



Appeal Decision

Site visit made on 27 January 2026

by **A A Phillips BA(Hons) DipTP MTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5 March 2026

Appeal Ref: APP/W2845/C/25/3372877

Land at 145 Wellingborough Road, Northampton NN1 4DX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Ernald Xhebexhia of Balkan Breeze Ltd against an enforcement notice issued by West Northamptonshire Council.
- The notice was issued on 13 August 2025.
- The breach of planning control as alleged in the notice is:
 - 3.1 The unauthorised erection of a single storey structure within the red line of the attached plan (the Unauthorised Structure).
 - 3.2 The material change of use of the land from open courtyard to a bar/restaurant/shisha lounge (the Unauthorised Use).
- The requirements of the notice are to:
 - i. Cease the unauthorised Use of the land at Appendix A of this notice.
 - ii. Remove from the land the Unauthorised Structure and return the land to its former condition.
 - iii. Remove from the land all debris and materials in compliance with step 5ii above to a licenced place of disposal.
- The periods for compliance with the requirements are:
 - Step 5i within 14 days.
 - Steps 5ii and 5iii within 3 months
- The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 (as amended).

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

The appeal on ground (d)

1. The ground of appeal is that at the date when the Notice was issued, no enforcement action could be taken. The Courts have established that the onus of proof falls on the appellant and the test of evidence is on the balance of probabilities. In addition, the appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
2. S171B(1) of the Act provides that no enforcement action can be taken in respect of operational development after the end of 10 years beginning with the date on which the operations were substantially completed. S171B(3) applies to any breach of planning control consisting of a material change in the use of land and/or buildings, except for a change of use of a building to use as a single dwelling, and it provides that no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. However, under the changes introduced by the Levelling-Up and Regeneration Act 2023 structures must have been substantially completed by April 2024 to qualify under the older 4 year building immunity period.

3. The appeal site has a long history of planning and enforcement issues. It was once used as an outdoor paved area linked to the former Chilli Village restaurant, but more recently it has been used as an unauthorised bar/restaurant/shisha lounge. The appellant contends that the current structure on site is immune from enforcement action owing to over 10 years of continuous use as restaurant overflow seating and any structure that has been erected on the land becomes a new planning unit immune from planning enforcement action.
4. However, in my judgement the land is not within the curtilage of the adjacent restaurant and the evidence from various planning applications, Google Street View images and the enforcement action shows that no permanent structures existed prior to 2016. The evidence before me is that any previous unauthorised structures were removed following enforcement action.
5. In addition, from 2018 only temporary and non-permanent structures were situated on the land, some having been erected under Covid-related permitted development rights. These remained longer than allowed, but no action was taken against them in order to support post-covid economic recovery. However, in 2023, the appellant replaced the previous temporary Covid-era structure with a new building. That is the unauthorised structure the subject of the enforcement notice and it is materially different from earlier ones and was clearly not substantially complete before the material period.
6. It is unclear when the appellant is arguing that the current use commenced because in his Grounds of Appeal he states that “there has been no change in the character of the activities from October 2018 and as such no further material change in use” and in the following paragraph “It is considered that since there have been no interruptions of the use since the material change in the character of activities associated with the use since it commenced in November 2020”. However, the evidence submitted is insufficient to prove that there has been continuous use of the formerly paved area for a bar/restaurant/shisha lounge for 10 years. The appellant’s claim of immunity is not supported by precise and unambiguous evidence sufficient to confirm his case.

Conclusion

7. Therefore, I conclude that in the absence of clear and unambiguous evidence with respect to the alleged breaches of planning control, the evidence presented by the appellant is insufficient to prove on the balance of probabilities that the unauthorised development is immune from enforcement action through the passage of time. The appeal on ground (d) fails.

A A Phillips

INSPECTOR