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Email: Joshua.Cheung@camden.gov.uk
Direct Line: 020 7974 3383

**Regeneration and Planning
Supporting Communities**
London Borough of Camden
5 Pancras Square
London
N1C 4AG

Phone: 020 7974 4444

camden.gov.uk

<https://www.camden.gov.uk/planning-building-development>

The Planning Inspectorate
Room 3a
Eagle Temple Quay House
2 The Square
Bristol
BS1 6PN

Dear Hannah Rogers,

**Town and Country Planning Act 1990 as amended
Planning Appeal Statement (Local Planning Authority)**

Site: FLAT 3, 10 Hilltop Road, London, NW6 2PY
Appeal by: MS MANDY SEAL
Enforcement Notice dated 17th July 2023

I write in connection with the above Enforcement Notice appeal regarding the replacement of five timber windows on the front elevation at first floor level with uPVC windows.

The Council's case is primarily set out in the delegated enforcement officer's report which has already been sent with the questionnaire. It is to be relied on as the principal statement of the case. Copies of the relevant Camden Local Plan policies and accompanying guidance were also sent with the appeal questionnaire.

In addition, the Council would be grateful if the Inspector would consider the contents of this letter which includes confirmation of the status of policy and guidance, comments on the appellant's grounds of appeal and further matters that the Council respectfully requests be considered without prejudice before deciding the appeal.

1. Summary

1.1 The property is a four-storey terraced building located on Hilltop Road. The building comprises four flats and the appeal relates to Flat 3 which is on the second floor. Hilltop Road comprises a mixture of flats and residential dwellings of two to four storeys. The majority of the properties have Victorian features and characteristics which benefit the appearance of the street scene and the surrounding area.

1.2 The appeal site and the row of terraced properties comprise unique architectural features of the Victorian period. The building is not listed, but it sits within the Fortune Green and West Hampstead Neighbourhood Plan area and opposite the South Hampstead Conservation Area. Therefore, any development at this site should preserve and support the distinct character, appearance and setting of the host building, street scene, and surrounding area.

1.3 The majority of properties on Hilltop Road have traditional timber sash windows which is an important characteristic of the Victorian era and of this street. Timber sash windows dominate a high number of properties in the borough and where possible the Council tries to preserve this aesthetic.

1.4 On the 21st March 2022, planning permission was refused for retrospective consent for the replacement of white painted timber sash windows with white uPVC windows (reference: 2021/5138/P). The reason for refusal was as follows:

The replaced windows, by reason of their detailed design including opening mechanism, proportions and inappropriate uPVC materials, would detract from the appearance of the host building and wider street scene, and would not be environmentally sustainable, contrary to policies D1 (Design) and CC1 (Climate Change Mitigation) of the London Borough of Camden Local Plan 2017 and Policy 2 of the Fortune Green and West Hampstead Neighbourhood Plan 2015.

1.5 As the application was retrospective the notification of refusal was passed on to the planning enforcement team in respect to the replacement of white painted timber sash windows with white uPVC windows (reference: EN21/0508) - **The case is the subject of this appeal.**

1.6 On the 27th June 2022, an enforcement notice was served but quashed on the 15th July 2023 as it only referred to 3 windows, and did not highlight the windows on the side of the projecting bay (2 side panels). The Inspector considered it did not specify with sufficient clarity the alleged breach of planning control or the steps required for compliance.

1.9 On the 17th July 2023, the notice was amended and re-served under the same LPA reference (EN21/0508), and alleges:

Without planning permission: Replacement of 5 x timber windows on the front elevation at first floor level with uPVC windows.

And requires within three (3) months of it taking effect:

1. *Completely remove the 5 uPVC windows from the front elevation at first floor level;*
2. *Reinstate timber-framed one over one sliding sash windows on the windows on the front elevation and timber windows on the side of the projecting bay to match the design and proportions of those which previously existed; and*
3. *Make good any damages caused by the above operations.*

2. Relevant planning history

2.1 The following history demonstrates that the Council is consistent in resisting unacceptable development at this site and this terrace of buildings. The Council however seeks to grant permission where the the visual amenity is preserved or enhanced and minimise the effects of climate change. The relevant history is below:

- **2021/5138/P [directly related to this appeal]** – Flat 3, 10 Hilltop Road, London, NW6 2PY (the appeal site) – Replacement of white painted timber sash windows with white UPVC windows (retrospective). Refused with warning of enforcement action on the 21st March 2022.

It sought the retrospective retention of the uPVC windows.

Reason(s) for refusal: *The replaced windows, by reason of their detailed design including opening mechanism, proportions and inappropriate uPVC materials, would detract from the appearance of the host building and wider street scene, and would not be environmentally sustainable, contrary to policies D1 (Design) and CC1 (Climate Change Mitigation) of the London Borough of Camden Local Plan 2017 and Policy 2 of the Fortune Green and West Hampstead Neighbourhood Plan 2015.*

- **2022/1949/P [directly related to this appeal]** – Flat 3, 10 Hilltop Road, London, NW6 2PY - Replacement of white painted timber sash windows with white uPVC windows. Refused on the 30th June 2022.

This Certificate of Lawfulness (Existing) Application sought confirmation that the replaced white painted timber sash windows with uPVC windows at first floor level does not constitute development and is lawful such that planning permission would not be required.

Reason(s) for refusal: *The proposal would materially change the appearance of the building and is considered to fall within the meaning of “development” requiring planning permission as defined by Section 55 of the Town and Country Planning Act 1990.*

- **2019/4991/P** – Flat C, 24 Hilltop Road, London, NW6 2PY - Replacement of 5 x existing single glazed timber windows with 5 uPVC double glazed windows. Withdrawn by applicant on the 24th March 2019.

The proposal sought to replace existing timber sash windows with uPVC on the principal elevations of the property.

Reason(s) for withdrawal: This Planning Application was withdrawn by the applicant upon learning from the case officer of the imminent recommendation for refusal.

3. Status of policies and guidance framework

National Planning Policy Framework 2023

The London Plan 2021

3.1 The full text of each of the below policies and guidance has been sent with the questionnaire documents.

Camden Local Plan 2017

A1 Managing the impact of development.

CC1 Climate Change Mitigation

D1 Design

D2 Heritage

Camden Planning Guidance 2021

CPG Design 2021

CPG Home Improvements 2021

Fortune Green and West Hampstead Neighbourhood Plan 2015

Policy 2 Design and Character

4. Grounds of appeal

4.1 The appellant has appealed against the Enforcement Notice under grounds A, C, F, and G, and has an appeal form which sets out their case. No further statements/documents have been cross copied to the Council.

4.2 In order to respond to the appellants grounds of appeal I will seek to break down the issues raised on each ground. The appellants case has been copied and pasted and formatted in italics, and addressed beneath.

5. Ground A: that planning permission should be given for what is alleged in the notice;

5.1 *The replacement windows insofar as they can be considered to constitute development, provide for an acceptable householder alteration to the host building.*

5.2 **Response:** First and foremost, I would note that this argument makes no reference to the relevant policy framework surrounding this case, nor in this regard includes any planning rationale to support why they believe the unauthorised works “provide for an acceptable householder alteration”. Should the appellant provide full arguments in relation to their Ground A appeal within their final comments, we respectfully request the Inspector to revert to this LPA appeal statement to primarily address any of their subsequent submissions – that being said, the Council will of course address any new matters / clarify any points if appropriate.

5.3 The Council contends that the unauthorised works do not accord with the relevant planning policy framework. Local Plan Policy D1 (Design) requires development to be of the highest quality design.’ Local Plan Policy D2 (Heritage) states that the Council will seek to protect non-designated heritage assets including those on and off the local list. Local Plan policy CC1 (Climate Change Mitigation) requires development to minimise the effects of climate change and encourage all developments to meet the highest feasible environmental standards. Camden’s Local Plan Document is supported by CPG Design 2021 and CPG Home Improvements 2021.

5.4 CPG Design 2021 guidance recommends that alterations take into account the character and design of the property and surroundings, and that windows, doors and materials should complement the existing building – where we resist the addition of new elements that would detract from the building’s appearance, including ‘Non-Designated Heritage Assets’. Both CPG Design 2021 and CPG Home Improvements “strongly discourages uPVC windows for both aesthetic and environmental reasons (inability to biodegrade)”. In addition, timber window frames have a lower embodied carbon content than uPVC and aluminium.

5.5 Policy 2 (Design & Character) of the Neighbourhood Plan requires ‘All development shall be of a high quality of design, which complements and enhances the distinct local character and identity of Fortune Green and West Hampstead’.

5.6 The NPPF also requires good design, not just design that is not harmful. Features which are sympathetic to the host building and wider area should be retained wherever possible, as their loss can harm the appearance of a building.

5.7 The traditional and dominant window material of the surrounding properties is timber – to which the Council seeks where possible to preserve or enhance the architectural and historic merit of the existing buildings. Accordingly, the Council would expect any replacement to be timber windows to match the existing. Some timber sashes have been lost in the area, and so the remaining must be retained, or replaced with sympathetic replicas in timber.

5.8 As such, the replacement of the previous five timber windows with uPVC impose a negative cumulative impact on the host building and surrounding area, providing as overtly modern and incongruous additions to the host building and terrace by virtue of their thicker proportions of frames which create a bulkier appearance, shinier/synthetic finishes, double glazing, and outward opening mechanisms compared to the original upward opening timber windows.

5.9 The new uPVC windows cannot be considered to complement the existing building and surrounding area, thus cannot be considered as high quality design, whereby this insensitive replacement perversely and significantly undermines their character and appearance - contrary to Policy D1 and D2 of the Local Plan, CPG Home Improvements and CPG Design, and Policy 2 of the Fortune Green and West Hampstead Neighbourhood Plan.

- Sustainability

5.10 Not only do timber windows have better thermal performance than uPVC, they also have a lower embodied carbon. Policy CC1 of the local plan aims to minimise the effects of climate change and encourage all developments to meet the highest feasible environmental standards, and expects all developments to optimise resource efficiency. The uPVC does not accord with sustainability requirements due to its inability to biodegrade and its use of non-renewable resources in the manufacturing process which is contrary to the intentions of Policy CC1. Recycling inefficient oil based materials still has a greater impact on the environment than using a biodegradable, sustainable and more efficient material. Timber is carbon sequestering which means it also traps and stores carbon away from the atmosphere. Since adopting the Camden Local Plan 2017, the Council has declared a climate emergency and is necessarily attaching great weight to environmental impact of development, including choice of materials.

5.11 The unauthorised uPVC windows cannot be considered to conform with Policy CC1 of the Local Plan, and CPG Home Improvements.

5.12 These design and sustainability arguments are notably supported by the Inspector of the recent appeal dismissal decision at 306 Kilburn High Road, Camden, London, NW6 2DB, which also regards the unauthorised replacement of timber windows with uPVC (please see Section 9 for further details and the Council's comments on it).

5.13 Finally, I would like to reiterate that it is considered unacceptable or unauthorised development elsewhere is not justification for the harm caused at the site and wider area. The predominant character remains timber windows which are respectful of the character and appearance of the buildings within the terrace, and are more sustainable.

6. Ground C: that there has not been a breach of planning control:

6.1 *There has not been a breach of planning control as the replacement windows do not constitute development.*

6.2 **Response:** Section 55 of the Town and Country Planning Act 1990 as amended - Meaning of "development" and "new development":

(1) Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

(2) The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—

(a) the carrying out for the maintenance, improvement or other alteration of any building of works which—

(i) affect only the interior of the building, or

(ii) do not materially affect the external appearance of the building,

6.3 Reiterating the appearance differences set out in Section 5, compared to the previous timber windows, the unauthorised uPVC windows have shiner/synthetic finishes, and are much thicker in proportions. Further, as a result of the different opening mechanisms, the open and closed positions of the uPVC are radically different to those of the timber sash windows. The uPVC windows open outward compared to the upward opening timber windows. When closed, the bottom piece of the uPVC windows protrude outward and even in front of the top piece, compared to the recessed bottom pieces behind the top piece of the timber sash windows.

6.4 Accordingly, in line with the reason for refusal of the 2022/1949/P certificate of lawfulness application, the unauthorised uPVC windows are unequivocally a material change of what was previously in place and materially alters the appearance of the principal elevation of the host building. By law, the replacement of the timber windows with uPVC constitutes as development.

7. Ground F: that the steps required to comply with the notice are excessive, and lesser steps would overcome the objections;

7.1 *It is not necessary to replace the windows as the alleged reason for the expediency in issuing the enforcement notice can be addressed via modifications.*

7.2 **Response:** The Council has argued that the unauthorised works are wholly unacceptable above and within the relevant refusal decisions, whereby these assessments have resulted in the reasons to serve the enforcement notice.

7.3 We are unsure what “modifications” the appellant is referring to and cannot provide a full response to this comment. Nonetheless, any “modifications” to the as-built uPVC windows are highly likely to be unsuccessful in mitigating the current harm as the issues with the uPVC are with their inherent design, form, and materiality, as we have argued above. Again, the traditional and dominant window material of the surrounding properties is timber – to which the Council seeks where possible to preserve or enhance the architectural and historic merit of the existing buildings. Therefore, we require their complete removal as an appropriate remedial action.

7.4 Accordingly, the steps required to comply with the notice are therefore not excessive, and are proportionate to the reality of the unauthorised works at this site.

8. Ground G: The time given to comply with the notice is too short;

8.1 *It is considered that a period of 6 months should be allowed in order to resource appropriate replacement windows and to establish with the Council that they are consistent with the requirements of the enforcement notice. This is essential, the appellant considers the Council's actions to be pedantic and cannot run the risk of trying to replace the windows to its satisfaction. Moreover, there is likely to be a considerable lead in time, given the current availability of materials within the building industry.*

8.2 **Response:** There are no notice requirements which require specialist builders or contractors who may be difficult to find in a short timeframe and there is no reason why the carrying out of the requirements would be technically unfeasible within the three month period. The appellant has cited “there is likely to be a considerable lead in time, given the current availability of materials within the building industry”, but no supporting evidence has been provided by the appellant to confirm current lead times or whether there is in fact a shortage in relevant materials.

8.3 Accordingly, the time (3 months) given to comply is reasonable and proportionate to the scale and nature of the planning breaches.

9. Recent appeal decision APP/X5210/C/22/3305743 (Enforcement Notice ref: EN21/0118) & APP/X5210/W/22/3302064 (Planning App ref: 2021/6303/P) – the ‘KHR Appeal’

9.1 In connection with point 5.12, the Council would like to submit the above referenced appeal decision for the Inspector to consider as there are many notable parallels between the sites and matters of the ‘KHR Appeal’ and this appeal. Further, the policy framework / considerations are identical. A copy of this decision and relevant enforcement notice has been sent with this statement.

9.2 The KHR Appeal regards the replacement of 22 x timber sash windows on all elevations at first, second and third floor levels with new uPVC double glazed casement windows at 306 Kilburn High Road, Camden, London, NW6 2DB. 306 Kilburn High Road is not listed nor lies within a Conservation Area but, like 10 Hilltop Road, is an attractive non-designated historic building with visual interest derived particularly from Victorian detailing.

9.3 An enforcement notice was served following the refusal of the retrospective application to retain the uPVC windows, and was appealed against. The appeal was ultimately dismissed and notice upheld. Below are the Inspector's notable comments, which are in-line with the arguments the Council has set out in this appeal statement.

9.4 Importance to retain existing timber windows: *"Whilst some buildings close to the appeal site have uPVC windows at upper floor levels, equally many have retained timber sash windows which, through their design detailing and traditional timber material, complement the architectural detailing of the buildings".*

Comment: This is in line with our argument that any replacement at the site should be timber windows which match the existing. The appellant has not demonstrated why their case should be an exception for the host building which does possess architectural and historic merit.

9.5 In relation to Ground A: *"By reason of their contemporary uPVC materials and overtly modern and undetailed design including the incongruous air vents on the existing windows, the appeal windows significantly undermine the intricate historic detailing of the building. When in open position, it is especially apparent that the windows enforced against are modern replacements since the opening mechanism is very obviously different from the sliding of the original sash windows."*

Comment: This is in line with our assessments of the unauthorised work's harm and inconformity with our policies. Whilst the uPVC windows at the appeal site does not have air vents, they are still undeniably modern and provide as incongruous additions that undermine the detailing of the host building.

9.6 In relation to precedents: *"As regards comments that a number of uPVC windows in the area have been replaced without planning permission and are immune from enforcement action, this does not correlate to implicit acceptance of these by the Council".*

Comment: In line with our comments on the surrounding uPVC examples around the site.

9.7 Final comment on Ground C, F, and G: The upheld notice was subject to amendments - replace the word "match" with "reinstate" within the requirements. No amendments were made to the compliance period, which is 3 months.

Comment: The Inspector of the KHR Appeal therefore agrees that 3 months to reinstate the 22 timber windows is appropriate and proportionate to the scale of the breaches. In connection with point 8.3, 3 months to reinstate the 5 timber windows at the site is not only appropriate, but can be argued to be generous on the part of the Council. The Inspector of the KHR appeal therefore also agrees that the replacement of timber with uPVC windows constitute as harmful works under Section 55 of the Town and Country Planning Act 1990 (as amended) and need to be removed.

9.8 Whilst the Council understands that each case must be determined by its own merits, we would argue that the comments within the KHR Appeal should be considered as they do reflect the situation of this appeal, and fall under the same policy and guidance framework. The Council therefore respectfully requests the KHR Appeal to be considered without prejudice before deciding the appeal.

10. Conclusion

10.1 Based on the information set out above and having taken account of all the additional evidence and arguments made, it is considered that the unauthorised works remains unacceptable for reasons set out above, within the delegated report, and refusal decision of relevant planning applications. The information submitted by the appellant in support of the appeal does not overcome or address the Council's concerns.

10.2 The proposed replacement uPVC windows, by reason of their inappropriate and non-traditional change in materials from original timber to uPVC materials, and change in design and form have a detrimental impact on the character and appearance of the host building, wider terrace and the street, contrary to policy and guidance.

10.3 The proposed replacement uPVC windows, by reason of their inappropriate use of uPVC materials, would not be environmentally sustainable contrary to policy and guidance.

10.4 The works unequivocally constitute as development under Section 55 of the Town and Country Planning Act 1990 (as amended) as the unauthorised works are materially different to the previous windows and to this effect materially changes the appearance of the principle elevation in a harmful manner.

10.5 The Council kindly invites the inspector to dismiss this appeal and uphold the enforcement notice.

If any further information or clarification on any matter associated with this case is required, please do not hesitate to contact Joshua Cheung on the above email or direct dial number.

Yours sincerely,

A handwritten signature in grey ink, appearing to read 'Joshua Cheung', is positioned above the typed name.

Joshua Cheung
Planning Enforcement Officer
Supporting Communities Directorate