



# Appeal Decisions

Site visit made on 19 October 2021

**by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH**

an Inspector appointed by the Secretary of State

Decision date: 16 November 2021

**Appeal A: Ref APP/X5210/C/19/3242107**

**Appeal B: Ref APP/X5210/C/19/3242108**

**Appeal C: Ref APP/X5210/C/19/3242109**

**Appeal D: Ref APP/X5210/C/19/3242110**

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

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Peter Swimer.
- Appeal B is made by Ms Marlene Shien.
- Appeal C is made by Ms Akiko Kikuchi.
- Appeal D was made by Mr Tomi Musto.
- The appeals are against an enforcement notice issued by the Council of the London Borough of Camden, numbered EN18/1008 and issued on 18 October 2019.
- The breach of planning control as alleged in the notice is 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.
- The requirements of the notice are to:
  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.
- The period for compliance with the requirements is 3 months.
- Appeal A is proceeding on the grounds set out in section 174(2) (a) (d) and (f) of the Town and Country Planning Act 1990 as amended (the Act). Since an appeal on ground (a) has been made, the application for planning permission deemed to have been made under section 177(5) of the Act falls to be considered.
- Appeals B, C and D are proceeding on the ground set out in section 174(2)(f) of the Act.

## Decisions

1. Appeals A, B, C and D are dismissed and the enforcement notice is upheld.
2. As regards Appeal A, planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

## Procedural Matter

3. Since the appeals were made, a revised National Planning Policy Framework (the Framework) came into force on 20 July 2021. The main parties were asked for any comments, and any received have been taken into account in the Decisions.

### **Appeal A: Ground (d)**

4. For an appeal to succeed under this ground, the appellant must satisfy me on the balance of probabilities that at the date the notice was issued it was not possible for the Council to take enforcement action. Section 171B(1) provides that any enforcement action in respect of operational development must be taken within 4 years of the date on which it was substantially completed.
5. The appellant has submitted an email and invoice from Security Direct Products Ltd that suggests that the operational development at Flat 1 may have been substantially completed by the date of the email on 19 June 2015<sup>1</sup>. This is more than 4 years before the date the notice under appeal was issued.
6. However, section 171B(4) of the Act provides that section 171B(1) does not prevent the Council taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, it has taken or purported to take enforcement action in respect of that breach. Significantly, the Council had issued an earlier enforcement notice on 21 February 2019 relating to what was essentially the same breach of planning control at the appeal address and which itself had followed an initial enforcement notice issued on 13 February 2019. These notices had been withdrawn due to errors. As the Council had taken or purported to take enforcement action in respect of the breach in February 2019, then it is for the appellant to show on the balance of probabilities that the development had been substantially completed 4 years before that date. The submitted evidence does not achieve that. Indeed, the invoice suggests that the work was not substantially completed when a deposit was paid on 21 May 2015.
7. Therefore, the appeal under ground (d) does not succeed.

### **Appeal A: Ground (a) and the deemed planning application**

#### *Main Issue*

8. The main issue in the appeal is the effect of the development on the character and appearance of Samara Mansions (the appeal building) and upon the Fitzjohns & Netherhall Conservation Area (CA).

#### *Reasons*

9. The appeal site lies within the CA. I have applied the statutory duty in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and paid special attention to the desirability of preserving or enhancing the character or appearance of the CA by attaching considerable importance and weight to that desirability.
10. The Council submits that the appeal building was granted planning permission in 2011<sup>2</sup>, as a replacement to a building to be demolished, taking into account an Inspector's findings in an appeal in 2009<sup>3</sup>. In dismissing that appeal, the Inspector had found that:

*'Its design has however been carefully formulated, utilising a range of*

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<sup>1</sup> "Trust you are happy with the shutters and works carried out"

<sup>2</sup> 2011/3471/P

<sup>3</sup> APP/X5210/A/09/2116848

*architectural features and local design references that have been interpreted in a contemporary manner’.*

11. Accordingly, the Council says that the approved building was supported in 2011 in part on the basis that the design incorporated key architectural features and local design references referred to by the Inspector. To this end, the resulting permission was conditioned to require approval of brickwork (demonstrating the proposed brick colour, texture and type, mortar and pointing), windows, terracotta decoration, and joinery. Further, the architectural significance of the CA is, according to the Fitzjohns & Netherhall Conservation Area Statement (FNCAS), partly derived from the wealth of applied decoration and detail on the properties within it.
12. In my judgement, the development results in the significant obscuration of important architectural detail associated with the building’s fenestration and soldier brick courses. I place very limited weight on the appellant’s arguments that other architectural detailing has been left unobscured and that the colour of the development matches that of the timber of the fenestration. I note that security shutters are explicitly mentioned in the FNCAS as an alteration which might erode character, and for the above reasons I find they do so in this case to an unacceptable extent. Further, despite there being modern aspects of the building’s design and notwithstanding comments to the contrary from the appellant, the rather bulky and utilitarian appearance of the external shutters, shutter boxes and guide rails is more suited to a commercial building rather than residential mansions within a conservation area and this incongruity further contributes to the overall significant harm caused to the character and appearance of the property and surrounding CA.
13. I acknowledge that the facades of the appeal building have differing degrees of visibility from the street and from within public views (more limited to the rear) and are screened to varying extents by landscaping and trees as well as boundary treatments and topography. However, harm to character and appearance and to the significance of a designated heritage asset is not contingent on public views. Therefore, while taking all of the appellant’s observations on visibility and impact into account, they do not affect my finding that the development’s obscuration of important architectural detail and its inharmonious features fail to preserve the character and appearance of the building and the CA.
14. The appellant has submitted a great deal of evidence advancing an argument that the development is strongly necessary for security reasons, including details of burglaries to each of the appellants’ flats before the shutters were installed. I note that in each case there was forced entry through doors and windows, despite other security measures being in place, and that there have been no similar incidents since the development has taken place. However, Planning Practice Guidance is clear that public benefits should be of a nature or scale to be of benefit to the public at large and not just be a private benefit<sup>4</sup>.
15. While I sympathise with the appellants, noting that the incidents must have been very distressing, the security benefits derived from the development are not of a nature or scale to be of a benefit to the public at large. The fact that the prevention and reduction of crime (and fear of crime) are objectives of the

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<sup>4</sup> Paragraph: 020 Reference ID: 18a-020-20190723

development plan<sup>5</sup>, supported by its supplementary planning document<sup>6</sup> and the Framework, does not change the private nature and scale of the appeal development for the purposes of the balance to be undertaken for proposals affecting heritage assets (Chapter 16 of the Framework).

16. Having regard to paragraph 202 of the Framework, whilst the harm caused to the significance of the CA would be less than substantial, it is a matter of considerable weight and importance. In this case, for the reasons given, there are no public benefits which would outweigh the harm caused. The development is therefore contrary to Policies D1 and D2 of the Camden Local Plan 2017 which together seek to ensure that proposals are of good design and protect the character and appearance of places, including conservation areas. It is also contrary to the heritage protection principles of the Framework.
17. The development does not accord with the development plan as a whole due to the conflict with these policies to which I assign considerable weight, and there are no other considerations which outweigh this finding including the private security of the residents of the appeal building. Accordingly, for the reasons given, the ground (a) appeal does not succeed and I will not grant planning permission in whole or in part.

#### **Appeals A, B, C and D: Ground (f)**

18. For an appeal to succeed under this ground, the appellant must satisfy me that the steps required to be taken by the notice exceed what is necessary to achieve its purpose.
19. It is clear from the way the notice has been drafted that the purpose of the notice is to remedy the breach of planning control by requiring the land to be returned to its condition before the breach took place. It does no more than this and is not excessive. Even if its purpose was to remedy injury to amenity, I do not accept the invitation to grant planning permission in part (creating a 'split decision') by approving less visible parts of the development (for example, development associated with windows and doors to the rear) because for the reasons I gave under ground (a) I do not consider that the development would be acceptable even if only to less publicly visible parts of the building. Therefore, the appeals under ground (f) do not succeed.

#### **Conclusions**

20. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application made in respect of Appeal A.

*Andrew Walker*

INSPECTOR

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<sup>5</sup> Camden Local Plan 2017, Policy C5

<sup>6</sup> Camden Planning Guidance: Design (December 2018)