



Appeal Decisions

Inquiry opened on 29 August 2007

Site visit made on 30 August 2007

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Decision date:
12th. December 2007

Appeal A: APP/X5210/C/07/2034125

28 Mornington Crescent, London NW1 7RE

- 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 Anfil Ltd against an enforcement notice issued by the Council of the London Borough of Camden.
- The Council's reference is EN06/0666.
- The notice was issued on 13 November 2006.
- The breach of planning control as alleged in the notice is without planning permission the unauthorised change of use involving the self containment of 5 of the 8 bedsit rooms within the House in Multiple Occupation.
- The requirements of the notice are that:
 1. The use of flats 1, 2, 4, 6, and 8 as self-contained flats shall completely and permanently cease.
 2. The property shall be permanently re-arranged to provide non-self contained bedsitting accommodation with shared facilities.
 3. All damage caused to the fabric of the building by the removal of the unauthorised works, shall be made good, to match the original work in terms of materials, colour, texture and profile.
- The period for compliance with the requirements is 12 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the *Town and Country Planning Act 1990* as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
- The inquiry sat for 2 days on 29 August and 7 September 2007.

Summary of Decision: The appeal is allowed following correction of the enforcement notice in the terms set out below in the Formal Decision.

Appeal B: APP/X5210/C/07/2034118

28 Mornington Crescent, London NW1 7RE

- 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 Anfil Ltd against an enforcement notice issued by the Council of the London Borough of Camden.
- The Council's reference is EN04/0185.
- The notice was issued on 13 November 2006.
- The breach of planning control as alleged in the notice is without planning permission the unauthorised insertion of a uPVC door in the ground floor rear elevation.
- The requirements of the notice are that the uPVC door in the ground floor rear elevation shall be permanently removed and replaced with a timber door to match the original removed door in terms of design and materials. Any damage to be made good to match the original fabric.

- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(g) of the *Town and Country Planning Act 1990* as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Appeal C: APP/X5210/F/07/2034129

28 Mornington Crescent, London NW1 7RE

- The appeal is made under section 39 of the *Planning (Listed Buildings and Conservation Areas) Act 1990* as amended by the *Planning and Compensation Act 1991*.
- The appeal is made by Anfil Ltd against a listed building enforcement notice issued by the Council of the London Borough of Camden.
- The Council's reference is EN06/0660.
- The notice was issued on 13 November 2006.
- The contravention of listed building control alleged in the notice is the unauthorised alterations of a Listed Building including the erection of raised timber bed structures in Rooms 1, 2, 3, 4 and 6; the erection of partitions, and the installation of bathroom fittings to create bathrooms and toilets within bedsit rooms; the insertion of a uPVC door in the ground floor rear elevation; cutting through the spine wall of the building, and erection of partitions to accommodate baths; the insertion of a uPVC window in the third floor rear elevation of the building; erection of a partition in Flat 8 to divide the room into 2 parts; erection of partitions to create toilets in the communal hallways which cut into Flats 4 and 6; removal of the wall and door between the sleeping/sitting area and hallway of Flat 2; [and] the erection of a partition in Flat 4 between the sitting area and kitchen, contrary to policies B1 [General Design Principles], B3 [Alterations and Extensions], B6 [Listed Buildings], and policy B7 [Conservation Areas] of the *London Borough of Camden Unitary Development Plan 2006*.
- The requirements of the notice are that:
 - 1) The raised timber bed structures in Rooms 1, 2, 3, 4 and 6 and any associated partitions shall be permanently and completely removed, and any damage (including loss of cornices or other fabric) shall be made good to match the adjacent original fabric.
 - 2) Partitions and bathroom fittings (including tiling) installed to create bath areas in Flats 1, 4, [and] 6 shall be permanently and completely removed, and any damage shall be made good to match adjacent original fabric.
 - 3) The uPVC door in the ground floor rear elevation shall be permanently and completely removed, and replaced with a timber door to match the original removed door in terms of design and materials. Any damage shall be made good to match the original fabric.
 - 4) The openings which have been created, partitions erected, and baths installed through the spine walls between Flats 3 and 4, Flats 5 and 6, [and] Flats 7 and 8 to provide bathroom accommodation, shall be permanently and completely removed, and the spine wall shall be reinstated to match the adjacent original fabric.
 - 5) The uPVC window inserted in Flat 7 (third floor on the rear elevation of the building) shall be permanently and completely removed, and a single glazed double-hung timber sliding sash window, which shall be painted white and match the original in terms of design and materials shall be inserted. Any damage shall be made good to match the original fabric.
 - 6) The partitions erected dividing Flat 8 in two shall be permanently and completely removed, and any damage made good to match the original fabric.
 - 7) The partitions erected to create toilets in the communal hallways (which cut into Flats 4 and 6) shall be permanently and completely removed, and any

- damage shall be made good to match the adjacent original fabric.
- 8) The wall (including cornice and skirting boards) located between the sitting/sleeping area and hallway of Flat 2, and the hall shall be reinstated to match the original in terms of design and materials used, and any damage shall be made good.
 - 9) The door opening between the sitting/sleeping area of Flat 2 shall be reinstated to match the dimensions of the door in Flat 1 and design and materials used, and any damage shall be made good.
 - 10) The partitions erected to separate the kitchen from the sitting area in Flat 4 shall be permanently and completely removed, and any damage shall be made good to match the original fabric.
 - 11) The partitions erected to create a separate toilet within Flat 8 shall be permanently and completely removed, and any damage shall be made good to match the original fabric.
- The period for compliance with the requirements is 12 months.
 - The appeal is made on the grounds set out in section 39(1)(c), (e), and (i) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* as amended.

Summary of Decision: The appeal is allowed in part and listed building consent for that part is granted, but otherwise the appeal fails, and the listed building enforcement notice is upheld as in the terms set out below in the Formal Decision.

Appeal D: APP/X5210/F/07/2034128
30 Mornington Crescent, London NW1 7RE

- The appeal is made under section 39 of the *Planning (Listed Buildings and Conservation Areas) Act 1990* as amended by the *Planning and Compensation Act 1991*.
- The appeal is made by Anfil Ltd against a listed building enforcement notice issued by the Council of the London Borough of Camden.
- The Council's reference is EN04/0755.
- The notice was issued on 13 November 2006.
- The contravention of listed building control alleged in the notice is the unauthorised alterations of a Listed Building including the erection of raised timber bed structures in Rooms 1, 2, 4 and 5; the erection of partitions to enclose kitchens, baths, divide rooms, and create WCs, and cutting through the spine wall of the building; erection of partitions to accommodate baths; [and] the replacement of roof tiles with incongruous concrete tiles, contrary to policies B1 [General Design Principles], B3 [Alterations and Extensions], B6 [Listed Buildings], and B7 [Conservation Areas] of the *London Borough of Camden Unitary Development Plan 2006*.
- The requirements of the notice are that:
 - 1) The raised timber bed structures in Rooms 1, 2, 4 and 5 and any associated partitions shall be permanently and completely removed, and any damage (including loss of cornices or other fabric) shall be made good, to match the adjacent original fabric.
 - 2) Partitions and bathroom fittings (including tiling installed to create bath areas in Flats 1, 5, 7, and 9) shall be permanently and completely removed, and any damage shall be made good to match adjacent original fabric.
 - 3) The openings which have been created, partitions erected, and baths installed through the spine walls between Flats 1 and 2, Flats 4 and 5, Flats 6 and 7 and Flats 8 and 9 to provide bathroom accommodation, shall be permanently and completely removed, and the spine wall shall be reinstated to match the adjacent original fabric.
 - 4) The partitions erected to create toilets in the communal hallways (which cut into Flats 5 and 7) shall be permanently and completely removed, and any damage shall be made good, to match the adjacent original fabric.
 - 5) The partition erected dividing Flat 7 in two shall be permanently and

completely removed, and any damage shall be made good to match the original fabric.

- 6) The partition erected dividing Flat 9 in two shall be permanently and completely removed, and any damage shall be made good to match the original fabric.
 - 7) The partition erected in Room 5 to enclose the bath and handbasin shall be permanently and completely removed, and any damage shall be made good to match the original fabric.
 - 8) The partition erected to enclose the kitchen in Flat 5 shall be permanently and completely removed, and any damage to be made good to match the original fabric.
 - 9) The concrete roof tiles shall be permanently and completely removed and natural Welsh slates shall be reinstated.
- The period for compliance with the requirements is 12 months.
 - The appeal is made on the grounds set out in section 39(1)(c), (e) and (i) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* as amended.

Summary of Decision: The appeal is allowed in part and listed building consent for that part is granted, but otherwise the appeal fails, and the listed building enforcement notice is upheld as in the terms set out below in the Formal Decision.

Applications for costs

1. At the Inquiry applications for costs were made by the Council of the London Borough of Camden against Anfil Ltd, and by Anfil Ltd against the Council of the London Borough of Camden. These applications are the subject of separate Decisions.

Procedural matters

2. The enforcement notice for Appeal A is headed Material Change of Use and requires that:
 1. The use of flats 1, 2, 4, 6, and 8 as self-contained flats shall completely and permanently cease.
 2. The property shall be permanently re-arranged to provide non-self contained bedsitting accommodation with shared facilities.
 3. All damage caused to the fabric of the building by the removal of the unauthorised works, shall be made good, to match the original work in terms of materials, colour, texture and profile.

However, only Requirement 1 is related to the breach of planning control alleged, which is without planning permission the unauthorised change of use involving the self containment of 5 of the 8 bedsit rooms within the House in Multiple Occupation. Requirement 2 goes beyond what is allowed under section 173(4) of the Act, which is (as far as this appeal is concerned) discontinuing the use of the land. As no works are involved in the change of use allegation (only in consequence of the change of use) Requirement 3 goes beyond what is allowed by the Act, as it relates to operations which are not the subject of the allegation. I shall therefore correct the enforcement notice by deleting Requirements 2 and 3.

3. It was agreed at the inquiry that the appellant (and the Council) were not aware that the fees had been paid for the deemed planning application for

Appeal B. No ground (a) appeal had been made, and the appellant had not intended to make an application for deemed planning permission. No evidence had been offered by either party for this reason, and there was no case put forward by the appellant in support of the deemed planning application. In the light of that agreement, I accept that the application for deemed planning permission was withdrawn at the Inquiry, and, as it does not cause injustice to either party, I shall deal with Appeal B solely on ground (g).

The appeal buildings

4. The appeal buildings are part of a terrace, 25-35 (Consecutive) Mornington Crescent, which was listed in Grade II on 14 May 1974. They are within the Camden Town Conservation Area.
5. 28 Mornington Crescent has 1 self-contained flat at basement level, and the established use of the upper floors is as a House in Multiple Occupation with 8 bedsitting type units. 30 Mornington Crescent has 1 self-contained flat at basement level, and the established use of the upper floors is as a House in Multiple Occupation with 9 bedsitting type units. The basement flats were granted planning permission and listed building consent on 10 November 1983 for 28 Mornington Crescent, and 6 December 1989 for 30 Mornington Crescent, respectively. There is no other planning history for the 2 properties.
6. 28 Mornington Crescent at present has 2 self-contained flats on the ground floor (Flats 1 and 2); a non self-contained flat (Flat 3), which has the sole use of the toilet in the hallway, and a self-contained flat (Flat 4) at first floor level; a non self-contained flat (Flat 5), which has the sole use of the toilet in the hallway, and a self-contained flat (Flat 6) at second floor level; and a non self-contained flat (Flat 7), which has the sole use of the toilet in the hallway, and a self-contained flat (Flat 8) at third floor level. 30 Mornington Crescent at present has 9 bedsitting type units, as the established use.

Appeal A

7. This appeal relates to the self-containment of 5 of the 8 bedsitting rooms in 28 Mornington Crescent.

The appeal on ground (c)

8. For this ground of appeal to succeed it is for the appellant to show that those matters (if they occurred) do not constitute a breach of planning control. The relevant matters in this appeal are whether the change of use of the bedsitting rooms with shared facilities to self contained flats is a breach of planning control.
9. As I have said earlier, 28 Mornington Crescent has 1 self-contained flat at basement level, and the established use of the remainder of the building is as a House in Multiple Occupation, with 8 bedsitting type units. At present it has 2 self-contained flats on the ground floor, a self-contained flat at first floor level, a self-contained flat at second floor level, and a self-contained flat at third floor level. There are 3 non self-contained flats, one on each of the first, second and third floors, and each has the sole use of the toilet in the respective hallway.

10. It is not disputed that the building was, with the exception of the basement flat, a House in Multiple Occupation. Planning legislation defines neither "multiple occupation" nor Houses in Multiple Occupation, as such, but relies on the concept of a "single household" and "family" in making distinctions for land-use purposes. Houses in Multiple Occupation are unclassified by *The Town & Country Planning (Use Classes) Order 1987*. The whole building is not used as a single, self-contained unit of occupation, nor is it used by a single person, a family, or more than one person living together like a family, as a single household. The accommodation consists of some bed-sitting rooms with shared WCs, and some self-contained units with their own internal WCs. The building clearly cannot be considered as a Class C3 Dwelling House, as none of the occupiers live together as a single household. It follows that the whole building is a single planning unit in use for the purposes of multiple residential occupation, and it is, in consequence, a *sui generis* use.
11. As a result of the *Housing and Planning Act 1986* and Article 4 of *The Town & Country Planning (Use Classes) Order 1987* as amended, planning permission is not required for the sub-division of premises other than dwelling houses, provided that both the existing and proposed uses fall within the same use class. Intensification of a use within a class in the Order has been held by the courts as not to constitute development unless and until its effect is to take the use outside of that class altogether. Taken together, this means that if a building used for purposes falling within a particular use class were to be sub-divided, without physical works amounting to development, and each of the units was to be used for purposes which also fell within the same class, planning permission is unlikely to be required, even though any associated intensification might be material change of use.
12. Whilst the use is a *sui generis* use, it is clear that the use is for multiple residential occupation whether the use is as a House in Multiple Occupation with all the units with shared WCs, or as a use where some of them are self-contained units. There has been no sub-division of the building, that is, the planning unit, only the provision of WCs within some of the existing units, and consequential amendments to the plan including some partitioning. That is not a material change of use and cannot give rise to a need for planning permission. There has been no increase in the number of units within the planning unit, and there has been no intensification of use. The self-containment of the units by providing internal WCs does not constitute a material change, especially where no overall increase in the number of units has occurred. There have been no planning consequences as a result of the self-containment of the 5 units.
13. The Council seek to prevent the loss of housing in multiple occupation, in the *London Borough of Camden Unitary Development Plan 2006* Policy H6, because it is low cost accommodation. The units that have had an internal WC provided, as opposed to being shared, seem to be as cheap to rent as they were before the improvements, which have merely involved a modest alteration to them to improve the living conditions and the privacy of the tenants. The same number of units remain available, and of a very similar size and standard, and the work has been done to benefit the existing tenants. The units remain similarly affordable, and thus remain accessible as cheap housing.

14. I therefore conclude as a matter of fact and degree that the alterations made to the interior of the building, in changing it from a House in Multiple Occupation with units with shared facilities, to a use for the purposes of multiple residential occupation with some units being self-contained units and some units having shared facilities, has not resulted in a material change of use, nor any material change in the character of the property, and therefore no breach of planning control has occurred. The ground (c) appeal succeeds, and I shall quash the enforcement notice. In consequence the appeals on ground (a), (f) and (g), and the deemed planning application, do not fall to be considered.

Appeal B

15. This appeal relates to the insertion of a uPVC door in the ground floor rear elevation of 28 Mornington Crescent.

The appeal on ground (g)

16. Ground (g) is that the appellant considers that the time given to comply with the notice is too short.
17. In my view 3 months is more than adequate time to replace a uPVC door with a timber door to match the original. It would not be necessary to move a tenant out to carry out this work, which is a simple and relatively straightforward exercise, and I see no reason to allow more time. I therefore conclude that the appeal on ground (g) does not succeed.

Appeal C

18. This appeal is concerned with alterations to the listed building at 28 Mornington Crescent.

The appeal on ground (c)

19. For this ground of appeal to succeed it is for the appellant to show that those matters (if they occurred) do not constitute such a contravention.
20. Section 7 of the *Planning (Listed Buildings and Conservation Areas) Act 1990* as amended states that, subject to the following provisions of this Act, no person shall execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised. The question to be addressed in a ground (c) appeal is whether the works alleged in the notice have affected the architectural or historic character of the listed building.
21. At my site inspection it was clear that all of the works had affected the character of the listed building. There was no difficulty in seeing each and every one of them, and in seeing that they all affected, to a greater or lesser degree, the character of the listed building. This ground of appeal is a legal test as to whether the works affect the character of the listed building, not whether the works harm it, or improve it. It is solely concerned with the effect of the works on the listed building.

22. As a matter of fact and degree, I consider that the appearance of the listed building has been materially altered by the works, and that the architectural and historic character of the listed building has been affected. It follows that the appeal on ground (c) does not succeed.

The appeal on ground (e)

23. Ground (e) is that listed building consent ought to be granted for the works.

Main issue

24. I consider that the main issue is the effect that the works have on the character of the listed building as a building of special architectural or historic interest and thus on the character of the Camden Town Conservation Area within which it is situated.

Reasons

25. As the appeal involves a listed building, I am required to take account of section 66(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* as amended which states that, in considering whether to grant planning permission for development which affects a listed building or its setting, special regard shall be paid to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
26. As the appeal building is in a conservation area, I am required to take account of section 72(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* as amended which states that, with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
27. In determining this appeal I shall also take into account relevant Government advice that is contained in Planning Policy Guidance: *Planning and the Historic Environment* (PPG15), as amended. Paragraph 2.4 of PPG15 states that the Courts have accepted that section 54A of the *Town and Country Planning Act 1990* as amended (which has been repealed and replaced by section 38(6) of the *Planning and Compulsory Purchase Act 2004*) does not apply to decisions on applications for listed building consent, since in those cases there is no statutory requirement to have regard to the provisions of the development plan. Policies in the Unitary Development Plan reflect the thrust of the statutory requirements, and I shall deal with them as a material consideration.

1) Raised timber bed structures in Rooms 1, 2, 3, 4 and 6 and associated partitions

28. The advice of English Heritage in *London terrace houses 1660-1860* is that the domestic plan form of London terrace houses is an important part of their character and special interest. It continues as a general rule the character, proportion and integrity of the principal rooms at ground and first floor levels, together with the primary and secondary staircase compartments, should be preserved. Normally such areas should not be subdivided.
29. The raised bed structures are large, bulky, and out of character, with an untidy nature. They are unattractively decorated, which adds to their intrusiveness into the historic space. They conceal or partially conceal historic features such as cornices, or chimney breasts, and they destroy any real understanding and

appreciation of the original plan. The effect of the raised beds with their supporting structures, their associated partitions, their safety rails, and their ladders up to the bed level, is to subdivide the room, and that damages the integrity of the room. Because of their intrusion they harm the proportions of the original space.

30. Although Room 6 is at second floor level, it seems to me that the same considerations should apply, as the room is similar to the others in terms of its character. I appreciate that freestanding beds can be used, and, in the light of the example I saw, they are not nearly so visually harmful, as they are seen as light furniture and not a heavy structure, and they are not, in any case, controlled by the legislation. Plainly there are many other acceptable sleeping arrangements, such as sofa beds, that also do not harm the special interest of the rooms. I consider that listed building consent should not be granted, as the works fail to preserve the listed building.

2) Partitions and bathroom fittings (including tiling) installed to create bath areas in Flats 1, 4, and 6

31. By contrast, the partitions used to form the bathroom areas, and the bathrooms themselves, are to be expected in a building in residential use, and represent part of the building's organic history, and its response to an evolving pattern of use and living. This clearly includes the provision of services, and other domestic improvements, which have occurred since the building was erected in the 1820s. The advice in PPG15 at paragraph 3.10 is that not all original uses will now be viable, and that is plainly the case here. The partitions for the most part seem to have preserved historic detail such as cornices, and to have broadly preserved the listed building. They are not unacceptably intrusive in terms of impact on the historic plan form. I will therefore grant listed building consent for these works.

3) The uPVC door in the ground floor rear elevation

32. The appellant has stated that this uPVC door is unacceptable in a historic building. I agree, as it is so out of character with the listed building, especially when compared with the traditional timber door that has been removed and replaced. I shall refuse listed building consent for the door, as it does not preserve the character of the listed building.

4) Openings created, partitions erected, and baths installed through the spine walls between Flats 3 and 4, Flats 5 and 6, and Flats 7 and 8

33. Evidence was put to the Inquiry that similar openings had been permitted in the past at a number of other properties, including in Mornington Crescent and at 93 Judd Street. One of the appellant's witnesses stated that the work in the appeal buildings was funded by Camden Council, and that the Greater London Council representative at that time took the view that listed building consent was not required for these, and a number of other works of improvement, carried out in the 1980s. No written evidence was produced to support this view, but that does not, to my mind, weaken its value or worth, after the passage of 25 years or so.
34. As with the bathrooms, these works represent a domestic improvement which it is sensible to make, the building being used in a somewhat different way to that for which it was designed and built – I was told as a quite smart upper middle class family dwelling. That is, of course, provided that they do not

unacceptably harm the fabric of the listed building. The plan form remains very much as built and plainly readable, and the building has been able to respond to the needs of a new use, but one which keeps it in relatively good condition, and at present ensures its future. Whilst the formation of the openings has clearly involved the removal of some historic fabric, and the partitions and baths have impacted on the building's special character, it has not been an unacceptable loss or impact on balance, and the character of the building has been generally preserved in this regard. I shall therefore grant listed building consent for these works.

5) UPVC window in Flat 7

35. This window is plainly out of character as bulky uPVC sections in a historic building. The large shiny sections do not have the quality, delicacy, finish or character of historic timber sliding sash windows. I see no reason for it to remain as it does not preserve the listed building, and I shall therefore refuse listed building consent for it.

6) Partitions dividing Flat 8 in two

36. The evidence put to the Inquiry was that this wall was likely to have existed prior to listing, and there was evidence on site that the wall may have been longer. In the light of the English Heritage advice the third floor is of lesser importance in terms of preservation in any case. I shall therefore grant listed building consent for it.

7) Partitions erected to create toilets in the communal hallways (which cut into Flats 4 and 6)

37. In line with my views above on the bathrooms which have been inserted, it follows that it is sensible to retain these toilets so long as they do not cause unacceptable harm to the listed building. Whilst they clearly affect the historic plan form, they do so to an insignificant level, being in the communal hallway, and on balance I consider that the listed building is preserved. I shall therefore grant listed building consent for them.

8) Wall located between the sitting/sleeping area and hallway of Flat 2

38. This represent a loss of historic fabric and the formation of a feature from its remnants. It is an unacceptable and unwarranted loss, and unattractive. It clearly does not preserve the listed building, and harms its special interest. I shall not therefore grant listed building consent for it.

9) Door opening between the sitting/sleeping area of Flat 2

39. Similarly, I shall not grant listed building consent for these works, as they do not preserve the listed building.

10) Partitions erected to separate the kitchen from the sitting area in Flat 4

40. The partitions represent an insensitive intrusion into the historic plan form of the room. They do not reflect its character in any way, and harm the integrity of the unit. They bear no historic relationship to the room, which they do not thereby preserve. I shall therefore refuse listed building consent for them.

11) Partitions erected to create a separate toilet within Flat 8

41. This seems to me to be a modest but acceptable intrusion into the room, providing as it does what I have referred to earlier as the provision of services, and other domestic improvements, which have occurred since the building was erected in the 1820s. It is modestly sized and discreetly located, and has scarcely any impact on the historic plan. On balance I consider that it preserves the listed building and I shall grant listed building consent for it.

Conclusion

42. Paying special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses, and paying special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area, I conclude that listed building consent should be granted for some of the unauthorised works but not for others. The appeal under ground (e) therefore succeeds in part.

The appeal on ground (i)

43. For this ground of appeal to succeed it is for the appellant to show that the steps required by the notice for the purpose of restoring the character of the building to its former state would not serve that purpose.
44. The appellant asserts that the remedial works put forward in the notice would not allow the building to be used as a House in Multiple Occupation or as a single family dwelling, as the property would have no bathroom or usable toilet facilities. This would appear to be wrong, as the property would seem to have such facilities. Furthermore, this ground is concerned with restoring the character of the listed building to its former state, and not with achieving a particular planning use. The requirements would restore the building to its former state, which was plainly acceptable in terms of a House in Multiple Occupation. The appeal on ground (i) does not succeed.

Appeal D

45. This appeal is concerned with alterations to the listed building at 30 Mornington Crescent.

The appeal on ground (c)

46. At my site inspection it was clear that all of the works had affected the character of the listed building. There was no difficulty in seeing each and every one of them, and in seeing that they all affected, to a greater or lesser degree, the character of the listed building. This ground of appeal is a legal test as to whether the works affect the character of the listed building, not whether the works harm it, or improve it. It is solely concerned with the effect of the works on the listed building.
47. As a matter of fact and degree, I consider that the appearance of the listed building has been materially altered by the works, and that the architectural and historic character of the listed building has been affected. It follows that the appeal on ground (c) does not succeed.

The appeal on ground (e)

Main issue

48. I consider that the main issue is the effect that the works have on the character of the listed building as a building of special architectural or historic interest and thus on the character of the Camden Town Conservation Area within which it is situated.

Reasons

1) Raised timber bed structures in Rooms 1, 2, 4 and 5 and associated partitions

49. For the reasons that I have given for Appeal C, I consider that these raised bed structures with their associated works are similarly harmful to the listed building at 30 Mornington Crescent, which they likewise fail to preserve. I shall therefore not grant listed building consent for them.

2) Partitions and bathroom fittings (including tiling) installed to create bath areas in Flats 1, 5, 7, and 9

50. For the reasons that I have given for Appeal C, I consider that the partitions and bathrooms are not unacceptably intrusive in terms of their impact on the historic plan form, and that they broadly preserve the listed building, and I shall in consequence grant listed building consent for them.

3) Openings created, partitions erected, and baths installed through the spine walls between Flats 1 and 2, Flats 4 and 5, Flats 6 and 7 and Flats 8 and 9

51. Again, these represent a sensible domestic improvement which causes no unacceptable harm to the listed building, and which is thereby preserved, notwithstanding a modest loss of historic fabric. I shall grant listed building consent for them.

4) Partitions erected to create toilets in the communal hallways (which cut into Flats 5 and 7)

52. Similarly, as with Appeal C, I find these to be acceptable for comparable reasons, and I shall grant listed building consent for them.

5) Partition erected dividing Flat 7 in two

53. As this wall seems, as with the wall in Flat 8 in Appeal C, to have been part of a wall present when the building was listed, I shall grant listed building consent for it.

6) Partition erected dividing Flat 9 in two

54. Again, this wall may have been part of the listed building at the time of listing. It seems to me to cause no undue harm, and I therefore consider that it preserves the listed building. I shall grant listed building consent for it.

7) Partition erected in Room 5

55. For reasons I have given in connection with Appeal C I consider this to be a reasonable and acceptable solution, in connection with providing a modest level of domestic facilities, without unduly harming the historic building or its plan form. I shall grant listed building consent.

8) Partition erected to enclose the kitchen in Flat 5

56. This partition seems to me to be a harmful and unnecessary intrusion into the historic space, which it unacceptably subdivides. It fails to respect the historic plan and it thus damages the integrity of the listed building. It fails to preserve the listed building and I shall not grant listed building consent for it.

9) Concrete roof tiles

57. There is no evidence as to what the building was roofed in when it was listed. It may well not have been inspected closely as the 3 slopes of the mansard roof concerned are difficult to see. The concrete tiles seem to be of some age, and I note that a number of roofs to the Crescent have artificial slates rather than Welsh slates. In view of this uncertainty, whilst I do not deny that Welsh slates would be very much more attractive than the rather dismal and unattractive concrete tiles, in the light of the judgement in *Bath City Council v Secretary of State for the Environment and Grosvenor Hotel (Bath) Ltd* [1983] JPL 737, where it was held that an improvement could not be secured to a listed building compared to its state before the unauthorised works were carried out, it seems to me wrong to require such a reinstatement when there is no evidence that at the date of listing the roof had Welsh slates on it. I shall therefore grant listed building consent for the concrete tiles, there being no evidence to the contrary.

Conclusion

58. Paying special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses, and paying special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area, I conclude that listed building consent should be granted for some of the unauthorised works but not for others. The appeal under ground (e) therefore succeeds in part.

The appeal on ground (i)

59. The appellant asserts, as with Appeal C, that the remedial works put forward in the notice would not allow the building to be used as a House in Multiple Occupation or as a single family dwelling, as the property would have no bathroom or usable toilet facilities. This would appear to be wrong, as the property would seem to have such facilities. Furthermore, this ground is concerned with restoring the character of the listed building to its former state, and not with achieving a particular planning use. The requirements would restore the building to its former state, which was plainly acceptable in terms of a House in Multiple Occupation. The appeal on ground (i) does not succeed.

Overall conclusions

60. From the evidence given at the inquiry, and for the reasons given above and having regard to all other matters raised, I conclude with regard to Appeal A that the appeal should succeed on ground (c). I shall delete Requirements 2 and 3, and quash the enforcement notice. In these circumstances the appeal under the various grounds set out in section 174(2) to the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not need to be considered.

61. For the reasons given above and having regard to all other matters raised, I consider that Appeal B should not succeed.
62. For the reasons given above and having regard to all other matters raised, I conclude that Appeals C and D should succeed in part only, and I will grant listed building consent for one part of the matter the subject of the notices, but otherwise I will uphold the listed building enforcement notices and refuse to grant listed building consent on the other part. It should be noted that the listed building enforcement notices cease to have effect for those matters granted listed building consent, by virtue of section 44(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990*.

Formal Decisions

Appeal A: APP/X5210/C/07/2034125

63. I direct that the enforcement notice be corrected by the deletion of Requirements 2 and 3. Subject to this correction I allow the appeal, and direct that the enforcement notice be quashed.

Appeal B: APP/X5210/C/07/2034118

64. I dismiss the appeal and uphold the enforcement notice.

Appeal C: APP/X5210/F/07/2034129

65. I allow the appeal insofar as it relates to Requirements 2), 4), 6), 7) and 11) of the listed building enforcement notice and grant listed building consent for the retention of:

- 2) Partitions and bathroom fittings (including tiling) installed to create bath areas in Flats 1, 4, and 6;
- 4) The openings which have been created, partitions erected, and baths installed through the spine walls between Flats 3 and 4, Flats 5 and 6, and Flats 7 and 8 to provide bathroom accommodation;
- 6) The partitions erected dividing Flat 8 in two;
- 7) The partitions erected to create toilets in the communal hallways (which cut into Flats 4 and 6); and
- 11) The partitions erected to create a separate toilet within Flat 8;

at 28 Mornington Crescent, London NW1 7RE.

66. I dismiss the appeal, and uphold the listed building enforcement notice, insofar as it relates to Requirements:
- 1) The raised timber bed structures in Rooms 1, 2, 3, 4 and 6 and any associated partitions;
 - 3) The uPVC door in the ground floor rear elevation;
 - 5) The uPVC window inserted in Flat 7;
 - 8) The wall (including cornice and skirting boards) located between the sitting/sleeping area and hallway of Flat 2;
 - 9) The door opening between the sitting/sleeping area of Flat 2; and

10) The partitions erected to separate the kitchen from the sitting area in Flat 4;

and refuse to grant listed building consent for the retention of the works at 28 Mornington Crescent, London NW1 7RE carried out in contravention of section 9 of the *Planning (Listed Buildings and Conservation Areas) Act 1990* as amended.

Appeal D: APP/X5210/F/07/2034128

67. I allow the appeal insofar as it relates to Requirements 2), 3), 4), 5), 6), 7), and 9) of the listed building enforcement notice and grant listed building consent for the retention of:

2) Partitions and bathroom fittings (including tiling) installed to create bath areas in Flats 1, 5, 7, and 9;

3) The openings which have been created, partitions erected, and baths installed through the spine walls between Flats 1 and 2, Flats 4 and 5, Flats 6 and 7 and Flats 8 and 9 to provide bathroom accommodation;

4) The partitions erected to create toilets in the communal hallways (which cut into Flats 5 and 7);

5) The partition erected dividing Flat 7 in two;

6) The partition erected dividing Flat 9 in two;

7) The partition erected in Room 5 to enclose the bath and handbasin; and

9) The concrete roof tiles;

at 30 Mornington Crescent, London NW1 7RE.

68. I dismiss the appeal, and uphold the listed building enforcement notice, insofar as it relates to Requirements:

1) The raised timber bed structures in Rooms 1, 2, 4 and 5 and any associated partitions; and

8) The partition erected to enclose the kitchen in Flat 5;

and refuse to grant listed building consent for the retention of the works at 30 Mornington Crescent, London NW1 7RE carried out in contravention of section 9 of the *Planning (Listed Buildings and Conservation Areas) Act 1990* as amended.

Stuart M Reid

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Alun Alesbury	of Counsel, instructed by E M Pick of E M Pick Planning, 30 Golders Manor Drive, London NW11 9HT.
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He called

John Eva	c/o 19 Victoria Rd, Romford, Essex.
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Tina Garrett MSc BSc (Hons) IHBC	Associate Director in Historic Buildings, CgMs Limited, Morley House, 26 Holborn Viaduct, London EC1 2AT.
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E M Pick BSc(Hons) MRICS BTP MRTPI	E M Pick Planning, 30 Golders Manor Drive, London NW11 9HT.
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FOR THE LOCAL PLANNING AUTHORITY:

Simon Randle	of Counsel, instructed by the Solicitor to the London Borough of Camden.
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He called

Robert Farnsworth DipUP MSc MA (Cantab) MRTPI	Senior Planner (Policy and Information), Forward Planning, London Borough of Camden.
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Sharon Bermingham BA MSc	Planning Enforcement Officer, Planning Appeals and Enforcement Team, London Borough of Camden.
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Hannah Walker BA (Hons) MSc	Conservation and Urban Design, London Borough of Camden
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INTERESTED PERSON:

Dave Dearie	Flat 4, 30 Mornington Crescent, London NW1 7RE.
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DOCUMENTS PUT IN AT THE INQUIRY

- 1 Statement of Common Ground dated 24 August 2007.
- 2 Bundle of Tenancy Agreements relating to 28 and 30 Mornington Crescent put in by the appellant.
- 3 Office Copy of Register Entries subsisting in the register on 23 November 2001 for 28 Mornington Crescent, St Pancras, put in by the appellant.
- 4 Office Copy of Register Entries subsisting in the register on 8 January 2002 for 30 Mornington Crescent, put in by the appellant.
- 5 Completion Statement re 30 Mornington Crescent as at 16.9.1983, put in by the appellant.
- 6 Advertisement for Lot 57, 25/25A Mornington Crescent, Camden Town NW1, from 1979, put in by the appellant.
- 7 The list of persons notified by the Council.
- 8 Minimum HMO Standards for Bedsits, Studios, Shared Houses and Shared Flats. Housing Act 2004. Effective April 2004. Put in by the Council (this Document supersedes Mr Pick's Appendix 8).
- 9 Table of analysis by the Council of relevant matters of various properties, identified by the appellant, put in by the Council.
- 10 Statement of John Michael Eva, for the appellant.
- 11 Bundle of Documents relating to whether planning permission was needed for the installation of a WC in Flat 5, 30 Mornington Crescent, put in by the appellant.
- 12 Policy HG17 and supporting text from the *London Borough of Camden Unitary Development Plan March 2000*, put in by the appellant.
- 13 Policy HG17 and supporting text from the *London Borough of Camden Unitary Development Plan March 2000*, with the last sentence of 6.63 highlighted, put in by the appellant.
- 14/1 2 sets of coloured plans put in for 28 and 30 Mornington Crescent by the appellant.
- 14/2
- 15 Appendix of monthly rents for 28 and 30 Mornington Crescent put in by the Council.
- 16 Extract from *The London Plan* page 61 put in by the Council.
- 17 Table produced by the Council showing the HMO Standards and the actual sizes of the Flats in 28 and 30 Mornington Crescent.
- 18 Part of the corrected Witness Statement of Diane Fleming, Team Leader Appeals and Enforcement, The London Borough of Camden, dated 22/11/2006 put in by the Council.
- 19 Exhibit DF/4 cover sheet and A3 attachment, put in by the Council.
- 20 Letter from Leo Kaufman to Peter Swinger of the Central Complaints Unit, Law and Administration, London Borough of Camden, dated 22 March 2007.
- 21 Missing page 14 from Mr Pick's Appendix 8, put in by the appellant.
- 22 Approval of Application for Special Grant from London Borough of Camden, dated 6 December 1985, relating to 93 Judd Street WC1, dealt with by Mr Eva, put in by the appellant.
- 23 The Council's Final Remarks.
- 24 Letter from the Council to E M Pick dated 22 August 2007 entitled NOTICE REGARDING COSTS put in by the Council.