

**THE DEVELOPMENT:** VARIATION OF CONDITION 3 (APPROVED PLANS) OF PLANNING REFERENCE 2020/5917/P DATED 20/08/21 FOR THE ERECTION OF A DOUBLE-STOREY SIDE EXTENSION, SINGLE-STOREY REAR EXTENSION WITH TERRACE ABOVE, INSTALLATION OF A BIN STORE ENCLOSURE IN THE FRONT GARDEN AREA, NAMELY TO ENLARGE THE ROOF TERRACE AT GROUND FLOOR LEVEL.

**THE SITE:** 131 KING HENRY'S ROAD, LONDON, NW3 3RB

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**FINAL COMMENTS ON BEHALF OF THE APPELLANT, NIMISHA AGARWAL**

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**Introduction**

1. These final comments respond to the submissions of the Local Planning Authority, Camden Council (the "**LPA**") dated 23 July 2024 (the "**LPA Comments**"). They will not repeat points set out in the Appellant's statement of case prepared by Maddox Planning and provided on 24 April 2024. These comments adopt the abbreviations set out in the Appellant's Statement of Case with the exception of "133's West Window" which has been substituted for "133's Bay Window."<sup>1</sup> These comments do not respond to every point made in the LPA's Comments, but failing to respond does not indicate acceptance of a point.

**Corrections**

2. By way of correction, the LPA<sup>2</sup> has mis-stated the size of the terrace. The usable area of the consented terrace is not greater than 12msq; the proposed terrace is in fact 18msq<sup>2</sup> (not 24msq). As the Inspector will see from the plans, the balustrade is set back from the end of rear elevation and, importantly, the Appellant is not seeking a terrace for the full width of the rear elevation, contrary to LPA Comments para 1.8. As specified in the Appellant's Statement of Case (para. 3.14(i)), the proposed terrace still leaves a large section of green roof either side of the proposed terrace.

**CPG Amenity**

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<sup>1</sup> It is correct that 133's Bay Window, the window in question, is situated on the west side of the building at 133. The Appellant's Statement of Case had called it "133's West Window" because it is situated to the west of the terrace when facing out to the garden. To avoid confusion, these Comments refer to the window as "133's Bay Window."

<sup>2</sup> And others, such as the comments from 129 of 16/07/2024

3. The LPA's interpretation of, and reliance on, para 2.4 of CPG Amenity (see Officer's Report ("OR") para. 4.2 and LPA Comments para 1.3) is misplaced.
4. Paras. 2.4-2.6 of CPG Amenity are not relevant here. The section is entitled "Separation between buildings". CPG Amenity para 2.4 and the worked example illustrate the focus of the paragraphs is on buildings directly facing one another. This is also reflected in the proposed mitigation measures, such as positioning "buildings" at an angle (CPG Amenity para. 2.8)<sup>3</sup>. This stands in stark contrast to the more considered nuanced section on "Balconies and Roof Terraces" at CPG Amenity paras. 2.11-2.12.
5. This case concerns terraces on neighbouring properties, where those properties have already been constructed. A balcony has already been approved at less than 18m separation distance in permission 2020/5917/P. The difference in separation distance between the consented terrace and that proposed is c. 2.1m (see PDF p. 12 of the Appendices to the Appellant's Statement of Case, drwg 259-PL-802-00). The possibility of positioning the relevant areas 18m apart has long since passed. The LPA's interpretation and application of CPG Amenity, considering para 2.4 both relevant and ostensibly important, would stifle development where there are neighbouring terrace houses – a common occurrence in London. That is obviously not its intention given it has consented multiple other balconies and ground floor extensions which do not satisfy the 18m rule.
6. The 18m guidance is therefore entirely inappropriate in this instance. The LPA's approach does not reflect the wording, structure, or content of SPG Amenity, is fundamentally counter-intuitive, and is not a point it felt problematic for previous consents (including 2020/5917/P). As set out in the Appellant's Statement of Case the LPA has either misinterpreted,<sup>4</sup> or misapplied, its own policy. Nothing contained in LPA Comments para. 1.3 shows that to be wrong.
7. Roof terraces have a dedicated section in CPG Amenity - "Balconies and roof terraces" (para. 2.11) is the correct section of the guidance, which is to be considered alongside CPG Home Improvement. The proposed terrace is compliant with both sets of guidance: it has been carefully sited and designed in that it is set at an angle to 133's Bay Window, there is a reasonable distance between the proposed terrace and 133's Bay Window and it is subordinate to the roof form (further detailed in para 3.14 of the Appellant's Statement of Case).

## Loss of privacy

8. The case put forward in LPA Comments paras 1.5-1.7 is misconceived.

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<sup>3</sup> Of course, even if the Inspector were to conclude this section of CPG Amenity does apply, the proposed terrace extension obviously is at an angle to the bay window of 133.

<sup>4</sup> The Inspector will of course be aware of the rules of interpretation of policy, set out in e.g. **Gladman Developments Ltd v SSHCLG [2021] EWCA Civ 104** at para. 32. I.e. policy is to be interpreted "*objectively in accordance with the language used, read in its proper context... A sensible approach should be adopted in seeking the true sense of the policy in question.*"

## *Impact*

9. A terrace was approved under 2020/5917/P, from which it can be inferred the impact on privacy on 133's Bay Window were considered acceptable. The question is whether the expansion of that terrace would generate "unacceptable" loss of privacy, which is the threshold for refusal in Policy A1. The focus of the Council's case appears to be that simply bringing the terrace closer to the first floor creates a greater and more direct overlooking of 133, materially reducing neighbouring occupants' privacy (LPA Comments para 1.5).
10. Even putting aside for the moment how the terrace will actually be used, the change in distance between the "old" views and the "new" views is small, 133's Bay Window remains at an angle to the balcony, and a person standing at the closest points on the new terrace, looking directly into the bay window (however unlikely that is) would not see noticeably more of the habitable room at 133 than can be seen in the approved design: see the lines of vision in Appendix 2 to the Appellant's Statement of Case (Appendices PDF p.13) and the Appellant's Statement of Case paras 3.11-3.13). Any increased opportunity for overlooking and consequent change in impact on privacy is therefore minimal if it exists at all. The LPA's Comments do not have a clear answer to this, simply repeating the point that the terrace will be closer (albeit still 6m apart). That in itself should be enough to dispense with this point.
11. However, the Appellant also makes the point that it is highly unlikely the new terrace would be used in a manner which materially impacts privacy (Appellant's Statement of Case para. 3.12-3.13). The suggestion by the Council the Inspector should discard how the terrace will actually be used (LPA Comments para 1.6) makes little sense, for two reasons. First, in deciding whether to grant planning permission one generally considers the ordinary impacts of the development – one does not, for example, consider the noise impacts of a housing development assuming every person living there is a drum enthusiast. Here, the focus of users of the terrace is on enjoying the terrace and view of the garden below, rather than spending any time sat at an oblique angle staring into 133's Bay Window. Second, of course, this must be seen in the context of the wider legal framework: if the residents of 131 were acting in an unusual manner and materially interfering with the privacy of 133 King Henry's Road, the occupiers of 133 may be able to restrain the matter by private nuisance.<sup>5</sup>
12. The Inspector will of course during their site visit<sup>6</sup> be able to stand on the terrace and compare the "old " and "new" views in person. The Appellant also asks the Inspector, to compare the views from the edge of the proposed terrace to 133's Bay Window with that of the views from edge of the approved terrace to 129. The views are not dissimilar and the Inspector will find the area of green roof left between the edge of the proposed

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<sup>5</sup> See e.g. the Supreme Court's decision in ***Fearn v Board of Trustees of the Tate Gallery* [2023] UKSC 4**.

<sup>6</sup> For the avoidance of doubt, the Appellant welcomes a site visit. Ms Wiener's claim in her objection dated 16.07.24 that the Appellant does not want a site visit is untrue and the Appellant is confused as to the basis of this claim.

terrace to the 133 is not smaller than that left between the edge of the approved terrace and 129.

13. Finally, the Appellant has set out further reasons why there is no unacceptable loss of privacy (Appellant's Statement of Case para 3.14) and how the terrace has been designed to mitigate overlooking (Appellant's Statement of Case para 4.4) to which the LPA's Comments disclose no answer.

#### *Other permissions*

14. While each planning permission must be considered on its merits, it is trite law that other similar decisions are material considerations and that good administration requires like cases to be treated alike.<sup>7</sup> A number of comparable permissions are put forward in the Appellant's Statement of Case at paras. 3.17-3.18 and again the LPA's attempts to distinguish their relevance is unpersuasive (LPA Comments paras 1.8-1.10).
15. For example, the smaller wooden terrace at 133 King Henry's Road<sup>8</sup> is at least as close to the bay window of their neighbour on the other side (135 King Henry's Road) as the terrace sought in this case. The LPA's case depends entirely on proximity to 133's Bay Window. The location, therefore, is the key consideration. However, the LPA does not have an answer to the Appellant's point that it has previously approved a terrace in similar proximity to a bay window - by focusing solely on size (LPA Comments para 1.9), the LPA seeks to avoid the issue, rather than answer it.<sup>9</sup> Contrary to suggestions from Objectors,<sup>10</sup> as the Inspector will see on site there is a direct view into the window of 135.
16. The terrace at 137A is not, contrary to the LPA's Comments, of a similar size to the terrace approved under 2020/5917/P. 137A's terrace is significantly larger than both the approved and proposed terrace of 131. It extends both to the east and west of 137A's bay window, so is broader (and closer to the neighbours) than the terrace approved at 131 under 2020/5917/P, (see too Statement of Case Appendices PDF p. 55). Based on the scale drawings submitted with 137A's application (this drawing was provided in the Statement of Case Appendices, p. 54),, the Appellant estimates the terrace at 137A to be c. 30msq which is significantly greater than the proposed expanded terrace 18msq. Again, therefore, terraces larger than that sought have already been granted permission in this area as identified in the Appellant's Statement of Case.<sup>11</sup>

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<sup>7</sup> **North Wiltshire DC v SSE [1993] 65 P&CR 137**

<sup>8</sup> The wooden terrace is at 133, not 135 as mis-stated in LPA Comments para. 1.9.

<sup>9</sup> For fullness sake, reliance by the owners of 133 on the hawthorn tree as a screening tool (their comments of 16/09/2023) is answered completely by the LPA's own photo at LPA Comments para. 1.9, showing the clear intervisibility from 133's terrace into the bay window of 135.

<sup>10</sup> E.g. the Mawson objection of 22.07.2024`

<sup>11</sup> This deals with a number of the concerns raised by objectors (not the LPA) regarding use of the terrace in relation to noise etc, and the erroneous suggestion (e.g. Ms Wiener's objection of 16.07.2024, Ms Lawrence of 24.07.2024) that no terrace as large as that sought has been approved in the Conservation Area. It clearly has.

## Conclusion

17. This is an application for a minor expansion of a terrace which will sit on a roof which has already been approved in a heavily constrained area. It is in accordance with the development plan. It would allow an increase in amenity space, enhancing the property and increasing the suitability for use by young families<sup>12</sup>, consistent with the Camden Local Plan and in particular Policy A1 (Statement of Case para 3.16 and Section 4). Contrary to some of the objections<sup>13</sup>, it is acceptable in design and heritage terms (OR Section 3, LPA Comments para 1.10). There were more letters of support than opposition at application stage from the local community, including immediate neighbours, notably lower ground floor of 133 as well as the top floor flat of 131 (who has a direct view of the Appellant's terrace): see the summary in OR PDF p.1-2.<sup>14</sup>
18. The sole basis of refusal by the LPA is the suggestion that this minor expansion would result in a loss of privacy contrary to Policy (OR 4.3 and 5.1, LPA's Comments at similar). Here, that is said to arise from moving the end of the terrace some 2m closer to 133's Bay Window than the distance already approved under 2020/5917/P.
19. However, A1 only prohibits development which would cause an "unacceptable" harm to amenity. In this case, the change in distance is small (and not dissimilar to the distance between the approved terrace and 129 on the other side), the window remains at an angle, and anyone looking in would not see noticeably more of 133's Habitable Room than has already been approved. Furthermore, the LPA is assuming an entirely unrealistic use of the terrace, and how the terrace will actually be used should not be discounted. The Council's reliance on its 18m guidance is arbitrary, and wholly misplaced in this context. The amendment does not, therefore, materially reduce the privacy of the occupants of 133 (*cf* LPA Comments para 1.5)
20. The Appellant therefore submits there will be no harm to privacy caused by the extension. Even if the inspector were to disagree with that, the harm is certainly not so severe as to be considered "unacceptable". It is clearly outweighed by the substantial benefit of this minor expansion to allow more amenity space for users of the flat at 131. The Inspector is respectfully asked to allow the appeal.
21. The conditions referred to by the LPA are accepted by the Appellant.

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<sup>12</sup> The comments objectors (such as Ms Wiener (16.07.2024) and Mr Rincroft (22.07.2024) indicate that the wish to raise a young family is irrelevant to the planning decision. That is wrong on two fronts. First, obviously, the suitability of any property for family use relates to the character and use of land so is a material consideration. Second, the personal circumstances of a particular applicant can also be material considerations: **Basildon DC v SSETR [2001] JPL 1184**.

<sup>13</sup> E.g. Meier objection of 10.07.2024, Katzen of 17.07.2024, Findlay of 11.07.2024

<sup>14</sup> For fullness sake, these have been reviewed. All matters that relate to planning merits that have been raised by objectors have been addressed in the Appellant's Statement of Case or this response. Other objections (for example, complaints about "scope creep"), do not go to the planning merits of this decision.