



Appeal Decisions

Site visit made on 10 October 2023

by **L Douglas BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date:

04th December 2023

Appeal A Ref: APP/X5210/C/23/3323920

Land at 94 Camden Road, London NW1 9EA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mr T & S Sestili & Cuppari against an enforcement notice issued by the Council of the London Borough of Camden.
 - The notice was issued on 12 May 2023.
 - The breach of planning control as alleged in the notice is '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'.
 - The requirements of the notice are: 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 period for compliance with the requirements is within 1 month of the notice taking effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), and (f) of the Act. 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.
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Appeal B Ref: APP/X5210/W/22/3312493

94 Camden Road, London NW1 9EA

- The appeal is made under section 78 of the Act against a refusal to grant planning permission.
 - The appeal is made by Mr T & S Sestili & Cuppari against the decision of Council of the London Borough of Camden.
 - The application Ref 2022/1770/P, dated 25 April 2022, was refused by notice dated 23 November 2022.
 - The development proposed is Alterations to existing shopfront to include installation of retractable awning, placing of tables and chairs within a 1m high timber enclosure and introduction of a ramped access to the front entrance.
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Decisions

Appeal A

1. It is directed that the enforcement notice is corrected by deletion of: (i) the plan dated 4 April 2023 attached to the enforcement notice; and (ii) the text 'as shown outlined in black on the attached plan' at paragraph 2 of the enforcement notice. Subject to the corrections, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

2. The appeal is dismissed.

Applications for costs

3. Applications for costs have been made by the appellants against the Council in respect of Appeals A and B. These form the subject of separate decisions.

Appeal A: Preliminary Matters

4. The timber enclosure, planters, and ramped access referred to by the enforcement notice are located outside of the land outlined in black on the plan attached to the notice and referred to by paragraph 2 of the notice. The description of the alleged breach of planning control refers to these being erected to the forecourt and front entrance of 94 Camden Road. I am therefore satisfied that no injustice would be caused to any parties if I were to delete the plan attached to the notice and reference to it at paragraph 2 of the notice using my powers under section 176(1) of the Act. The corrected notice will continue to describe the land to which it relates with sufficient precision.
5. The notice does not require the removal of the ramped access, which is referred to in the alleged breach of planning control. There is no need for me to consider this part of the alleged breach of planning control as part of the appeal under ground (a), with regard to the provisions of section 173(11) of the Act.

Appeal A: Ground (b)

6. To succeed under this ground of appeal the appellant would need to demonstrate that the breach of planning control alleged in the enforcement notice has not occurred.
7. A retractable awning has been installed on the façade of the appeal building. A timber enclosure, planters and a ramped access platform have been erected at the front of the appeal site, on its forecourt. The breach of planning control alleged in the notice has occurred, as a matter of fact.
8. The appeal under ground (b) must therefore fail.

Appeal A: Ground (c)

9. To succeed under this ground of appeal the appellant would need to demonstrate, on the balance of probabilities, that the breach of planning control alleged in the notice does not constitute a breach of planning control.
10. The appellant considers that the matters set out in the notice do not constitute a breach of planning control because they follow on from the prevailing pattern of development and are not materially different to a previous forecourt arrangement. Reference has also been made to the possibility that the works could benefit from planning permission under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
11. Section 57 of the Act states that planning permission is required for the carrying out of any development of land, subject to provisions set out therein. Section 55(1) of the Act provides the meaning of 'development' which includes the carrying out of building, engineering, mining or other operations in, on, over or under land. Section 55(1A) of the Act confirms that 'building operations' include, amongst other works, additions to buildings and other operations normally undertaken by a person carrying on business as a builder.

Based on everything I have read and seen, the awning, enclosure, planters, and ramped access all fall within the meaning of development provided at section 55 of the Act.

12. The enclosure and planters appear to have been carried out as a single operation. Noting that the appellants' 'existing' plans¹ show the enclosure exceeds 1 metre in height, and that it is adjacent to a highway used by vehicular traffic, there is no evidence before me to suggest that any of the development benefits from planning permission under the provisions of the GPDO. Even if the enclosure has been lowered since the notice was issued, the evidence indicates that it exceeded 1 metre in height before the notice was issued.
13. Google Street View photographs dated July 2014, May 2017, May 2018, July 2019, and January 2021 have been provided which show tables, chairs, and what appear to be different forms of enclosures on the forecourt in front of 94 Camden Road at those times. The tables, chairs and awning present in the July 2014 photograph are very different to what currently exists. The May 2017 and May 2018 photographs show enclosures around parts of the forecourt which are quite different in width, height and overall design to those shown in the July 2019 and January 2021 photographs. The photographs since May 2017 show a retractable awning which appears to have been similar to the current awning. The awning shown in those photographs appears to be of a different design and colour compared to the current awning.
14. The evidence presented does not demonstrate on the balance of probabilities that the previous awning or enclosures were exempt from planning control under the provisions of section 171B of the Act. The evidence does not indicate that the current awning, enclosure, or planters are not materially different to what previously existed, as claimed. I am therefore unconvinced that the current awning, enclosure or planters are exempt from planning control.
15. It has not been demonstrated, on the balance of probabilities by the appellant, that the awning, enclosure, planters, or ramped access do not constitute a breach of planning control.
16. The appeal under ground (c) must therefore fail.

Appeals A and B: Ground (a) and the deemed application for planning permission, and the s78 appeal

17. The main issues relevant to the appeal under ground (a) and the deemed application for planning permission in Appeal A and the appeal under section 78 of the Act in Appeal B are the effect of the developments on: the character and appearance of the area, with particular regard to the Camden Broadway Conservation Area (CA); and highway safety.

Reasons

Character and Appearance

18. The appeal site is located within the CA. The significance of the CA appears to rely on the mix of residential and commercial 4-storey terraced buildings with brick and stucco finishes, which reflect the 19th century development of the

¹ Plan refs: AD60 PL(B)10, AD60 PL(B)12 and AD60 PL(B)14

- area. As set out in the CA Appraisal², it has a dense, tightly-knit urban form set amid a network of busy roads and railway lines, with street trees and spacious pavements along Camden Road which make a positive contribution to its character and significance.
19. The appeal site is a restaurant within a parade of commercial units at ground floor level, located on the eastern side of Camden Road. A street tree is located directly to the front of the appeal site.
 20. The enclosure and planters to the front of the appeal site create an outside seating area associated with the restaurant, with an overhanging retractable awning. They protrude a significant distance across the pavement, towards the carriageway. The 'existing' plans submitted by the appellant suggest there is a gap of 2.2 metres between the planters and the nearest street tree. The 'existing' plans provided by the appellant show the enclosure has a height of 1.24 metres and a depth of 3.7 metres from the front elevation of the appeal building, and the retractable awning has a depth of 3.66 metres from the front elevation of the appeal building.
 21. The enclosure is a timber construction, with a basic and rough finish. The planters do not soften its appearance, and they do not add urban greening of any significant value. Visually, the enclosure and planters are untidy and cluttered additions to the pavement.
 22. I noted other outside drinking/dining areas and enclosures associated with commercial uses along the pavement on this part of Camden Road. However, none of them appear to protrude into the pavement as much as that at the appeal site. The outside drinking/dining area at 90 Camden Road has the appearance of moveable and temporary barriers, tables and chairs, similar to those which would be expected to be removed from the pavement at the close of business. In contrast, the enclosure and planters at the appeal site have the appearance of poorly designed permanent features which are intended to remain in place at all times. Indeed, the restaurant was closed when I undertook my site visit, but the enclosure and planters remained in place.
 23. The awning was only partly retracted during my site visit, but I note the Council's comments with regard to its size, design and appearance when fully opened, and the plans provided by the appellant. Those plans show it protruding 3.66 metres from the front elevation of the building, over the seating area. I saw retractable awnings of different sizes and designs in the surrounding area, but none appeared to be as large as that at the appeal site. Even in the context of various other awnings nearby, the retractable awning at the appeal site is a discordant feature in the street scene on account of its excessive size. It is a significant addition to the front of the building which encloses the ground floor and obscures the shopfront, to the detriment of the otherwise generally uncluttered character and appearance of the area.
 24. The enclosure, planters and retractable awning are bulky uncharacteristic additions to the street scene. The height, permanent appearance, and bland, modern finishes of the development are at odds with the more simple, spacious qualities of this part of the road. The untreated timber finish of the enclosure is particularly incongruous in this setting.

² The Council's Camden Broadway Conservation Area Appraisal and Management Strategy (2009)

25. The proposed amended form of development in Appeal B would include the reduction of the height of the enclosure to 1 metre, the reduction of the depth of the enclosure to 3.2 metres from the front elevation of the appeal building, and the reduction of the depth of the retractable awning to 3.17 metres from the front elevation of the appeal building. This is shown to leave a 2.7 metre gap between the planters and the nearest street tree. The planters would be painted to match the appearance of the enclosure and the appeal building.
26. The proposed alterations in Appeal B would fail to address the harm caused by the enclosure, planters and retractable awning to the character and appearance of the area and the significance of the CA. These features would still form an excessively large and discordant interruption in the street scene, obscuring much of the ground floor front elevation of the appeal building and protruding a significant distance across the pavement. The proposed altered enclosure, planters and retractable awning would not be modest in scale and size, and nor would they be constructed of sympathetic materials for their location.
27. The timber ramped access to the front entrance, proposed in Appeal B, has the insignificant appearance of a functional alteration to the frontage of the commercial unit, alongside what appears to be a timber-clad lightwell. In the context of various modern shopfronts and lightwell treatments along this part of Camden Road, the ramped access is not a notably uncharacteristic or harmful addition to the appeal site. It does not harm the character or appearance of the appeal building or the wider CA.
28. The development in both Appeal A and Appeal B would cause less than substantial harm to the significance of the CA, with regard to chapter 15 of the National Planning Policy Framework (the Framework). I have not been informed of any claimed public benefits associated with the development which may outweigh that harm.
29. The enclosure, planters and retractable awning harm the character and appearance of the area and the significance of the CA. The proposed alterations in Appeal B would not address that harm. The existing development in Appeal A and the proposed development in Appeal B would both fail to preserve or enhance the character or appearance of the CA, and would both cause less than substantial harm to the significance of the CA. That harm would not be outweighed by any public benefits. The existing development in Appeal A and the proposed development in Appeal B would both be contrary to Policies D1 and D2 of the Camden Local Plan (2017) (CLP). These require, amongst other things, development to respect and complement local context and character and to preserve the character or appearance of conservation areas.

Highway Safety

30. The enclosure and planters create a bottleneck on this part of Camden Road between them and the nearest street tree when approaching from the north-east. Tables, chairs, and A-boards at a neighbouring property and an advertising column to the south-west of the appeal site have a similar effect when approaching from that direction. The tables, chairs and A-boards at the neighbouring property did not protrude as far towards the carriageway as the enclosure and planters at the time of my site visit, and it is unclear whether they are lawful.

31. I have been referred to the Council's Streetscape Design Manual³, which gives detailed guidance on advised unobstructed footway widths at section 3.01. It advises that a minimum unobstructed pathway width of 1.8 metres should be provided within the footway to allow 2 adults sufficient passing space. It also explains that 3 metres minimum width should be provided for a busy pedestrian street. A 'busy pedestrian street' is not defined in the Manual.
32. Based on everything I have read and seen, I consider this side and part of Camden Road, close to an overground train station, to be a busy pedestrian street. An unobstructed pathway width of 3 metres in this case would allow safe use of the pavement in both directions by pedestrians, including those reliant on mobility scooters, wheelchairs, or buggies. A narrower unobstructed pathway in this location would increase the likelihood that some pedestrians may step out into the carriageway to pass when the pavement is congested.
33. On the evidence available, I am unconvinced that an unobstructed pathway width of 2.2 metres (Appeal A) or 2.7 metres (Appeal B) in this location would be appropriate. The existing enclosure and planters in Appeal A unacceptably hinder pedestrian movement and harm highway safety. The proposed alterations in Appeal B would not sufficiently increase the unobstructed pathway width between the enclosure/planters and the nearest street tree to satisfactorily address that harm.
34. The existing enclosure and planters in Appeal A and the proposed enclosure and planters in Appeal B therefore fail to accord with Policies C6 and T1 of the CLP and the advice set out in the Council's Streetscape Design Manual. These seek to promote fair access and walking through improving the pedestrian environment and ensuring that pavements are wide enough for users, amongst other things. The development is not contrary to Policy A1 of the CLP, which seeks to protect the quality of life of occupiers and neighbours.
35. The access ramp which forms part of the development proposed in Appeal B would not cause any harm to highway safety, and would improve access to the ground floor commercial unit at the appeal site.

Conclusions on the appeal under ground (a) and the deemed application for planning permission in Appeal A, and the appeal under s78 in Appeal B

36. The existing development in Appeal A harms the character and appearance of the area, the significance of the CA, and highway safety. The proposed development in Appeal B would not sufficiently address any of that harm so as to make the development acceptable. Therefore, for the reasons given, I conclude that the appeal under ground (a) in Appeal A should not succeed and the deemed application for planning permission in Appeal A should be refused, and that the appeal under section 78 of the Act in Appeal B should be dismissed.

Appeal A: Ground (f)

37. To succeed under this ground of appeal the appellant would need to demonstrate that the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by the breach.

³ Second edition, November 2000

38. The notice does not require the removal of the access ramp referred to by paragraph 2 of the notice. It does not, therefore, require the breach of planning control to be remedied in its entirety. Its purpose is to remedy injury to amenity.
39. The notice requires the awning, enclosure and planters to be removed, as well as any resultant material, and for any damage as a result of those operations to be made good. In the absence of any appropriate suggested alternative requirements which may achieve the purpose of the notice, I do not find the steps required to be excessive. The steps are not unnecessary, irrelevant, or a waste of time, as claimed.
40. The appeal under ground (f) therefore fails.

Overall Conclusions

Appeal A

41. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

42. For the reasons given above, I conclude that the appeal should not succeed.

L Douglas

INSPECTOR