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Town and Country Planning Act 1990 (As Amended)

Statement of Case

Appeal By

135 Finchley Road Ltd

135 Finchley Road London NW3 6JH

Against the decision of the London Borough of Camden to refuse planning permission for the retention of internal light strips installed behind the existing aluminium perforated screen façade fixed onto the existing front and side elevations

Planning permission: LPA reference 2018/1335/P

September 2018
Our ref: DZ/TOM/FIN.19.2

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1. Introduction

1.1. This Appeal Statement has been submitted on behalf of 135 Finchley Road Ltd (**“the Appellant”**). This is an Appeal against the decision of the London Borough of Camden to refuse planning permission LPA reference 2018/1335/P for the *installation of fixed LED lighting strips to the existing aluminium perforated screen façade on the front and side elevations of the restaurant and bar (Use Class A3/A4) (retrospective)* at 135 Finchley Road London NW3 (**“the Appeal Site”**).

1.2. The Council refused planning permission on 14th August 2018 and cited the reason for refusal as follows:

“The proposed installation of LED strip lighting to the façade would, by virtue of the extent of the lighting and its method of illumination as well as the visual prominence of the building, be visually intrusive and have a harmful impact on the appearance of the building, the street scene and detract from the appearance of the area generally, contrary to policies D1, D3 and D4 of the London Borough of Camden Local Plan (2017)”

1.3. Please refer to **Appendix 1 and 2** which includes a copy of the decision notice and the Appellants planning application documentation associated with the proposals.

1.4. The appellant disagrees with the Council’s assertion that the proposal will be visually intrusive and have a harmful impact on the appearance of the building, the street scene and detract from the appearance of the area generally.

1.5. This statement should be read in conjunction with the application drawings and reports which accompany this Appeal submission as follows:

- Planning, Design and Access Statement Prepared by Monmouth Planning Limited;
- Lighting Strategy Prepared by Monmouth Planning Ltd;
- Pre-existing and proposed drawings prepared by Tibbatts Abel;

- Illustrative plan showing location of residential properties prepared by Monmouth Planning Ltd.
- Email from lighting consultant

2. The Appeal Site Description and Location

2.1 135 Finchley Road was formerly used a nightclub. The premises have now been taken over by the appellant and used for restaurant (Class A3) purposes. The property is located opposite a major junction on Finchley Road (the A41) adjacent to Swiss Cottage underground station.



Photograph 1 site photograph of 135 Finchley Road outlined in red - Prior to the installation of the perforated aluminium cladding.



Photograph 2 – 135 Finchley Road –Perforated Aluminium cladding installed

2.2 The building is part of the 1960's Centre Heights development, a large mixed-use scheme with buildings of 1, 2 and 11 storeys in height fronting on to Finchley Road. The application building comprises the two-storey element which has recently been partially clad with perforated aluminium panels to both the front and side elevations facing Finchley Road and Swiss Cottage underground station. The 11-storey tower (Centre Heights) is currently being refurbished for residential use. We have reviewed the approved plans and can confirm that none of the living accommodation will be impacted upon by this proposal as none of the rear facades of the site will be illuminated.

2.3 The property is not listed nor is it located within a conservation area. The area can be described as rather dull and drab with a poor and ill-defined character.

2.4 Please refer to the Planning, Design and Access Statement submitted with this statement which provides a full description of the site and its surroundings.

3. The Appeal Proposal

- 3.1. The appeal proposals seek full planning permission for the retention of the lighting system installed behind the perforated aluminium cladding fixed to the building. None of the light fittings are visible. The lighting proposed will provide for a warm white light which will illuminate the perforated areas of the cladding. The lighting levels have been set at 20cdm² which is lower than the level recommended by the Institution of Lighting Professionals Guidance GN01:2011 which states that the maximum luminance level of a building in an urban area should be 25cd/m².
- 3.2. The overall aim of the proposals is to softly highlight the detail within the perforated cladding and to illuminate the building in such a way that enhances the character and appearance of the local area whilst not harming local amenity.

4. Relevant Planning History

- 4.1. Planning permission 2015/5554/P was granted for the installation of an aluminium perforated screen fixed on aluminium rails on the existing front and side elevations.
- 4.2. Planning permission 2015/4946/P was granted for alterations to the fenestration at ground and first floor level and for the replacement of the existing vertical framed windows between the ground and first floor level with horizontal aluminium double-glazed windows.

5. Other relevant Planning History

- 5.1 It is also relevant to note that the Council granted planning permission and listed building consent (LPA reference 2014/3985/P and 2014/4110/L) on 9 September 2014 for the retention of external lighting at Rosewood London 252 High Holborn WC1V 7EN. The property is grade II listed and located within the Bloomsbury Conservation Area. This proposal is similar in principle in that both applications seek to illuminate and highlight the architectural detail of the buildings we see no difference in the principle of the proposals.

6. Appellant's Grounds of Appeal

- 6.1. The Appellant's grounds of appeal are as follows:
- 6.2. The proposed retention of the lighting scheme will not be visually intrusive and will not have a harmful impact on the appearance of the building, the street scene and detract from the appearance of the area generally. The proposals have been discussed with a lighting expert who has confirmed that they agree that given the lighting levels proposed the scheme will not be harmful to local amenity in terms of the brightness and on the appearance of the building.
- 6.3. Enclosed at **Appendix 2** is a copy of the lighting strategy submitted following a request by the Council. This statement demonstrates that the proposals will not be harmful to local amenity, this was further confirmed by correspondence received from a lighting specialist who confirmed that a report was not necessary as the proposals would not cause undue light spill and would be of such a level that would not harm local amenity or cause harm to vehicle movements along this part of Finchley Road.

7. Relevant Planning Policy Considerations

- 7.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states:

"If regard is to be had to the development plan for the purpose of any determination to be made under the planning acts the determination must be made in accordance with the plan unless material considerations indicate otherwise"

- 7.2. The development plan in this case comprises:
- The National Planning Policy Framework (adopted July 2018);
 - The London Plan Consolidated since 2011 (Adopted 2016 and revised January 2017);
 - Camden Local Plan (Adopted 2017).

National Planning Policy Framework (NPPF) (Adopted July 2018)

- 7.3. Since submitting the planning application to retain the light fixings the NPPF has been updated. This statement therefore refers to the updated policies within the NPPF. The NPPF sets out the Government's planning policies for England and how these should

be applied. It provides a framework within which locally prepared plans for housing and other development can be produced.

7.4 **Paragraph 38** of the NPPF advises that *“local planning authorities should approach decisions on proposed development in a positive and creative way and should work proactively with applicants to secure developments that will improve the economic social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible”*

7.5 The presumption in favour of sustainable development is the golden thread that runs through the NPPF. **Paragraph 10** states that *“So that sustainable development is pursued in a positive way, at the heart of the Framework is a presumption in favour of sustainable development.”*

London Plan – The spatial development strategy for London consolidated with alterations since 2011 (adopted March 2016 and updated January 2017).

7.6 The London Plan is the overall strategic plan for London setting out an integrated economic, environmental, transport and social framework for the development of London over the next 20-25 years.

7.7 Under the legislation setting up the GLA, the London Plan should only deal with things of strategic importance to Greater London. The legislation also requires that the London Plan should take account of three cross-cutting themes;

- Economic development and wealth creation;
- Social development; and
- Improvement of the environment.

7.8 **Policy 7.4 (A)** states that *“development should have regard to the form, function and structure of an area, place or street.....It should improve an area’s visual or physical connection with natural features. In areas of poor or ill-defined character, development should build on the positive elements that can contribute to establishing an enhanced character for the future function of the area”*

- 7.9 **Policy 7.4 (B)** states that *“buildings should provide a high-quality design that contributes to a positive relationship between the urban structure, creates a positive relationship with the street level activity and people feel comfortable within their surroundings”*

London Borough of Camden Local Plan (Adopted 2017)

- 7.10 The Camden Local Plan sets out the Council’s planning policies and replaces the Core Strategy and Development Policies planning documents (Adopted 2010). This document ensures that Camden continues to have robust, effective and up-to-date planning policies that respond to changing circumstances and the borough’s unique characteristics and contribute to delivering the Camden Plan and other local priorities.
- 7.11 Camden’s Local Plan sets out the Council’s vision for the borough, helping to create the conditions for harnessing the benefits of economic growth, reducing inequality and securing sustainable neighbourhoods.
- 7.12 The local policies cited by the Council in its reason for refusal as stated within the decision notice are Policies D1, D3 and D4 of the Camden Local Plan. Set out below in detail are the policies cited:
- 7.13 **Policy D1 Design** – *States that the Council will seek to secure high quality design in development and will seek to secure development that will:*
- A. *Respect the local context and character;*
 - B. *Is sustainable in design and construction, incorporating best practice in resource management and climate change mitigation and adaptation;*
 - C. *Is of sustainable and durable construction and adaptable to different activities and land uses;*
 - D. *Comprises details and materials that are of high quality and complement the local character; and*
 - E. *Integrates well with the surrounding streets.*
- 7.14 **Policy D3 Shopfronts** – *The Council will expect a high standard of design in new and altered shopfronts, canopies, blinds, security measures and other features. When determining proposals for shopfront development the Council will consider:*

- a) *The design of the shopfront feature, including its details and materials;*
- b) *The existing character, architectural and historic merit and design of the building and its shopfront;*
- c) *The relationship between the shopfront and the upper floors of the building and surrounding properties including the relationship between the shopfront and any forecourt or lightwell;*
- d) *The general characteristics of shopfronts in the area;*
- e) *Community safety and the contribution made by shopfronts to natural surveillance; and*
- f) *The degree of accessibility.*

7.15 *The Council will resist the removal of shop windows without a suitable replacement and will ensure that where a shop, service, food, drink and entertainment uses are lost, a shop window and visual display is maintained.*

7.16 **Policy D4 – Advertisements** – The Council will require advertisements to preserve or enhance the character of their setting and host building. Advertisements must respect the form, fabric, design and scale of their setting and host building and be of the highest standard of design, material and detail.

8 The Case for the Appellant

8.4 The principle planning issues to be considered in this appeal are as follows:

- Design and character;
- Amenities of adjoining occupiers;

8.5 Design and Character

In accordance with Policy D1 of the Camden Plan the proposals have been developed to secure a high-quality design that respects the local context and character, is sustainable, durable, includes details and materials that are high quality and complement the local character. The Council has previously granted planning permission for the decorative cladding. The building does not have any ground floor frontage as such there is nothing to sign post the building and its uses for passing members of the public. This proposal seeks to define the building through the use of

subtle lighting which will enhance the appearance of the building, none of the light fittings are visible. The lighting will be set at a level that has been confirmed by a lighting specialist will not harm local amenity in terms of light pollution and distraction to passing vehicles. The proposals will however enhance this street has little to no character or definition.

- 8.6 The Council note that the lighting in itself is not an advert, but that when illuminated by the strip lighting it performs much like an advert in that it attracts the attention of passersby/potential customers and draw attention to the business inside. This assertion is not refuted, as the aim of the application is to draw attention to passing trade, which is required as there is not ground floor frontage defining the building as a restaurant. The appellant however argues that the proposals do not harm the character of the local area and is in keeping with the character of the local area. Just through the fact that the proposals attract attention is not harmful to the appearance of the local area and should not be a reason for refusal. Furthermore, the Council has allowed high level illuminated signage which is much brighter to the side of the building at New College Parade a 2-minute walk from the application site and opposite the appeal site at the Royal Centre of Speech and Drama, full details and photographs of these installations are enclosed within the submitted Lighting Strategy. These displays are much more prominent and draw attention to the sites, the Council has agreed that these do not impact the character of the local area, yet the scheme being proposed by this appeal which provide far less illumination has been considered unacceptable. This appears to be very inconsistent. This proposal does not contribute to an unsightly proliferation of signage and merely seeks to highlight the perforated elements within the cladding. The proposals do not contribute to street clutter as there are no additional fixings that will be seen from street level. The lighting is static and set at a low level of 20cd/m² which is below the Institution Lighting Professionals Guidance GN01:2011 which states that the maximum luminance level of a building in an urban area should be 25cd/m². On this basis the proposals will not harm local amenity nor impact upon public safety. Furthermore, the applicant is agreeable to conditions being imposed to limit the lighting level which the Council has agreed is acceptable.
- 8.7 The proposals will improve the area's visual appearance and will in accordance with Policy 7.4 (B) the proposals are of high-quality design contributing in a positive way to the local urban structure creating a positive relationship with the street level activity.

8.8 In accordance with Paragraph 38 of the NPPF the proposals will secure a development that will improve the economic social and environmental conditions of the area.

8.9 It is considered that the lighting will enhance the character and appearance of the local area and will enhance the appearance of this rather dull drab characterless street. The proposals will therefore be in line with polices D1, D3 and D4 of the Camden Local Plan.

8.10 Residential Amenity

As noted within the Council's delegated officer report and within the lighting strategy submitted as part of the application package, due to the aspect of the application sites elevations and its relationship to the neighbouring residential windows the artificial light spill would not directly affect any window within Centre Heights or Cresta House.

8.11 The Council and Appellant are agreeable to conditions being imposed that would limit the luminosity, static lighting, colour and timings, therefore it is not considered that the use of the lighting would result in detrimental harm to these neighbouring occupiers/users. The plan submitted with the lighting strategy provides full details of the location of the neighbouring properties and their orientation to the Appeal site.

8.12 Transport

As noted within the officer's delegated report the Council's Transport officers has confirmed that with the imposition of conditions to limit the luminosity, static lighting, colour and timings of the lighting, the proposals would not result in harm to the safety of road users. Furthermore, following the Council's consultation with TFL, they confirmed that subject to appropriate conditions no objection was raised.

9 Conclusion

9.4 This statement has endeavored to show that this proposal will complement and enhance the character and appearance of the Finchley Road by providing a scheme that will complement and enhance the appearance of the building and its locality. The appellant has demonstrated through the provision of a robust and detailed planning, design and access statement and lighting strategy that the proposals will not harm local

amenity and transport as agreed by the Council. The sole issue relates to the impact of the proposals on the appearance of the local area. Overall the proposals will not detract from the character of the street which includes a mix of buildings of different styles and colours. The proposals will bring much needed character to the street and will enhance the street scene. With suitable conditions as agreed by the Council the proposals will not harm local amenity or cause undue harm upon public safety.

- 8.2 For the reasons detailed above, the Appellant contends that the proposal is an acceptable form of development that complies with the Council's planning policies.
- 8.3 Accordingly, the Inspector is respectfully requested to allow the Appeal and grant full planning permission for the retention of the fixed LED lighting strips to the existing aluminum perforated screen façade on the front and side elevation of the building at 135 Finchley Road.

Appendix 1 – Decision Notice

Appendix 2 – Planning Application Package