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## Appeal Decision

Inquiry held on 9 August & 18 September 2017

Site visit made on 19 September 2017

**by B M Campbell BA(Hons) MRTPI**

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

**Decision date: 26 October 2017**

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**Appeal Ref: APP/X5210/C/16/3163207**

**84 Parkway, London NW1 7AN**

- 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 Leo Kaufman against an enforcement notice issued by the Council of the London Borough of Camden.
- The enforcement notice, numbered EN16/0198, was issued on 5 October 2016.
- The breach of planning control as alleged in the notice is without planning permission: Installation of a water tank on roof of dwelling (Class C3).
- The requirements of the notice are to remove the unauthorised water tank and make good any damage caused.
- The period for compliance with the requirements is three months.
- The appeal was initially proceeding on the grounds set out in section 174(2) (a), (c), (d), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.

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

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### Preliminary matters

1. At the inquiry applications for costs were made by each party against the other. These applications are the subject of separate decisions.
2. At the start of the inquiry, the appeal on ground (c) was withdrawn and at the start of the second sitting day ground (e) was withdrawn. It was further agreed that the matters raised by the Appellant on ground (f) would be better dealt with as proposed conditions under ground (a). The appeal thus proceeds on grounds (a), (d) and (g) only.
3. Within the documentation submitted with the appeal were two versions of the enforcement notice – one containing a typographical error at paragraph 5 relating to the period of compliance. However, it was confirmed that the notice issued and served was absent that error and there is therefore no need for me to make any correction.

### The appeal on ground (d)

4. The ground of appeal is that at the time that the notice was issued it was too late to take action against the matter alleged. There is no dispute between the parties that the installation of the tank and the erection of the tank housing comprise development within the meaning of s55 of the Act. Section 55 includes within the meaning of development the carrying out of building, engineering, mining or other operations in, on, over or under land and s57

states planning permission is required for such development. Thus it is the "carrying out" of the operations which require permission.

5. Section 171B(1) of the Act indicates that where there has been a breach of planning control consisting in the carrying out of building, engineering, mining or other operations without planning permission, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially complete.
6. The Appellant's case is that the tank and housing were first installed on the roof of the property in the summer of 2012. However, the housing had to be dismantled, the tank turned through ninety degrees and the housing re-erected in early 2016 because building works reduced the area of roof available. It is argued that what is there now is not materially different to what was there in 2012 since it is in the same position although turned through ninety degrees. That being the case, the tank and housing was substantially complete more than four years before the notice was issued.
7. The Appellant's argument relies on the repositioning of the tank not having affected the external appearance of the building and so not amounting to a fresh breach of planning control.<sup>1</sup> Turning the tank through ninety degrees has resulted in the long side of the structure being visible against the skyline when viewed directly from the rear, whereas in its former position the short side was seen. The Council's photographs quite clearly demonstrate the materiality of the change in the appearance of the building – much more of the tank housing can now be seen from the rear.<sup>2</sup>
8. It is the "carrying out" of operations which requires planning permission and in this instance it is clear that there were two separate and discrete operations undertaken some four years apart. The latter, which is attacked by the notice and involved repositioning the tank and erecting housing around it (albeit that it was reusing the housing dismantled) was undertaken in 2016 and so clearly was not complete four years before the notice was issued. Thus ground (d) must fail.
9. Even if it could be argued that the works in 2012 and 2016 were not separate operations, but part and parcel of one, the ground would still fail since the works were not substantially complete until 2016 when the tank and housing were finally repositioned.

### **The appeal on ground (a)**

10. The appeal site lies within the Camden Town Conservation Area. Section 72(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty upon me in dealing with this appeal on ground (a) to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.
11. In addition, in considering whether planning permission should be granted, I am required to determine the deemed planning application in accordance with the provisions of the Development Plan unless material considerations indicate

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<sup>1</sup> Section 55(2)(a)(ii) of the Act states that works that do not materially affect the external appearance of the building shall not be taken to involve development of land.

<sup>2</sup> LPA Appendix 5

otherwise.<sup>3</sup> The recently adopted Camden Local Plan (June 2017) comprises the Development Plan. The policies agreed to be relevant by the parties at the inquiry are policy D1 *Design* which sets out criteria aimed at securing high quality design in all development; A1 *Managing the impact of development* which amongst other things seeks to protect neighbours' amenity in terms of outlook; and D2 *Heritage* which reflects the duty imposed by the Planning (Listed Buildings and Conservation Areas) Act 1990 by including a requirement that development within conservation areas preserves or, where possible, enhances the character or appearance of the area. The Council has also made reference to its Supplementary Planning Document – Camden Planning Guidance *Design*.

12. The main issue in this case is, therefore, whether the tank and its housing preserve or enhance the character and appearance of the Camden Town Conservation Area.
13. In looking at the special interest of the conservation area, the Council's Camden Town Conservation Area Appraisal and Management Strategy divides the area into two sub areas of distinctly different character comprising the busy commercial and retail area which includes Parkway and the quieter and more formal residential area dominated by period terraces of townhouses. It recognises a 19<sup>th</sup> century architectural and historic character throughout.
14. Parkway, within the vicinity of the appeal property, is of that character being, in the main, lined with modest three storey houses built in the 1820s and 1830s to classical proportions. Most were converted to retail use on the ground floor from the mid-19<sup>th</sup> century onwards and latterly many have been provided with mansard roof additions including the appeal property. The Appraisal and Management Strategy recognises that on the north side (where the appeal property is situated) alterations and extensions detract from the initial homogeneity. Nonetheless most of the buildings along Parkway, including the appeal property, are identified in the Strategy as buildings making a positive contribution to the area.
15. There is no suggestion that the tank has any material impact on the front of the property from street level along Parkway from where it can hardly be seen.
16. Looking at the rear of the terrace which accommodates the appeal property, this is much altered and not all the changes affected have been sympathetic. However, that does not offer carte blanche to undertake further work which would result in additional harm. This point was made by my colleague in the February 2015<sup>4</sup> appeal decision when considering an unauthorised roof extension to the appeal property when he said "the presence of similarly harmful extensions in the vicinity cannot be justification to allow yet another inappropriate scheme which would whittle away at what remains of the qualitative built form in this particular part of the conservation area".
17. Whilst the Inspector in the December 2016<sup>5</sup> appeal decision made the point that the rear of the terrace was "eclectic in terms of its scale, built form and general appearance" and said that it was not particularly noted in the Appraisal and Management Strategy as contributing specifically to the character and

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<sup>3</sup> S70(2) of the Act and s38(6) of the Planning and Compulsory Purchase Act 2004.

<sup>4</sup> Ref: APP/X5210/C/14/2215256/7

<sup>5</sup> Ref: APP/X5210/W/16/3154638

appearance of the conservation area, he did not dismiss it as being of no consequence. Indeed, he carefully considered the effect that the proposed rear second floor extension at the appeal property would have on the rear of the subject building and rear of the terrace, before concluding that it would be neutral and allowing it.

18. That latter appeal decision also addressed the tank on the roof, the subject of the current appeal. In contrast to his conclusions relating to the rear extension, he found the tank on top of the flat roofed mansard to be an incongruous addition, harmful to the character and appearance of the conservation area, and refused permission for it. I find no reason to reach a different conclusion. Whilst not readily visible from street level along Parkway, the tank housing is an extremely prominent feature when viewed from the rear from properties along Gloucester Crescent. When seen from this direction the structure appears exposed against the sky like a large "coffin" or "chest" sitting on top of the very limited area of flat roof. It is an overly dominant element which unacceptably damages the appearance of the rear of the host building and further erodes what remains of the qualitative built form to the rear of the terrace.
19. As he did in the 2016 appeal, the Appellant has drawn attention to many other developments (not all within this conservation area) in an attempt to justify his own. However, as the Inspector in 2015 noted, the presence of other harmful development does not provide justification for more. That would not promote the policy objective of D2 *Heritage* of preserving and where possible enhancing the character and appearance of the conservation area. Indeed it would achieve precisely the opposite result.
20. Nonetheless if water tanks or similar structures on the roofs of period townhouses were so prevalent so as to have become an accepted and characteristic feature of the conservation area then it might be that the provision of another at the appeal property would result in no harm and thus would have a neutral effect. This, I understood to be the Appellant's case at the inquiry in opening, when it was also put to me that, because the 2016 Inspector was unaccompanied, the Appellant was unable to take him on a tour of the area to illustrate the point. Adequate time at this inquiry and site visit was thus provided to enable the Appellant to develop this argument.
21. During the inquiry and subsequent extensive site visit the Appellant was able to draw attention to other development in the area which, he considered, supported his case. Clearly there are examples of development that do harm the character and appearance of the area – indeed that is specifically acknowledged in the Appraisal and Management Strategy. However, there are two initial points to be made. The first is that made above and by my colleague before me in 2015: the presence of harmful development is not, in itself, justification for more.
22. The second is that a good proportion of the examples referred to were in no way comparable to the appeal property either in terms of the type of building affected or in terms of the development undertaken. Greater London House, for example, of which much was made in the Appellant's documents and at the inquiry, is the largest building in the conservation area and said to be some 550 feet long. It was built as a tobacco factory and has been converted to offices. It is the type of massive commercial building where one might expect

- to see functional plant and machinery on the roof. It in no way compares to the domestic scale and nature of the house and of the terrace of which the appeal property forms part.
23. Another example, a short terrace of contemporary residential houses in Albert Street, had tanks tucked beside masonry upstands in a regular pattern on the flat roofs of each property such as to appear an integral part of the original very modern design. They are not comparable. Finally, examples such as the tank on the outrigger at 27 Mornington Place and the balcony on the rear of 4 Gloucester Crescent (outside the Camden Town Conservation Area) are not comparable. Whatever their merits, and despite being on townhouses, they are not situated atop the roofs of those buildings seen in stark contrast against the sky.
  24. It is not necessary or practical for me to go through every example in detail pointing out the dissimilarities. Nonetheless, I can say that of all the developments brought to my attention, there were certainly some which could be said to be similar to that at the appeal property in that they comprised tanks on the roofs of properties of similar scale and character. Some of these were located on properties along Parkway close to the appeal property. However, as a result of what I consider to have been a good walking tour of the conservation area, I have come to the firm conclusion that the incidence of such development is sparse. The terraces of townhouses, an important component of the conservation area, are largely free from tanks on their roofs such that they have not become a characteristic feature of such properties nor of the conservation area generally. That being the case the presence of other tanks does not justify the harmful one on the appeal property.
  25. Much was made by the Appellant of the Council being inconsistent in its approach; suggesting that other comparable development has been permitted where not visible from the street. However, nothing I have seen suggests that the only consideration in any particular case was whether it could be seen from the street. Rather it seems that each was assessed having regard to the particular locational context. Moreover, many of those brought to my attention either have been, are, or are going to be, the subject of enforcement investigation by the Council including other tanks on roofs of properties along Parkway.
  26. One example of similar development is the water tank on the roof of 47 Arlington Street (a townhouse and listed building). However, the papers provided by the Appellant indicate that that was a replacement tank and so the considerations would not have been the same as in a situation where there was no pre-existing tank. This is an example of an instance where initially the case appears comparable but where circumstances can be seen to be different.
  27. An inconsistent approach by the Council has not been demonstrated but even if it had that would be a matter for the Appellant to take up with the Council. It would not be sufficient reason, in itself in this case, for me to allow harmful development at the appeal property in the form of an incongruous feature which is not prevalent or characteristic of the area.
  28. The mitigation measures suggested by the Appellant have already been considered by the Inspector in 2016 and I agree that these would not overcome the objection to the development. The introduction of air conditioning units to screen the structure would simply add to the harm and

dressing the structure up to appear as a chimney (with or without chimney pots) would add to the incongruity having regard to its arbitrary position on the roof unrelated in any way the plan form below.

29. On the main issue I conclude that the water tank fails to preserve the character or the appearance of the Camden Town Conservation Area. In this respect it would not accord with the provisions of the Development Plan, in particular policies D1 and D2.
30. In terms of the National Planning Policy Framework (NPPF), the harm to the designated heritage asset, the conservation area, would be less than substantial. That being the case, NPPF paragraph 134 advises that the harm should be weighed against the public benefits of the proposal, including securing optimal viable use. Whilst the Inspector in the 2016 appeal suggested that the desire to mount a water tank at high level to allow for the best possible head of water to outlets in the building was a private rather than a public benefit, it must also be the case that the provision of a satisfactory supply of water to residential and commercial buildings generally is in the public interest. Nonetheless, the installation of a tank on the roof of the building is clearly not the only solution available. Whilst it was suggested that no space was available within the building, that comes about because of the desire to maximise the amount of internal accommodation. The need for a supply of water does not outweigh the harm identified in this case nor indicate that the proposal should be determined otherwise than in accordance with the Development Plan.
31. The appeal on ground (a) fails.

### **The appeal on ground (g)**

32. The ground of appeal is that the time given to comply with the requirements falls short of what is reasonable. Three months is given. The Appellant asks for a year and draws attention to a Council owned property with an external tank which is not going to be removed for two years. I do not know the full circumstances appertaining there and give it little weight in my consideration here.
33. The time given to execute the works is, in my view, sufficient. However, the requirements of the notice interfere with the Appellant's right to the peaceful enjoyment of his possessions and with the occupiers' enjoyment of their homes.<sup>6</sup> Nonetheless, both those rights are qualified. In this case the private interests of those individuals are to be weighed against the public interest of requiring the timely removal of development found to harm the character and appearance of the conservation area.
34. In my view a little more time to enable arrangements to be made and to minimise disruption (especially for residents) would be appropriate but I consider four months to be sufficient. That would strike the appropriate balance between the competing public and private interests and ensure that a disproportionate burden was not placed on the Appellant or the occupiers of the property.
35. To this limited extent the appeal on ground (g) succeeds.

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<sup>6</sup> Article 1 of the First Protocol and Article 8 of Schedule 1 to the Human Rights Act 1998

**Formal Decision**

**Appeal Ref: APP/X5210/C/16/3163207**

36. It is directed that the enforcement notice be varied by the deletion from paragraph 5 of the words "three (3) months" and the substitution therefor of the words "four months" as the period for compliance with the requirements of the notice. Subject to this variation the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended

*B M Campbell*

Inspector

## **APPEARANCES**

### FOR THE APPELLANT:

Mr A Alesbury of Counsel instructed by Mr D Laverick

He called  
Mr K Perrettt Builder  
Mr L Kaufman Appellant

### FOR THE LOCAL PLANNING AUTHORITY:

Ms L Phillips of Counsel instructed by Mr A Maughan, Head of  
Legal Services

She called  
Mr J Sheehy Enforcement Officer

### DOCUMENTS submitted following the opening of the inquiry

- 1 Letter of notification of the inquiry and list of persons notified
- 2 Local Plan policies and Camden Planning Guidance extracts
- 3 Computer generated photograph with camouflage as chimney with pots
- 4 Appeal decision APP/X5210/C/14/2215256/7 with accompanying drawings
- 5 Appellant's list of properties to view on site visit
- 6 Photograph's taken from Parkway
- 7 Signed Statement of Common Ground
- 8 Council's schedule of investigations
- 9 Conservation area plans from the Appraisal and Management Strategy
- 10 Council's closing submissions