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Our Ref: EN15/0735
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The Planning Inspectorate
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Dear Craig Maxwell,

Re: Final comments - Site at Flat 1, April House, 45 Maresfield Gardens, London, NW3 5TE, against an Enforcement Notice served on 28th July 2015 for the unauthorised erection of metal gates and brick piers on the front boundary of the property

Further to the Council's submission dated 2nd November 2015, the appellants have submitted a more substantial appeal statement which the Council will also now address.

Summary of the case

The addition of front gates and piers dividing up a previously open forecourt parking area at the front of the property has created two defined off street parking zones to the north and south edges of the forecourt area with a central pedestrian access delineated by the piers. The specific location of the gates and piers means that the former cross-over, servicing the open forecourt arrangement (located more centrally and to the south of the site), cannot be used by the northern off-street parking bay, and means any vehicle using that space must bump over the kerb to access this space.

The Council have refused an application for the retention of the gates and piers as built, and have also served an Enforcement Notice against the unauthorised structures for the following reasons:

1. It appears to the Council that the above breach of planning control has occurred within the last 4 years.
2. The as built gates and gate piers on the front boundary form an arrangement which is considered to be detrimental to highway safety by virtue of inadequate sightlines for vehicles leaving the site, contrary to the London Borough of Camden Local Development Framework Core Strategy 2010 policies CS5 (Managing the impact of growth and

development), CS14 (Promoting high quality places and conserving our heritage), and the London Borough of Camden Local Development Framework Development 2010 Policy DP19 (Managing the impact of parking) and DP21 (Development connecting to the highway network).

3. The as built gates and gate piers on the front boundary form an arrangement which when in use results in the loss of part of an on-street residential parking bay, contributing unacceptably to parking stress in the surrounding area, contrary to the London Borough of Camden Local Development Framework Core Strategy 2010 policies CS5 (Managing the impact of growth and development), CS14 (Promoting high quality places and conserving our heritage), and the London Borough of Camden Local Development Framework Development 2010 Policy DP19 (Managing the impact of parking) and DP21 (Development connecting to the highway network).

This case is about the design of a new front wall, parking and access arrangement for the property concerned whilst balancing what impact this has on both on-street parking and vehicular and pedestrian highway safety.

Development Plan Policies

The Development Plan' for the purposes of Section 38(6) of the Planning and Compulsory Purchase Act 2004 is The Camden Core Strategy and Camden Development Policies of the Local Development Framework (adopted November 2010 following a full consultation procedure).

The current Fitzjohns / Netherhall Conservation Area Statement was formally adopted in 2001 after a public consultation process. The area was first designated in March 1984.

1.0 Further Comments on the Grounds of Appeal

- 1.1 The appellants have expanded on their arguments in relation to various matters across nearly all of the grounds of appeal. These are covered in the same order that they appear in the appellant's statement rather than in the order of the appeal categories submitted in the Council's main statement.

Ground E – That the Notice was not properly served on everyone with an interest in the land

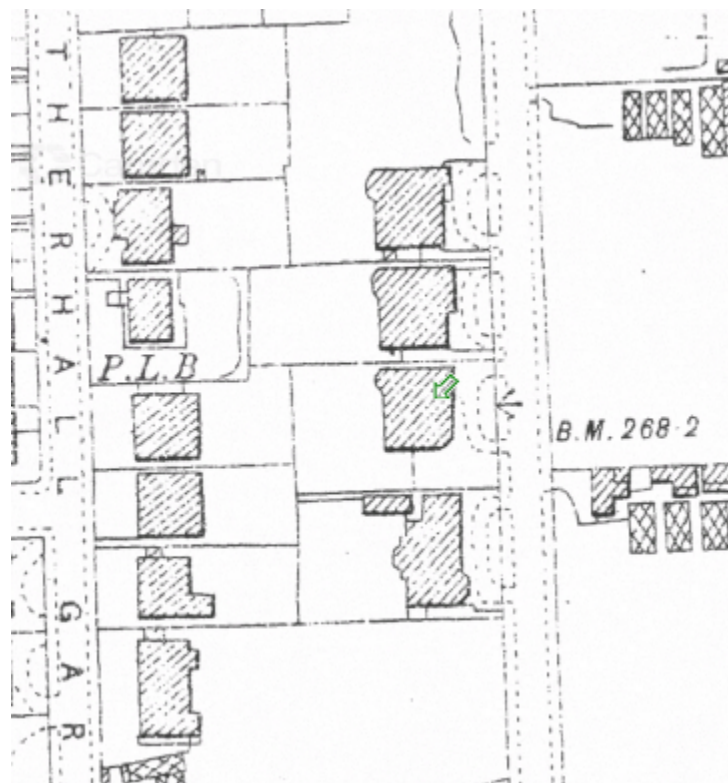
Service of the Enforcement Notice

- 1.2 The appellants have raised that the Notice affects two properties interests, but has only been served on one. This point is already covered in paragraphs 3.37 - 3.52 of the Council original statement. The Council would also raise that in para 1.5 the appellant refers to the southern space being used by Flat 2, which is incorrect. It is used by Flat E of the neighbouring property, No. 45 (not April House).

Ground A – that planning permission should be granted for what is alleged in the Notice.

Design and Conservation – Effect upon the host building / boundaries / hardstanding / piers and gates / soft landscaping

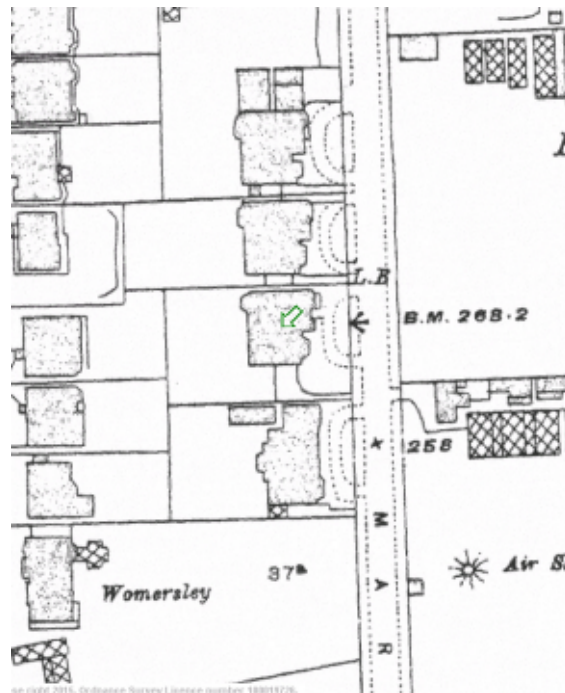
- 1.3 The appellants argue that harm is being caused to the character and appearance of the conservation area by the open forecourt and lack of boundary wall, which they reference in paragraph 3.9 of their statement from policy FN31 of the Fitzjohn's / Netherhall Conservation Area Statement, and that proposals to replace these should respect the original style of boundary and reinstated where lost.
- 1.4 This part of the CA statement also sets out that within the Conservation Area houses were built with front walls and double entrances for carriages. However, what is confusing in this particular site is the addition of the side extension to the main house (i.e. April House) and how this was laid out and what the access arrangements were. In order to bring some clarity to this it is important to see how this property evolved to fully understand when these changes took place. The OS extracts below are taken from OS 25 inch maps, 2nd (1894), 3rd (1914) and Revised (1935) editions which give some clues as to the evolving nature of the site as a whole.



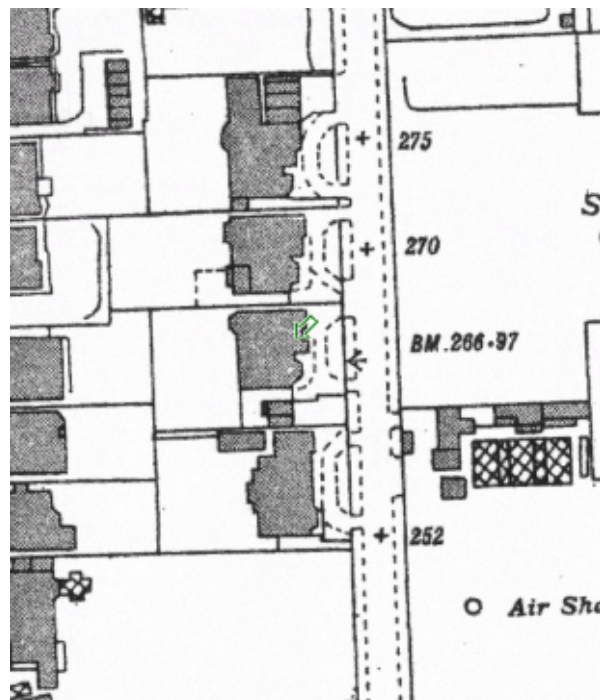
2nd edition OS 25 inch - 1894

- 1.5 The property was built between 1871 and 1894 between the 1st and 2nd Editions of these OS maps. It's clear that there once was an in/out

entrance at the property with the land currently occupied by April House, vacant at that time to the south.



3rd Edition 25 Inch OS Map - 1914



Revised Edition 25 inch OS Map - 1935

- 1.6 By 1935 a small detached out building had been constructed which may even have been a separate dwelling judging by the boundary line separating it from the main house front garden. Therefore, the open forecourt at the front of this property may well have been established as far back as between the two World Wars.

- 1.7 There is no dispute that the front boundary wall has been lost as can be understood from the OS plans above and Conservation Area statement. This wall was clearly lost before the designation of the conservation area in 1984 and the CAS in 1991. In the case of No. 45, the replacement main wall to the rest of the house has also been built using inappropriate materials as confirmed in the Negative Features section on page 21 of the CA statement. The CAS serves to protect any future loss of boundary walls rather than requiring the infilling of existing gaps.
- 1.8 The design of the new boundary wall is not considered to be harmful to the character and appearance of the conservation area, hence has not formed a reason for refusal. It is not considered that the new wall has made such a contribution to the character and appearance of the conservation area that the resulting impacts on highway safety can be ignored. Therefore the resulting harm in terms of highway safety and the loss of an on-street residential parking bay are not outweighed by the infilling of the open frontage.
- 1.9 The appellant states in their ground of appeal that *the appeal site had the most open forecourt in the area and therefore was a prime example of the dramatic effect and harm referred to in the guidelines* (Fitzjohn's / Netherhall Conservation Area Statement), (para 3.11). This point is disputed.
- 1.10 The Council's key concern in this case, as outlined by our reason for refusal are the fact the proposals are detrimental to highway safety and the impact on on-street residential parking bays by virtue of inadequate sightlines for vehicles leaving the site. These issues are not considered to be overcome from any design considerations from the loss of the open forecourt.

Parking and access

- 1.11 The appellants have highlighted a number of properties in the local area with "similar" style parking and access arrangements to that being proposed. There are a number referred to in more detail in Section 4 of their statement (also Appendix D) along with many more photographic examples in Appendix H of their statement. The Council will comment on those contained in Appendix D to give some clarity to those particular cases.

18 Prince Arthur Road - 2012/0512/P

- 1.12 This is the appellant's most comparable example to this appeal in relation to the on-street parking and access arrangements, thereafter it differs. The scheme was allowed at appeal for the removal of part of a front boundary wall and the creation of a new off-street parking space in the front garden within the Redington Conservation Area. In order to access the garden, one residential on-street parking bay was required to be reduced in length by 2.7m.

- 1.13 This was allowed partly because of the already substantial loss of front gardens to forecourt parking in the immediate area, which was considered not to harm character or appearance of the CA. The Inspector also considered that the proposal would not materially affect the availability of on-street car parking due to parking stress being lower than the 90% level considered to cause problems. Conditions were imposed requiring 2 cycle stands and an electric car charging point to be paid for by the applicant together with crossover costs.
- 1.14 The case differs because the boundary treatment at No. 18 was being partially removed and not added to with the offer of cycle stands and an electric recharging meter as compensation for the loss of on-street parking. The on-street space partially removed was claimed to be used by the owner nearly exclusively, and therefore this was considered to be an acceptable loss.
- 1.15 In this case, there is no bay directly in front of the access proposed, but to the north of it, which is required to be removed to provide a widening of the existing crossover (which worked perfectly adequately until the gates and piers were fitted), in order to accommodate highway safety standards due to a lack of visibility splay to the north.
- 1.16 In this case an off-road space was created and a bay was lost. In the appeal site, two existing off-road spaces already exist. This would result in the loss of a valued on-street space that is not just used by the appellant, while gaining no further off-road spaces. This is therefore not considered to be a comparable situation.

48b Netherhall Gardens - 2010/1946/P

- 1.17 The vehicular cross over in this particular case is in the same location as it was before the application was submitted in 2010 and the front boundary wall is a very similar height to that currently in place. Therefore, this is not a comparable case because highway safety has not been made any worse than previously existed.



Gate width not different in June 2008 than in December 2015

48c Netherhall Gardens – 2011/1177/P and 2012/4138/P

- 1.18 As above in the case of 48B, its neighbour, the vehicular cross over in this particular case is in the same location as it was before the application was submitted in 2011 and the front boundary wall is a very similar height to that currently in place. The misalignment of the cross over with the gates has always been in this location. Therefore, this is not a comparable case, because highway safety has not been made any worse than previously existed.



June 2012 – property not yet redeveloped – gate location fractionally wider in 2015

41a Maresfield Gardens – 2006/0246/P

- 1.19 No external changes to the as existing gates or crossover. This application made internal changes behind this front boundary wall and approved three off street car parking spaces running at right angles to the street. The scheme also allowed for a turning area behind the wall to make parking and access arrangements easier and an ability to enter and exit the site in forward gear. Therefore, this is not a comparable case, because highway safety has not been made any worse than previously existed.



June 2008 – Gate opening not different from 2006 to present day

8 Nutley Terrace – 2008/3176/P

- 1.20 No external changes to the as existing gates or crossover. This re-establishes a double width crossover with a low wall to one side and neighbouring side fence to the other and looks very similar to the 2008 situation pre-application. Therefore, this is not a comparable case, because highway safety has not been made any worse than previously existed.



June 2008 – No change to the width of the crossover and gate entry

40 Netherhall Gardens - 35006

- 1.21 This scheme was for raising the height of the boundary wall in 1982. The opening does provide a double gate width. No approval sought to narrow this entrance. Permission has long since expired and would be unlikely to be considered favourably now. However, no real change since the early 1980's and determined well before current policy. This access arrangement pre-dates the conservation area designation.

Therefore, this is not a comparable case, because highway safety has not been made any worse than previously existed in the last 30 years.



June 2008 – Gate opening no different to 1982 or present day

7a Netherhall Gardens – 23030

- 1.22 There is no record of planning permission being granted for the creation of this access gate and is likely to date from 1976 when permission was granted to convert the property to a single dwelling. This is therefore not considered to act as precedent given the permission pre-dates the current planning policy and the conservation area designation in 1984.



June 2008 – Crossover lost when raised table fitted in 1991 and pavement put back

7b Netherhall Gardens – PWX0202891 and P9601278R2

- 1.23 This permission was granted in 2003, which pre-dates the current planning policy and guidelines. It is unclear how this can be used as justification to warrant a development which has a detrimental impact on highway safety.

Vehicle- pedestrian visibility and safety

- 1.24 The appellants acknowledge that vehicle to pedestrian sight lines are reduced for pedestrians travelling south and a vehicle leaving the northern parking space.
- 1.25 The appellant introduces the Manual for Streets, which is National Guidance, and uses this to explain the theory that in the absence of wide visibility splays at private driveways, drivers emerge more cautiously as a result. They also state that account should be taken of the frequency of vehicle movements, the footway width and the amount of pedestrian activity.
- 1.26 That said; in either a forward or reverse gear, any vehicle leaving the northern space is doing so blind for the first 1.5m of bonnet (or more in a reverse gear) until they can see past the northern gate post!
- 1.27 One of the assumptions made in their statement (para 4.25) is that most pedestrians will move along the centre of the pavement, which at 2.76m according to the appellant is relatively wide, and not close to boundary walls.
- 1.28 However, one of the concerns held by the Council is the fact that a large number of walkers in the local area would be children, both accompanied and unaccompanied due to the schools within the local area. Anyone walking with a child is more than likely to walk on the outside of the pavement and keep the child between the boundary wall and themselves. Therefore, this raises the levels of concerns on highway safety grounds because children are less predictable road users than adults, and may well be walking, running or riding a scooter closer to the boundary walls than the appellant states.
- 1.29 Another walking group which also may not fit the appellants assumption would be dog walkers. Often they too will walk on the outer edge of the pavement and keep the dog between them and the front boundary walls. Dogs also will naturally be drawn to these boundaries to mark their territory. Therefore, the assumption that most pedestrians will use the centre of the pavement is incorrect.

Off-street parking

- 1.30 The appellants claim that the proposal will not result in an increase in off-street car parking and also claim that it will reduce the number of off-street parking spaces on the forecourt of the property. The claim is that up to 3 cars could be parked on the front forecourt under the previously existing layout, but in reality although possible, 3 vehicles would be a very snug arrangement. The user of the southern parking space, Mr Ian Green, who has written to the Inspector, has also stated that there have only ever been 2 parking spaces used on this forecourt,

and therefore the claim that it has been used for 3 vehicles, may not be entirely accurate.

- 1.31 The main issue in this case is balancing the enhancements to the character and appearance of the conservation area at the expense of highway safety and the loss of on-street parking.
- 1.32 The appellants have raised that the planning refusal report has mischaracterised the area when it claims that some properties in Maresfield Gardens have only one parking space, and claims that this is far from the norm in their Parking and Access Survey. In fact this is demonstrated in their Figure 4 (p19 of their appeal statement), which shows many have more than one off-street car parking area.
- 1.33 However, as can also be seen in Figure 4, 6 of the 8 photographs show parking on forecourts with no front boundary walls across these forecourts. Many seem to have a crossover with open access arrangements (some even with narrower crossovers than forecourts), which are not dissimilar to the previous arrangement at the appeal property. Therefore, whilst making the point that multiple off-street parking is the norm in the area, the appellants would have to agree that where this occurs in the local area, the access arrangements are usually by way of a more open forecourt in order to accommodate these vehicles. Therefore, these properties must all harm the character and appearance of the conservation area such as the appeal property once did, because they too, do not have front boundary walls in place, in line with the Fitzjohn's / Netherhall Conservation Area Statement.

On-street parking

- 1.34 The parking stress figure given is by Paul Mew as being 72% which Table 4 of his report states is the average overnight parking survey result. However, these figures are only taken for two consecutive evenings in September 2015. The figures given for both Maresfield Gardens and Netherhall Gardens are over 80% for both nights surveyed, but the Nutley Terrace figures reduce the overall impact. The Council's concerns are these figures were only taken from a 2 day period. However, the zone is known to suffer from very high levels of parking stress with 110 permits issues for every 100 spaces available on-street. It is not clear from the Paul Mew Transport Statement October 2015, that the overnight parking stress survey has included just residential parking bays or / and single yellow lines. The impact of this is that the figures could be an under-representation of parking conditions and that the actual occupancy is much higher.
- 1.35 It is also noted that the 'Lambeth method' of calculating parking provision and stress is based on 5m car lengths with figures rounded down to the nearest number even if available kerb space could accommodate an additional vehicle in reality. Therefore, the bay measured at 19.1m by Paul Mew is rounded down to only 3 available car parking spaces in line with the Lambeth methodology.

- 1.36 Camden has measured the bay to be 18.84m, but have considered car lengths to be 4.5m on average and not 5m. Therefore, the existing bay would accommodate 4 vehicles as evidenced by the photos kindly supplied by local resident Mr Amir Chen. The Lambeth method of calculating the number of vehicles in spaces is a perfectly legitimate calculation, however, in this instance it does trim 4m off the bay which itself is large enough space to park 4 vehicles.
- 1.37 This is demonstrated using one of the objection letters submitted to the Inspector from Mr Amir Chen, who has provided a variety of photographs showing 4 vehicles being parked in this northern parking bay showing two estate vehicles, one medium sized vehicle and one smaller vehicle. This is seen below in the photograph below. Equally, when poor parking takes place, the bay can accommodate as few as only 2 vehicles legally within the lines.
- 1.38 That said; the local residents who generally park in this bay live in the local area and more often than not, they live within the main part of 45 Maresfield Gardens. Therefore, they often park to the outer edges of the bay to ensure that 4 vehicles can nearly always park within it. As has been mentioned by some of the objectors, this is because, it is one of the few bays within the street with street lighting overhead and therefore has an increased sense of security. It is also free from overhanging tree's and therefore risk free from mess by tree sap and birds. Therefore, it is popular.
- 1.39 Furthermore, regular users therefore ensure a sense of community is kept by ensuring they park as considerately as possible for their neighbours.



Submitted by Amir Chen – Shows 4 cars parked in this 18.84m long bay. Parking has been undertaken well.



Poor parking where only 3 vehicles have been able to fit in the space – Officer's own November 2015

- 1.40 The appellants also claim that parking of 4 vehicles is not possible without numerous shuffles back and forth to enter or exit a space. The Council would comment that with on-street parking in London, it would be rare to be able to park a vehicle without at least some shuffling back and forth to parallel-park in a line of vehicles such as this.

Former open forecourt

- 1.41 The appellant claims that the previous open forecourt arrangement meant that one driver would always drive over the pavement to access one of the spaces. Therefore replicating the situation that now is proposed. The appellant has argued that the existing situation has damaged the pavement.
- 1.42 The Council disputes this as there is no evidence of any damaged York stone and an existing neighbour states that only 2 cars were ever parked on the forecourt. Furthermore, even if this was the case it would only be possible when the on street pay was not in use.

Swept Path Analysis

- 1.43 45 Maresfield Gardens Ltd have commissioned their own transport study written by Motion. This was submitted with the objections to PINs and is dated 29th October 2015. In it, they also critique the Swept Path Analysis for accessing the driveway that was contained in the original Paul Mew documentation submitted with the application.
- 1.44 It is important to note that in order to safely negotiate the parked vehicles located in residential parking bays on both sides of Maresfield Gardens, only entering the site with a left hand turn from the south (i.e. driving north) is safe to do so in forward gear without being impeded by a parked vehicle. All other entry and exits to / from the site are blocked by the existing parking arrangements. See drawing 151016-TK01.

Design of the cross over

- 1.45 If the Inspector considers the appeal favourably, then the Council has a slight preference for Crossover Style B.

Response to objections by the appellants

- 1.46 In response to the objections made by local residents, the Council has commented on all the points raised by the appellants elsewhere in this statement, and do not wish to comment further.

Planning conditions, agreements and undertakings

- 1.47 The appellant has proposed 2 planning conditions should the appeal be successful. The Council agrees with both conditions proposed, which will firstly restrict the parking space from being used by anyone else, or hired out, and secondly prevent the space being used until such time that the crossover is constructed in accordance with approved plans.

S106 legal agreement

- 1.48 The appellants have submitted a draft legal agreement should the appeal be successful. Having read through this part of their statement and the draft legal agreement some clarity needs to be given to the numbers of parking permits allowed per adult occupant per residence.
- 1.49 This is set out clearly in paragraphs 3.19 and 3.20 of the Council's original statement. Each adult in the household may apply for up to three on-street permits, with each permit being for up to three vehicles, although only 1 car can use the permit at a time. For example, one adult could have 9 cars (3 with permits parked on street and 6 parked off-street). However, in practice, most families only have 1 or 2 cars and if these are separately registered to each person, there would be 2 cars with 2 permits on the street (his and hers for example).
- 1.50 It was understood in the original appeal statement that the proposed S106 would reduce the parking permits to one for each person in the household, i.e. no more than one car being able to park on the street at any one time per person. However, the wording of the draft S106 doesn't reflect this.
- 1.51 Therefore, the wording to reduce the permits being able to be applied for from three to one vehicle, would still mean two adults living in the flat could still apply for two further permits, and even with one vehicle each, they could still have up to 6 vehicles between them, although only 2 would be able to park on street at a time. Therefore, this does not reduce the on-street parking to the one vehicle originally suggested, which was the purpose of off-setting the possible loss of

one on-street bay. Therefore, this needs to be re-drafted to reflect this understanding.

- 1.52 Furthermore, the draft S106 clauses are also not drafted in accordance with the Council's wishes. Clause (a) states that the owners / occupiers, shall not occupy the off-street space or be used by any vehicle for so long as they are not in possession of three or more Parking Permits.
- 1.53 Furthermore, Clause (c) requires that the space is not used or permitted to be use by any vehicle until such time as the Council has received the Highways Contribution in full. The Council believes this to be a repetition of Clause (b) and believe the appellants were meant to write that it would not be occupied until such time that the crossover had been constructed.
- 1.54 This said; the S106 would prove meaningless in any event, because the Council has no formal mechanism through its parking enforcement and permit service to administer checks when issuing said permits. Paragraphs 3.19-3.22 of the Council's original statement explain this further.

Ground F – The steps required are excessive and lesser steps would overcome the objections.

Alternatives

- 1.55 The appellants have suggested that the requirements of the Notice are too onerous and that lesser steps would overcome the objections. They have provided 5 statements which the Council will comment upon as follows:

Reversion to the previous scheme, required by the Notice, is undesirable in terms of the harmful effect upon character and appearance and safety and visibility.

- 1.56 The requirement to revert back to a situation where the open forecourt arrangement is considered harmful to the character and appearance in the conservation area is a matter of opinion. As seen in the appellants Figure 4, many other properties in the locality have this open access arrangement which also do not comply with the Fitzjohn's / Netherhall Conservation Area Management Statement. This harm has already been assessed and reasons given elsewhere in this statement.
- 1.57 Furthermore, the more open forecourt arrangement is more desirable to the Council for its improved safety and visibility, whereas the as built situation clearly reduces this quite substantially.

The Notice cuts across permitted development rights to reduce the height of the gates and piers to 1m on the front boundary.

- 1.58 In this scenario, the appellant would still not be allowed to park a vehicle safely on the front northern parking bay, and they would still have to cross the pavement to access this space. Therefore, the Council did not consider this to be an acceptable solution to address the breach of planning control. Furthermore consent would still be required to extend the crossover from the highway department.

The appellant states that the Council as Highways Authority would be required to fit a bollard to this section of pavement to lawfully enforce the use of the crossover if the former arrangement were to be reinstated.

- 1.59 The Council do not believe that this would be necessary, because as already mentioned above, it was very rare for 3 vehicles to be parked on this forecourt previously, and if it were to occur, then common sense would prevail and the northern part of the forecourt would be used first, therefore negating the need to drive over the kerb and pavement. The as built situation gives no option but to drive across this kerb and pavement to access the parking space.

The appellant states that the only issue is the northern bay and that the pedestrian gate piers could be retained and therefore their removal is not necessary to address the issues.

- 1.60 In order for this to be acceptable the vehicular gate would need to be replaced with a fixed railing. This would only retain the vehicular gate on the left hand side allowing access to only one car. Whilst this would address concerns with highway safety it would create more parking stress with the appellant or his neighbour being forced to park on the street. Unless the appellant is willing to agree to a S106 Legal Agreement to make the development Car Free this would not be acceptable in planning terms. While overcoming one issue it would create another and therefore was not considered to be an acceptable alternative.

- 1.61 *Finally, the appellants have suggested a low wall or railing to fit in place of the northern set of gates.* This is considered to create the same issues as above.

2.0 Conclusion

- 2.1 On the basis of information available and having regard to the entirety of the Council's submissions, including the content of this letter, the Inspector is respectfully requested to dismiss the appeal.

Yours sincerely

John Nicholls
Planning Enforcement Officer
Development Management
Culture and Environment Directorate