



Appeal Decision

Site visit made on 19 May 2020

by **Mark Harbottle BSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15th JUNE 2020

Appeal Ref: APP/N5090/C/19/3243090

Land at 1 Charcot Road, London NW9 5HG

- 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 Deniz Erpolat against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice, numbered ENF/1452/18, was issued on 7 November 2019.
 - The breach of planning control as alleged in the notice is, without planning permission, the construction of a single storey building and its use as a shisha lounge.
 - The requirements of the notice are: 1. Cease use of the building as a shisha lounge; 2. Demolish the building; and 3. Permanently remove all constituent materials resulting from the works in 2. above from the site.
 - The period for compliance with the requirements is three months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) 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.

Preliminary matters

2. While the appeal on ground (a), that planning permission should be granted, has lapsed, an appeal¹ against the refusal of planning permission for the construction of the building is subject to a separate Decision.

The ground (f) appeal

3. For the appeal to succeed on this ground, it must be demonstrated that the steps required to comply with the notice are excessive and that lesser steps could overcome the breach of planning control alleged in the notice. The notice defines the alleged breach of planning control as the construction of the building and its use as a shisha bar. Therefore, the lesser step of ceasing the use but retaining the building would not overcome the entire breach.
4. The appellant contends that the notice should be varied to permit the retention of the building, allowing it to be used for purposes ancillary to the adjacent

¹ APP/N5090/W/19/3242144

restaurant, in accordance with the decision in the *Mansi* case² that the requirements of an enforcement notice must respect lawful use rights. However, as the building is unauthorised and was built within the last 4 years, it has not acquired any lawful use rights.

5. For these reasons, the steps specified in the notice are not excessive and I shall not vary the notice. The appeal on ground (f) fails.

The ground (g) appeal

6. For the appeal to succeed on this ground, it must be demonstrated that the period for compliance with the requirements of the notice, i.e. 3 months after it takes effect, falls short of what should reasonably be allowed. The appeal on this ground is limited to requirements 2 and 3 of the notice.
7. The appellant suggests the compliance period for these requirements should be extended to 12-18 months to allow for further negotiations with the Council over an alternative scheme, to allow for religious holidays, and to minimise disruption. The evidence provided to support this suggestion is limited and only relates to the possibility of an alternative scheme. I am satisfied that 3 months is a reasonable period for requirements 2 and 3 to be complied with or for an alternative scheme to be devised for the Council's consideration.
8. Accordingly, I shall not vary the notice and the appeal on ground (g) fails.

Conclusion

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

Mark Harbottle

INSPECTOR

² *Mansi v Elstree RDC* [1964] 16 P & CR 153