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## Appeal Decisions

Site visits made on 5 July 2023 and 16 August 2023

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

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

**Decision date: 31 August 2023**

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### **Appeal A Ref: APP/H5390/W/22/3300463**

#### **330 – 332 Uxbridge Road, London W12 7LL**

- 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 Ahmad Sultan of Sultan International Investment Ltd against the decision of the Council of the London Borough of Hammersmith & Fulham.
- The application Ref 2022/00405/FUL, dated 11 February 2022, was refused by notice dated 23 May 2022.
- The development proposed is: Awnings on the front elevation and wrap around canopy on the side elevation of the property.

**Summary Decision:** Appeal A succeeds in part and permission for that part is granted, but otherwise the appeal is dismissed, as set out in the Formal Decision.

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### **Appeal B Ref: APP/H5390/C/22/3305233**

### **Appeal C Ref: APP/H5390/C/22/3305382**

#### **Ground Floor and Basement, 330 - 332 Uxbridge Road, London W12 7LL**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal B is made by David Parry of Parry's Oak Ltd and Appeal C is made by Mr Ahmad Sultan of Sultan International Investment Ltd against an enforcement notice issued by the Council of the London Borough of Hammersmith & Fulham.
- The enforcement notice was issued on 8 August 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, the retention of awnings on the front elevation and wrap around canopy on the side elevation of the property.
- The requirements of the notice are:
  - a) Remove from the land the awnings on the front elevation and wrap around canopy on the side elevation of the property.
- The period for compliance with the requirements is 2 months.
- Appeal B is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.
- Appeal C is proceeding on the grounds set out in section 174(2)(a) 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.

**Summary Decision:** Appeal C succeeds in part and permission for that part is granted. But otherwise Appeal C fails and Appeal B is dismissed and the enforcement notice is upheld in the terms set out below in the Formal Decision.

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## **Preliminary Matters**

1. I have taken the description of development for Appeal A in the heading above from the Council's decision notice (omitting superfluous wording), as this describes the development more accurately than the planning application form.

2. Based on the information provided, the appeal development in all 3 appeals is the same and so, in effect, are the ground (a) appeal and section 78 appeal. I have dealt with the appeals on this basis.
3. Before I knew that Appeal A or Appeal C had been lodged, I inspected the appeal site, unaccompanied, from the public highway, on 5 July 2023, for the sole purpose of determining Appeal B.
4. Subsequently, I became aware that Appeal A and Appeal C had been lodged, where there is a relevant planning merits dispute relating to the amount of clearance between the footway and the awnings and wrap around canopy. Therefore, I took the decision to inspect the site a second time, accompanied by the main parties for each appeal, so that the relevant measurements between the footway and the awnings and canopy could be demonstrated to me. The main parties were made aware of this purpose, before my visit on 16 August 2023.
5. The above circumstances mean that I have seen the appeal development twice, on separate occasions.

#### The Ground (a) Appeal and the Section 78 Appeal

6. An appeal on ground (a) is that planning permission ought to be granted for the matters stated in the notice.
7. The main issues for the ground (a) appeal and section 78 appeal are:
  - the effect of the appeal development on the character and appearance of the area, including the Ingersoll & Arminger Conservation Area, and
  - the effect of the appeal development on highway safety.

#### *Character and Appearance*

8. The appeal site is within the Ingersoll & Arminger Conservation Area. So there is a statutory duty upon me under section 72 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 that area.
9. The area is characterised by rows of mostly 19<sup>th</sup> century terraced buildings, fronting a busy high street, with commercial uses at ground floor level and residential uses above. The appeal site sits within a relatively short stretch of the Uxbridge Road high street that forms part of the conservation area.
10. In respect of this main issue, the Council's decision notice and enforcement notice focus on the wrap around canopy on the side elevation of the appeal building. Moreover, the report provided by the Council states:

*"Uxbridge Road has many other awnings to the front of properties which are similar to the proposed awning. The proposed front awning is not considered visually unacceptable or out of character with the surrounding area."*
11. As such, in respect of this main issue, there is no dispute between the main parties in respect of the awnings fronting Uxbridge Road. My attention has been drawn to materials used for the appeal development but the Council has not raised any objection in this regard and I see no reason to either.

12. However, the wrap around canopy, which is attached to the corner of the building and the flank elevation on Ingersoll Road, is uncharacteristic of 19<sup>th</sup> century buildings, particularly as a result of its shape.
13. The Ingersoll & Arminger Conservation Area Character Profile clearly states that where canopies are required, they should be straight canvas canopies capable of full retraction. But the wrap around canopy is rigid, adds conspicuous bulk to the building and has an incongruous shape. It harms the character and appearance of the area, including the conservation area. I give this issue considerable importance and weight in my decision.
14. My attention has been drawn to other canopy developments in the area, including at Nos 77 and 258 Uxbridge Road. But the examples I have been referred to are not within the Ingersoll & Arminger Conservation Area. So they are not within the same context and therefore, in my judgement, they do not support the case for the appellant.
15. The appellant considers the situation is an improvement on the situation in 2008. But I do not consider that to be the case, in light of the wrap around canopy.
16. I appreciate that the wrap around canopy may provide shelter for produce displayed on the footway fronting Uxbridge Road. But this is very limited and I see no reason why produce requiring shelter cannot be rationalised to fit under the front awnings or moved inside the shop.
17. The appellant has indicated that the proposal complies with design guidelines published by the Council. But I do not find this to be the case in respect of the wrap around canopy.
18. Given the size and scale of the wrap around canopy within the context of the conservation area as a whole, I consider it causes less than substantial harm to the conservation area as a designated heritage asset. Nevertheless, any harm to its significance should require clear and convincing justification and in accordance with paragraph 202 of the Framework, I must weigh the harm against the public benefits of the appeal development. But no public benefits have been identified in the evidence before me.
19. I conclude the wrap around canopy harms the character and appearance of the area, including the Ingersoll & Arminger Conservation Area. This does not comply with Policy DC1, DC4, DC5 or DC8 of the Hammersmith & Fulham Local Plan 2018, Key Principles CAG2, CAG3 or SD3 of the Planning Guidance Supplementary Planning Document - February 2018 (the SPD, which is a material consideration) or the historic environment policies of the Framework.

#### *Highway Safety*

20. For pedestrian safety, Key Principle TR20 of the Council's SPD contains minimum vertical clearances. This ensures solid structures and awnings are an appropriate distance from the footway. Over or within 1m of the carriageway, TR20 requires a 5.3m vertical clearance. Over the rest of the footway (i.e. the part of the footway more than 1m from the carriageway), TR20 specifies a minimum clearance of 2.3m for awnings and 2.6m for solid structures. TR20 is a material consideration to which I ascribe significant weight, given its direct relevance to this appeal development and this main issue.

21. On its decision notice and enforcement notice, the Council has identified that the clearance above the footway for the awning and wrap around canopy is 2.2m and 2m. Although it is not clear from these documents which measurement relates to which component of the appeal development, based on my observations at my first site visit, it appears most likely that the relevant measurements (according to the Council) are 2.2m for the wrap around canopy and 2m for the front awnings.
22. These measurements are disputed by the appellant and so at my second site visit I invited the appellant to demonstrate the relevant measurements to me, accompanied by the Council representative. However, at my second site visit, it was obvious that the front awnings had been positioned higher (ie partially retracted) from the height at which I saw them positioned at my first site visit. Even so, the lowest part of the awnings still hung lower than 2.3m above the footway.
23. The appellant relies on the 'base' (ie frame) of the awning being higher than the minimum clearance. But the awnings have a fringe which at my second site visit were still hanging below 2.3m. I am not satisfied that a measurement to the base, rather than the fringe, complies with TR20 and I have been given no reason why any discretion should be applied to the **minimum** clearance required by TR20. Any part of the canopy below 2.3m may still pose an obstruction and safety hazard for pedestrians trying to pass on the public highway underneath, particularly those carrying items (such as umbrellas).
24. I do not accept that the awnings cover only the area on the pavement where fruit and vegetables are displayed, such that they prevent the public from walking in this area. This simply does not fit with my observations from my first site visit, where I saw the awnings extended beyond the area where produce is displayed, fronting Uxbridge Road. Moreover, I have no reason to believe this is not how the awnings are usually positioned.
25. As such, I am not satisfied that any of the measurements for the front awnings, demonstrated at my second site visit, accurately reflect the height at which the front awnings are typically positioned. However, what is clear is that the front awnings are adjustable, such that it is possible for their vertical position to be adjusted.
26. The appellant has indicated that a condition could be used to establish the lowest height of the awnings (rather than refuse planning permission) and the Council has agreed. But there is no evidence that the height of the wrap around canopy is adjustable and, in any event, it is obvious from my own observations that the wrap around canopy is within 1m of the carriageway, as has been pointed out by the Council. Therefore, 5.3m clearance is required underneath the wrap around canopy and this cannot be achieved.
27. Bearing in mind the tests for conditions, set out in paragraph 56 of the National Planning Policy Framework, I see no reason why the lowest height of the retractable front awnings cannot be controlled by condition, to achieve compliance with TR20. But this is not the case for the wrap around canopy as it would not be reasonable to use a condition to attempt to make the wrap around canopy comply with TR20, given its proximity to the carriageway and its rigid design.

28. I appreciate there is concern that the above condition for the front awnings may not be complied with. But this is not a basis for refusing planning permission, when it would be possible to detect a breach of the condition from the street, meaning monitoring would not be unreasonably onerous or practicably impossible and so the condition would be enforceable.
29. I conclude that whilst the front awnings may comply with Key Principle TR20 of the SPD if subject to a condition, the wrap around canopy cannot comply and so the wrap around canopy is harmful to highway safety.

#### *Other Matters*

30. The appellant is not satisfied with the level of communication from the Council. But this is not a matter for me to consider in an appeal under section 174.
31. It has been said that the occupant of the shop on the appeal site leaves display trolleys, boxes and crates of products on the footway underneath the canopy. Be this as it may, this does not constitute part of the breach of planning control before me and is a matter for the highway authority, if the public highway is obstructed.

#### *Conclusion on Ground (a) and the Section 78 Appeal*

32. I am satisfied that the awnings on the front elevation and the wrap around canopy on the side elevation of the appeal building are severable components of the appeal development. I have no reason to think otherwise. So whilst the appeal on ground (a) and the section 78 appeal succeed in respect of the front awnings (subject to condition), they both fail in respect of the wrap around canopy, for the reasons set out above.

#### *The Ground (f) Appeal*

33. An appeal on ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy the breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
34. Under section 173(4) of the 1990 Act, when serving an enforcement notice the Council may seek to (a) remedy the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or (b) remedy any injury to amenity which has been caused by the breach.
35. Based on the single requirement of the notice, it is clear that the purpose of the notice is to remedy the breach.
36. Pursuant to the ground (f) appeal, the appellant states that all that is required for the wrap around canopy is that its fringe is removed or that a flat awning replaces the wrap around canopy. But these suggestions would not achieve the purpose of the notice.
37. The appellant has also suggested that the clearance shortfall is a *de minimis* contravention that does not justify enforcement action. But in an appeal under

section 174, I have no jurisdiction to determine whether it was expedient for the Council to have issued the notice.

38. I conclude that the appeal on ground (f) fails.

#### The Ground (g) Appeal

39. An appeal on ground (g) is that the period for compliance with the requirements of the notice falls short of what should reasonably be allowed.

40. Pursuant to ground (g), the appellant has set out various assertions. First, that only the occupier of the shop can comply with the enforcement notice within the time scale specified. Second, that the other parties served can only lawfully rectify the breach by applying to the court to require the shop occupier to remedy the breach and to have authority to remedy the breach directly if the shop occupier fails to comply. Third, that the time required for the other parties to remedy the breach depends entirely on the time required for the court to process the application.

41. The appellant states that a reasonable period for the other parties would be the time it takes for the court to rule on the matter plus four months from 19 September 2022 (the date the notice was due to take effect had an appeal against it not been lodged).

42. But there is nothing before me to corroborate the assertion that the appellant for ground (g), who is the owner of the property, has no legal authority to alter their own property. Without such evidence there is little to weigh in favour of extending the period for compliance.

43. So I am satisfied that the period for compliance specified in the notice does not fall short of what should reasonably be allowed and so the appeal on ground (g) fails.

#### **Conclusions**

44. For the reasons given above I conclude that Appeal A is allowed in part and dismissed in part, as set out in my Formal Decision.

45. For the reasons given above, I conclude that Appeal B should not succeed and I shall uphold the enforcement notice, in respect of the wrap around canopy on the side elevation of the property.

46. For the reasons given above I conclude that Appeal C should succeed in part only, and I will grant planning permission for the awnings on the front elevation. But otherwise I will uphold the notice and refuse to grant planning permission in respect of the wrap around canopy on the side elevation of the property.

47. The requirement of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of section 180 of the Act.

#### **Formal Decision**

48. Appeal A is dismissed insofar as it relates to the wrap around canopy on the side elevation of the property. Appeal A is allowed insofar as it relates to the awnings on the front elevation. Planning permission is granted for the awnings

on the front elevation, at 330 – 332 Uxbridge Road, London W12 7LL, in accordance with the terms of the application, Ref 2022/00405/FUL, dated 11 February 2022, and the plans submitted with it, so far as relevant to that part of the development hereby permitted and subject to the following condition:

- 1) Notwithstanding drawing P100, revision 0, dated 11 February 2022, no part of the front awnings hereby approved shall be extended closer than 2.3 metres to the footway.
49. Appeal B is dismissed and the enforcement notice is upheld, insofar as it relates to the wrap around canopy on the side elevation of the property, as a result of my decision on Appeal C, below.
50. Appeal C is allowed insofar as it relates to the awnings on the front elevation and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the awnings on the front elevation, at 330 – 332 Uxbridge Road, London W12 7LL and subject to the following condition:
- 1) No part of the front awnings hereby approved shall be extended closer than 2.3 metres to the footway.
51. Appeal C is dismissed and the enforcement notice is upheld insofar as it relates to the wrap around canopy on the side elevation of the property and planning permission is refused in respect of the wrap around canopy on the side elevation of the property, at 330 – 332 Uxbridge Road, London W12 7LL on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*L Perkins*

INSPECTOR