



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: 08 October 2025

Appeal Ref: APP/X5990/C/24/3351656

Ground Floor, 107 Edgware Road, London W2 2HX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Ms Helen Gordon against an enforcement notice issued by City of Westminster Council.
 - The notice was issued on 21 August 2024.
 - The breach of planning control as alleged in the notice is without the requisite planning permission and within the last 4 years, the installation of an external side partition screen, as shown outlined within the red dotted lines in attached Photograph A ("the Unauthorised Works").
 - The requirements of the notice are to:
 - 1) Remove the external partition screen affixed to the Property and any associated fixtures and fittings (as shown outlined in red in attached Photograph A);
 - 2) Following compliance with Step 1), make good any damage caused by the installation and/or removal of the partition screen; and
 - 3) Following compliance with Steps 1) and 2), remove any resulting waste materials and detritus from the Property.
 - The period for compliance with the requirements is: one month
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), and (f) 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. 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.

Applications for costs

2. An application for costs was made by Ms Helen Gordon against the Council. This application is the subject of a separate decision.
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Preliminary Matters

4. The appeal was originally made on grounds (a) and (f) only. However, the appellant's evidence raised points that amounted to a ground (c) appeal. The main parties were given the opportunity to comment on this, and the appeal will now also proceed on ground (c).

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 enforcement notice outlines the alleged breach of planning control as, without the requisite planning permission, the installation of an external side partition screen at the appeal property. 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 carrying out of building operations in, on, over or under land, with building operations including additions to buildings.
7. The appellant states that the land subject to the enforcement notice is a private forecourt, between two adjacent units in the same ownership, and that development on private land is not unlawful if it does not require planning permission or inherently affect amenity. In this regard, the appellant has provided an email from the Council in 2002, acknowledging that the forecourt had not been in use for the passing of pedestrians for 10 continuous years at that time. The appellant also makes general reference to a range of case law, to which I have had regard.
8. Nevertheless, the notice relates to the installation of the side partition, and 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.
9. 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 is affixed to the external wall of the building and, although it seems that the screen can be moved, the evidence before me suggests that 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. 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.
10. The appellant further references the position at the appeal site, prior to their acquisition of the unit, and has provided photographs showing similar enclosures and partitions at the site in 2012. However, limited further information is provided and this does not establish that the matters do not constitute a breach of planning control.
11. For the reasons given, the appeal on ground (c) therefore fails.

Appeal on ground (a)

12. 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

13. The main issues are the effect of the development on: the character and appearance of the area; and highway safety.

Reasons

Character and appearance

14. The appeal site is the forecourt of the ground floor unit at No. 107 Edgware Road, currently in use as a café, with tables and chairs on the forecourt in connection with this café use. Edgware Road reads as a wide, open street defined by a mix of uses. It comprises a range of ground floor commercial units with varied facades and residential uses above, which retain a more traditional external appearance through the consistent use of red and white brick.
15. The development is the installation of a side partition screen at the south-eastern end of the appeal property, which extends to enclose the seating area at this side. It is coloured black and white, with a sizeable transparent section allowing views into the adjacent seating area when travelling north-west along the road.
16. The footpath and forecourts of this section of Edgware Road feature a range of street furniture, advertisement placards, and other development. This includes seating and sale areas to the front of commercial units, some of which are bookended by projecting side partitions. The ground floor facades of the surrounds are therefore varied in design and materials. As such, while the materials of the development may appear at odds with the traditional upper floors, in the context of the eclectic street level, they do not appear out of place.
17. Nevertheless, due to its height and projection, the development is a prominent addition to the street, readily visible from Edgware Road and drawing attention in the immediate surrounds. It is not the only feature of this kind in the vicinity. However, the other forecourt features maintain the largely open feel of this part of Edgware Road. They are set back from structures on the adjacent footpath, retaining a legibility to the street and ensuring no sense of clutter.
18. By contrast, the appeal site lies by a particularly busy section of the footpath, with a sizeable bin, bus stop shelter, and kiosk in close proximity. I acknowledge that the evidence suggests the use of the forecourt area for the placement of table and chairs is immune from enforcement action, and would likely remain without the development. However, the addition of the side partition screen results in further, sizeable feature at this section of the street, resulting in visual clutter and creating an unduly busy and overdeveloped feel to this section of Edgware Road. Overall, it is at odds with the otherwise wide, open feel of the immediate vicinity and failing to respect or reflect this to the same degree as similar development nearby.
19. For the reasons given, the proposal would have a harmful effect on the character and appearance of the area. As such, it would fail to comply with Policies 7, 38, 40, and 43 of the City of Westminster City Plan 2019-2040, the guidance of the Westminster Way Public Realm Strategy Design Principles and Practice, and the provisions of the Framework insofar as they seek to ensure development has regard to the character and appearance of the area, adjacent buildings and the

spaces around and between them, and the pattern and grain of existing streets, and that development contributes to a clutter-free public realm.

Highway safety

20. The notice alleges that the development has been installed over the public highway, causing permanent obstruction and failing to secure good pedestrian movement. While the appellant alleges that the site is private land, the Council maintains that spaces in front of neighbouring properties to either side of the site remain part of the public highway.
21. In any event, regardless of whether these spaces, including the site forecourt, are still part of the public highway, it remains that the evidence suggests the use of the forecourt area for the placement of table and chairs is immune from enforcement action. Even without the presence of the side partition, this part of the street would likely remain obstructed by these features. As such, pedestrian movement and indeed the movement of any persons or machinery tasked with cleaning this section of the street, would remain interrupted as a result.
22. The side partition does not project further than the forecourt area where the table and chairs are placed, such that it does not further impede on the useable pedestrian passing space on the street. Its thin nature also ensures that it does not cause a further undue obstruction to the immediate south-east of the site.
23. For the reasons given, I find that the development does not result in harm to highway safety. As such, it complies with Policies T1 and T2 of the London Plan 2021, Policies 7, 24, 25, 28, and 43 of the City of Westminster City Plan 2019-2040, the guidance of the SPD, and the provisions of the Framework 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.

Other Matters

24. The appellant references an alternative scheme, and has provided drawings in this regard. However, it appears that the scale and positioning of the side partition would remain largely the same, such that the planning harm identified to the character of the area due to visual clutter would remain.

Conclusion

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

Appeal on ground (f)

26. An appeal on ground (f) is brought on the basis that the requirements of the notice exceed what is necessary. Section 173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve. They are either: (a) remedying the breach of planning control; or (b) remedying any injury to amenity which has been caused by the breach.
27. Section 173(4) is clear that a notice can remedy the breach of planning control by: making the development comply with the terms 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. Given

that the requirements of the enforcement notice are to remove the development and all resulting materials, the purpose of the notice is to remedy the breach of planning control.

28. The appellant argues the steps required by the notice exceed what is necessary. In this regard they refer to the alternative scheme. However, I have examined the planning merits of this above and found that it would still result in harm.
29. For these reasons, the above steps suggested by the appellant would not remedy the breach of planning control. I observed the site during my visit, and noted the presence of the development identified in the enforcement notice. From my observations the only way to remedy the breach would be to remove the development in its entirety, as outlined in the requirements of the notice. Given the purpose of the notice, the requirements are not therefore excessive.
30. The appeal on ground (f) therefore fails.

Overall Conclusion

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

C Rafferty

INSPECTOR