

Appeal Decisions

Site Visit made on 6 January 2026

by J Whitfield BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th March 2026

Appeal A Ref: APP/X5210/C/24/3352400

Appeal B Ref: APP/X5210/C/24/3352401

Flat 1, 35 Broadhurst Gardens, London NW6 3QT

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act).
 - The appeals are made by Mr Mitchell Leigh (Appeal A) and Mr Jacob Leigh (Appeal B) against an enforcement notice issued by the Council of the London Borough of Camden (the LPA).
 - The notice was issued on 12 August 2024.
 - The breach of planning control as alleged in the notice is, without planning permission, the erection of timber fencing around the edge of the first-floor rear terrace.
 - The requirements of the notice are to:
 1. Completely remove the timber fencing around the edge of the first floor rear terrace.
 2. Removal all constituent materials and make good any damages caused by the above operations.
 - The period for compliance with the requirements is: 1 month.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
 - Appeal B is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 (as amended).
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Decisions

Appeal A

1. The appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

2. The appeal is dismissed and the enforcement notice is upheld.

Appeals A and B on ground (c)

3. An appeal on ground (c) is brought on the basis that the breach of planning control alleged to have occurred does not constitute a breach of planning control. Section 171A(a) of the Act sets out that the carrying out of development without the required planning permission constitutes a breach of planning control.
4. Section 55(1) of the Act defines development as including building operations on land. Section 55(2)(a) of the Act sets out that the carrying out for the maintenance, improvement or other alteration of any building of works which, (ii) do not materially affect the external appearance of the building, do not involve development.

5. There is no statutory definition of what comprises a material effect on the external appearance of a building. In *Burroughs Day*¹, the court held that, for works to materially affect external appearance, the changes must be visible from a number of vantage points and material to the appearance of the building as a whole. Materially affecting means an impact capable of having some effect in planning terms.
6. The appellant argues that the fencing is not visible from any public areas. Nevertheless, I saw from my site visit that it will be visible from Canfield Gardens, depending on the height of the vegetation on the side boundary wall of 29 Broadhurst Gardens. Moreover, it is visible from both the internal and external areas of many surrounding properties. Furthermore, where it can be seen, it will be readily apparent to the onlooker that timber fencing had been erected on the rear offshoot, extending as it does on all three open sides of the roof. I note that the fencing has replaced a timber trellis in the same position. However, the photograph provided indicates that the previous trellis was more darkly stained than the current fence. Additionally, the design comprised narrow cross sections of horizontal and vertical timber framing, giving it a more open and transparent appearance than the timber fencing subject of the notice.
7. As a result, I am satisfied the alleged breach does not benefit from the exemption from development in Section 55(2)(a)(ii). The erection of the timber fencing amounts to a building operation, having regard to its size, permanence and degree of physical attachment and, as such, is development for the purposes of Section 55(1) of the Act for which planning permission is required.
8. Planning permission was granted on 12 February 2024 for the “removal of existing timber privacy fence to first floor rear terrace and erection of replacement metal balustrades in association with use of the flat roof as a terrace”².
9. The plans show the approved balustrades would comprise iron railings with horizontal bars between upright posts. In contrast, the development subject of the notice comprises timber fencing, with horizontal timber boarding more closely spaced than the railings shown on the approved plan. In my view, given the size, design and materials, the timber fencing subject of the notice is materially different to the metal railings approved by the 2023 permission. To that end, the development subject of the notice is not the development for which permission has been granted.
10. There is no evidence before me that planning permission has been granted for the erection of the timber fencing around the roof terrace subject of the notice, either expressly or by virtue of Article 3(1) of the Town and Country Planning (General Permitted Development) England Order 2015. As such, the alleged breach comprises development without planning permission, and thus, amounts to a breach of planning control as defined in Section 171A(a) of the Act.
11. The appeals on ground (c) therefore fail.

Appeal A on ground (a)

12. An appeal on ground (a) is brought on the basis that planning permission ought to be granted for the matters stated in the notice as constituting a breach of planning

¹ *Burroughs Day v Bristol CC* [1996] EGCS 126

² LPA Ref: 2023/2874/P

control. Where an appeal on ground (a) is duly brought, an application for planning permission is deemed to have been made.

Main Issue

13. The main issue is whether the development will preserve or enhance the character or appearance of the South Hampstead Conservation Area.

Reasons

14. The Land lies in the South Hampstead Conservation Area (the CA) which is characterised by large, semi-detached and terraced Victorian properties with a distinctive roofscape and ornamental decorative treatments to facades. The significance of the CA relies considerably on the attractive, wide variety of prominent roof forms. Roofs often including balconies with railings.
15. I note that timber is a traditional and established building material in the area. However, it is rarely found used in the construction of features of such scale and elevation as the development before me here. In contrast, it is more typically found in painted window frames or in minor elevational details. The fencing before me here extends around three sides of the roof terrace. Whilst neither party has provided an exact measurement, I saw from my site visit that the fencing was approximately in the region of 2m in height. Moreover, it is elevated at first floor level, above the gardens of the surrounding properties. Furthermore, the horizontal slats are tightly spaced together, leaving little permeability or opaqueness. This has the effect of introducing a solid and stark element of built form to the roofscape.
16. I note the railings approved by the LPA in February 2024 comprised a horizontal design too. However, the spacing between the railings was greater than the timber slats before me here. As a result, I find the timber fencing before me here appears as a stark and obtrusive feature.
17. The appellant argues that a condition could be imposed to stain the timber to a darker colour, similar to approved railings. However, it seems to me that would make little difference to the effect which derives from the overall scale and bulk of the fencing.
18. Likewise, a condition to introduce planting to soften any appearance would be unlikely to overcome any harm. Indeed, it is difficult to see how planting could be introduced on the external side of the fencing given its proximity to the edge of the roof terrace. In any event, no substantive planting plans are before me.
19. The appellant argues that the fencing is not visible from any public parts of the CA, noting the LPA said as much in during the consideration of the planning application for the approved railings. However, I was able to see from my site visit that the development could be seen from Canfield Gardens, dependent on the extent of hedge planting on the side boundary of 29 Broadhurst Gardens. In any event, the development would appear dominant and prominent in many private views within the CA such that its failure to preserve the character and appearance of the CA would be appreciable. Ultimately the CA has inherent architectural and historic interest irrespective of whether or not public views of parts of it can be easily gained.

20. I conclude, therefore, that the development will fail to preserve or enhance the character and appearance of the CA, in conflict with Policies D1 and D2 of the Camden Local Plan 2017 which seek to secure high quality design that preserves or enhances the historic environment and heritage assets, including conservation areas.
21. Given the scale of the development, the harm that arises to the heritage asset will be less than substantial. Paragraph 215 of the National Planning Policy Framework states that, where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. However, there is little evidence before me that the development will result in public benefits that will outweigh the harm identified above.

Other Matters

22. It seems to me that the previously approved railings will not be more harmful than the fencing before me, even with the privacy screens in place required by condition on that permission. To that end, they do not comprise a fallback position which justifies the development before me.
23. The appellant argues that the fencing is necessary to prevent harm to the living conditions of the occupiers of neighbouring properties through overlooking. However, there is little evidence before me that alternatives have been explored which could ensure such harm does not arise without giving rise to harm to the CA. As a result, I afford such matter limited weight.

Conclusion

24. For the reasons given above, I conclude that the appeal on ground (a) should not succeed and the deemed application for planning permission should be refused.

Overall Conclusions

25. I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

J Whitfield

INSPECTOR