



19th March 2025

FAO Tracy Warry
Room 3B – Eagle Wing
Temple Quay House
2 The Square
Bristol
BS1 6PN

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

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

Final Comments

Dear Ms Warry,

I am writing to provide final comments on Camden Council's Appeal Statement on behalf of the appellants, Mr Mitchell Leigh and Mr Jacob Leigh. The Council's appeal statement was received on the 27th February 2025.

The appellants have already set out their case in the grounds of appeal and appeal statements. This statement responds to matters raised in the Council's Statement only.

Ground A

At Paragraph 5.2, it is questioned why a leaking flat roof would require the removal of timber fencing. This is clear in Appendix 3 of the Grounds of Appeal which shows the works part way through and illustrates how the construction required the replacement of the parapet which would have meant the removal of the existing fencing.

At Paragraph 5.6, the Council quotes Policy D2 and states that the policy is specific and distinct. However, it is clearly open to interpretation and does not set any specific requirements for boundary materials. The appellant and neighbours consider the fencing to be preferable in design terms to the approved fencing and for the appeal proposal to meet this policy requirement.



Paragraph 5.7 highlights the difference between the “untreated” timber and painted timber of the windows along with the contrast to the red brick. As set out in the appeal statement this is a simple fix that the appellant would be happy to agree to via condition.

At Paragraph 5.8 the Council reiterate that the *“tight knitted horizontal slatted trellising of the panels of the unauthorised works amplify its dominating effect”*. Notwithstanding that this is not a close board fence and is single panel with through visibility, this comment contradicts the condition they applied to application 2023/2847/P, which requires the submission of details of a privacy screen. The appellant and neighbours consider the current fence to provide an appropriate balance between privacy and a solid barrier. As with the timber fence it replaced, this will be supplemented by planting once established.

At Paragraph 5.10 the Council conclude less than substantial harm is caused by the timber fencing. The appellant disagrees that there is harm. As set out in the appeal statement this is an area that is not visible from any public parts of the Conservation Area and the use of a traditional material replacing a longstanding terrace as part of necessary maintenance works should not fall into the category of harm.

Ground C

The arguments presented in Paragraphs 6.3 to 6.5 assume any change to be automatically material without any consideration of their impact.

As highlighted in their statement, Section 55(2) states that *“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 buildings or works which – (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building”*.

The NPPG provides some additional guidance on Section 55(2)(ii), stating *“The term ‘materially affect’ has no statutory definition, but is linked to the significance of the change which is made to a building’s external appearance”*. Whether a change is considered “material” is determined by planning officers and in this case the Planning Inspectorate, with regard to planning policy and case law. The appellants statement made an undeniable statement of



fact that the fence has been replaced and it is visually different. This does not amount to acceptance of a material change, which is a matter of judgement. In Paragraph 6.5 the Council accept that the materials are the same but that the design is different. The two main points of contention are the *“thick horizontal and vertical posts (the discernible skeleton)”* and the *“tight-knitted horizontal slatted trellising”* which is *“visually permeable”*. The appellant notes that the posts are exactly the same thickness as the original posts (75mm) and just like the original posts are set outside the parapet. The colouring of the posts presents a point of difference but this alone would not normally be considered a material change. Whilst it is noted that the horizontal slatted fencing presents narrower gaps, it is not a solid close board fence and is still a single panel permeable timber fencing. The only impacts are visual and views are limited to very specific areas to the rear of the property. As such the materiality of the change has to be brought into question, particularly when considered in the context of being part of a maintenance project linked to the roof repair.

We trust that these additional points will be taken into consideration. Should you have any queries in relation to this information, please do not hesitate to contact me.

Yours faithfully,

Ben Kelly MRTPI
Director