

Section 38 Planning (Listed Building and Conservation Areas) Act 1990
Listed Building enforcement Notice: EN22/0113
Land and premisses at 31 – 39 Argyle Street, London, WC1H 8EP

Appeal Statement on behalf of The St Pancras Hotel Grp Limited

Introduction

1. This Appeal Statement (the Statement) is submitted on behalf of the St Pancras Hotel Grp Limited ('The Appellant').
2. St Pancras Hotel Group Limited occupies under a long lease and operates the property Numbers 31 – 39 Argyle Street as a budget hotel under a long lease from SPHG Properties Limited. It was served with the listed building enforcement notice referred to below on 28 July 2023.
3. The St Pancras Hotel Grp Limited prides itself on its support of the local community. During the pandemic it provided free accommodation at the Property to NHS employees working in local hospitals, as well as accommodating one of the teams who were developing emergency respirators. The St Pancras Hotel Grp Limited is a member of the Friends of Argyle Square (FoAS), consulted FoAS on its proposed works, and supports the work of FoAS to ensure that the area and its heritage is properly maintained.
4. This Statement is supported by (1) an expert Heritage Grounds of Appeal dated 8th September and prepared by Dr David Hickie of Heritage Matters and by (2) a report prepared by Mr Joe Malone BSc (Hons) MCIOB, C.Build.E MCABE dated 7th September 2023 concerning the physical impacts of the proposed removal of the lime render at No. 39 Argyle Street. The Inspector is respectfully asked to refer to those two reports.
5. The statement is also supported by the following appendices (NB, the appendices are submitted as a single, internally paginated and bookmarked pdf. The appendix page numbers referred to in this statement are references to the internal page numbers at the bottom of each page):
 1. Listed Building Enforcement Notice Ref EN22/0113, served by Camden Council on 28 July 2023
 2. Email trail starting 17 March 2021 between Mr Gary Cilla of the Appellant, and Mr Paul Lovesey of Camden Council
 3. Email trail starting 21 February 2022 between Mr Gary Cilla and various Council officers
 4. Email trail starting 14 March 2023 between Dr David Hickie (the Appellant's Heritage Consultant) and Mr Joshua Cheung of the Council
 5. Heritage Review dated 3 April 2023 prepared by Dr David Hickie
 6. Penn House Appeal decision
 7. Monks Gate Appeal Decision
 8. Somerset House Appeal Decision.
6. As set out below, the Appellant appeals against the Listed Building Enforcement Notice reference EN22/0113 issued by the London Borough of Camden (the Council) on 28 July 2023 on the grounds set out at s. 39 (b), (c), (e), (i) and (j).

Background

7. Argyle Street runs in a south easterly direction from the Euston Road. Development at the top of Argyle Street where it meets the Euston Road comprises on the western side of the road, the Standard Hotel (formerly, the annex to Camden Town Hall) a multi-storey, 1974 Brutalist building and on the eastern side of the road, Argyle House, a four-storey, large footprint 20th century brick and stone building. From the road itself, the Grade I listed St Pancras Station is visible on the opposite side of the Euston Road.
8. To the rear of both the Standard Hotel and Argyle House, and lining both sides of Argyle Street, are modest, 3 storey (plus basement) brick terraces dating back to the 1830s. Of these, Numbers 7-19 (odd) and 27-43 (odd) (both on the eastern side of the road) and numbers 12 – 36 (even) (on the western side of the road) are each Grade II listed as groups of terraced houses.
9. The terraces are built predominantly of traditional, London Yellow Stock Bricks, with a variety of front façade treatments:
 - Plain white render (numbers 7, 16 & 18 (in both cases, the full front façade has been rendered and painted)).
 - Pebble Dash - Number 9.
 - Stucco – Numbers 15 – 19, 31- 37 (prior to the works that are the subject of the Enforcement Notice)
 - Plain Brick - Numbers 11, 22 – 32, 27 & 41
 - Painted Brick - Numbers 34, 36 and 43 (with the whole of the façade at Number 43 being painted).
10. In addition to the ground floor façade treatment, there is a mixture of plain, painted and rendered window arches and door recesses and painted first floor sill bands.
11. There is a wide variety of brick shades evident in the road and wider area, from a relatively light yellow to grey and nearly black. There is even a variety of brick shades within individual buildings, number 34 being a prime example (centre of the image below):



12. The darkening of the bricks is likely to be the result of exposure to London air pollution. Quite clearly, some of the facades in the road have been cleaned at some point and the darkening process as a result of air pollution has then restarted. As a result, a variety of shades of brick colour and the changes in those shade with the passage of time is very much part and parcel of the character of the area. This is perhaps most obvious in the contrast between neighbouring buildings on the southern side of Argyle Road where it turns eastwards (see image below).



13. Aside from Number 31 – 39, the terraces in the stretch of Argyle Street running northwest to south east present a very mixed character. Some, such as the Globe Hotel (opposite 31 – 33 Argyle Street) with its faded painted brickwork at ground floor and basement level, a muddle of pipes attached to the façade, and uncharacteristic fenestration of balconies at attic level are in a clearly poor state of repair and harmful to the character of the conservation area. Others have obviously been repaired and cleaned more recently and clearly positively contribute to the architectural character of the area.
14. Overall, and as is clear from the brief summary above, it is characteristic of Argyle Street, that there are a range of façade treatments and colourings in different states of repair, with little consistency from one building to the next.

Bloomsbury Conservation Area

15. Argyle Street sits within the Bloomsbury Conservation Area. As Camden Council’s ‘Bloomsbury Conservation Area Appraisal and Management Strategy (April 2011)’ explains, the “quintessential character of the Conservation Area derives from the grid of streets enclosed by mainly three and four storey development which has a distinctly urban character” (at para 3.8) and “[t]he townhouses arranged in terraces is the predominant form across the area, reflecting the speculative, (mainly) residential development of the Stuart, Georgian, Regency and early Victorian periods” (para 3.12).
16. Argyle Street itself falls within Sub Area 13 of the Conservation Area (Cartwright Gardens/Argyle Square), the interest of which derives “from the formal early 19th century street pattern and layout of open spaces, and the relatively intact surviving terraces of houses” (para 5.225).
17. The terraces were originally built as houses, but as the Survey of London (see extract at page 16 of Dr Hickie’s Heritage Grounds of Appeal dated 8th September 2023) records, “the whole area was reported to be overcrowded and squalid in 1848 (Survey of London, vol 24, 1952), and the

coming of the railways in the latter half of the century, with the opening of the stations at Kings Cross and St Pancras, rendered it particularly vulnerable to the conversion of its houses into lodging-houses and cheap hotels". The conversion to hotels has continued into the 20th Century, albeit it is understood that that trend may be reversing, with some buildings reverting to residential occupation.

Numbers 31 – 39 Argyle Street

18. Numbers 31 – 39 Argyle Street form part of the Grade II listed terrace of houses on the south-eastern side of the street. The Terrace was listed in 1974 and the listing description reads:

"Terrace of 8 houses, now mostly small hotels. c1834-9. Yellow stock brick with later 2nd floor patching. Nos 31 & 33, rendered ground floors; No.35, stucco ground floor; No.37, painted ground floor; No.41, all floors painted. Plain stucco 1st floor sill bands. All except Nos 31 & 33, slated mansard roofs with dormers. 3 storeys, attics (except Nos 31 & 33) and basements. 2 windows each. Round-arched ground floor openings. Doorways with pilaster-jambs carrying cornice-heads; fanlights and No.29 with panelled door. Others with C20 doors. No.27, single storey stucco entrance extension on return to St. Chad's Street. Gauged brick flat arches (mostly painted) to recessed sashes and casements; 1st floor in shallow, round-headed recesses (mostly painted) with cast-iron balconies. Parapets. INTERIORS: not inspected.

SUBSIDIARY FEATURES: attached cast-iron railings with tasselled spearhead finials to areas. (Survey of London: Vol. XXIV, King's Cross Neighbourhood, Parish of St Pancras IV: London: - 1952: 106)".

19. As the listing description explains, at the time of the listing, there were a variety of façade treatments within the terrace:

- 31 & 33 – rendered ground floor;
- 35 – stucco ground floor;
- 37 painted ground floor.

20. The listing description fails to mention that Numbers 31 – 37 (not Number 39) all have red bricks in the bricked lintels and rounded-headed recesses of the first-floor windows and forming the lintels above the second-floor windows (see 2017 Google Streetview image below).



21. Google Street view images show that even before the works described below were carried out, the brick work of numbers 31 – 39 had a variety of shades, differing from building to building (see image below from 2008) and even within individual buildings (for example where water has run off the balconies – as is visible in the image above).



22. Over the years, works have evidently been carried out to the buildings within numbers 31 – 39 Argyle Street. At the time the listing description was written, there was no attic storey in numbers 31 & 33. An attic storey was added to these two buildings pursuant to permission reference 8900201 and listed building consent reference 8970068, both of which were granted in 1990.

23. More immediately obvious (and referred to in the listing description), at some point in time, the ground floors of Numbers 31 – 37 had been rendered with a sand and cement-based render. As Mr Malone’s expert report submitted herewith explains, those materials were harmful to the London Stock Bricks as they trapped moisture. As a result, the render was failing before the works described below were carried out. It can also be seen in the image above, that the render of Numbers 31 – 33 was stylistically different from the ground floor render of Numbers 35 – 37, presenting a visual muddle.

24. At some stage the brick pointing of the buildings had been supplemented with cement and cement had been added to the window reveals, again, with the adverse impact of trapping moisture.
25. Similarly, at some point:
 - the windows of the buildings had been replaced with double glazed UPVC windows. Before the works were carried out, the windows had reached the end of their functional lives, the double glazing having failed.
 - the original slate roof tiles had been replaced with fibre cement roof tiles.
26. In addition to the problems described above and before the works described below were carried out, the roof tiling, roof leading and rainwater goods were in a poor state of repair resulting in water ingress to the building itself. The paintwork on the balconies also needed to be renewed.

The Works

27. The works which have given rise to the allegations in the Notice were part of a wider scheme of renovation of 31 – 39 Argyle Street (the Works).
28. The Works started in early 2021 and finished in August 2021. As recorded in an email dated 17 March 2021 from the Appellant's Gary Cilla to Paul Lovesey at Camden Council and contained at Appendix 2, page 12 - 13 to this statement, the works comprised:
 - Replacing the fibre cement roof slates with natural Welsh slates, replacing the leading and gutters.
 - Hand raking defective sand / cement pointing and replacing with colour matched lime pointing so as to allow the bricks to breath and remove trapped water.
 - Removing defective cement from window reveals and renewing lime render.
 - Removing multiple layers of old paint from metal balconies and repainting.
 - Removing ground floor sand and cement render and replacing with lime render.
 - Replacing PVC windows with original timber sliding sash windows with traditional cord & weights while respecting the correct fenestration.
 - Cleaning and refurbishing all downpipes.
29. In addition to the above, the works also included the cleaning of the brick façade, and this is described in a subsequent email from Gary Cilla to Paul Lovesey contained at Appendix 2. As summarised below, cleaning was carried out using a DOFF cleaning system, i.e. high temperature steam under low pressure. As a result, there is no damage to the surface that is being cleaned.
30. Further information relating to the works is contained in an email dated 21 February 2022 from Gary Cilla to Sophie Bowden at Camden Council and contained at Appendix 3 (page 20) to this statement. This email describes the works as follows:
 - Brickwork repairs undertaken in accordance with the recommendations of Code of Practice for Cleaning and Surface Repair of Building: BS 6270: 1982
 - Existing defective mortar that was not original lime, but cement-based mortar was carefully raked out and replaced due to the damage it was causing to the London stock brick. All repointing was completed with a lime-based mortar and in accordance with the recommendations of BS 5628: Part 3: 1985.
 - Previous sand and cement render which was covering the ground floor area was blown and in disrepair in most places. The material was not allowing the masonry to breath and was

harming the original brickwork. Therefore, after liaising with building control, it was removed and replaced with a lime-based mortar together with the correct ashlar detail for a more consistent look.

- The cleaning of the brickwork. Trial areas of brickwork that had been previously painted and heavily soiled were cleaned and tested before continuing with use of a DOFF cleaning system.
- Balcony repairs and restoration which included the removal of non-original tiles.
- Replacement of PVC windows with original timber sliding sash windows with traditional cord & weights while respecting the correct fenestration. This was done after consulting Friends of Argyle Square that maintain and promote heritage in the local area.

The Render

31. As the photos below show and as explained in Mr Malone's report, the process of removing the old, harmful concrete render by no means straight forward. Inevitably, either some of the surface of the underlying bricks comes away with the render, or a residue of the render is left on the bricks, in either case visibly changing the texture and colour of the bricks. In the event, this problem was resolved at Numbers 31 – 37, as the bricks were then re-covered with an appropriate, lime-based render.





32. The rendering of the ground floor of Number 39 appears to have been carried out in error, and has now been in situ for over 2 years and has fully cured. However, given the difficulties involved in removing the old render from Numbers 31 – 37, and as explained in the report prepared by Mr Malone (see in particular paragraph 8.1), the Appellant is concerned that removing the lime-based render on Number 39 would itself damage the surface of the underlying bricks and/or leave a residue, in either case, harmful to the building.

Brick Window Arches at Number 39

33. The inspector is asked to note that the Enforcement Notice wrongly alleges at section 3, subparagraph 5, that the yellow stock bricks in the rounded-headed recesses and gauged flat arches at Number 39 have been replaced. This is not correct. Instead, the Appellant arranged for the existing bricks to be stained so as to match the red colour of the original red bricks in numbers 31 – 37.

General Comments on the Works

34. The Inspector will appreciate that the Works were in the first instance designed to address the maintenance needs of 31 – 39 Argyle Street (summarised above under the heading of Numbers 31 – 39 Argyle Street).
35. However, the Appellant also intended to smarten up the appearance of numbers 31-39. Not only would this improve the visual character of the area, but it was intended to help relaunch the hotel following the Covid pandemic.

36. As Dr David Hickie has commented in an email dated 3 April 2023 to Joshua Cheung, a planning enforcement officer at Camden Council, (at Appendix 4, page 27), "[t]he building currently looks magnificent, resplendent in its original and likely 'as built' colours – which can now be enjoyed by current and future generations". The Appellant hopes that having viewed Argyle Street and the Property, that the Inspector will share this view.

Steps leading to the issue of the Enforcement Notice

37. The email dated 17 March 2021 from Gary Cilla (the Appellant's Front Office Supervisor) to Paul Lovesey (who we understand was a planning enforcement officer at the Council) (Appendix 2) records a telephone conversation between Mr Cilla and Mr Lovesey, in which it was agreed that "nothing has required any planning or building control as they were all cyclic decoration and repairs". The email then went on to confirm the details of the work carried out. This is the origin of the Appellant's understanding that no planning-related consents were required for the works being carried out. To the extent that this was an erroneous understanding, it was in any event an innocent misunderstanding.
38. As the email chain contained at Appendix 3 shows, it appears that concerns were first raised by the Council by a letter dated 15 February 2022. Unfortunately, the Appellant no longer has a copy of that letter (a copy has been requested from the Council). However, the email chain suggests that it was a request for information as to the works that had been carried out.
39. Subsequent correspondence with the Council (contained at Appendices 3 & 4), suggests that up to the date that it issued the Enforcement Notice, the Council's primary concern was the effect of the cleaning of the brickwork.
40. The Appellant sought advice from and commissioned a report dated 3 April 2023 from Dr David Hickie (contained at Appendix 5) (the Original Report). The Original Report was submitted to the Council by email dated 3 April 2023 (contained in email chain at Appendix 4, at pg 27).
41. As Dr Hickie explains on page 2 of the Original Report, he is a former Regional Director at English Heritage, Managing Director and Principal Consultant for Heritage Matters (a specialist heritage consultancy) and a nationally recognised heritage expert. Dr Hickie's expert views are summarised at paragraphs 1.6 and 1.7 of the original report as follows:
- "1.6 In summary, because the yellow brickwork is 'true' to the original buildings as built in the 1830's, leaving the recently cleaned brickwork in its original colours will not adversely affect this listed building or its setting, the settings of the nearby listed buildings or the conservation area. The current recently cleaned yellow brick façade preserves the special architectural and historic interest of this designated heritage asset and allows current and future generations to experience and enjoy the building as it was originally designed and built.
- 1.7 Therefore, I respectfully suggest that the St Pancras Hotel Group should be allowed to retain the current cleaned brick finish and not be required to apply a light soot wash to this original historic fabric. This could be reviewed as part of the quinquennial inspection process for the buildings in 5 years' time".
42. Dr Hickie also raised concerns about the potential for heritage harm arising from the application of a soot wash at paragraphs 3.4 and 3.5 of the Original Report.

“3.4 The use of a light sootwash dye application to the original London brick yellow frontage appears to be a seriously harmful change to original historic fabric - that importantly shows current and future generations what the original colour scheme of the terrace was both designed and was in actuality in the 1830’s when built. It is accepted that the surface colour of this historic brick fabric has changed over the decades due to smog and other pollutants in the atmosphere over the last nearly two centuries.

3.5 The application of a permanent dye to the brickwork will result in a permanent change to the surface colour of the brickwork which will not be able to be reversed by future generations if they so wished.”.

43. In response, the Council’s Planning Enforcement Officer explained in an email dated April 11 2023 (Appendix 4) that the Council considered that:

“... the material that was cleaned off the listed buildings was the visible residue of 150 years of coal fires and steam engines. This cannot be recreated in today’s cleaner environment, by which it would take a substantial amount of time (another 150 years) to recreate even if this was possible. The planning breaches exist as the appearances of the affected listed buildings have been materially altered into bright yellow facades, whereby their former facades are considered to give the buildings their historic interest.”

The Enforcement Notice

44. The Listed Building Enforcement Notice reference EN22/0113 was issued on 28 July 2023 (the Notice), giving a date of 9 September 2023 on which the Notice takes effect and is contained at Appendix 1 together with a map showing the location of 31 – 39 Argyle Street.

45. Section 3 of the Notice lists the following alleged contraventions of s. 8 of the Act:

1. Excessive cleaning of all the yellow stock brickwork at first and second floor elevations;
2. Excessive cleaning of the red bricks of all the round-headed recesses and of all the gauged flat arches;
3. Repointing of all the yellow and red stock brickwork with bright mortar at first and second floor elevations;
4. At No 39, the rendering of the yellow stock brickwork at ground floor elevation in painted stucco to match the ground floors of Nos 31-37; and
5. At No 39 replacement of the yellow bricks of the rounded-headed recesses and gauged flat arches with bright red bricks¹.

46. The reasons given for issuing the notice as set out at Section 4 of the Notice read:

- a. The work outlined above has been carried out to this Grade II listed building without the benefit of Listed Building Consent.
- b. The works by virtue of the harm to the brickwork and front elevations is harmful to the special architectural and historic interest of the listed building contrary to policies D1 (Design) and D2 (Heritage) of the Camden Local Plan 2017.

¹ As commented above, the allegation that the original bricks have been ‘replaced’ is wrong. The original bricks remain in place, but have been dyed.

47. Section 5 of the Notice requires the following steps to be taken within 6 months of the date of the notice (unless appealed):

1. Apply a light soot wash to the yellow and red stock brickwork and all the new mortar joints at the first and second floor elevations to nos. 31-37, to match the adjacent buildings on the site's terrace.
2. Completely remove the painted stucco render from No 39's front elevation at ground floor level (reinstating and making good the underlying brickwork to match the adjacent buildings on the site's terrace).
3. Reinststate the yellow bricks of No 39's round-headed recesses and gauged flat arches to match the adjacent buildings on the site's terrace.
4. Make good all damages as a result of the above operations.

Policy Background

48. Relevant planning and heritage policy is contained in the Government's National Planning Policy Framework (the NPPF), and the Camden Local Plan (2017) (LP).

National Planning Policy Framework

49. NPPF heritage policy is contained in section 16 of the NPPF.

50. Paragraph 189 explains that heritage assets "are an irreplaceable resource and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations".

51. Paragraph 199 requires "great weight" to be given to the conservation of a heritage asset and the more important the asset, the greater the weight should be "irrespective of whether any harm amounts to substantial harm or less than substantial harm".

52. Where development will lead to less than substantial harm to the significance of a designated heritage asset, "this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use" (NPPF, para 202).

53. As regards what constitutes 'substantial harm' as opposed to 'less than substantial harm', in the case of *Bedford Borough Council v Secretary of State for Communities and Local Government [2013] EWHC 2847 (Admin)*, the High Court held that 'Substantial Harm' requires "the impact on significance ... to be serious such that very much, if not all, of the significance was drained away".

54. The Government's Planning Practice Guidance explains² that:

"Whether a proposal causes substantial harm will be a judgment for the decision-maker, 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".

² Paragraph: 018 Reference ID: 18a-018-20190723

55. In their 2021 appeal decision³ on the proposed Holocaust memorial to be located in Victoria Tower Gardens adjacent to Parliament in London, the Planning Inspector commented on both the *Bedford* definition and the PPG guidance that:

“... there is in fact little to call between both interpretations. *Bedford* turns on the requirement for the harm to be assessed as ‘serious’ (with significance needing to be very much, if not all, ‘drained away’) in order that it be deemed substantial. Alternatively, paragraph 018 indicates that an important consideration would be whether the adverse impact ‘seriously’ affects a key element of special interest. In both interpretations, it is the serious degree of harm to the asset significance which is the key test. Moreover, in accordance with the logic of the *Bedford* argument, 018 explicitly acknowledges that substantial harm is a ‘high test’.”

Local Plan Policy

56. LP Policy D1 requires development (amongst other requirements) to “(a) respect local context and character” and “(b) preserve or enhance the historic environment and heritage assets in accordance with Policy D2 Heritage”.
57. Under the heading ‘Designated heritage assets’, the first part of LP Policy D2 (Heritage) prohibits “the loss of or substantial harm to a designated heritage asset”⁴. Under the same heading, and with reference to ‘Less than Substantial Harm’, Policy D2 goes on to state that “[t]he Council will not permit development that results in harm that is less than substantial to the significance of a designated heritage asset unless the public benefits of the proposal convincingly outweigh that harm”.
58. Under the heading ‘Conservation Areas’, the policy requires development within conservation areas to “(e) preserve[] or, where possible, enhance[] the character or appearance of the area”.
59. Under the heading ‘Listed Buildings’, the policy requires the Council to “(j) resist proposals for a change of use or alterations and extension to a listed building where this would cause harm to the special architectural and history interest of the building”.
60. Supporting paragraph 7.59 to Policy D2 explains that “[i]n order to protect listed buildings, the Council will control external and internal works that affect their special architectural or historic interest. Consent is required for any alterations, including some repairs, which would affect the special interest of a listed building”.
61. LP Policy E1 (Economic Development) requires the Council to “secure a successful and inclusive economy in Camden by creating the conditions for economic growth and harnessing the benefits for local residents and businesses”. The policy expressly requires the Council to “recognise the importance of ... employment generating uses, including ... leisure and tourism) (Policy E1(i)).
62. In keeping with LP Policy E1, Policy E3 (Tourism) “recognises the importance of the visitor economy in Camden” and commits the Council to “support tourism development and visitor accommodation”. Sub paragraph (h) requires tourism development and visitor accommodation not to harm the “local character” of an area.

³ Reference APP/XF990/V/19/3240661

⁴ There is no suggestion in the Notice that the works have caused such substantial harm, nor would that be appropriate in light of the NPPG guidance quoted above and the decision in *Bedford*. Hence, this aspect of Policy D2 is not discussed further.

Legal Background

63. Section 7 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) prohibits the execution of any works for the demolition, alteration or extension of a listed building in any manner which would affect its character as a building of special architectural or historic interest without the written consent of the local planning authority (LPA), granted under s. 8 of the Act (Listed Building Consent).
64. Pursuant to section 16 of the Act, “[i]n considering whether to grant listed building consent for any works the local planning authority or the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses”. The effect of this is that the planning decision maker must give “*considerable importance and weight*” to the desirability of preserving the setting or features of special architectural or historic interest of the heritage asset (*East Northamptonshire DC v Secretary of State for Communities and Local Government [2014] EWCA Civ 137*).
65. Where it appears to a local planning authority that such works have been carried out without listed building consent, the LPA may (if they consider it expedient having regard to the effect of the works) issue a listed building enforcement notice requiring steps to be taken to restore the building to its former state, or if such restoration would not be reasonably practicable or would be undesirable, for executing such specified further works as are necessary to alleviate the effect of the unauthorised works (Act, s. 38). Amongst other requirements, the enforcement notice must specify the date on which it is to take effect and the period for compliance with its requirements (s. 38(3)).
66. S. 39 of the Act allows for the owner (amongst others) of the relevant listed building to appeal against the notice on a number of grounds including:
 - “(b) that the matters alleged to constitute a contravention ... have not occurred;
 - (c) that those matters (if they occurred) do not constitute such a contravention; ...
 - (e) that listed building consent ought to be granted for the works, ... ; ...
 - (i) that the steps required by the notice for the purpose of restoring the character of the building to its former state would not serve that purpose;
 - (j) that steps required to be taken by virtue of section 38(2)(b) exceed what is necessary to alleviate the effect of the works executed to the building; ... “.

Relevant Planning Appeal Decisions

67. The issue of cleaning a historic building has been considered in a number of appeal cases (contained at Appendices 6-8 to this statement).
68. The case of Penn House, 38 St Mary’s, York YO30 7DD (Appeal Ref: APP/C2741/E/13/2209500) (Appendix 6, starting at page 69) concerned an application for listed building consent for cleaning the external elevations of a Grade II listed brick built house in York which is situated within a conservation area. In that case, the Inspector held that cleaning masonry constituted works falling within the ambit of section 7 of the Act: “[t]here is no doubt that removing the dirt and grime of

150 years or more will alter the appearance of the building by restoring, in some measure, the original lighter colours of the materials. Whilst that change of appearance would lose the present character with its patina of age, it would restore the original character of the building more closely than its present state”.

69. Part of the justification for the cleaning was because defects in the façade needed to be repaired by introducing new materials, including fresh pointing. The Inspector commented:

“Whilst I also accept the Council’s assertion that the case for repairs is not compelling in terms of justifying the cleaning of the building, I do find it persuasive in this case for two reasons. First, there is visual evidence of cracking in the north-east corner of the building. That and other less serious defects are apparent such as pointing to the portico. Second, any re-pointing or insertion of new bricks or stone necessary would lead to a dilemma if the building is not cleaned. What should the new materials match with, the weathered grey or the original white brick and stone? This situation has already led to some repair works being executed in grey which may contrast significantly with the original colours, but also does not harmonise well with the weathered materials. Consequently, I find that the issue of repairs adds significant weight to the case in favour of cleaning the building.

70. As regards the DOFF Cleaning system, the Inspector accepted the evidence that the system would not harm the fabric of the listed building (Appeal Decision, at paragraphs 14 – 15). The present Inspector is asked to note that the same DOFF cleaning system was used at 31 – 39 Argyle Street when it was cleaned.

71. As regards the impact of the cleaning on the character of the building and conservation area, the Inspector held at paragraph 17:

“The building might become more visually prominent in relation to its surroundings if cleaned, but that would not be out of character with the original design intention. Furthermore, some buildings in the vicinity have already been cleaned and they do not stand out in stark contrast because, whilst the near surroundings have a degree of unity in building style, the street scene is by no means uniform in character. The buildings are individual in detail and character. Consequently, I do not consider that cleaning of the appeal premises would be harmful to the character or appearance of the surroundings or the setting of nearby listed buildings.”

72. With specific reference to the argument that the accumulation of surface grime etc added to the historic character of the building, the Inspector held at paragraph 18:

“The Council also suggests that returning the building to the original conception would be highly subjective and unrealistic. Whilst it is generally accepted that works undertaken during the life of a listed building add to its history and character, I do not consider that accumulation of dirt and soot is necessarily comparable, and in this case there is no substantial evidence to support the Council’s assertion that the result would be subjective or unrealistic.”

73. The case of Monks Gate Cottage, Brighton Road, Horsham RH134 6JD (Appeal Ref: APP/Z3825/Y/16/3164439) (at Appendix 7, starting at page 74), concerned a refusal of what appears to be retrospective listed building consent for internal cleaning of timbers and the cutting-in of light fittings in a Grade II listed cottage. The Inspector’s attention is drawn to Paragraphs 6 and 7 of the appeal inspector’s decision:

“6. The loss of ‘the patina of age’ has reduced the historic interest of the building, although the architectural interest is less obviously affected, as the friable nature of parts of the timberwork may possibly be due to previous insect action. The frame is clearly still well able to function as intended and the part that each plays in the structural arrangement of the building remains obvious.

7. The conclusion is that there has been some slight loss of significance. Unfortunately the position now is that any loss cannot realistically be put back after the harm has occurred. Any attempt would be artificial and in itself harmful, lending a totally false history to the building; far better to leave the timberwork as it is to gain its own ‘patina of age’ in the long future that this building should have ahead. The level of harm is ‘less than substantial’, a differentiation required between paragraphs 133 and 134 of the Framework. In this case the latter applies and this states that this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use”.

74. In the case of Somerset House, The Strand, London WC2R 1LA (Appeal Ref: APP/X5990/Y/19/3226852) (at Appendix 8, starting at page 76) the appeal inspector held that cleaning works to a Portland stone staircase that would not cause any damage to the stonework “would not constitute works for the demolition, alteration, or extension of a listed building in a manner that would affect its character as a building of special architectural or historic interest. What is proposed does not, therefore, require listed building consent and no action is required on the appeal.”

Discussion

75. This appeal is lodged on the following s. 39 grounds as explained in greater detail below:

“(b) that the matters alleged to constitute a contravention ... have not occurred;

(c) that those matters (if they occurred) do not constitute such a contravention; ...

(e) that listed building consent ought to be granted for the works, ... ; ...

(i) that the steps required by the notice for the purpose of restoring the character of the building to its former state would not serve that purpose;

(j) that steps required to be taken by virtue of section 38(2)(b) exceed what is necessary to alleviate the effect of the works executed to the building; ... “.

76. I will discuss each of the alleged contraventions and the requirements of the Notice below individually (or in related groups), and explain which of and how the above grounds apply to that contravention/requirement. More detailed expert views are set out in the attached reports prepared by Dr Hickie and Mr Malone, and the Inspector is asked to refer to those reports for more detailed reasoning.

77. As a preliminary comment, and as explained above, the Appellant initially understood that no consents were required for the works that it discussed with Paul Lovesey from Camden Council in 2021. It may be that Mr Lovesey was expressing a view about whether the works required planning permission, rather than listed building consent. In any event, having now taken further specialist advice in the light of the Notice, the Appellant accepts that Listed Building Consent should have been obtained for certain (and potentially all) of the works. The failure to secure that

consent in advance of the works was an innocent misunderstanding and there is no suggestion that the Appellant was intentionally flouting Listed Building Control.

78. The remainder of this section will address each alleged contravention and the related requirement of the Notice.

*“1. Excessive cleaning of the yellow stock brickwork at first and second floor elevations; &
2. Excessive cleaning of the red bricks of all the round-headed recesses and of the gauged flat arches;
[&]
3. Repointing of all the yellow and red stock brickwork with bright mortar at first and second floor elevations”.*

Requirement to “Apply a light soot wash to the yellow and red stock brickwork and all the new mortar joints at the first and second floor elevations to Nos. 31 – 37 to match the adjacent buildings on the site’s terrace”.

79. The Inspector is reminded that as explained above the Property was in need of remedial works. Most of the pointing on the front façade of the Property had in the past been repaired with cement. The extant render was also cement-based and trapping moisture. Cement is not only an inappropriate material because historically, the buildings would have been constructed with lime-based mortar and render, as Mr Malone explains in his report, it is also potentially damaging to the building as it does not allow the fabric to breath and moisture to evaporate. As a result, the cement materials were failing and needed to be removed and replaced with appropriate lime-based materials (in particular the pointing).

80. Without staining the new lime mortar either before or after their use (and without cleaning the façade), the new materials would have ‘stood out like a sore thumb’ against the weathered bricks. The effect of cleaning the bricks is that it allows the new materials to merge into the façade.

81. Arguably, it might have been possible to use a lime mortar that already contained a dye so as to match the “visible residue of 150 years of coal fires and steam engines”. However, given that the shades of the bricks differed from building to building within numbers 31 – 39 (as is evident from pre-works Google Street view images), and moreover, given that the shade of the bricks varied even within a single building (for example where water had run down the wall from the balconies), dyeing the repair materials themselves either before or after their use would require a virtually unlimited pallet of greys. The likely result would have been that at least some of the repairs would have obviously stood out. A ‘pie-bald’ 31 – 39 Argle Road would be extremely harmful both to the heritage significance of the building and to the character of the area.

82. The sensible solution was steam cleaning of the façade using the DOFF cleaning system which would not damage the fabric of the building, and which would reveal the original colour of the bricks, consistent across the buildings. The colour of the lime-based mortar could then be matched to that colour.

83. The Enforcement Notice requires a soot wash to be added to the façade. Dr Hickie explains why he opposes such a wash at section 5 of his Heritage Grounds of Appeal and the Inspector is referred to Dr Hickie’s arguments. The Inspector is also referred to the Inspector’s reasoning in the Monks Gate case (Appeal Ref: APP/Z3825/Y/16/3164439): “the position now is that any loss cannot realistically be put back after the harm has occurred. Any attempt would be artificial and in itself harmful, lending a totally false history to the building”. It is submitted that for the reasons set out in Dr Hickie’s statement, the same principle applies in the present case.

84. The Appellant comments further as follows:

- a) There are practical difficulties in complying with the Council's request, as the colours of the brick facades of Numbers 29 Argyle Street and Number 41 Argyle Street are not the same.
- b) A soot wash is wholly artificial, and is in no way a true representation of the effect of not just 150 years' of air pollution, but also of the interventions from the occupiers and owners of individual buildings that has resulted in a varied brick colour pallet across Argyle Road as a whole.
- c) The cleaned bricks and matching mortar will inevitably darken over time. However, for the moment, the Appellant hopes that the Inspector would agree with Dr Hickie's comment in his email dated 3 April 2023 to Joshua Cheung at the Council that "the building currently looks magnificent, resplendent in its original and likely 'as built' colours – which can now be enjoyed by current and future generations".
- d) The renovated façade lifts the area and contributes to the presentation of the Hotel, which post-Covid is in the process of re-establishing itself in the Camden visitor economy. It is therefore also consistent with LP Policies E1 and E3.

85. The Somerset House appeal case (Appeal Ref: APP/X5990/Y/19/3226852) cited above is an example of cleaning works that were judged not to affect the historic character of the building. The Inspector may consider that DOFF cleaning of the façade of 31 – 39 Argyle Street, without any effect on the original fabric of the building, and with the result of revealing the original appearance of the building does not constitute a work in breach of s. 7 of the Act, and therefore does not require Listed Building Consent. In which case, the Inspector is asked to uphold the Appellant's Ground (c) appeal in respect of this part of the Notice.

86. Alternatively, the Inspector may prefer the approach of the appeal inspector in the case of Penn House (Appeal Ref: APP/C2741/E/13/2209500), that while cleaning may make a building more visually prominent in relation to its surroundings, cleaning is a work within the scope of Listed Building Control and which may be supported where "some buildings in the vicinity have already been cleaned and they do not stand out in stark contrast because, whilst the near surroundings have a degree of unity in building style, the street scene is by no means uniform in character". As the Inspector will see on their site visit and for the reasons explained at the start of this statement, Argyle Street presents a similar uniformity in the basic building style, however, the street scene is nonetheless highly varied given the great variety of façade treatments (both in terms of materials, and in terms of the evidence of previous cleaning).

87. Moreover, it is submitted that the inspector's finding in the Penn House case that "[w]hilst it is generally accepted that works undertaken during the life of a listed building add to its history and character, I do not consider that accumulation of dirt and soot is necessarily comparable" apply equally in the present case. A coating of soot and grime which might be appropriate for the insides of Kings Cross or St Pancras Stations (both of which were notably thoroughly cleaned during their recent restoration), does not necessarily add to the historic significance of buildings built as speculative residences.

88. In summary, if the Inspector considers that the cleaning was such as to require listed building consent, the Appellant submits that Listed Building Consent for the cleaning should be granted (Ground (e) appeal).

89. In addition, given the potential harm of the proposed soot wash, the Appellant submits both:

- e) that the soot wash would not serve the purpose of restoring the character of the building to its former state, and
- f) that given that the colour of the building will darken over time as a natural result of exposure to London's air, that the steps required exceed what is necessary to alleviate the effect of the executed works;

and that therefore their appeal against the first requirement of the Notice should be upheld on grounds (i) and (j).

"4. At No 39, the rendering of the yellow stock brickwork at ground floor elevation in painted stucco to match the ground floors of Nos 31 – 37"

Completely remove the painted stucco render from No 39's front elevation at ground floor level (reinstating and making good the underlying brickwork to match the adjacent buildings on the site's terrace".

- 90. As a preliminary point, the Inspector is asked to note that the stucco render has not been painted. This is a minor error in the enforcement notice.
- 91. The Inspector is referred to the report prepared by Joe Malone BSc (Hons) MCIOB, C.Build.E MCABE which is submitted in support of this appeal.
- 92. It is accepted that Listed Building Consent should have been secured for the rendering of Number 39 Argyle Road. As explained above, the rendering of No. 39 was a mistake, which the Appellant regrets.
- 93. Unfortunately, 'we are where we are'. The photographs contained earlier in this Statement show, and Mr Malone's report explains how removing render (whether cement or lime render) will damage the fire skin of the original bricks, resulting not just in the loss of original fabric, but also with the result that the weather proofing of the brick is lost. That in turn will be materially harmful to historic fabric of the building.
- 94. As Mr Malone explains at paragraph 8.1 of his report:

"8.1 I have to be clear in stating that if action is taken to remove the recently installed lime render, then it is inevitable that further chipping and damage will occur to the underlying masonry. Arguably, removal of this lime render would not cause the degree of consequential damage as would be seen when removing a hard OPC based render, but there will be some degree of consequential damage.

Moreover, it will be extremely difficult to remove render stains from the brickwork without either acid washing or sand/media blasting, both of which will also likely cause further harm (chemical or abrasive) to the masonry. An order to remove this render is an order to cause further consequential damage to the brickwork."

- 95. The Appellant submits that this case is 'on all fours' with the Monks Gate appeal case (Appeal Ref: APP/Z3825/Y/16/3164439). To quote the inspector in that case:

"... there has been some slight loss of significance. Unfortunately, the position now is that any loss cannot realistically be put back after the harm has occurred. Any attempt would be

artificial and in itself harmful ... The level of harm is 'less than substantial' ... this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use".

96. In the present case:

- a) the harm from the ground floor lime render of No. 39 is 'less than substantial'. However, lime render is the appropriate material, and will add to the weather proofing of the fabric of No. 39. Moreover, the rendered ground floor is consistent in appearance with the adjacent Nos. 31 – 37, and in keeping with (and more appropriate than many of) the varied ground floor treatments of the houses in Argyle Street.
- b) Mr Malone's expert report explains the inevitable harm to the fabric of the building that would result from removing the lime render. It is submitted that that harm is greater than the harm of leaving the render in place.

97. Applying the policy test contained at NPPF paragraph 202, it is suggested that the public benefits of leaving the lime render in place (and so *not* damaging the fabric of No. 39) outweigh the harms of the render itself. Such a step would also be consistent with Local Plan policy D2.

98. In summary, the Appellant submits that Listed Building Consent should be granted for the lime render to the ground floor of Number 39, and that the Inspector should uphold the Appellant's ground (e) appeal in respect of the requirements to remove such render.

99. The Appellant also submits that as a result of the harms to the fabric of No. 39 that would result from any attempt to remove the lime render, the steps required by the notice in respect of such render would not serve the purpose of restoring the character of the building to its former state, and that the Appellants Ground (i) appeal should be upheld in respect of this aspect of the Notice.

"5. *At No 39 replacement of the yellow bricks of the rounded-headed recesses and gauged flat arches with bright red bricks.*

3. *Reinstate the yellow bricks of No 39's round-headed recesses and gauged flat arches to match the adjacent buildings on the site's terrace".*

100. The Inspector is asked to note that the allegation that the yellow bricks above the windows to Number 39 were removed is incorrect. What actually happened is that the original bricks were left *in situ*, but were stained to match the red bricks above the windows to Numbers 31 – 37. As a result, the requirement to 'reinstate the yellow bricks' (to the extent that what the Council means is to put the original bricks back in place) is unachievable. The original bricks are still in place.

101. Hence, in the first instance, the Appellant appeals against this part of the Notice on ground (b) (that the matters alleged to constitute a contravention ... have not occurred).

102. Nonetheless, the Appellant accepts that Listed Building Consent should have been obtained for these works. Bearing in mind the Secretary of State's power at s. 41 of the Act to correct any defect, error or misdescription in an enforcement notice, the rest of this section considers the grounds of appeal assuming that the enforcement notice correctly alleges that the bricks have been dyed.

103. As explained in Dr Hickie's Heritage Grounds of Appeal, at section 7, it may be possible to re-dye the bricks back to their original colour, but it is not clear whether that would be successful.

That in turn raises the prospect of the 'medicine' doing more harm than good, and actually being harmful to the heritage significance and the appearance of the building.

104. The alternative would be to replace the bricks. There are two objections to such an approach:
- a) Replacing the bricks would mean the removal of original fabric, which *per-se* would be harmful to the historic interest and significance of the building.
 - b) The brick arches in particular support the wall above them. There is a risk that in removing the bricks in the arches, the wall above them is destabilised causing further harm to the building.
105. Moreover with the passage of time, the colour of the bricks will itself doubtless fade together with the rest of the building, and eventually, may become largely indistinguishable from the surrounding bricks. The reason for the staining as opposed to painting was because of its mineral properties that soaks into the brick and becomes part of the brick. It can never chip or bubble but more importantly remains breathable.
106. It should also be noted that the red colour of the bricks is also consistent with the originally red bricks in similar locations within the façade of numbers 31 – 37, and therefore consistent with the character of Argyle Street.
107. The Appellant therefore submits that the stained bricks cause 'less than substantial harm' to the heritage significance and character of the building. However, it is submitted that the harm of attempts to either re-dye them, or remove the original bricks and replace them is likely to exceed the harm of leaving the dyed bricks in place. The Appellant therefore urges the Inspector to grant Listed Building Consent for the dyed bricks (ground (e)) and in the alternative in respect of requirement 3, to uphold the Appellant's ground (i) appeal on the basis that the steps required by the notice would not serve the purpose of restoring the character of the building to its former state.

Conclusion

108. In summary, the Appellant accepts that Listed Building Consent should have been obtained for the works set out at section 3, paragraphs 3- 4 of the Notice, as well as for the re-dying of the bricks at Number 39. To the extent that the cleaning of Numbers 31 – 39 affected the architectural or historic character of the buildings, the Appellant accepts that Listed Building Consent should also have been obtained for that cleaning.
109. For the reasons set out above:
- a) the Appellant submits that Listed Building Consent should be granted for the DOFF cleaning and the repointing that has taken place, and the Inspector should reject the Council's requirement that a light soot wash be applied (requirement 1). As explained in Dr Hickie's Heritage Grounds of Appeal, the proposed soot wash is potentially harmful in its own right. The required soot wash therefore would not restore the character of the building to its former state (the Ground (i) appeal). Moreover, left alone, the colour of the brickwork will in time darken 'naturally'. Therefore, the soot wash also exceeds what is necessary to alleviate the effect of the works" (the Ground (j) Appeal).
 - b) Listed Building Consent should also be granted to retain the stucco from No 39's front elevation at ground floor level. The applied lime stucco is an appropriate material, it is visually consistent with the stucco applied to Numbers 31 – 37, and within the character

of Argyle Street, where there are a variety of frontage finishes, many of which involve ground floor stucco/render. More importantly, and as Mr Malone's report explains, it is not possible to remove the lime stucco without damaging the waterproof surface of the original bricks (with related loss of original fabric), without leaving residues of lime render (thereby affecting the appearance of Nu. 39) and without exposing the ground floor façade to an increased risk of damp ingress and brick deterioration. Hence, the requirement to remove the lime stucco from No. 39 is more harmful in heritage terms than simply leaving the stucco in situ and would not serve the purpose of restoring the character of the building to its former state (Appeal Grounds (e) and (i)).

- c) Listed Building Consent should also be granted to retain the red dyeing of the bricks above the windows on the first and second floors of Number 39. The Council has erroneously assumed that the original bricks were removed. The original bricks remain in situ, but have been dyed to match the colour of the red bricks at Number 31 – 37. It is not clear whether it is possible to dye the bricks back to the original yellow, and removing and replacing them would mean the loss of original fabric. Both such solutions are potentially harmful in heritage terms. The Appellant suggest that the solution most respectful to the fabric and heritage significance of Number 39 is to leave the bricks as they are so that their colour can naturally weather. They are consistent with the bricks at numbers 31 – 37 and therefore consistent with the character of the area.

For the above reasons, the Appellant urges the Inspector to uphold this appeal.

Buckles Solicitors
8 September 2023