



## Appeal Decision

Site visit made on 5 February 2015

**by Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 27 May 2015**

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### **Appeal Ref: APP/X5210/A/14/2222767**

### **Rebecca Hossack Galleries, 2A Conway Street, London W1T 6BA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Matthew Sturgis against the decision of the Council of the London Borough of Camden.
  - The application, Ref. 2013/8002/P, dated 13 December 2013, was refused by notice dated 1 July 2014.
  - The development proposed is the erection of a roof extension in connection with the use of the second and third floor as a residential flat; the provision of a balustrade at third floor level, and the installation of planting boxes at third floor level to provide a privacy screen.
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### **Application for Costs**

1. An application for an award of costs was made by Mr Matthew Sturgis against the Council of the London Borough of Camden. This application is the subject of a separate Decision.

### **Decision**

2. The appeal is allowed and planning permission is granted for the erection of a roof extension in connection with the use of the second and third floor as a residential flat; the provision of a balustrade at third floor level, and the installation of planting boxes at third floor level to provide a privacy screen at Rebecca Hossack Galleries, 2A Conway Street, London W1T 4BA in accordance with the terms of the application, Ref. 2013/8002/P, dated 13 December 2013, subject to the conditions in the attached schedule.

### **Main Issue**

3. The main issue is the effect of the proposed roof extension and terrace on the living conditions of adjoining occupiers as regards outlook, light, privacy and noise.

### **Reasons**

4. The Officers' Report on the appeal application explained that there was a previous proposal for a roof extension (Ref. 2012/2754/P), which was refused permission on 5 April 2013. This was unsuccessfully appealed on 27 March 2014 (Appeal Ref. APP/X5210/A/13/2206683).
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5. The current proposal has amended the first scheme in an attempt to overcome the Inspector's concerns as regards an unacceptable loss of outlook and a potential loss of daylight at flats in 2 Conway Street as a result of the proposed roof terrace associated with the extension. The revised scheme also seeks to address the issue of any potential loss of privacy for the occupiers of those properties, as well as for the occupiers of 44 Maple Street. Although officers considered that the revised proposal (which itself includes revisions made during the course of the application) had satisfactorily addressed these matters, the Committee refused permission against the officers' recommendation for approval.
6. Turning firstly to the effect on the outlook for neighbours, the Council argues that despite the amendments to the previously refused scheme, the proposed extension would be overbearing and unacceptably diminish the outlook from the side windows in 2D Conway Street and 44 Maple Street. However, the outlook is from bedrooms in these dwellings and whilst this is still important I consider that any effect carries less weight than the outlook from a living or dining room or kitchen which tend to be used frequently during the course of a day.
7. More significant is the fact that the amended proposal has increased the distance between the neighbouring windows and the extension as well as substantially reducing its height at its closest point through the introduction of a sloping roof. The combination of the amended siting and the more gradual increase in height would ensure that whilst views out of the bedroom windows would still be towards a roof, the structure would not be such as to obstruct the sky and dominate the outlook to the extent that there would be an uncomfortable feeling of enclosure.
8. The Council has also argued that the erection of the privacy screen to the proposed rear terrace would worsen the outlook for the neighbours. However, with its limited width of a metre or less and the potential for it to be a trellis or planter with associated planting rather than a solid structure, this would have little or no impact on any sense of enclosure for the occupiers of the adjoining buildings.
9. In respect of privacy, the replacement of the front and side terrace with a green roof that would have its access limited for maintenance purposes has essentially addressed the concerns previously raised. In its appeal statement the Council's remaining argument is that the *'issue of privacy goes beyond someone looking into a window ..... Simply having people close by is enough to compromise someone's privacy'*. In this case it is considered that the proximity of the terrace to the rooms of the HMO at 44 Maple Street could make it 'uncomfortable' for residents.
10. However, given that the context for the proposed development is central London where there is a high population density and countless roof terraces, I do not consider this is a credible argument. If the use of the terrace were to result in unacceptable levels of noise and disturbance this is a matter that can be addressed by the Council through the enforcement measures afforded by environmental protection legislation. More specifically in respect of noise, the terrace is for the domestic use of a flat of modest size and I must assess the proposal on this basis rather than on allegations of noise and disturbance arising from the retail art gallery on the lower floors.

11. The final objection referred to in the Council's Notice of Refusal is the effect of the appeal scheme on the daylight currently enjoyed by the occupiers of neighbouring properties. In this regard the appellant has commissioned a Daylight and Sunlight Report using an updated version of the BRE Guidance referred to supporting paragraph 26.3 for Policy DP26 in the Council's adopted document on Development Policies. This concludes that the windows and rooms to the buildings most likely to be affected by the proposed extension comfortably meet the BRE guidelines for daylight, with one minor transgression to a second floor bedroom at 2 Conway Street.
12. However in respect of that breach, the BRE Guidance makes it clear that in applying the standards it is important to ensure that mitigating factors are taken into account. This is to allow a balance to be struck with development proposals that are essentially reasonable but because of their context cannot be expected to fully meet the daylight standards. The appeal scheme is a case in point because the proposed extension only partially in-fills the existing gap at third floor level between Nos. 2 and 4 Conway Street, the higher buildings on each side.
13. As a Local Planning Authority for a part of central London, the Council will be well aware that there are many instances where a failure to fully meet a daylighting requirement but taking mitigating factors into account still represents compliance with BRE Guidance, as is explained in the Guidance itself. Accordingly I remain unconvinced as to the merit of the Council's assertion that this is a case in which the minor failure in the Report should be given greater weight than its context, and indeed more weight than the further standard BRE Guideline mitigation factor that daylight to a bedroom is less important than to a living room.
14. In assessing the effect on the living conditions of neighbours as raised by Members in refusing permission against the officers' recommendation, I have also had regard to the objections made by third parties and in particular by the residents of 2D Conway Street. However, whilst I am in no doubt that the previous scheme would have had a significantly adverse effect in respect of such issues as noise, outlook and daylight, I am satisfied that the substantially amended proposal now before me would not result in an outcome that would cause material harm to those considerations.
15. The occupiers of 2D refer to light spillage from the proposed roof lights, a point that is made briefly by the Council but not pursued in any detail. However, all development involves some escape of light and given the proximity of neighbouring buildings, light from their rooms will also affect the proposed extension. Furthermore, the appellant has pointed out that the roof lights will be low profile and flush with the roof and will additionally be constructed of materials that will prevent the excessive emission of light or glare. On balance I consider that any potential for light spillage is not such as to justify a refusal of permission.
16. Overall on the main issue, I conclude that the effect of the proposed roof extension and terrace on the living conditions of adjoining occupiers as regards outlook, light, privacy and noise would not be such as to cause unacceptable harm in conflict with Policy CS5 of the Camden Core Strategy 2010; Policy DP26 of the Camden Development Policies 2010-2025 adopted 2010, and the core

planning principles of the National Planning Policy Framework 2012 ('the Framework').

### **Other Matters**

17. The appeal premises lie within the area of the Fitzroy Square Conservation Area, which is a designated heritage asset as defined in the Framework. The extension would be set back behind the building's front parapet by 1.3m, and this together with its 'lightweight' appearance as a result of the extensive glazing will ensure that it would appear subordinate to the host building.
18. The Council has not objected to the design of the extension and although I have taken account of the objection from third parties that it would obstruct views that are characteristic of the area, I conclude that the character and appearance of the conservation area would be preserved.
19. During the course of the appeal the appellant signed a Section 106 Agreement with the Council to ensure that the proposed development is 'car free' through the preclusion of an on-street parking permit for occupiers of the proposed dwelling. Having regard to the Council's evidence that the relevant Controlled Parking Zone is practically at capacity, I agree this is necessary and consider the principle and form of this Agreement to be acceptable.

### **Conditions**

20. The Council has suggested some conditions if the appeal is allowed. A condition requiring the development to be carried out in accordance with the approved plans is required for the avoidance of doubt and in the interests of proper planning. Conditions in respect of external materials are necessary to safeguard the appearance of the building and the character of the area.
21. Conditions in relation to the 'green roof' will ensure that it is fit for purpose in terms of safeguarding the living conditions for adjoining occupiers and visual amenity. Conditions requiring a 1.8m high privacy screen and the obscure glazing of a window will prevent overlooking of neighbouring premises from the proposed roof extension. Finally, a condition in respect of the development incorporating feasible Lifetime Homes measures will ensure that the development is sustainable in terms of providing flexibility for future occupiers and their changing needs over time.

### **Conclusion**

22. For the reasons stated above, and having had regard to all other matters raised, the appeal is allowed subject to the conditions specified.

*Martin Andrews*

INSPECTOR

### **Schedule of Conditions**

- 1) The development hereby permitted shall begin before the expiration of three years from the date of this Decision;
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Nos. 000-P1; 201-P1; 202-P1; 210-P1; 211-P1; 301-P1; 302-P2; 303-P2; 310-P2; 311-P2; 312-P2; 320-P2;
- 3) All new external work shall be carried out in materials that in colour and texture resemble, as closely as possible, those of the existing building, unless otherwise specified in the approved application;
- 4) The 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 begins. This work 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;
- 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;
- 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;
- 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;
- 8) Prior to the first occupation of the extension the window at second floor level on the south east elevation of the building shall be obscurely glazed and fixed shut and thereafter maintained in that condition;
- 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 the new residential unit.