

Item No.

Responsible Officer: Director of Planning, Regeneration and Public Realm

Address: The Great Western P.H., Dawley Road, Hayes, UB3 1NF

Ward: Pinkwell

LBH Ref No: ENF/382/23

**NOTE FOR
PUBLICATION**

**This report contains
confidential or exempt
information**

This item is exempt from publication as it contains information which a) is likely to reveal the identity of an individual and b) contains information which reveals that the authority proposes to give, under an enactment, a notice under or by virtue of which requirements are imposed on a person. The authority believes that the public interest in withholding the information outweighs the public interest in disclosing it (exempt information under paragraphs 2 and 6(a) of Part 1 of Schedule 12A to the Local Government (Access to Information) Act 1985 as amended).

Purpose of Report

To seek the authority for the issue of Enforcement Notice(s) in respect of the unauthorised erection of a side canopy structure at The Great Western P.H., Dawley Road, Hayes, UB3 1NF.

1.0 RECOMMENDATIONS

- 1.1 That the Council resolves to release their decision and the reasons for it outlined in this report into the public domain, solely for the purposes of issuing the formal notice(s) to the individual(s) concerned.**
- 1.2 That Officers, having regard to the provisions of the Hillingdon Local Plan: Part One - Strategic Policies (November 2012), the Hillingdon Local Plan: Part Two - Development Management Policies (2020), and all other material planning considerations in accordance with Section 172 of the Town and Country Planning Act 1990 (as amended), should grant authority for the issuing of Enforcement Notices in respect of the following breach of planning control:**

Without planning permission, the unauthorised erection of a side canopy structure at The Great Western P.H., Dawley Road, Hayes, UB3 1NF (shown in the approximate position hatched in blue on the site plan) ("the breach").

1.3 The Land Affected:

The Great Western P.H., Dawley Road, Hayes, UB3 1NF ("the Land") as shown edged red on the attached plan.

1.4 That the Enforcement Notice(s) requires the following steps to be undertaken within two (2) calendar months of the date the notice(s) takes effect:

- (i) Demolish and remove the side canopy structure shown in the approximate position hatched in blue on the site plan.
- (ii) Remove from the land all debris, items, fixtures and fittings, plant and machinery resulting from compliance with point (i) above.

1.5 That the reasons for issuing the Enforcement Notices are as follows;

- a) Under the provisions of Section 55 (1) of the Town and Country Planning Act 1990 (as amended) the side canopy structure constitutes development for which planning permission has not been granted.
- b) The canopy, due to its size, design and proximity to No. 2A Shepiston Lane, results in increased noise, activity and disturbance from customers, including late into the evening, to the detriment of the amenities of the occupiers of the property. The development is therefore considered to be contrary to Policy DMHB 11 of the Local Plan: Part 2 - Development Management Policies (2020), paragraph 130 (f) of the NPPF(2021) and Policies D3 and D14 of the London Plan (2021).
- c) It appears to the Council that the above breach of planning control has occurred within the last four years, the development in question has been substantially completed less than four years ago.
- d) The Council does not consider that planning permission should be given, because planning conditions could not overcome these objections to the development.

- 1.6** Expediency has been considered in accordance with the Hillingdon Local Plan: Part One - Strategic Policies (November 2012), the Hillingdon Local Plan: Part Two - Development Management Policies (2020) and does not accord with the supplementary guidance.
- 1.7** That delegated powers be given to the Director of Planning, Regeneration and Public Realm to prepare the notice and associated plans and specifications including any alterations and amendments necessary to facilitate effective enforcement action.
- 1.8** In the event of non-compliance, the Borough Solicitor, in conjunction with the Director of Planning, Regeneration and Public Realm be authorised to take all necessary proceedings, including direct action, to ensure compliance with the Enforcement Notice(s).

2.0 BACKGROUND

- 2.1** The subject of this report relates to a two-storey public house called “The Great Western” located at the junction of Dawley Road and Pinkwell Lane. To the East, South, and West of the site, there is predominantly two-storey semi-detached and terrace residential properties. To the north, there are a mixture of commercial/residential terrace properties. The property has a pub garden partly laid to grass and part hard surfaced closest to the main building. There are approximately ten parking spaces to the front of the site.

2.2 Relevant Planning History:

Reference	Proposal	Date	Decision
42682/APP/2023/3289	(Part Retrospective application) for reduced size of single storey side canopy roof with timber poles to support the canopy roof for the pub.	02-01-24	Refusal
42682/APP/2023/3243	Retrospective planning application for a single storey side canopy roof with 12 timber poles to support the canopy roof for the pub.	02-01-24	Refusal
42682/APP/2023/2128	Retrospective planning application for a single storey side canopy roof with 12 timber poles to support the canopy roof for the pub.	10-10-23	Refusal
42682/APP/2018/35	Erection of a single storey freestanding timber canopy structure to existing Public House	27-02-18	Refusal

42682/APP/2017/3248	Canopy to side and landscaping alterations	09-11-17	Refusal
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2.3 Relevant Planning Enforcement History:

ENF/382/23	Unlawful erection of a roofed garden structure	Ongoing (subject of this report)
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- 2.4 On 23rd June 2023, the Council's Planning Enforcement Team received a report stating that a timber framed enclosure is being built in the pub garden and is nearly complete. It appears they will be installing a roof soon without planning permission.
- 2.5 On 27th June 2023, an unscheduled site inspection was completed by a Planning Enforcement Officer. The inspection established that a timber framed structure, with a flat roof has been erected to the side of the public house and part of the flat roof is overhanging the boundary fence at no. 2A Shepiston Lane.
- 2.6 On 28th June 2023, a warning letter was sent to the freeholder and leaseholder of the property, advising to either apply to retain the development or to remove it in its entirety within 21 days from the date of the letter.
- 2.7 On 18th July 2023, retrospective application reference 42682/APP/2023/2128 was received for a single storey side canopy roof with 12 timber poles to support the canopy roof for the pub. On 10th October 2023, the application was refused.
- 2.8 On 3rd November 2023, the owners and their agent were advised by email that the unauthorised structure must be removed by 13th November 2023 or formal enforcement action will follow.
- 2.9 On 8th November 2023 and 13th November 2023, two further retrospective applications reference 42682/APP/2023/3243 and 42682/APP/2023/3289 were received in an attempt to regularise the breach of planning control. Both retrospective applications were refused on 2nd January 2024.
- 2.10 No further correspondence has been received from the owner or his agent. Therefore, having reviewed the case it is considered that the side canopy structure at The Great Western P.H., Dawley Road, Hayes, UB3 1NF is detrimental to the adjoining neighbours, and therefore constitutes a significant breach of planning control. Accordingly, it is recommended that an Enforcement Notice now be served on all parties considered to have a legal interest in the land to remedy the breach in planning control.

3.0 KEY ENFORCEMENT ISSUES

- 3.1 The expediency of enforcement action has been assessed with reference to guidance contained in The National Planning Policy Framework (NPPF) July 2021.

3.2 Expediency has also been assessed with regard to the Statutory Development Plan (SDP), which for the Borough currently consists of the following documents:

- The Local Plan: Part 1 - Strategic Policies (2012)
- The Local Plan: Part 2 - Development Management Policies (2020)
- The Local Plan: Part 2 - Site Allocations and Designations (2020)
- The West London Waste Plan (2015)
- The London Plan - (2021)

The National Planning Policy Framework (NPPF) (2021) is also a material consideration in planning decisions, as well as relevant supplementary planning documents and guidance.

The policies that are relevant to this report include the following;

The Local Plan: Part 2 - Development Management Policies (2020)

Policy DMHB 11: Design of New Development

- 3.3 Policy DMHB 11 of the Hillingdon Local Plan: Part Two - Development Management Policies (2020) sets out design guidance for all new development in the borough. Part B of the policy states 'development proposals should not adversely impact on the amenity, daylight and sunlight of adjacent properties and open space'.
- 3.4 Paragraph 130 (f) of the NPPF (2021) states that new development should seek to 'create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience'.
- 3.5 The constructed canopy is approximately 3m high, 10.5m deep, 10.1m wide and sited immediately adjacent to the residential property at No.2A Shepiston Lane. The structure is open ended and is held up by 12 timber posts. The canopy is used as an outdoor eating, drinking and smoking area from 11am to midnight, Monday to Sunday. Due to its sheltered nature, the canopy can be used in varying weather conditions. This further allows for the space to be used all year round, resulting in increased noise and disturbance to neighbours from the site.
- 3.6 No noise insulation strategy or noise assessment has been provided to support the use to suggest that the development has an acceptable noise impact on neighbours. Nor has information been submitted to suggest that there is no increase in activity or general disturbance. Overall it is therefore considered that due to its location, size and the additional increases in noise, people movements, activity and general disturbance at the site, the development would have an adverse impact on the amenities of adjoining neighbours, in particular No.2A Shepiston Lane, which is contrary to Policy DMHB 11 of the Local Plan:

Part 2 - Development Management Policies (2020), paragraph 130 (f) of the NPPF(2021) and Policies D3 and D14 of the London Plan (2021).

- 3.5 It appears to the Council that the above breach of planning control has occurred within the last four years, the development in question has been substantially completed less than four years ago.
- 3.6 The Council does not consider that planning permission should be given, because planning conditions could not overcome these objections to the development.

4.0 OBSERVATIONS OF THE BOROUGH SOLICITOR

- 4.1 When making their decision, officers must have regard to all relevant planning legislation, regulations, guidance, circulars and Council policies. This will enable them to make an informed decision in respect of an application or recommendation to serve a notice.
- 4.2 In addition, Officers should note that the Human Rights Act 1998 (HRA 1998) makes it unlawful for the Council to act incompatibly with Convention rights. Decisions by the Committee must take account of the HRA 1998. Therefore, Officers need to be aware of the fact that the HRA 1998 makes the European Convention on Human Rights (the Convention) directly applicable to the actions of public bodies in England and Wales. The specific parts of the Convention relevant to planning matters are Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).
- 4.3 Article 6 deals with procedural fairness. If normal procedures are followed, it is unlikely that this article will be breached.
- 4.4 Article 1 of the First Protocol and Article 8 are not absolute rights and infringements of these rights protected under these are allowed in certain defined circumstances, for example where required by law. However any infringement must be proportionate, which means it must achieve a fair balance between the public interest and the private interest infringed and must not go beyond what is needed to achieve its objective.
- 4.5 Article 14 states that the rights under the Convention shall be secured without discrimination on grounds of 'sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status'.
- 4.6 The power to issue an Enforcement Notice is discretionary and should only be used where the Local Planning Authority are satisfied that there has been a breach or breaches of planning control. It must also be satisfied that it is expedient to issue the Notice having regard to the provisions of the Development Plan and to any other material considerations. Consequently the Council must decide based on the particular circumstances of each individual

case the question of expediency. The decision to take enforcement action must be reasonable and not based on irrational factors or taken without proper consideration of the relevant facts and planning issues or based on non-planning grounds. Enforcement action should not be taken purely to regularise the situation.

5.0 OBSERVATIONS OF THE DIRECTOR OF FINANCE

- 5.1 The costs of issuing an Enforcement Notice are not significant, but costs of up to £5,000 may be incurred if an appeal is made against the notice lodged and a public enquiry results. The costs of an appeal to be heard by written representations or hearing are negligible. At the present time, there is satisfactory provision within the enforcement budget with which to fund these likely costs.

6.0 CONCLUSION

- 6.1 The unauthorised development does not accord with the provisions of Policy DMHB 11 of the Local Plan: Part 2 - Development Management Policies (2020), paragraph 130 (f) of the NPPF (2021), Policies D3 and D14 of the London Plan (2021).
- 6.2 Consequently, it is recommended that an Enforcement Notice(s) be issued in accordance with Section 172 of the Town and Country Planning Act 1990 (as amended).

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Authorised by:



Desmond Adumekwe
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Date: 8th April 2024