



Enforcement Delegated Report		Receipt date:	06/01/2022
Officer		Enforcement Case	
Joshua Cheung		EN22/0006	
Breach Address		Photos & Other material	
Flat 1, Broadhurst Gardens, London, NW6 3QT			
Authorised Officer Signature			
			
22/07/2024			
Alleged Breach			
Without planning permission: the erection of timber fencing around the edge of the first-floor rear terrace.			
Recommendation(s):		That the Borough Solicitor be instructed to issue an Enforcement Notice under Section 172 of the Town and Country Planning act 1990 as amended for erection of timber fencing around the edge of the first floor rear terrace , and officers be authorised in the event of non-compliance, to commence legal proceedings under Section 179 or other appropriate power and/or take direct action under Section 178 in order to secure the cessation of the breach of planning control.	

Site Description
<p>The site is a four-storey detached Victorian townhouse that lies within the South Hampstead Conservation Area and is under an Article 4 direction: red/brown brick façade and detailing, white render at lower level, bay windows, portico, raised staircase access, timber sashes, gauged arches, sill bands, dentil mouldings and cavetto cornice, brick turret dormers. To the rear, the building has a single storey rear outrigger with a terrace above and an outbuilding.</p>
Investigation History
<p>24-FEB-22 – Previous enforcement officer posts letter of warning alleging the unauthorised use of the rear first floor flat roof as a terrace, as facilitated by the unauthorised timber balustrades (the subject of this report/notice). No recorded response.</p> <p>13-MAR-23 – Current enforcement officer posts final letter of warning. Forwarded via email on the 15th to an agent.</p>

23-MAR-23 – A different agent responds providing evidence that the use of the flat roof as a terrace has become lawful over the passage of time, but attempts to argue the unauthorised timber balustrades are not materially different to the pre-existing wooden trellis balustrades (see Figure 1 below)



Figure 1 – Comparison of pre-existing balustrades [left] with the new unauthorised [right].

04-APR-23 – After correspondence, agent withdraws the contention that the as-built is not materially different and expresses that an application will be sought for a black metal system.

12-JUL-23 - After extensive chasing, application for the “*Removal of existing timber privacy fence to first floor rear terrace and erection of replacement metal balustrades, in association with use of the flat roof as a terrace*” (ref 2023/2847/P) is submitted.

12-FEB-24 - 2023/2847/P granted. Condition 4 (privacy screening) needs to be discharged before use of terrace commences.

03-APR-24 - Officer follows up to provide the responsible party the informal opportunity to remove the as-built. No response.

12-APR-24 – Officer follows up again. No response.

11-JUN-24 – Officer follows up again on the 7th June 2024. Agent responds saying a new manufacturer is needed for the black railings and will provide updates on this. No further updates provided on this.

27-JUN-24 – Officer provides final chance to remove the unauthorised as-built informally (requesting a programme of works by the 12th July). No response.

Relevant policies / GPDO Category

National Planning Policy Framework (2023)

- Paragraph 59 - ‘Enforcement’
- Chapter 12 - ‘Achieving well designed places’
- Chapter 16 - ‘Conserving and enhancing the historic environment’

The London Plan (2021)

- D4 - Delivering good design
- HC1 - Heritage and conservation growth

Camden Local Plan (2017)

- D1 Design
- D2 Heritage

Camden Planning Guidance:

- CPG Design (2021) – Paragraphs 5.13 – 5.19 (Roof alterations and balconies and terraces)
- CPG Home Improvements (2021) – Section 2.2.3 (Balconies and Terraces)

South Hampstead Conservation Area Appraisal and Management Strategy (2011)

Assessment

Planning history of the site:

None.

Issues:

The main issues for considerations are:

- Design and heritage

Policy D1 of the Local Plan requires development to complement with the character, proportions, setting, context, form, details, materials, and scale of the existing building, neighbouring buildings and general street frontage. In this respect, preserves or enhances the historic environment and heritage assets in accordance with Policy D2 Heritage. Development must be of the highest architectural and urban design quality, which improves the function, appearance, and character of the local area – including sustainable and durable construction, and adaptable to different activities and land uses.

Policy D2 of the Local Plan states the Council will seek to preserve and, where appropriate, enhance Camden's designated conservation areas and heritage assets, as well as non-designated heritage assets including those outside of Conservation Areas and on an off the local list.

CPG Design states the Council will resist roof alterations or additions where there would be an adverse effect on the skyline, and the appearance of the building or the surrounding street scene, including where: the impact on adjoining properties both in terms of bulk and design and amenity of neighbours would be detrimental; and the scale and proportions of the building would be overwhelmed by an additional extension/storey. This guidance further states balconies and terraces should complement the elevation upon which they are to be located. Consideration should therefore be given to the following: detailed design to reduce the impact on the existing elevation; and a careful choice of materials and colour to match the existing elevations.

CPG Home improvements states handrails and balustrades carefully consider materials for enclosure: For traditional buildings, metal railings are preferred as they integrate well with the building's character, are more resilient, require low maintenance, support plants growth.

The Council is also directed to consider:

Section 72(1) of the Listed Buildings Act 1990 In the exercise of various functions under the Planning Acts in relation to land in conservation areas (including determination of planning applications) the Council is required to pay special attention to the desirability of preserving or enhancing the character and appearance of the Conservation Area.

And **Paragraph 208 of the NPPF**, where the benefits of a proposal for enabling development, which would otherwise conflict with planning policies but which would secure the future conservation of a heritage asset, outweigh the disbenefits of departing from those policies.

Assessment:

The unauthorised works is located at the rear at first floor level. It comprises timber posts and panels with steel metal supports externally fixed onto the parapets.

Both the timber and steel have untreated finishes which are undetailed and stark in appearance against the darker / more muted and architecturally interesting Victorian facades of the host and surrounding properties. The materials used do not relate well with its context.

The overall design and form, which comprises thick horizontal and vertical posts (which are discernibly the skeleton) and the tight-knitted horizontal slatted trellising of the panels, reads as an impermeable and bulky structure which is highly visible from surrounding residential occupiers as it is located at the first floor level. Through fixing the skeleton of the structure on the external faces of the parapet (rather than behind the parapets), the works create a turret-like and defensive appearance, to which the works cannot be considered subordinate to the host building. The design and form do not relate well with the scale and proportions of the host and surrounding buildings too.

Lastly, these works do not form the prevailing pattern of development along the single storey rear extensions of the terrace. And would be an unwelcome precedent in this part of the Conservation Area.

The timber privacy fence, by virtue of its materials, design, bulk, and location reads as a dominant and incongruous addition to the host building and surrounding Conservation Area, contrary to Policies D1 and D2 of the Camden Local Plan 2017.

The unauthorised solid timber fencing replaced lightweight trellis which was installed without planning permission. The flat roof is accessed by the owner/occupier of the site and has been formally used as a terrace for over 4 years. The fencing is considered to be more solid than its replacement so does not result in any detrimental impacts on amenity in comparison to the former situation.

Article 8 and Article 1 of the first protocol to the Convention on Human Rights state that a person is entitled to the right to respect for private and family life, and the peaceful enjoyment of his/her property. However, these rights are qualified in that they must be set against the general interest and the protection of the rights and freedom of others. In this case service of the Notice to bring about an improvement in the unsatisfactory appearance of the property is considered to be reasonable and proportionate.

Recommendation:

That the Borough Solicitor be instructed to issue an Enforcement Notice under Section 172 of the Town and Country Planning Act 1990 as amended for **erection of the timber fencing and posts around the edge of the first floor rear terrace**, and officers be authorised in the event of non-compliance, to commence legal proceedings under Section 179 or other appropriate power and/or take direct action under Section 178 in order to secure the cessation of the breach of planning control.

The notice shall allege the following breaches of planning control:

Without planning permission: the erection of timber fencing around the edge of the first floor rear terrace.

WHAT ARE YOU REQUIRED TO DO:

1. Completely remove the timber fencing around the edge of the first floor rear terrace.
2. Removal all constituent materials and make good any damages caused by the above operations.

PERIOD OF COMPLIANCE: ONE (1) month

REASONS WHY THE COUNCIL CONSIDER IT EXPEDIENT TO ISSUE THE NOTICE:

1. The development has occurred within the last <4 years>.
2. The timber fencing, by virtue of its materials, design, bulk, and location reads as a dominant and incongruous addition to the host building and surrounding Conservation Area, contrary to Policies D1 and D2 of the Camden Local Plan 2017.