

**RE: 135 FINCHLEY ROAD**

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**OPINION**

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1. It is proposed to carry out certain works of alteration to the roof on the first floor of 135 Finchley Road. The building is in use as a restaurant and the purpose of the works is to enable the creation of an open terrace area for customers to enjoy.
2. I am asked to advise whether the proposed works would constitute development requiring planning permission.
3. The definition of development is contained in section 55 of the Town and Country Planning Act 1990 which provides expressly that  
  
“(a) the carrying out for the maintenance, improvement or other alteration of any building of works which –  
(i) Affect only the interior of the building, or  
(ii) Do not materially affect the external appearance of the building  
...”  
  
do not involve development, and therefore does not require planning permission.
4. This provision was considered by Mr Richard Southwell QC, sitting as a deputy judge of the Queen’s Bench Division in *Burroughs Day v Bristol City Council* [1996] 1 PLR 78<sup>1</sup>. The learned deputy judge held that, in considering whether works would “materially affect the external appearance of the building”, the following factors had to be taken into account:

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<sup>1</sup> In which I appeared on behalf of the successful plaintiff

- (1) What must be affected is “the external appearance” of the building, and not its exterior. 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 external appearance must be “materially” affected, and this depends in part on the degree of visibility;
  - (3) Any change must be visible from normal vantage points;
  - (4) Materiality must in every case take into account the nature of the particular building which it is proposed to alter;
  - (5) The effect on the external appearance must be judged for its materiality in relation to the building as a whole, and not by reference to a part of the building taken in isolation.
5. The proposed works in the case of 135 Finchley Road comprise the removal of part of the existing flat roof and some redundant plant. The works to the roof involve the removal of a 1.5 metre strip. All the works will be contained below and behind the existing parapet wall. I am instructed that none of the works involve any other structural demolition works to the building. None of the works will be visible from any normal vantage point.
  6. My Instructions include a plan showing the proposed roof plan and also photographs showing the building as a whole and the area of roof that would be affected by the works.
  7. In my opinion considering the scope of the works involved in relation to the building as a whole the proposed works will not affect the external appearance of the building from any normal vantage point and certainly will not affect it materially.
  8. Applying the factors enunciated in the *Burroughs Day* case I consider that the proposed works will not amount to development requiring planning permission.

**JOHN HOBSON QC**

**Landmark Chambers  
180 Fleet Street  
London EC4A 2HG**

**2<sup>nd</sup> April 2015**