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# Appeal Decision

Site visit made on 1 October 2012

**by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 9 October 2012**

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**Appeal Ref: APP/X5210/C/12/2168032**

**1 Perrins Court, London, NW3 1QS**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Rinaldo Mollura against an enforcement notice issued by the Council of the London Borough of Camden.
- The Council's reference is EN11/0408.
- The notice was issued on 14 November 2011.
- The breach of planning control as alleged in the notice is the unauthorised erection of:
  - 1) Glazed screens fitted into metal frames set within the front first floor balcony.
  - 2) Glazed fixed screens fitted to the lower part of the balcony railing and side glazed doors to the north-eastern end of the balcony.
  - 3) The metal frame fixed to the original balcony which facilitates the fitting of the removable screens.
- The requirements of the notice are to remove:
  - 1) The glazed screens fitted into metal frames set within the front first floor balcony.
  - 2) The glazed fixed screens fitted to the lower part of the balcony railing and side glazed doors to the north-eastern end of the balcony.
  - 3) The metal frame fixed to the original balcony which facilitates the fitting of the removable screens.
- The period for compliance with the requirements is one month for requirements 1) and 2) and three months for requirement 3).
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

**Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.**

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## Procedural matters

1. The Appellant<sup>1</sup> requested that this matter be dealt with by way of written representations but sought the Inspectorate's views as to procedure in respect of the ground (d) appeal. Evidence was submitted by the Appellant which was disputed by the Council. The Appellant asked for a review of the procedure<sup>2</sup> and the Council was asked for its views. The Council was content for the matter to proceed by way of written representations. The Inspectorate reviewed the procedure against the Inquiry criteria<sup>3</sup> and came to the view that the written representations procedure remained appropriate. No further

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<sup>1</sup> who is professionally represented

<sup>2</sup> Email dated 19 April 2012

<sup>3</sup> Procedural Guidance : Planning appeals and called-in planning applications (PINS 01/2009)

comments relating to the procedure have been received from the Appellant or the Council, either before or following the arrangements being made for the accompanied site visit. I will therefore determine the ground (d) appeal on the basis of the documents that have been submitted.

### **The appeal on ground (c)**

2. In an appeal on ground (c) the Appellant has to show that there has not been a breach of planning control. The Appellant makes this appeal in respect of alleged breach 3) and he says that the metal support is only put in place from time to time and does not require planning permission.
3. From the documents it appears that the Appellant is referring to the horizontal metal pieces into which the glass panels are inserted which are referred to by the Council as the mullions. However, the metal frame that is the subject of allegation 3) is more extensive than those elements. I will be considering this ground of appeal, and the appeal in total, in the context of the whole frame.
4. The metal frame into which the glass frames are fixed is made of horizontal and vertical pieces of black coloured metal. The frame is a box-like shape fitted inside the balcony. It is fixed to the original posts of the balcony, along the railing and also along the top and bottom of the balcony; it is also fixed to the wall of the building. This frame appeared to me to be permanently fixed and when I asked the Appellant to remove it he said it could not be moved. The Appellant did remove one of the middle horizontal mullions into which the moveable frames are placed. The metal mullions are secured to the frame by bolts and nuts. Whilst they could be removed it appeared to me from the time it took the Appellant to do so that this did not happen very often.
5. Even if the mullions are removed occasionally, given their purpose, which enables the glass panels to be erected, it seems to me that the mullions form an integral part of the frame. The frame is clearly visible on the front elevation of the building and from photographs of the original building<sup>4</sup> it can be seen that the frame has altered the external appearance of the building.
6. The Appellant has referred to two authorities<sup>5</sup> that he says support his view that the metal frame does not constitute development or materially affect the external appearance of the building. However, I consider, as a matter of fact and degree, that the erection of the frame was an operation which resulted in a physical, permanent alteration to the building which materially affects its external appearance of the building. The metal frame requires planning permission which has not been obtained and the appeal on ground (c) fails.

### **The appeal on ground (d)**

7. In an appeal on ground (d) the Appellant has to show that, at the time the notice was issued, it was too late to take enforcement action against the matters stated in the notice. This means in this case that the Appellant has to show that the operations constituting the alleged breaches in the notice<sup>6</sup> were substantially completed on or before 14 November 2007.

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<sup>4</sup> Figure (iii) of the Council's statement

<sup>5</sup> *Parkes v SSE* [1979] 1 All ER 211 and *Kensington and Chelsea Royal London Borough Council v C G Hotels* (1980) 41 P & C R 40

<sup>6</sup> The Appellant originally made the ground (d) appeal in respect of breaches 1) and 2) but in the statement all three alleged breaches are considered

8. In support of his case the Appellant has submitted correspondence and other documents relating to the Glazier who did the work. The letter dated 11 October 2005 from the Glazier is an estimate of costs for 'supply and installation of glass screens to enclose balcony complete with double hung doors to side elevation and sliding lift or panels above existing railing height' plus a request for a deposit. A letter dated 12 October 2005 from the Architects to the Glazier confirms acceptance of the quote, gives instructions to proceed and encloses a cheque for the deposit. A letter dated 14 March 2007 from the Glazier acknowledges payment of the deposit and says that a sum of £4,500 is required to complete all outstanding work. A further letter from the Glazier dated 30 January 2012 says that the first date he attended the appeal site was 2 December 2005 and the visit was to agree and discuss the installation of glass panels; he says that the installation of the glass work commenced in February 2006 but because of the need for planning permission the last date he was on site was 29 April and work was put on hold. The glazier provided pages from his diary dated Friday 2 December and Monday 5 December 2005 with entries for 'Villa Bianca. Balcony Glazing' and 'fabricating mild steel angle frames' respectively.
9. There are some inconsistencies in these documents. The first date for the estimate is the letter dated 11 October 2005, but in the 2012 letter the Glazier says that he did not attend the appeal site until 2 December 2005. The first diary entry could therefore be the estimate visit rather than the commencement of work, which in the 2012 letter is said to be February 2006. The deposit was not acknowledged until 14 March 2007, some seventeen months after the date of the cheque and a year after the work is said to have commenced.
10. An additional matter to take into account with regard to the glazing is the appeal decision<sup>7</sup> issued after a site visit on 25 September 2006. The application was for the 'enclosure of existing balcony on first floor with demountable glazed screens to provide sheltered dining'. The Inspector does not refer to any glazed screens or doors being in position and her decision is written in the future-conditional tense. The date given by the Glazier when he finished the work, that is 29 April 2006, appears to be incorrect.
11. The Council has provided a photograph<sup>8</sup> clearly marked as taken on 14 June 2007. There is no metal frame attached to the wall of the building or within the balcony, nor are there any glass panels or doors. Similarly the frame and glass panels and doors are not apparent in photographs<sup>9</sup> said to have been taken on 23 April 2008.
12. Local residents have also advised that the cobbles in Perrins Court were laid between 18 August and 3 September 2008 and they have provided a photograph which shows cobbles and no frame or glass panels or doors at the appeal site<sup>10</sup>. However, a photograph provided by the Appellant shows the road still tarmaced and with a glass frame (not doors) on the eastern side of the balcony; this part of the frame and glazing therefore appears to have been in place prior to August –September 2008 but it was not referred to by the previous Inspector in September 2006 and given the contradictions in the

<sup>7</sup> APP/X5210/A/06/2017463

<sup>8</sup> Figure (x) of the Council's statement

<sup>9</sup> Figures (xi) and (xii) of the Council's statement

<sup>10</sup> Email to the Council dated 20 October 2011

Glazier's evidence, I am unable to make any finding when that part of the frame and glazing was erected.

13. It is for the Appellant to prove his case on the balance of probabilities. From what I have set out above I consider that he has failed to do so and the appeal on ground (d) fails.

### **The appeal on ground (a) and the deemed planning application**

14. In an appeal on ground (a) the Appellant is seeking planning permission for what is alleged in the notice and the deemed planning application is also for what is alleged in the notice.
15. The main issues to be considered are firstly the effect of the metal frame and glazed screens and doors on the character or appearance of the Hampstead Conservation Area and, secondly, the effect on neighbours' living conditions with regard to noise and disturbance.

### ***First issue: Character or appearance***

16. Perrins Court is a predominantly pedestrian street linking Hampstead High Street and Heath Street. The buildings are in a variety of styles and designs. There are commercial uses on many of the ground floors and upper floors but the buildings adjoining and opposite the appeal site are residential. The building on the appeal site, which is a restaurant, has two storeys and an attic; the first floor balcony is a distinctive and attractive feature in the street. The original balcony was an open and minimal structure with a canopy over metal columns and railings. The frame behind the original metal structure is heavy and utilitarian. Where it is attached to the columns and behind the railings it alters their shape and proportion and they appear clumpy and their original elegance is no longer apparent. The frame attached to the wall is painted black and is obtrusive on the front façade of the building. The heavy metal mullions enclose the balcony even when the glass panels are not in place thus adversely affecting the appearance of the balcony.
17. The thickness and obtrusiveness of the frame is enhanced by the permanent frames of the lower glass panels. When the upper glass panels, which are themselves framed in black metal, are in place the frame is thickened further to the further detriment of the appearance of the balcony. The appearance of the glass panels was considered by the previous Inspector who said that they 'would result in a rather odd appearance akin to a first floor conservatory and detract from the considerable charm of the property and wider street'<sup>11</sup>. Unlike her, I had the benefit of seeing the glass panels in place and I have no reason to come to a different conclusion.
18. The Appellant has suggested that the balcony is only enclosed at night. Photographs that appear to have been taken in daylight<sup>12</sup> show that this may not necessarily be the case, but in any event the detrimental appearance of the panels at night would be similar to that during the day. The hanging baskets, while attractive features, do not mitigate the harm resulting from the heavy metal frames and the glass panels.

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<sup>11</sup> Paragraph 2 of APP/X5210/A/06/2017463

<sup>12</sup> Figures (i) and (ii) of the Council's statement and Plate 1 from a local resident dated 8 January 2012

19. I have noted the Appellant's contention that the enclosure is needed to stop pigeons nesting. I noted that there were spikes on the inside of the balcony to deter them and I am aware that there are measures that can be taken to prevent pigeons roosting on buildings; the enclosure of the balcony is not, in my opinion necessary for this purpose.
20. Policy CS14 of Camden Core Strategy and Policies DP24 and DP25 of Camden Development Policies seek to, among other things, maintain the character of Camden's conservation areas and encourage the highest standards of design. For the reasons given above I consider that the development in this case does not comply with these policies and I conclude that metal frame and glazed screens and doors have a harmful effect on the character or appearance of the Hampstead Conservation Area.

### ***Second issue: Neighbours' living conditions***

21. The previous Inspector was of the view that the enclosure of the balcony would amount 'to an intensification of its overall use' and that, on balance 'the increased focus of activity at the front of the premises would be likely to materially increase the noise and disturbance experienced by local residents, particularly in the evenings'<sup>13</sup>. From what I have read in the representations made by local residents relating to the use of the balcony when it is enclosed I have no reason to come to a different conclusion.
22. I therefore conclude that the metal frame and glazed screens and doors, which allow for the enclosure of the balcony, have a harmful effect on neighbours' living conditions with regard to noise and disturbance and that the development does not comply with Policy D26 of Camden's Development Policies which seeks, among other things, to protect neighbours' quality of life.

### ***Conclusions***

23. For the reasons given above, and taking all other matters into account, I conclude that the ground (a) appeal fails and I refuse the deemed planning application.

### ***The appeal on ground (f)***

24. An appeal on ground (f) is on the basis that the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections. The Appellant has made an appeal on the grounds that if the alleged breach 3) requires planning permission, its presence could be restricted to evening hours only.
25. As I have mentioned above, it seems to me that the Appellant is only referring to the horizontal mullion across the middle of the frame. I have determined above that this part of the frame is integral to the whole frame and that it is not temporary. I have also considered above the use of the enclosed balcony during the evening hours and found against the Appellant.
26. The steps proposed by the Appellant would not serve the purpose of remedying the breaches of planning control set out in the notice and the appeal on ground (f) fails.

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<sup>13</sup> Paragraphs 3 and 4 of APP/X5210/A/06/2017463

### **The appeal on ground (g)**

27. The notice seeks compliance with the requirements to remove the glazed screens and doors within one month and the frame within three months. However, the Appellant says that the carrying out of the works would need to be scheduled to avoid and/or minimise disruption to the restaurant business and he says that six months would be more appropriate.
28. I appreciate that the Appellant does not want to disrupt his business but the works required are not extensive; they could be undertaken when the restaurant was closed; and they would take place outside the building in which the restaurant is situated. I consider that the time for compliance is not unreasonable and the appeal on ground (g) fails.

### **Conclusions**

29. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

### **Decision**

30. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*Gloria McFarlane*

Inspector