

STATEMENT OF CASE

**AGAINST REFUSAL TO GRANT PERMISSION FOR PROPOSED
USE OF HIGHWAY FORECOURT FOR PLACEMENT OF TABLES
AND CHAIRS WITH TIMBER PERGOLA AND BOUNDARY
FENCING**

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1.0 Introduction

- 1.1 This appeal statement of case follows the refusal of planning permission for the ‘erection of retractable canvas awning enclosure at first floor level measuring 12.5m long by 2.4m high by 2.9m wide” at The Argyle, 1 Greville Street, London, EC1N 8PQ.
- 1.2 The above planning application was refused by Camden Borough Council on 19/06/2017.
- 1.3 Since the time of the original decision, Camden Borough Council have adopted a new Local Plan which supersedes the previous Core Strategy and Camden Development Policies Document policies. This appeal statement will therefore focus on material policies from the recently adopted Local Pan which was adopted on 03/07/2017.
- 1.4 This statement of case comprises 7 sections, namely;
1. Site Description
 2. Relevant Planning Policy
 3. Material Considerations
 4. Design
 5. Benefits arising from the appeal proposal
 6. Conditions Proposed should the appeal be allowed
 7. Conclusion
- 1.5 Appendices;
1. Appendix 1.0 – Council correspondence
 2. Appendix 2.0 – Management Policy

2.0 Appeal Site History

2.1 A search of the Councils electronic records reveals the following planning applications as being relevant to this appeal.

APPLICATION NUMBER	DESCRIPTION OF DEVELOPMENT	DECISION
2017/0138/TC	10 tables and 40 chairs Monday to Sunday 08:00 - 21:30 Renewal Application	Granted 11/01/2017
2016/0206/TC	10 tables and 40 chairs Monday to Sunday 08:00 - 21:30 Renewal Application	Granted 14/01/2016
2015/0108/TC	10 tables and 40 chairs Monday to Thursday: 08:00 to 23:00 Friday to Saturday: 08:00 to 23:30 Sunday: 08:00 to 22:30 Renewal Application	Granted 12/01/2015
2013/7668/TC	10 tables and 40 chairs Monday to Thursday: 08:00 to 23:00 Friday to Saturday: 08:00 to 23:30, Sunday: 08:00 to 22:30 Renewal Application	Granted 28/11/2013
2013/4508/TC	10 tables and 40 chairs Monday to Thursday: 08:00 to 23:00 Friday to Saturday: 08:00 to 23:30, Sunday: 08:00 to 22:30 Start Times Variations	Granted 17/07/2013
2012/6569/TC	10 tables and 40 chairs - renewal Monday to Saturday: 10:00 to 23:00: Sunday: 10:22:30 Sunday: 10:00 to 22:30	Granted 06/12/2012
2011/6092/TC	10 tables and 40 chairs : New application (7 tables & 28 chairs on Leather Lane, 3 tables & 12 chairs on Greville Street) Monday to Saturday: 10:00 to 23:00 Sunday: 10:00 to 22:30	Granted 05/12/2011

3.0 Material Considerations

- 3.1 Camden Borough Council gave two reasons for refusal which are the subject of this appeal. The first reason relates to the visual impact of the proposed awning and the second relates to an increase in noise disturbance upon nearby residential neighbours.

Public Benefits

- 3.2 Contained within the officer's delegated report is reference to visual harm upon the Hatton Garden Conservation Area. In relation to Heritage Assets, only where a proposed development will lead to substantial harm to/or total loss of significance of a designated Heritage Asset should local planning authorities refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss (paragraph 133). This gives a presumption in favour of development that does not cause substantial harm, or if any substantial harm can be justified. Where a development proposal will lead to a less than substantial harm to the significance of a designated Heritage Asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use (paragraph 134).
- 3.3 The principal public benefit arising from the development will additionally satisfy the second reason for refusal as it relates to an improvement in noise disturbance. Currently, there exists one short awning facing Leather Lane which would be replaced by one continuous awning. The proposed awning would better contain noise generated from patrons using the authorised first floor level roof terrace.
- 3.4 The existing awning is of poor quality and requires replacement. The proposal will provide for a high-quality awning that will stand proud within the streetscene which includes both historical and modern buildings.
- 3.5 The Court of Appeal case between Suffolk Coastal District Council and Hopkins Homes Limited cited as [2016] WLR(D) 151, [2016] EWCA Civ 168 identified the importance of identifying 'significance' of a heritage asset. It is proposed here that the Council have misapplied the national policy for the protection of heritage assets in paragraph 135 of the NPPF by failing to understand the significance of the Conservation Area.
- 3.6 'Significance' (for heritage policy) is defined in the Glossary in Annex 2 to the NPPF as meaning 'the value of a heritage asset to this and future generations because of its heritage interest...'.
- 3.7 The Hatton Garden Conservation Area (CA) Statement (final draft as agreed by DC Sub-Committee on 05/05/1999) confirms in para 1.2 that 'This statement includes an assessment of the

special interest of the area'. Para 2.0 outlines that this Conservation Area was first identified within the Greater London Development Plan of 1976 which stated that the major policy aims 'included the protection of the architectural and historic character of the area, the safeguarding of the scale and pattern of development and the freedom of pedestrian movement'. It is considered that the development proposed does not conflict with any of these policy aims. The host building is modern and of a scale that benefits from strong built form proportions and therefore the addition of a modern, high quality awning compliments rather than opposes the prevailing character.

- 3.8 Para 5.10 of the CA Area Statement advises that 'it is often the case that buildings of different periods, architectural styles and functions exist together in the same street, creating contrasts in scale and character'. The same paragraph advises that this 'combination of styles make the area of special interest'. It is our interpretation therefore that an eclectic mix is, within reason, appropriate throughout the conservation area which seeks to preserve principles and sculpt future development rather than prevent modern high quality development.
- 3.9 Policy D2 (Heritage) of the recently adopted Local Plan states that the Council will take account of conservation area statements when assessing applications within conservation areas. With regards to Designated Heritage Assets, Policy D2 states that the 'Council will not permit the loss of or substantial harm to a designated heritage asset, including conservation areas...'. It is considered that this appeal neither losses or causes substantial harm to a heritage asset and therefore on this element only, passes the test.
- 3.10 Of the lettered subsections of Policy D2, it is considered by reason that the Council consider this development to fail letter (e). It is considered that given the wording of subsection (e), that a development need preserve either the character or appearance of the area to pass the test. The character of this area will not negatively change for the use of the site will remain as a public house that benefits from a first floor terrace with awnings. The proposal seeks to reconfigure the existing set up with a much higher quality awning that affords members of the public with an enhanced offering to spend leisure time outside. Furthermore, the inclusion of awnings over upper level windows is characteristic of the Hatten Garden Area as stated within the CA appraisal statement. It is proposed therefore that the development accords with Policy D2 of the Local Plan 2017.
- 3.11 It is considered that where appropriate, the development complies with all requirements outlined in Policy D1 of the Local Plan from subsection (a) through to (o). Particular emphasis should be made to the inclusivity for all in that members of the public will benefit from having a superior outdoor leisure venue and therefore secures this outdoor amenity space in the long term.

Noise

- 3.12 Steve Quatermain (Chief Planner) of the Department for Communities and Local Government wrote to all Local Planning Authorities on 11 April 2016 concerning planning guidance on noise. He wrote;

“We would like to re-emphasise that updated planning guidance on noise (supporting the National Planning Policy Framework) was published in December 2014. It makes clear that the potential effect of a new residential development being located close to an existing business giving rise to noise, for example a live music venue, should be carefully considered. The guidance also underlines planning’s contribution to avoiding future complaints and risks to local business from resulting enforcement action”.

- 3.1 Paragraph 7 continues the same theme of recognising that noise may already exist in the area and therefore that noise will contribute to the established character of the locality:

“When assessing whether a statutory nuisance exists, local authorities will consider a number of relevant factors, including the noise level, its duration, how often it occurs, the time of day or night that it occurs and the ‘character of the locality’. The factors influencing the ‘character of the locality’ may include long-established sources of noise in the vicinity – for example, church bells, industrial premises, music venues or public houses”.

- 3.2 Paragraph 4.4 of the delegated report states that the Council’s Noise and Licensing Team were consulted as part of the application process. It states that there is a history of complaints concerning noise nuisance however this contrasts to the information provided during the recently approved tables & chairs license application with reference, 2017/0138/TC.

- 3.3 **Appendix 1.0** shows correspondence from the Council dated 16/01/2017 confirming that over the past 12 months just 1 complaint was received in relation to noise from The Argyle. It confirms that the voluntary actions associated with a new management policy were successful. A copy of the management policy can be seen in **Appendix 2.0**.

- 3.4 With the above in mind, it is considered that noise from the pre-existing rooftop terrace is under control to the satisfaction of the Council’s environmental team. The presumption that a replacement awning will increase noise levels is baseless.

4.0 Benefits arising from the appeal proposal

- 4.1 It is considered that the proposed seating area at the appeal site would complement the role and function of the city. Furthermore, it would add colour and animation to this part of Leather Lane and Greville Street.
- 4.2 The seating area would attract an increased number of customers throughout the daytime and into the early evening. The proposed use at this appeal site would therefore contribute towards the character and function of the area and would provide a use that would attract the public who in turn would be better placed to enjoy the atmosphere of this public place.

5.0 Conditions Proposed should the appeal be allowed

- 5.1 Should the inspector be minded to allow this appeal and consider the colour of the proposed awning or its supporting framework material. The applicant will be willing to agree the final finish colour with the Local Planning Authority before construction begins.

6.0 Conclusion

- 6.1 The existing awning is of poor quality and requires replacement. The proposal will provide for a high-quality awning that will stand proud within the streetscene which includes both historical and modern buildings.
- 6.2 The Council comment on the perceived harm to the significance of the heritage asset, being the Hatton Conservation Area. As established within the recent Court of Appeal case between Suffolk Coastal District Council and Hopkins Homes Limited cited as [2016] WLR(D) 151, [2016] EWCA Civ 168, to understand significance one must understand the character of the area. The Conservation Area was first identified within the Greater London Development Plan of 1976 which stated that the major policy aims 'included the protection of the architectural and historic character of the area, the safeguarding of the scale and pattern of development and the freedom of pedestrian movement'. Given that the host building is modern in design, the inclusion of a modest but high quality awning is not considered to harm these founding principles.
- 6.3 For these reasons the Inspector is respectfully asked to allow the appeal.