



Appeal Decision

Site visit made on 15 July 2025

by **C Rafferty LLB(Hons), Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 11 August 2025

Appeal Ref: APP/X5990/C/24/3343183

195-197 Edgware Road, London W2 1ES

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Main Rudeini against an enforcement notice issued by City of Westminster Council.
 - The notice was issued on 21 March 2024.
 - The breach of planning control as alleged in the notice is without the requisite planning permission and within the last 10 years, the material change of use of the highway at the Star Street frontage of the Property from use for the passing of pedestrians to use for the provision of tables and chairs, free standing canvas barriers, and the installation of a fixed screen affixed to the building at ground floor level on the Star Street elevation of the Property, at the south-west end of the seating area.
 - The requirements of the notice are to:
 - 1) Cease use of highway (shown outlined and hatched red on Plan A) at the Star Street frontage of the Property for the provision of tables and chairs;
 - 2) Remove all tables and chairs and free-standing canvas barriers from the highway at the Star Street frontage; and
 - 3) Remove the timber-framed canvas screen positioned at the Star Street frontage, shown outlined by red lines on Photograph A.
 - The period for compliance with the requirements is 2 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). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is corrected by:
 - the insertion of the words “in connection with the adjacent café use” after the words “end of the seating area” at section 3 of the notice; and
 - the insertion of the words “in connection with the adjacent café use” after the words “provision of tables and chairs” at section 5 of the notice.
2. Subject to the corrections, 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 1990 Act (as amended).

Enforcement Notice

3. The breach of planning control as set out in the notice does not make it clear that the use of the land for the provision of tables and chairs, free standing canvas barriers, and the installation of a fixed screen is in connection with the café use at Nos. 195-197 Edgware Road. I can correct the notice to make this clear, and can do so without injustice to the appellant or the Council.

4. Similarly, the requirements of the notice do not make it clear that the provision of tables and chairs is in connection with the café use at Nos. 195-197 Edgware Road. I can correct the notice to make this clear, and can do so without injustice to the appellant or the Council.

Appeal on ground (c)

5. An appeal on ground (c) is brought on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, that those matters do not constitute a breach of planning control. The onus is on the appellant to make their case on the balance of probabilities.
6. The corrected enforcement notice outlines the alleged breach of planning control as the material change of use of highway land to use for the provision of tables and chairs, freestanding canvas barriers, and the installation of a fixed screen in connection with the adjacent café use of nos. 195-197 Edgware Road. Section 171A(1) of the Act is clear that carrying out development without the required planning permission constitutes a breach of planning control. Development is defined in s55(1) of the Act as including the making of any material change in the use of any buildings or other land.
7. The appellant states that the land subject to the enforcement notice is private land, providing land registry documentation to evidence private ownership of the area where the tables and chairs, barriers and screen are located. Accordingly, the appellant's case is that planning permission is not required for the use of the tables and chairs as they are not located on the highway and such use forms part of the use of the ground floor café.
8. However, even noting this ownership position, the Council states that the lawful use of this land is as part of the public highway. Indeed, prior to the alleged breach, this land would have been viewed as physically and functionally separate from the building at nos. 195-197 Edgware Road. It is situated outside of the building with no features to significantly differentiate it from the remainder of the surrounding footpath. Accordingly, this land would not have formed part of the same planning unit as the building at nos. 195-197 Edgware Road.
9. As part of the footpath, this land would have been used for the passing of pedestrians travelling along this section of Edgware Road. However, as a result of the alleged breach, it is now used in connection with the adjacent café, with customers spending time at the tables and chairs present for the consumption of purchased food and drink.
10. It is clear that as a matter of fact and degree there is a significant difference in the character and activities on this land when compared with the previous use. While the appellant refers to the pavement licensing regime, there is nothing substantive before me to suggest that such a licence is granted in respect of the appeal property. As such, I find that a material change of use has taken place without the requisite planning permission.
11. With regard to the fixed screen alleged in the notice, the appellant asserts that this is not development. Case law has established that building operations comprise activities which result in some physical alteration to the land which has some degree of permanence. In this regard, three primary factors, or tests, are relevant to whether operations amount to development. They are size, permanence, and

physical attachment. No single factor is decisive, and any judgement will be a matter of fact and degree based upon the specific circumstances of the case.

12. I observed the screen during my site visit. In terms of size, it is a tall feature that projects out towards the footpath, such that by reason of its overall dimensions it is a notable and prominent feature at the site. The screen itself is not fixed to the ground. However, it is hooked in place and hangs on a bracket affixed to the external wall of the building, which appears to be purpose-built. Evidence before me suggests that, although the screen can be moved, it remains in place and is not packed away overnight. In addition, while I have no evidence as to what the screen weighs, I observed that it would reasonably require more than one person to safely manoeuvre it from the bracket. This lends a degree of permanence to the screen. Taking all of the above together, I find that the fixed screen as alleged in the notice constitutes development for which there is no grant of planning permission. As such, this matter constitutes a breach of planning control.
13. For the reasons given, the appeal on ground (c) therefore fails.

Appeal on ground (a)

14. An appeal on ground (a) is brought on the basis that planning permission ought to be granted for the breach of planning control stated in the notice. Where an appeal on ground (a) is duly made, an application for planning permission is deemed to have been made.

Main Issues

15. The main issues are the effect of the development on: highway safety; the setting of a nearby conservation area and listed buildings; and the living conditions of occupiers of surrounding properties, with particular regard to noise and disturbance.

Reasons

Highway safety

16. The appeal site forms part of the highway on Star Street, at the Edgware Road junction. This section of Edgware Road is made up of a range of commercial uses at ground floor level, with residential properties above. The character of Star Street is different, while commercial uses exist towards the Edgware Road junction, travelling southwest the street is notably more residential in nature. Nevertheless, I observed both streets to be well-used during my visit, with regular passage of pedestrians in both directions. The Star Street footpath is notably narrower and passing pedestrians must navigate elements of street furniture in the vicinity of the site, to include a postbox and signage pole.
17. Various measurements have been provided by the parties, including the overall pavement width, the width of the seating area with barriers and screen, and distances relating to the signage pole and postbox. Nevertheless, I observed the resulting footpath space at this section of Star Street to be particularly narrow during my site visit, restricted by the seating area, canvas barrier, and screen. Together with the signage pole and postbox, the development introduces additional obstacles to navigate on the footpath.

18. I note the evidence provided by the appellant, including photographs of the footpath in use, and measurements of a typical wheelchair/ buggy. However, given the busy nature of the immediate surrounds, it is likely that this section of the footpath will be in use throughout the day by multiple individuals travelling in both directions. With the development in place, the space to accommodate such two way movements is constrained, particularly if pedestrians are travelling in groups. Given the presence of the tables, chairs, and fabric barriers, the removal of the side screen would not assist in alleviating these concerns. Overall, the free flow and safe passage of pedestrians is impeded.
19. For the reasons given, I find that the development results in harm to highway safety. As such, it fails to comply with Policy SD6 of the London Plan 2021 and Policies 7, 25, 28, and 43 of the City of Westminster City Plan 2019-2040 insofar as they seek to ensure highway safety in town centres, prioritise the pedestrian environment, ensure walking links are not negatively impacted, and create a clutter free public realm.

Listed buildings; Conservation area

20. The appeal site is adjacent to the boundary of the Bayswater Conservation Area (the CA), the immediate section of which is defined by, and derives significance from, the Grade II Listed Buildings of the terraced properties on Star Street. These buildings reflect the traditional 19th century architecture that characterises the CA as a whole, with a notable consistency in external appearance and materiality.
21. The development contains a fixed screen separating the seating area from the remainder of Star Street. While the appellant states that it is removable, it nevertheless facilitates the material change of use alleged in the notice. Although the screen is modest, its placement on the footpath renders it notable in the streetscene. It is readily experienced from, and in the context of, the adjacent CA and Listed Buildings, falling within the setting of these heritage assets.
22. The screen has a flimsy and somewhat temporary look due to its materials, which in the context of the nearby CA and Listed Buildings, appear contemporary and at odds with the adjacent traditional development. Even noting its placement at the café building, its overall appearance fails to respect or reflect the predominant nature of built form along Star Street. Viewed from the north east, its projection interrupts views into the CA, impacting the ability to appreciate the Listed Buildings from this direction. Overall, I find the screen to result in harm to the setting of the CA and Listed Buildings, and thus the significance of these assets.
23. When considering the impact of development on the significance of a designated heritage asset, great weight should be given to the asset's conservation and any harm to, or loss of, the significance of a designated heritage asset from development in its setting should require clear and convincing justification. Decision makers are also required to have special regard to the desirability of preserving a listed building or its setting. I find the harm arising in this case to be less than substantial, such that it should be weighed against the public benefits of the development including, where appropriate, securing its optimum viable use.
24. Limited public benefits of the proposal have been put forward. It prevents the drifting of smoke and marks the boundary of the seating area. However, each of these benefits are modest in scale and thus attract limited weight. Even when taken together they would not outweigh the harm identified.

25. For the reasons given, the proposal would have a harmful effect on the setting of nearby listed buildings and CA. As such, it would fail to comply with Policy HC1 of the London Plan 2021 and Policy 39 of the City of Westminster City Plan 2019-2040 insofar as they seek to ensure development is sympathetic to heritage assets and their settings.

Living conditions

26. The upper floors of 195-197 Edgware Road are residential in nature, and many other residential properties exist nearby, particularly further south-west along Star Street. As such, the Council is concerned that the development could result in noise and disturbance to nearby residents, and suggests that the hours of use should be limited.
27. I agree that the development would result in noise. The use of the seating area would result in conversations between staff and customers, in addition to potential noise associated with moving tables and chairs. However, in addition to nearby Edgware Road being well-used by traffic, it has a range of commercial uses that suggest a night time economy. It is unlikely that additional noise associated with the development would cause disturbance when occurring at the same time as these other evening activities. Nevertheless, I agree with the Council that should such noise be unrestricted and occur at times when surrounding residents can reasonably expect peace and quiet, such as late in the evening or early in the morning, this would result in undue disturbance.
28. In this regard, the Council has suggested that the use of the seating area should be restricted to between the hours of 09:00 and 23:00. However, little justification for these precise hours have been provided. The appellant refers to the hours of operation of the café, being 08:00 – 23:30, and has provided a Noise Impact Assessment (NIA) to this effect. The assessment finds that the noise associated with the seating area is insignificant and inaudible above ambient sound levels up to 23:30, concluding no observed effect.
29. In the absence of a technical assessment to the contrary, I attach great weight to the NIA submitted by the appellant. Taken together with the nature of nearby Edgware Road and surrounding uses I find that, if restricted to the hours of 08:00 – 23:30, the noise associated with the development would not result in undue disturbance. Had the development been acceptable in all other manners, this could have been secured by way of a condition.
30. For the reasons given, subject to an appropriate condition, I find the development does not result in harm to the living conditions of surrounding residents with particular regard to noise and disturbance. As such, it complies with Policy D14 of the London Plan 2021 and Policies 7 and 33 of the City of Westminster City Plan 2019-2040 insofar as they seek to ensure development avoids significant noise impacts on health and quality of life and protects amenity.

Other Matters

31. I acknowledge other examples of similar outdoor seating areas with screening and barriers in the immediate locality. However, I have no information before me on the circumstances under which such areas may have been permitted. In any event, I must decide the appeal before me on its own, site-specific merits.

Conclusion

32. For the reasons given above, appeal (a) is therefore dismissed.

Overall Conclusions

33. The appeals on ground (c) and ground (a) are dismissed.

C Rafferty

INSPECTOR