



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/24/3343180 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 Edgware Road 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 the north-west end of the seating area.
 - The requirements of the notice are to:
 - 1) Cease use of highway at the Edgware Rd frontage of the Property for the provision of tables and chairs for use by customers of 195-197 Edgware Rd use, except to the extent that:
 - a) the 6 tables and 12 chairs must only be placed within the part of the highway shown outlined by green lines on Plan A, with the area to be enclosed by barrier banners only;
 - b) the 6 tables and 12 chairs must only be placed on the highway, between the hours of 09:00 and 23:00 daily;
 - c) the 6 tables and 12 chairs must only be used by customers of the Property;
 - d) no more than 6 tables and 12 chairs shall be placed on the highway. No additional tables, chairs, screens, or any other furniture or equipment shall be placed on the highway; and
 - e) the 6 tables and 12 chairs may only be placed on the highway until [one year after date of service]
 - 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 deletion of the word “use” after the words “195-197 Edgware Road” at section 5 of the notice.
2. Subject to the corrections, the appeal is allowed, the enforcement notice is quashed 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 development already carried out, namely the material change of use of the highway at the Edgware Road 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 the north-west end of the seating area in connection with the adjacent café use at 195-197

Edgware Road, London W2 1ES as shown on the plan attached to the notice and subject to the following condition:

1. The use hereby permitted shall only take place between the hours of 08:00 and 23:30;
2. The use hereby permitted shall be carried out in accordance with Plan A attached to this decision.

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. Paragraph 1 of section 5 of the notice contains a typo, stating “for use by customers of 195-197 Edgware Road use”. I can amend this to remove the superfluous second “use”. I 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; 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 Edgware Road, at the Star Street 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.

17. In this location, the Council measures the distance between the building edge at 195-197 Edgware Road and the footpath kerb to be 5.7 metres, and the area covered by the seating area of the development to be 1.6 metres. Thus, with the seating area of the development in place, there remains 4.1 metres of useable footpath space for the passage of pedestrians, well in excess of the Council's stated minimum requirement of 2 metres. Taken together with my observations during my visit of groups of pedestrians passing the site with ease, I find that ample, usable footpath spaces remains with the seating area in place, including the canvas barriers and fixed screen. As such, there is no impediment to the safe and efficient passage of pedestrians.
18. The Council agrees that the seating area does not obstruct the flow of pedestrians but raises concerns that any expansion or alteration of the seating area may have such an impact. However, I must decide the scheme as it appears before me. In any event, any planning permission granted for the proposed use would reference the plan attached to the enforcement notice, which clearly shows the dimensions of the seating area and the placement and amount of tables and chairs.
19. For the reasons given, I find that the development does not result in harm to highway safety. As such, it complies 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.

Living conditions

20. The upper floors of 195-197 Edgware Road are residential in nature, and many other residential properties exist nearby. 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.
21. 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. Nevertheless, in addition to 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. However, 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.
22. 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.

23. 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 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.
24. 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

25. The Council refers to the unauthorised use of the property for mixed use purposes. I understand this to be the subject of a separate investigation.

Conditions

26. The main parties have not expressly provided a list of conditions to be attached in the event that planning permission is granted. However, the steps required to be taken in the enforcement notice set out certain conditions to which I have had regard. The appellant has had sight of such conditions, and the opportunity to comment on them as part of the appeal process.
27. I have attached a condition restricting the hours during which the permitted use may take place, necessary in the interests of certainty and to safeguard the living conditions of occupiers of surrounding properties.
28. The Council has suggested conditions setting out the amount and positioning of the tables and chairs, in addition to restricting the placement of other items on the highway. However, these are not necessary as the permitted use is to be carried out in accordance with the plan attached to the notice, which demonstrates such matters. I have therefore attached a condition referring to this plan. A condition to ensure the tables and chairs are to be used by customers of the Property only is also not necessary due to the corrections made to the notice and, as such, the description of development set out in the permission.
29. The Council further suggested that the use is limited to one year to allow for assessment of any negative impact arising and to avoid provision of seating across the frontage of No. 199 Edgware Road. Given my findings on the main issues, there is nothing substantive before me to suggest that a trial run is needed to assess the effect of the development, nor is there anything to indicate the planning circumstances are likely to change at the end of the one year period. Permission is granted with reference to the plan attached to the notice, which outlines the area where such seating is permitted. Accordingly, I do not find it necessary to limit the permission to a period of one year.

Conclusion

30. For the reasons given above, appeal (a) is therefore allowed.

Overall Conclusions

31. The appeal on ground (c) is dismissed.

32. The appeal on ground (a) is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

C Rafferty

INSPECTOR

Plan A

This is the plan referred to in my decision dated: [11 August 2025]

by C Rafferty LLB(Hons), Solicitor

Land at: 195-197 Edgware Road, London W2 1ES

Reference: APP/X5990/C/24/3343180

Scale: Not to Scale

Plan A

