



Appeal Decisions

Site visit made on 7 June 2022

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 August 2022

Appeal A Ref: APP/F5540/C/21/3284851

Premises known as 764 Great West Road, Isleworth, TW7 5NA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Masoud Karwan against an enforcement notice issued by London Borough of Hounslow.
 - The notice, numbered CUCO/2019/00022, was issued on 24 September 2021.
 - The breach of planning control as alleged in the notice is, without planning permission, the unauthorised use of part of the property as a car wash and valeting service and unauthorised erection of associated canopy, office structure and associated paraphernalia.
 - The requirements of the notice are to:
 - i) Cease the use of part of the site for car washing and valeting.
 - ii) Demolish the canopy structure (Coloured yellow and labelled A on the attached plan).
 - iii) Demolish the office structure (Coloured yellow and labelled B on the attached plan).
 - iv) Remove all paraphernalia associated with the car wash from the Land.Remove all of the resultant debris from the land.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) 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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Appeal B Ref: APP/F5540/W/21/3282588

764 Great West Road, Isleworth, TW7 5NA

- 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 Masoud Karwan against the decision of London Borough of Hounslow.
 - The application Ref 00505/AH/P25, dated 12 April 2021, was refused by notice dated 14 June 2021.
 - The development proposed is part change of use of hotel forecourt to car wash and valet service (use class generis) (retrospective).
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Decisions

Appeal A

1. It is directed that the enforcement notice is corrected by deleting 'the unauthorised use of part of the property as a car wash and valeting service and unauthorised erection of associated canopy, office structure and associated paraphernalia' in section 3 and replacing with 'the material change of use of the land to a mixed use of hotel, restaurant, car wash and valeting service with facilitating paraphernalia, and the erection of canopy and office structure'.

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

Appeal B

3. The appeal is dismissed.

Appeal A Preliminary Matters

4. The appeal form cites grounds (a), (f) and (g). However, the appellant has raised issues which relate to ground (c). The parties have had an opportunity to consider the representations made by the appellant and I have therefore determined the appeals as proceeding with the additional ground.
5. By the time of my site visit the use of part of the site as a car wash and valet service had ceased and the canopy structure (labelled 'A' on the plan attached to the enforcement notice) had been removed, in accordance with the first two requirements. However, s181(1) of the 1990 Act provides that compliance with any of the requirements contained in an enforcement notice shall not discharge the notice. Under s181(2), any requirement of an enforcement notice that a use is discontinued shall operate as a requirement that it be discontinued permanently, and so the resumption of the use at any time after discontinuance shall be in contravention of the enforcement notice. The requirements of an enforcement notice thus have an enduring effect. If it is complied with but there is a later breach of the requirements, s181(1) and (2) mean that remains enforceable under s179. Accordingly, it remains necessary to determine the appeal.

Appeal A - The Enforcement Notice

6. The breach of planning control as alleged in the notice is, *without planning permission, the unauthorised use of part of the property as a car wash and valeting service and unauthorised erection of associated canopy, office structure and associated paraphernalia*.
7. In terms of use, s55 defines development as '*the making of any material change in the use of any buildings or other land*'. The '*unauthorised use*' is not '*development*' for the purposes of the 1990 Act. Moreover, reference to paraphernalia is more accurately associated with facilitating the use, rather than as an '*unauthorised erection*'.
8. It is also clear from the evidence and my site visit that the enforcement notice does not describe all of the components of a mixed-use taking place on the site, including hotel and restaurant. All the uses on the planning unit at the time of the enforcement notice should be referred to in the allegation, even if only one element is subject to the notice. I shall therefore correct the allegation to the material change of use of the land to a mixed use of hotel, restaurant, car wash and valeting service with facilitating paraphernalia, and the erection of canopy and office structure. There is no suggestion that the hotel and restaurant uses are unlawful so the requirements should not be varied to address them.
9. None of the above result in the allegation being extended. The corrections simply put the notice in order. The substance of the appeal remains unchanged

for the purposes of the arguments and evidence advanced. I am therefore able to make those corrections without injustice to any party.

Appeal A on Ground (c)

10. The ground (c) appeal is that the use of part of the site for car washing and valeting would not constitute a breach of planning control as those services are ancillary and linked to the use of the hotel. The appellant argues that they are purposefully intended for guests using the hotel as a kind gesture to encourage return visits.
11. However, photographic evidence shows a posted price list for the car wash and valeting, as well as signs advertising a hand car wash from outside of the site to passing motorists. Evidence of a social media post is also provided advertising a business for sale comprising car wash and valeting centre, with a picture of the appeal site.
12. The evidence therefore clearly points to a separate business operation, rather than one which is incidental or functionally linked to the hotel. On the balance of probabilities, I find that the car wash and valeting service amounted to a primary use within a mixed use site. Planning permission is therefore required for a material change of use.
13. The ground (c) appeal fails.

Appeal A on Ground (a) and Appeal B

Main Issues

14. The red line boundary for both appeals is largely the same, although the application site boundary for Appeal B also includes a northern portion of the hotel site. I shall therefore refer to the sites in the singular.
15. Appeals A and B both relate to the use of part of the hotel forecourt for a car wash and valet service. Appeal A also includes the alleged erection of a canopy and office structure, along with associated paraphernalia. The main reasons for issuing the enforcement notice (Appeal A) are largely the same as the reasons for refusing the planning application (Appeal B). Consequently, there is significant overlap in the planning merits of both appeals. My reasoning therefore relates to Appeals A and B, unless otherwise stated.
16. The main issues are the effect on:
 - the character and appearance of the area and the Osterley Park Conservation Area;
 - the living conditions of the occupiers of No 766 Great West Road with particular regard to noise and disturbance; and
 - highway safety.

Reasons

Character and appearance

17. The site encompasses the Osterley Hotel and associated car parking area, situated on the corner of Great West Road (A4) and Wood Lane, within the Osterley Park Conservation Area.

18. The majority of the Conservation Area comprises Osterley Park country estate with its mansion house, stables and gardens. The appeal site falls within a recent extension to the Conservation Area where the character is very different and is largely derived from the interwar twentieth century suburban housing. The character in and around the appeal site is also influenced by the A4, which is three lanes in each direction, thereby creating a significant barrier between its northern and southern sides.
19. The original two storey part of the hotel on the western corner of the site is locally listed. It is an attractive building with mock Tudor feature gables, a tiled, hipped roof with tall brick stacks and rendered main elevations with decorative features. It makes a positive contribution to the Conservation Area, particularly in views from the south and west.
20. However, the significance of the building in views from the east is diminished by a series of sprawling extensions to the hotel. As the car wash was positioned on the opposite side of the site to the locally listed hotel it would have been largely seen in the context of those later additions. Consequently, the harm to the setting of the main, original part of the hotel would have been relatively minor.
21. Nevertheless, photographic evidence shows that the car wash and valeting service with its associated structures and paraphernalia created a cluttered and untidy appearance to the eastern part of the site, which due to its forecourt position would have been highly visible from the A4 and to customers of the hotel and restaurant.
22. The alleged office structure (Appeal A) remains and is situated directly alongside the boundary to the residential property at No 766. Although relatively modest in size, it is nonetheless clearly visible from the parking forecourt of the hotel. Given its somewhat makeshift and rudimentary appearance, it detracts from the appearance of the site and from the dwelling at No 766, where it can be seen in conjunction with it.
23. As noted, the former canopy (Appeal A) has been removed. However, it is apparent from the photographic evidence that it would have been highly visible and visually harmful due to its relatively large, bright blue roof positioned directly in front of an adjacent building.
24. The Council's first reason for refusal in respect of Appeal B, additionally references associated advertisements. Photographic evidence show a number in and around the site which, combined with the paraphernalia associated with the car wash, added to the cluttered and untidy appearance. The appellant suggests that conditions could be imposed to ensure that the adverts appear sympathetic to the appearance of the area. However, no details are provided to demonstrate how that would be achieved and, in any case, the other harms described would remain.
25. Similarly, removing both of the alleged structures (Appeal A) would improve the appearance of the site but the general operational paraphernalia would remain, detracting from its overall appearance. In any case, I'm unconvinced that it is a realistic proposition to remove all structures thereby leaving staff with no place to take shelter during inclement weather, to take breaks or for general operational reasons, such as taking payments.

26. I therefore conclude that if resumed, the alleged development of Appeal A, or the development as described for Appeal B, would result in unacceptable harm to the character and appearance of the area, thereby failing to preserve or enhance the Conservation Area, contrary to Hounslow Local Plan 2015 – 2030 (LP) Policies, CC1, CC2 and CC4. Those policies state, amongst other things, that any development within or affecting a Conservation Area must conserve and take opportunities to enhance the character of the area.
27. The National Planning Policy Framework (NPPF) expects that great weight is given to the conservation of heritage assets irrespective of whether that harm is substantial or less than substantial. For these case, I conclude that there would be less than substantial harm to the Conservation Area taken as a whole and to the significance of the locally listed building. In such circumstances the NPPF requires that any identified harm is weighed against any public benefits the development might secure. I recognise that the development would provide economic and social benefits, including employment and service provision. However, those benefits do not justify the identified harms, so as to prevail over the great weight that should be given to the conservation of the heritage assets.

Living conditions

28. The car wash and valeting service was previously concentrated in the south eastern corner of the site, adjacent to the residential property at No 766. That dwelling has a number of side ground and first floor windows which face the site as well as windows and a door in the rear elevation. The outdoor living space of No 766 is also adjacent to the site.
29. The office structure door is positioned in very close proximity to those aspects of the property and as a result occupants would likely have experienced significant noise disturbance from the associated comings and goings, conversations between staff, as well as radios playing. That is borne out by the representation received.
30. Although the main car washing area was positioned away from the boundary with No 766, with small buildings intervening, occupiers of No 766 would have experienced additional noise disturbance from jet washers, vacuum cleaners, vehicle movements and associated noise from engines stopping and starting, doors opening and closing, as well as car radios. In any case, photographic evidence shows cars being cleaned immediately adjacent to the side boundary wall to No 766, thereby losing any potential mitigation from being off-set from the boundary.
31. I appreciate that the occupants of No 766 will already likely experience general disturbance from the hotel and restaurant uses. However, that does not justify making matters materially worse. Moreover, it is not suggested those existing uses are to cease. Consequently, the effects of the car wash and valet use would increase the number and duration of noise generating sources, along with the associated disturbance.
32. The appellant's noise assessment reports' that the prevailing background noise climate at the site is dominated by noise from traffic of both cars and HGV's on the A4 which pass the front of the hotel. Although there is a solid wall between No 766 and the appeal site, the assessment acknowledges that its height does not intercept the direct path of sound from the noise source to the noise

sensitive receptor, and so cannot be considered as an effective noise attenuating structure.

33. The assessment identifies foam/ water jet washers and hoovers as the main sources of noise when the site is operational. The rating levels for all three pieces of equipment are calculated to be above the background sound level to an extent which indicates adverse to significant adverse impacts at the closest noise sensitive receptors at No 766.
34. The appellant suggests that operating hours could be controlled by way of condition. Photographic evidence shows that it previously opened between the hours of 0900 hours to 1900 hours, seven days a week. The appellant has not suggested lesser hours. Even if the car wash and valeting service were not to operate early in the morning or late in the evening time, there is no suggestion that it would not operate on the weekends. Indeed, it is likely that weekends would be the busiest time and the time when residents are likely to be at home or looking to utilise their outdoor amenity space.
35. In any case, it would not be appropriate to rely on occupants being away from their home during the working day to justify the acceptability of the use, particularly as home working has become increasingly common. I do not therefore find the harms would be overcome by more restrictive operating hours given the proximity of the site to No 766. In any event the harms found on the other main issues would remain.
36. I therefore conclude that if the alleged use were to resume, it would result in significant and unacceptable harm to the living conditions of the occupants of No 766, contrary to LP Policy CC2, which expects, amongst other matters, development to have a positive impact on the amenity of current and future residents.
37. I note that the noise assessment report suggests mitigation in the form of a 2.5m high noise barrier or a tunnel/ enclosure which would reduce the impact to low at the nearest noise sensitive receptor. The appellant suggests that such measures could be secured by way of condition or planning obligation.
38. Whilst LP Policy EQ5 seeks to minimise noise disturbance from adjoining uses by incorporating alternative forms of noise barriers, I have not been provided with any details or drawings to indicate how such measures might appear so as to avoid additional visual harm in such a prominent position.
39. Moreover, without specific details, I am unable to fulfil my statutory duties under s72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. In any case, even without the physical form of additional sound barrier measures, I have found unacceptable harm to the character and appearance of the area and Conservation Area.

Highway safety

40. The hotel has two access points, one from the A4, the other from Wood Lane. It is not suggested that either are deficient in terms of visibility.
41. Notwithstanding the clear visual and signed association with the A4 access, the Design and Access Statement (DAS) explains that access and egress would be

via Wood Lane. Whilst the submitted block plan shows a two way flow within the site between that access and the location of the car wash at the opposite side of the site, there are pinch points in front of the hotel and restaurant where it is very unlikely that two cars would be able to easily pass. At the time of my site visit, there were benches adjacent to the perimeter wall, thereby allowing only one car at a time to pass from one side of the site to the other. Even without those benches, attempts for two cars to pass are likely to lead to vehicles having to yield or be forced to reverse back, or even mount the footway directly in front of the hotel and restaurant. That in turn could result in conflict with pedestrians and other vehicles within the site.

42. The DAS asserts that the site lends itself to a simple layout with a linear throughput of cars and space for two cars to be worked on with four additional cars waiting. However, such an arrangement is not demonstrated on the block plan. What is shown is somewhat of a tortuous arrangement that is likely to result in much manoeuvring of vehicles associated with the car wash, again in likely conflict with pedestrians and users of the car park.
43. The DAS states that directional signs would be erected to emphasise the route within the car wash but again it has not been demonstrated how that would work. Given the mixed use of the site and juxtaposition of the forecourt parking and access from the A4, it is likely that significant manoeuvring of vehicles would be required in an attempt to accommodate all users, particularly at busy times, thereby adding to the likelihood of vehicular and pedestrian conflict. Moreover, queued vehicles within the site might also result in vehicles backing up onto the footway and cycle path running in front of the site, or even causing vehicles to slow or stop on the A4, thereby harming the safe and free flow of traffic.
44. Therefore, in the absence of information that demonstrates otherwise, even a one-way system is very likely to lead to more frequent incidences of pedestrian and vehicular conflict, over above that which would otherwise occur.
45. Although it is submitted that the car wash use is not expected to result in a significant increase in vehicular numbers, no evidence is provided to that effect. That would also appear to be at odds with the commercial reality of a car wash, which is to maximise the throughput of vehicles.
46. The position of the car wash also results in the loss of car parking spaces and associated circulation space for the existing hotel and restaurant uses. Whilst the appellant suggests that there is sufficient car parking on site to accommodate demand, no evidence is provided to show that the associated land take and operational overspill would not adversely affect the operation of the hotel and restaurant in terms of access, parking and servicing.
47. The appellant suggests the use of a digital information board at the entry point to indicate the availability of car parking. However, without sufficient on site parking, drivers may be forced into abortive movements close to the access points, which may not be anticipated by other vehicles, and/ or potentially parking in adjacent residential areas.
48. In the circumstances, I share the Council's view that an acceptable parking and operational management plan would be required to demonstrate that the mixed use of the site could operate in an acceptable manner. However, having regard to the above, it is difficult to envisage how an acceptable arrangement

could be achieved. Consequently, it would not be appropriate to leave that to a condition.

49. In the absence of sufficient supporting information to demonstrate otherwise, I conclude that the use of the site for a car wash and valeting service would result in unacceptable harm to highway safety, contrary to LP Policy EC2. That expects, amongst other things, that development proposals demonstrate that adverse impacts on the transport network are avoided.

Other Matters

50. Whilst the appellant considers the site to be grossly underutilised, no evidence is provided to that effect. The use was previously focused on part of the forecourt parking area and as noted above, no information is provided to demonstrate that those spaces are not required in connection with the existing uses on the land.
51. For the reasons explained, the car wash and valeting service does not safeguard and improve the environment or ensure safe and healthy living conditions. Therefore, having regard to paragraphs 119, 120, 124, 125 and 130 of the NPPF and Policy GG2 of the London Plan, I do not find that the car wash and valeting service would make effective or best use of land. The public interest in these cases therefore outweigh any economic and community service benefits of the car wash use.

Conclusions on Appeal A on ground (a) and the deemed planning application

52. For the reasons given above, I conclude that the ground (a) appeal should not succeed and I shall refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Conclusions on Appeal B

53. For the reasons given above, and having considered all other matters raised, I conclude that the appeal should be dismissed.

Appeal A on Ground (f)

54. An appeal on ground (f) is that the requirements of the enforcement notice are excessive to remedy the breach of planning control or, as the case may be, the injury to amenity caused by the breach.
55. Essentially, the alleged breach is the use of part of the land as a car wash and valeting service with associated paraphernalia, and the erection of associated canopy and office structure. The requirements of the notice are, in short, to cease the car washing and valeting use, demolish the canopy and office structures and remove all paraphernalia and resulting debris. The purpose of the enforcement notice is therefore to remedy the breach.
56. The appellant submits under ground (f) that in the absence of any structures there would be no significant effect on the locally listed building and Conservation Area. However, I have considered such matters under ground (a) and whilst I agree the harm would be less, I still conclude that the use would fail to preserve or enhance those heritage assets.

57. It is also argued that any harm to the living conditions of the occupants of No 766 could be mitigated by conditions requiring sound attenuation and restricting the hours of operation. Again, however, I have considered such matters under ground (a) and have come to the opposite conclusion.
58. I find that the requirements of the notice tally with the allegation and are not excessive but necessary to remedy the breach. The appeal on ground (f) must fail.

Appeal A on Ground (g)

59. The ground (g) appeal is that the three months given to comply with the notice is too short. The appellant requests a period of 6-9 months to secure a builder to carry out the demolition works and to find and relocate to an alternative location.
60. However, as noted, the use of the site for car washing and valeting has already ceased and the canopy structure has been removed. The only outstanding requirements are to demolish the office structure and remove all paraphernalia and resultant debris.
61. Given the fairly limited amount of paraphernalia still remaining and the size and rather rudimentary construction of the office structure, three months would strike a reasonable and proportionate balance between any difficulties which may be encountered and the public interest in this case.
62. The ground (g) appeal fails.

Richard S Jones

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/F5540/C/21/3284851	Mr Masoud Karwan
Appeal B	APP/F5540/W/21/3282588	Mr Masoud Karwan