

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

**TOWN AND COUNTRY PLANNING
(CONTROL OF ADVERTISEMENTS) REGULATIONS 2007**

DISCONTINUANCE NOTICE APPEAL

BY

IMPERIAL LONDON ENTERPRISES LIMITED

SITE AT THE MORTON HOTEL, 1-2 WOBURN PLACE, LONDON WC1H 0LH

LPA REF: EN15/0077
CWA REF: 1369

APPELLANT'S STATEMENT OF APPEAL

May 2019

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1. INTRODUCTION

- 1.1 This Statement of Appeal relates to the appeal by Imperial London Enterprises Limited against the Discontinuance Notice (“the Notice”) issued by Camden London Borough Council (“the Council”) on 26th March 2019 pursuant to Regulation 8 of the Town and Country Planning (Control of Advertisements) Regulations 2007 (“the Regulations”) in respect of the display of an advertisement (“the Advertisement”) at the Morton Hotel, 1-2 Woburn Place, London WC1H 0LH.
- 1.2 This statement should be read in conjunction with the following documents which are provided in a separate appendix:-
1. The ‘Heritage Appeal Statement’ prepared by Mr Laurie Handcock of Iceni Projects Limited;
 2. The Legal Opinion (“the Opinion”) dated 17th May 2019 prepared by Russell-Cooke Solicitors (with 2 appendices); and
 3. A draft section 106 Unilateral Undertaking.
- 1.3 A letter dated 14th May 2019 to the Borough Solicitor from Russell-Cooke Solicitors, and the Council's reply dated 16th May 2018, are uploaded with the appeal form along with a copy of the Notice.

2. THE APPEAL SITE AND THE SURROUNDING AREA

- 2.1 The Morton Hotel is a six storey building located at the junction of Woburn Place and Bernard Street. The ground floor of the building incorporates a branch of the HSBC Bank. The Heritage Appeal Statement (Document 1) describes the building in the following terms:-

'The Site, Morton Hotel, is a turn-of-the-twentieth-century building, part bank (ground floor) part accommodation (upper floors). It replaced Nos. 1 and 1 Woburn Place, which were erected circa 1805-7 from plans by James Burton on land developed by the Bedford Estate. The building is on a short L-shaped plan with orientation towards the landmark corner facing Russell Square. This corner has a three-storey projecting bay above a ground-floor entrance porch. The building has regular rhythmic fenestration, with a fairly even solid to void ratio, and decorative pilasters rising through pairs of window openings. The building is in red brick, with Portland stone ashlar window surrounds. There are decorative gablets at mansard roof level.'

- 2.2 The Advertisement is positioned at first-floor level, attached to one of two central ashlar mullions in the corner bay window. The Advertisement, which has deemed consent, was erected in 2000. It is internally illuminated but non-flashing, and measures approximately 1.2 metres by 2.4 metres. Its features muted white and blue colouring, with an upper section referencing the Morton Hotel, and a lower section referring to the proximity of the Royal National Hotel. Two separate, internally illuminated letter signs comprising the words 'MORTON' and 'HOTEL' are located at third and second floor levels respectively, immediately above the Advertisement. In addition, the Advertisement is directly above the illuminated fascia sign of the HSBC bank.
- 2.3 The appeal site falls within the Bloomsbury Conservation Area. This part of the conservation area includes numerous listed buildings on and in the vicinity of Russell Square, including the Grade II* Hotel Russell located on the south side of the junction, directly opposite the Morton Hotel. The garden of Russell Square is listed Grade II on the Register of Historic Parks and Gardens. Full details of all heritage assets in the vicinity of the appeal site are provided in the Heritage Appeal Statement.
- 2.4 The appeal site falls within the Central Activities Zone (CAZ), and the surrounding

area includes a wide range of land-uses including ground floor commercial, upper floor residential and office accommodation, various hotels, and a number of institutional uses including the University of London. Russell Square Underground Station is located on Bernard Street, a short distance to the east of the Morton Hotel.

3. RELEVANT HISTORY

3.1 No planning history of direct relevance to this appeal has been identified. Two consents to display advertisements on the Morton Hotel were granted during the 1970s, as follows:-

- Reference CA/573/C – *‘Erection at Morton Hotel, Russell Square, W.C. 1 of internally illuminated three sided box sign, measuring 1'10" (0.559m) x 1'3" (0.381m) 12'3 1/2" (3.746m) x 1'3" (0.381m), 1'8" (0.508m) x 1'3" (0.381m), overall height 13'11" (4.242m), with red coloured letters to read "Hotel" on ends and "Restaurant" on the front.’*
- Reference CA573/AD370 – *‘Display of a single sided, static, internally illuminated box sign, measurements 2'2" x 1'6" (0.7m x 0.5m approx), to be positioned on the left side of the main entrance.’*

4. THE NOTICE

4.1 The Notice, the subject of this appeal, is dated 26th March 2019. It advises the advertiser, owner and occupier of the Morton Hotel that the site is being used for the display of a particular Advertisement, as described in the First Schedule, for which deemed consent is granted under the Regulations, and which, for the reasons set out in the Second Schedule, the Council considers it necessary to be discontinued to remedy a substantial injury to the amenity of the locality.

4.2 The First Schedule to the Notice describes the Advertisement in the following terms:-

‘Internally illuminated sign at first floor level on the corner elevation of Morton Hotel, 1-2 Woburn Place, London, WC1H 0LH’

4.3 The Second Schedule to the Notice sets out the reasons for serving the notice, as follows:-

‘The display of the advertisement described in the First Schedule, by reason of its location, size, appearance and method of illumination has a detrimental impact on the character and appearance of the host building, the streetscene and the wider conservation area and thereby resulting in substantial injury to the amenity of the locality contrary to policies D1, D2 and D4 of Camden’s Local Plan 2017.’

4.4 The Notice requires the discontinuance of the display of the Advertisement within a period of 28 days after the date on which the Notice takes effect. The Notice shall take effect at the end of a period of 8 weeks after the service of the notice, i.e. on 21st May 2019.

4.5 On 14th May 2019, the Appellant’s Solicitors, Russell-Cooke, sent a letter to the Borough Solicitor summarising the findings of the Heritage Assessment (as undertaken by Icen Projects and set out in the appended Heritage Appeal Statement) which, in summary, are:-

1. That the Advertisement does not cause “substantial injury” to the amenity of the locality, which includes various designated heritage assets, and

2. That the Advertisement does not cause harm to any identified heritage assets. However should an Inspector identify harm to the character and appearance of the Bloomsbury Conservation Area or to the setting of the listed Russell Hotel and Russell Square Gardens, Icení is of the view that such harm would fall well within the “less than substantial “ measure set out in national policy and guidance.

- 4.6 In light of the above, Russell-Cooke requested the Council to agree to a meeting at which Icení's findings would be explained and discussed so that the parties could seek a resolution to this matter without the need to undergo the full extent of the appeal process. The letter also suggested that the owner would be willing to reduce the lumen levels of the Advertisement. Russell-Cooke requested that the Council extend the current 8 week period at the end of which the Notice takes effect by 3 to 4 weeks.
- 4.7 The Council's reply of 16th May 2019 stated that whilst the authority is not averse to having a meeting, it considers that the location and means of fixing of the advertisement are unacceptable in principle, and that an extension to the 8 week 'effective period' is unnecessary.

5. PLANNING POLICY CONTEXT

The National Planning Policy Framework (NPPF) (Revised February 2019)

- 5.1 The revised NPPF (“the Framework”) states that the purpose of the planning system is to contribute to the achievement of sustainable development which is defined to comprise economic, social and environmental dimensions. The planning system should help build a strong, responsive and competitive economy, and should contribute to protecting and enhancing the built and historic environment
- 5.2 Planning decisions should help create conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity. Planning policies and decisions should recognise and address the specific locational requirements of different sectors (Section 6).
- 5.3 Good design is a key aspect of sustainable development, and planning decisions should ensure that developments function well, are visually attractive, are sympathetic to local character and history whilst not preventing innovation or change, and optimise the potential of the site whilst providing a high standard of amenity (Section 12). Paragraph 132 states that the quality and character of places can suffer when advertisements are poorly sited and designed. A separate consent process within the planning system controls the display of advertisements, which should be operated in a way which is simple, efficient and effective. Advertisements should be subject to control only in the interests of amenity and public safety, taking account of cumulative impacts.
- 5.4 Section 16 of the Framework sets out national policy on the conservation and enhancement of the historic environment. In determining applications, LPAs should require an applicant to describe the significance of any heritage assets (as defined in Annex 2 of the Framework) 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. When considering the impact of proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation. Where a development proposal will

lead to less than substantial harm to the significance of a designated heritage asset including its setting, this harm should be weighed against the public benefits of the proposal, including, where appropriate, securing its optimum viable use. Fuller details of Section 12 of the Framework are set out at paragraphs 4.3 to 4.13 of the Heritage Appeal Statement.

National Planning Practice Guidance (NPPG)

- 5.5 Paragraph 45 of NPPG states that a local planning authority may take discontinuance action if it is satisfied that such action is necessary to remedy a substantial injury to the amenity of the locality or a danger to members of the public. It states that as “substantial injury” to the amenity of the locality is a more rigorous test than the “interests” of amenity, local planning authorities will need to justify this in their statement of reasons.
- 5.6 Paragraph 47 of NPPG advises that, prior to serving a discontinuance notice, a local planning authority should consider whether a modified display would be acceptable and if so, the authority should discuss this with the person displaying the advertisement.
- 5.7 Paragraph 50 of NPPG states that Regulation 8 requires a statement of the reasons for taking discontinuance action. This must explain why the local planning authority considers that substantial injury to the amenity of the locality or a danger to members of the public, as the case may be, has been caused and also why it considers it necessary to serve the notice. The reasons given should be specific to the site and leave the person displaying the advertisement in no doubt about exactly what makes the display unacceptable to the local planning authority. If the notice specifies a particular advertisement, the statement should specifically address that particular advertisement.
- 5.8 Paragraph 79 of NPPG states that the term “amenity” is not defined exhaustively in the Regulations. It includes aural and visual amenity (regulation 2(1)) and factors relevant to amenity include the general characteristics of the locality, including the presence of any feature of historic, architectural, cultural or similar interest (regulation 3(2)(a)). It is, however, a matter of interpretation by the local planning authority (and the Secretary of State) as it applies in any particular case. In practice, “amenity” is usually understood to mean the effect on visual and aural amenity in the immediate neighbourhood of an advertisement or site for the

display of advertisements, where residents or passers-by will be aware of the advertisement. So, in assessing amenity, the local planning authority would always consider the local characteristics of the neighbourhood, for example, if the locality where the advertisement is to be displayed has important scenic, historic, architectural or cultural features, the local planning authority would consider whether it is in scale and in keeping with these features.

- 5.9 NPPG reinforces and elaborates the Framework's approach to the protection of heritage assets. Further details are provided within paragraphs 4.14 to 4.17 of the Heritage Appeal Statement.

The Statutory Development Plan

- 5.10 The statutory development plan for the area comprises the consolidated London Plan 2016 (incorporating alterations since 2011), and the Camden Local Plan which was adopted in June 2017.

The London Plan

- 5.11 The following policies of the London Plan, as summarised, are considered to be relevant to the issues raised by this application:-

- Policy 4.5 states that the Mayor will support London's visitor economy and stimulate its growth, including provision for business visitors in and around the CAZ;
- Policy 7.4 states that development should have regard to the form, function and structure of an area, place or street, and the scale, mass and orientation of buildings. Design should be a high quality and human scale that has regard to existing context;
- Policy 7.6 states that architecture should make a positive contribution to a coherent public realm and streetscape. It should incorporate the highest quality materials and design appropriate to its context; and
- Policy 7.8 states that development affecting heritage assets and their settings should conserve their significance by being sympathetic to their form, scale, materials and architectural detail.

5.12 The following policies of the adopted Local Plan, as summarised, are considered to be relevant to the issues raised by this planning application:-

- Policy D1 states that high quality inclusive design is required which respects local context, preserves or enhances heritage assets, is of sustainable construction which uses high quality complementary materials, and preserves strategic and local views;
- Policy D2 states that the Council will preserve and, where appropriate, enhance Camden's heritage assets and their settings, including conservation areas, listed buildings, historic parks and gardens, and locally listed heritage assets. 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;
- Policy D3 states that new and altered shopfronts should be of a high standard of design, having regard to, inter alia, the relationship between the shopfront and the upper floors of the building; and
- Policy D4 requires advertisements to preserve or enhance the character of their setting and host building. They must respect the form, fabric, design and scale of their setting and host building and be of the highest standard of design, material and detail. Advertisements which (i) contribute to an unsightly proliferation of signage in the area, (ii) contribute to street clutter in the public realm, (iii) cause light pollution to nearby residential properties or wildlife habitats, (iv) have flashing illuminated elements, or (v) impact upon public safety, will be resisted. Advertisements above fascia level or ground floor level on shopfronts will be resisted except in exceptional circumstances. Advertisements in conservation areas and on or near listed buildings must not harm their character and appearance, and must not obscure or damage architectural features.

Planning Guidance

- 5.13 Camden Planning Guidance (CPG) has been issued on a number of topics including Design. The Design CPG (March 2019) provides detailed design guidance in support and clarification of Local Plan design policies. The guidance states that high quality design makes a significant contribution to the success of a development. The impact of development on designated and non-designated heritage assets will be carefully assessed having regard to the principles set out in the Framework.
- 5.14 Camden Planning Guidance (Advertisements) (March 2018), which supports Local Plan Policy D4, states that good quality advertisements respect the architectural features of the host building and the character and appearance of the surrounding area. It states that advertisements above fascia level can appear visually obtrusive, and where illuminated, can cause light pollution for residential properties. When considering the level of illumination on advertisements, account should be taken of the intensity of illumination, the surface area to be illuminated, and positioning and colours. Illumination should be in accordance with the guidance set out in the Institute of Lighting Engineers' guidance.

Bloomsbury Conservation Area Statement (BCAA)

- 5.15 The BCAA, which was published in 2011, describes the sensitive heritage context of Russell Square (a Grade II Registered Park & Garden) including a number of statutory listed buildings facing and in the vicinity of the square. The appeal site is situated within defined Sub-Area 11.
- 5.16 Further details of the BCAA, and of other policy and guidance documents, are provided in the Heritage Appeal Statement.

6. CONSIDERATIONS

Impact on the amenity of the locality

6.1 The Heritage Appeal Statement (Document 1) describes, in considerable detail, the townscape and heritage context of the Advertisement, and thoroughly assesses the impact of the Advertisement on the character and appearance of the host building, the street-scene, and designated heritage assets. Its key conclusions are as follows:-

- The advertisement has existed in this location, at this size and scale since 2000, and benefits from Deemed Consent. It is located in the context of other established commercial signage on this building and in this part of the conservation area;
- The assessment contained in the Heritage Appeal Statement has considered the impact of the Advertisement on the character and appearance of the host building, both as a contributor to the Bloomsbury Conservation Area and a non-designated heritage asset in its own right, the Bloomsbury Conservation Area as a designated heritage asset, and the surrounding streetscape, all identified by the Council in the Notice. For completeness, and with regard to the statutory duty within Section 66 of the 1990 Planning (Listed Buildings and Conservation Areas) Act, the assessment has also considered nearby designated heritage assets with the potential to be affected detrimentally through harmful change within their setting, namely the Grade II* Hotel Russell and Grade II Russell Square Registered Park & Garden. These two designated heritage assets were not identified by the Council in the Notice;
- The assessment has considered whether the Council's case for harm is made out, and whether the alleged detrimental impacts are sufficient to merit the finding of 'substantial injury to amenity'. The Heritage Appeal Statement has recognised that in considering this question, it is appropriate to take into consideration the statutory duties within Section 72 (and within Section 66(1)) of the 1990 Planning (Listed Buildings and Conservation Areas) Act, and the policy and guidance contained within the London Borough of Camden local development plan, the NPPF

(2018) and the London Plan. It has also taken into consideration relevant national guidance regarding the historic environment;

- The Heritage Appeal Statement has identified that, in the view of Mr Handcock, the Advertisement, in terms of its location, size, appearance, method of illumination, and relationship with its surroundings, causes no detrimental impact and no harm to any of these identified assets, either directly, or indirectly. The Advertisement is experienced in a part of the Conservation Area and street-scene which is busy and commercial, dominated by hotels and other commercial premises, and in an area with multiple signage and hotel advertisements which form part of the appearance of the vicinity, in both day and night settings. Sitting in this context, and as part of a defined characteristic of this part of the Bloomsbury Conservation Area, the Advertisement cannot be considered to be out of place or incongruous, it is clearly perceived as part of the landscape of hotels and commercial premises of the locality. In addition, detailed assessment of the Advertisement within multiple viewpoints, considering the Advertisement's visual influence has demonstrated it cannot, within its context, be considered to be an overly large or out of character feature. The Heritage Appeal Statement has, within this context, been informed by a full understanding of the history, development and significance of the designated heritage assets, fully assessed the impact of the Advertisement, and has found that no harm arises from its presence, nor should its continued existence be considered to be harmful;
- Mr Handcock's assessment is that there is no detrimental impact, arising in harm, to the character and appearance of the locality, however were the Inspector to identify harm to any of these assets, it would very clearly, under any reasonable and objective analysis be minor in its extent, and certainly well within the 'less than substantial' measure outlined in the Framework and NPPG. This is particularly as the scale of the Advertisement by its very nature can only affect a tiny portion of the Conservation Area and would, in all diurnal conditions, be perceived still as part of the fundamental character of its vicinity. This vicinity itself differs from the predominate character and appearance of the Bloomsbury Conservation Area as a whole, the special interest of which

is defined, in very great part, by its planned grid layout and eighteenth and early nineteenth century terraces. It is therefore Mr Handcock's view that even were harm to the Bloomsbury Conservation Area's character and appearance to be identified, it is not possible for this harm to be more than the very lowest level of less than substantial harm;

- Further, were harm, necessarily at the lowest end of less than substantial, to be identified to the character and appearance of the Bloomsbury Square Conservation Area, or to the setting of the Hotel Russell or Russell Square Gardens, it would clearly be appropriate to apply 'considerable weight and importance' to this harm, under the terms of Sections 66 and 72 of the 1990 Planning (Listed Buildings and Conservation Areas) Act. As such, it would also be appropriate to take into account Case Law, including the Palmer Case (Palmer -v- Herefordshire CC, [2016] EWCA Civ 1061) in the Court of Appeal, which indicated that when according 'great weight' to such harm (as per the wording of paragraph 193 of the NPPF), the degree of harm, remains highly relevant. The court agreed in that case that, *"the duty to accord 'considerable weight' to the desirability of avoiding harm does not mean that any harm, however slight, must outweigh any benefit, however great, or that all harms must be treated as having equal weight."*;
- Therefore, should detrimental impact or harm in one or more of the criteria set out by Council (of location, size, appearance or method of illumination) be found to be justified by the Inspector, then given the Advertisement's limited sphere of influence, the nature of its context, and the nature of the Bloomsbury Conservation Area (the designated asset) as a whole, any identified harm, of a necessarily less than substantial nature, would not, given that appeal decisions have demonstrated that the 'substantial injury' threshold is a high one, be sufficient to result in 'substantial injury to amenity' through detrimental impact to the significance of these assets. Therefore, a finding of limited or minor detrimental impact or harm would not in turn be sufficient to warrant the finding of 'substantial injury to amenity';

- It is therefore Mr Handcock's stated strong view that the Council's case for 'substantial injury to amenity', as laid out within the Notice, is not made out.

6.2 The findings of the Heritage Appeal Statement are therefore that the Notice should be quashed because the Advertisement does not cause substantial injury to amenity, and does not cause harm to any identified heritage assets. Without prejudice to this view, if the Inspector identifies harm to the character and appearance of the designated heritage assets in the vicinity of the appeal site, the view is taken on behalf of the Appellant that such harm would fall well within the "less than substantial" measure set out in the Framework and NPPG.

Legal Framework for the determination of this appeal

6.3 The appended Legal Opinion of Russell-Cooke Solicitors (Document 2) sets out the legal framework for the determination of this appeal, as summarised below.

The statutory test

6.4 The Regulations require a local planning authority to exercise its powers in the interests of amenity and public safety, taking into account (a) the provisions of its development plan, so far as they are material; and, (b) any other relevant factors. Where an advertisement benefits from deemed consent, the Regulations empower a local planning authority to issue a discontinuance notice if it is satisfied that it is necessary to do so to remedy a "*substantial injury*" to the amenity of the locality or a danger to members of the public.

6.5 As the Notice focusses on amenity, public safety does not need to be considered. Accordingly, the relevant test to be satisfied before a local planning authority takes discontinuance action in respect of an advertisement has two limbs, specifically (a) that the display of a particular advertisement with deemed consent is causing a substantial injury to the amenity of the locality; and (b) it is necessary to remedy that injury.

6.6 NPPG advises that "*substantial injury to the amenity of the locality is a more rigorous test than the "interests" of amenity*". Further, the courts have held that it is a stricter test than that used in determining an application for express consent

which may be refused on the basis of injury to amenity. In *Putney Bridge Approach Limited v The Secretary of State for Communities and Local Government* [2018] EWCA Civ 2268, the Court of Appeal accepted that the two limb test set out above “*was a relatively high threshold in planning terms*” albeit each element involved planning judgment. Russell-Cooke submits that the rationale is to reflect the fact discontinuance action results in the removal of a right conferred by Parliament and therefore such powers should not be exercised lightly. Accordingly, simple non-conformity with local policies or less than substantial injury to amenity is not sufficient to meet the test.

- 6.7 The Regulations specify that “amenity” includes aural and visual amenity, and that factors relevant to amenity include the “*general characteristics of the locality, including the presence of any feature of historic, architectural, cultural or similar interest.*” NPPG advises that “*in assessing amenity, the local planning authority would always consider the local characteristics of the neighbourhood: for example, if the locality where the advertisement is to be displayed has important scenic, historic, architectural or cultural features, the local planning authority would consider whether it is in scale and in keeping with these features.*”

Other factors

- 6.8 As the appeal site is located in the Bloomsbury Conservation Area and within the vicinity of other designated heritage assets, in applying the Regulation 8 test, it is necessary to consider the desirability of (a) preserving or enhancing the character or appearance of the conservation area and (b) preserving the listed assets and their settings. The provisions of the Council’s development plan, so far as they are material, must also be taken into account, as well as other factors such as the Framework.

The need for a statement of reasons

- 6.9 Regulation 8(3) of the 2007 Regulations specifies that a discontinuance notice must (among other things) contain a statement of the reasons why the local planning authority (a) considers that a substantial injury to the amenity of the locality or a danger to members of the public, as the case may be, has been caused, and (b) considers it necessary to serve the notice. NPPG advises that the reasons given by the local authority should “*be specific to the site and leave*

the person displaying the advertisement in no doubt about exactly what makes the display unacceptable to the local planning authority. If the notice specifies a particular advertisement(s), the statement should specifically address that particular advertisement(s)...".

Why the Notice should be quashed

6.10 Having regard to case law and other appeal decisions cited in the Opinion, and to the findings of Heritage Appeal Statement, the Inspector is requested to quash the Notice for the reasons set out below.

6.11 Whilst it is acknowledged that each case must be considered on its individual merits, a review of case law and of the appeal decisions cited in the Opinion reveals various key themes which are relevant to the assessment of this appeal. The Opinion applies these themes to the assessment of the impact of the Advertisement on amenity, as follows:-

- (a) The more dominant, out-of-scale, incongruous or visible an advertisement is, the more likely it is to cause "substantial injury" to the amenity of the locality. However, just because an advertisement is large and conspicuous does not necessarily mean it causes "substantial injury". Neutralising factors may include (among others) large sections of the host building remaining visible and the exact position of the subject advertisement (for example, whether it is set back). In the instant case, the Advertisement, which is small, is set away from the building line, with the result that the form of the host building remains clear, as does any decorative detail and overall architectural form of the building. The size of the Advertisement is proportionate to the height of the parallel window and ultimately is considered by Mr Handcock in the Heritage Appeal Statement to be of a "*size and scale and orientation*" that accords with the proportions and form of the host building. Further, Mr Handcock is satisfied that the Advertisement is barely discernible from the main frontage of the listed Hotel Russell and is only visible from a small part of the Russell Square Gardens. While Mr Handcock identifies some impact due to the Advertisement's brightness, he concludes in his statement that "*this is not a detrimental impact to the degree that this can be judged as "harm" to the character of the Conservation Area*", nor does it harm the

host building and street-scene. It is therefore contended that the Advertisement cannot be classed as unduly dominant, out-of-scale or intrusive. Notwithstanding this, the Appellant intends to give a section 106 unilateral undertaking to secure firstly a light assessment and secondly an obligation restricting the luminosity of the Advertisement to identified recommended thresholds (if ultimately necessary). Accordingly, any impact will be readily mitigated. A draft unilateral undertaking is appended to this statement (Document 3);

- (b) How long an advertisement has been *in situ* without complaint is relevant to assessing “substantial injury” but is not determinative. Further, a change in local policies is not enough to render the long-standing display of a particular advertisement suddenly so injurious to the amenity of the locality that it warrants the service of a discontinuance notice i.e. more is required. Applying these principles, it is noted that the Advertisement has been in place for nearly 20 years and the Council did not identify it as a detractor in its 2011 Bloomsbury Conservation Area Appraisal and Management Strategy. On the contrary, the Council recorded the Appeal Site (with the Advertisement *in situ*) as being a positive contributor to the conservation area, with the shopfront noted as having particular merit. Further, identified heritage assets in the vicinity of the appeal site were already designated when the Advertisement was erected, and there have been no subsequent designations. In summary, no factors have changed that would support the Council’s allegations that the Advertisement suddenly now after nearly 20 years causes “substantial injury” to the locality;
- (c) For an advertisement to cause “substantial injury” to the amenity of the locality requires more harm than simply having a negative effect on the character and appearance of a conservation area. Accordingly, while the Council alleges that the Advertisement has a “detrimental impact” on the character and appearance of the host building, the street scene and the wider conservation area, this is not the relevant test, as reflected by the specific wording of the 2007 Regulations. In the alternative, even if “detrimental impact” could be said to equate of “substantial injury”, for the reasons set out in detail in his statement, Mr Handcock is satisfied that the Advertisement does not cause any harm to the host building, street

scene and the character and appearance of the conservation area, nor does it impact on the significance of the listed Hotel Russell and Russell Square Garden;

- (d) The character of the neighbourhood and the presence of other advertisements in the vicinity is relevant. In the instance case, the Appeal Site is located within Sub-Area 11 of the Bloomsbury Conservation Area, which is a busy commercial area, characterised by hotels, with a continuous frontage of shops and signage. In particular, the character of the buildings along the east side of Southampton Row and on Woburn Place is “*overwhelmingly commercial, tourist centred and dominated by hotels*” and the quality of building within this area is very mixed. For this reason, Mr Handcock has described the Advertisement as being typical of the character of the area and as sitting “*naturally and sympathetically within its surroundings*”. Further, in the immediate vicinity of the Advertisement is a large London Underground roundel, hotel signage and Southampton Row and Woburn Place also include a number of hanging signs (illuminated and non-illuminated) of varying quality. Within this context, it is clear that the Advertisement is not incongruous.

- 6.12 The Opinion also considers the extent to which the Local Plan policies cited in the Notice are decisively applicable to the statutory test arising under the Regulations. Whilst the policies are material considerations, they are not by themselves decisive as to whether the statutory test in Regulation 8(1) has been met. For example, Policy D1 is primarily relevant to the design of future developments, and Policy D4 is principally concerned with advertisements requiring consent under the Regulations, noting that certain types of advertisement do not require consent, and are regarded as having deemed consent. Furthermore the Heritage Appeal Statement confirms that the Advertisement and its relationship with the locality do not clash with the policy requirement to preserve and enhance designated heritage assets. The Opinion notes that supporting paragraph 7.88 to Policy D4 advises that the Council will, where appropriate, seek the removal of advertisements with deemed consent that it considers to harm the character and amenity of a building or local area (which may include discontinuance action). However, Russell-Cooke is of the view that whether an advertisement “*harms*” the character and amenity of a building or local area is not equivalent to the test of whether an advertisement

causes “*substantial injury*” to the amenity of the locality. Furthermore, even if it could be said that some “harm” does arise in connection with the Advertisement, for the reasons set out by Mr Handcock, the degree of harm would be so low as to be *de minimis*. Accordingly, it is considered entirely inappropriate for the Council to have taken discontinuance action.

- 6.13 For the above reasons and having regard to the clear findings set out in the Heritage Appeal Statement, it is submitted on behalf of the Appellant that the Advertisement does not cause substantial injury to the amenity of the locality. Accordingly, the high threshold of the statutory test set out in Regulation 8(1) has not been satisfied, with the result that the Notice should be quashed.

7. CONCLUSIONS

- 7.1 The Advertisement, which has been in place for almost 20 years, has become an established but inconspicuous feature of this commercial area, and benefits from deemed consent. The findings of the Heritage Appeal Statement clearly indicate that the Advertisement does not cause substantial injury to the amenity of the locality. Furthermore, the Advertisement does not cause harm to any designated heritage assets including their settings. Therefore, no conflict is considered to arise with policies and guidance set out in the Framework and the NPPG, or with policies of the statutory development plan, so far as they are material.
- 7.2 Without prejudice to this conclusion, if the Inspector reaches the view that the Advertisement causes substantial injury to amenity by virtue of its luminosity, the Appellant intends to give a section 106 unilateral undertaking (in a similar form to that appended to this Statement) to restrict the lumen levels of the Advertisement.
- 7.3 The Inspector is therefore respectfully requested to quash the Notice.

CHRISTOPHER WICKHAM ASSOCIATES
May 2019

The following documents are provided in a separate Appendix to this statement:-

1. 'Heritage Appeal Statement' prepared by Mr Laurie Handcock of Icen Projects Limited;
2. Legal Opinion (including Appendices 1 & 2) dated 16th May 2019 prepared by Russell-Cooke Solicitors; and
3. Draft section 106 Unilateral Undertaking