



Appeal Decision

No site visit made

by **A Berry MTCP (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 07 April 2025

Appeal Ref: APP/V1260/C/24/3347311

135-137 West Hill Road, Bournemouth BH2 5EG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act").
 - The appeal is made by Messrs Gunduz & Kingsley Property Group Gunduz & Kingsley Property Group [sic] against an enforcement notice ("EN") issued by Bournemouth Christchurch and Poole Council.
 - The EN was issued on 31 May 2024.
 - The breach of planning control as alleged in the notice is failure to comply with conditions imposed on a planning permission ref 7-2021-2888-M granted on 21 June 2023.
 - The development to which the permission relates is: "Alterations, change of use of part of the ground floor from Hotel to Restaurant (Class E) and formation of external seating area".
 - The conditions in question are numbers 2 and 5 which state:
Condition 2: The restaurant use hereby permitted shall not be open to customers outside the following times: 8:00am - 11:00pm Sunday to Thursday and 8:00am - 11:30pm Friday to Saturday.
Condition 5: No amplified music shall be played nor any public address system be used either inside the premises or within the curtilage of the premises at any time. Music shall be limited to background music only, and no music shall be played within the curtilage of the premises outside the following times: 0800 hours and 2300 hours.
 - The notice alleges that the conditions have not been complied with in that: "Non-compliance with the permitted operating hours and music playing hours as specified above".
 - The requirements of the notice are to:
 - i) Ensure the premises is not open to customers outside the permitted times, as follows:
08:00am - 11:00pm Sunday to Thursday, 8:00am - 11:30pm Friday to Saturday
 - ii) Ensure no amplified music is played nor any public address system used either inside the premises or within the curtilage of the premises at any time. Ensure music is limited to background music only, and no music is played within the curtilage of the premises outside the following times:
0800 hours and 2300 hours.
 - The period for compliance with the requirements is: Within one (1) month after this Notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(g) of the 1990 Act.
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Decision

1. It is directed that the EN is corrected by:
 - the deletion of the words "*Ensure the premises is not open...*" and their substitution with the words "*Ensure the restaurant use is not open...*" in Section 5.
2. Subject to the correction, the appeal is dismissed and the EN is upheld.

Preliminary Matters

3. The planning merits of the development are not relevant to this appeal. My decision rests on the facts of the case and the interpretation of any relevant planning law or judicial authority. Therefore, a site visit was not necessary as it would not help me

reach a decision. I advised the main parties of my intention to determine the appeal without a site visit. The Council responded stating they agreed with this approach. While I have not received any comments from the appellant, I have proceeded on this basis.

Background

4. Planning permission¹ was granted with conditions (“the original planning approval”) for the change of use and alterations to the ground floor of the premises from a hotel to a restaurant and the formation of an outside seating area. Condition 2 limits the hours the restaurant is open to customers. Condition 5 prevents the playing of any amplified music or the use of a public address system internally or within the curtilage of the premises; limits any music to background music; and prevents the playing of music within the curtilage of the premises outside of specific times.
5. A subsequent planning application² was refused by the Council in December 2023 that sought to vary Conditions 2, 4 and 5 of the original planning approval by extending the permitted hours. The reason for refusal was the effect of the development on the living conditions of the occupiers of nearby residential properties from noise and disturbance.
6. The Council served a Breach of Condition Notice that took effect on 22 November 2023. However, in case there was a change in the occupation of the premises, the Council also served an EN. This appeal is therefore against the EN.

Matters Concerning the Notice

7. There is a discrepancy between the wording of Condition 2 which refers to “*the restaurant use*” and the requirements of the EN that refers to “*the premises*”. It is therefore necessary for me to correct Section 5 of the EN so that it is consistent with the wording of the condition. I am satisfied that the EN can be corrected in this respect without causing injustice.

Appeal on Ground (g)

8. An appeal under ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed.
9. The appellant asserts that the period specified to comply with the EN does not give sufficient time for the consideration of a planning application³ submitted to vary “*the terminal hour*” so that it aligns with the premises licence. The appellant asserts that licencing liaised and worked in conjunction with the local planning authority and therefore, the planning application “*should be approved*”. An alternative compliance period has not been advanced by the appellant.
10. The Council state that the original planning approval was in place approximately two years prior to the premises operating as Nala Lounge and therefore, the appellant should have been aware of the restrictions imposed by the conditions attached to the planning approval and been prepared to operate within these parameters. The Council assert that the actions required to comply with the EN are relatively straightforward and do not require complex or time-consuming measures that would justify a longer compliance period. A swift resolution is required to

¹ Planning Ref 7-2021-2888-M

² Planning Ref 7-2023-2888-P

³ Planning Ref 7-2024-2888-T

minimise the ongoing harm to the living conditions of the occupiers of neighbouring properties from noise and disturbance.

11. The time for compliance refers to the time required to undertake the works needed to remedy the breach. I have no substantive evidence before me to suggest that compliance with the breach would involve any complex or time-consuming measures. I acknowledge that a planning application has been submitted to vary the conditions, however, this does not persuade me that the time given to comply with the requirements of the EN are too short.
12. I acknowledge the premises licence is approved by the Council. However, the Planning and Licensing regimes are separate and involve consideration of different matters. Furthermore, a licensing committee or licensing officers are not bound by decisions made by a planning committee or planning officers under an agreed scheme of delegation, or vice versa. Consequently, there is no guarantee that planning permission will be approved to vary the timings imposed by conditions 2 and 5 to align with the premises licence.
13. Should planning permission be granted to vary the conditions within the one-month compliance period, the Council is able under s173A(1) to withdraw an EN issued by them, even if the EN has taken effect. Alternatively, the requirements of the EN would cease to have effect in so far as they are inconsistent with that planning permission.
14. Given the uncertainty of if or when planning permission may be granted to vary the conditions, I find that the one-month compliance period afforded by the EN does not fall short of what is reasonable. Therefore, the appeal on ground (g) should fail.

Conclusion

15. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the EN with a correction.

A Berry

INSPECTOR