



**PLANNING SERVICES**

**TOWN & COUNTRY PLANNING ACT 1990 (as amended)**

**INFORMAL HEARING**

**STATEMENT OF CASE**

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**APPEAL SITE** 22 Frognal Way, London NW3 6XE

**APPELLANT** Mr Jeremy San

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**SUBJECT OF APPEAL**

Appeal against an Enforcement Notice for the unauthorised removal of the roof from the three wings of the dwellinghouse.

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**COUNCIL REFERENCE:** EN15/0457

**PLANNING INSPECTORATE REFERENCES:** APP/X5210/C/15/3136490

## 1.0 SITE AND SURROUNDINGS

- 1.1 The appeal relates to a single-storey detached dwelling house located at the end of Frognal Way, a private cul-de-sac in Sub Area Five of the Hampstead Conservation Area. The property is located on a generous plot of land with a large garden to the rear. Dating from 1975, it was designed by Phillip Pank, a prominent local modernist architect and artist, for Harold Cooper.
- 1.2 The dwelling consists of a central rotunda with three wings which radiate out. The layout was designed to cater for Harold Cooper's wife, who was wheelchair-bound. It has been vacant since 2007, and is currently protected by a temporary roof.
- 1.3 The site is prominent in views from all sides: from the west along Frognal Way itself; from the north along the public footpath linking Church Row to Frognal Way; from St John's Churchyard in the north-west; and from residential properties at a higher level on Church Row in the north-east.
- 1.4 The siting and design of this single-storey house ensure that there are uninterrupted long views from Frognal Way towards the rear of the listed terrace of houses on the south side of Church Row, which is an important local view.
- 1.5 The surrounding area is predominantly residential with properties from different periods ranging from the eighteenth to late twentieth centuries, many of them listed (grade I, II\* and II). St John's Church in Church Row is grade I listed. Frognal Way within Sub Area Five of the Hampstead Conservation Area is characterised by a number of distinctive houses dating from different decades of the twentieth century, in a range of architectural styles, with some by notable architects.

## 2.0 RELEVANT PLANNING HISTORY

**April 2008** Erection of 2 x two-storey single-family dwellings together with basement parking and associated landscaping following demolition of existing house, garage and swimming pool, ref. 2007/3790/P & 2007/3791/C. The Council would have refused this application on the following grounds:

- design of proposed dwellings;
- excessive off-site parking;
- failure to enter into a legal agreement to secure car-capped housing; and
- failure to enter into a legal agreement to secure a Construction Management Plan.

However, this application was not determined by the Council as an appeal against non-determination was lodged by the applicant.

**October 2008** a subsequent appeal against non-determination of the above application 2007/3790/P and 2007/3791/C dismissed by the Planning Inspectorate.

**September 2009** Planning permission granted for extension to existing basement, conservatory extension at ground floor level, insertion of car lift to basement, introduction of green roof, lightwells, lantern light roof extension and associated works to existing dwelling house, ref. 2009/3168/P.

The following matters were reserved for later submission of details:

- Condition 3 Design details
- Condition 4 Landscape details
- Condition 5 Construction management plan
- Condition 6 Green roof details

**April 2010** Approval of details granted pursuant to conditions 4 (details of tree protection measures) and 5 (construction management plan) of 2009/3168/P (granted 28th September 2009) for the extension to existing basement, conservatory extension at ground floor level, insertion of car lift to basement, introduction of green roof, lightwells, lantern light roof extension and associated works to existing dwelling house, ref. 2010/0915/P.

**March 2012** Planning permission granted for replacement of existing external brickwork of existing residential dwelling with custom manufactured bricks as an amendment to planning permission granted 28/09/2009, ref. 2009/3168/P for extension to existing basement, conservatory extension at ground floor level, insertion of car lift to basement, introduction of green roof, lightwells, lantern light roof extension and associated works to existing dwelling house, ref. 2011/0924/P.

- No extension of the time for implementation of 2009/3168/P was given as part of this decision.

*In Summer 2012 the flat roofs to the three wings of the house were removed. The then owner argued that this was repairs/ maintenance and that it was permitted under application ref. 2009/3168/P. However the works exposed the interior of the dwelling to the elements, threatening its structural stability through water penetration and weathering. Officers advised the owner to rebuild the roof or put in place a protective roof. In order to ensure that the works were carried out within a strict timeframe, the following notice was served:*

**December 2012** Untidy Land Notice (S215) issued on 10 Dec 2012, to remedy the poor condition of the land, ref. EN12/0238.

This required the following works to be carried out within 2 months:

*“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 overhang or encroach upon any adjoining land or highway.”*

During a site visit in January 2013 officers verified that a temporary roof had been fitted to the building; the site had been tidied up, with litter and debris removed; and vegetation was cut back. None of the door or window openings were open to the elements. The measures required by the section 215 Notice had been complied with.

**March 2016** Planning permission refused for demolition of existing dwelling house at 22 Frognal Way redevelopment to provide a single detached family dwelling house and all other necessary works, ref. 2015/3530/P.

*Reasons for Refusal:*

- The proposed demolition by reason of the loss of the existing building which makes a positive contribution to the Hampstead Conservation Area would cause harm to the character and appearance of the conservation area contrary to policies CS14 (Promoting high quality places and conserving our heritage) of the London Borough of Camden Local Development Framework Core Strategy and policy DP25 (Conserving Camden's heritage) of the London Borough of Camden Local Development Framework Development Policies.
- The proposed development, in the absence of a legal agreement securing a construction management plan, would be likely to give rise to conflicts with other road users, and be detrimental to the amenities of the area generally, contrary to policies CS5 (Managing the impact of growth and development), CS11 (Promoting sustainable and efficient travel) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policies DP20 (Movement of goods and materials), DP21 (Development connecting to highway network) and DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Policies.
- The proposed development, in the absence of a legal agreement securing a Basement Construction Plan requiring appropriate detailed drainage design, construction method statements, and mitigation and monitoring measures,

would be likely to harm local hydrology, geology and land stability conditions and would cause harm to the built and natural environment and local amenity. This would be contrary to policies CS5 (Managing the impact of growth and development), CS14 (Promoting high quality places and conserving our heritage) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policy DP27 (Basements and lightwells) of the London Borough of Camden Local Development Framework Development Policies.

### 3.0 PLANNING POLICY FRAMEWORK

#### Local Development Framework

3.1 The London Borough of Camden Local Development Framework was formally adopted on the 8th November 2010. The Council's policies therefore have been adopted recently and are up to date. There are no material differences between these policies and the NPPF. The Council's policies should be given substantial weight in accordance with paragraphs 214 -216 of the NPPF.

3.2 The relevant LDF policies as they relate to the appeal are listed below:

#### Core strategy

CS5 Managing the Impact of growth and development

CS14 Promoting high quality places and conserving our heritage

#### Development Policies

DP24 Securing high quality design

DP25 Conserving Camden's heritage

DP26 Managing the impact of development on occupiers and neighbours

3.3 The full text of each of the policies has been sent with the questionnaire documents.

#### Supplementary Guidance (Camden Planning Guidance)

3.4 Camden Planning Guidance No 1: Design (revised) was formally adopted in 2015. The following sections are relevant

#### *CPG 1 Design*

- Ch 2 Design Excellence

- Ch 5 Roofs, Terraces and Balconies

3.5 These Supplementary Planning Document were adopted following extensive public consultation.

Hampstead Conservation Area Statement 2001

- 3.6 The Council also refers to guidance in the Hampstead Conservation Area Statement. This statement was formally adopted in 2001 and published in 2002. In particular the Council refers to the text on History, 20<sup>th</sup> Century (page 11); Character and Appearance, Sub Area Five Frognal (p. 41); and Design Guidelines Materials and Maintenance, New Development, Roof Extensions (H17 to H24 and H31 to H33, pp. 61-3). A copy of the relevant sections was sent with the questionnaire.

Other policy documents

- 3.7 London Plan 2011  
National Planning Policy Framework 2012



#### 4.0 SUBMISSIONS

4.1 The Council issued an Enforcement Notice under Delegated Powers on 20<sup>th</sup> May 2015, then reissued it on 14<sup>th</sup> September 2015. The breach was identified as follows:

“The removal of the original roof and fascia boards from the three wings of the dwelling house”

4.2 Reasons for issuing the Notice:

- i) It appears to the Council that the breach has occurred within the last 4 years.
- ii) 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.

4.3 The Notice requires the following steps to be taken:

Within four months of the Notice taking effect:

*Completely reinstate the original roof and fascia boards to the three wings of the dwelling house.*

4.4 The Notice was due to take effect on 26/10/2015, unless an Appeal was submitted by that date. Compliance with the notice was due on 26/02/2016.

4.5 The appellant has appealed on the following grounds:

- Ground A, that planning permission should be granted for the works;
- Ground C, that there has not been a breach of planning control;
- Ground F, that the steps required to comply with the Enforcement Notice are excessive and lesser steps could overcome the objections;
- Ground G, that the period of compliance is too short.

#### *Site and Surroundings*

- 4.6 Frognal Way was laid out in the 1920s and the properties on the street are generally consistent in scale and form, being large houses on generous sites with front and back gardens. The dwellings were not all developed at the same time and the architectural style varies across the properties, from the traditional to the overtly modern, as to be found at No 22.
- 4.7 The house on the appeal site, which dates from the 1970s, is of considerable architectural and townscape merit, as recognised by the Inspector in the 2008 Appeal decision. The architect who designed the building, Phillip Pank, was a well-regarded modernist architect and another of his designs in the area (38 Millfield Lane) has been statutorily listed grade II. The appeal property was considered for listing by the then English Heritage (now Historic England) in 2007. While it was not listed, it was recognised as a building of local importance that made a positive contribution to the conservation area as a good example of a 1970s architect-designed house which complements the remarkable houses of earlier decades in the same street.
- 4.8 It is worth repeating the assessment of the Inspector as set out in his 2008 report (paragraph 14) “In my view, the building is of interesting and distinctive design and appearance, designed by an architect of some local importance following a commission from a specific client with a disabled wife. Its form and design are assimilated into the site without detracting from the adjoining house and with little impact on important local views of Church Row and surrounds. As a commissioned house, it continues and adds to the theme of individual houses in Frognal Way, which define its character. English Heritage, in considering listing, indicated that the house

makes a positive contribution to the conservation area and this reflects my own assessment of the building. Its inclusion in 'Buildings of England' further indicates its significance. In my opinion, it falls within the defined criteria for making a positive contribution contained within Appendix 2 of 'Guidance on Conservation Area Appraisals'".

- 4.9 The Inspector goes on to state in paragraph 15 "I conclude, for the above reasons, that the existing building makes a positive contribution to the character and appearance of the Hampstead Conservation Area".
- 4.10 It is noted that the Inspector's assessment and conclusions were made when the building was intact and weatherproof, with its original roof and cornicing in place, and before later unconsented alterations to the external appearance of the property (for discussion of later unconsented alterations that took place please see officer response to Ground A below, p.15, 4<sup>th</sup> bullet point). The Council granted permission for alterations to the building in September 2009 (2009/3168/P), however permission was only granted because the proposal was in accordance with Council policies and guidance and it would have safeguarded the architectural quality and distinctiveness of the property as well as the character and appearance of the Hampstead Conservation Area.

#### *Policy Context*

- 4.11 Development Policy DP24 states that the Council will grant permission for development that is designed to a high standard.
- 4.12 Policy DP24 includes criterion (a) which requires all development to be of a high standard of design and that the Council should consider the 'character, setting and context...' of alterations and extensions. Paragraphs 24.11 and 24.12 assist in understanding the approach to considering the characteristics of the site, features of local distinctiveness and the wider context. In this case the Council submits that the local distinctiveness is made up of the layout and scale of buildings and the high degree of continuity in materials, parapet lines and in the form and treatment of openings.

- 4.13 Criterion (b) of DP24 requires all development to consider “the character and proportions of the existing building where extensions and alterations are proposed”. Criterion (c) requires all development to consider the materials to be used.
- 4.14 Policy DP25 ‘Conserving Camden’s Heritage’ states in criterion (a) that the Council will take account of Conservation Area Statements and in criterion (b) that within Conservation Areas, the Council “will... only permit development that preserves and enhances the character and appearance of the Conservation Area” .
- 4.15 Camden's Planning Guidance on Design (CPG1) with regard to roofs states that roof alterations should be “architecturally sympathetic to the age and character of the building and retain the overall integrity of the roof form” (para. 5.7).
- 4.16 Paragraph 5.8 states that “Materials such as clay tiles, slate, lead or copper that visually blend with existing materials, are preferred for roof alterations and repairs... Replacement by inappropriate substitutes erodes the character and appearance of buildings and areas” .
- 4.17 This guidance is supplemented by Hampstead Conservation Area Statement which deals with the character and appearance in the Conservation Area in detail, and which recognises that within the wide variety of building styles in the Conservation Area there are striking examples of modern architecture and design (p.62). This property, as a commissioned house from an architect of local importance, with a distinctive layout of rotunda and fingers responding to the contours of the site, is a very good example of 1970s architecture within the Hampstead Conservation Area.
- 4.18 The Hampstead Conservation Area Statement also states, in section H17 (p. 61) that “existing/ original architectural features and detailing characteristic of

the Conservation Area should be retained and kept in good repair, and only be replaced when there is no alternative or to enhance the appearance of the building through the restoration of missing features”.

### *Discussion*

- 4.19 The works under consideration are the removal of the original roof and cornicing to all three fingers of the house, which took place in February/ March 2012. A protective plywood roof was installed in December 2012. Due to warping of the plywood boards, an external layer of plastic was laid on top in Autumn 2014.
- 4.20 The works that have been carried out stretch across the full extent of the three fingers of the flat roof; they are prominently visible in views from all sides, including from street level in Frognal Way and from properties and open spaces on higher ground towards Church Row. Due to the scale of the works, albeit of a reversible nature, they have noticeably impacted on the impression the building gives within its surroundings.
- 4.21 By removing the distinctive cornice and the flat roof, and by covering the property with a ‘stop-gap’ plywood roof structure with plastic sheeting, the works cannot be considered to be sympathetic to the appearance of the building in terms of form, proportions or materials. The original Pank design has a pronounced horizontal emphasis and the original cornicing was a prominent and important feature. Without this element the building appears visually incomplete and poorly proportioned. The existing roof works, which have now become the *de facto* permanent roof of the property, do not complement or integrate with the building and, as such, do not comply with policy DP24. The removal of the original roof and cornicing and the replacement with the existing plywood roof covered in plastic erodes and overwhelms the character and appearance of the property; the works also fail to preserve and enhance the character and appearance of the Hampstead Conservation Area, conflicting with policy DP25.

4.22 The works that have been carried out have a harmful impact on the architectural quality and visual appearance of the appeal building and the character and appearance of the wider Hampstead Conservation Area.

### **Response to Grounds of Appeal**

#### 4.23 **Ground A**

- *The appellant has stated “there is no harm to amenity at present, the site is secure, the building is weatherproof”.*
  - Officer response: the plywood roof that is in place at the property was required as a protective measure as part of the Section 215 Notice. Having been in place since December 2012, three and a half years, it has now become the *de facto* permanent roof of the property and enforcement action was taken on this basis. In the section above (paras. 4.19 to 4.25) the works are assessed against the Council’s design policies CS14, DP24 and DP25 and cannot be considered to be in accordance with these policies due to the visual appearance of the works and the materials used which are not in keeping with the remainder of the property or the surrounding Conservation Area;
  - Despite the presence of the plywood roof, there has been widespread evidence of water penetration to the inside of the property during officer site visits with gaps in the external brick walls and between the top of the brick walls and the temporary roof, necessitating a layer of plastic sheeting in Autumn 2014. The structural stability and integrity of the property may have been compromised as a result of water penetration to the property.
- *The appellant states that it was not expedient to issue the Enforcement Notice as the owner was preparing an application for redevelopment of the property and permission for redevelopment would remove the need for an Enforcement Notice.*

- Officer response: the owner of the site had been involved in pre-application discussions before the Enforcement Notice was served. However, it is important to note that, at the time the Notice was served:
  - ❖ There was no permission in place for redevelopment of the site;
  - ❖ An application for redevelopment of the site had not been submitted;
  - ❖ There were no implemented permissions which were partly constructed and could be built out;
  - ❖ The original roof and cornicing were removed in February/ March 2012 and the plywood roof was installed in December 2012. These works would become immune to enforcement action under the 4-year rule in February/ March 2016 and December 2016 if no enforcement action was taken;
  - ❖ Based on the history of decisions at the site and the nature of the proposals, it was not clear during pre-application discussions whether the resulting application would comply with Council policies, and if it could be recommended for approval by officers. This was indicated to the appellant's representatives during the pre-application meetings. The appellant's representatives were also advised during these meetings that the Council was minded to take enforcement action;
  - ❖ There was no guarantee that the permission for redevelopment of the site, if granted, would be implemented;
  - ❖ Apart from the removal of the roof, a number of areas of brick were cut out of the front of the dwelling and the porch was demolished. In addition to these alterations, the areas in front of and to the side of the house were left in an untidy condition; graffiti was sprayed on the exterior of the building, one of the

external brick walls was painted blue and a tarpaulin was put over another area of the external wall, indicating that part of it may have been removed. Taken as a whole, these factors indicated to officers that the dwelling was being subjected to a pattern of deliberate neglect which began under the previous owner, and which has continued under the current owner. This is described in the Officer Delegated Report for EN15/0457 as a “pattern of deliberate neglect... in order to run down the building, allowing [the owner] to make an argument that the house cannot be maintained and the site should be redeveloped”;

- It is noted that the application for redevelopment of the site, discussed at pre-application stage, was refused by the Council in March 2016 (ref. 2015/3530/P);
- ❖ In conclusion, if enforcement action was not taken, the visual harm resulting from the existing situation would continue, in breach of planning policies, and would have become immune to enforcement action in due course. There was also a risk that the pattern of deliberate neglect would continue.
- ❖ On the other hand, if planning permission was granted for the application discussed at pre-application stage, and that permission was implemented, the Enforcement Notice requirements would be superseded and the Notice would fall away with no harm to the land owner. At the time the Notice was issued, it was necessary and expedient to take enforcement action.

#### 4.24 **Ground C**

- *The owner has stated that in carrying out the roof works there was not a breach of planning control but “the works form part of the lawful implementation of the 2009 Permission”*



- Officer response: the 2009 Permission had 4 conditions attached, which required details to be submitted and approved before the permission could be implemented:
  - ❖ Condition 3 Design details
  - ❖ Condition 4 Landscape details
  - ❖ Condition 5 Construction Management Plan
  - ❖ Condition 6 Green Roof details
  
- Conditions 4 and 5 were discharged under application ref. 2010/0915/P referred to above.
  
- No application was made to discharge condition 3 or condition 6.
  
- Condition 3 is as follows:
  - ❖ “The details of all new window frames to be used on the building shall not be otherwise than as those submitted to and approved by the Council before any work is commenced on the relevant part of the development.  
  
A sample panel of all facing materials (including brick) shall be erected on the site and approved by the Council before the relevant part of the works commence.  
  
The relevant part of the works shall not be carried out otherwise than in accordance with the details thus approved.”
  
- Condition 6 is as follows:
  - ❖ “Full details in respect of the green roofs in the areas indicated on the approved roof plan shall be submitted to and approved by

the local planning authority before the development commences. The buildings shall not be occupied until the approved details have been implemented and these works shall be permanently retained and maintained thereafter”.

- In order for the application 2009/3168/P to have been lawfully implemented the above conditions would need to have been discharged before any physical works relating to the permission took place on site. Condition 6 is particularly clear in stating this. Formal discharge of all of the conditions has not taken place so the scheme cannot be considered as having been lawfully implemented;
- It is recognised that land profiling and excavation of earth took place at the rear of the site, however these preparatory works for 2009/3168/P did not, for example, involve digging of trenches to lay foundations and even if they did, the pre-commencement conditions, in particular no. 6, were not discharged so the scheme cannot be considered to have been lawfully implemented;
- From February/ March 2012 until December 2012 when the S215 Notice was issued, the interior of the building was left exposed to the elements. It is difficult to see how this situation, in which weather was allowed to penetrate the building and undermine its structural stability can now be claimed to be part of works to implement the scheme to refurbish and extend the building, which was granted under 2009/3168/P;
- Based on the above considerations, the permission 2009/3168/P was never implemented and in late September 2012 it expired. As a result, it cannot be built out now. Instead the Notice correctly requires the reinstatement of the original roof.

#### 4.25 **Ground F**

- *The appellant has stated that, as the permission granted under 2009/3168/P has been implemented, the appropriate requirement would be to complete this scheme within a suitable period.*
  - Officer response: permission 2009/3168/P was never implemented, as discussed above. As a result, the requirements of the Enforcement Notice, as issued, are reasonable. There is no approved situation at the site other than the original condition. As such, it is not excessive to require its reinstatement; lesser steps would not overcome the planning objections to the works.

#### 4.26 **Ground G**

- The appellant has stated that *“Four months... is not sufficient time to engage professionals and to complete the... works... A period of at least two years is appropriate”*
  - Officer response: the roof that would need to be reinstated is a standard flat roof surrounded by the timber barge board cornice that has been retained by the owner, as confirmed by the previous architect Alan Power.
  - If steps were taken at the beginning of the four-month period to engage suitable professionals, there is no reason why the works to reinstate the original roof and cornices could not be completed by the end of the compliance period as the notice requires.
  - In their statement, the appellant has proposed a period of 2 years as a more appropriate compliance period. However, no explanation has been provided for why a period of 2 years would be necessary. The standard flat roof could be reinstated in a much shorter period of time and it is not clear what exceptional site constraints would justify a compliance period of 2 years. Such a compliance period would result in the visually harmful works being retained on site for an excessive and unnecessarily lengthy period of time.

## 5.0 APPROPRIATE CONDITIONS

5.1 The works have already been carried out. Conditions cannot be attached which would control the development or mitigate the harm that has been caused.

Contact: John Sheehy 020 7974 5649

April 2016