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LPA ref: EN21/0508
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The Planning Inspectorate
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Dear Hannah Rogers,

**Town and Country Planning Act 1990 as amended
Comments on recent submissions (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 would be grateful if the Inspector would consider the contents of this letter which includes comments on the appellant's latest submissions, and that the Council respectfully requests be considered without prejudice before deciding the appeal.

1. Summary

1.1 On the 23rd November 2023, the Council submitted our appeal statement to PINS alongside two supporting Appendices in response to the Appellant's Appeal Form, which set out their principle arguments.

1.2 On the 29th November 2023, the Council was requested to submit comments in relation to the appellant's new submissions.

1.3 Section 5.2 of the LPA's appeal statement stated:

... 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.

1.4 The Council has reviewed the new submissions, which has now set out a few planning arguments. The basis of these rationales has already been addressed, but we will comment on the outstanding matters. In this regard, we would continue to respectfully request the Inspector to revert to the LPA statement dated 23rd November 2023 to primarily address the appellant's new submissions. The appellant's case has summarised and formatted in italics and addressed beneath.

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

- Heritage and architectural significance

2.1 *The appeal site has no heritage value whatsoever. The appeal site is not a “Heritage Asset”, and it is duly noted that the Council does not seek to claim that the replacement windows, affect the setting of the Conservation Area. It is noted that the properties within Hilltop Road are deliberately excluded from the [South Hampstead] Conservation Area.*

2.2 **Response:** Sections 11.2 – 11.4 of the South Hampstead Conservation Area appraisal and management strategy states that “*there are a number of streets just outside the conservation area (e.g., Hilltop Road) which contain very fine buildings and are not currently part of any conservation area at all*”. The statement stipulates the inclusion of Hilltop Road and adjacent streets to the South Hampstead Conservation Area are still subject to a deeper investigation of the history, which it does have, however they should be retained as part of one or the other to ensure that the character of the area as a whole – by their protection - is maintained. The appeal site does have heritage value.

2.3 Nonetheless, the Council has not claimed that 10 Hilltop Road is a “Heritage Asset” but have explicitly stated that it is a ‘Non-Designated Heritage Asset’ which, in-line with our Local Plan Policy D2 and CPG Design, we seek to protect. The site is one of many very fine Victorian properties which any external works are expected to be sympathetic, which the Council has argued the replacement uPVC windows are not.

2.4 The fact the site and opposite properties are not within the Conservation Area, should hold little/no material weight in the Inspector’s decision of this appeal.

- Design

2.5 *The appellant has again reiterated the few ‘examples of uPVC’ in the area, stating that the Council’s refusal of the uPVC proposal is contrary to their own policies and guidance wherein it is incumbent to have due regard to the property and surroundings.*

2.6 **Response:** The appellant is arguing that uPVC fittings are the new reality of the site, the Hilltop Road terrace, and surrounding area, thus on this basis the unauthorised uPVC windows should be allowed. However, the true reality of Hilltop Road is that timber windows are a dominant feature that exists in Hilltop Road and the surrounding area, and the existing uPVC windows are without consent and some of which are likely (unfortunately) immune from action. Please note, Camden does not publish informal planning enforcement investigations for the public to view.

2.7 Again, the Council has been consistent in refusing any applications for uPVC windows around this area, and maintain that unacceptable development elsewhere is not justification for the harm at the site. Accordingly, as the basis of these design rationales primarily rely on the referenced precedents and undermining of the architectural significance of the host building and surrounding properties, I invite the Inspector to attribute little to no material weight to these arguments.

- Sustainability

2.8 *The appellant has provided an online website advertisement from a uPVC recycling company to support their sustainability argument: ‘A lot of research and development has been undertaken into waste and the approach to dealing with it continues to evolve and adopt innovative approaches.’*

2.9 **Response:** It is expected that a private recycling company for uPVC would promote uPVC. Nonetheless, the recyclability of a material does not guarantee that they will be recycled in practice. Alongside an absence of legal mechanisms to compel London residents to recycle any type of rubbish, studies into plastic waste management demonstrate that over 60% of plastic waste in the UK is not recycled ([DEFRA, 2023](#)). Where subsequently discarded uPVC window frames will

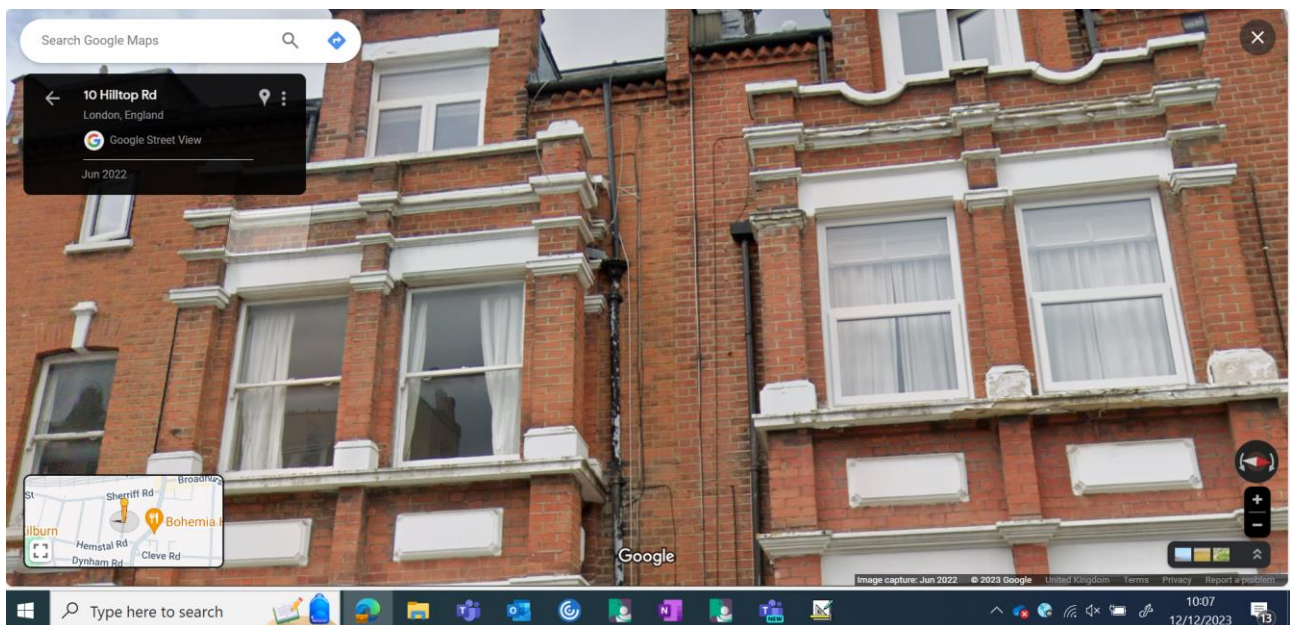
negatively contribute toward to climate crisis which our planning policies and guidance aim to ameliorate – again, it states that recycling inefficient oil-based materials still has a greater impact on the environment than using a biodegradable, sustainable and more efficient material. Recycling alone is not the solution ([GreenPeace, 2021](#)). In this light, the high risks of uPVC's improper disposal outweigh any benefits raised by the appellant - where its use does not securely safeguard our local and national environments.

2.10 We therefore expect homeowners to in the first instance explore the scope of repairing existing and/or implementing sympathetic timber replacements. The appellant has not demonstrated any exploration or interest in using timber – particularly evident in the below Ground F arguments.

2.11 Both parties could continue debate about uPVC's toxicity on atmospheric, habitat, and human health, however the fact is that uPVC is out of accordance with the development plan.

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

3.1 *The works have not resulted in openings being made wider and the proportion of the window frame remains materially the same.*



Comparison between No 12's desirable timber sash against the harmful uPVC appeal windows.

3.2 **Response:** The appellant's submission that the proportions of the window frames have remained materially the same is transparently false. The works are entirely different to the pre-existing timber windows and unequivocally produce a harmful material alteration to the principal elevation. This is clear through the drawings they have provided too. Development has taken place under Section 55 of the Town and Country Planning Act 1990 (as amended).

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

4.1 *The appellant considers that altering the windows to address the Council's concerns regarding the opening mechanism and deliver the sliding sash operation, would address the criticisms in the reason for expediency – using the APP/X5210/C/18/3210081 Flat at 2nd and 3rd Floor, 7 Estelle Road, London, NW3 2JX as an example.*

4.2 In the case of 7 Estelle Road, uPVC sash windows were installed to the front dormers at third floor (roof) level. The site lies within the Mansfield Conservation Area and is not listed. The appeal

was allowed and notice quashed. The Council only objected to the materials used, not design. A notable comment from the inspector is partly cited by the appellant:

“This is not a listed building, and the conservation area has already been negatively impacted by the modern dormers, therefore reducing the impact of these dormers by removing the obvious and incongruous modern window styles is much to be encouraged. Obviously wooden sash windows would be preferable to uPVC, but given the distance from the pavement, it would take some effort and knowledge on the part of a passer-by to detect the new windows were indeed plastic.”

4.3 Response: The merits between this appeal case and the 7 Estelle Road case are not comparable. At 7 Estelle Road, the uPVC sash windows are considered to be in a less conspicuous position at dormer level. At 10 Hilltop Road, the appeal windows are prominently projected toward the street at first floor level, where passers are easily able to discern the differences between the unauthorised uPVC and neighbouring timber windows, thus read as an incongruous additions.

4.4 The windows at 7 Estelle Road are sash and considered by the Inspector to be the appropriate opening mechanism, but simultaneously expressing that *“obviously wooden sash windows would be preferable to uPVC”*. The Inspector also stipulates that the many modern dormers are cumulatively degrading this part of the Mansfield Conservation Area and encourages the removal of obvious uPVC window styles. The notable feature along Hilltop Road that is impacting the surrounding area are unauthorised uPVC fittings.

4.5 The policy and guidance considerations of 7 Estelle Road are also out of date. Our Local Plan was updated shortly after and new guidance adopted. Further, updates to the London Plan and NPPF.

4.6 Design was not argued by the Council and the sustainability policies were weaker in 2016 compared to today, to which the outcome may have been different in today's context.

4.7 The appellant has not specified how they intend to install uPVC sash windows, but it can be assumed that it will require a complete overhaul, thus any complete removal of the existing harmful should be replaced with timber.

4.8 The matters are not as comparable as the recent 306 Kilburn High Road Appeal Decision, so it cannot be considered that replacing the as-built uPVC with sash uPVC is an acceptable remedial action. We invite the Inspector to attribute little/no material weight to the 7 Estelle Road case.

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

5.1 *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 and do not need planning permission. Given how this appeal has arisen, the appellant both for financial reasons and peace of mind would seek to secure a certificate of lawfulness or planning permission for the replacement windows. Taking into account the delays experienced in validating the S191 application, a 6-month period is reasonable. The Council's approach appears to be a punitive one. 6 months should also cover the lead in time, given the current availability of materials/windows and glaziers to install.*

5.2 Response: A certificate of lawfulness and a full planning application have already been refused. Accordingly, the Council under Section 70C of the Town and Country Planning Act 1990 (as amended) will likely decline to determine any subsequent applications made for these unauthorised works.

5.3 No evidence has been supplied to show issues with current lead times or whether there is in fact a shortage in relevant materials. Please also refer to Section 9.7 of the LPA Appeal Statement.

5.4 As their argument is based off their proposal to submit another certificate of lawfulness, Ground G should fail.

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 unauthorised works remains unacceptable for reasons set out above, LPA appeal statement, 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.

6.2 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.

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

6.4 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 principal elevation in a harmful manner.

6.5 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,



Joshua Cheung
Planning Enforcement Officer
Supporting Communities Directorate