
Appeal Decisions

Site visit made on 1 June 2015

by **JP Roberts** BSc(Hons), LLB(Hons), MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 August 2015

Appeal A Ref: APP/X5210/C/14/3000406

Appeal B Ref: APP/X5210/C/14/3000408

56-58 Fortune Green Road, London NW6 1DT

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr Mohammed Alayan and Appeal B is made by Mr Daniel Khan against an enforcement notice issued by the Council of the London Borough of Camden.
 - The Council's reference is EN14/0153.
 - The notice was issued on 8 October 2014.
 - The breach of planning control as alleged in the notice is:
Without planning permission the unauthorised use of the unit as a sandwich bar/café with an external shisha lounge and erection of a (sic) extending retractable canopy, shisha enclosure, handrail and wooden balustrade.
 - The requirements of the notice are:
 1. *Cease the use of the property as an outdoor shisha lounge with an internal sandwich bar/café area.*
 2. *Remove the enclosed structure, decking, tables and chairs, awning with side sheet, wooden balustrading and hand-rails.*
 - The period for compliance with the requirements is 3 months.
 - The appeals are proceeding on the grounds set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
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Decisions

1. I direct that the enforcement notice be corrected by the replacement of the plan attached to the notice with that attached to this decision.
2. I further direct that the notice be varied by the replacement of the words "3 months" with the words "9 months" in the period for compliance.
3. I dismiss the appeals and uphold the enforcement notice subject to the above corrections and variation.

Preliminary matters

1. The plan accompanying the notice shows a much larger part of the building than is actually occupied by the shisha lounge and sandwich bar/café use. It incorporates a part of the building which is in residential use and forms a different planning unit. I shall therefore correct the notice by substituting an amended plan.
2. The Council's statement refers to the premises as a café/restaurant. However, that is not what the notice says; it alleges the "use of the unit as a sandwich

bar/café with an external shisha lounge". Whilst the words "shisha lounge" do not give a precise description, in my view, it is a reasonable way of describing the external seating area which is used principally for the smoking of shisha with ancillary food and drink being served, both within the indoor and outdoor parts of the premises. The smoking of shisha appears to me to be the principal element of the use. I consider that the alleged breach of planning control is correct, based on what I saw on my visit.

3. The appellants also argue that the notice is incorrect in referring to a "shisha enclosure", wooden balustrading and a handrail. There was no enclosure present at the time of my visit, but the photographs provided by the Council show that the external seating area was enclosed by plastic or similar sheeting. The appellants confirm that railings were provided around the burner. Accordingly I consider that the notice is correct in this respect.

Reasons

4. The appellants seek 18 months as the period of compliance, to provide a sufficient period to find alternative premises and to obtain planning permission. I consider that it is a desirable objective to ensure that a thriving business is provided with a realistic opportunity to relocate. I recognise that most alternative premises will require planning permission for a change of use beforehand, and that this would take some time. This has to be weighed against the need to protect local residents' living conditions and the character and appearance of the area. The extent of any harm caused by the breaches has not been fully argued before me, as there has been no opportunity to argue the planning merits, and I have therefore taken a balanced, pragmatic view on the evidence before me.
5. The Council argues that the appellant has already had ample opportunity to find alternative premises since the issue of the notice. Normally, the appellants would be entitled to have a legitimate expectation of success in the appeal. However, in this case, once it became clear that the only ground of appeal remaining was ground (g), they would have been aware that they would need to comply with the notice and to consider their options as to the future of the business from that time on.
6. There is an expectation that breaches of planning control will be enforced in a timely manner in order to maintain the integrity of the planning system. In my view, a compliance period of 18 months is more akin to a temporary planning permission, and that a period of 9 months would be a more appropriate period to strike the appropriate balance between the appellants' business interests and the wider public interest. Should the particular circumstances warrant it, the Council has powers under s.173A(b) of the Act to extend the period for compliance.
7. Accordingly, the appeal on this ground succeeds to this limited extent.

JP Roberts

INSPECTOR



Plan

This is the plan referred to in my decision dated: 17 August 2015

by J P Roberts BSc(Hons), LLB(Hons) MRTPI

Land at: 56-58 Fortune Green Road, London NW6 1DT

Reference: APP/X5210/C/14/3000406 and APP/X5210/C/14/3000408

Not to scale

