

**APPENDIX E**  
**APPEAL PRECEDENTS**

# **DOCUMENT A**



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## Appeal Decision

Site visit made on 13 March 2017

by **G J Fort BA PGDip LLM MCD MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 31 March 2017

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### **Appeal Ref: APP/X5210/W/16/3165786 283-285 West End Lane, London NW6 1RD**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Daniel Kattan against the decision of the Council of the London Borough of Camden.
  - The application Ref 2016/2017/P, dated 5 July 2016, was refused by notice dated 17 November 2016.
  - The development proposed is a raised timber decking and enclosure serving the outdoor seating area.
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### **Decision**

1. The appeal is allowed and planning permission is granted for a raised timber decking and enclosure serving the outdoor seating area at 283-285 West End Lane, London NW6 1RD in accordance with the terms of the application, Ref 2016/2017/P, dated 5 July 2016, subject to the following condition:
  - 1) The development hereby permitted relates to the following approved plans: Existing-Location plans ALHSE-L001; Existing-Front and Side Elevation: ALHSE-E001; Existing-Section AA' ALSHE-S001; Existing-Section BB' ALSHE-S002; Existing-Ground Floor ALSHE-P001.

### **Procedural Matters**

2. The appeal follows the refusal of a retrospective application for planning permission. I saw at my site visit that the development as described above was in situ and I have considered the appeal on this basis. However, as retention does not constitute development for the purposes of the Town and Country Planning Act 1990 (as amended), I have omitted the phrase "retrospective application for the retention" from the description given in the banner heading above.
3. I was supplied with two application forms relating to the same appeal scheme, one dated 8 April 2016, and the other dated 5 July 2016. I have used the latter date as this form has a correctly completed Certificate B.

### **Main Issues**

4. I consider the main issues in this appeal to be firstly, whether the development preserves or enhances the character and appearance of West End Green Conservation Area; and secondly, the effects of the development on highway safety.
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## **Reasons**

### *Character and appearance*

5. The appeal building is located in the West End Green Conservation Area, and is part of a terrace of buildings in mixed use including commercial and residential units. Of four storeys, the appeal building contains a public house at ground floor and is located on a prominent site at the junction of West End Lane and Inglewood Road, its scale and presence is accentuated by the tall domed roof at its corner. Part of the corridor of development along the spine of West End Lane, the appeal building is typical of the area's metropolitan suburban character and part of a planned Victorian and Edwardian design aesthetic from which the significance of the Conservation Area derives to a considerable degree.
6. 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.
7. 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.
8. 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.
9. 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.

### *Highway Safety*

10. 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.

11. 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.
12. 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.
13. 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.

#### **Other Matters**

14. I note that some of the site may not be in the appellant's ownership, and that as a result, a stopping up order may be required. However, this is a private matter that is not instrumental in a planning decision of this nature.

#### **Conditions**

15. I have not been supplied with a list of suggested conditions by either party. However, in the interests of certainty I have attached a condition which specifies the approved plans.

**Conclusion**

16. The appeal development conflicts with Policy 9 of the Neighbourhood Plan in terms of the width of pavement achieved in front of Nos 283-285. However, the lack of harm caused to highway safety as a result of this is a material consideration that justifies a departure from that policy in this instance.
17. In all other respects, the appeal development does not conflict with the development plan insofar as the policies that have been drawn to my attention are concerned. Accordingly, for the reasons given above, and having regard to all other matters raised, the appeal should succeed.

*G J Fort*

INSPECTOR

## **DOCUMENT B**



# The Planning Inspectorate

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Direct Planning Ltd  
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Your Ref: DP/5774/AP  
Our Ref: APP/H5960/A/13/2201351  
Date: 2 December 2013

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Dear Sir/Madam

**Town and Country Planning Act 1990  
Appeal by Mr Michael Croner  
Site at 253a & 253b Wimbledon Park Road, London, SW19 6NW**

I enclose a copy of our Inspector's decision on the above appeal.

If you have queries or feedback about the decision or the way we handled the appeal, you should submit them using our "Feedback" webpage at <http://www.planningportal.gov.uk/planninginspectoratefeedback>.

If you do not have internet access please write to the Quality Assurance Unit at the address above.

If you would prefer hard copies of our information on the right to challenge and our feedback procedure, please contact our Customer Service Team on 0303 444 5000.

Please note the Planning Inspectorate is not the administering body for High Court challenges. If you would like more information on the strictly enforced deadlines for challenging, or a copy of the forms for lodging a challenge, please contact the Administrative Court on 020 7947 6655.

Yours sincerely

Kevin Plummer

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*You can use the Internet to submit documents, to see information and to check the progress of this case through the Planning Portal. The address of our search page is - <http://www.pcs.planningportal.gov.uk/pcportal/casearch.asp>  
You can access this case by putting the above reference number into the 'Case Ref' field of the 'Search' page and clicking on the search button*

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## Appeal Decision

Site visit made on 29 October 2013

by **Edward Gerry BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 2 December 2013

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**Appeal Ref: APP/H5960/A/13/2201351**

**Unit 2, Fish & Chips/Fish Peddlar, 253A/253B Wimbledon Park Road SW19 6NW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Michael Croner (Crystax Limited Fish & Chips/Fish Peddlar) against the decision of the Council of the London Borough of Wandsworth.
  - The undated application, application Ref 2012/4777, was refused by notice dated 14 January 2013.
  - The development is outside decking and outside canopy.
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### Decision

1. The appeal is allowed and planning permission is granted for outside decking and outside canopy at Unit 2, Fish & Chips/Fish Peddlar, 253A/253B Wimbledon Park Road SW19 6NW in accordance with the terms of the undated application, Ref 2012/4777, and the plans submitted with it.

### Procedural Matter

2. Although the planning application was undated, the certificates were dated 1 October 2012. The application was also validated, registered and determined by the Council. On this basis I have a valid appeal before me.
3. The Council confirms it has no objection to the outside canopy. I see no reason to deviate from the position taken by the Council on this matter. Accordingly, although my decision refers to both the outside decking and the outside canopy as they are part of the same application, my considerations set out below focus on the decking.

### Main Issue

4. The effect of the development on the movement of pedestrians in the vicinity of the appeal site.

### Reasons

5. The appeal site is located on a busy road. It fronts onto a pavement and there is approximately 1.9 metres between the appeal site and guardrails adjacent to the road. There are a number of other commercial units within the locality of the appeal site which make use of land in front of them, in a similar way to the appeal site. This includes the two units directly to the north east of the appeal site.

6. Policy DMT1 in the Wandsworth Local Development Framework Development Management Policies Document (2012) (DMPD) aims to ensure, amongst other things, that development does not have a negative impact on the transport system, including the highway network. I acknowledge the Council's concerns regarding the impact of the development on the movement of pedestrians. However, the width of the pavement between the edge of the appeal site and the guardrails is similar to the width of the pavement on the opposite side of the road. I also note the appellant's evidence that, prior to this development, part of the appeal site was occupied by a grocer's shop, which had fruit displayed in boxes placed on the private forecourt. In all these circumstances, the appeal scheme causes no material harm.
7. The Council suggest that the development may encourage a number of other similar proposals to come forward, potentially exacerbating the existing problems for pedestrians. Whilst I note the Council's concerns, it was evident from my site visit, that a number of units already have a similar arrangement to that at the appeal site. This includes the two units to the north east of the development which make use of the land in front of their respective units in a similar way to the appeal site. There is no evidence in front of me that these developments are unauthorised or, if they are, that they are subject of enforcement action. On this basis they are likely to remain and the removal of the decking area at the appeal site would only have a very minimal impact in improving pedestrian movement in the area.
8. I accept the Council's points regarding the impact of special events, such as the Wimbledon Tennis Championships, on pedestrian density and flow and the effect of the decking on the partially-sighted and the mobility of impaired pedestrians. Whilst I appreciate my site visit only provides a snapshot of the situation I did not witness any problems with regards to pedestrian movement. I accept that there are certain times of the day, such as during rush hours, and certain times of the year, for example during the Wimbledon Tennis Championship, when the pavement adjacent to the appeal site is likely to be busier than what I experienced. However I do not consider that any possible negative impacts during these limited times would amount to unacceptable harm.
9. I note the Council's argument that the permanent nature of the decking would result in the area subject of this appeal being unavailable for an indefinite period of time. However, given that I consider the development does not unacceptably harm the movement of pedestrians, in my view it is not significant that the area covered by the decking is unavailable for an indefinite period of time.
10. Finally, the Council's Officer Report makes reference to criteria set out in guidance produced by Transport for London. Unfortunately I have not been provided with the guidance, nor any details of its status and thus have been unable to give it any weight in reaching my decision.
11. For these reasons the proposed development would not unacceptably harm the movement of pedestrians in the vicinity of the appeal site. In consequence there would be no conflict with Policy DMT1 in the DMPD.

**Conclusion**

12. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be allowed. No conditions have been suggested and I do not consider that any are needed.

*Edward Gerry*

INSPECTOR