**Date: 21/04/2017**

**Your ref: APP/X5210/W/16/3164956**

**Our ref: 2016/4805/P**

**Contact: Raymond Yeung**

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**Dear Hazel Stanmore-Richards**

**Planning Appeal by Witek Wacinski**

**Site at Flat 3 137 Malden Road, NW5.**

**Proposal:** Creation of a green roof and terrace at roof level of the existing flat; replacement of existing windows to the front elevation and the creation of a new rear window at 3rd floor level.

The Council’s case for this appeal regarding refusal of planning permission is largely set out in the officer’s delegated report dated 26/10/2016. This details the site and surroundings, the site history and an assessment of the evidence. A copy of the report was sent with the questionnaire.

In addition to the information sent with the questionnaire I would be pleased if the Inspector could take into account the following information and comments before deciding the appeal.

**1.0 Summary**

1.1. The appeal site is a three-storey, mid-terrace property with a basement and a mansard roof extension. The property is sub-divided into flats and the proposal relates specifically to Flat 3, on the second and third floors. Although the site is not within a conservation area, the existing roof line of the terrace is largely un-impaired and the terrace is uniform and of a positive strong architectural appearance. The proposed roof terrace and railings would have and unaccepted prominence and would harm the character and appearance of the host building, street scape and the wider area.

1.2 On 26th October 2016 (2016/4805/P) permission was refused on the following grounds

*The proposed terrace with associated balustrade, by reason of its location, size and detailed design which contribute to its visual prominence, creates an incongruous addition to the roof which would harm the character and appearance of the host building, streetscape and the wider area, contrary to policy CS14 (Promoting high quality places and conserving heritage) of the London Borough of Camden Local Development Framework Core Strategy and policy DP24 (Securing high quality design) of the London Borough of Camden Local Development Framework Development Policies.*

The application is a resubmission of a similar application which was refused, the difference between the current refusal and previous is that the current includes a black metal balustrade of a similar height , smaller roof terrace by virtue of the sedum green roof, a different staircase which now sees a more conventional once compared to the previous spiral staircase, and timber front mansard frames windows, please see below.

1.5 A previous application for a roof terrace 2015/1461/P refused 20/10/2015 for the following reason;

*The proposed terrace with associated railings and rear spiral staircase, by reason of its location, size and detailed design which contribute to its visual prominence, creates an incongruous addition to the roof which would harm the character and appearance of the host building, streetscape and the wider area, contrary to policy CS14 (Promoting high quality places and conserving heritage) of the London Borough of Camden Local Development Framework Core Strategy and policy DP24 (Securing high quality design) of the London Borough of Camden Local Development Framework Development Policies.*

The appeal proposal did not improve upon the previous and the impact would remain unacceptable. (Please see appendix 2).

**2.0 Status of Policies and Guidance**

2.1 The Camden Core Strategy and Camden Development Policies are currently ‘The Development Plan’ for the purposes of Section 38(6) of the Planning and Compulsory Purchase Act 2004. On 8th November 2010 the Council formally adopted the Core Strategy and Development Policies documents of the Local Development Framework. These documents have been through an Examination in Public, and the appointed Inspector found the documents to be sound in a decision published on 13th September 2010. The full text of the relevant policies cited above was sent with the questionnaire documents.

2.2 It should be noted that there are no material differences between the council’s polices adopted in 2010 and the emerging Camden Local Plan that will replace them shortly, see para 2.4 below. The submission draft is a material consideration in planning decisions. At this stage the Plan has weight in decision making and is a statement of the Council’s emerging thinking. Emerging policy is considered relevant to the subject appeal are placed in Appendix 3.

The Council also refers to supporting guidance documents: The Camden Planning Guidance has been subject to public consultation and was approved by the Council in 2013 and 2015.

NPPF

2.3 With reference to the National Planning Policy Framework 2012, policies and guidance contained within Camden’s LDF 2010 are up to date given that there are no material differences with emerging policies. The council’s policies therefore accord with paragraphs 214 – 216 (Annex 1) of the NPPF and should be given full weight in the decision of this appeal. In addition the NPPF 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.

Weight to be given to the emerging local development plan

2.4 The emerging Camden Local Plan is reaching the final stages of its public examination.  For information, the following sets out the timing of forthcoming stages and gives information on the weight to be given to the Plan as it progresses to adoption.

2.5 Consultation on proposed modifications to the Submission Draft Local Plan took place from 30 January to 13 March 2017.  The modifications have been proposed in response to Inspector's comments during the examination and seek to ensure that the Inspector can find the plan 'sound' subject to the modifications being made to the Plan (please see appendix 3). The relevant policies in the emerging plan is policy D1 on design, see Appendix 3.

2.6 The Local Plan should at this stage be a material consideration, with limited weight in decisions until the publication of the Inspector's report into the examination, which is expected in mid-April.  At this point the Local Plan policies should be given substantial weight.

2.7 Adoption of the Local Plan by the Council is anticipated in June or July (depending on Cabinet and Council meeting dates).  At that point the Local Plan will become a formal part of Camden's development plan, fully superseding the Core Strategy and Development Policies, and having full weight in planning decisions.

**3.0 Comment on the Appellant’s Ground of Appeal**

3.1The following summarises the appellants’ grounds of appeal, followed by the Councils comments;

3.2 The appellant quotes extracts from CPG1 Guidance at paragraph 5.25.The council does not agree with the statement that the property will not be materially altered. The erection of a balustrade at 1.1 high and 5.5 metres deep would take up a very significant footprint above the existing mansard roof. The roof itself measures only 7.8 metres depth which is significantly more than 60% of area as suggested in the applicant’s statement.

3.4 The council does not agree that the railings would not be visible from the ground. Despite the setback from the front façade, you would be able to clearly them from the pavement on the opposite side of Malden Road and from the grounds of the commercial car garages directly adjacent to the property.

3.5 Regardless of any set-back you would also able to see the rear of the property very clearly from Quadrant Grove to the west, which the appellant has failed to acknowledge. Such clear and open view of the rear of the proposal from the public realm is unacceptable.

3.6 As such, the council does not agree with the appellant’s statement which falsely states that you would not see the proposed works from the public domain. The accompanying diagram does not take a viewpoint from angled views, nor from Quadrant Grove and the commercial garages opposite. It can also be seen from many occupiers/users within the surrounding properties.

3.7 The immediate adjoining properties do not have such roof addition and therefore the neighbouring buildings are un-interrupted with additions. The proposal would represent an isolated incongruous feature in the street scene.

3.8 With the above taken into consideration the council maintains that the proposal would create visual prominence and would definitely be an incongruous addition and such harm would outweigh the any benefits the proposal would bring to this existing flat.

3.10 The Council accepts that the proposed rear and front window, are acceptable in

design and amenity terms and these do not form part of the reason for refusal.

**4.0 Other Matters**

4.1 On the basis of information available and having regard to the entirety of the Council’s submissions, including the content of this letter, the Inspector is respectfully requested to dismiss the appeal.

4.5 If any further clarification of the appeal submissions is required please do not hesitate to contact Raymond Yeung on the above direct dial number or email address.

**Yours sincerely**

**Raymond Yeung**

**Planning officer**

**Culture and Environment Directorate**

**Appendix 1 - Suggested Conditions**

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:

Design & Access statement, EP1, EE1, ES1, PP1, PE1, PS1

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.

**Appendix 2**

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| Stuart Henley & Partners |
| 6 Wrotham Business Park  Barnet  Herts  EN5 4SB |
| Application Ref: **2015/1461/P** | | |
|  | Please ask for: **Fiona Davies** | | |
| Telephone: 020 7974 **4034** | | |
|  | | |
| 20 October 2015 | | |

Dear Sir/Madam

**DECISION**

Town and Country Planning Act 1990 (as amended)

**Full Planning Permission Refused**

Address:

**Flat 5**

**137 Malden Road**

**London**

**NW5 4HS**

Proposal:

Roof terrace and spiral staircase access to rear

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| Drawing Nos: Site Location Plan, 4685\_01, 4685\_02a. |

The Council has considered your application and decided to **refuse** planning permission for the following reason(s):

Reason(s) for Refusal

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| 1 | The proposed terrace with associated railings and rear spiral staircase, by reason of its location, size and detailed design which contribute to its visual prominence, creates an incongruous addition to the roof which would harm the character and appearance of the host building, streetscape and the wider area, contrary to policy CS14 (Promoting high quality places and conserving heritage) of the London Borough of Camden Local Development Framework Core Strategy and policy DP24 (Securing high quality design) of the London Borough of Camden Local Development Framework Development Policies. |

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| **Delegated Report** | | | **Analysis sheet** | | | | |  | **Expiry Date:** | | | **09/06/2015** | |
| N/A / attached | | | | | | **Consultation Expiry Date:** | | | 05/05/2015 | |
| **Officer** | | | | | | | **Application Number(s)** | | | | | | |
| Fiona Davies | | | | | | | 2015/1461/P | | | | | | |
| **Application Address** | | | | | | | **Drawing Numbers** | | | | | | |
| Flat 5, 137 Malden Road  London  NW5 4HS | | | | | | |  | | | | | | |
| **PO 3/4** | **Area Team Signature** | | | **C&UD** | | | **Authorised Officer Signature** | | | | | | |
|  |  | | |  | | |  | | | | | | |
| **Proposal(s)** | | | | | | | | | | | | | |
| Roof terrace and spiral staircase access to rear | | | | | | | | | | | | | |
| **Recommendation(s):** | | **Refuse Planning Permission** | | | | | | | | | | | |
| **Application Type:** | | **Full Planning Permission** | | | | | | | | | | | |
| **Conditions or Reasons for Refusal:** | | **Refer to Draft Decision Notice** | | | | | | | | | | | |
| **Informatives:** | |
| **Consultations** | | | | | | | | | | | | | |
| **Adjoining Occupiers:** | | No. notified | | | **19** | No. of responses  No. electronic | | | | **01**  **00** | No. of objections | | **01** |
| **Summary of consultation responses:** | | 1 objection from the owner/occupier of 7 Malden Place (the property to the rear of the application site) has been received. The objection to the proposal is made on the following grounds:   * Long standing issues from residents in the area holding parties on roof terraces * The proposal would compound current noise issues * The application site has been the source of some disturbances   *Officer comments:*   * *Noise issues are governed by Environmental Health legislation* * *High level roof terraces are discouraged in CPG1 and are not commonplace in the borough in particular at such a high-level on the roof of this prominent building on a main road and very visible from the street-scape.* | | | | | | | | | | | |
| **CAAC/Local groups\* comments:**  \*Please Specify | | Application site does not lie within a Conservation Area. | | | | | | | | | | | |

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| **Site Description** |
| The site is a three-storey property with a basement and a mansard roof extension.  The property is sub-divided into flats and this application relates specifically to Flat 5, that occupies the second and third floors.  The site is not listed nor does it lie within a Conservation Area. However as part of the Strategic View Wider Setting 2010, falls within a strategic view from Parliament Hill to the Palace of Westminster. |
| **Relevant History** |
| 12577/R1 - The conversion of 137 Malden Road, NW5 to provide four self-contained dwelling units together with the erection of a roof extension Granted conditional planning permission on 22/03/1972.  8903513 – Extension of existing kitchen including enclosure of existing terrace at rear first floor level as shown on two unnumbered drawings at Flat 4, Malden Road, Granted conditional planning permission on 14/03/1990.  131 Malden Road  2014/1751/P Retention of balustrade. Granted 15/09/2014 |
| **Relevant policies** |
| **National Planning Policy Framework 2012**  **The London Plan March 2015 consolidated with changes since 2011**  **LDF Core Strategy and Development Policies 2010**  CS5 (Managing the impact of growth and development)  CS14 (Promoting high quality places and conserving our heritage)  DP24 (Securing high quality design)  DP26 (Managing the impact of development on occupiers and neighbours)    **Camden Planning Guidance**  CPG1 (Design) 2015 – chapters 2, 3 and 5  CPG6 (Amenity) 2011 – chapters 6 and 7 |
| **Assessment** |
| **1.0 Proposal**   * 1. Planning permission is sought for a roof terrace with spiral stair to the rear to provide access.   2. Following officer recommendation the proposal was amended from a glazed balustrade to a metal balustrade to relate more closely to the railings at ground floor level at the front of the property however it is considered that this revised proposal still does not overcome the reasons for refusal.   **2.0 Assessment**  The main material planning considerations are considered to be:-   1. The impact of the proposal on the character of the host building and surrounding area 2. The visual prominence of the proposal 3. The impact of the proposal on the amenity of neighbouring properties   **Design**  2.1The Council’s design policies are aimed at achieving the highest standard of design in all developments. Policy DP24 highlights that development should consider the character, setting form and scale of neighbouring buildings.  2.2 CPG1 Design guidance advises that the main considerations for proposals for roof alterations and extensions should be:   * The scale and visual prominence; * The effect on the established townscape and architectural style; * The effect on neighbouring properties   2.4 It goes on to advise that the detailed design of proposed roof terraces should seek to ensure the roof terrace complements the elevation upon which it is located and without having an adverse impact upon the character and appearance of buildings and streetscapes.  2.4 CPG1 also recommends that consideration should be given to the detailed design of the terrace to reduce the impact on the existing elevation and a careful choice of materials and colour to match the existing elevations. The proposed balustrade fails to comply with these recommendations, as it does not complement the existing elevation in terms of siting or materials. It would be visible from the street-scape and the use of the metal balustrade does not overcome its incongruity in relation to the established appearance of the elevation as part of the street facing terrace of Georgian houses.  2.5 Paragraph 5.25 of CPG1 also advises that any handrails should be set back behind the line of the roofslope and invisible from the ground. Although the terrace has been setback from the parapet by 1m following officer advice it is considered that the roof terrace and associated metal balustrade will still be highly prominent from the street-scene and out of character with the street elevation and the surrounding area. Similarly, it will introduce clutter to the roof-scape.  2.6 The roof terrace proposed would occupy the footprint of the existing flat roof. Furthermore, the proposed balustrade would be visible from the street-scene and from properties to the rear of the site and therefore considered harmful to the character of the host building and the wider townscape.  2.7 The existing roof line of the terrace is largely un-impaired with regard to development on the roof level and roof terraces. Approval was granted for the “retention of balustrade” to the top floor flat, Flat D at 131 Malden Road (reference: 2014/1751/P) following an associated Enforcement case (EN13/0766). However this permission was retrospective and granted to an existing roof terrace. While not mentioned in the report it appears that the roof terrace was considered lawful when assessed and therefore permission was granted for a revised proposal to improve the visual appearance of an existing terrace. However the proposal at the subject of this application relates to the creation of a new terrace to the flat roof.  2.8 It is considered that the proposed balustrade and associated roof terrace at the subject of this application, would unbalance the appearance of the terrace, particularly with its highly visible and prominent position from the street-scene at the front elevation of the property.  **Amenity**  2.4 CPG6 Amenity states: “Development should be designed to protect the privacy of both new and existing dwellings to a reasonable degree. Spaces that are overlooked lack privacy. Therefore, new buildings, extensions, roof terraces, balconies and the location of new windows should be carefully designed to avoid overlooking. The degree of overlooking depends on the distance and the horizontal and vertical angles of view. The most sensitive areas to overlooking are:   * Living rooms; * Bedrooms; * Kitchens; and * The part of a garden nearest to the house.”   2.5 Paragraph 5.23 of CPG1 advises that balconies and terraces can provide valuable amenity space for flats that would otherwise have little or no private exterior space. However, they can also cause nuisance to neighbours. Potential problems include overlooking and privacy, daylight, noise, light spillage and security.  2.6 Due to the distance from the roof terrace and the nearest residential windows, the proposal may not cause any adverse overlooking directly into properties but is likely to enable overlooking into back gardens of properties located to the rear of the application site at Malden Place. No loss of light would result from the terrace. Although the roof terrace may generate noise from use, it would be residential in nature therefore this is not considered a reason for refusal.  **3.0 Recommendation**  The proposed terrace with associated railings and rear spiral staircase, by reason of their size, location and detailed design would be particularly prominent and an incongruous addition to the roof which would harm the character and appearance of the host building, and the wider area and streetscape, contrary to policy CS14 (Promoting high quality places and conserving heritage) of the London Borough of Camden Local Development Framework Core Strategy and policy DP24 (Securing high quality design) of the London Borough of Camden Local Development Framework Development Policies. |

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|  | **Appendix 3**  The relevant replacement policies are D1 on Design, This shows that there are no material differences with the adopted policies. It should be noted however the importance of good design is strongly reinforced in the emerging plan. |