

GROUND OF APPEAL

APPEAL REFERENCE APP/X5210/C/18/3199378

5 CHETWYND VILLAS
CHETWYND ROAD
LONDON NW5 1BT

April 2018

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1.0 INTRODUCTION

- 1.1 This grounds of appeal statement is prepared by Mr Ben Ingham and Miss Philippa Cooper (The Appellant) in support of an appeal against an Enforcement Notice EN16/0664 issued by the London Borough of Camden (LBC) on the 9th March 2018.
- 1.2 In summary the alleged breach of planning control relates to the erection of a garden building in the rear garden of 5 Chetwynd Villas, that is over 2.5m in height.
- 1.3 The Appeal is proceeding under Ground A as we consider that retrospective planning permission should be granted for the garden building. Ground F has also been included as part of the appeal case.
- 1.4 The preferred procedure for the appeal is the written representations procedure.

2.0 **GROUND A**

- 2.1 The Council claims that erection of the garden building would contrary to Policies D1 (Design) and D2 (Heritage) of the Camden Local Plan 2017. It will be explained below that the garden building is in fact compliant with this policy.

Background

- 2.2 The Appellants constructed the garden building in 2016. A floor plan, elevation and photograph of the Garden Building is included at Appendix A. The garden building replaced an existing shed. The garden shed, which had an overall height of 2.7m, was built on a concrete slab over 4 years ago and therefore would have been immune from enforcement action. The concrete slab on which the garden shed stood is 180mm above ground level. Appendix B contains a photograph of the garden shed and a Google Earth aerial photograph of the garden shed in 2013.
- 2.3 In July 2017 an enforcement officer from the Council visited the appeal site. The officer incorrectly measured the height of the garden building from the garden to the top of the fascia board, which resulted in an overall measurement of 2.86m. The correct measurement of the garden building from the top of the concrete slab is in fact 2.68m. On the 22nd March 2018 we invited the enforcement team to return the appeal property to inspect the concrete slab. Following the site visit the officer advised us that if the fascia board was removed the garden building, then the building would be considered to comply with permitted development regulations and the enforcement notice complied with. This advice was later retracted with an explanation that the height of the shed should be measured from the garden and not the concrete slab.

Site Context

- 2.4 The appeal site forms part of a terrace of properties known as 1-5 Chetwynd Villas. These properties are much smaller in form than other properties within Chetwynd Road and Dartmouth Park Road and as a result have larger gardens.
- 2.5 In terms of siting and design, the outbuilding covers 19.2sqm of the garden measuring 82sqm and (according to the LBC Delegated report on a retrospective application submitted by the Appellant) is “designed appropriately as a standalone garden structure”. (see Appendix C)
- 2.6 The garden building is level with a 3m high boundary wall with the neighbouring property at 1 Chetwynd Road and it rises approximately 1m above the boundary fence with 4 Chetwynd Villas. It is also level with the 3m high open weave timber fence boundary with adjoining property Lamora.

Planning Designation

- 2.7 The appeal site is a two-storey end of terrace residential (Use Class C3) property located within the Dartmouth Park Conservation Area. The Property has been identified as a positive contributor within the conservation area but is not nationally or locally listed.

Planning Policy

National Planning Policy Framework (2012)

- 2.8 It is considered that paragraph's 137 and 207 of the National Planning Policy Framework (2012) are most relevant to this appeal.
- 2.9 Paragraph 207 of the NPPF states:
- “Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.”*
- 2.10 Given that the garden building is only 180mm over the permitted development height of 2.5m (when measured from the base of the concrete slab) the Council's enforcement action is not considered a proportionate response to the suspected breach of planning control.
- 2.11 Paragraph 137 of the NPPF states:
- “Local planning authorities should look for opportunities for new development within Conservation Areas and World Heritage Sites and within the setting of heritage assets to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to or better reveal the significance of the asset should be treated favourably.”*
- 2.12 It is considered that the impact of the garden building on the Dartmouth Park Conservation area would be neutral and that it would preserve the character and appearance of the local area.

National Guidance - Ensuring effective enforcement

- 2.13 Paragraph: 011 Reference ID: 17b-011-20140306 states:
- “In deciding, in each case, what is the most appropriate way forward, local planning authorities should usually avoid taking formal enforcement action where: there is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area;”*

- 2.14 It is our view that the modest increase in height of the garden building above 2.5m represents a trivial breach of control that causes no material harm or adverse impact on the amenity of the 5 Chetywnd Villas or the surrounding area.

London Borough of Camden local Plan (2017)

- 2.15 Those parts of **Policy D1 (Design)** considered relevant to the appeal site state:

The Council will seek to secure high quality design in development. The Council will require that development:

- a. respects local context and character;
- b. preserves or enhances the historic environment and heritage assets in accordance with Policy D2 Heritage;
- c. is sustainable in design and construction, incorporating best practice in resource management and climate change mitigation and adaptation;
- d. is of sustainable and durable construction and adaptable to different activities and land uses;
- e. comprises details and materials that are of high quality and complement the local character;
- f. integrates well with the surrounding streets and open spaces, improving movement through the site and wider area with direct, accessible and easily recognisable routes and contributes positively to the street frontage;
- g. promotes health;
- h. is secure and designed to minimise crime and antisocial behaviour;
- i. responds to natural features and preserves gardens and other open space;
- j. incorporates high quality landscape design (including public art, where appropriate) and maximises opportunities for greening for example through planting of trees and other soft landscaping,
- k. preserves strategic and local views;

The Council will resist development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

2.16 Those parts of **Policy D2 (Heritage)** considered relevant to the appeal site state:

The Council will preserve and, where appropriate, enhance Camden's rich and diverse heritage assets and their settings, including conservation areas, listed buildings, archaeological remains, scheduled ancient monuments and historic parks and gardens and locally listed heritage assets.

Designated heritage assets

Designed heritage assets include conservation areas and listed buildings.

The Council will not permit the loss of or substantial harm to a designated heritage asset, including conservation areas and Listed Buildings, 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:

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

The Council will not permit development that results in harm that is less than substantial to the significance of a designated heritage asset unless the public benefits of the proposal convincingly outweigh that harm.

Conservation areas

Conservation areas are designated heritage assets and this section should be read in conjunction with the section above headed 'designated heritage assets'. In order to maintain the character of Camden's conservation areas, the Council will take account of conservation area statements, appraisals and management strategies when assessing applications within conservation areas.

The Council will:

- e. require that development within conservation areas preserves or, where possible, enhances the character or appearance of the area;
- f. resist the total or substantial demolition of an unlisted building that makes a positive contribution to the character or appearance of a conservation area;
- g. resist development outside of a conservation area that causes harm to the character or appearance of that conservation area; and
- h. preserve trees and garden spaces which contribute to the character and appearance of a conservation area or which provide a setting for Camden's architectural heritage.

Planning Considerations

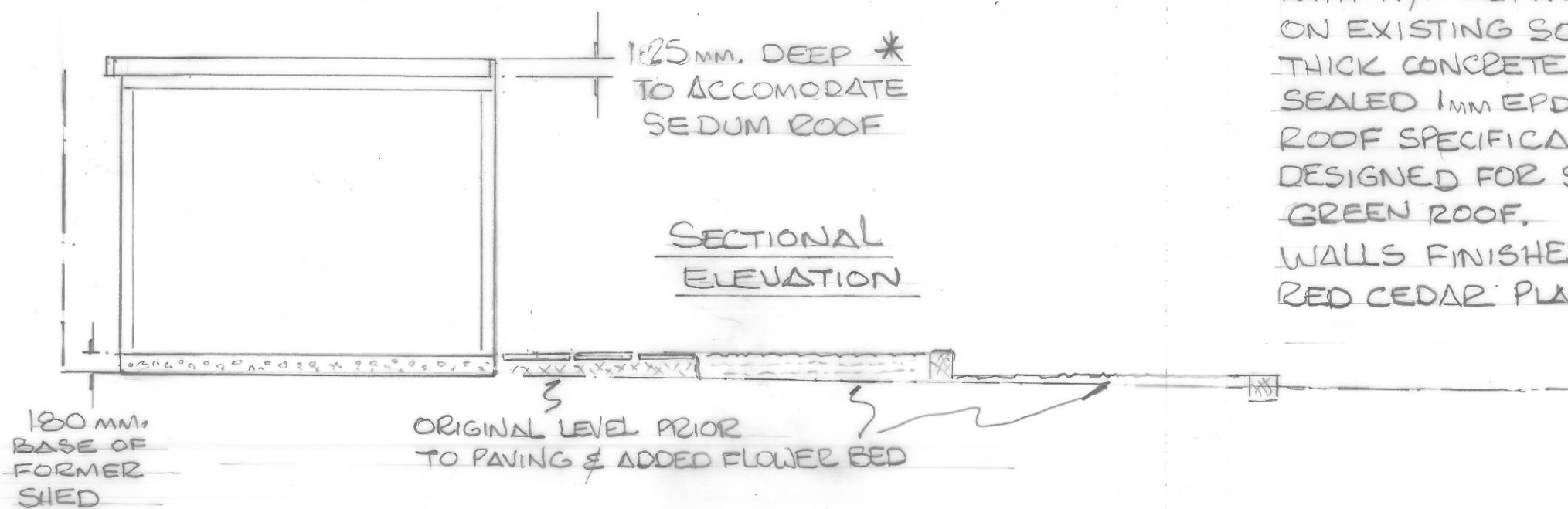
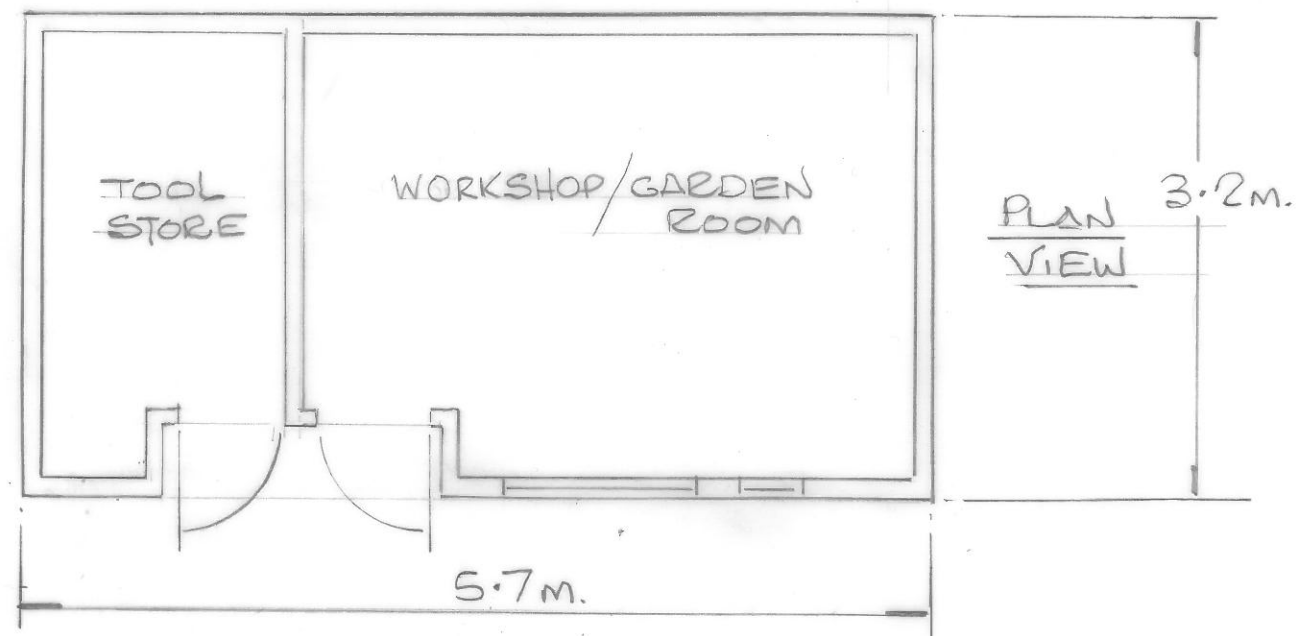
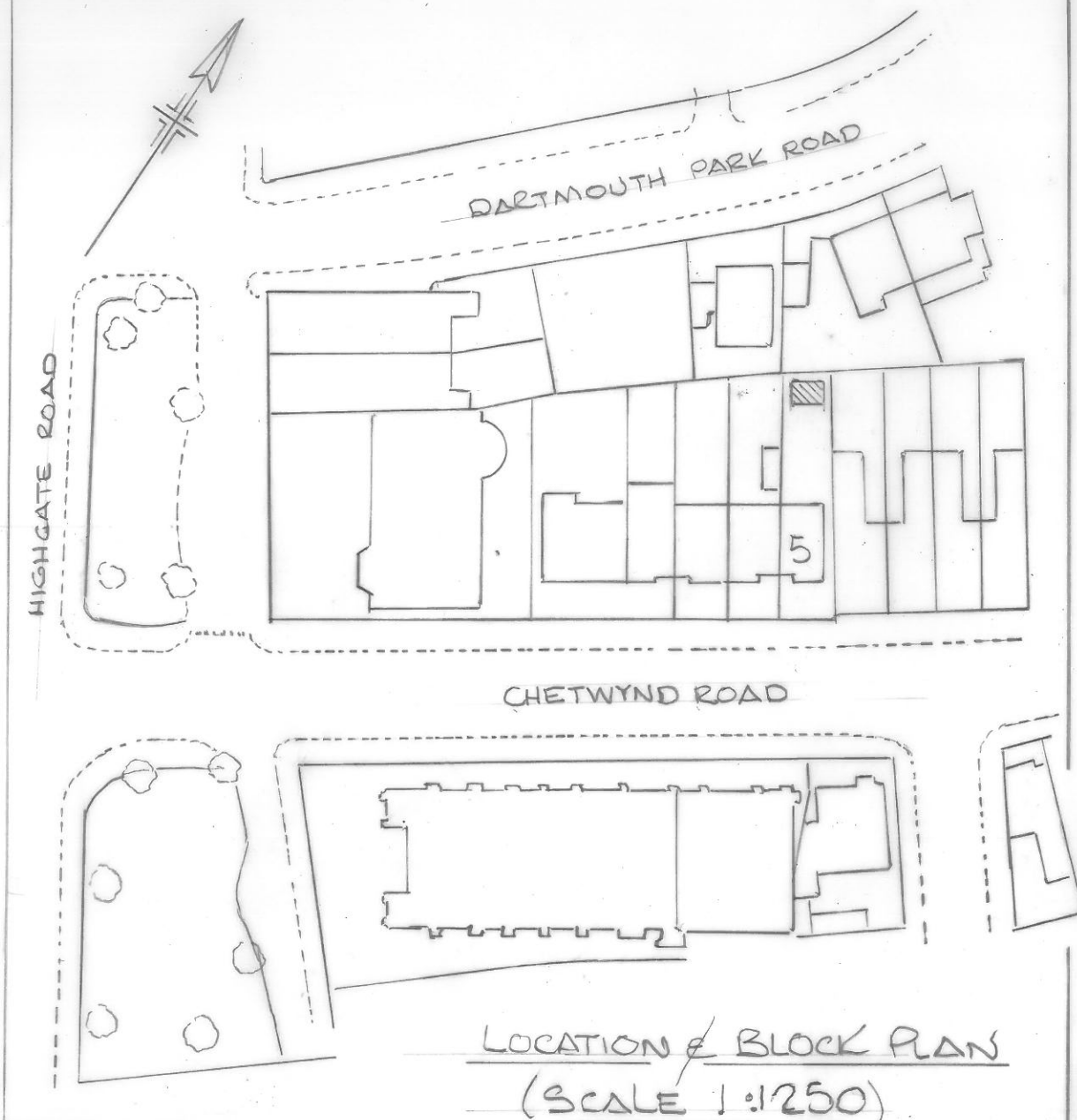
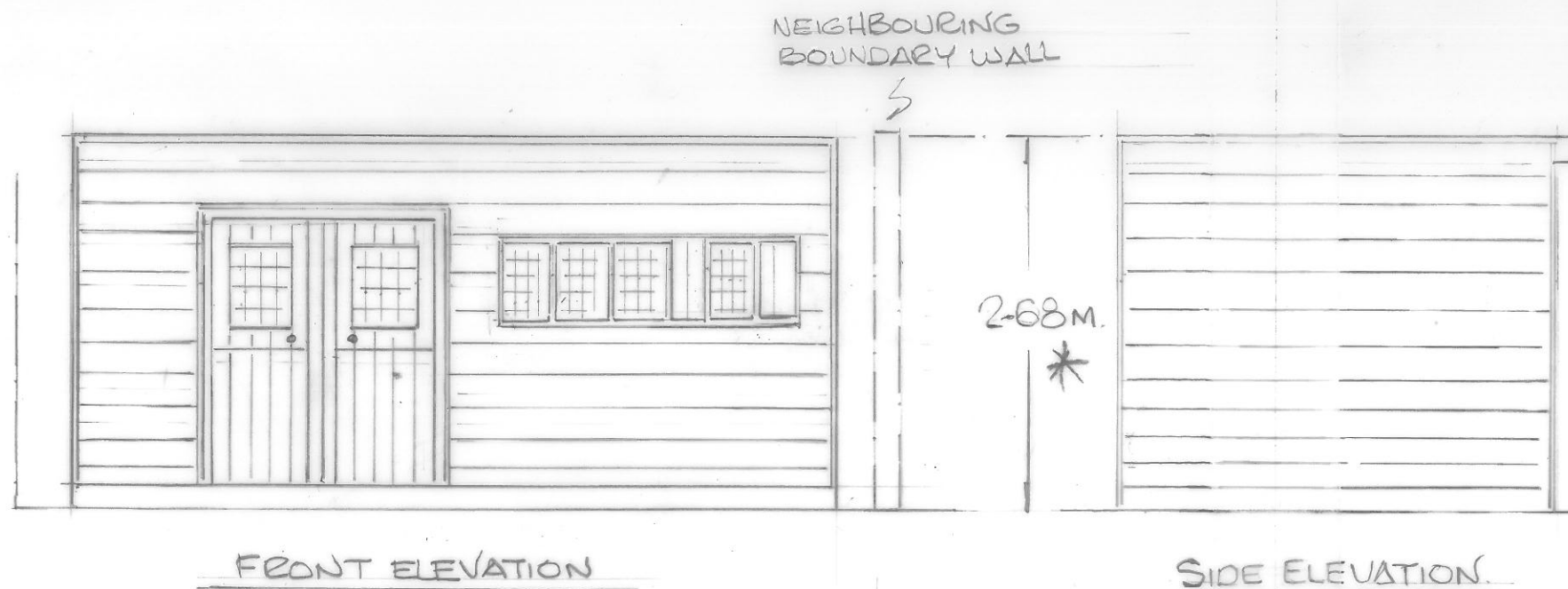
- 2.17 The main issue in this case is whether the garden building represents an overly dominant and incongruous form of development that neither preserves nor enhances the character and appearance of the surrounding area contrary to Policies D1 (Design) and D2 (Heritage) of the Camden Local Plan 2017.
- 2.18 It is our opinion that the garden building does not conflict with LBC Policy D1 (Design) because:
- It is a small building that respects local context and replaced a similar garden shed.
 - It preserves the historic environment in accordance with Policy D2 Heritage.
 - It is constructed from high quality sustainable materials
 - The garden building replaced an existing shed and therefore garden space is not reduced
 - It does not interfere with any local or strategic views
- 2.19 As regards LBC Policy D2 (Heritage) it is our opinion that it does not conflict with this policy because the garden building:
- Preserves the character and appearance of the area, given that it replaced an existing shed. The building has been constructed from British red cedar and lined with douglas fir ply. We believe it is an attractive building that fits well within the garden. (see Appendix D)
 - The garden of 5 Chetwynd Villas garden has not been reduced in size because the garden building replaced an existing shed.
- 2.20 The delegated officer report on the retrospective application states “it is considered no undue harm would be caused with regards to the amenity of neighbouring properties in terms of access to sunlight, daylight, visual bulk or sense of enclosure.”
- 2.21 Based on the delegated report the Council’s primary concern with the garden building relates to the impact on visual amenity of surrounding properties given that it “is widely visible, intrusive overly dominant and incongruous”. In fact the visual amenity of the surrounding properties has changed very little given that the previous view was of a garden shed.
- 2.22 There is no published guidance on how impacts on residential visual amenity should be assessed, or the criteria that should be applied in considering the extent of any such impacts. However, the matter of consideration of potential effects on living conditions has been examined at public inquiries.
- 2.23 The inspector’s decision in respect of the proposed Sixpenny Wood development states that: “There is no right to a view per se, and any assessment of visual intrusion leading to a finding of material harm must therefore involve extra factors such as undue obtrusiveness, or an overbearing impact leading to a diminution of conditions at the relevant property to an unacceptable degree”.

- 2.24 At the Burnthouse Farm appeal, (APP/D0515/A/10/2123739) the Inspector posed the question: “would the proposal affect the outlook of these residents to such an extent, i.e to become so unpleasant, overwhelming and oppressive that this would become an unattractive place to live?”
- 2.25 In our opinion the garden building has minimal impact on the visual amenity of the surrounding properties given that their previous outlook was of a garden shed that was replaced by a garden building. The outlook of the surrounding properties has not become unpleasant overwhelming or oppressive.
- 2.26 As regards views of the garden building from Dartmouth Park Road, Appendix E contains a photograph of this view. The view from Dartmouth Park Road is primarily of the garage and its driveway. There is a limited view of the top of the garden building where it projects above the garden wall of 5 Chetwynd Villas.

3.0 **GROUND F**

- 3.1 It is the appellant’s position that the requirement of the notice is excessive.
- 3.2 As set out in *Tapecrow Ltd V First Secretary of State* (2006) EWCA Civ 1744 (2007) P&CR 7, the enforcement procedure is intended to be remedial rather than punitive.
- 3.3 The notice requires the appellant to completely remove the single-storey outbuilding which we consider to be punitive.
- 3.4 We believe the notice should have required the appellant to reduce the garden building to 2.5m in order for it to be considered permitted development under criterion E.1 (e)ii of Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995(as amended).

APPENDIX A



CONSTRUCTION
TIMBER FRAMED, LINED
WITH W/P PLYWOOD.
ON EXISTING SOLID 180mm
THICK CONCRETE BASE
SEALED 1mm EPDM ON
ROOF SPECIFICALLY
DESIGNED FOR SEDUM
GREEN ROOF.
WALLS FINISHED IN WESTERN
RED CEDAR PLANKING

PROJECT
RE-BUILT WORKSHOP/GARDEN
ROOM & TOOL STORE AT 5,
CHETWYND VILLAS, NW51BT

TITLE
ELEVATIONS & PLAN VIEW
SITE & BLOCK PLAN.
CONSTRUCTION DETAILS

SCALES	DRG. No.	DATE/REV.
1:50	5/17	10/04/18
1:1250		

APPENDIX B









Demolished outbuildings

APPENDIX C

Delegated Report		Analysis sheet	Expiry Date:	05/04/2017
		N/A	Consultation Expiry Date:	09/03/2017
Officer			Application Number(s)	
Evelyn Jones			2017/0417/P	
Application Address			Drawing Numbers	
5 Chetwynd villas Chetwynd Road London NW5 1BT			5/17	
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature	
Proposal(s)				
Retrospective application for the erection of an outbuilding in the rear garden				
Recommendation(s):		Refuse Planning Permission and Enforce		
Application Type:		Householder Application		

Conditions or Reasons for Refusal:	Refer to Decision Notice					
Informatives:						
Consultations						
Adjoining Occupiers:	No. notified	00	No. of responses	00	No. of objections	11
			No. electronic	00		
Summary of consultation responses:	A site notice was displayed from 10/02/2017 and a public notice was published in the Ham & High from 16/02/2017.					
	<p>The owner/occupiers of 23 Woodsome Road, 6 Grove Terrace, Flat 2 3 Dartmouth Park Road, Lamorna Dartmouth Park Road, 9 Laurier Road, 8A Woodsome Road, The House Lisenden Gardens, 27 Dartmouth Park Avenue, 25 Croftdown Road, 2 Dartmouth Park Road and 1 Dartmouth Park Road objected to the proposal on the following grounds:</p> <ul style="list-style-type: none">• The garden shed is oversized and unattractive. It is too large and high above the boundary wall.• The poor design is noticeable from Dartmouth Park Road, it is also crowding a tree on the corner of the property• The outbuilding blocks views through the gardens and houses of Chetwynd Road• This is not a replacement shed, in contrast to the previous structure the shed is oversized and visible, the outbuilding is much bigger than is stated on plans and does not fall within the perimeters of permitted development.• It is out of keeping with the design of other buildings in the area• It has the potential to impact immediate neighbours through depravation of light into garden space• Approval could set a dangerous precedent• The drawings submitted show a much smaller shed than what was actually built• There is a tree at risk from the outbuilding• The shed projects above the back and west garden walls by 1.1 metres contrary to the Dartmouth Park Conservation Area Appraisal and Management Statement.• The shed is 200sqm and therefore much too large for a small area of garden space.• It is a poor quality design• It is an overbearing structure that only 4m from the living accommodation of some neighbouring properties will result in the loss of visual amenity• The shed is high above the garden wall and crowds the garden space• The shed will add to light pollution <p>The owner/occupiers of 2 Chetwynd Villas and 3 Chetwynd Villas made the following comments in support of the application:</p> <ul style="list-style-type: none">• It is a contemporary well designed structure built in attractive timber which will soften over time.• The green roof will be an ecological benefit to the neighbourhood.• The shed is a positive addition to the neighbourhood, pleasant to look at and environmentally sound.					

**Dartmouth Park
CAAC**

- The top of the development can be seen from Dartmouth Park Road
- It will also set a bad precedent for other properties in Chetwynd Villas.

Site Description

The site is a two storey end of terrace residential (Class C3) property located within the Dartmouth Park Conservation Area. The property has been identified as a positive contributor within the conservation area but is not listed.

Relevant History

No relevant site history

Relevant policies

National and Regional Policy

National Planning Policy Framework (2012)
London Plan (2016)

LDF Core Strategy and Development Policies

CS5 - Managing the impact of growth and development
CS14 - Promoting high quality places and conserving our heritage
DP24 - Securing high quality design
DP25 - Conserving Camden's heritage
DP26 - Managing the impact of development on occupiers and neighbours

Camden Local Plan Submission Draft 2016 Policies

A1 - Managing the impact of development
D1 - Design
D2 - Heritage

Camden Planning Guidance

CPG1 Design (2015)
CPG6 Amenity (2011)

Dartmouth Park Conservation Area Statement 2009

Draft Camden Local Plan

The Inspector's report on the Local Plan was published on 15 May 2017 and concludes that the plan is 'sound' subject to modifications being made to the Plan. While the determination of planning applications should continue to be made in accordance with the existing development plan until formal adoption, substantial weight may now be attached to the relevant policies of the emerging plan as a material consideration following publication of the Inspector's report, subject to any relevant recommended modifications in the Inspector's report.

Assessment

1. Proposal:

1.1 The application proposes:

-The retention of a timber clad outbuilding, measuring approximately 2.8m in height, 6m in width and 3.2m in depth, providing 19.2sqm of ancillary space on the rear boundary of the rear garden. The outbuilding features two east facing windows and a pair of doors, a flat timber roof, with the intention to plant a green roof, and timber clad walls.

1.2 It is considered the proposed single storey outbuilding fails to satisfy criterion E.1 (e)ii of Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended). On this basis the proposal would not constitute permitted development.

1.3 The main issues for consideration are:

- The impact of the proposal upon the character or appearance of the building, the surrounding area and the wider Dartmouth Park Conservation Area and;
- The impact that the proposal may have upon the amenity of the occupiers of the neighbouring properties.
- The impact on trees within the garden.

2. Impact on the host building and surrounding area:

2.1 In consideration of Camden Planning Guidance, the construction of garden buildings, including sheds, stand-alone green houses and other structures in rear gardens, can often have a significant impact upon the character of an area. The Council would ensure the siting, location, scale and design of the proposed development has a minimal visual impact on, and is visually subordinate to, the host and surrounding gardens.

2.2 The Dartmouth Park Conservation Area Statement refers to front and rear gardens in residential streets as making an important contribution to the streetscape and character of the residential area. While the outbuilding would be contained to the rear garden of 5 Chetwynd Villas, given the gap between the residential buildings of Lamora and 1 Dartmouth Park Road that border the site to the rear, the outbuilding is visible from Dartmouth Park Road.

2.3 The application site forms part of a terrace of properties known as 1-5 Chetwynd Villas. These properties are much smaller in form than other properties within Chetwynd Road and Dartmouth Park Road and but as a result have larger gardens. No other properties within the terrace of Chetwynd Villas has built a structure in the rear garden or extended to the rear, therefore maintaining the appearance of these large open gardens.

2.4 To the rear, Dartmouth Park Road is made up of large four storey semi-detached properties with substantial gardens backing onto the rear gardens of Chetwynd Road. To the east end of Dartmouth Park Road are 2 x two-storey detached residential buildings. One of these properties, the building known as Lamora, backs onto the subject site. This has very little garden space and therefore rear elevation windows are approximately 3m from the outbuilding.

2.5 In terms of siting and design, the outbuilding covers 19.2sqm of a garden measuring 82sqm and is designed appropriately as a standalone garden structure. Within its setting however, it is considered the outbuilding, by virtue of its size, bulk and position at raised garden floor level, is the subject of clear and direct view points. Whilst the outbuilding is level with the 3m high boundary wall with the neighbouring property at 1 Chetwynd Road, it rises approximately 1m above the boundary fence with 4 Chetwynd Villas. It is also level with the 3m high open weave timber fence boundary with Lamora. The outbuilding can be viewed from the all properties comprising Chetwynd Villas, many properties on Chetwynd Road and Dartmouth Park Road and particularly in close views from the rear elevations of

the properties on Dartmouth Park Road. It is considered neither the surrounding mature trees, nor the boundary walls and associated screening would discreetly hide nor adequately compensate the surrounding properties and gardens in respect of their views of a widely visible, intrusive, overly dominant and incongruous feature.

2.6 Where the surrounding properties on Chetwynd Road and Dartmouth Park Road have retained a sense of openness, contributing greatly to the character and appearance of the surrounding area and conservation area. It is considered the outbuilding, by virtue of its location and position to the end of the garden, scale, size and bulk, spoils the sense of garden openness when viewed from the surrounding properties and from Dartmouth Park Road.

2.7 Within this context, it is considered the proposal would constitute an unduly prominent element which would detract from the open character of the neighbouring gardens and the wider surrounding area. The proposal would therefore neither preserve nor enhance the character or appearance of the terrace or the Dartmouth Park Conservation Area.

3. Neighbour amenity

3.1 It is considered that no undue harm would be caused with regard to the amenity of the neighbouring properties in terms of access to sunlight, daylight, visual bulk or sense of enclosure. While the residential building of Lamora bordering the site to the rear has a rear window 3m from the outbuilding, the angle of the building in relation to the window is such that is considered there would be no impact on amenity of residents of the building Lamora.

3.2 With particular regard to privacy, noise and disturbance associated with the use of the outbuilding, it is considered the level of activity associated with the reasonable use of an outbuilding of this size for domestic purposes would not materially harm the living conditions of nearby residents, particularly those along Dartmouth Park Road.

4. The impact on trees within the garden.

4.1 One point of objection raised by a neighbouring property relates to a hawthorn tree in the rear corner of the garden that the structure encroaches on. The council's tree officer has reviewed the application and has confirmed there is no tree preservation order within the boundaries of the site or any bordering properties. The development is not considered to impact on any trees within the site or adjoining properties.

5. Recommendation:

a) Refuse planning permission

b) Authorise enforcement action

That the Borough solicitor be instructed to issue an Enforcement Notice under Section 172 of the Town & Country Planning Act 1990 as amended and to pursue any legal action necessary to secure compliance and officers be authorised in the event of non-compliance, to prosecute under section 179 or appropriate power and/or take direct action under 178 in order to secure the cessation of the breach of planning control.

The Notice shall allege the following breach of planning control:

The unauthorised erection of a single-storey outbuilding located in the rear garden

The Notice shall require within a period of 2 calendar months of the Notice taking effect:

Remove the single-storey outbuilding located in the rear garden.

REASONS WHY THE COUNCIL CONSIDER IT EXPEDIENT TO ISSUE THE NOTICE.

The single-storey outbuilding located in the rear garden, by reason of its scale and location would be overly dominant and appear as an incongruous form of development which would neither preserve nor enhance the character or appearance of the surrounding area, contrary to policy CS14 (Promoting high quality places and conserving our heritage) of the London Borough of Camden Local Development Framework Core Strategy, policy DP24 (Securing high quality design) of the London Borough of Camden Local Development Framework Development Policies and policies D1 (Design) and D2 (Heritage) of the Camden Local Plan Submission Draft 2016.

APPENDIX D



APPENDIX E

