

Date: **6/11/2023**
Your ref: **APP/X5210/C/23/3326337**
Our ref: **EN23/0105**
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Dear Ben White

Appeal by Mrs Sarah Abergl.

Site: 80 Greencroft Gardens, London, NW6 3JQ.

Appeal against an Enforcement Notice dated 19th June 2023 (ref EN23/0105) for :

Without planning permission: Installation of roller shutters, single-pane bi-folding doors to rear elevation of the lower maisonette and installation of glass balustrades around the lower floor rear sunken garden.

In summary, the EN was issued for the following reasons :

1. The development has occurred within the last 4 years ; and
2. The negative impact of the roller shutters and glass balustrades on the character and appearance of the host building and conservation area.

Therefore the roller shutters and glass balustrade elements are unacceptable.

The EN requires that both elements are removed within 6 months.

The appellants have appealed on grounds a, c and g.

1.0 Summary

The Council's case is set out in detail in the attached Officer's Delegated Report, and it will be relied on as the principal Statement of Case. The report details the application site and surroundings, the site history and an assessment of the proposal. A copy of the report was sent with the questionnaire. In addition to the information sent with the questionnaire, I would

be pleased if the Inspector could also take into account the following information and comments before deciding the appeal.

Site and designations

- 1.1 This building is noted as being a positive contributor within the South Hampstead Conservation Area
- 1.2 It is a 5-storey, mansion block building on the north side of Goldhurst Terrace. The building accommodates seven flats in total and the proposal relates to a two-level maisonette, which occupies part of the ground floor and the entirety of lower ground floor.
- 1.3 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.
- 1.4 The ground floor has access to/ownership over the ground level garden located to the rear of the building. An outdoor staircase provides access between the lower garden and ground level garden.
- 1.5 It is understood side passages to the side elevations of the building are gated to restrict general access to the rear garden.
- 1.6 A pergola (which is currently being considered for retrospective planning permission (2022/4478/P)) is located at the rear of garden, adjacent to the site's rear boundary with properties on Canfield Gardens.

History

- 1.7 Planning Permission was refused on 28 February 2023 for the reason below:

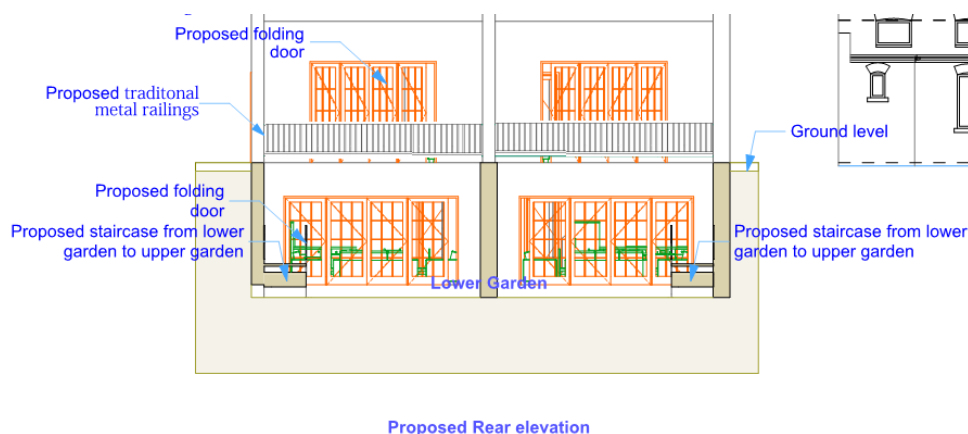
The proposed roller shutters and glass balustrades, by reason of their design, materials and location, are considered to be unsympathetic and obtrusive features that are harmful to the character and appearance of the host building and conservation area, contrary to policies D1 (Design) and D2 (Heritage)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

Notice was given on the decision notice that Enforcement Action had been authorised and was to proceed. The EN was subsequently issued on 19/6/23.

- 1.8 The image below shows the unauthorised shutters and glass balustrade refused planning permission 28/2/23. The unauthorised single-pane bi-folding doors are not included in the Enforcement Notice.



1.9 The site's full history is set out in the delegated report. Two planning decisions are of relevance. In summary, planning permission was granted on 14/4/ 2018 (2016/2822/P) for alterations and extensions for conversion from 4 to 7 flats and then on 29/11/ 2018 (2018/3103/P) permission was granted for variations. The varied plans approved differ in relation to: 4 x wider doors with bi-fold, introduction of roller shutters and installation of glass balustrades. The lower floor rear elevation as approved firstly is shown in the image below.



Status of Policies and Guidance

2.1 *The London Borough of Camden Local Plan 2017 (the Local Plan) was formally adopted on the 3 July 2017 as the basis for planning decisions and future development in the borough. The relevant Local Plan policies as they relate to the reason for refusal are:*

D1 – Design

2.2 The Council also refers to supporting guidance documents. The Camden Planning Guidance (CPG) was adopted following the adoption of the Camden Local Plan in 2017. There have been no changes to the relevant policies since the application was refused.

3. Comments on grounds of appeal

Ground a) that planning permission should be granted.

3.1 The appellant's statement is summarised in italics and addressed below:

1. *The Appellant accepts the roller shutters obscure the fenestration of the building, as seen from the rear. The Appellant has sought to confirm the roller shutters are only intended to be closed when the occupants are not at home and therefore the shutters would only be closed for short periods of the year, and therefore correspondingly the shutters would only have minimal impact on the character and appearance of the area. The applicant has offered a condition that would only allow the shutters to be in place for 35 days in a calendar year.*

Response to point 1: In this instance it is not reasonable to make assumptions on the duration the roller shutters would remain closed. The four roller shutters can also be operated independently of each other, and the degree of harm varies depending on whether some or all of the roller shutters are closed.

A 35 day per calendar year limit on the period of the roller shutters being closed, is not considered practical as a means of being enforced by Council. There is no practical way Council could effectively monitor the number of days the roller shutters would remain closed in a calendar year.

Notwithstanding, a duration/time limiting condition is not considered adequate in mitigating the harm the roller shutters cause to the host building and conservation area. The four metal enclosures of the roller shutters, positioned atop the ground floor and lower ground floor rear elevation openings, are permanently in place and cause enduring harm to the appearance of the host building and conservation area.

Overall, a duration/time limiting condition would not be appropriate in this instance of adequately mitigating the harm of the roller shutters.

2. *The Appellant has noted that a crime incident occurred at the property on 13th July, where an intruder attempted to enter the property via a break in (crime reference No.2323535/23). The Appellant attests that the roller shutters deter break ins, which is a problem in the road and the area generally.*

The Appellant also notes that the applicant suffers from anxiety (as confirmed in a medical letter). The Appellant submits that the requirement to remove the roller shutters would exacerbate the applicant anxiety. The applicant would prefer to operate the roller shutters at their discretion, however a condition allowing the roller shutters to be in place for 35 days in a calendar year would help the applicant's anxiety.

Response to point 2:

The medical letter submitted in relation to the applicant's anxiety, does not contain sufficient detail to ascertain whether the anxiety manifests as a mental impairment which has substantial and long-term adverse effects on the applicant's ability to carry out normal day-to-day activities. It is therefore not possible to conclude that the applicant's anxiety qualifies as a 'disability' and 'protected characteristic' in relation to the Public Sector Equality Duty.

Section 149(1) of the Equality Act 2010 requires a public authority, in the exercise of its functions, to have due regard to the need to -

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.*

Sections (3) and (4) of the Act further state that:

(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;*
- (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;*
- (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.*

(4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

This Public Sector Equality Duty is also reflected in the development plan itself, with policy C6 for example promoting fair access and removing barriers that prevent everyone from accessing the same facilities and opportunities.

Notwithstanding the particulars of the applicant's anxiety, any benefits of the roller shutters in deterring break ins are not considered to justify the harm the roller shutters cause to the character and appearance of the host building and conservation area. It is understood there are barriers/gates in the side passages between the host building and the site's side boundaries, as well as security cameras positioned at the exterior of the host building, which would restrict access to the rear of the property and deter break ins. These measures alone, along with possible others which could be implemented as permitted development (e.g. tinting of the windows), are considered sufficient in limiting the risk of break ins to the property.

3. *The appellant notes that 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.'

The appellant submits 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. The appellant references caselaw under Mansell v Tonbridge and Malling BC [2017] EWCA Civ 1314, in support of using a fall-back position as a material consideration.

The appellant considers the fall-back position is a realistic prospect (having confirmed with manufacturers 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. The appellant considers that 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 – with the applicant being willing to accept a planning condition restricting the number of days the as-built roller shutters (installed externally to the building) can be used.

Response to point 3

The appellants "fall back" position of installing the roller shutters internally, the visual impact of the roller shutters being installed internal to the openings, is considered to be significantly less than the visual impact of the existing, externally built roller shutters, such that the effects of internal versus external shutters are not comparable. Internal built shutters would be obscured by the glazing and other detail in the fenestration and would have a similar effect to curtains or blinds, which are entirely common in residential properties. Planning permission should not be given on the basis that the shutters could be installed internally when there are no similar comparable effects to installing external shutters.

4.0 Ground (c) - that the alleged breach does not constitute a breach of planning control:

Glass Balustrades

- 4.1** In paragraphs 5.1 to 5.3 of the Appellant's statement it is claimed that the glass balustrade that has been installed at ground floor level does not require planning permission as it is permitted under Class A of Part 2 of Schedule 2 of the General Permitted Development Order 2015 (as amended).

Council's response:

- 4.2** The Council contends that the glass balustrade does not benefit from permitted development as it is subject to planning conditions. The current 'as-built' scheme does not accord with either condition (3) or condition or condition (6) attached to the 2 relevant permissions granted in 2018. Article 3(4) of the GPDO states 'Nothing in this Order permits development contrary

to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Act otherwise than by this Order.' This is amplified below.

- 4.3** On 17/04/2018- planning permission showed the proposed rear elevation with metal balustrades around terraces at ground and 1st floor levels. Again on 29/11/2018- a further permission to vary the above showed 2 x metal balustrades to be installed at ground floor level and on metal balustrade at 1st floor level: see images above.

- 4.4** The later 2018 permission (ref: 2018/3103/P) resulted in a replacement condition (3) as follows:

REPLACEMENT CONDITION 3:

- 4.5** The development hereby permitted shall be carried out in accordance with the following approved plans-

(Prefix: ARC-532-) A-00, A-03, A-04, A-05, A-06, A-07, E-02, E-03, **E-04** (received 13.11.17), E-05, E-06, S-01, S-02, S-03; Revised ground floor plan, basement floor plan and proposed AA Section produced by 'The Draughtsman London' dated 20/03/2018 (received 07.09.18).

Supporting documents: Basement Impact Assessment (Surface Water BIA and Design/construction proposals) Rev1 by Croft Structural Engineers (dated 31 Aug 2017); Flood risk assessment Rev2 by Croft Structural Engineers ref. 170503 (dated 31 Aug 2017); Basement Impact Assessment (Slope and Land stability report) ref. 30207-1 80 Greencroft BIA Rev 1 by Ground and Project Consultants Ltd (dated Aug 2017); Email correspondence - Croft Structural Engineers/Campbell Reith (dated Sept 2017); Planning, Design and Access Statement by Archian Ltd; Daylight and Sunlight report by Waldrams Ltd; Arboricultural Impact Assessment Report and Methods Statement ref. QPM/80GRC/AIM/01 (dated 26.10.17).

Reason: For the avoidance of doubt and in the interest of proper planning.

- 4.6** Approved drawing E-04 as highlighted in the condition above, shows the approved rear elevation, including the proposed traditional metal railing enclosing the terraces at rear ground floor level.

CONDITION 6

- 4.7** Condition (6) attached to both the 2016 and 2018 permissions (2016/2877/P & 2018/3102/P respectively, stipulates:

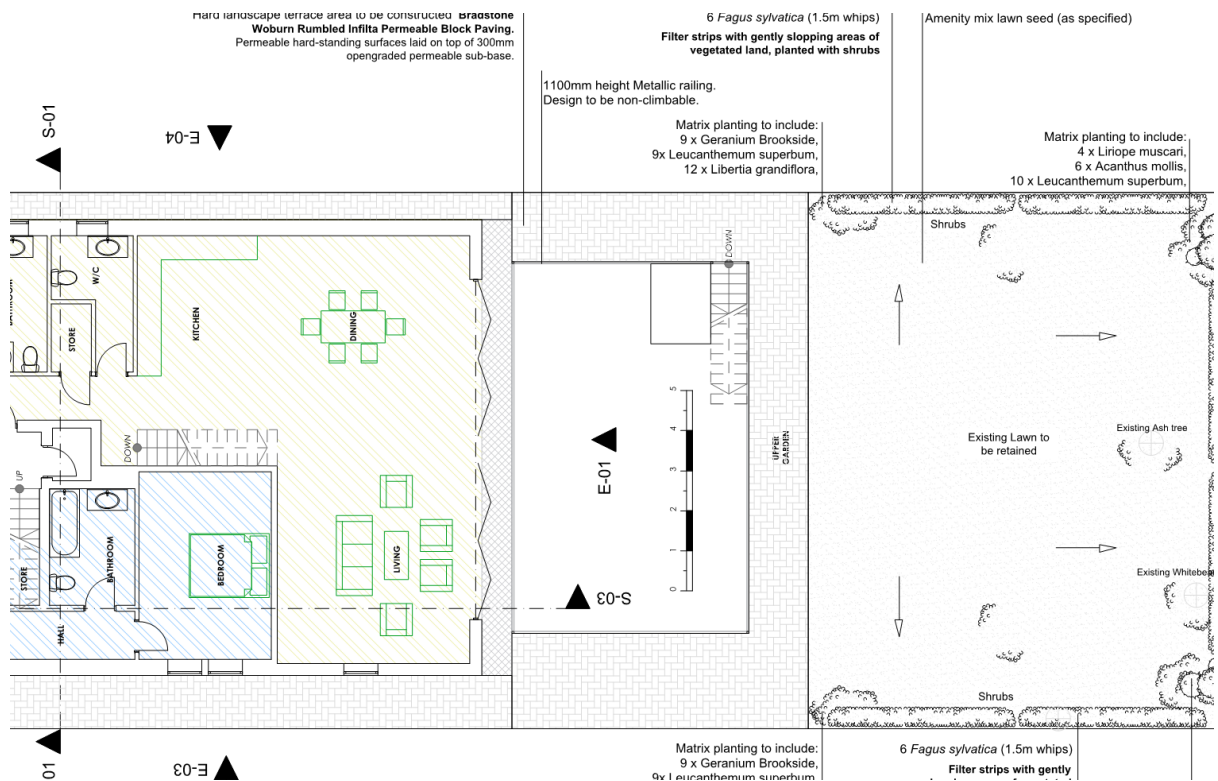
No development shall take place until full details of hard and soft landscaping **and means of enclosure of all un-built, open areas** have been submitted to and approved by the local planning authority in writing. [Such details shall include details of any proposed earthworks including grading, mounding and other changes in ground levels.] The relevant part of the works shall not be carried out otherwise than in accordance with the details thus approved.

Reason: To ensure that the development achieves a high quality of landscaping which contributes to the visual amenity and character of the area in accordance with the requirements of policies A2, A3, A5, CC1, CC2, CC3, D1 and D2 of the London Borough of Camden Local Plan 2017.

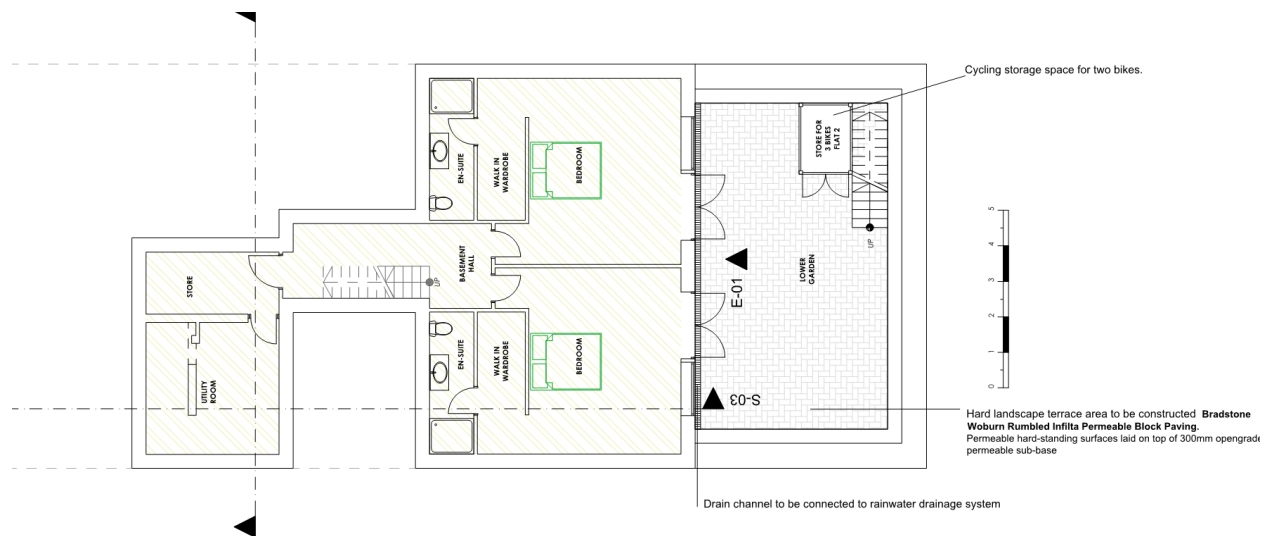
- 4.8 The details relating to condition (6) attached to the permission granted under referenced 2018/3103/P was submitted in March 2019, and discharged on 02/07/2019, under application ref: 2019/1628/P. A metallic railing was depicted at ground floor level as shown below:

Drawing no. CON/001 submitted in support of application 2019/1628/P:

Proposed ground floor:



Proposed lower ground floor:



4.9 It appears that the proposed and approved metal balustrades to enclose the new, approved, terraces at ground floor level at the site were never implemented and that the alternative current glass balustrade has been installed instead. The glass balustrade was not installed as a sole entity but forms part of the comprehensive development that was approved on 17/04/2018 under ref: 2016/2822. As such, the glass balustrade does not benefit from permitted development, as the balustrade is subject to planning conditions, and the current 'as-built' scheme does not accord with either condition (3- approved drawings) or condition (6- hard and soft landscaping and enclosures) attached to the two 2018 permissions

4.10 Notwithstanding the above circumstances, with regard to the GPDO: Class A relates to gates, fences, and walls etc., where the relevant part of the legislation states:

A. The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

Development not permitted

A.1 (b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level.

Given however that planning permission was required to create a lower ground floor level with lightwell in the rear garden, the addition of the glass balustrades around the sunken garden would not fall within Class A of Part 2 of Schedule 2 of the General Permitted Development Order 2015 (as amended).

Roller Shutters

- 4.11** Paragraph 5.4 of the Appellant's statement argues that the roller shutters are in place for a short period of time and that is therefore not development because it is considered to be a temporary structure. The roller shutter however is affixed to the building and is not being taken in every night, therefore, as it is in place for 24 hours a day, it is considered to be a permanent fixture on the property. It is not a temporary structure in this regard, and is therefore development.
- 4.12** The Appellant also argues in paragraph 5.4 that the housing element for the roller shutters has not been alleged in the breach of planning. The roller shutter however is clearly included in the planning breach in section 3 of the enforcement notice that was issued. Its housing is not considered to be a separate entity and forms part of the roller shutter. There would not be one part without the other, therefore, it is considered that the housing is an incumbent feature.

5.0 Ground (g)- The time given to comply with the notice is too short

- 5.1** In paragraph 6.2 of the Appellants statement, it indicates that the compliance period of 6 months is too short, given the time taken for the works to be tendered for and builder's availability.

Council's response:

- 5.2** No evidence has been provided to substantiate that the six month compliance period for the glass balustrade and roller shutter to be removed is too short. However, the Appellant has specified an alternative compliance period of 8 months instead of 6 months. In the event that the Planning Inspector is minded to dismiss this appeal and considers that the compliance period to be too short, then the Council would raise no objection to the compliance period being extended to eight months.

6 Conclusion

- 6.1** Based on the information set out above and having taken account of all the additional evidence and arguments made, it is considered that the proposal remains unacceptable for reasons set out within the original decision notice. The information submitted by the appellant in support of the appeal does not overcome or address the Council's concerns.
- 6.2** The shutters and balustrades, by reason of their location, size, design and visibility have a detrimental impact on the character and appearance of the conservation area and impact on the pavement.

7. Suggested conditions should the appeal be allowed.

- 7.1** The development hereby permitted shall be carried out in accordance with the following approved plans: SKA 08 00 01, rev D00; SKA GG 08 70 01, rev D00; SKA GG 08 70 02, rev D00; SKA 08 00 02, rev D00; SKA GG 08 70 03, rev D00; Covering letter prepared by SK-Architecture Ltd, dated 10/12/2022

Reason: For the avoidance of doubt and in the interest of proper planning.

If any further clarification of the appeal submissions is required please do not hesitate to contact Brendan Versluys on the above direct dial number or email address.

Yours sincerely,

Brendan Versluys
Planning Officer