



Appeal Statement

Flat 1 35 Broadhurst Gardens, NW6 3QT

Enforcement Appeal Ref: APP/X5210/C/24/3352400

On behalf of the appellant Mitchell Leigh

February 2025



Appeal Statement

Section 174(2)(a) of the Town and Country Planning Act says "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."

Details have been provided within the appeal submission to outline this case. The appellant considers the replacement screening to be the most suitable solution for the site, balancing the requests of neighbours for screening and the need to be architecturally sympathetic and to preserve the character of the Conservation Area. Timber is a traditional and well-established material in the area, and the proposal is not visible from any public parts of the Conservation Area. As such the potential for harm is minimal. The metal railings approved under application 2023/2847/P are not a conservation style railing and are also horizontal slatted. In approving this application, officers state in the officer report at **(Appendix 1)**:

"It is noted that this is a not an uncommon feature within the terrace and it would not appear out of keeping with the prevailing pattern of development. The terrace would extend to the rear boundary line of the existing rear extension and would not be visible from the streetscene. Overall, the proposed metal balustrades are considered acceptable in terms of their material, height and detailed design".

Taking this into consideration, the key points of contention are the material and the detailed design. In terms of the material, as stated above, timber is a traditional material that would commonly be found in the conservation area (windows, doors, decking, sheds etc). As can be seen in the images on the officer's report at **Appendix 1**, the approved design for the metal railings is for horizontal slats, similar to the design of the timber fence subject to the appeal. The main difference is the spacing between the slats, which is something neighbours objected to and which demanded a condition to provide further details of screening. The appellant presents the view that the closer slatted timber fence serves this purpose already.

Should the appearance remain the primary concern, there would be options to paint or stain the wood, which would be a far more cost efficient and sustainable response than disposal



and replacement with a metal balustrade (and as yet unspecified additional screening). Furthermore, it should be noted that the original fencing was supplemented with planting which grew through and around the trellis. The current proposal facilitates this but will take some time to establish. In the meantime, unlike the previous proposal and the approved scheme, neighbouring amenity will be protected by the closer slatting.

Section 2.2.3 of the Council's Home improvements CPG clearly states the following:

- Balconies should be located at the rear of properties to ensure no impact on the streetscene and wider area;
- Timber balustrades could be appropriate at lower levels;
- Consider spaces for planters within your balcony for screening and enhancement;
- When deemed necessary, privacy screens should be made of natural materials and allow plants to grow on them; Plants act like a sound barrier, provide shade and lower air temperature;

In summary, the proposal is considered to follow guidance and presents an appropriate balance between respecting the privacy and amenity of neighbours and respecting the architecture of the building and surrounding area.

Section 174(2)(c) of the Town and Country Planning Act says "that those matters (if they occurred) do not constitute a breach of planning control".

As above, details have been provided within the appeal submission to outline this case. The exemption from the definition of "development" is necessarily a subjective aesthetic judgement based on the circumstances of the case. There is no statutory definition of 'material effect'. The only broad guidance is that for a material effect on external appearance to have occurred there should be a substantial or significant physical change. The leading court case on this subject is *Burroughs Day v Bristol City Council* 1996 and is often cited in considerations of material effect on external appearance. The court held that changes in external appearance had to be judged in relation to the building as a whole in order to determine the materiality of their effect. Here it was also stated that any change to external appearance must be visible from a number of normal vantage points and that visibility from



the air or a single building would not suffice. Thus part of the test for “material effect” must depend on the degree of visibility.

In this instance, the site is not visible from any public areas and is well screened by trees. The original square panel timber trellis was erected without complaint and had become a lawful development over time. The new slatted panel timber trellis is in the same position at the same height and simply replaced something that was required to be replaced as part of necessary maintenance works to the roof. Due to the large openings, replacing exactly like for like would no longer provided a screening function once the planting had been removed (again due to the necessary building works). It is noted that the original trellis had a darker wood stain. However, the staining or painting of a fence in a neutral colour would not normally constitute a material change.

Response to Council Statement

The Council has not presented a separate appeal statement and is relying on the enforcement report. The appellant had not seen this report prior to it being posted alongside the questionnaire. As such it was not referred to in the grounds of appeal and is addressed here instead.

The Enforcement report states that on the 4th April 2023 the appellant “*withdraws the contention that the as-built is not materially different*”. In the context of the second part of this appeal it is important to directly address this point. The appellant has looked back through the correspondence and notes that they stated on this date that they would “*not contest the council’s decision regarding the current as built balustrades*” and would proceed to put in an application for the metal balustrades and subsequently remove the timber installation. This is subtly different to withdrawing their contention, which has remained and is an important consideration of this appeal. Following on from this, it is accepted that there were delays in getting the application submitted. The appellant planned to use Randall Design to submit the application as they worked with the metal fabricator. They were first contacted in April 2023 but did not respond until June. At this point Camden were already pressing for an application and after going through the requirements with them, Randall advised that they could not meet the required timescales due to other work. As such the appellant prepared and submitted the application themselves in July 2023. The Council responded in October



2023 asking for further drawings, which required a measured survey and further architectural input. At this point the appellant instructed Arcvelop who provided the drawings that would eventually be approved in February 2024. The majority of the delay with determination appears to have been on the Council's side, with the original case officer leaving the Council part way through the process. Following on from the approval it then took months to secure quotes for the metal balustrades, which was as frustrating for the appellant as for the Council. However, the appellant spoke with Joshua Cheung at Camden planning on multiple occasions advising him of this situation. When they finally got the quote, it was much higher than expected, which ultimately led to the decision to appeal the enforcement on the grounds stated. Whilst this was a protracted process, the appellant entered into it in good faith with the aim of securing a mutually agreeable solution. This was the sole reason they did not contest the Council's judgement that the change was material in April 2023.

Ultimately, as evidenced, the costs were prohibitively high to implement something which they and their neighbours consider to be an undesirable change. Whilst it would have been preferable for all parties to have contested this at the time, the intention was always to avoid an appeal. At this stage it is a last resort for both parties and an independent judgement is required.

In addressing the Enforcement Officers assessment section of the report, the following comments are made:

- **Enforcement Report** - *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.*
- **Appellant Response** - The appellant considers the lighter tone to assimilate with the London Stock brick and prefers this aesthetic. However, staining to a darker colour would be accepted as a potential resolution. Similarly the steel fixings can be painted if required to resolve the concern.
- **Enforcement Report** - *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.

- **Appellant Response** – As can be seen on the site photographs, this is a like for like replacement. This is the correct construction for preventing potential water ingress to the roof and sits appropriately above the parapet where it does not conflict with the original brick. The structure or skeleton is visible as it is a single slatted trellis. A doubled slatted that concealed the posts would be much more solid and arguably would be materially different to the existing.
- **Enforcement Report** - *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.*
- **Appellant Response** – Officers should be aware that each planning application is judged on its own merits and that there is effectively no such thing as “precedent” in planning. Whilst there is a requirement for consistency in decision making, the specific circumstances of the case, whereby it is an established use, would always prevent this being used effectively in support of an alternative proposal on another site. Likewise, the reason that these works do not form a prevailing pattern of development is that they are not following precedent and are required to be judged on their own merits. It should be noted that there is not a consistent pattern of development across the rear of Broadhurst Gardens as different extensions have come forward at different times, some of which under permitted development rules, which would apply to houses still in single ownership. In the wider surroundings there are quite a few different examples of first floor (and above) roof terraces evident in aerial views. Each appear to take different approaches to screening dependent on the site circumstances.
- **Enforcement Report** – *The timber privacy fence, by virtue of its materials, design, bulk, and location reads as a dominant and incongruous addition to the host building*

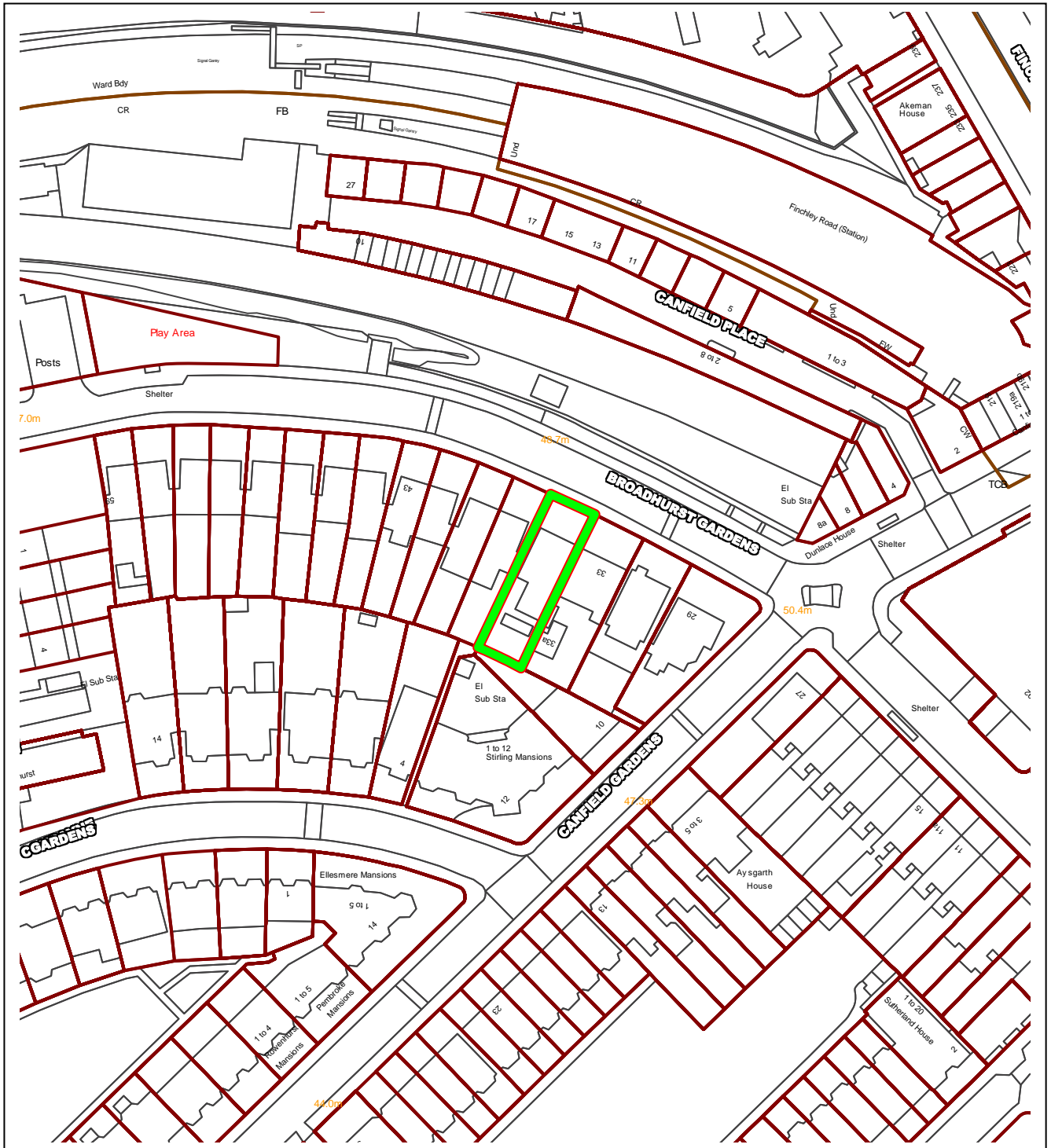
and surrounding Conservation Area, contrary to Policies D1 and D2 of the Camden Local Plan 2017.

- **Appellant Response** – The officer is making a subjective judgement regarding the dominance and perceived incongruousness of the appeal proposal. The appellant considered the replacement trellis to be an entirely reasonable response that provides some additional screening for an established terrace using established materials and established fixings. As set out earlier, it is consistent with Camden CGP. We do not consider the approved metal balustrade to be an improvement visually, and it has revealed a clear concern from neighbours in terms of privacy. The proposals do not change the roof form, as they might if constructed in brick, and the use of timber is sympathetic to the building and conservation area. It is considered that the appeal proposal meets the requirements of Policies D1 and D2 of the Camden Local Plan, which are generic to all development, whilst more specifically following the guidance in the CPG.
- **Enforcement Statement** - *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.*
- **Appellant Response** – The property was purchased with the terrace in place and the owner was required to remove the trellis to undertake repairs to the roof. The replacement fencing was not considered by the appellant to be a material change. Whilst it has narrower slatting to provide increased privacy, it is not a “solid fence”. Given that the approved fencing required a screening solution to be submitted via condition, the narrower slatting should be supported as a point of principle.

Appendix 1

2023/2847/P

35 Broadhurst Gardens

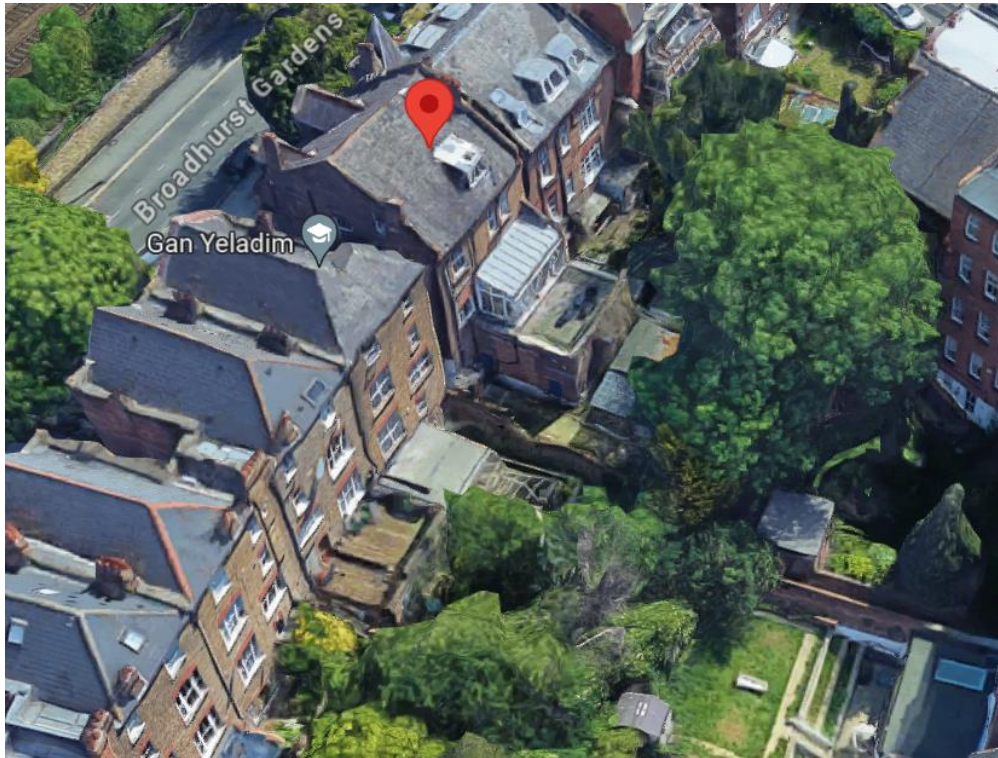


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2023/2847/P

Photos and Plans

2023/2530/P



Application site marked with red arrow



Existing Rear Elevation

Existing rear and side elevation

2023/2847/P

Photos and Plans



Existing trellis

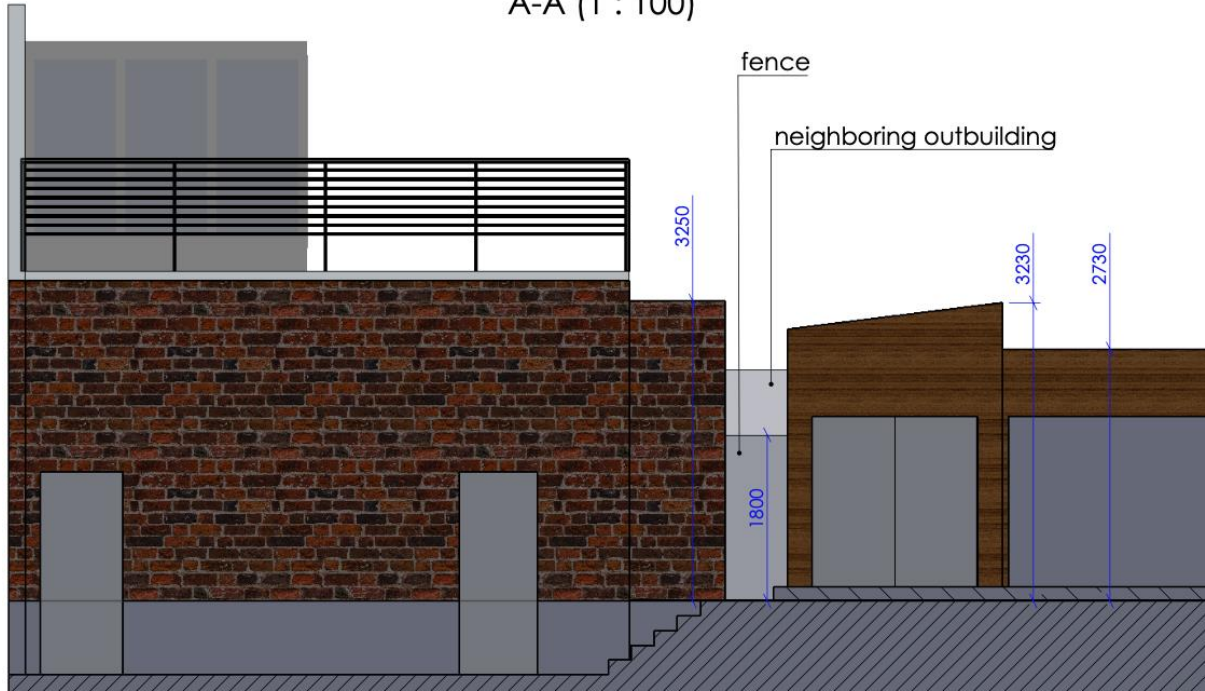


Proposed rear and side elevation

2023/2847/P

Photos and Plans

A-A (1 : 100)



Proposed visual showing the iron railings

Delegated Report (Members Briefing)		Analysis sheet		Expiry Date:	06/10/2023
		N/A / attached		Consultation Expiry Date:	08/10/2023
Officer				Application Number(s)	
Enya Fogarty				2023/2847/P	
Application Address				Drawing Numbers	
Flat 1 35 Broadhurst Gardens London NW6 3QT				See draft decision notice	
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature		
Proposal(s)					
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.					
Recommendation:		Grant conditional planning permission			
Application Type:		Full Planning Permission			

Conditions or Reasons for Refusal:	Refer to Draft Decision Notice			
Informatives:				
Consultations				
Summary of consultation:	Three site notices were displayed surrounding the site on the 01/09/2023 (consultation end date 25/09/2023)			
Summary of consultation responses:	No. of responses	03	No. of objections	03
	<p>Three objections were received from neighbouring properties at Flat 1, 33 Broadhurst Gardens, Flat 1, 35 Broadhurst Gardens and another neighbouring property. Their objections can be summarised as follows;</p> <ol style="list-style-type: none"> 1. The timber panels form a solid separation to ensure no visibility, iron railings will result in a loss of privacy 2. The iron railings would allow clear views into habitable rooms 3. No permission for existing terrace 4. Windows facing the rear terrace were replaced without planning permission 5. Noise and smoking occur on the terrace <p><i>Officers Response;</i></p> <ol style="list-style-type: none"> 1. <i>The iron railings are considered more acceptable in design terms, but would provide less privacy than the solid timber panels. Therefore, a condition has been included to ensure privacy screens are erected prior to the use of the terrace.</i> 2. <i>As stated, privacy screens will be erected to ensure there is no loss to privacy to neighbouring windows.</i> 3. <i>See Section 1.1.</i> 4. <i>The replacement of windows are not part of this planning application.</i> 5. <i>Noise from the terrace would be no greater than standard use of residential gardens in this area. Smoking on the terrace is outside the remit of planning legislation.</i> 			

South CAAC Comments: **Hamstead**

CAAC objected to the following application and is summarised below;

1. *No existing permission for use of the ground floor extension roof as a first-floor rear terrace*
2. *Unauthorised works to rear windows on the application site, enforcement action should be taken.*
3. *The metal railings would result in a loss of privacy to no.33 Broadhurst Gardens.*

Officers Response;

1. Although there is no permission for the existing terrace, it is noted that the terrace has been in place for more than four years, so the terrace is now considered lawful through the passage of time.
2. The rear windows are not subject to this application, it is advised to contact planning enforcement if your concerned works have been completed without planning permission
3. It is noted that the metal railings would afford views into neighbouring windows, therefore a condition will be attached to ensure privacy screens will be in place.

Site Description

The application site is a detached four storey building located to the west of Finchley Road. The site is within the South Hampstead Conservation Area.

The building on the site is a detached Victorian townhouse constructed from red/brown brick with red brick detailing and white render at lower level, bay windows, raised staircase access and brick turret dormers. The site has a vehicle access and front hardstanding providing off-street parking. To the rear, the building has a single storey rear outrigger with a terrace above and an outbuilding.

Relevant History

2018/1961/P - Change of use from a recording studio (B1c light industrial use) to residential (C3 use) comprising 1 x 2 bedroom flat with off-street parking. **Granted 21/06/2018**

Relevant policies

National Planning Policy Framework (2023)

The London Plan (2021)

Camden Local Plan (2017)

- A1 Managing the impact of development
- D1 Design
- D2 Heritage

Camden Planning Guidance:

- CPG Home Improvements (2021)
- CPG Amenity (2021)
- CPG Design (2021)

South Hampstead Conservation Area Appraisal and Management Strategy (2011)

Draft Camden Local Plan

The council has published a new Draft Camden Local Plan (incorporating Site Allocations) for consultation (DCLP). The DCLP is a material consideration and can be taken into account in the determination of planning applications but has limited weight at this stage. The weight that can be given to it will increase as it progresses towards adoption (anticipated 2026).

Assessment

1. The Proposal

- 1.1. Planning permission is sought for removal of an existing timber balustrade/fence atop the rear roof terrace, and replacement with metal railings to form a terrace.
- 1.2. Assessment of the planning history revealed that permission was never granted for the installation of a timber fence to form a roof terrace. The roof terrace has been in place since before 2018 and is therefore considered lawful. Therefore, the proposal seeks only to enclose this space with new metal railings, rather than permission for the use as a terrace.

2. Assessment

- 2.1. The principal considerations material to the determination of this application are as follows:
 - Design and Conservation
 - Residential amenity

3. Design and Conservation

- 3.1. The Council's design policies are aimed at achieving the highest standard of design in all developments. The following considerations contained within policy D1 are relevant to the application: development should respect local context and character; comprise details and materials that are of high quality and complement the local character; and respond to natural features. Policy D1 of the Local Plan seeks to secure high quality design in development and Policy D2 seeks to preserve and, where appropriate, enhance Camden's rich and diverse heritage assets, including conservation areas. Policy D2 states that Council will only permit development within conservation areas that preserves and enhances the character and appearance of the area.
- 3.2. CPG1 (Design) provides further guidance relating to roofs, terraces and balconies and states in paragraph 5.7 that roof alterations are likely to be acceptable where alterations are architecturally sympathetic to the age and character of the building and retain the overall integrity of the roof form.
- 3.3. The guidance also emphasises that consideration should be given to the detailed design of balconies and terraces to reduce the impact on the existing elevation. Materials and colours should match the existing elevation, and setbacks should be used to minimise overlooking.
- 3.4. The proposed metal railings are considered sympathetic to the design and appearance of the existing building and wider conservation area. The railings will not appear bulky or dominant in rear views in the context of this building or area. The removal of the wooden trellis and the installation metal railings is considered an improvement and enhancement to the host building and conservation area.
- 3.5. It is noted that this is a not an uncommon feature within the terrace and it would not appear out of keeping with the prevailing pattern of development. The terrace would extend to the rear boundary line of the existing rear extension and would not be visible from the streetscene. Overall, the proposed metal balustrades are considered acceptable in terms of their material, height and detailed design.
- 3.6. Special attention has been paid to the desirability of preserving or enhancing the character or appearance of the conservation area, under s.72 of the Listed Buildings and Conservation Areas Act 1990 as amended by the Enterprise and Regulatory Reform Act 2013.
- 3.7. As such, the proposed development is in general accordance with policies D1 and D2 of the Camden Local Plan 2017.

4. Residential Amenity

- 4.1. Policy A1 seeks to protect the quality of life of occupiers and neighbours by only granting permission to development that would not harm the amenity of residents. This includes factors such as privacy, outlook, implications to natural light, artificial light spill, odour and fumes as well as impacts caused from the construction phase of development.
- 4.2. The neighbouring properties feature windows to the rear elevation close to the terrace and as a result there may be loss of privacy to neighbouring properties. Therefore, a condition would be attached to provide details of a privacy screen prior the commencement of the relevant works to ensure there is no overlooking to neighbouring properties at no.33 and 37 Broadhurst Gardens.
- 4.3. As a result, due to its size and location of the terrace and privacy screen, it is considered that it would not harm the amenity of any neighbouring properties by way of overlooking, added sense of enclosure or noise. The development is thus considered to be in accordance with policy A1 of the Camden Local Plan.

5. Recommendation

- 5.1. Grant conditional Planning Permission.

The decision to refer an application to Planning Committee lies with the Director of Regeneration and Planning. Following the Members Briefing panel on Monday 12TH February 2024, nominated members will advise whether they consider this application should be reported to the Planning Committee. For further information, please go to www.camden.gov.uk and search for 'Members Briefing'.

Application ref: 2023/2847/P
Contact: Enya Fogarty
Tel: 020 7974 8964
Email: Enya.Fogarty@camden.gov.uk
Date: 7 February 2024

Development Management
Regeneration and Planning
London Borough of Camden
Town Hall
Judd Street
London
WC1H 9JE

Phone: 020 7974 4444

planning@camden.gov.uk
www.camden.gov.uk

Kai Reid
1 Pinnacle Close
London
N10 3BF
United Kingdom

DRAFT

Dear Sir/Madam

DECISION

Town and Country Planning Act 1990 (as amended)

Full Planning Permission Granted

Address:

Flat 1

35 Broadhurst Gardens

London

Camden

NW6 3QT

DECISION

Proposal:

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.

Drawing Nos: Location Plan; PD 02; PD 03; PD 02; PD 03

The Council has considered your application and decided to grant permission subject to the following condition(s):

Condition(s) and Reason(s):

- 1 The development hereby permitted must be begun not later than the end of three years from the date of this permission.

Reason: In order to comply with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).

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

Location Plan; PD 02; PD 03; PD 02; PD 03

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

- 3 All new external work shall be carried out in materials that resemble, as closely as possible, in colour and texture those of the existing building, unless otherwise specified in the approved application.

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policy D1 and D2 of the London Borough of Camden Local Plan 2017.

- 4 Prior to commencement of the roof terrace, details of a privacy screen to prevent unacceptable overlooking into neighbouring properties shall be submitted to and approved in writing with the Local Planning Authority. The roof terrace shall not be used or accessed, other than for emergency egress, until the approved privacy screen has been fully installed and the approved privacy screen shall thereafter be retained for the duration of the development.

Reason: In order to prevent unreasonable overlooking of neighbouring premises in accordance with policy A1 of the Camden Local Plan 2017.

Informative(s):

- 1 Your proposals may be subject to control under the Building Regulations and/or the London Buildings Acts that cover aspects including fire and emergency escape, access and facilities for people with disabilities and sound insulation between dwellings. You are advised to consult the Council's Building Control Service, Camden Town Hall, Judd St, Kings Cross, London NW1 2QS (tel: 020-7974 6941).
- 2 This approval does not authorise the use of the public highway. Any requirement to use the public highway, such as for hoardings, temporary road closures and suspension of parking bays, will be subject to approval of relevant licence from the Council's Streetworks Authorisations & Compliance Team, 5 Pancras Square c/o Town Hall, Judd Street London WC1H 9JE (Tel. No 020 7974 4444). Licences and authorisations need to be sought in advance of proposed works. Where development is subject to a Construction Management Plan (through a requirement in a S106 agreement), no licence or authorisation will be granted until the Construction Management Plan is approved by the Council.
- 3 All works should be conducted in accordance with the Camden Minimum Requirements - a copy is available on the Council's website (search for 'Camden Minimum Requirements' at www.camden.gov.uk) or contact the Council's Noise and Licensing Enforcement Team, 5 Pancras Square c/o Town Hall, Judd Street London WC1H 9JE (Tel. No. 020 7974 4444)

Noise from demolition and construction works is subject to control under the Control of Pollution Act 1974. You must carry out any building works that can be heard at the boundary of the site only between 08.00 and 18.00 hours Monday to Friday and 08.00 to 13.00 on Saturday and not at all on Sundays and Public Holidays. You must secure the approval of the Council's Noise and Licensing Enforcement Team prior to undertaking such activities outside these hours.

In dealing with the application, the Council has sought to work with the applicant in a positive and proactive way in accordance with paragraph 38 of the National Planning Policy Framework 2021.

You can find advice about your rights of appeal at:

<https://www.gov.uk/appeal-planning-decision>.

Yours faithfully

Chief Planning Officer

DRAFT

DECISION