

**THE PENTHOUSE FLAT  
23 PRINCE ALBERT ROAD, LONDON,  
NW1 7ST**

**PLANNING & HERITAGE STATEMENT**

JUNE 2014

PREPARED AT THE OFFICES OF

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## **CONTENTS**

## **PAGE NO**

1.	INTRODUCTION	1
2.	SITE DESCRIPTION AND PLANNING HISTORY	2
3.	BACKGROUND TO THE APPLICATION	3
4.	PLANNING POLICY	4
5.	PLANNING CONSIDERATIONS	8
6.	SUMMARY & CONCLUSIONS	14

## **APPENDICES**

1. Email dated 30 April 2014
2. Email dated 9 May 2014
3. Correspondence dated 16 May 2014
4. Aerial photograph

## 1. INTRODUCTION

- 1.1 This Planning Statement has been prepared by Chase & Partners on behalf of the residents of The Penthouse, 23 Prince Albert Road, London, NW1 7ST who purchased the property in September 2012. The works relate to the property's roof garden where the applicants have undertaken some maintenance works involving alterations to existing features that have been in-situ for a period in excess of 10 years.
- 1.2 The applicants have carried these works in good faith and did not realise planning permission was required. They have already removed some items from the roof garden at the Council's request and would like to work with the Council positively in order to resolve matters.
- 1.3 Retrospective planning permission is sought for:
- two replacement air conditioning condensers and two small support units;
  - non-fixed planters;
  - replacement decking; and
  - glass balustrade.

The application also includes the proposed installation of a hot tub.

- 1.4 The statement sets out the background to the proposals, the planning policies relevant to determination of the application and assesses the proposal against those policies.

## 2. SITE DESCRIPTION AND PLANNING HISTORY

- 2.1 The application site is located on the northern side of Prince Albert Road on the corner of the junction with Albert Terrace. Immediately to the north-west is Primrose Hill and to the south are Regents Canal and London Zoo. The northern side of Prince Albert Road is predominantly residential.
- 2.2 The application site occupies the upper two floors of an 8 storey, flatted residential building, built in the 1960's. It is a modern red-brick building with windows in each elevation. On the southern elevation the flats have balconies. The building is not listed, but lies within the Primrose Hill Conservation Area.
- 2.3 There is a limited planning history for the building as a whole and the applications of relevance to the application premises are as follows:
- i. TP23753/20260 - The erection of an 8 storey residential building comprising 1 x 2 room and 11 x 3 room flats and 2 x 6 room maisonettes. Granted 11/02/1963;
  - ii. 9300952 - External alterations to the main building including alterations at roof level to replace existing stair enclosure with new roof access; enclosure of balconies and glazed enclosure at 7<sup>th</sup> floor; alterations to the entrance. (Granted: 12/08/1996).

### 3. BACKGROUND TO THE APPLICATION

- 3.1 In March 2014 the applicant erected a pergola structure within their roof garden. They were unaware that planning permission would be required and only realised following an approach from Allen Gillespie, a Camden Planning Site Inspector.
- 3.2 The applicants removed the pergola in April 2014. However, following his visit the Planning Site Inspector informed the applicant that the case had been kept open in order for an Enforcement Officer (Angela Ryan) to investigate other features within the garden such as seating and a kitchenette. In correspondence dated 30 April 2014 the Enforcement Officer stated that all the items that had been installed within the garden area, including freestanding items, constituted development and therefore require planning permission (**Appendix 1**). In the same correspondence the officer stated that the proposed hot tub was considered acceptable.
- 3.3 The applicant carried out further works to minimise any visual impact within the garden and removed a timber screen that had been placed around the AC condensers, at the request of Officer's.
- 3.4 On 9 May 2014 the Enforcement Officer wrote to the applicant's architect, Henry Busiakiewicz of BB Partnership, stating that, in their opinion, a planning application would be required for the non-fixed planters and commented that the height of them was acceptable (**Appendix 2**).
- 3.5 The Enforcement Officer formally wrote to the applicants on 16 May 2014 (**Appendix 3**) stating that planning permission is required for the following:
- Retention of the condenser units;
  - Replacement timber decking;
  - Retention of the glass balustrade;
  - Retention of the planters.
- 3.6 In the same correspondence the Officer requested that all freestanding items in the south and eastern section of the garden be totally removed or relocated.
- 3.7 The applicants have submitted this application in recognition of the Officer's comments and seek to regularise the position.

## 4. PLANNING POLICY

4.1 Planning applications must be determined in accordance with the development plan<sup>1</sup> unless other material indicates otherwise<sup>2</sup>. This section sets out the 'development plan' framework against which the application proposals need to be assessed.

4.2 It sets out the provisions of the National Planning Policy Framework (NPPF) relevant to the proposals together with local policies contained in the London Borough of Camden Local Development Framework.

### National Planning Policy Context

4.3 The National Planning Policy Framework (NPPF) was issued in March 2012 and constitutes guidance to local planning authorities in both drawing up development plans and in determining applications.

4.4 It is a material consideration in planning decisions and contains a strong presumption in favour of 'sustainable development' described as "the golden thread" that runs through both plan making and decision taking. For decision taking this means

- Approving development proposals that accord with the development plan without delay; and
- Where the development plan is absent, silent, or relevant policies are out-of-date, granting planning permission unless
  - 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; or
  - Specific policies in this Framework indicate development should be restricted.

4.5 Guidance on the core principles in planning are set out at paragraph 17. This encourages planning to be creative and encourages high quality design. It recognises that account needs to be taken of the different roles and characters

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<sup>1</sup> Section 38(6) of the Planning & Compulsory Purchase Act

<sup>2</sup> Section 70(2) of the Town & Country Planning Act 1990

that an area has. It recognises that heritage assets should be conserved in a manner appropriate to their 'significance'.

4.6 Section 7 of the NPPF deals with design and recognises that good design is a key aspect of sustainable development and is indivisible from planning. At paragraph 60 it is stated that planning decisions should not attempt to impose architectural styles or tastes. It goes on to state that planning should not seek to stifle innovation, originality or initiative through '*unsubstantiated requirements to conform to certain development forms or styles*'. Notwithstanding it recognises that it is 'proper' to promote and reinforce local distinctiveness.

4.7 Innovation in design is further referred to at paragraph 63 and states that 'great weight' should be given to design that raises design standards within a locality. It is recognised at paragraph 64 that poor design should be refused where it fails to take opportunities to improve the character and quality of an area and the way it functions.

4.8 Paragraph 65 reads:

*"Local planning authorities should not refuse planning permission for buildings or infrastructure which promote high levels of sustainability because concerns about incompatibility with an existing townscape, if those concerns have been mitigated by good design."*

4.9 Section 12 deals with 'Conserving and enhancing the historic environment'. It reiterates the statement that heritage assets should be conserved in a fashion appropriate to their significance. At paragraph 126 the NPPF sets out four statements that need to be taken into account when assessing 'significance':

- The desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- The wider social, cultural, economic and environmental benefits that conservation of the historic environment can bring;
- The desirability of new development making a positive contribution to local character and distinctiveness; and
- Opportunities to draw on the contribution made by the historic environment to the character of a place.

4.10 The NPPF states that the more important a heritage asset the greater weight should be given to its protection. It identifies that harm can be caused to the significance of a heritage asset through alteration or development within its setting, and any harm should be 'exceptional'.

### **Local Planning Policy - Camden Development Policies**

4.11 Policy DP24 deals with securing high quality design in all developments, including alterations, and will need to consider, inter alia, the following:

- Character, setting, context and the form and scale of neighbouring buildings;
- Where alterations are proposed the character and proportions of the existing building,;
- The quality of materials;
- The appropriate location of buildings services equipment;
- The provision of appropriate hard and soft landscaping including boundary treatments; and
- The provision of appropriate amenity space.

4.12 At paragraph 24.23 it is recognised that private amenity space adds to resident's quality of life and that gardens, balconies and roof terraces are greatly valued and are especially important for families. It further stresses that the residential amenity of neighbours must be considered, in accordance with policy DP26.

4.13 Policy DP25 deals with Conservation Areas and requires developments to maintain their character. In decision taking the Council will:

- Take account of conservation area statements when assessing planning applications;
- Only permit development that preserves and enhances the character and appearance of the area.;
- Not permit development outside of a conservation area that causes harm to it;



- Preserve trees and garden spaces that contribute to the character of an area.

4.14 Policy DP26 manages the potential impact of new development on neighbours and requires it to consider residential amenity. It further states that the Council will require new developments to provide an acceptable standard of accommodation in terms of amenity space and suitable outdoor space for private amenity space, wherever practical.

## 5. PLANNING CONSIDERATIONS

- 5.1 This section considers the development proposals in the context of the relevant planning policy. The application seeks full planning permission for the maintenance and replacement of elements that have historically always been within the roof garden. Other ancillary items are proposed that do not constitute development and therefore do not require planning permission.
- 5.2 As stated in the Introduction the applicant carried out these works unaware that they required planning permission. They are very keen to appease the Council's concerns and have already removed structures at the Council's request – a pergola and AC unit wooden screen.

### Principle of Development

- 5.2 Planning permission is sought for:

*“Within the roof garden of the property the installation of two replacement air conditioning condensers and two support units, a hot tub and non-fixed planters. Installation of replacement decking and glass balustrade.”*

- 5.3 All of the items listed, except for the hot tub, have been within the roof garden for a period in excess of 10 years. A photograph provided by the Enforcement Officer at **appendix 4** shows landscaping and three AC condensers in a similar position to those currently on-site. Large planters are positioned around the edge of the garden. Therefore the principle of development for which planning permission has previously been accepted.
- 5.4 It is not disputed that the alterations, repairs and maintenance for which planning permission is sought are operational development - a physical alteration to land, but not a change of use – and have resulted in a material change in the appearance of the garden. However, it is considered that the other freestanding equipment that the Enforcement Officer refers to in their letter dated 16 May 2014 (**Appendix 3**) (barbeque, seating, kitchenette) does not constitute development nor require planning permission. These are domestic items that are ancillary to the use of the garden and incidental to the enjoyment of the dwelling house. The photograph at **appendix 4** clearly shows ancillary garden furniture being used in and around the roof. Consequently, it is considered that these items do not require to be removed or relocated.

- 5.5 A useful comparable is the use of a garden in the green belt. The provision of garden equipment, for example tables, chairs, barbeques and play equipment, do not require planning permission and are acceptable within the green belt. However, more permanent structures, such as summer houses, are not.
- 5.6 It is also considered that the planters do not require planning permission as they are not fixed structures and can be removed at anytime. Notwithstanding this they have been included in this planning application in response to the Officer's request in their letter dated 16 May 2014 (**Appendix 3**).
- 5.7 With regard the 'freestanding equipment' the letter dated 16 May 2014 (**Appendix 3**) states that these should be moved so that they are not visible from the street, but does not request that planning permission be sought for them.
- 5.8 In determining this planning application the issues that need to be considered are whether the design of the proposals gives rise to any wider impacts on the character and appearance of the Conservation Area and/or residential amenity.

### **Character and Appearance of the Conservation Area**

- 5.9 Policies contained within the Development Plan seek to secure high quality design (DP24). This requires development to consider the character and setting of buildings, the quality of materials to be used and to be visually interesting from street level.
- 5.10 The NPPF recognises the need for good design in new development and states at paragraph 65 that it can mitigate concerns about its compatibility within existing townscapes.
- 5.11 It is considered that the proposals lessen the impact on views from the surrounding area, particularly in respect of the new glass balustrade and the proposed planters. The previous balustrade comprised of a white, metal, tubular frame that ran around the circumference of the roof garden. This had a strong visual presence and appeared like an additional level in the roofscape.

**Previous View from Prince Albert Road**



- 5.12 The current glass arrangement is transparent, and more sympathetic and less imposing on views from street-level. The quality of design and materials lessen the visual presence of the roof garden and therefore enhances the character and appearance of the Conservation Area.
- 5.13 The landscaping around the periphery of the garden is of a very high quality and replaces planters and landscaping decks that were previously housed in and around the garden. These too will be an enhancement to the area. Details of the landscaping are contained in the Design and Access Statement.

- 5.14 Views of the roof garden are obscured by other buildings within Prince Albert Road and the well established planting in and around the area.

**View from neighbouring 21 and 22 Prince Albert Road**



**View from the West**



- 5.15 The NPPF clearly states that local planning authorities should refuse consent where new development would lead to 'substantial harm'. In this instance views of the proposed development are limited and there has historically been identical plant and equipment within the roof garden. Consequently, the proposals do not create a new intrusive element within the Conservation Area and therefore do not cause harm.

- 5.16 The application building sits in the very south-western corner of the Conservation Area. Primrose Hill is not within the designation, but is registered as Metropolitan



Open Land and a Site of Nature Conservation Importance. Views of the proposed development actually from within the Conservation Area are therefore limited.



5.17 The Primrose Hill Conservation Area Statement identifies the aspects of Prince Albert Road that are of heritage significance as being the coloured Crown Estate villas, particularly No's 1 – 5, that are at the eastern end of the road. No 23 Prince Albert Road is actually listed in the Statement as a 'negative building'. These are classed as detracting from the character and appearance of the Conservation Area because of their bulk, scale, height, materials and the way in which they address the street. Therefore in considering whether there is any harm caused, the application building should be afforded little weight as any perceived impact would not be significant. The proposals do not detract from the character and appearance of the Conservation Area and are in accordance with the NPPF and policy DP25 of Camden's Development Policies Document

### **Residential Amenity**

5.18 The lawful use of the roof as a garden has been well established for over 10 years. During that time there has been plant and equipment on the roof, as well as garden furniture that is ancillary to the use and enjoyment of the garden. We are not aware of any complaints from neighbours on the grounds of residential amenity. A planning history search also appears to show that there have been no

objections from neighbours on the various applications that have been submitted at the application premises. Therefore historically the roof garden has not given rise to any residential amenity impacts that have caused concern amongst neighbouring residents.

- 5.19 The planning application is accompanied by a noise report prepared by NVP Ltd which concludes that the AC condensers do not exceed existing noise levels and there is no need for any attenuation. Consequently they do not cause an impact in relation to noise and vibration. In addition there used to be 3 condensers on the roof (**Appendix 4**) which has been reduced to 2 plus two small support units. They are modern units that work more efficiently. Therefore their visual presence and operation are less intrusive.
- 5.20 The garden is an established, lawful use. The proposed works will not result in other impacts such as overlooking/privacy. They will not diminish daylight/sunlight to neighbouring properties and will not cause overshadowing. As such they are in accordance with policy DP26 of Camden's Development Policies Document.
- 5.21 The Enforcement Officer states in their letter dated 16 May 2014 (**Appendix 3**) that the freestanding units would 'detract from the visual amenity of the occupiers of the surrounding buildings'. Policy DP26 recognises 'outlook' as being a consideration in the determination of an application. However, the garden is atop an 8 storey building. The prevailing building height in the area is 3 storeys and therefore actual views from neighbouring buildings and their gardens are restricted, and the proposals impact on 'outlook' would be negligible.
- 5.22 As stated above, the Council appear to confirm that if the 'freestanding equipment' were to be relocated in the garden, away from the south and east of the site, that they would be acceptable. Nor does the letter dated 16 May 2014 state that planning permission is required. There are no specific Development Plan Policies governing this and taking into account the above the proposals would not cause an impact on neighbouring residents and accord with relevant policy.

## **7. SUMMARY AND CONCLUSIONS**

- 7.1 The roof garden is an established use and forms an integral part of the Penthouse. The development that planning permission is sought for is a result of maintenance and replacement of equipment that was previously in place, with the exception of the hot tub. Therefore this is predominantly an application for the replacement of plant and equipment at roof level.
- 7.2 The Enforcement Officer has stated that 'freestanding equipment' is acceptable on the roof if it is relocated, and does not state that they would require planning permission.
- 7.3 The application building is located on the very edge of the Conservation Area and is over twice the height of neighbouring buildings. Views of the garden from street level are restricted by virtue of being screened by established planting and neighbouring properties. The Conservation Area Statement recognises that No 23 is a 'negative building' and therefore does not carry much weight in terms of its contribution to the character and appearance of the Conservation Area. Consequently, any impact that may arise from the proposals would not be significant and not cause any harm.
- 7.4 There have been no previous complaints about the use of the garden or the presence of the plant and equipment. The application proposals have been assessed with regard environmental effects (noise) and it has been demonstrated that they would not give rise to any significant adverse impacts. Consequently they would not cause any impact on the residential amenity of adjoining occupiers.
- 7.5 The proposals are in accordance with relevant planning policies, both nationally and locally, and should therefore be granted planning permission.

### **CHASE & PARTNERS**

June 2014



## **APPENDIX 1**

## **APPENDIX 2**

## **APPENDIX 3**

## **APPENDIX 4**