

Delegated Report		Analysis sheet		Expiry Date:		14/04/2016	
		N/A / attached		Consultation Expiry Date:		NA	
Officer				Application Number(s)			
Jonathan McClue				2016/0905/P			
Application Address				Drawing Numbers			
Greater London House Hampstead Road London NW1 7AW				See decision notice			
PO 3/4		Area Team Signature		C&UD		Authorised Officer Signature	
Proposal(s)							
The construction of two 3 storey infill extensions at ground, 1st and 2nd floor levels within the external courtyard of the building to create an additional 3539sqm of floorspace.							
Recommendation(s):		Refuse					
Application Type:		Certificate of Lawfulness (Proposed)					
Conditions or Reasons for Refusal:		Refer to Decision Notice					
Informatives:							
Consultations							
Adjoining Occupiers:		No. notified	00	No. of responses	00	No. of objections	00
				No. electronic	00		
Summary of consultation responses:		No formal consultation was undertaken.					
CAAC/Local groups* comments: *Please Specify		Camden Town Conservation Area Advisory Committee (CAAC) wrote to the Council on 29/04/2016 to state that they do not object to the application.					

Site Description

The application site comprises of the Greater London House building which fronts Hampstead Road; Mornington Crescent wraps around the sides of the building and to the rear with the building forming an island in the middle. The large iconic structure is considered one of the finest examples of an Art Deco building in London. It was constructed between 1926 and 1928 by the Carreras Tobacco Company on the communal garden area of Mornington Crescent and later refitted for offices and renamed Greater London House in 1961. The building is noted as having early 20th Century Egyptian Revival architecture which is claimed to be inspired by the Egyptian tomb of Tutankhamun which was discovered in 1922. In 1996 architects Finch Forman and design architects Munkenbeck and Marshall were commissioned to restore the original Egyptian architecture of the building. The restoration won a Civic Trust Award and a Camden Design Award. The project was also featured as Building of the Month in the RIBA Journal.

The building is 168m long with the Hampstead Road façade constructed of Atlas White cement. The façade is lined with a colonnade of twelve large papyriform columns which are painted in bright colours with Venetian glass decoration. It includes ornate cat motifs, Carreras is written in raised Egyptian-style lettering, there are reliefs showing the face of Bastet which are placed in circular recesses, the building benefits from a highly decorative, deep cavetto-form parapet and there are two gigantic effigies of black cats flanking the entrance.

Greater London House has a floor area of approximately 30,352m² and is up to 8 storeys high. It mainly contains office (B1a) in addition to a gym at lower ground floor level. The building is known to have a range of different commercial occupiers including the British Heart Foundation, Young & Rubicam advertising agency, ASOS, Wunderman, WPP, Wonga.com, Radley + Co and other companies. Access is provided from a number of entrance points on Hampstead Road and Mornington Crescent. Two ramps from Mornington Crescent lead to roller shutter doors which provide access to a large external courtyard. The courtyard (accessed from the public highway (Mornington Crescent)) contains cycle and car parking spaces and provides the main access for servicing and deliveries.

The host building is highlighted as making a positive contribution to the character and appearance of the Camden Town Conservation Area. In addition to this designation the building's frontage, as seen from Harrington Square Gardens, is noted as being one of 3 formal vistas within the conservation area.

Mornington Crescent Tube Station (grade II listed) lies opposite the site to the northeast. The adjacent buildings at 1, 2-12, 13-24, 25-35 Mornington Crescent are also grade II listed. The development in the immediate vicinity is largely residential with ground floor commercial units located near the junction of Mornington Crescent, Hampstead Road and Camden High Street opposite the Tube Station. Three 20 storey Council tower blocks lie adjacent to the site to the southwest. These are 1-80 Dalehead, 1-80 Gillford and 1-80 Oxenholme within the Harrington Square estate.

The site is located just outside of Camden Town Centre which lies immediately to the northeast and includes adjacent buildings on Mornington Crescent and Camden High Street. The host building is covered by an Article 4 direction which has removed the right to change from office (B1a) to residential use (C3) without the formal grant of planning permission.

Relevant History

K12/9/2/11627(R): Fencing to existing car parking area. *Granted Subject to Conditions on 03/11/1971*

8700596: Erection of an additional 9000sq.m of office floorspace. *Refused on 10/08/1987*

8700597: Erection of an additional 5000sq.m of office floorspace. *Refused on 10/08/1987*

PE9700102: Erection of four service risers on the elevation of the courtyards and erection of

associated plant at roof level. *Granted Subject to Conditions on 17/02/1997*

PE9700121R1: Alterations to the front elevation and forecourt area of the building comprising: the erection of a new glazed canopy over each of the main and two side entrances; the reinstatement of statues on either side of the entrance; the refurbishment of the existing decorative pillars to the front elevation; the installation of replacement windows front elevation; the creation of a new access road from Hampstead Road; the provision of full wheelchair access to the main entrance. *Granted Subject to Conditions on 19/06/1997*

PE9700631: Installation of new glazing to the whole building. *Granted Subject to Conditions on 03/10/1997*

PE9800760: Change of use of part of the basement from offices to gymnasium and restaurant. *Granted Subject to Conditions on 03/06/1999*

PEX0200132: Construction of bridge links in the internal courtyard to create additional office (Class B1) floor space. *Granted Subject to a Section 106 Legal Agreement on 08/03/2002*

2008/0747/P: Retention of two sets of double doors to provide access to a flat roof at rear fifth floor level and timber decking and planter boxes on the roof, all to facilitate use of the roof as a terrace in connection with the existing offices (Class B1). *Granted Subject to Conditions on 02/04/2008*

2008/1568/P: Change of use of part basement from gymnasium (Class D2) to office use (Class B1). *Granted Subject to Conditions on 01/05/2008*

2008/3361/P: Alterations to rear boundary treatment including installation of a new gate and alterations to delivery entrance (on Mornington Crescent) including new staircases and ramp to basement level offices on the north side. *Granted Subject to Conditions on 21/08/2008*

Relevant policies

Section 55 of the Town and Country Planning Act 1990 (as amended)

Section 192 of the Town and Country Planning Act 1990 (as amended)

Assessment

1.0 Proposal

1.1 A Certificate of lawfulness of proposed use or development (CLOPUD) has been submitted under Section 192 of the Town and Country Planning Act 1990 (the Act) to establish whether the proposed operations to be carried out would be lawful.

1.2 The proposed operation is to construct two x 3 storey infill extensions over the ground, first and second floors of the building. The extensions would be built within an external courtyard over a lower ground floor parking and servicing area. The uplift in floor area would be 3539m².

1.3 The applicant considers that the operation does not constitute 'development' which is defined within the Act as *"the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land."* Building operations is defined within the Act as including:

"(a)demolition of buildings;

(b)rebuilding;

(c)structural alterations of or additions to buildings; and

(d)other operations normally undertaken by a person carrying on business as a builder."

1.4 The Council considers that the operation falls within the meaning of the definition of 'development' under section 55(1) of the Act. This has not been disputed by the applicant.

1.5 Section 55(2) of the Act specifies certain operations or uses of land that are not taken to involve development of the land for the purposes of the Act. The applicant considers that section 55(2)(a)(ii) would apply to the proposed operation:

(2)The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land—

(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,

1.6 The CLOPUD application has been made on the basis that the proposed operations do not constitute 'development' under section 55 of the Act and can be carried out without the need for planning permission. The applicant considers that the operations (involving the alteration of the exterior of the building) would not be visible above the roof line of the existing building and would therefore not materially affect its external appearance. It is stated that the works would only be seen from a limited number of enclosed vantage points within the external courtyard itself and that there are no other vantage points surrounding the site from which change would be visible.

1.7 The Secretary of State has advised local planning authorities that the burden of proof in applications for a Certificate of Lawfulness is firmly with the applicant (DOE Circular 10/97, Enforcing Planning Control: Legislative Provisions and Procedural Requirements, Annex 8, para 8.12). The relevant test is the "balance of probability", and authorities are advised that if they have no evidence of their own to contradict or undermine the applicant's version of events, there is no good reason to refuse the application provided the applicant's evidence is sufficiently precise and unambiguous to justify the grant of a certificate. The planning merits of the use are not relevant to the consideration of an application for a certificate of lawfulness; purely legal issues are involved in determining an application.

2.0 Applicant's Evidence

2.1 The applicant has submitted the following information in support of the application:

- Site location plan
- Drawing package by Forme UK Interior Architecture
- Concept Design Presentation by Forme UK Interior Architecture
- Cover Letter from Gerald Eve dated 17 February 2016
- Advice note prepared by Herbert Smith Freehills LLP dated 16 February 2016
- Response to the Position Statement of London Borough of Camden prepared by Herbert Smith Freehills LLP dated 7 June 2016
- Counsel advice note prepared by Morag Ellis QC dated 14 June 2016

2.2 The submission relies heavily on the case of *Burroughs Day v Bristol City Council* [1996] 1 PLR 78 (Burroughs Day) which considered whether the works undertaken to a building materially affected its external appearance. The case was in response to the refusal of a listed building consent which involved a lift shaft within a roof valley. It was found that the works did not constitute development as they were not considered to materially affect the external appearance of the building due to the nature of the works and their visibility. The Burroughs Day case is often quoted in decisions over the materiality of external works and whether they constitute development.

2.3 The applicant cited a CLOPUD approved at Westminster City Council under 10/05260/CLOPUD on 09/08/2010. The scheme consisted of the infilling of an internal atrium/lightwell to create additional office floorspace. Westminster approved the CLOPUD on the basis that the operation would not materially affect the external appearance of the building and would not constitute development. The applicant considers that the approval is a good precedent example.

3.0 Assessment

3.1 The supporting statement submitted on behalf of the applicant asserts (on the basis of Burroughs Day) that *“as the infill Works will not be visible above the roof line of the existing building they will not materially affect the external appearance of the building”*.

3.2 The Council takes issue with this assertion that for the works to “materially affect the external appearance of the building” they must be “visible above the roof line”. What matters, in the Council’s view, is whether the works would result in a material change to the appearance of the exterior of the building when viewed from normal vantage points in the ordinary course of events.

3.3 The Council submits that the two matters the judge was principally concerned with in Burroughs Day were: (i) the nature of the works and their overall effect on the building (taking into account any particular sensitivities it might have); and (ii) the degree of visibility of those works to someone ‘looking at the building’ from a normal vantage point.

Nature of the works

3.4 The case of Burroughs Day was decided on a very particular set of facts. As discussed above, Burroughs Day involved a lift shaft within a roof valley of a building. These facts are very different from the facts of the proposed operation that form part of the subject application, which involve two substantial infill extensions to the external courtyard of the building over 3 storeys resulting in 3539m² of new floorspace.

3.5 The judge in Burroughs Day acknowledged that *“whether the external appearance of a building is*

'materially affected' is likely to depend on both the nature of the building and the nature of the alteration". He accepted that *"whether the external appearance would have been materially affected is a matter of degree"* on which he had to form a judgment according to the particular facts of the case. That case concerned comparatively minor alterations to the roof of a building; this case would involve substantial extensions to three floors that would affect a substantial part of the building.

3.6 Burroughs Day related to a listed building so involved particular sensitivities that do not apply to this case (where the building is not the subject of a statutory listing). However, even the relatively minor works to the roof of that building were deemed capable of materially affecting its external appearance. While the Council accepts that the works proposed in this case are to an external courtyard of an unlisted building (although it is a positive contributor to the Camden Town Conservation Area and is widely renowned as a striking example of early 20th Century Egyptian Revival architecture), the works are substantial and undoubtedly have a material effect on the external form of the building (i.e. they would result in a significant physical change to its external surface). As such, they have the potential to materially affect its external appearance. Whether they do so or not will depend on the degree to which the works are visible

Degree of visibility

3.7 The judge in Burroughs Day held that *"whether the effect of an alteration is 'material' or not must depend **in part** on the degree of visibility"* (**emphasis added**). This is because section 55(2) is concerned not just with alterations but with alterations that *"materially affect the external appearance of the building"*.

3.8 In Burroughs Day, the determinative fact was that the works could only be seen from one vantage point on top of another building. It was considered that from this single vantage point that the works appeared very small. Aside from this very limited view the works were deemed to not be visible from any other vantage points: *"the roof works would be entirely invisible to anyone looking at no.16"*.

3.9 The fact that the works in this case are so substantial (unlike in Burroughs Day) means that any degree of visibility of those works would be likely to have a material effect on the appearance of the building. Anyone who views these works would immediately appreciate a substantial or significant physical change. This is a very different situation from that in the Burroughs Day case where someone looking at the works would not notice such a change.

3.10 A key point to be drawn from Burroughs Day is that whether the external appearance of a building is materially affected is a matter of degree to be decided according to the particular facts of each case. The Council's view is that the facts here are so very different from Burroughs Day that it would be wrong to apply the tests in Burroughs Day too rigidly.

3.11 With a materially different set of facts there will be different considerations. The critical part of the Burroughs Day judgment (on which the applicant's submission places significant weight) is the judge's finding that *"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"*.

3.12 'But in some cases, such as the proposed operations, a building's external appearance can be materially changed even if viewed from different parts of the building itself. This was not a scenario the judge had to consider in Burroughs Day. On the facts in the Burroughs Day case, the works to the outside of the building (its roof) could not be viewed from within the same building. The judge in Burroughs Day justified his conclusion that the works would not materially affect the external appearance of the building on the basis that *"the roof works would be entirely invisible to anyone looking at no.16"* apart from the top of a nearby office block. In this case, the proposed works would be visible to anyone looking at the building from within many different parts of the building itself – of which there are many different occupiers – from the external courtyard and from the top of a nearby residential tower. There is thus a much higher degree of visibility than in Burroughs Day and, unlike in Burroughs Day, the alterations would materially affect the way in which the exterior of the building would be seen by a variety of observers looking at the outside of the building.

3.13 If an observer is standing in the external courtyard of the host building they are standing 'outside the building'. This point has not been disputed by the applicant (indeed it was accepted by the applicant at the site visit). The courtyard is a normal external vantage point as people are currently parking their cars and cycles there every day and the area is used for deliveries, servicing and maintenance – and they are all accessing the external courtyard directly from the public highway. An observer standing in the courtyard (i.e. outside the building) is going to see a material alteration to the external appearance of the building once the works are commenced. Even if it could be argued that once the works were completed an observer within the courtyard would no longer be outside the building, an observer would be able to remain 'outside the building' for a substantial period while the works are ongoing. This would be until such time as the courtyard is covered by the extension and so the observer would no longer be 'outside the building'. At the point of the works starting, the proposed operation would be visible from 'outside the building' and this will constitute the commencement of the development. The proposed works are to the exterior of the building which (from commencement and during construction) would be able to be viewed by someone 'outside the building'.

3.14 Furthermore, the Council considers that once the works are complete they would materially affect the external appearance of the building as they could be viewed from within residential units at the top of a nearby tower (see Figure 1 below). Although in Burroughs Day, a single view from the top of a nearby office block was not considered to be sufficient to find that the works materially affected the external appearance of the building in that case, that was due in part to the very limited extent of the works themselves: they were so minor that even though they might be seen from that one vantage point, they were not considered to materially affect the building's external appearance (the judge said that "from the Berkely Square office building, the degree to which the external appearance of no 16 would be affected would be very small, though perhaps not minimal"). In this view from the nearby tower, the much more substantial works that are proposed here would, in the Council's view, have a material effect on the external appearance of the building. But whereas in Burroughs Day there was only that one viewpoint, here the works would also be visible from different parts of the building itself (by different occupiers) and from the external courtyard. It would also be possible for glimpse views of the works from Mornington Crescent when the roller shutter doors are open.



Figure 1 (left): View from 78 Dalehead, Harrington Square. Dalehead is one of three 20 storey tower blocks (in addition to Gillford and Oxenholme) which lie adjacent to the site to the southwest.

3.15 In Burroughs Day the limited works to the exterior of the building could only be viewed from one vantage point at the top of a neighbouring office building; in this case the substantial works to the exterior of the building will be seen from the top of the nearby tower, from the external courtyard and from different parts of the building itself (which are in different occupation). The proposed alteration, which would be a significant physical change, would therefore be one which materially affects the way in which the exterior of the building will appear to observers looking at the outside of the building from a variety of normal vantage points.

3.16 The applicant has asserted that works must be visible from public vantage points; the Council disagrees. The judge in Burroughs Day stated: *"In my judgment, all roof alterations which can be seen from any vantage point on the ground or in or on any neighbouring building or buildings would be capable of affecting the "external appearance" of the building in question"*. This statement is very clear that any normal vantage points, whether public or private, should be taken into account. The test is not whether the material change can be seen from a public viewpoint (rather than from a private building or courtyard); what matters is the degree of visibility in the ordinary course of events. The judge in Burroughs Day was quite clear that it was normal vantage points (whether on public or private property) rather than unrealistic ones (such as from hot air balloons) that were to be taken into account.

Westminster City Council decision

3.17 The applicant has submitted a decision made by Westminster City Council (WCC) at 6 Agar Street under 10/09647/CLOPUD (Officer Report attached as Appendix 1). The decision, made under delegated authority by WCC, approved the infilling of an atrium at multiple levels to provide additional office floorspace. This approval was put forward as a precedent by the applicant as they consider it to involve a similar set of circumstances as the proposed works here.

3.18 The Council considers that the WCC approval has a different set of circumstances from the proposal. The Officer Report (Appendix 1) makes various references to the area of the building being an 'internal atrium' or 'lightwell' which people rarely went into, did not benefit from direct access to/from the public highway and was not visible from any vantage point 'outside the building'. The atrium at Agar Street appears to be a very different sort of enclosure from the courtyard at Greater London House which is used by people and vehicles accessing it directly from the public highway. The atrium at Agar Street is an internal space (an 'internal lightwell') which is not considered to be a normal vantage point as people did not go into it on a daily basis as a matter of course. In contrast, Greater London House has a large external courtyard covered in tarmac which is well used for vehicle and cycle parking by various people on a daily basis and which has direct access onto the public highway.

3.19 Even if the circumstances were identical, different local planning authorities might come to different conclusions, given that subjective judgment is involved. Camden is in no way bound to a decision made by another authority and each CLOPUD must be considered on its own merits. Notwithstanding this, the circumstances of the current proposal are different from those at Agar Street and require a different judgment to be made.

Islington decision

3.21 An Islington appeal decision (APPIV5570/C/OO/I056516 dated 10/08/2001, attached as Appendix 2) provides further support for the proposition that one has to look at each case in a common sense way, based on the particular facts of the case. In the Islington case the Appellant considered that the installation of a small window at the rear of the property did not materially affect the external appearance of the building and would not constitute development as defined in s55 of the Act. The appeal considered whether the window would be an alteration to a building which falls within the exception of s55(2)(a)(ii).

3.22 The Inspector considered that there is no dispute that the window cannot be seen from any public vantage points but is visible from an adjoining basement flat. On a strictly Burroughs Day approach it was considered that the window would not constitute a significant alteration in relation to the scale of the building overall. However, the Inspector considered that the factors listed in Burroughs Days are not exhaustive and that account should also be taken of other considerations. Based on the window having an amenity impact on an individual occupier the Inspector concluded that the installation of the window is not de minimis and was sufficient to constitute development for the purposes of s55.

3.23 The above appeal makes it clear that there may be other considerations that need to be taken

into account which did not present themselves in Burroughs Day (such as amenity (not relevant in Burroughs Day) or the ability to be able to view the change to the external appearance of the building from different parts within the same building (not something that was possible in Burroughs Day)). The proposed operation is even further removed from the Burroughs Day set of facts than the Islington appeal case was. Even in the Islington case, the Inspector felt unable to consider the case to be a similar situation to that in Burroughs Day as the Inspector had different facts and considerations to deal with.

Summary

3.24 Below are a number of points summarising the Council's position:

- This case is materially different to Burroughs Day and has a significantly different set of facts
- The proposal results in a material alteration that is not de minimis in terms of its construction, resulting physical appearance, visibility and impacts
- The nature of the alteration is significant as it involves 2 separate extensions over 3 floors of the building with an uplift of 3,539m² GIA. It would substantially infill the external courtyard area
- The nature of the building itself is significant. It lies within the Camden Town Conservation Area and is renowned as a striking example of early 20th Century Egyptian Revival architecture
- The external works would have a high level of visibility from a number of vantage points inside and outside of the building. This includes from multiple floors and elevations of the building itself, within the external courtyard of the building, a nearby residential tower (Dalehead) and from Mornington Crescent when the roller shutters are open
- A precedent has been set at appeal (see Appendix 2) which clearly states that the factors in the Burroughs Day case were not exhaustive and that account should also be taken of other considerations
- It is noted that the judge in Burroughs Day held that "whether the effect of an alteration is "material" or not must depend **in part** on the degree of visibility". The degree of visibility is therefore only part of the judgment as to whether the effect of an alteration is material

4.0 Conclusion

4.1 The proposed operations would have a material effect on the external appearance of the building. There would be a material change in the external form of the building; that change would be clearly visible from a number of normal vantage points, both outside and within the building. It would therefore result in a material change to the external appearance of the building as appreciated by observers viewing the outside of the building in the ordinary course of events. For these reasons, the Council considers that the proposed works constitute "development" for the purposes of section 55 of the Act. Therefore, planning permission would be required for the proposed development.

5.0 Recommendation: Refuse Certificate of Lawfulness (Proposed)

APPENDICES:

Appendix 1: 6 Agar Street Officer Report ref: 10/09647/CLOPUD

Appendix 2: 1A Florence Street Appeal Decision ref: APP/V5590/C/00/1056516

Appendix 1: 6 Agar Street Officer Report ref: 10/09647/CLOPUD

Delegated Report**Development Planning****Address:** 6 Agar Street, London, WC2N 4HN,

Case No.:	10/09647/CLOPUD	TP:	TP/4747
Date of Application:	03.11.2010	Date Valid:	03.11.2010
Date amended/ completed:	03.11.2010	8 Wk Date:	29.12.2010
Agent:	Ms Natalie Rowland / Gerald Eve LLP	On behalf of:	
Development Plan Context:	- London Plan July 2011 - Westminster's City Plan: Strategic Policies 2013 - Unitary Development Plan (UDP) January 2007		

LB: **CA:** Covent Garden**Proposal:**

Infilling of atrium at first, second, third and fourth floor levels to provide additional office floorspace at 6 Agar Street, 1-5 Chandos Place and 4-6 Bedford Street. New internal glazed curtain wall to all sides of atrium, terrace at second floor and Juliet balconies at third and fourth floors.

Consultations:**Relevant Planning History:**10/05260/CLOPUD

Infilling of atrium at first, second, third and fourth floor levels to provide additional office floorspace at 6 Agar Street, 1-5 Chandos Place and 4-6 Bedford Street.

Application Permitted 9 July 2010

CLOPUD granted on 9/7/10 for infilling of atrium at first, second, third and fourth floor levels to provide additional office floorspace at 6 Agar Street, 1-5 Chandos Place and 4-6 Bedford Street.[RN:10/05260/CLOPUD]

Considerations:

The site comprises three separate addresses: 6 Agar Street, 1-5 Chandos Place and 4-6 Bedford Street. To the rear of the facades and to the centre of the site exists an internal atrium.

The site comprises primarily office use but also contains retail and restaurant uses and a gym at ground and basement levels. Part of the site is grade II listed - the building fronting Bedford Street and Chandos Place.

A CLOPUD was issued earlier this year for the infilling of the atrium at first, second, third and fourth floor levels to provide additional office floorspace. This application seeks a CLOPUD for similar works although the current drawings have been revised to correct an error.

The Town and Country Planning Act 1990 defines development as 'the carrying out of building, engineering, mining or other operations in on over or under land'. The works would clearly fall within the definition, and as such would ordinarily require planning permission. However the Act does expressly state that development excludes works of alteration of any building where such works do not 'materially

Item No.

affect' the external appearance of the building. The test is not whether the works affect the exterior of the building but whether they materially affect its appearance. Case law has established that if change is noticeable from at least more than one vantage point then planning permission would be required.

In this case the infill proposed will not be visible from outside the building or overlooked by immediate adjoining owners. The partial infill will therefore not materially effect the external appearance of the building.

Recommendation:

Grant a Certificate of Lawfulness for the proposed development.

Case Officer or Morning Meeting Officer: Matthew Mason	Date:
Reason (if over 8/13 wk deadline):	

DRAFT DECISION LETTER

Address: 6 Agar Street, London, WC2N 4HN,

Proposal: Infilling of atrium at first, second, third and fourth floor levels to provide additional office floorspace at 6 Agar Street, 1-5 Chandos Place and 4-6 Bedford Street. New internal glazed curtain wall to all sides of atrium, terrace at second floor and Juliet balconies at third and fourth floors.

Plan Nos: Site location plan (J10059); Existing plans - (EX) 03, (EX) 04, (EX) 05, (EX) 06, (EX) 09, (EX)10; Proposed plans - (PL) 03, (PL) 04, (PL) 05, (PL) 06, (PL) 09, (PL) 10.

Case Officer: Matthew Mason

Direct Tel. No. 020 7641 2926

Recommended Condition(s) and Reason(s) or Reason(s) for Refusal:**Reason:**

It is considered that the proposed infilling of the atrium at first, second, third and fourth floor levels would not materially affect the external appearance of the building and it would not therefore amount to development requiring the benefit of planning permission from the Local Planning Authority.

Informative(s):

- 1 We do not consider these works to the internal lightwell will affect the character and appearance of this listed building. Listed building consent will not therefore be required for these works.

Appendix 2: 1A Florence Street Appeal Decision ref: APP/V5590/C/00/1056516



Appeal Decision

Inquiry held on 26 June 2001

by **Sean Slack BA LLB DipTP MRTPI**

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

The Planning Inspectorate
4/09 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 6372
e-mail: enquiries@planning-
inspectorate.gsi.gov.uk

Date

10 AUG. 2001

Appeal Ref: APP/V5570/C/00/1056516

1A Florence Street, Islington, London N1

- 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 Pinaster Properties Limited against an enforcement notice issued by the London Borough of Islington.
- The Council's reference is E001376.
- The notice was issued on 23 November 2000.
- The breach of planning control as alleged in the notice is the installation of a window to the party wall between No.1 and 1a Florence Street N1, without planning permission.
- The requirements of the notice are to remove window and close opening with brickwork as appropriate.
- The period for compliance with the requirements is 28 days.
- The appeal is proceeding on the grounds set out in section 174(2)(a),(c),(d) and (f) of the 1990 Act. The deemed application for planning permission also falls to be considered.

Summary of Decision: The appeal on ground (a) succeeds and the notice is quashed. Planning permission is granted on the deemed application subject to a condition as set out in the formal decision.

Procedural Matters

1. The evidence in relation to the ground (d) appeal was taken on oath.

Planning policy and background

2. The Islington Unitary Development Plan (UDP) was adopted in November 1994. The relevant policy is D8 which is concerned with proposals for alterations and extensions to buildings. The policy states that alterations or extensions should safeguard the daylight and sunlight to adjoining properties and avoid overlooking and disturbance. A similar policy D2 in the UDP Review Statement 2000 seeks to protect the privacy and minimise disturbance to occupants of adjoining buildings. The appeal site is within the Upper North Street Conservation Area. From the evidence, I am satisfied that the alleged development does not give rise to objections on grounds of conservation area policy.
3. The appeal concerns a small window measuring approximately 600mm high by 350mm wide which has been installed in a basement room to offices at 1A Florence Street. The window faces a small yard or patio to a basement flat at 1 Florence Street. The window is of conventional design with a small opening light and has been glazed in obscure glazing. It is claimed that the window is the only natural source of light and ventilation to the basement office. The window subject to appeal is about 2 metres from the bedroom window in the basement flat and can be seen from that property albeit at an oblique angle.

The appeal on ground (c)

4. In order to succeed on a ground (c) appeal it would be necessary to show that the alleged development does not constitute a breach of planning control. It was said that the installation of a small window at the rear of the property does not materially affect the external appearance of the building and would not constitute development as defined in section 55 of the 1990 Act.
5. No claim is made that the window is permitted development under the Town and Country Planning (General Permitted Development) Order 1995. The appeal turns on whether the window can be said to be an alteration to a building which falls within the exception in section 55(2)(a)(ii).
6. The Council have drawn attention to relevant judicial authority in Burroughs Day v Bristol City Council [1996] 1PLR 78 which sets out factors to be taken into consideration in assessing whether alterations to a building are material. These are listed in the judgement as follows;
 - (1) The alteration must be one which can be seen by an observer outside the building;
 - (2) The degree to which the alteration must be capable of being seen by observers (Burroughs) is all roof alterations which can be seen from any vantage point on the ground or in any neighbouring building;
 - (3) The external appearance must be "materially" affected, and this depends in part on the degree of visibility;
 - (4) Materiality must in every case take into account the nature of the particular building, such as whether it is listed;
 - (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.
7. There is no dispute that the window cannot be seen from any public vantage points but is visible from the adjoining basement flat and from the yard. On a strictly Burroughs approach it would appear that the window would not constitute a significant alteration in relation to the scale of the building overall. However, my view is that the factors listed in that case are not exhaustive and that account should also be taken of other considerations. Although the window has no significant impact on the appearance of the building, it clearly has a visual impact when viewed from the basement patio and from the bedroom window of the basement flat. The installation of the window of this size could have a significant impact on the amenity of an individual occupier and adversely affect the enjoyment of the property. For example, it could create the possibility of being overlooked should the obscure glass be replaced. It could enable conversations to be overheard which could result in a feeling of insecurity and loss of privacy for residents of the basement flat. For these reasons I do not consider the present appeal to be a similar situation to that in Burroughs. My conclusion is that the installation of the window is not de minimis and is sufficient to constitute development for purposes of section 55. The appeal on ground (c) therefore fails.

The appeal on ground (d)

8. It was claimed in support of the grounds of appeal that although a window had recently been installed, a window of the same size had been in position for more than 4 years. No evidence was presented at the Inquiry to challenge that of Mr Brogan that the window was installed in June 1999. The ground (d) appeal is without foundation.

The appeal on ground (a) and the deemed application


9. The issue in the appeal is whether the development would result in unacceptable harm to the amenity of residents in the basement flat at 1 Florence Street in particular through loss of privacy.
10. I saw that the window was glazed in obscure glass and in size and design did not look out of place. With the upper light open it was only possible to have a very restricted view of the wall of the adjacent basement flat. In practical terms, I do not consider the alleged development to be any threat to the privacy of the occupiers of that property. Nonetheless, an open window could transmit the sound of activities taking place in the basement office. This could have a disquieting effect on residents of the basement flat using the paved garden or patio. The appellant has offered to secure the opening light. I consider this would largely overcome the planning objection. The Council have suggested a similar condition should the appeal be allowed. I also consider it necessary that the condition should ensure that the obscure glazing is retained in order to protect the privacy of the adjoining residents. Subject to this condition, the appeal ground (a) appeal succeeds and I shall grant permission on the deemed application. In the circumstances, the ground (f) appeal does not need to be determined.

Other matters

11. I have considered all other matters raised at the Inquiry and in writing including the submissions by the Council concerning a possible breach of Article 8 of the European Convention for the Protection of Human Rights (now enacted in the Human Rights Act 1998) as a result of the alleged development.

Formal Decision

12. For the reasons given above and in exercise of the powers transferred to me, I direct that the notice be quashed and grant planning permission on the application deemed to have been made under section 177(5) of the Act for retention of a window between No.1 and 1A Florence Street, Islington N1 subject to a condition that the window shall be permanently retained in obscure glass and permanently fixed shut.


Sean Slack
Inspector

Information

A separate note is attached setting out the circumstances in which the validity of this decision may be challenged by making an application to the High Court within 6 weeks from the date of this decision.

This decision does not convey any approval or consent that may be required under any enactment, by-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Attention is drawn to the provisions of section 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires consent to be obtained prior to the demolition of buildings in a conservation area.

APPEARANCES

FOR THE APPELLANT:

Mr A Good ARICS Chartered Building Surveyor with A C Holden
Surveyors Limited, Woodview, 26 Skelmersdale Road,
Clackton-on-Sea, Essex
He gave evidence and called

Mr R Woodman Appellant Company - Pinaster Properties

FOR THE LOCAL PLANNING AUTHORITY:

Mr T Treuherz Legal Officer with London Borough of Islington Council
He called

Ms C Zacharia BTP MRTPI Enforcement Manager for the Council's Planning
Service

DOCUMENTS

Document 1 List of persons present at the inquiry
Document 2 Notification of inquiry to interested persons
Document 3 Letter from Mr W Brogan
Document 4 Extract from Islington UDP 1994

PLANS

Plan A Plan attached to Enforcement Notice
Plan B Plan showing boundary of the Angel and Upper Street (North) Conservation Areas
Plan C Survey sketch plan submitted by Mr Brogan

PHOTOGRAPH

Photo 1 Showing the window subject to appeal