already delayed the date when the notice will come into effect, knowing that its requirement to cease the use will be upheld. During this time there has been nothing to prevent the appellant from making preparations to cease the use while waiting for the appeal to be determined and at the site visit it looked like the premises may have already closed. It also appears from the appellant's submissions that he has had conversations with the Council about new uses and the appropriate steps to take but has not taken them any further.
6. In cases involving business operations it is necessary to weigh the interests of the business against the harm caused by the activities the subject of the notice. On the other hand, the use enforced against seriously harms the living conditions of nearby occupiers. Taking all these matters into account I conclude that the period for compliance is reasonable especially as the steps required, which are to cease the use, are straightforward, there being no other requirements. The appeal on ground (g) fails.

Conclusion

7. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

D Fleming

INSPECTOR