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2nd January 2024

STATEMENT OF CASE

Planning application to Camden Council ref 2024/4446/P
Application Property: 12 Modbury Gardens, London NW5 3QE

1.0 Introduction

1.1 The application was submitted on 12th October 2024, confirmed as valid on 22nd October 2024, and determined on 12th December 2024. The application was refused.

1.2 The decision notice received from Camden Council (the LPA) gives a single reason for refusal, that:

the proposed alterations to the rear elevation, by reason of their scale and design, would represent a bulky, incongruous and unsympathetic addition that would fail to preserve the character and appearance of the host property and surrounding area.

1.3 In which case it was declared that the LPA consider the development:
contrary to policy D1 (Design) of the LB Camden Local Plan (2017).

1.4 The LPA further provided a Delegated Report which provides more detail on their reasoning.

2.0 Reasons for refusal

2.1 It is felt helpful at the outset to identify those issues where there is no disagreement between the Appellant and the LPA, based on the Officer's Delegated Report, and those issues which are in dispute:

- There is no objection to the proposed mansard roof extension [paragraph 3.5 of Officer's Delegated Report].
- The replacement of existing windows and doors in the front elevation is acceptable [paragraph 3.13].
- The bin storage area is acceptable [paragraph 3.14].
- The installation of metal railings and a gate at the front of the property is in keeping with existing pattern of development and is acceptable [paragraph 3.15].
- The proposals (including first floor rear terrace and the rear alteration works) would cause no harm to the amenity, sense of enclosure or outlook of the occupants of neighbouring properties; therefore the proposals comply with Local Plan policy A1 [paragraph 4.5].
- The proposals relating to trees and landscaping are acceptable and comply with Local Plan policy A3 [clause 5.3].
- The amalgamation of two existing residential units into a single dwellinghouse is acceptable and in accordance with Local Plan policy H3 [paragraph 7.1].
- The lowering of the floor level in the rear part of the lower ground floor by approximately 400mm is not considered to be underground development and is exempt from the requirement to provide a basement impact assessment [paragraph 8.1].

2.2 It is considered that the sole issue to be considered in the determination of this appeal is whether or not the alterations at the rear of the property would cause material harm to the character and appearance of the host property and surrounding area.

2.3 The Officer's Delegated Report provides additional detail on the Council's justification for the refusal decision:

- There are no two storied full width rear extensions along this side of Modbury Gardens that have been granted under current planning policies and guidance [paragraph 3.9].
- The rear extension and terrace are not considered subservient to the host building and would result in an unacceptable level of bulk and mass to the rear of the property and would disrupt the rhythm of rear elevations along the terrace [paragraph 3.10].
- Original features including an existing timber sash window at upper ground floor would be lost [paragraph 3.10].
- The massing of the proposed alterations would detract from the historic character of the rear elevation [paragraph 3.10].
- The full width nature of the extension, combined with the shape and size of the windows (sic) and doors at lower and upper ground floor levels would result in a bulky box like appearance. The full width upper ground floor extension would fail to be subordinate to the host building. The proposed fenestration does not relate to the existing rear elevation [paragraph 3.11].
- 1.8m high glass privacy screens are not in accordance with CPG (Home Improvements) guidance and are considered unacceptable due to the proposed materials (glass). As per the CPG, privacy screen should be made of natural materials and support plants to grow on them [paragraph 3.12].

3.0 The site, surroundings, and heritage significance

- 3.1 The site is located on the north side of Modbury Gardens, a short cul-de-sac on the west side of Queens Crescent, close to its junction with Prince of Wales Road. There are three similar culs-de-sac immediately to the north.
- 3.2 The property as existing comprises three storeys – lower ground, upper ground, and first floors, with a London pattern slate roof with a central valley, concealed behind parapets to the front and rear. The front elevation is in painted render; the rear of the building is largely in yellow London stock brickwork, with some areas of the brickwork painted white.
- 3.3 Modbury Gardens and its adjoining culs-de-sac date from the late Victorian period. The narrow roadway and small scale of the properties give the street an intimate and informal

atmosphere; the individual properties are painted different colours from each other, which contributes positively to the character and identity of the street.

- 3.4 It should be noted that the LPA have not listed or 'locally listed' any of the buildings on Modbury Gardens, nor included the street in a conservation area. The appellant recognises that there is some historic character to the application property and the surrounding area, but the significance of the non-designated heritage asset must be considered a low level in context of the LPA's failure to take any steps to identify or describe heritage significance of the building, terrace, or wider area, or create an increased level of protection for the asset by doing so.
- 3.5 As set out in Historic England's key guidance document 'Conservation Principles, Policies and Guidance', understanding the significance of places is vital. Significance is based on an appreciation of the fabric, how and why it has changed over time, and then to consider:
- who values the place, and why they do so
 - how these values relate to the fabric
 - their relative importance
 - whether associated objects contribute to them
 - the contribution made by the setting and context of the place
 - how the place compares with others sharing similar values
- 3.6 In our view the significance of this non-designated heritage asset is based almost exclusively in the character of the streetscape (a narrow and short cul-de-sac with short terraces both sides). The houses' street elevations are of largely uniform design but the streetscape is enlivened with the application of a differing paint colour on each property. The individual houses are attractive examples of modestly sized late Victorian housing, with detailing such as ashlar banding, cornicing, and mouldings well preserved and largely unaltered on the street elevations of most of the houses.
- 3.7 It is important to note that the roofscape & the rear elevation of the terrace are not visible from anywhere in the public realm. This must necessarily diminish the significance of these parts of the non-designated heritage asset, because far fewer people will be in a position to appreciate them.
- 3.8 It should also be noted that rear elevations of historic properties were invariably considered by their designers to be of lesser importance than the street elevations. This is shown in the

design of no. 12 Modbury Gardens by the different materiality (painted render on the front elevation, unadorned stock brickwork on the rear elevation), the absence of decorative detail at the rear, and the addition of 'service' elements such as the rainwater goods collecting water from the main roof, and the small chimney stack on the boundary with no. 11.

3.9 Furthermore, the rear elevations of every building on Modbury Gardens have been substantially altered in the past. Many of the properties were individually altered and extended in the 1960s, and further piecemeal alterations and extensions in more recent years have resulted in a haphazard pattern of development, with little remaining original fabric, and no discernible rhythm or consistency across the terrace. This too must inevitably diminish the heritage significance of the rear elevation of the terrace.

4.0 Relevant Planning History

4.1 The Officer's Delegated Report lists one relevant planning application at the application site, and fourteen relevant planning applications to neighbouring properties on both sides of Modbury Gardens. It should not be necessary to duplicate the list here; the Appellant does not dispute the relevancy of any of the named applications.

4.0 Planning policy

The National Planning Policy Framework (September 2023)

4.1 So that sustainable development is pursued in a positive way, at the heart of the National Planning Policy Framework (NPPF) is the presumption in favour of sustainable development. Achieving sustainable development means that the planning system has three overarching principles which are interdependent. These are the economic objective, the social objective and the environmental objective.

4.2 As stated in paragraph 11 of the NPPF, planning policies and decisions should apply the presumption in favour of sustainable development and approve development proposals that accord with an up-to-date development plan, without delay.

4.3 In terms of achieving well-designed places, policies and decisions should ensure that developments will function well and add to the overall quality of the area; are visually attractive; are sympathetic to local character and history; establish or maintain a strong

sense of place; optimise the potential of sites; and create places that are safe, inclusive and accessible and which promote health and well-being [paragraph 130].

The Development Plan

- 4.4 The Development Plan comprises the London Plan (2021) and Camden's Local Plan (2017).
- 4.5 The Officer's Delegated Report identifies four relevant Local Plan policies: A1, A3, D1, and H3, and four relevant supplementary planning guidance documents: Design, Amenity, Home Improvements, and Basements.
- 4.6 Camden's Local Plan policy A1 seeks to protect the amenity of occupiers and neighbours.
- 4.7 Local Plan policy A3 sets out that the Council will protect and enhance sites of nature conservation and biodiversity.
- 4.8 Local Plan policy D1 sets out that the Council will seek to secure high quality design in development. Of particular note are the following sub-clauses to the policy wording setting out the Council's requirements:
- a. respects local context and character;
 - b. preserves or enhances the historic environment and heritage assets in accordance with policy D2 Heritage;
 - e. comprises details and materials that are of high quality and complement the local character;
 - n. for housing, provides a high standard of accommodation.
- 4.9 Local Plan policy H3 seeks to protect existing homes, and specifically states the Council will resist the loss of two or more residential units.
- 4.10 Local Plan policy D2 is also mentioned in passing in the Delegated Report. This is primarily concerned with the protection of designated heritage assets – conservation areas, listed buildings, and archaeological remains. The policy also states that the council will seek to protect non-designated heritage assets, and the effect of a proposal on the significance of a non-designated heritage asset will be weighed against the public benefits of the proposal, balancing the scale of any harm or loss and the significance of the heritage asset.

4.11 As mentioned in para 2.1 above, the Officer's Delegated Report confirms that the proposals are acceptable and in accordance with policies A1, A3, and H3. The only area of dispute is the Council's contention that the proposals do not comply with policies D1 and D2.

Supplementary Planning Documents

4.12 The Home Improvements CPG (2021) is the only one of the four named supplementary planning documents that is examined in detail in the Officer's Delegated Report.

4.13 Delegated Report paragraph 3.3 sets out Council requirements for a new roof extension or mansard. Paragraph 3.5 confirms that the proposed mansard roof extension is acceptable.

4.14 Delegated Report paragraph 3.6 states that Home Improvements CPG requires rear extensions should:

- be subordinate to the building being extended;
- be built from sympathetic materials;
- respect and preserve the original design and proportions of the building;
- respect and preserve existing architectural features;
- be carefully scaled in respect of height, width, and depth;
- allow for the retention of a reasonably sized garden.

4.15 Delegated Report paragraph 3.7 sets out that Home Improvements CPG states a new balcony should:

- be subordinate to the roof slope being altered;
- preserve the roof form;
- metal railings are preferred;
- privacy screens be no less than 1.8 metres height, made of natural materials and support plants to grow on them.

4.16 Delegated Report paragraphs 3.09 to 3.12 outline the Council's assertion that the proposals are not in accordance with the Home Improvements CPG.

5.0 Consideration of the issues

- 5.1 The Council's assertion that the proposed alterations would be unacceptably bulky, not subservient to the host property, and would harm the historic character of the rear elevation of the terrace is considered to be the main issue in dispute.
- 5.2 The complaints about the fenestration to the rear elevation, and the materiality and design of the privacy screens to the proposed roof terrace, are considered to be of secondary importance.

Form, scale, mass, and design of the extension

- 5.3 With regard to the form, scale, mass, and design of the extension, it is considered that a number of key points undermine the Council's assertions.
- 5.4 The relevant planning history in the Officer's Delegated Report include applications on both sides of Modbury Gardens. These include relatively recent approvals for no. 2 Modbury Gardens (2024/4001/P), no. 3 Modbury Gardens (2021/3519/P), no. 6 Modbury Gardens (2017/7044/P), and no. 5 Modbury Gardens (2014/7270/P).
- 5.5 In each case the approved proposals involved rear extensions and/or alterations that resulted in a two-storey high full width rear extension.
- 5.6 At nos. 2 and 3 there were existing two-storey extensions, full width at lower ground floor level and part width at upper ground floor level; in both cases the Council approved an infill extension at upper ground floor level to create a full width two-storey high rear extension. Although the approved extension in each case was a relatively small incremental addition to existing built form, the applications could and should have been refused if the Council felt they made an already unacceptable situation worse.
- 5.7 The two-storey extensions at nos. 2 and 3 are the same depth at lower ground and upper ground floor levels, extending to a line approximately 6.4 metres deep from the original rear wall of the property. Both properties also have internal floor levels in their rear extensions that derive from the original dogleg stair, and as such the internal floor levels and the overall height of each extension are markedly higher, relative to the original building, than the alterations we applied for at no. 12.

- 5.8 In contrast, the alterations applied for at no. 12 included lowering of the internal floor levels in the extension to align with the levels of the original house. The depth of the built form alterations at no. 12 was proposed to be 6.4 metres at lower ground floor level (this matched the existing footprint – no extension at this level was proposed) and stepped back to 4.6 metres at upper ground floor level. As such, the approved alterations at nos. 2 and 3 created two-storey full width rear extensions that are clearly and demonstrably more bulky and boxlike, larger, and more dominant when compared to the host building than the proposed alteration at no. 12 which has been rejected by Camden.
- 5.9 It makes no sense therefore for the Officer's Delegated Report to state that the proposed alterations at no. 12 would not be subservient to the host building, and/or would result in an unacceptable level of bulk and mass to the rear of the property. This is clearly contradicted by their approval of the recent applications at nos. 2, 3, 5, and 6 Modbury Gardens.
- 5.10 It is considered that the Council is making an entirely artificial distinction between the properties on each side of Modbury Gardens. The two terraces were built at the same time, and the houses were originally of exactly the same size and design. The heritage significance of one of these properties would not differ depending on which side of the street it is on.
- 5.11 The overall form of the proposed rear alterations at no. 12 was carefully considered to provide additional accommodation needed by the applicant, whilst minimising the bulk and scale of the external form, and any adverse effects on neighbours' amenity. We researched the existing context and the planning history of the street and took a particular cue from the approved designs of rear extension at nos. 5 and 6 Modbury Gardens, which are stepped in a similar manner to the proposals at no. 12. The overall depth of built form at each level as existing at nos. 5 and 6 are comparable to our proposal; at no. 5 the depths of lower ground and upper ground extensions are 5.3 and 3.6 metres from the original rear wall of the host property; at no. 6 the corresponding measurements are 7.7 and 3.6 metres.
- 5.12 Our design philosophy was described in the submitted Design & Access Statement.
- 5.13 While the applications at nos. 5 and 6 Modbury Gardens date from before the adoption of the current Local Plan, they are still relatively recent and as such it follows that they are a relevant precedent. The current policies are worded in such a way as to be subject to

interpretation, and the wording is sufficiently similar to previous policies to make it very difficult in our view for the Council to claim there has been a sea change in their policy.

5.14 The image in fig. 1 below is a screenshot of a three dimensional view from Google Earth which gives an overview of the rear elevation of the north terrace at Modbury Gardens. No. 12 is the third property from the left.

5.15 It can very clearly be seen that the existing situation is that the rear of each house has been altered independently and with no reference to its neighbours. Each house has a completely different form and massing. A number of original window openings remain at upper ground and first floor level, but most of the properties have a non original pattern of fenestration to the upper storeys – most noticeably nos. 8, 9, 10, 12 and 13. Nos. 13 and 14 have also had their rear parapets extended upwards to accommodate roof extensions, which has disturbed the original parapet line.



Fig. 1 Google Earth view of rear of north terrace

5.16 In view of this clear absence of a coherent pattern of development, it is illogical for the Council to argue both that the proposed extension would detract from the appearance and character of this rear elevation [Delegated Report paragraphs 3.9 & 3.10] and that it would

disturb the rhythm of rear elevations along the terrace [paragraph 3.10]. There is literally no aspect of the existing rear elevation of the terrace that could possibly be described as possessing a regular rhythm.

5.17 We would also dispute very strongly the Council's characterisation of the existing situation at the rear of no. 12 as 'retaining the original historic appearance of a typical Victorian mid-terrace property. The existing two-storey rear extension dates from the 1960s; its unusual part-monopitch roof slope falling to the rear pays no attention to context, established archetypes, or the historic character of the property. The side facing glazed screen with spandrel panels, and the general low quality of the detailing are typical of the immediate postwar era, but would be more suited to a commercial building. The form and design of the existing extension can hardly be viewed as a positive contributor to the property.

5.18 One important motivation of the applicant in submitting this application was to reconfigure the rear part of the building to remove the unsightly and incongruous 1960s extension so that the building can be made to fit better with its context. In the absence of a clear pattern of development to the rear of the north terrace, it is not inappropriate to look at the south terrace for more coherent examples.

5.19 It is contended that the LPA has not taken into account the positive benefits of removing the existing 1960s extension, which is of low quality design and construction, and extends significantly further into the rear garden at upper ground level than the proposed extension.

5.20 Officer's Delegated Report paragraph 3.10 also mentions loss of original features, namely an upper ground floor sash window in the rear elevation. This should be considered in light of the (extremely low) heritage significance of the already much-altered rear elevation of the non-designated heritage asset. We consider this in isolation would not be sufficient reason to refuse the application.

Fenestration design

5.21 Ordinarily, minor points of design such as the shape and size of a window, or the design and materiality of architectural detail, could be resolved by dialogue between the planning officer and the applicant or agent; it is confusing and disappointing that the Council did not take this opportunity.

5.22 Delegated Report paragraph 3.11 refers to 'shape and size' of the window and door openings at lower and upper ground floor levels. It is not particularly clear what the problem is. It would be a valid design philosophy to deliberately differentiate certain aspects of the design of an extension from the host building, to assist with its reading as an addition to the original built form. Home Improvements CPG states that rear extensions should 'respect and preserve original design and proportions of the building, including its architectural period and style', however this clearly *does not* mean that a new extension should be designed in a mock historic style.

5.23 The section of Home Improvements CPG relating to roof extensions contains a presumption that the type, design and alignment of dormer windows should relate to fenestration below. However, there is no such presumption in the section that covers rear extensions.

5.24 The photos of rear extensions in figs. 2 & 3 below are copied from Home Improvements CPG and are clearly presented in that document as examples of good design. In each case the extensions are contemporary styled extensions on a historic property and contain fenestration that is wider/larger or different in proportion, when compared to the original windows on upper storeys.



Fig 2. Rear extension to Georgian property, Tonkin Liu architects



Fig 3. Rear extension to Victorian property, Whiteman architects

5.25 The proportions of the rear facing fenestration at lower and upper ground level have been carefully considered. Whilst the proportion of the two new openings in question do not match the historic sash windows to the property, the openings relate to each other as they

match in width. We consider they are appropriate to the design and proportions of the extension.

5.26 A relatively wide opening for sliding or sliding/folding doors at garden level is very commonly seen on approved designs for rear extensions to historic properties across the Borough. We cannot accept that there is any problem with the submitted design in this respect.

5.27 While the Council might have had a preference for smaller/narrower window openings on the upper ground floor level, we consider this is not unambiguously required by the wording of Home Improvements CPG.

5.28 The existing situation at the rear of neighbouring property no. 9 Modbury Gardens (a full width extension approved in 2002) has also been noted for context: as can be seen from the photo Fig. 4 below, this presents a contemporary appearance with large areas of glazing.



Fig 4. Rear of no. 9 Modbury Gardens

Design and materiality of the privacy screens

5.29 It is noted that Home Improvements CPG does express a preference for natural materials to be used for privacy screens to upper floor external terraces, and for the screen to be designed in such a way as to support climbing plants.

- 5.30 As the provision and dimensions of the privacy screens is not an issue, we consider it would have been simple for the LPA to negotiate the change in materiality and design detail through dialogue. Again it is disappointing that this was not done. Even so, the desired change to this element could be effected by inclusion of a condition along the lines of 'notwithstanding the contents of submitted drawings 333/025 revision C, 333/026 revision C, and 333/028 revision C, the privacy screens to both sides of the proposed external terrace at first floor level are to be constructed using natural materials and detailed in a way as to support climbing plants.' If desired the condition could also require detail drawings of the proposed screens to be submitted for the LPA's approval prior to installation.
- 5.31 The Appellant would accept such a condition, and if the appointed Planning Inspector is minded to uphold our appeal we would respectfully invite them to include such a condition if they deem it necessary.
- 5.32 However, whilst it is accepted that the submitted proposals for the privacy screens do not fully accord with the Council's Home Improvements CPG, nevertheless having regard to the existing examples of glass privacy screens to two properties on the opposite terrace, and the rear elevation being visible from neighbouring properties only, it is considered the level of harm that would result from an approval of the submitted plans would be negligible.

6.0 Conclusion

Design of the rear extension

- 6.1 The proposed extension is clearly subordinate in scale and massing to the existing house, is comparable to the height and footprint area of existing extensions at other properties, is not out of proportion to the size of the site, and does not adversely affect neighbours' amenity or the established character of the local area. There appears to be no good reason why it should be refused.

Effect on neighbours' amenity

- 6.2 As accepted by the LPA there would not be any significant adverse effects on neighbours' amenity as a result of the proposed works.

Effect on the character of the local area

- 6.3 The property is not in a Conservation Area.

- 6.4 The Council have stated that the design of the mansard roof extension and the proposed alterations at the front of the property are acceptable.
- 6.5 The proposed rear extension is entirely to the rear of the existing terraced house and as such is not visible from the public realm. It will demonstrably have zero effect on the street scene.
- 6.6 There would be no significant adverse effects on the established local character of the area as a result of the proposed works.

Summary

- 6.7 The reasons given by Camden for refusal of the application are illogical, arbitrary, inconsistent when considered alongside approved extensions at other comparable properties in the immediate neighbourhood, not based on a proper application of policy, and insufficient to justify the refusal decision.
- 6.8 It has been shown that the proposed rear extension is of an appropriate design and preserves the residential amenities of adjacent and nearby properties. Accordingly, the proposals comply with Local Plan policies D1 & D2, and the London Plan.
- 6.9 There are no material planning considerations that prejudice the granting of planning permission for the proposed development. Thus, having regard to Section 38(6) of the Compulsory Purchase and Planning Act 2004 there is thus a strong presumption that planning permission should be granted. The Inspector is therefore requested to allow this appeal with a condition that materials match those existing.