



Appeal Decision

Hearing held and site visit made on 17 February 2026

by **M. P. Howell BA (Hons) Dip TP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16 MARCH 2026

Appeal Ref: APP/N5090/C/25/3374777

Land at 266 - 268 West Hendon Broadway, London NW9 6AG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Ms Mariana Rusu (WH Broadway Ltd) against an enforcement notice issued by the Council of the London Borough of Barnet.
- The notice was issued on 9 September 2025.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a building for use as three units of temporary sleeping accommodation on upper floors and commercial unit on ground floor.
The requirements of the notice are to:
 1. Cease the use of any part of the building as temporary sleeping accommodation.
 2. Demolish the building.
 3. Permanently remove all constituent materials resulting from the works above from the land.
- The period for compliance with the requirements is: 9 months after this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (f) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary Decision: The enforcement notice is quashed.

Applications for costs

1. An application for costs was made by Ms Mariana Rusu (WH Broadway Ltd) against the Council of the London Borough of Barnet. This application is the subject of a separate decision.

Preliminary Matters

2. At the Hearing, I received late evidence, which was subsequently shared with the main parties. These included extracts of policies that the appellant considered relevant but had not previously provided, namely Policies SD6 and E10 of the London Plan 2021 (London Plan). The Council also provided an extract of Policy TOW02 from the Brent Local Plan 2025 (Local Plan) and a map showing the site's location in proximity to the area identified for regeneration in Brent Cross. The appellant also provided images of the site externally and internally, taken in January 2026.
3. The late evidence submitted was received after the specified deadlines. However, I deemed it relevant to the appeal, and not substantial enough to warrant an adjournment. Both parties were aware of this additional information and raised no objections to my consideration of it when making my decision on the appeal.

Matters Concerning the Enforcement Notice

4. Before considering the grounds of appeal, I have a duty to put the Enforcement Notice (Notice) in order, if necessary. The powers transferred to Inspectors under

section 176(1)(a) of The Town and Country Planning Act 1990, as amended (the 1990 Act), include correcting any defect, error or misdescription in the Notice or, under section 176(1)(b), to vary the terms of the Notice. In each case, the only test is whether the correction or variation would cause any injustice to the Council or appellant.

5. Both parties agreed that the address describing the land to which the Notice relates can remain as land at 266 - 268 West Hendon Broadway, London NW9 6AG. This is because the alleged building is largely confined to 268 West Hendon Broadway, but also extends to 266 West Hendon Broadway at the rear on the ground floor. At the hearing, the Council confirmed that the Notice did not include any of the historical building at No 266, and a varied plan to denote the extent of the erected building would provide clarity on this matter.
6. I discussed possible variations to the plan to clearly identify the building in question. Following a brief discussion at the hearing, the Council presented a plan illustrating the extent of the alleged building, indicated by a black-edged line. The main parties reached an agreement on the varied plan, which provides greater clarity regarding the land to which the Notice relates, the extent of the alleged building and what actions were necessary to remedy the breach. The varied plan provides certainty regarding the building and can be executed without causing injustice to either party.
7. The Notice claims, under the "Reasons for Issuing the Notice," that the development occurred within the last 10 years. It is acknowledged that the wording of section 171B(1)(a) of the 1990 Act has been recently updated to stipulate that the time limit for taking action on all unauthorised development in England is 10 years, commencing from the date on which the operations were substantially completed. Nevertheless, the ten-year enforcement limit only applies to operational development that was substantially completed on or after 25 April 2024.
8. At the hearing, it was established through information provided in the Council's Enforcement Report that the building was in use and therefore substantially completed by January 2024. The parties agreed that the Notice should be varied to indicate that the period for taking action is four years. Both parties were consulted, and neither party raised any concerns regarding potential injustice being caused. It is understood that this error has not impacted the appellant's ability to appeal on other grounds, namely ground (d), and I agree the variation can be made to delete the number '10' and substitute it with the number '4' without causing injustice.
9. The parties acknowledged my request in my prehearing note to clarify whether the requirement to cease using any part of the building as temporary sleeping accommodation was excessive, given that the Notice is aimed at operational development and requires the building to be removed.
10. The appellant stated in their updated statement that they perceive the Council's intent is not to demolish the building but merely to address their concerns regarding the external detailing of the front elevation and its use. The Council indicated that the Notice was drafted having regard to a highlighted appeal¹. Notably, paragraph 8 of that appeal indicates that enforcement notices aimed at operational development typically involve ceasing the use and removal of the structure. The Council acknowledged that if the requirement to cease the use was deleted, it would still remedy the breach, but indicated that the requirement provided flexibility to the

¹ Appeal reference APP/X5210/C/23/3331834

appellant in making an appeal where the building is retained with a more appropriate use.

11. In my judgement, when combined with the error in paragraph 4, which refers to the breach occurring in the last 10 years, the requirement to cease the use creates ambiguity about the allegation being made and the measures needed to remedy it. Since the building was constructed, the parties agree it has only been in use as a barbershop and an apart hotel, and no material change of use has occurred. As such, it is an excessive requirement to cease the use, particularly when no material change of use has been alleged.
12. Given the comments in the highlighted appeal and the concerns over the acceptability of the use, I understand the rationale behind the Council's inclusion of this requirement. However, it is essential to recognise that the drafting comment in the highlighted appeal was not critical to the outcome of that appeal decision, and no other justification for adopting this approach has been provided by the Council. The requirement to demolish the building and the removal of the resultant waste render the 'cease the use' requirement redundant. Hence, omitting this requirement not only clarifies the operational development allegation being made in this instance but also still remedies the alleged breach without causing injustice.
13. I also considered the position that the requirement allows the appellant flexibility to propose the retention of the building, but with a different use. However, my authority on the ground (a) is confined to the whole or part of the matters alleged in the Notice. As established, the Notice is directed at operational development in the form of a building for a specific use, and not a material change of use. The alleged building and its use are not two strands of development, but an operational development with a described use. Consequently, the requirement to cease the use does not introduce any flexibility to the appeal that can be made on ground (a).

The Appeal on Ground (b)

14. An appeal on ground (b) is that the matters alleged in the Notice, which appear to the Council to constitute the breach of planning control, have not occurred. To succeed on this ground, the appellants must demonstrate that on the balance of probability the matters stated in the Notice have not occurred.
15. The appellants do not contend that the operational development, in the form of a building, has not occurred, but that the building is being used differently than what is alleged. Specifically, the use is a barbers shop in part of the ground floor and the remainder of the building as an 'Apart Hotel' with 20 rooms. For clarity, the appellant indicates that an Apart Hotel is defined as in the London Plan as "self-contained hotel accommodation (C1 Use Class) that provides for short-term occupancy purchased at a nightly rate with no deposit against damages. This will usually include concierge and room service, and include formal procedures for checking in and out. Planning conditions may limit the length of stay for occupiers."²
16. Both parties, therefore, acknowledged that the building had been constructed, and the Council accepts that the description of its use in the Notice was inaccurate. It will need to be corrected to accurately reflect how the building is being utilised and to consider the appeal made on ground (a) and the deemed planning application.

² Glossary- Page 496 of London Plan 2021

17. The Council visited the property³ and confirmed that the layout of the building was largely as indicated in the as-built plans submitted by the appellant⁴. They do not dispute the description of its use as an Apart Hotel and barbershop. The use of the Apart Hotel is considered a single planning unit, with 20 apartment rooms and shared hotel-type services. The Council noted the presence of a reception room, cleaning staff, waste facilities and a connected laundry room located on the roof of the ground floor at the back and accessed from outside.
18. Additionally, the basement floor of No 268 was being used in conjunction with the Apart Hotel, as were the upper floors of the existing building at No 266. The rooms in No 266 were accessible through a rear door located on the property of No 266. At the hearing, both parties agreed that the allegation does not currently address the basement of No 268 or the upper floors of the existing building at No 266. However, the Council confirmed that the Notice should focus on the erected building and its use, and it would have to consider what action, if any, to pursue with respect to the basement of No 268 and the upper floors of No 266.
19. Both parties agreed that it was unnecessary to reference the use classes⁵ for the barbershop and apart hotel in the allegation. I also noted that the term "commercial use" was vague, and I would be more comfortable with the barbershop use being detailed. There were no objections regarding the commercial use being described as a barber shop. It was, therefore, agreed between the parties during the hearing that the Notice allegation should be corrected to allege the following:

‘Without planning permission, the erection of a building for use as an Apart-Hotel on the rear ground and upper floors and a barber shop on the front ground floor.’
20. The powers transferred to Inspectors under section 176(1)(a) of the 1990 Act include correcting any defect, error or misdescription in the Notice or, under section 176(1)(b), to vary the terms of the Notice. In each case, the test is whether the correction or variation would cause any injustice to the appellant or the Council. Section 176(1) of the 1990 Act does not mention interested parties, but it is necessary to consider whether correcting or varying the Notice would result in any loss of natural justice. As such, procedural unfairness may serve as a reason why injustice has been caused when considering the correction or variation of a Notice.
21. Both temporary sleeping accommodation and apart hotels involve short-term, non-residential, commercially operated sleeping facilities with frequent guest turnover and potential impacts on traffic, parking and nearby living conditions from comings and goings, privacy, noise and disturbance. The occupants of temporary sleeping accommodation and apart hotels are also transient in nature and not permanent residents, despite each unit of accommodation having facilities one might expect for day-to-day living.
22. While I recognise that using a building for temporary sleeping accommodation does have some crossover or similarities to an Apart Hotel use, as set out above, there are also differences to consider when comparing the alleged and the actual use of the building in this case.
23. For instance, the allegation as drafted refers to three units of temporary sleeping accommodation, with one unit on each floor above the ground level. Each unit is

³ Site visit undertaken on 7th January 2026- Paragraph 4- Council Updated Statement

⁴ Appendix 04 of Appellants Statement of Case

⁵ Class E and Class C1 classifications in The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

designed to accommodate approximately 1 to 2 persons, with a double bed, along with kitchen and bathroom facilities. Collectively, the temporary accommodation use alleged would have an occupancy of between 3 and 6 persons at any given time. There is also no suggestion that it would include services beyond access to the privately rented accommodation in the building.

24. In contrast, the building operates as an Apart Hotel, which is considered a single planning unit because it provides services to its occupants, much like a small hotel. For instance, it offers laundry services, a communal waste disposal system, and a staffed reception for guests. The building also contains 20 apartments, significantly more than the alleged three units. Given that each of the rooms provides a similar level of accommodation, the Apart Hotel can accommodate approximately 20 to 40 people at any one time. It was also alleged that the rear ground floor was in use in connection with the barber, but the corrected allegation means the layout is different, with the rear ground floor being part of the Apart Hotel accommodation.
25. The differences outlined above distinctly separate the corrected use of the building from what is currently alleged in the Notice. The nature and scale of the corrected use indicate a different operation, resulting in staff employment, services and a significantly greater potential for guest and staff turnover as well as deliveries both in terms of volume and frequency. There is also a change to the layout, with the apart hotel accommodation being utilised in the ground as well as upper floors. These variations highlight a notable difference in the layout, potential comings and goings, traffic, noise, and disturbances around the premises, especially when compared to the initial allegation. In this regard, I accept that the agreed correction would clarify the use of the building; however, this serves to substitute a materially different breach rather than merely correct a defect, error, or misdescription.
26. There is an agreement between the appellant and the Council to correct the allegation, and each main party has been given time to consider their case based on the use of the building as described. The appellant has set out a case to support the retention of the building with its correct use, and the Council has maintained the same reasons for issuing the Notice. As such, despite the significant change to the nature and scale of the use being considered, no injustice has been caused to either of the main parties by the correction to accurately describe the building's use.
27. Despite the main parties agreeing that no injustice would be caused to their cases, there is still a clear potential for third-party prejudice in making this correction. I accept that representations were not made in the appeal process and that neighbouring occupants may have grown accustomed to the actual use over time. However, a service complaint was made to the Council over the unauthorised development and neighbours as well as other consultees were notified of the original allegation during the appeal. Even if the initial allegation did not generate objections, the responses might have differed had they been informed of the use of the building from the outset. Consequently, in my judgement, there would be a clear case of procedural unfairness to third parties should the allegation be corrected in this manner and the ground (a) considered as part of the appeal.
28. For these reasons, I conclude that the erection of a building for use as three units of temporary sleeping accommodation on upper floors and commercial unit on ground floor has not occurred as a matter of fact, and I cannot correct the Notice without resulting in procedural unfairness and causing injustice to third parties.

Conclusion

29. For the reasons given above, I conclude that the breach of planning control alleged in the Enforcement Notice has not occurred. In accordance with my powers under section 176(1)(a) of the 1990 Act, I cannot correct the allegation as I cannot be certain that injustice would not be caused were I to do so. Accordingly, the appeal succeeds on ground (b), and the Notice should be quashed.
30. In these circumstances, the appeals on grounds (a) and (f) set out in section 174(2) of the 1990 Act (as amended) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act (as amended) do not fall to be considered.

Formal Decision

31. The enforcement notice is quashed.

M. P. Howell

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Alvin Ormonde Agent for the Appellant

Miss Noémi Byrd Counsel for appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Brett Sinclair Principal Enforcement Officer- Council for the London
Borough of Barnet

DOCUMENTS AND PLANS

- Written Submission of Costs Application (appellant)
- Extract of Policy TOW02 of the Brent Local Plan
- Extracts of Policies SD6 and E10 of the London Plan
- Varied Site Plan for Enforcement Notice
- Policy Map- Showing site and Brent Cross Regeneration Growth area

PHOTOGRAPHS

- File with Images of the site externally and internally January 2026