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## Appeal Decision

Site visit made on 27 June 2023

**by R Merrett Bsc(Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 7 August 2023**

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**Appeal Ref: APP/A4520/C/23/3315010**

**Land to the south of the Trimmers Arms, 34 Commercial Road, South Shields NE33 1RW**

- 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 Monaf Ullah against an enforcement notice issued by South Tyneside Metropolitan Borough Council.
  - The enforcement notice, numbered ENF/22/0019, was issued on 7 December 2022.
  - The breach of planning control as alleged in the notice is Without planning permission:
    - a. the material change in the use of the Land to use in connection with a public house (as a beer garden and for the holding of outdoor entertainment); b. the erection on the Land of a timber stage with sides and roof, as approximately shown by blue arrows on the photographs numbered 1 to 3 at Appendix 1 (hereinafter referred to as **"the Stage"**); c. the erection on the Land of timber decking, as approximately shown by green arrows on the photographs numbered 4,5,7,8 and 9 at Appendix 1 (hereinafter referred to as **"the Decking"**); d. the erection on the Land of a timber pergola, as approximately shown by purple arrows on the photographs numbered 6 to 9 at Appendix 1 (hereinafter referred to as **"the Pergola"**); e. the siting on the Land of 19 immovable timber seating booths with roofs, examples of which are shown (without any specific identifier) on photographs 4 and 7 to 9 at Appendix 1 (hereinafter referred to as **"the Seating Booths"**); and f. the erection on the Land of a timber building with white plastic roller shutter to one elevation, as approximately shown by black arrows on the photographs numbered 8 to 10 at Appendix 1 (hereinafter referred to as **"the Building"**).
  - The requirements of the notice are a. Cease the use of the Land in connection with a public house (as a beer garden and for the holding of outdoor entertainment) and remove all moveable tables and chairs and any moveable paraphernalia in connection with the unauthorised use; b. Remove from the Land the Stage, the Decking, the Pergola, the Seating Booths and the Building.
  - The period for compliance with the requirements is in relation to step a: two weeks and in relation to step b: three calendar months.
  - The appeal is proceeding on the grounds set out in section 174(2)(b) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the 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.
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### Decision

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

## **Preliminary Matters**

2. The appellant failed to attend the scheduled accompanied site visit, without providing any subsequent explanation. I therefore propose to determine the appeal on the basis of the information before me, including an unaccompanied visit, but without having had the opportunity to enter the site.
3. The appellant says that a letter was sent by the Council to the landlord of the pub, many years ago, advising that the appeal site could only be used as a car park or beer garden. He therefore suggests that planning permission is not needed for the alleged unauthorised use. Whilst this could be interpreted as a 'hidden' ground (c) appeal, that there has not been a breach of planning control, the onus rests with the appellant to demonstrate their case on the balance of probability. I have not been provided with any evidence from the appellant to substantiate this point, including any correspondence regarding an apparently related Freedom of Information request. I am therefore unable to give further consideration to it.
4. The appeal is not proceeding on ground (a), that is to say planning permission ought to be granted for the development described in the notice. Accordingly the planning merits of the development, including the question of any benefits that might arise from it, are not before me for consideration. The appellant has stated that similar developments have been undertaken without planning permission at other venues, but are not being investigated by the Council. He alleges receiving unfair treatment because houses are being built nearby. However these matters are also outside the scope of this appeal.

## **The appeal on ground (b)**

5. The appeal is that the alleged development has not occurred as a matter of fact. The key date for this assessment is the time when the notice was issued. As set out above I was unable to gain access to the site. However, I was able to gain limited oblique views, from the adjacent footpath on Commercial Road, of part of its interior, via gaps between boundary fence boards. From there it was apparent that various aspects of the alleged development, including the decking, pergola and seating booths had been either substantially or completely removed, with various waste paraphernalia remaining on the site. The stage and surrounding parts of that structure appeared to remain in place, at the southern end of the site. It was unclear whether the alleged building was still there.
6. However, with a ground (b) appeal the question is whether the alleged breach had occurred by the date of issue of the notice. In this regard the onus rests with the appellant to demonstrate their case on the balance of probability. If the alleged activities or structures had been on the site, an appeal on ground (b) cannot succeed simply on the basis that the activities or structures were removed. Having inspected the various photographs accompanying the notice, I am satisfied, on the balance of probability, that the various alleged operational developments had occurred as a matter of fact when the notice was issued. Furthermore the appellant does not dispute that the alleged material change of use actually occurred, and I have no reason to take a contrary view.
7. The appellant states that the noise complaints referred to in the notice are incorrect and unsubstantiated; also that the Council previously said that serving a notice would not be in the public interest. However, these points

relate to the merits of the development which, as explained above, are not before me for consideration as part of this appeal. The question is whether the alleged development occurred as a matter of fact, which for the above reasons I have concluded, on the balance of probability, that it did. The ground (b) appeal must fail.

### **The appeal on ground (f)**

8. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s173 (4) (a)) or to remedy injury to amenity (s173 (4) (b)). The Act sets out that the breach may be remedied by making the development comply with the terms of any planning permission granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place.
9. With regard to the unauthorised development, the objectives of the notice are to cease the use of the land, including getting items related to that use removed, and to secure removal of the operational developments, therefore to restore the land to its condition before the breach took place. It follows that the purpose of the notice is to remedy the breach of planning control.
10. There is no information before me to suggest the development benefits from planning permission. Given that the purpose of the notice is to remedy the breach of planning control, this can only therefore be achieved by discontinuing the use and removing the unauthorised development, thereby restoring the land to the condition it was in before the breach took place. To require this does not, therefore, exceed what is necessary and the appeal on this ground must fail.
11. The appellant's case is simply expressed that the requirement to remove items and to cease the use for live entertainment is 'way too excessive'. This suggests that the appellant advocates the retention of the unauthorised development in some form. However, the appellant is not progressing a ground (a) appeal, that is to say that planning permission should be granted for the development. In the absence of a ground (a) appeal, and a deemed planning application, I am unable to consider the merits of the development, including any conditions which may be deemed appropriate, which are not therefore before me. These representations do not therefore weigh in favour of the appeal.

### **Conclusion**

12. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

*R Merrett*

INSPECTOR