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Ward: St Johns

Officer: Hugh Miller

Address : 69 Fortess Road, NW5

Date of Application : 13/06/1998

Application Number: PE9800794      Case File: E12/19/14

Proposal :

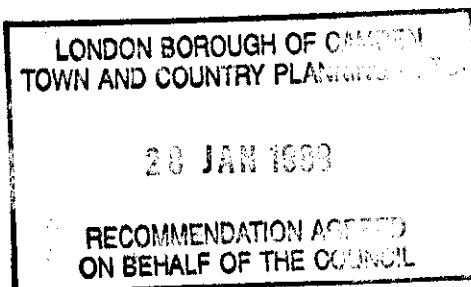
The construction of a roof terrace, including the retention of metal railings around the flat roof of the rear extension the decking-over of the roof surface mid way between first and second floor levels, as shown on drawing numbers: A3/ elevations, A4/Plan.

RECOMMENDATION SUMMARY :      Refuse planning permission and enforce

Applicant

Agent

M.A. Bowring.  
69 Fortess Road  
London  
NW5 1AG



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## OFFICER REPORT:

### 1.0 SITE

A basement plus three storey terraced property situated on the west side of Fortress Road south west of Lady Somerset Road and east of Bellina Mews. The building has office use on the ground and part of the basement and residential use on the upper floors.

- 1.1 There is an existing roof terrace at no. 61. The adjoining property numbers 71-73, has an extension on the second floor level, as do other properties in this terrace. At the rear is Bellina Mews, comprising 7, 2-storey dwellings and their flank wall is situated close to the boundary of no. 69.

### 2.0 PROPOSAL

- 2.1 The retention of metal railings measuring approximately 1.0m high around the flat roof of the rear extension including the decking-over of the roof surface mid way between first and second floor levels.

### 3.0 RELEVANT HISTORY

- 3.1 An enforcement complaint regarding the erection of the railings was made the summer 1998. This application seeks to regularise the unauthorised works.

### 4.0 RELEVANT POLICIES

- 4.1 Borough Plan policies are:-  
UD3- good standard of design.
- 4.2 Unitary Development Plan policies:-  
Relevant policies include the following:-  
EN6- noise, EN16 (new)- setting of development, EN27- neighbour amenity, EN51- alterations to existing buildings, SPG- DS5 visual privacy & overlooking, DS6- noise & vibration, balconies & terraces 16.4- 6.
- 4.3 The Inspector's report on the Public Local Inquiry into objections to the Deposit Draft Unitary Development Plan was published in January 1997. The Council's Environment Committee formally considered the report's findings and the Council's response at a special meeting on April 29th 1998. The Committee agreed a draft Statement of Decisions on all of the Inspector's recommendations save those relating to the Inspector's chapter on the Central London Area. Proposed modifications and the Statement of Decisions were placed on deposit on 10th June 1998 for a statutory consultation period of six weeks, which expired on 22nd July 1998.

The Council's proposed Modifications constitute a material planning consideration to be taken into account alongside the Council's draft UDP policies, the Inspector's report and the policies contained within the statutory Borough Plan.

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Objections to the proposed Modifications are currently being processed, and it is anticipated that the Council will be in a position to formally respond to these soon.

5.0 **CONSULTATIONS**

5.1	<b>Adjoining Occupiers</b>	Number Notified	13
		Replies Received	02
		Objections	02

Concern about loss of privacy, noise, height of railings & impact on habitable room, impact on quality of life.

6.0 **ASSESSMENT**

- 6.1 The main issues are loss of privacy/overlooking and noise nuisance.
- 6.2 The application is seeking to regularise (i) the erected metal railings to the flat roof area of the rear extension and (ii) the decking-over of the roof surface to facilitate the use of the roof as a terrace.
- 6.3 The roof terrace measures approximately 14sqm. The erected metal balustrade is situated behind the parapet of the roof of the existing rear extension. Access to the terrace is via an existing rear window.
- 6.4 The roof terrace is situated midway between the first and second floors. Approximately 3.0 metres from the roof terrace are located two windows to the bedrooms of the self-contained flats at first and second floors at nos.71-73 Fortress Road.

**Design**

- 6.5 The balustrade would be acceptable in terms of scale and character and it would accord with Borough plan policy UD3. Policy EN16 (new) would be complied with in terms of the prevailing architectural style of the area.
- 6.6 In terms of design, materials and execution the proposed is acceptable and it would not detract from the appearance of the building.

**Neighbour amenity: loss of privacy/overlooking/visual intrusion.**

- 6.7 The proposal would not accord with EN27. Policy justification states that "It is important that in all development proposals, ... any harmful effects to the amenity of occupiers of existing buildings .... and neighbouring properties is avoided, especially in the case of residential buildings". The proposal would cause demonstrable harm through overlooking, loss of privacy and an unnecessary degree of visual intrusion into the bedroom of the adjoining property.

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- 6.8 The occupier of the adjoining first floor flat would be the most vulnerable of the two dwellings, because the bedroom would be directly overlooked from the terrace. Due to the difference in floor levels, there would be less direct overlooking into the room of the second floor flat, although there would be some loss of amenity.

#### **Noise**

- 6.9 In the UDP, noise as an amenity issue is referred to under policy EN6 and the Supplementary Planning Guidance (SPG) DS6. Policy justification to EN6 states that "Noise and vibration, can affect health and have a direct impact on local amenity. Its impact can therefore be a material planning consideration".
- 6.10 Both adjoining flats would experience noise from the terrace. In this instance, the element of noise is onerous for the adjoining occupiers. Given the proximity of the terrace to these habitable rooms, officers are of the opinion that the terrace use would be unacceptable on grounds of noise.
- 6.11 It would not comply with SPG guidelines on balconies/terraces in that it would cause unreasonable harm to the adjoining occupiers.
- 6.12 The proposed would not reduced the amount of daylight or sunlight into the habitable rooms of the adjoining occupiers. Neither would it impact on the amenities of the dwellings at rear, in Bellina Mews.
- 6.13 The substantive issues raised by the adjoining occupiers letters of objections has been referred to in paragraphs 6.7-6.10.

#### **Conclusion**

- 6.15 The development is contrary to policies which seek to protect neighbour amenities. The proposal would impact significantly on the adjoining occupiers, to the detriment of their amenities, and it would be unacceptable. Under Section 172 of the Town and Country Planning Act 1990 an Enforcement Notice should be served.

#### **7.0 LEGAL COMMENTS**

- 7.1 The comments of the Borough Solicitor is incorporated in this report.

#### **8.0 RECOMMENDATION**

- 8.1 That planning permission be refused for the following reason:

- 1 The roof terrace by reason of its location has led to a material loss of privacy, from overlooking, and noise and disturbance to the occupiers of the two adjoining flats at first and second floors at 71-73 Fortress Road, contrary to policies EN6, EN27, DS5 and DS6 of the emerging Unitary Development Plan, and contrary to SPG guidelines on Balconies and Terraces.

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**B**

8.2 That the Borough Solicitor be instructed to issue an Enforcement Notice under Section 172 of the 1990 Act and officers be authorised in the event of noncompliance, to prosecute under Section 179 or take direct action under section 178 in order to secure compliance with the notice.

8.3 The Notice shall allege the following breach of planning control:-

The construction of a roof terrace including the erection of 1.0 metre high metal balustrades to the flat roof of the three storey rear extension, between first and second floors.

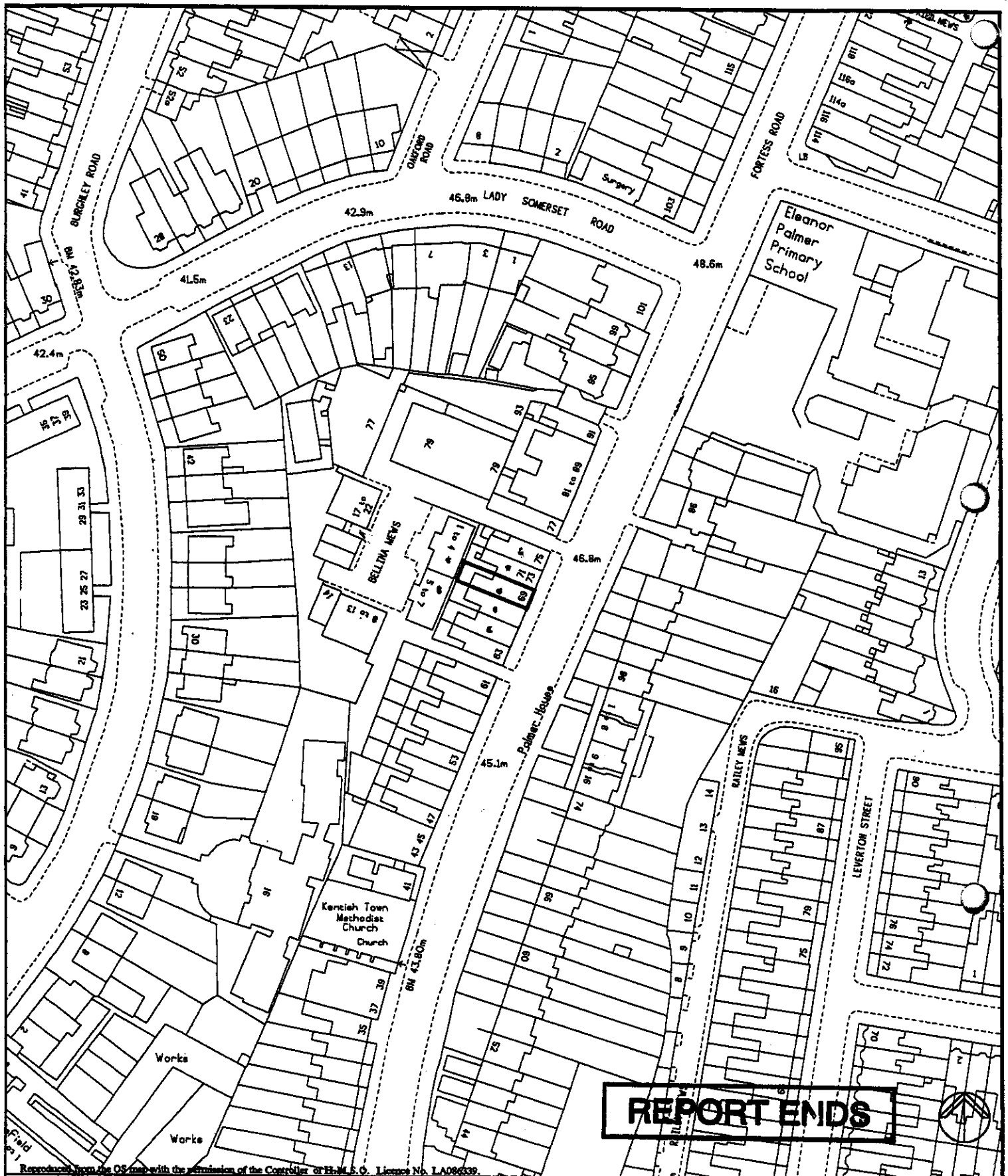
8.4 The Notice shall require that within a period of three months of the Notice taking effect, the balustrades shall be removed and the use of the roof as a terrace shall cease.

8.5 **Reasons why the Council consider it expedient to issue the notice:**

- i) The use of the roof terrace is considered to cause harm, through a material loss of privacy, from overlooking, noise and disturbance to the occupiers of the two adjoining flats at first and second floors at 71-73 Fortess Road, contrary to policies EN6, EN27, DS5 and DS6 of the emerging Unitary Development Plan, and contrary to SPG guidelines on Balconies and Terraces.

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London Borough of Camden

PE9800794

Environment Department

Town Hall Extension

Argyle Street Entrance

London WC1H 8EQ

69 YORKESS ROAD, NWS

Dates: 12-Nov-1998

Scale: 1 : 1250

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