



**STATEMENT OF CASE FOR THE LONDON BOROUGH OF  
CAMDEN**

**Appeal by Mr M Sturgis  
Site at Rebecca Hossack Galleries, 2a Conway Street,  
London, W1T 6BA**

**Reference: APP/X5210/A/14/2222767/NWF**

**21 August 2014**

## **1.0 INTRODUCTION**

- 1.1 The following is the council's statement of case following the appeal by Mr M Sturgis into the Council's decision to refuse planning permission (Ref: 2013/8002/P) at 2a Conway Street. The description of development is:

*Erection of roof extension with rear roof terrace in connection with the use of the second and third floor as a residential flat.*

- 1.2 The application was submitted on 13 December 2013. However, it did not become a valid application until 3 January 2014. The application was reported to committee with a recommendation of approval. However, the committee resolved to refuse planning permission on 19 June 2014, and it was formally decided on 1 July 2014. The reason for refusal was:

*The proposed roof extension and terrace by virtue of their close proximity to neighbouring habitable residential windows would result in a loss of outlook, visual amenity, light, and privacy as well as, light and noise pollution to the detriment of the amenity of the occupiers of these properties contrary to policies CS5 (Managing the impact of growth and development) of the London Borough of Camden Local Development Framework Core Strategy and to policy DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Plan.*

## **2.0 PROPOSAL**

- 2.1 The proposal is for the erection of a roof extension with rear roof terrace in connection with use of the second and third floor as a residential flat.
- 2.2 The proposed roof extension would extend from the party wall with No. 4 Conway Street and have a maximum width of 6.02 metres to the front but 6.19 metres to the rear. It would have a depth of 7.8 metres and a pitched roof with a ridge height of 4.33 metres from the existing roof level. The extension would be set in from the front building line by 1.3 metres. The distance between the roof extension and the rear of the building would be 1.4 metres where it is nearest to 2 Conway Street, and 1.58 metres to the other side. This is due to the slight angle of the floors below. The extension would be set away from the stepped flank elevation of No. 2 Conway Street by 1.13 metres to the rear and 2.54 metres where the building adjoins the roof terrace at 2D Conway Street. The height of the extension slopes to a height of 1.78 metres on the south-eastern side (the flank facing 2 Conway Street).

### 3.0 SITE AND SURROUNDINGS

- 3.1 The application site is located on the north western side of Conway Street in close proximity to Fitzroy Square. The ground and first floor of this 3 storey building are in use as a retail art gallery (Class A1) with ancillary office use at second floor level. The building, which does not form part of a parade, has a different character and appearance to the other buildings in the street. It is not listed but it lies within Fitzroy Square Conservation Area and is identified as making a positive contribution to the conservation area.
- 3.2 The building is a 20th Century light industrial building which stands in Conway Street on the return to Maple Street. Southeast of the site is a Grade II listed terrace on Maple Street which backs directly onto the application site. Northwest of the site is the unlisted "The Lukin" public house (no. 4 Conway Street) which dates from the 19th Century. The application site reflects the proportions of subordinate buildings often found on the quiet return of historic terrace in Bloomsbury which front busier streets.

### 4.0 RELEVANT PLANNING HISTORY

- 4.1 The planning records at the site itself are:

**November 2013:** Planning permission (ref: 2013/6004/P) granted for "First floor rear infill extension including extension of existing roof terrace and balustrade at first floor level and replacement of existing window with access door to existing art gallery/retail unit (Class A1)".

**April 2013:** Planning permission (ref: 2012/2754/P) refused for "Erection of roof extension with terrace over, creation of terrace at rear third floor level and enlargement of rear second floor level terrace through erection of metal platform and creation of a doorway, all in connection with provision of studio flat within roof extension (Class C3)". The reasons for refusal were:

- 1. The proposed roof extension and screening to the fourth floor roof terrace, by virtue of their bulk, mass and proximity to habitable windows at 2D Conway Street and the flat at fourth floor level at 44 Maple Street, would result in a loss of outlook to the habitable rooms at these flats to the detriment of the amenity of their occupiers, contrary to policy CS5 (Managing the impact of growth and development) of the London Borough of Camden Local Development Framework Core Strategy and to policy DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Plan.*
- 2. The proposed roof terrace on the roof of the extension, by virtue of its proximity to habitable room windows at 2D Conway Street and at*

*fourth floor level at 44 Maple Street, would result in an increase in overlooking and loss of privacy to these properties to the detriment of the amenity of their occupiers, contrary to policy CS5 (Managing the impact of growth and development) of the London Borough of Camden Local Development Framework Core Strategy and to policy DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Plan.*

3. *Insufficient information has been provided to demonstrate that the development would not have an adverse impact upon the residential amenity of the occupiers of the residential units at second and third floor level at 2 Conway Street in terms of daylight contrary to policy CS5 (Managing the impact of growth and development) of the London Borough of Camden Local Development Framework Core Strategy and to policy DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Plan.*
4. *The proposed development, in the absence of a legal agreement to secure car-free housing, would be likely to contribute unacceptably to parking stress and congestion in the surrounding area, contrary to policies CS11 (Promoting sustainable and efficient travel) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy; and policy DP18 (Parking standards and limiting the availability of car parking) of the London Borough of Camden Local Development Framework Development Policies.*

An appeal was subsequently lodged (PINS Ref: APP/X5210/A/13/2206683), which was dismissed in **March 2014**.

**December 2011:** Planning application (ref: 2011/5165/P) withdrawn for “Erection of additional storey at roof level with rooflights, photovoltaics and green roof, creation of terrace on roof of extension, at rear third floor level and rear second floor level extension of existing terrace all in connection with provision of studio flat within roof extension (Class C3)”. This followed advice that the proposal was unacceptable in terms of design and neighbour amenity.

## **5.0 PLANNING POLICY**

- 5.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. The London Borough of Camden Local Development Framework is made up of the London Plan (2011) and the Camden Local Development Framework (LDF). Within this the Core Strategy (2010), the Development Policies (2010) and specific supplementary planning

documents/guidance are of relevance. It was formally adopted on the 8th November 2010. The policies of relevance to the appeal scheme are expressed in the reasons for refusal, and the full text of the relevant policies was sent with the questionnaire documents

- 5.2. The reason for refusal refers to policies within the Core Strategy and Development Management Policies, and the full text was sent with the questionnaire documents. In addition the Camden Planning Guidance (CPG) supports the policies of the Core Strategy and Development Policies. This has been subject to public consultation and was approved by the Council in 2013.
- 5.3. With reference to the National Planning Policy Framework 2012, policies and guidance contained within Camden's LDF 2010 are up to date and fully accord with paragraphs 214 – 216 (Annex 1) of the NPPF and should therefore be given full weight in the decision of this appeal. The National Planning Policy Framework was adopted in April 2012 and states that development should be refused if the proposed development conflicts with the local plan unless other material considerations indicate otherwise. There are no material differences between the Council's policies and the NPPF in relation to this appeal.

## **6.0 EVALUATION**

- 6.1. The Council's reason for refusal exclusively relates to the impact on neighbouring amenity. There is no objection to the impact of the development in terms of design, land use, highways and transportation, or any other matters.

### **Relevant planning policy**

- 6.2. Core Strategy policy CS5 concerns the impacts of growth and development. Part d of the first part of the policy concerns the amenity and quality of life of local communities. The second part (points e, f, and g<sup>1</sup>) requires the amenity of residents to be protected by considering the impacts of developments, ensuring that these impacts are balanced against the characteristics of the areas, and mitigating where required. The supporting text notes that protecting amenity is a key part of successfully managing growth within Camden (paragraph 5.8). The Development Policies build on this and provide further detail. Policy DP26 is mentioned in the supporting text of CS5 and provides more detail on the specific amenity considerations. This includes visual privacy and overlooking, overshadowing and outlook, sunlight, daylight and artificial light levels, noise. The supporting text notes how it can have a major effect on the amenity and health of residents.

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<sup>1</sup> It is actually labelled 'f' within the policy but this appears to be a mistake and so is referred to as 'g' instead.

### **Impacts of the proposed development on neighbouring amenity**

- 6.3. There are a number of issues raised in the reason for refusal, but they are all a product of the proximity of the roof extension and terrace to neighbouring windows.
- 6.4. The previous appeal decision is a material consideration. The development under consideration was a larger roof extension which covered more of the site. This extension was approximately 3.8m from the side face of 2 Conway Street and 44 Maple Street, extended almost to the front of the property and was set-back from the rear by 1.96m.
- 6.5. The development which is the subject of this appeal is different. It would be further away from the adjacent properties, increasing the previous distance of 3.8m to approximately 4.7m. It would extend further to the rear than the previous proposal. Instead of being 1.96m it would only be 1.4m where it is closest to 44 Maple Street.
- 6.6. In terms of height the previous proposal was a consistent height, whereas the appeal proposal has a sloped roof profile. The height of the appeal proposal at its maximum would be 4.33m above the existing roof, which is approximately 0.6m below the previous proposal. At the point nearest to 2 Conway Street and 44 Maple Street it would be 1.83m above the existing roof.
- 6.7. Therefore, whilst generally reduced in extent the issue is whether these reductions are sufficient to address the previous concerns. Whilst the distance to neighbouring properties has increased it is still well below 5m, which is extremely close even in an urban environment. : the committee report itself described it as being “in close proximity” (paragraph 6.6.1). The height of the roof has been reduced overall, and with a sloped design now introduced the nature of the impact has also been altered. Nevertheless at the point nearest to 2 Conway Street and 44 Maple Street it is still 1.83m in height above the existing roof, and immediately starts to increase at quite a steep gradient up to its maximum height: for example, where it reaches 3m in height it would still be only 7m away. This is significant and as the extension also extends further towards the rear of the site this presents a longer wall to these neighbouring properties. This would result in an overbearing development, which would unacceptably diminish outlook from the windows of these neighbouring properties.
- 6.8. A further factor would be the addition of a privacy screen to the terrace to the rear. This would be necessary to avoid overlooking from the terrace itself, and a condition is suggested in appendix 1 (number 6) which would require a 1.8m high screen to be erected. However, this would further exacerbate the impact described above by extending the solid structure visible from 2 Conway Street and 44 Maple Street to the rear edge of the appeal site’s roof: in addressing one issue another is made worse.

6.9. The previous refused planning application at the site included a reason for refusal concerning loss of daylight to the second and third floors of 2 Conway Street, and was partly on the basis of a lack of information. The appeal scheme includes a proposed section CC which indicates that the development would fail the 25 degree angle test for the second floor at flat 2B Conway Street, and whilst the fail is marginal it is nevertheless a fail. The appellant did submit a daylight and sunlight report<sup>2</sup> with the appeal proposal. It notes that the proposal would result in a fail for a second floor bedroom to 2 Conway Street, albeit that it is described as minor (paragraphs 1.3.1 and 4.1.1). Some mitigation is offered in the document: it appears to be suggested that where a development would result in a building matching the height of those around it that differing standards can be applied. In response to this there is no objection to an increase in the height of the building in design and conservation terms. However, it is not considered imperative in urban design terms, certainly not to the extent that neighbouring amenity could be compromised. There are a number of buildings of different designs and heights and it is not the case that the proposal would unify an entire terrace. It is also noted in the document that buildings in close proximity to the site boundary may be considered “bad” neighbours, “taking more than their fair share of light” (paragraph 4.2.1). Whilst there will undoubtedly be instances where this approach could be adopted it is not considered that this is one of them: the relationship between the site and those buildings to the south-east is the result of the buildings turning the corner from Conway Street into Maple Street. It is an inevitable result of the street pattern which is replicated countless times in urban settings. It is not unusual and to adopt a lesser approach would be to conclude that all those properties on or near to junctions with perpendicular streets may be subject to a lower standard of amenity because they inevitably have windows which face towards the side of buildings. Also suggested as mitigation is that kitchens and bedrooms are given less weighting than living rooms, and that the BRE guidelines are not intended to be mandatory or applied in strict calculation terms. This is broadly agreed with, although it is not the case that this inevitably leads to the conclusion that a proposal is acceptable. Equally, it is not appropriate to equate a marginal fail as a pass and whether or not there are material considerations to outweigh this is dependent on the context and other planning objectives.

6.10. The proposed roof extension would include large roof lights which would have the potential for light spillage from them, even if it is unlikely that a loss of privacy will occur from them. Of more concern would be the potential for disturbance from the roof terrace itself. Whilst a 1.8m high screen could prevent persons of average height looking into the neighbouring properties this cannot mitigate the actual distance itself. The previous proposals included more outdoor amenity space than is now proposed. Now included is a terrace to the rear, and an area which is indicated as being a green roof. There is an access onto this area and

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<sup>2</sup> This forms appendix 1 of the document entitled *Statement of Case*.

balustrade but it is indicated as being for maintenance only. The rear terrace would also be only 4.7m from 44 Maple Street, and the impact of an outdoor area in such close proximity would be detrimental. Whilst properties on Conway Street would be further away they are nevertheless still close. It is not being suggested that a large amount of people could gather on there, but the proximity is such that even an individual smoking or playing music would have an impact. Were it to be 3 or 4 people chatting so close to neighbouring windows the impact would be even greater. The issue of privacy goes beyond having someone looking into a window. Simply having people so close by is enough to compromise someone's privacy and can make it uncomfortable for neighbouring residents. This would be especially acute for 44 Maple Street where occupiers of rooms within this House of Multiple Occupation (HMO) are reliant on their individual rooms for privacy. The appellant's statement of case suggests that the impact will be no greater than is currently the case. Even though the use proposed is residential the proximity is such that even when being used in a very typical way the roof terrace would cause a loss of amenity.

### **Car free housing**

- 6.11. The previous appeal decision referred to a planning obligation for car free development, in particular the removal of on-street car parking permits for the proposed unit. The inspector did not comment on the need for this, but did note that the appellant did not dispute the need for the obligation. A draft legal agreement has been produced by the Council and it is hoped that this can be agreed shortly.
- 6.12. The site is in a very sustainable location with access to public transport. Indeed, it is one of the most highly accessible locations within London being within a short walk of a number of underground stations<sup>3</sup>. Many buses run along Euston Road, Great Portland Street and Tottenham Court Road. With there being so many offices and other businesses nearby a potential resident may not even require public transport. Therefore, there is considered no justification for future residents of the proposed unit to be able to obtain an on-street parking permit.
- 6.13. In addition, Conway Street and the surrounding area has double yellow lines and is within the congestion charging zone, which is considered to be further justification for the obligation. The Controlled Parking Zone (CPZ) that the site falls into is practically at capacity, with the most recent statistics indicating the ratio of permits to car parking spaces is 0.99. Whilst not at absolute capacity it is nevertheless considered that the figure is so close to 1 that it is vulnerable to further permits being provided.
- 6.14. A combination of the proximity to public transport, the site being within the congestion zone and the number of permits already in issue demonstrates the need for a car free development.

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<sup>3</sup> Immediate examples are Regent's Park, Great Portland Street, Warren Street and Goodge Street.



## **7.0 COMMENTS ON THE APPELLANT'S GROUNDS OF APPEAL**

- 7.1. Most of the points made by the appellant are considered to have been addressed in section 6 above. Outstanding points are addressed below.
- 7.2. Paragraphs 5.6 and 5.7 of the appellant's Statement of Case state the height of the roof extension to be 1.7, whereas the Council has measured it to be 1.83m, although the comments above would still apply regardless as the impact would still be significant.
- 7.3. The appellant suggests that outlook and sunlight/daylight are intrinsically linked (paragraph 5.9). There will certainly be many instances where to reduce the impact on one would reduce the impact on the other. However, this is not a universal rule of thumb. It does not therefore follow that addressing one issue automatically addresses the other. For example, it could be demonstrated that the impact on daylight/sunlight is acceptable (although the above comments above argue that it is not in this instance) whilst concerns remain over outlook. It is not considered correct to amalgamate the issues as suggested by the appellant.

## **8.0 CONCLUSION**

- 8.1 The recent dismissed appeal is a material consideration but it is important to make a distinction between a lesser impact and the impact having reached the point of acceptability. The proximity to neighbouring properties remains extremely close, and the impact of the proposal is not universally less than the previous example and it would extend further to the rear. Overall, the impact remains unacceptable. It would appear as overbearing to neighbours and it has not been categorically demonstrated that the impact on daylight is acceptable. There would be a loss of privacy and increased noise generated by the roof terrace (even with a privacy screen) and light spillage.
- 8.1 There is not considered to be a wider benefit which would justify the granting of planning permission in spite of the impact on neighbouring amenity: whilst there are no objections to the design or impact on the conservation area, or the provision of an additional unit. However, neither these issues, nor any others, are considered sufficient to outweigh these concerns.
- 8.3 The Planning Inspectorate is respectfully asked to dismiss the appeal.

## APPENDIX 1 - Conditions

Without prejudice to the views expressed above if the Planning Inspectorate resolves to grant planning permission the following conditions are suggested:

- 1 The development hereby permitted must be begun not later than the end of three years from the date of this permission.

Reason: In order to comply with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).

- 2 The development hereby permitted shall be carried out in accordance with the following approved plans:

*000-P1; 201-P1; 202-P1; 210-P1; 211-P1; 301-P1; 302-P2; 303-P2; 310-P2; 311-P2; 312-P2; 320-P2.*

REASON: For the avoidance of doubt and in the interest of proper planning.

- 3 All new external work shall be carried out in materials that resemble, as closely as possible, in colour and texture those of the existing building, unless otherwise specified in the approved application.

REASON: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policy CS14 of the London Borough of Camden Local Development Framework Core Strategy and policy DP24 and DP25 of the London Borough of Camden Local Development Framework Development Policies.

- 4 Manufacturer's specification and a sample of the zinc cladding shall be submitted to and approved in writing by the local planning authority before the relevant part of the work is begun.

The relevant part of the works shall be carried out in accordance with the details thus approved and the approved sample shall be retained on site during the course of the works.

REASON: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policy CS14 of the London Borough of Camden Local Development Framework Core Strategy and policy DP24 and DP25 of the London Borough of Camden Local Development Framework Development Policies.

- 5 Prior to commencement of the relevant part of the development a plan showing details of the green roof including species, planting density, substrate and a section at scale 1:20 showing that adequate depth is available in terms of the construction and long term viability of the green roof, and a programme for a scheme of maintenance shall be submitted to and approved in writing by the local planning authority. The green roof shall be fully provided in accordance with the approved details prior to first occupation and thereafter retained and maintained in accordance with the approved scheme of maintenance.

Reason: To ensure that the green roof is suitably designed and maintained in accordance with the requirements of policies CS13, CS14, CS15 and CS16 of the London Borough of Camden Local Development Framework Core Strategy and policies DP22, DP23, DP24 and DP32 of the London Borough of Camden Local Development Framework Development Policies.

- 6 Prior to the commencement of development details of a 1.8 metre high privacy screen to the south eastern boundary of the terrace shall be submitted to and approved in writing by the local planning authority. The screening shall be installed in accordance with the details thus approved prior to commencement of use of the roof terrace and shall be permanently maintained and retained thereafter.

REASON: In order to prevent unreasonable overlooking of neighbouring premises in accordance with the requirements of policy CS5 of the London Borough of Camden Local Development Framework Core Strategy and policy DP26 of the London Borough of Camden Local Development Framework Development Policies.

- 7 The green roof to the front and side of the roof extension shall not be used as an amenity space. It shall be accessed for maintenance purposes only.

REASON: In order to prevent unreasonable overlooking of neighbouring premises in accordance with the requirements of policy CS5 of the London Borough of Camden Local Development Framework Core Strategy and policy DP26 of the London Borough of Camden Local Development Framework Development Policies.

- 8 The window at second floor level on the south east elevation of the building shall be obscurely glazed and fixed shut.

REASON: In order to prevent unreasonable overlooking of neighbouring premises in accordance with the requirements of policy CS5 of the London Borough of Camden Local Development Framework Core Strategy and policy DP26 of the London Borough of Camden Local Development Framework Development Policies.

- 9 The lifetime homes features and facilities, as indicated on the drawings and documents hereby approved shall be provided in their entirety prior to the first occupation of any of the new residential units.

REASON: To ensure that the internal layout of the building provides flexibility for the accessibility of future occupiers and their changing needs over time, in accordance with the requirements of policy CS6 of the London Borough of Camden Local Development Framework Core Strategy and policy DP6 of the London Borough of Camden Local Development Framework Development Policies.