

Appeal Statement

Site: Flat 2, 80 Greencroft Gardens, London, NW6 3JQ

Alleged breach of planning control:

“Installation of roller shutters and single-pane bi-folding doors to rear elevation of the lower maisonette, and installation of glass balustrades around the lower floor rear sunken garden.”

Reasons for issuing the notice:

“The roller shutters and glass balustrades, by reason of their design, materials and location, are considered to be unsympathetic and obtrusive features that are harmful to the character and appearance of the host building and conservation area, contrary to policies D1 (Design) and D2 (Heritage) of the London Borough of Camden Local Plan 2017.”

Requirements of the Notice.

- 1) *“Completely remove the roller shutters to rear elevation of the lower maisonette at ground floor and lower ground floor level, and*
- 2) *Completely remove the glass balustrades around the sunken garden.”*

Period of Compliance

6 Months after the notice takes effect.

Procedural and legal point

The Notice includes in its allegation the single-pane bi-folding doors to rear elevation. However, the requirements of the Notice do not require their removal. Therefore, if the Notice is upheld then planning permission would automatically be granted for the single-pane bi-folding doors to rear elevation.

The appeal is made under grounds (a), (c) & (g).

1.0 Appeal Site and Location

1.1 The appeal site is a two-level maisonette, which occupies part of the ground floor and the entirety of lower ground floors of the five-level building. A one-bedroom flat is also located on the ground floor; however, this flat does not extend to the building's rear elevation. The building accommodates seven flats in total. The maisonette has three bedrooms; two of these being on the lower ground floor, with the third bedroom and open plan living, kitchen and dining area occupying the ground floor.

1.2 The appeal property is located within the South Hampstead Conservation Area.

2.0 Relevant History

2.1 Planning permission was refused 28th February 2023 (planning ref: 2022/5431/P), for: *"Installation of roller shutters and single-pane bi-folding doors to rear elevation of the lower maisonette, and installation of glass balustrades around the lower floor rear sunken garden."*

2.2 Planning permission was granted 17th April 2018 (planning ref: 2016/2822/P), for: *"Extensions to the property at basement, ground and roof levels including the provision of no.2 front lightwells, rear sunken garden and rear terraces to facilitate sub-division from 4x into 7x self-contained residential units (C3)."*

2.3 Planning permission was granted 3rd December 2013 (planning ref: 2013/5966/P), for: *"Erection of single storey rear extension at ground floor level, two dormer roof extensions and inset terrace at roof level and new entrance door on side elevation at ground floor level to create 2 x self-contained flats to ground floor and roof space (Class C3)."*

3.0 Planning Policy Context

3.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 (PCPA 2004) provides: *"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise."*

3.2 Paragraph 10 of the NPPF (2021) states; *"So sustainable development is pursued in a positive way, at the heart of the Framework is a presumption in favour of sustainable development (paragraph 11)."*

3.3 Paragraph 11 states; *"Plans and decisions should apply a presumption in favour of sustainable development."*

3.4 Camden Local Plan (adopted 2017) Policy D1 seeks to secure high quality design in all development and ensure development responds to local context. It also explains that the Council will resist development that would cause harm to the appearance of the area.

3.5 Policy D2 seeks to preserve and enhance heritage assets and their settings, including conservation areas.

4.0 Ground (a) appeal

4.1 Planning Assessment

4.2 The Council's Design Policy D1 of the Local Plan requires development to be of the highest architectural and urban design quality, which improves the function, appearance and character of the area. Development should respect the local area in context and character; preserve or enhances the historic environment and heritage assets; comprise details and materials that are of high quality and complement the local character; integrate well with the surrounding streets; respond to natural features and preserves gardens and other open space; incorporate high quality landscape design and maximise opportunities for soft landscaping, preserve strategic and local views. Policy D2 seeks to preserve and enhance heritage assets and their settings, including conservation areas.

4.3 It is accepted the roller shutters when closed obscure the fenestration of the building, as seen from the rear. However, the roller shutters are now only intended to provide security when the family are not at home. Therefore, the roller shutters would only be in place for short periods of the year therefore, only having a minimal impact on the character and appearance of the building and the area, as seen from the rear, when considered over the duration of a calendar year. In this respect the appellant would accept a planning condition that would only allow the shutters to be in place for 35 days in a calendar year.

Other material considerations – prevention of crime and health

4.4 Section 38(6) of the Planning and Compulsory Purchase Act 2004 (PCPA 2004) provides: *'If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan **unless material considerations indicate otherwise.**'*

4.5 There was a crime incidence on 13th July, where a person attempted to enter the property via a break in (crime reference No.2323535/23). The roller shutters deter break ins, which is a problem in the road and the area generally – the crime report reference emailed by the Police has been submitted as part of the appeal documentation.

4.6 The appellant also suffers from anxiety, which is demonstrated by the letter dated 20th July 2023, from the applicants doctor. The requirement to remove the roller shutters would exacerbate the applicants anxiety. The appellant would prefer the roller shutters to be able to be used when ever she wanted, to best manage her anxiety of break ins. However, allowing the roller shutters to be in place for 35 days in a calendar year would help with her anxiety. The impact on the appellant is a material consideration.

Other material considerations - the fall-back position

4.7 Section 38(6) of the Planning and Compulsory Purchase Act 2004 (PCPA 2004) provides: *'If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan **unless material considerations indicate otherwise.**'*

4.8 It is the appellants case that a significant material consideration is the “fall-back” position of the roller shutters being able to be installed internally because this would not constitute development.

4.9 In the Court case *Mansell v Tonbridge and Malling BC [2017] EWCA Civ 1314*, the Court of Appeal upheld a judgment of the High Court that permitted development rights can properly be taken into account as a fall-back position where some alternative form of development is then proposed.

4.10 The judgment confirmed the legal considerations in determining the materiality of a fallback position as a planning judgment were:

- the basic principle is that for a prospect to be a “real prospect”, it does not have to be probable or likely: a possibility will suffice;
- there is no rule of law that, in every case, the “real prospect” will depend, for example, on the site having been allocated for the alternative development in the development plan or planning permission having been granted for that development, or on there being a firm design for the alternative scheme, or on the landowner or developer having said precisely how he would make use of any permitted development rights available to him under the GPDO. In some cases that degree of clarity and commitment may be necessary; in others, not. This will always be a matter for the decision-maker’s planning judgment in the particular circumstances of the case in hand.

4.11 This judgement related to permitted development fall-back positions, but the same principle applies in this case for works that do not constitute development.

4.12 The fall-back position is a realistic prospect (it has been confirmed by the manufactures that the same roller shutter mechanism can be installed internally) and would allow the roller shutters to be in place every night and all other periods the family required security. Whilst the impact on the character and appearance of the building and locality would be less than the current position, it would have a greater impact overall because of the duration the roller shutters would in place over a calendar year – the appellant is willing to accept a planning condition restricting the number of days the roller shutter can be used to provide the stated benefit.

The glass balustrade

4.13 The glass balustrades atop the sunken garden have a high-quality contemporary form. The fact the glass is transparent ensures the feature has very minimal light weight impact on the character and appearance of the area, ensuring it preserves the character and appearance of this part of the South Hampstead Conservation Area.

5.0 Ground (c) appeal – the alleged breach does not constitute a breach of planning control.

5.1 The glass balustrade is permitted development under Class A of Part 2 of Schedule 2 of the General Permitted Development Order 2015 (as amended).

5.2 This permits the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure so long as the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level (when not adjacent to a highway).

5.3 The glass balustrade is erected at ground level and does not exceed 2 metres in height, therefore, qualifies as being permitted development.

5.4 The roller shutters are only in place for short period of time, meaning the action of having a roller shutter in place is not development because it would be considered a temporary structure - it should be noted that the housing element of the roller shutter has not been alleged in the breach of planning control.

6.0 Ground (g) appeal.

6.1 The period of compliance stated in the Notice is 6 months.

6.2 It is the appellants case the period of compliance is too short because it takes considerable time for the work to be tendered for, builders to be available (in times when builders are in short supply).

6.3 The appellant therefore requests 8 months to comply with the Enforcement Notice.