



Appeal Decision

Site visit made on 28 May 2025

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 June 2025

Appeal Ref: APP/A5270/C/23/3329396
138 Churchfield Road, Acton, W3 6BS

- 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 Honar Hewa Khfaf against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 2 August 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises to a shisha lounge (sui generis).
 - The requirements of the notice are:
 - 1.Cease the use of the premises as a shisha lounge.
 - 2.Remove all materials, furniture, fixtures, fittings, equipment and paraphernalia brought onto and attached to the property which facilitate the Unauthorised Use.
 - 3.Remove all resultant debris.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (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.

Procedural Matters

2. The Appeal has only been lodged under ground (f). However, it is clear from the substance of their appeal submissions that the appellant is also seeking to appeal under ground (b), in so far as they state that the appeal premises is a restaurant rather than a shisha lounge and ground (g) in so far as they state the abrupt cessation of the operations would affect their employees. As the Council have provided detailed comments on the appellant's statement, I am satisfied that neither party would be prejudiced by the inclusion of this. I have therefore determined the appeal on this basis.
3. I was unable to undertake an internal inspection of the appeal site as the appellant failed to attend the accompanied site visit on 28 May 2025. Accordingly, this appeal will be determined on the basis of the evidence before me, which is considered appropriate given that there is no appeal on ground (a), and I am not considering the planning merits of the development. Both parties were subsequently written to explaining this, and therefore I am satisfied that neither party would be prejudiced by this.

The Appeal on ground (b)

4. To succeed on this ground, the onus is upon the appellant to demonstrate on the balance of probabilities that the allegation has not occurred as a matter of fact.
5. The appellant states that the business operating at the site is a restaurant. Therefore, it appears that the appellant considers that the allegation (the material change of use of the Property to use as a Shisha Lounge) has not occurred. However, no evidence has been submitted by the appellant to support this claim. Even without the countering evidence of the Council, the appellant has not met the required standard of proof in his own submission.
6. The Council's own investigation contradicts the appellant's claim. In July 2022, complaints were received from the houses to the rear of the premises that the premises were operating past midnight in the rear garden area, sometimes as late as 5am. The Council's "parkguard" stewards visited on 17 September 2022 and again on 21 September 2022. On 17 September 2022, they were able to confirm that a number of people were in the rear of the property at 00.30. At the 21 September visit, they observed people smoking shisha¹.
7. A site visit was made on 12 November 2022 by planning enforcement officers. Photographs from that visit show that the kitchen is little used, but that the rear of the premises in the extension contains a large number of shisha hookahs, facilities for burning charcoal and stores of shisha and charcoal and shisha-related paraphernalia².
8. A food hygiene inspection on 4 July 2023 by a food team officer found that no food was being stored or prepared on site. The officer was informed that the premises had not operated as a restaurant for a couple of months, that there was no plan to reopen as a restaurant and that the premises now operated solely as a shisha lounge. The food officer confirmed that there was no food on site and the hygiene inspection was cancelled³ and the photographs of this site visit shows customers smoking Shisha and Shisha pipes stored inside the property⁴. As such the Officer's site visits confirms that a restaurant business is not operational.
9. The Council's evidence and photographs of the appeal site contradicts the appellant's claims that the premises is a restaurant. I attach significant weight to the Council's statement which provides clear and compelling evidence that at the time the Notice was issued the appeal site was used as a Shisha lounge.
10. On the balance of probabilities, and based on all the evidence before me, I conclude that the appellant has not shown that the alleged change of use has not occurred.
11. Accordingly, the appeal on ground (b) must fail.

The Appeal on Ground (f)

12. The appeal on this ground is "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to

¹ Appendix 7 of the Council's Appeal Statement.

² Appendix 8 of the Council's Appeal Statement.

³ Appendix 9 of the Council's Appeal Statement.

⁴ Appendix 10 of the Council's Appeal Statement.

remedy any breach of planning control which may be constituted by those matters (i.e. the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".

13. The enforcement notice requires the use of the premises as a shisha lounge to cease, together with the removal of materials, furniture, fixtures, fittings, equipment and paraphernalia brought onto the property which facilitate the unauthorised use. Therefore, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.
14. However, no specific details of these lesser alternative steps have been proposed, and I am not under a duty to search for solutions. Furthermore, since there is no appeal on ground (a), there is no deemed planning application. Therefore, the planning merits of the development, such as whether the development results in harm in relation to noise, odour and parking problems can play no part in my decision.
15. The notice has been issued to remedy the breach of planning control. That would not be achieved by the steps outlined by the appellant, as it would not remedy the breach of planning control, which is the purpose of the notice and planning permission would still be required.
16. Therefore, the appeal on ground (f) fails.

The Appeal on Ground (g)

17. This ground of appeal is that the time given to comply with the notice is too short. The Council has given 3 months for the use of the site as a shisha lounge to cease and the removal of all equipment which facilitated this unauthorised use. The appellant states that the abrupt closure of the business would harm their employees.
18. Since there is no ground (a) appeal, I must take the Notice on face value which identifies harm in relation to the living conditions of neighbouring occupiers in relation to noise, odour and disturbance and increased pressure for on-street parking spaces. As such, extending the period for compliance will extend the harm caused to neighbouring occupiers.
19. Furthermore, there would not be any complex building operations required to cease the unauthorised use of the site and remove any items that facilitate this use. In these circumstances, I conclude that the time period given by the Council would be reasonable and proportionate time to comply with the notice and the appeal on ground (g) fails.

Conclusion

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

R Satheesan

INSPECTOR