

Statement of Case

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28 Lyndhurst Road, NW3 5PB

Lyndhurst Global Ltd

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Appendix 1	Decision Notice (LPA ref. 2016/3019/P)
Appendix 2	Letter dated 12 th August 2016 (incorrect date, noted as 12 th April) from LBC Enforcement Team (LPA ref. EN16/0107)
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1. Introduction

1.1 This Statement of Case ('Statement') has been prepared by GVA on behalf of our client, Lyndhurst Global Ltd (the 'Appellant') in support of an appeal against the refusal of an application for Full Planning Permission (LPA ref. 2016/3019/P) for the erection of decking and screening at 28 Lyndhurst Road (the 'Application Site').

1.2 Lyndhurst Global Ltd submitted the application to the London Borough of Camden (LBC) on 27 May 2016 for the following description of development:

'Erection of timber deck above storage units in rear garden and associated metal and glass balustrade (Retrospective) and installation of 1.8m screening all for use as a raised terrace (Class C3)'.

1.3 The retrospective application was made following an enforcement investigation (LPA Ref. EN16/0107) by the Council.

1.4 On 4 November 2016, the London Borough of Camden (LBC) refused the application under delegated powers for the following reason:

'The unauthorised raised terrace, balustrading and screening located within the rear garden by reason of its scale, location and detailed design, would be overly dominant and appear as an incongruous form of development which would harm the character and appearance of the application site and the immediate and surrounding Fitzjohns and Netherhall Conservation Area, contrary to policy CS14 (Promoting high quality places and conserving our heritage) of the London Borough of Camden Local Development Framework Core Strategy and policy DP24 (Securing high quality design) and DP25 (Conserving our Heritage) of the London Borough of Camden Local Development Framework Development Policies'.

1.5 The Decision Notice is enclosed at Appendix 1. Pursuant to the refusal of the planning application, an Enforcement Notice (LPA ref. 1800.48) (Appendix 2) was served on Lyndhurst Global Ltd dated 23 November 2016.

1.6 This Statement reviews the proposed development in relation to the policies of the Statutory Development Plan, national policy and other material considerations and sets out the reasons why the appeal scheme should be granted planning permission.

2. Site Context and Background

- 2.2 The Applicant Site comprises is a large, detached residential containing six flats located within the Fitzjohn and Netherhall Conservation Area. The building is not listed nor is it locally listed.
- 2.3 The existing building comprises five storeys to the front elevation and six storeys to the rear elevation. To the rear of the garden, a row of storage units are situated at lower ground floor level, and the roofs of the storage units are flush with ground (garden) level. The storage units were granted consent by the Council pursuant to planning application ref. PW9702199R3 for the following development:

'Erection of a row of single storey storage sheds at south end of rear garden to be screened by a 2m high timber fence. As shown on Drawing Numbers: 01C, unnumbered existing site plan and section drawings, and letters dated 20th May 1997 and 2nd September 1997'.

- 2.4 From a review of the Council's online planning records, we note that the application site has an extensive planning history dating to 1988 (Appendix 3). Relevant planning history to note, includes the storage units, as noted above; the change of use of the existing building from a hotel to six flats (LBC ref. 9400868); and the erection of a rear extension (LBC ref. 2013/7377/P).
- 2.5 The subject application to which this appeal relates to is the decking area constructed above the roof of the storage units to the south end of the rear garden to provide a terrace (LPA ref. PW9702199R3).
- 2.6 As previously mentioned, the application was submitted following the receipt of a letter from LBC advising of an enforcement breach (LPA ref. RS/PE/EN16/0107), that retrospective planning permission should be sought for the decking (Appendix 4). The letter from LBC advised on remedial action and included LBC's main concerns as follows:

'The new terraced area may result in the creation of additional overlooking given its close proximity to the rear gardens and rear facades of properties located in Wedderburn Road. This may be overcome by providing a higher screen that incorporates obscured glazing'.

- 2.7 Following receipt of the letter from LBC advising the Appellant submitted an application for the following description of development (submission documents attached at Appendix 5):

'Erection of timber deck above storage units in rear garden and associated metal and glass balustrade (Retrospective) and installation of 1.8m screening all for use as a raised terrace (Class C3)'.

2.8 The initial submission proposed the following:

- The retention of a timber decked terrace (108 sqm) atop of the rear garden and existing storage units.
- The retention of a 1.1m metal and glass balustrade along the perimeter of said terrace.
- The installation of a 1.8m 'camouflage' screen along the perimeter of the terrace.

2.9 Pertinent to the appeal, the Council did not raise any issues in relation to the design of the decking or its impact on the conservation area in its letter. In fact, the letter recommends a larger screening area. This is completely contrary to the reason cited in the Council's refusal of the application.

2.10 Therefore, the Council recommended design changes to the decking area and its regularisation in planning terms in its letter dated 12th August 2016 (Appendix 4). Having recommended such an approach it was therefore very surprising that the Council subsequently chose to refuse the application on design and heritage grounds.

3. The London Borough of Camden's Approach

- 3.1 We consider that LBC have not taken a positive and pro-active approach to decision taking, as required by paragraphs 186 and 187 of the National Planning Policy Framework.
- 3.2 The Appellant has demonstrated throughout the statutory determination period a willingness to engage and be flexible with the proposed design of the decking. LBC wrote to the Appellant on 12 August 2016 stating the following (Appendix 6):

'We would accept a roof terrace that is set back further from the rear boundary line so that no screening is required to prevent overlooking and of a sufficiently smaller scale (at least half of the width of the existing. We would then be able to grant approval subject to enforcement action which would require you to amend the roof terrace to comply with the approved plans'.

- 3.3 As a result, the design team revised the terrace as follows, to include the setting back of the terrace by 5000mm from the rear boundary, delineating the back of the terrace by a row of planters and the reduction in the area of terrace by fifty percent. This is shown on drawing no. 889/TP/201 (Appendix 7).
- 3.4 The Council has been inconsistent in terms of the reasons for requiring remedial action. No reference was made by officers at the Council during the determination of the application at any point to concerns over the impact of the proposed development on the Fitzjohn and Netherhall Conservation Area.
- 3.5 In addition, Officers requested an Arboricultural Impact Assessment to be provided by the Appellant on 12 September 2016 (Appendix 8); this was prepared by Landscape Planning Ltd and submitted to LBC on 1 November 2016 (Appendix 9). The Arboricultural Impact Assessment concluded that the decking had been implemented without undue impact on the mature trees and advised that tree grids should be installed and a live screen should be provided at the eastern edge of the decking. The lack of impact on the trees is not disputed by LBC in the Decision Notice, nor in the Officer's Report (Appendix 10) for the application subject to carrying out the works proposed within the Arboricultural Impact Assessment. These works, as noted by officers in the Officer's Report, could be conditioned (Officer's Report, Paragraph 4.5).

4. Planning Policy and Guidance Context

- 4.1 Section 38(6) of the Planning and Compulsory Purchase Act (2004) requires that decisions made under the Town and Country Planning Act should be determined in accordance with the development plan unless material considerations indicate otherwise.
- 4.2 The relevant adopted development plan in this case comprises:
- The Further Alterations to the London Plan (2016) and the Minor Alterations to the London Plan (2016), hereafter referred to as "The London Plan";
 - The London Borough of Camden (LBC) Local Development Framework Core Strategy (2010); and
 - The London Borough of Camden (LBC) Local Development Framework Development Policies (2010).
- 4.3 LBC has prepared and submitted the draft Camden Local Plan to the Secretary of State for Examination. The Examination in Public took place in October 2016. The Inspector's Report has not been published, however it is noted that the draft plan is at an advanced stage and holds material weight.
- 4.4 Paragraph 28 of the 'Local Plans' section of the NPPG states that Supplementary Planning Documents should build upon, and provide more detailed advice or guidance, on the policies in the Local Plan.
- 4.5 The guidance of relevance, in this case, comprises:
- Camden Planning Guidance – CPG6 Amenity (2011);
 - Camden Planning Guidance – CPG1 Design (2015); and
 - Fitzjohn and Netherhall Conservation Area Appraisal and Management Strategy (2001).

5. Appellant's Case

5.1 LBC's reason for refusal is set out in Section 1, Paragraph 1.4, of this Statement. The Council's reason for refusal is addressed below and the evidence is provided for why the appeal should be allowed.

5.2 In the first instance, as noted in Paragraph 3.2 of this Statement, the Appellant made alterations to the proposed terrace following remedial advice from officers at the Council in order to make the proposed scheme acceptable (Appendix 7). The application was revised as follows:

- An increased set-back of the terrace by 5000mm from the rear boundary;
- Delineating the back of the terrace by a row of planters; and
- Reduction in area of the terrace by fifty percent.

5.3 It should be noted that in correspondence prior to the submission of the application, Officers did not raise concern with regard to the design of the terrace nor the impact of the terrace on the character and appearance of the Application Site and the immediate and surrounding Fitzjohns and Netherhall Conservation Area. As noted above, the application was submitted retrospectively following a request by LBC's Enforcement Team (Appendix 4) for the following reason:

'The new terraced area may result in the creation of additional overlooking given its close proximity to the rear gardens and rear facades of properties located in Wedderburn Road. This may be overcome by providing a higher screen that incorporates obscured glazing'.

5.4 The submission proposal sought to overcome the overlooking which was of concern for officers at the Council, through the inclusion within the application proposals of a camouflage screening of 1.8m in height. The Case Officer dealing with the application requested further amendments to reduce overlooking. Amendments were duly submitted. At no stage were comments raised by LBC officers during the application determination period in relation to the proposed scale of the terrace in design terms or the impact of the terrace on the immediate surroundings and setting of the Fitzjohn and Netherhall Conservation Area.

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- 5.5 The policies and relevant guidance on design and conservation areas, as cited in the Council's reason for refusal in LBC's Decision Notice, are summarised below (relevant extracts at Appendix 11):
- Core Strategy Policy CS14, Promoting high quality places and conserving our heritage – Ensuring that Camden's places and buildings are attractive, safe and easy to use by, inter alia, requiring high standard of design, and preserving and enhancing heritage assets and conservation areas.
 - Development Management Policies Policy DP24, Securing high quality design – requiring all developments to be of the highest quality of design.
 - Development Management Policies DP25, Conserving Camden's heritage – maintain the character of Camden's conservation areas. Developments should take account of conservation area statements, appraisals and management plans. Development will only be permitted within conservation areas that preserve and enhance the character and appearance of the area.
 - Fitzjohns and Netherhall Conservation Area Appraisal and Management Strategy (2001) (Appendix 12).
- 5.6 Further assessment of the scheme against these policies and guidance is provided below.
- 5.7 Under Core Strategy Policy CS14, LBC seeks to ensure that all new development should be of the highest standard of design that respects the local character of the surrounding area and seeks to preserve and enhance the Borough's conservation areas. Notably at no point during the application determination period or prior to the submission of the refused application did officers raise concerns in relation to the design of the terrace. In fact, officers recommended in the Council's letter dated 12th August (Appendix 6) that the terrace screen should be increased in height. This runs contrary to the Council's reference to the screening being 'incongruous' in the Council's reason for refusal of the application.
- 5.8 The Application Site is located within the Fitzjohn and Netherhall Conservation Area. The Fitzjohn and Netherhall Conservation Area Appraisal and Management Strategy sets out LBC's approach to the preservation and enhancement of the conservation area. The Conservation Area Appraisal states that whilst not visible from the street, rear gardens form large blocks of open land making a significant contribution to the character of the area (Appendix 12, p. 10). Officers have given weight to this point in the determination of the application. At Paragraph 2.3 of the Officers Report, Officers note that; *'within this context, it is considered a pattern of raised terraces to*
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the end of the rear gardens has not been adequately established'. This is incorrect in this instance, given that the terrace is built upon existing storage units which are 2300 mm in height and establish a baseline of additional height within the rear garden of 28 Lyndhurst Road. The height of the raised terrace has been marginally increased as a result of the introduction of decking by 70mm. Therefore the introduction of a formal terrace above the storage units is not considered to erode the character of the area in heritage terms.

- 5.9 The terrace is located upon the roof of storage units located at lower ground level which have been in situ for 19 years, and immune from enforcement action. In this time, the rear garden, including the Application Site has been used by residents of 28 Lyndhurst Road as garden space and a de facto terrace. The de facto terrace included a simple protection balustrade. The storage units are a permanent feature of the garden of 28 Lyndhurst Road and therefore the Fitzjohn and Netherhall Conservation Area.
- 5.10 The introduction of a formal terrace seeks to enhance the garden space above the storage units, providing a visual enhancement. The application, that is the subject of the appeal, does not seek to increase the size of the terrace, nor does it seek additional height. The application is solely for the regularisation of the increased area of timber decking and the introduction a glass and metal balustrade for the safety of future users. The scheme has been amended post submission to reduce the surface area of timber decking, which has been set back from the boundary of storage units. Therefore the terrace is not considered to further erode the character of the conservation area, and the size of the terrace is considered appropriate in scale.
- 5.11 Paragraph 2.7 of the Officer's Report for the application states the following:

'In terms of materials, the use of timber decking and artificial grass is broadly considered sympathetic; however the evidently modern metal and glass balustrading, in addition to the proposed 'camouflage' screen is considered wholly unsympathetic and would result in diminishing effect on the character of the CA'.

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- 5.12 The design and material of the timber decking and artificial grass is considered to be acceptable. The focus of the remainder of this Statement will be in relation to the other design elements of the proposal.
- 5.13 The Officer's Report at Paragraph 2.9 states that the proposal would detract from the open character of the application site and the wider surrounding area and as a result would neither preserve nor enhance the character or appearance of the site or surrounding area and should be refused on this basis.
- 5.14 As discussed above, the Application Site prior to the installation of the terrace comprised a raised garden on top of the existing storage units, this is the baseline height. The introduction of the balustrade increases the height of the terrace by 1.1 metres. The introduction of the decking and facilitation of greater access requires the balustrade along the perimeter of the terrace in order to provide safety, especially given the height of the terrace above lower ground level. The intention through the application proposals is to provide screening which is of greater height than the balustrade. This was at the request of Officers for the benefit of amenity. We consider that in addition, the introduction of screening provides a visual barrier to the terrace from the surrounding area and therefore preserves the immediate and surrounding Fitzjohns and Netherhall Conservation Area in heritage terms.
- 5.15 The scale of the terrace is considered acceptable, given that the terrace is built directly above the storage units. The baseline condition of the rear garden has been altered through the introduction of the storage units. The proposed terrace does not increase the area of the raised garden and therefore does not have an impact on the immediate and setting of the Fitzjohn and Netherhall Conservation Area. In addition, following advice from officers, the quantum of decking has been reduced and in parts replaced with artificial grass. The roof of the storage units was previously planted with hardy shrubs and weeds. The tree density resulted in restricted light to the ground in this part of the garden and subsequently reduced the vegetation growth. The decking and artificial grass is considered to provide a visual enhancement to the rear garden. In terms of impact upon the character of the existing property, the proposed terrace is located on the existing storage units to the rear of the garden and would remain subordinate to the host property. By virtue of the proposed decking and introduction of artificial grass, it is considered that the outlook from the rear of 28 Lyndhurst Road will be improved.
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- 5.16 The initial offer by the Appellant was a camouflage screen to be placed upon the glass balustrade. Following further review and input from Landscape Planning Limited, a 'Live Screen' was proposed; please refer to Paragraph 5.7 of the Arboricultural Method Statement (Appendix 9). The 'Live Screen' was proposed to be installed to a height of 1.8m. The Live Screen was proposed to be provided in spaced planters, which would be independently irrigated and managed by pruning. The planters were to be boxed in using the same materials as the decking to provide the best visual continuity. It is considered that the use of planters as a screen for the terrace would provide more than adequate screening which would be congruent with the surrounding mature trees and boundary walls. As noted in Paragraph 4.6 of the Officers Report, a condition could be attached to a consent requiring the retention of the living screen in perpetuity and replacement should any element die or become unfit for purpose.
- 5.17 It is clear from the Officers Report for the application that the proposed balustrade is the key point of contention for LBC. As stated above, the balustrade is required for safety. It is the intention that the Live Screen will provide an appropriate level of screening which will be seen in the context of the existing mature trees and vegetation. In this instance, it is considered that the proposed balustrade would therefore be suitably integrated within the surroundings and therefore would preserve the character and appearance of the Fitzjohn and Netherhall Conservation Area. As the proposed terrace is located to the rear of 28 Lyndhurst Road, there would be no significant public views of the development and the character and appearance of the surrounding conservation area would therefore be maintained. In addition, the Officers Report refers to neighbouring residential amenity (Officer's Report, Paragraphs 3.1 to 3.3) and the impact of the proposed development on existing trees (Office's Report, Paragraphs 4.1 to 4.5).
- 5.18 We agree with the conclusion in the Officer's Report for the application that no harm would be caused with regard to the amenity of the neighbouring buildings or surrounding gardens in terms of privacy as a result of the measures incorporated following the revision of the proposals during the statutory determination period. This is dependent upon the inclusion of screening which would be secured by condition and required to remain in perpetuity. The Appellant is committed to providing a screen of 1.8 metres in height, comprising of either a camouflage screen or Live Screen, which would consequently ensure that there would be no impact with
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respect of overlooking. In respect of the implications of the terrace on noise for neighbouring properties, given the existing size of the garden the introduction of the terrace would not allow the intensification of its use or capacity to disturb neighbours.

- 5.19 In respect of the trees, the conclusions of the Arboricultural Impact Assessment set out requirements to ensure the protection of the tree which the Appellant is content to implement. As noted at Paragraph 4.4 of the Officers Report this could be secured by condition.

6. Summary

- 6.1 The Appeal has been lodged with respect of the refusal of planning application (LBC ref. 2016/3019/P) at 28 Lyndhurst Road for the erection of timber decking by the London Borough of Camden.
- 6.2 In summary, the application proposes development that is in accordance with adopted policy. The revised proposal, pursuant to the request of LBC satisfies the concerns raised in respect of the scale, location and detailed design of the terrace. In addition, the Live Screen proposed is considered suitable in order to screen the terrace and therefore preserve the character of appearance of the Fitzjohns and Netherhall Conservation Area.
- 6.3 As noted in Paragraph 5.15, we agree with the conclusions of Officers with respect of the trees and residential amenity.
- 6.4 In conclusion, we respectfully request that this appeal is allowed. In addition, we respectively reserve the right to submit further information to address any correspondence that may come from the London Borough of Camden in the future with respect of this appeal.