

**PLANNING ENFORCEMENT**

TOWN AND COUNTRY PLANNING ACT 1990 (as amended)

# STATEMENT OF CASE

**APPEAL SITE**

16 Hampstead High Street, London, NW3 1PX

**LPA CASE OFFICER**

Mr Joshua Cheung (Enforcement)

**APPELLANT**

Mr Winston Leong

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**SUBJECT OF APPEAL**

Appeal against the Enforcement Notice dated 29<sup>th</sup> January 2025

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**LPA REFERENCE**

EN25/0002

**PINS REFERENCES**

APP/X5210/C/25/3362222

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**DATE**

15<sup>th</sup> May 2025

## **1. Summary**

1.1 The site is a four-storey (including basement) mid-terrace property that lies within the Hampstead Conservation Area (CA) and Hampstead Neighbourhood Plan catchment. The site also forms part of Hampstead Town Centre's 'Primary Frontages'. A restaurant operates at the ground and basement levels.

1.2 An unauthorised roller shutter has been installed to the shopfront of the property. Following the refusal of the retrospective application (reference 2023/4577/P) to retain these works, the Council served an Enforcement Notice on the 29<sup>th</sup> January 2025, alleging:

***Without planning permission:*** installation of an external shutter box and metal roller shutter to the shopfront.

1.3 And requiring that:

*Within a period of **THREE (3) months** of the Notice taking effect:*

1. *Completely remove the external shutter box and metal roller shutter from the shopfront; and*
2. *Remove any constituent materials and make good any damages as result.*

1.4 The reasons for serving the notice:

- a. *The development has occurred within the last 4 years.*
- b. *The external shutter box and metal roller shutters by reason of its location, design, and appearance results in a dominant and incongruous addition which harms the character and appearance of the host building and the Hampstead Conservation Area contrary to Policies D1 (Design), D2 (Heritage) and D3 (Shopfronts) of the Camden Local Plan 2017; and Policies DH1 (Design), DH2 (Conservation areas and listed buildings), and EC2 (Contributing positively to the retail environment) of the Hampstead Neighbourhood Plan 2018.*

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

2.1 The following histories, including Section 3 below, demonstrates that the Council is consistent in resisting unacceptable development at this site and this terrace of buildings. The Council however seeks to grant permission where the visual appearance and character of the host building and surrounding CA is preserved or enhanced.

- 8804404 and 8880545: The retention of the installation of a new shopfront for existing restaurant as shown on drawing no(s) 26/344 01 02 03 04 05 06B 07 08 09 10 11 12 13 14 15 & 16 revised on 21.10.88. Granted on the 19<sup>th</sup> December 1990.
- 9200385, 9280063 and 9400234: Alterations to existing shop front as shown on drawing no(s) 106/01/01 02 03. Granted on the 13<sup>th</sup> August 1992.
- 2023/3019/A: Display of 1x illuminated fascia sign. Metal mullions are to be replaced from the current mirrored surfaces with a bronze/brass natural finish. Granted on the 22<sup>nd</sup> August 2023.

### 3. Relevant planning history on Hampstead High Street

- (No.6 - 6a) 9200076: Erection of metal slat roller shutters at front elevation to shop entrance as shown on (1) Front Entrance with shutter (2) Side Plan. Refused on the 18<sup>th</sup> June 1992.
- (No.6) P9600235: Installation of security shutter, as shown on drawing Nos. SK1-3, EX1, location plan. Granted on the 4<sup>th</sup> April 1996.
- (No.18) 2004/4256/P and 2004/4257/L: Retention of external solid retractable shutter and shutter box in front of shop door. Refused on the 15<sup>th</sup> February 2005.
- (No.18) 2005/4125/L: Removal of existing solid external shutters and shutter box in front of shop door, removal of solid internal shutter behind shop window and installation of new internal open brick bond shutters behind shop door and shop window. Granted on the 22<sup>nd</sup> November 2005.

3.1 The P9600235 and 2005/4256/P consents follow the respective refusals of their prior applications. Figures 1 and 2 show comparisons of the accepted and refused shutter proposals, respectively.

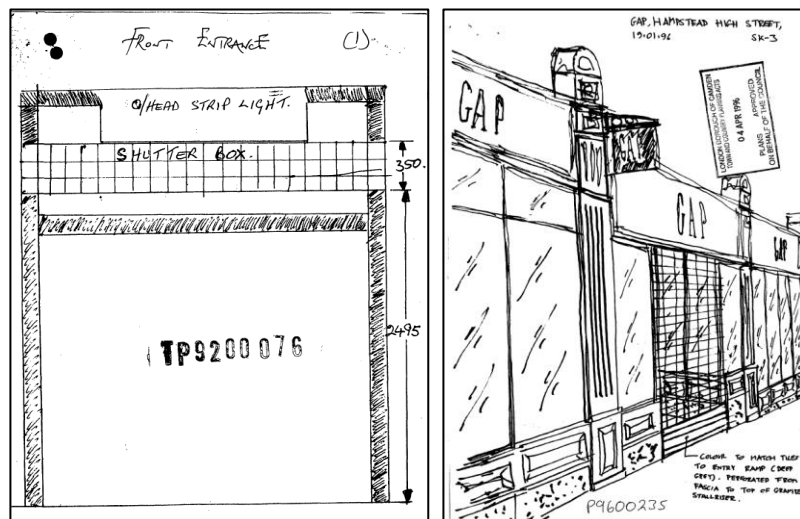


Figure 1: [Left] Prior 9200076 (solid shutters proposed but not shown in this drawing) - refused. [Right] Subsequent P9600235 drawing (brick and bond shutters) - approved.



Figure 2: [Left] Prior 2004/4256/P and 2004/4257/L photo (proposed retention) – refused. [Right] Subsequent 2005/4125/L drawing (brick and bond shutters) - approved.

3.2 Reflected by the above lack of planning history for other properties along Hampstead High Street, I have verified on-site that the rest of the terrace does not possess external roller shutters.

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

4.1 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 2024**
- **The London Plan 2021**

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

- **Camden Local Plan 2017**
  - D1 Design
  - D2 Heritage
  - D3 Shopfronts
- **Hampstead Neighbourhood Plan 2018**
  - DH1 Design
  - DH2 Conservation and listed buildings
  - EC2 Contributing positively to the retail environment
- **Camden Planning Guidance 2021**
  - CPG Design – Paras 6.40, 6.42 – 6.46
- **Hampstead Conservation Area Appraisal and Management Strategy 2001**
  - H40 & H41 Shopfront Security

4.3 It is noted that the Council has begun the process of updating the Local Plan. The Hampstead Neighbourhood Plan is also in the process of being updated. 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.

#### **5. Grounds of appeal**

5.1 The appellant has appealed against the Enforcement Notice under Grounds F and G and has submitted a statement which sets out their case. I will seek to break down the issues raised on each ground then respond accordingly.

5.2 However, the Council discusses a notable preliminary matter first.

#### **6. Preliminary matters:**

6.1 PINS barred the appellant's Ground A appeal under Section 174(2A) of the Act. However, it appears the appellant's statement remains a Ground A representation, seeking retrospective consent for the alleged works. To which, this appeal is under Grounds F and G only.

6.2 Accordingly, within this section the Council expands on a few points within the Officer's Delegated Report w/ enforcement section ('Officer's Report') - Council's principal statement which does sufficiently rebut the appellant's submitted statement - as an initial response. It is therefore recommended that the Officer's Report is read in conjunction with this section, in particular.

6.3 Like its neighbours, the site is a beautiful mid-terrace property that benefits from its architecturally interesting Georgian features - broadly comprising its London yellow stock brick façade, gauged arches and timber sash windows, and surviving shopfront embellishments (including its cornice, consoles and capitals). As such, the site has been appropriately designated as [1] a 'positive contributor' to the CA and [2] part of the Hampstead Town Centre's Primary Frontages, which requires commensurate preservation and/or enhancement. This holds significant weight in this appeal.

6.4 The site is covered by the Hampstead Neighbourhood Plan, which our local communities have carefully crafted with their devolved powers to achieve their vision of their neighbourhood. It is reiterated that Policy EC2 of the Neighbourhood Plan states: *Security measures that do not detract from the streetscape, including toughened glass and the strengthening of shop fronts will be supported. External security shutters, grilles or meshes will not be supported.* Alongside Policies D1, D2 and D3 of the Local Plan, this holds significant statutory weight within this appeal.

6.5 Further supporting texts in the Camden Local Plan 2017 include:

6.51 As part of Policy C5 Safety and Security:

*'To further encourage pedestrian use, developments should also maximise the use of 'active frontages' designed to give buildings a safer, more welcoming appearance and enable overlooking of public areas. External security features which obscure the front of buildings such as solid roller shutters can make places seem hostile and unsafe which can discourage pedestrian movement, they will therefore be resisted'; and*

6.52 As part of Policy D1 Design:

*'Building facades should be designed to provide active frontages and respond positively to the street. Active frontages are building facades that allow people on the street to see inside the building. A more active type of frontage is one where the use opens out to the street, like a shop with a window display and entrance, or a use like a café or restaurant with outdoor dining. Active frontages add interest and vitality to public spaces. Views into buildings provide interest to passers-by and views out of buildings provide safety through passive surveillance or 'eyes on the street'. Positive factors for frontages are entrances, shop fronts and windows. Negative factors include long blank facades, high boundary walls, solid roller shutters and service entrances and yards.'*

6.6 The external roller shutter in question does not respond well with the architectural features of the host building by way of its semi-industrial appearance - appearing solid, utilitarian, and presents a blank featureless ('dead') frontage to the street. The shutter thereby detracts from the character of the site (especially as a 'positive contributor') and setting of the CA, as well as harming the interest and vitality of this part of the Hampstead Town Centre's Primary ('active') Frontages. In relation to the rest of the terrace, the external roller shutter is a stand-alone addition, meaning these undesirable effects are exacerbated.

6.7 The shutter also reads as a defensive addition within the vibrant and welcoming character of the Hampstead High Street 'small town shopping centre'. This resultant hostile and unsafe perception will begin to discourage pedestrian movement, thereby natural surveillance, and harm community cohesion - reducing the sense of community. CPG Design has also identified that external shutters can attract further anti-social behaviour such as graffiti.

6.8 In aggregate, the external roller shutter results in a stark and incongruous addition to the host building and surrounding area, and its retention is contrary to Policies D1 (Design), D2 (Heritage) and D3 (Shopfronts) of the Camden Local Plan 2017; and Policies DH1 (Design), DH2 (Conservation areas and listed buildings), and EC2 (Contributing positively to the retail environment) of the Hampstead Neighbourhood Plan 2018.

6.9 The appellant has raised the matter of 'exceptional circumstances' cited within CPG Design in allowing for the retention of the external roller shutter – in this case the appellant submits that their 'exceptional circumstances' are the recent attacks to the business shopfront. First and foremost, the Council does sympathise with the appellant and does understand that this is an unfortunate situation. However, this must be balanced with the harm that is caused from a solid shutter detracting from the character and appearance of the site and surrounding area, as well as generating feelings of insecurity in those walking by, hide internal intruders and encourage crime and anti-social behaviour such as graffiti.

6.10 CPG Design sets out that solid external shutters will only be acceptable where they do not harm the character of shopfronts, such as internal brick bond grilles or collapsible gates, and are integrated into the shopfront in terms of design, materials and colour. They will only be allowed in exceptional circumstances, and we do not consider the appellant has demonstrate this is the case. Camden's CPG recommends pin-hole shutters as they provided security without compromising surveillance and security. The benefits that have been identified comprise increased security for the business – no corresponding public benefits have been identified. In other words, the 'exceptional circumstances' threshold of the appellant's submission has not been met.

6.11 Moreover, it has not been demonstrated that similar benefits could not be achieved by alternative means that would be less harmful to the host building and surrounding CA. Namely, the lack of a sequential test which CPG Design and Policies H40 and H41 of the CA Appraisal and Management Strategy provides guidance on.

**7. Ground F: "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".**

7.1 However, insofar the appellant's statement can be interpreted as a Ground F representation, in this context these arguments would suggest the retention of the works remedies the injury to amenity caused by the breach. The 'amenity' in question within this appeal is the visual amenity of the architecturally interesting host building, adjoining parade of shops under the Primary Frontage designation and wider conservation area.

7.2 Firstly, the appellant has not sufficiently demonstrated how the retention of the shutters is a lesser step or even remedies the injury to amenity caused by the breach of planning control. Correspondingly, the appellant has not demonstrated how the notice requirements exceed what is necessary to remedy the injury to amenity.

7.3 As set out in the above Section 6 and Officer's Report, the external roller shutters result in a dominant and incongruous addition and contrary to the development plan as a whole, where the harm outweighs any identified benefits. The Enforcement Notice requires what is necessary to remedy breach of planning control and directly associated injury to amenity. Accordingly, the Council wholly refutes the notion that retaining the breach remedies the injury to amenity it causes. Therefore, Ground F should fail.



**8. Ground G: “that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed”.**

8.1 The appellant has not provided any arguments in relation to Ground G. As such, the Council is unable to comment further at present time and Ground G should fail.

**9. Other matters:**

9.1 Paragraph 12 of the appellant’s statement: “*The Appellant has also asked in his appeal that full consideration should be take of another exception to the rule which exists at 19 Heath Street, London, NW3 6TR where – within the same conservation area – a security gate has been allowed and installed. (Application 800190).*”

9.2 In order for the Inspector to fully consider this application, the Council encloses its details below (see Figures 3 and 4). **8700190** (19 Heath Street, London, NW3 6TR): *Installation of a new shop front as shown on drawing no. MC-631-A4.revised on 24th March 1987. Granted on the 29<sup>th</sup> April 1987.*

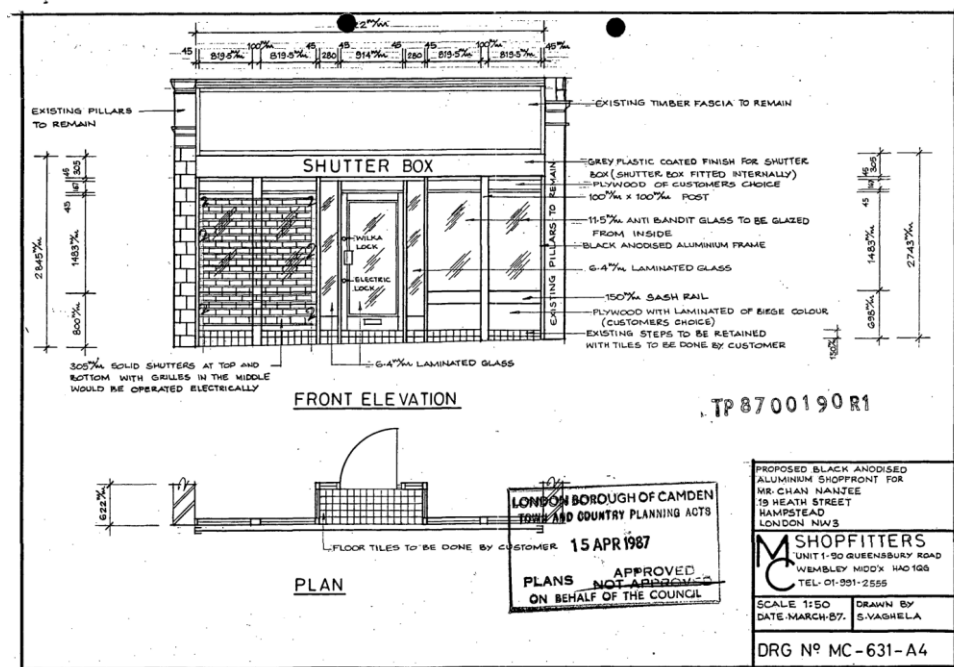


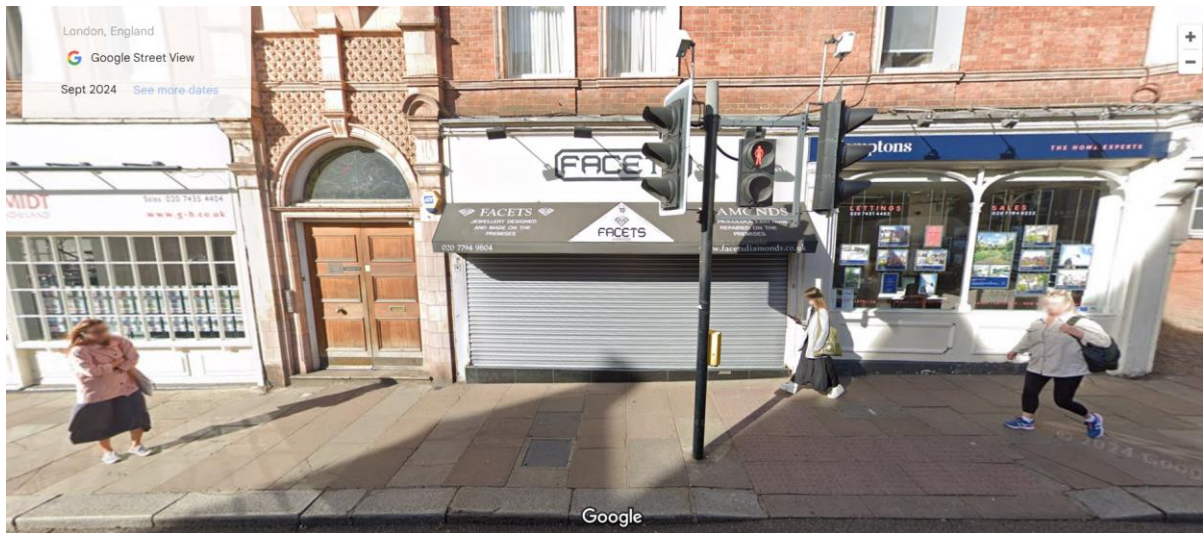
Figure 3: Approved drawing of the 8700190 consent – 1987.



Figure 4: Pre-existing immune position – circa 2008 – 2022.

9.3 As can be seen in Figure 3 above, the Council granted consent for brick and bond shutters, which enables an active frontage and is sympathetic to the host building and surrounding CA. Though this is a historic application and the development plan has evolved since, this decision remains consistent with the Council's decisions outlined in Sections 2 and 3 above.

9.4 However, the business subsequently implemented a different design to the consent - solid slats at stallriser level, brick and bond for the rest (see Figure 4 above). This external roller shutter was immune from enforcement action through the passage of time. To which, it should be noted that immune development does not correlate to the implicit acceptance of the works. Nonetheless, this pre-existing shutter was considered to preserve the appearance of the host building through allowing an active frontage.



*Figure 5: As-built unauthorised position – 2022 – present.*

9.5 Unfortunately, it appears that the business has recently changed to completely solid shutters (see Figure 5 above), similar to the works alleged in the notice of this appeal, so an enforcement case has been opened to investigate these matters. It therefore appears that the appellant may have inadvertently conflated the historic consent with the unauthorised position, which the Council has now clarified.

## **10. Conclusion**

10.1 The external roller shutter is a defensive, stark and incongruous addition that harms the character, appearance and vitality of the host building (a Positive Contributor and Primary Frontage), streetscape and wider CA, contrary to Policies D1 (Design), D2 (Heritage) and D3 (Shopfronts) of the Camden Local Plan 2017; and Policies DH1 (Design), DH2 (Conservation areas and listed buildings), and EC2 (Contributing positively to the retail environment) of the Hampstead Neighbourhood Plan 2018.

10.2 The benefits of the shutter are primarily private and cannot do not convincingly outweigh the harm caused, and the 'exceptional circumstances' cited by the appellant does not justify a departure from the development plan.

10.3 the appellant has not sufficiently demonstrated how the retention of the shutters is a lesser step or even remedies the injury to amenity caused by the breach of planning control. Correspondingly, the appellant has not demonstrated how the notice requirements exceed what is necessary to remedy the injury to amenity. The Enforcement Notice requires what is necessary to remedy breach of planning control and directly associated injury to amenity. Accordingly, the Council wholly refutes the notion that retaining the breach remedies the injury to amenity it causes. Ground F should fail.



10.4 The appellant has not provided any arguments in relation to Ground G. As such, the Council is unable to comment further at present time and Ground G should fail.

10.5 The Council kindly invites the inspector to dismiss this appeal and uphold the enforcement notice.

**11. Without prejudice, suggested conditions should the inspector be minded to allow the appeal**

11.1 The Council is unable to suggest any conditions that would overcome the harm caused by the alleged works.

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