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## Appeal Decisions

Site visit made on 21 August 2017

**by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 31 August 2017**

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### **Appeal A: Appeal Ref: APP/X5210/C/17/3166646**

#### **28 Lyndhurst Road, London, NW3 5PB**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Sony Douer against an enforcement notice issued by the Council of the London Borough of Camden.
- The enforcement notice, reference EN16/0107, was issued on 28 November 2016.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a raised terrace and associated timber decking and metal and glass balustrading in the rear garden of the property.
- The requirements of the notice are:
  - (a) Totally remove the unauthorised raised terrace and associated timber decking and metal and glass balustrading from the property; and
  - (b) Make good any damage caused as a result of removing the unauthorised development from the property.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is dismissed and the enforcement notice upheld.**

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### **Appeal B: Appeal Ref: APP/X5210/W/16/3165817**

#### **28 Lyndhurst Road, London, NW3 5PB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Sony Douer against the decision of the Council of the London Borough of Camden.
- The application Ref 2016/3019/P, dated 25 May 2016, was refused by notice dated 4 November 2016.
- The development proposed is the construction of a timber deck to replace an existing terrace, including a steel and glass balustrade and a 1.8m high screen to alleviate overlooking issues to and from adjoining properties.

**Summary of Decision: The appeal is dismissed.**

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### **Preliminary Matters**

1. The application in Appeal B was a retrospective one and the timber deck and associated development is the breach of planning control alleged in Appeal A. One of the application drawings in Appeal B is drawing No 889/TP/101A and this drawing represents the existing development that I saw on my visit. I will determine both Appeals A and B on the basis of this drawing.

2. The Appellant has provided drawing No 889/TP/201 which is entitled 'proposed location and extent of timber decking' but this drawing was not considered by the Council in the application in Appeal B and it does not represent what has been built. I therefore will not be taking this drawing into account in either of the appeals.

### **Main Issue**

3. The main issue in both of these appeals is the effect of the raised terrace and associated timber decking and metal and glass balustrading on the character and appearance of the host site and whether they preserve or enhance the character or appearance of the Fitzjohns and Netherhall Conservation Area.

### **Reasons**

4. The appeal property is a large detached building comprising six flats. It is located within the Fitzjohns and Netherhall Conservation Area. There are five storeys to the front and six to the rear. The rear garden has a significant slope and a row of storage units is located at lower ground floor level to the rear of the garden with roofs flush with the ground level.
5. The development that is the subject of these appeals has been constructed partly on the roof of the storage units to the south end of the rear garden to provide a terrace. The roofs of the storage units comprise an area of some 28 sq m whereas the raised terrace and timber decking cover some 108 sq m<sup>1</sup> and extend across the whole width of the garden. The terrace itself is higher than the rear boundary fence and trellis and the glass and metal balustrade at its edge and sides is some 1.4 m high.
6. The Conservation Statement for the Fitzjohns/Netherhall Conservation Area notes that although gardens are not always visible from the street the rear gardens form large blocks of open land which make a significant contribution to the character of the area<sup>2</sup>. The Statement also notes that the trees, both in private gardens and in the street, contribute to the landscape and the character of the area<sup>3</sup>. The Guidelines state that 'rear gardens contribute to the townscape of the Conservation Area and provide a significant amenity to residents and a habitat for wildlife. Development within gardens is likely to be unacceptable'<sup>4</sup>. These are matters that I will take into account below.
7. The raised terrace, decking and balustrade amount to a significant structure that has been built in the rear garden. It does not complement the setting of the garden which includes a number of mature trees and natural planting. In particular the emergence of the trees through the timber decking, which had been erected around them, was a strange and unnatural effect. I noted on my visit that there are no similar built structures visible from No 28 in other gardens and in this respect the terrace and the associated development is incongruous and out of place.
8. The hard metal and glass materials of the extensive balustrade and the size and hard surface of the timber decking emphasise the alien and intrusive nature of the development. The terrace and the other features of the

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<sup>1</sup> The Officer's delegated report paragraph 2.4

<sup>2</sup> Page 10

<sup>3</sup> Page 10

<sup>4</sup> Page 42 F/N32

development are clearly visible from the flats at No 28 and from the upper floors of properties at the rear in Wedderburn Road. The terrace, timber decking and balustrade, because of the materials used, its height and size and its location, constitute an overly dominant feature in the garden of No 28 and in the area in general. The terrace neither enhances or preserves the character or appearance of the Conservation Area.

9. The Appellant has suggested a number of alterations, which could be imposed by way of conditions, which he considers would make the terrace acceptable. These include the reduction in the amount of timber decking by setting it back from the rear boundary, the provision of artificial grass between the decking and the balustrade and the positioning of planters with shrubs or a camouflage screen between the timber decking and the artificial grass. The amount of timber decking that would remain would be substantial and there could be no guarantee that the shrubs would thrive or result in any effective screen. The camouflage screen would in itself be an alien feature that would not be in keeping with the open expanse of the rear gardens. The positioning of the planters would mean that the metal and glass balustrade would remain visible to the properties in Wedderburn Road. From what I saw on my visit I am uncertain where a camouflage screen could be located given the presence of the storage units so that it would screen the balustrade from the properties in Wedderburn Road. It appears to me that there would be no mitigation of the balustrade's adverse impact. The imposition of conditions would not therefore render the development acceptable.
10. Policy CS14 of the London Borough of Camden Local Development Framework Core Strategy and Policies DP24 and DP25 of Camden's Local Development Framework Development Policies seek to ensure, among other things, that all new development is of the highest standard that respects local character and that development takes account of conservation area statements and preserves and enhances the character and appearance of the area. For the reasons given above I conclude that the development that is the subject of these appeals does not comply with these policies or with the relevant Conservation Area Statement.
11. Taking the above matters into account, although there is harm to the Fitzjohns and Netherhall Conservation Area, the harm that arises from the erection of the raised terrace and associated timber decking and metal and glass balustrading in the rear garden of the property is not substantial as advised by the National Planning Policy Framework (the Framework) and the Planning Practice Guidance. Therefore paragraph 134 of the Framework requires that where a development leads to less than substantial harm to the significance of a designated heritage asset, the harm should be weighed against the public benefits of the proposal. Given the location of the terrace in a rear garden accessible only to the occupiers of the property there are no public benefits that are sufficient to outweigh the harm that results to the Fitzjohns and Netherhall Conservation Area.
12. I have noted the Appellant's grievances about the manner in which he considers the Council has dealt with this matter and the need for the balustrade for health and safety reasons but these are matters outside the scope of the planning considerations with which I am concerned in this appeal. The conclusion reached about, among other things, a rear extension to the

property in 2014 is not comparable with the development in these appeals given the differences in the types of development and their locations<sup>5</sup>.

13. I therefore conclude that the raised terrace and associated timber decking and metal and glass balustrading have a harmful effect on the character and appearance of the host site and that they do not preserve or enhance the character or appearance of the Fitzjohns and Netherhall Conservation Area.

#### **Appeal A - Conclusions**

14. For the reasons given above, and taking all other matters into account, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

#### **Appeal B - Conclusions**

15. For the reasons given above, and taking all other matters into account, I conclude that the appeal should be dismissed.

#### **Decisions**

##### **Appeal A: Appeal Ref: APP/X5210/C/17/3166646**

16. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

##### **Appeal B: Appeal Ref: APP/X5210/W/16/3165817**

17. The appeal is dismissed.

*Gloria McFarlane*

Inspector

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<sup>5</sup> Ref 2013/7377/P – the Appellant’s response to the Council’s appeal statement