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**PROPOSED REMOVAL OF SECTION OF FLAT ROOF
AT 135 FINCHLEY ROAD, LONDON, NW3 6JH**

**STATEMENT IN SUPPORT OF APPLICATION
FOR LAWFUL DEVELOPMENT CERTIFICATE**

Prepared by
Meeson Williams Phillips Ltd

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www.meesonwilliamsphillips.com

APPLICATION FOR LAWFUL DEVELOPMENT CERTIFICATE FOR REMOVAL OF SECTION OF FLAT ROOF

1.0 INTRODUCTION

- 1.1 135 Finchley Road comprises an established late night venue premises that occupies all four storeys of the building (from lower basement to first floor). The building was built in the 1960s as part of the Centre Heights development, a large mixed-use scheme with buildings of 1, 2 and 11 storeys fronting Finchley Road.
- 1.2 The building adjoins Swiss Cottage Station. Photographs of the building are attached as Appendix 1.
- 1.3 The roof at first floor is shielded from all normal public views by a 1.34m high parapet wall.
- 1.4 The applicant proposes to remove part of the existing flat roof, along with some redundant plant, to create an open terrace area for customers to enjoy. This will form part of an overall refurbishment of the premises to create an upmarket restaurant.
- 1.5 All new roof works will be contained below and behind the existing parapet wall. None of the works will be seen from any normal public (or other) viewpoint and there will be no structural demolition works to the building, other than the flat roof in part and redundant roof plant.
- 1.6 The purpose of this application is to demonstrate that planning permission is not required for the partial demolition (removal of roof plant and flat roof), in accordance with the relevant statute and case law. This position has been ratified by John Hobson QC.
- 1.7 This statement is set out in the following sections:
 - 2.0 Relevant Planning History
 - 3.0 Need for Planning Permission for Proposed Roof Works
 - 4.0 Demolition & Planning Control
 - 5.0 Summary & Conclusions

2.0 RELEVANT PLANNING HISTORY

- 2.1 Planning permission was granted in May 1995 for the change of use from Class A2 (bank) to Class A3 (food and drink), Council ref: 95/00303.
- 2.2 Since reclassification of the use classes in April 2005, the use has comprised part A4 and part nightclub and is likely, therefore, to be “sui generis” in nature. A new Premises License has been granted by Camden Council which allows for the sale of alcohol to customers from 1200hrs to 2330hrs on Mondays to Thursdays; 1200hrs to 0000hrs (midnight) on Fridays and Saturdays; and 1200hrs to 2230hrs on Sundays, as well as the provision of late night refreshment on Mondays to Sundays from 2300hrs to 0200hrs.
- 2.3 None of the relevant planning history has any implications for the subject application. The application refers to minor physical works to the roof of the building and the nature of the use is not a material consideration.
- 2.4 The new occupier wishes to refurbish the premises to a very high standard to create an upmarket restaurant with waiter only service. Consequently, the customer capacity of the property will reduce from the previously permitted 250 persons to a new total capacity of 180 persons.
- 2.5 The modest void created by removal of a small section of roof will provide a limited terrace area for customers to enjoy, akin to an al fresco dining area provided at restaurants with a forecourt.

3.0 NEED FOR PLANNING PERMISSION FOR REPLACEMENT ROOF

- 3.1 It is proposed to remove a 1.5m wide strip of the existing flat roof from the front and part sides of the flat roof at first floor. This amounts to less than 30% of the existing roof.
- 3.2 As the removal of roof material will be located behind and below the parapet wall, it will not be seen from any normal vantage point outside the site. Section 55(2) of the 1990 Town & Country Planning Act states that the carrying out for the maintenance, improvement or other alteration of any building or works, which do not “*materially affect the external appearance of the building*” do not involve development that is subject to planning control (author’s italics).
- 3.3 The meaning of the phrase “*materially affect the external appearance of the building*” was considered by the High Court in *Burroughs Day v Bristol City Council* (1996 – see Appendix 2). This comprised works involving alterations to the roof of a listed building, which would not be visible except from in the air above or the top floors of a nearby office block, as well as the restoration of the original glazing pattern on the front elevation.
- 3.4 The High Court held that changes in external appearance had to be judged in relation to the building as a whole in order to determine the materiality of the effect. It was also stated that any change to external appearance must be visible from a number of normal vantage points and that visibility from the air or a single building would not suffice. Thus part of the test for “*material effect*” must depend on the degree of visibility. The court considered that while the works affected the appearance of the building, the building was not “*materially*” affected thereby. The works were not visible from any street or from any window, except from the top two floors of an office building or from the air. There was no development.
- 3.5 In summary, the judgement listed factors to be taken into account in deciding whether alterations to a building were material, as follows:
- What must be affected is ‘the external appearance’ of the building, and not simply its exterior – that is, the alteration must be one which affects the way in which the exterior of the building is or can be seen by an observer outside the building;

- Roof alterations may affect the external appearance of the building if they can be seen from any normal vantage point on the ground or on or in a neighbouring building;
- The external appearance must be 'materially' affected, which depends in part on the degree of visibility;
- Whether a proposal is material is likely to depend on both the nature of the building and the nature of the alteration;
- Materially is to be judged in relation to the whole building, not simply the part directly affected.

3.6 It is specifically the change to the external appearance of the building that is to be assessed; therefore it is not relevant to consider matters such as the street scene or any conservation area designation.

3.7 Applying the Burroughs Day principles, the proposed roof works cannot be seen from any normal vantage point outside the building; the degree of visibility is nil; the location behind and below a parapet wall renders the proposed works invisible from all directions; and the appearance of the building taken as a whole is unaffected.

3.8 As a consequence to the above, the proposed minor roof alterations cannot be considered to materially affect the external appearance of the building, such that "*development*" will not be undertaken under the meaning of the 1990 Act. Planning permission is not therefore required in this case.

3.9 The applicant has obtained a legal opinion on this matter from John Hobson QC at Landmark Chambers. The QC's firm opinion is that the proposed works to the roof do not amount to development requiring planning permission (see Appendix 3).

4.0 DEMOLITION & PLANNING CONTROL

- 4.1 The recent Court of Appeal Judgement in the case of SAVE Britain's Heritage v SSCLG has important and immediate consequences for planning control over demolition.
- 4.2 This judgement by the Court of Appeal has quashed relevant paragraphs 2(1)(a) to (d) of the Town & Country Planning (Demolition – Description of Buildings) Direction 1995, contained in DoE Circular (WO 31/95).
- 4.3 This means that the demolition of a listed building, a building in a conservation area, a building which is a scheduled monument, or a building that is not a dwelling house or adjoining a dwelling house is now 'development'. However, the judgement does not apply to the demolition of (i) buildings the cubic contents of which, measured externally, does not exceed 50 cubic metres and (ii) any gate, wall, fence or other means of enclosure (except in a conservation area).
- 4.4 The partial demolition of a roof of a building is not caught by this judgement, but it is submitted that the removal of redundant plant and part of the flat roof at 135 Finchley Road falls outside the realms of planning control (see Section 3.0 above). In any case, the extent of proposed demolition works is less than 50 cubic metres, therefore the extent of demolition works do not amount to development.
- 4.5 In conclusion, the proposed removal of redundant plant and section of flat roof material does not need prior approval for the method of demolition from London Borough of Camden.

5.0 SUMMARY & CONCLUSIONS

- 5.1 The applicant proposes to remove redundant roof structures and part of the existing flat roof.
- 5.2 All proposed roof works will be contained below and behind the existing parapet wall. None of the works will be seen from any normal public (or other) viewpoint and there will be no structural demolition works to the building, other than the flat roof in part and redundant roof structures.
- 5.3 The proposed roof works cannot be seen from any normal vantage point outside the building; the degree of visibility is nil; the location behind and below a parapet wall renders the proposed works invisible from all directions; and the appearance of the building taken as a whole is unaffected.
- 5.4 As a consequence to the above, the proposed minor roof alterations cannot be considered to materially affect the external appearance of the building, such that “*development*” will not be undertaken under the meaning of the 1990 Act. Planning permission is not therefore required in this case.
- 5.5 In conclusion, the proposed removal of redundant plant and flat roof material does not need planning permission or prior approval for the method of demolition from London Borough of Camden.

LIST OF APPENDICES

1. Photographs of site (2015)
2. Burroughs Day v Bristol City Council 1996
3. Opinion from John Hobson QC