



Appeal Decisions

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 06 April 2020

Appeal A Ref: APP/N5090/C/19/3238274

Appeal B Ref: APP/N5090/C/19/3238275

Appeal C Ref: APP/N5090/C/19/3238276

Land at Caspian Lounge, 427 High Road, London N12 0AP

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr Amir Hassan, Appeal B by Mr Filiz Demir and Appeal C by Mr Ahmed Ali Tabatabaei-Hassan against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice, numbered ENF/0065/18, was issued on 27 August 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the use of the rear extension as a shisha lounge.
 - The requirements of the notice are to cease the use of the rear extension as a shisha lounge.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the ground set out in section 174(2)[c] of the Town and Country Planning Act 1990 as amended.
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Decisions

1. Appeal A Ref: APP/N5090/C/19/3238274;
Appeal B Ref: APP/N5090/C/19/3238275; and
Appeal C Ref: APP/N5090/C/19/3238276
are dismissed, and the enforcement notice is upheld.

Procedural Matters

2. The appellants were asked to confirm their grounds of appeal shortly after the appeals were submitted because the facts which have been submitted seem to relate to grounds (a) and (d) as well as ground (c) which is specified on the appeal form. A reply was not received. Since the prescribed fees have not been paid within the specified period, an appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
3. The appellants have not submitted their appeals on the basis of ground (d), which is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. However, they have addressed this ground in their submissions, and I have considered it below.

4. In this case it was not necessary for me to carry out a site visit because neither the merits of the scheme nor the potential for alternatives are before me. I have advised the main parties of my intention to determine the appeal without a site visit and I have not received any comments from them.

Reasons

Ground (c)

5. An appeal on ground (c) is on the basis that the matters alleged in the notice do not constitute a breach of planning control. This is a legal ground of appeal and the onus of proof lies with the appellants. The standard of proof is the balance of probabilities.
6. The appellants have not argued that the use of the rear extension as a shisha lounge is a breach of planning control but instead rely on the length of time that the premises have been used for such activities, which is an argument under ground (d).
7. The Council consider that the use as a shisha lounge requires planning permission and have already refused a planning application for retention of rear extension and use as a shisha lounge/bar (Council Ref 19/1708/RCU) (the planning application).
8. There is no evidence before me which seeks to demonstrate that the use of the rear extension as a shisha lounge, which is the breach as defined by the Council, does not constitute a breach of planning control. Furthermore, the appellants criticise the Council for not allowing the submission of a further application following the refusal of the planning application which points towards an acceptance that planning permission is required.
9. The appellants have not shown, on the balance of probabilities that the use does not constitute a breach of planning control. On this basis, the appeal under ground (c) fails.

Ground (d)

10. An appeal under ground (d) is also a legal ground and the onus of proof lies with the appellants. The standard of proof is again the balance of probabilities. In this case it is necessary for the appellants to demonstrate that the use has subsisted for a ten-year period because the allegation relates to a change of use. The relevant date in this case is 26 August 2009 as 10 years prior to the date of issue of the notice.
11. The appellants say that the rear of the commercial unit has been used as a smoking area for at least a decade. To support this argument, they have produced two street view photographs to show the front of 427 High Road which show that the unit was advertised as 'Famished Café' in 2008 and 2012. However, this evidence does not show that the rear of the premises was in use as a shisha lounge at that time and there is no signage on the café frontage to suggest such a facility was available.
12. The Council has not made any comments on the timescale of the use suggested by the appellant and the comments by the neighbour do not substantiate the claim as at best they only relate to a year of use. However,

even in the absence of evidence to the contrary there is insufficient information to demonstrate on the balance of probabilities that the extension has been used as a shisha lounge since 26 August 2009.

13. On the basis of the evidence before me the appellants have failed to demonstrate, on the balance of probabilities, that at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. Therefore, the appeal under ground (d) fails.

Conclusion

14. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice.

Sarah Dyer

Inspector