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## Appeal Decision

Site visit made on 14 August 2017

**by Pete Drew BSc (Hons) DipTP (Dist) MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 4 September 2017**

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### **Appeals A & B Ref: APP/K5600/C/17/3171928 & 3171929**

#### **Land at 39 Argyll Road, London W8 7DA**

- Appeals A and B are made under section 174 of the Town and Country Planning Act 1990 [hereinafter "the Act"] as amended by the Planning and Compensation Act 1991.
  - Appeals A and B are made by Mr Sandro Lavery and Ms Khabiba Kashkay, respectively, against an enforcement notice issued by the Council of the Royal Borough of Kensington and Chelsea.
  - The enforcement notice was issued on 7 February 2017.
  - The breach of planning control as alleged in the notice is: Without planning permission, the installation of glass safety screens to rear elevation windows and balustrade.
  - The requirements of the notice are: (i) Remove the unauthorised glass safety screens to windows on the rear elevation as shown on drawing Front & Rear Elevation – As Built PR01, photograph C on retrospective planning application PP/16/05988; (ii) Remove unauthorised glass safety screens to the rear elevation balustrade as shown on drawing Front & Rear Elevation – As Built PR01, photographs A and B on retrospective planning application PP/16/05988; (iii) Remove all resultant debris from the land.
  - The period for compliance with the requirements is "Two calendar" [see below].
  - Appeals A and B are proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Act.
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### **Appeal C Ref: APP/K5600/X/17/3171040**

#### **39 Argyll Road, London W8 7DA**

- Appeal C is made under section 195 of the Act against a refusal to grant a certificate of lawful use or development [LDC].
  - Appeal C is made by Mr S Lavery against the decision of the Council of the Royal Borough of Kensington and Chelsea.
  - The application [Ref CL/17/00447], dated 24 January 2017, was refused by notice dated 6 February 2017.
  - The application was made under section 191(1)(b) of the Act.
  - The description of development for which an LDC is sought is: "*Clear glazed Juliet screens to existing sash windows on the rear façade, clear glazed screen to the rear roof terrace behind existing metal balustrade and clear glazed screen to the front roof terrace behind the existing bottle balustrade*" [see below].
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### **Appeal D Ref: APP/K5600/W/17/3168915**

#### **39 Argyll Road, London W8 7DA**

- Appeal D is made under section 78 of the Act against a refusal to grant planning permission.
  - Appeal D is made by Mr Hollowell against the decision of the Council of the Royal Borough of Kensington and Chelsea [see below].
  - The application Ref PP/16/05988, dated 12 September 2016, was refused by notice dated 14 November 2016.
  - The development proposed is: Installation of glass safety panels to 3 rear windows, and glass screen to front and rear balustrades (Retrospective Application) [see below].
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### **Appeals A & B: Decision**

1. I direct that the enforcement notice be corrected by:
  - i. the addition of the letter "A" at the end of the postcode in paragraph 2 of the notice, so that it reads "W8 7DA"; and,
  - ii. the addition of the word "*months*" in paragraph 5 of the notice after the words "*Two calendar*".
2. Subject to these corrections the appeals are allowed and the enforcement notice is quashed.

### **Appeal C: Decision**

3. The appeal is allowed and attached to this decision is an LDC that describes the operations which are considered to be lawful. A plan that identifies the land, edged in red, is attached to the LDC.

### **Appeal D: Decision**

4. The appeal is allowed and planning permission is granted for the installation of glass safety panels to 3 rear windows, and glass screen to front and rear balustrades at 39 Argyll Road, London W8 7DA in accordance with the terms of the application, Ref PP/16/05988, dated 12 September 2016, and the plans submitted with it.

### **Preliminary matters**

5. Paragraph 2 of the enforcement notice subject of Appeals A and B identifies the address, but the postcode is wrong to the limited extent that it is missing the final letter: "A". I am satisfied that there would be no injustice if I were to correct this aspect of the notice by adding the missing letter, because this is entirely consistent with the Appellants' submission when taken in the round.
6. Paragraph 5 of the enforcement notice says that the time for compliance is: "*Two calendar from the effective date of the notice*". Plainly this is supposed to say two calendar months, but the word "*months*" is missing. No claim is made that the absence of this word on the face of the notice renders it a nullity and there is no clear basis to make such a finding. To the contrary the grounds of appeal in the statement that accompanies the enforcement appeal form refer to it as if it had said 2 months and the point has not been taken. This gives me a sound basis to find there would be no injustice if I were to correct this defect or error on the face of the notice by adding the word "*months*".
7. The application for an LDC, which is the subject of Appeal C, refers to a third component, namely: "*clear glazed screen to the front roof terrace behind the existing bottle balustrade*". However, whereas the reason for refusal relates to the works at the rear, no LDC was issued in respect of the works to the front. Paragraph 4.1 of the Delegated Report unambiguously confirms that: "*...it is accepted...that the glazed panels to the front roof terrace do not constitute material development...as defined under section 55 of [the Act]*". Nothing that I saw during my inspection would lead me to dispute the conclusion that this component does not involve development because the works do not materially affect the external appearance of the building [section 55(2)(a)(ii) of the Act].
8. It follows that, irrespective of my findings in relation to the other components for which an LDC is sought, it would be appropriate to issue an LDC for this operation. It formed part of the application, the Council has confirmed why it

- considers the operation to be lawful and, for the above reasons, I agree. An LDC is attached to this decision to confirm this aspect of the development.
9. Only an Applicant has a right of appeal and the Applicant on the application that is now the subject of Appeal D is Toby Hollowell, which is why I have used that name in the above bullet-points. I am aware that a letter was sent by Mr Hollowell to The Planning Inspectorate on 6 March 2017, which says: *"...we confirm that we agree to the above appeal proceeding in the name Mr Hollowell and for all matters to be conducted by the substitute Appellant Austin Mackie Associates Ltd"*. On this basis I am satisfied the Applicant is aware of the appeal having been made and I have jurisdiction to determine the appeal.
  10. However whereas the letter refers to Mr Mackie, the appeal form confirms that he is merely the Agent and so it would not be appropriate to treat him as the *"substitute Appellant"* because he has no interest in the land. The appeal form says Mr S Lavery is the Appellant, but since he was not the Applicant and is not identified in the letter dated 6 March 2017 it would be inappropriate to identify him as the Appellant. In the unlikely event there are any implications that arise from this stance these would be a matter for the parties involved. However the bottom line is that I shall proceed to determine what is plainly a valid appeal.
  11. The description of development in Appeal D has been modified from that set out on the application form. However the description set out in the Council's decision notice has been adopted by the Appellant in Section E of the appeal form and in those circumstances I shall deal with the appeal on that basis.

### **Appeals A & B Ground (c) and Appeal C**

12. The Planning Practice Guidance says that an Applicant is responsible for providing sufficient information to support an application for an LDC<sup>1</sup>. Lawful development is development against which no enforcement action may be taken, for example because it does not involve development or is a form of permitted development. Since this is the equivalent of ground (c) in an enforcement appeal the Appellants need to show that: *"...there has not been a breach of planning control"* [as per section E. (c) of the appeal form].

### **Are the operations development?**

13. The first basis on which the claim is made is that the operations undertaken do not materially affect the external appearance of the building [applying section 55(2)(a)(ii) of the Act]. Case law has held that what must be affected is the external appearance, not the exterior, and so the alteration must be one which affects the way in which the exterior of the building can be seen by an observer outside the building. Whether the effect of an alteration is material or not depends in part on the degree of visibility. Whether the external appearance of a building is materially affected is likely to depend on both the nature of the building and the nature of the alteration. In addition the effect on the external appearance must be judged for its materiality in relation to the building as a whole and not by reference to a part of the building taken in isolation.
14. My inspection revealed that the Juliet screens that have been fitted to 3 of the rear sash windows and the screen that has been fitted to the rear roof terrace are visible from a number of public and private vantage-points. However,

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<sup>1</sup> Paragraph: 006, Reference ID: 17c-006-20140306.

adopting the words of the party that made the representations, the: "...*glass screen on the top terrace is just about visible*"<sup>2</sup> from Upper Phillimore Gardens. My inspection confirmed those words to be apt as, whilst it can be seen, one really has to stop and focus to even identify No 39 along the terrace of houses; from here the screen is seen against the side of the neighbour's mansard roof. No claim is made that the Juliet screens on the rear sash windows can be seen from this public vantage-point and my inspection would corroborate this view.

15. Notwithstanding the above, during the course of my inspection I did notice that there is a more direct view of the rear of No 39 from the gap between No 49 and 51A [Hyde House], Campden Hill Road. I did check with the Appellants' representative who confirmed that he did not wish to make representations in relation to this observation. In this narrow vista between the existing houses the screen that has been fitted to the rear roof terrace is seen against the mass of the mansard roof of No 39 and the Juliet screens are also visible. There is no reason to doubt that this narrow vista can also be appreciated from the Council's own offices, which stand on the eastern side of Campden Hill Road.
16. My inspection from the rear garden of No 39 confirmed what is evident from the various photographs that have been submitted as part of these appeals. On the day of my inspection the screen that has been fitted to the rear roof terrace was seen against a clear blue sky and whilst by no means prominent it was distinguishable. The Juliet screens sit within the window reveals and, by virtue of being transparent, the glass does not detract from the sash window form, including the vertical glazing bar<sup>3</sup> on the lower half of each sash window. The mounts or fixings, of which there are 4 for each screen, are visible but appear as small circular silver objects slightly proud of the Juliet screens.
17. Based on my inspection from the rear garden of No 39 and the photographs of the surrounding properties, including their gardens, it is clear that the rear of No 39 is seen from the rear gardens of adjacent properties in Argyll Road and a number of properties in Campden Hill Road, at a distance of more than 30 m. To a greater or lesser extent the view from all of these properties would not be materially different to that from the rear garden of No 39. I acknowledge that most of those views would be slightly more distant than what I observed, but there is no reason to think that the alterations at issue would not be visible from a number of private vantage-points and would, to an extent, affect the way in which the exterior of No 39 is seen by the occupiers of those dwellings.
18. I appreciate that No 39 sits perhaps a third of the way down Argyll Road and that the rear is seen as part of a long terrace of similar town houses to which various alterations have been undertaken over many years. The result is that there is variety in the external form of those dwellings and, as the Appellants observe, this includes modern interventions, such as a conservatory. However the fact that this is a somewhat sensitive dwelling is evident from its location within the Kensington Conservation Area. Even minor alterations to such a building have potential to have a material effect on its external appearance.
19. In consideration of whether the alterations affect the external appearance of the building as a whole, in my view it is relevant that the operations extend across 4-storeys in total. The Juliet screens are fitted to windows on the first,

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<sup>2</sup> Source of quote: caption to photograph that accompanied the submission made by Savills, dated 13 June 2017.

<sup>3</sup> I note Savills describe this as a mullion, which I understood to be more of a structural support between adjacent window units, which does not appear to be the case in this instance.

second and third floor levels, and the screen that has been fitted to the rear roof terrace extends across the majority of the width of the house. So whilst there are no operations that are visible from the front of the dwelling they do affect the whole of the rear elevation of the property.

20. For the above reasons I conclude that it is appropriate to draw a distinction between the screen to the front roof terrace, which is invisible in the street scene by virtue of being behind and below the bottle balustrade, and the works that have been undertaken at the rear of No 39. In totality those operations do materially affect the external appearance of the rear of the building when seen from a number of private vantage-points and more than one public vista. I am therefore satisfied that there has been development as defined in the Act and so turn to consider whether those operations are permitted development.

***Are the operations permitted development?***

21. The answer to question 10 of the LDC application form indicates that the works were substantially completed by "01/03/2015" and this date is not in dispute<sup>4</sup>. Section 56 of the Act states that for the purposes of the Act development of land shall be taken to be initiated if the development consists of the carrying out of operations, at the time when those operations are begun. The Town and Country Planning (General Permitted Development) (England) (Order) 2015 [the 2015 Order] did not even come into force until 15 April 2015. It must follow that the relevant Statutory Instrument is the Town and Country Planning (General Permitted Development) Order 1995 [the GPDO]. Whilst I note that the Council assessed the development against the 2015 Order, which would appear to be incorrect, the relevant provisions have not materially changed<sup>5</sup>.
22. Article 3 and Class A of Part 1 to Schedule 2 of the GPDO granted planning permission for the enlargement, improvement or other alteration of a dwellinghouse. The Delegated Report on the application subject of Appeal C assesses the development against the criteria in the equivalent provisions of the 2015 Order and the only basis on which it says that the development is not permitted is that it fails condition A.3 (a). Since the criteria in the GPDO are not materially different the sole issue is one of interpretation of the condition, which says: "*(a) the materials used in any exterior work (other than materials used in the construction of a conservatory) shall be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse*"<sup>6</sup>.
23. The Government has published Technical Guidance to aid the interpretation of this condition<sup>7</sup>. It says: "*The condition above is intended to ensure that any works to enlarge, alter or improve a house result in an appearance that minimises visual impact and is sympathetic to existing development. This means that the materials used should be of similar visual appearance to those in the existing house, but does not mean that they need to be the same*

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<sup>4</sup> I acknowledge that the complaint was lodged on 30 September 2016 but, by definition, the operations had been completed before this date. Moreover the answer to question 3 on the planning application form, now subject of Appeal D, says that the works were started on "08/01/2015".

<sup>5</sup> In those circumstances I have taken the view that no purpose would be served by obtaining the views of the parties in this matter, the only practical effect of which would be to delay this decision.

<sup>6</sup> Substituted by the Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order [SI No 2008/2362 Sch.1 para.1], with effect from 1 October 2008.

<sup>7</sup> "*Permitted development rights for householders*", DCLG, April 2017; see [link](#). Note: the Appellants refer to the earlier version dated April 2016 as part of the appeal submission that was made in March 2017, but the key quote appears to be unchanged. Again I saw no purpose in obtaining further views in those circumstances.

materials”<sup>8</sup>. An example is: “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”<sup>9</sup>.

24. In that context, the Council’s key concern relates to the colour of the glass. It accepts that: “...glass clearly exists on the exterior of the building”<sup>10</sup>, and so no issue is taken with the use of glass per se as a material. Instead it says that the glass has a “blue-ish tone which differentiates them from the existing clear glazing, to such a degree as to not be of a ‘similar appearance’”<sup>11</sup>. However, in contrast, an interested party says the same glass has “a ‘green’ tinge”<sup>12</sup>.
25. As is observed at final comments stage for the Appellants the most likely explanation for the difference is that the glass is to some degree reflective and picking up say the blue of the sky or the green of nearby vegetation. Whilst it inevitably raises a question of fact and degree it is noticeable that the Technical Guidance only refers to the colour of the frames, rather than the glass.
26. Moreover it would appear from my inspection that there is a difference between the glass used in the Juliet screens that have been fitted to 3 of the rear sash windows and the screen that has been fitted to the rear roof terrace. The former appears to comprise 3 separate layers of glass melded together, but the latter appears to be a much thicker single sheet of glass. I do not propose to speculate on the refractive effect that this might have, e.g. in sunlight, but there is likely to be a difference. In my view this is likely to be exacerbated by the fact that whereas the former is seen against the sash windows, including the white frame, the latter is seen against different backgrounds, including the white flank of the neighbour’s mansard, the roof of No 39 and against the sky<sup>13</sup>. Whilst not conclusive this might be a factor in the different views expressed, although they do not distinguish between the respective screens.
27. The Council relies on an appeal decision<sup>14</sup>, but this concerns uPVC windows and, in particular, a comparison between plastic frames and the aluminium frames they appear to have replaced. There is no reference to the Technical Guidance in the decision, but the test that has been applied by the Inspector is consistent with that guidance. A reasoned fact and degree judgment is made that is beyond reproach. I have noted the Council’s reference to paragraphs 7 and 9 of that decision in terms of approach and I agree that the condition is applicable to the development that has been undertaken at No 39. As such it is quintessentially a judgment of fact and degree that must be made.
28. The Appellants have referred to 3 appeal decisions<sup>15</sup>, 2 of which say a common sense approach should be taken to what constitutes a similar appearance and the third effectively represents an application of that approach in practice. My inspection confirmed what is evident from the photographs, namely that clear

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<sup>8</sup> Source of quote: bottom of page 31.

<sup>9</sup> Source of quote: third bullet-point, page 32.

<sup>10</sup> Source of quote: Delegated Report on application No CL/17/00447.

<sup>11</sup> Source of quote: Delegated Report on application No CL/17/00447.

<sup>12</sup> Source of quote: submission made by Savills, dated 13 June 2017.

<sup>13</sup> When seen from Upper Phillimore Gardens, Campden Hill Road, and the rear garden, respectively.

<sup>14</sup> Appeal Ref APP/K5600/C/16/3152614, dated 1 December 2016.

<sup>15</sup> Appeal Ref APP/N5660/X/09/2109929, APP/T2215/X/10/2136302 etc and APP/W5780/X/12/2185569.

- as opposed to obscure glazing has been used<sup>16</sup>. The glass might have a slight tint but, as is evident from the divergent views as to what the tint is, I consider that it would satisfy the condition at issue. Glass is a material that is found on the exterior of the existing dwellinghouse and the particular glass that has been used in all the screens has a similar visual appearance to the glass that already exists. It is like the existing glass found on the dwelling in the sense that both are clear glazing<sup>17</sup>, but potentially not exactly the same in the sense that it might have a slight tint or alternatively just might appear as if it does under certain conditions. However, adopting a common sense approach, the glass used in all of the screens at issue does comply with condition A.3 (a).
29. In that context, focussing on the screen that has been fitted to the rear roof terrace, there are no fixing brackets, or at least none that are obvious. Whilst it is higher than the metal balustrade and has a marginally different shape, in the sense that rather than just stepping up it rises at 45° adjacent to the steps, the Council has not taken issue with its shape<sup>18</sup>. In these circumstances I find that the screen that is fitted to the rear roof terrace is permitted development by virtue of Article 3 and Class A of Part 1 to Schedule 2 of the GPDO.
30. Turning to the Juliet screens that are fitted to 3 of the rear sash windows, the additional concern that the Council has with these operations relates to the metal fixing brackets. Metal, as a material, is evident on this elevation, e.g. in the balustrade and the rain water goods. In those instances the metal is painted black, whereas the fixing brackets are silver. However there are similar minor accoutrements on this elevation that are silver, such as the outside light at ground floor level. In terms of shape the rain water goods, light and a feature associated with a CCTV or security system are all circular. The brackets are minor features in the context of the elevation as a whole and, noting the condition explicitly relates to materials, I consider that they do give a similar visual appearance to those evident at the existing dwellinghouse.
31. The Appellants refer to 2 examples<sup>19</sup> of where the Council has confirmed that glazed Juliet balconies are permitted development. In the case of 12 Reece Mews, the method by which the "*obscured glass*" was to be affixed is unclear from the submitted drawing. Whilst it might be that freestanding glass panels were proposed it is conceivable that the black lines that demarcate the panels on the submitted plan comprise metal frames. The Delegated Report does not identify the issue and I agree with the submission that the conclusion must be that the form of mounting was not considered to be a relevant consideration.
32. In the other example at 8 Paultons Street<sup>20</sup>, what is identified in the Delegated Report as a submitted drawing, No PL06, does show some sort of frame, such as a handrail supported by posts at each end. The rail appears to extend most of the width of the building and would therefore appear to be a more dominant feature than the small circular silver objects that are at issue in these appeals. The Delegated Report confirms that site is within the Cheyne Conservation Area

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<sup>16</sup> I note in the case of 12 Reece Mews [application No CL/14/00851] that the Council issued an LDC in respect of a glass balustrade on the front elevation that is shown to comprise "*obscured glass*" on drawing No SK020.

<sup>17</sup> I note the Council's email to the Appellants' Agent dated 9 February 2017 acknowledges that: "*If the glass was clear then the panels themselves would be PD*", albeit this appears to be in contrast to the use of tinted glass.

<sup>18</sup> Potentially a factor having regard to the quoted Technical Guidance.

<sup>19</sup> Paragraph 21 of the Council's statement says that the Appellants do not provide specific examples, but this is plainly wrong. Indeed I note that the 2 examples concerned were the subject of an exchange of emails between the main parties on 6 January 2017 and I can therefore be satisfied that the Council is fully aware of them.

<sup>20</sup> Application No CL/13/03618.

and the analysis section refers to the presence of timber framed windows. However, as has been submitted for the Appellants, there is no evidence the Council sought details of the frame, such as materials, or found it necessary to test that aspect of the proposal against the provisions of the GPDO.

33. It is unclear why the Council has adopted a more stringent approach in these appeals. As the Appellants observe the logical extension of this argument is that an application for an LDC might be refused because the hinges, door plinth or door furniture was aluminium rather than cast iron. I agree that such a restrictive approach would not be consistent with the permissive nature of the GPDO which, in this respect, applies equally to dwellinghouses outside of Conservation Areas as it does to those within. The small circular silver objects at issue here do result in an appearance that minimises visual impact and are sympathetic to existing development, in line with quoted Technical Guidance, not least because of their modest size in the context of the rear elevation.
34. The interested party has raised a further argument that there are no mullions or transoms within the screens such that they do not match the sash windows. Leaving aside the issue of whether this is technically a glazing bar or a mullion, such an argument completely misses the point. It appears to be common ground, certainly with the Council, that the operations are within the generic nature of works that are permitted by Class A. In those circumstances the narrow focus is on the proper interpretation of condition A.3 (a), which relates to materials rather than dictating the precise form of the development.
35. For the above reasons, and having taken account of all other matters raised, I conclude that the ground (c) in Appeals A and B, as well as Appeal C, should succeed.

#### **Appeal D: The approach to this appeal, main issue and policy context**

36. The question of whether permission is required does not affect the validity of Appeal D, but I shall determine it in the context of my earlier findings. It is however notable from the Council's reason for refusal that no issue is taken with the installation of the glass safety screen to the front balustrade.
37. The main issue in Appeal D is the effect of the development on the appearance of the building and whether it would preserve or enhance the character or appearance of the Kensington Conservation Area.
38. The Development Plan [DP] includes *The RBKC Consolidated Local Plan 2015* [LP], which was adopted in July 2015. Since the date of decision the Council adopted the Kensington Conservation Area Appraisal [hereafter "CAA"] on 3 February 2017 and I have taken into account relevant excerpts provided.

#### **Reasons**

39. In the context of my earlier analysis I propose to test the development against relevant, quoted LP policies. LP Policy CL1 requires development to respect the existing context, character and appearance, and the specific requirements at issue appear to be a), b) and h)<sup>21</sup>. In terms of a) this minor development does not materially alter the height, mass or roofscape, and does allow the historic fabric of the building to be read. Glass is a traditional material evident on the

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<sup>21</sup> The Council does not identify the criteria in each policy that it says have been contravened and so my approach in this respect is guided in respect of this policy and others by the representations of the interested party.

- rear of the terrace, for example in the 2-storey conservatory at No 37. As such the development is an appropriate response to its context as required by b) and the alterations preserve the characteristics of the terrace as required by criterion h). For these reasons, which in certain respects are elaborated on below in the context of other policies, I find compliance with LP Policy CL1.
40. The interested party does not appear to allege a conflict with LP Policy CL2, which requires all development to be of the highest architectural and urban design quality. Amongst other things the criteria set out in the policy require development to respond well to its context [criterion a. iv] and to be of an appropriate architectural style in response to its context [criterion b. i]. For the reason previously identified [see CL1, b)] I find no conflict with these criteria. It is functional [criterion a. i] and fit for purpose insofar as it represents an appropriate design response to the problem of ensuring the safety of the Appellants' young children. As such there is compliance with LP Policy CL2.
41. LP Policy CL6 requires alterations not to harm the existing character and appearance of the building and its context. I have previously established that the glass used is clear and my inspection did not reveal it to be of an especially "*reflective nature*"<sup>22</sup>; the point is made by reference to the bottom photograph on the submitted plan<sup>23</sup>. The brackets evident in the same photograph are very minor features and, noting that photograph must have been taken next to the upper ground floor bay window and so could not be closer, it must follow that views from neighbouring properties would reveal them to be discreet.
42. The panels are located within the existing window reveals and the glazing bars on the original sash windows are not obscured in views through the clear glass. So whilst I acknowledge that sash windows are a characteristic feature of the rear of the terrace, the glazing panels have not resulted in the loss of the sash windows and in my view they do not materially detract from them. The clear glazed screen to the rear roof terrace is set against the backdrop of existing roof forms and even where it might be seen from private gardens against the sky, the glazed screen does not block views and is thus also discreet.
43. For these reasons the development complies with criteria a and c of LP Policy CL6 because it does not harm the character or appearance of the existing building, its setting or townscape, is of a high quality form, detailed design and materials, and is discretely located. Turning to criterion b, I note that the interested party is concerned that allowing this appeal could result in a cumulative effect, but that must be seen in the context of my conclusions in Appeals A-C. In any event the criterion is merely concerned with a detrimental cumulative effect, whereas I have found no harm. It is an established planning principle that each scheme must be considered on its merits and so whilst I note the scheme permitted at 108 Campden Hill Road<sup>24</sup> this does not alter my approach to this policy test. As such I find compliance with LP Policy CL6.
44. The interested party does not appear to allege a conflict with LP Policy CL11, which requires development to protect and enhance views, vistas and gaps that

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<sup>22</sup> Source of quote: paragraph 6.2 of the Delegated Report.

<sup>23</sup> Drawing No PR01 in which the clouds in the sky are reflected equally in the lowest window in that image in both the upper and lower panes. The upper pane is the original sash window and in my view there is no material difference in the reflection. In reaching this view I reject the contention, by the interested party, that it is more reflective as a result of its design, without a glazing bar, because the glazing bar is evident in that photograph.

<sup>24</sup> Planning permission ref No PP/16/01799.

- contribute to the character and quality of the area. The most relevant criterion is c) that says within Conservation Areas development should, at a minimum, preserve views (ii) generally within Conservation Areas, including the rear of properties. I consider that the minimal glazed interventions undertaken do meet this test. Whilst the rear of No 39 can be detected from the public realm, views of the development are extremely restricted and it is seen in the context of a terrace in which there is some variation in the built form. This is evident at roof level, for example in one photograph taken by the interested party<sup>25</sup>.
45. I acknowledge paragraph 34.3.92 of the supporting text, but it is material that there have been no objections from neighbours. The text effectively delegates the assessment of significance of rear views to the CAA. Paragraph 3.181 of the CAA identifies Argyll Street as being the only named example within the Phillimore Estate which has less consistency. Paragraph 3.240 of the CAA acknowledges that rear elevations were designed to be less significant and this and the subsequent paragraphs dealing with rear elevations do not identify Argyll Street to be of note. Paragraph 3.244 of the CAA says many rear elevations are visible from side streets bringing them clearly into the public realm, but the associated photograph on page 91 of the CAA, whilst taken from the top of Upper Phillimore Gardens, is of Campden Hill Road. In contrast the rear of No 39 and its neighbours are barely visible and this is illustrated by the photograph that is provided by the interested party from that location<sup>26</sup>. In this context I find that the development does not conflict with LP Policy CL11.
46. My view is confirmed by the fact that the Council has alleged no conflict with LP Policy CL8, which requires roof alterations to be architecturally sympathetic to the age and character of the building. It does not therefore resist the roof alterations on the basis that they offend any of the criteria in b). This appears to be an acknowledgement that, amongst other things, (v) the rear roof line is not exposed to long views and/or the clear glazed screen to the rear roof terrace would not have an intrusive impact. It is also consistent with the fact that no conflict is alleged with LP Policy CL9, which requires modifications to buildings to be subordinate to the original building so that its form can be understood, and to reinforce the character and integrity of the original building.
47. LP Policy CL3 requires development to, at a minimum, preserve the cherished and familiar local scene. The only relevant criterion is a), which reiterates the statutory duty in section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. For all the reasons that I have outlined above I consider that the development does meet the statutory test and comply with LP Policy CL3.
48. I have no reason to doubt that this is the only example within this terrace of a glass screen at roof level and glass window screens of this kind. However, for the above reasons, that does not equate to the development being harmful or contrary to policy. I have noted the claim that the screens result in the loss of short views but, noting the Appellants' incredulous response, I find no basis to support the assertion given the nature of the materials used and their form.

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<sup>25</sup> Top photograph of the rear of Argyll Road, which is said to have been taken in May 2017, which accompanied the submission made by Savills, dated 13 June 2017.

<sup>26</sup> Previously referred to in footnote 2 above. As the Appellants' final comments observe this photograph would appear to have been taken with a zoom, but even then it is necessary to annotate what is being referred to.

49. On the main issue I conclude that the development preserves the appearance of the building and the character and appearance of Kensington Conservation Area, in compliance with LP Policies CL1, CL2, CL3, CL6, CL8, CL9 and CL11, and the CAA. In these circumstances, noting the Council has not put forward any conditions<sup>27</sup>, I find no reason to impose a materials planning condition or, since the development has been undertaken, an implementation condition.

### **Appeals A & B: Conclusion**

50. For the reasons given above I conclude that Appeal A and B should succeed on ground (c). Accordingly the enforcement notice will be quashed. In these circumstances the appeals under the remaining grounds set out in section 174(2) of the Act and the applications for planning permission deemed to have been made under section 177(5) of the Act do not fall to be considered.

### **Appeals C: Conclusion**

51. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC in respect of clear glazed Juliet screens to existing sash windows on the rear façade, clear glazed screen to the rear roof terrace behind existing metal balustrade and clear glazed screen to the front roof terrace behind the existing bottle balustrade at 39 Argyll Road, London W8 7DA was not well-founded. Appeal C will succeed and I shall exercise the powers transferred to me in section 195 (2) of the Act.

### **Appeal D: Conclusion**

52. For the reasons given above, and having regard to all other matters raised, I conclude that Appeal D should be allowed without any planning conditions.

*Pete Drew*  
INSPECTOR

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<sup>27</sup> See the conclusion on appeal 3168915 in the Council's statement, although curiously an Appendix 2 then cites a condition that requires complete accordance with the details shown on the submitted plans. However given the fact that the application, and hence the plans, were retrospective, I consider such a condition to be unnecessary. The Council's statement itself does not refer to an Appendix 2 and whilst it does refer to Appendices A3 and A4, no such appendices have been submitted [although the photographs, "Appendix A3", are otherwise before me]. I saw no need to obtain the results of the Land Registry search given the absence of any ground (e) appeals.



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# Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191  
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)  
ORDER 2015: ARTICLE 39

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**IT IS HEREBY CERTIFIED** that on 24 January 2017 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Act, for the following reasons:

1. The first operation listed in the First Schedule hereto does not involve development of the land specified in the Second Schedule hereto because it does not materially affect the external appearance of the building.
2. The second operations listed in the First Schedule hereto are permitted development by virtue of Article 3 and Class A of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995.

Signed

*Pete Drew*

Inspector

Date: 4 September 2017

Appeal C Ref: APP/K5600/X/17/3171040

## **First Schedule**

1. Clear glazed screen to the front roof terrace behind the existing bottle balustrade.
2. Clear glazed Juliet screens to existing sash windows on the rear façade and clear glazed screen to the rear roof terrace behind existing metal balustrade.

## **Second Schedule**

Land at 39 Argyll Road, London W8 7DA

## NOTES

This certificate is issued solely for the purpose of Section 191 of the Act.

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the Local Planning Authority.

## Plan

This is the plan referred to in the Lawful Development Certificate dated: 4 September 2017

**by Pete Drew BSc (Hons) DipTP (Dist) MRTPI**

**Land at: 39 Argyll Road, London W8 7DA**

**Appeal C Ref: APP/K5600/X/17/3171040**

Scale: Do not scale as original plan has been scanned which might cause variations.

**SITE LOCATION PLAN  
AREA 2 HA  
SCALE 1:1250 on A4  
CENTRE COORDINATES: 525272, 179659**



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