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Attn Patrick Marfleet
(patrick.marfleet@camden.gov.uk)

Our Ref
IG/Maygrove Road

Your Ref

Date
12 August 2021

Dear Sirs

Application for a Single Rooftop Extension at Beaufort Court, 65 Maygrove Road, London NW6 2DA
Class A, Part 20, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)
Application Reference Number: 2021/3504/P

1 Introduction

- 1.1 We act for Regal Property Investments Limited, which has a leasehold interest in a number of flats in the above-referenced property ("the Property").
- 1.2 The above-referenced application ('the Application'), as submitted on behalf of Avon Ground Rents Limited ('the Applicant'), has been brought to our client's attention. Please note that our client has not received any formal notification from the Council regarding the Application, as to which we must reserve our client's position generally.
- 1.3 On 2 August 2021, our client wrote to Mr Patrick Marfleet, who is the case officer charged with conduct of the Application, seeking clarification as to the notification process that was undertaken but is yet to receive a response. Please provide us with a copy of the notification letter that was sent by the Council.
- 1.4 We note from the Council's on-line planning file that 15 August 2021 is the deadline for the submission of comments in response to the Application. Please accept this letter as our client's **strong objection** to the Applicant's attempt to extend upwards the Property.
- 1.5 The Application has purportedly been submitted pursuant to Part 20 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the Order') and relates to the proposed addition of a storey to create a further 16 residential units ('the Development') on top of the Property.

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2 **The Order**

2.1 The Applicant relies upon Part 20 of Schedule 2 to the Order.

2.2 Paragraph A of Part 20 provides as follows:

'A. Permitted Development

Development consisting of works for the construction of up to 2 additional storeys of new dwelling houses immediately above the existing top most residential storey on a building which is a purpose-built, detached block of flats, together with any or all -

- (a) *engineering operations reasonably necessary to construct the additional storeys and new dwelling houses;*
- (b) *works for the replacement of existing plant or installation of additional plant on the roof of the extended building reasonably necessary to service the new dwelling houses;*
- (c) *works for the construction of appropriate and safe access to and egress from the new and existing dwelling houses, including means of escape from fire, via additional external doors or external staircases;*
- (d) *works for the construction of storage, waste or other ancillary facilities reasonably necessary to support the new dwelling houses.'* [our emphasis]

2.3 It is not suggested by the Applicant that any of sub-paragraphs (b) – (d) above are engaged by the Application.

2.4 We emphasise the reference to *detached*, which is defined in the following way (per Paragraph C(1)):

"detached" means that the building does not share a party wall with a neighbouring building;

2.5 The rights granted by Paragraph A of Part 20 are subject to conditions. Insofar as material to the Application, we note the following conditions as set out in Paragraph A.2:

'A.2 Conditions

- (1) *Where any development under Class A is proposed, development is permitted subject to the condition that before beginning the development, the development must apply to the local planning authority for prior approval of the authority as to-*

...

- (f) *the provision of adequate natural light in all habitable rooms of the new dwellinghouses;*

- (g) *impact on the amenity of the existing building and neighbouring premises including overlooking, privacy and the loss of light;*

...

- (i) *where the existing building is 18 metres or more in height, the fire safety of the external wall construction of the existing building.*

and the provisions of paragraph B (prior approval) of this Part apply in relation to that application.' [our emphasis]

2.6 It would appear that the Applicant acknowledges that the prior approval of the Council is required in respect of those relevant matters set out in Paragraph A.2 and that such approval should be granted. Indeed, the Application seems to comprise the requisite

application pursuant to Paragraph A.2 (see, for example, the application form that has been submitted by the Applicant).

2.7 In addition, Paragraph B of Part 20 provides as follows (insofar as is material):

'B. – Procedure for applications for prior approval under Part 20

(1) *The following provisions apply where under this Part, a developer is required to make an application to a local planning authority for prior approval.*

...

(2) *The application must be accompanied by –*

...

(i) *where the application for a prior approval relates to the requirement mentioned in paragraph A.2(1)(i).... a report from a chartered engineer or other competent professional confirming that the external wall construction of the existing building complies with paragraph B4(1) of Schedule 1 to the Building Regulations 2010...*

...

(3) *The local planning authority may refuse an application where, in the opinion of the authority –*

(a) *the proposed development does not comply with, or*

(b) *the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with,*

any conditions, limitations or restrictions specified in this Part as being applicable to the development in question.

...

(9A) *Where the application relates to prior approval under Paragraph A.2(1)(i).... the local planning authority must refuse prior approval if the application is not accompanied by the report mentioned in sub paragraph (2)(i) above.*

...

(12) *The local planning authority must give notice of the proposed development-*

(a) *by site display in at least one place on or near the land to which the application relates for not less than 21 days of a notice which-*

(i) *describes the proposed development;*

(ii) *provides the address of the proposed development; and*

(iii) *specifies the date by which representations are to be received by the local planning authority.*

(b) *unless the proposed development falls within Class ZA, by serving a notice in that form on all owners and occupiers of any flats and any other premises within the existing building...' [our emphasis]*

2.8 The changes to Part 20, to which we have drawn specific attention above, were inserted by the Town and Country Planning (General Permitted Development) (England) (Amendment) (No.4) Order 2020 ("the 2020 Order") with effect from 30 December 2020. These changes (and the importance of them) were trailed in a letter (of the same

date) that the Secretary of State for Housing, Communities and Local Government sent to all local planning authorities in England, which was cast in the following terms:

‘...’

Since the tragedy at Grenfell Tower, the Government’s Building Safety Programme has been addressing fire safety failings in existing buildings, while developing wider reforms for the future building safety regulatory system.

In support of the Building Safety Programme, the Independent Expert Advisory Panel (the Expert Panel) has issued advice on the measures building owners should take to review ACM and other cladding systems to assess and assure their fire safety, and the potential risks to residents of external fire spread managed appropriately...

The amendment to the GPDO has the effect of introducing an additional matter for prior approval to two permitted development rights which allow extra storage to be added to existing buildings. These rights are: Class A (new dwelling houses on detached blocks of flats) and Class AA (new dwelling houses on detached buildings in commercial or mixed use of Part 20 to the Order.

This new requirement requires the developer seeking prior approval under those classes in relation to an existing building, which is 18 metres or more in height, to provide a report from a chartered engineer or other competent professional confirming that the external wall construction of the existing building complies with paragraph B4(1) of Schedule 1 to the Building Regulations 2010 to the local planning authority.

Paragraph B4(1) provides that the external walls of the building shall adequately resist the spread of fire over the walls and from one building to another, having regard to the height, use and position of the building.

Where a report is not provided the local planning authority must refuse prior approval. This requirement will further encourage any necessary remediation works to be done quickly...’ [our emphasis]

- 2.9 Whilst the Order has been further amended by the Town and Country Planning (General Permitted Development) (England) (Amendment) (No.2) Order 2021 with effect from 1 August 2021, the transitional provisions make it plain that the Application must still comply with the requirements of the 2020 Order. Yet, it omits to do so.

3 **Objection**

- 3.1 Our client relies upon the following points in support of its objection.
- 3.2 First, the Property is at least 18m in height. As is clear from the above extracts of the Order, this is an important point but it is not addressed in the Application. We refer to the enclosed letter (“the Letter”) from Ashton Fire, being a highly reputable firm of fire engineers. The Letter supports our client’s contention regarding the height of the Property.
- 3.3 This being so, Paragraph A.2(1)(i) of Part 20 is engaged.
- 3.4 It follows that the Application must be accompanied by a report from a chartered engineer (or other competent professional) confirming that the external wall construction of the Property (as existing) complies with paragraph B4(1) of Schedule 1 to the Building Regulations 2010.
- 3.5 We have checked the miscellany of documents that have been uploaded to the Council’s on-line planning file in support of the Application. We cannot see any reference there to the submission of such a report. This is a fatal omission. In accordance with Paragraph B(9A) of Part 20 (as above) the Council must refuse prior

approval and reject the Application: it has no discretion to do otherwise (indeed, any contrary decision would be susceptible to legal challenge).

- 3.6 We, therefore, respectfully invite the Council to reject the Application at the earliest opportunity.
- 3.7 In view of the above, it is not strictly unnecessary for us to comment any further. However, we would also draw the Council's attention to the other fire-related concerns raised in the Letter having regard to (amongst other things) the current investigation into the fire safety status of the external wall composition at the Property, which is being carried out by Mr Iain Clark of the Council.
- 3.8 Second, it is not accepted that Part 20 can legitimately be relied upon by the Applicant in any event. In particular, our client does not accept that the Applicant has demonstrated that the Property is *detached* within the meaning of Part 20. In this respect, we note that the Application is supported by a letter dated 10 March 2021 from Simon Levy Associates ("SLA"), which concludes that there is no evidence to demonstrate that the Property is separated from 61 Maygrove Road by a party wall. We would emphasise that the burden is on the Applicant to demonstrate to the satisfaction of the Council that the Property is *detached*. Our client does not accept that the Applicant has discharged this burden.
- 3.9 We would highlight the following points arising from the letter produced by SLA:
- (a) SLA refer to photographs contained in Appendix A but they are not available on the Council's portal. Please provide us with a full copy of them by return;
 - (b) quite apart from this, the assessment produced by SLA does not rely upon any measurements taken on-site nor the benefit of any access to the interior of 61 Maygrove Road;
 - (c) the assessment relies (in part) on an image of the Property that was taken during the early stages of its construction; and
 - (d) it is stated that the gap between the Property and 61 Maygrove Road has been partially infilled to prevent rubbish and debris accumulating.
- 3.10 We enclose photographs of the Property and 61 Maygrove Road that were taken on 4 August 2021.
- 3.11 As can be seen, there is no gap between the Property and 61 Maygrove Road. We note the explanation proffered by SLA but it is not supported by substantive evidence. Given that this issue goes to the heart of the Application, it is incumbent on the Council to ensure that it can properly form a view as to whether there exists a party wall in this location. Whereas, it is clear that further investigation is required in order to clarify the position. As matters stand, the Applicant has failed to provide sufficient information to enable the Council definitely to establish whether the Development complies with Part 20.
- 3.12 This paucity of information represents a further basis upon which the Application should be rejected.
- 3.13 Third, the Development would have an unacceptable impact on the amenity of occupiers of the Property (at the very least, the Council does not have sufficient information before it in order to satisfy itself that such an impact would not arise). The Applicant's submission includes a Daylight & Sunlight Assessment dated March 2021 as prepared by GIA, which purports to conclude that: (i) all the tested surrounding

properties comply with the well-established BRE guidance; and (ii) neighbouring properties would not experience any material loss of light. It is also noted that the covering letter submitted in support of the Application advises that this conclusion (by GIA) *'is supported by the pre-application feedback which sets out that the proposed extension would not have a significant impact in terms of loss of light or outlook.'*

3.14 The covering letter goes on to state:

'In addition, the new storey will not impact on overlooking and privacy due to being set back from the road and to the rear, as is the case for the existing fourth storey which was considered acceptable in privacy and overlooking terms. This view was supported by officers at the pre-application stage.'

3.15 We are not aware that any independent assessment of the sunlight and daylight implications of the Development has been undertaken by a qualified surveyor on behalf of the Council. We would respectfully invite the Council to do so. Without this, it cannot conceivably be the case that the pre-application advice provided by officers was predicated upon any definitive or accurate (i.e. expert) conclusion that the Development would not give rise to unacceptable impacts in terms of loss of light and outlook for neighbours (and, indeed, other properties within the Development).

3.16 This absence of proper scrutiny of the likely sunlight and daylight impacts of the Development represents a further basis on which the Application must be rejected (per sub-paragraphs (f) and (g) of Paragraph A.2 of the Order (as above).

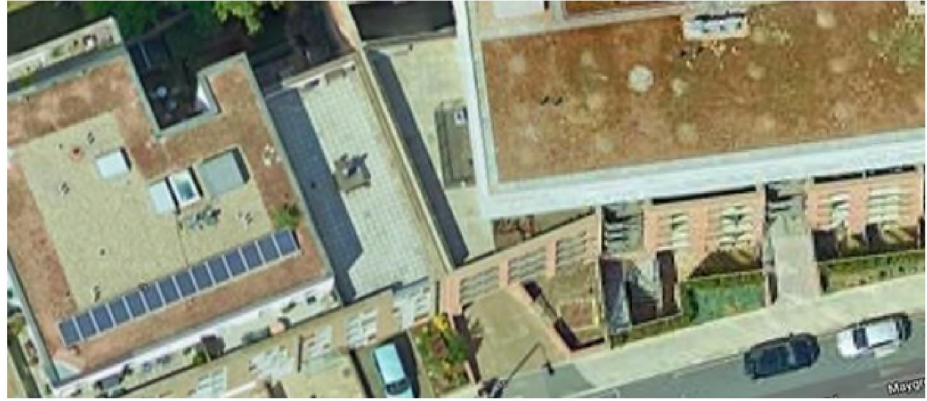
3.17 Finally, and by way of further important context, we are instructed that it has taken nearly a year for the leaseholders of the Property to obtain an EWS1 certificate for the Property: this was necessary to allow occupiers to be able to mortgage and/or sell their respective interests in the Property. The addition of a new floor to the Property, as proposed by the Application, would invalidate the current EWS1 certificate to the significant detriment of all occupiers and their families with potentially huge implications for them on both a personal and financial basis.

3.18 For all the reasons set out above, we respectfully invite the Council to reject the Application.

Yours faithfully



Clyde & Co LLP









Mr Michele Labo.
Regal London Ltd.
4-5 Coleridge Gardens
London, NW6 3QH

Dear Michele,

Review of proposed additional floor at Beaufort Court, 65-67 Maygrove Road, London

We have undertaken a fire safety review of the proposed extension works at the above-named property (Camden Council planning application reference 2021/3504/P). It is understood that the proposal has been submitted on the basis that it is considered 'permitted development' under the General Permitted Development Order 2015 (as amended).

Fire safety considerations at planning stage

For permitted developments it is understood that 'Prior Approval' rather than 'Planning Permission' is required from the local authority. As such, it is understood that the expectations of the London Plan 2021 would not apply in full. However, as noted in Section 3.12.11 in Policy D12 of the London Plan 2021:

"Some refurbishments may not require planning permission; nevertheless, the Mayor expects steps to be taken to ensure all existing building are safe, taking account of the considerations set out in this policy, as a matter of priority."

Based on the information provided to date, it is not apparent that a detailed assessment of the fire safety expectations for the proposal have been completed. As such, this would not appear to be cognisant of the expectations of above statement, where the extent of the extension could also be considered as a major development in London planning guidance (construction of 10 or more dwellings).

Height of the building and external walls

The residential aspects of the existing Beaufort Court building are arranged over basement, ground and four above-ground levels, with the basement level apartments also having access to external courtyards. It would be expected that in considering the overall height of the building and height of the uppermost storey with respect to the expectations of Building Regulations, reference is made to Diagrams D4 and D6 in Approved Document B Volume 1 (ADB) respectively.

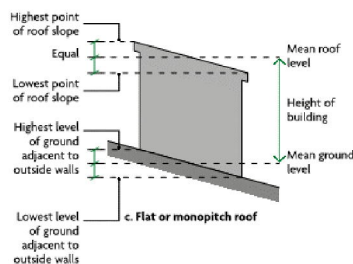


Diagram D4 Height of building

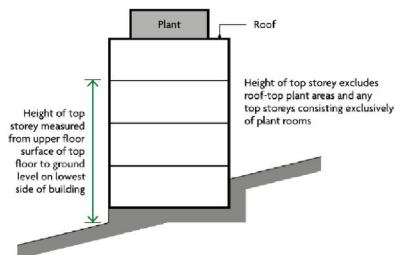
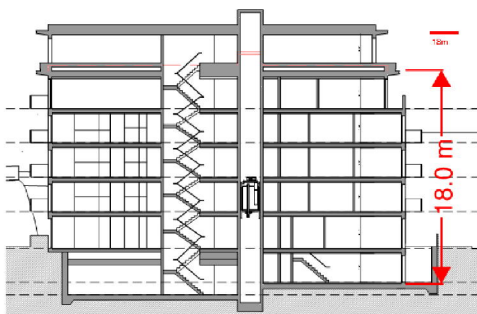


Diagram D6 Height of top storey in building

With the basement levels having residential accommodation and associated external space, this could be considered as the lower side of the building. This is particularly relevant where the external walls associated with this level form a continuous part of the overall building envelope above. The existing external walls have a height at or around 18 m, and these would be increased further by the proposed extension.

If the building control authority for the extension works was to interpret the resulting development as having a floor at greater than 18 m in height, this would then result in the entirety of the development being considered a 'relevant building' under Regulation 7(4) of the Building Regulations, with the restrictions of Regulation 7(2) to be applied. The existing external walls feature materials that would be rendered illegal by the works, including timber panelling, aluminium composite panels, PIR insulation, and laminated glass balustrades. Extensive works may be required to replace materials across the building in this event.



Existing and proposed external wall heights

Suppression requirements

The proposed extension works will result in the creation of new accommodation at a storey height of greater than 11 m above ground level. ADB was amended in 2020, with changes coming into effect on 26th November 2020. For residential developments that had not submitted an initial notice and commenced building work prior to 29th January 2021, it is now expected that automatic suppression be provided throughout residential buildings featuring an occupied floor greater than 11 m in height.

In a circular letter issued by the Ministry of Housing, Communities & Local Government (MHCLG) on the 26th May 2020, guidance for the application of the ADB revisions to extension works was provided as per below:

Extensions

Applicants and building control bodies are reminded of the need to consider these new provisions in relation to extensions as required by Regulation 4(1). New accommodation, formed by building work, should meet the relevant requirements having considered the guidance in the approved document. This means ensuring that the standard of fire protection for the occupants of the new accommodation is as would be provided for a new building under the approved document.

In the majority of cases, therefore, sprinkler protection and wayfinding signage will be necessary in any newly formed accommodation that falls above the new 11m trigger height. It may also be necessary to consider additional protection for the existing parts of the building where needed to ensure that the extension is compliant with the applicable requirements of Schedule 1. Equally, it will be necessary to satisfy regulation 4(3) by ensuring that the level of fire protection in the building as a whole is made no worse.

There may also be situations where the risk assessment for the building (provided under the Fire Safety Order) requires further work to be done. Regardless of the minimum requirements of the regulations there is, of course, merit in providing additional protection throughout the building.

In our experience to date, it is typically expected that the addition of a floor at greater than 11 m in height would result in suppression being expected throughout new and existing apartment and ancillary areas of the building to meet Appendix E in ADB. The latest version of BS 9251 (for residential sprinklers), which came into force on the 30th June 2021, also now recommends that where car parks greater than 100 m² are present, as is the case at Beaufort Court, then these would be expected to be protected in accordance with BS EN 12845 (for commercial grade sprinklers).

Where retrospective installation of sprinklers throughout all apartments and ancillary areas is necessary to facilitate the construction of an additional floor at the building, access will be required to all apartments (new and existing) to conduct installation works. The sprinkler systems would result in additional ongoing maintenance costs, and the location of water tanks and pumps for the system may result in the loss of ancillary space in the basement level of the building.

EWS1 Forms

Ashton Fire recently completed an assessment of fire risk and EWS1 form for the Beaufort Court development. Changes to the external wall construction and height of the building would invalidate the existing EWS1 form, where based on building geometry that would no longer be present.

During the period between commencement of the extension works and reissue of an up-to-date EWS1 form for the completed works, existing residents of the building may be unable to re-mortgage or sell their apartments without the supporting EWS1 paperwork required by mortgage lenders.

Conclusions

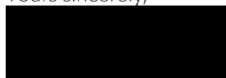
The proposed works would benefit from greater scrutiny with regards to fire safety, as also advocated within Policy D12 of the London Plan 2021. They would also pose a foreseeable risk that extensive works to remove and replace existing material in the external walls could be required, changing the external look-and-feel of the building.

The proposed extension works are likely to require the retrospective installation of sprinklers throughout the building, including residential sprinklers within apartments, common corridors, and small ancillary areas, with commercial grade sprinklers in larger ancillary areas such as the basement car park.

It would be considered that the proposals do not currently offer sufficiently detailed proposal for fire safety such that existing residents of the building may determine the impact that the works may have regarding required access to install sprinklers their apartments and consequential redecoration works, additional maintenance charges that may be required for the suppression systems, changes to ancillary areas the lower levels of the building to accommodate suppression system pumps and tanks, possible changes to the external walls and balconies of their apartments, and the potential invalidation of the EWS1 form currently provided for apartments at the development.

Additional review of the fire safety expectations to facilitate the extension under the Building Regulations may also assist the developer in ensuring that the proposal is commercially and legally viable (with respect the apartment access), prior to committing further resources in developing the design. It is our experience that in many cases the costs of retrospectively installing sprinklers will be considerable, and we would recommend that these are considered at the earliest opportunity by potential developers / investors.

Yours sincerely,



Andy Ballantyne BArch MEng CEng MIFireE PMSFPE
Chartered Engineer, Fire Safety Engineering