



---

## Appeal Decision

Site visit made on 14 April 2026

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

an Inspector appointed by the Secretary of State

Decision date: 09 June 2026

---

**Appeal Ref: APP/T5150/C/24/3345955**

**225-227 Edgware Road, London NW9 6LU**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Masoud Karwan (Kabul City Restaurant) against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice was issued on 26 April 2024.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises to a restaurant within Class E.
- The requirements of the notice are to: Cease the use of the premises as a restaurant.
- The period for compliance with the requirement is: 1 month.
- The appeal was made on the grounds set out in section 174(2)(a) and (g) 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 appeal is dismissed, and the enforcement notice is upheld with variations.**

---

### Matters Concerning the Enforcement Notice

1. It is incumbent upon me to put the Enforcement Notice (Notice) in order. I have powers under section 176(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act) to correct any defect, error or misdescription in the Notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the test is whether the correction or variation would not cause any injustice to the appellant or the local planning authority.
2. The Notice alleges a material change of use of the premises to a restaurant within Class E. However, under the reasons for issuing the Notice, it states that the development occurred within the last 4 years, which is more consistent with a breach of planning control relating to operational development or a material change of use to a single dwelling house alleged before 25 April 2024. In this instance, the breach of planning control represents a material change in the use of the land, and the period for establishing immunity is ten years. As such, even if the breach occurred within the last 4 years, it would be appropriate to vary the number to 10 to align with the time limits set out in Section 171B (2) of the 1990 Act.
3. I invited the Council and the appellant to provide observations on the issue raised, and whether the Notice can be varied in this manner without causing injustice to either party. The Council indicated that this was an error in the drafting of the Notice and accepts that reference should be made to 10 years rather than 4. The Council considers this is a matter I can vary without causing injustice to either party. The appellant provided comments but did not provide observations on the matter raised regarding the variation to the Notice or whether it would cause injustice.
4. There is no evidence with the appeal submission to indicate that the appellant has suggested that the development took place more than 4 or 10 years before the

Notice was issued. It is also important to note that the time frame for lawfulness in this situation is being varied to a longer period, and so unless a claim of lawfulness had been claimed on the shorter period, extending it would not cause a significant change in the appellant's approach to any grounds of appeal. Furthermore, the Council is only required to state why it is expedient to issue the Notice; and it is not invalid if it does not include the relevant time to take action.

5. Therefore, I am satisfied that this is a situation where I can use my powers to vary the Notice for greater clarity without causing injustice to either party. To clarify, in Schedule 3 under "Reasons for Issuing the Notice," I will delete the number "4" and replace it with "10."
6. The appellant asserts in his submissions that there are procedural irregularities in the issuance of the Notice, claiming it does not clearly specify why the material change of use from a public house to a restaurant constitutes a breach of planning control. Additionally, the appellant argues that a detailed explanation of how the new use is contrary to local planning policies was not provided.
7. Section 173 of the 1990 Act outlines the required contents of such an enforcement notice, which must identify the land, state the breach of planning control, cite the applicable paragraph of section 171A (1), specify remedial steps, and set a compliance period. Moreover, the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (ENAR 2002), Regulation 4, outline additional matters to be specified in an enforcement notice issued under section 172 of the 1990 Act. It shall specify (a) the reasons why the authority finds it expedient to issue the notice; (b) all relevant policies and proposals from the development plan; and (c) precise boundaries of the land involved, either through a plan or otherwise.
8. The alleged breach of planning control is clearly described, and the land is identified both descriptively and via a plan. The Notice cites the relevant paragraph of section 171A (1) and outlines the steps required to remedy the breach. Schedule 3 states the Council's reasons why it is expedient to issue the Notice and references the policies in the Brent Local Plan 2022 (Local Plan) and London Plan 2021 (London Plan). While the Notice does not explicitly indicate why the material change of use is considered a breach, the sections of the 1990 Act and ENAR 2002 make it clear that such an explanation is not required. In my judgment, the Notice complies with the requirements outlined in the 1990 Act and ENAR 2002 regulations mentioned above.

### **Preliminary Matters**

9. No grounds (c) or (e) are ticked on the Appeal Form, but based on the appellant's submissions, these hidden grounds have been made. The appeal on ground (c) is that the unauthorised use alleged in the Notice was not a material change of use from the previous use as a public house. An appeal on a hidden ground (e) was also set out on the Appeal Form, indicating that there was an 'improper Service of Notice'. The Council has noted the appellant's claims and has addressed the hidden grounds in its Statement of Case. I have indicated in correspondence to the parties that I will have regard to these matters when making my decision on the appeal.
10. During the appeal, the government released a consultation on the National Planning Policy Framework, proposing changes to the existing National Planning Policy Framework 2024 (the Framework), accompanied by a Written Ministerial Statement. As these reforms are still draft proposals and may change, I have given them limited

weight. It was, therefore, unnecessary to consult the parties regarding these changes, and my decision is solely based on the Framework.

### **The Appeal on Ground (e)**

11. Ground (e) is concerned with whether the Notice was properly served as required by section 172(2) of the 1990 Act. This requires a copy of a Notice to be served (a) on the owner and on the occupier of the land to which it relates; and (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the Notice. The burden of proof is firmly on the appellant, and the test is on the balance of probabilities.
12. There is no dispute that the Notice was served more than 28 days after its date of issue or less than 28 days before the date specified as the date for taking effect. Furthermore, the appellant does not contend that a copy of the Notice was not served on every owner and/or occupier of and/or person having an interest in the land. The main thrust of the contention is that the Council did not follow the service mechanics prescribed in section 329 of the 1990 Act. The appellant's case is that the Notice was incorrectly served to the wrong door and was only discovered a week later by a window cleaner. The appellant states that the delay in receiving the Notice has significantly impacted his ability to respond within the given timeframe.
13. Section 329 of the 1990 Act sets out the required methods for serving notices. Where a notice is required to be served on any person as an occupier of premises, Paragraph (2)(a)(ii) provides for the Notice to be 'affixed conspicuously to some object on those premises.' There is no definition of affixed or conspicuously in the 1990 Act, so it is necessary to consider the definition in ordinary English. In this respect, 'affixed' means 'to attach, fasten, join, or stick' and 'conspicuously' means 'in a way that is obvious or easily seen, or that attracts notice, often intentionally.'
14. The Council's certificate of service record confirms that the appellant, alongside 'the owner' and 'the occupier,' among others, was served with the Notice on 2 May 2026, by hand at the Land. A site notice was affixed to a board positioned low on the shopfront, and the accompanying Notices were attached to the shutters. The photographs provided by the Council clearly illustrate the methods of attachment and show the location where the Notice was secured or tucked into the roller shutter door adjacent to the main entrance, as well as the site notice being fastened by string in a low position on the shopfront.
15. While the appellant contends that the Notice went unnoticed for a week, this assertion alone does not substantiate the claim that the Notice was not conspicuously displayed. It is crucial to assess its placement within the context of the surrounding environment and its visibility to the public or affected parties. The site notice and envelope were intentionally positioned at the front of the premises, immediately to the side of the main entrance. The envelope with the Notices were attached at approximately eye level, while the site notice was securely tied low down. Although it is true that the envelopes containing the Notices were somewhat inserted or slid into to the side of the shutter, and that the site notice was positioned lower than might be optimal, the photographs indicate that, collectively, these placements would have been readily visible and comprehensible to individuals approaching the site and entering the premises.
16. Consequently, the Notices were affixed to an object on the premises in a manner that attracted attention and displayed prominently, ensuring they were easily

observable from various angles and distances. Given these considerations, the assertion that the Notices were not conspicuously affixed lacks merit when contextualised by the layout of the site and their positions near the entrance of the building. On the balance of probabilities, I conclude that the Council served the Notice by affixing it to a conspicuous object on the land in accordance with section 329 of the 1990 Act.

17. Furthermore, the intention to appeal the Notice was communicated on 4 June, accompanied by a copy of the Notice in the correspondence. The appellant submitted an Appeal Form and articulated Grounds of Appeal, presenting their case within six weeks for a Statement of Case. Therefore, I find it untenable to suggest that any delay in observing the Notice has inflicted substantial prejudice on the appellant in their appeal process.
18. Accordingly, the appeal on ground (e) fails.

### **The Appeal on Hidden Ground (c)**

19. To succeed on ground (c), the appellants must demonstrate that the use alleged does not amount to a breach of planning control. When appealing on these grounds, the onus rests with the appellant to make their case. The evidence alone should be sufficiently precise and unambiguous to demonstrate that on the balance of probabilities, the development does not amount to a breach of planning control.
20. The appellant sets out that he took occupation and started using the site as a restaurant since December 2023. The main thrust of the appellant's case is that the premises were previously a public house with food offering, which should be considered under Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO). However, he also contends that the change from a public house to a restaurant does not constitute a material change as both fall under similar use class categories and function as places to serve food and beverages to the public.
21. Section 55 of the 1990 Act sets out the meaning of development, which includes the making of any material change in the use of buildings or other land. Paragraph 55(2) states that the following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land, includes (f) in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class.
22. Based on the statements and evidence submitted by both parties, there is no dispute that the previous use of the premises was as a public house, namely McGowan's Public House, before the occupation of the premises by the appellant. The Council's evidence suggests that the premises had a licence for entertainment, live music and sports as well as function rooms for hire. An advert from a commercial estate agent was also provided that described the use as a public house/bar. The images of the inside and outside of the property also show signage for McGowans Clery Clock Bar. Internally, it shows informal seating and tables, a large bar with stools, pool tables, standing areas, a kitchen, toilets and a games area.

23. Since changes to the UCO in 2020<sup>1</sup>, the use of a premises as a public house is generally regarded as a *sui generis* use, which is a Latin term, meaning of its own kind. A restaurant use, however, typically falls under Class E (b)- Food and drink which is mostly consumed on the premises set out within the UCO. The implication of this is that a change of use from a public house, even one with food provision, to a restaurant is not in the same use class. As such, such a change would not be exempt from the definition of development in section 55(2)(f) of the 1990 Act.
24. Furthermore, for completeness, following changes to the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO) in 2021, Schedule 2, Part 3, Class AA was introduced which permitted changes of use of a building and any land within its curtilage (a) from a use falling within 3(6)(p) (public house, wine bar, or drinking establishment) of the UCO to a use falling within article 3(6)(q) (drinking establishment with expanded food provision), or vice versa, of that Order. However, the GPDO does not permit a change of use from a public house to a restaurant, which would fall within Class E of the Order. As such, there are no permitted rights to change from a public house to a restaurant set out in the GPDO.
25. The concept of a material change of use (MCU) is not defined in the statute. The basic approach is that, for an MCU to have occurred, there must be some significant difference in the character of the activities from what has gone on previously. In light of this, information on the previous and existing use would need to be provided to allow the decision maker to carry out this assessment. It is necessary to have regard to the layout, its facilities as well as the scale and nature of the activities before determining whether an MCU has occurred from a public house to a restaurant.
26. When appealing on these grounds, the burden of proof rests with the appellant to make their case. The appellant indicates both uses would serve food and beverages to the public; the premises included a kitchen, and there has been minimal change to the infrastructure of the premises. Aside from this, the appellant has provided limited information on the specific activities associated with its use as a restaurant to demonstrate their case that the change of use is not material.
27. With the benefit of a site visit and the evidence submitted, signage to the front of the premises has been changed to indicate the Kabul City Restaurant. The premises also have an Uber Eats sign outside, suggesting takeaway is available. Internally, pictures provided show the layout appears similar, but there are more tables and chairs as well as booths which appear to be laid out for dinner, with table cutlery, folded napkins and side plates. There is less informal standing space; the bar area has been made smaller and fresh food is on display. There is also no offer of alcoholic drinks.
28. As indicated previously, the Council's evidence suggests that the premises had been long established as a public house or bar through its planning history, licences and activities. The images of the public house show signage for an Irish bar outside and informal seating and tables, a large bar with stools, pool tables, a kitchen and a games area inside. Based on this evidence, this was a public house primarily focused on selling alcoholic beverages for on-site consumption, with food available. As a consequence, public houses, such as this, offer a relatively informal space where people can meet and are often seen as playing an important role in terms of

---

<sup>1</sup> The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020



the community. There are also opportunities to watch live music and sports as well as take part in recreational activities such as pool.

29. It is acknowledged that the facilities and activities associated with a restaurant can also be found in a public house, especially those that serve food. However, due to the internal and external changes made, as well as the services being offered, there has been a significant transformation in the character of the premises compared to the previous use. Notably, the premises now primarily provide a sit-down dining experience, where customers pay to enjoy cooked meals served on-site and takeaway food is available. Drinks are offered, but no alcohol is served, and the beverages mainly complement the food. Additionally, there are no recreational facilities or activities, such as pool tables, games, or opportunities to watch live music and sports.
30. Accordingly, based on the evidence before me, and on the balance of probabilities, the alleged change of use is material, and there has been a breach of planning control, for which no planning permission has been granted.
31. The appeal on ground (c) must, therefore, fail.

### **The Appeal on Ground (a) and the Deemed Planning Application**

32. The **main issue** is whether the material change of use to a restaurant is acceptable, having regard to local development plan policies that seek to protect public houses.

### **Reasons**

33. The appeal site comprises a building at the corner of 225-227 Edgware Road, adjoining Wakemans Hill Avenue. The ground floor of the address is currently laid out as a restaurant, but based on the evidence before me, and for the reasons set out above, the previous lawful use was a public house. The deemed planning application, therefore, seeks permission to retain the use as a restaurant.
34. Policy BHC5 of the Local Plan states that the Council will support the loss of public houses only under certain criteria. This includes: a) its continued use as a pub or as an alternative community facility is not economically viable as demonstrated by meeting the marketing requirements as set out in the supporting text; (b) that it will not detrimentally affect the character and vitality of the area and retain as much of its external fabric and appearance as possible; (c) that it does not constitute the loss of a service of value to the community; and (d) if an asset of community value, has been offered for sale to local community groups.
35. According to the Statement of Case, the Council has not issued the Notice because the development contravenes criteria (b) and (d) of Policy BHC5 of the Local Plan. On the evidence before me, I have no reason to disagree. However, it is contended that the appellant has failed to satisfy the requirements of (a) and (c) of Policy BHC5 of the Local Plan. Policy HC7 of the London Plan is also relevant as it seeks to protect against the loss of public houses where they have a heritage, economic, social or cultural value to local communities, or where they contribute to wider policy objectives on town centres and the nighttime economy.
36. The appellant's Appeal Form refers to an email sent to the Council from local Councillors, which indicates that the public house closed some time ago and contributed to anti-social behaviour issues resulting in complaints from residents on Wakemans Hill Avenue. Also, the area of Kingsbury has changed significantly since

the public house policy was introduced, and the cultural significance of the people and the character of the townscape needs to be taken into context when considering these sensitivities and applying these policies.

37. I appreciate that the area might have changed since the policy to protect public houses was introduced. However, Policy BHC5 of the Local Plan was considered sound and adopted as part of the Local Plan with the detailed criteria that need to be satisfied. My remit in this appeal is, therefore, limited to determining whether the evidence provided with the appeal demonstrates compliance with Policy BHC5 of the Local Plan.
38. The evidence submitted by the appellant and set out by Councillors in the email on the economic, cultural, and social benefits compared with its use as a public house is largely anecdotal, with limited evidence to substantiate the claims being made. I have no substantive detail on any marketing of the public house. For instance, there is limited information before me to clarify whether, as part of this marketing exercise, the property was marketed locally and regionally for 24 months, as a public house and as an alternative community facility, or at a price agreed with the Council following independent professional valuation. There is also limited evidence before me demonstrating the efforts that were made to preserve the facility, including diversification options, or outlining the requirements of a viability test.
39. The appellant indicates that there are three more public houses within a 100-meter radius of the site. However, no detailed analysis has been undertaken on the three public houses highlighted, in terms of their facilities and community environment when compared with the appeal property. As such, there is limited evidence to suggest that the marketing requirements in the supporting text to Policy BHC5 have been met, and I cannot conclude whether the continued use at the site as a public house or as an alternative community facility is not economically viable or that it does not constitute the loss of a service of value to the community.
40. I acknowledge that the appellant was unaware of the requirement for a planning application and is now willing to cooperate with the Council to provide the necessary information. The appellant also communicated his intentions to parts of the Council without receiving adequate responses, and he believes the restaurant is not harmful to the surrounding area and would be a more efficient use of the site. Although I have had regard to these matters, the primary issue is the acceptability of the material change of use against policy criteria that seek to protect public houses. As such, these matters do not ultimately change my conclusions on the main issue.
41. Accordingly, based on the evidence before me, the retention of the use as a restaurant would not be acceptable having regard to local development plan policies that seek to protect public houses. I have insufficient evidence to show that the development complies with Policy BHC5 of the Local Plan, which is consistent with the overall intention of Policy HC7 of the London Plan to resist development that would result in the loss of a public house use unless there is evidence to demonstrate there is no realistic prospect of it being retained. For these reasons, I find that the development is contrary to Policy BHC5 of the Local Plan and Policy HC7 of the London Plan.

### *Planning Balance*

42. To allow the restaurant at the appeal site would run contrary to Policy BHC5 of the Local Plan and Policy HC7 of the London Plan, which encourage the retention of

public houses, unless a sufficient marketing and viability exercise has been undertaken to demonstrate the public house no longer makes a valuable contribution to the community. The development, therefore, conflicts with these policies, and I attribute significant weight to the conflict with them.

43. I have had regard to the matters raised by the appellant, which are benefits of the scheme that need to be weighed against the planning harm identified. These benefits include a significant investment being made to improve the premises, including refurbishments and enhancements to meet health and safety standards. There is also an uplift to the local economy from the active use of the premises and creation of jobs, as well as anecdotal evidence on the reduction in anti-social behaviour from the previous premises. However, these considerations are of modest weight in favour of allowing the appeal, and do not outweigh the conflict with development plan policies that seek to protect the loss of public houses.
44. Dismissing the appeal and upholding the Notice would require the restaurant use at the site to cease, potentially impacting the appellant's business. However, the interference is lawful and pursues a legitimate aim in the public interest, namely compliance with development plan policies which seek to resist the unjustified loss of public houses as valued community facilities. In the absence of evidence to demonstrate the impact of the requirements of the Notice on the appellant's business, I am satisfied that the decision to dismiss the appeal and uphold the Notice is therefore proportionate and necessary in the public interest.

#### *Conclusion on the Appeal on Ground (a)*

45. For the reasons given above and taking into account the development plan as a whole and all other relevant material considerations, I conclude that the appeal on ground (a) should not succeed. I shall uphold the Notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

#### **The Appeal on Ground (g)**

46. This ground of appeal is that any period specified in the Notice falls short of what should reasonably be allowed. The period for compliance with the requirements is within one month of the Notice taking effect. The appellant contends that additional time is required to prepare and submit a retrospective application, as not enough time was available in the appeal process to engage with the necessary professionals, conduct assessments, consult with the local community and apply.
47. I acknowledge the Council's position that the appellant did have time during the appeal process to put together the necessary information to try to show compliance with the development plan policies that seek to protect public houses. However, I sympathise with the fact that the appellant undertook the appeal without professional advice, and the requirements of the Notice are to cease a use, which employs staff. Furthermore, it will require time to put together the details of the marketing efforts over a period of time or the viability of the previous public house use. As such, in my judgement, 3 months is a reasonable period that balances the harm from the development with the time the appellant needs to prepare a detailed retrospective application for the Council to consider.
48. To that limited extent, the appeal on ground (g) succeeds. I will vary the Notice accordingly.



## Formal Decision

49. It is directed that the enforcement notice is varied by:

*In Schedule 3, in the reasons for issuing this Notice, the number '4' will be deleted and substituted with the number '10.'*

*In Schedule 5, the deletion of the number and word '1 month' and its substitution with the number and word '3 months' as the period for compliance.*

50. Subject to the variations, the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*M. P. Howell*

INSPECTOR