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ENFORCEMENT NOTICE APPEAL BY:

MR B S KANG

CONCERNING ALLEGED UNLAWFUL DEVELOPMENT AT:

**7 COPTIC STREET
LONDON
WC1A 1NH**

APPELLANT'S STATEMENT

REP REF: MB/ML/13/116

PINS REF: APP/X5210/C/13/2198147

1. **INTRODUCTION:**

1.1. On 19 April 2013, the London Borough of Camden Council issued an Enforcement Notice, alleging a breach of planning control at 7 Coptic Street, London, WC1A 1NH. The Notice was served on Mr B S Kang, on whose behalf this appeal is made.

1.2. The breach alleged in the Notice comprises, ***“Change of roof form from valley to flat roof, installation of glazed balustrades to enclose roof terrace, and installation of two items of air conditioning plant to the roof.”*** The Council provides the following three reasons for issuing the Notice:

1. ***It appears to the Council that the above breach of planning control has occurred within the last 4 years.***
2. ***The roof works by reason of their location, size and detailed design, are a discordant and incongruous feature which have a detrimental impact on the integrity of the roof and the appearance of the building and the Conservation Area. As such, the works are contrary to Policies CS14 (Promoting high quality places and conserving our heritage) of the London Borough of Camden Local Development Framework Core Strategy; and DP24 (Securing High Quality Design) and DP25 (Conserving Camden's Heritage) and the London Borough of Camden Local Development Framework Development Policies.***
3. ***The air conditioning units due to their location in close proximity to residential windows have the potential to have a detrimental impact on the residential amenity of occupiers due to noise and vibration. The works therefore fail to comply with Policy CS5 of the London Borough of Camden Core Strategy 2010 and Policies DP26 (Managing the impact of development on occupiers and neighbours) and DP28 (Noise and***

Vibration) of the London Borough of Camden Local Development Framework 2010.

- 1.3. The Council further states in the Notice that planning permission should not be granted as conditions could not overcome the identified objections.
- 1.4. The three reasons given for issuing the Notice set out two principal issues for consideration in relation to the Ground (a) appeal. Firstly, whether the roof works cause harm to the host building and the Bloomsbury Conservation Area; and secondly, whether the air conditioning units would cause harm to residential amenity through noise and vibration.
- 1.5. The Notice sets out 3 requirements which must be met within 6 months of the same taking effect:
 1. *Complete removal of flat-roofed area including external flat roof surface and all balustrades;*
 2. *Removal of all air-conditioning equipment from the roof of the building; and*
 3. *Reinstate the original butterfly roof to match the form and profile of the original roof.*
- 1.6. The effective date of the Notice was 31 May 2013.

- 1.7. There are important matters arising from the Council's reasons for issuing the Notice. Firstly, there is no allegation of a breach of planning control in respect of the rooflight window which provides access to the roof terrace and the Notice does not require its removal. The appellant maintains that the installation of this does not materially change the building's appearance and as such, the Council correctly omitted it from the Notice since it does not constitute development requiring planning permission. Without prejudice to this opinion, if the Council should contest that permission is required for this feature then its omission from the Notice amounts to under-enforcement and as such, deemed planning consent is granted for this feature. It is requested that the Council clarifies its position in respect of this matter in its final comments.
- 1.8. Secondly, it is important to note that the Council's objection to the air conditioning units relates only to concerns regarding potential impact on residential amenity, there is no objection to their appearance, location or impact on the host building or their impact on the conservation area's character and appearance. As such, in the event that the Inspector finds that planning permission is required for the units and that they would not harm residential amenity, they should be allowed to remain in place, even in the event that the Ground (c) appeal and other elements proposed without prejudice in the Ground (a) appeal are dismissed. In this circumstance, the Notice's requirements would need to be redrafted since access to the units via the rooflight window for maintenance purposes would still be required.
- 1.9. Finally, in its reasons for issuing the Notice, the Council has not alleged any conflict with the objectives of the Bloomsbury Conservation Area Appraisal and Management Strategy, or the guidance contained within CPG1 – Design, both of which are used for the assessment of development proposals in the Borough and are materials considerations in planning decisions.

2. THE APPEAL SITE, SURROUNDING AREA AND HERITAGE ASSESSMENT:

- 2.1. The appeal site comprises a single dwellinghouse located centrally within a terrace of 8 properties on the western side of Coptic Street, almost opposite the junction with Little Russell Street and around 25m north of the junction with New Oxford Street. As photograph 1 below shows, the appeal property comprises a 4 storey building with grey render at ground floor level and exposed yellow brick above.



Photograph 1: Front elevation of 7 Coptic Street

- 2.2. Similar to the adjoining neighbours, the appeal building is of Victorian design, with a traditional window hierarchy going up the building beneath a parapet. It provides single family dwellinghouse accommodation across basement, ground, first, second

and third floor levels, but other than the roof terrace which is the subject of this appeal, the dwelling has no outside amenity space.

- 2.3. Photograph 2 shows a view looking south along the terrace towards New Oxford Street and demonstrates the variety of building heights, with stepped ridge and parapet lines for its entire length. Although seemingly of Victorian construction, the buildings at either end of the terrace are of complementary designs, comprising a red brick tenement block at Stedham Chambers (to the north) and a white painted Victorian building at the junction between Coptic Street and New Oxford Street which has a modern roof addition.



Photograph 2: View along terrace from Little Russell Street towards New Oxford Street

- 2.4. The area immediately surrounding the appeal site displays a considerable variety of building ages and designs, including Victorian buildings along the western side of Coptic Street, Grade II listed Georgian buildings along Museum Street, Victorian town houses and more modern infill developments which front onto New Oxford

Street, Bloomsbury Street and Stedham Place. Notably, the building opposite the appeal site on Coptic Street is a modern 6 storey flatted development, comprising corner balconies (see photograph 4) and roof terraces (see photograph 3).

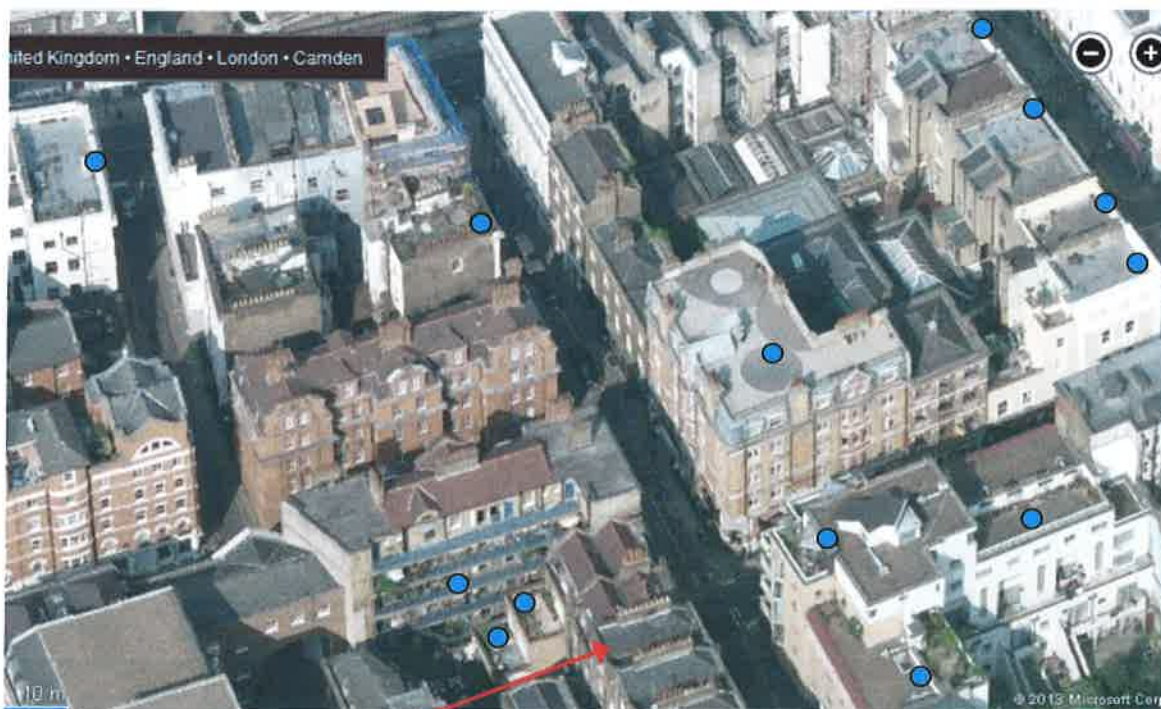
- 2.5. Diagonally opposite the appeal site, at the junction between Coptic Street and Little Russell Street is a 5 storey building with a roof terrace, which due to the furniture and perimeter balustrades which can be seen, appears to be used by residents for sitting out and other amenity purposes (see photograph 4).
- 2.6. The aerial photograph (photograph 5) appears to show that it is common for buildings to provide roof terraces and further details in this respect are provided below in the planning history section of this Statement. It further shows that the occupants of the flats in Stedham Chambers use their access balconies as outdoor amenity areas.



Photograph 3: View towards roof terraces at building opposite the appeal site



Photograph 4: View showing corner balconies and roof terrace at building opposite the appeal site and the roof terrace above the building at the corner of Coptic Street and Little Russell Street



Photograph 5: Aerial view showing appeal site and nearby roof terraces (identified by blue spots)

- 2.7. It is, therefore, the case that the area's character is in part defined by roof level and similar amenity spaces.
- 2.8. The area displays a mix of commercial and residential uses. The property at no.6 Coptic Street is in use for office purposes within Class B1 and many units along this and surrounding roads have commercial, High Street type uses at ground floor level with residential accommodation above.
- 2.9. The Council's published guidance on the Bloomsbury Conservation Area (adopted April 2011) defines 14 Sub-Areas and the appeal site falls within Sub-Area 7: Museum Street/Great Russell Street. Relevant extracts from the SPG are provided at **APPENDIX 1** for the Inspector's reference. This describes that Coptic Street is characterised by a combination of shopping and residential uses and is quieter than the principal streets, providing northward views towards the British Museum. It further explains that the street is significantly enclosed by four storey buildings with a variety of building forms and materials, but notes that the terrace comprising the appeal site is relatively uniform with a strong parapet line with evidence of earlier shopfronts in the form of console brackets and fascias. The appeal building is defined as making a positive contribution to the conservation area, but no mention is made of the valley roof form as being an important constituent part; clearly the importance of the building to the conservation area's character is, in the Council's opinion, defined by the appearance of the front elevation.

3. THE APPEAL PROPOSAL:

- 3.1. The matters alleged in the Notice comprise, without planning permission, the change of roof form from valley to flat roof, the installation of glazed balustrades to enclose a roof terrace and the installation of two items of air conditioning plant to the roof.
- 3.2. A section of the original valley roof measuring 4.69m x 4.47m has been demolished, set roughly 1m in from the rear parapet (see photograph 6) and roughly 2m in from the front parapet (see photograph 7). As the photographs show, sections of the original valley roof have been retained.



Photograph 6: View from roof terrace towards the retained valley roof and parapet to the rear of the building



Photograph 7: View from roof terrace towards the retained valley roof and parapet to the front of the building

- 3.3. Along the front and rear sides of the roof terrace, 1.2m balustrades have been installed, comprising glass panels fixed to chrome posts. The terrace is accessed via an internal timber staircase leading up from third floor level and through a roof light window located towards the centre of the roof. This again is partly enclosed by a 1.2m balustrade. The floor of the terrace is finished in timber boards and to the rear, the appellant has installed a ceramic sink with cold water supply.
- 3.4. The north and south flanks of the roof terrace are enclosed by the tall chimney stacks which stand on the party walls between the appeal property and its neighbours. The two air conditioning units have been installed on the southern stack, positioned behind the front balustrade. High quality Fujitsu units have been installed and were specifically chosen due to their low noise level when in operation.

4. **RELEVANT PLANNING HISTORY:**

- 4.1. From studying the information available on the Council's web-site, there does not appear to be any relevant planning history. However, there is relevant history associated with nearby properties, located within Sub-Area 7 of the Bloomsbury Conservation Area, which is important to bring to the Inspector's attention.

1 Coptic Street: Planning permission was granted on 5 October 2011 under reference number 2011/3207/P for the excavation of an enlarged basement, erection of a single storey rear extension with roof terrace above, erection of second floor balcony, modifications to chimney stacks, erection of a roof extension and provision of roof terrace and installation of solar panels. The scheme included 1.8m high railings around the perimeter of the first floor roof terrace and second floor balcony.

The decision notice, delegated report and relevant approved plans are at **APPENDIX 2**. This decision is especially relevant, it relating to a Victorian property along Coptic Street, which is defined in the conservation area appraisal and management strategy as making a positive contribution to the area's character. The Inspector's attention is drawn to pg.2 of the delegated report where, when discussing the roof extension, the officer notes the narrowness of the surrounding streets, which means the extension would not be visible from the public realm other than from two vantage points. The officer concludes that the extension would not have a detrimental impact on the conservation area.

At pg.4 of the decision, the Council confirms that the scheme was compliant with Policies CS14, DP24 and DP25.

28 Museum Street: Planning permission and listed building consent were granted on 16 February 2012 under reference numbers 2011/6466/P and 2012/0260/L for the change of use of the office at this property to form a 2 bedroom maisonette, including the formation of roof terraces at first floor rear level and at the main roof level, including the installation of decking and balustrades to the front and rear.

The notice of planning permission, officer's report and the approved plan showing the roof terrace are enclosed at **APPENDIX 3**. The Inspector's attention is drawn to the annotations on the approved plan, which explain that the flat roof would be landscaped and stainless steel guard rails would be provided, extending 150mm above the existing parapet wall and set back by 200mm from the front elevation so as to minimise the visual impact. As the balustrades were approved to be erected above the parapet, it is demonstrated that the Council applies its design guidance flexibly.

Notably, part 3 of the decision notice explains the reasons for granting planning permission, stating that the scheme was compliant with Policies CS14, DP24 and DP25.

31 Museum Street: Planning permission and listed building consent were granted on 8 February 2012 under reference numbers 2011/5960/P and 2011/5691/L for the change of use of the office to form a 3 bedroom flat, alterations including new screening around the existing first floor rear terrace, the extension of the existing access structure at roof level and the erection of new balustrades and screening around the existing roof terrace.

The notice of planning permission, officer's report and approved plans showing the roof terraces are enclosed at **APPENDIX 4**. The Inspector's attention is drawn to the annotations on the approved plans, which confirm that

new hardwood decking and hardwood fencing with 1.2m high steel posts would be provided to the first floor terrace and that new decking would be provided to the fourth floor roof terrace along with a 1.8m tall hardwood screen with steel posts to the side elevation.

Again, part 3 of the decision notice explains the reasons for granting planning permission, stating that the scheme was compliant with Policies CS14, DP24 and DP25. Furthermore, at pg.4 of the officer's report, it is stated, "*The proposal seeks to install a new metal balustrade ... along the western elevation ... of the existing roof terrace and a new slatted hardwood screening ... with galvanised steel posts along the north elevation of the existing roof terrace. The proposed balustrade and screening would not be highly visible from the public realm and is considered to be acceptable in this regard.*"

- 4.2. These permissions are clearly highly relevant to the appeal proposal because they have been granted since the adoption of the Core Strategy and Development Policies, as well as following the publication of the Council's guidance on the Bloomsbury Conservation Area and CPG1. Accordingly, they should be afforded considerable weight by the Inspector when assessing the first of the principal issues in this Enforcement Notice appeal.

5. RELEVANT PLANNING POLICY:

- 5.1. Of relevance to this appeal are the Government's policy objectives relating to the historic environment as set out in the National Planning Policy Framework, Policies 5.3 and 7.8 of the London Plan and Policies CS5 and CS14 of the Council's Core Strategy and Policies DP24, DP25, DP26 and DP28 of the Council's Local Development Framework Development Policies. The Bloomsbury Conservation Area guidance (discussed above) is also relevant, as is the Council's Planning Guidance: Design (CPG1), which is discussed below.

National Planning Policy Framework:

- 5.2. Section 12 of the Framework relates to the need to conserve and enhance the historic environment. Annex 2 of the framework defines conservation as: *"The process of maintaining and managing change to a heritage asset in a way that sustains and, where appropriate, enhances its significance."* This is an important definition because it recognises that change to the historic environment is inevitable and makes it clear that conservation does not imply preventing or resisting change. Instead it suggests that change should be managed to ensure the heritage significance is sustained and where possible, enhanced.
- 5.3. The definition of conservation also confirms that change should be embraced and not resisted. Change is only harmful insofar as it erodes significance.
- 5.4. Paragraph 128 states that LPAs should require an applicant to provide a description of the significance of the heritage asset. The reason for identifying significance is of relevance because not all parts of a heritage asset will necessarily be of equal significance. This concept is reinforced by paragraph 138 which deals specifically with conservation areas and world heritage sites. It follows, therefore, that parts of a

heritage asset can accommodate substantial change without the significance of the asset being affected.

- 5.5. Paragraph 131 explains that local authorities, when determining application, should take into account the desirability of sustaining and enhancing the significance of a heritage asset and putting it to a viable use. It further advises that new development should make a positive contribution to local character and distinctiveness.

London Plan:

- 5.6. Policy 5.3 explains that new developments should achieve the highest standards of sustainable design and construction in order to improve their environmental performance.
- 5.7. Policy 7.8 concerns heritage assets and explains that their significance should be sustained and enhanced. Part C of the policy explains that development can acceptably incorporate heritage assets and part D explains that any development which might affect the setting of an asset should be sympathetic to its form, scale, materials and architectural detail.
- 5.8. Copies of these policies are at **APPENDIX 5**.

Core Strategy:

- 5.9. Policy CS5(d) explains that the Council will seek to ensure that developments protect and enhance the environment within the Borough as well as the Borough's heritage. Part (e) of the policy seeks to ensure that developments do not cause harm to residential amenity. The supportive text at paragraph 5.8 further explains that the Council expects development to avoid harmful effects on the amenity of existing and future occupiers and nearby properties.

5.10. Policy CS14 seeks to ensure that developments achieve a high standard of design which respects the local context and character and further requires that developments preserve and enhance conservation areas.

Camden Development Policies:

5.11. Policy DP24 seeks to ensure that developments achieve a high standard of design, requiring that proposals take into account the character, setting, context and form of neighbouring buildings, the character of the host building and the provision of appropriate amenity space. The explanatory text at paragraph 24.23 explains that private outdoor amenity space can significantly enhance a resident's quality of life and explains that applicants are encouraged to explore all options for its provision. It further states that roof terraces are greatly valued and can be especially important for families.

5.12. Policy DP25 seeks to ensure that developments conserve the Borough's heritage. In respect of development affecting conservation areas, the policy requires that consideration is given to the published conservation area guidance. Its objective is that new development should preserve or enhance the significance, character and appearance of the conservation area.

5.13. The objective of Policy DP26 is to ensure that the quality of life enjoyed by residents is preserved. The policy advises that the Council will consider matters including noise and vibration levels and further states that wherever practical, private outdoor spaces should be provided. The supportive text at paragraph 26.12 advises that private outdoor spaces are particularly important to provide in the context of family houses and advocates the provision of roof gardens.

5.14. Policy DP28 relates to noise and vibration and advises that permission will only be granted for development involving plant and machinery where it can be operated without causing harm to amenity and where it would not exceed noise thresholds. This policy and its relevance to the air conditioning units at the site is considered in more detail in the Noise and Vibration Assessment prepared by Peter Moore Acoustics Ltd, which is discussed below.

Camden Planning Guidance: Design (CPG1):

5.15. The introduction explains that the guidance supports the policies in the LDF and is consistent with the Core Strategy and the Development Policies and is a material consideration in planning decisions. It is not explained whether the document was published following a period of public consultation. It sets out general design guidance to be considered when designing new development proposals, covering a range of issues, including at part 5: Roofs, terraces and balconies.

5.16. Paragraph 5.23 explains that balconies and terraces can provide valuable amenity spaces for properties which might not have any. Paragraphs 5.25 – 5.26 discuss roof level terraces and the relevant parts advise as follows:

- Any terrace should be set behind a parapet;
- The roof should be of sufficient size to accommodate a terrace without adversely affecting the appearance of the roof or the elevations of the property;
- Roof terraces should not result in the parapet height being altered or in the case of valley roofs, infilling of the rear valley parapet by brickwork or railings;
- Any handrails should be invisible from the ground; and
- The terrace should not overlook the habitable rooms in adjacent property.

6. **THE APPELLANT'S CASE:**

6.1. This appeal is made on Grounds (c), (a) and (f) and the appellant's case in respect of each is set out below.

Ground (c) appeal:

6.2. It is contended that the works undertaken do not constitute development and that planning permission is not required for what is alleged in the Notice. The appellant's case on this ground references the Court ruling in the case of *Burroughs Day v Bristol City Council*.

6.3. Section 55(1) of the Town and Country Planning Act (1990) (the Act) defines the meaning of development as: "... *the carrying out of building, engineering, mining or other operations in, on, over or under land ...*". Section 55(2) sets out those operations which shall not be taken to involve development, including: "*the carrying out for the maintenance, improvement or other alteration of any building of works which - ... do not materially affect the external appearance of the building*" (Section 55(2)(a)(ii)).

6.4. The Courts have established the tests to be applied to the judgement as to whether alterations have a material impact on external appearance. The case of *Burroughs Day v Bristol City Council* sets out well-established, reliable case law. Briefly, that case related to proposed alterations and extensions to a Grade II Listed Building within a conservation area in Bristol, including external renovations, replacement windows and the erection of a 0.9m tall roof extension to house a lift shaft. The roof extension then proposed was between the inner surfaces of the roofs and below the ridge height of the building. The case turned on the meaning of Section 55(2)(a)(ii) – "do not materially affect the external appearance of the building" and the following tests were established in interpreting these words:

1. What must be affected is “the external appearance”, not simply “the exterior”. As such, the alteration must be one which affects the way in which the exterior of the building is or can be seen by an observer outside the building.
2. The ability to view the alterations from different vantage points outside the building.
3. The degree to which the external appearance is affected by the alteration.
4. The nature of the building and the nature of the alteration.
5. The effect on the building as a whole.

6.5. I will deal with each of these tests in relation to this appeal scheme.

External appearance:

- 6.6. The roof works affect only part of the original valley roof, with two sections of the original roof, including the front and rear parapets being retained. The sizeable front and rear elevations of the building are completely unaltered when viewed from ground level or from within neighbouring buildings.
- 6.7. In my opinion, therefore, the development does not materially alter the way in which the building is seen by an observer outside the building.

Vantage points:

- 6.8. The alterations would only readily be visible only from within the top floor flats and roof terrace at the Victorian block at the corner of Coptic Street and Little Russell Street (shown at Photograph 4), isolated locations within the upper floor dwellings, balconies and roof terraces of the modern flatted development on the opposite side of Coptic Street (also shown at Photograph 4) and the from the top floor offices within tall block at 2-8 Bloomsbury Street (shown at Photograph 6, above).

- 6.9. By virtue of the retention of sections of the original valley roof and the front and rear parapets, the alterations cannot be seen from any public vantage point at ground level. In my opinion, these are a limited number vantage points and are not so numerous as would result in a material change to the views of the appeal building.

The degree to which the external appearance is affected:

- 6.10. By virtue of the facts that the alterations are invisible other than from a few isolated private vantage points, that the alterations are contained within retained sections of the original roof and that the exposed front and rear elevations of the building are entirely unaltered, the degree of change to the external appearance of the building is, in my opinion, limited.

The nature of the building and the nature of the alteration:

- 6.11. The building is within a conservation area but unlike the building in the case of *Burroughs Day v Bristol City Council*, it is not a listed or a Listed Building. It comprises a large single family dwellinghouse with an imposing front elevation. The Council's published guidance on the conservation area makes clear that the front elevation, including the retained parapet, is what makes the positive contribution to the character of the conservation area. There is no mention of the original valley roof form being an important feature in the area. The nature of the alterations are of a type which would typically be expected, or at least are not incongruous, within the context of a single family dwellinghouse.
- 6.12. The alteration does not reduce or otherwise restrict the outlook from surrounding buildings which have a view across the roof and this is an important consideration in assessing this issue.

The effect on the building as a whole:

- 6.13. Given the retention of the important front and rear parapets and the two sections of the original butterfly roof with no other alteration to the front or rear elevations, the overall effect on the building is minimal.
- 6.14. In view of the foregoing assessment, in my professional opinion the matters alleged in the Notice do not amount to development requiring planning permission and as such, it is submitted that the Council's decision to issue the Notice was unreasonable and that the Notice should be quashed.

Ground (a) appeal:

6.15. In the event that the Inspector finds that planning permission is required for the unlawful alterations, the appellant's case for a grant of planning permission is set out below. This case is made without prejudice to the Ground (c) appeal.

6.16. As is explained above, there are two principal issues for consideration in relation to the Ground (a) appeal. Firstly, whether the roof works cause harm to the host building and the Bloomsbury Conservation Area; and secondly, whether the air conditioning units would cause harm to residential amenity through noise and vibration.

Issue 1: Impact on the host dwelling and the conservation area:

6.17. The Enforcement Delegated Report (provided in the Council's Questionnaire) is a useful starting point in considering this issue as it sets out what harm the Council alleges and why, therefore, it was expedient for it to take enforcement action.

6.18. In assessing the works, the Council firstly makes reference to Policy DP24, noting that the policy requires development to consider the area's and building's character and context.

6.19. It is evident from the information provided in Sections 2 and 4 of this statement that the area's character and context is, in part, defined by the provision of roof terraces and balconies, including those which have been approved on the modern building constructed opposite the appeal site, the ones consented at no.1 Coptic Street and those which have been approved recently along Museum Street arguably with more visually prominent balustrades. Evidently the Council is content for roof terraces to be provided in this location and considers them to preserve the character and appearance of the Bloomsbury Conservation Area. It is important to note that the

Council has further accepted that such an alteration is acceptable in the context of a Victorian dwellinghouse which is defined as making a positive contribution to the area's character and appearance. Given the public policy objective of consistent decision making, it is unclear why objections have been raised to this scheme.

6.20. The Bloomsbury Conservation Area Appraisal and Management Plan describes that the character of Coptic Street is defined by its enclosed nature due to the tall buildings which abut the highway (a point reinforced in the delegated report relating to the planning permission at 1 Coptic Street). The character is further defined, the Council states, by the front elevations of the buildings, including the roof level parapets and the original ground floor level features, which give clues to a historic commercial use. It is for these reasons that the appeal building, like no.1 Coptic Street is defined as one which makes a positive contribution to the conservation area. Unlike the case of the planning permission at no.1 Coptic Street, the front elevation of the appeal building is unaffected by the works which have been undertaken and the parapet has been retained. The document does not suggest that the area's special character is defined by its roofscapes, or valley roofs, explaining why there have regularly been permissions granted for roof level alterations within the conservation area.

6.21. The definition of conservation set out in the Framework confirms that change is inevitable, that it should be embraced and that it is only harmful insofar as it erodes significance. Given that the Council has not defined the roofscape as making an important positive contribution to the area's character, it follows that sensitive alterations can be approved without the area's heritage significance, character, or appearance being harmed.

6.22. As to the question of whether the proposed addition is sensitive to the host building, the advice published by the Council in CPG1 – Design sets out guidance in terms of roof terraces at paragraphs 5.25 – 5.26. It sets out five requirements, provided at

pg.16, above. The first requirement is that any roof terrace should be set behind a parapet and the terrace created at the appeal site is set away from both front and rear parapets, behind retained sections of the original valley roof. The terrace is, therefore, compliant with this requirement.

6.23. Secondly, the guidance says the roof should be of sufficient size to accommodate a terrace without harming the appearance of the roof or the building's elevations. We submit that due to the substantial areas of the original roof form which have been retained and the use of high quality materials, the works have not resulted in any harm being caused to the building's roof. No alterations to the front or rear elevation have occurred and as such, the roof terrace is considered to be compliant with this requirement.

6.24. Next, the guidance advises that parapet heights should not be increased and in the case of valley roofs, should not be altered or infilled. As is evident from the photographs above and when visiting the site, the parapets have not been altered and the Council does not contest otherwise. There is no breach of this requirement. Despite this, it is interesting to note that in granting planning permission for the roof terrace at 28 Museum Street, the Council approved the provision of balustrades above the retained parapet, so evidently it applies the guidance flexibly.

6.25. The fourth requirement is that handrails should be invisible from ground level. The appellant deliberately set the balustrades away from the parapets in order to ensure that they could not be seen from ground level. We have viewed the building from numerous street level public vantage points, including in the restaurant garden in Stedham Place and can advise that we were unable to see the balustrade from any position. Accordingly, there is no conflict with this objective of the guidance.

6.26. Finally, the guidance says that terraces should not overlook habitable rooms in adjacent property. There are views from the terrace towards habitable rooms within

the modern building on the opposite side of Coptic Street. However, due to the terrace being recessed behind the front elevation of the building, a greater amount of separation is provided between this vantage point and the neighbouring building than is provided from within the habitable rooms to the front of the appeal building and this property. Accordingly, there would be no loss of amenity or privacy enjoyed by occupants of the flats within the modern building and the Council does not contest otherwise. In fact, at the bottom of the third page of the Enforcement Delegated Report, it is explained, "*There has been no loss of privacy for neighbouring occupiers as a result of the unauthorised works.*". The works are, therefore, compliant with the final detailed objective of the guidance.

6.27. Previous to these more detailed requirements (which themselves are clearly applied flexibly), the Council sets out general principles, again which are used to guide development, rather than prescribing a series of fixed and inflexible requirements to which development must adhere. In its case, the Council is reliant on paragraph 5.8 of CPG1, which says, *inter alia*, that roof alterations are unlikely to be acceptable where there is an unbroken run of valley roofs and where terraces have a largely unimpaired roof line and indeed this is referred to in the Enforcement Delegated Report.

6.28. Due to the sensitive design, retained sections of the original valley roof both to the front and rear, including the parapets, the impression of the run of valley roofs across the rear elevation of this part of the terrace would remain and as such, there is no breach with this objective.

6.29. The requirement to retain a consistent roof line is intended to be applied to proposals for additional storeys, which is not proposed in this Ground (a) appeal. The view of the roof line from the public realm would not be altered and as such, there is no conflict with this requirement.

6.30. As is suggested in the policy review above, there is support of the development arising from other Development Plan policies given the provision of private amenity space where currently none exists. The explanatory text at paragraph 24.23 (associated with Policy DP24) explains that private outdoor amenity space can significantly enhance a resident's quality of life and explains that applicants are encouraged to explore all options for its provision. It further states that roof terraces are greatly valued and can be especially important for families. Further to this, the supportive text at paragraph 26.12 (referring to Policy DP26) advises that private outdoor spaces are particularly important to provide in the context of family houses and advocates the provision of roof gardens. It is clear that the proposed roof terrace would significantly enhance the quality of accommodation provided at the appeal site, especially in view of the absence of any parks within the immediate vicinity of the site. The fact that the terrace provides a sitting out space for the family which will occupy the house is a factor which should be afforded weight in the context of this appeal.

6.31. In view of the proposal's compliance with all general and detailed design guidance set out within CPG1 and the use of high quality materials, it is argued that the roof terrace is sensitive to the host building, avoiding any harm to its character or appearance and neither does it diminish the building's positive contribution to the Bloomsbury Conservation Area.

6.32. The conservation area displays a number of roof terraces and balconies in the immediate vicinity of the site and the Council has recently approved three additional ones in the area. As such, any objection in principle to the terrace on the grounds that it would be incongruous and that it would harm the area are clearly unreasonable and inconsistent with recent decisions. The Coptic Street roofscape is not mentioned by the Council as making a positive or important contribution to the area's character and as such, the appellant maintains that sensitive changes such as that proposed can

reasonably be approved. It is, therefore, the appellant's case that the development preserves the character and appearance of the Bloomsbury Conservation Area.

- 6.33. It should be noted that many developers, keen to maximise their profits, would have provided an enlarged terrace, covering all of the roof at the appeal building. However, in the interests of preserving the building's character and appearance, the appellant decided to provide a reduced area, which was actually more expensive to construct given the need to retain and then make good sections of the original valley roof.

Issue 2: Harm to residential amenity:

- 6.34. The allegation of harm to residential amenity is based on concerns regarding noise and vibration generated by the air conditioning units when in operation. The Enforcement Delegated Report, at pgs.3-4 discusses these and says that due to the absence of any information demonstrating that the units meet the required noise and vibration levels and close proximity to residential windows, there is potential for there to be an adverse impact on residential amenity.
- 6.35. As advised in the Grounds of Appeal, the appellant has commissioned an assessment, undertaken by Peter Moore Acoustics Ltd, which is attached as **APPENDIX 6** to this Statement. This assessment has been prepared following measurements carried out on site between Friday 21 June 2013 to Monday 24 June 2013 and sets out the worst case scenario for noise being generated by the units at the quietest time of the week (Sunday night). The report finds that the noise and vibration levels from the proposed air conditioning units are within the criteria set by Policy DP28 (paragraph 11.1). It further concludes that in the worst case scenario of both units running in heating mode on a Sunday night, the noise levels are below the lowest observable adverse effect level and below the level outside an open bedroom window which is needed to achieve good sleep (paragraph 11.2).
- 6.36. In relation to vibration, the report concludes that the levels are low to the point of being imperceptible (paragraph 11.3).
- 6.37. Accordingly, the conclusion reached is that the units do not have a detrimental impact on the amenities of residential occupiers and that reason (c) for the Notice is unjustified (paragraph 11.4).
- 6.38. In the light of the conclusions of this report and the empirical evidence set out therein, it is the case that the Council's objection to the air conditioning units should

not be sustained and planning permission, if required, should be granted for their retention. The standard maintenance condition could reasonably be imposed on any planning permission.

6.39. In the light of this empirical evidence, the Council is requested to confirm its position in relation to its objection to the air conditioning units in its final comments submission. In the event that the Council has no counter evidence to dispute the findings of the appellant's noise and vibration assessment, it would plainly be unreasonable for it to sustain its objection on this ground. In the event that the Council sustains its objection without sound planning grounds for doing so, the appellant will consider making an application for a partial award of costs.

Ground (f) appeal:

6.40. Without prejudice to their Ground (c) and (a) appeals, the appellant also pleads Ground (f) and submits that Notice's requirements are excessive.

6.41. The Notice requires the complete removal of the flat roof area and balustrades. Although the front and rear balustrades would require removal in order to prevent the use of the roof terrace, the flat roof would not have to be removed. All that is required to remedy the breach is to remove the timber surface and reinstate the valley roof above.

6.42. In the event that the Council withdraws its objection to the air conditioning units, or the Inspector otherwise finds that they are unobjectionable, but the objections to the roof terrace are upheld, a small flat roofed area would be required to the south and west sides of the rooflight to enable access to the units for maintenance purposes. In this circumstance, the Notice's requirements would have to be redrafted carefully, along the following lines, which can be discussed at the Hearing:

1. The removal of the timber decking surface and the front and rear balustrades; and
2. Reinstall the original slate valley roof to match the form and profile of the original roof, with the exception of a 1m wide corridor running to the south and west sides of the rooflight and extending to the air conditioning units.

6.43. The appellant submits that in this scenario, the central balustrade should be retained as it acts as a handrail, allowing easier, safer access to the roof.

7. CONCLUSION:

- 7.1. In my opinion, the matters alleged in the Notice do not require planning permission. In my professional opinion the external appearance of the building has not materially been altered as the alterations would be visible only from a few isolated private vantage points and from nowhere in the public realm. I further submit that the nature of the building is unaffected by the alterations, which are harmonious with the use and that the effect on the building as a whole is minimal. Therefore, in accordance with Section 55(2)(a)(ii) of the Act, I am of the opinion that the alterations do not materially affect the external appearance of the building and as such, the matters alleged in the Notice do not amount to development requiring planning permission. Accordingly, the Inspector is respectfully requested to allow the appellant's Ground (c) appeal and quash the Notice accordingly.
- 7.2. Without prejudice to the case made under Ground (c), the appellant has also requested that planning permission is granted for the retention of the alterations. In respect of the impact on the conservation area, the Council's published guidance on the Bloomsbury Conservation Area has been consulted and this sets out that the special character of Coptic Street arises from the enclosed nature of the street and the front elevations of the buildings, including the strong front parapet line, none of which has been affected by the works. This guidance is reinforced in the delegated report relating to the planning permission at no.1 Coptic Street. Notably, the guidance does not allege that the roofscape of the appeal building is important to the area's historic significance, character or appearance and as such the Framework is clear that sensitively designed alterations can be made without causing harm.
- 7.3. In order to demonstrate that the alterations are sensitive to the host building, the works proposed in the Ground (a) appeal have been tested against the design guidance in CPG1 and it is clear that they are compliant. It is, therefore, concluded that the roof terrace is sensitive to the host building and by virtue of the use of high

quality materials, the works preserve the character, appearance and historic significance of the Bloomsbury Conservation Area and do not diminish the important contribution which the appeal building makes to the area.

- 7.4. The appellant has brought to the Inspector's attention three recent planning permissions in the same Sub-Area of the conservation area, granted by the Council following the publication of its conservation area appraisal and CPG1, where roof terraces have been approved, including one along the same street where the building is also defined as making a positive contribution to the area's character. A key objective of public policy is a consistency of decision making and it is considered unreasonable for the Council to have objected to the roof terrace at the appeal site when it recently has considered three other roof terraces in the area to be unobjectionable.
- 7.5. It is concluded that the scheme is compliant with the Framework, London Plan Policies 5.3 and 7.8, Core Strategy Policy CS14 and Development Policies DP24 and DP25, as well as the guidance published in the Bloomsbury Conservation Area Appraisal and Management Strategy and in Camden Planning Guidance 1 – Design.
- 7.6. In respect of the air conditioning units, the Council's objection is in respect of the potential for harm to residential amenity through noise and vibration caused by the operation of the units. We have submitted empirical evidence demonstrating compliance with the Council's adopted policies and as such, the objection on this ground is unjustified and the Council is invited to withdraw this reason and it is concluded that the units should be allowed to remain at the site.
- 7.7. The Inspector is respectfully requested to allow the Ground (a) appeal, granting planning permission for the proposed development and quashing the Notice.

- 7.8. In the event that the Ground (c) and (a) appeals are dismissed, the appellant submits that the Notice's requirements are excessive that that lesser steps are required to overcome the breach of planning control. In the absence of any alleged breach concerning the rooflight window and in the light of the evidence submitted demonstrating that the air conditioning units would not cause harm to amenity, these should remain, along with a section of flat roof area, given access to the units for maintenance purposes.
- 7.9. Accordingly, in the event that the Inspector upholds the Notice I conclude that its requirements should be redrafted along the lines described at paragraph 6.41 and the Notice varied accordingly.

APPENDIX LIST:

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| APPENDIX 1 | Extract from the Bloomsbury Conservation Area Appraisal and Management Strategy |
| APPENDIX 2 | Details relating to planning permission at 1 Coptic Street |
| APPENDIX 3 | Details relating to planning permission at 28 Museum Street |
| APPENDIX 4 | Details relating to planning permission at 31 Museum Street |
| APPENDIX 5 | Extract from the London Plan (July 2011) |
| APPENDIX 6 | Assessment of noise and vibration from air conditioning units, prepared by Peter Moore Acoustics Ltd. |