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Your Ref: APP/X5210/W/23/3322805 &
APP/X5210/Y/23/3322808
Our Ref: 2022/0560/P & 2022/2098/L

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Dear Ruth,

**Planning (Listed Buildings and Conservation Areas) Act 1990, Town and Country
Planning Act 1990**

Appeals by Mr Martin Vander Weyer

Site Address: Flat A, 40 Earlham Street, LONDON, WC2H 9LH

I write in connection with the above appeals against the refusal of planning permission (Ref. 2022/0560/P) and listed building consent (Ref: 2022/2098/L) for the **Installation of rear balcony with metal grille front and hinged floor sections, including associated replacement of rear window with timber French doors; and External and internal alterations in connection with the installation of a rear balcony with a metal grille front and hinged floor sections, including associated replacement of rear window with timber French doors respectively.**

1.0 Summary

- 1.1 The appeal site comprises of a Grade II listed building located on the southern side of Earlham Street within the Seven Dials (Covent Garden) Conservation Area. Along with nos. 36 and 38, the host building forms part of an early 19th Century terrace with later shop premises to the ground floor of nos. 36 and 38. The original terrace and building comprises 4-storeys, plus basement level. A 2-storey roof addition, set back from the front and rear façades of the building, was erected in the late 1970's. The upper floors have since remained in use as residential units.
- 1.2 There are a number of Grade II listed buildings adjoining or located in close proximity to the application site. These include, the Cambridge Theatre, Earlham Street (South side); the Seven Dials Warehouse, nos. 27 to 33 Shelton Street (north side) and nos.

42-54 Earlham Street (south side); and the Crafts Centre, nos. 29-43 (odd) Earlham Street (north side; including nos.8-26 Short's Gardens).

- 1.3 Planning permission was refused on 01 December 2022 (a copy of the decision notice was sent with the questionnaire) for the installation of a rear balcony with metal grille front and hinged floor sections, including associated replacement of a rear window with timber French doors. It was refused for the following reason:

1. The proposed balcony and French doors, by virtue of their detailed design, siting, scale, form and materials, would add unnecessary visual clutter, resulting in an unsympathetic addition which harms the character and appearance of the host building to the detriment of its special architectural and historic interest as a listed building, contrary to policies D1 (Design) and D2 (Heritage) of the London Borough of Camden Local Plan 2017.

- 1.4 Listed building consent was refused on 01 December 2022 (a copy of the decision notice was sent with the questionnaire) for the external and internal alterations in connection with the installation of a rear balcony with a metal grille front and hinged floor sections, including associated replacement of a rear window with timber French doors. It was refused for the following reason:

1. The proposed balcony, French doors and associated alterations, by virtue of their detailed design, siting, scale, form and materials, would add unnecessary visual clutter, resulting in an unsympathetic addition and would result in loss of historic fabric, harming the special architectural and historic interest of the listed building, contrary to policy D2 (Heritage) of the London Borough of Camden Local Plan 2017.

- 1.5 The Council's case is set out in detail in the Officer's Delegated Report and it will be relied on as the principal Statement of Case. The report details the appeal site and surroundings, the site history and an assessment of the proposal. A copy of the report was sent with the questionnaire.

- 1.6 In addition to the information sent with the questionnaire, I would be pleased if the Inspector could also take into account the following information and comments before deciding the appeal.

2.0 Status of Policies and Guidance

- 2.1 In determining the above mentioned application, the London Borough of Camden has had regard to the relevant legislation, government guidance, statutory development plans and the particular circumstances of the case. The full text of the relevant policies was sent with the questionnaire documents.

2.2 The London Borough of Camden Local Plan 2017 (the Local Plan) was formally adopted on the 03 July 2017 and replaced the Local Development Framework Core Strategy and Camden Development Policies documents as the basis for planning decisions and future development in the borough. The relevant Local Plan policies as they relate to the reasons for refusal are:

- A1 Managing the impact of development
- D1 Design
- D2 Heritage

2.3 The Council also refers to the following supporting guidance documents:

Camden Planning Guidance

- CPG Design 2021 - chapters 1 (Introduction), 2 (Design excellence) and 3 (Heritage)
- CPG Home Improvements (January 2021) – chapter's 'Key principles' (pages 16-32), 'Materials' (pages 36-37), 'Rear extensions' (pages 40-41) and 'Balconies and terraces' (pages 54-55)
- CPG Amenity 2021 – chapters 1 (Introduction), 2 (Overlooking, privacy and outlook) and 6 (Noise and vibration)

Other guidance:

- Seven Dials (Covent Garden) Conservation Area Statement (adopted 1998)

2.4 The Council also refers to the following legislation, policies and guidance within the body of the Officer's Delegated Report:

- National Planning Policy Framework (2021)
- London Plan (2021)

3.0 Comments on the Appellant's Grounds of Appeal

3.1 The appellant's grounds of appeal are summarised as follows:

1. Design and impact on listed building and conservation area
2. Precedent and material consideration
3. Benefit

4.0 Design and impact on listed building and conservation area

4.1 The Appellant argues that the proposal would be a modern and contemporary addition to the rear in terms of its design and materials, and respects the historical value of the building, especially given the secluded location and sensitive design of the proposed development. The Appellant considers that an elegant simple balcony rail would improve the overall appearance as seen from the courtyard and a French window would add symmetry to existing rear fenestration.

- 4.2 The Appellant states in support of the appeal that the proposed development would not harm the character and appearance of the Seven Dials Conservation Area and that the special architectural interest of the listed building at the front would be preserved.
- 4.3 The Appellant considers the simplicity, rhythm and original architectural intention of the Georgian rear elevation to no longer be evident and all that remains of the original fabric is the brickwork which would be unaltered by the proposal.
- 4.4 In regard to amenity space, the Appellant highlights Paragraph 7.23 of Local Plan Policy D1 (Design) which encourages applicants to explore all options for the provision of new private outdoor space.

5.0 Response to ground of appeal 1

- 5.1 Given that the proposed alterations would affect only the rear of the building, it is firstly brought to the attention of the Planning Inspector that there is no dispute between the Council and the Appellant as to the potential impact of the proposals at the front of the appeal site.
- 5.2 Both parties agree that the character and appearance of the Seven Dials (Covent Garden) Conservation Area and the special architectural interest of the listed building at the front would be preserved (as also stated in Paragraph 3.9 of the Officer's Delegated Report).
- 5.3 Notwithstanding the above, and contrary to the Appellant's view, the Council considers that the appeal proposal would add unnecessary visual clutter to the rear elevation of the building, involving harmful and insensitive changes to the distinctive qualities of the historic host building, and as such, would fail to preserve its special architectural interest at the rear.
- 5.4 While the Appellant refers to Paragraph 7.23 of Local Plan Policy D1 (Design) in support of the appeal proposal for additional rear amenity space, it is important to note that the wording of this part of the policy simply encourages applicants to '*explore*' options for new private outdoor space. Whether an option (or proposal) would be acceptable or not depends on the consideration of a number of material factors, some of which are set out within Paragraph 7.2 of Policy D1 (and as listed and taken into consideration in Paragraph 3.1 of the Officer's Delegated Report). These include:
- the character, setting, context and the form and scale of neighbouring buildings;
 - the character and proportions of the existing building, where alterations and extensions are proposed;
 - the prevailing pattern, density and scale of surrounding development;
 - the impact on existing rhythms, symmetries and uniformities in the townscape;
 - the composition of elevations;

- the suitability of the proposed design to its intended use; and
- the wider historic environment and buildings, spaces and features of local historic value.

- 5.5 In this regard, while the Appellant argues that the appeal proposal would introduce a modern and contemporary addition in the form of an elegant simple balcony rail and a French window which would respect the historical value of the building, it is the Council's view that in this particular case, the alterations fail to meet the high standards of design considerations as listed above, so raising significant design and heritage concerns (the Planning Inspector is referred to Paragraphs 3.10 – 3.20 of the Officer's Delegated Report in this regard).
- 5.6 The proposed metal grille balcony would be a particularly unsympathetic and insensitive addition in so far as it would extend across almost the full width of the rear elevation at 1st floor level and protrude over 3 times further forward in depth than 2 existing narrow Juliette balconies at 2nd and 3rd floor levels. The appeal proposal would therefore have a significantly more noticeable and pronounced impact on the rear elevation than the Juliette balconies in situ. The existing character of this rear elevation is otherwise one of a well-preserved, vertically proportioned composition, and as such, a wide, horizontally proportioned, metal grille balcony as proposed would be out-of-keeping and harmful to the existing character and appearance of the rear façade of the appeal site.
- 5.7 Furthermore, the proposed design of the cantilevered balcony with raiseable grille floor on a supporting four-legged, platform structure would not be a typical feature of a 19th century building of this kind and is considered to represent a clumsy design approach that would add uncharacteristic features, bulk and unsympathetic materials to the rear elevation which would detract from the special significance of the historic building.
- 5.8 Additionally, the proposed introduction of timber French doors would involve the replacement of a 1st floor window which is one of four remaining vertical sliding sash windows on this elevation. Indeed, notwithstanding that 2 rear windows and openings at 2nd and 3rd floor levels have been replaced with doors and small Juliette style balconies at some point in the past and that the existing windows that remain may not be original, the appearance of the rear of the building still clearly follows a traditional and historic pattern of a flat vertically proportioned façade with single glazed, timber framed, horned sash windows.
- 5.9 In this regard, the Appellant's view that the simplicity, rhythm and original architectural intention of the Georgian rear elevation is no longer evident is strongly disputed. Rather, it is the Council's view that the existing fenestration remains fairly consistent and uniform in appearance; the repeating rhythm and pattern of fenestration being plainly evident in its well preserved and historic configuration, which allows an appreciation of the original openings and composition. The window

proposed to be replaced forms part of this composition and still retains its original form and proportions.

- 5.10 The removal of this window and surrounding brickwork, therefore, including any associated internal alterations, would amount to a loss of some historic fabric and a serious disruption to the characteristic and historic rhythm of fenestration on this rear façade. Along with alterations that have already taken place in the past which involved the loss of historic fabric following the introduction of Juliette balconies and doors, the proposed removal of the existing window and brickwork at 1st floor level and replacement with French doors and balcony, would contribute cumulatively to the harm caused to the appearance of the listed building and integrity of the rear elevation as a whole.
- 5.11 In this context, the Appellant's assertion that the proposed French window would add symmetry to existing rear fenestration and that original brickwork fabric would be unaltered by the appeal proposal is considered by the Council to be misjudged. Heritage assets are irreplaceable, and as such, any harm or loss requires clear and convincing justification. No clear or convincing justification has been put forward by the Appellant in either the application or appeal submissions to show that the appeal proposal would be necessary to preserve the significance of the listed building.
- 5.12 The Appellant also argues that the character and appearance of the listed building would not be harmed by the appeal proposal due in part to the secluded location at the rear of the appeal site. The Council disagrees with this view as it does not appear to give due weight and consideration to the significance of the special architectural and historic interest of the listed host building and setting.
- 5.13 Though the rear elevation of the appeal site is not visible from within the public realm, its visibility is not necessarily the deciding factor when considering proposals in relation to listed buildings. Retaining the integrity of the building, original architectural intention and fabric are important considerations as they essentially provide the significance of the building which in this instance is the simplicity and rhythm of the rear elevation. Therefore, even though the rear elevation of the appeal site may be secondary and have lesser significance to that of the front, it nevertheless has significance for the building as a whole and for the listed setting, and is a material consideration.
- 5.14 Overall therefore, the proposed balcony and associated alterations, by virtue of the detailed design, siting, scale, form and materials, would add unnecessary visual clutter for the reasons set out above (and in Paragraphs 3.10 – 3.20 of the Officer's Delegated Report), resulting in an unsympathetic addition and loss of historic fabric, harmful to the character and appearance of the rear of the host building, and detrimental to the special architectural and historic interest of the Grade II listed building and its' rear setting.

- 5.15 As such, the appeal proposal is considered to be unacceptable and would not accord with Local Plan Policies D1 (Design) and D2 (Heritage) and related guidance in design and heritage terms.
- 5.16 In considering whether to grant planning permission and listed building consent for any proposed works, the Council has had special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses, under s.16 of the Listed Buildings and Conservation Areas Act 1990 as amended by the Enterprise and Regulatory Reform Act (ERR) 2013. Special attention has also been paid to the desirability of preserving or enhancing the character or appearance of the Seven Dials (Covent Garden) Conservation Area, under s.72 of the Planning (Listed Buildings and Conservation Areas Act 1990) as amended by the Enterprise and Regulatory Reform Act (ERR) 2013.

6.0 Precedent and material consideration

- 6.1 The Appellant argues that the principle of the proposal follows the precedents of several modern additions already established at the rear elevation of the building and that the proposed full width balcony respects and preserves the integrity of the traditional and historical pattern and should be a material consideration.
- 6.2 The Appellant also asserts that the projection of the proposed balcony would be similar to that of the 4th floor terrace (Flat H) and therefore the impact of the integrity of the listed building would not be harmed more than what is currently established. The Appellant concludes that the rear façade would appear more complete as a result.

7.0 Response to ground of appeal 2

- 7.1 The Appellant has referenced in the Statement of Case, a number of examples of modern additions to the rear elevation of the building considered to be relevant and to set a precedent for the current proposals.
- 7.2 It is firstly emphasised that the Council has taken all of the examples listed in the Appellant's Statement of Case (and other relevant examples) into consideration during the assessment of the application. In this regard the Planning Inspector's attention is brought to the 'Relevant History' section of the Officer's Delegated Report (pages 2-3) which lists all relevant planning history taken into consideration. The Inspector is also referred to Paragraphs 3.17 – 3.20 of the same Report which sets out consideration of a number of these examples specifically referenced by the Appellant in the Planning Statement which supported the original application submission.

- 7.3 Turning to the examples referenced by the Appellant in the Statement of Case, it is firstly noted that 2 existing Juliette balconies at 2nd and 3rd floor levels on the rear elevation of the appeal site building do not appear to have planning approval. They are also not considered to represent examples of similar existing alterations as they are noted as being significantly smaller and narrower in size than the proposed balcony. As such, they have a more understated use for green planting typical of balconies of this kind, rather than a more active use for private sitting out purposes as proposed.
- 7.4 Additionally, and in contrast, the proposed metal grille balcony would be a particularly unsympathetic and insensitive addition in so far as it would extend across almost the full width of the elevation at 1st floor level and protrude over 3 times further forward in depth than the existing narrow Juliette balconies, thereby having a significantly more noticeable and pronounced impact on the rear elevation than the Juliette balconies in situ.
- 7.5 As such, the 2 existing Juliette balconies at 2nd and 3rd floor levels are not considered to represent examples of similar existing alterations, nor provide any precedent for the proposed works, especially in the absence of any formal planning consideration for the examples in situ.
- 7.6 The Appellant also refers to an existing balcony at 4th floor level on the host building (Flat H). It is firstly noted that the Appellant has incorrectly highlighted the front balcony of Flat H in yellow (rather than the rear balcony) in the extract 4th floor plan on Page 7 of the Statement of Case.
- 7.7 Importantly, this rear balcony, and indeed the terrace space at 5th floor level, is located on a modern extension granted consent in 1979 for the provision of 2 additional storeys to nos. 36 - 40 Earlham Street (ref. P14/57/B/HB2156(R)). Approval was subsequently granted in 2010 for trellis screening to part of the 5th floor level rear elevation (2010/5276/P & 2010/5452/L) to match existing trellis screening at 4th and 5th floor levels.
- 7.8 Notwithstanding that all the subsequent alterations at 4th and 5th floor levels have been to contemporary parts of the building rather than to historic fabric of the listed building as would be the case with the appeal proposal, it is also important to note that the balcony space at these floor levels differs from the appeal proposal in so far as they are located in a number of set-back positions on the modern addition to the building. The approval and consent in 2010 also did not involve any extension beyond the existing building line, but simply the addition of some timber trellises to enclose part of the 5th floor level. As such, the Planning Officer at the time considered that *'the method of screening is contextually sympathetic and in keeping with the character of the upper two floors'* and *'sufficiently discreet so as to avoid harm to the appearance of the listed building'*.

- 7.9 This would not be the case with the proposed 1st floor level balcony which would directly impact adversely on the historic fabric and appearance of the rear of the appeal site for the reasons stated above (and as set out in Paragraphs 3.10 – 3.20 of the Officer's Delegated Report), particularly through the loss of some historic fabric, the addition of unnecessary visual clutter, and a serious disruption to the characteristic rhythm of fenestration and general composition on the rear façade.
- 7.10 The Appellant also refers to alterations and additions to provide residential accommodation (7 flats and 2 maisonettes) and 2 shops at nos. 36, 38 and 40 Earlham Street which were granted planning permission and listed building consent in 1979 (P14/57/B/28193(R) and HB2156(R) respectively). While there are no records available to demonstrate the consideration given or assessment that was undertaken at the time, it is important to recognise that these are historic approvals which pre-date current policies and guidance, as well as, the adoption of the Seven Dials (Covent Garden) Conservation Area (adopted in 1998).
- 7.11 As such, it is uncertain whether the proposal would receive planning approval were it to be considered under current policies and relevant guidance. Nevertheless, it is confirmed that the example has been taken into account during the assessment of the appeal proposal and is not considered by the Council to set a precedent for the proposed alterations.
- 7.12 Another example which the Appellant asserts should be taken into account as a clear precedent for the appeal proposal is a Lawful Development Certificate granted for the use of the basement and ground floors for retail and dog grooming at no. 36 Earlham Street (2021/3272/P) granted on 20/07/2021. The application was submitted to establish that the use of the site as retail (pet shop) and a dog grooming facility would still be considered to fall within Class E use. This example was not referred to in the Officer's Delegated Report as it is not considered to be relevant to the assessment of the appeal proposal, especially as no external works of alteration were involved.
- 7.13 In summary, the Council has been mindful throughout the course of the application to take into consideration all the examples (and other relevant examples) suggested by the Appellant as setting a precedent for the appeal proposal during the assessment of the application. However, none of the examples are considered by the Council to be sufficiently similar or comparable to set any precedent for the appeal proposal. Therefore, while due attention has been paid to past changes, the appeal proposal has also been assessed in light of its site context and historic setting, based on the individual merit of the proposal, and having due regard to all relevant current policies and guidance, planning and appeal history.

8.0 Benefit

- 8.1 The Appellant asserts that the proposals would be suitable for their intended use and that the benefits of the scheme outweigh any less than substantial harm.

9.0 Response to ground of appeal 3

- 9.1 Paragraph 199 of the National Planning Policy Framework (NPPF) states that when considering the impact of a proposal on the significance of the designated heritage asset (the appeal building), great weight should be given to the asset's conservation. This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. The more important the asset, the greater the weight should be.
- 9.2 As heritage assets are irreplaceable, any harm or loss requires clear and convincing justification. It is the Council's view that in this case, the Appellant has not put forward a clear or convincing justification in either the application submission or Statement of Case to show that the proposal would be necessary to preserve the significance of the listed building.
- 9.3 Furthermore, the Appellant states on Page 5 of the Statement of Case that the appeal proposal *'includes designing a balcony which would ensure less than substantial harm to the special architectural and historical interest of the building'* and in Section 5 concludes that *'Any harm would be less than substantial when outweighed by the merits and quality of the proposed scheme.'* The Council agrees that the appeal proposal would cause harm to the significance of the listed building and that the harm caused would be less than substantial.
- 9.4 Under these circumstances, Paragraph 202 of the NPPF advises 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.
- 9.5 It is the Council's view that there is no public benefit arising from the proposal to offset the harm caused by the appeal proposal.
- 9.6 The appeal proposal is solely for the purposes of providing private amenity space for use by the occupant of Flat A (the Appellant). Indeed, the Appellant confirms this in support of the appeal proposal when referencing Paragraph 7.23 of Local Plan Policy D1 (Design) which encourages applicants to explore all options for the provision of *'new private outdoor space'*.
- 9.7 Additionally, the Appellant also states on Page 5 of the Statement of Case that the appeal proposal *'would ensure the Flat (the appeal site) is flexible and adaptive to modern living requiring suitable private amenity space in upgrading to a good standard of residential accommodation.'* Again, this confirms the wholly private nature of the appeal proposal.

9.8 As such, the appeal proposal fails to meet the requirements of Paragraph 202 of the NPPF in the absence of any public benefit arising from the development to offset the harm caused to the significance of a designated heritage asset.

10.0 Conclusion

10.1 Having regard to the entirety of the Council's submissions, including the content of this statement, the Inspector is respectfully requested to dismiss the appeal.

10.2 If any further clarification of the appeal submission is required, please do not hesitate to contact Tony Young on the above direct dial number or email address.

Yours sincerely,

Tony Young

Planning Officer - Planning Solutions Team
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London Borough of Camden