



Town planning and development



Section 174 - Town and Country Planning Act 1990 (as amended)

ENFORCEMENT APPEAL IN RESPECT OF: -

Flats 1, 2, 4 and 5, Samara Mansions, 11 Netherhall Gardens, London, NW3 5RN

Installation / retention of window and door shutters, shutter boxes and guide rails on the rear and side elevations located on the lower ground, ground and first floor of the building

APPELLANT'S GROUNDS OF APPEAL

Submitted on behalf of the owners of flats 1, 2, 4 and 5, Samara Mansions, 11 Netherhall Gardens.

LPA Ref: EN18/1008

28th November 2019

1.1 INTRODUCTION

- 1.1 This submission forms the appellant's Appeal Grounds of Appeal in respect of an appeal against an enforcement notice issued by the London Borough of Camden (The LPA) against the installation of external, retractable security shutters at the premises, namely, attached to flats 1, 2, 4 and 5, Samara Mansions, 11 Netherhall Gardens.
- 1.2 This follows the LPAs withdrawal of an earlier enforcement notice relating to flats 1,4 and 5 at the same address, served on 21st February 2019 (which itself followed an initial enforcement notice issued before that on 13th February 2019, which itself was withdrawn due to a series of errors contained within it). The LPA gave no explanation as to why the notice of 21st February was withdrawn, though it is considered likely this was due to it missing out flat no.2. Whatever the reasoning, enforcement appeals were submitted in response to the 21st February Enforcement Notice, which is no longer being proceeded with (Reference: Appeals APP/X5210/C/19/3225969: Flats 1, 4 and 5 Samara Mansions, NW3 5RN (with linked appeals)).
- 1.3 Also of significant relevance the current enforcement appeal here, a planning appeal was submitted in response to the refusal of planning permission (LPA Ref: 2018/1577/P) for the retention of the same shutters, shutter boxes etc. at flats 1, 2, 4 and 5 Samara Mansions in March 2019 (Ref: APP/X5210/W/19/3225915). However, following the council's refusal of the planning application, the above enforcement notices were served, reducing the time to appeal to the 28-day limit on planning refusals. This meant that the planning appeal could not be accepted at the time it was submitted - the Planning Inspectorate turned away this appeal.
- 1.4 The appeal against the 21st February enforcement notice was nonetheless submitted, with the appeal being made on ground A. Despite an initial discussion with the Planning Inspectorate on relevant fees due for an enforcement appeal, it was agreed that despite the enforcement notice relating to 3 of the 4 affected flats, and the planning application being

submitted as a collective application under one resident's name) the nature of the enforcement notice was the same as that refused under the relevant planning application (Ref: 2018/1577/P), and the requirement for a fee (a double fee) was waived.

- 1.5 This now leads us to the present situation, where the appellants (the owners of flats 1, 2, 4 and 5 Samara Mansions) are forced to appeal again against a new enforcement notice, served after two initial notices were withdrawn, and whereby a double fee is again requested to be paid in order to have the appeal considered on ground A. In our view the matters under consideration are the exact same as those considered under ground A previously (albeit with flat 2 now included) and also the matters considered and refused by the council under planning application 2018/1577/P (refusal issued 21st January 2019). In this light we therefore submit that no fee is required in order to make this appeal under Ground A.

2.0 THE PRESENT ENFORCEMENT NOTICE

- 2.1 The present enforcement notice was issued on 18th October 2019. The enforcement notice becomes effective on 29th November 2019 unless an appeal is first made to the Planning Inspectorate. This is that appeal.

The new enforcement notice alleges that without planning permission:

the Installation of window and door shutters, shutter boxes and guide rails on the rear and side elevations located on the lower ground, ground and first floor of the building.

- 2.2 In issuing the enforcement notice the authority state the reasons for this are:
- a) **The unauthorised development has occurred within the last 4 years.**
 - b) **The window and door shutters including shutter boxes and guide rails on the rear and side elevations located on the lower ground, ground and first floor of the building, by reason of their location, design and**

appearance, result in an incongruous addition which harms the character and appearance of the building and the Fitzjohns & Netherhall Conservation Area, contrary to policies D1 (Design) and D2 (Heritage) of the Camden Local Plan 2017.

2.3 To remedy this, the enforcement notice requires the following actions:

Within a period of 3 months of the Notice taking effect:

- 1. Remove from the external elevations of the properties the window and door shutters, shutter boxes, guide rails and any associated fixtures or fittings on the rear and side elevations located on the lower ground, ground and first floor of the building.**
- 2. Make good any damage caused to the rear and side elevations with materials to match the existing building.**
- 3. Remove from the property all constituent materials resulting from the above works.**

2.4 This time the enforcement notice specifies all four flats which were the subject of the initial planning application to the council in 2018/2019 and the notice appears to have been served on the owners or occupiers of all flats within the Samara mansions building. This appeal is submitted on behalf of the owners of flats 1, 2, 4 and 5.

3.0 SITE AND SURROUNDING AREA

3.1 The appeal site is located to the west side of Netherhall Gardens, Hampstead, North London. It is within a predominantly residential area and lies at the western end of the Fitzjohns & Netherhall Conservation Area, which is dominated by usually large detached properties, set within often extensive grounds with established landscaping.

- 3.2 The current building known as Samara Mansions, at 11 Netherhall Gardens was erected in 2014, having replaced the previous substantial house in situ here. The previous building had been recognised as making a positive contribution to the conservation area in the Fitzjohns & Netherhall Conservation Area Statement (FNCAS). However, this original building was found to have structural difficulties, and whilst efforts were made to retain its façade, in 2013 this eventually led to the complete replacement of the original Victorian building with the current building. The current building is therefore relatively new (and post-dates the FNCAS). Nonetheless, the design and detailing of the current building referenced the heritage and scale of the original and those around it. It was designed to appear like a single grand dwelling, albeit in this case the property is divided into 9 purpose built apartments, set across 5 levels. The building largely follows the proportions of the previous building on site, which had been extended to the side. The building therefore stretches almost completely across the width of the plot, save for a side access to the northern boundary, adjacent to flats 2 and 5 in the building. Planning approval was granted with numerous conditions for the submission of details, including for example, the design of individual windows, which are all timber sliding sashes, albeit incorporating double glazing.
- 3.3 Whilst attention to incorporate traditional local elements was paid to create a building that would sit well within the surrounding conservation area, the building nonetheless employs contemporary design features, including for example glazed balustrades to balconies. Thus, whilst something of a pastiche of the surrounding Victorian buildings, the building does display prominent nods to modernity.
- 3.4 The building at Samara Mansions has differing degrees of visibility from public vantage points and within the conservation area. Its facades therefore have different degrees of influence upon the character and appearance of the conservation area. The rear of the building and garden area are entirely secluded from public views. Whilst the land falls swiftly away to flats and shops on Finchley Road to the west, there is little if any visibility of the appeal site and building due to extensive landscaping and trees located here. The

north flank elevation is more open to the street, but still benefits from screening by landscaping and trees to the side boundary, which is comprised of a 2m high close-boarded fence to the open forecourt parking area of no.13.

- 3.5 Other than the shutters subject to this enforcement appeal, the building and individual flats within it are fitted with a variety of security measures. Aside from the external shutters subject to this appeal, the building is fitted with a CCTV system covering the foyer and sides of the building, including the gated side passageway to the rear garden on its northern flank. Internally, each flat has its own alarm system, whilst individual owners have also installed their own personal CCTV within their flats. At the rear, the communal entrance door to the rear garden area is also fitted with fixed internal metal bars to add strength and security to this exposed and vulnerable entrance to the building. Remote 'sensor' lighting is also attached to the building, which covers among other areas, the side passageway to the north.

4.0 DEVELOPMENT SUBJECT TO THIS ENFORCEMENT APPEAL

- 4.1 The enforcement notice refers to the Installation of an undisclosed number of window and door shutters, shutter boxes and guide rails on the rear and side elevations located on the lower ground, ground and first floor of the building. Whilst there are other shutters on other flats outwith this enforcement notice, the notice refers to flats 1, 2, 4 and 5 within the building. The total number of external shutters attached to these flats amounts to 26 in total, 14 of which are sited to the rear of the main building, with 12 to the side (southern elevation) which are all attached to flat 2. A schedule of the shutters is attached below, referencing the flats identified in the current enforcement notice, revised from the previous appeal made here due to the inclusion of flat 2 in the notice:

Flat	Level	shutters	Notes
1	Ground and lower ground floor	10 shutters in total, 3 to ground floor terrace and 6 to lower ground floor	All rear facing, none are visible from the street
2	Ground floor flat	12 shutters in total, previously omitted from the enforcement notice recently withdrawn	South-facing shutters are visible from various aspects on the street
4	First floor	1 shutter enclosing 2 windows.	All rear facing, none are visible at all from the street

			and partially hidden by balcony parapet within site
5	First floor	3 shutters to the rear bay windows	All rear facing, none are visible from the street.

5.0 RELEVANT PLANNING POLICY

5.1 The Appellant will refer to the following policy documents in their statement of case:

National Planning Policy Framework (2019)

National Planning Policy Planning Practice Notes

The London Plan (2018)

Relevant policies of the LB Camden adopted development plan:

- Policy G1 Delivery and location of growth
- Policy A1 Managing the impact of development
- Policy D1 Design
- Policy D2 Heritage
- Policy C5 Safety and Security

The appellants will also refer to policies and guidance contained in the Council's published Supplementary Planning Guidance:

- The Fitzjohns & Netherhall Conservation Area Statement (FNCAS)
- The Camden Planning Guidance Design (December 2018)

6.0 GROUNDS OF APPEAL

6.1 Under Section 174 of the Act the appellant will argue the appeal on the following grounds:

Ground A

Under Ground A, the appellant will argue that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted for the retention of the shutters, shutter boxes and guide rails as installed at the site.

The appellants will argue that there are different degrees of impact caused by different shutters around the building. This is primarily due to the position of each shutter, the visibility of each shutter on the building from within the site, and from public vantage points outside the site (i.e. the street). In this case for example, shutters attached to the part of flat 1 comprising its lower ground basement area, are not obviously visible at all and do not materially harm the visual integrity of the building. Indeed, we will argue that all shutters attached to the rear of the building are not visible from public vantage points within the conservation area, and therefore have very limited if any harm upon it. Those attached to the side (southern elevation) are more visible, but a combination of their design, siting and location, as well as other factors of material consideration, render the impact of these shutters to be acceptable when considering the wider public benefits of their retention.

The appellants will argue that even if it is deemed that less than substantial harm would occur by retaining some or all of the shutters, this harm is in any case very limited but is outweighed by the needs of the occupants of those flats to ensure their safety and security, having suffered from a series of violent break-ins in the recent past, before the shutters were installed. In accordance with the NPPF and local policy, the appellants will argue that in the balancing exercise required between any harm caused to the conservation area, and the public benefits of ensuring flats within the building are suitably safe and secure. In this case the appellants will argue that this

balance should be determined in favour of retaining the shutters, or each shutter that is deemed to have the least visual harm.

In arguing this aspect the appellants will provide evidence of previous break-ins, the security measures already installed at the site and those fitted afterwards in vain, and will demonstrate that the building itself is inherently vulnerable to crime, namely burglary via breaking and entering, as a result of its location as well as the manner in which it was designed and approved, without due care and attention paid to safety and security of the building via Secured by Design principles, for example. The appellants will evidence this with additional and up-to-date information provided by the Metropolitan Police's Secured by Design team, who have visited the site and assessed the security of it at the request of the appellants, and argue that under policy C5 of the Camden Core strategy, the council should, but has not thus far, applied sufficient weight to the safety and security needs of the appellants, nor indeed, consulted the relevant experts in this field to inform their decision-making on this matter.

Notwithstanding, and without prejudice case set out above, should the inspector be minded to do so, the appellants will also argue that if any harm from any one particular shutter (or group of shutters) is deemed to be unacceptable, taking into account the balancing exercise, then a split decision can be issued, allowing those shutters without any harm, and being more vulnerable at the rear, to be retained.

Ground F

Linked to the appellants request to consider a split decision under Ground A (should this be deemed appropriate in this case), we will argue that the steps required by the notice to be taken exceed what is necessary to remedy any injury to the character and appearance of the building or conservation area, that has been caused by the breach. Essentially, we will argue that, notwithstanding consideration of the Ground A appeal, the steps required to remedy the breach of planning control, and any injury caused to the character and amenity of the conservation area, could be satisfactorily managed by removing only those shutters that are visible from publicly accessible vantage

points within the conservation area (i.e. the street). Thus, the removal of solely those shutters causing any 'direct visual injury' to the conservation area would remedy the alleged harm caused to the visual appearance of the building and the designated heritage asset. Conversely, the removal of those causing no harm would have no material benefit to the conservation area (if their removal cannot benefit the conservation area it follows that their retention cannot harm it) and there is therefore no justification in seeking their removal.

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Orbis town planning

28th November 2019