

**22 FROGNAL WAY**

**HEARING STATEMENT ON BEHALF OF THE APPELLANT**

**APRIL 2016**



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## **1 INTRODUCTION**

- 1.1 This Hearing Statement has been prepared by Brecher LLP (Brecher) on behalf of Mr Jeremy San OBE ("the Appellant"). It relates to an appeal against an enforcement notice dated 14 September 2015 ("the Enforcement Notice") issued by the London Borough of Camden ("the Council") relating to the condition of the roof at 22 Frogna Way, London NW3 6XE. The enforcement appeal is to be dealt with under the Hearing procedure.
- 1.2 The Enforcement Notice was served by the Council on the Appellant as well as on the Owner/Occupier of the Site and C Hoare & Co. The effective date of the Enforcement Notice was 26 October 2015.
- 1.3 The Appellant submitted an appeal dated 14 October 2015 against the Enforcement Notice which was validated by The Planning Inspectorate with a start date of 16 October 2015.
- 1.4 A copy of the Enforcement Notice (Appendix 1), the Council's Delegated Report relating to the Enforcement Notice dated 11 September 2015 (Appendix 2), the Appeal Form dated 14 October 2015 (Appendix 3), the Council's Delegated Report relating to planning application 2015/3530/P (Appendix 4) and the Section 215 Notice dated 10 December 2012 (Appendix 5) can be found in the Appendices to this Hearing Statement.

## **2 SITE AND SURROUNDINGS**

### **The application site**

- 2.1 The application site relates to the property at 22 Frogna Way, located at the end of a private road with vehicular access from Frogna which was acquired by the Appellant in March 2014. The site covers an area of approximately 0.22 hectares and is located in the Frogna and Fitzjohns ward of the London Borough of Camden.
- 2.2 Number 22 Frogna Way is a detached family house. The site was originally built in c.1975 by the architect Philip Pank for his client Mr Harold C Copper. The building has an individualistic design, and a peculiar footprint which features a central rotunda which provides an entrance hall, and three wings which protrude from the hallway. The existing building has two levels; the ground floor level, which appears as a single level dwelling from Frogna Way; and the lower ground floor below, which provides access to the garden. The building is situated within a generous plot of land, and benefits from mature landscaping.
- 2.3 The building has been vacant for nearly ten years, but previously comprised a residential dwelling, a garage (which has since been demolished), and an open-air swimming pool in the garden. The building is currently in a poor condition following the partial implementation of the 2009 planning permission by the previous owner (please refer to the planning history section below for further details).

### *Heritage and conservation*

- 2.4 The site is located in the Hampstead Conservation Area.
- 2.5 Although there are several listed buildings in the vicinity of the site, the building itself is not listed, and is not identified on Camden's Local List which was adopted in January 2015. The building was cited as making a neutral contribution to the Conservation Area in the Hampstead Conservation Area Statement (2001). A

Planning Inspector in 2008 considered the building as it was at the time made a positive contribution to the Conservation Area.

### **The surrounding area**

- 2.6 The surrounding area comprises a mixture of predominantly residential properties, with varying building heights and styles along Frognal Way, Church Row and Perrins Walk.
- 2.7 Frognal Way is characterised by large detached family dwellings which have been individually designed and commissioned within large plots. These buildings vary in height, scale, bulk, mass and architectural style.

### **Planning and enforcement history**

- 2.8 The existing house was constructed following the grant of planning permission in approximately 1975.
- 2.9 More recent planning history is demonstrated by applications for redevelopment, and subsequently alteration and extension of the existing house. The main applications of relevance are summarised below.

#### *The 2007 Dismissed Appeal - 2007/3790/P and 2007/3791/C*

- 2.10 An application for the demolition of the existing building and the erection of 2 x two storey family dwellings was submitted to the Council in August 2007 (application reference 2007/3790/P and 2007/3791/C). The previous owner of the building appealed against non-determination, and the application was considered by a Planning Inspector. The Inspector considered that the building at that time made a positive contribution to the conservation area.
- 2.11 The Inspector subsequently refused the appeal on the grounds that the proposed development 'would harm the character and appearance of this part of the conservation area and would interrupt important local views and views from St John's churchyard. I also conclude that the proposed houses would harm the setting of nearby listed buildings and I am not convinced that the suggested condition and Section 106 agreement would restrict parking availability to ensure less reliance on the car and the use of alternative modes of transport. For these reasons, I conclude that Appeal A should be dismissed and planning permission refused' (Appeal Decision, Paragraph 28). The appeal was dismissed on 20 October 2008.

#### *The 2009 Extension Consent — 2009/3168/P ("the 2009 Permission")*

- 2.12 Following the refusal of the 2007 appeal scheme, planning permission was granted by the Council in September 2009 for an extension scheme (application reference 2009/3168/P), which included various alterations to the existing building, including, inter alia:
- extensions to the existing basement;
  - curved extensions between the three wings creating new lightwells;
  - the demolition and replacement of the garage including the insertion of a car lift;
  - substantial excavation works to alter the ground levels;
  - replacement of the flat felt roofs and the introduction of a sedum green roof;
  - Demolition of the porch;
  - a new lantern light over the lounge; and

- the addition of stone coping to the rotunda and other associated works.

2.13 This application has been part implemented but left uncompleted by the previous owner.

*The 2011 Brickwork Replacement Consent — 2011/0924/P*

2.14 An application was subsequently approved in March 2012 for the removal of the existing external brickwork and replacement with custom manufactured bricks in association with the extension scheme (application reference 2011/0924/P).

*Section 215 Notice*

2.15 In December 2012, the Council issued a Section 215 Notice dated 10 December 2012 on the previous owner with a compliance date of two months from the effective date of 14 January 2013 in relation to the poor condition of the site with the following requirements to remedy the condition of the land:

- “3.1 In respect of the roof of the dwellinghouse on the land, either:
- 3.1.1 fit a watertight permanent roof which matches the previous roof in design and materials; or
- 3.1.2 fit a temporary watertight roof.
- 3.2 In respect of any external window and door openings of the dwellinghouse where the windows and or doors have been damaged or removed, board up fully all external window and door openings. Paint all installed boarding to match the adjacent brickwork in colour.
- 3.3 Remove permanently from the land all litter and debris and keep the land clear of all litter and debris.
- 3.4 Cut back all vegetation on the land so that such vegetation does not overhand or encroach upon any land or adjoining highway.”

2.16 This notice has been fully complied with.

*Tree Applications*

2.17 Two tree applications were submitted and approved for: i) the felling of a willow (application reference 2014/4872/T); and ii) the reduction of the lower north limb of a lime tree by 15% (application reference 2014/4899/T).

*Enforcement Notice dated 20 May 2015*

2.18 An enforcement notice was issued by the Council on 20 May 2015 for an alleged breach of planning control carried out by the previous owner relating to the unauthorized removal of the roof from the three wings of the dwellinghouse without planning permission. The Appellant submitted an appeal against the enforcement notice dated 30 June 2015 (APP/X5210/C/15/3128742). However, the notice was withdrawn on 14 September 2015 by the Council following comments from The Planning Inspectorate which noted that the first requirement in the enforcement notice referred to development which was not contained in the allegation.

*The 2015 Planning Application - 2015/3530/P ("the 2015 Application")*

- 2.19 An application for the demolition of the existing dwelling house at 22 Frogal Way and redevelopment to provide a single detached family dwelling house and all other necessary works was submitted by the Appellant in July 2015 (application reference 2015/3530/P).
- 2.20 The design proposals incorporate a green roof which slopes upwards towards the south of the site away from Church Row, forming a ha-ha style roof when viewed from Church Row. It is proposed that the green roof will feature meadow style planting, rather than a sedum roof.
- 2.21 The 2015 Application was informally endorsed by two design officers and indications were that the application would be reported to Committee with a positive recommendation for approval. Unfortunately, following a change of staff and a further review in particular of heritage considerations, the application was refused on 18 March 2016 on the basis of alleged adverse impact on the character and appearance of the Hampstead Conservation Area. Two other reasons for refusal relate to a Construction Management Plan and a Basement Plan which are capable of being secured by way of a S.106 Agreement.
- 2.22 At the time of writing this statement, the Appellant is in the process of preparing an appeal against the refusal of the 2015 Application.

*Enforcement Notice dated 14 September 2015*

- 2.23 The Enforcement Notice the subject of this appeal is considered in detail in section 3 of this statement.

### **3 ENFORCEMENT NOTICE**

*Enforcement Notice*

- 3.1 The alleged breach of planning control in the Enforcement Notice is:
- "Without Planning Permission:
- The removal of the original roof and fascia boards from the three wings of the dwelling house"
- 3.2 The reasons for issuing the Enforcement Notice are set out below:
1. It appears to the Council that the above breach of planning control has occurred within the last 4 years.
  2. The alterations to the dwelling house, which include the removal of the original roof and the original fascia boards, have a detrimental impact on the appearance of the building and the character and appearance of the Hampstead Conservation Area. As such the works are contrary to policies CS14 (Promoting High Quality Places and Conserving Our Heritage) of the London Borough of Camden Local Development Framework Core Strategy; policy DP24 (Securing High Quality Design) and DP25 (Conserving Camden's Heritage) of the London Borough of Camden Local Development Framework Development Policies.

The Council do not consider that planning permission should be given because planning conditions could not overcome these problems.”

3.3 The Enforcement Notice requires the original roof and fascia boards to the three wings of the dwelling house to be completely reinstated within a period of four months of the Enforcement Notice taking effect. The effective date of the Enforcement Notice is 26 October 2015.

3.4 The Appellant's Grounds of Appeal are set out below.

#### **4 GROUNDS OF APPEAL**

##### *Ground A*

4.1 The appeal on this Ground is made without prejudice to the arguments under Ground C below. Planning permission should be granted for a temporary period to enable the approved temporary roof to remain in place for a further period to cover the determination of the planning appeal in relation to the 2015 Application for the redevelopment of the site.

4.2 The 2015 Application seeks full planning permission for the “demolition of existing dwelling house at 22 Frogna Way and redevelopment to provide a single detached family dwelling house and all other necessary works”.

4.3 A planning officer of the Council at a meeting on site with the planning consultant representative of the owner on 14<sup>th</sup> May 2015, indicated that the service of an enforcement notice was contemplated, but that the grant of permission for redevelopment pursuant to the 2015 Application, formerly the subject of pre-application meetings, would remove the need for or justification for the enforcement notice. Further it is confirmed on page 7 of the Delegated Report relating to the 2015 Application that if permission is granted subject to S106 and development commences the enforcement notice will no longer be relevant. Therefore permission should be granted on a temporary basis whilst the planning appeal against the refusal of the 2015 Application is determined. A period of at least eighteen months is appropriate.

4.4 It is not accepted that there is any harm to amenity at present; the site is secure, the building is weatherproof, and the Council acknowledge that there is full compliance with the Section 215 Notice dated 10 December 2012. However, if it is determined that there are any legitimate concerns of this nature relating to amenity these may be addressed by appropriate conditions.

4.5 Overall, it was not expedient or proportionate to issue the Enforcement Notice; the Appellant and his professional planning team were in regular correspondence and dialogue with planning officer, who both acknowledged full compliance with the Section 215 Notice (the circumstances for which arose during the ownership of a previous owner), and that a new application for redevelopment and use as a family home by the Appellant was about to be submitted following extensive consultation, and officers acknowledged that permission for this development would remove the need for an enforcement notice.

##### *Ground C*

4.6 The removal of parts of the roof as identified in the Enforcement Notice do not constitute a breach of planning control; the works formed part of the lawful implementation of the 2009 Permission. Structural engineers engaged by the previous owner of the house confirm that the sections of the old roof were removed in order

to replace the old roof beams with new steel beams to support new / re-used timber joists, to support the new approved sedum "green" roof.

- 4.7 Council officers in considering and granting a further permission in 2011 in relation to replacement brickwork at the house acknowledged that the 2009 Permission had been lawfully implemented, including by the carrying out of excavation works at the rear of the property. It is acknowledged that there has been a hiatus in completing the works of major alteration to the house, which commenced during the period of ownership of the previous owner, and which led to the issue by the Council of the Section 215 notice requiring a temporary roof, and which was installed by the previous owner and approved by the Council as having complied with the terms of the notice, and which is the subject now of the Enforcement Notice.

*Ground F*

- 4.8 The appeal on this ground is made without prejudice to the arguments under Grounds A and C above). The steps required to be taken are excessive; the officer of the Council has acknowledged that the 2009 Permission has been implemented.
- 4.9 It is unreasonable and excessive to require the restoration of something "original" since that it is not possible.
- 4.10 The point made under Ground A that it is not expedient or proportionate to issue the Enforcement Notice is repeated and relied upon in relation to this Ground of Appeal, F.

*Ground G*

- 4.11 The appeal on this ground is in the alternative to the Ground A condition that temporary planning permission be granted for 18 months. The period for compliance is too short at four months, it is not sufficient time to engage professionals and to complete the approved works. Further, as the Council officer has acknowledged that permission for the application for redevelopment of the site would remove the need for or justification for enforcement, a period to allow the appeal against the refusal of the 2015 Application to be determined should be provided. A period of at least eighteen months is appropriate.

**5 APPEAL QUESTIONNAIRE**

- 5.1 It appears that the previous enforcement notice dated 20 May 2015 was incorrectly annexed to the appeal Questionnaire dated 29 October 2015 submitted by the Council instead of the Enforcement Notice which is the subject of this enforcement appeal.

**6 CONCLUSION**

- 6.1 The Hearing Statement fully justifies the case for setting aside the Enforcement Notice for the reasons set out in the Grounds of Appeal.
- 6.2 For the reasons above, it is with respect that the Inspector is asked to allow the appeal.