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Dear Sofie,

RE: Non-Material Amendment Application to planning application 2016/4136/P, to remove 4 x windows and increase the height of 1 approved window at 9 Maresfield Gardens, London, NW3 5SJ. Application Reference: 2021/0159/P

This objection letter has been prepared by hgh Consulting and is submitted on behalf of our client who resides at 7 Maresfield Gardens. The objection relates to a Section 96a application to remove 4 windows and increase the height of 1 approved window of the original scheme (2016/4136/P) for:

"Excavation of basement extension to existing semi-basement to create four new dwellings comprising 1x 2 bed and 3 x1 bed units and ground floor rear extensions with roof lantern to allow rearrangement of existing dwellings to provide 2 x 3 bed units with rear balcony/terrace and staircases"

Our client is located directly adjacent to the proposed development and is directly and adversely impacted by this planning application.

The Proposed Development

The subject site is located directly adjacent next to 7 Maresfield Gardens. The site is currently under construction for the redevelopment of the existing dwelling to 4 residential dwellings and the excavation of the existing basement and rear extensions (2016/4136/P). The proposal comprises amendments to this application and, of relevance to this letter, the increase in size of a habitable room window which faces the boundary with 7 Maresfield Gardens.

It is surprising that the original application (2016/4136/P) was approved given the direct overlooking it resulted in for our client. These privacy issues are made worse by the significant enlargement of the window, which is creating an even more unacceptable breach of privacy and overlooking from the application site to 7 Maresfield Gardens.

Grounds of Objection

Having reviewed the information submitted with the application, we wish to register an objection to the proposals with regards to the adverse impact on our client's residential amenity and also regarding the use of a S96A non-material amendment application when the enlargement of the window, we consider, constitutes a material change.

**Planning, Environment &
Development**

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Adverse impact on our client's residential amenity

Our client has expressed concern that the proposed application will significantly impact on their residential amenity. Camden Local Plan (2017) Policy A1 outlines *"the amenity of communities, occupiers and neighbours is protected"*.

Camden Amenity SPG (2021) sets out that:

"the Council will therefore expect development to be designed to protect the privacy of the occupants of both new and existing dwellings to a reasonable degree. Therefore, new buildings, extensions, roof terraces, balconies and the location of new windows should be carefully designed to avoid overlooking".

Camden Housing SPG (2021):

"The proposal should not have a significant detrimental impact to neighbouring amenity in terms of neighbouring outlook, privacy, sunlight, daylight, noise or vibration. Additionally, the proposal should not result in any overlooking into neighbouring habitable rooms"

The proposed enlargement of the window does not accord with these policies for the reasons set out below.

As shown in figure 1, 9 Maresfield Gardens is located extremely close to the boundary of no. 7, therefore the proposed development needs to incorporate details to ensure that the neighbouring properties are not affected by the proposals with regards to loss of privacy and overlooking. This clearly was not taken into account when officers considered the original planning application.

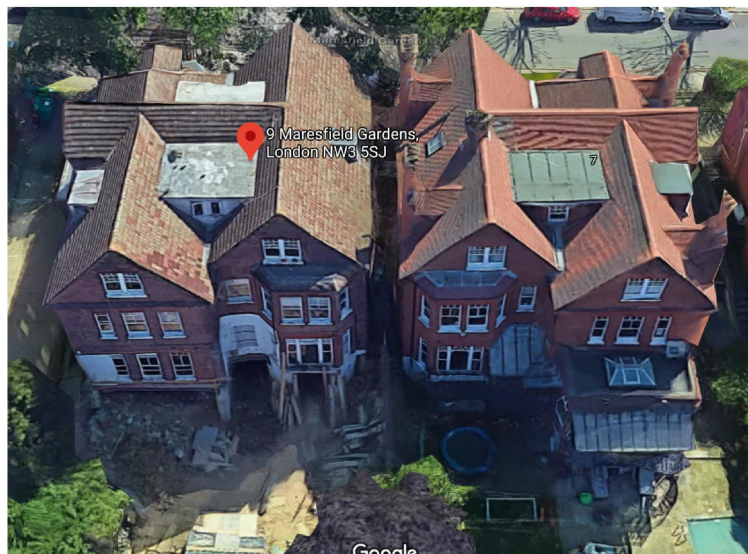


Figure 1: Aerial view showing tight relationship between 7&9 Maresfield Gardens

While the positioning of the proposed window remains broadly unchanged to that approved, the height of the proposed window is materially larger than the previous one as shown in figures 2&3 below. The enlarged window is approximately 0.5 metres taller than the approved window and serves a habitable room and would therefore directly overlook onto the neighbouring property at no. 7, specifically into their living room and kitchen, as shown clearly in figure 4 below. The proposal would also reduce the sense of privacy for the owners of no. 7 with respect to the amenity currently offered by the garden. This is clearly contrary to the London Plan (2021), Local Plan Policy A1 and the Camden Amenity SPG.

The amended window would cause increased harm to no. 7 due to the fact it will allow for increased overlooking into the garden at no.7, as well as direct overlooking into a habitable room of no. 7 (figure 4)

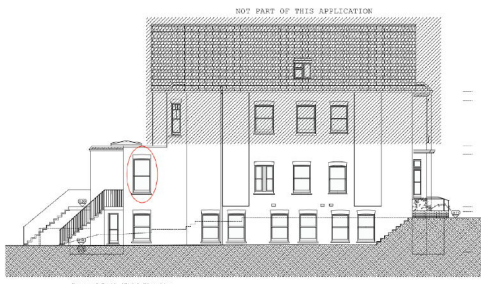


Figure 2: Proposed enlarged window



Figure 3: Approved plan including approved window



Figure 4: View from no. 7 towards unapproved window at no.9

Additionally, the increased overlooking, resulting from a larger window on the boundary exacerbates and compounds the loss of privacy resulting from the approved first floor balcony which clearly should not have been approved by the Council as it doesn't accord with any of the planning policies listed above. Both the window and balcony can be seen from the images below and both the window and balcony will directly overlook into the garden and habitable rooms towards the rear.



Figure 5: View from ground floor room at no.7



Figure 6: View from garden of no.7 towards balcony

Material Change

This application proposes securing the changes, that are already under construction, via section 96a of the Town and Country Planning Act (1990). This allows 'non-material amendments' to be made to an extant planning permission. There is no definition of what 'non-material' means and it will depend on the merits of the individual scheme. Generally, however, a non-material amendment should represent:

- A small change i.e., not material;
- Does not vary significantly from what was described on the planning permission; and
- It does not breach planning policy.



As outlined previously, the amendment to the original application represents a significant change in that the amended window is approximately 0.5 metres taller than the original, resulting in a material increase in direct overlooking of our client's property. This will result in a loss of privacy and amenity constituting a breach in local planning policy A1 and the Camden Housing and Amenity SPGs.

It is considered that the approved scheme failed to meet the requirements of these policies, as outlined above, however further and substantial harm is caused as a result of the amendments proposed. As such, the harm caused, and the failure to meet planning policy requirements, mean that changes proposed are material, and the S96a route is therefore inappropriate for determining this application.

In light of the above, the appropriate route for dealing with this application would be via a S73 application for a (Minor Material Amendment). However, given the level of harm identified, and the failure to accord with relevant planning policy, we would recommend that the application is refused.

Nevertheless, if the Council is minded to approve the amendments, we would urge that a requirement is placed upon the developer to ensure that the window cannot be opened and is fully obscure glazed, and that a screen is erected on the approved balcony to avoid detrimental overlooking. This, we consider, should be submitted as a s73 application.

Conclusion

As outlined above, we consider that the approved scheme should not have been permitted with habitable room windows and a balcony along the boundary with 7 Maresfield Gardens, and that the proposed amendment would adversely impact upon the existing residential amenity of our client further, contrary to planning policy. Additionally, we consider that the applicants use of a Section 96A application to amend the scheme is invalid due to the amendments constituting a material amendment to the scheme that would materially affect our client.

In light of this, we request that the application be refused. Our client's would however be amenable to an application that ensures that the amended ground floor window facing their property is fully obscure glazed and unopenable, and that a screen is erected on the balcony to avoid overlooking.

We look forward to receiving written confirmation that this objection has been received and registered.

Yours faithfully,

Sarah Ballantyne-Way

Director