

# **Town and Country Planning Act 1990**

## **Section 174 Appeal Statement**

**Appeal by Mrs Mandy Seal**

**Site Address:**

**Flat 3, 10 Hilltop Road,**

**London,**

**NW6 2PY**

**APP/X5210/C/22/3303170**

## **Information and Background**

The appellant replaced the deteriorating, timber sash windows given that the windows were performing poorly in respect of heat loss, draughts, noise; resulting in an environmentally unfriendly living environment and an unsustainable one, for example with more heating required to offset the loss through the windows.

The appellant is a lay person and the decision to replace the windows was one that many people take every day of the week, instructing window companies/glaziers to replace windows in homes.

Notwithstanding, the appellant was comforted in her decision to replace the windows given the following facts:

- The appeal site is not within the South Hampstead Conservation Area.
- A variety of window styles can be found locally.

and that the windows did not represent a material alteration to the external appearance of the building.

As confirmed on the planning application form for the S73a submission, work by the glaziers to replace the windows commenced on 20 March 2021, with the work being completed 2 days later on 22 March 2021. A copy of the application form is attached at Appendix 1.

This application was submitted as the appellant received an intimidating letter from the Council, as confirmed in the planning officer's associated report, which states at page 3:

*"EN21/0508 – In June 2021, an enforcement case was raised at Flat 3, 10 Hilltop Road in relation to the unlawful replacement of white painted timber sash windows with white uPVC windows. The property owner was sent a letter from Camden Council dated 9th September 2021 to inform them that the replacement windows were unlawful and were provided with two options extracted below, 1. Make a planning application for replacement timber sash windows with uPVC windows 2. Remove uPVC windows and re-instate the original timber framed windows"*

A copy of the report is attached as Appendix 2.

The appellant acted swiftly in securing the services of a local agent and instructing a planning application to be submitted, which was duly made on 19 October 2021.

The appellant acted in good faith in instructing the glazing company to replace the windows and in submitting the planning application, which was in response to the Council's letter, rather than an admission that planning permission was actually needed.

Given the lack of clarity as to why planning permission was needed for replacing the windows, and the receipt of the Council's decision notice to refuse planning permission; the appellant submitted an application pursuant to S191 of the Act to confirm that the works undertaken were lawful or alternatively for the Council to explain their opinion.

The S191 application was submitted on 5 May 2022. A copy of the application form can be found at Appendix 3.

The Council inexplicably procrastinated in the validation of the application – noting that no additional information was requested or needed to validate the application – eventually validating it on 27 June 2022; 53 days after its submission. It took just 3 days to determine the application. However, the Council's deliberate delay in validating the application, gave it enough time to issue the enforcement notice, which coincidentally was issued on 27 June 2022, the very day the Council validated the S191 application.

The decision notice surprisingly omitted the date the application was made. A fundamental omission given it is the date the application is made, on which the claim the development is lawful.

Given the Council's skulduggery, this prevented the appellant from challenging the decision as the enforcement notice had been issued.

This is highly unreasonable behaviour on the part of the Council and has put undue stress and further expense on the appellant, a lay person who was merely speaking to improve the flat and make it more environmentally friendly.

A copy of the S191 application form, decision notice and screen shot from the Council's website can be found at Appendix 4.

The appellant has therefore been left with no alternative, but to appeal the Council's enforcement notice.

## **Grounds of Appeal**

### ***a) That planning permission should be granted for what is alleged in the notice***

The Council's reason for issuing the enforcement notice opines:

*"The replaced windows, by reason of their detailed design including opening mechanism, proportions and inappropriate materials, detract from the appearance of the host building, wider street scene and the wider area, and are not environmentally sustainable, contrary to policies D1 (Design) and CC1 (Climate Change Mitigation) of the London Borough of Camden Local Plan 2017 and Policy 2 of the Fortune Green and West Hampstead Neighbourhood Plan 2015."*

This reason flows from the reason for refusal for the planning application submitted by the appellant for the *"replacement of white painted timber sash windows with white UPVC windows (retrospective)."* A copy of the decision notice is found at Appendix 5.

In order to understand the generic words found in the reason for issuing the enforcement notice, it is essential to have due regard to the planning officer's assessment of the planning application referred to in the preceding paragraph, found within the officer's delegated report.

It is also incumbent upon this report to identify, which specific elements of the 3 policies the replacement windows allegedly conflict with.

The following commentary is found:

### **Officer's Report**

In respect of the appeal site, it states:

*"The property is a four-storey terraced building located on Hilltop Road.*

*The building is not listed and not in a Conservation Area. However, it sits within the Fortune Green and West Hampstead Neighbourhood Plan area and opposite the South Hampstead Conservation Area."*

### **Comment**

It is noted that the appeal site has no heritage value whatsoever.

The appeal site is opposite 7, Hilltop Road; this property is not within the South Hampstead Conservation Area. To the south of 7 Hilltop Road, lies no.9 Hilltop Road, which is also not located within the Conservation Area.

The Council's assessment wherein it is claimed that the appeal site is opposite the Conservation Area is misleading and incorrect. It is noted that the properties within Hilltop Road are deliberately excluded from the Conservation Area, with the boundary closely following the curtilage of St James Mansions.

Not one of the original dwelling houses with the principal elevations to Hilltop Road are included within the Conservation Area.

The appeal site is not a "Heritage Asset" and it is duly noted that the Council does not seek to claim that the replacement windows, affect the setting of the Conservation Area. This position is agreed and not a matter of dispute between the two parties.

#### **Officer's Report**

Turning to the assessment of the application, the officer's report opined:

*"2.2 CPG Design 2021 guidance recommends that alterations take into account the character and design of the property and surroundings, and that windows, doors and materials should complement the existing building.*

*2.4 The traditional and dominant window material in the application property and the surrounding properties is timber. Therefore, the replacement of the likely original timber windows with uPVC is not considered to complement the existing building or surrounds.*

*2.5 The replacement of the previous timber windows with uPVC windows fails to preserve the appearance of the building on account of both their non-traditional materials, their thicker proportions of frames which give a bulkier appearance and the opening mechanisms which opens outwards rather than sliding upwards.*

*2.6 The poor-quality materials and the detailed design of the windows are considered harmful to the host building, and the character and appearance of surrounding buildings, contrary to Camden Local Plan policies, Camden Planning Guidance 2021 and the Fortune Green and West Hampstead Neighbourhood plan 2015."*

#### **Comment**

The appeal proposal merely seeks approval for the installed windows.

The works have not resulted in the openings being made wider and the proportion of window to frame remains materially the same.

The horizontal emphasis remains with the sole use of transoms, with the use of mullions resisted, to ensure there is no material alteration to the external appearance of the building.

The Design and Access Statement submitted with the planning application, sought to bring to the planning officer's attention that:

"There are quite a few buildings on this side of road (My Emphasis) that have UPVC window on the street front, [including to the top floor (2nd Floor flat) of 10 Hilltop Road itself]:

10 Sherrif Road, which its main elevation faces Hilltop Road, is fully glazed by UPVC windows.

6 Hilltop Road, top floor, has UPVC glazing. 8 Hilltop Road, top floor, has UPVC glazing.

10 Hilltop Road, top floor, has UPVC glazing. 12 Hilltop Road, top floor, has UPVC glazing.

24 Hilltop Road, 50% of the front elevation has UPVC glazing.

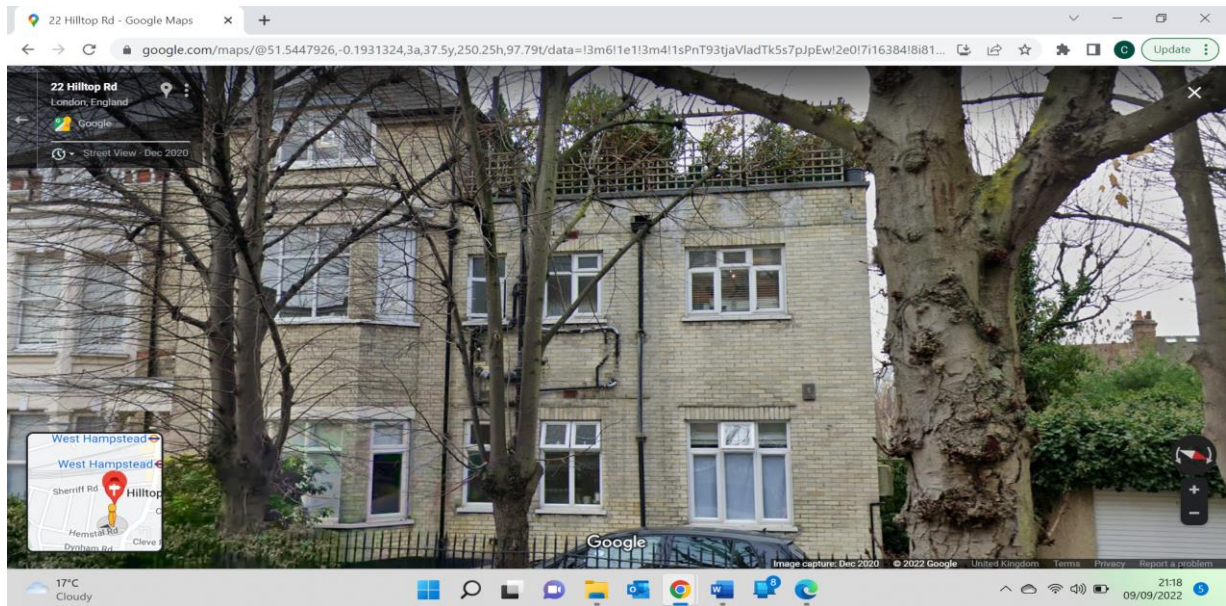
Other examples of UPVC windows are found in the immediate local area, in the adjoining streets of Hemstal Road to the south and Sheriff Road to the north. For example 25, 27, 29 and 31 Sheriff Road. This is not an exhaustive list. It does however reflect on the Council's unreasonably narrow approach in assessing the application for replacement windows. This is contrary to their own policies and guidance wherein it is incumbent to have due regard to the "*property and surroundings*."

The assessment of the planning application, which laid the foundations for the Council's decision and reasons for issuing the enforcement notice, failed to have due regard to all material considerations i.e. its own guidance and its own development plan policies. This is unreasonable behaviour.

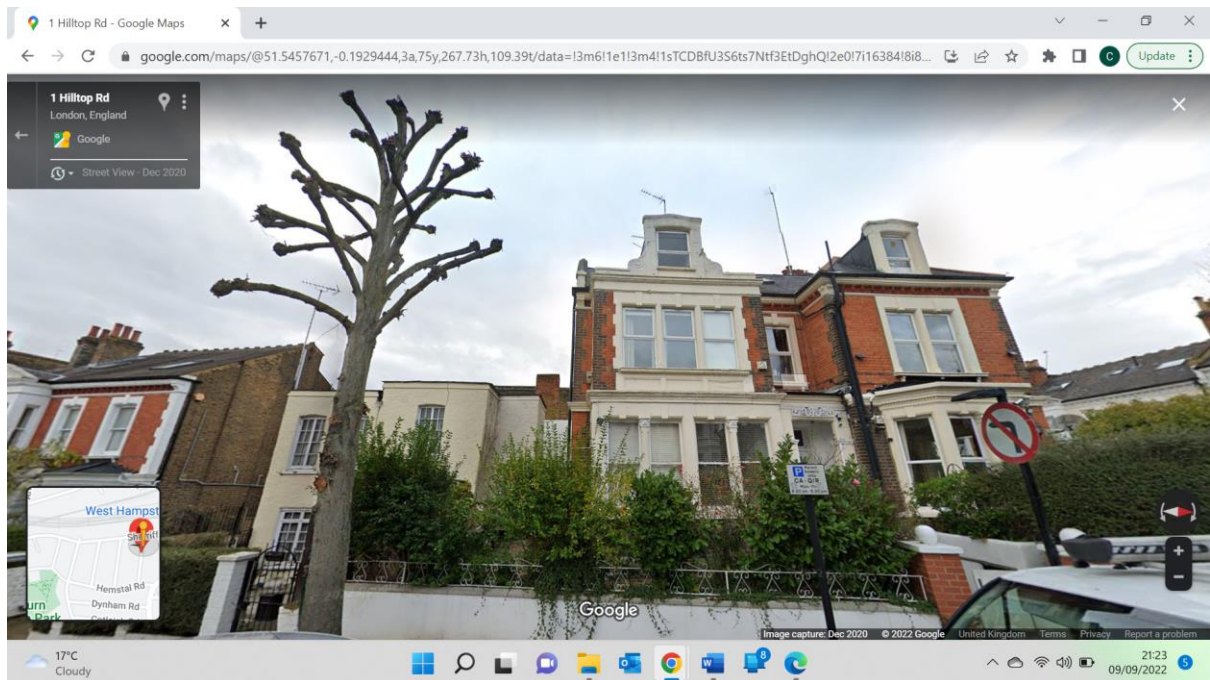
Indeed, the two most prominent buildings within Hilltop Road, (excluding St James Mansion which the conservation area boundary wraps around) are found at either end of the road at the junctions with Hemstal Road and Sheriff Road.

These properties informed the appeal proposal, with the appellant drawing comfort from their existence and that similar examples of replacement founds are found nearby in the same street, in highly prominent locations. 24, Hilltop Road is located at the junction with Hemstal Road.

## 24 Hilltop Road (directly opposite the Conservation Area)

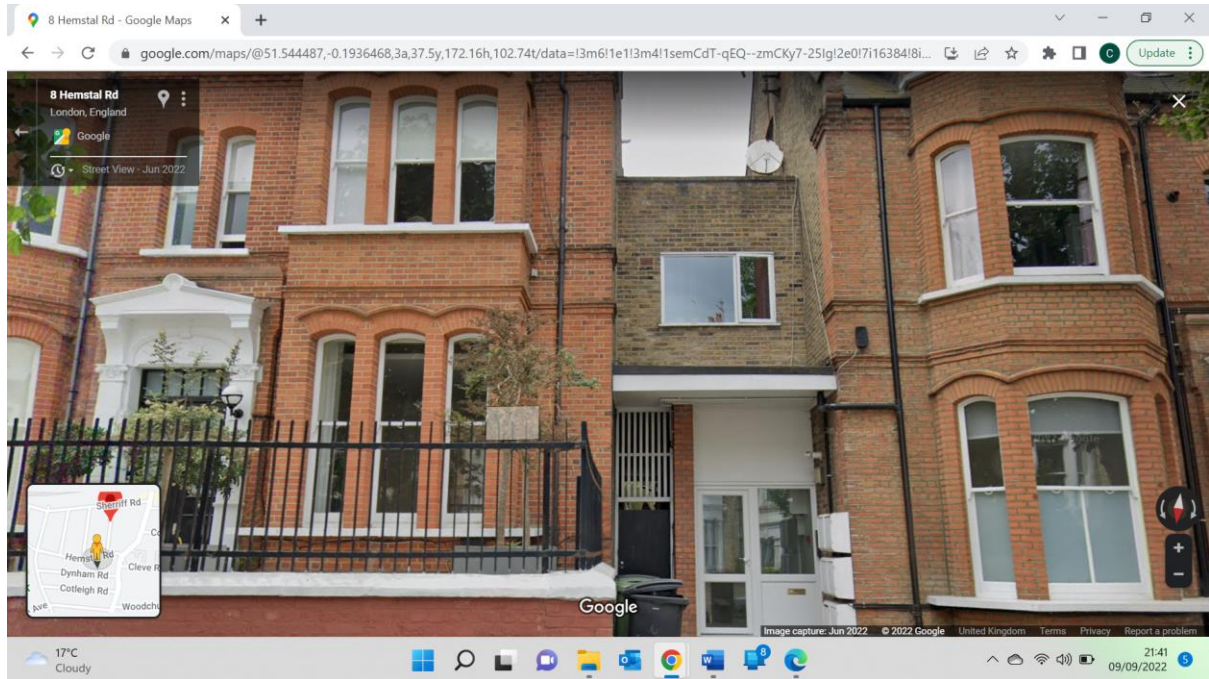


## 10 Sheriff Road, in its elevated prominent siting



## Hemstall Road – Another Example of Varying Fenestration in the Locality





The drawings considered and refused by the Council have been copied and pasted below, for ease of comparison.

### Pre-Existing Front Elevation



### Existing Front Elevation





As can be seen from the photographs above, the pre-existing and existing drawings and will be self-evident from the Inspector's site visit, the replacement windows have taken into account the character and design of the property and its surroundings, and the replacement windows have a neutral effect on the existing building, thereby complementing it.

Furthermore, the Council granted planning permission for the *"replacement of 3 existing timber framed windows with UPVC windows at first floor level in connection with existing first floor flat"* at 24 Hilltop Road on 11 November 2008. A copy of the decision notice is attached at Appendix 6.

### **Other Material Considerations**

The Ministry of Housing, Communities and Local Government Permitted development rights for householders, Technical Guidance, September 2019 at page 31, bullet point 3 states:

*"It may be appropriate to replace existing windows with new uPVC double-glazed windows or include them in an extension even if there are no such windows in the existing house. What is important is that they give a similar visual appearance to those in the existing house, for example in terms of their overall shape, and the colour and size of the frames."*

Whilst it is noted that this guidance relates to dwelling houses and planning permission granted by the General Permitted Development Order, the approach outlined above is proportionate and reasonable in considering the appeal proposal and provides guidance for the legitimate expectations of homeowners.

An appeal from 2019 within a Conservation Area within the London Borough of Camden, referenced APP/X5210/C/18/3210081 Flat at 2nd and 3rd Floor, 7 Estelle Road, London, NW3 2JX, is considered material to the appeal proposal.

This relates to an enforcement appeal wherein the alleged breach of planning control was given as:

“without planning permission: replacement of windows to front dormer with uPVC framed windows.”

The requirements of the notice are:

1) remove the uPVC framed windows and re-instate the original timber framed window; or 2) remove the e uPVC framed windows and install timber framed single glazed sash opening windows.

This appeal site was within the Mansfield Conservation Area.

Obviously, there is a higher bar applied to this appeal proposal given its Heritage Asset status. The appeal was allowed, and the enforcement notice quashed. The Inspector commented:

*“The Council are unconcerned by the method of opening **and object only to the materials used, but I disagree.** (My Emphasis) This is not a listed building, and the conservation area has already been negatively impacted by the modern dormers.”*

The appeal was determined under the same development plan policies as this appeal (other than the Neighbourhood Plan) and the Inspector found the materials/proposal to be in accordance with the Council’s policies on design and heritage D1 and D2 of the Local Plan. The Inspector’s decision being informed by a thorough assessment of the surrounding area, unlike the Council’s approach in this appeal. Whilst it is essential to re-iterate that this appeal related to a site in a Conservation Area, unlike this appeal.

A copy of the appeal is found at Appendix 7.

### **Officer’s Report**

*2.3 Both CPG Design 2021 and CPG Home Improvements also state that uPVC windows are strongly discouraged both aesthetically and for their inability to biodegrade. In addition, timber window frames have a lower embodied carbon content than uPVC and aluminium.*

The aesthetics of the windows has already been assessed and discussed in their immediate and wider context above.

Turning to the rhetoric advanced by the Council in respect of the windows being criticised for their inability to biodegrade. This is once again a narrow approach advanced by the Council. A lot of research and development has been undertaken into waste and the approach to dealing with it continues to evolve and adopt innovative approaches.

One example of this can be found on the company LKM Recycling's webpage, a leader in the recycling field (based at Brooker House, Symmonds Drive, Eurolink Industrial Estate, Sittingbourne Kent ME10 3SY) which confirms:

*"Fortunately, there is an alternative — recycling. At LKM, uPVC recycling is part of our waste collection services. As it turns out, uPVC frames make for effective and sustainable building materials. uPVC materials are made from salt and oil. They are 'unplasticised', meaning they lack plasticisers, an item added to make plastics more flexible. That means uPVC products are hardy and resilient, making them well-suited for construction projects. These factors make uPVC products perfect for recycling.*

*Using recycled UPVC products is highly beneficial for you and the environment. Here are a few reasons why:*

*1. They're sustainable and environmentally friendly.*

*If you choose recycled uPVC window frames, you reduce the need to manufacture new products and cut back the energy needed for it. Recycling also preserves raw materials and natural resources needed to make them. Using recycled uPVC also clears up landfills where used uPVC frames and collateral waste from uPVC production would normally go.*

*Not only are uPVC products sustainable, they also have incredibly long lifespans. In fact, uPVC items can be recycled up to ten times or more without affecting their performance, according to the Building Research Establishment (BRE). The BRE estimates that uPVC window frames have a reference service life that lasts around 35-40 years on average.*

*2.They are energy-efficient*

*Recycled uPVC window frames can lead to savings. Like most plastics, uPVC can insulate your home efficiently, shielding you from the cold and keeping warm air inside. You can maintain warmth in your home without racking up your utility bills.*

*3.They are hardy and dependable*

*In addition to having a long lifespan, uPVC products are also sturdy and durable. They are low-maintenance and can last for years without having to be replaced. The very things that make them difficult to dispose of are also what allow them to function and survive a long time.*

*Recycled uPVC window frames are not vulnerable to rust, rot or warping, and they do not need to be furnished or varnished. Recycled uPVC windows are themselves recyclable, which reduces the need to dispose of uPVC plastics considerably.*

#### **4. They are affordable**

*Though many eco-friendly products tend to be more expensive than their non-green counterparts, uPVC is the exception to the rule. uPVC window frames are not only cheaper than regular and non-recycled frames, but they are also easier and less costly to maintain.*

*Using recycled uPVC window frames is an excellent way to reduce your costs and your carbon footprint. With these highly sustainable products, you're contributing to your savings and the environment."*

#### ***(c) That there has not been a breach of planning control***

There has not been a breach of planning control as the replacement windows do not constitute development. Replacing windows is an everyday occurrence within the country, wherein there are deviations from the original window design and planning permission is not secured. Common-sense dictates that this does not constitute development for which planning permission is required, otherwise the planning system would be cluttered with applications (S70 or S192) for minor, non-material development.

Section 55(1) of the Act defines development as including building operations in, on, over or under, land. Building operations comprise such matters as demolition, rebuilding, structural alterations or additions to buildings and other operations normally undertaken by a builder.

The definition of a builder in the online Oxford English Dictionary is given as *"a person or company whose job is to build or repair houses or other buildings."*

The appeal proposal is for replacement windows already installed, these works were not undertaken by a builder, but by a window company/glazier, who do not undertake building work.

Section 55(2)(a)(ii) excludes, amongst other things, ...the carrying out for the maintenance, improvement or other alteration of any building of works which...do not materially affect the external appearance of the building.

The replacement windows are an alteration which does not materially affect the external appearance of the building. The works have not resulted in the openings being made wider, the rhythm and pattern of the openings remains the same. The proportion of window to frame remains materially the same. The horizontal emphasis remains with the sole use of transoms, with the use of mullions resisted, to ensure there is no material alteration to the external appearance of the building. The materials are already in use on the building.

#### ***f) The steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections***

The appellant considers that altering the windows to address the Council's concerns regarding the opening mechanism and deliver the sliding sash operation, would address the criticisms in the reason for expediency.

***g) The time given to comply with the notice is too short.***

It is considered that a period of 6 months should be allowed in order to resource appropriate replacement windows and to establish with the Council that they are consistent with the requirements of the enforcement notice and do not need planning permission.

Given how this appeal has arisen, the appellant both for financial reasons and peace of mind would seek to secure a certificate of lawfulness or planning permission for the replacement windows.

Taking into account the delays experienced in validating the S191 application, a 6-month period is reasonable. The Council's approach appears to be a punitive one. 6 months should also cover the lead in time, given the current availability of materials/windows and glaziers to install.

**Conclusion**

The alleged breach of planning control does not constitute development; it falls outside the parameters of the definition of development in Section 55(1) of the Act and is specifically excluded from section 55(2)(a)(ii) being an alteration of a building, which does not materially affect its external appearance.

Notwithstanding the above it has been established that if planning permission is required the proposal complies with the development plan policy and all material considerations, meeting the requirements of Section 38(6) of the Act and that the appeal should be allowed.