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**45 Maresfield Gardens, Hampstead NW3 5TE**

## **Statement of Case**

**LPA Enforcement Reference EN15/0735**

**LPA Planning Reference 2016/2827/P**

**Planning Appeal Reference APP/X5210/W/16/3155248)**

**Enforcement Notice Appeal Reference APP/X5210/C/16/3154765**

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for Mr Kfir Chervinski

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## 1 Introduction

- 1.1 This Statement sets out the Appellants case. It is drafted as a joint statement for the planning and enforcement appeals, which are to be linked (subject to PINS confirmation).
- 1.2 The Statement refers to, but does not repeat sections of the first enforcement appeal statement and rebuttal statement (Appeal Appendices 5 and 6), including examples and photographs of relevant developments in the area (Appeal Statement Chapter 4, Parking and Access) and detailed responses to objectors' comments (Appeal Statement Section 5, Response to Objections).
- 1.3 This Statement also refers to supporting evidence submitted with first and second applications and the first enforcement appeal including:
- *Appeal Statement Appendix D, Relevant Planning Permissions.*
  - *Appeal Statement Appendix D, Options for the Treatment of the Crossover.*
  - *Appeal Statement Appendix H, Photographs of Historic and Contemporary Boundary Treatments.*
  - *Various transport statement, surveys and technical notes (Appeal Appendices 7,8, 12, and 13).*

## 2 Design of piers and gates

- 2.1 The Council considers that both the gates and gate piers are acceptable in design terms and do not harm the character and appearance of the conservation area (Appeal Appendix 1, Officer delegated Report). This is therefore assumed to be common ground, although objectors continue to raise concern in relation to design and materials.
- 2.2 The gates and piers are symmetrically arranged in order to complement the host building. The piers are constructed of multi-stock brick to complement the host building and matching neighbouring piers. The darker brick colours reflect the darker tones of over-burnt brick piers typical of the area and mentioned in the conservation area statement. The piers are capped with simple, thin concrete copings. The gates comprise a simple black painted metal grid typical of other development approved in the area.
- 2.3 Appeal Statement Appendix H, Photographs of Historic and Contemporary Boundary Treatments, describes the character of boundary treatments in the area. Bricks types are typically varied and often do not match the host building.
- 2.4 The detailed design was developed in consultation with planning officers. The brick piers were made lower in height, the coping stones made thinner with simple black painted metal gates specified, rather than ornate or historically derived styles.

- 2.5 Some objectors refer to the two tall side piers capped with ball finials. These have not been altered and are not the subject of this appeal.

### **3 Former arrangement**

- 3.1 The Enforcement Notice requires that the forecourt be returned to the earlier, unsatisfactory, forecourt arrangement.
- 3.2 The Enforcement Notice requires demolition and removal of the gates and piers and reversion to the earlier open forecourt layout. This will result in material harm to the character and appearance of conservation area. Conservation area guidance resists the loss of boundary walls, piers and gates; opposes open forecourts; and promotes reinstatement wherever possible (Fitzjohns/Netherhall Conservation Area Statement Guideline F/N31).
- 3.3 The previous open arrangement permitted up to three cars to park on the forecourt. The second and third, right hand vehicles would inevitably cross over the already wide crossover, because the kerb was practically flush and there were no gates or gateposts to restrict this movement. This resulted in repeated damage and demonstrable harm to historic Yorkstone paving. If this former unsatisfactory layout is reinstated then the Highway Authority may need to consider measures such as rows of bollards to prevent pavement over-running at this property, whilst continuing to overlook exactly the same situation on forecourts nearby (See Appeal Appendix 12, Transport and Parking Survey).
- 3.4 Reinstatement of the previous layout, as the Notice requires, clearly does not offer a satisfactory or final resolution of the concerns raised by the Council and others, and in many ways will make the situation worse.

### **4 On-street parking**

- 4.1 The adjacent resident parking bay will need to be shortened in order to ensure that parked cars do not obstruct sight lines for vehicles entering or leaving the northern parking space.
- 4.2 The Council raises no objection to the positive effect of these alterations on vehicle sightlines. It is concerned with the effect on the availability of on-street parking and how the works will be funded.
- 4.3 The appellant will offer a highways contribution via a legal agreement to fund these alterations. The agreement was offered to the Council with both previous planning applications.
- 4.4 According to established standards, the shortened bay will not result in a significant reduction parking opportunities on Maresfield Gardens. The current arrangement, where four smaller cars can sometimes squeeze into the three standard resident parking bay lengths, means that the middle two cars cannot comfortably exit the parking bay without numerous shuffles back and forth due to how close vehicles will be required park.

- 4.5 The appellant will offer an undertaking to restrict access to resident parking permits for residents of the appeal property, materially reducing the demand for on-street spaces in close proximity to the appeal property.
- 4.6 There is capacity to provide additional on-street parking bays in close proximity to the appeal property. An undertaking will be offered as part of the highways contribution for the laying out of up to two additional bays.
- 4.7 There are at least two sections of single yellow line on the west side of Maresfield Gardens that can accommodate at least two new or extended resident parking bays. Both are well light by nearby streetlights.
- *Between the Lakefield House and No. 43 Maresfield Gardens (45.5 metres from the appeal proeprty entrance gates).*
  - *In front of No. 53 Marefsiedl gardens (100 metres from the appeal proeprty entrance gates).*
  - *In front of No. 55 Maresfield Garden (105 metres from the appeal proeprty entrance gates).*
- 4.8 It is claimed that reducing the length of the adjacent bay will force some residents to park in unsatisfactory residents parking bays nearby that are affected by poor street lighting, overhanging trees and poor surveillance with increased car crime.
- 4.9 There is no automatic right to use a particular residents parking bay and residents unable to park in the adjacent bay will still be able to use alternate bays. The nearest bay is immediately opposite on the east side of the road, some 6m from the appeal property. The nearest alternative bay on the west side is 10m away. Both are well lit, with an open setting and with no trees overhanging or obstructing views.
- 4.10 There is a streetlight adjacent to the parking bay outside No. 45, but this is not unique in the street. In fact, most bays have adjacent streetlights (which can be confirmed during the inspector's site visit). Street lighting is generally designed to create even lighting levels across the street, rather than patches of light and dark. The even spacing of columns indicates that there are good and reasonably even levels of illumination along the entire street. The appropriate level of street lighting is ultimately a Highway Authority matter.
- 4.11 There are no on-street trees that may obstruct street lighting or that create blinds spots. There are mature trees in front gardens, but they are generally tall with few low hanging braches that might affect lighting levels. There is no immediate evidence that there is a preponderance of trees that might drop sap or fruit on cars, with few overhanging trees from adjacent front gardens. In any case, whilst an inconvenience, dripping sap is limited by tree species, can be seasonal and is sometimes associated with unhealthy trees that need attention. Sap can be easily removed from cars.
- 4.12 In relation to surveillance and perception of car crime, the bay adjacent to No.45 is poorly overlooked from the property whilst the bay across the road can be more clearly viewed. The lack of street trees adds to a general open aspect in views along the street, enhanced by the gentle incline. Neighbours present no evidence of increased car crime in this part of Maresfield Gardens that particularly affects nearby resident parking bays, but not the bay adjacent to No. 45.

## 5 Parking stress

- 5.1 It is claimed that marginal reduction in on-street spaces will materially add to parking stress.
- 5.2 The Transport Statement submitted with this appeal demonstrates that there is sufficient reserve parking capacity within 200 metres of the site (Section 4.17) and the average overnight parking stress can be categorized as 'moderate' (72%). The Statement concludes that the proposals will not result in the loss of parking opportunities on Maresfield Gardens, because there is sufficient reserve parking capacity in the vicinity of 45 Maresfield Gardens to accommodate any displaced resident parking resulting from the forecourt parking layout (Section 5.48).
- 5.3 Reducing the length of the adjacent resident parking bay is designed to address objectors' concerns in relation to pedestrian-vehicle sight lines. The reduction in the length of the parking bay will not result in a loss of parking opportunities on Maresfield Gardens according to established standards (Section 6.5 of the Transport Statement).
- 5.4 An updated Transport Statement will be shortly submitted in response to the recent claims made in Council's the officer's committee report. (Appeal Appendix 1, Officer Report dated 19th July 2016).

## 6 Planning History of approving parking spaces

- 6.1 There are examples of forecourt parking and new walls and gates relevant to this appeal. There are also a number of planning permissions and appeal decisions of relevance. Please refer to Appeal Appendix 12, Transport and Parking Survey, and Appeal Appendix 5, Appeal Statement sections 4.2 - 4.11).

## 7 Crossover

- 7.1 There are a wide variety of crossover geometries, details and materials in the area. Many detract from the quality of the area (See Appeal Appendix 12. Transport and Parking Survey and Appeal Appendix 5, Appeal Statement, Figures 3 and 4). In contrast, the crossover can be carefully designed and detailed in order to complement the street scene and enhance the conservation area with the use of traditional and high quality paving materials.
- 7.2 Two options for the treatment of the crossover have been devised. Drawings are attached (Appeal Appendix 5, Appeal Statement, Appendix G). The first shows a single, wider crossover and the second shows the crossover divided into two parts with a central 'island' or nib. The schemes replicate the high quality materials typical in the area including as Yorkstone paving, granite sett bands and wide granite kerbs.
- 7.3 For the purposes of this appeal scheme, the works may be controlled either by a 'prior to first use of the parking space' planning condition and/or by legal agreement (see proposed conditions at Chapter 11 below) via a highway contribution. There is also the opportunity for a subsequent crossover application to the Highway Authority.

- 7.4 The Council's opposition to the proposals has effectively excluded a standard S106/278 agreement, which the appellant is still willing to consider entering in to. This would help to address some of the Council's technical concerns with the operation of the proposed unilateral undertaking and monitoring fees.
- 7.5 The Council claims the crossover arrangement would likely lead to an increased level of maintenance, as vehicles entering and exiting the site would over-run the central nib, causing it to be damaged. Appeal Appendix 13. Transport Technical Note July 2015 at Figure 2 shows demonstrates through a swept path analysis that a large family car can comfortably enter and leave the northern parking space without encroaching on the kerb on either side.
- 7.6 The detailed design of the crossover can be subsequently amended and controlled by the Highway Authority with the proposed planning condition to prevent use of the northern parking space unless and until it is provided. Sufficiently high quality and robust details can be specified so as to minimise the damage and costs to the Council, for example by providing flush/shallow kerbs and radii kerbs that can be over-run without damage. The Inspector will note at the site visit that the chunky late Victorian radii kerbs have survived where later kerb and paving types have proved less robust. If such measures are adopted it seems unlikely that long term or lifetime maintenance costs will rise above current levels.
- 7.7 It is accept that the crossover will need to be realigned to meet the new gates and piers and highways consent is required. The council's normal position is that it will not consider such applications unless and until permission is in place for the parking space to be served by the re-aligned crossover. The council has granted a crossover application in relation to Prince Arthur Road for a new parking space allowed on appeal for a property converted to two flats (previously 3 self contained flats). The Council's argument on permitted development and single dwelling houses does not therefore seem to be entirely consistent. The Council deployed the same arguments at that appeal- that they would not grant highways consent even if the appeal was allowed- but the crossover is now in place.

## 8 Sightlines

- 8.1 It is claimed the applicant/appellant has failed to demonstrate that there would not be issues with highway safety along Maresfield Gardens and has not demonstrated that a car can enter and leave the parking space in a safe manner.
- 8.2 The LPA acknowledge that the proposed central nib provides a central refuge compared with a full width crossover and that this is a saefty enhancement.
- 8.3 The Council does not prescribe a specific required visibility envelope for vehicle to pedestrian sightlines. Proposals should there be judged on site-specific circumstances and national guidance (Manual for Streets). Manual for Streets notes that the absence of wide visibility splays at private driveways will encourage drivers to emerge more cautiously (Section 7.8.3 and 7.8.4) and account should be taken of the frequency of vehicle movements, the amount of pedestrian activity and footway width.

### *Visibility splays*

- 8.4 Camden Council does not prescribe a specific required visibility envelope. Proposals should there be judged on

site specific circumstances and national guidance (Manual for Streets), which notes that the absence of wide visibility splays at private driveways will encourage drivers to emerge more cautiously.

- 8.5 It is acknowledged that vehicle to pedestrian sight lines are reduced for pedestrians travelling south where vehicles are leaving the northern parking space. However, there appears to be common agreement that these concerns relate only to the northern parking space and only in relation to pedestrians travelling southbound and for cars existing the northern space.
- 8.6 The Transport Statement (Appeal Appendix 7) demonstrates that there will be no issue with vehicles entering the northern parking space, particularly where the resident parking bay is adjusted, increasing visibility, but that driver-pedestrian visibility will be restricted for vehicles leaving the space.
- 8.7 The width of the footway means that the northern parking space has sufficient vehicle to pedestrian sightlines and the degree or reduction in vehicle to pedestrian sightlines are likely to encourage drivers to emerge more cautiously, improving pedestrian safety on the footpath.
- 8.8 Relatively narrow driveways with tall brick piers and boundary walls on either side are a typical and historic feature of the area and help to define the boundary and property threshold. High walls and narrow entrances are a typical feature of many driveways in the area. This is a historic characteristic (see Appeal Appendix 12, Transport and Parking Survey July 2015). The introduction of excessively wide entrances without gate piers is likely to diminish these qualities. The blanket application of standard visibility splays is likely to result in an erosion of environmental quality and encourage vehicle to exit forecourt parking spaces less cautiously. This will also be contrary to conservation area guideline FN31, boundaries, which states that proposals should respect the original style of boundary.
- 8.9 The piers to either side of the plot are pre-existing and the effect on sightlines is therefore not materially different.

*Frequency of vehicle movements and pedestrian activity*

- 8.10 Manual for Streets notes that and account should be taken of the frequency of vehicle movements and the amount of pedestrian activity (Section 7.8.3 and 7.8.4).
- 8.11 The Transport Statements find a low flow of traffic and low flow of pedestrians adjacent to the site. The number of vehicles entering or leaving the northern parking space is predicted to be low whilst the pavement is relatively wide, so that pedestrians will not be forced to move along the pavement close to the boundary. The delineation of the crossover will indicate the presence of the parking space and the likelihood of cars exiting the adjacent space whilst national guidance (Manual for Streets) indicates that reduced vehicle to pedestrian sight lines “will encourage drivers to emerge more cautiously”. Proposals to re-delineate the on street parking bay will improve pedestrian to vehicle visibility for vehicles entering the northern parking space.
- 8.12 The Transport Statement surveys undertaken in term time demonstrate that there is a low pedestrian density, with associated low number of pedestrian movements and low flow of traffic in Maresfield Gardens. This should be considered alongside the predicted low number of vehicle movements (one return movement per week day) into and out of the northern parking space that serves a single dwelling.



### *Footway width*

- 8.13 Manual for Streets notes that account should be taken of footway widths. (Section 7.8.3 and 7.8.4)
- 8.14 The width of the footway means that vehicle to pedestrian sightlines are generally good, because most pedestrians will move along the middle of the relatively wide pavement, not close to boundary walls. Where the proposed crossover alterations are carried out, pedestrians approaching the property will note the delineation of the crossover indicating the presence of the parking space and this will signal the likelihood of cars exiting the adjacent space.
- 8.15 Proposals to adjust the on street parking bay will further improve pedestrian to vehicle visibility for vehicles entering the northern parking space.

## **9 Off street parking**

- 9.1 It should be noted by the inspector that some objectors confusingly assume the development involves the creation of forecourt parking where previously here was none. This is not the case.
- 9.2 The proposals will reduce private off street parking provision, helping to restrict car use and reduce congestion and pollution in line with Core strategy policy CS11 (making private transport more sustainable and minimising provision for private parking) and CS11 (promoting sustainable travel modes) and DP18 (minimising necessary parking provision).
- 9.3 The previous arrangement permitted up to three cars to park on the forecourt whilst the appeal scheme permits a maximum of two. The Council accepts this position: 'Historically at the site, there was a vehicle access and there were usually two or three cars, which could be parked within the front garden. 'The proposals will therefore result in a reduction from two to three spaces to a maximum of two off-street parking spaces (first application officers delegated report).
- 9.4 The Council agrees that the dimensions of the proposed parking spaces are in line with Camden guidance.<sup>1</sup>

## **10 Cycle stands**

- 10.1 The proposals include the provision of 2 external cycle parking stands. The proposed location is indicated on proposed plans, but can be added by a proposed planning condition.
- 10.2 The stands help to meet Camden Core Strategy policy CS11, promoting sustainable and efficient travel, and also DP22, Promoting sustainability and tackling climate change, and DP32 Air quality and Camden's Clear Zone (on the basis that some residents will commute into to the Clear Zone).

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<sup>1</sup> First application Officer Delegated Report Section 4.3.

## 11 Electric car charging point

- 11.1 The Council claim that the provision of an electric vehicle charging point does not meet the aims of policy and cannot therefore be a material consideration. Further, they claim that policies on electric charging points and promoting the use of electric vehicle solely relate to new development that provides new or additional parking spaces.
- 11.2 It is accepted that the provision of an electric vehicle charging will not mitigate of any potential effects upon sight lines or on-street parking. This is instead offered in order to accord with policy and to provide planning benefit and is therefore a material consideration.
- 11.3 The London Plan and the emerging draft replacement support the provision of electric charging points in new developments. The Mayor's Electric Vehicle Delivery Plan (May 2009) sets out a range of measures to encourage the use of electric vehicles and increase the number of charging points and aims to ensure that 1 in 5 spaces (both active and passive) provide an electrical charging point to encourage the uptake of electric vehicles.<sup>2</sup>
- 11.4 Camden Core Strategy Policy CS11, sustainable and efficient travel, promotes the use of low emission vehicles, including through expanding the availability of electric charging points. Core Strategy policy CS13 promotes the use of renewable energy technologies to reduce carbon emissions and tackle climate change. Electric vehicle charging points also support DP26, managing the impact of development on occupiers and neighbours; DP22, promoting sustainability and tackling climate change; and DP32, Air quality and Camden's Clear Zone.
- 11.5 Policy clearly promotes measures to encourage the uptake of electric vehicles and consequently reduce emissions, improve air quality and reduce noise. The Council confuses policies to guide and to restrict the amount of car parking provided in new developments that provide new or additional spaces with the clear promotion of electric vehicle charging points in general.

## 12 Planning conditions

- 12.1 The appellant offers the following conditions.
- 12.2 In order to support the appellant's case that the frequency of vehicle movements in and out of the parking space will be low, because it relates to a single dwelling, the following condition is offered:

*The northern car space shall be used solely for the benefit of the occupants of the dwelling of which it forms part and their visitors and for no other purpose and permanently retained as such thereafter.*

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<sup>2</sup> Parking Standards Minor Alterations To The London Plan, March 2016 Policy 6.13.

- 12.3 Crossover alterations are normally and routinely secured separately through a Vehicle Crossover Application following the grant of planning consent. The Councils Vehicle Crossover Application process also includes provision for adjustments to adjacent resident parking bays. Notwithstanding these provisions, we offer the following condition (based upon Circular 11/95 Appendix A, Acceptable Model Condition No.17) where the Inspector considers it necessary to control this through the grant of planning permission:

*The car (northern) parking space shall not be used until the Highways Authority has given its approval in writing for the construction of a vehicle crossover and the vehicle crossover has been constructed in accordance with the terms of the approved detail.*

- 12.4 A condition to control the detail and location of electric charging point is proposed.
- 12.5 A condition to control the location and design of cycle parking spaces in proposed.

## 13 S106

- 13.1 The Council claims that a reduction in the length of the adjacent resident parking bay will have a material effect upon the availability of resident's parking spaces. Whilst this is disputed, the appellant offers the following approach, if the Inspector considers that this is justified.
- 13.2 The obligations contained in the Unilateral Obligation are conditional upon a specific finding by the Inspector that they are necessary ('Blue Pencil Clauses') and should become effective by the Inspector appointed to determine the Enforcement Notice Appeal and recorded as such in the decision letter issued in final determination of the Appeal.
- 13.3 The appeal property is a single dwelling. Under the Council scheme, each car owner resident at the property is entitled to apply for a resident parking permit, with up to three permits issued per dwelling. A legal agreement (unilateral undertaking) will offered reducing the maximum number of applications from three to two (or one).
- 13.4 The undertaking also includes provision for the payment of a highways contribution towards the cost of altering the vehicle crossover and the laying out of up to two new or extended on-street bays in the vicinity.
- 13.5 The appellant continues to be willing to consider entering into a S106 agreement with the Council (rather than a unilateral undertaking) if it accepts some or all of the purposes above (reducing access to parking permits and a highways contribution to fund the altered crossover and/or setting our new on-street bays), that these will be 'blue pencil' clauses for the inspector to accept or strike out. This may also help to address the various technical concerns the Council raises with the unilateral.

## 14 Alternatives

- 14.1 The scope of the new Notice has been expanded to include removal of materials after demolition of the gates and piers.

- 14.2 Chapter 7 of the first enforcement appeal statement (Appeal Appendix 5) addresses the excessive scope of the first enforcement notice and alternative remedies, had the Notice been upheld. These are set out again below
- 14.3 The following alternative remedy is proposed. The arrangement of the southern parking space and central pedestrian gate and piers are not disputed by the Council and may be retained. They should not therefore be required to be removed by the Notice and in this respect the Notice is excessive. The gates opening onto the northern space may be permanently fixed closed (they remained chained and locked at present).
- 14.4 The appellant contends that 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.
- 14.5 Permitted development rights may be exercised to allow gates and piers of a reduced height (below 1m). The Notice cuts across the exercise of these rights.
- 14.6 Separate powers are available to Highway Authority to prevent vehicles over-running of the pavement in relation to the appeal scheme, whilst these powers will need to be employed if the scheme reverts to the former layout, as the Notice requires.
- 14.7 Reversion to the earlier scheme and the alternatives described above are all considered to be inferior to the option to retain the appeal scheme.
- 14.8 Where the appeal is otherwise unsuccessful, the appellant suggests the Inspector ought to vary the terms and scope of the notice in one or some combination of the above bullet points pursuant to s.176 of the Town and Country Planning Act 1990.

#### *Council alternatives*

- 14.9 The agent approached the Council on 19<sup>th</sup> April 2016 to try to explore alternative ways forward. The Council responded On 25<sup>th</sup> May, immediately prior to serving the second Enforcement Notice, set out two alternative layout schemes. Both layouts retain two street parking spaces but do not require the trimming of the on-street bay or widening of the existing cross over.
- *Remove the central brick gate piers, the railing to the southern side and box hedge planting to the centre. Relocate the bin store to the northern boundary, install a relocated and lowered brick pillar of no more than 1.2metres in height, leaving a pedestrian access at a point 1.2metres from the northern boundary to create and enable the two off-street parking spaces to be accessed from the left and central positions, in-line with the existing crossover.*
  - *As above, but remove both central brick gate piers and install a metal railing post (no more than 200mm in width) up to a height of 1.7metres, off-set by 1.2metres from the northern boundary, to create the pedestrian access to the north and provide the off-street parking for two-cars to the left and central positions.*
- 14.10 The appellant rejected both options on the basis that they involved complete demolition of the existing scheme The appellant wishes to pursue the appropriate remedy of appeal against the Councils refusal of

planning permission on planning grounds, which technical errors by the Council prevented at the first enforcement appeal.

- 14.11 Both options involve moving the southern parking place closer to the existing southern tall brick pier with ball finial, where the sightlines are similar to the appeal proposals for the northern space. This is effectively 'handing' the appeal scheme and it is then difficult to see why the Council supports this scheme, but opposes the appeal scheme. Is the practical effect of this advice that the Council will support the appeal scheme where the piers are reduced in height and should they not therefore amend the scope of the Notice accordingly?
- 14.12 The appellant believes the Council does not in principle oppose the proposed crossover option with a central nib and two narrower crossovers, provided the adjacent parking bay is set back and alternative on-street spaces are created nearby. The appellant has offered mechanisms to alter the bay, create or extend nearby bays, and restrict permits for residents of the appeal property. The Council's concern with pedestrian-vehicle sightlines, which is not supported by government best practice guidance, seems to apply unequally to the northern vs. the southern corner of the frontage.

## 15 Costs

- 15.1 The appellant applies for an award of costs and will write separately with reasons.