

# Appeal Decision

Site visit made on 19 June 2018

**by Pete Drew BSc (Hons) DipTP (Dist) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 29 June 2018**

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**Appeals A, B & C Ref: APP/X5210/C/17/3191981, 3191982 & 3191983**  
**Land at: 48 Mornington Terrace, London NW1 7RT ("the Property")**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 [hereinafter "the Act"] as amended by the Planning and Compensation Act 1991.
  - The appeals are made by [A] Mr & Mrs Chandresinghe; [B] Mr L Chandresinghe; and, [C] Mrs E Chandresinghe, respectively, against an enforcement notice issued by the Council of the London Borough of Camden.
  - The enforcement notice, reference EN14/0974, was issued on 10 November 2017.
  - The breach of planning control as alleged in the notice is: *Without planning permission the unauthorised erection of a black metal and glass outbuilding in the rear garden.*
  - The requirements of the notice are: (1) Totally removed [sic] the black metal and glass outbuilding from the rear garden; and (2) Make good any damage done as a result of the above works.
  - The period for compliance with these requirements is 3 months.
  - Appeals A, B & C are proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Act.
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## Appeals A, B & C: Formal Decision

1. The appeals are allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act for the development already carried out, namely the unauthorised erection of a black metal and glass outbuilding in the rear garden on land at: 48 Mornington Terrace, London NW1 7RT, referred to in the enforcement notice, subject to the following condition:
  - i. Within 3 months of the date of this decision a record of the existing planting on the green roof and in the rear garden, together with a schedule of landscape maintenance for a period of 5 years, shall be submitted in writing to the local planning authority for its written approval. The planting on the green roof and in the rear garden shall be maintained in accordance with the approved schedule of maintenance and any plants which die, are removed or become seriously damaged or diseased within 5 years of its written approval shall be replaced in the next planting season with others of similar size and species. The planting shall be retained for the lifetime of the development.

## Procedural matters

2. The Council relies in part on a delegated report on a retrospective application [No 2014/7412/P] for the structure. However the report also appears to relate to a refusal of listed building consent [No 2014/7447/L] for the same building. I have therefore considered whether there might be a need for listed building consent. However the fact is that the Council has only issued an enforcement notice under the Act, which suggests that it is of the view that listed building consent was not in fact required. My jurisdiction solely relates to the appeals against that notice and so I intend to proceed accordingly.

3. The assessment in the delegated report was undertaken in 2015 in the context of a materially different policy framework. As a result the reason for refusal of 2014/7412/P alleges a conflict with a series of different policies from plans that appear to have been superseded<sup>1</sup>. So whilst the Council rely on the delegated report<sup>2</sup>, when one takes account of the fact it relates, in part, to an application for listed building consent and the planning assessment is against a materially different policy framework, the Council's case does appear to have changed. However I will try to distil the underlying objection from the delegated report.

**All Appeals: Ground (a), planning merits: *Main issue***

4. The main issue is whether the development would, at a minimum, preserve the character or appearance of Camden Town Conservation Area [CA] and the setting of the host building and the listed terrace of which it forms part.

***Planning policy***

5. The Development Plan [DP] includes the London Borough of Camden Local Plan ["LP"], which was adopted in 2017. The Council has also referred to the London Plan, but at no point has it claimed that there is a conflict with quoted policies 7.4, 7.6 and 7.8<sup>3</sup>, and I propose to deal with this appeal on that basis.
6. The Council relies on other policy documents that are not part of the DP. This includes Camden Planning Guidance, notably CPG1 Design, which was adopted as a Supplementary Planning Document [SPD] on 6 April 2011, following consultation, and updated in 2013 and 2015. Having regard to the date of adoption and the definition of SPD in the Glossary in the National Planning Policy Framework ["the Framework"], I attach the SPD substantial weight. The Council adopted the Camden Town Conservation Area Appraisal [CAA] and Management Strategy<sup>4</sup> in October 2007 and I attach it substantial weight.

***Reasons***

7. The appeal site, No 48, forms part of a terrace of 27 residential properties that are Grade II Listed. The Appellants say that the uniform appearance of the front elevation of the terrace is the primary reason for the statutory listing and, having reviewed the list description<sup>5</sup>, I agree. It records that the interiors were not inspected and, on the balance of probability, it would appear to follow that the rear of the terrace was not inspected either<sup>6</sup>. In these circumstances I find that the significance<sup>7</sup> of this designated heritage asset, both the listed building and the wider terrace, derives from the public face of these properties.
8. The Camden Town Conservation Area Townscape Appraisal Map<sup>8</sup> shows that the entire block within which the appeal site lies is not only within the CA, but that the terrace within Albert Street, to the east, and Delancey Street, to the north, which surround the rear gardens within the block, are also listed<sup>9</sup>. In

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<sup>1</sup> I make this assumption on the basis that none of the policies were relied on when issuing the notice.

<sup>2</sup> The Council's letter dated 2 May 2018 says its: "...case is largely set out in the Officer's delegated report".

<sup>3</sup> Regulation 4 of The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, says: "An enforcement notice issued under section 172 of the Planning Act shall specify— (a) the reasons why the local planning authority consider it expedient to issue the notice; (b) *all* policies and proposals in the development plan which are relevant to the decision to issue an enforcement notice..." [*my emphasis*]. The word "shall" is mandatory, but the reason given on the face of the enforcement notice does not specify the London Plan Policies.

<sup>4</sup> The Council's questionnaire provided selected Appendices from the CAA, but not Appendices 7-13, inclusive.

<sup>5</sup> Submitted with the Council's questionnaire.

<sup>6</sup> One could only gain access to the rear via the interior[s].

<sup>7</sup> As defined in the Glossary in Annex 2 to the Framework.

<sup>8</sup> Appendix 6 to the CAA.

<sup>9</sup> I have not been given the list descriptions but anticipate their significance relates to the front of those properties.

contrast to the uniformity of the front of the listed terraces, the rear displays an eclectic mix of extensions and alterations that have been made over the years, typically at lower and upper ground floor levels, and within the roof slope. There are a number of outbuildings in rear gardens within the block.

9. The Appellants quote a passage from the CAA and submit that, as it contains no reference to the rear elevations and gardens, the significance of the CA derives exclusively from the public realm<sup>10</sup>. However, having reviewed the CAA, I disagree. In these circumstances I set out the passage that might have been overlooked<sup>11</sup>: *"There is a greater sense of open space in the residential portions of the Conservation Area, in part due to the main Euston railway cutting immediately to the west but also the result of wide tree-lined streets and private front and back gardens, especially in Albert Street and Mornington Terrace. The trees and greenery of back gardens are only visible in occasional glimpses from the public realm but contribute to the nature of the western part of the Conservation Area. Views of back gardens are retained, especially where development has been kept single-storey or where gaps have been preserved. Gaps also occur at the end of terraces; these allow views to back gardens over high garden walls, introducing a welcome respite to an otherwise very urban environment and making a major contribution to the visual amenity and the character of the area. In an area lacking in open space and street trees these views into gardens with mature trees are an important element in the character and appearance of the Conservation Area"*<sup>12</sup> [my emphasis].
10. My reading is that the CAA is identifying the rear gardens within this block to be of significance in glimpsed views from the public realm principally, it would appear, from street level. What I take from this passage is that the trees and greenery, generically landscaping, in the back gardens does make a positive contribution to the character and appearance of the CA. In order to, at a minimum, preserve that characteristic, landscaping is a vital consideration.
11. The building appears to have replaced what is described as an 'off-the-peg'<sup>13</sup> garden shed and perhaps the best that can be said is that it was very modest. I reject any inference that it was necessary to consider its retention and refurbishment, and the claim that it should have informed the design of the new building. In that context, turning to examine its replacement, the Council has identified 5 areas of concern, which I propose to deal with in turn.
12. In terms of design, it is an unashamedly modern creation. However, noting that it is not an extension, the Appellants refer to the examples of the British Museum and the Holbourne Museum to illustrate that it is not essential to adopt a neo-traditional approach to both design and materials. It appears to be deliberately contemporary in appearance in order to provide distinction from the host structure to enable its history to be read and understood by future generations. Paragraphs 60 and 63 of the Framework say decisions should not stifle innovation and that great weight should be given to innovative designs. Conceptually the building might not be ahead of the curve, but given the integration with the landscaping I consider the holistic design is innovative.

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<sup>10</sup> Paragraphs 5.6.3-5.6.5 of the grounds of appeal.

<sup>11</sup> Acknowledging that it is quoted in paragraph 3.3 of the heritage appeal statement, which has been prepared by another party, but I would still disagree with paragraph 6.5 thereof given the terms of this passage. The Council might also have overlooked it given what is said in paragraph 3.1 of its letter dated 2 May 2018.

<sup>12</sup> Source of quote: page 21 of 48 of the pdf version that was supplied with the Council's questionnaire, under a title "*Sub Area 2: Residential*".

<sup>13</sup> Page 2 of the Appellants' final comments.

13. The test must be whether the design respects its context and the character and appearance of the area. In my view because landscaping is at the heart of its design, the building does sit comfortably in its sensitive, historic setting. In particular the sedum and wildflower roof<sup>14</sup> not only has a visual link to a similar roof on the single storey rear extension, but softens the building when seen from the upper storeys of the host property and, I have no doubt, adjoining dwellings. It is clear the planting, including box balls and the exotic tree ferns, in the remainder of the rear garden was a conscious design choice which embraces the outbuilding and ensures it is successfully ground into its setting.
14. I acknowledge the Council's concern that: "*...as the plants appear to have been deliberately planted likewise they can deliberately be removed*"<sup>15</sup>. First I would regard it to be highly unlikely that the green roof would be removed because it is such an integral part of the design, adds to biodiversity, is likely to reduce run off and simply because it is an attractive feature of the building; it would be reasonable to impose a planning condition to ensure its retention. LP Policy D1 c) requires sustainable design that incorporates best practice in resource management and climate change mitigation and adaptation. To this extent the design of the building appears to exemplify best practice and be sustainable.
15. Turning to the landscaping in the remainder of the rear garden I accept that, despite its lush appearance, it is conceivable that a prospective occupier might wish to remove it in order to provide a more functional area. However, given the Appellants' holistic design approach I consider it would be appropriate to impose a condition to require its maintenance and retention too. The appeal statement acknowledges that the landscaping is part of a deeply considered approach in which the building and the planting: "*...are interlinked and were developed and evolved concurrently*"<sup>16</sup>. What is said to be an effective merging between building and planting is a key factor in its acceptability in this context. The condition that I propose is necessary to maintain that equilibrium and it would ensure that, contrary to the Council's claim, it would not be prominent.
16. Turning to materials, the Council describes it variously as being black steel [delegated report] and a glass and aluminium structure with a fully glazed frontage [May letter]. The materials schedule on the submitted plans record the facade to comprise a "*slim metal frame 'greenhouse' style glazing*" and the side elevation refers to a "*traditional lead capping*" above "*painted render with horizontal garden wire to enable creepers to grow over the exposed side elevation from the trellis*". The grounds of appeal otherwise refer to rolled steel and the scalloped edging above the glazed façade of the outbuilding, which mirrors that found on the conservatory of the host property.
17. LP Policy D1 e) requires development to incorporate details and materials that are of high quality and complement the local character. The materials appear to be of a high quality. The exception might be said to be the rendered side elevation, but my inspection, taken together with the submitted photographs and plans, would suggest that this is inconspicuous. Even when viewed from the gardens of the immediate neighbours it is likely that the combination of the brick wall, timber trellis and, over time, climbing plants, would ensure that this would preserve the character and appearance of the area. The use of metal and glazing is in keeping with the materials employed in the conservatory on

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<sup>14</sup> As per annotation on drawing No A 301.

<sup>15</sup> Source of quote: paragraph 3.7 of the Council's letter dated 2 May 2018.

<sup>16</sup> Source of quote: paragraph 7.5 of the appeal statement.

- the host building and similar structures that exist in rear gardens in the block. In compliance with LP Policy D1 d) it appears to be of a durable construction.
18. Turning to scale, the delegated report gives the measurements of the building to be 4.9 m in width and 4.1 m in depth. On this basis, it would appear to be common ground<sup>17</sup> that the outbuilding has a footprint of approximately 20 m<sup>2</sup>. It does however fill the width of the plot and the Council's estimate that it takes up about a third of the rear garden area has not been disputed. However the outbuilding that the Council permitted<sup>18</sup> at No 50 appears to fill the width of that plot, albeit I acknowledge that it appears to taper such that it might be narrower<sup>19</sup>, and takes up a not dissimilar proportion of that rear garden<sup>20</sup>. Its existence contradicts the Council's claim that this outbuilding is an anomaly. The Council has not referred to any provisions in the SPD with regard to this aspect of the scale of outbuildings and relevant LP Policies do not contain such provisions. In my view this aspect of the outbuilding would preserve the setting of the listed building and the character and appearance of the CA.
  19. The delegated report says the building is 4.5 m in height, but it was clear from my site inspection and the plans before me that it is partly sunken. Figures 8, 9 and 10 in the appeal statement show that it does protrude slightly above the wall and trellis that surround the rear garden of the property, but to a very modest extent. Submitted drawing No A 302, would suggest that the distance A-B, above the trellis, is less than 0.5 m by reference to the scale bar on that drawing. In terms of net height, above ground level, it appears to be broadly comparable to the building that the Council has permitted at No 50, the plans for which record its height to be 2.5 m<sup>21</sup>. There is also an extractor duct that protrudes above the northern rear corner of the green roof, but my inspection confirmed it is very modest and is only really seen if one is looking for it.
  20. In my view Figure 12 of the grounds of appeal, which shows a cross section relative to the host property, puts the net height of the building into its proper context. The listed building is a 5-storey dwelling and part of a terrace, set within a block, of similar scale. The cross section shows, amongst other things, that the highest part of the outbuilding is below the height of the upper ground floor<sup>22</sup>. That was confirmed during my site inspection. In my view this clearly demonstrates that the net height of the building is acceptable in its context.
  21. This brings me to bulk, which I take to mean the combined effect of the volume of the building in relation to other buildings and spaces. In my view it follows from my earlier findings that this is acceptable in the particular circumstances of this case. Amongst other things the fact that part of the building is sunken, together with the attractive, integrated landscaping scheme, leads me to find that the outbuilding does not appear bulky in its context.
  22. Turning to location, my inspection confirmed it is sited away from the public realm and screened from Mornington Terrace by the listed terrace itself. No

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<sup>17</sup> See figures for the area in the delegated report "Assessment" and paragraph 4.2.18 of the grounds of appeal, but contrast with the figure of 23.9 m<sup>2</sup> on the first page of the letter from the Council dated 2 May 2018.

<sup>18</sup> Full planning permission granted for, amongst other things, a single storey rear outbuilding, under its reference 2015/1507/P, on 22 October 2015. In that context I fail to understand why paragraph 3.10 of the Council's letter dated 2 May 2018 refers to this as a "permitted development scenario". Amongst other things I note condition 5 of that planning permission with regard to the green roof on the permitted outbuilding.

<sup>19</sup> Although Figure 7 in the grounds of appeal would suggest it is not that much narrower.

<sup>20</sup> See Appendix G to the grounds of appeal, specifically the upper ground floor plan on drawing No MOR200 Rev R.

<sup>21</sup> See Figure 13 of grounds of appeal, together with Appendix G thereof, specifically the annotation "2.5m high western red cedar clad garden room" on drawing No MOR200 Rev R.

<sup>22</sup> The lower ground floor being a basement.



public vantage-point was drawn to my attention during the site inspection and, taking account of the information provided, I think it most unlikely that there is a public vista in which any part of the building would be seen. Crucially, having regard to the quoted passage from the CAA, the landscaping makes a positive contribution to the character and appearance of the CA such that, taken holistically, the development would at a minimum preserve that characteristic. Viewed in the context of the CAA I find no conflict with LP Policy D1 f).

23. I have given reasons for finding that the significance of the host building and the listed terrace of which it forms part derives from the public realm. The development would have no effect on the significance of the listed building and terrace, and would therefore conserve the asset, in line with paragraph 132 of the Framework. Subject to the imposition of a landscaping condition I have also given reasons why it would conserve the identified significance of the CA.
24. In reaching this view I note the Council's claim that the outbuilding causes "...substantial harm to the setting of the designated heritage asset and to the character and appearance to the non-designated heritage asset" [sic]<sup>23</sup>. With respect I believe there is a conflation of terminology here. Paragraph 133 of the Framework is concerned with substantial harm to significance and I entirely reject any inference that this paragraph would be engaged here. I anticipate that the reference to *non-designated heritage asset* is a reference to the CA but, having regard to the Glossary, that too is a designated heritage asset. Since I find no harm there is no need to identify or weigh the public benefits.
25. The only conflict with the SPD that has been alleged by the Council concerns paragraph 3.22 thereof. It says: "*In assessing applications for listed building consent...*", but I have explained why the deemed application does not involve such a judgment. I am however aware of the statutory duties that arise from section 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 ["the LBCA Act"]. For the reasons I have identified, I conclude that the outbuilding does preserve the setting of the listed building and the terrace of which it forms part and does preserve the character and appearance of the CA. Amongst other things, I disagree with the claim that "...if the structure can be seen from any [public or private] viewpoint then it is harmful"<sup>24</sup> and such an assertion is entirely inconsistent with the Council's decision at No 50.
26. On the main issue I conclude that the development preserves the character and appearance of the CA, the setting of the host building and the listed terrace of which it forms part. In my view, for the reasons I have given, the building is of a high quality contemporary design that respects its local context and, as such, I find no conflict with LP Policies D1 and D2, the SPD or the CAA.

### **Other matters**

27. The delegated report discounts the effect of the development on neighbours' living conditions, including by reason of loss of privacy and overshadowing; I have no reason to disagree. Although I have noted the concerns expressed in that report in relation to light pollution I am unconvinced that this would cause harm to neighbours' living conditions. The planting in the rear garden would disrupt light dispersal from the glass façade and this adds to my reasons why it is necessary to impose a condition to ensure its maintenance and retention.

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<sup>23</sup> Source of quote: paragraph 3.8 of the Council's letter dated 2 May 2018.

<sup>24</sup> Source of quote: paragraph 3.6 of the Council's letter dated 2 May 2018.

28. The Council alleges that, if permitted, this would set an unacceptable precedent but it is an established planning principle that each application or appeal should be determined on its own merits. For this reason, whilst I have referred to the developments that set the immediate context for the appeal site, I do not find great assistance from those further afield, including the quoted appeal<sup>25</sup>. In any event, given that I have found this particular scheme to be acceptable in its specific context it cannot set an *unacceptable* precedent.

***Planning condition***

29. The Council did not suggest any conditions but, for the reasons set out in my substantive assessment, there is a need to impose a planning condition to ensure that the landscaping establishes, that any plants that die are replaced and that it is maintained. The conventional period is the first 5 years because past that point the planting will have either taken or failed, as the case may be, and whilst I acknowledge that it appears to have been in place for some time I consider that such a period would not be inappropriate in this case.

30. In framing the condition I shall require a record to be provided of the planting that exists and this could be in the form of a plan, photographs, or a mix. The objective is for there to be a record against which replacement planting or even potentially enforcement, if necessary, could take place. The maintenance might be as simple as watering in prolonged dry periods and protecting from snow and frosts, to ensure the building remains grounded in its landscape setting to address the Council's concern. I shall impose a retention clause in line with condition 5 of the planning permission at No 50 [Ref 2015/1507/P].

31. I acknowledge that this approach is unusual in relation to a private rear garden but I consider that it meets the tests for conditions in paragraph 206 of the Framework because the scheme has been expressly advanced on the basis that it is a holistic design. So, returning to the prospect that a prospective occupier might wish to remove the planting in order to provide a more functional area, the condition that I shall impose would ensure that a planning application would be required to amend the condition in order to remove the planting. This would ensure that the Council would retain control and that neighbours and other interested parties would be consulted about that application.

**All Appeals: Ground (a): Overall conclusion**

32. My finding on the main issue leads me to conclude that the ground (a) appeals, the deemed planning applications, should succeed. In those circumstances the appeals under grounds (f) and (g) do not fall to be considered.

**All Appeals: Conclusion**

33. For the reasons given, and having regard to all other matters raised, I conclude that the appeals should be allowed. I shall quash the enforcement notice and grant planning permission on the applications deemed to have been made under section 177(5) of the Act subject to the identified planning condition.

*Pete Drew*  
INSPECTOR

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<sup>25</sup> Appeal Ref. APP/X5210/W/15/3063786.