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Date 10 November 2015
Our ref APL/00102/AUT/DGu
Your ref 2010/2460/P

Dear Sir/madam

Merton House, Merton Lane, N6 6NA

Application to discharge of condition 3 of planning permission ref 2010/2460/P

Please find enclosed our application with revised details to discharge condition 3 of the planning permission granted on 7 September 2010 (LBC ref: 2010/2460/P) for:

“Excavation to create basement floor level, including provision of garage and associated ramped drive; remodelling of rear (north) elevation at ground floor level to provide additional residential accommodation, including erection of new single storey extension on side (east) elevation with glazed link to main house (following demolition of existing single storey outbuilding); erection of rear (north) elevation extension at first floor level; installation of new dormer on side (east) elevation and enlarged dormer on rear (north) elevation and associated alterations, all to single family dwellinghouse (Class C3).”

The submission comprises the following:

1. Application forms
2. Application fee of £28.00
3. Proposed external landscape plan ref: 94-100 (Oct 2015)

Original Permission

In September 2010 planning permission was granted for the above development subject to nine planning conditions. Condition 3 of the permission required details of hard and soft landscaping and means of enclosure to be submitted to and approved by the local planning authority. The condition also included the requirement that the *“relevant part of the works shall not be carried out otherwise than in accordance with the details thus approved.”*



On 12 May 2013 details were submitted of the proposed hard and soft landscaping works in order to discharge condition 3 and these were approved on 5 July 2013 (LBC ref: 2013/2999/P). The details in relation to the front of the property showed amongst other things:

1. The existing 2.7m high brick wall/fence on the northern boundary with 35 Highgate West Hill
2. The existing brick wall and fence on Highgate West Hill
3. The gate to the property from Highgate West Hill
4. The existing brick wall on Merton Lane to be made good and an iron railing to replace the chicken wire fence and privet hedge
5. New iron gates to the driveway from Merton Lane
6. A hedge to be planted behind the iron railings fronting Merton Lane
7. Three grassed areas to be laid with good quality amenity grade turfs
8. Paved areas linking the gate from Highgate West Hill to the front of the house and the driveway off Merton Lane, creating footpaths and terraced areas
9. An area of ornamental planting directly in front of the house
10. Various existing trees in the front garden (cherry x1, holly x1, apple x2, hornbeam x1, walnut x1, hawthorn x1)

Work commenced on site on 1 September 2013 with practical completion on 31 March 2015 (the contractors attended daily for another month) and our client moved back in to the property in May 2015.¹

Breach of Condition

In June 2015 Mr John Sheehy (Senior Planning Officer) wrote to the agent responsible for the submission of the landscaping scheme, Mr Almas Bavcic, to arrange a site visit to the property following a complaint received on 8 April 2015. A site visit was arranged for 15 June 2015 and in addition to the planning officer, the Council's Tree and Landscape officer, Mr Gerry Oxford, attended.

On 19 June 2015 Mr Sheehy wrote to the Mr Bavcic to say that the works that were carried out were not in accordance with the approved landscaping details, in particular he noted that:

1. A number of trees that were supposed to have been retained had been removed
2. Trees that were to be planted were not in place
3. Areas of soft landscaping had been hard landscaped.

Unfortunately rather than following Camden's own Planning Enforcement Policy which states that "*Government guidance makes it clear that we should first try [to] remedy planning breaches through negotiation in all but the most serious cases*", Mr Sheehy's response was to advise that:

¹ Note the development as a whole has not yet been completed as the approved basement level and garage have yet to be built.



- a. *"because of the seriousness of the breaches, the Council will issue a Breach of Condition Notice which will require the approved landscape details to be instated in full"*
- b. *"the Council is minded to take separate action against the site owner as complete removal of trees from a site without permission is in breach of tree protection legislation" and*
- c. *"We are also minded to take enforcement action against the front and side boundary treatment onto Merton Lane and Highgate West Hill, which is not in accordance with the approved drawings 782-021-41 and 782-021-42. The approval of details application 2013/2999/P shows a metal fence on an inset photograph but there are no dimensions of such a fence on the drawing."*

Mr Sheehy also advised that the front/side fence had to be reduced *"down to no more than 1.0m in height"*. This position was overly onerous and did not reflect the position in the Town and Country Planning (General Permitted Development) Order 2015, which sets out in Schedule 2, Part 2, Class A that *"the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure"* is permitted development unless, inter alia, *"the height of any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height"*.

There is clear evidence that the fence and wall did not exceed the original height of the timber fence that had been in place (see Annex 1 to this letter), other than a trellis that had been added for decorative purposes. Consequently in subsequent email correspondence Mr Sheehy's position changed noting that the retention of the fence to this height was acceptable, though the additional trellis that had been added needed to be removed.

Unfortunately, with regard to the boundary to Merton Lane he required its reduction *"to a maximum of 1.1m in height and the transplanting of a fully grown mature hedge to the front garden inside the fence."* This did not reflect the fact that a means of enclosure fence existed above the wall previously (namely a chicken wire fence within a substantial privet hedge) and that the Council had already granted planning permission for railings above the wall when condition 3 was discharged in July 2013 (LBC ref: 2013/2999/P).

Despite our client offering to meet with Mr Sheehy in order to seek to resolve matters, Mr Sheehy refused to meet or discuss the matter, and on 4 August 2015 the Council served a Breach of Condition Notice on the owners of the property in relation to conditions 3 (hard and soft landscaping), 4 (trees dead, dying or diseased) and 5 (retained trees). The allegation was that *"the conditions have been breached in that works are not in accordance with the landscape plan approved pursuant to condition 3 of application ref. 2010/2460/P."*

The Notice required the owners to *"fully implement the landscape details approved by the Council under application ref. 2013/2999/P and shown on drawing 93-014, dated February 2012"* with the following steps being specified to be undertaken within four months:



1. ***“Front Garden:*** plant one hawthorn tree near the entrance gate in the position it occupied by the removed hawthorn. This shall be planted as a Heavy Standard with a girth of 12-14cm, and the planting process should take into account the standards set out in BS5236:1975 and BS8548:2014;
2. ***“Front Garden:*** plant two apple trees near the front corner of Highgate West Hill in the position occupied by the removed apple trees. These shall be planted as Heavy Standards with a girth six of 12-14cm, and the planting process should take into account the standards set out in BS5236:1975 and BS8548:2014;
3. ***“Front Garden:*** plant one walnut tree near the front corner of Highgate West Hill in the position occupied by the removed walnut tree. This shall be planted as a Heavy Standard with a girth six of 12-14cm, and the planting process should take into account the standards set out in BS5236:1975 and BS8548:2014;
4. ***“Front Garden:*** plant one cherry tree along Highgate West Hill in the position occupied by the removed cherry tree. This shall be planted as a Heavy Standard with a girth six of 12-14cm, and the planting process should take into account the standards set out in BS5236:1975 and BS8548:2014;
5. ***“Front Garden:*** plant one holly tree along Highgate West Hill in the position occupied by the removed holly tree. This shall be planted as a Heavy Standard with a girth six of 12-14cm, and the planting process should take into account the standards set out in BS5236:1975 and BS8548:2014;
6. ***“Front Garden:*** completely remove the artificial grass covering to the front garden and replace with a natural turf lawn;
7. ***“Rear Garden:*** plant three silver birches in the rear garden in place of the apple, the loss was [sic] of which was approved under 2010/2460/P. These shall be planted as Heavy Standards with a girth six of 12-14cm, and the planting process should take into account the standards set out in BS5236:1975 and BS8548:2014;
8. ***“Rear Garden:*** plant four apple trees near the single storey out building in the positions occupied by the removed apple trees. These shall be planted as Heavy Standards with a girth six of 12-14cm, and the planting process should take into account the standards set out in BS5236:1975 and BS8548:2014.”

The notice included the requirement that *“following their completion, the above measures shall be permanently maintained and retained thereafter.”*

On 14 September 2015 a letter was sent from Gerry Oxford to our client entitled ‘Letter of Alleged Offence’, advising him that the removal of eight trees from the property, situated in the Highgate Village Conservation Area was in contravention of s211(1) and s210(1) of the Town and Country Planning Act 1990 and as such the matter was to be reported to the Council’s Legal Department with a view to the Council commencing criminal proceedings against our client.



Again this is somewhat of an unfortunate approach for the Council's officers to take as our client had been in contact with both Mr Sheehy and Mr Oxford setting out, as required by the Council's policy, a timetable to comply with the breach and rectify the situation. This has now been complied with in respect of the tree planting.

Proposed Solution

Replacement trees

Our client and his agent Mr Bavic have had considerable correspondence with the Council's officers making it clear that they wished to resolve matters and setting out the reason for some of the breaches. To summarise, because of rampant honey fungus the privet hedge (along Merton Lane) and the hawthorn and cherry in the front garden had died, though the holly, hornbeam and pendulous cherry were still in place. In the rear garden the apple trees along the boundary with 35 Highgate West Hill had died and the client had proposed (as shown in the planning application) new planting of three silver birch trees. It is worth noting that the Arboricultural Impact Assessment submitted with the 2010 planning application noted that the apple tree overhanging Highgate West Hill was diseased with honey fungus decay should be removed.

Our client had confirmed to Mr Sheehy that he had ordered appropriate trees from Majestic Trees of St Albans, and that Majestic Trees proposed to plant replacement specimens in the first planting season. The trees to be planted were:

- 1x Malus d. 'Granny Smith' (girth 14-16cm)
- 3x Malus domestica 'Fuji' (girth 14-16cm)
- 3 x Betula albosinensis 'Fascination' (girth 14-16cm)
- 1x Crataegus x per 'Prunifolia Splendor' (girth 12-14cm)
- 16x Prunus lusitanica 'Myrtifolia' (hedging) (height 100-125cm)
- 4x Prunus lusitanica (hedging) (height 100-125cm)
- 1x Juglans regia (girth 12-14cm)
- 1x Prunus avium (girth 12-14cm)

Majestic Trees have since been on site and the planting has now been undertaken – not only in the front garden, but also in the rear – fully complying with points 1-5 and 7-8 of the Breach of Condition Notice (set out on pages 3-4 above). The mature hedge that has been planted fronting Merton Lane is higher than the railings in some places and will soon grow through the railings, softening the front boundary treatment and replicating the appearance of that boundary as it was previously when the privet hedge grew through the chicken wire fence.

We trust therefore that Mr Oxford will be able to confirm that this aspect of the breach has been remedied and that he will instruct the Council's Legal Department accordingly.



Boundary treatment to Highgate West Hill

With regard to the front feather edged fence on Highgate West Hill, our client had also advised Mr Sheehy that in July 2015, the trellis above the fence had been removed and so this fence now accords with the height of the former fence.

The boundary treatment along Highgate West Hill therefore accords with drawing 93-014 (February 2012) which was approved when details of hard and soft landscaping were discharged on 5 July 2013 (LBC ref: 2013/2999/P). The wall has been retained and the fence has been improved or altered, respecting the former height on that frontage, as permitted by Part 4, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015.

The iron gate has also been replaced by a temporary wooden gate which is no higher than the former gate and matches the height of the feather edged fence. Our client proposes to replace this with a more attractive gate in the future once the issues associated with the Breach of Condition Notice have been resolved (this will be under the permitted development entitlement arising from Part 4 of Schedule 2 of the Town and Country Planning [General Permitted Development] Order 2015).

The details in relation to the boundary treatment fronting Highgate West Hill can be seen in Annex 1 to this letter.

Boundary Treatment to Merton Lane

In relation to the front boundary to Merton Lane, we have already noted that the boundary detail that was present at the time of the planning application in 2012 was a wall, above which was a chicken wire fence within a substantial privet hedge (growing through the fence). This detail was shown on the application drawings that were submitted with the 2010 planning application (see Annex 2).

When details of hard and soft landscaping, including boundary treatment, were provided to discharge condition 3 in 2013, the landscape plan showed the treatment of this part of the boundary as being "iron railing installed on existing brick wall with existing hedge behind" with a photograph on the submitted plan (drawing 93-014 [February 2012]) showing the treatment (see Annex 2). This plan and detail was approved by the Council on 5 July 2013.

Whilst the approved plan did not include details of the height of the existing wall or the height of the proposed railings on top, the Council did not seek clarification with regard to the height prior to determination. Rather the planning officer's delegated report recorded that:

"The proposed boundary treatments wooden fencing to the rear and an iron railing on top of the existing brick wall to the front are also considered to be acceptable, and therefore is considered to preserve and enhance the character and appearance of the conservation area."



As noted with the boundary fronting Highgate West Hill in the previous section, our client is entitled to erect, construct, maintain, improve or alter the front boundary fence/wall provided the height of the replacement does not exceed that of the former fence/wall by virtue of Part 4 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015. The boundary treatment approved when condition 3 was discharged (LBC ref: 2013/2999/P) does not exceed the height of the fence/wall that already existed. Therefore the current boundary treatment not only accords with the details approved by the Council, but also is permitted development.

Whilst the intention had been to retain the privet hedge behind the iron railings, as noted earlier the hedge was diseased and replacement planting has now taken place. The initial planting was unsuccessful and consequently Majestic Trees have replaced that with a new mature hedge which will grow through the railings (already higher than the railings in places) and form a much softer boundary treatment.

Soft landscaping

The approved landscaping plan (drawing 93-014 [February 2012]) proposed three areas of lawn for the front garden. The two smaller areas, adjacent to 35 Highgate West Hill, have been laid with slate chippings rather than grass, whilst the larger area of grass has been laid with artificial turf (see Annex 3). The Breach of Condition Notice does not refer to the two areas of slate chippings but refers only to the artificial turf.

The sixth step in the Breach of Condition Notice required our client to “*completely remove the artificial grass covering to the front garden and replace with a natural turf lawn.*” Whilst the artificial turf is not the same as the “*good quality amenity grade turfs*” specified on the approved plan, we consider that there is no justification for the Council’s requirement to completely remove the artificial turf and replace it with natural lawn.

Section 55(1) of the Town and Country Planning Act 1990 states that development “*means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.*” Clearly the creation of artificial sports pitches with the associated building and engineering operations can be development. However, the laying of artificial turf in a residential garden (and in this instance in particular) is not operational development, since it can be undertaken by any individual, involving only the tamping down of the soil, laying of a weed membrane, rolling out the artificial grass (as with turf) and then fixing it with ground pins.

The photograph in Annex 3 shows the artificial lawn. It can be seen from the photograph that the artificial lawn is not distinguishable from normal grass. Further the lawn is not visible from outside the property and so has no adverse impact on the conservation area.



Planning Submission

We are submitting revised details pursuant to condition 3 of planning permission reference 2010/2460/P. The revised plan shows the boundary treatment as it currently is, details the replacement planting that has been undertaken by Majestic Trees, and includes the different areas of hard and soft landscaping treatment to the front garden as described above.

We have shown that some of the breaches alleged in the Breach of Condition Notice are not actually breaches of condition 3, such as the height of the fence fronting Highgate West Hill (where the treatment was no different to that which already existed) and the railings on top of the wall fronting Merton Lane (a detail that the Council had specifically approved in the previous submission ref: 2013/2999/P and which does not exceed the height of the former means of enclosure).

Additionally the requirement of the Breach of Condition that *“following their completion, the above measures shall be permanently maintained and retained thereafter”* goes beyond the requirements of the planning permission and is not reasonable. Condition 3 required the development to be carried out in accordance with the approved details, condition 4 required the planting to be undertaken within the first planting season and any trees or areas of planting which die, are removed or become damaged or diseased within 5 years shall be replaced, and condition 5 required retention and protection of existing trees on site.

Finally, we consider that step 6 of the Breach of Condition Notice is excessive, since the replacement of the artificial turf is unnecessary as the laying of the turf in this instance would not constitute development and our client would be entitled to lay this without requiring planning permission.

Having outlined the steps our client has undertaken to comply with the Breach of Condition Notice and set out the proposed solution with regard to the other deficiencies associated with the notice we consider that the submitted landscaping plan (drawing 94-100) should be approved.

We trust that you will find this application all in order and we look forward to positive engagement with the Council in order to resolve this satisfactorily.

Should you have any questions or need further information please do not hesitate to contact me

Yours faithfully

David Gurtler
Director



Annex 1: Boundary details to Highgate West Hill

Drawing 782-021-42 from permission 2010/2460/P showing existing wall and fence



Google Streetview image from May 2012 showing existing wall and fence



Google Streetview image from June 2015 showing existing wall and fence (before trellis removed)





Annex 2: Boundary details to Merton Lane

Drawing 782-021-41 from permission 2010/2460/P showing existing wall, fence and hedge



Google Streetview image from May 2012 with much of wall and fence obscured by hedge

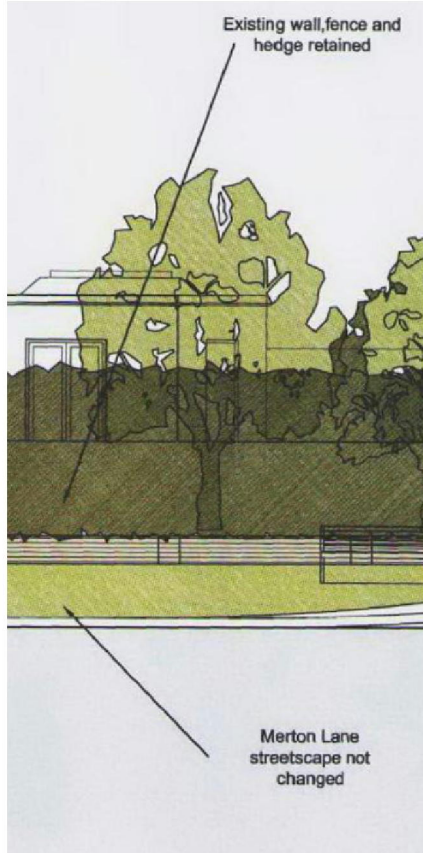


Google Streetview image from June 2015 showing existing wall and new railings

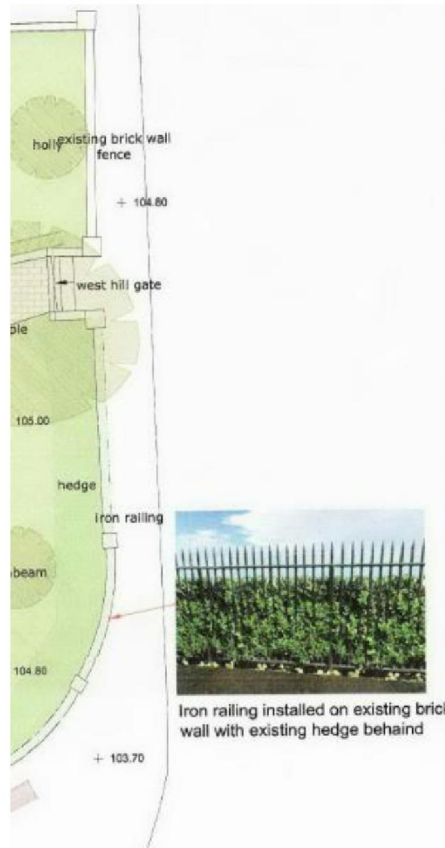




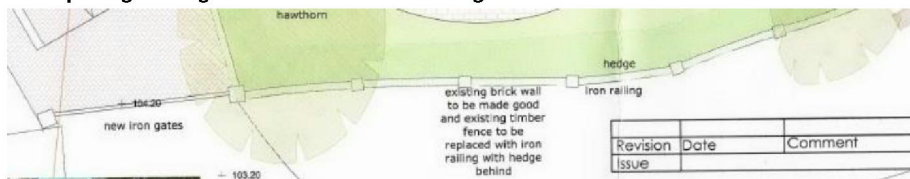
Extract from drawing 782-021-41 showing existing fence, wall and hedge (2010/2460/P)



Extract from drawing 93-014 (landscape plan) showing approved railing detail (2013/2999/P)



Extract from drawing 93-014 (landscape plan) detailing new iron gates, making good of brick wall and replacing existing timber fence with iron railings.





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Annex 3: Hard and Soft Landscaping

Panorama showing slate chippings adjacent to 35 Highgate West Hill and artificial grass.

