

<b>Enforcement Delegated Report</b>	<b>Receipt date:</b>	<b>25/03/2019</b>
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<b>Officer</b>	<b>Enforcement Case</b>
Angela Ryan	EN19/0270
<b>Breach Address</b>	<b>Photos &amp; Other material</b>
Basement and Ground Floors, 46 Birchington Road, London, NW6 4LJ	On file

**Authorised Officer Signature**



26/04/2019

**Alleged Breach**

Unauthorised installation of timber decking and associated timber enclosure to front forecourt area

**Recommendation(s):** That the Borough Solicitor be instructed to issue an Enforcement Notice under Section 172 of the Town & Country Planning Act 1990 as amended and to pursue any legal action necessary to secure compliance. Additionally, officers to be authorised that in the event of non-compliance, to prosecute under section 179 or appropriate power and/or take direct action under 178 in order to secure the cessation of the breach of planning control.

**Site Description**

The site comprises a two storey plus basement building, located on the north-west- side of Birchington Road near to the junction with Kilburn High Road. The basement and ground floor are currently in use as a restaurant (class A3). The first floor level of the property has been sub-divided into two residential flats. The wider area is comprised of mixed commercial/residential uses.

The site falls within the Kilburn Town Centre. The site is not listed and neither is it located within a designated conservation area.

**Investigation History**

28-03-19- letter sent to the all those having an interest in the land advising that the terrace is unauthorised development and that a further enforcement notice will be served in order to secure the its total removal and requesting the timber decking and associated timber enclosure is totally removed. No response had been received to date.

**Relevant policies / GPDO Category**

**Local Plan 2017**  
**A1(Managing the impact of development)**  
**A4 (Noise and vibrations)**  
**C6 (Access for all)**  
**D1 (Design)**

**Camden planning Guidance 2019:**  
**CPG 1- Design: Chapters 1 & 5**  
**National Planning Policy Framework 2019; paras 127, 130**

## Assessment

### Relevant Planning history:

23/12/2014- permission granted for the change of use of ground floor and basement from shop (Class A1) to restaurant (Class A3) including extract duct to roof at rear.) (Ref: 2014/5696/P)

13/01/2017- Planning permission was refused for the erection of timber enclosure and decking to forecourt of restaurant (Class A3) [retrospective]. (Ref: 2016/5627/P). The Council's refusal of the planning application was subsequently appealed against and the appeal was dismissed on 19/05/2017. The Planning Inspectorate was of the opinion that:

1. Decking set behind the timber enclosure forms an outdoor seating area associated with the restaurant. The use of timber materials, substantial height and predominantly solid form of the development along the majority of the site boundary results in an incongruous, bulky, enclosing and oppressive feature which detracts from the simple form of the appeal property and fails to reflect the traditional materials and generally low, open form characteristic of existing boundary treatment within the street. The development has a harmful effect upon the character and appearance of the appeal property and the surrounding area.
2. The imposition of conditions relating to hours of use, music and external lighting would ensure that the development would not have a harmful effect upon the living conditions of the occupants of neighbouring residential properties, with particular regard to noise nuisance and light pollution
3. The details do not demonstrate an intention to use the outdoor area for customers. Such a use could result in disturbance to the residents of flat 46A in particular. The management of activity in this area would need to be closely controlled but I am satisfied that this could also be achieved by a management condition, particularly with regard to times of use of this area.

On 17/01/2018- Planning permission was again refused for the erection of raised terrace in front forecourt bounded with brick walls/piers, metal railings and associated platform lift to restaurant (Class C3) (Ref: 2017/3702/P)

On 26/10/18- Planning permission was again refused for the erection of the creation of an elevated dining terrace area within existing street level forecourt including planters, new boundary walls with piers and glass balustrade and a disabled lift for the ancillary use of the restaurant (Class A3). (Ref: 2018/2505/P)

### Enforcement History

12/09/2016- a complaint was received in respect to the unauthorised installation of timber decking and associated timber enclosure on front forecourt area. (Ref: EN15/1152)

On 19/05/2017- A formal notice was issued which required within two months of the notice taking effect that:

- the timber decking and associated enclosure is completely removed and the development made to comply with planning permission ref: 2014/5696/P; and
- make good any damage as a result of the above works

A compliance visit undertaken on 21/07/2017 and verified that the unauthorised terrace had been removed.

### Issues:

Since the previous terrace was removed, a further timber terrace has again been installed on the front elevation of the property, which is similar in form and nature to the one that was refused and appealed against and subject to enforcement.

### **Design:**

The site is located within the Kilburn Town Centre. However, due to the location of the building within a mixed commercial/residential street, and the street being located in a predominantly residential setting, terrace in its current form comprising timber decking and associated timber enclosure is considered to be an incongruous addition within its immediate context and is not a characteristic feature within the street scene, and therefore sets an unacceptable precedent.

Commentary in paragraph 7.2 of policy D1 says that The Council will require all developments, including alterations and extensions to existing buildings, to be of the highest standard of design and will expect developments to consider:

- character, setting, context and the form and scale of neighbouring buildings;
- the character and proportions of the existing building, where alterations and extensions are proposed;
- the prevailing pattern, density and scale of surrounding development;
- the impact on existing rhythms, symmetries and uniformities in the townscape;
- the composition of elevations;
- the suitability of the proposed design to its intended use;
- inclusive design and accessibility;
- its contribution to public realm and its impact on views and vistas; and
- the wider historic environment and buildings, spaces and features of local historic value.

Commentary in paragraph 7.4 of policy D1 further goes on to say that:

*“Good design takes account of its surroundings and preserves what is distinctive and valued about the local area. Careful consideration of the characteristics of a site, features of local distinctiveness and the wider context is needed in order to achieve high quality development which integrates into its surroundings”.*

During the appeal process the Planning Inspectorate was of the opinion that:

*“Decking set behind the timber enclosure forms an outdoor seating area associated with the restaurant. The use of timber materials, substantial height and predominantly solid form of the development along the majority of the site boundary results in an incongruous, bulky, enclosing and oppressive feature which detracts from the simple form of the appeal property and fails to reflect the traditional materials and generally low, open form characteristic of existing boundary treatment within the street. The development has a harmful effect upon the character and appearance of the appeal property and the surrounding area”*

In light of the above it is considered that the proposal fails in terms of its design, and is thereby considered to be contrary to policy D1 of Camden’s Local Plan 2017.

### **Noise:**

Moreover, in the absence of planning permission being approved and an appropriate condition restricting the use of the front terraced area, the use has the potential harm existing residential amenity to the residential occupiers located on the upper floors of the site and the surrounding area by way of noise nuisance created at unsociable hours.

### **Recommendation:**

That the Borough Solicitor be instructed to issue an Enforcement Notice under Section 172 of the Town & Country Planning Act 1990 as amended and to pursue any legal action necessary to secure compliance. Additionally, officers to be authorised that in the event of non-compliance, to prosecute under section 179 or appropriate power and/or take direct action under 178 in order to secure the

cessation of the breach of planning control.

**The notice shall allege the following breaches of planning control:**

Unauthorised installation of timber decking and associated timber enclosure to front forecourt area

**WHAT ARE YOU REQUIRED TO DO:**

1. To totally remove the timber decking and associated enclosure located on the front forecourt area, and make the development comply with the planning permission granted on 12/02/2014 (ref: 2014/5696/P).
2. Make good any damage as a result of the above works

**PERIOD OF COMPLIANCE:**

Within 1 month of the notice taking effect

**REASONS WHY THE COUNCIL CONSIDER IT EXPEDIENT TO ISSUE THE NOTICE:**

The timber decked area and associated enclosure due to its size, design and location is considered to be an incongruous addition, which has a detrimental impact on the character and appearance of the host building and the surrounding area contrary to policy D1 of the London Borough of Camden's Local Plan 2017

The raised terrace area by reason its proximity to the windows of the residential dwellings above and hours of use, potentially until 23:30 hours Monday to Saturday and 22:30 Hours on Sunday and Bank Holidays, it is likely to result in noise nuisance to the detriment of the amenity of neighbouring occupiers and is thereby contrary to policy A1 of the London Borough of Camden's Local Plan 2017