

**TOWN & COUNTRY PLANNING ACT 1990**  
**PLANNING ENFORCEMENT APPEAL**

at

**JUDGES, JUDGES HILL, NORTHAW, HERTS**

**GROUND OF APPEAL**

**Ground e – Listed building consent should be granted for the works**

This ground of appeal is pleaded only in respect of those matters set out in Ground (j) below which require listed building consent. Specifically it is in respect of those items set out Section 3 (2) of the listed building enforcement notice. That is “the affixing of extractor flues with associated supporting structures, cabling and pipework to the rear of the listed building”. The reasons why it is considered that listed building consent should be granted are included in the Ground (j) appeal below. It will be noted that, inter alia, the Ground (j) appeal also concerns a shed and a cold store room. It will be noted that in the event of the appeal under Ground (j) being allowed, these two structures will become free standing and would not require listed building consent.

**Ground j – where restoration of the building to its former state is not required, the works required go beyond what is necessary to alleviate the effect of the works done**

This ground of appeal is pleaded on the basis that the full requirements of the notice would effectively prevent the business from continuing and prejudice the continued operation of the long established pub/restaurant business, the recognised use of the listed building. In this respect, the appellant is not challenging all the requirements of the notice but those which directly affect, on an immediate basis, his ability to continue operating the pub/restaurant, which is the historic use of the premises. It is the appellant’s contention that the requirements set out in Section 5 of the notice relating to the removal of the timber shed and the cold store room (included in Requirement (i)) and the removal of the extractor fans and their associated supporting structures, cabling and pipework (Requirement (v)) will immediately impact upon essential business operations to the extent that the business could not continue. With regard to the shed and cold storeroom, which pre-date the “jumbrellas” and associate works, these are comparatively small (and would become again) free-standing structures sited discreetly at the rear of the building. Whilst they might be considered within the setting of the listed building, they are nevertheless, located where the appearance of the principal building is not affected to any material degree and certainly not from any public vantage point.

The extractor flues and associated work are an essential feature of any pub restaurant and are generally required under environmental health and safety regulations regardless of whether the building to which they are attached is listed or not. As will be appreciated, such structures are often, if not always, present on a building where the lawful use is associated with preparation and cooking of food. They are therefore on many listed buildings such as Judges, where the historic use has always been as a pub/restaurant. What might be described as a compromise between harm to the character and appearance of the listed building (if any) and its ability to continue its historic use has to be considered. In this case the flues are on the rear elevation of the western wing of the listed building where they provide extraction from the kitchen area. Their visual impact is limited indeed and not an unusual feature on a building, whether listed or not, used for pub/restaurant purposes.

With the future of the business under threat from the requirements of the listed building enforcement notice comes also a threat to the upkeep and maintenance of the listed building. This is contrary to advice set out in the National Planning Policy Framework. In particular, reference during the appeal process will be made to paragraphs 185 a) and b), 192 a) and b) and 196 of that document.

In presenting this ground of appeal, care has been given to assessing whether it should be made under Ground (g) or Ground (j). Ground (j) has been chosen on the basis that the notice is somewhat vague on the matter of whether the Council intends the building to be restored to its previous condition. The word “reinstate” has been used in the notice. This means to bring back something previously removed, whereas “restore” means re-establish to a former condition/appearance. Taking the overall intention implied by the notice, it appears to be requiring the removal of building, plant and equipment but not the actual bringing back of anything removed earlier. Making good is required but in the context of this appeal, this is not necessarily the same as restoration, a word not used in the enforcement notice. Consequently, Ground (j) has been used although there is a degree of semantics in making the choice.

Whether through Ground g) or Ground J) the appellant requests that the requirements of the notice be revised to exclude reference to the shed and cold store in Requirement (i) and remove altogether Requirements (v) and (vi).

### **Ground h – the compliance period stated in the notice is too short**

In the absence of this appeal against the enforcement notice, the notice would come into effect on 16<sup>th</sup> December 2019 with the requirements contained therein needing to be acted upon and the structures, plant and equipment removed within two calendar months. This can only be described as disastrous for the business which would be unable to survive, putting at serious risk the future of the listed building.

It should be pointed out that the works in respect of which the listed building enforcement notice has been served were not carried out by the appellant but by the tenant business in occupation at that time. That business went into liquidation shortly after the work was carried out, leaving the appellant, the owner of the listed building, to take over the running of the business and endeavour to negotiate with the Council

over the works now the subject of the enforcement notice. At the same time there has been a need to establish the new business, which is still in its first year, and make it viable and sustainable in the longer term.

The appellant remains willing to reach agreement with the Council but the listed building enforcement notice does not give sufficient time to either do this or carry out whatever proves necessary whilst at the same time enabling the appellant to manage and develop the business's growing customer base necessary to ensure the long term viability and, in effect, the proper maintenance of the listed building.

Bearing in mind that the notice gives only two calendar months from when it comes into effect and that the period for compliance runs through the Christmas and New Year period, up until Valentine's day, the busiest time for any pub/restaurant business, there is no doubt the business would have to close, many bookings cancelled and customers disappointed in the extreme. It is not possible for the business to continue to operate at the same time as works necessary to comply with the notice are carried out. In fact such works as currently required by the notice and the time given would mean the immediate closure of the business putting in jeopardy many jobs and the future of the listed building.

In the light of the above, a period of eight months is requested. This would allow sufficient time for negotiations to take place with the Council on a suitable alternative scheme which would allow a viable business to operate, whilst at the same time satisfying the Council on listed building matters. There is also a need to arrange a detailed programme of works balancing the need of the business to continue against the desire of the Council to see work on the removal of offending structures, and their replacement with whatever is agreed, progress at a reasonable pace. Two months for compliance in all the circumstances is not reasonable, whereas a period of eight months would give time for all that is necessary to resolve issues between the Council and the appellant.