

architecture : planning

Upp

**Appellant's Response to Council Statement of Case**

Appeal Reference APP/X5210/C/22/3305184

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335 West End Lane, London, NW6 1RS

The appellant would like to make the following points in reply to the council's statement of case:

- Paragraph 1.9 of the LPA's statement of case states that *"The Appellant has been aware of the breaches since 2020 and has done very little to rectify them to date, hence enforcement action taken."* This is factually incorrect. Following the dismissal of the planning appeals in November 2020, the appellant prepared revised plans which were submitted to the Local Planning Authority in April 2021 with a view to obtaining pre-application advice from the LPA and actively engaging with them to provide an appropriate resolution to the issues raised by the first appeal. The details of the pre-application submission were submitted with the original grounds of appeal of the enforcement notice and demonstrate beyond doubt that the appellant has tried to rectify the situation constructively.
- As to paragraphs 3.1 the appellant replies as follows (by reference to the chronology already supplied):
  - 8(d): on 19.4.21 the LPA undertook to provide pre-application advice;
  - 8(j): on 12.4.22 the LPA again undertook to provide pre-application advice;
  - 8(n): as at 15.8.22 the LPA had failed to provide that advice. Lamentably, and unreasonably, some 18 months after the original request that remains the position despite the LPA's resistance of this appeal, and in clear breach of the requirements to behave constructively through an appeal process.
  - In those circumstances it is hopeless and unreasonable for the LPA to refer to, and apparently rely upon, a claimed absence by the appellant to chase its own correspondence in circumstances where the LPA had said it *would* provide the advice sought; but has failed at every stage to do so
  - It is equally hopeless and unreasonable for the LPA to rely upon the fact it has different teams dealing with planning applications and planning enforcement. The LPA is one planning authority and is required to behave constructively. The provision of pre-application advice, potentially leading to a successful regularisation of the position, *is* patently capable of being relevant to enforcement proceedings. How the LPA can claim otherwise when it has failed to provide that very advice is unfathomable.
- As to paragraph 3.2 the appellant replies as follows:
  - This paragraph is plainly nonsensical in light of the steps the appellant took to engage, as already set out.
  - The appellant's grounds of appeal set out particularly relevant examples of alterations similar to, or consistent with, those at the site had occurred. Properties at 337, 339 and 331 West End Land were identified, and other properties had historically been identified.
  - The LPA has continued to fail to grapple adequately with this issue. It (repeatedly) says *"some"*, *"bad"* examples have been identified. But it has still failed in relation to *any* of these

identified properties to (a) say that they are lawful; (b) say they are not lawful, but they are not proposing to enforce; or (c) they are not lawful, and they are proposing to enforce (with some supporting reasoning). In no case do they adequately explain why those properties should not now be considered as (a) part of the relevant baseline for the Conservation Area; and (b) properties which the LPA did not consider were so inconsistent with the Conservation Area in policy terms that enforcement was required. This reinforces the error of approach that infected the first appeal, as set out in the appellant's grounds of appeal.

- The LPA has, instead, in a wholly unsatisfactory way, said at paragraph 3.11 that *“There are a number of shopfronts in the area installed without the benefit of planning consent. Given the passage of time, they are immune from development”*. Plainly, the LPA knows which shopfronts it considers fall within that category. It should identify them, because they are relevant, and should say whether in each case enforcement was considered and whether it was taken. Good design and the duties that arise in relation to Conservation Areas are not new, and would have applied at the relevant times.
- As to the response on Ground (a):
  - For the reasons set out above the points made in the original grounds of appeal stand and, in fact, are strengthened in relation to the criticism of the first decision and appeal. This inspector is free to form a different judgment, and should take into account the apparent current baseline and the consistency of the development with other elements of the Conservation Area.
- As to the response on Ground (f):
  - For the reasons highlighted above the appellant strongly refutes the point that the appellant did not seek to engage with the enforcement officer to remedy the situation. The appellant had informed the enforcement officer that they were seeking pre-application advice. It is the LPA who has failed to engage.
  - The last sentence of paragraph 3.16 is plainly wrong. The inspector has power under ground (f) and/or (f) in combination with ground (a) to consider alternatives. The details of the pre-application advice request have now been shared with the Inspector precisely on the basis that they provide an alternative option. The appellant respectfully requests that the Inspector considers these measures and ascertains if they are considered appropriate alterations under Ground (f), which would respond positively to the character of the area and are not as onerous as the requirements by the LPA under ground F of the enforcement notice.
  - Paragraph 3.16 is also confusing. The appellant wanted to make changes to the shopfront including aluminium framed windows instead of timber. When an applicant is unsure if an application is acceptable they have the ability to engage in pre-application advice with the LPA prior to submitting a formal planning application. In fact, this is actively encouraged in the NPPF. It appears that the LPA is driven to suggest that the Inspector does not have



*power* to consider this alternative, as it does not assert that these changes do not adequately meet the LPA's concerns, instead stating "*Paragraph 17 of the Appellant's statement refers to drawings and plans supporting the revised scheme, which would have met the concerns previously identified . . .*". That is also why the LPA has not responded to the detail of the alterations advanced under ground (f). Had the LPA responded to the pre-application advice then a subsequent planning application would have been forthcoming.

- Paragraph 3.16 also seeks, unreasonably, to maintain the artificial distinction between two teams in one authority, in order to seek to say that the request for advice was "*a planning matter rather than an enforcement matter*". Given that the propriety of enforcement depends upon assessment of planning merits, this attempt to justify the unjustifiable melts away.
- The appellant welcomes the fact that the LPA accept under Ground G that 12 months is an appropriate time frame to remedy the alleged breach should the Inspector consider it necessary.
- The inspector is invited to grant permission for the works undertaken, alternatively for the proposals advanced under grounds (f)/(a).