



The Planning Inspectorate

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PLANNING APPEAL - ALLOWED

Mr Derek T James RIBA DipArch BSc
Messrs M & J Architects
39 Grosse Way
Dover Park Drive
Putney
LONDON SW15 5DQ

Your Reference

9609

Council Reference

C10/12/4

Our Reference

T/APP/C/97/X5210/648626

T/APP/X5210/A/97/285963/P6

Date

19 MAY 1998

ENFORCEMENT APPEAL - PART ALLOWED/PART DISMISSED + VARIED

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 SECTIONS 78 AND 174 AND SCHEDULE 6
PLANNING AND COMPENSATION ACT 1991
APPEALS BY MR E L QUARADEGHINI
LAND AND BUILDINGS AT 88 HILLWAY HIGHGATE, LONDON N6**

1 I have been appointed by the Secretary of State for the Environment, Transport and the Regions to determine your client's appeals against an enforcement notice issued by the Council of the London Borough of Camden and against a refusal of planning permission by the same Council both concerning the above mentioned land and buildings. I have considered the written representations made by you and the Council and also those made by The Highgate Society, Holly Lodge Conservation Area Advisory Committee and other interested persons. I inspected the site on 24 February 1998.

THE NOTICE

- 2
- (1) The notice was issued on 7 August 1997
 - (2) The breach of planning control as alleged in the notice is without planning permission
 - (i) the erection of the roof of the rear kitchen extension at the premises higher than approved by planning permission P9601231R2 dated 18 October 1996,
 - (ii) the erection of a fence along the rear boundary between 88 Hillway and 90 Hillway over 2 metres high along part of the rear boundary between 88 Hillway and 90 Hillway as indicated by X on the plan attached to the enforcement notice



- (3) The requirements of the notice are -
- (i) the height of the rear kitchen extension shall be reduced in accordance with drawing number 9609-03C of the planning permission P9601231R2 dated 18 October 1996,
 - (ii) the boundary fence between 88 Hillway and 90 Hillway shall be reduced to a height not exceeding 2 metres
- (4) The period for compliance with these requirements is three months

GROUNDS OF APPEAL

3 Your client's appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the 1990 Act as amended by the Planning and Compensation Act 1991

THE APPEAL UNDER SECTION 78

4 The development for which the Council has refused planning permission is the erection of a single-storey side extension to the front of the existing two storey side addition for use as a garage for domestic purposes

INTRODUCTION

5 There is a continuing dispute between your client and his neighbour at 90 Hillway concerning the boundary between the two properties. Nothing in this decision letter should be taken as expressing an opinion on the merits of the appellant's or his neighbour's case concerning this dispute and any planning permission that may be granted by this letter should not be construed as a determining factor in the pursuit of any litigation

THE APPEAL ON GROUND (C) AGAINST THE ENFORCEMENT NOTICE

6 This relates only to the rear boundary fence Hillway, and the houses fronting it, slope steeply downwards from south to north. This gives rise to a sharp change of levels between each rear garden so that the rear garden of your client's property is at a significantly lower height than that of his neighbour to the north. You accept that the overall height of the fence erected by your client exceeds 2m in height but you argue that, if the ground levels of the gardens had not been terraced when the houses were built in the 1920s the overall height of the present fence would not have been more than 2m above the natural ground level. Class A of Part 2 of the Second Schedule to the Town and Country Planning (General Permitted Development) Order 1995 permits the erection of a gate fence, wall or other means of enclosure not adjacent to a highway used by vehicular traffic without the need for express planning permission, provided its height, as erected or constructed, does not exceed 2m above ground level. The height of the fence, the subject of the enforcement notice, is more than 2m high as measured from the actual ground to which it is

fixed, and as pointed out in Vol 4 of the *Encyclopedia of Planning Law and Practice* at 3B 2070 the Order prescribes no special method for measuring the height of a fence or other means of enclosure where the land is uneven. I take the view that, as the height of the fence is greater than 2m it requires planning permission, which has not been sought or obtained. Accordingly, a breach of planning control has taken place and the appeal on ground (c) fails.

THE APPEAL AGAINST THE ENFORCEMENT NOTICE ON GROUND (A) AND THE DEEMED APPLICATION

7 From my inspection of the site and its surroundings and the written representations I consider that the main issues in this appeal are firstly, the visual impact of the enlarged kitchen addition and the rear boundary fence at the appeal premises upon the character and appearance of the Holly Lodge Conservation Area and secondly, the effect of the enlarged kitchen addition and the rear boundary fence at the appeal premises upon the visual amenities of occupants of the attached dwelling to the north.

8 As far as the first matter is concerned section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that with respect to any buildings or other land in a Conservation Area special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. However as Paragraph 4.20 of Planning Policy Guidance 15, Planning and the Historic Environment points out, in *South Lakeland District Council v Secretary of State for the Environment* [1992] 1 All ER 573 the House of Lords ruled that preserving the character or appearance of a Conservation Area could be achieved not only by a positive contribution to preservation but also by development which left the character or appearance of the area unharmed.

9 Although the rear of the houses on the east side of this part of Hillway do not front onto a public highway, and are therefore not seen from any vantage point nevertheless they adjoin the grounds of Highgate Cemetery. Therefore, I am firmly of the opinion that the design of any new development in this sensitive location should be of a uniformly high standard. The kitchen extension as constructed incorporates a hipped tiled roof matching the pitch of the main roof whereas the kitchen extension as approved by the local planning authority would employ a shallow mono pitch roof, which in my judgement is less sympathetic to the extended dwelling, and thereby to the Holly Lodge Conservation Area as a whole, than the unauthorised development, the subject of this notice. I therefore conclude that the hipped roof to the kitchen extension preserves and enhances the character and appearance of the Holly Lodge Conservation Area and is acceptable.

10 However, to my mind different considerations apply to the unauthorised fence. Because of the continuing boundary dispute the section of fence erected as a replacement for that removed as a consequence of building works has the appearance of a stop-gap. I appreciate your client's requirements for privacy and that the future of any fence erected by him in this location may be of a short-term nature, because of its uncertain private legal status. Nonetheless, the character and appearance of the Holly Lodge Conservation Area cannot be ignored and any fence which is erected in this position should be kept to as low a height as possible, employing materials that blend in with the remainder of the means of enclosure. I am not satisfied that the unauthorised fence meets the test set by section 72 of the 1990 Listed Buildings and Conservation

Areas Act and I therefore conclude that planning permission should not be granted for this aspect of the unauthorised development

11 Turning to the second issue Policy EN27 of the Camden Unitary Development Plan deposit draft, incorporating further proposed changes, states that in considering proposals for new development, the decision maker will ensure that sufficient daylight and sunlight is allowed into and between existing and proposed buildings and onto adjoining buildings and land. As the rear main walls of 88 and 90 Hillway face east and as 90 Hillway is to the north of its attached neighbour, even before the present additions to 88 Hillway were carried out the rear windows and patio area of 90 Hillway would have been in shade after midday. The requirement of the local planning authority in the enforcement notice is to reduce the overall height of the unauthorised fence to 2m. I do not consider that the section of unauthorised fence protruding above that height has any appreciable impact upon the amount of sunlight and daylight received by the rear windows and rear patio of 90 Hillway, and that UDP Policy EN27 is not breached by these works.

12 Similar considerations apply to the impact of the enlarged kitchen extension on the levels of sunlight and daylight received by 90 Hillway. The extension as enlarged is of the same footprint as the kitchen extension already approved by the local planning authority, both of which protrude slightly less than 1m beyond the rear main wall of 90 Hillway. Any impact upon the outlook from rear windows of 90 Hillway by the greater volume of the unauthorised addition is, in my judgement imperceptible. The increased bulk of the extension undoubtedly gives rise to increased overshadowing to 90 Hillway especially to its rear patio area, but I do not consider this to be on such a scale as to warrant the withholding of planning permission, bearing in mind that the entire area would have been in shade in the afternoon even before the extension was erected. Overall I am firmly of the opinion that the additional height and bulk of the kitchen extension as erected, and of the boundary fence, compared with what has already been approved by the local planning authority or could have been erected as permitted development, cause so little additional loss of sunlight and daylight to occupiers of 90 Hillway as to be acceptable in those terms.

13 I gained the strong impression, from the voluminous correspondence submitted by the owner of 90 Hillway, that her main concern was the loss of the view across Central London, in particular from her patio which has resulted from these unauthorised works. If this were comparable to say the view of St Paul's Cathedral from the Archway carrying Hornsey Lane over Archway Road nearby in the London Borough of Haringey, then that would have been unfortunate. Policy ENV24 of the latest version of the emerging Camden Unitary Development Plan seeks to control the siting, height and form of buildings to avoid harmful intrusions into important local views and the existing skyline, to safeguard the quality of the environment, the amenity of open spaces and the design, character and setting of the special precincts parks and squares. In addition, RPG3 Annex A gives Supplementary Guidance on the Protection of Strategic Views in London including those from Parliament Hill and Kenwood to St Paul's Cathedral and from Parliament Hill to the Palace of Westminster. All of the ten views, afforded protection in RPG3A, are of famous London landmarks seen from well-known public vantage points, and it is clear to me, from the general tenor of UDP Policy ENV24, that this seeks to protect only views of important townscape features from locations to which the public at large have access.

14 In my judgement the function of statutory planning legislation is the regulation of the development of land and buildings in the public interest and this does not extend to the maintenance of private views across other land outside a landowner's control no matter how attractive that view may be. In conclusion, I find that the unauthorised rear fence on the boundary of 88 and 90 Hillway has an unacceptable visual impact upon the Holly Lodge Conservation Area and should be removed to the extent required by the terms of the enforcement notice, but that the enlarged kitchen addition does not infringe policies contained within the emerging Unitary Development Plan and can remain. Overall planning permission will not be given for the application deemed to have been made under section 177(5) of the 1990 Act except insofar as it relates to the erection of the roof of the rear kitchen extension at the premises higher than that approved by planning permission P9601231R2 dated 18 October 1996.

THE SECTION 78 APPEAL

15 From my inspection of the site and its surroundings and the written representations I consider that the main issue in this appeal is the visual impact of the proposed garage upon the character and appearance of the Holly Lodge Conservation Area. As in the section 174 appeal, the decision maker has to apply the test of section 72 of the 1990 Listed Buildings and Conservation Areas Act as subsequently amplified by judicial authority, as set out in paragraph 8 above.

16 Hillway is part of Holly Lodge Estate, an attractive secluded private residential estate comprising, for the most part, mock timber-framed two storey dwellings with hipped tiled roofs erected in the 1920s. A feature common to many of these dwellings are two-storey, flat-roofed links which seemingly have been in place for a long time. One such link is between the northern flank main wall of the appeal premises and the boundary with 90 Hillway, set well behind the front main wall of 88 Hillway. The proposal is to erect a single-storey garage in front of the two storey link in the void between the northern flank wall of 88 Hillway and the southern flank wall of 90 Hillway but set slightly behind the front main wall of 88 Hillway. Matching materials are proposed including a flat roof to the single storey addition in front of the two storey flat roof link. I take the view that, seen against the backdrop of the existing two storey flat roofed addition, the erection of a single storey flat-roofed garage behind the front main wall of the original dwelling at 88 Hillway, subject to the imposition of a condition requiring the use of matching materials, would leave the character or appearance of the Holly Lodge Conservation Area essentially unharmed. Moreover, in my opinion the garage addition would not give rise to a terracing effect as a significant void would remain at first floor level facing the highway between the flank walls of 88 and 90 Hillway. To my mind this neutral impact, in line with the *South Lakeland* judgement, preserves the character of the Conservation Area and is therefore acceptable.

17 Doubts have been expressed in third party representations whether the garage is of sufficient size to accommodate cars which are in your client's ownership especially as the presence of gas and electricity meters restrict the potential width of the garage at certain points. However, I have no reason to believe that the garage could not accommodate an average sized family saloon. Whilst I cannot insist on the garage being used for the parking of a car and for no other purpose, I intend to impose a condition making the garage available for the parking of

a car at all times. On that basis I conclude that the development the subject of the section 78 appeal is acceptable.

OTHER MATTERS

18 In reaching my conclusions on these appeals I have taken account of all the matters raised including the possible impact of the construction of a garage upon air bricks providing ventilation underneath the ground floor timber floor of 90 Hillway and any damage that may have taken place in the past to a gas flue in that property but I do not consider these to be of sufficient weight to alter my decisions.

FORMAL DECISIONS

19 For the above reasons, and in exercise of the powers transferred to me, I determine these appeals as follows:

The Enforcement Notice Appeal Inspectorate's Reference T/APP/C/97/X5210/648626

20 I determine this appeal as follows -

i I allow the appeal insofar as it relates to the increased height of the roof of the rear kitchen extension and grant planning permission on the application deemed to have been made under section 177(5) of the amended Act, for the erection of the roof of the rear kitchen extension at the premises higher than approved by planning permission P9601231R2 dated 18 October 1996 at 88 Hillway, Highgate, London N6 subject to no conditions.

ii I vary the enforcement notice by the deletion of Step 1 of paragraph 5 of the enforcement notice.

iii I dismiss the appeal and uphold the enforcement notice as varied insofar as it relates to the erection of a fence along the rear boundary between 88 Hillway and 90 Hillway over 2 metres high along part of the rear boundary between 88 Hillway and 90 Hillway, as indicated by "X" on the plan attached to the enforcement notice, and refuse to grant planning permission, in respect of that land, on the application deemed to have been made as aforesaid.

The Section 78 Appeal Inspectorate's Reference T/APP/X5210/A/97/285963/P6

21 I allow your client's appeal and grant planning permission for the erection of a single storey side extension to the front of the existing two-storey side addition for use as a garage for domestic purposes at 88 Hillway Highgate London N6 in accordance with the terms of the application (No PE9700066R1) dated 27 January 1996 but apparently received by the local planning authority on 29 May 1997, and the plans submitted therewith, subject to the following conditions -

- (i) no development shall take place until samples of the materials to be used in the construction of the external surfaces of the garage extension hereby permitted have been submitted to, and approved in writing by the local planning authority, development shall be carried out in accordance with the approved details
- (ii) the garage hereby permitted shall be kept available for the parking of a car at all times

22 Attention is drawn to the fact that an applicant for any consent agreement or approval required by a condition of these permissions has a statutory right of appeal to the Secretary of State if consent agreement or approval is refused or granted conditionally or if the authority fail to give notice of their decision within the prescribed period

23 These decisions do not convey any approval or consent required under any enactment, byelaw order or regulation other than section 57 of the Town and Country Planning Act 1990

24 Your attention is drawn to the provision of section 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires consent to be obtained prior to the demolition of buildings in a conservation area

RIGHTS OF APPEAL AGAINST DECISIONS

25 This letter is issued as the determination of the appeals before me Particulars of the rights of appeal against my decisions to the High Court are enclosed for those concerned

Yours faithfully



I W CURRIE BA MPhil ARICS MRTPI
Inspector

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