

Planning Statement

Site: 4 Clyde Circus, London, N154LF

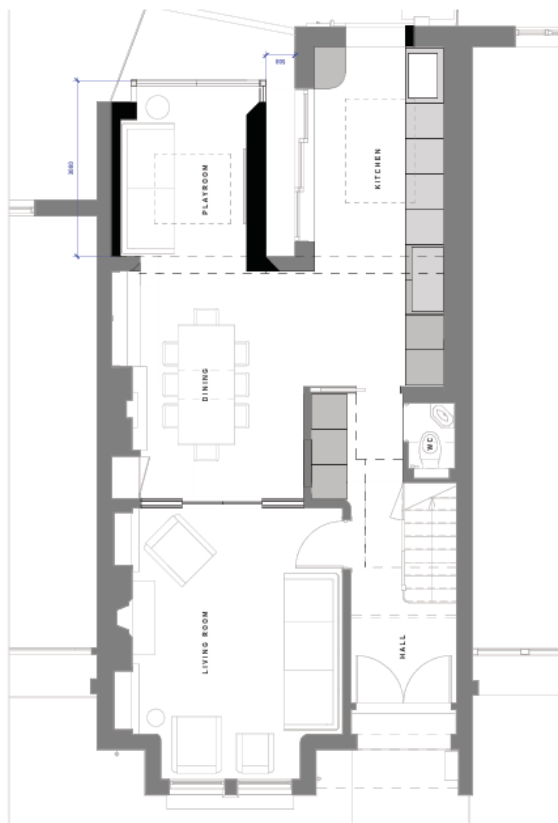
Proposal: Removal of existing rear bay window and erection of single storey rear extension.

Planning Assessment

Section 38(6) of the Planning and Compulsory Purchase Act 2004 (PCPA 2004) provides: *'If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan **unless material considerations indicate otherwise.**'*

A Certificate of lawfulness was approved 31 March 2026 (planning ref: HGY/2026/0647), for: *"erection of a single storey ground floor extension."*

The approved floor plan and rear elevation is shown below.



It is the applicant's case that a significant material consideration is the permitted development "fall-back" position, as confirmed by the certificate of lawfulness.

The proposal is identical to the proposal granted a certificate of lawfulness in regard to depth and height, but the proposal seeks to attach to the existing rear extension.

It is considered that what is proposed would improve the character and appearance of the property and this part of the conservation area when compared to the proposal confirmed as permitted development by the certificate of lawfulness.

And the proposals impact on neighbouring amenity will be identical to the proposal confirmed as permitted development by the certificate of lawfulness.

In the Court case *Mansell v Tonbridge and Malling BC* [2017] EWCA Civ 1314, the Court of Appeal upheld a judgment of the High Court that permitted development rights can properly be taken into account as a fall-back position where some alternative form of development is then proposed.

The judgment confirmed the legal considerations in determining the materiality of a fallback position as a planning judgment were:

- the basic principle is that for a prospect to be a “real prospect”, it does not have to be probable or likely: a possibility will suffice;
- there is no rule of law that, in every case, the “real prospect” will depend, for example, on the site having been allocated for the alternative development in the development plan or planning permission having been granted for that development, or on there being a firm design for the alternative scheme, or on the landowner or developer having said precisely how he would make use of any permitted development rights available to him under the GPDO. In some cases that degree of clarity and commitment may be necessary; in others, not. This will always be a matter for the decision-maker’s planning judgment in the particular circumstances of the case in hand.

It is the Applicants case that in the event the application is refused, it is a reasonable prospect that the proposal confirmed as lawful by the certificate of lawfulness, will be implemented as the alternative fall-back position.

Therefore, in line with the Court ruling, significant weight should be afforded to the outlined fall-back position. Significant weight can be attributed to the fall-back position because it is a real prospect that in the event the application is refused then the fall-back positions would be implemented - **the basic principle set by case law is that for a prospect to be a “real prospect”, it does not have to be probable or likely: a possibility will suffice.**

Overall, it is clear the proposals impact on the character and appearance of the property, this part of the conservation area and neighbouring amenity would be no worse than the proposal that can be built under permitted development.

Therefore, giving significant weight to the permitted development fall-back position (as required by case law) is sufficient on its own to justify granting planning permission.