

**Date:** 14/08/2023  
**PINS ref** APP/X5210/C/23/3323920  
**LPA ref:** EN21/1164  
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The Planning Inspectorate  
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BS1 6PN

Dear Corrina Clements,

**Town and Country Planning Act 1990 as amended  
Planning Appeal Statement (Local Planning Authority)**

**Site: 94 Camden Road, London, NW1 9EA  
Appeal by: MR T & S SESTILI & CUPPARI, DeGusto Restaurant Ltd  
Enforcement Notice dated 12<sup>th</sup> May 2023**

I write in connection with the above referenced Enforcement Notice regarding retractable awning, a timber enclosure, planters and ramp. **This appeal has been linked with the APP/X5210/W/22/3312493 appeal regarding refusal of planning permission in November 2022 for the same works and a decision is awaited.**

The Council's case is primarily set out in the delegated enforcement officer's report (EN21/1164) which has already been sent with the questionnaire. It is to be relied on as the principal statement of the case. Copies of the relevant Camden Local Plan policies and accompanying guidance were also sent with the appeal questionnaire.

In addition, the Council would be grateful if the Inspector would consider the contents of this letter which includes confirmation of the status of policy and guidance, comments on the appellant's grounds of appeal and further matters that the Council respectfully requests be considered without prejudice before deciding the appeal.

## **1. Summary**

1.1 The site is a 4-storey building with a pale brick elevation on the east side of Camden Road. It forms part of the Georgian Terrace and the short parade of shops on this side of Camden Road. The site and terrace have historic features which benefit the appearance of the street scene and the surrounding area.

1.2 The building is not listed but is located within the Camden Broadway Conservation Area. Therefore, any development at this site should preserve and support the distinct character, appearance and setting of the street scene and surrounding area.

1.3 Planning permission was refused on the 23<sup>rd</sup> November 2022 for retrospective permission for the *Installation of retractable awning, erection of a timber enclosure and planters to forecourt and introduction of a ramped access to the front entrance (retrospective)* (reference: 2022/1770/P).

The reasons for refusal was as follows:

*1) The canopy, enclosure and planters, by virtue of their siting, size and design, appear as bulky, incongruous and unsympathetic additions that harm the character and appearance of the host property, streetscene and conservation area, contrary to policies D1 (design) and D2 (heritage) of the London Borough of Camden Local Plan 2017.*

*2) The timber enclosure, by virtue of its siting and size, results in a pavement width that is not wide enough for the number of people expected to use it, which is detrimental to the quality of the public realm and hinders pedestrian movement and accessibility by vulnerable or disabled users, contrary to policies A1 (Managing the impact of development), C6 (Access for all) and T1 (Prioritising walking, cycling and public transport) of the London Borough of Camden Local Plan 2017.*

1.4 The appellant has submitted an appeal on the 5<sup>th</sup> December 2022 against the LPA's decision of refusal (PINS reference: APP/X5210/W/22/3312493).

1.5 A site visit was conducted on the 22<sup>nd</sup> February 2023 by the current Enforcement Officer to confirm whether the unauthorised works should be able to remain at the site whilst the APP/X5210/W/22/3312493 appeal progresses.

1.6 By virtue of the active harm being inflicted to the immediate and surrounding area – as outlined by the above reasons for refusal – it was/is considered that the works should not be allowed to remain whilst the APP/X5210/W/22/3312493 appeal progresses.

1.7 Accordingly, the Council sought to work with the appellant to remedy the harm through initially requesting the complete removal of the unauthorised works within 3 weeks from the 27<sup>th</sup> February 2023. After some correspondence, the scheduled compliance check was conducted on the 24<sup>th</sup> March 2023 – it verified that the opportunities to remedy the harm were not taken by the appellant.

1.8 An enforcement notice referenced EN21/1164 and alleging *“Without planning permission: Installation of retractable awning, erection of a timber enclosure and planters to forecourt and introduction of a ramped access to the front entrance”* was then served on the 12<sup>th</sup> May 2023, which would have taken effect on the 24<sup>th</sup> June 2023. The enforcement notice required that within one month of it taking effect the appellant must:

*1) Completely remove the retractable awning and make good any damage as a result of this operation; and*

*2) Completely remove the timber enclosure and planters located on the forecourt, remove all resultant material and make good any damage as a result of these operations.*

**The Enforcement Notice is the subject of this appeal and has been linked with the APP/X5210/W/22/3312493 appeal.**

## **2. Relevant History**

2.1 The history demonstrates that the Council is consistent in resisting unacceptable development at this site and this terrace of buildings. The Council however seeks to grant permission where the impact on the Conservation Area is preserved or enhanced and amenity of adjoining occupiers and pedestrians is unharmed. The relevant planning history is below:

2014/6291/P – 94 Camden Road, London, NW1 9EA - Use of rear ground floor roof as a terrace (retrospective), and the installation of timber balustrade with trellis. **Refused with warning of enforcement action – 19/12/2014.**

EN14/0778 – 94 Camden Road, London, NW1 9EA - The unauthorised installation of planters and decking to facilitate the use of the flat roof of the ground floor rear extension as a terrace. The unauthorised erection of timber support posts and timber housing erected to the rear of the ground floor rear extension. **Formal notice served and the timber enclosure was removed – 09/06/2015.**

## **3. Status of policies and guidance**

**National Planning Policy Framework 2021  
The London Plan 2021**

3.1 The full text of each of the policies has been sent with the questionnaire documents.

**Camden Broadway Conservation Area Appraisal and Management Strategy 2009  
Regents Canal Conservation Area Statement**

**Camden Local Plan 2017**

D1 - Design

D2 – Heritage

T1 – Prioritising walking, cycling, and public transport

**Camden Planning Guidance**

CPG Design (2021)

CPG Transport (2021)

## **4. Grounds of appeal**

4.1 The appellant has appealed against the Enforcement Notice under grounds A and F.

4.2 In order to respond to the appellants grounds of appeal I will seek to break down the issues raised on each ground: the appellants case is summarised in italics and addressed beneath.

## **5. Ground A: that planning permission should be given for what is alleged in the notice;**

- Design and Heritage:

*5.1 The appellant argues that the unauthorised works are modest in size. The use of timber for the enclosure is acceptable/sympathetic in relation to the Conservation Area. The planters add a desired visual interest to the site and soften the appearance of the enclosure. That there are prevailing patterns of similar development in the locality which the works have followed – examples of awnings,*

*forecourt enclosures and outdoor seating have been cited. The unauthorised works therefore preserve the character and appearance of the Conservation Area.*

5.2 Response: Whilst there are examples of awnings within the vicinity, there are a number of other properties along the shopping parade that do not have awnings, including at the immediate neighbours either side of the appeal site. It is therefore incorrect to suggest that they are a characteristic feature, and do not constitute a prevailing pattern of development. In addition, the Conservation Area Statement states that canopies detract from the character and appearance of the conservation area.

5.3 Response: The appellant refers to existing forecourt enclosures within the vicinity. The only example of a permanent enclosure exists at no. 43-45 Camden Road ('The Living Room'). This enclosure appears to be historic for which there is no planning history, and therefore cannot be taken as a precedent. It is noted that nearby retail units have outdoor seating and barriers, however these appear to be temporary in nature and can be moved. The historic examples at No. 94 also appear to be temporary in nature. The examples at no. 90 Camden Road and 104 Camden Road have no formal planning history for the placement of tables, chairs and barriers. The existing enclosure at no. 94 appears as a permanent structure and means of enclosure. There are no other examples of such permanent structures on this side of the shopping parade, and therefore the development cannot be considered to be in keeping with pattern of development in the area.

5.4 Response: The timber slats of the existing enclosure, which appear unfinished and untreated, are highly conspicuous and do not respond to the appearance of the host building with regards to materiality and design. The unauthorised works, albeit reduced in height and depth, would still appear as an incongruous feature that would dominate the shopfront and detract from the visual appearance of the streetscene. Framing the lack of precedents in the immediate and wider area against the works enhances its overall clutter and bulk to the street scene. The addition of planters add further clutter and bulk to the host building and street scene.

- Managing the impact of development, Prioritising walking, cycling and public transport and Access for all:

*5.5 The Appellant submits that the enclosure retains sufficient pavement width that allows pedestrian movement without any obstruction. The distance from the tree to the enclosure is 2.7m from 2.2m. Camden's Streetscape Design Manual states that 'clear footway' is the unobstructed pathway width within the footway and should be 1.8m wide for two passing adults and 3m wide for a busy pedestrian street. The width of 2.7m is therefore be acceptable.*

5.6 Response: The appellant has argued that the clear footway is the area measured from the enclosure to the tree trunk (2.7m). However, there is a tree pit in which the tree is located, and the distance should be measured from the edge of the tree pit, as it cannot be considered to form part of a clear footway. This distance is significantly less than the distance suggested by the appellant which is blatantly incorrect. The tree itself is also significantly wider than the one depicted on the drawings. The reality is that the tree and the enclosure create a pinch point which is an obstruction to pedestrians and more vulnerable users in wheelchairs or pushchairs, which outweighs the benefits of the existing ramped access to the front entrance, as it does not serve same footfall.

## **6. Ground F: that the steps required to comply with the notice are excessive, and lesser steps would overcome the objections;**

*6.1 The appellant argues that insofar the unauthorised works are acceptable, the steps required to comply with the notice are excessive and that the service of the enforcement notice is unnecessary.*

6.2 Response: The Council has argued that the unauthorised works are unacceptable. Further, the provision of one month to completely remove them is proportionate to the scale of the breaches. There are no Notice requirements which require specialist builders or contractors who may be

difficult to find in a short timeframe and there is no reason why the carrying out of the requirements would be technically unfeasible within the one-month period. No evidence has been provided by the appellant to confirm current lead times or whether there is a shortage in materials.

6.3 Response: The benefits accrued from the unauthorised works are entirely private and do not convincingly outweigh the ongoing harm at the site. The Council therefore believes that the service of the enforcement notice, after the unaccepted provision of informal opportunities to mitigate the harm, is an appropriate and proportionate response.

6.4 Response: Accordingly, the steps required to comply with the notice are therefore not excessive and the matter warrants the service of an enforcement notice.

## **7. Grounds B and C**

7.1 It is noted that the appellant has stated their appeal is also made on Grounds B and C too (see section 5.3 of their statement). Grounds B and C were not included in their Appeal Form. Nevertheless, the Council comments as follows.

7.2 *Ground B: "That a breach has not occurred"*. The works currently in situ produce a harmful material change to the front elevation of the site, thus constitute as development under Section 55 of the Town and Country Planning Act 1990 as amended, and do not have formal approval from the LPA. A breach of planning control has therefore occurred and an Enforcement Notice was correctly served to regularise the breaches.

7.3 *Ground C: "That the matters set out in the Notice do not constitute a breach"*. As argued in the officer's delegated report and the above LPA appeal statement, the Council maintains that the works should be refused planning permission and that a breach has occurred.

## **8. Conclusion**

8.1 The unauthorised installation of retractable awning, erection of a timber enclosure and planters to forecourt and introduction of a ramped access to the front entrance, by virtue of their design, proportions and inappropriate materials, detract and create clutter to the appearance of the host building, street scene and wider conservation area.

8.2 The timber enclosure in particular, by virtue of its siting and size, results in a pavement width that is not wide enough for the number of people expected to use it, which is detrimental to the quality of the public realm and hinders pedestrian movement and accessibility by vulnerable or disabled users.

8.3 Overall they constitute 'less than substantial harm', however do not provide any demonstrable public benefits that would outweigh this harm.

8.4 On the basis of the information available and having regard to the entirety of the Council's submissions, including the content of this letter, the Inspector is respectfully requested to dismiss this appeal for the reasons stated on the enforcement notice.

8.5 The Council is unable to recommend any conditions to mitigate the impact of the development should the appeal be allowed.

If you require any further information or clarification on any matter associated with this case please contact Joshua Cheung on the above email or direct dial number.

Yours sincerely,

A handwritten signature in grey ink, appearing to read 'JC', is located in the upper left corner of the page.

Joshua Cheung  
Planning Enforcement Officer  
Supporting Communities Directorate  
London Borough of Camden