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## Appeal Decision

Site visit made on 27 July 2021

**by L Perkins BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 6 September 2021**

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### **Appeal Ref: APP/X5210/C/20/3260569**

### **Land at 327 West End Lane, London NW6 1RS**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr A Shiraz against an enforcement notice issued by the Council of the London Borough of Camden.
  - The enforcement notice was issued on 11 September 2020.
  - The breach of planning control as alleged in the notice is: Without planning permission: Installation of 2 x Jumbo Umbrellas to the front of the ground floor unit.
  - The requirements of the notice are: Completely and permanently, remove the 2 x Jumbo Umbrellas positioned to the front of the ground floor unit and remove any resulting debris.
  - The period for compliance with the requirements is 1 month.
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (c) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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### **Decision**

1. The appeal is allowed and the enforcement notice is quashed.

### **Application for Costs**

2. An application for costs was made by Mr A Shiraz against the Council of the London Borough of Camden. This application is the subject of a separate decision.

### **Preliminary Matters**

3. By a letter dated 15 July 2021, arrangements were made for me to inspect the site, accompanied by a representative of the Council and the appellant. No one attended to represent the Council. Given that the items which are the subject of the appeal are plainly visible from the public highway and having tried to contact the Council (via the case officer) to find out if a Council representative was on their way, I determined the most suitable course of action was to proceed with my visit.
4. My attention has been drawn to an earlier enforcement notice, dated 11 February 2020. But this is not before me for consideration in this appeal.

### **Reasons**

5. An appeal on ground (b) is that those matters stated in the notice have not occurred as a matter of fact. An appeal on ground (c) is that those matters

(if they occurred) do not constitute a breach of planning control. These are both legal grounds of appeal. As such, the burden of proof is on the appellant (and not the Council) to make out their case, to the standard of the balance of probabilities, ie whether something is more likely than not.

*Ground (b)*

6. The Council alleges that 2 jumbo umbrellas have been installed to the front of the ground floor unit. This is entirely consistent with my observations at my site visit. It is the appellant's view that the umbrellas do not constitute an "installation". But this is a point which goes to the appellant's ground (c) appeal, which I address below. Consequently, the appeal on ground (b) fails.

*Ground (c)*

7. In an appeal on ground (c), the matters stated in the notice may not constitute a breach of planning control if what is alleged in the notice is not "development", as defined by section 55 of the 1990 Act.
8. Section 55 of the 1990 Act defines "development" as including the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.
9. The dispute in this case is focussed on whether the umbrellas constitute a building operation for the purposes of section 55. Case law has identified three primary factors as decisive of what constitutes a building: size, permanence and physical attachment to the land. None of these alone is necessarily decisive and greater weight may be given to one factor over the others.
10. Whilst the umbrellas are large, there is no evidence they were not brought onto the site in an assembled form and slotted into their bases. The umbrellas are easily unfurled or collapsed by the turning of a handle. The base of each umbrella is mounted on wheels and so, despite their weight, each umbrella may be moved around relatively easily. This was obvious at my site visit. Legs may be lowered from each corner of each base, for support. But in my judgement, this does not undermine their moveability.
11. The umbrellas rest by their own weight and are otherwise not physically attached to the ground. Heaters attached to the umbrellas may be easily plugged into/detached from electrical points set within the decking on which the umbrellas stand. The umbrellas have not resulted in any permanent physical alteration to the land.
12. I place considerable weight on the ease with which the umbrellas may be wheeled around and so taking into account the above points, I am satisfied that neither umbrella constitutes a building and so neither umbrella is a building operation for the purposes of section 55, noted above.
13. I have taken into account the Council's point that the umbrella bases have been seen in the same layout throughout March to December 2019. But this does not necessarily mean they constitute development. Moreover, in my judgement it makes no difference whether the umbrellas are moved from their bases, or from the forecourt and put inside the building.
14. My attention has been drawn to other appeal decisions referred to in the Council's submission. The appeal decisions dating from 2016 concerned

wooden structures. Based on the information provided, I am not satisfied these are comparable to the umbrellas before me or that the circumstances of these cases are the same as those in the case before me.

15. The parasols which were the subject of the first 2003 appeal decision referred to by the Council were fitted into sunken fixing points. The "marquee"/"sunbrellas" which were the subject of the second 2003 appeal decision referred to by the Council were anchored in a concrete footing. I am not satisfied these circumstances are comparable to those in the case before me. Therefore, the other appeal decisions I have been referred to have not changed my overall conclusion in this case.

16. I conclude the appeal on ground (c) succeeds.

### **Conclusion**

17. For the reasons given above, I conclude that the appeal succeeds on ground (c) and the enforcement notice is quashed. In these circumstances, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

*L Perkins*

INSPECTOR