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## Appeal Decisions

Site visit made on 2 September 2020 by Hannah Ellison BSc (Hons) MSc MRTPI

### Decision by Susan Ashworth BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 November 2020

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#### **Appeal A: Appeal Ref: APP/X5210/W/20/3249374 335 West End Lane, London NW6 1RS**

- 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 Stephen Balsam against the decision of the Council of the London Borough of Camden.
  - The application Ref 2019/3436/P, dated 4 July 2019, was refused by notice dated 30 January 2020.
  - The development proposed is described as 'New shopfront and decking seating area, with fascia advertising, shutter box and retractable awning'.
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#### **Appeal B: Appeal Ref: APP/X5210/Z/20/3249368 335 West End Lane, London NW6 1RS**

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
  - The appeal is made by Mr Stephen Balsam against the decision of the Council of the London Borough of Camden.
  - The application Ref 2019/3692/A, dated 4 July 2019, was refused by notice dated 30 January 2020.
  - The advertisement proposed is described as 'New shopfront and decking seating area, with fascia advertising, shutter box and retractable awning'.
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### Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

### Application for costs

3. Applications for costs against both appeals were made by Mr Stephen Balsam against the Council of the London Borough of Camden. These applications will be the subject of a separate Decision.

### Appeal Procedure

4. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

## **Preliminary Matters**

5. The appeal relates to two different proposals at the same address. Given that similar considerations apply to both proposals I have addressed them within the same decision letter.
6. At the time of my site visit the development was already in place. I have dealt with the appeal on that basis.
7. The Council has drawn my attention to a number of policies and guidance it considers to be relevant. I have determined Appeal A in accordance with those policies. However, powers under the Regulations<sup>1</sup> to control advertisements may be exercised only in the interest of amenity and public safety, taking account of any material factors. The National Planning Policy Framework (the Framework) and the Planning Practice Guidance reiterates this approach. Accordingly, with regard to Appeal B, I have taken policies into account where relevant.

## **Main Issues**

8. The main issues are:
  - (i) Whether or not the proposal would preserve or enhance the character or appearance of the West End Green Conservation Area, and;
  - (ii) The effect of the use of the seating area on the living conditions of neighbouring occupiers, with particular regard to noise and disturbance.

## **Reasons**

9. The appeal site is a restaurant located on the ground floor of a mid-terraced building located within a commercial parade on the south side of West End Lane opposite the West End Green. There is residential accommodation on the upper floors of the host building and wider terrace. The site is within the West End Green Conservation Area (the CA), the special interest of which appears to be derived from its village character with central green and substantial buildings, terraces and mansion blocks, many of which have retained their traditional appearance and detailing.

### *Character and appearance*

10. Policy D3 of the Camden Local Plan (June 2017) (the LP) states that when determining proposals for shopfront development the Council will consider the existing character, architectural and historic merit and design of the building and its shopfront, and the general characteristics of shopfronts in the area, amongst other things. The terrace within which the appeal building is located is identified within the West End Green Conservation Area Appraisal and Management Strategy, London Borough of Camden (February 2011) (the CAA) as making a positive contribution to the CA. Similar to the wider terrace, the appeal building has traditional fenestration on the upper floors thus creating a regular rhythm in this part of the street scene. Whilst there are a variety of shopfronts on the ground floor of the terrace, many appear to retain traditional windows and features such as pilasters and stall risers.

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<sup>1</sup> The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended)

11. Policy D3 of the LP also notes that where an original shopfront of architectural or historic value survives, in whole or in substantial part, there will be a presumption in favour of its retention. From the information before me it appears that the shopfront replaced a traditional timber shopfront. The Camden Planning Guidance, Design (March 2019) (the CPG) states that large expanses of undivided glass should be avoided and vertical glazing bars should be used to subdivide large windows to help visually relate the shopfront with the upper elevations of the building.
12. The shopfront is fully glazed and has a modern appearance. It lacks traditional features thus failing to relate to the proportions or layout of the upper floor of the host building. It reads as a gap along the frontage and adds a horizontal emphasis to the otherwise traditional vertical detailing on the building. Heaters and an awning have also been installed in front of the shopfront window. Due to their prominent forward positioning and design they also read as incongruous additions which detract from the characteristics of the building and wider terrace.
13. The appellant considers that the shopfront forms a pair with the attached glazed shopfront at No 337 West End Lane and thus has sought to complement this design. Whilst the upper floors of Nos 335 and 337 are painted, they nevertheless have the same characteristics as the wider terrace and are therefore read as a group rather than a pair. Moreover, from the information before me it appears that the shopfront at No 337 has not been granted planning permission.
14. My attention has been drawn to other examples of shopfronts, awnings and heaters in the locality. I acknowledge there is no one distinct shopfront design and there are some examples of fully glazed frontages. However, it is clear that of the examples given, they either have not been granted planning permission or, where they have, it was prior to the adoption of the CPG. As such, these harmful examples do not individually or collectively justify the appeal proposal.
15. Furthermore, whilst the terrace has been identified within the CAA as making a positive contribution, it also notes that it is in poor condition and altered but with potential for a positive effect on the Green. Examples of poor-quality shopfronts do not therefore justify further harm to the condition of the terrace.
16. The decking seating area has been constructed in timber and is finished in a dark colour. To take account of the slope in ground levels outside the appeal site, the decking is raised above the adjacent pavement. There are narrow gaps between the balustrades which restrict views through to the seating area. All these factors cause it to be a prominent addition to the front of the appeal site and its solid appearance significantly encloses this part of the street scene. The amended plans which were received during the course of the application removed the fence along the site boundary with No 337 and this is reflected in the scheme as installed. However, this does little to overcome these concerns. I am also not convinced that a safe and enclosed seating area could not be achieved by a design that would be more in keeping with the area.
17. Examples of other decked or enclosed external seating areas have been submitted. Whilst I have not been provided with the full circumstances of their approval, again it appears that the examples either do not have planning permission or were granted permission prior to the adoption of current policy and guidance. As such, I afford limited weight to the examples.

18. The installed fascia advertisement is predominantly black and depicts the name of the restaurant in white writing with a white and red logo. The writing and logo are internally illuminated. Whilst these elements of the advertisement are discreet and the illumination levels could be reasonably controlled via a condition, the height of the fascia board itself is taller than the space between the corbels on either side of the host building and it projects beyond the shopfront. It therefore appears as an overly dominant and prominent addition to the front of the host building and prevents the architectural features of the building to be fully appreciated. As such, it fails to respect or compliment the proportions of the building and wider terrace.
19. There are discrepancies between the amended plans, in that some indicate the fascia sign and awning casement would be flush with the shopfront and others show they would be projecting. As noted above, both elements project forward in the installed scheme. Furthermore, the amended plans do not include the installed heaters. Nevertheless, I have had regard to the flush design and lack of heaters and, whilst this approach may be more in keeping with the host building and wider area, the amended plans do not address the concern with the overall depth and positioning of the fascia.
20. It is acknowledged there are numerous examples and designs of fascia advertisements in the locality, including along the wider terrace of the appeal site. However, there is no compelling evidence as to whether or not they have been granted consent and thus they do not weigh in favour of this proposal. In any event, I have determined this proposal on its own merits and have found that it causes harm as identified above.
21. Taking all the above into consideration, the proposal fails to preserve or enhance the character or appearance of the CA and therefore harms its significance. In terms of the approach set out in the Framework, the proposal causes less than substantial harm to the CA's significance as a designated heritage asset. Paragraph 196 states that where a development would lead to less than substantial harm, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimal viable use.
22. It is suggested that the decking provides level access to the premises. However, I note that level access to the premises has been achieved using the natural incline of the pavement, rather than the installed decking. Consequently, there are no demonstrable public benefits that outweigh the identified harm to the significance of the CA. The Framework is clear that great weight should be attached to the asset's conservation.
23. Consequently, the shopfront and decking seating area conflicts with Policies D1, D2, and D3 of the LP, Policies 2, 3 and 13 of the Fortune Green and West Hampstead Neighbourhood Plan (September 2015) (the NP) and the Framework which collectively seek to ensure developments have a high standard of design which preserves or enhances the historic environment. It also fails to comply with the CPG as noted above.
24. The fascia advertisement conflicts with Policy D4 of the LP and Policies 2, 3 and 13 of the NP which, although not decisive, collectively require proposals to preserve, enhance and make a positive contribution to the character of their setting and the host building.

### *Living conditions*

25. The immediate area has a vibrant atmosphere with a number of commercial uses opening until late evening. As such, there would be high levels of general activity and comings and goings in and around the appeal site. Occupiers of the residential accommodation on the upper floors of the appeal building and wider terrace would be accustomed to a degree of background noise.
26. Whilst the proposal provides an additional area of outside seating along the existing terrace, it is of a limited size and the imposition of a condition limiting hours of use could satisfactorily mitigate noise generated by the use of the decking seating area. As such, I do not consider that the use of this area increases the amount of activity and noise experienced by nearby occupiers beyond a reasonable degree. Additionally, there is little evidence before me that the design of the decking area would give rise to crime and antisocial behaviour.
27. Consequently, this element of the proposal would not result in a harmful effect on the living conditions of neighbouring occupiers and does not therefore conflict with Policy A1 of the LP which seeks to protect the quality of life of occupiers and neighbours.

### **Other Matters**

28. The appeal site is within the setting of the Grade II listed West Hampstead Fire Station at No 325 West End Lane, and the Grade II listed drinking fountain in West End Green. The area has a busy commercial setting which would have changed significantly over time. Thus, due to the appeal site's mid-terrace location which is a sufficient distance away from the listed buildings, the appeal site makes a neutral contribution to their significance as heritage assets and therefore this proposal preserves their setting.
29. I acknowledge that no interest groups have objected to the proposals, however a lack of opposition for a proposal is not a ground for granting planning permission or advertisement consent and does not outweigh the harm I have identified above.

### **Conclusion and Recommendation**

30. For the reasons given above I recommend that both Appeal A and Appeal B are dismissed.

*Hannah Ellison*

Appeal Planning Officer

### **Inspector's Decision**

31. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis both Appeal A and Appeal B are dismissed.

*Susan Ashworth*

INSPECTOR