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PINS refs: APP/X5210/C/24/3352400
APP/X5210/C/24/3352401
LPA ref: EN22/0006
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The Planning Inspectorate
Room 3B
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Dear Tracy Warry,

Town and Country Planning Act 1990 as amended

Final comments: Response to the appellants' recent submission ('Appeal Statement') dated February 2025.

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

APP/X5210/C/24/3352400 appeal by: Mitchell Leigh – Grounds A and C

APP/X5210/C/24/3352401 appeal by: Jacob Leigh – Ground C

Enforcement Notice dated 12th August 2024

I write in connection with the appellants' recent representations on the Enforcement (Officer's) Delegated Report (document labelled '*APP STATEMENT Appeal Statement.pdf*' dated February 2025).

The Council would be grateful if the Inspector would consider without prejudice before deciding the appeal, the Council's response (final comments) to these representations – directly below.

Yours sincerely,

Joshua Cheung
Planning Enforcement Officer
Supporting Communities Directorate

It is recommended that these final comments be read in conjunction with both the Council's Delegated Report and Statement of Case dated 25th February 2025.

1. Response to the appellants' recent submission ('Appeal Statement') dated February 2025.

1.1 The Council will breakdown and summarise (or copy and paste where appropriate) the appellant's recent submission, and format it in italics, and respond to it directly below.

1.2 **Appellant:** *Page 1 (whole) and 2 (first half).*

1.3 This part of the submission is an objection to the implementation of the 2023/2847/P consent, which again is not a formal requirement of the notice, nor relevant to the Ground A appeal. The Council has addressed these arguments in full in Section 7 (Page 6) of our Statement of Case. In essence, the Council's notice has required what is necessary to remedy the breach of planning control.

1.4 **Appellant:** *"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."*

1.5 The Council has sufficiently rebutted against this argument. This is found in Section 6 (Pages 4 - 5) of our Statement of Case, and our assessments made within are dictated by law. In summary, the works are a significant (dominant, defensive and stark) addition to the rear façade of the site. It harmfully and materially alters the external appearance host building and character of the surrounding Conservation Area. To which, the unauthorised development goes beyond 'repair, maintenance, improvement or other alteration works. Accordingly, the timber fencing constitutes development – unauthorised at that.

1.6 **Appellant:** *"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."*

1.7 The breach is visible from a number of vantage points to many, if not all, surrounding residential occupiers, especially as it is located at a high level. This is notably evident through, but not limited to, the community engagement in the 2023/2847/P application, as outlined by the appellant throughout this appeal.

1.8 The enforcement team consistently deals with complaints where works have affected the 'exterior' of the site but not harmfully altered its 'external appearance'. However, in this case, given the material visual harm caused (as outlined in the Council's Officer's Report and Statement of Case), it has been and continues to be considered that the breach affects the external appearance of the host building. This is reflected by reason (b) of serving the notice.

1.9 **Appellant:** *"The original square panel timber trellis was erected without complaint and had become a lawful development over time."*

1.10 The Council does not believe this to be relevant to the Ground A appeal. However, would state that development that has become lawful over the passage of time does not correlate to the implicit acceptance of the works by the Council. In fact, a complaint did come through under reference EN16/0424 "creation of a very large balcony" that directly relates to the appeal site. The Council found the trellis had been repaired, thus continued to be immune from enforcement action.

1.11 **Appellant:** *The last parts of Page 3 and first part of Page 4.*

1.12 These parts detail the appellants' own view on the history of this enforcement case. This is not relevant to the appeal.

1.13 **Appellant:** *"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."*

1.14 This appears to be a Ground F argument. Ground F was not appealed, but the Council responds as follows. Firstly, the Council disputes that the "lighter tone" of the as-built timber assimilates with red bricks. In connection with paragraph 5.7 of the Council's Statement of Case, the untreated timber finish, a more modern and seemingly 'incomplete' appearance, is at odds with the earthy and darker tones of the London red stock brickwork and thus particularly incongruous in its setting. Therefore, it cannot be considered that sympathetic materials have been used.

1.15 Nonetheless, the timber fencing's overall design, in particular its use of thick panelling and posts and its tight knit form results a solid and dominant structure that does not respond well with the surrounding aesthetic architectural features (including dentil cornicing and gauged arches). Painting the works in a dark colour will not mitigate its inherent harm of solidity and overall dominance at high level. Depending on the 'dark colour', painting it may even exacerbate the harm. To this effect, the Council continues to be unable to suggest any conditions that would overcome the harm caused.

1.16 **Appellant:** *"As can be seen on the site photographs, this is a like for like replacement."*

1.17 Again, it cannot be considered a like for like replacement, as outlined in the Council's Officer's Report and Statement of Case – side-by-side comparison photos found in both documents.

1.18 **Appellant:** *"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 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."*

1.19 Firstly, there is no demonstrable evidence that the timber fencing prevents water ingress. However, insofar it may, the appellant has not provided a sequential test that justifies the unauthorised works, particularly the visual harm, against other methods of waterproofing, but especially against policy. To which, Appendix 2 of the appellant's initial statement reveals they laid "...a waterproof membrane to protect the flat below..."

1.20 It should be noted that whilst the panelling of the unauthorised timber fencing is knit more tightly in comparison to the pre-existing, there are still spaces in between each panel that would facilitate the appellant's mentions of overlooking.

1.21 **Appellant:** *"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."*

1.22 This is not justification for retaining the timber fencing. It does not show how the as-built is compliant with the development plan and, again, is thus not a material consideration to this Ground A appeal.

1.23 **Appellant:** *"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.”

1.24 As should be noted at this stage of the appeal, the Council has indeed judged this case on its own planning merits, determining the timber fencing causes visual harm to the host building and this part of the Conservation Area against our policies. Part of this assessment is to understand the context of the unauthorised works. The Council is minded to be concerned about the precedent and principle of granting consent for harmful works would cause for the rest of the borough but more particularly, this terrace of properties.

1.25 **Appellant:** *“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.”*

1.26 Notably, CPG Home Improvements states balconies and terraces must 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; Timber balustrades could be appropriate at lower levels.

1.27 Whilst this guidance does not preclude the use of timber at higher levels, it provides clear indication on what is acceptable, and this is reflected by our granting of the 2023/2847/P application.

1.28 Policy D1 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. Policy D2 of the Local Plan states the Council will seek to preserve and, where appropriate, enhance Camden’s designated conservation and areas and heritage assets, as well as non-designated heritage assets including those outside of Conservation Areas and on an off the local list. The Council has explained these works do not respond well with the site, a traditional building, and this part of the Conservation Area, contrary to these policies.

1.29 As required by law and procedure, the Council’s formal decisions surrounding this enforcement case has and continues to be based on our planning policies and guidance, thus objective.

1.30 Again, the appellants have a workable scheme to address their neighbours concerns through the implementation of a sympathetic balustrading system.

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

2.1 The Council continues to be unable to suggest conditions that would overcome the harm caused.

3. Conclusions

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

3.2 The unauthorised timber fencing, by reason of its materiality, 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.

3.3 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.

3.4 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