
Appeal Decision

Site visit made on 6 June 2017

by Elizabeth Jones BSc (Hons) MCTP MRTPI

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

Decision date: 19 June 2017

Appeal Ref: APP/G4620/C/17/3167766

Land at Tudor Works, 36A Windmill Lane, Smethwick, West Midlands B66 3EU

- 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 Lamin Yaffa against an enforcement notice issued by Sandwell Metropolitan Borough Council.
- The enforcement notice was issued on 20 December 2016.
- The breach of planning control as alleged in the notice is without planning permission, a material change of use of the first floor of the Tudor Work, 36 A Windmill Lane, Smethwick from general industrial (B2 Use) to a mosque (D1 use) on the Land shown edged black on the attached plan ("Unauthorised Use").
- The requirements of the notice are:
 - 5.1. Discontinue the Unauthorised Use.
 - 5.2. Remove from the building all religious furniture and equipment arising from compliance with the requirements of 5.1 above.
- The period for compliance with the requirements is five months.
- The appeal is proceeding on the grounds set out in section 174(2) (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

The appeal on ground (g)

Reasons

1. The ground (g) appeal is that the time given to comply with the requirements of the notice falls short of what should be reasonably allowed. Five months has been given. The appellant has requested a time period of thirty six months to allow for an alternative site to be found.
 2. From all I have seen and read, the time given is sufficient for the physical requirements of the notice to be complied with. It would not take long to cease the use and to remove all the items associated with it. Having regard to the reasons for issuing the notice, for as long as the premises remain in the unauthorised use there is a conflict with planning policies aimed at safeguarding highway safety particularly in relation to the traffic generated and parking.
 3. I am informed that the mosque is a community of approximately 300 people. That community is clearly in need of suitable premises from which to function. The Council consider that whilst the community would prefer to purchase a property, given the length of time this is taking, the current funds could be
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used to rent a property instead. Be that as it may, I have had regard to the appellant's submissions relating to the purchase of alternative premises and the funds raised thus far¹.

4. Taking all of the above into account, there is a balance to be struck. This is between the conflicting interests of complying with planning policy in terms of highway safety and giving the community sufficient time to look for an alternative premises so as to minimise the possibility of having no place from which to function. In my view, thirty six months would be unnecessarily long but five months is likely to be insufficient given the difficulties of securing alternative premises and raising the necessary funds. Having regard to the submissions from both parties, and taking into account of the fact that there has been time during the appeal proceedings for compliance, I consider a period of twelve months would represent a more reasonable length of time which would strike the appropriate balance between the legitimate interests of enforcing planning control and the interests of the appellant and would not place a disproportionate burden on the appellant. To that extent, the appeal on ground (g) succeeds.

Formal Decision

5. The appeal is allowed on ground (g), and it is directed that the enforcement notice be varied: by the deletion of the words "five months" and the substitution therefor of the words "twelve months" as the time for compliance. Subject to this variation the enforcement notice is upheld.

Elizabeth Jones

INSPECTOR

¹ Letter from First City dated 12 January 2017 & Bank Statement /Receipt.