

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

Planning Inspectorate Reference: APP/X5210/F/23/3334740

Appellant's Response
to Statement of Case by London Borough of Camden dated 25 January 2024

1. Introduction

- 1.1. This statement is the response by the St Pancras Hotel Grp Limited (the Appellant) to the Statement of Case by the London Borough of Camden (the Council) in respect of the above listed building enforcement appeal (the Response).
- 1.2. The Inspector is respectfully asked to read this statement in conjunction with the Appellant's Appeal Statement dated 8 December 2023.
- 1.3. Much of the Council's Statement of Case is concerned with addressing the Appellant's arguments as to the origin and heritage significance of the colour of the facades of Numbers 31 – 39 Argyle Street before the DOFF cleaning which took place in 2021. In its statement the Council repeatedly asserts that that façade colour was the result of "at least 150 years exposure to smoke from steam trains and domestic fires" but fails to provide any supporting evidence. Nor does it substantively address the evidence provided by the Appellant in its Statement of Case. Nonetheless, it draws a range of conclusions from its repeated assertions which are equally unsupported.
- 1.4. The Appellant apologises to the Inspector for the length of this Response. However, it is important to the Appellant that the Inspector is made aware of the strength of the evidence that the pre-cleaning colour of the facades of 31-39 Argyle Street are most likely the result of just the most recent 30 years or so of exposure to London air pollution. It is also likely that by far the largest contributor to that pollution has been car and bus exhausts. The Appellant also suggests that 30 years modern air pollution has little heritage value, particularly as it is so ubiquitous in any city.
- 1.5. The evidence presented below, includes evidence that the Council as owner of 41 Argyle Street, has itself cleaned 41 Argyle Street at some point between the late 1980s and 2008. Moreover, in 2021 it cleaned the façade of its own Grade II listed town Hall (built 1934 – 37). Hence, its concerns about the heritage significance of staining from coal fire and steam engine smoke (phased out in the 1960s) on the facades of buildings are curiously partial, suggesting that in reality, such residues possess little heritage value.
- 1.6. This Response provides further support to the Appellant's December 2023 Grounds of Appeal and should be read together with them. This Response will cover the following areas raised in the Council's Statement of Case:
 - 1 Introduction
 - 2 Cleaning of the Facades
 - 3 Patina of Age
 - 4 Principle of Cleaning and Repointing
 - 5 Quality of the Works

- 6 SPAB Principles
- 7 Appropriateness of a soot wash
- 8 Subsequent Weathering
- 9. Precedents
- 10 Principles of Enforcement
- 11 Grounds of Appeal – Unauthorised Cleaning and requirement to soot wash (etc)
- 12 Unauthorised Render
- 13 Grounds of Appeal: Unauthorised Render etc
- 14 Unauthorised Dying of Brickwork
- 15 Grounds of Appeal: Unauthorised dying of brickwork (etc)
- 16 Conclusion

1.7. In addition, this Response raises concerns about the lawfulness of Requirements 2, 3 and 4.

1.8. This Response is also supported by the following appendices (these have been collated into a single pdf with bookmarks for the individual documents):

- Appendix 1: Title Register to 41 Argyle Street, London
- Appendix 2: Details of DOFF Integra System
- Appendix 3: Barwin (Contractors) brochure and screenshots from company website confirming they are certified by Stonehealth
- Appendix 4: SPAB Principles.

2. Cleaning of Façade

2.1. The Council repeatedly asserts that the pre-cleaning colour of the facades of 31-39 Argyle Street are the result of “at least 150 years of exposure to smoke from steam trains and domestic fires, both of which are no longer prevalent locally” (Council Statement, para 6.5, with similar comments at paras 7.40, and 11.1). It describes this product of allegedly at least 150 years exposure, as the building’s ‘patina of age’ (paras 6.3, 6.7, 7.8, 7.11, 7.15, 7.16, 7.18, 7.19, 7.22, 7.23, 7.24, 7.27, 11.1 & 11.7).

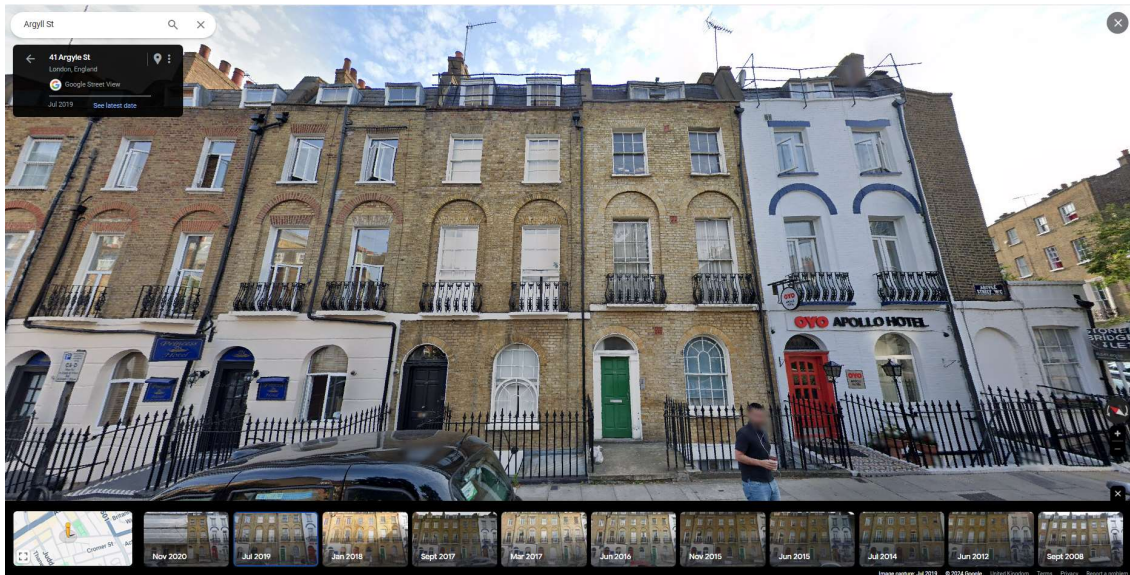
2.2. Aside from the fact that the buildings have been in situ since the 1830s, the Council presents no evidence to support the assumption that the pre-cleaning colour of the facades was the product of at least 150 years of soot from domestic fires and steam engines. Moreover, subject to one throw away comment, the Council wholly fails to engage with the evidence contained in the Appellant’s Statement of Case, and in particular, the evidence of different façade tones both within 31-39 Argyle Street and elsewhere in Argyle Street.

2.3. The throw away comment is at para 7.18 of the Council’s Statement, where it suggests that the variety of façade tones within Argyle Street is the product of “the residue of coal fires and steam engines hav[ing] resulted in the varying colours”. The statement provides no explanation of how this strange phenomenon might be possible given the fact that with notable exceptions¹, all the buildings in Argyle Street date from the same period, are of a nearly identical architectural style, are constructed from the same materials and have been exposed to the same environmental conditions.

¹ I.e. the buildings on the corner of Argyle Street and the Euston Road, and the building on the northern corner of Chad Street and Argyle Street

Evidence of Cleaning

2.4. The Council itself provides evidence of cleaning within the terrace of which 31-39 Argyle Street form part. Figure 3 in the Council's statement is a screen shot from Google Street View's July 2019 image with 39 and 41 Argyle Street in the centre of the image and a side wall of 45 Argyle street visible on the right-hand side of the image. For ease of reference, the same image is included below.



Cleaning of Number 41

2.5. The Council is the freehold owner of Number 41, which is registered at the Land Registry under title number 274334 (register attached at Appendix 1) and which according to the title register, the Council appears to have acquired on 30 January 1923.

2.6. The inspector will see from the July 2019 image that 41 Argyle Street is a much lighter colour than 39 Argyle Street. There is also a clear line (more easily seen in the extract from 2008 Google Street View image² below), akin to a 'tanning line' snaking its way down the party wall between numbers 39 and 41, with 39 being slightly darker. There is no way that this difference in colour is the result of some natural process.

² This is the earliest record of Argyle Street available on Google Street View



2.7. Moreover, in the above images, Number 41 is noticeably lighter in colour than the dark façade shown in the mid-1980s photo³ contained as Figure 9 of the Appellant’s Appeal Statement (and included below for ease of reference – Number 41 is immediately adjacent to the white painted Hotel Apollo).



³ We estimate the photo at Figure 9 of the Appellant’s Appeal Statement to be from the mid-1980s based on the models of the parked cars

- 2.8. The only possible explanation for this change of colour, is that the Number 41 has been cleaned by the Council as freeholder at some point between the mid-1980s and 2008.

Number 45 Argyle Street.

- 2.9. The side wall of 45 Argyle Street is also visible on the right-hand side of the Council's figure 3 (see above). It is noticeably darker in tone than the rest of the terrace of which it forms part. The image below is likely to be a pre-WWII image of Argyle Street (note the absence of cars and of any street markings (notwithstanding the 'To Garage' sign) and the gas light). It shows the side wall of 45 Argyle Street as similarly dark at that date, and dark-ish brick tones across the whole terrace (albeit some of the buildings are clearly slightly lighter in tone).



Figure 19, from Dr Hickie, Heritage Grounds of Appeal. Likely pre-war image of Argyle Street. Please note painted facades.

- 2.10. By contrast, in the Council's Figure 3 (a 2019 image), the façades of 35, 37, 39 and 41 Argyle Street are significantly lighter than the façade colour of 45 Argyle Street.
- 2.11. Similarly, the 2008 Street View Image contained as Figure 10 to the Appellant's Statement of Case and the July 2019 Google Street View image contained at Figure 14 of the Appellant's Statement of Case show 31 – 33 Argyle Street to be (if anything) slightly lighter in tone than 35, 37 & 39 Argyle Street in the same image, and hence significantly lighter in tone than the side wall of 45 Argyle Street. How is that possible given the similar age, design and materials of the buildings?

56 Argyle Street

- 2.12. The Council's Statement of Case refers to permission reference 2004/2033/L, which authorised a soot wash to the top half of the rear external wall of 56 Argyle Street. 56 Argyle Street is part of a listed terrace which includes the Wardonia Hotel, and which is visible in Figure 8 of the Appellant's Statement of Case (image below for ease of reference. Number 56 is on the

left, immediately adjacent to the Wardonia). It forms part of the same terrace as the Wardonia and is therefore built of the same London stock yellow brick (and the same brick as numbers 31 – 39 Argyle Street). As originally constructed, Number 56 would have been architecturally identical to the Wardonia, albeit at some point, the ground floor of the Wardonia has been rendered. The Inspector is asked to note the very dark colour of the façade to Number 56 in the image below (even compared to the neighbouring brickwork of Number 54 visible in the top left-hand corner of the image).



- 2.13. The image below is taken from the Council's online planning file for application reference 2004/2033/L and shows the pre-soot-washed rear wall of number 56 with the new bricks in the upper half of the wall.



Photograph of rear elevation, showing inappropriate brickwork

- 2.14. What is notable about this image is the exceptionally dark colour of the wall below the new bricks (and indeed the dark colour of the part of the neighbouring wall on the right-hand side of the image). This may be a product of the light on the day that the photo was taken, but given the dark colour of the front façade evident in the more recent Google Street View image above, suggests that this may be the authentic result of “at least 150 years of exposure to smoke from steam trains and domestic fires”.
- 2.15. The inspector will appreciate that this façade colour is substantially darker than the pre-cleaning façade colours at 31-39 Argyle Street (or indeed, 41 Argyle Street).
- 2.16. What possible explanation can there be for the fact that there is an obvious ‘tan line’ between 39 and the Council’s 41 Argyle Street, or that 31-39 Argyle Street, once of a generally similar hue to 45 Argyle Street, were so much lighter in colour in the 2008 and 2019 Google Street view images, or that the pre-cleaning facades of 31-39 Argyle Street were significantly lighter than the facades of 56 Argyle Street, or the variety of façade tones within the terrace already evident in the mid-1980s photo? All of these buildings are of a similar age, of a similar design, of similar materials and have been subject to precisely the same air pollution over the years.
- 2.17. The only possible explanation is that the substantially lighter coloured buildings have been cleaned, possibly several times, before the earliest (2008) Google Street View images were taken.

Frequency of Cleaning

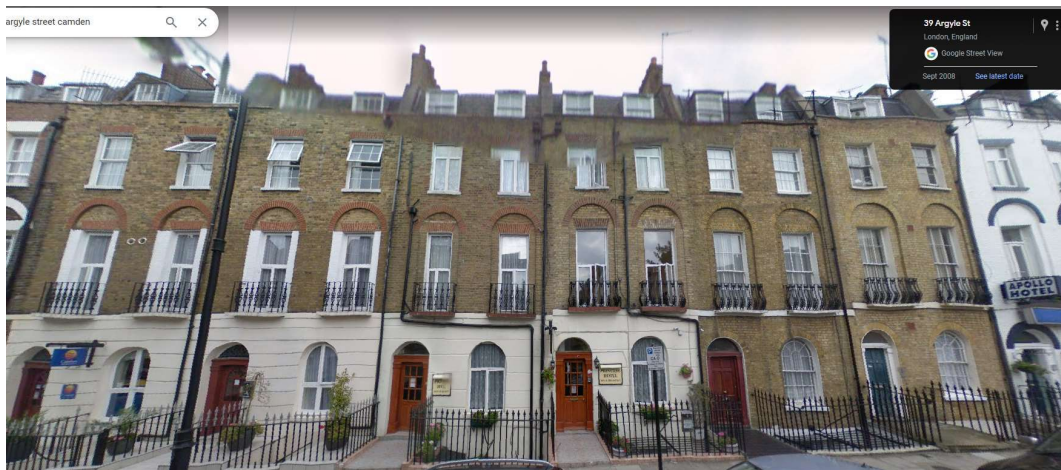
- 2.18. The photographic evidence also suggests that cleaning is likely to have been a repeated occurrence. Again, for ease of references, that evidence is reproduced below.



Pre-WWII image of Argyle Street



Mid-1980s image



2008 Google Street View Image (Figure 10 from Appellant's Appeal Statement)



July 2019 image (Figure 1 from Councils' Statement of Case).

2.19. The inspector will see from these images that there are a series of changes in the façades of this terrace:

- The pre-war image shows the top floor of 27 & 29 Argyle Street with a clearly lighter colour (possibly painted?), a lighter colour on the ground floors of numbers 31 and 33 (either paint or render) and painted first floor round headed window recesses and the bricks above the second-floor windows at numbers 31 and 35.
- The mid-1980s image shows all the first floor round headed window recesses and the bricks above the second-floor windows of numbers 31 – 37 as painted.
- By contrast, the Google Street View 2008 and 2019 images show that by at least 2008 there was no painting at all in the facades of numbers 31 – 37 above ground floor. Therefore, at some point after the mid-1980s, that painting was removed.

2.20. Nonetheless, there are no unsightly lighter patches above the windows of numbers 31 – 37 in either the 2019 or 2008 Google Street View images. Such lighter patches would be expected where surface painting has been removed (taking with it deposits from air pollution), and where the surrounding wall colour derives from 150+ years of air pollution. The absence of any lighter patches above the windows in the 2008 and 2019 images indicates that when (or possibly after)

the paint was removed post-mid-1980s, the façade as a whole was cleaned to produce a more uniform colour. That cleaning appears to have extended to Number 39 the façade of which is *roughly* the same colour as Numbers 31-37 in the 2008 and 2019 images.

- 2.21. Other alterations within Argyle Street as a whole have included rendering some of the ground floors. Again, it appears quite possible that if a landowner was going to the expense of rendering the ground floor of a building in the hope of improving its appearance, they would also have cleaned the upper two floors so that the whole façade appeared 'improved' (as was evidently the case for the Wardonia Hotel on the bend in the road).
- 2.22. Hence, the evidence suggests not just that 31-39 Argyle Street (and indeed, the Council's 41 Argyle Street) have been cleaned between the mid-1980s and 2008, but even that repeated façade cleaning has taken place over time.

Reasons for cleaning

- 2.23. We can only speculate why landowners would have cleaned the façades of their buildings⁴. Equally, we can only speculate why landowners made other changes to the facades of their buildings, such as painting the facades (in whole or in part) or adding render to the ground floor. However, as Dr Hickie explains at page 16 of his report, the conversion of the terraced houses into cheap hotels and hostels started with the arrival of the railways in the 1850s and 1860s and continued with the cheap, budget hotels well into the 20th century. Doubtless, improving the external appearance of the building (whether through, painting, render or cleaning) helped promote the offering of one hotel above that of its neighbours, and therefore made commercial sense.
- 2.24. In any event, the façade changes and façade cleaning evident in the photographic evidence are part and parcel of the history of these buildings and of this area and illustrative of a history of use as cheap hostels and budget hotels.
- 2.25. *Post script:* given that the Council is the freehold owner of Number 41 Argyle Street and hence was responsible for cleaning that façade, perhaps it could explain what motivated it to do so?

Conclusions on Evidence of Cleaning

- 2.26. In summary, the photographic evidence shows (i) variations in the colour of 31-39 Argyle Street even in early photos, (ii) painted window surrounds and recessed arches in the mid-1980s (which are clearly also the same painted elements recorded in the listing description), and no such painting in the earliest 2008 Google Street View images and subsequently. (iii) Subsequent Google Street View images do not show any difference in the brick colour of the areas where the paint has been removed, and the areas that were never painted, (iv) the side wall of Number 45 Argyle Street (and the façade of number 56 Argyle Street) are significantly darker than the pre-cleaning facades of 31-39 Argyle Street. This evidence gives rise to the following conclusions:

⁴ NB, there is an established history of cleaning buildings in this area. The Committee Report for the 2004 planning and listed building consents authorising the renovation works to St Pancras Chambers (Planning Permission reference 2004/3319/P and listed building consent reference 2004/3322/L) explains at paragraph 2.7 that "[b]etween 1992-1996 £9 million of public money was spent by British Rail *on exterior cleaning*, waterproofing and emergency restoration, leaving the building watertight and structurally sound" (emphasis added).

- Firstly, the pre-cleaning façade colour of 31-39 Argyle Street (and indeed 41 Argyle Street) cannot be the product of 150+ years exposure to air pollution caused by coal fires and steam engines. This is because (i) if that was the case, we would expect the façade colour to at least match the colour of either the side wall to Number 45 Argyle Street or the façade colour of 56 Argyle Street, both of which are similar in age, design and materials to 31-39 Argyle Street, and both of which have been exposed to exactly the same environmental conditions. The pre-cleaning façade colour of 31-39 Argyle Street is noticeably lighter than both those buildings. (ii) The listing description and the mid-1980s photo above show that parts of the façade to 31-39 Argyle Street were painted, while other parts were not. The 2008 Google Street View image shows that by that date the paint had been removed from the brickwork. It is inevitable that when that paint was removed, any pollution deposits on its surface would have been removed at the same time, and that much of the earlier pollution deposits on the bricks beneath it would also have come away with the removed paint. That would have resulted in clearly lighter brick colours where the paint had been removed compared to the unpainted areas. No such areas are visible in the pre-cleaning images of 31-39 Argyle Street. The likely explanation is that the facades were cleaned after the paint was removed to produce a more uniform appearance. (iii) The ‘tan-line’ between Nos. 39 and 41 is evidence that Number 41 which is owned by the Council was cleaned between the mid-1980s and 2008. Its present façade colour therefore cannot represent 150+ years of air pollution.
- Secondly, the pre-cleaning colour of the facades to 31-39 Argyle Street reflect air pollution experienced after the cleaning that clearly took place between the mid-1980s and 2008. Given the effects of the clean air legislation referred to at paragraph 6.4 of the Council’s Statement of Case on London air pollution, the pre-cleaning façade colours are likely to be primarily a result of car exhausts.
- Thirdly, periodic cleaning of facades is part of the story and history of many of the buildings in Argyle Street and of 31-39 in particular. Such cleaning is likely to be illustrative of their commercial use, particularly in the post-war period.

3. Patina of Age

3.1. The Council’s Appeal Statement claims that (i) the patina (i.e the residue from air pollution) constitutes “part of the special interest of these buildings is the way in which they have weathered and mellowed in the 190 years after they were built, allowing their great age to be understood by the observer” (para 6.3),⁵ (ii) that it forms “part of the historic fabric” (para 7.8), and (iii) that its removal amounts to substantial heritage harm (Council statement, paras 7.2 and 7.5).

(i) What contribution does the ‘patina’ make to the special interest of 31 – 37 Argyle Street.

3.2. Addressing the above points in order. For the reasons set out in the Appellant’s Statement of Case and as further explained above, all the evidence suggests very strongly that the pre-cleaning colours of the facades to 31-39 (and No. 41) Argyle Street reflect cleaning carried out between the mid-1980s and 2008, and the results of subsequent air pollution, primarily from car and bus exhausts. Certainly, the Council has offered no contradictory evidence of its own, other than unsubstantiated assertions.

3.3. It is highly doubtful that observers will be assisted in understanding the “great age” of these buildings by the presence of a couple of decades of car/bus exhaust pollution which any building built in the 1980s in London (or in any other town either in England or elsewhere) has been

⁵ For the sake of completeness, a fuller description of the importance the Council attaches to this ‘patina of age’ is set out at para 10.1 of the Council’s Statement.

subject to. In any event, the great age of the buildings is most obviously evident in their Georgian terrace design and in their materials, which the cleaning has better revealed. It doesn't need to be further illustrated by artificial soot washing.

- 3.4. Moreover, the story of the buildings in Argyle Street, is one of buildings originally built speculatively as residential accommodation, which with the coming of the railways changed to cheap hotels or hostels and which become 'budget' hotels in the 20th century. The operators of those hotels are likely to have regarded differing façade treatments as a way of differentiating their offerings from those of their neighbours. That evidently included in the case of 31-39 Argyle Street (but not just 31-39 Argyle Street), painting parts of the facades at some point post-war, subsequently removing that paint, and at some point, cleaning the façade.
- 3.5. That budget hotel use is an integral part of the story of these buildings and of this area immediately south of the great railway stations. Observers, seeing the cleaned facades of 31-39, and seeing that cleaning at various points in time has been part and parcel of the varying façades of Argyle Street as a whole, will not only appreciate the 'great age' of these buildings just by observing the Georgian architectural style and original materials, but the more observant amongst them may also perceive in the different façade tones the history of the change of use in this area from speculative residential in the 1830s, to cheap hotels in the latter half of the 19th Century and to budget hotels in the 20th Century. Unfortunately, that history is not classically 'romantic', but it is integral to these buildings and to this area. It would be artificial to attempt to hide it by dying the facades to match an imaginary view of the effect of more than 150 years of coal smoke deposits.
- 3.6. Finally on this point, to the extent that a few decades of discolouration from car exhausts contributes to an understanding of the historic significance of these buildings, it is respectfully submitted, that that contribution is negligible in heritage terms, and hence should attract no or negligible weight.

(ii) Does the 'Patina' form part of the historic fabric?

- 3.7. Turning then to the Council's contention that the colour of the façades forms part of the historic fabric of the building.
- 3.8. We are not aware of any statutory, case law or Historic England definition of either 'fabric' or 'historic fabric'. However, there are dictionary definitions of 'fabric' as the term is used in the context of buildings, and Historic England's use of the term 'historic fabric' in its guidance notes suggests that the term does not extend to environmental deposits on the surface of a building.
- 3.9. The word 'fabric' in respect of a building is defined in the Oxford English Dictionary as "the walls, floor, and roof of a building". It goes on to explain that the "word originally denoted a building, later a machine, the general sense being 'something made'". Notably, an environmental deposit is not 'fabric' within the scope of a standard dictionary definition.
- 3.10. Historic England's 'Making Changes to Heritage Assets, Advice Note 2', appears to use the phrase 'historic fabric' interchangeably with the expression 'original fabric' and 'original materials', e.g. at paragraph 11 which reads:

"Original materials normally only need to be replaced when they have failed in their structural purpose. Repairing by re-using materials to match the original in substance, texture, quality and colour, helps maintain authenticity, ensures the repair is technically and visually

compatible, minimises the use of new resources and reduces waste. However, alternative approaches may be appropriate if it can be demonstrated that the technique will not cause long-term damage to the asset and results in less overall loss of *original fabric* and significance or demonstrates other major benefits. An example may be the use of resin or steel reinforcements to stabilise structural timbers without loss of *historic fabric*” (emphasis added).

- 3.11. Environmental deposits are no more part of the original materials of the building, than (say) the growth of moss or lichen. They are certainly not part of the original walls, floors or roof of the building.
- 3.12. We do not dispute that in appropriate situations, environmental deposits can help illustrate the history of a building. However, by no stretch of the imagination do they form part of the original materials/historic fabric of a building and there is no authority to suggest that they do. Therefore, they are not part of the historic fabric.

(iii) Does the cleaning the ‘patina’ cause substantial harm?

- 3.13. The Council continues to claim that the cleaning caused substantial harm. Government Guidance and guidance from relevant planning appeal decisions on what constitutes ‘substantial harm’ was set out at paragraphs 72 – 74 of the Appellant’s Statement of Case, and in brief terms, it shows that ‘substantial harm’ is a “high test”, and that ‘substantial harm’ requires “the impact on significance ... to be very serious such that *very much, if not all, of the significance [is] drained away*” (emphasis added). Notably, the Council’s Appeal Statement makes no reference at all to these authorities.
- 3.14. It borders on the absurd to suggest that cleaning the facades of 31 – 39 Argyle Street has had the effect of draining away “very much, if not all” of its heritage significance⁶. The buildings’ floors, roof and walls remain intact, they remain very obviously part of a Georgian terrace in terms of design and materials, and the vast majority of their historic significance continues to lie in their design, construction and original materials, and by no means in the recent environmental deposits on their façades.
- 3.15. The suggestion is particularly absurd given the evidence of historic cleaning of the buildings even before the cleaning which took place in 2021. This very strongly suggests that the pre-2021 cleaning colour of the facades was the product of no more than 30 or so years of car/bus exhaust deposits (the major contributor to air pollution in London in this period). It is not clear from the Council’s Statement of Case what degree of heritage significance they would attribute to those 30 years of deposited car/bus exhausts. However, for the reasons explained above, it is submitted

⁶ This is particularly obvious in the comparison with the cleaning of St Pancras Chambers and Kings Cross Station. If the residue of 150+ years of steam trains (i.e. the ‘Patina’ to adopt the Council’s terminology), constitutes part of the fabric of 31-39 Argyle Street, such that its removal would amount to substantial harm because it drains away “very much if not all of the [heritage] significance”, then by the same logic, and given that the steam trains are the very reason for the existence and form of St Pancras and Kings Cross, even more significance was drained away when the patina was cleaned off St Pancras and Kings Cross. The fact that they are public buildings (Council Statement, para 7.15) does not diminish the harm from that cleaning. Indeed, if the patina is central to a public understanding of the great age of these public buildings, it is all the more unjustifiable to damage that public understanding by cleaning it away. NB, at no point in the officer report into the 2004 St Pancras scheme does the Council even suggest that the grime coating the buildings is of such great heritage significance, or that removing it would constitute substantial harm. Indeed, it is hardly given a thought.

that given the wholly unexceptional source of the deposits over that period, those deposits have no or negligible heritage significance.

- 3.16. Moreover, the cleaning itself has some heritage significance. As a continuation of the history of periodic cleaning of facades in Argyle Street, it helps to illustrate the continuing commercial use of the buildings, and hence helps to illustrate the change in use of the properties in Argyle Street from the originally speculative residential development to cheap boarding houses in the mid-late 19th Century, and to the increased number of budget hotels, particularly in the post WWII era. That history is not as romantic as steam trains, but it is nonetheless Argyle Street's story and in particular, the story of 31 – 39 Argyle Street, and should not be artificially hidden under a soot wash.

4. Principle of Cleaning and repointing

- 4.1. As paragraph 7.21 of the Council's Statement explains, the Bloomsbury Conservation Area Appraisal and Management Strategy states at paragraph 5.4 that inappropriate cleaning and pointing of brickwork can have a detrimental impact on the character and appearance of the Conservation Area. The document does not explain what constitutes 'inappropriate' cleaning and pointing.
- 4.2. The Council accepts at paragraph 7.15 of its statement that "[t]here will be instances where cleaning is required, particularly in restoration cases such as ... St Pancras Chambers"⁷ noting that "St Pancras Chamber and Kings Cross Station are major public buildings". They then go on to state at para 7.16 that "[i]n the case of No 31-39 Argyle Street, it is not considered that its patina of age required any restorative works ...". Paragraph 7.16 recognises that repointing works took place, and that there has been spalling of the bricks as a result of the previous use of concrete pointing, but paragraph 7.17 then goes on to state that the need to repoint "is not a justification to disregard [the terrace's] final appearance".
- 4.3. Starting with the issue of whether the works carried out in 2021 to 31-39 Argyle Street qualify as 'restoration'. The scope of the works is set out at paragraph 37 of the Appellant's Statement of Case and described more fully in the email trail attached at Appendix 3 to the Appellant's Statement of Case. It is difficult to see how replacing fibre cement slates "that were leaking very badly", replacing the code 4/5 lead that "was all perished and not completed correctly in place" (Gary Cilla email of 17 March 2021 at 5.22 PM), "hand raking defective sand/cement pointing and replac[ing] with lime pointing and colour matched ...[thereby] allowing the bricks to breath and remov[ing] trapped water ... [r]emoving defective cement from window reveals", replacing "[damaged] previous ground floor sand an cement render", and replacing "some older non original PVC windows that were beyond repair ... with timber softwood sashes to match the rest of the street" (Gary Cilla email dated 17 March 2021 at 14.55), does not constitute restoration. These were clearly works that were necessary for the continued health of 31-39 Argyle Street. These may be on a smaller scale than the works at St Pancras and they may relate to a private building, but that does not mean that they do constitute restoration. Hence, the works (including the cleaning) potentially fall within the class of 'restoration works' which the Council considers justifies cleaning. Further discussion of this issue is contained at paragraphs 104 and following of the Appellant's Appeal Statement, and the Inspector is referred to those paragraphs.
- 4.4. Turning to the issue of whether the works amount to a 'disregard of the [terrace's] final appearance. In a related comment at para 7.38 of its appeal statement, the Council states that

⁷ Notably, there is no recognition that the Council's 41 Argyle Street has obviously been cleaned (see above), or explanation of why this might have been justified.

“[t]here is no good reason for the new mortar jointing to be that bright. The benefits begin and end with the fact they are lime-based”. Paragraph 7.37 explains that “[i]t is normal practice for skilled bricklayers to repoint or repair brickwork without producing a “piebald” appearance. It is clearly more logical and efficient to ensure that any new materials being introduced are sympathetic in all aspects prior to their application”.

- 4.5. These criticisms are wholly unjustified. As explained above, the pre-works façade colour of 31-39 is a reflection of earlier cleaning and subsequent exposure to air pollution which is likely to comprise primarily car/bus exhaust fumes. The evidence also suggests that such periodic cleaning is characteristic of Argyle Street and is likely to reflect the commercial needs of the budget hotels, which wish to differentiate themselves from their neighbours and to present a clean and attractive looking hotel offering. Even the Council has cleaned the façade of 41 Argyle Street. The pointing was not just a lime pointing, but as Gary Cilla’s email confirms, it was “colour matched” to the underlying, yellow bricks by the skilled bricklayer – wholly in accordance with the Council’s expectations as set out in its paragraph 7.37.
- 4.6. Moreover, as explained in the Appellant’s Appeal Statement and as illustrated in the images supplied in that statement and above, not only was there a variety of brick tones between buildings (see Appellant’s Appeal Statement, Figure 10) but even within the façades of individual buildings (e.g. the obvious water stains below the first floor windows visible in Appellant’s Appeal Statement, Figure 11). Making a precise match to those various underlying colours required either a virtually unlimited pallet of greys in the lime pointing, or alternatively it would require post-pointing colouring of the façade. Presumably, that colouring would need to recreate the water stains visible in Figure 11. This would be artificial, is not justified by whatever heritage value is attributable to the few decades of air pollution that have left their mark on the façade, but nonetheless appears to be what the Council now expects.
- 4.7. Contrary to the Council’s assertion in its paragraph 7.17, the Appellant had very careful and context appropriate regard to the appearance of the terrace in their decision to clean the facades and to match the pointing to the original brick colour.

5. Quality of the Works

- 5.1. The Council queries the quality of the workmanship and the reliability of retrospective expert reports:
- At paragraph 7.2 of its Statement, where it states that it cannot be certain that the DOFF cleaning system was correctly implemented, and that in the absence of a scheme previously approved by the Council, there is a possibility that the fire skin of the masonry has been removed or damaged in the cleaning with other possible adverse “implications on the health of the brickwork”. For that reason, it suggests at para 7.5 that “there is scope to argue that substantial harm has been caused; harm to the health of the brickwork.”
 - At para 7.4, where it suggests that the retrospective nature of Mr Malone’s and Dr Hickie’s reports puts a question mark over their reliability.
- 5.2. Starting with the DOFF Integra cleaning system. The Doff Integra cleaning system is manufactured by Stonehealth (details attached at Appendix 2). The DOFF Integra system is a low pressure, steam cleaning system with a maximum steam temperature is 150 degrees manufactured by Stonehealth Ltd⁸. It involves projecting low pressure steam at the masonry to

⁸ <https://stonehealth.com/>

be cleaned. Stonehealth Ltd guarantees that its use will result in “0% surface damage” [details attached at Appendix 2].

- 5.3. The same DOFF cleaning system was used to clean the masonry at St Pancras Station by a company called Stonewest⁹. There is no record on the Council’s website, of approval of the system being secured pursuant to Condition 22 of listed building consent reference 2004/3322/L, which is quoted at paragraph 7.15 of the Council’s Statement. This is presumably because the system falls within the definition of a nebulous water spray, and therefore required no further consents. Equally, and as reported in the Planning Inspectorate’s Penn House, 38 St Mary’s, York Decision (referred to at Para 89 of the Appellant’s Appeal Statement and included at Appendix 6 to that statement), the Planning Inspectorate has also previously accepted that DOFF cleaning would not harm a building’s fabric.
- 5.4. Cleaning of 31-39 Argyle Street was carried out by a company called Barwin¹⁰ using the DOFF Integra system. Barwin specialises (amongst other services) in cleaning the fabric of historic buildings. The accreditations page on their website confirms (attached at Appendix 3) that they are a fully certified by Stonehealth, the manufacturer of the DOFF cleaning system. Their brochure (also attached at Appendix 3) shows that they have been entrusted with the DOFF cleaning of such significant monuments as the Grade II listed Buckingham Gates, ornate lighting columns on Westminster Bridge, the gilded statue of Prince Albert which comprises the centrepiece of the Albert memorial in Kensington Garden (etc).
- 5.5. In any event, Council officers attended the Site back in 2021 and no concerns were raised at that time about any adverse impacts from the cleaning to the brick surfaces. There is no basis for the Council to speculate now that a system it has been happy to see used on other buildings, including St Pancras Chambers, might exceptionally have damaged the brickwork of 31-39 Argyle Street.

Reliability of Reports by Dr David Hickie and Mr Joe Malone

- 5.6. Turning to the issue of the retrospective reports. The first of these is by Dr David Hickie, a former regional director at English Heritage and a full member of the Institute of Historic Building Conservation. At Paragraph 1.2 of Dr Hickie’s report he expressly confirms “[t]hat the evidence I have prepared for this appeal written statement is true and has been prepared and is given in accordance with the guidance of my professional institution, and I confirm that the opinions expressed are my true and professional opinions”.
- 5.7. The second report is by Mr Joe Malone, a building surveyor, member of the Chartered Association of Building Engineers (CABE) and of the Chartered Building Consultancy (CIOB). Although he does not provide a similar statement to Dr Hickie’s in his report, the CABE Ethical Framework requires its members to “uphold the highest standards of professional conduct, openness, fairness, honesty and integrity”. The CABE Rules of Professional Conduct require members to “discharge their professional duties with integrity, impartiality and objectivity”.
- 5.8. Experts are entitled to disagree with each other, and if they do, they should explain why they do so, where necessary providing supporting evidence. However, vaguely questioning the reliability of the expert reports, as the Council does at its paragraph 7.4 simply because they are retrospective and without providing any further explanation, is perilously close to suggesting that Dr Hickie and Mr Malone are in breach of the professional standards of their respective chartered institutes. The Council has presented no evidence to support such a suggestion, and if that is

⁹ https://www.stonewest.co.uk/case_study/st-pancras-station/

¹⁰ <https://barwin.co.uk/about-us/>

what they have in mind, the suggestion is roundly rejected. In any event, Dr Hickie and Mr Malone expect to attend the informal hearing of this appeal, and the Inspector can form their own view on the basis of their oral evidence.

6. SPAB Principles (attached at Appendix 4)

- 6.1. The Council is critical at paragraph 6.2 of its statement of the Appellant's application of the SPAB Principles.
- 6.2. Under the heading, 'Respect of Age', the SPAB principles state that "Bulging, bowing, sagging and leaning are signs of age which deserve respect. Good repair will not officiously iron them out, smarten them or hide the imperfections. Age can confer a beauty of its own. These are qualities to care for, not blemishes to be eradicated".
- 6.3. The Appellant does not disagree with this statement and there has been no attempt to "officiously iron out" any bulging, bowing, sagging or leaning.
- 6.4. The Council now is asking the Appellant to restore the building to the state that it was before the cleaning took place. It is key tenet of the SPAB philosophy that the works should be "Repair not Restoration". Materials and repairs should be treated in an honest fashion. The dishonest staining of historic fabric to imitate the colour of the brickwork as it was before the cleaning, is clearly contrary to the SPAB approach.
- 6.5. This issue is specifically addressed in the SPAB Approach where it is stated:

"Workmanship

Why try to hide good repairs? Careful, considered workmanship does justice to fine buildings, leaving the most durable and useful record of what has been done. *On the other hand, work concealed deliberately or artificially aged, even with the best intentions, is bound to mislead*" (emphasis added).

- 6.6. The SPAB Approach specifically states that artificially aging is not a good idea – even if it is done with the best of intentions.
- 6.7. The SPAB Approach also highlights the importance of "Regular Maintenance".
- 6.8. The evidence provided in the Appellant's Statement of Case and in this Response, suggests that many of the buildings in Argyle Street are regularly maintained. Moreover, part of their 'story' (and unrecognised by the Council despite the photographic evidence) is one of gradual changes to the facades of the mostly budget hotels, including periodic façade cleaning (e.g. Number 41 Argyle Street) as part of a repair and maintenance regime. It is suggested that for the owners and operators of the hotels, these works reflect their responses to the commercial need to differentiate their offering and present their hotels in the most attractive light. In the present case, those works were carried out professionally, and at no point has any Council officer who has visited the Site suggested the opposite.
- 6.9. The soot washing proposed by the Council is the epitome of an attempt to deliberately conceal "or artificially age" the work carried out, and obviously contrary to the above quoted SPAB principle.

7. Appropriateness of a soot wash

7.1. The Council promotes a 'light soot wash' for two reasons:

- (i) it considers that the pre-cleaning façade colour was the result of exposure to 150+ years of atmospheric pollution from coal fires and steam trains (see paragraph references above); and
- (ii) as it states at para 6.6 of its statement (and elsewhere), "the cleaning has made [31-39 Argyle Street] stand out among their neighbours, which had come to us as more or less homogenous terraces albeit with some variation of detailed design". At various points the Council describes the appearance of the cleaned buildings as 'glaring' (paras 6.5 and 7.40). At paragraph 6.7 it explains that "a sufficient wash should be applied to make the houses match their prior appearance (including neighbours), so reuniting the terrace". There are similar comments at para 7.8 "the resultant brickwork facades are much brighter than their prior appearances and compared to neighbouring properties ... [t]he collective façade of No 31-39 has unequivocally brightened, resulting in a dominant and incongruous addition to the immediate and surrounding area" and at para 7.43 the Council suggests that a soot wash is required so that "Nos 31 – 39 ... materially match their neighbours (in order to reunite with the terrace). Similarly, para 11.14 suggests that the soot wash is required so that "31-39 should closely match their neighbours (in order to reunite with the terrace), namely No 41 as it stands today on the 25th January 2024".

7.2. As evidence of the suitability of the soot wash, the Council cites various planning decisions of its own (including the decision at 56 Argyle Street) between paragraphs 5.1 and 5.14 of its Statement.

7.3. Starting with the last of these points, i.e. the other Council decisions. The Appellant wholly endorses the Council's comment at paragraph 7.15 (made in reference to the St Pancras case) that "each case should be determined on its own merits". The soot washes in the decisions the Council cites may or may not be justified. However, there is insufficient information in the Council's statement as to the circumstances of each of those cases to judge whether the cases are at all relevant to 31-39 Argyle Street¹¹. Therefore, no reliance can be placed on these other cases as to the suitability of a soot wash in the present case.

7.4. Turning then to point (i) above. We have explained above the history of facade cleaning in Argyle Street and presented photographic evidence in the Appellant's Appeal Statement and above showing that the pre-cleaning colour of the façade of 31-39 Argyle Street is most likely to reflect exposure to air pollution since (at the very earliest) the mid-1980s. Moreover, it is suggested above that façade cleaning is an intrinsic part of the story of the cheap hostels/budget hotels Argyle Street, and of 31-39 Argyle in particular.

7.5. Instead of understanding and respecting the 'story' of Argyle Street, and of numbers 31-39, the Council is proposing a soot wash, with the express intention of recreating an assumed (but unevidenced) 150+ years of exposure to the smoke of coal fires and steam engines. In the language of the SPAB principles and in light of the evidence above, that is intentionally misleading, and in effect an attempt to cover up the actual history of 31-39 Argyle Street.

¹¹ Albeit, as the photo above from the planning file for 56 Argyle Street shows, in that case a soot wash was recommended to merge a limited area of new bricks into the overall and very dark colour of the rear elevation of the building. That is quite a different circumstance from the present, where there is clear evidence of the facades being periodically cleaned, and the whole of the façade of 31-39 was being repointed with an appropriate lime-based mortar (i.e. the repairs did not affect just a section of one wall).

- 7.6. To the extent that the soot wash is proposed simply to reproduce the pre-cleaning façade colouring which evolved following the cleaning which appears to have taken place post the mid-1980s, why would that be necessary in heritage terms? What is the heritage significance of a colour which is the result of 30 or so years of exposure to modern air pollution, doubtless largely comprising car and bus exhausts? The Council statement is completely silent on this point, and for the reasons set out above such façade colour is only likely to have negligible heritage value, particularly when set against the story of Argyle Street, of budget hotels changing façade treatments (including cleaning) in response to commercial pressures.
- 7.7. Therefore, and from a heritage perspective, the proposed light soot wash is inappropriate, and firmly within the scope of the ‘artificial aging’ that the SPAB principles advise against.
- 7.8. As regards point (ii), the history of the terrace comprising numbers 27 -45 Argyle Street, is a history of variety, including the Council’s obvious cleaning of 41 Argyle Street. The homogeneity the Council seeks has not been part of that history since at least the end of WWII and in light of the evidence presented in the Appellant’s Appeal Statement and above, is un-historic and hence is itself harmful to the heritage significance of the buildings.
- 7.9. Moreover, this insistence on uniformity within the terrace points to other problems. The Enforcement Notice requires a soot wash to be applied “to match the previous appearance of No 31-39”. It does not require the soot washed Nos 31-39 to “materially match their neighbours in order to reunite the terrace” as suggested at para 7.43 of the Council’s Appeal Statement (and elsewhere). In any event, a requirement for the soot washing to “materially match” neighbouring buildings would be problematic. The pre-cleaning photographic evidence shows differences in façade colours between individual buildings within Nos 31-39, and in particular, it shows that No. 39 was a darker than the cleaned, council owned No. 41, with a ‘tan-line’ running down the joins in the party wall (see evidence above, and discussion of this point at paragraphs 29 – 30 and 106).
- 7.10. Nonetheless, it is understandable why the Council suggests that there should be a uniformity of façade colour in the terrace and that the buildings should “materially match their neighbours”. As the Appellant’s Appeal Statement explains at paras 108 – 114, the subtle differences in the pre-cleaning colours between and within¹² individual buildings within the row of nos. 31-39 and the relatively low resolution of the Google Streetview Images (the only images of the pre-cleaning facades of which we are aware) will inevitably mean that it is difficult to assess, post-soot wash, whether the requirements of the notice have been satisfied. The Appellant’s recollection of the pre-cleaning colour may well differ from Council officers’.
- 7.11. Unfortunately for the Council a requirement for the soot-washing to ‘materially’ match neighbouring buildings/reunite the terrace is unlawful, as it would require No. 31-39 to be stained to a different colour from the pre-cleaning colour (and hence would be a harmful and artificial intervention).
- 7.12. Also, the very fact that the Council appears to be adopting the “materially matching neighbouring buildings”/“reunite the terrace” as its yard stick for a successful soot washing highlights the fact that the success or failure of the soot washing (and any potential prosecution for failing to comply with the Enforcement Notice) will depend on a very subjective judgement – do the individual buildings ‘materially’ match their neighbours/reunite the terrace. This is precisely the scenario envisaged in *Kaur v Secretary of State for the Environment [1989] 10 WLUK 246*, as it leaves “a degree of uncertainty both for the applicant and for the local planning authority. No clear procedure by which a firm conclusion could properly be reached has been

¹² E.g. the water run-off stains below the first-floor windows of No 39

provided". That lack of clarity as to how the soot washing requirement can be satisfied potentially renders the Enforcement Notice a nullity.

7.13. Finally, the Council describes the effect of the washing as 'glaring' and "resulting in a dominant and incongruous addition to the immediate and surrounding area". This is very much a subjective response. Where the Council sees a 'glaring' result, Dr Hickie in his professional capacity sees a building that "currently looks magnificent, resplendent in its original and likely 'as built' colour" (Dr Hickie at page 28).

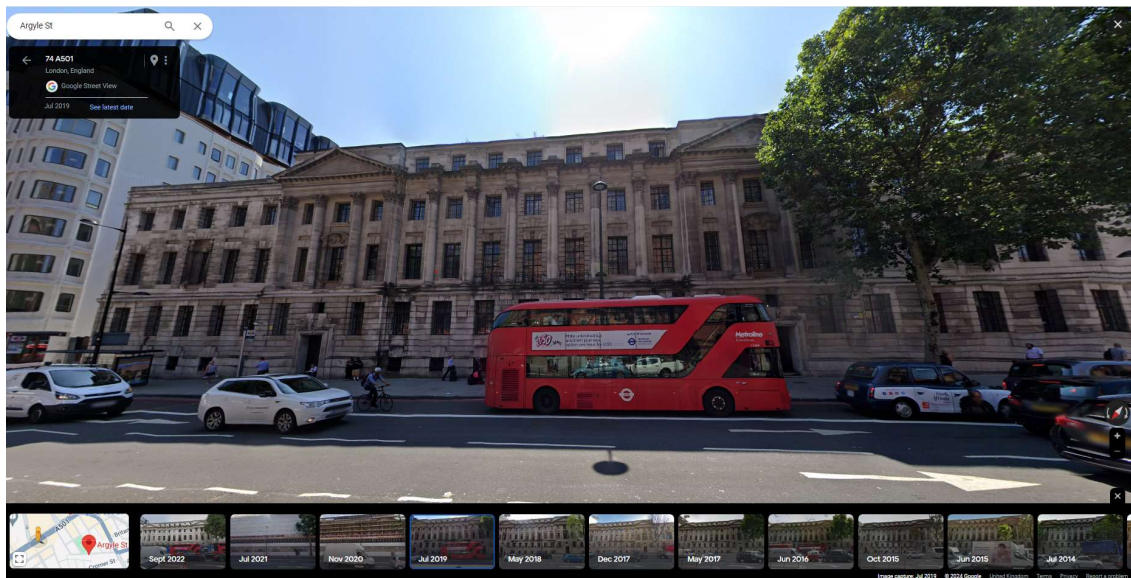
7.14. The Council's more negative assessment does not take account of the varied character of Argyle Street, or indeed of its 'story' (as described above). That varied character is described in the Appellant's Appeal Statement starting at paragraph 12 and it need not be repeated here. The Inspector will form their own views on the varied character of Argyle Street at their site inspection. However, the Appellant respectfully submits that Dr Hickie's assessment is more correct, and that the cleaned façade of 31-39 is part of the varied character of Argyle Street and of its ongoing commercial story.

8. Subsequent weathering

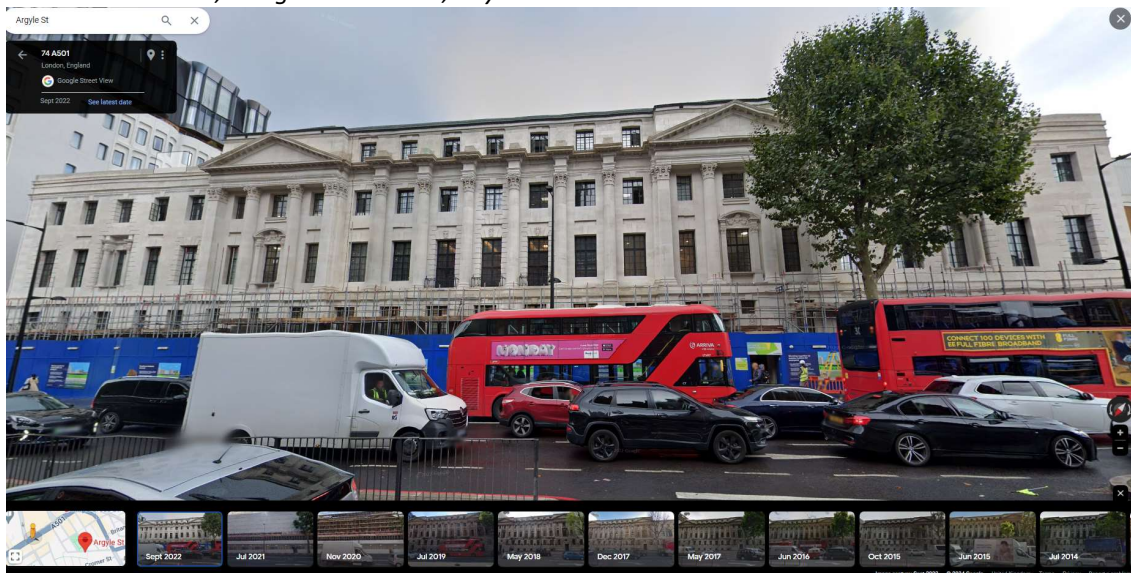
8.1. At paragraphs 7.40 and 11.12 of the Council's Appeal Statement, the Council states that there is no evidence that natural weathering will "reinstate the prior desirable appearance", and goes on to reiterate that "[t]he dulling of the brickwork is the result of at least 150 years exposure to smoke from steam trains and domestic fires, both of which are no longer prevalent locally".

8.2. For the reasons set out in the Appellant's Appeal Statement and explained above, the Council's concerns are based on the fallacy, that the pre-cleaning colour of the facades of Nos 31-39 was the result of "at least 150 years exposure to smoke from steam trains and domestic fires" and therefore historically desirable (Council's Statement at para 7.40). The evidence above shows that this cannot be the case. Instead, that pre-cleaning colour is most likely to be the result of approximately 30 years exposure to modern air pollution, which largely constitutes car and bus exhausts.

8.3. Nonetheless, it could be argued that even this 30 or so years of pollution has some heritage value. However, as suggested above, that heritage value is likely to be negligible. By way of illustration, Camden Town Hall (the seat of Camden Council), is located on the Euston Road, opposite St Pancras Station, and immediately next to the former Annex to Camden Town Hall which is itself located on the corner of Argyle Street and the Euston Road. According to the Historic England website, Camden Town Hall was built between 1934 and 1937, and was Grade II listed in April 1996. The first image below shows the town hall in July 2019, with a darkened façade, doubtless as a result of environmental pollution (probably from the cars and busses on the Euston Road). The second image is from September 2022 and shows a cleaned façade (we understand that the cleaning took place in 2021).



Camden Town Hall, Google Street View, July 2019



Camden Town Hall, Google Street View, September 2022.

- 8.4. Evidently, exhaust deposits from the Euston Road did not have sufficient heritage significance to prevent that cleaning.
- 8.5. To the extent that the Council may argue at the hearing that even 30 years or so of environmental pollution has heritage value, the Appellant respectfully submits that either it has no such value or that any such value is negligible and of no weight. Observers will appreciate the great age of 31 – 39 Argyle Street from their architectural form and materials. 30 or so years of pollution from car and bus exhausts (which is prevalent throughout London and elsewhere) is hardly going to add materially to that appreciation.
- 8.6. The Council also alleges that there is no evidence that natural weathering will over time dull the current appearance of 31-39 Argyle Street. The fact that natural weathering (i.e. exposure to air pollution) will eventually dull the current colour of 31-39 Argyle street would normally not need

any evidence – the evidence is all around as natural weathering is the source of the deposits on all buildings, including Camden Town Hall.

- 8.7. However, just in case further evidence is required, the Council has itself provided that evidence. As explained above, the evidence shows that at some point post-mid 1980s (and before 2021), 31 – 39 Argyle Street were cleaned. 41 Argyle Street is noticeably lighter in colour than 31-39 Argyle Street in the July 2019 Google Street View image shown as Figure 3 in the Council's Appeal Statement. It is also notably lighter than the very much darker side wall to Number 45 Argyle Street, and 56 Argyle Street notwithstanding that the buildings are of the same design, materials, age, location and hence have been subject to the same environmental impacts. The only possible explanation for this, is that 41 Argyle Street has also been cleaned.
- 8.8. There is a 'tan line' down the party wall between 39 and 41 Argyle Street, with 39 Argyle Street being slightly darker (see images above). This shows that 41 Argyle Street was cleaned at some point after 31-39 Argyle Street were cleaned. The fact that 39 Argyle was slightly darker than 41 Argyle Street can be explained only by either its cleaning being less effective, or it being exposed for a longer period to air pollution (or both). If further evidence is required, the photo below is figure 4 from the Council's Appeal Statement and shows 37 -45 Argyle Street, with number 41 (immediately adjacent to the white painted Apollo Hotel) looking noticeably darker than it did in the 2019 image. The Inspector will be able to confirm on their site visit that the colour of number 41 is duller as at today's date than it appears to be in the 2019 Google Street View image contained at Figure 3 of the Council's Statement of Case.



[Figure 4 – Picture of No 41 Argyle Street – dated 25th January 2024]

9. Precedents

- 9.1. Paragraph 7.25 of the Council's Appeal Statement explains that given the number of Georgian terraces within the vicinity and in Camden, that granting consent for the current façade of Nos 31-39 would create a damaging precedent. They also raise a concern regarding a suggestion that the Appellant is minded to clean the brick work of Nos. 27-29.
- 9.2. As regards the issue of precedent. As the Council has confirmed at paragraph 7.15 of its Appeal Statement, proposals for any listed building must be considered on their own merits (i.e. in light of the facts relevant to that particular building). Suffice it to add that the Appellant's Appeal Statement and this Response Statement set out the particular facts relevant to numbers 31 - 39. Those facts are clearly different from the facts in the case of (say) number 56 Argyle Street. The risk of setting an unwelcome precedent is overstated.
- 9.3. As regards the second issue, the Appellant appreciates the Council's sensitivity on the issue of façade colour and will not undertake any cleaning of Nos 27-29 without first making an application to the Council.

10. Principles of Enforcement

- 10.1. At several points in its Appeal Statement, the Council objects to the Appellant's case that greater harm would be caused by soot washing / removing the render at Number 39 / removing the red-dyed bricks at Number 39 on the basis that not requiring the works to be reversed would be "the easiest method for the appellant" (Council Statement, Para 7.40) or the "easiest way forward for the Appellant" (Council Statement, Para 9.4).
- 10.2. Elsewhere, the Council's concern is that the works are "unprecedented and should not be allowed" (Council Statement, Paras 6.13, 6.15, 8.10), and a concern that the facade cleaning set a "damaging precedent for immediate listed properties to begin completely removing the important patina of age of [sic] the facades" (Council Statement para 7.24, 7.25 & 1.11), with similar comments in respect of the render at Council Statement para 8.10. In other words, the Council appears to be suggesting that irrespective of any other considerations, as a matter of principle, the unauthorised works should be reversed, whatever it takes.
- 10.3. It is respectfully submitted, that whether or not leaving the works as they are "[is] the easiest method for the appellant" and whether that would set an unwelcome precedent that cannot be allowed is beside (and indeed, missing) the point:
- The evidence suggests that the pre-cleaning façade colour was the result of approximately 30 years' air pollution. It does not have the heritage significance the Council attributes to it. A soot wash that is proposed so as to give the impression of 150+ years of coal smoke pollution is replacing that actual history with an artificial story. By definition, such a wash is harmful to the heritage significance of the buildings.
 - In respect of the render, Mr Malone's evidence is clear that removing the render will cause further harm to the fabric of the building. What further remedial works would then be required to 'make good' that damage (Requirement 4) are wholly unclear.
 - As regards the dye, it is not clear whether the proposed DOFF cleaning will be successful¹³, and hence whether it is even possible to comply with the requirements of the notice. The only

¹³ This is without prejudice to the Appellant's offer to test this proposal on sample bricks and provide the results to the Council. Should DOFF cleaning be successful, the Appellant is happy to DOFF clean the red dye from the relevant bricks at 39 Argyle Street.

other solution of which the Appellant is aware (and notably, not expressed in the Notice requirements), is removing and replacing the dyed bricks, which would require removing historic materials. That in itself is harmful in heritage terms.

10.4. Moreover, s. 38(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 limits the scope of the steps a council can require in an enforcement notice to those necessary:

- (a) for restoring the building to its former state; or
- (b) if the authority consider that such restoration would not be reasonably practicable or would be undesirable, for executing such further works specified in the notice as they consider necessary *to alleviate the effect of the works which were carried out without listed building consent* (emphasis added); or
- (c) for bringing the building to the state in which it would have been if the terms and conditions of any listed building consent which has been granted for the works had been complied with.

10.5. The Council's comments suggest an element of punishment, with a view to making an example of the Appellant (with little regard to the adverse impact of its requirement) so as to discourage other property owners from taking similar steps.

10.6. Such an approach is outside the scope of s. 38(2), and contrary to case law, which has repeatedly confirmed that "the enforcement procedure is intended to be remedial rather than punitive" (Carnwath LJ, in *Tapecrown Limited v The First Secretary of State (and another)* [2006] EWCA Civ 1744).

10.7. The purpose of the enforcement procedure is to secure the best possible outcome in all the circumstances for the buildings which are the subject of an enforcement notice. Not to require further harmful steps to those buildings with the aim of discouraging third parties. For these reasons, the Inspector is urged to uphold the Appellant's grounds of appeal, and resist the more emotive claims of the Council, that in effect 'something must done'.

11. Grounds of Appeal – Unauthorised Cleaning (Contravention 1), unauthorised re-pointing (Contravention 3) and requirement to Apply a Light Soot Wash (Requirements 1, and part of Requirement 3)

11.1. We apologise for having gone to such detail and length in addressing the points relating to the cleaning and light soot wash in the Council's Statement of case. However, having done so we can address the ground of appeal in relation to the above issues briefly.

11.2. The Appellant's Statement of Cases explains that the Appellant appeals against the above alleged contraventions and the requirements on Ground (b), (e), (i) and (j). the Appellant's arguments are set out at paragraphs 99 – 121 of the Appellant's Appeal Statement. Further support for those arguments is set out above. The Inspector is respectfully requested to review those arguments in light of the further evidence and arguments presented in this Response document.

11.3. For all the reasons set out Appellant's Appeal Statement and as further detailed above, the Appellant submits that its Appeal in respect of Contraventions 1 & 3, and Requirement 1 and part of Requirement 3 should be upheld.

12. Unauthorised Render

12.1. The Council addresses the unauthorised render at paragraphs 8.1 – 8.11 of its statement. Most of the Council’s Statement highlights the heritage harm of the unauthorised render at Number 39 and questions the reasons for the render.

12.2. As explained at paragraph 125 of the Applicant’s Statement, the Appellant accepts that listed building consent should have been obtained for both the removal of the concrete render on the ground floor facades of 31-37 Argyle Street, and for the application of render to the ground floor façade of 39 Argyle Street.

12.3. As Mr Malone explains at section 4 of his report, historic buildings such as 31-39 Argyle Street manage moisture:

“... in line with the ‘overcoat’ principle’ that is to say, that just like a thick woollen overcoat, the bricks will absorb some moisture, but will keep the occupants dry, so long as the masonry is allowed to go through seasonal wet/dry cycles.

The masonry must be allowed to breathe, and be able to lose moisture through the normal evaporative process to function as intended. With this in mind, it is critical to note that the lime mortar joints are sacrificial; with most of the salts and moisture being lost through the mortar joints. In the process, the lime mortar joints erode far more quickly than would be seen for hard OPC mortar joints. *Substituting the lime mortar with OPC mortar results in a building that can no longer lose salts and moisture through the mortar joints, which in turn, drives up salt and moisture content in the bricks. This in turn leads to advanced spalling and erosion of the masonry due to freeze/thaw action and damage is often focussed on the brick arris.*

The same principle applies where hard OPC render is applied to historic building fabric. Cracks will usually develop in the render due to differential movement between the render and the much softer brick substrate. This results in water ingress, which drives up brick moisture content and leads to wetting of the bricks and subsequent spalling due to freeze/thaw action. It is common to see a great deal of spalling and erosion to the underlying masonry, once these hard OPC based renders are removed” (emphasis added).

12.4. In summary, cementitious render is inappropriate and in the longer term harmful to buildings such as 31 – 37 Argyle Street. As Gary Cilla’s email to the Council dated 17 March 2021 explains, in this case the sand and cement render was damaged, and it made sense for the health of the buildings to remove it and to replace it with lime render. The Council’s Appeal Statement does not take issue with this.

12.5. The step that was harmful in heritage terms, was to render the ground floor of Number 39 (in particular without listed building consent). This was a mistake which the Applicant acknowledges and regrets.

12.6. The question then arises, whether the mistake is remediable, i.e. can the render be removed without causing further harm to the building? The only expert evidence on this question is from Mr Malone, a CIOB Chartered Building Consultant, a Chartered Building Engineer, in the form of his report dated 7 September 2023. His view is expressed in unequivocal terms at section 8:

“8.0 RISK OF FURTHER CONSEQUENTIAL DAMAGE

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”.

12.7. Mr Malone is expecting to attend the informal hearing in this case, and that will allow Mr Malone to explain the above concerns, and it will allow the Inspector to test Mr Malone’s evidence for him or herself.

12.8. The only comment by the Council in respect of the risks of harm to Number 39 from any attempt to remove the render at Number 39 is at para 8.4 of its statement, where the Council states:

“If the appellant is contending that lime render has been used, then it should be easier to remove than Cementous render. The works are recent, so immediate intervention must be undertaken to salvage and prevent further damage to the underlying brickwork. Then, as required by requirement 4, make good all resultant damages.

12.9. Notably, the Council’s Appeal Statement has been prepared by Mr Joshua Cheung (an enforcement officer), and Mr Nick Baxter (a senior conservation officer). As far as the Appellant is aware, neither officer is a qualified building engineer or building surveyor, and therefore neither officer is qualified to make the above assessment. Nor does the Council present any evidence to contradict Mr Malone’s findings.

13. Ground of Appeal: Unauthorised rendering of brickwork at Number 39 (Contravention 5), and requirement to remove the render from No. 39, making good and reinstating the previous appearance of the underlying brickwork (Requirement 2 (and Requirement 4 to the extent that it overlaps with Requirement 2)).

13.1. The Inspector is asked to note, that the Appellant does not disagree with the Council’s criticism of the rendering of Number 39. It sincerely regrets the rendering.

13.2. However, the Appellant does not appeal against that criticism. Instead, it is appealing against Requirement 2 (and Requirement 4 to the extent that it overlaps with Requirement 2) of the Enforcement Notice. The Appellant’s grounds of appeal and arguments in favour of those grounds remain as set out at paragraphs 122 – 133 of its Appeal Statement.

13.3. The Appellant would add, that in light of Mr Malone’s evidence, both removing the render by chipping it away and clearing off the render stains from the brickwork with either acid washing or sand/media blasting will harm the underlying masonry and its weather resistant skin. The Appellant understands that in such cases, the normal remedy, is then a lime render.

- 13.4. The first ground of objection to these requirements is that they would themselves cause greater damage to the fabric of the historic 39 Argyle Street, than leaving the render in place. Hence complying fully with the Requirement 2 notice would not restore the character of the building to its former state (Ground (i)).
- 13.5. Moreover, the Appellant submits that for the reasons summarised above, the harm to the building from the removal of the render and from removing the resulting render stains (which unless re-rendered risks leaving a porous and unsightly masonry surface) is outweighed by the benefits of leaving the render in place, regrettable as that may be and listed building consent for the render should be granted (Ground (e)).
- 13.6. However, there is also a more fundamental legal objection to the above requirements. There is an irreconcilable conflict between the requirement to “make good” and the requirement to “reinstate the previous appearance”. The notice is wholly unclear as to what steps it requires to make good the inevitable damage of chipping away the lime render and clearing off the render stains. A further coat of lime render would doubtless require further listed building consent. This brings Requirements 2 and 4 within the scope of the *Kaur* decision. It is hopelessly unclear as to what steps are actually necessary to restore the building to its former state (or whether that is even possible). Requirements 2 and 4 are therefore likely to be unlawful.

14. Unauthorised Dying of Brickwork

- 14.1. The Council addresses the unauthorised dying of the bricks above the first and second floor windows at number 39 at paragraphs 9.1 – 9.7 of its Appeal Statement.
- 14.2. As with the rendering of the ground floor of Number 39, the Appellant acknowledges that listed building consent should have been sought before dying the bricks, and regrets that no application was made. However, the Appellant is concerned that it will not be possible to remove the dye, leaving replacing the bricks as the only alternative, with related loss of original fabric.
- 14.3. The Council’s argument is two-fold; firstly, that the dying “has obliterated the difference between the architectural treatment of 31 – 37 and 39” and secondly that the dye “contribute[s] to the cumulative brightening caused by other alleged works” (i.e. cumulatively with the façade cleaning). It goes on to suggest that DOFF cleaning the bricks may be sufficient to remove the dye.

15. Ground of Appeal: Unauthorised dying of brickwork (Contravention 2), requirement to “remove the bright red dye from the yellow bricks, and then apply a light soot wash to reinstate their previous appearance (Requirement 3, and Requirement 4 to the extent of any overlap)”

- 15.1. The dying of the bricks is addressed at paragraphs 136 to 142 of the Appellant’s Appeal Statement, where the Appellant notes that an unsuccessful attempt has been made to dye test bricks (i.e. not the bricks in number 39) back to their original colour, resulting in an unsatisfactory orange hue. Paragraph 139 of the Appellant’s Statement considers the alternative of replacing the bricks (notably, this is not required or authorised by the Enforcement Notice).
- 15.2. As regards the dye itself, the Appellant welcomes and is willing to try the Council’s suggestion of DOFF cleaning the red dye from the bricks. It has ordered further red dye and will carry out tests on individual test London stock yellow bricks (i.e. not part of 39 Argyle Street, and first dying the bricks, leaving the dye to cure, and then using the DOFF steam process to attempt to remove the dye). That experiment should be complete before the start of the informal hearing, and the

Appellant is happy to share both the methodology and results of the experiment with the Council and with the Inspector (subject to the Inspector's permission). Samples of the Dyed and DOFF cleaned bricks can also be made available for viewing either at the appeal hearing, or on the Inspector's site visit.

- 15.3. If DOFF cleaning the bricks is not successful, the Appellant is not aware of any other way of complying with the requirement to remove the dye other than replacing the bricks with historic London stock yellow bricks which notably, the Notice does not require. The harms from removing original fabric are summarised at paragraph 139 of the Appellant's Appeal Statement. For these reasons, and assuming that DOFF cleaning is not able to restore the original colour of the bricks, and instead of risking a 'half-way house' colour from only partially successful DOFF cleaning, the Inspector is requested to uphold the Appellant's Ground (e) appeal for the reasons set out in the Appellant's Appeal Statement.
- 15.4. As regards the requirement to apply a soot wash, the Inspector is referred to the arguments above and in the Appellant's Appeal Statement regarding Requirement 1 (apply a light soot wash to the brickwork and jointing ... to match the previous appearance of No 31-39). For the reasons set out above in respect of that requirement, the Appellant submits that a soot wash would not serve the purpose of restoring the character of the building to its former state and urges the Inspector to uphold the Appellant's ground (i) appeal.
- 15.5. As with Requirement 2, there is a more fundamental objection to Requirement 3. It does not specifically require any particular method of removing the dye. If it proves impossible to remove the dye, the Appellant will by default be in breach of the Notice. Replacing the bricks with (say) salvaged London stock yellow bricks of the same period would require a further listed building consent. Again, that brings the requirement within the scope of the *Kaur* decision, and renders Requirement 3 potentially unlawful.

16. Conclusion

- 16.1. In summary, the Council has offered no evidence at all that the pre-cleaning colour of the facades to 31-39 Argyle Street were the result of the claimed 150+ years of air pollution. By contrast, the evidence contained in the Appellant's Statement of Case as further discussed above suggests very strongly that the pre-cleaning colour was the result of façade cleaning that took place at some point post mid-1980s and presumably, when the paint above the first and second floor windows was removed.
- 16.2. The Council suggests that the colour of Number 41 Argyle Street, is an example of the results of 150+ years of air pollution. However, the evidence of the 'tan-line' which is visible in the 2008 Google Street View image is particularly strong evidence that the façade of 41 Argyle Street was itself cleaned by the Council (as freehold owner) at some point after Nos 31-39 had been cleaned.
- 16.3. The Council makes no attempt to attribute any historic significance to the façade colour that is evidently the result of 30 or so years of bus and car exhaust pollution. Given the ubiquity of such pollution throughout London and elsewhere, the Appellant respectfully submits that such colour has either no or negligible heritage significance.
- 16.4. The Council wholly fails to engage with the government guidance, high court case law, and Planning Inspector assessments of what constitutes 'substantial harm'. However, it appears to argue that the cleaning of the facades caused 'historic fabric' to be lost. There is no legal definition of 'historic fabric'. The dictionary definition of 'fabric' in respect of a building refers to

structural elements such as floors, walls and the roof, which clearly does not include environmental residues. Moreover, Historic England guidance makes no distinction between the terms 'original fabric' and 'historic fabric' and uses the terms interchangeably. The residue of air pollution does not form part of the 'original fabric' of 31-39 Argyle Street, and hence, its cleaning away does not result in the loss of original/historic fabric. In particular and in the present case, it cannot constitute 'substantial harm' in heritage terms.

- 16.5. In any event, the DOFF cleaning was carried out by the highly experienced, specialist contractors, Barwin, who are certified by the Stonehealth Ltd, the manufacturers of the DOFF system and very experienced in cleaning sensitive heritage buildings. The DOFF system itself is guaranteed not to harm brick surfaces, and there is no evidence at all that any harm was done to the fabric of the façade in the present case.
- 16.6. The Council does not explain how or what circumstances of the soot washing it has required elsewhere are in any way relevant to the present case. The better and obviously correct argument is, as the Council itself states, that each case must be determined on its own merits. In the present case, the cleaning was carried out as part of a series of restorative works to Numbers 31-39. The Council itself agrees that façade washing may be appropriate as part of restorative works (e.g. St Pancras Chambers, and presumably Camden Town Hall). It is submitted that in the present case, façade cleaning was appropriate, both because the works were restorative, but also because façade cleaning is clearly part of the 'story' of these buildings. In any event, the cleaned colour of the façade will tone down with time, as appears to have been the case following the Council's cleaning of Number 41 Argyle Street. It follows that a soot wash is inappropriate and an artificial intervention, contrary to SPAB guidance.
- 16.7. As regards precedents, the simple answer, is that every case must be determined on its own merits and there is no risk of setting a precedent. However, the Council's concern that in effect, something must be done to discourage third parties from following suit (irrespective of the harm to the building from the actions the Council proposes), is a punitive requirement, outside the scope of s. 38 of the Planning (Listed Buildings and Conservation Areas) act 1990, and contrary to clear case law (*Tapecrow*).
- 16.8. The Council has not raised any strong reasons for resisting the Appellant's Grounds of Appeal against the proposed soot wash, nor has it provide any expert evidence to counter the clear advice in Mr Malone's expert report that removing the render from the ground floor of 39 Argyle Street will inevitably result in chipping the underlying bricks, leaving a residue of lime render that would need to be removed either with an acid wash or some form of abrasive – in either case causing yet further damage to the façade. The Council's requirement 4 is wholly vague as to what steps would then need to be taken to "make good all damages as a result of [such] operations". In the normal course of event, such damage would itself require remediation by the application of lime render. Requirements 2 and 4 are therefore likely to be unlawful.
- 16.9. As regards removing the dye from the bricks above the first and second floor windows at Number 39, and the suggestion that this could be done with DOFF cleaning, the Appellant is certainly willing to experiment with that method on sample bricks, and to share its results with both the Council and the Inspector. However, as at the date of this Response, it is unclear whether that method will be successful, and if not, what the Appellant can do to comply with Requirement 3.
- 16.10. Assuming that the DOFF cleaning is successful, it is submitted that for the same reasons as set out above in respect of the general requirement to apply a soot wash to the facades of 31-39

Argyle Street, the requirement to “apply a light soot wash to reinstate [the bricks’] previous appearance”, is artificial and unnecessary.

- 16.11. To the extent that the dye cannot be removed, it is unclear what steps would need to be taken, given that the proposed soot washing is conditional on the dye first being removed. If DOFF cleaning is unsuccessful, the effect the Council is seeking to achieve is most likely to be achieved by replacing the bricks, which the Notice does not require. Simply soot washing the bricks without first removing the dye will not restore their pre-dye appearance.
- 16.12. The Appellant is willing to test sample bricks to see whether DOFF cleaning will successfully remove the dye (and that is its preferred approach). However, the uncertainty as to whether that will be successful, and if not, what steps can be taken to comply with Requirement 3 again bring Requirement 3 within the scope of *Kaur* and potentially make the requirement unlawful for uncertainty.
- 16.13. For the reasons set out in this Response and for the reasons argued in more detail in the Appellant’s Appeal Statement, the Appellant urges the Inspector to uphold its grounds of appeal.

Buckles Solicitors

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