

**GROUND OF APPEAL – LISTED BUILDING ENFORCEMENT NOTICE**

**ON BEHALF OF ETHAN AND TRACY SASSOWER**

**IN RESPECT OF A LISTED BUILDING ENFORCEMENT NOTICE**

**RELATING TO LAND AND PREMISES AT 40b ROSSLYN HILL, LONDON, NW3 1NH**

**LPA REFERENCE: EN15/0364**

**22<sup>ND</sup> JULY 2016**

### **Ground (a)**

**That the building or structure is not of special architectural or historic interest.**

*The listed building includes “any object or structure fixed to the building, and any object or structure within the curtilage of the building, which although not fixed to the building, forms part of the land and has done so since before 1<sup>st</sup> July 1948, shall be treated as part of the building.”*

Section 7 of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that no person shall cause to execute alterations or extensions to a listed building unless the works are authorised. The structures, the subject of the enforcement notice, do not form part of the listed building. They are not fixed to the listed building (as defined by relevant case law) and their construction does not pre-date 1<sup>st</sup> July 1948.

They are free-standing self-supporting outdoor structures which are not attached to the listed building. The structures are mounted on casters and are capable of being moved easily around the terrace on which they have been positioned. The structures are not ‘fixed’ to the listed building and therefore do not form part of the listed building. Since the structures are not attached to the listed building and do not constitute an alteration/extension to the listed building, listed building consent is not required.

As such, the Listed Building Enforcement Notice is invalid since no breach of the Planning (Listed Building and Conservation Areas) Act 1990 has occurred.

### **Ground (c)**

**That those matters (if they occurred) do not constitute such a contravention.**

The structures are located on a rear roof terrace. The residential use of the buildings is lawful and use of the roof terrace as external amenity space ancillary to the residential use is also authorised. Placing free-standing objects or structures – such as seats, tables,

parasols and barbeque equipment – on an authorised external amenity space does not constitute development and does not require the benefit of planning permission or listed building consent.

The Council wrote to the appellant on 21<sup>st</sup> June 2016 stating the following:

*“The Council considers that the erection of free standing structures is operational development requiring planning permission as defined by s55 of T&CPA taking into account size, degree of permanence and physical attachment to the ground.*

*This is demonstrated in an appeal decision Reigate & Banstead where the claim that a garden structure did not comprise a building because it could be moved was rejected by an inspector who upheld an enforcement notice. The ‘outbuilding’ was a trailer comprising a welded metal frame clad in timber which was supported on castor wheels. The inspector concluded that a reasonable person would gain the impression that the structure had been erected on site and it certainly had the appearance of a building as it contained a pitched roof and a garage door. The fact that it could be pushed around the site, albeit a cumbersome procedure, did not mean that it was not a building.*

*Simply putting a structure on wheels does not mean that it is does not constitute development. There are no permitted development rights available for such structures and the Council considers planning permission and listed building consent are required. “*

It is apparent therefore, that the Council is aware that the structures are mounted on casters and not attached to the building structure.

Reference to an appeal decision in respect of Reigate and Banstead Council are irrelevant to this case. The correct authority is the relevant listed building case law which defines fixtures and considers the degree of annexation. These structures are not fixed to the building structure and do not constitute ‘alterations’ to the listed building - therefore the question of listed building enforcement action does not arise.

The structures – the subject of the enforcement notice - are free-standing garden furniture which combines timber screening, seating and garden/barbeque storage facilities all of which are incidental to the lawful use of the terrace as external residential amenity space.

The Council has previously confirmed – in granting permission and listed building consent for alterations and extensions to the listed building – that use of this terrace as external amenity space would not have adversely affect the character or special interest of the building as one of special architectural or historic interest.

The Council has also granted permission and listed building consent for the erection of timber trellising around the roof terraces and for timber screening to the side of the upper floor terrace. The structures would be viewed in the context of these authorised structures as well as other movable garden furniture placed on the roof terrace.

The operational works to which the Enforcement Notices relate, concerns a timber structure which is not part of the listed building and is incidental to the outdoor residential use of the roof terrae which has already been granted permission and listed building consent.

### **Ground (e)**

#### **That listed building consent ought to be granted for the works.**

Notwithstanding and without prejudice to the appellants' position that the works do not require planning permission or listed building consent, the appellant considers that permission and listed building consent should have been granted, had it been submitted. The appellant considers that the appropriateness of the structures must be considered in the context of previous decisions by the Council:

- Planning permission and listed building consent granted for single storey extension at rear first floor level to existing flat – granted 23<sup>rd</sup> December 2011 (2011/5238/P & 2011/5248/L).
- Planning permission and listed building consent granted for installation of metal balustrade and timber screen at second floor level to create rear roof terrace, alterations to window to create access door and installing steps to terrace – granted 3<sup>rd</sup> July 2014 (2014/2517/P & 2014/2673/L)

- Planning permission and listed building consent approval of details of railings and “oiled vertical iroko plank screening” to second floor roof terrace - granted 22<sup>nd</sup> October 2014 (2014/5393)

The structure is located on a rear roof terrace which is enclosed by timber trellis screening which provide the visual context for the structure. The structures are only visible in the context of the existing trellis work which surrounds the roof terraces.

The Enforcement Notice states that the wooden structures, by reason of their visual prominence and incongruous addition to the rear roof terrace, would have a detrimental impact on the special interest of the listed building and would form an unwelcome precedent.

The Council’s reasons for issuing the notice are unreasonable and fail to consider the existing context of the timber structure which includes existing timber trellis and timber garden furniture. In this context, the structure is not incongruous.

The structures have been designed as bespoke garden furniture to reflect the character and visual quality of this external residential amenity space. They do not detract from the character and special interest of the listed building and would not form a precedent.