

**APPEAL BY: ROZAY LOUNGE**

**LOCAL PLANNING AUTHORITY: LONDON  
BOROUGH OF CAMDEN COUNCIL**

**APPEAL SITE:  
327 WEST END LANE, LONDON, NW6 1RS**

**LOCAL PLANNING AUTHORITY REFERENCE:  
EN19/0206**

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## **1.0 INTRODUCTION**

- 1.1 This appeal statement has been prepared in support of the above appeal against the Council's Enforcement Notice. It provides a brief discussion of the enforcement case from the applicant's perspective, the reason for the appeal and the grounds of appeal submitted. It also provides some background details that the applicant feels is relevant to the Inspector's decision.

## **2.0 BACKGROUND**

- 2.1 The current Enforcement Notice (dated 11<sup>th</sup> September 2020) was issued following the withdrawal of a previous Notice issued by the Council for the same works. That Notice was issued on 11<sup>th</sup> February 2020. However, the applicant was only made aware of that Notice on the 23<sup>rd</sup> of July 2020.
- 2.2 The original Notice came as a surprise to the applicant as the Council previously confirmed that planning permission was not required and it followed discussions with the Council's Enforcement Officer who had informed the applicant that if they undertook some works to the property to bring it in line with access and Building Control requirements, then the umbrellas could stay (see Appendix V). The applicant maintains that they were never served the Notice. The Landlord, residential occupiers at the property and the bank who have a charge on the land all confirmed that they did not receive the original Notice until made aware of it by the applicant in July-August 2020. The Bank subsequently wrote directly to the Council on 6<sup>th</sup> of August asking for clarification on the matter.
- 2.3 Following the issuing of the original Notice, the applicant engaged a Planning Consultant to deal directly with the Council. The applicant sought the reissuing of the Notice on the following grounds:
- The Enforcement Notice was illegal as it was not issued in accordance with the planning legislation requirements.
  - The applicant cannot "uninstall" the umbrellas as they have not been "installed".
  - The Notice did not include the applicant themselves as part of the affected parties.
- 2.4 These discussions took place between 29<sup>th</sup> July 2020 and 7<sup>th</sup> September 2020. During this time, the applicant sought proof from the Council that the original Notice was served in accordance with the legislation. While the Council argued that it was served correctly and they did have proof of this, they did not provide this proof to the applicant. However, did withdraw and reissue the new Notice to the bank on 16<sup>th</sup> September 2020. The applicant themselves were served with the Notice on 21<sup>st</sup> September 2020.

2.5 A brief summary of the sequence of the enforcement history is provided:

- 5/1/2019: Applicant sends e-mail to the Council's duty planning service asking whether planning permission is required for the umbrellas. This provides an image of the size and type of umbrellas. Since the Health Act 2006, shisha can only be consumed externally. Therefore, it is important that an area be established for this.
- 15/1/2019: The Council's Officer confirms that the proposed umbrellas would not constitute development stating "*The use of non-fixed and foldable/collapsible mobile umbrellas along with the associated stands on the front forecourt of the above property would not constitute development requiring planning permission.*"
- Following receipt of the confirmation e-mail, the applicant agrees to take the 15 year lease for a shisha bar at the premises.
- Summary 2019: Council opens enforcement case regarding the umbrellas.
- 10/6/2019: Council's Enforcement Officer proceeds to tell the applicant how to position the umbrellas and undertake upgrade works to the forecourt to make the umbrellas suitable/acceptable and exempt from enforcement action. In his e-mail, he accepts that the umbrellas are fine but that the applicant should move them about more often. At a later date, the officer asks the applicant to undertake some access and upgrade works amounting to around £3000. Applicant agrees and undertakes the works. If the umbrellas are unacceptable and they have issued a Notice in February 2020, then why is the officer still instructing the applicant on where to position the umbrellas? Surely any position would be unacceptable in the view of the Council?
- 23/7/2020: Council's Enforcement Officer sends an e-mail to the applicant referring them to an Enforcement Notice that was dated 11<sup>th</sup> February 2020. The applicant has never seen this Notice previously and it is too late to appeal.
- 29/8/2020: Applicant's consultant contacts the Council's Enforcement Officer to discuss the matter. Officer refuses to engage unless it's over the phone only. Applicant's consultant states that e-mails would be best. Officer refuses and immediately threatens enforcement prosecution. Applicant's consultant contacts Enforcement Manager.
- 30/8/2020 – September 2020: Applicant in discussion with Manager regarding validation of Notice.

- 21/09/2020: New Notice served on applicant.

2.6 The appeal has been submitted under grounds a, b and c.

### **3.0 APPLICANT'S CASE GROUND A**

3.1 The applicant does not consider that the works constitute development under section 55. However, should the Inspector find otherwise, the applicant would like the planning merits of the development considered under the appeal.

### **4.0 APPLICANT'S CASE GROUND B AND C**

4.1 Ground B refers to cases that argue that the breach of control alleged in the enforcement notice has not occurred as a matter of fact. The Enforcement Notice states that the umbrellas have been installed at the site. However, the applicant argues that the use of the umbrellas do not amount to "installation" and that no "installation" of any part of the umbrellas had taken place. So, the applicant cannot "uninstall" them. Additionally, as they have not been installed then the works do not amount to development as defined by section 55 of the 1990 Planning Act.

4.2 As such, the appeal is also made on ground c that the operations alleged in the notice do not amount to development under section 55 of the Act. This was confirmed by the Council on two occasions also. There are no adverts on the umbrellas.

4.3 The large umbrellas are on a wheel podium and are wheeled around the front forecourt area often. They are not permanently affixed to the ground at any point. Or in the same position for more than a month continuously. Additionally, prior to their purchase, the Council confirmed that umbrellas used in this way was acceptable and did not require planning permission in the Council views. The behaviour and communication from the Enforcement Officer, in recognising this fact that they are on wheels and advising the applicant where to best locate them also suggests that they too agreed that the umbrellas did not amount to "development". However, after a year the Council changed its mind and decided to prosecute without warning.

4.4 The umbrellas are not in "situ" and are regularly moved around except for when the Officer informed them to place it in a particular position, close to the entrance of the shop. Which the applicant did. Again, this was at the direction of the Council. They are closed when the unit is closed and open when in use.

4.5 Under the Governments business and Planning Bill as introduced in the House of Commons on 25 June 2020 (Bill 148) (See Appendix VII. Page paragraph

71.), umbrellas are defined as “furniture”. *“Clause 1 provides at subsection (4) the types of business which may apply to the local authority for a “pavement licence” to put furniture temporarily on the highway. “Furniture” is defined in Clause 9 and includes stalls for selling or serving food or drink, tables and chairs and articles such as umbrellas, barriers and heaters.”* This would also allow the use of umbrellas going forward without the need for planning permission.

- 4.0 In addition to the above, although the use of the umbrellas are central to the use of the site for the sale of shisha (as it must be outside), the current social climate has made the need to provide service outside of the applicant’s unit even more pivotal to their business. Since Governmental controls have created restrictions in numbers of persons within any given space. This has meant that the external seating at the site is even more of a premium. The umbrellas contribute to this by helping to create a shelter.

## **5.0 CONCLUSION**

- 5.1 The applicant contends that the umbrellas are not installed and are at best furniture. Therefore, in light of the above, we ask that the Inspector quash the Enforcement Notice and recognise that the use of the umbrellas in this way is not development as defined under section 55 of the Planning Act or approve it on the grounds that it meets the Council’s planning framework.