

# **Town and Country Planning Act 1990**

## **Comments on the LPA's Appeal Statement**

**Appeal by Mrs Mandy Seal**

**Site Address:**

**Flat 3, 10 Hilltop Road**

**London**

**NW6 2PY**

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

These comments on the Local Planning Authority's written appeal statement, utilises its paragraph numbering for ease of reference. This document does not seek to comment on all that the Local Planning Authority has written, as most has already been addressed in the appellant's appeal statement.

**1.3** – The Council makes an unsubstantiated statement of fact that *“the appeal site and the row of terraced properties comprise **unique** architectural features of the Victorian period.”* (My Emphasis). It is within this mindset and context, that the Council has approached its assessment of the replacement windows. The definition of unique in the Oxford English Dictionary is given below:

***“being the only one of its kind.”***

The west side of Hilltop Road in which the appeal site sits, is a pleasant road, typically found in inner London boroughs. The appeal site is:

- not within a Conservation Area,
- it is not a Listed Building,
- it is not within an area of Special Character,
- it is not a locally listed building.

Moreover, given the Council's claim that the appeal site has unique architectural features, it has not been the subject of an Article 4 direction.

The Council fails to list one unique quality of the appeal site, which is not surprising given it is typical of buildings found in many streets, in many London boroughs and is therefore not unique.

**1.3** - The Council somewhat bizarrely – given its failings identified above - conclude that *“therefore, any development at this site should preserve and support the distinct character, appearance and setting of the street scene and surrounding area.”* The Council has failed to identify a distinct character or a distinct appearance, its use of the adjective “distinct” follows on from its misuse of the adjective “unique.” The Collins dictionary gives the following explanation *“if something is distinct from something else of the same type, it is different or separate from it.”* The appellant fails to understand what is “unique” or “distinct” about the appeal site and the Council has failed to provide an informed explanation through a character analysis, seeking to rely on unsubstantiated jargon.

**1.4** – The Council states that *“timber sash windows dominate a high number of properties in the borough.”* Prima facie this appears to contradict the claims outlined above, which centred on the appeal site and the row of buildings being “unique” and “distinct”.

**2** – The Council's claim that the relevant planning history demonstrates that it is *“consistent in resisting unacceptable development at the rear of this terrace of buildings”* is without merit for two reasons.

The first is that it lists only one planning record, one example of a decision to try and underpin their position, whilst duly ignoring other examples raised in the appellant's appeal statement.

The second relates to the fact that the Council has completely misguided itself in this enforcement appeal by referencing it *“resisting unacceptable development at the rear of this terrace of buildings.”* The appeal proposal relates to the front of the building.

**7.7** – *“In addition, timber window frames have a lower embodied carbon content than uPVC and aluminium.”* It is unfair and unreasonable for the Council to cite comments as facts, without underpinning them accordingly as it has done consistently throughout this appeal.

The appellant has found a source on the Building Boardroom with research showing that wooden frames are, the lowest embodied carbon option, at 40kg CO2e per m2 of double-glazing, with uPVC not so far behind at 52kg. The appellant acknowledges it is somewhat fashionable to be critical of uPVC windows, but also identifies that this is just one input of sustainability. The Council’s focus here and comments fail to have due regard or produce any evidence as to where timber is sourced and the biodiversity and ecological issues that arise from the loss of trees. It is essential to flag the somewhat blinkered approach of the Council in this respect, a fact that the appellant has already highlighted in its written submissions.

The appellant notes that the Council’s statement has clearly not been able to address the appellant’s position under this ground of appeal and that the appeal should be allowed under this ground and the enforcement notice quashed.

**8.3** – *“The Council will argue that the works carried out comprise “development” under Section 55(1) of the Town and Country Planning Act 1990. The Council will set out that, as a result, the works require planning permission and in the absence of this they are in breach of planning control.”*

**Comment** - The appellant notes the Council’s statement of intent, that it will argue that the works carried out comprise development. However, it is not possible to comment as the Council, somewhat tellingly fails to advance any “arguments” to counter the appellant’s position.

**8.4** – *“Under Schedule 2 Part 1 of the General Permitted Development Order 2015 (as amended) alterations to windows and doors relate solely to dwelling houses. Flat and maisonettes do not benefit from permitted development rights therefore, if the replacement windows differ in appearance or size to those being replaced (in this case the material and design would differ) planning permission would be required.”*

**Comment** - The appellant notes the Council’s approach that the window replacement constitutes development, because flats do not have permitted development rights. However, this does not deal with the appellant’s position that the replacement windows are not development. The replacement windows were undertaken by a glazier and not a builder, there was no building operation involved. The appellant considers that the replacement windows are therefore not development in terms of section 55(1) of the Act.

**8.5** – *“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 traditional and dominant window material in the property and the surrounding properties is timber. Therefore, the replacement of the original timber windows with uPVC is not considered to complement the existing building or surrounds.”*

**Comment** – herein lies further proof of the Council’s confused and incorrect approach in dealing with this appeal. The comments made here relate to the appellant’s appeal under ground “c” and yet the Council quotes design guidance, the “values” of the windows and the existing building and its surrounds, which would be more appropriate to the ground “a” appeal.

The appellant notes that the Council’s statement has clearly not been able to address the appellant’s position under this ground of appeal and that the appeal should be allowed under this ground and the enforcement notice quashed.

**Conclusion** – the appeal should be allowed, and the enforcement notice quashed as the window replacements are not development. If the Inspector is minded to disagree with the appellant, it remains that the windows do not materially alter the external appearance of the **“building”**. Notwithstanding, planning permission if required should most definitely be granted as the replacement windows comply with the Council’s development plan policies.