



**Listed Building Enforcement Notice Appeal
Statement of Case Ground 'E'
58 Doughty Street, London, WC1N 2JT**

25th May 2016

LPA: London Borough of Camden

**Listed Building Enforcement Notice Ref:
EN14/0844 (19/04/2016)**

Contents

- 1.0 Introduction
- 2.0 The Site
- 3.0 Relevant Planning History
- 4.0 The Listed Building Enforcement Notice
- 5.0 Planning Policy Position
- 6.0 Assessment
- 7.0 Conclusions

Appendix 1 – Site Photographs

Appendix 2 – Copy of Listed Building Enforcement Notice (Ref: EN14/0844)

Appendix 3 – Appeal Decision at No.30 Brownlow Mews

Appendix 4 – Plans of the Moveable Planter

1.0 Introduction

- 1.1 This Statement of Case has been prepared on behalf of our client, Mr Roger Keeling, in support of the installation of a moveable planter in the rear garden of No. 58 Doughty Street, London WC1N 2JT (hereafter referred to as 'the site'). Site photographs are provided at Appendix 1.
- 1.2 This appeal has been submitted against a Listed Building Enforcement Notice (Ref: EN14/0844), which was issued by the London Borough of Camden (LBC) on 19th April 2016. A copy of the Listed Building Enforcement Notice (LBEN) is provided at Appendix 2.
- 1.3 This LBEN has been appealed against Ground 'E' within the Planning (Listed Buildings and Conservation Areas) Act 1990 at Section 39 '*Appeal against listed building enforcement notice*', which states:

'(e) that listed building consent ought to be granted for the works, or that any relevant condition of such consent which has been granted ought to be discharged, or different conditions substituted.'
- 1.4 The appellant submitted a Certificate of Lawfulness for the moveable planter in 2015, which sought to confirm that the provision of the planter at the site did not constitute development. This was subsequently refused by the London Borough of Camden (LBC) on 16th February 2016 and has also been appealed by the appellant. We have also recently submitted an appeal against a further Planning Enforcement Notice, which was issued by LBC on 23rd May 2016. We consider that it would be most efficient if these 3 appeals could be co-joined as they all relate to the same moveable planter.
- 1.5 We would like to highlight that we do not consider that the moveable planter constitutes 'development' Under Section 55 of the Town and Country Planning Act 1990. However, we have submitted this appeal in order to confirm that Listed Building Consent (LBC) is not required for the moveable planter, which will be dealt with via the appeal against the refusal of the Certificate of Lawfulness application, noted above.
- 1.6 However, we have appealed this Listed Building Enforcement Notice (LBEN) in order to demonstrate that the moveable planter is acceptable in planning and listed building terms, should the Planning Inspector conclude that it does constitute development and require Listed Building Consent.

- 1.7 Should the Planning Inspector conclude that the planter does constitute development and considers that it is not acceptable development, we have also suggested an alternative condition to deal with the alleged breach.
- 1.8 The moveable planter is located in the shared rear garden and provides a degree of separation between No.58 Doughty Street and No.28 Brownlow Mews. The moveable planter enables both properties to benefit from enhanced privacy and amenity. Both properties are owned by the appellant and No.58 Doughty Street is rented out.
- 1.9 The format of the report is set out as follows:
- Section 2 describes the site and its' context;
 - Section 3 details the relevant planning history;
 - Section 4 provides a summary of the LBEN;
 - Section 5 summarises the planning policy position;
 - Section 6 provides an assessment of the planter; and
 - Section 7 contains our conclusions.

2.0 The Site

- 2.1 No.58 Doughty Street is a four storey, plus lower ground, mid terrace Georgian Building located on the Eastern side of Doughty Street. It forms part of a Grade II listed terrace constructed during 1807-09. The property is located within the Bloomsbury Conservation Area and is rented out by the appellant.
- 2.2 The property shares a garden with No.28 Brownlow Mews which lies immediately to the east. Both properties are owned by the appellant and the moveable planter was placed between two raised planting beds to provide a degree of separation to aid privacy and amenity, which will engender the use of the garden by the occupants of both properties.
- 2.3 Photographs of the site and moveable planter are provided at Appendix 1.

3.0 Planning History & Background

- 3.1 In September 2012 the council issued an Enforcement Notice against a 2m high steel wire mesh support, used to support ivy planted in raised beds and a wooden planter that was subdividing the rear garden of the property. The appellant complied with this notice.
- 3.2 In consultation with LBC the appellant then erected bamboo cane and twine to hold up the ivy plants to create a screen, with the same planter box on the pathway holding up the bamboo canes. Contrary to previous advice, LBC advised that this may also be considered development and in consultation with LBC the appellant replaced the bamboo and twine, with a row of yew bushes forming a hedge. Under pressure from a neighbour LBC then advised that the wooden planter may be considered development. Again in consultation with LBC the appellant replaced the wooden planter with a planter on wheels.
- 3.3 The LDC Officer's Report at the same site (Ref: 2015/3880/P) by LBC is relevant with regards to this and states:

'The Council did not originally consider this development but a neighbour supplied Counsel's opinion which concluded that this was in fact development and the Council changed its position. The owner removed this construction rather than be the subject of a further enforcement notice. They have now installed this 'moveable' planting box which the applicants consider is not development as defined by s.55 of the Town and Country Planning Act 1990 (T&CPA).'

- 3.4 The applicant then submitted a Certificate of Lawfulness for the moveable planter in July 2015, which was subsequently refused on 16th February 2016. This refusal has also recently been appealed. This refusal prompted the Enforcement Team at LBC to issue a Listed Building Enforcement Notice (Ref: EN14/0844) on 19th April 2016 and a Planning Enforcement Notice on 23rd May 2016 (Ref: EN14/0844).

4.0 The Listed Building Enforcement Notice

- 4.1 The Listed Building Enforcement Notice (Ref: EN14/0844) was issued by LBC on 19th April 2016. The LBEN alleges the following contravention:

'Without listed building consent: The unauthorised construction of a metal planting box subdividing the rear garden as shown as an X on the attached plan and on the attached photograph.'

- 4.2 The LBEN states the following reasons for issuing the notice:

- a) *The work outlined above has been carried out to this Grade II listed building without the benefit of Listed Building Consent.*
- b) *The metal planting box detracts from the character of the listed building as a building of special architectural character and historic interest by harming the historic relationship between the main house and the mews property, sub-dividing the original garden plot and negatively impacting visually on the setting of the listed building contrary to policies CS14 (promoting high quality places and conserving our heritage) and DP25 (conserving Camden's heritage), of the Council's Local Development Framework 2010.'*

- 4.3 The LBEN then states that the appellant is required to *'permanently remove the metal planting box from the site'* within 1 month of the notice taking effect (31st May 2016) unless an appeal is made against it beforehand.

Alternative Proposed Condition for Compliance

- 4.4 The key concerns from the council appears to be that the planter provides a degree of separation between the garden of the two properties. Therefore, the LBEN requires the permanent removal of the moveable planter from the site. The provision of a moveable planter in a large garden should not be a significant concern for a local planning authority.
- 4.5 Therefore, we consider that it would be reasonable that the shrubs must be kept at a maximum height (e.g. 2.5 high or any such height at the Planning Inspector considers is appropriate) should this be an area of concern for the Planning Inspector.

Furthermore, the appellant is also willing to paint the moveable planter another colour (e.g. green) which may be less visible should the Planning Inspector consider that this would be an appropriate and alternative way of dealing with the alleged breach. This could be dealt with via an appropriately worded condition.

5.0 Planning Policy Position

- 5.1 In this instance the Development Plan comprises Camden's Core Strategy, which was adopted in November 2010; Camden's Development Policies, which was also adopted in November 2010 and the London Plan (Consolidated with Alterations since 2011) published in March 2015.
- 5.2 The following documents will also include provisions that are 'material considerations':
- The National Planning Policy Framework (NPPF);
 - Adopted Supplementary Planning Guidance and Documents (SPG/SPD);
 - The Bloomsbury Conservation Area appraisal and management Strategy, adopted April 2011.
- 5.3 Consultation on the Camden Local Plan Submission Draft 2016 has now closed. The plan takes into account feedback from initial engagement, consultation of a draft plan and a series of evidence studies and national policy and legislation. When finalised the Local Plan will replace the Core Strategy and Camden Development Policies documents as the basis for planning decisions and future development in the borough. The examination of the Plan by the Planning Inspector is expected to take place in the summer of 2016.

Proposals Map Designations

- The Site is located within the Bloomsbury Conservation Area;
- No.58 Doughty Street is Grade II listed;
- No.28 Brownlow Mews is a 'positive contributor' to the Conservation Area.

6.0 Assessment

- 6.1 The council assert that the provision of a moveable planter in the rear garden at the site constitutes development and also requires Listed Building Consent. Although we do not agree that the moveable planter constitutes development or requires Listed Building Consent we have assessed the moveable planter against the relevant policies should the Planning Inspector consider that it does require Listed Building Consent.

Listed Building Considerations

- 6.2 The property forms part of a Terrace of 23 houses (excluded No.48) which are Grade II listed. An extract of the Listed Building Description is provided below:

*'TQ3082SE DOUGHTY STREET
798-1/96/311 (East side)
14/05/74 Nos.39-47 AND 49-62 (Consecutive)
and attached railings
(Formerly Listed as:
DOUGHTY STREET
Nos.39-62 (Consecutive))*

GV II

Terrace of 23 houses, excluding No.48 which is listed separately (qv). Nos 39-46 c1792; Nos 47-62 c1807-9; terrace completed by 1820. No.62 rebuilt in facsimile since 1974. Built by J Wigg, G Slaton and J Wilson. Multi-coloured stock brick most with evidence of tuck pointing; No.45 painted. Plain stucco first-floor sill band. Slate mansard roofs with dormers except Nos 53-55 and 62.

Nos 39-47, 49-52 and 56-61: three storeys, attics and dormers. Three windows each; No.39 with four windows (one blind) and three-window return to Guilford Street. Round-arched doorways with panelled or recessed pilaster-jambs, cornice-heads, most with patterned fanlights and panelled doors. Nos 44-47, 49, 51 and 52 have doorways with stuccoed surrounds; Nos 57-61, doorways with Greek Doric engaged columns carrying cornice heads with guttae. Gauged brick flat arches to recessed, mostly 2-pane sashes. Nos 49, 52, 56, 57 and 60 with cast-iron balconies to first-floor windows. Stucco

cornices and blocking courses, except No.39. Most houses with original lead rainwater heads and pipes. INTERIORS: not inspected.

Nos 53-55 and 62: four storeys and basements. Three windows each, No.62 with 3-window return to Roger Street, plus three-storey three-window extension. Nos 53-54, round-arched doorways with moulded jambs and lion-head stops, cornice-heads and patterned radial fanlights. No.55 has projecting round-arched, rusticated stucco portico with cornice and later C19 doorway. Patterned, half-glazed door and overlight. No.62 has return with projecting Doric porch, part-glazed doors and patterned fanlight. Gauged brick flat arches to recessed sash windows; first-floor with cast-iron balconies. Cornice, continuing from other houses in terrace, at third-floor level.

INTERIORS: not inspected but Nos 53-55 noted to have stick baluster stairs.

SUBSIDIARY FEATURES: attached cast-iron railings with urn finials to areas.

(Survey of London: Vol. XXIV, King's Cross Neighbourhood, Parish of St Pancras, IV: London: -1952: 50-54).

Listing NGR: TQ3077682208'.

6.3 It appears that No.58 Doughty Street has been listed for its group value and primarily due to the architectural quality of the main façade of the property which fronts onto Doughty Street. However, there is no mention of any of the gardens or the relationship between the properties with those at Brownlow Mews, within the listing description. This suggests that the architectural and historic interest is primarily focussed upon the Doughty Street façade, which is understandable.

6.4 Furthermore, Paragraph: 022 (Reference ID: 18a-022-20140306) within the National Planning Practice Guidance states:

'What is a listed building?

A listed building is a building which has been designated because of its special architectural or historic interest and (unless the list entry indicates otherwise) includes not only the building itself but also:

- *Any object or structure fixed to the building;*
- *Any object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so since before 1 July 1948.*

Revision date: 06 03 2014.'

- 6.5 It is likely that the garden walls at the property will form part of the curtilage of the building as they date back to before 1 July 1948 and are therefore included within the listing as they are part of the curtilage. However, the moveable planter is set on four wheels and is capable of being moved by one person when empty. Therefore, although it is positioned within the garden we do not consider that it requires listed building consent as it is not an object or structure that is fixed to the building or indeed the ground. Furthermore, it does not form part of the land nor has it done so since before 1 July 1948.
- 6.6 The placing of large pots, planters, or indeed garden furniture such as tables or chairs does not require listed building consent. The moveable planter is positioned on four wheels and can be easily moved by one person when empty. This is similar to a pieces of garden furniture, which are commonplace in the gardens of listed buildings across the country, which do normally require Listed Building Consent. We see no reason why Listed Building Consent is required in this instance.
- 6.7 The council recently refused a Certificate of Lawfulness application for the moveable planter at the site, which is the subject of another appeal. The delegated refusal from the Council referred to a neighbouring planning application which was dismissed at appeal. The works proposed included a proposal to add fenestration to the rear elevation (along with a host of other works). The delegated report states:

'An appeal against this refusal at 30 Brownlow Mews was dismissed with the Inspector commenting; '...the sharing or subdivision of the existing garden would blur that relationship and suggest that the former service building has a more equal status with the main dwelling'. As the properties are listed, planning permission is required to erect walls and fences that are usually permitted development for other households.'

- 6.8 Although the quote is correct, we consider that it should be noted that the extent of the proposed separation of the garden at No.30 Brownlow Mews appeared to constitute a

permanent structure and were clearly building operations, which would permanently separate the gardens. Furthermore, paragraphs 8-9 of the appeal decision are relevant and state:

'8. The rear wall of No.30 Brownlow Mews facing into this garden is currently devoid of windows or doors. It seems to me that this is an important representation of the original functional relationship between the main house (originally No.60 Doughty Street) and its service quarters (No.30). Clearly, it was not intended to provide a view or access into the garden from No.30 and this reflected the status of the two buildings in relation to each other. While it has changed over time, the vestige of this relationship, it seems to me, is an integral part of the setting of the terrace and the character of the conservation area. The introduction of a large, glazed opening, with a door, and the sharing or subdivision of the existing garden (the plans are not entirely clear as to the intention) would blur that relationship and suggest that the former service building has a more equal status with the main dwelling.

9. On top of that, the planning application form suggests that the fenestration proposed to the rear would be framed in aluminium. Notwithstanding other modern additions to the rear of No.61, I take the view that the use of a material of this type would be an unsuitable and alien addition in the context of the rather traditional appearance of No.30.'

- 6.9 It is clear that the proposed works at No.30 Brownlow Mews were dismissed for a wide range of reasons and that the proposed permanent separation of the garden, which is not relevant in this instance, was merely one of many reasons why the Planning Inspector dismissed the appeal. Therefore, we would like to highlight that this example is not relevant and is certainly not conclusive when read in full context. A copy of the Appeal Decision for No.30 Brownlow Mews is provided at Appendix 3.

Relevant Planning Policy

- 6.10 With reference to the relevant planning policies, Policies CS14 '*Promoting high quality places and conserving our heritage*' and DP25 '*Conserving Camden's heritage*' are relevant. Part 'B' of Policy CS14 requires proposals to preserve and enhance Camden's rich and diverse heritage assets and their settings, including conservation areas, listed buildings, archaeological remains, scheduled ancient monuments and historic parks and gardens.

6.11 Part 'G' of Policy DP25 states that to preserve or enhance the borough's listed buildings, the Council will:

'g) not permit development that it considers would cause harm to the setting of a listed building.'

6.12 Paragraph 25.15 forms part of the supporting text to this policy and states:

'25.15 The setting of a listed building is of great importance and should not be harmed by unsympathetic neighbouring development. While the setting of a listed building may be limited to its immediate surroundings, it often can extend some distance from it. The value of a listed building can be greatly diminished if unsympathetic development elsewhere harms its appearance or its harmonious relationship with its surroundings. Applicants will be expected to provide sufficient information about the proposed development and its relationship with its immediate setting, in the form of a design statement.'

6.13 The provision of a moveable planter in the rear garden of No.58 Doughty Street does not harm the setting of the listed building at No.58. The planter is only 72 cm high, 1.27 metres long and 80 cm wide (see Appendix 4 for a copy of the plans of the moveable planter). It is set on four wheels which are an integral part of the planter and it is brown in colour, which is sensitive to the brown, green and grey colouring found across gardens in the UK. The planter can be easily moved by one person when empty and is not fixed to any part of the curtilage of the listed building or garden in general. Therefore, we consider it preserves the character of the wider Bloomsbury Conservation Area and does not cause any harm or detriment to the setting of the listed building at No.58 Doughty Street.

6.14 Furthermore, we consider that Policy DP26 *'Managing the impact of development on occupiers and neighbours'* is also relevant in this instance. The relevant section of the Policy states:

'The Council will protect the quality of life of occupiers and neighbours by only granting permission for development that does not cause harm to amenity. The factors we will consider include: a) visual privacy and overlooking.'

6.15 We consider that Paragraph 7.4 from Camden's Planning Guidance SPG also supports this policy and states:

'7.4 Development should be designed to protect the privacy of both new and existing dwellings to a reasonable degree. Spaces that are overlooked lack

privacy. Therefore, new buildings, extensions, roof terraces, balconies and the location of new windows should be carefully designed to avoid overlooking. The degree of overlooking depends on the distance and the horizontal and vertical angles of view. The most sensitive areas to overlooking are:

- *Living rooms;*
- *Bedrooms;*
- *Kitchens; and*
- *The part of a garden nearest to the house.*

6.16 Although the moveable planter is not fixed to the ground or surrounding walls at the property, it does provide a degree of separation, although it is not considered that this holds any permanence. This separation accords with policy DP26 as well as Paragraph 7.4 within the Camden Planning Guidance noted above as it enables the separate residents at both No.58 Doughty Street and No.28 Brownlow Mews to benefit from adequate privacy whilst in the garden.

6.17 We consider that the removal of the moveable planter and associated shrubs would reduce the likelihood of the respective occupants making use of the garden, for leisure and play, which in turn would discourage a healthy lifestyle in accordance with Policy 3.2 'Improving health and addressing health inequalities' within the London Plan. This policy seeks to improve the health of all Londoners and Part D of the policy 'Planning Decisions' states that *'new developments should be designed, constructed and managed in ways that improve health and promote healthy lifestyles to help to reduce health inequalities.'*

6.18 On this basis, we consider that the provision of a moveable planter should be granted Listed Building Consent as it provides a sensitively designed addition to the rear garden, which does not harm the setting of the listed building or the wider conservation area. Furthermore, it does not create a permanent structure, which was the case at No.30 Brownlow Mews and provides a degree of separation between the rear gardens of No.58 Doughty Street and No.28 Brownlow Mews which provide additional privacy, amenity and health opportunities for the respective residents of both properties.

6.19 Additionally, the structure is small in the context of the rear garden and the following points should be noted.

- The moveable planter and the plants it contains cannot be seen from outside Doughty Street or Brownlow Mews;

- The planter is only visible from the upper floors (above ground) of the immediately adjacent properties, due to the height of the garden wall and its surmounting fence (so it is not visible when the occupants of No.59 Doughty Street are in the garden);
- The metal moveable planter is brown in colour and its materiality and colour is sympathetic to the garden and does not stand out or detract from the properties;
- Judged in relation to the building as a whole (No.58 Doughty Street), which is substantial, we do not consider that the degree of visibility of the moveable planter is such that it would constitute development or that it is detrimental to the setting of the listed building or causes visual harm.

7.0 Conclusions

- 7.1 In conclusion, we consider that the provision of the moveable planter at the site does not constitute development and therefore does not require Listed Building Consent. However, we have appealed this LBEN in order to seek to resolve this matter.
- 7.2 Should the Planning Inspector consider that Listed Building Consent is required for the moveable planter, we consider that the proposals are acceptable, for the reasons detailed within this statement. The planter is not physically attached to the ground or surrounding walls and can be easily moved by one person when empty. Therefore, it is akin to a large table in any rear garden. Such structures do not normally require Listed Building Consent.
- 7.3 The moveable planter does not harm the setting of the listed building and preserves the character and appearance of the Bloomsbury Conservation Area. The degree of separation provided by the moveable planter enhances the privacy and amenity of both families at No.58 Doughty Street and No.28 Brownlow Mews and also engenders the use of the garden by the residents of both properties, which accords with Policy 3.2 within the London Plan. On this basis, we consider that Listed Building Consent should be granted for the moveable planter, should the Planning Inspector conclude that such consent is indeed required in this instance.