

DIRECT PLANNING LIMITED

**TOWN AND COUNTRY PLANNING ACT 1990
(AS AMENDED BY THE PLANNING AND COMPULSORY PURCHASE ACT 2004)
SECTION 78 APPEAL AND S73A (2) (c) FOR CONTINUED USE.**

**STATEMENT OF CASE ON BEHALF
OF THE APPELLANT**

**APPELLANT : MR WILLIAM CHOW.
APPEAL SITE : 237-239 WEST END LANE, LONDON NW6 1XN.
OUR REF : DP/6379/AP.
LPA REF : 2017/1829/P.
DATE : 8 AUGUST 2017.**

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1.0 INTRODUCTION

1.1 The London Borough of Camden refused planning permission for the retention of a timber decking with enclosure decking at 237-239 West End Lane , London NW61XN , for the following reason(s):

“1. The timber decking and perimeter timber enclosures, by virtue of their location on the public highway, reduce the width and function of the pavement resulting in harm to the safety and amenity of pedestrians and other road users, contrary to policy 9 of the Fortune Green and West Hampstead Neighbourhood Plan, policy CS14 (Promoting high quality places and conserving our heritage) of the London Borough of Camden Local Development Framework Core Strategy and policies DP17 (Walking, cycling and public transport) and DP21 (Development connecting to the highway network) of the London Borough of Camden Local Development Framework Development Policies and policies A1, C6 and T1 of the Camden Local Plan Submission Draft 2016)”.

2.0 THE SITE LOCATION AND DESCRIPTION

2.1 The site is located on the north west corner of the junction of West End Lane and Sandwell Crescent. The property is a four-storey building, constructed in the 1960/70s.

2.2 The building is in mixed use with restaurant at ground floor level and residential accommodation above. The application site relates to the ground floor restaurant.

2.3 The site is located within the West End Green Conservation Area but not listed

3.0 THE APPEAL PROPOSAL

3.1 The appeal proposal involves the retention of a timber decking with enclosure at 237-239 West End Lane, London NW6 1XN. Copies of the planning application forms submitted to the Council are enclosed in our Appendix B. The pre-existing and existing frontages are shown on enclosed Google photographs.

4.0 POLICY CONSIDERATIONS

4.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 gives priority to the provisions of development plans in determining planning applications and appeals as well as all other material considerations.

4.2 The Courts have held that Central Government's policy contained in Ministerial Statements, Circulars, the National Planning Policy Framework (NPPF) are material considerations that must be taken into account by the decision maker, as are previous relevant appeal decisions.

4.3 Advice in paragraph 19 of the NPPF states that *"the Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore significant weight should be placed on the need to support economic growth through the planning system."*

4.4 Advice in paragraph 56 of the NPPF is that *"the Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people."* This advice is echoed in paragraph 59 of the NPPF which states that *"local planning authorities should consider using design codes where they could help deliver high quality outcomes. However, design policies should avoid unnecessary prescription or detail and should concentrate on guiding the overall scale,*

density, massing, height, landscape, layout, materials and access of new development in relation to neighbouring buildings and the local area more generally.”

4.5 Advice in paragraph 61 of NPPF on design considerations states that *“although visual appearance and the architecture of individual buildings are very important factors, securing high quality and inclusive design goes beyond aesthetic considerations. Therefore planning policies and decisions should address the connection between people and places and the integration of new development into the natural, built and historic environment.”*

4.6 This advice is echoed in paragraph 64 of NPPF states that *“permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.”*

4.7 National Planning Policy framework 2012

The London Plan 2016

Camden LDF Core Strategy 2010

CS5 Managing the impact of growth and development

CS11 Promoting sustainable and efficient travel

CS14 Promoting high quality places and conserving our heritage

Camden Development Policies 2010

DP16 Promoting sustainable and efficient transport

DP21 Development connecting to the highway network

DP24 Securing high quality design

DP25 Conserving Camden’s heritage

DP26 Managing the impact of development on occupiers and neighbours

Camden Planning Guidance

CPG1 Design (2015), chapters 2, 3, 4, 5 and 9

CPG6 Amenity (2011), chapter 9

CPG7 Transport (2011), chapter 8

Camden Streetscape Design Manual

TfL Pedestrian Comfort Guidance (PCG) 2010**West End Green Conservation Area Appraisal and Management Strategy, February 2011****Fortune Green and West Hampstead Neighbourhood Plan, September 2015**

Policies 2, 3 and 9 Draft Camden Local Plan 2016

D1 Design

A1 Managing the impact of development

C6 Access for all

G1 Delivery and location of growth

T1 Prioritising walking, cycling and public transport

- 4.8** The Council's refusal reasons state that the timber decking and perimeter timber enclosure, by virtue of their location on the public highway, reduce the width and function of the pavement resulting in harm to the safety and amenity of pedestrians and other road users contrary to policy 9 of the Fortune Green and West Hampstead Neighbourhood Plan, policy CS14 (Promoting high quality places and conserving our heritage) of the London Borough of Camden Local Development Framework Core Strategy and policies DP17 (Walking, cycling and public transport) and DP21 (Development connecting to the highway network) of the London Borough of Camden Local Development Framework Development Policies and policies A1, C6 and T1 of the Camden Local Plan Submission Draft 2016', please refer to the Decision Notice enclosed in Appendix C.

5.0 THE PLANNING CONSIDERATIONS

- 5.1** The appeal timber decking measures 1.84m to 1.86m in depth over the premises forecourt. The pedestrian pavement is approximately 3.9m in depth beyond this. The raised platform area created by the decking stretches the entire width of the premises, with a break in the middle for entry into the premises, and varies in height due to the premises being located on a slope.

The decking is enclosed by timber balustrade being 1.0m at the highest point. Above ground level,

- 5.2** Design principles. Policy CS14 (Promoting high quality places and conserving our heritage). The development site is semi-detached building which occupies a prominent corner location with the frontage well-proportioned and highly visible from the public realm. The timber decking and enclosure are modest in size, not appearing bulky in design. It protrudes 1.86m beyond the front elevation and the decking is concealed from view by its surrounding perimeter timber enclosures. The latter form a solid boundary which, therefore in terms of scale and materials, they are considered to be subordinate to the host property and streetscene and is sympathetic to the general character of the Conservation Area. The development complies with policy CS14.
- 5.3** Policy CS5 seeks to protect the amenity of Camden's residents by ensuring the impact of development is fully considered. The opening hours of the premises are 8.00am – 11pm Mondays to Saturdays, it is expected that the activity within the street would be fairly limited during the evening and night time hours, and it is unlikely that noise would be generated by customers using the decking during the evening would result to noise nuisance to neighbouring residents. The purpose of the decking is solely for customers using the business premises, the business activities would not generate any level of noise that can impact on the amenities of neighbouring resident. The Council acknowledges that there would be an intensification of use, the front area is on a main road in a busy town centre location and nearer 3 train stations, hence residents should expect reasonable levels of noise from prevailing street activities. It could therefore be concluded that the development would no significant impact on the amenities of residents in the immediate vicinity.

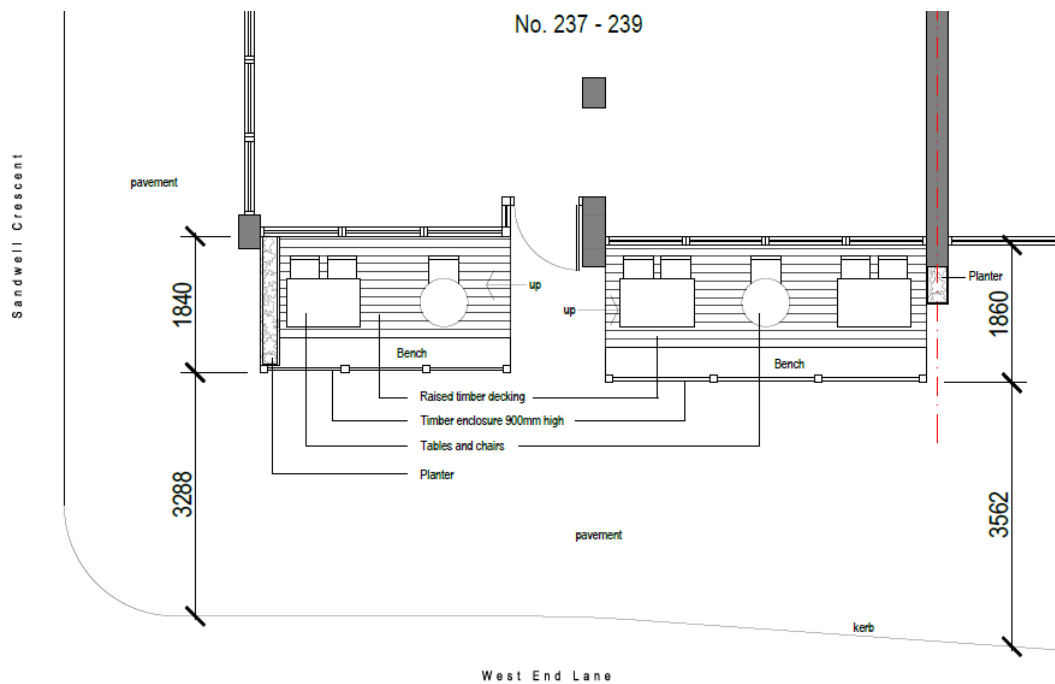
- 5.4** Highway and safety impact. Policy CS11 states that the Council will ensure that growth and development has regard to Camden's road hierarchy and does not cause harm to the management of the road network.

Paragraph 8.9 of CPG7 states 'Footways should be wide enough for two people using wheelchairs or prams, to pass each other.

Camden's Streetscape Design Manual– section 3.01 footway width states the following clear footway: 1.8 metres - minimum width needed for two adults passing and 3 metres - minimum width for busy pedestrian street.

With reference to drawing no: DP/2948/OF/01, the timber decking is erected on a space considered as the shopfront which is only 1.86m deep from the wall. The erection of the timber decking was carried out in accordance with the above stated policies. The gap maintain between the edge of the kerb and the edge of the decking is 3.5 on the west side and 3.2 on the east side. The gap far exceed the 1.8m and 3.0m required by Camden's Streetscape Design Manual– section 3.01 footway.

- 5.5** The claim by Camden Council that the proposal blocks an established right of way, which in turn hinders pedestrian movement and prevents sustainable travel, will lead to the loss of public highway, will diminish the pedestrian route and would exacerbate the busy pedestrian high street is merely a presumption. The pedestrian space provided on the pavement between the decking and the curb is equivalent to a driveway or access way, it can enable 3 wheel chair users to go through at the same time and can enable a crowd to walk through during the busiest time of the year.



The image above shows that the area covered by the decking is considered the shopfront area. While the pedestrian space left on the pavement is wide enough to be used as a driveway.

The Council's claim that the proposal blocks an established right of way, which in turn hinders pedestrian movement and prevents sustainable travel, will lead to the loss of public highway, will diminish the pedestrian route and would exacerbate the busy pedestrian high street is merely a presumption.



The photo above shows that the enclosure is in alignment with neighbouring gate and its considered to be within the perimeter of the shopfront, as such no detrimental impact on the highway or pedestrian is anticipated.

5.6 The appeal wooden decking is consistent with the accepted width of the pavement as shown on the enclosed drawing and therefore meets the requirements of criterion B (a), (c) and (d) of the London Plan policy 7.4 on ‘*Local Character*’, which state that **“buildings, streets and open spaces should provide a high quality design response that:**

(a) has regard to the pattern and grain of the existing spaces and streets in orientation, scale, proportion and mass;

(c) is human in scale, ensuring buildings create a positive relationship with street level activity and people feel comfortable with their surroundings; and

(d) allows existing buildings and structures that make a positive contribution to the character of a place to influence the future character of the area.”

5.7 The appeal wooden decking has been built to high design standards with a wheelchair access point at the middle and complies with criterion B of LP policy 7.5 on ‘*Public Realm*’, which states that *“development should make the public realm comprehensible at a human scale, using gateways, focal points and landmarks as appropriate to help people find their way. Landscape treatment, street furniture and infrastructure should be of the highest quality, have a clear purpose, maintain uncluttered spaces and should contribute to the easy movement of people through the space.”*

5.8 The appeal wooden decking as acknowledged by Camden Council is an improvement and enhancement of the street scene and is consistent with LP paragraph 7.16 which states that *“the quality of the public realm has a significant influence on quality of life because it affects people’s sense of place, security and belonging, as well as having an influence on a range of*

health and social factors. For this reason, public and private open spaces, and the buildings that frame those spaces, should contribute to the highest standards of comfort, security and ease of movement possible.”

6.0 APPEAL PRECEDENT

6.1 Each appeal must be determined on its own merits and the similar appeal precedent is offered as a material consideration in the instant case, please refer to our Appendix E

6.2 The following are examples of similar developments for which planning permission was refused but were allowed on appeal

6.3 Document A - Appeal Ref. APP/X5210/W/16/3165786

Site: 283-285 West End Lane, London NW6 1RD

Planning ref: 2016/2017-Erection of raised timber decking and perimeter timber enclosure on shop front (retrospective)

The Inspector allowed the development on the following considerations:

The appeal development has introduced raised timber decking and a timber boundary treatment to the front of Nos 283-285 inset from the corner of the building but along the length of its West End Lane frontage.

The boundary of the appeal development is more or less on the same line as the historic boundary treatments of its neighbouring properties. It is also of a similar height to these neighbouring boundaries. I saw that similar materials had been employed in boundaries of a scale like that of the appeal development elsewhere within the block, and that these provide a clear context for the scheme. Consequently, the appeal development does not read as an incongruous or discordant feature within the streetscene. Whilst I am mindful that other structures in the area may not benefit from planning consent, a lack of substantive evidence in these regards limits the weight that I can attach to this consideration.

The appeal building is of considerable scale and as a result the limited and subservient scale and depth of the appeal development does not diminish the building's presence in the streetscene. As a consequence, the appeal development does not undermine the architectural character of the appeal building to any degree, and does not erode its positive contribution to the character, appearance or significance of the Conservation Area.

For the reasons given above, and mindful of my duty arising from section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I consider that the development preserves the character and appearance of the West End Green Conservation Area. It follows that the development thus does not conflict with Policies 2 and 3 of the

Fortune Green and West Hampstead Neighbourhood Plan (the Neighbourhood Plan); or Policies CS5 and CS15 of the Camden Core Strategy (the Core Strategy); or Policies DP24 or DP25 of the Camden Development Policies (the Development Policies). Taken together, and amongst other things, these policies seek to ensure that new developments preserve the character and appearance of the West End Green Conservation Area.

The commercial and other uses in the environs of the appeal building drive footfall along West End Lane. Immediately in front of the appeal site there is an uncontrolled pedestrian crossing, and zebra crossings across West End Lane

are close to the appeal site in either direction. At the time of my afternoon site visit, admittedly only a snapshot, I observed a steady stream of vehicular traffic, which due to the nature of the road and presence of crossings in the environs of the appeal site moved through the area at relatively low speed. I observed a considerable amount of pedestrians walking along the pavement in front of the appeal building, and I saw people using the uncontrolled crossing there. Given the contents of the parties' submitted evidence I have no reason to conclude that what I observed was an unusually high level of footfall or vehicular traffic through the area.

I note that due to the appeal development the width of the pavement falls below the technical standards given in Transport for London's Pedestrian Comfort Guidance, and would conflict with Policy 9 of the Neighbourhood Plan in this respect. However, the appeal development more or less continues the established line of front boundary treatments of its near neighbours. This means that the footway is of a similar width along a considerable proportion of the length of the block, and as a result, pedestrian flows are already directed along that part of the pavement. Moreover, the footway is free from street furniture and obstructions at the front of the appeal property.

During my visit I observed people with prams passing each other adjacent to the appeal site, as well as groups of people walking three abreast. I saw no-one straying into the road as a result of passing pedestrians coming the other way in front of the appeal building. I also saw that people using the uncontrolled crossing were not prevented from accessing the pavement in front of the appeal site by people using the footway, and did not cause undue obstruction of the footway when waiting to cross. These observations, taken together with the site specific aspects outlined above lead me to the view that the appeal development does not result in a pavement that is too narrow for pedestrians, those with push chairs or anyone in a wheel chair. It is therefore reasonable to conclude that the appeal development does not inconvenience pedestrians and other road users to a degree that would be of material harm to their safety or amenity. The lack of harm caused by the development in these respects justifies a departure from Policy 9 of the Neighbourhood Plan in this instance.

For these reasons, the appeal development causes no harm to highway safety. The appeal development would thus not conflict with Policy CS11 of the Core Strategy; or Policies DP16 and DP21 of the Development Policies. Taken together, and amongst other things, these policies promote sustainable travel and seek to ensure that developments are properly integrated with the transport network and do not hinder pedestrian movement or cause harm to highway safety

Document B - Appeal Ref. APP/H5960/A/13/2201351

Site: Unit2 Fish & Chips / Fish Peddlar. 253a & 253b Wimbledon Park Road, London SW19 6NW

Appeal allowed for outside timber decking and outside canopy.

In this similar case, the Inspector allowed the development on the conclusion that: See attached Appendix E - Document B for the full Inspector's decision.

“For these reasons the proposed development would not unacceptably harm the movement of pedestrians in the vicinity of the appeal site consequently there would be no conflict with Policy DMT1 in the DMPD”

7.0 CONCLUSIONS

7.1 Taking into account the above, it is considered that the proposals would not harm any interests of acknowledged importance.

7.2 The two main material consideration in this case is impact on the conservation area and impact on highway and pedestrian safety.

Camden Council has acknowledged through their Officers report that “the timber decking and enclosure are modest in size, not appearing bulky in design. It protrudes 1.86m beyond the front elevation and the decking is concealed from view by its surrounding perimeter timber enclosures. The latter form a solid boundary which, therefore in terms of scale and materials, they are considered to be subordinate to the host property and streetscene and is sympathetic to the general character of the Conservation Area. The development complies with policy CS14”

7.3 The claim by Camden Council that the proposal blocks an established right of way, which in turn hinders pedestrian movement and prevents sustainable travel, will lead to the loss of public highway, will diminish the pedestrian route and would exacerbate the busy pedestrian high street is merely a presumption. The pedestrian space of 3.4m provided on the pavement between the decking and the curb is equivalent to a driveway, it can enable 3

wheel chair / 3 push chair users / to walk through at the same time and can enable a crowd to walk through during the busiest time of the year. The development will not have a detrimental impact on highway or inflict any harm on pedestrians walking through the shopfront as such, it complies with Fortune Green and West Hampstead Neighbourhood Plan, policy CS14 (Promoting high quality places and conserving our heritage) of the London Borough of Camden Local Development Framework Core Strategy and policies DP17 (Walking, cycling and public transport) and DP21.

- 7.4** Camden Council failed to take into consideration that most or every shop in particularly in city centres should have a shopfront, the quest for shopfront usage is evident in this appeal and Camden Council has dished out uncountable planning permission for chairs and tables for shops around West End Lane. The Council has acknowledged in their Officer's report that "the only thing in favour of the timber enclosure is that it will prevent drift of tables and chairs further onto the pavement. I see that there is permission for the tables and chairs in Planning application 2017/1829/P" This appeal will therefore conclude that the timber decking and enclosure would have a highway and safety benefit for the street and the Council should have supported or embraced it.
- 7.5** The appeal wooden decking is considered as an improvement and enhancement of the street scene and is consistent with LP paragraph 7.16 and affords better use of the forecourt on private land than before and accords with DMPD (2012) policy DMT1. In these circumstances, the Inspector is respectfully requested to uphold the appeal and grant planning permission.
- 7.6** In these circumstances, the Inspector is respectfully requested to uphold the appeal and grant planning permission.