

**PLANNING ENFORCEMENT**

TOWN AND COUNTRY PLANNING ACT 1990 (as amended)

**STATEMENT OF CASE****APPEAL SITE**

Flat 1, 35 Broadhurst Gardens, London, NW6 3QT

**LPA CASE OFFICER**

Mr Joshua Cheung (Enforcement)

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**PINS REFERENCES AND APPELLANTS**

APP/X5210/C/24/3352400 – Mitchell Leigh

APP/X5210/C/24/3352401 – Jacob Leigh

**LPA REFERENCE**

EN22/0006

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**SUBJECT OF APPEALS**

Appeals against the Enforcement Notice dated 12<sup>th</sup> August 2024

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**DATED**

25<sup>th</sup> February 2025

## **1. Summary**

1.1 The site is a four-storey detached traditional Victorian townhouse that lies within the South Hampstead Conservation Area. The site is also under an Article 4 direction that restricts certain permitted development rights to protect its historic character and appearance and setting of the Conservation Area. The building has a rear single storey outrigger.

1.2 Following discussions with the appellants on the breach, they submitted an application (LPA reference: 2023/2847/P) 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*”. This application was approved on the 12<sup>th</sup> February 2024. A copy of this Decision Notice is sent alongside this appeal statement as Appendix A.

1.3 However, after acquiring this workable scheme, there were difficulties and delays in removing the unauthorised timber fencing informally, so the Council considered it was appropriate to serve an Enforcement Notice. The notice was served on the 12<sup>th</sup> August 2024 alleging:

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

1.4 And requiring that:

*Within a period of **ONE (1) month** of the Notice taking effect:*

- 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.*

1.5 The reasons for serving the notice:

- a) The development has occurred within the last 4 years.*
- b) 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.*

## **2. Relevant planning history of the site**

**2023/2847/P:** 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. Granted on the 14<sup>th</sup> February 2024.

2.1 A copy of the Officer’s Report is also sent alongside this appeal statement as Appendix B. It reflects the Council’s enforcement position on the alleged works.

## **3. Status of policies and guidance framework**

3.1 In arriving at its current position, Camden Council has had regard to the relevant legislation, government guidance, statutory development plans and the particular circumstances of the case. The development subject to this appeal was considered in the light of the following policies:-

**National Planning Policy Framework 2023**

**The London Plan 2021**

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

**Camden Local Plan 2017**

D1 Design

D2 Heritage

**Camden Planning Guidance 2021**

CPG Design (2021)

CPG Home Improvements (2021)

**South Hampstead Conservation Area Appraisal and Management Strategy (2011)**

3.3 It is noted that the Council has begun the process of updating the Local Plan. Having looked at the relevant emerging policies, I am of the opinion that there is no material difference that would alter the Council's decision and within this appeal.

3.4 It is also noted that there have been recent changes to the NPPF. Having looked at the relevant adopted policies, I am of the opinion that there is no material difference that would alter the Council's decision and within this appeal.

**4. Grounds of appeal(s)**

4.1 There are two concurrent appeals against the Enforcement Notice. Both appellants have submitted the same two documents for each appeal - no further statements/documents have been cross copied to the Council:

APP/X5210/C/24/3352400 appeal by Mitchell Leigh	Grounds A and C	<ul style="list-style-type: none"><li>• “Facts to support Ground A”</li><li>• “Facts to support Ground C”</li></ul>
APP/X5210/C/24/3352401 appeal by: Jacob Leigh	Ground C	<ul style="list-style-type: none"><li>• “Pages from Facts to Support Ground A”</li><li>• “Pages from Facts to Support Ground C”</li></ul>

4.2 In order to respond to the appellants’ grounds of appeal I will seek to break down the issues raised on each ground. I will address the Ground A arguments under Section 5, and the Ground C arguments under Section 6. The appellants arguments are copied, pasted and formatted in italics below, and responded to underneath.

**5. Ground A: “that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged”**

5.1 **Appellant 1:** *The owner was obliged to carry out works to the terrace as there were leaks through to the flat below (See details in email chain at Appendix 2). In order to carry out these works it was necessary to remove the timber fencing around the edge (See Photographs at Appendix 3). The roof was made good and a new timber slatted fence was put back in place (See Photographs at Appendix 4).*

5.2 The Council is unsure how the leaking flat roof relates or justifies the addition of timber fencing. Nonetheless, this argument does not demonstrate compliance with the development plan and is thus not a material consideration to this Ground A appeal.

5.3 **Appellant 2:** *The owners sought quotes for the works to implement the planning permission, but these were considered prohibitively expensive at circa £15,000 for the works and scaffolding (See quotes for works and scaffolding at Appendix 6).*

5.4 The costs to remove the unauthorised works and implement a more appropriate scheme is not justification for retaining the unauthorised timber fencing. Again, it does not show how the as-built is compliant with the development plan, and is thus not a material consideration to this Ground A appeal. It should also be noted that the Council has only required the removal of the unauthorised timber fencing.

5.5 **Appellant 3:** *The replacement fence and decking is considered to be an enhancement to the site that is appropriate to the conservation area. Timber is a traditional material and is well established at the site.*

5.6 Whilst timber can be a desirable and traditional material to use for development around the borough, this is underpinned by the scale of its use, positioning, overall design (including finish), and of course context. Accordingly, the appellants' primary argument for their Ground A appeal is fairly broad. The Council would clarify that 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.* This policy is specific and distinct in what proposed development should embody across the borough and does not reflect the appellant's broad argument.

5.7 To this effect, the Council reiterates that the intense use of untreated timber positioned at high level produces a stark and defensive addition. This harmful effect is exacerbated through the site and surroundings' primarily red brick context - not even the surrounding boundary treatments are of timber construction. Though the red brick rear facades have white timber framed windows, which are considered traditional to the site and surrounding Conservation Area, this is not comparable to the much thicker proportions and untreated finish that the unauthorised works employ. As such, unlike the timber windows, the unauthorised works cannot be considered to preserve, thus 'enhance', the architectural significance and appearance of the properties. The broad argument that timber is 'traditional' and "well-established at the site" is therefore not applicable to this appeal either.

5.8 The Council would also reiterate the tight-knitted horizontal slatted trellising of the panels of the unauthorised works amplify its dominating effect, thus, in aggregate cannot read as subservient and sympathetic to the site and setting of the surrounding Conservation Area, which is contrary to CPG Home Improvement design guidance (Section 2.2.3 (Page 55)), and Policies D1 and D2 of the Camden Local Plan 2017.

5.9 The Council's principal assessment on the visual harm of the unauthorised timber fencing is found in Pages 3 – 4 of the Enforcement Delegated Report.

5.10 The less than substantial harm produced by the unauthorised timber fencing is considered to outweigh any benefits that can be identified – the Council contends that the Ground A appeal should therefore fail.

## **6. Ground C: "that those matters (if they occurred) do not constitute a breach of planning control"**

6.1 In order for Ground C to succeed the appellant must demonstrate on the balance of all probabilities that the erection of the unauthorised timber fencing does not constitute as development, either through demonstrating that the installation of the as-built timber fencing does not constitute development or is a result of maintenance, improvement or other alteration works, as governed by Section 55 of the Town and Country Planning Act 1990 as amended ('the act').

## 6.2 The relevant parts of Section 55:

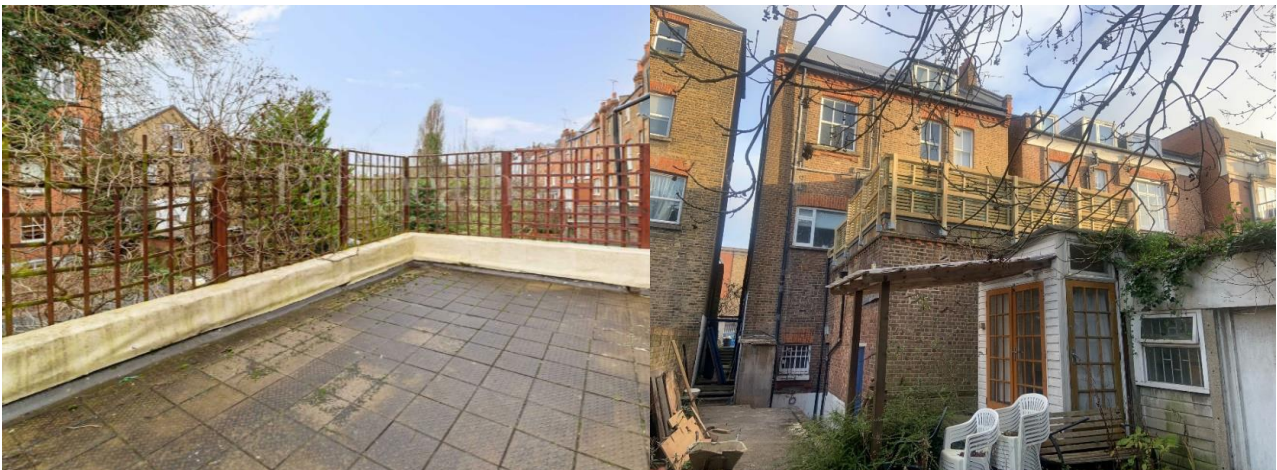
*“(1A) For the purposes of this Act “building operations” includes— (a) demolition of buildings; (b) rebuilding; (c) structural alterations of or additions to buildings; and (d) other operations normally undertaken by a person carrying on business as a builder.”*

*“(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 Appellant:** *Whilst it is beyond doubt that the fencing is different (i.e. the same fencing has not been put back) it still constitutes a timber structure around the terrace that performed a screening function and allowed for creeping plants to complement the screening... Whilst without planting there is a greater level of screening offered by the replacement fence due to the smaller apertures, there is no-one materially affected by this...*

6.4 Verified by the appellant in paragraphs 5.1, 5.3, and 6.3 above, building operations under Section 55(1A)(d), have unequivocally been undertaken, which of course comprises the permanent removal pre-existing immune fencing from the site and installation of a new timber slatted fencing.

6.5 Paragraph 6.3 is also indicative that the appellants understand that a material alteration has occurred. Whilst the physical materials used by the pre-existing and unauthorised as-built may be similar, the Council agree with the appellant that their designs are very (materially) different. This is further evident in Figure 1 below:



[Figure 1]

6.6 Figure 1's left-hand image shows the pre-existing immune fencing, which comprises a lightweight trellis which is visually permeable. The right-hand image shows the unauthorised timber fencing, which comprises thick horizontal and vertical posts (the discernible skeleton) and the tight-knitted horizontal slatted trellising of the panels.

6.7 In light of all the above, the works that have resulted in the as-built timber fencing go beyond 'repair, maintenance, improvement or other alteration works. To which, these building operations have unequivocally materially altered the external appearance of the host building, further confirming the development has occurred. This development was carried out without permission, thus contrary to Section 57 of the Act, which states planning permission is required for the carrying out of any development of land, subject to provisions set out therein.

6.8 On the balance of all probabilities, a breach of planning control has occurred and Ground C should therefore fail.

## **7. Other matters raised by the appellant**

7.1 **Appellant:** *Given that the nearest neighbours below and to the left prefer the existing fencing, and that it relates to a well-established development and use, it is considered that planning permission ought to be granted were an application submitted... In determining the application for the iron railings, officers commented that they were considered to be more acceptable in design terms but noting that they would provide less privacy. As such a condition was added to ensure privacy screens. This would of course have the effect of creating a solid barrier and may well look very similar to the timber slatted fence... Whilst it is noted that officers preferred the design of the metal railings, this is clearly at the expense of meeting Policy A1 which seeks to protect the quality of life of occupiers and neighbours.*

7.2 Firstly, the implementation of the 2023/2847/P consent is not a formal requirement of the notice. The Council's notice has required what is necessary to remedy the breach of planning control.

7.3 To which, it is not demonstrated how the appellant's (theoretical) privacy screen would result in the same harmful visual effect as the unauthorised works. In fact, the appellant's argument can be viewed as contradictory and accepts the visual harm of the unauthorised works, given it implies disinterest in recreating the "effect" of a "solid-barrier", contrary to their Ground A appeal. Should the appellant submit an inappropriate discharge of conditions application, the Council would refuse it.

7.4 Accordingly, the Council refutes the notion that the implementation of the 2023/2847/P consent would "of course" impose visual harm and be contrary to Policy A1 of the Local Plan. The consented iron railings paired with an approved privacy screen, which Camden's CPG Home Improvements outlines related design guidance in Section 2.2.3 (Page 55), would address the neighbours concerns regarding overlooking and result in a balustrade system that is sympathetic to the visual appearance of the architecturally interesting and traditional host building and this part of the surrounding Conservation Area.

7.5 Accordingly, the appellants have a workable scheme to address their neighbours concerns through the implementation of a sympathetic balustrading system. These reasons would support why the Ground A appeal should fail.

## **8. Without prejudice to the appeal, suggested conditions should the Inspector be minded to grant permission for the unauthorised works**

8.1 The Council is unable to suggest conditions that would overcome the harm caused.

## **9. Conclusion**

9.1 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 and within the Enforcement Delegated Report. The information submitted by the appellant in support of the appeal does not overcome or address the Council's concerns.

9.2 The unauthorised timber fencing, by reason of its materiality (including finish), 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, and guidance.

9.3 The Council has demonstrated on the balance of all probabilities that the works alleged in the notice constitute as unauthorised development (again harmful) under Section 55 and 57 of the act.

9.4 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