



Date: 4<sup>TH</sup> October 2022  
Your Ref: APP/X5210/C/22/3305184  
Our Refs: EN20/0537  
Contact: Angela Ryan  
Direct Line: 020 7974 3236  
[Angela.Ryan@camden.gov.uk](mailto:Angela.Ryan@camden.gov.uk)

Faiza Kanwal  
The Planning Inspectorate  
Temple Quay House  
2 The Square  
Bristol  
BS1 6PN

Dear Sir/Madam,

**335 West End Lane, London, NW6 1RS**

**Appeal against the Enforcement Notice dated 7/7/22 (EN20/0537) for works to existing restaurant: Installation of a new shopfront including retractable awning and decked seating to the forecourt with balustrading.**

**APPEAL BY: KSE Holdings LTD**

I write in connection to the above referenced appeal.

The Council's case is largely set out in the Officer's delegated report, a copy of which was sent with the appeal questionnaire. In addition to the information sent with the questionnaire, I would be pleased if the Inspector could take into account the following comments before deciding the appeal.

**1.0 Summary:**

**Site**

- 1.1** The appeal site is a four-storey mid-terraced building. There is a restaurant located on the ground floor and residential accommodation above. It is 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 terrace.

The site lies within the West End Green Conservation Area.

**Planning history summarised**

- 1.2** The enforcement notice was served against development that had already been refused permission and dismissed on appeal.

In 2019, applications for planning permission and advertisement consent to retain the unauthorised works to the existing restaurant were submitted and subsequently refused on design and conservation grounds. At the time of the applications being refused complaints were also received about the fascia sign and later about the balustrading. This is amplified below.

Subsequent appeals against the refusals were then dismissed. The refused scheme is identical to the works being enforced against. Therefore, the Inspector's comments in dismissing the appeal are highlighted in addressing the grounds of appeal

### **Refusal of retrospective planning permission/ advertisement consent and appeal dismissed**

- 1.3** On 30/01/2020- planning permission was refused for the installation of replacement shopfront, including retractable awning and balustrading to decked area to forecourt of existing restaurant (Class A3). (**Ref: 2019/3436/P**). The grounds for refusal related to inappropriate design and materials, which failed to preserve or enhance the appearance of the host building, the shopping parade and the West End Green conservation area (**See Appendix 1**)
- 1.3** On 30/01/2020- Advertisement consent was also refused for the display of 1x internally illuminated fascia sign to existing restaurant (Class A3). (**Ref: 2019/3692/A**) The grounds for refusal related to inappropriate design that failed to preserve or enhance the character and appearance of the host building, the parade of which it forms a part, and the West End Green Conservation Area. (**See Appendix 2**)
- 1.4** The above refusals were appealed, against and were dismissed by the Planning Inspectorate on 17/11/2020 (Refs: APP/X5210/W/20/3249374 & APP/X5210/Z/20/3249368). The grounds for dismissal in relation to appeal A- the shopfront was refused on the grounds of the shopfront's modern appearance, lacking traditional features thus failing to relate to the proportions or layout of the upper floor of the host building. It adds a horizontal emphasis to an otherwise traditional vertical detailing on the building. The heaters installed on the front of the site were considered to be incongruous additions, which detracted from the characteristics of the building and the wider terrace.
- 1.5** The Inspector was of the opinion that the decked seating area is raised above the adjacent pavement, and the narrow gaps between the balustrades restricts views through to the seating area. 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 Inspector was 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. The shopfront and decked 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), and the Framework which collectively seek to ensure developments have a high standard of design which preserves or enhances the historic environment.

- 1.6** In respect to appeal B – relating to the shop fascia sign the Inspector is of the opinion that the overall depth and positioning caused harm due to the height of the fascia board being taller than the space between the corbels on either side of the host building. It therefore projected beyond the shopfront, and appears as an overly dominant and prominent addition 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, and fails to preserve or enhance the character or appearance of the CA and therefore harms its significance. **(See Appendix 3)**

### **Enforcement history**

- 1.7** On 31/01/2020- An enforcement complaint was submitted in respect to an unauthorised fascia sign (EN20/0106). On 09/03/2020, a letter of alleged offence was sent to the Appellant in this respect. In response to the letter, there was an e-mail exchange between the Council and the Appellant's Agent in regards to the 8- week deadline to submit an appeal against the advertisement refusal. **(See Appendix 4)**
- 1.8** On 09/07/2020- An enforcement complaint was submitted in respect to an unauthorised shopfront and balustrading to decked seating area on the forecourt at the appeal site (EN20/0537). Given Covid 19 and the unprecedented lockdowns etc., formal enforcement action was held in abeyance. A letter was sent to the Occupier on 11/03/2022 informing/reminding them of the breaches. An e-mail trail between the Appellant's Agent and the Council followed relating to the service received from the planning department, Council's inaction, and asking whether the letter dated 09/03/2022 (refer to para 1.7) was valid, amongst other things **(See Appendix 5)**.
- 1.9** The Appellant has been aware of the breaches since 2020 and has done very little to rectify them to date, hence enforcement action taken.
- 1.10** The enforcement notice was issued on 5<sup>th</sup> July 2022, and should have taken effect on 17<sup>th</sup> August 2022. It requested that within 3 months of the notice taking effect the Owner/Occupier should:
1. Totally remove the unauthorised shopfront and reinstate a traditional timber shopfront to match the proportions of the shopfront in place prior to the unauthorised works;
  2. Totally remove the timber balustrade and decked seating area from

the front forecourt; and

3. Remove from the land any resulting material and make good any damage caused as a result of the above works. **(See Appendix 6)**

## **2.0 Relevant planning policy:**

- 2.1 In arriving at its current position the London Borough of Camden has had regard to the relevant legislation, government guidance, statutory development plans and the particular circumstances of the case. The development subject to this appeal was considered in the light of the following policies:-

### **National policy documents:-**

- 2.2 National Planning Policy Framework (NPPF) 2021 - The Council's policies within the Officer's Delegated Report are recent and up to date. The Camden Local Plan was adopted in 2017 and the Camden Planning Guidance CPG1 on Amenity, design, advertisements, & transport adopted in 2021 after extensive consultation. **(Please note that all references made to the 2018 and 2019 CPG's in the officer's delegated report are incorrect and should read 2021- see paragraph 2.4 below. There are no new material considerations in respect to the corrections to the relevant CPG's and their paragraphs/chapters. Therefore, these corrections do not prejudice the Appellant's case, neither would they have affected the outcome of the Council's decision to take enforcement action)**

### **2.3 Development Plan:-**

1. The relevant policies contained in Camden's Local Plan 2017 are listed below:

D1- Design  
D2- Heritage  
D3- Shopfronts  
D4- Advertisements  
A1- Managing the impact of development  
A4- Noise and vibration  
TC4- Town Centre uses

2. The full text of each of the policies has been sent with the questionnaire documents.

- 2.4 **Supplementary Planning Guidance**  
**CPG Amenity 2021 -chapter: 2 and 6**  
**CPG Design 2021 -chapter: 3, 6 and 7**  
**CPG Advertisements 2021- chapter: 1**  
**CPG Transport 2021 -chapter: 9.14**

- 2.5 **West End Green Conservation Area Appraisal and Management Strategy 2011 (CAAMS) paragraphs 5.3.1, 5.3.2 (pages 16-17), Section 2 (page 38), 7.3 (page 49)**
- 2.6 **Fortune Green and West End Green Neighbourhood Plan 2015 Policies 2, 3 and 13**

As such, there are no new material considerations in this instance.

3.0 **Comments on appellant's grounds of appeal:**

**Appellants complaint about the local authority procedure”**

- 3.1 Paragraph 4 of the Appellant's statement contends that the “*LPA has and/or refused to engage constructively with the Appellant, notwithstanding the Appellant paying for the Council's pre-action services, which it signally failed and/or refused to provide*”.

**Council's response:** The Appellant failed to chase up their pre-application enquiry with the planning team for approximately 11 months and only sought to refer to it as a response to the letter sent on 09/03/2022 from the enforcement team warning of formal enforcement action (**refer to appendix 4**). The letter also offered some advice on what would be acceptable development. Moreover, the Appellant's pre-application enquiry submitted to the planning team and the issue of enforcement are two separate issues and should not be clumped together as a single issue. The pre-application enquiring has no bearing on the issue of enforcement. The enforcement team has sought to engage with the Appellant in order to see the breaches resolved which, has so far been ignored.

- 3.2 Paragraph 5 of the Appellant's statement mentions the NPPF 2021, para 59 which emphasises that LPA's should act proportionately in responding to suspected breaches of planning control. The statement also refers to PPG ID:17b-003-20140306 which reinforces the importance of the above consideration. The Appellant also refers to PPG ID:17b-008-20140306 which states that early engagement is vitally important to establish whether those responsible for any breach are receptive to taking action to remedy the breach.

**Council's response:** As stated earlier, the enforcement team sought to engage with the Appellant in 2020 and 2022. Two years down the line the Appellant has still not been receptive to resolving the breaches. Instead the Appellant has sought to justify them by citing bad examples of other shopfronts within the locality of the appeal site, some that do not benefit from having consent and others having become lawful over a passage of time, hence the service of a formal enforcement notice given the time that has lapsed since the unauthorised works were undertaken.

**Ground A- that planning permission should be granted:**

- 3.3** The appeal lies within the West End Green Conservation Area, where the Council expects all development to preserve or enhance their character and appearance. The Planning Inspector in the appeal decision considered that the special interest of the area 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. The Inspector was also of the view that *“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 stallrisers”*.
- 3.4** Policy D1 (Design) expects a high quality design. As stated in the Officer Delegated report
- “good design takes account of its surroundings and preserves what is distinctive and valued about the local area”*
- 3.5** The delegated report further goes on to state: *“Policy D3 (Design) of Camden’s local plan 2017 states that 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. It also states that traditional architectural features should be reinstated where they have been lost. The host 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 of buildings, many retain traditional windows and features such as pilasters and stall risers. The traditional timber shopfront at the host building has been replaced with a fully glazed shopfront, with aluminium framing. The Council considers that a full height glazed shopfront is not appropriate for this property and advised that a traditional timber shopfront would be acceptable and should include architectural elements such as a stall riser, transom and mullions glazing bars and a door frame to the entrance”*.
- 3.6** When the Inspector assessed the current shopfront in the previous appeal, paragraph 12 of the appeal decision issued on 17/11/2020 states:
- “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”.*

- 3.7** Paragraph 13 of the appeal decision confirms that: *“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.*
- 3.8** Paragraph 14 of the appeal decision confirms that the Inspector’s attention was drawn to other examples of shopfronts, awnings and heaters in the locality. The Inspector acknowledges that there is no one distinct shopfront design and that there are some examples of fully glazed frontages. The Inspector then confirms *“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.*
- 3.9** Paragraph 15 of the Inspector’s decision confirms *“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”.*
- 3.10** In regards to the decked seating area paragraph 16 of the appeal decision confirms: *“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 Inspector later goes on to state, *“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”* Paragraph 17 of the appeal decision states **“.** **(See Appendix 4)**
- 3.11** The Inspector’s conclusions concurs with the Council in respect to the merits of the unauthorised shopfront and decked seating area. There are a number of shopfronts in the area installed without the benefit of planning consent. Given the passage of time, they are immune from enforcement action.
- 3.12** In paragraph 12 of their statement, the Appellant seeks to justify that these types of shopfronts reflect the local character and that of the

conservation area. The Appellant is also of the opinion that it was a matter for the LPA to show that it was enforcing against those developments. Otherwise there was no reason to think those developments would not remain in place (and indeed that they did not enhance (or preserve) either elements of their locality or the conservation area, based on what had existed previously).of the area and provides a context for the appeal site.

**Council's response:** The Council made the Appellant aware that the shopfront and decking was unauthorised development that did not benefit from either planning or advertisement consent and it is the current unauthorised works in relation to the appeal site that the Council is enforcing against. Prior to submitting this appeal, the Appellant was aware that some of the shopfronts cited in the locality were installed without planning permission and had become lawful over a passage of time. Therefore, the Council did not have the opportunity to assess their acceptability in terms of design, neither their impact on the setting of the conservation area. However, the Council is of the opinion that poor examples of existing shopfronts (particularly those where the Council has not been given an opportunity to assess their acceptability/design) should not be used as justification to introduce a further unacceptable shopfront within the locality. By allowing a shopfront and decked seating area of an unacceptable design within the location, the Council is of the opinion that this would result in eroding the special characteristics of the area, which were considered important enough to be included within a conservation area designation to ensure that they were preserved or enhanced. The introduction of a modern glazed shopfront in an area where traditional shopfronts are retained would result in detracting from the character and appearance and setting of this non-designated heritage asset.

- 3.13** The unauthorised shopfront is considered to cause 'less than substantial harm' to the non-designated heritage asset. Paragraph 202 of the NPPF 2021 states that "where a development proposal will lead to 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, where appropriate, securing its optimum viable use. The Council is of the opinion that there is limited public benefit in relation to the shopfront and decked seating area, and no evidence has been presented that would imply that the absence of these unauthorised elements would harm the optimum viable use. There is an opportunity for a shopfront and seating area to be designed to be more in keeping with the area. As such, it is considered that there are no significant benefits that outweigh the less than substantial harm that is caused as a result of this unauthorised development.



**Appeal on Ground F- the requirements of the enforcement notice are excessive:**

- 3.14** Paragraph 7 of the Appellant's statement states that '*had agreement been reached under ground (f) no appeal would be necessary*'.

**Council's response:** Ground (f) relates to the requirements in the enforcement notice being too excessive. At no point has the Appellant sought to discuss the requirements of the notice since it was issued and therefore the Council fails to see how an appeal was necessary regarding ground (f) in this regard.

- 3.15** Paragraph 16 of the Appellant's statement implies that the enforcement notice exceeded what was necessary and seeks to entwine the pre-application issue with the issue of enforcement.

**Council's response:** The Council is of the opinion that had the Appellant been willing to resolve the breaches then it would not have taken them 11 months to chase up their pre-application submission. However, I would reiterate that the enforcement action taken was not contingent upon the pre-application submission or any decision being made in this respect.

- 3.16** Paragraph 17 of the Appellant's statement refers to drawings and plans supporting the revised scheme, which would have met the concerns previously identified. These revisions were submitted to the planning department and not the enforcement team. It remains a planning matter rather than an enforcement matter. Moreover, if the Appellant is of the opinion that the revised plans would have addressed the Council's concerns previously identified, then the Council fails to see why a revised planning application has not been submitted for consideration since the appeal decision was issued in 2020. It is outside the remit of the Inspector to consider the revised plans and grant permission in response to this enforcement appeal.

- 3.17** In paragraph 20 the Appellant mentions their rights under the human rights Act 1998 for protection of property as well as the service of the economic dimension of sustainability which is furthered by allowing the business to trade and without incurring additional expenditure and loss of income in this newly post Covid era. Apart from the fact that the unauthorised development occurred prior to Covid, the Council is of the opinion that these issues should not be used as justification for unauthorised development. Moreover, these issues provide very little argument in regards to why the requirements in the notice are excessive. The Appellant has provided no evidence in regards to compliance with the notice and how this would impact on the business.

The enforcement notice seeks to resolve a planning breach by requiring the removal of an unauthorised shopfront and seating area, which, are currently unlawful. The Council is therefore of the opinion that the requirements as outlined in the enforcement notice are not excessive, but are reasonable to ensure that the current breach is resolved.

**Appeal on Ground G- The time to comply with the notice is too short (3)**

- 3.18** Paragraph 22 of the Appellant's statement contends that the 3 months compliance period is considerably short of what should reasonably be allowed and considers that the period should be extended to 12 months. Given the current economic climate, the Council would have no objection to the compliance period being extended to 12 months or an alternative period that the Inspector may deem fit should they be minded to dismiss this appeal.

**4.0 Conclusion**

- 4.1** The Council considers the unauthorised development has resulted in the loss of a traditional shopfront and its architectural detailing. The modern glazed shopfront provides no articulation and is out of keeping within the existing townscape. As such, the Council maintains that the replacement shopfront by reason of its design and materials is an incongruous addition which fails to relate to the proportions or layout of the upper floor of the host building, and detracts from the character and appearance of the host building, shopping parade, and wider West End Green Conservation Area contrary to policies D1 (Design), D2 (Heritage) and D3 (Shopfronts) of Camden's Local Plan 2017 and policies 2 & 3 of the Fortune Green and West End Green Neighbourhood Plan 2015.
- 4.2** The Council also maintains that the timber balustrade and decked seating area are prominent additions, which by reason of their location, scale and solid appearance encloses this part of the street scene of their location and has a detrimental impact on the host building, shopping parade and wider West End Green Conservation Area and are contrary to policies D1 (Design) and D2 (Heritage) of Camden's Local Plan 2017 and polices 1, 3 and 13 of the Fortune Green and West End Green Neighbourhood Plan 2015.
- 4.3** The Council maintains that the fascia sign by reason of its inappropriate design, fails to preserve or enhance the character and appearance of the host building, the parade of which it forms a part, and the West End Green Conservation Area,
- 4.4** The Council is unable to recommend any conditions to mitigate the impact of the development should the appeal be allowed, given that the development has already been fully implemented.

For the reasons give above, the Council respectfully requests that this appeal is dismissed. If you require any further information or clarification on any matters associated with this case, then please contact Angela Ryan on the above direct dial number.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'A Ryan', written in a cursive style.

Angela Ryan  
Planning Officer  
Culture and Environment Department