The Planning Inspectorate

Appeal Decision

Site visit made on 25 August 2022

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 05 September 2022

Appeal Ref: APP/G5750/C/20/3265321
Unit 5, 36 Plashet Grove, Upton Park, London E6 1AE

- 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 Minhaz Bhad Patel against an enforcement notice issued by the Council of the London Borough of Newham.
- The enforcement notice is dated 20 November 2020.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use to a shisha lounge.
- The requirements of the notice are: 1. Cease the use of the property as a shisha lounge. 2. Remove from the property all fixtures and fittings that solely facilitate the use as a shisha lounge including, but not limited to sofas, tables, gaming machines and shisha smoking equipment and paraphernalia. 3. Remove from the site all debris arising from compliance with steps 1 and 2.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (f) of the Town and Country Planning Act 1990 as amended.

Decision

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

Preliminary matters

2. A site visit was arranged for 25 August 2022, and a letter dated 15 August 2022 was issued confirming the time of the visit and requesting access to the property. The appellant did not attend the site visit, and I was unable to gain access to the appeal site. However, in conjunction with the written evidence, I was able to see enough from my visit to the exterior of the site and its environs to determine the appeal.

3. At the end of his statement of case, the appellant expresses concerns that the Council have not engaged in dialogue with him as he would have wished in order to resolve their concerns. However, this matter is outside the scope of the appeal, and it is for the appellant to address any such concerns through the appropriate channels, independently of the appeal process.

The appeal on ground (b)

4. The appeal on ground (b) is that the breach of control alleged in the enforcement notice has not occurred as a matter of fact. The appellant's case is that the appeal site is now a sports bar, and that the use of shisha on the premises has been prohibited since 21 November 2020. He says that any

reference to the shisha lounge in advertising material found in the public domain is outdated and will be changed.

5. However, this ground of appeal as set out in s174(2)(b) is worded in the past tense, and the question is whether the breach had occurred by the date of issue of the notice. An appeal on ground (b) cannot succeed simply on the basis that the activities amounting to a material change of use prior to the issuing of the notice have since ceased.

6. The appellant clearly states that the premises were intended to be set up for use as a shisha lounge. The Council state that this use was being undertaken in October 2020, and the appellant does not dispute this. Therefore, even if an unauthorised use ceases after the service of an enforcement notice, this does not lead to success on ground (b)

7. It is clear from the evidence and the appellant's own comments that the shisha use had occurred as a matter of fact prior to the issue of the notice, and so the appeal on ground (b) must fail.

The appeal on ground (c)

8. The appeal on ground (c) is that there has not been a breach of planning control. This could be, for example, because permission has been granted, or because a development is permitted development.

9. In his statement of case, the appellant addresses his comments under ground (c) to the effect of the development on matters such as noise and disturbance, odours, safe and easy access, and the promotion of healthy lifestyles. However, all of these points go to the planning merits of the case. As the appellant has not pleaded ground (a), which is that planning permission ought to be granted for the development, I am unable to take these comments into account.

10. Beyond these comments, the appellant offers no evidence that planning permission has been granted for the material change of use of the appeal site, and gives no indication of any other reason why he considers that a breach of planning control has not occurred.

11. In the absence of any evidence to show that there has not been a breach of planning control, the appeal on ground (c) must fail.

The appeal on ground (f)

12. The appeal on ground (f) is that the steps required to comply with the requirements of the notice are excessive.

13. The first requirement of the notice is to cease the use of the property as a shisha lounge. The appellant states that he is unsure of what he should do in relation to this requirement, as he maintains that the shisha use has already ceased. However, the wording of the notice is clear, and the appeal on this ground is that the requirements are excessive. The aim of the notice is to remedy the injury to amenity arising from the use. The cessation of the unauthorised use would achieve that aim, and so it cannot be said to be excessive.

14. With regard to the second requirement, he argues that the removal of fixtures and fittings that solely facilitate the use of a shisha lounge would have been a

reasonable request but for the reference to the sofas, tables and gaming machines. He states that, in parallel to the appeal process, he is applying for planning permission for use of the appeal site as a sports bar. That being the case, he argues that the sofas and tables, items which are not specific to the shisha use, should be able to stay.

15. In their statement of case, the Council say that they have not received a planning application for the use of the appeal site as a sports bar. The appellant has not provided any details of having made such an application.

16. The enforcement notice refers to a 'shisha lounge' and not simply the smoking of shisha. It would be unusual for persons to carry out such an activity in a lounge without tables or seating of some kind. In any event, the appellant has not shown that the tables, sofas or gaming machines relate to any lawful use at the appeal site, or to a sports bar that has gained planning permission. That being the case, I am satisfied that it is not excessive for these items to be removed along with the shisha paraphernalia.

17. Drawing these factors together, I find that the requirements of the notice are commensurate with its aim, and that no lesser steps have been identified that would achieve that aim.

18. The appeal on ground (f) therefore fails.

Conclusion

19. For the reasons above, the appeal is dismissed and the enforcement notice is upheld.

Elaine Gray

INSPECTOR