

Planning Statement

July 2010

9 Kidderpore Gardens, London NW3 7SS
Proposed Extension and Refurbishment

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Howard Sharp & Partners LLP

1. This statement sets out the relevant Planning Policy considerations that are material to the determination of the subject application for the extension and refurbishment of the subject property. The report identifies the appropriate character and context within which the scheme is proposed and then goes on to consider the relevant planning policy and other material considerations.
2. The report concludes that the proposal as assessed against the Relevant Development Policy and the other material considerations should be determined favourably.

Site and Surroundings

3. It is particularly relevant to note that, although the frontage elevations and character of the properties on Kidderpore Gardens have very similar treatments and will follow a degree of homogeneity the rear elevations by contrast are treated very differently. Over the years, since their original construction, the buildings have been adapted to suit the requirements of the various occupiers leading to the situation at the present day where there can not be said to be any particular style or form to the treatment of the rear elevations.
4. Nevertheless, it is evident that most properties have been extended to the rear (and to varying degrees extending into basement areas and this is covered in detail by the Design and Access Statement and it will not be repeated further here).

Elements of the Proposed Design: Design Parameters

5. The applicants, through the architects, have contained the proposed works within the precedents set by the surrounding properties. The proposal projects no further than the line which represents the extent of other properties along Kidderpore Gardens and this again is expressed in various forms in the design and access statement. The height both relative to the existing building and as it presents to the nearest neighbour at 11 Kidderpore Gardens similarly is maintained at a low level so as to ensure that the building proposed is subordinate in form and mass to the main part of the property and is as unintrusive as possible in its affect on immediate neighbours.
6. The scheme proposes sustainable energy and carbon reduction measures to meet the demands of a family in the 21st Century and also employs materials which are interpreted in a modern way, which are found in the local area such as glass, white render and metal flashing/roof material. The proposed 'green' roof is covered in the policy helped further in terms of both sustainable urban drainage and also has the effect of softening the appearance of the whole structure as viewed from both within and outside the site.

Planning Policies

7. The Development Plan Policies are contained within the Camden Replacement Unitary Development Plan (saved) adopted June 2006 and also the policies of the London Plan as adopted and amended.

Camden Policies

8. Policy FD6: Amenity for Occupiers and Neighbours – The key issue is whether development causes harm to the amenity of occupiers and neighbours in terms of (inter alia) privacy and overlooking, sunlight and daylight and other matters. The applicants have gone to great lengths to ensure that all possible impacts of the scheme are fully considered and various reports are submitted with the application to demonstrate that there will be no harm to the amenity of either the occupiers or the neighbours.
9. Policy FD8: Disturbance – Clearly any change involving a building operation will involve some disturbance from plant and machinery and construction. Policy FD8 seeks to ensure that such equipment is operated within certain thresholds and that planning conditions are used to minimise the impact on local amenities.
10. In respect of both these policies, again the applicants have given detailed evidence to demonstrate that there will be no unacceptable conditions as a result of the scheme and the applicants have committed to accepting suitable and reasonable conditions to ensure that this is maintained.
11. Policy FD9: Resources and Energy – The Council is seeking here to ensure that development does not cause harm to the water environment or encourage flooding. Measures to conserve water will be encouraged by the use of the green roof. Overall, there will be a net gain to the amount of permeable area thereby reducing the risk of flooding and increasing the ability of the site to absorb surface water. Renewable energy and energy efficiency forms part of the proposals and following construction in accordance with the application, the building will operate at a much more efficient level in terms of use of energy through the use of a domestic Combined Heat and Power unit, energy efficient appliances and extensive high performance glazing reducing the need for artificial lighting. This is an important factor weighing in favour of the scheme.
12. Policy H1U: Housing – The proposal will increase the amount of residential floor space at the property thereby securing the fullest possible residential use of underused parts of the site. The main area of infill is currently an unused and unattractive corner of hard-standing. This is to be transformed into a light and spacious area which will allow more people to be accommodated within the property than would otherwise be the case.

Design

13. At paragraph 3.4 to 3.6 in the DPP Adopted Plan (saved), the point is well made that the Council wishes to encourage high quality design and promote and recognise innovative, sustainable and high quality design in the local built environment. It is acknowledged by the Council that our surroundings have to adapt to meet changing social needs and economic requirements.
14. Policy B1: General Design Principles – This is a criteria based policy covering many issues. The main aspects being respect for site and setting, improvement to the spaces around and between buildings, promoting sustainable energy efficient buildings, high quality landscaping treatments.
15. Paragraph 3.8 sets out the Council's wish to encourage innovative and imaginative designs to enhance the built environment '*unless a development site is within an area of homogenous architectural style of a high standard that it is important to retain, high quality contemporary designs within the policy framework will be welcome*'. As explained above, the context of the site is one of a real lack of homogeneity, with varying styles, sizes and volumes of various periods featuring all around the site. Here is an area where contemporary design should be welcomed.
16. Policy B3: Alterations and Extensions – Harm to the architectural quality of the existing building or to the surrounding area will not be permitted. Other key factors are:-
 - Respect for the form, proportions and character of the building and its setting.
 - Extensions to be subordinate to the original building in terms of scale and situation.
 - High quality materials to match/compliment existing materials.
 - Unsympathetic extensions to be removed or improved.
 - Architectural integrity of existing building preserved.
17. Part B of the policy explains that where there would be harm to the appearance or setting of a building or the established character of the surrounding area, the Council will not allow (inter alia) excavation to create new basements.

There is an existing basement at the property. As explained above, additional floor space is created to optimum use of underused vacant space which is very unattractive and provides no purpose to the occupiers of the building. In this case, it could not be reasonably concluded that there would be harm to the appearance, setting of the building or the character of the area through the creation of the additional basement space. The proposal meets all the relevant criteria in terms of form and proportions and indeed, provides the benefit of by removing an unsympathetic and dated extension.

18. Policy B7: Site – The property lies within the Conservation Area. The Conservation Area statement identifies the main elements of the worthiest conservation and none of these features identified would be compromised or affected in any way as a result of the proposals. In law, proposals should preserve **or** enhance and this can be achieved by preservation which can mean resulting in a neutral affect. The proposals put forward offer enhanced aspects of the character of the area through the replacement of existing features which detract from the existing character and provide a contemporary, modern and sustainable approach which will endure as it employs materials that are found in the area.
19. Assessment of the proposal against other supplementary guidance is covered by the comprehensive Design and Access Statement.

The London Plan RSS (Consolidated with Alterations - February 2008)

20. There are many overarching policies that have some general relevance. Of particular note is Policy 4A.3 Sustainable Design and Construction which seeks to ensure that there are measures to make most effective use of land and existing buildings, minimising use of energy including natural ventilation and vegetation on buildings. These principles have been very much to the fore in the brief to the designers of the scheme.
21. Policy 3A.4: Efficient Use of Stock – Boroughs should promote the efficient use of existing stock by reducing the number of unsatisfactory dwellings and should produce and implement strategies to bring properties back into use.
22. Policy 3A.3: Maximising the Potential Sites – This overarching policy ensures that development proposals achieve the maximum intensity of use compatible with local context. The need to accommodate the growing need of the population of London is an overwhelming policy driver and carries significant weight. It is also important to address a suitable mix of dwelling sizes and tenures. This proposal will bring back into use a family home and with the additional accommodation, will provide a home for a larger family.

Other Material Considerations

23. National Planning Policy statements in the form of PPS3 (Housing), PPS1 (Sustainable Development) and PPS22 Renewable Energy. It hardly needs repeating but the overarching themes are that developments should, where possible, result in improvement to the national commitment to carbon dioxide reduction and to reduce the impact on natural resources. PPS3 stresses the importance of maximising the use of existing properties and to provide new residential accommodation and floor space.

Assessment of the Proposal against the relevant Development Plan Policies and Other Material Considerations

24. In terms of the context within which the proposal is to be considered, there really is a mixture of style, ages and treatments of the rear elevations. There is a lack of homogeneity. In such circumstance, Camden's policies consider that there is an opportunity for modern contemporary architecture and design. This opportunity has been taken by the architects of the scheme to produce a modern building but with respect for the materials and form and the neighbouring character. Use of existing materials in a modern way is generally accepted to be a better approach than pastiche or historical mimicry of earlier styles.
25. The building incorporates a number of sustainable design principles, perhaps the most visual being the 'green' roof which will absorb rainwater and thus provide a sustainable urban drainage route. The appearance of vegetation also further softens the appearance of the new structure and helps further to ensure that the new building blends harmoniously with the natural surroundings. This is taken further with the outline of a landscaping scheme that accompanies the application indicating how there is an integrated approach to the whole of the rear garden as it moves from the internal accommodation to the outside.
26. Decision-makers on schemes elsewhere within Camden Borough have also had to interpret policy and consider the appropriateness of a modern approach to design. One such example is at 78 Canfield Gardens, London NW6 which concerns an Enforcement Notice and various changes in a Conservation Area. The Inspector records the works which were the subject of an Enforcement Notice *'The erection of a two storey rear extension, works of excavation to the rear garden and the creation of additional habitable space in the basement'*. The site fell within the Swiss Cottage Conservation Area. The Council were arguing that the extension appeared bulky and solid and that the excavation was unduly intrusive. The Inspector considered that *'The extension relates well to the form, proportions and character of the building and its settings. There are rear extensions on most of the properties in the vicinity and I do not consider that it conflicts with the historic pattern of development in the*

surrounding area ... The Swiss Cottage Conservation Area statement states that in most cases rear extensions should be no more than one storey in height. Although it clearly is a two storey structure, the lower floor is at basement level and I do not consider that there is any conflict with the spirit of this guidance, which must relate to the height of an extension above ground level (paragraph 44 and 45). I am satisfied that the extension has not resulted in a significant loss of light to the living room (to the neighbouring occupier)'. Copy of the Appeal Decision attached at Appendix 1.

27. In conclusion, the proposal not only conforms to the relevant Development Plan Policies and other material considerations but also brings about positive change and benefits in particular the sustainability benefits both at the time of construction and throughout the life of the building, using energy saving measures and the incorporation of a sustainable urban drainage system for the roof.
28. Given the mixed nature of the treatment of the rear elevations of the surrounding properties, the ages and different forms of extension, Camden's own policies support in such circumstances modern contemporary design. This design as submitted meets the minimum tests of preserving or enhancing (i.e. leaving a neutral effect) indeed, the proposal actually enhances the area.



Appeal Decision

Inquiry held on 15 May 2001

by **David Harrison** BA DipTP MRTPI

an Inspector appointed by the Secretary of State for the
Environment, Transport and the Regions

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Date

13 JUN 2001

78 Canfield Gardens, London NW6

Appeal A : APP/X5210/C/00/1052172

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Radville International Corporation against the decision of the London Borough of Camden to issue an enforcement notice.
- The Council's reference is EN990824.
- The notice was issued on 4 September 2000.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised formation of a vehicle access and hardstanding in the forecourt area.
- The requirements of the notice are as follows: A wall which matches: EITHER the previously existing wall in design, materials and height; OR the existing wall on the west side of the street frontage, shall be erected across the full width of the existing vehicle access, in the position marked X-X on the attached site plan.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2) [a] [d] and [f] of the 1990 Act.

Summary of Decision: The notice is upheld with variations.

Appeal B : APP/X5210/C/00/1056321

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Radville International Corporation against the decision of the London Borough of Camden to issue an enforcement notice.
- The Council's reference is EN000321.
- The notice was issued on 22 November 2000.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a two-storey rear extension, works of excavation to the rear garden, and the creation of additional habitable space in the basement.
- The requirements of the notice are: 1) The two-storey rear extension shall be rebuilt to the dimensions approved in the planning permission PW9902440R2 dated 12 September 1999. 2) The works of excavation to the rear garden shall be infilled to the dimensions approved in the planning permission PW9902440R2 dated 12 September 1999.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2) [a] [c] [f] and [g] of the 1990 Act.

Summary of Decision: The appeal is allowed, the notice is quashed and planning permission is granted in the terms set out in the Formal Decision below.

Procedural matters

1. The evidence relating to the ground (d) appeal against Notice A was given on oath.

Site description

2. Canfield Gardens lies within the Swiss Cottage Conservation Area, which was designated in 1988. The conservation area mainly comprises large late-Victorian houses, many of which have been converted into flats. In the general vicinity of the appeal site the majority of the houses are three-storey with front gardens. No.78 lies close to a slight bend in Canfield Gardens. To the east of the bend the majority of houses still have their original front boundary walls and gardens, which is characteristic of the conservation area in general. To the west of the bend there is a stretch of road where sections of wall have been removed and parking takes place in many former front gardens.
3. No.78 has a frontage of about 11.5 metres, and is divided into three flats. The ground floor flat is owned by the appellant company. At the time of the Inquiry the majority of the forecourt was laid with gravel. A brick wall with railings extends along the western half of the frontage as far as the central paved footpath to the front door, terminating with a brick pier. The wall is similar to that in front of the adjoining properties to the west, Nos. 80 – 84. The eastern part of the frontage is open for a width of some 7 m, and there is a matching brick pier at the eastern edge where it adjoins No.76. The kerb has been lowered opposite this opening so that vehicular access can be gained to the gravelled forecourt. It is possible to park cars on both sides of the paved footpath to the front door. Two trees have been planted behind the wall on the west side of the frontage and there are also flowerbeds and planters around the edge of the gravelled area.

APPEAL A: The vehicle access and hardstanding

The appeal on ground (d)

Main issue

4. The issue to be decided is whether, on the balance of probabilities, the alleged unauthorised development was substantially completed more than four years before the issue of the notice, i.e. before 18 October 1996.

Reasons

5. The allegation is "The unauthorised formation of a vehicle access and hardstanding in the forecourt area". However, a letter dated 12 May 2000 from the Council to the appellant's agent states: "*The fact that there was parking on the frontage of the above mentioned property is not in dispute, access was gained by the lawful crossover a little further down the street. The issue is that within the last four years the front boundary wall has been demolished and that vehicles are now entering the front garden via the access created by the demolished wall.*" The lawful crossover referred to in this letter is that at No.80, the adjoining property to the west. There is an approved vehicle access here, which leads to "grasscrete" parking areas in front of Nos. 80, 82 and 84. It appears that the boundary wall between the front gardens of Nos. 80 and 78 was removed while renovation work was being carried out at No.80, and vehicles were parked in the front garden of No.78 for a time.
6. Although no reference to the removal of the front boundary wall is made in the allegation it was agreed by both parties that the presence of a front boundary wall four years before the issue of the notice would be an indication that vehicular access direct from the street to the

front garden was not possible at that time. There is conflicting evidence from local residents about when the wall was removed and vehicles were first driven over the footway into the front garden of the property.

7. Mr Ziser has lived opposite the appeal site at No.111 for about 10 years. He stated in his Statutory Declaration dated 17 October 2000 that the front wall was demolished four years ago and was not rebuilt. Similar declarations were made by two other residents and by the gardener who worked at Nos. 80, 82 and 84. At the Inquiry Mr Ziser said that the wall had still been there in July 1995, and vehicular access over the footway had begun later in the summer of that year. In the summer of 1996 No. 78 was derelict and there were "a few bricks hanging on each pier" of the original wall. The kerb was not lowered until about two years ago when No.78 was being refurbished. When asked about the trees that had been in the front garden he said that vehicles parked in between the trees.
8. Mr Nadler has lived at No.54 since 1991 and said that he walked or drove past the property regularly. He said that before the work took place in the last 12 to 18 months, there was a continuous wall running along the frontage of No.78 apart from the pedestrian access. It was the same general height as the walls in the rest of the road, but it had been crumbling and leaning. There were also two or three trees in the front garden. He could not recall specific dates when the alterations were made.
9. Mr Symonds has lived at No.48 since 1993, and recalled that before work was carried out over the last 12 to 18 months there was a wall running along the frontage of the property, although the section of wall to the right (i.e. east) of the path to the front door was unsafe and in very poor condition which he believed was a result of root damage. The garden contained two or three large mature trees.
10. The Council's Planning Enforcement Officer Joe Henry visited the premises on 6 July 1998 following a complaint about the removal of a front boundary wall. He explained that in his report of the visit (Appendix 15 to Document 4), he had mistakenly transposed reference to Nos. 78 and 80. Examination of the hand written report shows that he had originally written them down the right way round and subsequently changed them. The report states (with the numbers corrected) "There has been an existing access at (80) for well over 4 years. The dividing wall between 78 and 80 has been removed and cars are parking in the forecourt area, gaining access from the road via No. (80)". Although this arrangement implies that it was not possible for vehicles to enter the garden of No.78 directly from the road Mr Henry could not recall whether or not there was a wall along the frontage of No.78 at this time.
11. In addition to the evidence about the timing of the removal of the wall I have also taken account of the application to fell the trees in the front garden which was approved in September 1998. The trees were still in the garden until at least this time, and would be likely to have inhibited direct access from the road.
12. On the balance of the evidence it seems to me that the front boundary wall, probably in poor condition, was not demolished until at least 1998, at about the same time as the trees were felled. The vehicular access to the site direct from Canfield Road could not have been formed before then. The lowering of the kerb appears to have occurred in the early part of 2000, but this has no direct bearing on the formation of the vehicular access to the front garden, as it would have been possible for cars to mount the kerb.

13. The onus is upon the appellant to demonstrate that the unauthorised development is immune from enforcement action. My conclusion is that on the balance of probabilities the alleged unauthorised development was not substantially completed more than four years before the notice was issued. The appeal on ground (d) therefore fails.

The appeal on ground (a)

Planning policy

The Development Plan

14. The statutory development plan comprises the recently approved Camden Unitary Development Plan 2000. Policy EN1 generally seeks environmental protection and improvement in the borough, and Policy EN13 encourages high standards of design in all development. Policy EN14 requires all proposals for development to be sensitive to and compatible with the scale and character of their surroundings, and sets out a number of criteria for assessing proposals. Policy EN25 seeks the retention of garden walls and railings where they are part of the established character of an area, and Policy EN26 sets out four criteria for considering proposals for forecourt parking. These include the contribution which the existing forecourt or garden, and its means of enclosure, make to the visual appearance of the area; the cumulative visual impact of any roadside and/or forecourt or front garden parking in the area, and the nature and extent of any landscaping, surfacing or other ameliorative works which may be proposed to offset any adverse visual impact. Policy EN 31 states that the Council will seek to ensure that development in conservation areas preserves or enhances their special character or appearance, and is of high quality in terms of design, materials, and execution.

Supplementary Planning Guidance

15. The Swiss Cottage Conservation Area Statement was adopted by the Council in 1995. Paragraphs 9.23 states that the loss of front garden spaces can have a devastating effect on the appearance of the area, and Paragraph 9.24 indicates that wherever possible the Council will encourage the reinstatement and replanting of front gardens. Paragraph 9.31 makes it clear that forecourt parking will not normally be acceptable in the conservation area.

Main issue

16. The deemed planning application is to retain the vehicular access and hardstanding in the forecourt area, as constructed. The main issue is whether or not the vehicular access and hardstanding that have been constructed preserve or enhance the character and appearance of the Swiss Cottage Conservation Area. I need to consider the effect of the development that has been carried out, and also the effect of any planning conditions that might be imposed in order to change its appearance.

Reasons

17. There are vehicle access points to front gardens at the houses on both sides of No.78 and at all the properties opposite from No.101 through to No.115. In most cases, the forecourt parking arrangements at these properties and others in the immediate locality have eroded the setting of the properties and their contribution to the character and appearance of the

area. Despite the concentration of forecourt parking areas in this locality this form of development is not typical of Canfield Gardens as a whole, or of the conservation area.

18. Two recent appeal decisions relating to No.66 Canfield Gardens are of particular relevance to this case. In the first decision dated 28 July 1998 [Ref: APP/X5120/A/98/294989] the Inspector allowed a scheme for the provision of one off-street parking space, subject to conditions requiring details of surfacing materials and limiting parking to one vehicle. When the Inspector made his visit the section of the front wall to the west of the central pedestrian gateway had been removed over a distance of about 5 m. In paragraph 7 of his decision he states that the proposal before him was to pave half of the double frontage garden to provide a single parking space and to retain the other side as garden with additional planting surrounding the parking bay. The front boundary was to be walled, with pillared gateways. He goes on to describe the proposal as a sensitive scheme, where the extent of the enclosure of the frontage, with minimal vehicular provision, and landscaping to relieve the harshness of paving and to screen the parking space, would combine to overcome the visual impact of the parking area and its use. He concluded that its impact would not conflict with planning policies nor would it detract from the character and appearance of the conservation area, which accordingly would be preserved.
19. The scheme that he approved had a greater degree of enclosure of the frontage than existed at the time of the Inspector's visit. The approved scheme was not implemented following the appeal decision, and an enforcement notice was issued on 21 May 1999 requiring either that the approved scheme be implemented or that a wall be constructed across the frontage. Photographs of the forecourt as it appeared at this time, with the 5 m wide access are at Photo 3. An appeal against the enforcement notice was dismissed on 5 November 1999 [Ref: APP/X5210/C/99/1025210]. The approved scheme has since been implemented and I was able to see the result during my visits to the area. In dismissing the deemed application to retain the 5 metre wide access the Inspector states in paragraph 15 of his decision that the appeal scheme is of much better quality than any of the other examples of forecourt parking within the adjoining section of Canfield Gardens. However, he concludes "In my view, the scheme detracts from the overall character of the conservation area, due to the extent of hard surfacing of the front garden and the loss of enclosure on the front boundary."
20. It seems to me that the work that has been carried out at No.78 is broadly similar to the original scheme at No.66, which the Council successfully took enforcement action against. My own conclusion on the impact of the unauthorised development at No.78 is broadly in line with that reached by the Inspector in November 1999. I believe the loss of enclosure on the front boundary caused by the 7 m wide gap has a significant effect upon the appearance of the street scene, and the extent of the shingled area adds to the visual harm. The presence of parked vehicles in the former front garden area is incongruous, and at odds with the original form of the development which is still evident in most of the length of Canfield Gardens and the adjoining roads in the conservation area.
21. I need to go on to consider whether the deemed application to retain the existing development might be acceptable if conditions were imposed requiring further landscaping and a greater degree of enclosure, so that it might be comparable with the scheme that was allowed on appeal in July 1998 and has been implemented at No.66.
22. A plan indicating a scheme similar to that approved at No.66 (although mirrored) was submitted at the Inquiry [Plan F]. It shows a grassed and planted area on the west side of the

stone path leading to the central front door, and a paved area to the east of it. There would be a new pier on the east side of the central pathway, with gates to match the existing railings. Large planters are also shown at the head of the paved area in front of the windows. This plan was put forward as a possible compromise, and it was further agreed that the paved area could be narrowed by the incorporation of planting strips on either side and by introducing short stretches of additional boundary wall. It was established that the minimum width of vehicle access that would be acceptable to the appellant was 3.5 metres, and gates could be provided if required.

23. Using this plan as a starting point it would be possible to approve the deemed application to retain the vehicle access and hardstanding with conditions that would allow a scheme of similar quality to that carried out at No.66 to be implemented at No.78. The visual effect would be likely to be less harmful than the existing situation, but in my view the breach in the wall, albeit much reduced, and the presence of a vehicle in the former front garden would contribute to the erosion of the character and appearance of the conservation area.
24. If the notice is upheld all that can be required is the erection of a frontage wall. It would not be reasonable to require the garden to be planted or paved in any particular way. The result could be rather bland, as at No. 91 where the boundary wall has been retained but the whole garden is covered in a uniform paving. However, there is a broad principle at stake, which is whether or not the Council is able to pursue its aim of resisting similar schemes elsewhere in the conservation area, and encouraging the reinstatement of front gardens.
25. In its present form the forecourt does not preserve or enhance the character and appearance of the conservation area. In my view it is positively harmful to it. It could be modified if conditions were applied and complied with, but I believe the principle of allowing further vehicle access points in the conservation area is fundamentally at odds with the aim of preserving or enhancing its character and appearance. There is a clear conflict with the aims of development plan policy, in particularly Policy EN26, and with the aims of the Swiss Cottage Conservation Area Statement. I therefore intend to dismiss the appeal.
26. I have taken into account all the other decisions taken by the Council and the appeal decisions relating to forecourt parking in Canfield Gardens which have been referred to, but they do not alter my conclusions.
27. I do not believe that removing one car from the road would have any net benefit in alleviating parking congestion as the opportunity for on-street parking would be reduced by the presence of the vehicle crossing. I have also taken account of the letters of support from some local residents. I have considered all the other matters raised but none of them outweigh the factors that have led me to my conclusion.
28. The appeal on ground (a) therefore fails, and I shall not grant planning permission for the retention of the vehicle access and hardstanding.

The appeal on ground (f)

Main issue

29. The issue to be considered here is whether there are any lesser requirements that could be substituted for that in the notice that would overcome the harm to amenity that I have identified.

Reasons

30. As part of the discussion of what conditions might be applied in the event of a deemed approval being granted I have in effect already considered ways in which the requirements of the notice might be modified to require sections of boundary wall to be built or paving and planting to be carried out. I have already concluded that the harmful impact of the development could not be overcome by the imposition of conditions, and for the same reasons it would not be possible to overcome the harm by varying the requirements of the notice along similar lines.
31. The requirements include the option of matching the original wall, but no evidence emerged at the Inquiry about its appearance apart from the general impression that it had been about the same height as the remaining walls in the locality. In view of this lack of detailed information I see little point in retaining this part of the requirement as one of two options.
32. It was suggested during the Inquiry that the requirement might need to be varied so that the effect of the notice would not prevent pedestrian access to the house. A wall is required to be erected in the position "X-X" on the plan attached to the notice, and this scales at approximately 7 metres from the eastern edge of the forecourt, and appears to extend over part of the existing paved footpath to the front door. The Council representatives said that it was not the intention of the notice to have this effect, and I will vary the requirement so that it is clear that pedestrian access can be retained. To this extent the appeal on ground (f) succeeds. I also intend to vary the requirement to include the construction of a matching pier at the western end of the new wall where it adjoins the path to the front door. As I am in effect reducing the length of the wall that is required to be built I do not consider that the additional pier will make the overall requirement more onerous and no injustice will result from this.

Overall conclusion on Appeal A

33. My overall conclusion is that the appeal fails and the notice will be upheld as varied.

APPEAL B: The rear extension

The appeal on ground (c)

Main issue

34. Planning permission was granted for a rear extension on 12 September 1999. The issue to be decided is whether the differences between the extension as built and as approved are so slight as to be immaterial, or whether an entirely different extension has been built, which requires planning permission.

Reasons

35. It was agreed that the extension that has been built projects 0.7 m further into the garden than the approved scheme. The roof of the extension is 0.5 m higher than that approved, and the floor level is 1 m lower. It has an artificial slate roof rather than a glass roof. There is no doubt in my mind that the extension that has been built is not in accordance with the approved drawings to the extent that it amounts to an entirely different extension to that

approved. The extension requires planning permission and in the absence of a planning approval for the work there has been a breach of planning control.

36. The appellant raised other arguments in support of the ground (c) appeal but they have not led me to any other conclusion than the one that I have reached. The appeal on ground (c) therefore fails.

The appeal on ground (a)

37. The deemed application is to retain what is in effect a two-storey structure at basement and ground floor level. Part of the rear garden has also been excavated at two different levels in order to accommodate the extension.

Planning Policy

The Development Plan

38. The same general Camden UDP policies apply to the rear extension as are set out in paragraph 14 above, that is to say Policies EN1, EN13, EN14, and EN31. In addition Policy EN22 states that in considering applications for extensions to existing buildings, the Council will seek to ensure that proposals relate to the form, proportions and character of the building and its setting and have regard to the historic pattern of development in the surrounding area. Extensions should be subordinate to the original building in terms of scale, situation or use of materials, and should not dominate neighbouring buildings. Paragraph 4.57 of the supporting text in the UDP states that rear extensions are likely to have no impact on the street scene but should be carefully sited to respect the historic plan form in the area, the integrity and proportions of the original building and the amenities of the adjoining occupiers. Policy EN27 states that the Council will oppose development within basement areas where this would detract from the original design of the building or the established character of the street.

Supplementary Planning Guidance

39. Paragraph 9.14 of the Swiss Cottage Conservation Area Statement states that rear extensions should be as unobtrusive as possible. In most cases such extension should be no more than one storey in height, of a lightweight glazed construction, and allow for the retention of a reasonably sized rear garden. Such structures should not noticeably add to the visual bulk of the property.

Main issue

40. The main issue is the effect of the extension and the excavation of the garden upon the character and appearance of the Swiss Cottage Conservation Area.

Reasons

41. The extension is not visible in the street scene, and views are confined to those from gardens and houses to the side and rear. Despite its relatively unobtrusive location in the terms of the conservation area as a whole it is still necessary to ensure that the character and appearance of the area is preserved or enhanced rather than harmed.

42. The originally submitted scheme was for a larger extension, but it was reduced in size following discussions with Council officers. The approved scheme has a glazed roof and the rear wall and western wall would also be of glass, and the east wall of brick. The extension that has been built is set further into the ground and is higher overall, so that it can incorporate two floors. The roof is covered with artificial slates, but the walls are of the same materials as the approved scheme. A larger area of the rear garden has been excavated, on two levels. I have considered the impact of the extension as built against the criterion set out in the relevant policies in the development plan and in the supplementary planning guidance.
43. The Council prefers the approved scheme and considers the extension as built is harmful to the conservation area. The Council argues that the extension appears to be a more bulky structure because of its larger size and also because the roof is solid as opposed to being glazed. It has necessitated the excavation of a larger area of the rear garden that would have been necessary with the approved scheme, and this is unduly intrusive. Rather than leaving a gap below the first floor windowsill, as in the approved scheme, the roof extends right up to it, and this causes visual conflict.
44. Whilst the extension is larger than the approved scheme I do not consider that it is so large or intrusive as to cause harm. In my view the extension relates well to the form, proportions and character of the building and its setting. There are rear extensions on most of the properties in the vicinity and I do not consider that it conflicts with the historic pattern of development in the surrounding area. I saw that the roofs of most of the rear extensions in the locality extend up to the windowsills, and I do not find that this makes the scheme unacceptable.
45. Although it is a large extension I consider that due to its lightweight structure it appears to be subordinate to the original building, and does not dominate neighbouring buildings. The Swiss Cottage Conservation Area Statement states that in most cases rear extensions should be no more than one storey in height. Although it clearly is a two-storey structure the lower floor is at basement level, and I do not consider that there is any conflict with the spirit of this guidance, which must relate to the height of an extension above ground level.
46. In my view the extension has a neutral effect, which means that the character and appearance of the conservation area is preserved. It would be less intrusive if it was smaller, but its impact is quite acceptable in this context. I find it does not conflict with the aims of development plan policies or with the provisions of the Swiss Cottage Conservation Area Statement.
47. I have also considered whether any harm has been caused to the residential amenity of the occupiers of No. 76 Canfield Gardens, the detached house to the east. I am satisfied that the extension has not resulted in a significant loss of light to the living room. Concern has also been expressed about noise disturbance from an extractor on the side of the kitchen, but this would be the same whichever version of the extension was built, and this is not a matter that carries any weight in my determination of the appeal.
48. No conditions were suggested by the Council in the event of retrospective permission being granted. It was suggested by the appellant that if necessary the retaining walls to the excavated area could be painted a darker colour, or faced with brick, but I do not consider that this is necessary.

49. I have taken into account all the other matters raised but they do not lead me to a different conclusion to the one that I have reached.

Overall conclusion on Appeal B

50. The appeal on ground (a) therefore succeeds, and there is no need for me to consider the appeals on ground (f) and ground (g).

Formal Decision

Appeal A: The vehicle access and hardstanding: Ref: APP/X5210/C/00/1052172

51. In exercise of the powers transferred to me, I direct that the enforcement notice be varied by deleting the requirement in paragraph 5 of the notice and substituting the following requirement. "A wall which matches the existing wall on the west side of the street frontage shall be erected across the full width of the existing vehicular access for a distance of 5.5 metres from the eastern edge of the forecourt in the approximate position marked X-X on the attached site plan. There shall be a matching pier at the western end of the wall where it adjoins the footpath to the front door."
52. Subject to this variation I dismiss the appeal, uphold the notice and refuse planning permission on the application deemed to have been made under section 177(5) of the Act as amended.

Appeal B: The rear extension: Ref: APP/X5210/C/00/1056321

53. In exercise of the powers transferred to me, I allow the appeal and direct that the enforcement notice be quashed. I grant planning permission on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the erection of a rear extension on land at 78 Canfield Gardens referred to in the notice.

Information

54. Particulars of the right of appeal against this decision to the High Court are enclosed for those concerned.
55. This decision does not convey any approval or consent that may be required under any enactment, by-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.
56. Attention is drawn to the provisions of section 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires consent to be obtained prior to the demolition of buildings in a conservation area.

David Hanson

Inspector

APPEARANCES

FOR THE APPELLANT:

Robert Wickham MA MPhil(TP) FRICS MRTPI Howard Sharp and Partners, Chartered Surveyors and Chartered Town Planners, Westminster

He called:

Ray Bussell BSc Dip Arch RIBA	Work and Bussell, Architects
Brenda Division Dip Arch FRIBA	Dinerman Davison Associates, Chartered Architects
Shmeul Ziser	Flat 1, 111 Canfield Gardens, London NW6 3DY
Jonathan Harbottle BSc MA(TP) MRICS MRTPI	Howard Sharp and Partners

FOR THE LOCAL PLANNING AUTHORITY:

Richard Banwell Of counsel

He called:

Diane Fleming BA MRTPI	Senior Appeals Officer with the Borough Council
Claire Brady BSc Dip UPS MA	Conservation Officer with the Borough Council
Joe Henry	Planning Enforcement Officer with the Borough Council

INTERESTED PERSONS:

Ellis Nadler	54 Canfield Gardens, London NW6
Peter Symonds	48 Canfield Gardens, London NW6 3EB

DOCUMENTS

Document 1	List of persons present at the Inquiry
Document 2	Council's notification letters
Document 3	Letters and e-mails in response to 2 above
Document 4	Appendices to Mr Harbottle's main proof, including Statutory Declaration of Shmuel Ziser at Appendix 18
Document 5	Appendices to Mr Harbottle's supplementary proof
Document 6	Two extracts from JPEL submitted by the appellant
Document 7	File of Supporting Documents submitted by the Council
Document 8	Extracts from the final approved version of the Camden UDP
Document 9	Documents relating to appeals at 66 Canfield Gardens
Document 10	Extract from JPEL submitted by the Council
Document 11	Extracts from Note From Legal Division of Camden LBC concerning the statutory requirements of the Council in relation to planning matters
Document 12	Statutory Declaration of Ellis Nadler of 54 Canfield Gardens
Document 13	Statutory Declaration of Peter Symonds of 48 Canfield Gardens
Document 14	Statutory Declaration of Robert Kernick of 79 Canfield Gardens

PLANS

- Plan A Plan attached to notice A
- Plan B Plan attached to notice B
- Plan C Plan submitted by Mr Harbottle
- Plan D Plans appended to Mr Bussell's proof
- Plan E Plans appended to Brenda Davison's proof
- Plan F Plan No.1149/2 indicating off-street parking at 78 Canfield Gardens : Dinerman Davison Associates

PHOTOGRAPHS

- Photo 1 Photographs bound into Mr Harbottle's proof
- Photo 2 Two additional photographs submitted by Mr Harbottle
- Photo 3 Two photographs of No.66 Canfield Gardens