

Land adjacent to No.1 Elsworthy Terrace,
London NW3
Appendix 5



Appeal Decision

Hearing held on 30 May 2012

Site visit made on 30 May 2012

by **M T O'Rourke BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 July 2012

Appeal Ref: APP/X5210/A/12/2169260

100a Fellows Road (land fronting King's College Road), London NW3 3JG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Dr Otto Chan against the decision of the Council of the London Borough of Camden.
 - The application Ref 2010/3972/P, dated 20 July 2010, was refused by notice dated 23 December 2011.
 - The development proposed is erection of a basement, ground and first floor single dwelling house (Class C3) fronting King's College Road.
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Procedural Matters

1. At the hearing the appellant agreed the Council's description of development set out above. The house would have 3 storeys, however there would not be a first floor as such since the top floor would be at street level to King's College Road. For the avoidance of doubt the description should be altered to read 'first floor (street level)' and the appeal has been determined on that basis.
2. A draft legal agreement was provided at the hearing. This was completed and a copy provided to The Planning Inspectorate in accord with the agreed timetable. It provides for the submission and approval of a Construction Management Plan and a Sustainability Plan before the development is implemented, that no new resident of the house shall be entitled to apply for a residents' parking permit, and for a highways contribution. The Section 106 agreement addresses the matters raised in the Council's fourth, fifth, sixth and seventh reasons for refusal and regard has been had to it to the extent explained in the reasoning.
3. Prior to the determination of the application, revised plans were submitted by the appellant in September 2011 in an attempt to address some of the issues that had been identified by the Council. However it appears from the correspondence that the Council declined to accept them considering them to result in fundamental alterations to the proposal which should be dealt with by way of a fresh application. After discussion at the hearing on the Wheatcroft principles and the PINS guidance and hearing the Council's concerns about third party and internal consultation, it was confirmed on behalf of the appellant that he wished the appeal to be determined on the basis of the submitted plans.
4. However it was requested that regard should be had to the revised plans in the event that there were legitimate concerns as to whether they could be

overcome by the revised plans if secured by an appropriate condition. Circular 11/95 advises that, if used properly, conditions can enhance the quality of development and enable many developments proposals to proceed where it would otherwise have been necessary to refuse planning permission, and that decision makers should always consider if there is a specific problem whether it could be overcome by the imposition of a condition, subject to meeting the Circular tests. The appeal has been considered on that basis.

Decision

5. The appeal is allowed and planning permission is granted for erection of a basement, ground and first floor (street level) single dwelling house (Class C3) fronting King's College Road at 100a Fellows Road (land fronting King's College Road), London NW3 3JG in accordance with the terms of the application, Ref 2010/3972/P, dated 20 July 2010, subject to the conditions set out in the attached schedule at Annex B.

Application for costs

6. At the Hearing an application for costs was made by the appellant against the Council. This application is the subject of a separate decision.

Main Issues

7. The main issues are:
 - (a) Whether the development would provide an acceptable standard of accommodation for future occupants in terms of natural light, outlook and natural ventilation;
 - (b) Whether adequate provision is made for planting at the front of the site and if not whether there would be harm to the character or appearance of the Conservation Area;
 - (c) The impact of the proposed development on the trees at the rear of Nos. 53 and 51 Eton Avenue; and
 - (d) The impact on adjoining residents, in terms of any overlooking or loss of privacy.

Reasons

8. The appeal site comprises a long thin strip of unoccupied scrub land behind Nos. 100A and 102 Fellows Road with a 7m frontage to King's College Road, a short side street running between Fellows Road and Eton Avenue to the north within the Belsize Conservation Area. Both the principal streets are fronted by large houses, many of which are split into flats. There are two buildings opposite the site on the west side of King's College Road. The site is identified in the Belsize Conservation Area Statement (CAS) 2003 as being in the Eton Avenue sub-area where all the buildings in the immediate vicinity are identified as making a positive contribution to the Conservation Area.
9. The development plan comprises the London Plan and the Camden Core Strategy and Development Policies adopted in 2010. Although they predate the National Planning Policy Framework, there was no suggestion at the hearing of there being any conflict with the Framework and the relevant policies have the full weight of Section 38(6).

10. Policy CS6 of the Core Strategy identifies housing as the priority land use in the Borough and where the Council seeks to maximise the supply of additional homes (policy DP2) at densities towards the higher end of the London Plan's density matrix. There are a number of other relevant Core Strategy policies and Development Policies along with adopted supplementary planning guidance which are considered in more detail in the reasoning on the main issues.

Matters not in dispute between the main parties

11. At the hearing a number of matters were agreed by the Council not to be in dispute. Although earlier applications to develop the site were refused permission including on appeal in 1995, no objection is now being made to the principle of development in landuse and transport terms. Policy BE20 of the CAS advises that modern development will not be resisted provided it respects the layout, height and scale of existing development in the Conservation Area. In that regard permission was granted in 2010 for the erection of a two storey house next to the appeal site on land to the rear of 53 Eton Avenue with subsequent permission given to enlarge the basement, add a pedestrian gate and widen the vehicle gates onto King's College Road. In agreeing that development, the Council were satisfied with its modern design and form of development including a basement and the building's proximity to the trees along the southern site boundary.
12. The Council also agreed that there was no objection in principle to the design and appearance of the house, subject of this appeal, and to its impact on the character and appearance of the Conservation Area save in respect of issue (b) which is considered below. Further there is no dispute between the main parties in respect of the acceptability of the information on the basement construction, ground stability and the structural stability of adjoining buildings and no risk of the basement being flooding. The appeal scheme also provides adequate private amenity space in the rear garden for future occupants.

Issue (a)

13. There are significant differences in ground levels between the appeal site, King's College Road, the rear garden of No. 53 Eton Avenue and that of No. 102 Fellows Road. The design of the appeal proposal utilises these differences appearing from King's College Road as a small single storey rectangular glass pavilion with semi-basement and basement levels. The limited width and depth of the plot, and need to reduce any overlooking and loss of privacy to neighbours, has determined to a large extent the design and internal layout of the house with the garden level and lower ground floor being single aspect with large windows in the rear elevation looking out over the garden area.
14. Whilst the Council were critical of the internal layout as '*contrived*' and failing to provide satisfactory living conditions for future residents, its objection is essentially about the two garden level bedrooms where the only natural light and ventilation would be provided by strip skylights. Further because of the internal layout it was argued that there would be little opportunity for them to benefit from light '*filtering*' through from the east facing garden rooms.
15. However the Council provided no evidence in its statement or at the hearing that the living conditions for future occupants would be unacceptable in terms of any national or borough wide standards. Advice on minimum requirements for daylight and sunlight is provided in Camden Planning Guidance on Amenity

(CPG6) and on Housing (CPG2) at paragraph 4.23. The skylights would have an area of more than 1/10 of the floor areas of the bedrooms, meeting the Council's own standard. Further the appellant's daylight and sunlight study indicates that with Average Daylight Factor (ADF) values of between 2.32% and 2.8%, the Building Research Establishment's guidance of a minimum of 1% ADF for bedrooms would be exceeded. The skylights are shown as opening and so would provide passive ventilation in accord with CPG2.

16. The bedrooms at garden level would not have an outlook. However Camden is an inner London Borough where houses with basements are one of its typical house types and where street rooms often have no outlook and the Council was unable to point to anywhere in its own guidance including policy DP27 or CPG4 on Basements and Lightwells that sets out such a requirement. Indeed at the hearing the appellant referred to the agreed plans for the adjoining site where the second bedroom would have a high level window and limited outlook.
17. In an attempt to address the Council's concern the appellant had submitted revised drawings (Plan B) to show the bedrooms with floor to ceiling height windows as well as the skylights which would provide an outlook from these rooms onto the southern boundary fence. However it appears the Council was not satisfied with that solution either. For the hearing the appellant's architect had prepared further drawings to demonstrate ways that the Council's objection could be overcome without detriment to the neighbours' privacy including the simple introduction of a trellis on top of the boundary fence.
18. However in that I have determined that the appeal drawings are acceptable and the development would provide an acceptable standard of accommodation for future occupants in terms of natural light, outlook and natural ventilation there is no need for me to take the matter of revisions any further. It will be for the appellant to make amendments to the scheme if he so wishes using the minor modifications process to do so.
19. I conclude on the first main issue that the development would accord with local policies CS5, CS6, CS13, and DP26 and would provide an acceptable standard of accommodation for future occupants in terms of natural light, outlook and natural ventilation as set out in CPG2, CPG4 and CPG6.

Issue (b)

20. Policy DP27 requires that basement or other underground development should not cause harm to the built and natural environment. Paragraph 27.9 advises that proposals for basements that take up the whole rear and/or front garden of a property are unlikely to be acceptable and that sufficient margins should be left between the site boundaries and any basement construction to sustain the growth of vegetation and trees.
21. The application drawings show the upper and lower basement levels extending up to the boundary of the site with King's College Road and across the full width of the site. Although the scheme provides an area at street level that could potentially be planted it would be seriously constrained both by its limited size and containment by retaining walls below ground and overshadowing by the large trees to the north and on the street. As such it was accepted at the hearing that any planting would be likely to be limited to the lawn shown on the drawings and climbers on the wall and trellis.

22. The Council referred to the Belsize CAS which describes the character of this sub-area as being houses with front gardens and boundary walls. However to my mind that description pertains more to the principal streets of Eton Avenue and Fellows Road. My observation was that the main characteristic of King's College Road is the high side boundary walls, that garden planting is not a particular feature and it is the street trees that provide the greenery.
23. The appeal scheme would retain the existing boundary wall and gates and the new house would be set back behind it. There is potential to have some planting at the front. Although even if the basement were to be set back from the street, as shown on the revised drawings, it is unlikely that it would be reasonable to expect that much could be planted that would be capable of achieving any height. This was confirmed by the appellant's arboriculturalist.
24. However it was agreed at the hearing that the scheme would not result in the loss of any tree requiring replacement. Nor is there any significant planting on the site at the moment that is visible from the street. Although the footprint of the proposed basement development would not allow for extensive boundary planting in the front garden, there is no strong planning justification in this case to warrant the set back of the basement as shown on the appellant's revised plans. Indeed on the adjoining site permission was recently granted to extend the basement up to the front boundary and where the area remaining is within the root protection area of a mature tree outside the site limiting its potential to sustain planting.
25. In that the appeal scheme provides for the retention of the boundary wall with the new house set back to allow for some planting in the front garden, it would be in keeping with the existing streetscene in King's College Road and would respect the character and appearance of the Conservation Area. I conclude on this issue that there would be no conflict with policies BE19 and BE40 of the Belsize CAS or with the objectives of Core Strategy and Development Policies CS14, CS15, DP24, DP25 and DP27.

Issue (c)

26. There is a line of trees outside the site in the gardens of Nos. 53 and 51 Eton Avenue which are subject to protection being trees in a Conservation Area. They are at a higher level with their root spread confined by the existing 3m retaining wall that forms the northern site boundary and investigations found no evidence of their roots on the site. They are an attractive amenity feature in the area, screening the houses in Eton Avenue and Fellows Road one from the other, and it is important that development on the appeal site does not adversely affect their long term health.
27. The Council's tree officer was satisfied that the arboricultural report demonstrated that the appeal scheme would not be damaging to the trees adjacent to the site. It was clear to me on my site inspection that it is those trees to the rear of Nos. 53 and 51 that the residents of the upper floor flats in Eton Avenue are particularly concerned should be retained. They are not on the appeal site and being to north of the proposed house with limited overhang, they would not conflict with the appeal proposals. There is therefore no reason why any future occupants of the new house should ask for them to be topped, lopped or felled. Indeed in granting permission for development on the land to the rear of No. 53, the Council must have satisfied itself that the

scheme proposed would not have an unacceptable impact on the trees within that site which will lie to the south of the house and its terrace.

28. The submitted drawings indicate the installation of a 2,700 litre water tank in the north east corner of the appeal site immediately next to the Sycamore tree in the garden of No. 51. Because of the difference in levels with the retaining wall acting as a root barrier, the evidence of the appellant's tree specialist was that the scheme would not cause any harm to its long term health and amenity value. This was not contradicted by any professional advice to the Council.
29. Nonetheless it is apparent looking at the site layout that there is potential to relocate the tank elsewhere on the site and the revised drawing 3E indicates an alternative location on the southern boundary by the sunken terrace. I am satisfied that this is a matter that could be made subject to a condition requiring further details of the tank's location and dimensions to be submitted, approved and implemented prior to the occupation of the new house. Thus I find no conflict with policies CS14, CS15, DP24 and DP25 which promote high quality design, conserving Camden's heritage and protecting trees.

Issue (d)

30. With respect to the impact on neighbouring properties, whilst the Council considered that the appeal scheme would be acceptable those living around the site had concerns about their privacy, overlooking, outlook and light.
31. There is a difference in levels between the appeal site and 102 Fellows Road. The scheme provides for the retention of the boundary fence and angled timber privacy screens on the southern side of the house at street level would avoid any overlooking or loss of privacy. There would be green walls to soften the building's side elevation and as it would only be single storey to King's College Road and above the existing boundary line, it would not have an unacceptable impact on the outlook from No. 102's rear windows and garden. Nor would there be any loss of daylight as a result of the development.
32. For those living in Eton Avenue to the north, views of the appeal development would be mainly screened by the boundary trees and the scheme permitted on the adjoining site which would be closer and more obvious. I am satisfied that there would be no harm to their amenities or outlook as result of the appeal scheme. Accordingly the development would comply with the requirements of policy DP26.

Planning obligations

33. Subsequent to the hearing the Council and the appellant completed a legal agreement providing obligations for various matters relating to the development. The tests in the Community Infrastructure (CIL) Regulations 2010 and in the Framework require that a planning obligation may only constitute a reason for granting planning permission where it is necessary to make the development acceptable in planning terms, is directly related to and fairly and reasonably related in scale and kind to the development.
34. The construction impact of the development is likely to be significant and much of it would take place outside of the site and therefore beyond the control of a planning condition. A planning obligation is therefore an appropriate mechanism to require the submission and implementation of a Construction Management Plan. As there might be damage to the highway outside the site

during construction, the obligation provides for a developer's contribution towards any necessary repairs in accord with policy DP2. Both obligations meet the CIL tests and can be taken into account.

35. The site is in a sustainable location with a Public Transport Accessibility Level of 5 (very good) where Core Strategy policy CS11 and Development Policy DP18 seek car free development. In that the obligation provides that future occupants of the new house would not be entitled to apply for a residents' parking permit, it directly relates to the development and is necessary to make it acceptable in planning terms.
36. Core Strategy policy CS13 and Development Policy DP22 promote sustainable design and construction and the agreement provides for the submission and approval of a Sustainability Plan prior to occupation of the new house to secure Code for Sustainable Homes level 3. This is a matter that is often addressed through planning condition. However in that the Sustainability Plan would provide for subsequent management and maintenance to maintain that standard, it would meet the CIL tests and can be taken into account.

Conditions

37. I have considered the conditions discussed at the hearing in the light of the advice in Circular 11/95 and paragraphs 203 and 206 of the Framework.
38. Conditions on materials, slab levels, foundation design, the roof top photovoltaic panels, privacy screens, landscaping, cycle parking and refuse storage are all necessary to secure an appropriate standard of development. There are trees on the adjoining site and in the street that could be damaged by plant during piling and construction works and a scheme is required for their protection during the course of the building works.
39. Having regard to the advice in the Circular there are not the exceptional circumstances in this case such as to warrant the removal of permitted development rights or any persuasive evidence that to do so would serve a clear planning purpose. For the reasons given in paragraph 29, further details of the location and dimensions of the water tank are required. For the avoidance of doubt development shall be restricted to the approved plans. The wording of the conditions has been amended in places to reflect that of the Circular Model Conditions.

Conclusion

40. The appeal proposal would make effective use of the site in a highly accessible location and would contribute to housing provision in the Borough whilst providing satisfactory living conditions for its future occupants. It would preserve the character and appearance of the Conservation Area and be in keeping with the street scene without adverse impact on surrounding residents or on the adjoining trees. As such it would comply with the objectives of the Core Strategy, the Council's Development Policies and Camden Planning Guidance as well as the Belsize CAS. I have taken into account all other matters raised but none are of such weight as to override my conclusions for the reasons given above that the appeal should be allowed.

Mary O'Rourke
Inspector

**ANNEX A
APPEARANCES**

FOR THE APPELLANT:

Sebastian Head of Counsel	Instructed by Michael Burroughs Associates
Emma Murray MRTPI	Michael Burroughs Associates
Claire Miles	Charlton Brown Architects
Tim Price	Tretec
Matthew Craske	GVA
Dr Otto Chan	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

William Bartlett	Solicitor in the Council's Legal Team
Elaine Quigley	Planning Officer
Aysegul Olcar-Chamberlin	Planning Officer (attended the site visit only)

INTERESTED PERSONS:

Hazel Hallam	Local resident
Joanne Webster	Local resident

DOCUMENTS HANDED IN AT THE HEARING

- 1 The Planning Inspectorate Good Practice Advice Note 09 Accepting Amendments to Schemes at Appeal submitted by the appellant
- 2 List of addresses sent Charlton Brown's letter of 14.12.11 informing residents of the revised plans submitted to the Council by the appellant
- 3 Appellant's note on consistency with the National Planning Policy Framework
- 4 Timeline provided by the Council as comment on the appellant's statement
- 5 Paginated copy of Appendix 1 of Michael Burroughs Associates' statement
- 6 Digest of judgement in case of R. (on application of Vieira) v Camden LBC [2012] EHC 287 (Admin) and the full judgement (submitted by the Council)
- 7 Appellant's written application for an award of costs
- 8 Draft S106 agreement
- 9 Copy of the legal agreement dated 20 June 2012

PLANS

- A Application drawings on which the Council made its decision:
1070/S - 01-06
1070/AP2 - 01C, 02D, 03D, 04D, 05D, 06, 07, 08A, 09, 10A
- B Revised drawings submitted by the appellant to the Council on 16 September 2011:
1070/AP2 - 01D, 03E, 09A
- C Revised drawings submitted at the hearing:
1070/AP2 - 09C showing cross section with a fully glazed southern wall to Bedroom 3 and angle of vision over the boundary fence
1070/AP2 - 09F 2 showing cross section with a lower glazed section in the southern wall to Bedroom 3 and angle of vision over a raised boundary fence
- D Drawings submitted by the appellant showing the permitted scheme on the adjoining land to the rear of 53 Eton Avenue (with approved amendments)
- E 1:1250 plan showing distance of 65m from rear to 53 Eton Avenue to Burnham town block on south side of Fellows Road

ANNEX B

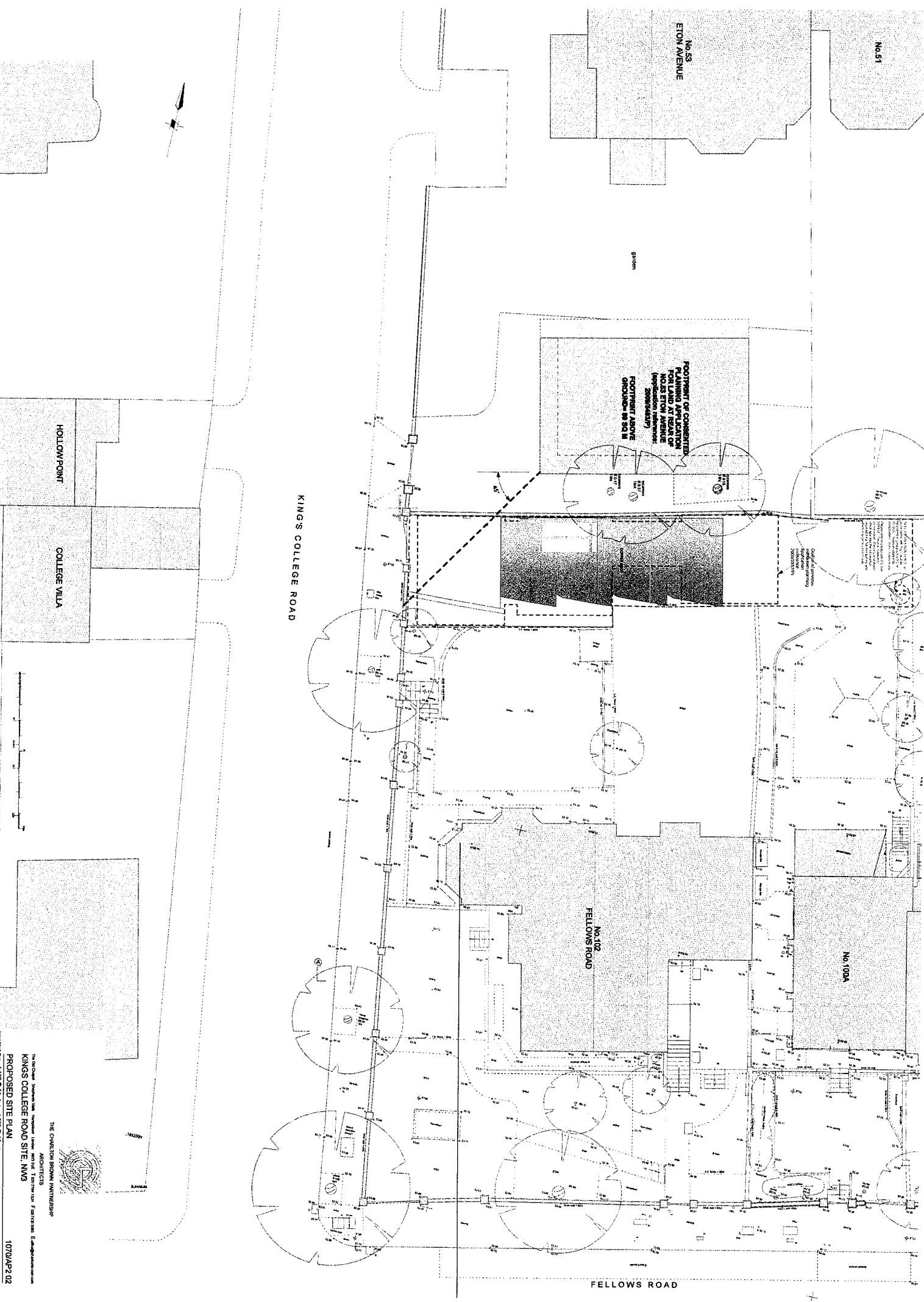
Schedule of Conditions (11 in all)

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule above as Plan A.
- 3) Notwithstanding condition 2 no development shall take place until details of all external facing and roofing materials (including windows, doors and balustrades) to be used on the building have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) Notwithstanding condition 2 no development shall take place until details of the design of the foundations and the proposed slab levels of the building in relation to the existing and proposed levels of the site and the surrounding land have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 5) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 6) Details, including sections and elevations, of the photovoltaic panels on the roof of the house shall be submitted to and approved in writing by the local planning authority before the relevant parts of the development are begun and the development shall be carried out in accordance with the approved details.
- 7) Prior to the first occupation of the house, the privacy screens on the southern elevation, as indicated on the approved plans, shall be installed and permanently retained thereafter.
- 8) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include means of enclosure; the layout, with dimensions and levels, of the pedestrian access ramp and the timber decked terrace on the site; and hard surfacing materials.
- 9) All trees on the site, or parts of trees growing over the site from adjoining sites, unless shown on the approved plans as being removed, shall be retained and protected from damage. No development shall take place until details have been submitted to and approved in writing by the local planning authority to demonstrate how the trees to be retained and those trees outside but adjoining the site are to be protected during construction works. Such details shall follow the guidelines and standards set out in BS 5837:2012 Trees in Relation to Design, Demolition and Construction. During construction works the trees shall be protected in accordance with the approved details.
- 10) No development shall take on site until details of the proposed cycle storage area for 2 cycles have been submitted to and approved in writing by the

local planning authority. The cycle storage area shall be provided in accordance with the approved details prior to the first occupation of the new dwelling and permanently retained thereafter.

- 11) No development shall take on site until details of the proposed refuse storage area have been submitted to and approved in writing by the local planning authority. The refuse storage area shall be provided in accordance with the approved details prior to the first occupation of the new dwelling and permanently retained thereafter.

END



KINGS COLLEGE ROAD

No. 102
FELLOWS ROAD

No. 53
ETON AVENUE

No. 51

No. 100A

FELLOWS ROAD

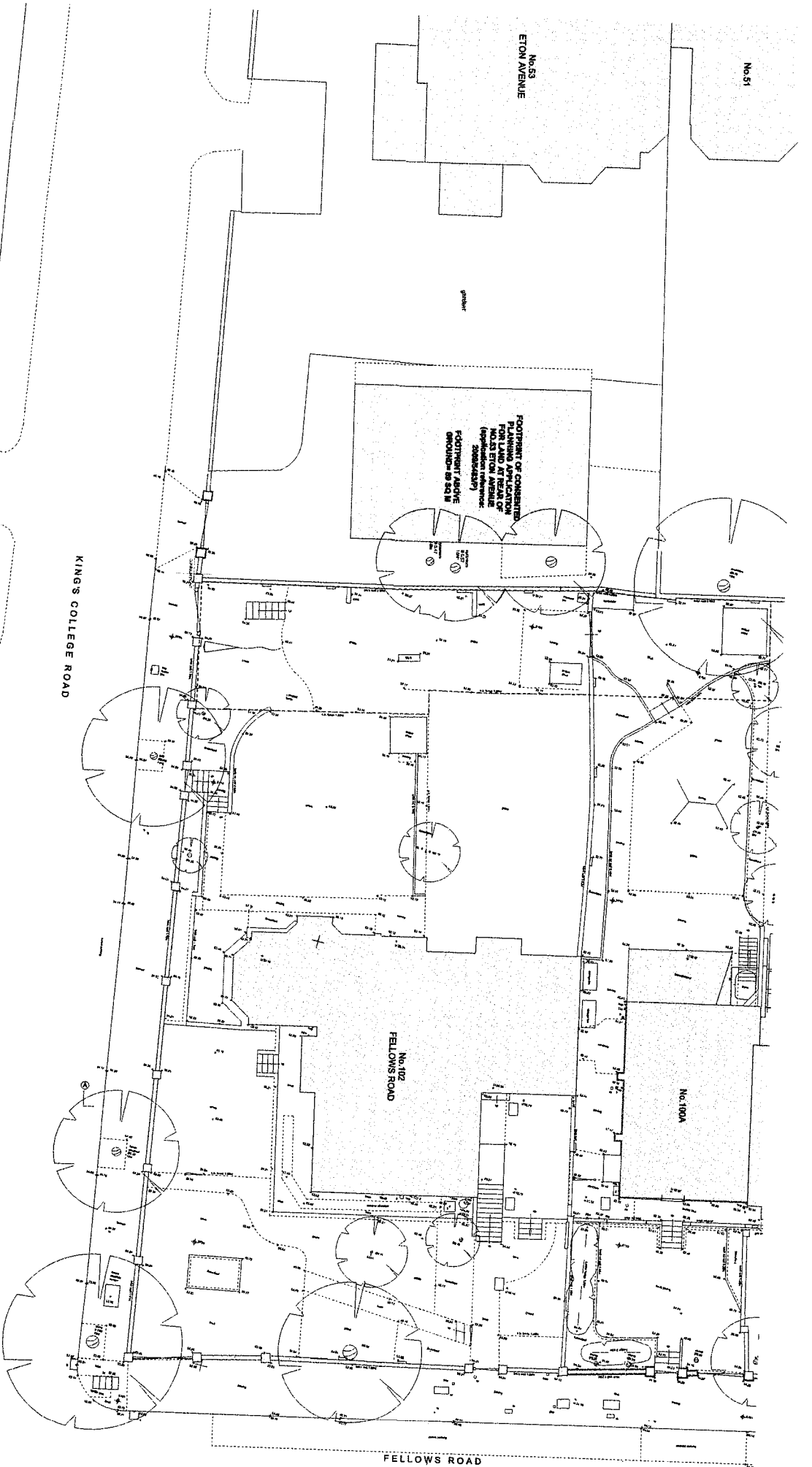
HOLLOW POINT

COLLEGE VILLA

FOOTPRINT OF COMMENTED
PLANNING APPLICATION
FOR LAND AT REAR OF
101 KINGS COLLEGE ROAD
(including reference
2006/0100/0100/0100)

THE CHARLTON BROWN PARTNERSHIP
ARCHITECTS

THE CHARLTON BROWN PARTNERSHIP
ARCHITECTS
KINGS COLLEGE ROAD SITE, NMS
PROPOSED SITE PLAN
1:100 @ A1 Scale 1:200 @ A3
1070/AP2 02

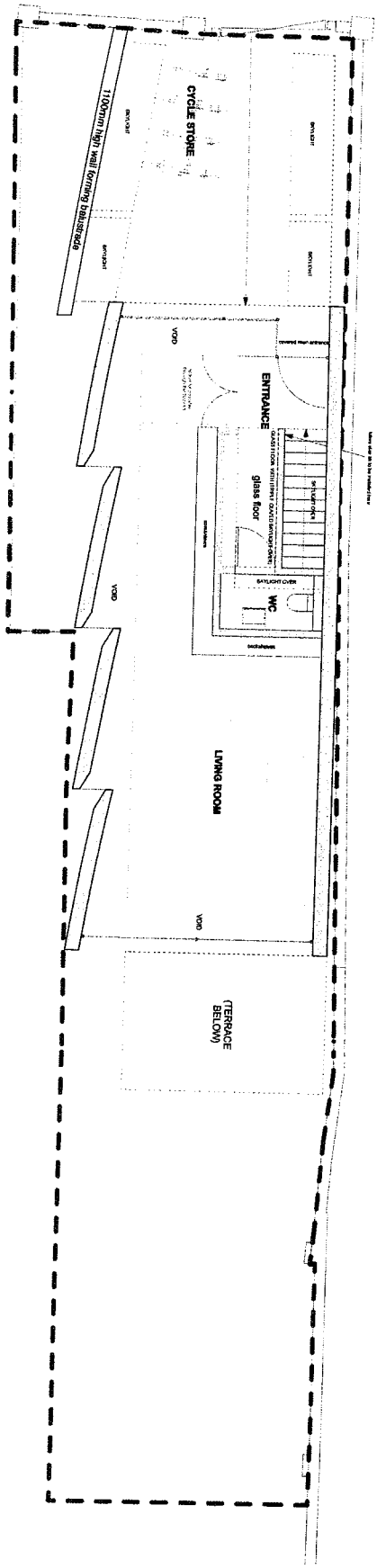


1:100 @ A1
 1:200 @ A3
 ON CENTRE SURVEYS LTD.
 200/201 FLEET STREET
 LONDON EC4A 3DF
 TEL: 020 7818 1100
 FAX: 020 7818 1100
 A member of the Survey Associates

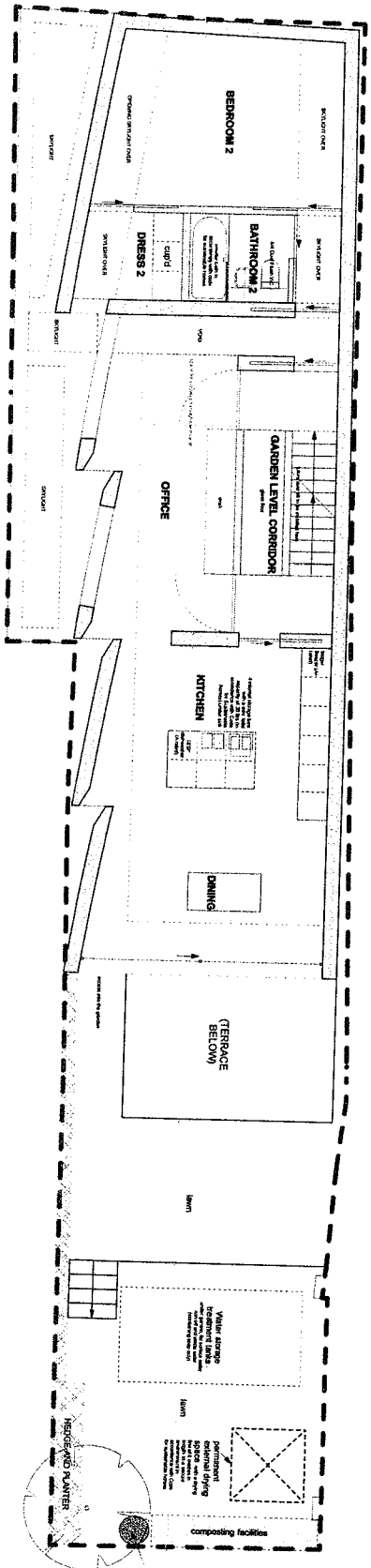
EXISTING SITE PLAN

Scale	Proj No.
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1:200 @ A3	

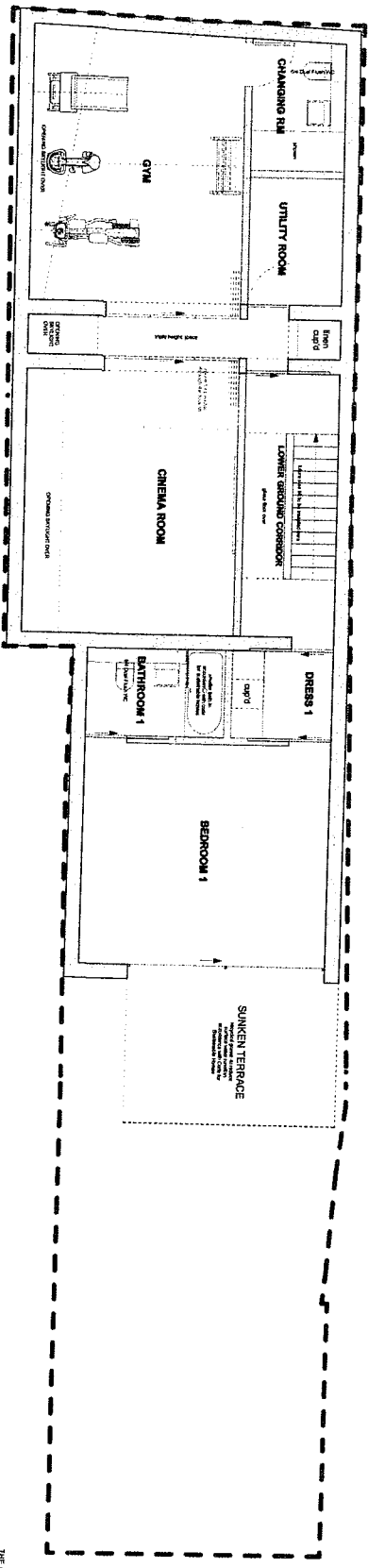
10/06
 © SURVEY ASSOCIATES LTD. 2006
 KINGS COLLEGE ROAD SITE
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 NINE
 THE
 KING'S COLLEGE ROAD PARTNERSHIP
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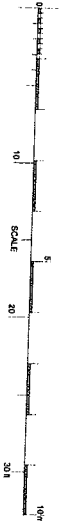
STREET LEVEL



GARDEN LEVEL



LOWER GROUND



THE CHARTERED BROWN PARTNERSHIP
 ARCHITECTS
 1070/AP2 03
 JULY 2010
 PROPOSED PLANS
 KINGS COLLEGE ROAD SITE, NW3
 1500mm Scale 1:100 © J.S. The drawing is copyright