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## **FULL STATEMENT OF CASE**

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**APPEAL UNDER S.78 OF THE TOWN AND COUNTRY PLANNING ACT 1990  
(AS AMENDED) AGAINST THE DECISION OF THE LONDON BOROUGH OF  
CAMDEN TO REFUSE TO GRANT PLANNING PERMISSION**

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**ERECTION OF SINGLE STOREY GROUND FLOOR REAR EXTENSION AND  
REAR DORMER EXTENSION**

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**4 OAKFORD ROAD, LONDON, NW5 1AH**

**D&M REFERENCE: 068/23  
MAY 2023**

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## 1.0 INTRODUCTION

- 1.1 D&M Planning Ltd has been instructed by the appellants to submit this householder appeal under s.78 of the Town and Country Planning Act 1990 (as amended), against the decision of the London Borough of Camden dated 5 April 2023 under planning reference 2021/0315/P to refuse to grant planning permission for: **the erection of single storey ground floor rear extension and rear dormer extension (retrospective)**.
- 1.2 During the course of the application the proposed work was undertaken and accordingly the Council altered the title of the decision to include retrospective. It is understood this was not agreed with the applicant or their representative at the time. The remainder of the above description, with the exception of retrospective, was set out in the application form and was subsequently used by the Council in the Decision Notice of Refusal. The application was submitted on behalf of the Appellants by Mr Lee Whiteman of Whiteman Architects. The involvement with the appeal is D&M Planning Ltd's first instruction on the matter.
- 1.3 During the assessment of the proposal by the Council, an issue was raised within the officer's report as to whether the works which had been carried out to the roof of the three-storey outrigger (or rear closet wing) on the rear elevation formed part of the application. Whilst not specifically referred in either the original proposed description of development or the amended description on the decision notice, this alteration was shown on the submitted drawings and was assessed by the Council as part of the overall scheme. It was these same drawings which formed part of the Council's decision.
- 1.4 In our view, as the inclusion of this element of the proposed works should not prejudice interested third parties, including that of neighbouring occupiers, we have no objection to this element being considered as part of the wider appeal proposal. Therefore, the description of development may need to be revised. We would add at this juncture that it

was within the power of the Council to have amended the description of development, as they did, to have included this if they so wished.

- 1.5 It should also be noted that the works proposed have since been carried out by the Appellant.
- 1.6 Therefore, as originally submitted, the proposal comprised three main elements: a single storey ground floor infill extension; a rear dormer extension with loft conversion; and an alteration to the roof of the rear three storey outrigger.
- 1.7 The planning application was submitted in late January 2021, having subsequently been registered by the Council on 24 February 2021. The application was simply accompanied by the application form and a full set of plans to allow the Council to assess the proposal.
- 1.8 However, although there was some correspondence entered into between the architect and the planning case officer back in June 2021, a formal decision was not issued until 5 April 2023 (see **Appendix 1**). It is unclear why the Council took so long to determine this modest and straightforward householder application.
- 1.9 The application was refused for the following reason:
- ‘The rear dormer window extension with flank masonry walls, by reason of its design, scale, bulk, siting and materials represents an overwhelming and incongruous addition, harming the original roof form and the character and appearance of the host building contrary to Policy D1 (Design) of the London Borough of Camden Local Plan 2017 and Policy D3 (Design Principles) of the Kentish Town Neighbourhood Plan 2016.’*
- 1.10 It is therefore evident that the concern of the Council relates to the design and impact of the proposed rear dormer extension. These concerns are further expanded in the accompanying Officer’s Delegated Report (see **Appendix 2**).

- 1.11 It is clear from the Council's Decision Notice that no objection was raised to either the proposed single storey infill extension or to the roof alteration to the rear three-storey outrigger. However, within the Officer's Delegated Report, although concern was expressed over the introduction of a flat roof area to the outrigger and that this feature was deemed to be incongruous and out of keeping, this did not actually form part of any reason for refusal of the application. Notwithstanding, we have assessed this element as part of the wider appeal proposal. Again, it is noted that this element was shown on the plans though was not included in the description of development.
- 1.12 The following statement will set out why the proposal, when assessed on its own individual merits and against relevant saved Local Plan policies, national guidance and material considerations, should be considered acceptable. However, the wider context and other similar developments which have taken place in the locality are a highly relevant consideration.
- 1.13 In their assessment of the proposal, the Council appears to dismiss the fact that certain aspects of the proposal could represent permitted development (subject to design detail) or that this could represent a material 'fallback' position' in the assessment of the proposal. However, we strongly question the Council's position on this, and we will demonstrate that this is, in fact, a highly material consideration.
- 1.14 In the determination of the application, the Council has warned that enforcement action may be taken on certain aspects of the development which have taken place. This action would relate to the rear dormer roof extension and the alteration to the roof of the rear closet wing or three-storey outrigger. However, at the time of writing this statement, an Enforcement Notice has yet to be served.
- 1.15 Having regard to the location, scale and nature of the appeal proposal, it would not represent EIA development under the EIA Regulations 2017.

## 2.0 SITE & CONTEXT

- 2.1 The appeal site is located on the north-western side of Oakford Road, within an established residential area of Kentish Town.



*Location Plan*

- 2.2 The site comprises a mid-terrace 4-bedroom property with a three-storey outrigger on the rear elevation. The property has accommodation on three floors with the lower ground set below road level, with stepped access up to the front ground floor of the building.
- 2.3 The terrace, when viewed from the street, is attractive in appearance, with many dwellings featuring bay windows and contrasting facing brickwork and other architectural detailing and features. The rear of the terrace is far more ordinary in appearance with facing brickwork elevations. The terrace has a slate roof. To the rear there is a small yard and fenced rear garden area.



*Immediate Street Scene Context (Source Google Street View – August 2022)*

- 2.4 The immediate locality is generally characterised by terraced housing, but with variations in height, age, style and appearance. Many terraces are set behind frontage low walls, railings and in some cases hedging.
- 2.5 To the side of No. 2 Oakford Road there is an under-croft which leads to a yard area with a series of outbuildings to the rear. No. 2a to the rear is operated as a funeral director business.
- 2.6 The site lies within the built-up area of this part of London. The property is not a listed building and nor does not lie within a Conservation Area.

### 3.0 PLANNING HISTORY AND APPLICATION BACKGROUND

- 3.1 There is no previous planning history relating to the site. The property is well established and can be regarded to be ‘original’ in terms of its planning status and in relation to the consideration of permitted development.
- 3.2 At this point, we consider it worthwhile to set out some background to the application and the correspondence which had taken place between the architect and planning case officer.
- 3.3 We have already highlighted the fact that although the application was submitted back in January 2021, it took the Council over 2 years to consider and to determine the application. It is unclear as to why it took so long for what is argued to be a straightforward householder application.
- 3.4 As previously highlighted, the planning application was submitted in late January 2021 and made valid by the Council in late February 2021. The agent emailed the planning case officer on 6 May 2021 seeking an update on the application, noting that a decision was due by the 21 April 2021. Three further follow-up emails were sent to the case officer on 18 May 2021, 21 June 2021, and 23 June 2021. The planning case officer eventually responded to that third email explaining the delay but also advised the following:

*‘I have had a brief look at the application and do not have any objections to the proposal and so will be recommending it for approval.’*

- 3.5 However, in a follow up email of the same date, the planning case officer sought to clarify that the previous email was just in relation to the ground floor infill extension and advised that the proposed rear dormer extension was unacceptable on design grounds. The case officer also advised that the proposed rear dormer window be omitted from the application and that this could be submitted through a separate certificate of lawfulness



application if this element was deemed to represent permitted development. A number of subsequent emails, also appended to this appeal, were subsequently sent without reply.

- 3.6 The case officer also stated that whilst she appreciated that there are other larger dormer windows within the street, it may be that they have constructed these under permitted development if the dwelling was a single dwelling, rather than a planning application. The case officer therefore questioned their relevance in the assessment of the proposal. This point was raised again in the Officer's Delegated Report and is addressed later in this statement.
- 3.7 In an email of response of the same date, the architect quite rightly contended that there was case law which demonstrates that Permitted Development fallback positions are material considerations when determining planning applications and was prepared to provide additional information to support this position. However, no further correspondence was received from the case officer and no such information was requested.
- 3.8 However, having heard nothing for several months, the agent eventually received a refusal notice dated 5 April 2023. This is more than 2 years after the planning application was submitted. This long delay is unexplained. In our view, this period could have been usefully used to have had some meaningful negotiations on the application. The Council has clearly not been helpful or proactive in finding a possible positive outcome on this application. A copy of this email correspondence is attached at **Appendix 3** for information.
- 3.9 The agent has explained that they thought that the majority of the proposed works fell within permitted development, but submitted a full planning application as they were including some non-matching materials to the dormer roof extension. Any applicant is not obliged to submit a certificate of lawfulness application if they believed the works to

be permitted development. The applicant then decided to start the loft conversion works bearing in mind that just to put on roofing tiles to match the existing would comply with the permitted development criteria.

- 3.10 As previously highlighted, we have now noted that the Council has, in conjunction with refusing the planning application, has warned that enforcement action may be taken in respect of the rear roof dormer extension and works to the roof of the rear closet wing. The reasons for serving an enforcement notice and what the applicant is required to do to comply are set out towards the end of the Officer's Delegated Report. It is interesting to note that although it is proposed to take enforcement action against the works to the rear closet wing, this did not form a reason for refusal of the planning application despite being clearly shown on the submitted plans.
- 3.11 In any event, it is suggested that it would only be reasonable that this appeal be considered and determined prior to any enforcement action being taken by the Council.

## 4.0 APPEAL PROPOSAL

- 4.1 The appeal proposal essentially involves extensions and alterations to the existing dwelling house at 4 Oakford Road, London, NW5 1AH. The proposal is considered to comprise three main elements – a ground floor rear infill extension; a loft conversion with rear roof dormer extension; and alterations to the roof of the rear closet wing.
- 4.2 Whilst the Council only refused the planning application on the grounds of the design of the proposed rear dormer extension, as all three elements were on the submitted drawings, these are all described in turn below for completeness and will be evident to the Inspector during the course of their site visit.
- 4.3 The existing property comprises a 4-bedroom terraced house with accommodation on three floors, including a lower ground floor. One bedroom is located within the lower ground floor. In essence, the proposal is to provide enlarged and improved accommodation, creating a 3-bedroom dwelling but with more spacious accommodation.
- 4.4 As part of the proposal, there would be a change to some of the internal room arrangements and their use. For example, the lower ground floor bedroom would become a playroom, the third smaller bedroom on the first floor would become a bathroom with the roof area being converted into the third main bedroom with en-suite.
- 4.5 The single storey rear ground floor extension would enlarge the existing kitchen, and which would open up into the existing dining room by the removal of a wall. This extension would come in line with the neighbour's rear extension (No. 2) and would be set back slightly from the existing rear three-storey outrigger (or closet wing). The infill would have a flat roof with a rooflight, its rear wall would be made of cladding panels and have large glazed crittal windows.

- 4.6 The rear roof dormer extension would extend across the full width of the roof, being enclosed by two parapet brick walls, and to the ridge of the roof. The dormer would have a width of 5.1m, a depth of 3.5m and a height of 3.5m resulting in a cubic capacity of circa 31.23 cubic metres. Its rear elevation would be faced in cladding panels similar to the ground floor infill extension with two different sized rear facing windows. Its roof would be single ply membrane or similar. There would be a small roof light added on the front roof elevation to provide light to the en-suite shower facility.
- 4.7 The alterations to the rear three-storey outrigger would simply involve changing this from a mono-pitch roof to a flat roof. The change to the roof provided some extra headroom to the previously existing bedroom and now proposed new bathroom. The south-western wall would be increased in height by 1.4m. It should be highlighted that what has actually been built on site is slightly different from is shown on the submitted plans, where the roof has actually been built at a slightly lower height leaving the side parapet wall. It is development shown on the plans which are relevant to this appeal.
- 4.8 The overall layout and access to and within the site would remain largely unaltered.
- 4.9 The site is an established residential plot. The curtilage is currently residential in appearance, and this would remain unchanged.
- 4.10 Given the scale and nature of this householder proposal, there would be no implications in respect of car parking.

## 5.0 PLANNING POLICY BACKGROUND

5.1 For the purposes of Section 38(6) of the Planning and Compulsory Purchase Act 2004, planning applications should be determined in accordance with the Development Plan unless material considerations indicate otherwise. Section 38(3) states that the Development Plan includes the Regional Spatial Strategy and any other Development Plan documents.

5.2 The National Planning Policy Framework (NPPF) was introduced 2021 and replaced the previous version. The NPPF sets out national planning policy to be taken into account by councils when preparing new local plans and when taking decisions on planning applications.

### NPPF

5.3 In this document there continues to be a strong presumption in favour of sustainable development and at paragraph 3 it advises the Framework should be read as a whole.

5.4 Paragraph 7 of the NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 8 states there are three dimensions to sustainable development: economic, social and environmental, and paragraph 9 goes onto explain these roles should not be undertaken in isolation, because they are mutually dependent. However, it also states these are not criteria against which every decision can or should be judged. Decisions should also take local circumstances into account, to reflect the character, needs and opportunities of each area.

5.5 Paragraph 10 states the following:

*‘So that sustainable development is pursued in a positive way, at the heart of the Framework is a presumption in favour of sustainable development (paragraph 11)’.*

- 5.6 Paragraph 11 goes onto state that plans and decisions should apply a presumption in favour of sustainable development.

*‘For decision-taking this means:*

*c) approving development proposals that accord with an up to date development plan without delay; or*

*d) where there are no relevant development plan policies, or the policies which are the most important for determining the application are out of date, granting permission unless:*

*(i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed , or*

*(ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of this Framework taken as a whole.’*

- 5.7 The most relevant sections of the NPPF in relation to this proposal are 2 (Achieving sustainable development) and 12 (Achieving well-designed places).

## **DEVELOPMENT PLAN**

- 5.8 The Local Development Plan comprises the London Plan 2021, the Camden Local Plan 2017 and the Kentish Town Neighbourhood Plan 2016. There is also the Camden Planning Guidance 2021 which relate to design, amenity and home improvements as referenced in the Officer’s Delegated Report; these form material considerations to the determination of the appeal.

- 5.9 In terms of the Camden Local Plan 2017 the Council has referred to Policy A1 (Managing the Impact of Development), Policy A4 (Noise and Vibration) and Policy D1 (Design).
- 5.10 In terms of the Kentish Town Neighbourhood Plan 2016, the Council made reference to Policy D3 on Design Principles.
- 5.11 This is considered to provide the relevant policy framework in respect of this appeal. We provide a review of the relevant policy context for the appeal proposal, which focuses on the considerations of design/appearance and neighbouring amenity. The Council did not refer to the relevant policies within the London Plan, however, given the nature of the proposal as a householder these seek to achieve similar objectives.

#### *Design and Appearance*

- 5.12 Paragraph 126 of the NPPF states the following:

*'The creation of high-quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live a work and helps make development acceptable to communities.'*

- 5.13 Paragraph 130 of the NPPF states that planning policies and decisions should ensure that developments achieve a number of objectives, including that they function well and add to the overall quality of the area; are visually attractive as a result of good architecture; and are sympathetic to local character and history, including the surrounding built environment...while not preventing or discouraging appropriate innovation or change.

- 5.14 Policy D1 of the Local Plan states that development should respect local character and context. Supporting paragraph 7.2 advises that developments should consider a range of factors such as the character and proportions of the existing building, where extensions and alterations are proposed; the character, setting, context and the scale and form of the surrounding buildings; the impact on existing rhythms and uniformities in the townscape; architectural detailing and materials; and the suitability of the proposed design to its intended use.
- 5.15 Policy D3 of the Neighbourhood Plan states that development must respect the historic appearance of Kentish town to reinforce rather than detract from its distinctiveness.

#### *Neighbouring Amenity*

- 5.16 Paragraph 130 of the NPPF states that developments should create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing future users.
- 5.17 Policy A1 of the Local Plan seeks to protect the quality of life of occupiers and neighbours by only granting permission to development that would not harm the amenity of residents. This includes factors such as privacy, outlook and implications to natural light and artificial light spill, odour and fumes as well as impacts caused from the construction phase of development. Policy A4 also seeks to ensure that residents are not adversely impacted upon by virtue of noise or vibrations, such as from the construction phases of development.

#### *Supplementary Guidance*

- 5.18 The Council's CPG on Design provides wide-ranging generic design principles and guidelines which would apply to all types of development. This document essentially



provides support to Policy D1 of the Local Plan. More detailed guidance in respect of householder type development is set out within the CPG on Home Improvements.

- 5.19 The Council's CPG on Home Improvements supports the Council's vision by providing information about how residents can adapt and improve their homes as circumstances and needs change. It also highlights what can be done without the need for planning permission.
- 5.20 The document set out some general design principles which should apply to all types of extensions and alterations, such that they should normally respect and compliment the original character and setting of the building together with the use of sympathetic materials. However, it also highlights that the surrounding built context and other development found within the locality is also an important consideration.
- 5.21 Section 2.1.1 deals with rear extensions. Of note, it highlights that in some cases, the rear elevations of properties can be important when seen in the wider townscape. It advises the following:
- 'Depending on where your home is located, there are times when the rear of the building may be architecturally distinguished, either forming a harmonious composition, or visually contributing to the townscape. Where architectural merit exists, the Council will seek to preserve it when it is considered appropriate. Some of the Borough's important rear elevations are identified in the Conservation Area appraisals.'*
- 5.22 In this case, the site is not located within a conservation area and the rear of the host dwelling is not considered to be architecturally distinguished or to make a positive contribution to the townscape. It is not visible from the surrounding roads. The rear elevations of properties within this terrace and other nearby terraces have been the subject

of various extensions and alterations over the years as will be evident on the Inspectors site visit.

- 5.23 Section 2.2 deals with roof extensions and dormers. As part of the preparation of an application, at section 2.1 it advises that consideration be given to the following:

*‘The existing roof form and any existing extensions to it;*

*The roof visibility and prominence in relation to gardens, street scene and wider area, considering land topography;*

*The pattern of development of neighbouring buildings to include historic extensions and new types of development’*

*Other rear extensions present at the neighbouring buildings which obtained planning permission through a planning application or permitted development.’*

- 5.24 It is therefore contended that any planning application should be assessed having regard to not only the details of the particular proposal, but other extensions and alterations which have taken place in the locality – whether by obtained by planning permission or by permitted development. For the Council to claim that any other development which may have been carried out in the locality to be irrelevant and not valid examples is not accepted. Indeed, the Council does not even appear to follow its own advice and guidance.

- 5.25 The document goes to advise the following:

*‘Previous guidance presented a hard-line approach of restricting development at roof level on any unbroken roofline. **Under this guidance, a more flexible approach is proposed, to give more weight to existing older extensions and to those allowed under permitted development, in the immediate context of the building being proposed for extension, within and outside Conservation Areas.**’*

*Not every unbroken roofline is of heritage value and therefore it is not worthy of preservation.'*

**[our emphasis]**

- 5.26 This section also goes to recognise that certain extensions, including rear dormer windows, can be permitted development and should be taken into account. It is therefore quite clear from the Council's own guidance that in view of the various permitted development rights which exist, this needs to be taken into account and a more flexible approach to certain type of householder development.

## 6.0 MAIN ISSUES

6.1 The main issue at this appeal relates to the impact of the proposed extensions and alterations on the character and appearance of the area, including their impact upon the host dwelling and terrace.

6.2 It is evident from the Decision Notice of Refusal and Officer's Delegated Report that the Council's concerns relate to the form, design and impact of the proposed rear dormer extension and the alterations to the roof of the rear three-storey outrigger. For the avoidance of any doubt, the Council raised no objection in respect of the ground floor rear infill extension.

### *Rear Dormer Window*

6.3 The application proposal relates to mid-terrace property located within an established residential area. The proposed rear dormer would occupy much of the rear roof area of the property. It is acknowledged that the proposal would not comply with some of the recommendations set out within the Council's SPG (and which is of fairly recent date) and would to some lesser degree arguably dominate the rear roof elevation and alter the character and appearance of this row of terraced houses.

6.4 However, the proposal would be sited on the rear roof slope of the building and would not be visible from other roads or public viewpoints, only from the rear aspects and rear gardens of other surrounding properties. The front elevation of the building, which is more attractive in appearance, would not be affected by the proposal with the exception of the installation of a small rooflight (noted elsewhere to represent permitted development) and which would have very little impact upon the overall character and appearance of the terrace.

- 6.5 It has been argued elsewhere within this Statement that the proposed dormer, or at least one of an identical size and bulk, could be erected under permitted development. It has been argued that the proposed dormer only requires planning permission due to the use of cladding on the rear face of the dormer rather than matching materials. For context the cladding panels selected were chosen due to them having a similar hue as slate tiles whilst also providing architectural features. These features and materials have been used elsewhere in London to great effect including on award winning developments.
- 6.6 Within the Officer's Delegated Report, Officers suggest that the impact of the dormer is exacerbated by the two built-up side parapet walls which are out of keeping with the original architectural features of the host building and disrupts the pattern and form of the rear building line of the terrace. However, it is contended that the rear elevation of this terrace, and indeed, the rear elevations of other parts of the wider terrace, has already been significantly altered by other development, such as the erection of rear dormer windows (as highlighted later in this Statement). The rear elevation also includes other architectural features such as chimneys and lower parapet walls at various points which highlight 'divisions' between properties and at the end of the terrace, such as at No.2 Oakford Road as illustrated in the photograph included within the Officer's Delegated Report. As such, such features would not be out of keeping; they could also be considered to fall within the specifications of permitted development. In any event the property already benefited from such parapet walls, and we understand that this has remained unchanged as part of the works.
- 6.7 It is contended that these side parapet walls would represent relatively modest features and would not significantly add to the visual impact of the proposal. The majority of the side walls would in effect comprise the side walls of the actual dormer roof extension with only slight projections beyond the main dormer itself. Again, these features are common within London to provide architectural detailing and have been commonly accepted to be agreeable under permitted development.

6.8 In terms of materials, the type of cladding proposed has also been used in the proposed ground floor infill extension and which was found to be acceptable by the Council. Whilst would have a different appearance to the use of tiling to match the main building, it is not unusual for extensions including dormers to be built in contrasting external materials and which, as in this case, would enhance the visual appearance of the development.

6.9 It is contended that the rear roof of this terrace of buildings is not of historic value and given the past extensions and alterations which have been made to this terrace of buildings, there is no unbroken roofline worthy of retention in this case.

*Alterations to Outrigger Roof*

6.10 This part of the appeal proposal would replace an existing pitch roof with a flat roof, with the side parapet wall feature on its north-eastern side retained. One of the main reasons for the change was to create some additional headroom space within this part of the dwelling.

6.11 Whilst it is recognised that the retention of the original roof pitch would be preferred, it is contended that the change to a flat roof would not be sufficiently harmful to justify a refusal. The flat roof would be located to the rear elevation of the building and would not affect the main roof of this terrace. This part of the appeal proposal would represent a relatively modest flat-roof area which would have very little impact upon the overall scale, character and setting of this building.

6.12 As such, not unlike the proposed rear roof dormer, it would not be highly visible or intrusive within the locality.

6.13 As highlighted elsewhere in this Statement, reference has been made to other flat roof areas of buildings within the area, including to the rear of properties along this same side of Oakford Road. It is also contended that reference should be given to permitted

development in this regard to. We have not provided images of these buildings at this stage as they can be seen during the course of a site visit, however, should the Inspector deem necessary these can be provided or be readily viewed online.

*General Comments*

- 6.14 As highlighted elsewhere in this Statement, it is noted that certain extensions and alterations to dwellings can often be carried out under permitted development. This would particularly apply to the proposed rear dormer addition. The Council's own Design SPG clearly highlights that dormer windows can quite often be carried out under permitted development and advises that applicants should look at this option.
- 6.15 The Council's own Design guidance clearly indicates that a more flexible approach should be undertaken, taking into account any nearby historical development and what can potentially be achieved under permitted development. In this case, the Council has sought to apply its own Design guidance in an unreasonably inflexible manner, particularly given the lack of visual harm caused by the appeal proposals.

## 7.0 COMMENTS ON OFFICERS DELEGATED REPORT – OTHER ISSUES

7.1 It is noted that there were no responses received in response to the advertisement of the application.

7.2 The Council raised no objection in respect of the proposed ground floor rear infill extension. This extension represents a very modest addition to the property, being located and physically enclosed by the surrounding buildings and adjoining rear additions. Its form and design are deemed to be acceptable.

7.3 In finding this element of the appeal proposal acceptable, the Council stated at paragraph 3.9 of the Officer's Delegated Report the following:

*'Given the modest size, form, location and height of the extension it is not considered it would have a detrimental impact on the character and appearance of the subject building or the surrounding area.'*

7.4 We concur with these conclusions and that the proposal would comply with Policies D1 and D3 of the Local Development Plan and relevant design guidance.

7.5 The Council did not raise any objection to the appeal proposal in respect of the potential impact upon neighbouring amenity. This issue was addressed at paragraphs 4.1 to 4.4 of the Officer's Delegated Report. The overall conclusion was as follows:

*'It is considered that the proposal would not result in undue harm to the residential amenities of neighbouring occupiers in regards to loss of light, overbearing, overlooking or privacy impacts.'*



- 7.6 We concur with these conclusions and that the proposal would comply with Policies A1 and A4 of the Local Development Plan and relevant design guidance. However, we wish to expand briefly on the acceptability of the proposal in this regard.
- 7.7 The ground floor extension is a modest infill extension which would not project beyond the existing rear projecting walls of the host dwelling and neighbouring dwelling to the south-west. No neighbouring windows would be affected.
- 7.8 The alteration to the roof of the three-storey outrigger would slightly increase the height, bulk and massing of this part of the dwelling. The existing mono-pitch roof would be replaced by a flat roof with its overall height taken up to that of the existing side wall feature. This outrigger is separated to the side common boundary with No. 2 to the south-west of 2m. The proposal would increase the height of the south-western wall of this roof alteration by 1.4m.
- 7.9 Given the degree of separation between this part of the dwelling and its relationship to No. 2 to the south-west, and the position of the rear facing windows at No. 2, there would be no adverse impact in terms of amenity. The change in overall scale, bulk and mass would be modest and this part of extended dwelling would not breach any 45degree angle from the neighbour's rear windows. There would be no change to the side facing windows in the extension.
- 7.10 The proposed rear dormer addition would increase the scale, bulk and massing of the existing roof of the dwelling and its visual impact when viewed from the rear gardens of neighbouring properties. However, any additional impact should be viewed within the wider context and scale of the terrace of buildings. This would not be significant.
- 7.11 The outlook from the rear facing windows and any potential overlooking from the rear dormer extension would not be dissimilar to the other existing windows on the rear

elevation. There is already a significant degree of mutual overlooking between dwellings which is not unusual in urban locations. Therefore, any additional overlooking would not be significant or harmful in this case. Further, a dormer window under permitted development could be constructed in the same location.

- 7.12 At paragraph 4.4 of the Officer's Delegated Report, it was advised that a condition would have been recommended for the flat roof of the extended three-storey outrigger, if considered appropriate to prevent this space from being used as a roof terrace. In our view, although it would be difficult for this roof area to be accessed and potentially used in this way, we have no objection to such a condition if it would make this element of the proposal acceptable in planning terms. Further it indicates that the Council were willing to consider this element of the proposal regardless of the wording of the description of development.
- 7.13 However, it is noted that the Officers did not suggest the imposition of such a condition in respect of the flat roof of the single-storey infill extension.
- 7.14 In view of the nature and position of the proposed extensions on the north-western rear elevation of the dwelling, it is considered that there would be no material impact in respect of the potential loss of daylight or even natural light to neighbouring properties.
- 7.15 There would some degree of noise and disturbance associated with any new development, such as during construction. In the case of householder development, like this, any disruption would be limited.
- 7.16 Therefore, the various elements of the appeal proposal are considered in neighbour amenity terms. It is further noted that neither neighbour had submitted any concerns in respect of the application.

## **8.0 OTHER MATERIAL CONSIDERATIONS – PERMITTED DEVELOPMENT**

- 8.1 It is strongly contended that permitted development can be, and most often is, a highly material consideration in the consideration and determination of planning applications.
- 8.2 It has been established at the Court of Appeal (decision: *Mansell v Tonbridge and Malling BC* [2017] EWCA Civ 1314), that consideration should be given to a ‘realistic fallback position in terms of how the site could be developed.’ In this instance it was not a requirement that the fallback position be implemented only that there was a realistic prospect of its implementation. The term realistic has also been subject of discussion within the courts. The courts finding that realistic is the opposite of theoretical and must be on sound footing. Given the prevalence of permitted development we consider this to be highly realistic.
- 8.3 In this case, it is argued that the various elements of the appeal proposal could be erected under the relevant sections of Part 1 of Schedule 2 of the GPDO 2015 (as amended) as permitted development and not therefore require planning permission, subject to some slight changes to the details of the scheme. It is understood that the dwelling has not previously been extended and is therefore original for the purposes of applying the GPDO.
- 8.4 It is understood that the site is not affected by any Article 2 (3) Land designations and is not subject to any Article 4 Directions which may further restrict the carrying out of householder permitted development rights.
- 8.5 The single storey ground floor infill extension is not an issue for the Council.
- 8.6 Whilst the Council has suggested that an alternative certificate of lawfulness application should be submitted for the extensions which is at issue at this appeal, such extensions

can be erected if an applicant believes the works to be permitted development without the need for a certificate. The certificate may be recognised as best practice, but it is not essential.

- 8.7 We therefore will demonstrate how the rear dormer extension and roof alteration to the three-storey outrigger could represent permitted development subject to some minor alterations to detail.

#### Class A

- 8.8 It is considered that the roof alteration to the three-storey outrigger should be assessed under Class A of the GPDO 2015 rather than Class B as it would involve the enlargement, improvement or other alteration of the dwelling house. Class B would normally deal with additions to an actual roof, and which may create additional volume and floorspace to that roof. This is not the case here it also does not extend the property per se but acts as an alteration. The alteration has been carried out in new London Stock Brick as opposed to salvaged ones, so whilst currently a contrast it will weather and age to match that of the existing in an organic manner.
- 8.9 The requirement of A(3) c is noted however, in this case, it is argued that it would be impractical to add a pitched roof from a constructional point of view. Any new pitched roof would have a height above eaves level which would obscure windows and/or compromise internal ceiling height which is the objective of such an alteration.

#### Class B

- 8.10 The proposed dormer roof extension, or very similar, would be considered under Class B of the GPDO 2015. The proposed dormer has been calculated to have a volume of circa 31.23 cubic metres which is well within the limitation of 40 cubic metres (criteria d).

- 8.11 The proposed dormer would not exceed the highest part of the roof (criteria b) as shown on the proposed elevations; even if the construction has resulted in the parapets resulting in modest lift above this could be easily remedied and certainly would not diminish the fallback position. The extension would be to the rear elevation not the front nor an elevation which fronts the highway thus complying with (criteria c).
- 8.12 The dormer does not include any raised platform, balcony or verandah (criteria e) and as set out the dormer is not, for the purposes of the GPDO, on Article 2 (3) land (criteria f).
- 8.13 Having reviewed the relevant criteria and conditions under Class B, we believe that the only part of this section the proposal could possibly fail would be Condition B.2 (a) in that matching materials would not be used, but a different type of cladding. With reference to Condition B.2 ((b) (i) (bb) the edge of the enlargement is set back by 0.2m from the eaves, though this can not be appreciated from ground level new flashing has been included in this area which is of a similar colour to the cladding.
- 8.14 It is contended that even if the current proposal just fell outside of the Class B requirements, as suggested above, a rear dormer roof extension of very similar scale, bulk and mass could quite easily be erected under permitted development. The visual impact upon the rear elevation of the host building and wider terrace would be very similar to that proposed at this appeal.
- 8.15 It is submitted that there is a realistic and not merely a theoretical prospect of implementing extensions and alterations the same or very similar to those the subject of this appeal. Therefore, this presents a material fallback position which should be accounted for in the overall assessment of the proposal. Indeed, should the appeal be dismissed the appellant will be minded to adapt the dormer to ensure compliance so that they can achieve their aims for the loft conversion. This would evidently incur costs which could have been avoided had the application been dealt with in a timely manner.

## 9.0 OTHER MATERIAL CONSIDERATIONS – PRECEDENT EXAMPLES

- 9.1 We express concern that within the Officer's Delegated Report, whilst Officers acknowledge that there are other examples of large full-width dormer windows on this side of Oakford Road, it is suggested that as a majority of these dormers have been implemented under permitted development rights and not a planning application, they are not considered to be relevant or valid examples.
- 9.2 It is also suggested by Officers that flat roofed three-storey outriggers are not features characterised to the rear of this terrace, although reference is made to rear outriggers which have been built-up to create terraces, and these examples are not considered to be relevant or valid examples.
- 9.3 However, in our view, it is strongly contended that provided a development was carried out lawfully, whether under permitted development or via a planning permission or even now lawful by virtue of the passage of time, it is highly relevant. These examples now form part of the street scene character and appearance of an area; for example, there is a flat roof outrigger only a couple of doors down from the appeal site. Indeed, larger dormer windows particularly where sited on rear roof elevations, are a common feature across not only this part of Camden Borough but across London and the wider country as a whole.
- 9.4 We wish to refer to an appeal decision issued in October 2021 which addressed two key issues – the relevance of the permitted development fallback position and that given this, that it is not always necessary to slavishly follow guidance set out within a Council's SPG. Whilst this appeal decision relates to a different location, the principles set out can equally apply to this current appeal proposal. This decision is attached at **Appendix 4**. We would draw the Inspector attention to paragraph 9 wherein the Inspector stated the following:

*'9. Whilst the appellant's argued 'fallback' position may be unlikely to take place for this reason, the Council has accepted that, on its own, a dormer window of the size proposed would not need planning permission on the appeal property. Dormers of this size, and very often in much more prominent positions than would be the case here, are being built all over the country under current PD rights. It does not seem appropriate to require the appeal proposal to slavishly follow guidance set out in SPG that is over 17 years old, when I have concluded above that the proposed dormer would not look out of place in this location.'*

- 9.5 Although the guidance issued by Camden is much more recent than that of the appeal scheme the conclusion that dormers are being built all over the country under current PD rights remains the same. The site is not in Article 2(3) land and there is no Article 4 direction in place to prevent such extensions coming forward elsewhere in the terrace. Indeed, as highlighted by officers there are some clear examples of such.
- 9.6 This section goes on to provide examples of similar forms of development which have taken place in Oakford Road and in the wider locality, including to the rear of properties in nearby Burghley Road and which visible from the rear of the appeal site and from between other buildings. Many of these examples will be apparent at a future appeal site visit.
- 9.7 From a visit to the appeal site, and from a review of aerial maps of the area, it will be apparent that there are many examples of rear dormer extensions in the locality. Within the Officer's Delegated Report itself, Officers refer to three Certificate of Lawfulness applications which were approved for the erection of rear dormer extensions, being at No. 16 Oakford Road in November 2020 (reference 2020/4831/P), No. 1 Oakford Road in September 2008 (reference 2008/3658/P) and No. 17 Oakford Road in June 2020 (reference 2020/1764/P).

- 9.8 There are also similar rear dormer extensions present at Nos. 12, 14 and 18 Oakford Road. This is also an example of a more modest rear and front dormer roof extension further along the road at No. 22 Oakford Road. Therefore, these few examples clearly illustrate that rear dormer roof extensions, similar in scale and appearance to that proposed at this appeal are commonly found within the locality and would not appear out of -keeping or visually harmful to the area.
- 9.9 Part of the current appeal proposal involves the creation of a flat roof area to the three-storey rear outrigger. We have already sought to argue that the impact of this relatively modest change to the roof of this part of the building is acceptable. Within the Officer's Delegated Report, reference is made to three examples where flat roofs have been created and although made into terraces, are again a feature of the area. These roof terraces are found at Nos. 12a, 34 and 36 Oakford Road with the latter two being clearly visible between buildings from Burghley Road. The appeal proposal would be a relatively minor feature and would not appear out of keeping or be visually intrusive.
- 9.10 It is therefore strongly contended that these other examples of similar development are valid and should be taken into account in the overall assessment of this appeal proposal. This further emphasises, regardless of the highly material fallback position, that the proposed development is justified in policy terms.
- 9.11 Given the above and the fallback position it is contended that the proposal is wholly acceptable.



## 10.0 CONCLUSIONS

10.1 This appeal has been submitted following the refusal of application reference 2021/0315/P on 5 April 2023 in respect of the **‘erection of single storey rear infill extension and conversion of loft space to habitable room with rear dormer window extension (retrospective).’**

10.2 The application was refused for one reason (see Decision Notice at **Appendix 1**), outlined below:

*‘The rear dormer window extension with flank masonry walls, by reason of its design, scale, bulk, siting and materials represents an overwhelming and incongruous addition, harming the original roof form and the character and appearance of the host building contrary to Policy D1 (Design) of the London Borough of Camden Local Plan 2017 and Policy D3 (Design Principles) of the Kentish Town Neighbourhood Plan 2016.’*

10.3 It is therefore evident that the concern of the Council relates to the design and impact of the proposed rear dormer extension. However, it is also evident that the Council had concerns over the alterations to the roof of the rear closet wing but was not captured within the reason for refusal.

10.4 In view of the circumstances surrounding this application particularly the warning of enforcement action, it is requested that this element be considered as part of the appeal. This element was shown on the submitted plans and the Council had the option to reword the description of development, as officers opted to do in terms of adding the word *retrospective*.

- 10.5 For the avoidance of doubt, the Council raised no objection in respect of the ground floor rear infill extension. Nor did the Council raise any objection on the grounds of impact upon neighbouring amenity or any other matter.
- 10.6 It is contended that whilst the proposal would involve a change to the character and appearance of the host building, its impact is considered to be limited and acceptable for this building and location. The proposal would not cause harm to the character or appearance of the area.
- 10.7 The Council appear to dismiss the relevance of the permitted development ‘fallback’ position which in our view can be a material planning consideration in the assessment of a proposal. It is argued that the permitted development ‘fallback’ position is highly relevant in this case and where it has been argued that both the rear dormer extension and roof alterations to the rear outrigger, or at least very similar are permitted development.
- 10.8 The Council fully acknowledges that there are several examples of other rear dormer windows and flat roof outriggers in the road and immediate locality, including some that have been used as terraces. However, the Council claims that these examples are not considered to be relevant or valid is not accepted. In our view, it does not matter how these were built but if they are lawful, they form part of the street scene and part of the context for the proposal.
- 10.9 It is quite clear from the Council’s own Design guidance that regard should be had to the surrounding built context, including other historic developments which have been erected under permitted development or via a planning permission, and the guidance should be applied flexibly.

10.10 Therefore, having regard to the details of the proposal and all other material considerations and the lack of harm caused, the proposal is considered to be acceptable in overall planning terms.

10.11 It is therefore contended that the appeal should be allowed, and permission be granted for the various extensions and alterations sought at this appeal.

**D&M PLANNING LIMITED**

***Chartered Town Planners***