

TOWN and COUNTRY PLANNING ACT 1990  
PLANNING AND COMPENSATION ACT 1991  
PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS ACT 1990  
PLANNING & COMPULSORY PURCHASE ACT 2004  
LOCALISM ACT 2011

MR MARTIN CLARKE

&

LONDON BOROUGH OF CAMDEN

Statement in respect of appeals  
under Sections 78 and 174  
of the Town and Country Planning Act 1990 (as amended)  
by Mr M Clarke  
against the service of an enforcement notice ref EN16/0302  
and non determination of a planning application ref 2016/2958/P  
by the London Borough of Camden  
and in respect of works to  
loft conversion (including rear roof dormer and terrace and enlarged side  
elevation dormer), single storey rear extension and fenestration works including  
double access doors at upper ground floor rear elevation.

at  
45 Goldhurst Terrace  
London  
NW6 3HB

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LPA Ref: 2016/2958/P and EN/16/0302  
Our Ref: 1256/16

September 2016

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## **APPENDICES**

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## 1. THE APPEAL SITE AND SURROUNDINGS

- 1.1 The appeal site is located in South Hampstead. It is a short distance from Finchley Road and Swiss Cottage Underground Stations, South Hampstead Station and bus routes running along the A41 Finchley Road to the north. The site is in a sustainable location accessible to shops, services and community facilities. See O.S. location plan at **Appendix 1**.
- 1.2 The subject property is located on the east side of Goldhurst Terrace and is an end of terrace property which is subdivided into four flats.
- 1.3 The appeal site at 45 Goldhurst Terrace comprises a five storey building including semi basement accommodation and accommodation within the roofspace. It is not Listed but is part of an attractive terrace within the South Hampstead Conservation Area. The building comprises 3 two bed and 1 three bed self contained flats, one on each floor except for the fourth and roof space which form a maisonette on two floors. There is a shared access via a doorway to the left of the front elevation.
- 1.4 At the time of writing the property is undergoing modernisation with new floors and ceilings, replacement windows sanitary and kitchen equipment etc being installed and then the building will be decorated.
- 1.5 Photographs of the site are included in the Design and Access Statement supplied with the appeal papers and within this document.

## 2. THE PLANNING HISTORY OF THE APPEAL SITE AND SURROUNDINGS

2.1 The relevant planning history of the site is summarized as follows:-

<a href="#">016/1630/P</a>	FLAT A Erection of single storey garden room in rear garden	REGISTERED	17-05-2016	No decision
<a href="#">2015/7089/T</a>	REAR GARDEN: 8 x Sycamore - Remove	FINAL DECISION	17-12-2015	No Objection to Works to Tree(s) in CA
<a href="#">2013/0414/T</a>	REAR GARDEN: 2 x Sycamore - Thin crown by 20%. Lift crown to a height of 4m. Remove suckers from trunks.	FINAL DECISION	29-01-2013	No Objection to Works to Tree(s) in CA
<a href="#">2011/3507/T</a>	FRONT GARDEN: 1 x Unspecified Tree - [Option 1] Fell. [Option 2] Prune by up to 50%.	FINAL DECISION	19-07-2011	No Objection to Works to Tree(s) in CA

2.2 Of most relevance to the appeal scheme is a similar scheme as follows:

<a href="#">2015/5564/P</a>	Erection of single storey rear extension at lower ground floor. Erection of side and rear roof dormers. Installation of Juliette balcony at first floor rear elevation, installation of 2 conservation style rooflights to front roofslope and installation of windows in side elevation at lower ground, ground, first and second floors.	FINAL DECISION	26-11-2015	Granted
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2.3 Planning permission 2015/5564/P will be referred to further in the statement of case which follows, as it represents the "legal fall back" position and it is necessary to compare the work to be regularised with that which has already been permitted.

2.4 That permission covered the erection of single storey rear extension at lower ground floor, erection of side and rear roof dormers, installation of Juliette balcony at first floor rear elevation, installation of 2 conservation style rooflights to

front roofslope and installation of windows in side elevation at lower ground, ground, first and second floors. **See Appendix 2.**

2.5 That application was approved on 26 November 2015.

2.6 The Planning Officers Report for application 2015/5564/P is attached at **Appendix 3.** It concluded:-

*"The proposed development is considered acceptable in terms of design, impact on the conservation area and impact on amenity. The development is deemed consistent with the objectives and policies identified above. It is recommended conditional consent be given to the proposed development".*

2.7 This decision is relevant as it concludes that all elements of the scheme were acceptable. Some of these have not built as approved and so with this appeal proposal; and the conjoined enforcement appeal. the Inspector has to consider whether all the elements now proposed are acceptable (or some of them, or none of them) but bearing in mind that this decision which is still extant, implemented in part, represents the legal fallback position and is a material consideration.

2.8 On 29<sup>th</sup> June 2016 an Enforcement Notice ref EN1/0302 was served to take effect on 10<sup>th</sup> August 2016.

2.9 The breach was identified as:-

### 3. **THE BREACH OF PLANNING CONTROL ALLEGED**

#### **Without Planning Permission:**

- 1) Erection of a rear dormer, side dormer and rear roof terrace materially different from approved plans so as to be without planning permission;
- 2) Removal of the clay tile roof to the projecting bay at rear first floor level and creation of a brick balustrade to create an external balcony;
- 3) Installation of a uPVC door installed at ground floor rear within the bay;
- 4) Replacement of the timber-framed windows to the first and second floor rear elevation with uPVC windows.

2.10 This required that :-

## 5. WHAT YOU ARE REQUIRED TO DO

Within a period of **six (6) months** of the Notice taking effect:

1. Completely remove the rear and side dormer and reinstate the roof to match the materials and profile of the original roof slope, remove the brick balustrade and reinstate the original bay window roof at rear first floor level, remove the UPVC windows and door at upper floor rear and rear ground floor level and replace them with timber sash windows to match the original, as shown on existing drawings A9743PA/001 and A9743PA/003 approved under application ref. 2015/5564/P: **or**
  2. Make the rear roof dormer and terrace, the side dormer, the upper ground floor rear bay windows roof, the rear bay windows and the upper floor rear windows to comply with the terms (including conditions and limitations of the planning permission granted in respect of the land ref: 2015/5564/P as shown on drawings A9743PA/005A, A9743PA/007A and A9743PA/008A.
- 2.11 On August 2016 an appeal was lodged in respect of Grounds F and G (because there was an application with the Council submitted before the Enforcement Notice was served Ground A could not be pleaded). See next Section which explains about the retrospective planning application.
- 2.12 That appeal proceeded under reference APP/X5210/C/16/3156126.
- 2.13 The Council withdrew the Notice on 17 August 2016.
- 2.14 The Inspectorate decided by letter dated 13<sup>th</sup> September 2016 to take no further action in respect of that appeal.
- 2.15 On 17 August 2016 the Notice was reserved but confusingly with the same reference number EN16/0302. It was to take effect on 28<sup>th</sup> September if this appeal had not been lodged against it.
- 2.16 The second Enforcement Notice identified the breach as:-

### 3. THE BREACH OF PLANNING CONTROL ALLEGED

#### **Without Planning Permission:**

- 1) Erection of a rear dormer, side dormer and rear roof terrace materially different from approved plans so as to be without planning permission;
- 2) Removal of the clay tile roof to the projecting bay at rear first floor level and creation of a brick balustrade to create an external balcony;
- 3) Installation of a uPVC door installed at ground floor rear within the bay;

2.17 The requirements of the Notice were:-

### 5. WHAT YOU ARE REQUIRED TO DO

Within a period of **six (6) months** of the Notice taking effect:

1. Completely remove the rear and side dormers and reinstate the rear and side roof to match the materials and profile of the original

roof slope, remove the brick balustrade and reinstate the original bay window roof at rear first floor level, as shown on existing drawings A9743PA/001 and A9743PA/003 approved under application ref. 2015/5564/P: **or**

2. Make the rear roof dormer and terrace, the side dormer, the first floor rear bay roof and the upper ground floor rear bay windows comply with the terms (including conditions and limitations) of the planning permission granted in respect of the land ref: 2015/5564/P as shown on drawings A9743PA/005A, A9743PA/007A and A9743PA/008A.

2.18 The effective date was 28<sup>th</sup> September unless an appeal was lodged.



### **3. THE DEVELOPMENT THE SUBJECT OF THIS APPEAL**

- 3.1 A planning application to regularise the changes that had been made was submitted on 20<sup>th</sup> June 2016 and was given the reference 2016/2958/P.
- 3.2 Planning permission was sought for development at the appeal site including:
- ☐ Lower ground floor rear extension (5m deep, 2.9m high and 5.4m wide);
  - ☐ Juliette balcony at first floor with metal railings ;
  - ☐ Rear roof dormer with inset terrace;
  - ☐ Side dormer;
  - ☐ New windows in side elevation at lower ground (two), ground, first and second floor; and
  - ☐ Two velux conservation style windows in the front elevation.
- 3.3 The lower ground floor extension was to be of render with steel framed sliding doors, whilst the dormer extensions were to be of slate to match the existing roof slope. All new windows are to be timber framed and the Juliette balcony at first floor is to include a metal balustrade.
- 3.4 The planning application comprised the following documents and plans:-
- Planning Application Forms
  - Design and Access Statement
  - Certificate A
  - A9743 PA 001 Existing floor plans
  - A9743 PA 002 Existing floor plans and front elevation
  - A9743 PA 003 Existing rear and side elevations
  - A9743 PA 004 Existing section
  - A9743 PA 009 Location and block plan
  - A9743 PA 005 B Proposed floor plans
  - A9743 PA 006 B Proposed floor plans and front elevation
  - A9743 PA 007 C Proposed rear and side elevations
  - A9743 PA 008 B Proposed section
- 3.5 It is understood that the application is to be refused under delegated powers towards the end of September 2016.



## **4. RELEVANT PLANNING POLICIES**

- 4.1 The planning policies are discussed in order below. There is national policy in Planning Policy Statements etc, the London Plan Spatial Strategy; the Camden Development Policies and Core Strategy as well as various Supplementary Planning Documents. The Camden Unitary Development Plan (UDP) has been largely superseded.

### **Legislation**

- 4.2 Legislation relating to listed buildings and conservation areas is contained in the Planning (Listed Buildings and Conservation Areas) Act 1990.

Section 66 of the Act places a duty on the decision maker to have special regard to the desirability of preserving listed buildings and their settings

More importantly in this case Section 72 of the Act places a similar duty on the decision taker with respect to the desirability of preserving or enhancing the character or appearance of conservation areas.

Also see the discussion on *Obar Camden Limited v London Borough of Camden* and another [2015] EWHC 2475 (Admin) below.

### **GOVERNMENT GUIDANCE**

#### **i) The National Planning Policy Framework 2012**

- 4.3 The NPPF sets out the Government's simplified planning framework which includes a presumption in favour of sustainable development. The NPPF is a material consideration in support of the Government's need to achieve economic growth. It urges 'Development that is sustainable should go ahead without delay'. The Government's key housing objective is to significantly increase the supply of housing and to provide a wider choice.
- 4.4 The NPPF constitutes the Government's current national guidance and policy regarding development in the historic environment. It is a material consideration and includes a succinct policy framework for local planning authorities and decision takers. It relates to planning law by stating that applications are to be determined in accordance with the local plans unless material considerations indicate otherwise.

- 4.5 Paragraphs 126 to 141 of the NPPF deal with conserving and enhancing the historic environment with much emphasis on “significance”, defined in Annex 2 as: *“The value of a heritage asset to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset’s physical presence, but also from its setting.”*
- 4.6 Paragraph 128 of the NPPF places a duty on the Local Planning Authority (LPA) to require an applicant to describe the significance of any heritage assets affected by a proposal, providing a proportionate level of detail. The effects of any development on a heritage asset therefore need to be assessed against its heritage significance.
- 4.7 Paragraph 129 requires LPAs to identify and assess the *“the particular significance of any heritage asset”*. This should be taken into account when considering the impact of a proposal on a heritage asset, including by development affecting its setting.
- 4.8 Paragraph 131 requires local planning authorities to take account of the desirability of new development, making a positive contribution to local character and distinctiveness.
- 4.9 Paragraph 132 applies specifically to designated heritage assets. It states that great weight should be given to their conservation and it requires a proportionate approach (i.e. the more important the asset, the greater the weight attached to its conservation).
- 4.10 Conservation (for heritage policy) is defined in Annex 2 of the NPPF:  
*“The process of maintaining and managing change to a heritage asset in a way that sustains and, where appropriate, enhances its significance.”*
- 4.11 The importance and relevance of this definition is that it does not suggest conservation to be the same as preservation. Indeed, what sets conservation apart is the emphasis on proactively maintaining and managing change and not on a reactive approach to resisting change. In its simplest interpretation conservation could amount to a change that at least sustains the significance of a heritage asset.

- 4.12 Paragraph 133 deals with substantial harm to, or total loss of, significance of a designated heritage asset. In cases of substantial harm or total loss of significance, applications should be refused unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefit that outweighs that harm or loss.
- 4.13 Paragraph 134 deals with cases of less than substantial harm and notes that any such harm should be weighed against the public benefits of the proposal. Heritage protection and the conservation of heritage assets are recognised as of benefit to the public. Clearly there is a national and local need for good quality housing in sustainable locations which is the public benefit.

**ii) National Planning Practice Guidance (NPPG) 2014**

- 4.14 The National Planning Practice Guidance (2014) provides advice on enhancing and conserving the historic environment in accordance with the NPPF (2012).
- 4.15 In relation to harm the guidance states:  
*“Whether a proposal causes substantial harm will be a judgment for the decision taker, having regard to the circumstances of the case and the policy in the National Planning Policy Framework. In general terms, substantial harm is a high test, so it may not arise in many cases. For example, in determining whether works to a listed building constitute substantial harm, an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest. It is the degree of harm to the asset’s significance rather than the scale of the development that is to be assessed. The harm may arise from works to the asset or from development within its setting.”*
- 4.16 Paragraph 020 of the document notes that public benefits can be heritage based and can include:
- ☐ Sustaining or enhancing the significance of a heritage asset and the contribution of its setting;
  - ☐ Reducing or removing risks to a heritage asset; and
  - ☐ Securing the optimum viable use of a heritage asset in support of its long term conservation.

iii) **Historic Environment Good Practice Advice in Planning Note 3: The Setting of Heritage Assets (English Heritage, 2015)**

- 4.17 This document, published by Historic England (previously known as English Heritage) in April 2015, replaces the earlier 2011 setting guidance. The document provides for a thorough understanding of the setting of a heritage asset and the relationship of the setting to curtilage, character and context.
- 4.18 The guidance document notes, in paragraphs 9 and 10, that the protection of the setting of heritage assets need not prevent change.
- 4.19 The document recognises that not all heritage assets are of equal importance and states that the contribution made by their setting to their significance will also vary. Not all settings have the same capacity to accommodate change without causing harm to the significance of the asset.
- 4.20 As per earlier English Heritage guidance the document advocates a stepped approach to assessing the impact of change within setting on the significance of heritage assets. This stepped approach is:  
Step 1: identify which heritage assets and their settings are affected;  
Step 2: assess whether, how and to what degree these settings make a contribution to the significance of the heritage asset(s);  
Step 3: assess the effects of the proposed development, whether beneficial or harmful, on that significance;  
Step 4: explore the way to maximise enhancement and avoid or minimise harm;  
and  
Step 5: make and document the decision and monitor outcomes.
- 4.21 Guidance under Step 2 notes that the asset's physical surroundings and how the asset is experienced (such as views, noise, tranquillity, sense of enclosure etc.) should be taken in to consideration.
- 4.22 Step 3 is also important in making it clear that a proposed development should not be assessed in terms of its impact on setting; instead it should be assessed in terms of the impacts on significance. That is to say, what matters is not the extent of visibility of the development or change to the setting of an asset, but the extent of change to its archaeological, architectural, artistic or historic interest. In some circumstances, this evaluation may need to extend to cumulative and complex impacts which may have as great an effect on heritage assets as large-scale development and which may not only be visual. At the very least the

assessment should address the key attributes of the development in terms of its location and siting, form and appearance, additional effects and permanence.

- 4.23 Paragraph 28 recognises that good design may reduce or remove harm, or provide enhancement. In fact this is so important that design quality may be the main consideration in determining the balance of harm and benefit. In this case the relevance of good, well considered design has been acknowledged.

## THE LONDON PLAN 2016

### The London Plan March 2016 consolidated with amendments since 2011

- 4.24 The Mayor has published the replacement of the spatial development strategy for London – the London Plan. From March 2016 this replaces the London Plan (consolidated with alterations since 2004) which was published in February 2008 and again in 2011. Relevant extracts from the current, adopted London Plan 2016 are attached as **Appendix 4**.
- 4.25 The strategic aims of the Mayor's housing policies are set out in paragraph 3.13. They are the provision of more homes in order to promote opportunity and real choice for the population of London with a range of tenures that meet the diverse and changing needs at affordable prices. Housing provision is clearly a priority and housing provision monitoring targets for each Borough are set out in Table 3.1 on page 96 with appropriate density ranges given at Table 3.2. It should be remembered that the appeal development does not involve the loss of a housing unit per se, but a reconfiguration of an existing building to create modernised and desirable self contained residential units.
- 4.26 The quality and design of housing development is subject to Policy 3.5 on page 102. The policy is more applicable to new build schemes rather than conversions where strict adherence to standards is more difficult to achieve. This is recognised in Policy 3.5 (C), suggesting that there is some discretion, where it states that minimum spaces standards in LDF's should "generally" conform to the space standards in Table 3.3. Sub-paragraph (D) also suggests some flexibility. There is no suggestion in this case that the floor space standards are inadequate.
- 4.27 Policy 3.8 at page 108 seeks to ensure that there is a choice and range of housing including different sizes and types of dwelling which are affordable, taking account of the housing requirements of different groups and the changing role of different sectors including the private rented sector. Paragraph 3.55 on page 94 refers to shared accommodation which is accepted as part of the strategic housing supply. Where shared accommodation is of a "reasonable standard" it should generally be protected. A mixed and balanced community is sought by Policy 3.9 to be achieved through different tenures and household incomes. Existing housing is protected by Policy 3.14.

- 4.28 In terms of "Living Spaces and Places" Policy 7.4 requires that development "have regard to the form, function and structure of an area, place or street and the scale, mass and orientation of surrounding buildings...". Architecture in Policy 7.6. should make a positive contribution to a coherent public realm, streetscape and wider cityscape. It should incorporate the highest quality materials and design appropriate to its context". Included within the Policy is (c) which states that buildings and structures should comprise details and materials that complement, not necessarily replicate, the local architectural character".
- 4.29 Policy 7.8 recognises the strategic importance of Conservation Areas and the legal duty to preserve and enhance. Proviso "D" states that "Development affecting heritage assets and their settings should conserve their significance, by being sympathetic to their form, scale, materials and architectural detail". The supporting paragraphs (7.31 and 7.31A) explain that heritage assets should be protected from inappropriate development that is unsympathetic. However if harm does arise it can be outweighed by public benefit such as securing an "optimal viable use".



## **CAMDEN REPLACEMENT UNITARY DEVELOPMENT PLAN**

- 4.30 The UDP has been superseded by the adopted Local Development Framework. Only UDP policy LU1 has been saved and this policy is not relevant to the current appeal. Therefore we do not propose to consider the UDP policies.

## CAMDEN DEVELOPMENT POLICIES LOCAL DEVELOPMENT FRAMEWORK

### CAMDEN CORE STRATEGY & DEVELOPMENT POLICIES 2010

- 4.31 The Core Strategy (CS) and Development Policies (DP) documents were adopted in November 2010 (see extracts at **Appendix 5 and Appendix 6 respectively**). The CS and DP policies that appear relevant are :-  
CS5 (Managing the impact of growth and development)  
CS6 (Providing high quality homes)  
CS14 (Promoting high quality places and conserving our heritage)  
DP24 (Securing high quality design)  
DP25 (Conserving Camden's heritage)  
DP26 (Managing the impact of development on occupiers and neighbours)
- 4.32 The Borough's housing aims are set out at paragraph 6.3. Policy CS6 [Providing quality homes] sets out to minimise the net loss of existing homes (sub paragraph d), and to create mixed and inclusive communities by seeking a diverse range of housing products (j), a range of different sizes (k) and a variety of types for different groups(l). The supporting text at paragraph 6.18 indicates that the net loss of existing homes (rather than floor space) will be minimised and that in some circumstances the loss of homes can be justified, suggesting the policy will be applied with a degree of flexibility. Housing policy will be considered alongside other policies including the need to protect other uses.
- 4.33 The importance of market rented housing is acknowledged at paragraph 6.34 and measures to improve access to cheaper housing include positive consideration of low-cost market housing through innovative design, and seeking a mix of sizes including small homes.
- 4.34 Policy CS6 seeks the provision of more homes. It states that "*The Council will aim to make full use of Camden's capacity for housing by:*  
*a) maximising the supply of additional housing to meet or exceed Camden's target of 5,950 homes from 2007-2017, including 4,370 additional self-contained homes;*  
*b) maximising the supply of additional housing over the entire plan period to meet or exceed a target of 8,925 homes from 2010-2025, including 6,550 additional self-contained homes;....."*
- 4.35 Policy CS14 is the "heritage" policy which seeks amongst other things to secure that:-