

## The Planning Inspectorate

### ENFORCEMENT NOTICE APPEAL FORM (Online Version)

**WARNING:** The appeal **must** be received by the Inspectorate **before** the effective date of the local planning authority's enforcement notice.

**Appeal Reference: APP/X5210/C/16/3150172**

#### A. APPELLANT DETAILS

|                          |   |
|--------------------------|---|
| Name                     | Ms Dilek Macit  |
| Address                  | 21 Aberdare Gardens<br>LONDON<br>NW6 3AJ                                |
| Preferred contact method | Email <input checked="" type="checkbox"/> Post <input type="checkbox"/> |

#### A(i). ADDITIONAL APPELLANTS

Do you want to use this form to submit appeals by more than one person (e.g. Mr and Mrs Smith), with the same address, against the same Enforcement notice? Yes  No

**Additional Appellant:** Mr Marcus von Bock und Polach  
**Appeal Reference:** APP/X5210/C/16/3150173

#### B. AGENT DETAILS

Do you have an Agent acting on your behalf? Yes  No

|                          |   |
|--------------------------|---|
| Name                     | Mr David Gurtler  |
| Company/Group Name       | Alpha Planning Limited  |
| Address                  | 85 Friern Barnet Lane<br>Whetstone<br>LONDON<br>N20 0XU                 |
| Phone number             | 07594 189 858   |
| Email                    | enquiries@alphaplanning.ltd.uk  |
| Your reference           | APL/00128/MAC/DGu   |
| Preferred contact method | Email <input checked="" type="checkbox"/> Post <input type="checkbox"/> |

#### C. LOCAL PLANNING AUTHORITY (LPA) DETAILS

|                                      |                          |
|--------------------------------------|--------------------------|
| Name of the Local Planning Authority | London Borough of Camden |
| LPA reference number (if applicable) | EN14/0602                |
| Date of issue of enforcement notice  | 31/03/2016               |
| Effective date of enforcement notice | 12/05/2016               |

#### D. APPEAL SITE ADDRESS

Is the address of the affected land the same as the appellant's address?      Yes     No   

Address     

Are there any health and safety issues at, or near, the site which the Inspector would need to take into account when visiting the site?      Yes     No   

What is your/the appellant's interest in the land/building?

Owner     

Tenant     

Mortgagee     

None of the above     

#### E. GROUNDS AND FACTS

Do you intend to submit a planning obligation (a section 106 agreement or a unilateral undertaking) with this appeal?      Yes     No   

(a) That planning permission should be granted for what is alleged in the notice.     

The facts are set out in

the box below

The two main issues that the Council has indicated as being reasons why it is expedient to take enforcement action are:

a) the alleged harm that the metal railings and decking would have on the character and appearance of the property and the South Hampstead Conservation Area by reason of their visual prominence and incongruous addition; and

b) the alleged detrimental impact on the amenity of adjacent properties caused from overlooking and the potential for noise and disturbance.

With regard to the impact upon the building and the conservation area, the Council quotes Policy CS14 from the Core Strategy and Policies DP24 and DP25 from the Development Policies DPD.

Policy CS14 seeks to ensure that places are attractive, safe and easy to use, with the highest standard of design, respecting the character and context of the area, preserving and enhancing the borough's rich heritage and seeking the highest standards of access. Policy DP24 elaborates on the issues of design, character, quality of materials and accessibility, whilst Policy DP25 states that the Council will take account of conservation area statements and appraisals and only permit developments that preserve and enhance the conservation area.

We have considered the South Hampstead Conservation Area Appraisal which indicates that ironwork features extensively all over the conservation area and also draws attention to the high level balconies within the conservation area. We have also considered the character of the area, the positive contribution the frontages of properties in Aberdare Gardens make to the conservation area and the Article 4 Direction that takes away many permitted development rights associated with the principal elevation of the properties. We contend that the decking and metal railings are appropriate to the conservation area, with this part of the conservation area being characterised by similar forms of development both at first floor and on some of the upper floors of buildings, with some of these developments being more prominent situated on corner properties. We consider that the decking and railings preserve the character of the conservation area.

Further, the decking is not visible from any publicly accessible location and is also below the height of the parapet to the ground floor extension, as such the proposal has no impact upon the character and appearance of the conservation area or the building itself. Whilst the metal railings are higher than the parapet wall, they are also not visible from the street or other publicly accessible location.

In relation to the second ground, the impact on the amenity of neighbouring properties, the Council quotes Policy CS5 from the Core Strategy and Policy DP26 from the Development Management DPD.

Policy CS5 states that the Council will give particular consideration to providing uses that meet the full needs of the population, providing sustainable buildings and protecting and enhancing the environment and heritage. The policy also seeks to: make sure the impact on occupiers and neighbours is fully considered; ensure development contributes to strong and successful communities; and require mitigation measures where necessary. Policy DP26 seeks to protect the quality of life by only granting planning permission for development that does not harm amenity, amongst the factors the Council will consider in this regard are visual privacy, overlooking and noise.

We contend that the Council has not had regard to its own policy by not fully considering the development prior to taking enforcement action and by not considering the needs of the occupiers in this instance. Whilst access to the roof of the ground floor extension has been available since the extension was erected, the door that provides access was provided in 2007. The occupiers elderly parents occupied the first floor flat, with Ms Macit's father having severe alzheimer's disease and the decking and metal railings were provided since as the disease progressed access to the roof needed to be more accessible and safer for him, since getting out to the terrace was his access to fresh air at this stage in his life. This now applies to Ms Macit's mother who has metastasised cancer in her spine whereby while she is on chemotherapy (every other week) she cannot go down the stairs.

In relation to the effect on the amenity of adjoining properties, the issue is whether the works result in a greater material effect than if the decking and railings were not in place. The Council in granting planning permission for the single storey extension in 2000 (ref: PWX0002564/R1) did not impose a planning condition restricting its use as a roof terrace, and the use is one that is incidental to the enjoyment of the dwellinghouse. Further, the door providing direct access to the roof has been in place for over four years, providing access to the roof for use by the occupiers of the property. We contend that there is no material harm to the amenities of neighbouring occupiers arising from the works that are the subject of this enforcement notice. Whilst persons on the roof terrace would have clear views towards the gardens of numbers 19 and 23 Aberdare Gardens, these would be similar to those views that are already available from the existing windows of the appeal property and also from the lawful use of the single storey flat roof that the occupiers have enjoyed for many years. Thus the appeal proposals will not significantly worsen the situation for those properties.

We therefore consider that planning permission should be granted for the metal railings and the decking.

(b) That the breach of control alleged in the enforcement notice has not occurred as a matter of fact.

(c) That there has not been a breach of planning control (for example because permission has already been granted, or it is "permitted development").

The facts are set out in

the box below

Whilst creating a verandah, balcony or raised platform is not permitted development (Schedule 2, Part 1, Class A [exclusion K] or Class B [exclusion E] of the Town and Country Planning (General Permitted Development) Order 2015, we consider that the decking does not materially affect the external appearance of the building having regard to Section 55(2)(a)(ii) of the Town and Country Planning Act 1990. Further, given that the owner could use the existing roof as a terrace with no restriction, and under the Town and Country Planning (General Permitted Development) Order could lay felt over the deck to 'finish off' the roof (as opposed to a platform/deck), we do not consider that this constitutes development.

Additionally it should be noted that the notice requires the "use of the rear ground floor extension flat roof as a terrace" to cease and the owners to make good any damage that has occurred as a result of the works. We contend that the door that provides access to the roof has been in place for over four years (it was inserted in 2007), is exempt from enforcement control and that the use of the roof is incidental to the enjoyment of the dwelling as such and has not been prevented by condition. Thus the enforcement seeks to restrict rights which the owners are lawfully entitled to exercise.

(d) That, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice.

The facts are set out in

the box below

We reserve our right at this stage to challenge on this ground. Our clients' solicitors have requested information off the Council which the Council initially refused to provide, but now appears to be treating as a Freedom of Information request and therefore the information will be provided by the end of this month.

Whilst we accept that the decking and the metal railings may not benefit from the four year time limit set by section 171B(1) of the Town and Country Planning Act, we contend that it is too late for the Council to take action against the door that provides access to the roof and the use of the roof as a terrace does not constitute a change of use and as such it's use is incidental to the enjoyment of the dwellinghouse and so no enforcement action can be taken against that.

It may be that it is not necessary to appeal on this ground since the Council does not specifically mention the door (though it does require the use to cease and the door is the means of access to the roof), but until we have received the information from the Council's legal department we have to reserve this position.

(e) The notice was not properly served on everyone with an interest in the land.

(f) The steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections.

The facts are set out in

the box below

The steps required by the Council to comply with the notice are excessive.

The first step to cease the use of the ground floor flat roof as a terrace was not restricted by planning condition on the planning permission granted in 2000 (ref: PWX0002564/R1) and the owners have been using the roof as a terrace at least since the door was put in to provide access in 2007, this is incidental to the overall use of the dwellinghouse. Thus the requirement to cease the use of the ground floor flat roof is excessive.

The requirement to completely remove the railings and the decking is excessive. If there is any material additional harm that arises as a result of the works that have been undertaken, it would be possible to provide other lesser steps. We do not consider that there is any necessity to remove the decking and the RSJ supports that are below, rather if the Inspector does consider the deck material to

be harmful to the character of the conservation area it would be perfectly possible (and within permitted development rights) to cover this with roofing felt.

If the metal railings are considered to cause material harm due to their position on the edge of the ground floor extension's parapet wall, then it would be possible to set this back further from the parapet wall. Whilst we do not think the Council can exert any control over the use of this roof, we consider that the railings are important for the safety and quality of life of Ms Macit's mother, and so if the Inspector did consider their current position to cause harm, we would suggest setting them back, so that they are less prominent (though they are only visible from privately accessible areas). If it is considered that the works have resulted in a material increase in overlooking and loss of privacy to adjoining residents than is lawfully occurred before the decking and metal railings were erected, then we consider that a light weight wire 'trellis' could be erected above the railings on the side closest to 19 Aberdare Gardens and climbing plants trained to form a green screen (already the owners have plants situated on this boundary).

The relocation of the railings, if considered necessary to make the development acceptable, and the provision of a planting screen with wire trellis could easily be the subject of a planning condition.

(g) The time given to comply with the notice is too short. Please state what you consider to be a reasonable compliance period, and why.

The facts are set out in

the box below

The time period given is only three months. If this were solely to relate to the removal of the metal railings then it would be possible to do this and make good any damage within that time period. However, since the enforcement notice goes further, were the Inspector to conclude that the railings, decking and RSJs had to be removed, than to organise a contractor to fit it in to his schedule (including a lead in period) would require six months.

## F. CHOICE OF PROCEDURE

There are three different procedures that the appeal could follow. Please select one.

1. Written Representations

(a) Could the Inspector see the relevant parts of the appeal site sufficiently to judge the proposal from public land? Yes  No

(b) Is it essential for the Inspector to enter the site to check measurements or other relevant facts? Yes  No

Please explain.

The relevant part of the appeal site cannot be seen from any public land and it will be necessary for the Inspector to enter the site to determine whether the additional works cause any additional impact to that which can arise from the lawful use of the terrace.

2. Hearing

3. Inquiry

## G. FEE FOR THE DEEMED PLANNING APPLICATION

1. Has the appellant applied for planning permission and paid the appropriate fee for the same development as in the enforcement notice? Yes  No

2. Are there any planning reasons why a fee should not be paid for this appeal? Yes  No

If no, and you have pleaded ground (a) to have the deemed planning application considered as part of your appeal, you must pay the fee shown in the explanatory note accompanying your Enforcement Notice.

## H. OTHER APPEALS

Have you sent other appeals for this or nearby sites to us which have not yet been decided?

Yes

No



## I. SUPPORTING DOCUMENTS

01. Enforcement Notice:

see '[Appeal Documents](#)' section

02. Plan:

see '[Appeal Documents](#)' section

## J. CHECK SIGN AND DATE

I confirm that all sections have been fully completed and that the details are correct to the best of my knowledge.

I confirm that I will send a copy of this appeal form and supporting documents (including the full grounds of appeal) to the LPA today.

**Signature**

Mr David Gurtler

**Date**

11/05/2016 18:50:39

**Name**

Mr David Gurtler

**On behalf of**

Ms Dilek Macit

The gathering and subsequent processing of the personal data supplied by you in this form, is in accordance with the terms of our registration under the Data Protection Act 1998. Further information about our Data Protection policy can be found on our website under Privacy Statement.

## K. NOW SEND

### Send a copy to the LPA

Send a copy of the completed appeal form and any supporting documents (including the full grounds of the appeal) to the LPA.

To do this by email:

- open and save a copy of your appeal form

- locating your local planning authority's email address:

<https://www.gov.uk/government/publications/sending-a-copy-of-the-appeal-form-to-the-council>

- attaching the saved appeal form including any supporting documents

To send them by post, send them to the address from which the enforcement notice was sent (or to the address shown on any letters received from the LPA).

When we receive your appeal form, we will write to you letting you know if your appeal is valid, who is dealing with it and what happens next.

**You may wish to keep a copy of the completed form for your records.**

## L. APPEAL DOCUMENTS

We will not be able to validate the appeal until all the necessary supporting documents are received.

Please remember that all supporting documentation needs to be received by us within the appropriate deadline for the case type. If forwarding the documents by email, please send to **appeals@pins.gsi.gov.uk**. If posting, please enclose the section of the form that lists the supporting documents and send it to PO Box 326, Bristol, BS99 7XF.

**You will not be sent any further reminders.**

Please ensure that anything you do send by post or email is clearly marked with the reference number.

### The documents listed below were uploaded with this form:

**Relates to Section:** SUPPORTING DOCUMENTS  
**Document Description:** 01. The Enforcement Notice.  
**File name:** 21 Aberdare Gardens Enforcement Notice.pdf

**Relates to Section:** SUPPORTING DOCUMENTS  
**Document Description:** 02. The Plan.  
**File name:** 21 Aberdare Gardens Location Plan.pdf

**PLEASE ENSURE THAT A COPY OF THIS SHEET IS ENCLOSED WHEN POSTING THE ABOVE DOCUMENTS TO US**

**Completed by** MR DAVID GURTLER

**Date** 11/05/2016 18:50:39