The Planning Inspectorate

Appeal Decisions

Site visit made on 28 January 2020

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 February 2020

Enforcement Appeal Ref: APP/X5990/C/18/3214051
38 St John's Wood Terrace, London NW8 6LS

- 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 Hom Malass of DRUNCHSW3 Limited against an enforcement notice issued by City of Westminster Council.
- The enforcement notice, numbered 1, was issued on 20 September 2018.
- The breach of planning control as alleged in the notice is: Without the requisite planning permission and within the last 4 years the unauthorised erection of two umbrella structures within the forecourt, as shown in the attached photograph.
- The requirements of the notice are: Remove the two umbrella structures shown in the attached photograph from the Property, along with any associated fixtures, fittings and wiring.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (d) of the Town and Country Planning Act 1990 as amended.

Enforcement Appeal Ref: APP/X5990/C/18/3214055
38 St John's Wood Terrace, London NW8 6LS

- 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 Hom Malaas of DRUNCHSW3 Limited against an enforcement notice issued by City of Westminster Council.
- The enforcement notice, numbered 2, was issued on 20 September 2018.
- The breach of planning control as alleged in the notice is: Without the requisite planning permission and within the last four years the installation of an air-conditioning unit, as shown in the attached photograph.
- The requirements of the notice are:
    i) Remove the air conditioning unit shown in the attached photograph from the Property, along with any associated fixtures, fittings and wiring and
    ii) Repair any damage caused to the exterior of the building by the installation or removal of the air conditioning unit and any associated fixtures, fittings or wiring.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Enforcement Appeal Ref: APP/X5990/C/18/3214058
38 St John's Wood Terrace, London NW8 6LS

- 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 Hom Malaas of DRUNCHSW3 Limited against an enforcement notice issued by City of Westminster Council.

- The enforcement notice, numbered 3, was issued on 20 September 2018.
- The breach of planning control as alleged in the notice is: Without the requisite planning permission and within the last four years the installation of 7 x light fittings, as identified by the red circles in the attached photographs.
- The requirements of the notice are:
    i) Remove the seven light fittings circled red in the attached photograph from the Property, along with any associated fixtures, fittings and wiring; and
    ii) Repair any damage caused to the exterior of the building by the installation or removal of the light fittings and any associated fixtures, fittings or wiring.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended.

Planning Appeal Ref: APP/X5990/W/18/3212060
38 St John's Wood Terrace, London NW8 6LS

- 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 DRUNCHSW3 LTD against the decision of City of Westminster Council.
- The application Ref 18/00349/FULL, dated 20 December 2017, was refused by notice dated 21 March 2018.
- The development proposed is described as: Two forecourt umbrellas.

Decision: Enforcement Notice 1

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Decision: Enforcement Notice 2

2. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Decision: Enforcement Notice 3

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

Decision: Planning Application

4. The appeal is dismissed.

Application for Costs

5. An application for costs was made by City of Westminster Council against DRUNCHSW3 Limited. This application is the subject of a separate Decision.

Preliminary Matters

6. The Council have distinguished between the different enforcement notices with numbers and I have used numbers consistent with these to distinguish between the different notices in these decisions. From the information provided, including the appeal form for Enforcement Notice 1, it is apparent that the development which is the subject of the Planning Application is the same as the development which is the subject of Enforcement Notice 1 and so I have considered these below together.

Reasons: Enforcement Notice 1 and the Planning Application

The appeal on ground (c)

7. At the site visit I saw that each of the two umbrellas stands in a cylindrical metal socket that is roughly knee-high and is permanently cemented into the ground. As a result, the land has been physically altered. Each umbrella is secured in its socket by two bolts which may be removed by a hexagonal-headed tool. Each umbrella may be manually collapsed by one person, with a winding action from a removable handle. This was demonstrated to me at the site visit.

8. The evidence indicates that once collapsed, the umbrellas are removable from their sockets. But in this case, there is no evidence the umbrellas are ever removed and the appellant states that the umbrellas have remained in situ since they were installed in May 2017. When open, the umbrellas cover almost the entire forecourt of the appeal building. Consequently, in this case, whether open or closed, in relative terms each umbrella is substantial in size.

9. At the site visit it was apparent that, when collapsed, the length and circumference of each umbrella is such that it is not possible for it to be easily gripped and lifted out of its socket and removed. There is no evidence to indicate otherwise. Considering all of the above points, by reason of the combination of the umbrellas' size, permanence and physical attachment to the land, I conclude they fall within the definition of development set out in section 55 of the Town and Country Planning Act 1990 (as amended).

10. The appellant is concerned that the Council's decision indicates that every garden umbrella or parasol requires planning permission. But I do not accept this contention as whether permission is required will depend on the specific circumstances of each case. Accordingly, considering all of the above points, the ground (c) appeal fails.

The appeal on ground (d)

11. The appellant has stated that the existing umbrellas were installed in May 2017. This is less than four years before the enforcement notice was served indicating that the umbrellas are not immune from enforcement action by virtue of section 171B(1) of the above Act.

12. My attention has been drawn to what is referred to as a history of umbrellas on the forecourt of the appeal site. Photographs have been provided to support this, these are said to have been taken in 2008, 2011 and 2013, showing large umbrellas on the forecourt of the premises. However, whilst structures similar to the existing may have previously existed for a considerable length of time, there is no evidence which satisfies me they were the same structures which exist now.

13. Even if I am wrong in this regard, the evidence indicates the previous umbrellas were removed at some point before 15 May 2015 and their ground attachments were removed before 8 March 2017. On this basis, the current structures were new constructions when they were erected in May 2017. Therefore, based on the information provided, the current umbrellas constituted a fresh act of development when they were erected and the existence of umbrellas on the site previously makes no difference in this regard. Considering all of the above points, the appeal on ground (d) fails.

The appeal on ground (a), the deemed planning application and the planning application

14. The main issues in the ground (a) appeal are the effect of the umbrellas on the character and appearance of the area, including the St John's Wood Conservation Area, and their effect on the living conditions of neighbouring occupiers with particular regard to noise and disturbance.

Character and Appearance

15. The appeal site is within the St John's Conservation Area and therefore section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. The area is characterised by a mixture of building types including historic terraced houses and more modern blocks of flats.

16. The appeal site contains a mid-19th century former public house, identified in the Conservation Area Audit as a building of intrinsic architectural merit. It is prominently located on a corner with Charlbert Street. The front elevation of the building is set back from the road to form a generous front courtyard garden area. This is characteristic and locally distinctive of many of the older buildings in the street including the long line of historic terraced buildings to the right of the appeal site when viewed from the front.

17. In this context, the forecourt umbrella structures are incongruous and out of character. They cover almost the entire forecourt of the building and visually dominate its frontage. Due to their size, whether open or closed, they obscure views of the appeal building and architectural details on its ground floor level, including windows, front entrance doors and pilasters.

18. The appellant considers such umbrellas are common features across London but none have been drawn to my attention which are seen within the context of this appeal site. So I do not consider them to be characteristic of the area. The appellant states that the umbrellas are regularly retracted. But no information has been provided which satisfies me this mitigates the harm the umbrellas cause to the character or appearance of the area.

19. I appreciate the appeal site may have a history of umbrella structures on its forecourt. But there is no evidence which satisfies me that the previous umbrellas were development requiring planning permission, and that if they were, that they were lawful. As such, I give the presence of previous umbrellas on the appeal site limited weight in this regard.

20. Given the size and scale of the structures, I consider they cause less than substantial harm to the character and appearance of the conservation area. Nevertheless, any harm to the significance of a designated heritage asset should require clear and convincing justification and in accordance with paragraph 196 of the National Planning Policy Framework (the Framework), I must weigh the harm against the public benefits of the development.

21. No information has been provided of any public benefits arising from the umbrellas. Whilst there may be some benefit arising for users of the site in terms of shelter from the elements, I am not satisfied this is a public benefit of sufficient weight to outweigh the harm to the conservation area in this case. I

conclude therefore that the development harms the character and appearance of the area including the conservation area.

22. Consequently, it does not comply with Policies 7.4 and 7.8 of the London Plan 2016 (as amended) (the London Plan), Policies S25 and S28 of the Westminster City Plan, consolidated with all changes since November 2013, November 2016 (the City Plan), Policies DES1 and DES9 of the Unitary Development Plan adopted January 2007 (the UDP) or the design and heritage policies of the Framework.

Living Conditions

23. The appeal site immediately adjoins residential accommodation and is in an area that I found to be a quiet, predominantly residential, part of the street. There is a dispute between the parties over whether the umbrellas intensify the use of the forecourt resulting in greater noise and disturbance for neighbouring occupiers.

24. The appellant considers the arrangement of tables and chairs beneath the umbrellas limits patron numbers, and therefore noise and disturbance, compared to a 'vertical drinking' arrangement which could otherwise exist. However, I do not accept this argument as the umbrellas provide shelter from the elements, including during the hours of darkness, and evidence indicates lighting and heating have been provided underneath the umbrellas, thereby prolonging their use.

25. Therefore, in my judgement, the umbrellas intensify the use of the forecourt and significantly prolong the time when the forecourt may be used, compared to a situation where the umbrellas did not exist. If the umbrellas did not exist, patrons would be more likely to seek shelter from the elements inside the building, reducing any effect on noise and disturbance for neighbouring occupiers.

26. The appellant has stated that the umbrellas themselves provide a measure of attenuation. But no evidence has been provided of how effective they are in this regard and so I give this point limited weight in my decision. I note the appellant's concern that the Council's decision may have not been informed by observations from its Licensing or Environmental Health teams. But I do not consider such observations to be determinative in what is essentially a matter of planning judgement.

27. I note the appellant has provided an acoustic report but this pre-dates the erection of the umbrellas which are the subject of this enforcement notice. Consequently, I am not satisfied this report takes account of the effect of the umbrellas on noise and disturbance or that it considers background noise levels during all times of the day when the umbrellas are in use. Moreover, the report is based on likely background noise levels rather than actual noise levels measured from the nearest residential accommodation. So considering the above points I give this report limited weight in this decision.

28. I conclude that based on the information provided, the activity facilitated by the umbrellas harms the living conditions of neighbouring occupiers, with particular regard to noise and disturbance and as such they do not comply with Policy 7.15 of the London Plan, Policies S29 and S32 of the City Plan or Policies ENV6 and ENV7 of the UDP.

Other Matters

29. The appellant considers the external space is vitally important to the viability of the business and till receipts have been provided to support this view. However, the information provided shows an outside till has a higher level of takings than inside tills and there is no evidence to indicate the business would no longer be viable without the umbrellas.

Conclusion on the ground (a) appeal

30. Considering each of the main issues for the ground (a) appeal, the appeal on ground (a) fails.

Conclusion: Enforcement Notice 1 and the Planning Application

31. For the reasons given above I conclude that the appeal should not succeed. I uphold the enforcement notice, I refuse to grant planning permission on the deemed application and I refuse to grant planning permission for the planning application.

Reasons: Enforcement Notice 2

The appeal on ground (a)

32. The main issues in the ground (a) appeal are the effect of the air conditioning unit on the character and appearance of the area, including the St John's Wood Conservation Area, and its effect on the living conditions of neighbouring occupiers with particular regard to noise.

Character and Appearance

33. Because the appeal site is within a conservation area, I must pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area in considering whether to grant planning permission for the air-conditioning unit, as required by section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

34. The appeal building is identified in the Conservation Area Audit as a building which has intrinsic architectural merit. The air-conditioning unit which is the subject of this enforcement notice is prominently positioned high up at first floor level on the rear elevation of the appeal building. A second unit is positioned lower down to its left. The information provided indicates the second unit does not benefit from a grant of planning permission and is not subject to the enforcement notice, as the photograph attached to the notice clearly indicates. Therefore, the second unit is not before me for me in the deemed planning application under ground (a) for this appeal.

35. Despite being located at the rear, the air-conditioning unit which is the subject of the notice is clearly seen when standing on the opposite side of Charlbert Street and when approaching the appeal site from the southeast. Against the backdrop of the appeal building's traditional brick rear façade the air-conditioning unit appears as an incongruous and utilitarian feature which is out of character with the historic character and appearance of the building and the conservation area. The air-conditioning unit clutters the rear elevation of the building and does not preserve or enhance the conservation area's character or appearance.

36. Given the size and scale of the air-conditioning unit, I consider it causes less than substantial harm to the character and appearance of the conservation area. Nevertheless, any harm to the significance of a designated heritage asset should require clear and convincing justification and in accordance with paragraph 196 of the Framework, I must weigh the harm against the public benefits of the proposal. No information has been provided of any public benefits arising from the air-conditioning unit. Whilst there may be some benefit arising for users of the building, I am not satisfied this is a public benefit of sufficient weight to outweigh the harm to the conservation area in this case.

37. I conclude therefore that the appeal development harms the character and appearance of the area including the St John's Conservation Area. It therefore does not comply with Policies 7.4 and 7.8 of the London Plan, Policies S25 and S28 of the City Plan, Policies DES1, DES5 and DES9 of the UDP or the design and heritage policies of the Framework.

Living Conditions

38. The Council has suggested conditions to control noise and vibration from the air-conditioning unit as well as its hours of use. In respect of amenity, in its statement, the Council says it has no objection to the air-conditioning unit if these conditions are imposed on a grant of planning permission.

39. There is no evidence the unit cannot comply with the conditions suggested and from the information provided and my observations at my site visit, there are no immediately adjacent neighbours affected by noise or vibration from the unit.

40. Considering all of the above points, I see no reason why this air-conditioning unit should be resisted on grounds of its effect on the living conditions of neighbouring occupiers. So subject to the suggested conditions, the unit would not conflict with Policy 7.15 of the London Plan, Policies S29 or S32 of the City Plan or Saved Policies ENV6 or ENV7 of the UDP.

Conclusion on ground (a)

41. Whilst I have found in favour of the appellant in respect of living conditions, I have found the air-conditioning unit harmful in terms of its effect on the character and appearance of the area and I conclude there is conflict with the development plan overall and so the appeal on ground (a) fails.

Conclusion: Enforcement Notice 2

42. For the reasons given above I conclude that the appeal does not succeed. I uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Reasons: Enforcement Notice 3

The appeal on ground (c)

43. The 7 light fittings are small cylindrical units fixed to the building with a round bracket of similar diameter. The colour of the light fittings and fixtures more or less matches the part of the building to which they are affixed. They are evenly spaced around the first floor windows at sill level on the front and flank elevations facing the street. Given their limited size, their relatively discreet

appearance and the size of the building, in my judgement, the light fittings do not materially affect the external appearance of the building. Therefore, they are not development under section 55(2)(a)(ii) of the Town and Country Planning Act 1990 (as amended).

44. In reaching this conclusion I have taken into account the visual effect of the lights including the appearance of the building at night when the lights are switched on. In the case of *Kensington and Chelsea RBC v SSE and CG Hotels* [1981] 41 P&CR 40, the installation of floodlights on the façade of a hotel was found not to materially affect the external appearance of a building even though the actual lights had such an effect when switched on. In this respect, in my judgement, that case is comparable to the appeal before me. The effect of the lights when switched on, even when emitting light of different colours, does not materially affect the external appearance of the building and so the appeal on ground (c) succeeds.

Conclusion: Enforcement Notice 3

45. For the reasons given above I conclude that the appeal succeeds on ground (c). Accordingly the enforcement notice is quashed. In these circumstances the appeal on ground (a) set out in section 174(2) to the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended does not need to be considered.

L Perkins

INSPECTOR