



## Appeal Decision

Site visit made on 13 June 2023

**by G Robbie BA(Hons) BPI MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 25 August 2023**

**Appeal Ref: APP/X5210/C/22/3305184**

**335 West End Lane, London NW6 1RS**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by KSU HOLDINGS LTD against an enforcement notice issued by London Borough of Camden.
- The notice, numbered EN20/0537, was issued on 5 July 2022.
- The breach of planning control as alleged in the notice is Without planning permission, installation of a new shopfront, including retractable awning and balustrading to decked seating area to the forecourt.
- The requirements of the notice are to:
  1. Totally remove the unauthorised shopfront and reinstate a traditional timber shopfront to match the proportions of the shopfront in place prior to the unauthorised works;
  2. Totally remove the timber balustrade and decked seating area from the front forecourt; and
  3. Remove from the land any resulting material and make good any damage caused as a result of the above works.
- The period for compliance with the requirements is: THREE (3) months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

**Summary Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.**

### Formal Decision

1. It is directed that the enforcement notice be corrected by:

- 1) At section '4. Reasons for Issuing this Notice: (b)' delete the words '*...Fortune Green and West End Green Neighbourhood Plan 2015;*' and substitute with the words '*...Fortune Green & West Hampstead Neighbourhood Plan 2015;*'.
- 2) At section '4. Reasons for Issuing this Notice: (c)' delete the words '*...Fortune Green and West End Green Neighbourhood Plan 2015;*' and substitute with the words '*...Fortune Green & West Hampstead Neighbourhood Plan 2015;*'

And varied by:

- 3) The deletion of the words '*THREE (3) months*' and their substitution with the words '*twelve (12) months*' as the period for compliance at section 5 of the notice.
2. Subject to these corrections and variation, the appeal is allowed insofar as it relates to the balustrading to decked seating area as depicted on the plans

referred to in condition 1 below and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended), for the balustrading to decked seating area at 335 West End Lane, London NW6 1RS, subject to the conditions in the schedule below.

3. Subject to these corrections and variation, the appeal is dismissed and the enforcement notice is upheld, as corrected and varied, insofar as it relates to the remaining parts of the development subject to the notice and planning permission is refused in respect of the new shopfront, including retractable awning on land at 335 West End Lane, London NW6 1RS on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### **Preliminary Matters**

4. Applications for planning permission<sup>1</sup> and consent to display advertisements<sup>2</sup> were refused by the Council and subsequently dismissed at appeal<sup>3</sup> for a scheme very closely resembling that which is alleged by the notice. Both parties draw upon the appeal decisions in their submissions and I have carefully considered the content thereof in coming to the conclusions set out in my decision.
5. As part of the appellant's appeal submission, an alternative scheme has been put forward under ground (f) on the basis that the steps required by the notice exceed what is necessary to remedy any breach of planning control which may be constituted by those matters. This follows a previously submitted amendment during the course of the application for planning permission. Various, the revisions include the removal of the length of balustrading (fence) between the appeal property and the adjacent 337 West End Lane, revisions to the spacing between the vertical wooden balustrading slats, revised shopfront including 5-panel door / glazing panels and a deeper fascia board. I have considered these amendments within the scope of the appeal under ground (a) and have determined the appeal accordingly.
6. Whilst the appellant also argues within the ground (f) appeal that the purpose of the notice is to remedy an injury to amenity, it is clear from the notice's requirements to restore the land and shopfront to their condition before the breach took place, that it seeks to remedy the breach of planning control in accordance with section 173(4)(a) of the Act, not amenity. For the avoidance of doubt, this is the basis upon which I have determined the appeal.
7. The Council have clarified that the title of the neighbourhood plan referred to in the reasons for issuing the notice is not as stated therein, but is instead the '*Fortune Green & West Hampstead Neighbourhood Plan*' (2015) (hereafter, NP). Notwithstanding this error, it is clear that the Council's references to NP Policies 2, 3 and 13 refer to those set out within the correctly titled NP. I have determined the appeal accordingly.

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<sup>1</sup> LPA Ref No: 2019/3436/P

<sup>2</sup> LPA Ref No: 2019/3692/A

<sup>3</sup> APP/X5210/W/20/3249374 and APP/X5210/Z/20/3249368

## **The appeal on ground (a)**

### **Main Issue**

8. The main issue is whether or not the alleged breach of planning control would preserve or enhance the character or appearance of the West End Green Conservation Area (the CA).

### **Reasons**

9. The replacement shopfront that the notice seeks to attack is predominantly glazed with frameless window panes, within which a frameless glazed door is also set. These glazed elements are set within a ground floor opening that extends the whole width of the shopfront, framed by retained pilasters, consoles and corbels. A deep fascia board, within which a retractable awning is sited, is set between the decorative consoles.
10. The terraced block within which the appeal premises lies is identified in the '*West End Green Conservation Area Appraisal and Management Strategy*' (CAAMS) (2011) as making a positive contribution to the CA, for which much of its special interest is derived from its village character and central green<sup>4</sup>. The terrace within which the appeal premises is situated faces towards the green and is, as whole, a prominent feature within this part of the CA.
11. The CAAMS notes the trend of retail shops converting to restaurants and cafes within this character zone. The resulting increase in pavement and forecourt activity here is set against the CAAMS' observation that some of these extensions of activity to pavement and forecourt have been of poor design and quality. Despite the relative age of the CAAMS, my observations of the site and its surroundings confirm that the same pressures appear to exist now as then.
12. The appeal property's shopfront, particularly by virtue of its largely unbroken extent of glazing, creates a large and gaping void at ground floor level. Without any framing to break up the glazed expanse, its effect is to render the building's ground floor proportions entirely at odds with the more traditional appearance, proportions and rhythm of the upper floors. This is also at odds with the prevailing pattern and character of shopfronts within the terraced block, the harm from which is warned against by the CAAMS.
13. Whilst I accept that there is some variation in shopfronts along the terrace, with some being of a distinctly less traditional appearance than others, it is really only the appeal premises and the neighbouring unit at No. 337 which display such unrelieved extents of glazed shopfront. There may not be a prevailing pattern of traditional shopfronts, and that variation is part of the character and appearance of the area, but for those elsewhere along the terrace there are at least some that employ some, more traditional, features such as framed doors and smaller glazing panels broken up by thicker frames, and others with small stallrisers. Importantly, they broadly avoid the large, unbroken dark void created by the large, glazed opening at the appeal property, which is compounded by the excessively deep, darkly coloured fascia board.
14. The replacement shopfront the subject of this notice is, for the reasons I have set out, harmful to the character and appearance of the appeal property. The

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<sup>4</sup> The site lies within 'The Green and West Cottages' character zone

large expanse of glazed frontage creates an incongruously large and dark void at ground floor level at odds with the proportions and vertical emphasis of the upper floors of the building, and of those around it. Whilst the retractable awning is a pleasant feature and evokes a more traditional appearance and character for the shopfront, the positive aspects of its presence do not overcome the harm that arises from the glazed shopfront or uncharacteristically deep fascia board. Nor, because of its housing behind the fascia, does it lend itself to reaching a split decision under ground (a).

15. Camden Local Plan (CLP) (2017) Policy D1 sets out the Council's approach to securing high quality design that respects local character and context, preserves or enhances the historic environment and provides high quality and complimentary detailing. CLP Policies D2 and D3 support this broad aim with specific regard to the approach to developments affecting heritage assets and, specifically, shopfront development respectively.
16. Whilst the appellant seeks to argue that these development plan policies do not expressly require enhancement, for the reasons I have set out, the appeal scheme shopfront fails to either preserve or enhance the character or appearance of the Conservation Area. It is, therefore, contrary to CLP Policies D1, D2 and D3. Despite pre-dating the CLP, NP Policies 2, 3 and 13 are broadly consistent with the aforementioned CLP Policies in their approach to design and the historic environment and, as such, the replacement shopfront is contrary to these NP Policies.
17. The notice also seeks to attack the area of decking, and the balustrade partly enclosing it, which are sited on the appeal property's forecourt. The appeal property is not alone within this terraced block in featuring such decking and balustrade at the front however, and a number of other properties within this terraced block feature similar arrangements, with further examples elsewhere along West End Lane. The CAAMS, accurately in my view, identifies both the benefits and drawbacks of such areas upon the character and appearance of the forecourt, and surrounding, areas.
18. The terraced block is on a slight slope and so part of the decked area is raised above pavement level. This difference in levels is also evident in the height of the balustrade relative to the pavement. Finished in a dark colour and with minimal gaps between the vertical timber slats, the deck and balustrade is visually intrusive and incongruous within the street. An open forecourt at the neighbouring property exacerbates the harsh intervention brought about by the deck and balustrade.
19. For these reasons, in the form in which the appellant seeks to retain the decking and balustrade, they are visually unacceptable additions to the front of the appeal premises. Whilst the contribution that such areas and developments make to enlivening the forecourt areas and street frontages of commercial units is acknowledged, I am mindful of the harmful effect that can arise to the character and appearance of the surrounding area, particularly given the appeal site's location within the conservation area. Alterations such as that attacked by the notice are recognised within the CAAMS as being harmful to the character and appearance of the CA, and to this particular character zone. The retention of the decking and balustrade in the manner set out is therefore contrary to CLP Policies D1, D2 and D3, and NP Policies 2, 3 and 13 and also fails to preserve or enhance the character or appearance of the CA.

### *Amended scheme*

20. A revised scheme was submitted with the appeal in relation to both the shopfront and the decking and balustrading. I am satisfied that the revised scheme as it relates to both main elements described above is capable of being part of those matters enforced against, as set out by section 177(1)(a) of the Town and Country Planning Act 1990 (as amended) and I have considered the amended scheme accordingly.
21. With regard to the revised shopfront, the scheme would introduce five distinct, framed glazing units which would introduce a degree of verticality to the ground floor shopfront, whilst also breaking up the currently gaping, frameless glazed opening. It is not clear from the drawings however, whether the revised scheme would incorporate bi-fold doors, with the potential when opened to replicate the large featureless opening created by the current glazing. Even if this were to be the case, when closed the revised shopfront would provide a welcome degree of verticality to the ground floor opening and a means to break up the otherwise gaping extent of the existing, and this is something that weighs in favour of the proposed revisions.
22. However, the revised shopfront would not be wholly successful. The fascia shown on the submitted drawings would be even deeper than the existing fascia, resulting in a poorly proportioned shopfront overall. Even though the revised framed glazing and fascia elements would continue to be set within the existing characterful pilasters, consoles and corbels the additional depth of the fascia element would be out of proportion to the width and depth of the shopfront itself, resulting in a top-heavy shopfront and would undermine the, albeit limited, beneficial effects of the framed glazed panels. As these elements of the shopfront are interlinked, the scope for a split decision in this instance does not exist and for the reasons set out, I am not persuaded that the revised shopfront scheme would accord with the aims and objectives of CLP Policies D1, D2 or D3, or NP Policies 2, 3 or 13 and it would fail to preserve or enhance the character or appearance of the CA.
23. The revised scheme as it relates to the decking and balustrade would however be more successful. This scheme would increase the spacing between the vertical timber slats, thereby increasing visibility through the balustrade. Combined with the incorporation of planters along the top of the balustrade rails along the front and side of the deck, the result would be a less visually heavy-handed, incongruous and intrusive decked area for seating and dining.
24. As a result, this element of the revised scheme would strike a more satisfactory balance between encouraging more active use of commercial frontages and the sensitivity of a CA location. It is part of the matters enforced against and so can be considered as part of a revised scheme, whilst it is also severable from the shopfront element of the notice's targeted works. Thus, this element of the scheme would preserve the character and appearance of the CA and as such would not be in conflict with the aims and provisions of CLP Policies D1, D2 or D3, with NP Policies 2, 3 or 13, or with the National Planning Policy Framework (the Framework) in relation to the historic environment.

### **Other Matters**

25. In reaching my conclusions in relation to the appeal under ground (a), I have carefully considered the appellant's submission under ground (f) regarding the

convention rights of Article 1 of the First Protocol (A1FP) of the European Convention on Human Rights<sup>5</sup>. As this is a qualified right, it requires a balancing exercise of the rights conferred by A1FP with the legitimate interests of others and the wider public interest, to which I have had due regard in reaching my split decision under ground (a).

26. I have also been mindful of the appellant's submissions regarding the economic dimension of sustainability, as set out in the Framework, and incurring additional costs and expenditure in what the appellant describes as the 'post-Covid' era. In reaching my split decision under ground (a) I have had due regard to both these matters and I am satisfied that my conclusions would not result in a disproportionate impact in this instance.
27. I have some sympathy with the appellant's complaints that the Council did not, or would not, enter into meaningful pre-application discussions regarding the matters the notice seeks to attack. I have also noted the appellant's concerns regarding poor communication and internal co-ordination between various teams at the Council. However, these are not matters that alter my conclusions in respect of the ground (a) appeal and the planning merits of the works the notice seeks to attack.

### **Conditions**

28. Given my conclusions in respect of the appeal under ground (a), I have considered the matter of conditions in respect of the balustrade and decked area. I have imposed a plans condition to relate to the plans and elevations of the revised scheme, submitted at appeal, only insofar as they relate to the balustrade and decked area. In so doing, I am satisfied that the detail shown on those drawings with regard to the matters are acceptable, and that a plans condition is both reasonable and necessary.

### **The appeal under ground (g)**

29. In seeking a longer period of 12 months within which to comply with the notice's requirements, rather than the 3 months set out in the notice, the appellant cites the practicalities and difficulties of arranging labour, materials and the procurement, fabrication and delivery of replacement windows. The Council, I note, do not disagree and these are matters for which I have some sympathy.
30. Mindful of the Council's position regarding the appellant's request for a longer period with which to comply with the notice's requirements, and the on-going operational requirements of the appellant's business, I agree that a longer period is both reasonable and justified. Notwithstanding my conclusion in reaching a split decision with respect to the matters the subject of the notice, I will amend the time period for compliance with the notice's requirements to 12 months. The appeal on ground (g) is therefore successful.

### **Conclusion**

31. For the reasons set out, and having regard to all other matters raised, I conclude that the appeal should succeed on ground (a) in part only. I shall therefore grant planning permission for part of the matter the subject of the enforcement notice, namely the balustrade to the decked seating area, as

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<sup>5</sup> As set out within the Human Rights Act 1998

shown on the plans specified below in condition 1. The enforcement notice is otherwise upheld, as corrected and varied, and planning permission is refused on the other parts the subject of the enforcement notice, namely the shopfront, including retractable awning. It is not necessary for me to make any changes to the requirements of the notice as a result of this, since the provisions of section 180 of the Act mean that the requirements of the notice will cease to have effect so far as inconsistent with the planning permission I have granted.

*G Robbie*

INSPECTOR



### **Schedule of conditions**

#### Condition 1

The development hereby permitted shall be carried out in accordance with the proposed plan and section and proposed elevations shown on the following plans, only insofar as it relates to the balustrade and decked area: WEL-PE001 Proposed Elevations and WEL-EP001 Proposed Plan and Section.

**\*\* end of schedule \*\***