

21 June 2017

Town and Country Planning Act 1990 (as amended)

APPEAL STATEMENT

By Mark Strawbridge
On behalf of Mr Girod and Ms Burrows

Appeal against refusal of planning permission by Camden Council for alterations to the rear elevation at second floor level, including creation of a roof terrace with two deck skylights and translucent screen on the two storey outrigger, and replacement of existing window with glazed door to top flat (Class C3).

Site at 59B Oseney Crescent, London, NW5 2BE

PINS ref: **APP/X5210/W/17/3178371**

LPA ref: 2016/5020/P

My ref: 0521/04/2017

For more information please contact Mark Strawbridge on 07968326331

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1 INTRODUCTION AND SUMMARY OF THE CASE

- 1.1 My name is Mark Strawbridge; I am a Member of the Royal Town Planning Institute (RTPI), a founder member of the Institute for Historic Building Conservation (IHBC) and an affiliate of the Chartered Institute for Archaeologists (CIfA). I hold various technical qualifications, a BA (hons) from Oxford Brookes, the RTPI's 1st professional exam, post-graduate diplomas in Town Planning (Bristol) and Landscape Architecture (Birmingham) and an honorary Doctorate in Liberal Arts. I am proprietor of CAMplan and Lead Consultant (Built Heritage) at Museum of London Archaeology (MOLA). I have over 30 years' post qualification experience of planning, conservation and development in sensitive locations.
- 1.2 I am instructed by Thomas Girod and Helen Burrows ('the Appellants') to appeal against the decision of Camden Council (the 'LPA') to refuse planning application LPA Ref: 2016/5020/P for "alterations to the rear elevation at second floor level, including creation of a roof terrace with two deck skylights and translucent screen on the two-storey outrigger, and replacement of existing window with glazed door to top flat (Class C3)" at 59B Oseney Crescent, London, NW5 2BE ('the Site').
- 1.3 The LPA owns the freehold on the building and gave permission for the alterations in its capacity as Landlord in April 2016. The application to Camden leaseholder services is included in the submission pack.
- 1.4 The planning application was refused on 22nd December 2016 under the provisions of the Council's delegated procedure for the following reason:

The proposed development by virtue of its detailed design, size and location would appear as an incongruous addition that would have an adverse impact on the character and appearance of the host building, wider terrace and the wider Bartholomew Estate Conservation Area. The proposal is therefore contrary to Policies CS1 (Distribution of growth), CS5 (Managing the impact of growth and Development), CS14 (Promoting high quality places and conserving our heritage), DP24 (Securing high quality design) and DP25 (Conserving Camden's heritage) of the London Borough of Camden Core Strategy and Development Policies 2010.
- 1.5 The Decision Notice and Delegated report are in the submission pack. Planning application LPA Ref: 2016/5020/P was itself a resubmission of planning application LPA Ref: 2015/4022/P which was refused on 14th September 2015 under the provisions of the Council's delegated procedure. The Decision Notice and Delegated Report for the previous application are in the submission pack.

Summary of the case

- 1.6 The aim of the planning system is to promote sustainable development. National planning policy requires that balance to be struck, taking into account the level of significance of any heritage assets likely to be affected, weighed against the benefits of the proposal, including securing its optimum viable use.
- 1.7 The LPA has refused this proposal on the basis that it 'would have an adverse impact on the character and appearance of the host building, wider terrace and the wider Bartholomew Estate Conservation Area'.

- 1.8 In this decision, the LPA has failed to take any other issues into account in particular the pro-sustainable development London Plan, and Camden's own policies which require the provision of appropriate outdoor space to combat climate change (DP22) and the provision of amenity space (DP24 and DP26). The LPA has therefore has not made a balanced decision in terms of the legislation and the National Planning Policy Framework (NPPF) advice.
- 1.9 The LPA has shown prejudicial inconsistency in the consideration of this application and the previous application in 2015:
- a. In the 2015 decision, the LPA carefully considered the character and heritage aspects, as the legislation and policy requires, and concluded that 'the terrace would represent a modest development that would not harm the setting of the conservation area.'
 - b. In the current decision, the LPA has failed to identify and assess the significance of the heritage assets affected as required by the NPPF. The LPA is therefore in no position to make an informed decision on the impact or otherwise that a proposal might have, nor has it shown what is different about this application which now makes it unacceptable on character and heritage grounds when in 2015 it was acceptable on those same grounds.
- 1.10 The LPA has not understood the difference between designated and undesignated assets for the purposes of applying the NPPF advice to this proposal, and in arriving at the decision the LPA in this case has applied the wrong tests as follows:
- a. The LPA has failed to review or assess the character and appearance of the CA since its designation and has not taken into account developments through time and as such has not assessed the proposal against the current situation.
 - b. The LPA has overstated the potential effect of the development; impact of change on the significance of the designated asset will be negligible. Introducing a high quality contemporary design into the CA, in accordance with advice in the NPPF and local policies, would amount to enhancement of the character and appearance of the CA.
- 1.11 The LPA has greatly overstated the severity of the potential impact of the proposal on the street scene, and amenity. The LPA do not point towards any standards by which to measure impact on amenity fairly. Therefore the decision appears to have been overly reliant on the representations of third parties.
- 1.12 The significance of heritage assets will not be harmed. Living conditions of adjacent property will not be materially impacted upon. It is considered that, overall, the proposal complies with both the spirit and letter of national and local policy advice, and should be approved, subject to appropriate conditions.

2 SITE DESCRIPTION

- 2.1 The site comprises a three-storey residential terrace property currently arranged as two separate residential dwellings – a one bed flat at the lower level and a 3-bed maisonette over - with a common entrance. The conversion was undertaken by Camden Council in the 1970s.

- 2.2 The property dates from the late C19th. The property is brick with details in stucco. It has white timber framed sash windows and period features including a front portico and ornate windows; and uniform proportions, which are replicated along the terrace. The existing principal roof is a pitched roof and is covered with slate tiles.
- 2.3 The property faces directly onto Oseney Crescent, effectively north. It has a small front garden, and the demise at the rear of the property has an approximate 10m long rear garden surrounded by fences. No. 59B does not have access to the rear garden.
- 2.4 The property and its five neighbouring properties (55 – 65) are residential houses of a similar size and scale. They were the last 6 units in the crescent to be constructed (post-1882) and had one or two storey rear extension wings of significant depth, with pitched roofs, although two now have flat roofs over some or all of the extension. Apart from these six properties, others on Oseney Crescent and the adjacent streets are not characterised by rear extensions although there are several instances of modern C20th extensions.
- 2.5 The main building and side return do not appear to have any evidence of wall insulation. The building's heating is achieved via gas central heating, via wall mounted radiators.
- 2.6 The application site is sustainable, being located within a residential area a short distance from Kentish Town Road and from other services and facilities.
- 2.7 The property is not listed, but is located within the Bartholomew Estate Conservation Area.

3 PROPOSAL

- 3.1 The proposal is as described on the submitted forms and plans (Nos: 001; 002; 003; 004; 005; 006; 007; 008; Structural calculations; and Design and Access Statement)
- 3.2 This proposal is a resubmission of planning application LPA Ref: 2015/4022/P that proposed a similar scheme, albeit larger in extent and with limited screening, which was turned down in 2015. The redesign subject of this appeal has been formulated in response to comments and concerns raised in respect of that earlier application.
- 3.3 The Officer's report on that consent is relevant. In relation to Design & Impact on the Conservation Area, it states (**bold** denotes the Appellants' emphasis):

*Policies CS14 of the Core Strategy, DP24 and DP25 of the Development Policies states that the Council will require all developments including alterations and extensions to existing buildings, to be of the highest design standards in terms of the character, siting, context, form and scale to the existing building and the general area. The removal of the pitch roof above the two-storey closet wing and creation of a terrace would alter the character and appearance of the closet wing. The retention of the gable end at the rear of the closet wing would hide the roof alteration from public views reducing harm to the exterior appearance. **The railings and parapet wall would be visible from neighbouring properties but would on balance not detrimentally impact the buildings positive contribution to the conservation area.** Guidance in the Bartholomew Estate conservation area appraisal states that "roof terraces are not part of the established character of the conservation area". **The roof of the two-storey closet wing extension is not the principal roof of the main property and therefore the alterations would not be considered as sensitive or prominent.** The value of the conservation area is partly on account of the limited changes and development that has taken*

place within it. The development of such a terrace is not common but the sensitive design within the remnants of the closet wing pitch roof and retention of the gable end succeeds in reducing potential harm to the character of the host property. **The terrace would represent a modest development that would not harm the setting of the conservation area.** The proposed alteration of the sash window to a French door, to access the roof terrace is only acceptable in this instance and purpose.

3.4 From this the Appellants understood that in principle a roof terrace and the alterations to achieve it would be acceptable in design and conservation area terms.

3.5 The Officer's report goes on to discuss the impact on neighbouring amenity, thus:

Under planning guidance CPG 6 which focuses on amenity, all developments are required to have some regard for the amenity of existing and future occupants. Policies CS5 (Core Strategy) and DP26 (Development Policies) state that the council will protect the quality of life of existing and future occupiers and neighbours by only granting permission for those developments that would not have a harmful effect on amenity. Such issues include visual privacy, overlooking, overshadowing, outlook, sunlight, daylight and artificial light levels. The formation of a second storey rear roof terrace projecting approximately 5.8m in depth beyond the rear building elevation would result in harmful overlooking and privacy concerns to neighbouring properties. The depth of the terrace would provide direct views into habitable rooms and overlooking privacy areas directly to the rear of the adjacent properties contrary to policy DP26.

3.6 The report concluded that:

*Guidance in CPG1 states that the possible use of screens or planting can prevent overlooking of habitable rooms or nearby gardens, without reducing daylight and sunlight or outlook of the terrace. The proposed terrace has included planters on the terrace to be in accordance with the guidance in CPG1 and prevent overlooking **however on balance the proposed planters would be insufficient to remove the harm caused to neighbouring amenity**, contrary to DP26.*

3.7 The 2015 application was turned down for the following reason:

The creation of a terrace at rear second floor level, by reason of its location and proximity to neighbouring properties would cause harmful overlooking and result in a loss of privacy to the occupiers of 57 Oseney Crescent, contrary to policy CS5 (Managing the impact of growth and development) the London Borough of Camden Local Development Framework Core Strategy; and Policy DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Policies.

3.8 It is this area of concern that the Appellants sought to address in the resubmission, seeking to resolve the amenity issue by reducing the size of the proposed terrace and including translucent screening of a height and disposition designed to preclude overlooking of whilst not obstructing light to neighbouring property. This approach is common and generally acceptable elsewhere in the Camden Borough and beyond.

The changes in the design in the second planning application are detailed below:

- a. Replacement of the railing with a 1.8m high translucent glass screen, facing the rear garden and the neighbouring property at no 57 Oseney Crescent. The screen to be set back by circa 30cm from the edge of the parapet wall running on the side of the rear extension.

- b. Shorten the length of the terrace as required to ensure the screen of the terrace will not cross a 45 degree line struck from the centre of the window of the neighbouring property most likely to be affected by the development. This will result in the end of the terrace to be set back by circa 1.5m from the outrigger's rear wall, and the proposed terrace would have a footprint of circa 12 sqm. The slated roof to be retained on the 1.5m setback at the gable end of the closet wing. The Appellants estimate that the 1.5m setback would further minimise the impact of the proposed change, as the roof line of the side return would be undisturbed.

4 REASON FOR REFUSAL (RR)

4.1 Nevertheless, application 2016/5020/P was turned down for the following reason:

'The proposed development by virtue of its detailed design, size and location would appear as an incongruous addition that would have an adverse impact on the character and appearance of the host building, wider terrace and the wider Bartholomew Estate Conservation Area. The proposal is therefore contrary to Policies CS1 (Distribution of growth), CS5 (Managing the impact of growth and Executive Director Supporting Communities development), CS14 (Promoting high quality places and conserving our heritage), DP24 (Securing high quality design) and DP25 (Conserving Camden's heritage) of the London Borough of Camden Core Strategy and Development Policies 2010.'

4.2 Given the 2016 application is smaller in size and includes a privacy screen to address the concerns raised by the first decision, it is not clear why now the LPA consider the 'design, size and location' of the development to be 'an incongruous addition that would have an adverse impact on the character and appearance of the host building, terrace and wider Bartholomew Estate Conservation Area' when in 2015 the same LPA concluded that 'The railings and parapet wall would be visible from neighbouring properties but would on balance not detrimentally impact the buildings' positive contribution to the conservation area' and the proposed terrace 'would represent a modest development that would not harm the setting of the conservation area'.

The change in view is not explained: the least the Appellants might expect from the system is to have a proposal considered with consistency.

4.3 On the expectation that the LPA did set out to apply consistency, the Appellants conclude that: (i) the LPA declared that the terrace as proposed in 2015 was acceptable but for the privacy concerns, and since (ii) the only changes in the 2016 re-submission were made to addresses the privacy concerns, then (iii) the reason for refusing the Appellants' 2016 application can only be linked to the way the Appellants propose to remedy the privacy concerns, namely the translucent screen.

The LPA has failed to assess that change in terms of harm to the significance of the designated asset; the significance of the undesignated asset or in terms of the preservation and enhancement of the character of the CA.

5 DEVELOPMENT EXAMPLES

- 5.1 Roof terraces in the vicinity of the Site and in the Bartholomew Estate Conservation Area
- Apart from the side returns on buildings numbering 55 – 65, there are few rear extensions to properties on the north side of Oseney Crescent. Some properties on Islip Street have

ground floor rear extensions, which appear more recent and could host a terrace upon them. However many of these properties are split into flats and some are publicly owned, both of these factors likely operate as a natural brake on development.

- The properties on Caversham Road and Gaisford Street are typically of square design, with no or smaller rear extensions, although a terrace at what looks like upper ground level has just been added at 68 Caversham Road.
- On Patshull Road, Lawford Road, Bartholomew Road and Bartholomew Villas, many of the properties have rear extensions, whether original or modern additions. In turn, many of these have roof terraces upon them, many very similar in design to the original 2015 proposal by the Appellants. As one respondent on the 2016 application noted, 14 terraces could be seen from the rear of their property on Bartholomew Road.
- Some of these look to have been there for some time, while others are more recent: there are numerous instances of roof terraces having been approved elsewhere in the Bartholomew Estate Conservation Area in recent years, as evidenced in Appendices 1 and 2.
- While many of the properties in the Bartholomew Estate Conservation Area do not have rear extensions at all, the Appellants' research demonstrates that of those properties that do have a rear extension, the majority of those have a roof terrace upon them. See the map in the Appendix 4 for an illustrated guide.

5.2 Contemporary developments in the vicinity of the Site:

- The rear extension immediately opposite the Site, at number 57 Oseney Crescent, is topped by a flat roof crossed by a walkway providing access for 57B to the garden below through a spiral staircase. Both the walkway and the spiral staircase are metallic structures of a modern and functional appearance, and clearly visible from adjacent properties.
- The modern extension in contemporary form and using extensive glazed materials situated across the back gardens at 78A Caversham Road and clearly visible from adjacent properties including the appeal site, permission was granted by the LPA Ref: 2013/2774/P dated 21/06/2013. In the planning officer's delegated report for this building the planning officer notes that *'the Bartholomew Estate Conservation Area Statement says that extensions should be in harmony with the original form and character of the house. Although full width, the extension would still be in harmony with the existing building and the general pattern of the development in the area in terms of its materials, size and bulk... ..white render and aluminium doors and window are considered appropriate materials. The proposed part glazed and sedum roof would assist in the extension appearing lightweight and contemporary.'*¹
- A recent consent for an extension using glazed doors at 13A Oseney Crescent (Ref 2014/6925/P dated 16/06/2015), on the same street, is an example of a characterful contemporary design solution clearly visible across similar back gardens that complements the traditional appearance of the building it is appended to.

5.3 The use of privacy screening in similar cases of creation of roof terraces have been approved in the case of Victorian properties in Camden conservation areas, for instance:

- 2014/4565/P (123 Goldhurst Terrace, NW6 3EX), an exposed redbrick three storey residential dwelling dating back to the Victorian times which lies in the South Hampstead Conservation Area. In a similar case to the Appellant's, this proposed to create a terrace at second floor level, in replacement of the pitched roof of a side return. The Officer requested the use of a 1.8m high privacy screen to the side of the roof terrace to prevent overlooking. In this case, the planning decision did not go so far as to specify the type of privacy screen to be used, the applicant having originally suggested the use of a glazed screen.

¹ <http://camdocs.camden.gov.uk/HPRMWebDrawer/Record/2927426/file/document?inline>

- 2013/1577/P (14 Lady Margaret Road, NW5 2SX), a stucco fronted period property in the Kentish Town conservation area. It was proposed that the roof terrace be built at the second floor level of the closet wing be enclosed with a low level brick plinth and part opaque glazed balustrade to an overall height of 1100mm height. The Member's Briefing report found that *"in terms of design, materials and execution, the proposed roof terrace would not cause any significant material change to the appearance of the host building given the similarities to those existing on neighbouring houses. The proposed roof terrace would not harm the appearance of the building or the conservation area."*² The project was subsequently given full planning permission.
- 2015/0341/P (30 St Mark's Crescent, NW1 7TU) a brick and stucco fronted period property in the Primrose Hill Conservation Area. Proposal to increase the size of useable rear terrace which overlooked a neighbouring window. The applicants proposed 1.8m high bamboo planting to prevent overlooking. The LPA approved the application, with a requirement that planting was backed by a *"permanent structure such as timber trellis or obscured glazed screen to maintain privacy, in case the plants die or do not grow sufficiently in the future to prove an effective screen"*³.

6 PROCEDURAL COMMENTS

- 6.1 Despite stated claims to the contrary, the LPA did not seek to work in a positive and pro-active way in accordance with paragraphs 186 and 187 of the National Planning Policy Framework (NPPF)⁴ with the Appellants. During the 2016 application, the Officer did not take up any offer to discuss the proposal and to envisage any possible mitigation measures, in contradiction to paragraph 187 of the NPPF ("Local planning authorities should look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible. Local planning authorities should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area."). The officer did not let the Appellants share any concerns with the proposed plans until a few days before the decision was published, only giving the Appellants the option to withdraw their application at short notice. .
- 6.2 In particular, the Appellants would have wished to be able to engage with the Officer into a discussion as to the detailed design of the screen, including the type of translucent screen envisaged and arrive at a constructive compromise solution which works for all parties. Instead, the Officer :
- Did not reply to a suggestion made in an email to the Case Officer to discuss options for the screen, nor did the Officer make any query about the proposed screen. **The Appellants believe that the use of patterned glass with a Pilkington Privacy Level of 3 or above would address the privacy concerns while allowing light and colours to pass through the screen; such a glazed screen would therefore bear little visual impact.** The Appellants were prepared to provide the Case Officer with samples of the type of glass envisaged, allowing for comparison with the frosted glass typically used for privacy screens⁵.
 - During the planning application process the Appellants proposed to remove the screen at the end of the terrace, adjacent the retained element of outshut roof. Removing this portion of the screen which is not essential for privacy purposes (the end of the terrace only overlooking the end of the gardens of 59 and 61 Oseney crescent), would indeed have

² <http://camdocs.camden.gov.uk/HPRMWebDrawer/Record/2943648/file/document?inline>

³ <http://camdocs.camden.gov.uk/HPRMWebDrawer/Record/5153818/file/document?inline>

⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf

⁵ The Appellants are willing to discuss changes to the design, in a spirit of cooperation, during this appeal.

helped make the proposed screening more acceptable. This suggestion was made in an email to the Case Officer to which there was no reply.

- 6.3 There has been a lack of consistency of approach and decision making regarding the use of contemporary-style glazing in conservation areas. Contemporary glazing has been approved in developments in the conservation area, including directly opposite to the rear of the Appellants' property. There are many roof terraces that have been approved in this conservation area. In other Camden conservation areas very similar cases where translucent glass screens are proposed or added for privacy reasons have been approved by this LPA (Please see examples discussed in paragraphs 5.1 - 5.3, above, and in Appendices 1 and 2). The Appellants' proposal should be treated fairly and consistently in all respects, in the light of this.
- 6.4 According to the LBoC website⁶, having attracted three objectors the second application should have been presented to the Members Briefing Panel, which it was not. This was clearly in breach of standing orders and reinforces the view that the LPA's decision making lacks consistency.
- 6.5 Neighbours on Oseney Crescent informed the Appellants that they had been approached by the Case Officer for their views, despite not committing, nor intending to comment on the application. When the Appellants queried this, the Case Officer stated that this was 'good practice', although did not refer to which regulations allow such canvassing of members of the public. However she not seem to have made approaches with any consistency: for example, she did not approach all the residents that received written notification; neither did she provide any basis or rationale for how, therefore, she did decide to make unsolicited approaches.

7 COMMENTARY ON THE SITE AND AMENITY

Building

- 7.1 The building is as described. It was converted to flats by London Borough of Camden in the mid-1970s; the upstairs flat (59B) was not provided with any outdoor amenity space or access to the garden at that time. It is however a family dwelling. The proposed development would improve its fitness for purpose by: creating outdoor space for family living, creating an alternative and more accessible fire escape to the rear particularly for the bedrooms on the second floor, and providing an opportunity to better insulate the room below.

Conservation Area and Character

- 7.2 The site is within the Bartholomew Estate Conservation Area (CA 1992). The CA is a designated asset in terms of the NPPF.
- 7.3 The CA has a Conservation Area Assessment (CAA LBoC 2000) referenced in full in the Heritage Statement accompanying the planning application on both occasions. This document is over 5 years old; it pre-dates many of the approvals referred to in Appendix 1 and consequently is in need of review.
- 7.4 The CAA states Numbers 3-65 (odd) are noted as making a 'positive contribution to the character and appearance of the CA'; it is assumed that this refers mostly to the frontage. The rear of the terrace is only mentioned as being part of a 'composite view' when viewed from Cantelowe Gardens and Caversham Road and is ascribed no qualitative assessment.

⁶Reference: <https://www.camden.gov.uk/ccm/navigation/environment/planning-and-built-environment/planning-applications/after-an-application-is-made/deciding-the-outcome-of-an-application/>

- 7.5 The character of the CA is, in our view, largely encompassed in its unity of form, distinct townscape and the compatibility of its materials. This is solely appreciated from the public realm and comprises the frontages of the terraces exclusively. The CA has been subject to change, minor and more major, through time without detriment to its overall character and appearance and therefore its significance.
- 7.6 We would agree with the Council's interpretation embodied in the Officer's report on the 2015 application that:
- 'Guidance in the Bartholomew Estate conservation area appraisal states that "roof terraces are not part of the established character of the conservation area". However, the roof of the two storey closet wing extension is not the principal roof of the main property and therefore the alterations would not be considered as sensitive or prominent. The value of the conservation area is partly on account of the limited changes and development that has taken place within it. The development of such a terrace is not common but the sensitive design within the remnants of the closet wing pitch roof and retention of the gable end succeeds in reducing potential harm to the character of the host property. The terrace would represent a modest development that would not harm the setting of the conservation area.'*
- 7.7 It is respectfully suggested that nothing material has changed in the interim and the proposal subject of this appeal is not sufficiently different to facilitate a polar opposite view in principle.
- 7.8 The cumulative impact of change has not impacted negatively on the significance of the designated asset and there is no suggestion that a 'tipping point' has been reached wherein one more change is going to cause harm.

Amenity

- 7.9 There was no 'in principle' objection to the proposed development at the time of the 2015 application according to the Case Officer's report (quoted above). The concerns were concentrated on the impact on the amenity of the neighbouring property.
- 7.10 The resubmission subject of this appeal seeks to resolve these issues by design. The glazed screen will negate any opportunity for inter-visibility or overlooking while allowing light through.
- 7.11 In reference to daylight and amenity, the LPA's CS document recommends reference to the *"British Research Establishment's Site Layout Planning for Daylight and Sunlight – A Guide to Good Practice"* (1991). This sets out broad methodologies for assessing the impact of development on light to principal windows of existing property. A commonly used rule of thumb is the '45 degree rule'; a more comprehensive method is the Vertical Sky Component (VSC). In relation to existing buildings this works thus:
- 'If any part of a new building or extension measured in a vertical section perpendicular to a main window wall of an existing building, from the centre of the lowest window, subtends an angle of more than 25 degrees to the horizontal, then the diffuse daylighting of the existing building may be adversely affected. This will be the case if either:*
- (a) the vertical sky component measured at the centre of an existing main window is less than 27%, and less than 0.8 times its former value;*
- or*
- (b) the area of the working plane in a room which can receive direct skylight is reduced to less than 0.8 times its former value.'*
- 7.12 The window(s) on the next-door property potentially affected are at a lower level than the balustrade proposed (which is translucent in any event) and as such the existing eaves of the rear outshut are already within the 25 degrees parameter. The translucent balustrade, set back off the eaves line, will therefore not obstruct any more light than the building does at present.

8 SIGNIFICANCE OF THE ASSET(S)

- 8.1 Given that the key issue identified by the officers in this case is the potential impact on the Conservation Area, it is surprising that the LPA at the outset did not properly assess the significance of the designated asset - the CA or the undesignated asset No 59B⁷. As a consequence, The Appellants would argue that the LPA was unable to determine whether or not there would be impact or harm and have come to their conclusions through no reliable process. The reason for refusal is unsound in this respect.
- 8.2 'Significance' lies in the value of a heritage asset to this and future generations because of its heritage interest, which may be archaeological, architectural, artistic or historic. Known and potential heritage assets within the site and its vicinity should be identified from national and local designations, Heritage data and expert opinion. The determination of the significance of these assets is based on statutory designation and/or professional judgement, set against the 'four values' - i.e. Evidential, Aesthetic, Historical and Communal values. (Ref: Conservation Principles and Guidance for the Sustainable Management of the Historic Environment (English Heritage, now Historic England, April 2008)).
- 8.3 As a baseline, heritage assets are set against the following table:

Heritage asset description	Significance
<i>World heritage sites Scheduled monuments Grade I and II* listed buildings English Heritage Grade I and II* registered parks and gardens Protected Wrecks Heritage assets of national importance</i>	<i>Very high (International/ national)</i>
<i>English Heritage Grade II registered parks and gardens Conservation areas Designated historic battlefields Grade II listed buildings Burial grounds Protected heritage landscapes (e.g. ancient woodland or historic hedgerows) Heritage assets of regional or county importance</i>	<i>High (national/ regional/ county)</i>
<i>Heritage assets with a district value or interest for education or cultural appreciation Locally listed buildings</i>	<i>Medium (District)</i>
<i>Heritage assets with a local (i.e. parish) value or interest for education or cultural appreciation</i>	<i>Low (Local)</i>
<i>Historic environment resource with no significant value or interest</i>	<i>Negligible</i>
<i>Heritage assets that have a clear potential, but for which current knowledge is insufficient to allow significance to be determined</i>	<i>Uncertain</i>

The Conservation Area is, as a baseline, a designated asset of HIGH significance. The building on site is an undesignated asset of only local interest and are therefore of LOW significance.

- 8.4 The principal designated asset identified is the CA. Where this part of the asset can generally be experienced is the public realm in proximity to the site. The rear of the building group is not generally available to view and it is neither prominent nor a focal point. What little actual view is

⁷ It is noted that there is no comment from the Conservation Officer on file and the Appellants' FOI request discovered no correspondence on this application.

available is taken tangentially whilst moving along the street. In accordance with the requirements of the NPPF, the significance of the designated asset is assessed as follows:

Conservation Area		
Value	Criteria	Commentary
Evidential	The potential of the physical remains to yield evidence of past human activity. This might take into account date; rarity; state of preservation; diversity/complexity; contribution to published priorities; supporting documentation; collective value and comparative potential.	The CA was designated in 1990, assessed in 2000 and there have been relatively minor changes, approved and not, ever since. The cumulative impact has not affected the overall value and appearance of the place.
Aesthetic	This derives from the ways in which people draw sensory and intellectual stimulation from the heritage asset, taking into account what other people have said or written;	The aesthetic experience and quality of the area is largely through its cogent and unified architectural appearance and townscape, mostly associated with the Streetside elevations.
Historical	The ways in which past people, events and aspects of life can be connected through heritage asset to the present, such a connection often being illustrative or associative;	The CAA sets out the history of the place in detail.
Communal	This derives from the meanings of a heritage asset for the people who know about it, or for whom it figures in their collective experience or memory; communal values are closely bound up with historical, particularly associative, and aesthetic values, along with and educational, social or economic values.	There is little to substantiate the communal history of the area other than references to development relating to the church.
Overall Assessment	The designated asset, that is the Conservation area as a whole, is of High Significance	

8.5 The significance of the undesignated asset is assessed as follows:

Undesignated Asset – 59B		
Value	Criteria	Commentary
Evidential	The potential of the physical remains to yield evidence of past human activity. This might take into account date; rarity; state of preservation; diversity/complexity; contribution to published priorities; supporting documentation; collective value and comparative potential.	The asset has been altered through time; it is part of a group identified as having a presence in the street and making a contribution to the character of the area. There is little research written about it.
Aesthetic	This derives from the ways in which people draw sensory and intellectual stimulation from the heritage asset, taking into account what other people have said or written;	The building contributes to the character of the area through the consistency and unity of the front elevation of the group. The rear elevation is not prominent in any viewpoint.
Historical	The ways in which past people, events	There is little written about this

	and aspects of life can be connected through heritage asset to the present, such a connection often being illustrative or associative;	asset, and no past events are linked to the site.
Communal	This derives from the meanings of a heritage asset for the people who know about it, or for whom it figures in their collective experience or memory; communal values are closely bound up with historical, particularly associative, and aesthetic values, along with and educational, social or economic values.	There is little to substantiate the communal history of the group or any associations with any other factor.
Overall Assessment	The undesignated asset, that is 59B, is of Low Significance	

9 LEGISLATION AND POLICY

9.1 This section will provide an overview of relevant legislation, policy and advice for ease of reference with a discussion of its relevance for this appeal.

Legislation, policy and advice that will be discussed include:

1. **The Planning (Listed Building and Conservation Areas) Act 1990**
2. **The National Planning Policy (NPPF 2012) and National Planning Policy Guidance (NPPG 2014)**
3. **The London Plan 2013/2016**
4. **Local policies**
 - a. **Camden Core Strategy 2010 – 2025 Local Development Framework**
 - b. **Camden Development Policies 2010 – 2025**
 - c. **Supplementary Advice – Bartholomew Estate Conservation Area Statement (LBoC 2000)**

9.2 The Council have not properly followed current national policy and have been selective in the application of local policy, referring to those which might support their refusal while ignoring those which point to approval. In particular, local policy CS1 is hardly relevant, and policies DP22 and DP26 are both supportive of the provision of external amenity space. These omissions suggest that the LPA have not come to a 'balanced judgement' as required by the NPPF.

9.3 Notwithstanding the comments and the reason for refusal, we believe that the proposal meets the requirements of and is wholly in accord with the NPPF, and therefore with those elements of local policy which are in accordance with it.

9.4 The Appellants believe that change is a natural and welcome process. The historical character of the property should be preserved and enhanced where possible but appropriate changes and additions form part of the natural development of buildings and heritage assets.

1. The Planning (Listed Building and Conservation Areas) Act 1990 as amended, (the Act) with particular reference to S72.

Conservation Areas

S72 states the general duty in respect of CAs, thus:

In the exercise, with respect to any buildings or other land in a conservation area, of any powers under any of the provisions mentioned respects in subsection (2) above, special attention shall be paid to the desirability of conservation preserving or enhancing the character or appearance of that area.

Commentary

The Act

9.5 The 1990 Act requires decision makers to have ‘special regard’ to heritage matters but it does not require the exclusion of all other issues. The aim of is to promote sustainable development; whereas heritage is an integral component of sustainability, other factors such as viability, economic and community development and good design need to be considered and a balance reached.

9.6 S72 of the Act requires that LPAs should ensure that ‘special attention shall be paid to the desirability of conservation preserving or enhancing the **character or appearance**⁸ of CAs’. Also, the wording stresses special ‘attention’ in the case of CAs rather than special ‘regard’ in the case of Listed Buildings – it is suggested that attention is careful assessment whilst regard means that notice must be taken – this constitutes a lesser test.

9.7 Case law (South Lakeland) has stated that the “*statutorily desirable object of preserving the character of appearance of an area is achieved either by a positive contribution to preservation or by development which leaves character or appearance unharmed, that is to say, preserved.*”

2. The National Planning Policy (NPPF 2012) and National Planning Policy Guidance (NPPG 2014)

The purpose of the planning system is to contribute to the achievement of sustainable development. The policies in paragraphs 18 to 219, taken as a whole, constitute the Government’s view of what sustainable development in England means in practice for the planning system.

Sustainable development

There are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles:

- an economic role – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;
- a social role – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community’s needs and support its health, social and cultural well-being; and
- an environmental role – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.

These roles should not be undertaken in isolation, because they are mutually dependent. Economic growth can secure higher social and environmental standards, and well-designed buildings and places can improve the lives of people and communities. Therefore, to achieve sustainable development,

⁸ Author’s emphasis.

economic, social and environmental gains should be sought jointly and simultaneously through the planning system. The planning system should play an active role in guiding development to sustainable solutions.

At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking. For plan-making this means that:

- local planning authorities should positively seek opportunities to meet the development needs of their area;
- Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:– any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or – specific policies in this Framework indicate development should be restricted.

For decision-taking this means:

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out of date, granting permission unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or specific policies in the Framework indicate development should be restricted.

LPA should seek to conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations;

LPA should recognise that residential development can play an important role in ensuring the vitality of centres and set out policies to encourage residential development on appropriate sites; and where town centres are in decline, local planning authorities should plan positively for their future to encourage economic activity.

Section 7 Requiring good design

The general view is that the Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people. NPPF Section 7 states that:

Planning policies and decisions should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles. It is, however, proper to seek to promote or reinforce local distinctiveness. (Para 60).

Although visual appearance and the architecture of individual buildings are very important factors, securing high quality and inclusive design goes beyond aesthetic considerations. Therefore, planning policies and decisions should address the connections between people and places and the integration of new development into the natural, built and historic environment. (Para 61).

Local planning authorities should not refuse planning permission for buildings or infrastructure which promote high levels of sustainability because of concerns about incompatibility with an existing townscape.... (Para 65)

Section 12 The historic environment

This section of the NPPF is most relevant to the appeal case. In paragraph 126 it states that assets should be conserved *'in a manner appropriate to their significance'*. The advice goes on to say:

When considering the designation of conservation areas, local planning authorities should ensure that an area justifies such status because of its special architectural or historic interest, and that the concept of conservation is not devalued through the designation of areas that lack special interest. (Para 127)

In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum, the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. (Para 128).

In determining planning applications, local planning authorities should take account of:

- *the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;*
- *the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and*
- *the desirability of new development making a positive contribution to local character and distinctiveness. (Para 128).*

When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. Substantial harm to or loss of a grade II listed building, park or garden should be exceptional. Substantial harm to or loss of designated heritage assets of the highest significance, notably scheduled monuments, protected wreck sites, battlefields, grade I and II listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional. (Para 132).*

Where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:

- *the nature of the heritage asset prevents all reasonable uses of the site; and*
- *no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and*
- *conservation by grant-funding or some form of charitable or public ownership is demonstrably not possible; and*
- *the harm or loss is outweighed by the benefit of bringing the site back into use. (Para 133)*

Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. (Para 134).

The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non

designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset. (Para 135).

Not all elements of a World Heritage Site or Conservation Area will necessarily contribute to its significance. Loss of a building (or other element) which makes a positive contribution to the significance of the Conservation Area or World Heritage Site should be treated either as substantial harm under paragraph 133 or less than substantial harm under paragraph 134, as appropriate, taking into account the relative significance of the element affected and its contribution to the significance of the Conservation Area or World Heritage Site as a whole. (Para 138).

Commentary

- 9.8 The NPPF 2012 post-dates the Core Strategy 2010, and hence the policies contained in the earlier document are only relevant in so far as they are compatible with the NPPF.
- 9.9 NPPF/NPPG sets out the 3 dimensions of sustainable development and stresses that 'these roles should not be taken in isolation'. New development of any sort in a sustainable location will contribute to a greater or lesser extent to the economy, the community and the environment, notwithstanding the special regard or attention required by the Act.
- 9.10 LPAs are required to conserve heritage assets in a manner appropriate to significance, which pre-supposes that in every case, the significance of assets will be assessed prior to determination. The LPA failed to do this and has subsequently mis-assessed the nature of the impact upon it.
- 9.11 The LPA has not taken account of the NPPF advice on design. In particular notice has not been taken of the requirement that Planning policies and decisions should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles.
- 9.12 The proposed development is well designed in all respects and will be built to a high standard of design and performance – i.e. it will be a sustainable development. The NPPF urges LPAs not refuse to planning permission for buildings or infrastructure which promote high levels of sustainability because of concerns about incompatibility with an existing townscape, all things being equal.

Section 12 – The Historic Environment

- 9.13 This sets out the basis on which heritage matters may be considered in the Development Control process. In paragraph 126 it states that assets should be conserved 'in a manner appropriate to their significance'. This presupposes that significance will be assessed prior to any opinion being formed, but also that the less significant the asset the less necessary it is to conserve it. Therefore, the loss or alteration of an undesignated asset of low significance is much less harmful overall than the loss of a designated asset of high significance.
- 9.14 In this case the proposed change is so small in relation to the CA as a whole that the designated asset – the CA – will be not impacted upon in any material way. Its significance over all will remain high, and therefore there will be no harm, in terms of the advice.
- 9.15 Para 133 refers to substantial harm or a total loss of significance of a designated heritage asset and is therefore not the appropriate test.
- 9.16 Para 134 again refers to designated assets only; the significance of the CA will suffer no harm, as the alteration to the appeal building will represent only a very minor impact to a non-designated asset, and therefore there is no requirement to show community benefit. We believe, notwithstanding this, that the proposed development accords with national and local policy and advice.
- 9.17 Even if it were concluded that there were substantial harm to the significance of the designated asset, the optimal use for the rear of the building's roof other than to keep the rain off would be

some form of amenity space for the family dwelling. Also, according with policy and displaying good design by definition (NPPF) constitutes 'community benefit.'

- 9.18 The impact of change to the undesignated asset (59B) will be minor and the harm to its low significance will be very much less than substantial. Para 135, in the case of undesignated assets, requires that a balanced judgement be made; in respect of the impact on significance, the LPA have not done this.
- 9.19 The LPA have not carried out any assessment of significance before coming to a conclusion. This is directly contrary to the advice in the NPPF.
- 9.20 The building is in the CA and therefore it or any constituent part of it cannot be, strictly speaking, in its setting.

3. The London Plan 2013/2016 as amended

The section of the LP titled 'Policy Areas - Design principles' at paragraph 4B.1 'Design principles for a compact city' states:

The Mayor will, and boroughs should, seek to ensure that developments should:

- *maximise the potential of sites*
- *promote high quality inclusive design and create or enhance the public realm*
- *contribute to adaptation to, and mitigation of, the effects of climate change*
- *provide for or enhance a mix of uses*
- *be accessible, usable and permeable for all users*
- *be sustainable, durable and adaptable in terms of design, construction and use*
- *address security issues and provide safe, secure and sustainable environments*
- *be practical and legible*
- *be attractive to look at and, where appropriate, inspire, excite and delight*
- *respect the natural environment and biodiversity, and enhance green networks and the Blue Ribbon Network*
- *address health inequalities*

These principles should be used in assessing planning applications and in drawing up area planning frameworks and DPD policies. Design and access statements showing how they have been incorporated should be submitted with proposals to illustrate their impacts.

Commentary

The London Plan

- 9.21 The LP is pro-sustainable development. We believe that the proposal meets all of the criteria set out in the LP, with particular regard to the health and climate change agendas.
- 9.22 We consider that, in the spirit of the London Plan, the proposed development seeks to maximize the use of the historical property. The existing ill-conceived and badly executed rear extension will be improved into a much more interesting and amenable space. Daylight will be maximized and high insulation values will minimize heat loss in the rear extension. The proposed development will be highly sustainable, well detailed and of a high-quality build.

4. Local policies (In so far as they comply with the NPPF)

The Reason for Refusal refers to Policies CS1 (*Distribution of growth*), CS5 (*Managing the impact of growth and Executive Director Supporting Communities development*), CS14 (*Promoting high quality places and conserving our heritage*), DP24 (*Securing high quality design*) and DP25 (*Conserving Camden's heritage*) of the London Borough of Camden Core Strategy and Development Policies 2010.

Commentary

9.23 As discussed above, NPPF post-dates CS policies which are therefore only relevant in as much as they reflect the aims of the NPPF.

4a) Camden Core Strategy 2010-2025 Local Development Framework

In the preamble, this refers to several core ideas including:

A sustainable and attractive Camden – Tackling climate change and improving and protecting Camden's environment and quality of life

The Council will ensure that Camden's places and buildings are attractive, safe and easy to use by:
a) *requiring development of the highest standard of design that respects local context and character;*
b) *preserving and enhancing 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;*

In referring to Camden's heritage, paragraphs 14.9-14.11 state that '*Camden has a rich architectural heritage with many special places and buildings from throughout Camden's history (see map 6). 39 areas, covering much of the borough, are designated as conservation areas, recognising their special architectural or historic interest and their character and appearance. We have prepared conservation area statements, appraisals and management strategies that provide further guidance on the character of these areas. We will take these documents into account as material considerations when we assess applications for planning permission and conservation area consent in these areas.*

We have a responsibility to preserve and, where possible, enhance our heritage of important areas and buildings. Policy DP25 in Camden Development Policies provides more detailed guidance on the Council's approach to protecting and enriching the range of features that make up our built heritage.'

Other policies specifically referred to in the Reason for Refusal (RR) are:

CS1 (Distribution of growth)

It is not clear how this policy applies, as the proposal does not represent 'growth' or the strategic location of mixed-use development in the Borough.

CS5 (Managing the impact of growth and Executive Director Supporting Communities development)

This policy cross refers to various development policies including the ones discussed below.

CS14 – (Promoting high quality places and conserving our heritage)

This sets out the Council's overall strategy on promoting high quality places, seeking to ensure that Camden's places and buildings are attractive, safe, healthy and easy to use and requiring development to be of the highest standard of design that respects local context and character.

It states that ‘Camden has a unique and rich built and natural heritage, with many areas with their own distinct character, created by a variety of elements including building style and layout, history, natural environment including open spaces and gardens, and mix of uses. We have a duty to respect these areas and buildings and, where possible, enhance them when constructing new buildings and in alterations and extensions.’

Commentary

9.24 CS1 is not relevant and CS14 is not compatible with the NPPF. There is no duty on LPAs or developers to ‘respect’ historic buildings and areas. The duty is to conserve heritage assets in a manner appropriate to their significance; the duty in relation to CAs is to ‘preserve or enhance’ the character and appearance of the area.

9.25 In fact, there is no requirement in any of the local policies to assess significance, which is the key consideration of the NPPF. In this respect they are superseded by NPPF.

4b) Camden Development Policies 2010-2025

Policies referred to:

Policy DP 24 - Securing high quality design

This states that ‘The Council will require all developments, including alterations and extensions to existing buildings, to be of the highest standard of design and will expect developments to consider:

- a) character, setting, context and the form and scale of neighbouring buildings;
- b) the character and proportions of the existing building, where alterations and extensions are proposed;
- c) the quality of materials to be used;
- d) the provision of visually interesting frontages at street level;
- e) the appropriate location for building services equipment;
- f) existing natural features, such as topography and trees;
- g) the provision of appropriate hard and soft landscaping including boundary treatments;
- h) the provision of appropriate amenity space; and
- i) accessibility.’

DP25 Conserving Camden’s heritage

This policy states ‘In order to maintain the character of Camden’s conservation areas, the Council will:

- a) take account of conservation area statements, appraisals and management plans when assessing applications within conservation areas;
- b) only permit development within conservation areas that preserves and enhances the character and appearance of the area;
- c) prevent the total or substantial demolition of an unlisted building that makes a positive contribution to the character or appearance of a conservation area where this harms the character or appearance of the conservation area, unless exceptional circumstances are shown that outweigh the case for retention;
- d) not permit development outside of a conservation area that causes harm to the character and appearance of that conservation area; and
- e) preserve trees and garden spaces which contribute to the character of a conservation area and which provide a setting for Camden’s architectural heritage.’

Commentary

- 9.26 Policy DP25 refers to maintaining the character of Camden's Conservation Areas – the NPPF requires the preservation or enhancement of character. Paragraph b) states that LBoC will *'only permit development within conservation areas that preserves and enhances the character and appearance of the area'*. It is impossible to preserve **and** enhance as one cannot enhance without making a change, and therefore not preserve.
- 9.27 Paragraph c) refers to harm to the character or appearance of the conservation area; the NPPF requires consideration of harm to the significance of heritage assets. Similarly, paragraph d) refers to setting but not in terms of its contribution to significance
- 9.28 In paragraph e) the policy suggests preserving trees and garden spaces are the only factors which contribute to the character of a conservation area. This is clearly erroneous and contrary to the advice in the NPPF.

Policies DP 22 and DP 26

The RR does not refer to policy DP22 – *'Promoting sustainable design and construction'* which, at paragraph 22.17, promotes the provision of external space as one of the measures to combat climate change.

The RR also omits policy DP26. *'Managing the impact of development on occupiers and neighbours'*, which would appear to be pertinent.

This 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;*
 - b) *overshadowing and outlook;*
 - c) *sunlight, daylight and artificial light levels;*
 - d) *noise and vibration levels;*
 - e) *odour, fumes and dust;*
 - f) *microclimate;*
 - g) *the inclusion of appropriate attenuation measures.*
- We will also require developments to provide:*
- h) *an acceptable standard of accommodation in terms of internal arrangements, dwelling and room sizes and amenity space;*
 - i) *facilities for the storage, recycling and disposal of waste;*
 - j) *facilities for bicycle storage; and*
 - k) *outdoor space for private or communal amenity space, wherever practical.*

Commentary

- 9.29 Policies DP22 and DP26 are both supportive of the provision of external amenity space; omission suggests that the LPA have not come to a 'balanced judgement' as required by the NPPF.

4c) Supplementary Advice

Bartholomew Estate Conservation Area Statement (LBoC 2000)

In the management section, under the heading 'Guidelines', note BE31 of this document states that:

ROOF TERRACES

BE31 Planning permission may be required for the formation of roof terraces. It is advisable to consult the Planning Service to confirm if this is the case. Roof terraces are not part of the established character of the Conservation Area. The creation of high level balconies where they will be visually intrusive or result in partial removal of the roof will be resisted.

Commentary

- 9.30 This policy is out of date (or at least has been overtaken by events) and is not born out in relation to the site and its immediate neighbours or the fact of the many roof terraces that are apparent in the wider area.
- 9.31 Historic England states that LPA's have a duty to draw up an appraisal (previously known as a Conservation Area Statement) when a Conservation areas is designated. The Camden LPA offers the original Bartholomew Estate Conservation Area Statement dated 2000 as both its 'appraisal and management strategy' for the Bartholomew Estate conservation area on its website⁹. Historic England says that Appraisals / Conservation Area Statements should be '*regularly reviewed as part of the management of the conservation area and can be developed into a management plan*'¹⁰ however the Bartholomew Estate Conservation Area Statement has not been updated for 17 years.
- 9.32 Before the CA was designated, a number of roof terraces were constructed, mostly with consent. Subsequently, schemes with roof terraces and balconies have been approved in the CA. In the last year or so several schemes have been sanctioned nearby.

The Officer's report on the 2015 application concurs with this view.

⁹ <https://www.camden.gov.uk/ccm/navigation/environment/planning-and-built-environment/planning-policy/supplementary-planning-documents--spds-/conservation-area-appraisal-and-management-strategies/>.

¹⁰ Paragraphs 21 and 22 of Historic England's Advice note 1: Conservation Area Designation, Appraisal and Management <https://content.historicengland.org.uk/images-books/publications/conservation-area-designation-appraisal-management-advice-note-1/heag040-conservation-area-designation-appraisal-and-management.pdf>.

Previous guidance from English Heritage stated that Conservation Area Statements / Appraisals should be updated every five years.

10 CONDITIONS

To assist the Inspector, in the recommended outcome of the appeal being upheld, the Appellants would suggest appending conditions:

1. Statutory time limit for implementation
2. Approved plans, for the avoidance of doubt
3. Materials/samples in particular for the privacy screening to be provided and agreed by the LPA
4. The provision and agreement of a Construction Method Statement
5. If appropriate, a provision to vary slightly the details of the submitted scheme. E.g.
'Notwithstanding the submitted plans, the design shall be amended to remove the screening across the south end of the terrace. Amended plans should be submitted to and approved by the LPA. prior to the commencement of the approved use.'

11 STATEMENT OF CASE

- 11.1 The LPA refused to grant planning permission on the grounds of having an adverse impact on the character and appearance of the host building, wider terrace and the wider Bartholomew Estate Conservation Area. This reason is supported in the Officer's report by concerns expressed in relation to (i) the design and impact on the Conservation Area, and (ii) Neighbouring Amenity, although both making the same conclusion that the proposed screen would not form an integral part of the rear elevation of the building and would appear as an incongruous addition.

Response to concerns

- 11.2 In terms of the Act, 'special consideration' of heritage matters does not preclude other issues entirely. The aim is still to promote sustainable development and a balance needs to be struck, taking into account the level of significance of the heritage assets likely to be affected. 'Conservation/preservation' in this context does not mean the preclusion of change. The LPA has failed to take any other issues into account and have therefore has not made a balanced decision in terms of the legislation and the NPPF advice.
- 11.3 The main concerns are threefold, and require different tests. I) The impact or otherwise on significance of designated and undesignated assets, II) The preservation or enhancement of the character and appearance of the C.A., and III) Whether the design of the terrace is integral and would appear as an incongruous addition. Taking these in turn:
- I) Impact*
- 11.4 The NPPF requires that heritage assets, designated and otherwise area identified and that significance be assessed by reference to known information and professional judgement. The LPA has failed to adequately assess the significance of the assets affected.
- 11.5 Having failed to adequately assess the significance of assets the LPA was therefore in no position to make an informed decision on the impact or otherwise that a proposal might have.
- 11.6 The LPA has not understood the difference between designated and undesignated assets for the purposes of applying the NPPF advice to this proposal.
- a. In coming to the decision on heritage grounds the LPA has applied the wrong tests. The NPPF sets out the various criteria in Chapter 12. The appropriate tests are a) the

impact on significance of designated and undesignated assets and b) the preservation or enhancement of character of the Conservation Area.

- b. In the 2015 decision the LPA appears to have carefully considered the heritage and character aspects commenting that *'the roof alteration would [be hidden] from public views reducing harm to the exterior appearance. The railing and parapet wall would be visible from neighbouring properties but would on balance not detrimentally impact the buildings positive contribution to the conservation area.'* The decision goes on to note that the proposed terrace *'is not on the principle roof of the main property ...'* and is of *'sensitive design... reducing the potential harm to the character of the host property.'* The 2015 decision concludes that *'the terrace would represent a modest development that would not harm the setting of the conservation area.'* The LPA have failed to show how this development which is smaller in extent, and includes a privacy screen to address concerns raised in the 2015 decision, differs from the 2015 proposal to such an extent that the principle of development is unacceptable where before it was acceptable.

- 11.7 The LPA has failed to review or assess the character and appearance of the CA since its designation or taken into account developments affecting its character and as such has not assessed the proposal against the situation on the ground.
- 11.8 The LPA has overstated the potential effect of the development; impact of change on the significance of the designated asset will be negligible.
- 11.9 The significance of the undesignated asset no.59B has not been assessed by the LPA. The significance of the undesignated assets is embodied in the qualities of the façade to the street only, in real terms The significance is low and the harm to it on account of an obscured part of a rear elevation will be negligible.

II) *Character and Appearance of the CA*

- 11.10 The view from the street will be unchanged by this development and its contribution to the character of the views between properties across the back gardens would be adequately maintained by a contemporary development as proposed. It will thereby preserve the character and appearance of the CA.
- 11.11 The Bartholomew CAAC, who might be expected to have an opinion about development in the CA has not made any objection to the original or revised applications.
- 11.12 Introducing a high quality contemporary design into the CA, in accordance with advice in the NPPF and local policies would amount to enhancement of the character and appearance of the CA.

III) *The Design*

- 11.13 The proposed design is no more nor less integral than other roof terraces that have been approved in this and other conservation areas in the borough. Indeed, for several of the terraces in the same conservation area of similar design it is impossible to tell whether they were original, and therefore integral, or later alterations.
- 11.14 The proposed design increases (from the first application) the proportion of the roof at the end of the side return which will be retained, the LPA commented at the time this was *'sensitive design within the remnants of the closet wing pitch roof and retention of the gable end succeeds in reducing potential harm to the character of the host property'*.
- 11.15 The relative size of the terrace has been reduced in the second application. It is modest and will not over power the rear elevation of the much larger three storey building it appends.

11.16 In terms of context, the proposed development is in keeping with the flat roof alteration on the equivalent space at number 57, immediately next door and with alterations to the modern glass extension approved directly opposite at 78A Caversham Road. The latter was described by the LPA as *'in harmony with the existing building and general pattern of the development in the area'* as the conservation area requires, with the glazing giving a *'lightweight and contemporary'* appearance. The proposed development with a privacy screen would achieve a similar effect.

11.17 The appellants have conducted research and propose the use of translucent (rather than opaque) glass for the privacy screening to achieve a similar effect to the development at 78A Caversham Road to the extent that it is visible to other properties across the back gardens. The screening will be barely visible, low impact, and thus congruent, from any reasonable distance.

Turning to other points:

11.18 The proposal seeks to address concerns raised about the amenity of the adjoining property by design. There will be no material impact on light or privacy attendant upon this development.

11.19 In any event the LPA has greatly overstated the severity of the potential impact of the proposal on the street scene, and amenity.

11.20 If the planning system is to be properly applied and is to be fair to all parties, amenity must be considered a constant – i.e. a baseline that is applicable wherever it is under consideration. There are various standards available but the LPA do not point towards any standards of relative disposition, space around dwellings, inter-visibility between windows, acceptable light levels or amenity space by which to measure impact on amenity. It therefore appears to be largely reliant on the representations of third parties. This is contrary to the spirit and purpose of the planning system and is not fair to the appellants.

11.21 Furthermore in the delegated report, the Case Officer has not considered, nor stated why it has ignored in its statement:

- a. The requirement to provide outside space for environmental and amenity reasons (Camden policies DP 22, 24 and 26);
- b. The pro-development spirit of the London plan;
- c. The valid arguments made in the two letters it received in support of the application.

The Site property currently lacks any access to outside space, something which the 2015 Camden plan notes *'can add significantly to resident's quality of life and applicants are therefore encouraged to explore all options for the provision of new private outdoor space.'*¹¹ As the Mayor's London plan says, *'buildings and structures should... (f) provide high quality indoor and outdoor spaces'*¹² and the Mayor's Housing special policy guidance says *'a minimum of 5 sqm of private outdoor space should be provided for 1-2 person dwelling and an extra 1 sqm should be provided for each additional occupant.'*¹³ The proposed terrace would also have other benefits such as providing a fire escape for the top flat particularly for the bedrooms on the second floor, and allowing for the improvement of insulation of the room below in the side return.

¹¹Draft Camden Local Plan 2015, Section 7, Design and Heritage, p.g.179 http://camden.gov.uk/ccm/cms-service/stream/asset?jsessionid=1D2E54598615CC444AF2653C411BFBF0?asset_id=3286995&

¹² Mayor of London plan, March 2015, Chapter 7 London's Living Spaces and Places, Policy 7.6 Architecture pg. 283 <https://www.london.gov.uk/what-we-do/planning/london-plan/current-london-plan/london-plan-chapter-7>

¹³Draft Interim Housing Supplementary Planning Guidance, May 2015, Housing Standard 4.10.1 p.g.76 and note (pg. 196) this wording in the new 2015 draft is unchanged from the existing guidance https://www.london.gov.uk/sites/default/files/draft_interim_housing_supplementary_planning_guidance.pdf

Without acknowledging the benefits of the proposed development and compatibility with local policies, the Appellants are at a loss to understand how the Officer could conclude that: *“The benefit to the amenity of the neighbouring occupiers would not outweigh the harm caused to the character and appearance of the building and the surrounding conservation area.”*

The LPA has therefore has not in the Appellants’ view made a balanced decision in terms of the legislation and the National Planning Policy Framework (NPPF) advice.

11.22 During the application process the Appellants made two suggestions to the Officer for revision of the design which are relevant in consideration of the Officer’s decision:

- a. First, the Appellants proposed a discussion on what would be the most suitable form of privacy screening: opaque glass is frequently used but the Appellants have researched patterned glass, which can offer a high level of privacy (Pilkington Privacy level 3 and above) but has a much lower impact, being barely visible once more than a few metres away. Solutions other than glazed screens have also been accepted in other cases of overlooking terraces/ balconies in the Camden Borough, for instance:
 - In case Ref: 2015/0341/P the Camden Planning Officer specified that bamboo planting was backed by a ‘permanent structure such as timber trellis or obscured glazed screen to maintain privacy’.
 - Trellis screening and planting was also accepted in the case Ref: 2014/5216/P at Flat 2, 45 Rossllyn Hill NW3 5UH; although the decision notice is missing from the LPA’s website, from the case documents it likewise appears that this was added to the design after some discussions with the planning officer, and then approved.
 - A terrace in the same conservation area on Bartholomew Road appear to use planted, possibly supported by a trellis, for screening.
- b. Second, the Appellants highlighted that the screening across the bottom of the terrace is not necessary for privacy issues and therefore to remove this from the design to reduce any character impact. The LPA has for instance accepted such a proposal in a very similar case (Ref: 2014/4565/P 123 Goldhurst Terrace, NW6 3EX), concluding that it was not necessary for privacy.

The Appellants were disappointed that the Planning Officer did not engage in discussions about either suggestion, or to find workable solutions. The Appellants remain open to the idea of workable variations in the scheme, in the spirit of ongoing dialogue as advised by the NPPF.

Conclusion

11.23 The significance of heritage assets will not be harmed. Living conditions of adjacent property will not be materially impacted upon. The design is sensitive, low impact, congruent and in keeping with nearby alterations while additional amenity to the property will be considerable. It is considered that, overall, the proposal complies with both the spirit and letter of national and local policy advice, and should be approved, subject to appropriate conditions.

Appendices

Appendix 1 - Examples of Approvals for Roof Terraces in the LB of Camden as at September 2016

Existing roof terraces in the same conservation area as 59b Oseney Crescent NW5 2BE			
Address	Consent/Date	CA	Notes
78 Bartholomew Road	-	Y	Open railings roof terrace over FF extension
81 Bartholomew Road	2013/5381/P 11/09/2013 PE99001036 11/01/2000	Y	2013 – new windows Trellis roof terrace on 1 st and 2 nd storey
82 Bartholomew Road	84241 21/05/1982	Y	On top of GF extension Open railings
84 Bartholomew Road	12168 19/10/1971	Y	On top of GF extension Open railings
11 Bartholomew Villas	8401998 23/11/1984	Y	2F open railings
19 Bartholomew Villas	2016/3994/P Pending	Y	2F wall and open railings
62/64 Bartholomew Villas	-	Y	FF open railings
71b Gaisford Street	2009/2795/P 13/08/2009	Y	Approved with railings
117 Gaisford Street	PEX0100587 21/09/2001 34250 02/09/1982	Y	On top of FF extension
64 Lawford Road (former Duke of Cambridge PH)	APP/X5210/A/14/222/4018 PE99001036 11/01/2000	Y	Appeal dismissed on heritage grounds FF and 2F open railings
70 Patshull Road	2008/5179/P 22/12/2008	Y	Creation of roof terrace at SF
72 Patshull Road	8903556 (??1989) 2016/3994/P	Y	Conversion extension and roof terrace
74/76 Patshull Road	-	Y	2F
Approvals for Roof terraces in LB of Camden 09/2015 – 08/2016			
42 Camden Square	2015/6094/P	Y	Extension, associated roof terrace
40 Chester Terrace	2016/1104/P	Y	Roof terrace Ballustrade & screening Listed Building
17 Croftdown Road	2015/4680/P	Y	Replacement works incl. roof terrace
67 Goldhurst Terrace	2016/2650/P	Y	3F roof terrace
152 Goldhurst Terrace	2016/3355/P	Y	New roof terrace as FF – see officer's report re: 'design & mitigation'
16 Healey Street	2016/1839/P		Roof terrace Ballustrade and screening – see also No. 14
158 Iverson Road	2015/4837/P	N	New rear extension and RT

Appendix 2 - Examples of Approvals for Roof Terraces in the LB of Camden since 31st December 2016

Approvals for Roof terraces in LB of Camden 31/12/2016 -01/06/2017 include:			
Address	Consent/Date	CA	Outcome
Central Somers Town Covering Land At Polygon Road	2017/2148 Addition of retractable canopy on 1st floor roof terrace 10/05/2017	N	Approved
112-116 New Oxford Street London WC1A 1HH	2017/2045/P Details of the glazed tiles, plant screening materials, decking and louvers, as required by condition 5 of planning permission ref 2016/7030/P (dated 30/03/2017) Roof terrace	Y	Awaiting decision
120 Leighton Road London NW5 2RG	2017/2104/P Erection of mansard roof extension including installation of 2 x front dormer windows and rear roof terrace with associated glazed balustrade.	Y	Approved
11 Dennington Park Road London NW6 1BB	2017/2224/P Dis-con pursuant to 2015/3109/P landscaping including R/T 19/04/2017	N	Approved
8 Prince Albert Road London NW1 7SR	Variation of condition 3 of planning permission approved on 26/07/2016 under ref: 2016/2700/P for the erection of single storey side extension with roof terrace above 11/04/2017	Y	Approved
4 Gascony Avenue London NW6 4NA	2017/0681/P Conversion from single family dwellinghouse to provide 3x self-contained flats [2x1bed & 1x2bed] including erection of 1st floor infill rear extension and new roof terrace 24/03/2017	N	Approved
6 Lyme Terrace London NW1 0SN	2017/0950 Use of the existing second floor flat roof as a roof terrace with associated pergola, metal railings and metal access stair. (CoL) 23/03/2017	Y	Approved
7, Crossfield Road Basement Flat London NW3 4NS	2017/1082/P Erection of single- storey rear extension to lower ground floor level with roof terrace above with balustrade and replacement of stairs to rear garden. 15/03/2017	Y	Approved
75 Bartholomew Road London NW5 2AH	2017/0839/P Erection of single storey, zinc clad roof extension with front roof terrace. 01032017	Y	Approved
Flat 1 1-3 Redhill Street London NW1 4BG	2017/0890/P Loft conversion with roof terrace and roof lights	Y	Approved

	23/02/2017		
17 Belsize Road London NW6 4RX	2017/0731/P Erection of rear roof terrace at first floor level and associated screening 15/02/2017	N	Approved
Flats 1 & 3 66-68 Gloucester Avenue London NW1 8JD	2017/0351/P Provision of a roof terrace on the roof of the existing lower ground floor rear extension including the installation of glazed access doors and perimeter metal balustrading. 07/02/2017	Y	Approved
29 Gayton Road London NW3 1TY	2017/0565 Erection of a single storey infill extension to the rear at lower-ground floor level, replacement of existing window with door and installation of glass balustrade for a new roof terrace, alteration to the fenestration to the rear and front elevations all associated with the use as a residential dwelling (Class C3). 02/02/2017	Y	Approved
76-78 Gloucester Avenue London NW1 8JD	2017/0073/P Mansard roof extension including roof terrace to the front and rooflight on top, to residential property (Class C3). 31/01/2017	Y	Approved
17 Redington Gardens London NW3 7SA	2017/0245/P Erection of raised roofs with associated rooflights, gabled dormers and a rear roof terrace to accommodate new second storeys to both 16 and 17 Redington Gardens 30/01/2017	Y	Approved

Appendix 3 - Examples of Relevant Appeal Decisions

Written Reps.: 03/08/2016 Inspector: H CASSINI

Address: 1 Fulham Park House, Chesilton Road, Hammersmith and Fulham, London Appellant: Lambert Pressland Ltd Authority: HAMMERSMITH & FULHAM Summary of Decision: ALLOWED
Description:

a)3 x one bedroom, 1 x two bedroom and 1 x three bedroom flats from first floor B1 offices; rear extensions over car park; formation of roof terraces over groundfloor retail units. Main issues the loss of employment and the effect on neighbouring occupiers' living conditions. Weight to a realistic Part 3 Class O fallback for conversion to residential. However consider the appeal proposal offered more appropriately sized family accommodation with amenity space provided for 4 of the 5 dwellings. Considered while a minimal loss of light would occur to the two ground floor windows of neighbour, did not find that the proposal would have a significant adverse effect. With regard to the proposed rear terraces, as a result of the distance, found no significant impact in terms of disturbance or overlooking would occur. The total size of the front terraces range from 15.5 to 26.8sqm but reduced to 12sqm due to landscaping restricting numbers; a 1.7m privacy screen proposed to mitigate overlooking.

APP/X5210/W/16/3145069

Inquiry: 7 June 2016 Inspector: Timothy C King

Address: 47 Burrard Road, London NW6 1DA

Authority: CAMDEN

Summary of Decision: ALLOWED

Description: Creation of a rear roof terrace with associated glass balustrades, planters and roof level changes at second floor above closet wing.

APP/X5210/A/09/2093255

Hearing: 12/03/2012 Inspector: N BURROWS

Address: 54 PARLIAMENT HILL, LONDON, NW3 2TL

Appellant: MR DWIGHT POLER Authority: CAMDEN

Summary of Decision: PARTLY ALLOWED, PARTLY DISMISSED

Description:

Unauthorised frameless, tinted glass balustrade around installed rooftop decking to create roof terrace; roof plant equipment. Semi detached, 5 storey unlisted property in conservation area but identified as making a special contribution to area character of Victorian Gothick Revival with elaborate detailing. Notes area of extensive rooftop vistas. Alleged roof terrace for solely leisure and entertainment, however claims fire escape route with balustrade providing a safe perimeter enclosure support. However decides escape route could be reconfigured. Frameless glass design sits uncomfortably with Victorian host detailing; appearing as an alien and unsympathetic roof feature and alteration; adding mass despite transparent quality and harming host and conservation area. Notes although decking inextricably linked to balustrade, not required to be removed; intentional under enforcement as not visible from streetscene. Small Air con unit acceptable as not intrusive.

Hearing: 06/10/2009 Inspector: L COFFEY

Address: FLAT 4, 27 SWINTON STREET, LONDON WC1X 9NW

Appellant: MR CASPAR WILLIAMS Authority: CAMDEN Summary of Decision: ALLOWED

Description: Roof extension and terrace to top floor flat in inner suburb and Conservation Area. SPD not adopted so limited weight. No harm to setting of adjacent Listed Building or character and appearance of Conservation Area due to low profile and light construction, contemporary design adding interest to utilitarian appearance of building.

Hearing: 20/07/2009 Inspector: J.M TRASK
Address: 139A & B FORTRESS ROAD, LONDON NW5 2HR
Appellant: MRS T SHEHAB Authority: CAMDEN Summary of Decision: ALLOWED
Description: Roof terrace and metal railings at 3 storey mid terrace building with ground floor surgery and flats over. Established residential area where similar terraces present. Dwelling a modern infill within Victorian terrace. Railings would not appear incongruous. No area character or appearance harm. Erection of privacy screen to preserve adjacent residential amenity from overlooking acceptable subject to Council approval.

Hearing: 26/03/2009 Inspector: D LAVENDER
Address: FLAT 58 WEST KENSINGTON MANSIONS, BEAUMONT CRESCENT, LONDON W14 9PF
Appellant: MR S BRAZIER Authority: HAMMERSMITH & FULHAM Summary of Decision: ALLOWED
Description: Roof garden from flat roof of mansion block in inner urban residential Conservation Area. No harm to character & appearance of Conservation Area or neighbour privacy subject to conditions requiring approval of details of roof structures to reduce prominence and ensure border screening sufficient to ensure privacy.

Hearing: 11/02/2004 Inspector: R MATHER
Address: 13 HIGHGATE HIGH STREET, LONDON, N6
Appellant: I M ISMAIL Authority: CAMDEN Summary of Decision: ALLOWED
Description: FLAT FROM SHOP & DORMER EXTENSION/ROOF TERRACE TO UPPER FLAT IN CONSERVATION AREA-NO HARM TO VITALITY/VIABILITY OF LOCAL CENTRE/CHARACTER OR APPEARANCE OF CONSERVATION AREA & NO HAZARD TO ROAD SAFETY DUE TO OFF SITE PARKING AS IS CAR FREE DEV'T

Inquiry: 31/07/1998 Inspector: D RUSDALE
Address: 3 ARLINGTON ROAD, NW1
Appellant: REDCOURT LTD Authority: CAMDEN Summary of Decision: ALLOWED
Description:
UNAUTHORISED ROOF TERRACE OVER REAR EXTENSION AT FLATTED HOUSE IN RESIDENTIAL AREA-NO LOSS OF NEIGHBOURS' LIGHT OR PRIVACY

Appendix 4 - Estimate of Properties with Rear Extensions and Terraces in the Bartholomew Estate CA

