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Grounds of Appeal

**Section 174(2) of the Town and County
Planning Act 1990**

Planning Enforcement Appeal

**48 Mornington Terrace, Camden, London,
NW1 7RT**

November 2020



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Project Name: 48 Mornington Terrace

Location 48 Mornington Terrace, Camden, London NW1 7RT

Client: Undercover Architecture Ltd and JL Center Holdings LLP

File Reference: P1742

Issue	Date	Author	Checked	Notes
PL1	10.11.2020	K Tipper	C Barker	Initial Draft
PL2	17.11.2020	K Tipper	C Barker	Second Draft
PL3	19.11.2020	K Tipper	C Barker	Appeal Issue

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1. Introduction

- 1.1. This statement has been prepared by ECE Planning Ltd on behalf of **Undercover Architecture Ltd** and **JL Center Holdings LLP** (“the Appellants”) in support of their Appeal against the issue of an Enforcement Notice under Section 172 of the Town and County Planning Act 1990 (“the Act”) by the London Borough of Camden (“the Council”) reference EN20/0163 (“the Notice”) (copy at **Appendix A**) in relation to 48 Mornington Terrace, Camden, London, NW1 7RT (“the Property”).
- 1.2. At the time of issue of the Notice the Property was in the ownership of Luke and Estelle Chandresinghe and the basement of the Property was occupied by their architecture practice; Undercover Architecture Ltd. On 21 October 2020 the freehold ownership of the Property was transferred to JL Center Holdings LLP, which is an LLP set up by a business partner of Luke and Estelle Chandresinghe. Undercover Architecture Ltd remain in occupation of the basement of the Property.
- 1.3. The Appeal is lodged jointly by JL Center Holdings LLP as a person with an interest in the Property and Undercover Architecture Ltd as relevant occupier.
- 1.4. The Notice was issued on 12 October 2020 alleging the following breach of planning control at 48 Mornington Terrace, Camden, London NW1 7RT:

“Without planning permission: The material change of use of the basement of the property from part of a residential dwelling (Use class C3) to an office (Class E)”
- 1.5. The following Statement sets out the Appellants’ grounds of appeal under section 174(2) of the Act against the Notice. It is intended to submit further representations and evidence within the requisite 6 weeks of the start date of this appeal, in accordance with The Planning Inspectorate’s Procedural Guide: Enforcement notice appeals – England (July 2020) (July 2020 guidance). The Appellants have so far been denied access to the officer’s report which informed the decision to issue the Notice
 - 1.5.1. The Appellants appeal under grounds (a), (b), (f) and (g) of section 174 (2) of the Act.

2. Mode of Appeal

- 2.1. The Appellants wish to appeal against the Enforcement Notice by means of the Informal Hearing procedure. The appeal should be heard and conjoined with the Appellants' appeal under section 39 of the Listed Buildings Act 1990 against a Listed Building Enforcement Notice issued in respect of alleged unauthorised works and alterations to the basement of the Property.
- 2.2. It is considered that this procedure is the appropriate mode, in line with Annexe G to the July 2020 guidance. This mode will ensure the Inspector can test the evidence by questioning participants under Section 172 of the Act, or seeking clarification on matters, and is proportionate to the alleged breach of planning control. Furthermore, this mode will allow for further discussion to take place on an accompanied site visit, where the full extent of the alleged breach of planning control and the relationship with the alleged alterations which are the subject of the Listed Building Enforcement Notice can be seen and discussed with the parties. It is envisaged that an advocate will represent the Appellants at the hearing.

3. The Site

- 3.1. The Property forms part of a Grade II Listed terrace within the Camden Town Conservation Area.
- 3.2. The Grade II Listed Mornington Terrace forms 27 residential properties, including the Property. Coupled with a handful of recent properties to the south, the Grade II Listed terrace forms the eastern side of Mornington Terrace, whilst (with the exception of the Edinboro Castle Public House, and the adjacent two storey property) those properties that once formed the western flank of Mornington Terrace have long since been demolished to accommodate the railway line that serves London Euston Railway Station. The Property's context is illustrated in Figure 1 and 2 below.



Figure 1 - Site Context (Source: Google, 2018)



Figure 2 - Site Location (Source: Google, 2018)

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- 3.3. The Grade II Listed Mornington Terrace was constructed in the first half of the 19th Century and is Georgian in character. The terrace is subdivided equally, with each of the residential properties, benefiting from a generous step-back from the street, as well as private amenity space to the rear.
- 3.4. Further reflecting the Georgian character of the Grade II Listed terrace, each property is predominantly constructed from red brick with a stucco ground floor and stucco fluted Ionic pilasters marking the division of the terrace. The properties also benefit from cast-iron railings flanking those steps to the entrance and marking the private amenity space to the front.
- 3.5. Whereas the front elevation of the Grade II Listed terrace is uniform in appearance, the rear elevation of the terrace reflects the variety of historic extensions and alterations made to each of those properties that form the terrace, together with the terrace within Albert Street (to the east) and Delancey Street (to the north) which form the rear enclosure of gardens.
- 3.6. The uniform appearance of the front elevation is the primary reason for the statutory listing, and this is illustrated in Figure 3 below. The eclectic mix of historic extensions and alterations are typically to the rear at lower and upper ground floors, and within the roof slope as illustrated in the images 4-6 below. The significance of the Property as a heritage asset therefore pertains to the public face of these terraced properties. This was accepted by the Planning Inspector under APP/X5210/C/17/3191981, 3191982 & 3191983 (**Appendix B**) noting:

“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, 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. In these circumstances I find that the significance of this designated heritage asset, both the listed building and the wider terrace, derives from the public face of these properties”.



Figure 3 - Front uniform elevation (Source: Google 2018)

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Figure 4 - Typical Roof Alterations (rear elevations of Albert Street)



Figure 5 - Typical Rear Extensions and Garden Rooms (Mornington Terrace, Delancey Street and Albert Street)

4. Planning History

4.1. Introduction

- 4.1.1. The following planning history pertains to the appeal site and includes relevant applications, appeals, and enforcement cases.

34063(R1) & HB2891(R1) - The Change of Use of the basement to a self-contained dwelling unit, including works of conversion.

- 4.1.2. This application, made on 16 April 1982, sought permission for the use of the lower ground floor as a self-contained residential apartment, an accompanying Listed Building Consent application was also submitted to the Council. Permitted 17 September 1984.

- 4.1.3. It is not known whether this was completed and whether self containment took place. In 2013 when Luke and Estelle Chandresinghe bought the Property it was not self contained and it is not self contained now. The basement remains internally connected to the upper floors of the Property.

L9601081 & L9601081R1 - Removal of chimney and rebuilding part rear wall below parapet level without replacing attached flue below parapet level.

- 4.1.4. This application sought Full Planning Permission and Listed Building Consent for the scheduled works. Permitted 2 August 1996.

2008/3295/L - Mass concrete underpinning to the single storey rear extension.

- 4.1.5. This application sought Listed Building Consent for the underpinning of a single storey rear extension due to subsidence. Permitted 9 October 2008.

2013/2343/L & 2013/2239/P - Erection of basement and ground floor rear extension with first floor rear extension above, new rear lightwell with associated landscaping and glass canopy over front lightwell to existing dwelling (Class C3).

- 4.1.6. These applications sought Full Planning Permission and Listed Building Consent for alterations and extensions to the existing property including the erection of basement level, ground floor and first floor rear extensions.

- 4.1.7. Planning Permission and Listed Building Consent was refused by the Council. Refused 26 April 2013.

2013/4379/L & 2013/4286/P - Erection of rear extension at lower ground floor of existing dwelling (Class C3) and associated landscaping.

- 4.1.8. These applications sought Full Planning Permission and Listed Building Consent for a rear extension to the existing property at lower ground floor level. The applications represented revisions to the previously refused applications (2013/2343/L & 2013/2239/P). Those revisions sought to address the concerns raised by the Council in relation to the previous application, however despite those alterations, the applications were again refused by the Council. Refused 18 July 2013.

2013/6592/P Erection of single storey rear extension on basement level, new rear lightwell with balustrade and alterations to rear ground floor windows of rear extension to dwellinghouse (Class C3).

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4.1.9. This application, which sought Full Planning Permission, represented further revisions to those previously refused applications noted above, for the erection of a replacement ground floor rear extension and alterations to the existing property.

4.1.10. The Council determined that the revisions incorporated within the application adequately addressed those concerns previously raised, concluding that the proposals would not harm the special architectural and historic interest of the listed terrace and the character and appearance of the wider Conservation Area. It was also concluded that the proposals would have no adverse impact on the amenities of the neighbouring properties. Permitted 8 April 2014.

2013/6742/L - External and internal alterations for erection of single storey rear extension on basement level, new rear lightwell with balustrade and replacement of rear ground floor windows of rear extension to dwellinghouse and associated internal alterations (Class C3).

4.1.11. This application for Listed Building Consent accompanied the above application for Full Planning Permission (2013/6592/P) and sought associated internal alterations. Permitted 8 April 2014.

2014/7506/L and 2014/7441/P Erection of full width rear extension at lower and ground floors (retrospective).

4.1.12. These applications for Listed Building Consent and Householder Planning Permission were refused on 21 July 2015.

2014/7447/L and 2014/7412/P Erection of a garden room in the rear garden (retrospective).

4.1.13. These Listed Building and Full Planning applications sought to regularise the construction of a single storey flat roofed and partially sunken garden room measuring approximately 20sqm.

4.1.14. The Council determined the development to be unacceptable in terms of the scale, size and design and permission was refused on 21 July 2015.

4.1.15. Following the refusal of the application, an enforcement notice (reference EN14/0974), was issued on 10 November 2017. The breach of planning control as alleged in the notice was 'Without planning permission the unauthorised erection of a black metal and glass outbuilding in the rear garden'.

4.1.16. The enforcement notice was subsequently quashed at appeal and planning permission was granted by the Planning Inspectorate on 29 June 2018 (**Appendix B**).

5. Policy

5.1. Introduction

- 5.1.1. A key role of the planning system is to regulate the development and use of land in the public interest. At the heart of the planning framework are statutory Development Plans, which seek to guide the decision making process. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires, that where the Development Plan contains relevant policies, applications for planning permission shall be determined in accordance with the Development Plan, unless material considerations indicate otherwise.
- 5.1.2. The Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) refers to the general duty in respect of Listed Buildings and Conservation Areas. Any decisions where listed buildings and their settings and conservation areas are a factor must address the statutory considerations of the aforementioned Act, in particular Section 66. In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Section 72 of the Act requires that 'special attention shall be paid to the desirability of preserving or enhancing the character of that area'.
- 5.1.3. In this case, the Development Plan comprises the London Borough of Camden Local Plan which was adopted on 3 July 2017. The Camden Local Plan sets out the Council's planning policies and replaces the Core Strategy and Development Policies planning documents (adopted in 2010).
- 5.1.4. The National Planning Policy Framework (NPPF), National Planning Practice Guidance (NPPG), the London Plan, and Supplementary Planning Guidance are also material considerations.

5.2. National Planning Policy Framework (NPPF)

- 5.2.1. At the heart of NPPF and wider Government guidance is the presumption in favour of sustainable development, which runs through both plan-making and decision-taking. This commitment to sustainable development encompasses three mutually dependent dimensions: *an economic objective*; *a social objective* and, *an environmental objective*.
- 5.2.2. Paragraph 58 addresses the role of enforcement in the planning system, noting that enforcement action is discretionary and the local planning authority should act proportionally in responding to suspected breaches of planning control.
- 5.2.3. Section 11 of the NPPF sets out the Government's objective to ensuring efficient use of land. Section 16 of the NPPF addresses specifically the importance of conserving and enhancing the historic environment.

5.3. National Planning Practice Guidance (NPPG)

- 5.3.1. The National Planning Practice Guidance (NPPG) supplements those overarching objectives of the National Planning Policy Framework and is updated periodically to reflect changes to government guidance.

5.4. Strategic Planning Policy – London Borough of Camden Local Plan 2017

- 5.4.1. The key strategic development plan document for the borough is the Camden Local Plan 2017. The Council has cited three Local Plan policies within in the Notice, these being policy H3 (Protecting existing homes), DM1 (Delivery and Monitoring), and T2 (Parking and car-free development).

- 5.4.2. The Appellants consider, in addition to those policies noted by the Council within the Notice, that policy E2 (employment premises and sites) is pertinent to the consideration of this appeal, specifically as the use of the Property, and as noted at Section 3 of the Notice, relates to an architects studio/office. The alleged unauthorised use must therefore also be considered in the context of the economic value that the architectural and design studio contributes to the borough and local community in addition to the use of the Property for residential purposes.

Policy H3 Protecting existing homes

The Council will aim to ensure that existing housing continues to meet the needs of existing and future households by:

- a. resisting development that would involve a net loss of residential floorspace, including any residential floorspace provided;
 - within hostels or other housing with shared facilities; or
 - as an ancillary element of another use, wherever the development involves changing the main use or separating the housing floorspace from the main use;
- b. protecting housing from permanent conversion to short-stay accommodation intended for occupation for periods of less than 90 days; and
- c. resisting development that would involve the net loss of two or more homes (from individual or cumulative proposals), unless they:
 - create large homes in a part of the borough with a relatively low proportion of large dwellings;
 - enable existing affordable homes to be adapted to provide the affordable dwelling-sizes that are most needed; or
 - enable sub-standard units to be enlarged to meet residential space standards.

Exceptionally, the Council may support development that involves a limited loss of residential floorspace where this provides for the expansion of existing health premises to meet local needs

T2 Parking and car-free development

The Council will limit the availability of parking and require all new developments in the borough to be car-free.

We will:

- a. not issue on-street or on-site parking permits in connection with new developments and use legal agreements to ensure that future occupants are aware that they are not entitled to on-street parking permits;
- b. limit on-site parking to:
 - i. spaces designated for disabled people where necessary, and/or
 - ii. essential operational or servicing needs;
- c. support the redevelopment of existing car parks for alternative uses; and
- d. resist the development of boundary treatments and gardens to provide vehicle crossovers and on-site parking.

Policy DM1 Delivery and monitoring

The Council will deliver the vision, objectives and policies of the Local Plan by:

- a. working with a range of partners to ensure that opportunities for creating the conditions for growth and harnessing its benefits for the borough are fully explored;
- b. working with relevant providers to ensure that necessary infrastructure is secured to support Camden's growth and provide the facilities needed for the borough's communities. Information on key infrastructure programmes and projects in the borough up to 2031 are set out in Appendix 1;
- c. working proactively in its actions as a landowner and by facilitating land assembly where considered appropriate;
- d. using planning contributions where appropriate to;
 - i. support sustainable development;
 - ii. secure the infrastructure, facilities and services to meet the needs generated by development;
 - iii. mitigate the impact of development;
- e. secure appropriate scheme implementation (including multi-site developments) and control phasing where necessary;
- f. working with neighbouring boroughs to coordinate delivery across boundaries; and
- g. monitoring the implementation of the Local Plan policies and infrastructure provision on a regular basis.

Policy E2 Employment premises and sites

The Council will encourage the provision of employment premises and sites in the borough. We will protect premises or sites that are suitable for continued business use, in particular premises for small businesses, businesses and services that provide employment for Camden residents and those that support the functioning of the Central Activities Zone (CAZ) or the local economy.

We will resist development of business premises and sites for non-business use unless it is demonstrated to the Council's satisfaction:

- a. the site or building is no longer suitable for its existing business use; and
- b. that the possibility of retaining, reusing or redeveloping the site or building for similar or alternative type and size of business use has been fully explored over an appropriate period of time. We will consider higher intensity redevelopment of premises or sites that are suitable for continued business provided that:
- c. the level of employment floorspace is increased or at least maintained;
- d. the redevelopment retains existing businesses on the site as far as possible, and in particular industry, light industry, and warehouse/logistic uses that support the functioning of the CAZ or the local economy;
- e. it is demonstrated to the Council's satisfaction that any relocation of businesses supporting the CAZ or the local economy will not cause harm to CAZ functions or Camden's local economy and will be to a sustainable location;
- f. the proposed premises include floorspace suitable for start-ups, small and medium-sized enterprises, such as managed affordable workspace where viable;
- g. the scheme would increase employment opportunities for local residents, including training and apprenticeships;
- h. the scheme includes other priority uses, such as housing, affordable housing and open space, where relevant, and where this would not prejudice the continued operation of businesses on the site; and
- i. for larger employment sites, any redevelopment is part of a comprehensive scheme.

6. Grounds of Appeal

6.1. Introduction

- 6.1.1. This section seeks to address the Council's stated reason for service of the Notice which is scrutinised below. As noted at the start of this statement, the Appellants' will submit further information and evidence within the appeal programme. This is necessary, as the Appellants have not been provided with a copy of the Council's report or authority to serve the Notice, and therefore the Appellants have not been provided the opportunity to scrutinise the Council's justification and reasons for issuing the Notice, other than those expressly stated at Section 4 of the Notice.
- 6.1.2. In accordance with Section 174 of the Town and Country Planning Act 1990 (as amended) the Appellant wishes to appeal against Enforcement Notice EN20/0163 on Grounds (a), (b), (f) and (g).
- 6.1.3. The grounds should be considered in the following order (b), (a), (f), (g).

Ground (b) - that the breach of control alleged in the enforcement notice has not occurred as a matter of fact;

Ground (a) - that planning permission should be granted for what is alleged in the notice (or that the condition or limitation referred to in the enforcement notice should be removed).

Ground (f) - that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach

Ground (g) - that the time given to comply with the notice is too short.

6.2. Reason for Issuing the Notice

- 6.2.1. The Council has stated the following reason for issuing the Enforcement Notice:

- a) The change of use has occurred within the last 10 years*
- b) The change of use of the basement to an office results in the net loss of residential floorspace and would set an unacceptable precedent for the rest of the buildings along this terrace of buildings and is thereby contrary to policy H3 of Camden's Local Development Plan 2017;*
- c) In the absence of a S106 legal agreement to secure car-free development, it would be likely to contribute unacceptably to parking stress in the surrounding area and is thereby contrary to policies T2 and DM1 of Camden's Local Plan 2017.*

6.3. Ground B - that the breach of control alleged in the enforcement notice has not occurred as a matter of fact

- 6.3.1. The use of the basement of the Property by Undercover Architecture Ltd has been gradual and has evolved from a studio used ancillary to the residential use of the family of the Directors of the practice and their occupation of the Property to occupation by their architectural design practice employing 6 people. The evolution of the use of the basement from ancillary studio/office is set out in more detail below, which clearly indicates that gradual change.

- September 2014 - September 2018: The Property is occupied by the Chandresinghe family, whilst using the basement as a home working space with six people, including Mr & Mrs Chandresinghe, working in the studio.
- October 2018 - October 2020: the Chandresinghe family take up occupation in France and rent out the Property. Periodic use and occupation of the Property by the Chandresinghe family. When the family were not in London, the upper floors of the Property were rented on short term lets in between periods of family occupation. A maximum of six staff were working in the basement studio.
- In response to the Covid-19 lockdown earlier this year, and the uncertainty of Covid, the Chandresinghe family decided to rent the upper floors of the Property on a long term lease (from May 2020), as the Chandresinghe family were setting up their home and architectural design studio in France. The upper floors of the Property are occupied by a single tenant.

6.3.2. There is no physical barrier to prevent access between the basement and the ground floor and the rest of the Property above. Undercover Architecture Ltd manages the tenancy and has full access to the upper floors from the basement to maintain it. When in London, members of the Chandresinghe family often stay in the basement. The Property remains a single planning unit. Whilst the use of the basement has resulted in a use which may perhaps be no longer be considered 'ancillary' to the residential use it remains nonetheless tied to the residence above by means of an internal staircase and, in part, used for residential and overnight accommodation when the Principals of the architectural practice are in London.

6.3.3. There is little or no net loss of residential floorspace when compared to the previous situation, when the basement was used as ancillary office accommodation. Anyone visiting the premises would find the situation little different from the situation which prevailed when the Chandresinghe family occupied the Property. Applying the principles in Burdle v SSE (1972) 3 All ER 240, the lack of physical separation and the tendency to treat the building as a whole as a single unit of occupation means that the Property should be looked at as a single planning unit when considering the materiality of any change in the use of the building.

6.3.4. The use of the basement is as a mixed use for residential and office purposes in association with the use of the building as a dwelling house. There has been no material change of use and the breach of planning control alleged in the Notice has not occurred as a matter of fact.

6.4. Ground A - that planning permission should be granted for what is alleged in the notice

6.4.1. The submissions on this Ground are without prejudice to the submissions on Ground (b).

6.4.2. The Council alleges under section 4b) of the Notice that the change of use would result in a net loss of the residential floorspace and furthermore, the change of use would set an unacceptable precedent for the rest of the buildings along the terrace.

6.4.3. The use of the basement as an architectural design studio, has not resulted in a loss of residential, floorspace, for the reasons set out under Ground (b) above. There is therefore no breach of policy H3.

6.4.4. The Appellants will demonstrate that the use of the basement has not resulted in material harm to either the Property, or the wider terrace and has not set an unacceptable precedent for future development elsewhere in the terrace, which would need to be considered on their own merit. In fact, several of the houses in the Terrace have been previously subdivided.

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- 6.4.5. The Appellants are keen to ensure that the basement use is not severed from the upper floors. It is not the Appellants' intention for the basement studio/office to be operated independent from the rest of the Property above, or by any other commercial enterprise other than by Undercover Architecture Ltd. For this reason, the internal link connecting the studio/office to the upper residential accommodation has been retained.
- 6.4.6. In this respect, the Appellants are willing to accept a condition which ties the basement studio/office to the upper floors of the Property. This can be secured by means of appropriately worded planning condition (or section 106 obligation) ensuring the studio/office is not severed from the rest of the Property. Similarly, a condition can be secured restricting the use of the studio/office for the benefit of Undercover Architecture Ltd (or its successors in title). This would ensure that the use could be granted for a temporary period with reversion to a single family dwelling on cessation of use by Undercover Architecture Ltd or successors. This can be easily facilitated without physical works, as the internal link to the upper floors, as noted earlier, has been retained.
- 6.4.7. The Council has been aware of the use of the basement since 2015. Since that time, the Council has not progressed enforcement proceedings until now and therefore the Appellants submit that there has been no detrimental impact to the wider group terrace by reason of activity associated with the architectural design studio. Had the Council considered the harm to be unacceptable, then enforcement proceedings would surely have progressed at an early date.
- 6.4.8. On this basis, it is submitted that the requirement to cease the use has not reached the threshold of expediency, with the more reasonable and proportionate approach being to seek a retrospective application to regularise the use. Indeed, this is the approach taken by the Appellants who have submitted a retrospective application to the Local Planning Authority (ref) without prejudice to their belief that planning permission for the use is not required (as set out in their ground (b) appeal).
- 6.4.9. The Council has asserted at reason c) that the absence of a section 106 legal agreement to secure car-free development would likely contribute unacceptably to parking stress in the surrounding area. The Appellants would be willing to enter into such an agreement to bind the occupiers/staff of the studio/office in the basement of the Property.
- 6.4.10. The development is therefore consistent with planning policy - the appeal on Ground (a) should succeed and planning permission should be granted.
- 6.5. Ground F - that the steps required by the notice to be taken, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach**
- 6.5.1. The submissions on this Ground are without prejudice to the submissions on Grounds (b) and (a).
- 6.5.2. The requirement, as set out at Section 5 of the Notice to: *"To cease the unauthorised office use, and remove all fixtures, fittings and equipment that facilitate the unauthorised office use"* exceeds what is reasonably necessary to remedy the alleged breach.
- 6.5.3. There is no demonstrable harm caused by the use of the basement which requires immediate cessation. The requirement to remove all fixtures, fittings and equipment that facilitate the unauthorised use is ambiguous, as it is silent on what fixtures and fittings are explicitly associated with the alleged unauthorised use. The fixtures and fittings are the same as those in the basement when the Chandresinghe family lived in the Property and the use by them for their architectural practice was ancillary.

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6.5.4. There is no reason that any residential occupier could not use the basement as a home office and there is no need to remove any equipment associated with such a use. Such ambiguity renders the Notice unenforceable

6.6. Ground G - that the time given to comply with the notice is too short

6.6.1. The submissions on this Ground are without prejudice to the submissions on Grounds (b) (a) and (f).

6.6.2. The Council has imposed a timeframe of one month from the Notice taking effect to comply with the requirements of the Notice i.e. the cessation of the use and removal of all fixtures and fittings and equipment. The implications of requiring a business to cease operation within such a short timeframe is unreasonable and fails to have regard to the economic impact such a requirement will have on a small independent enterprise.

6.6.3. Should the Inspector resolve to uphold the Notice, it is submitted that an 18 month period is a more reasonable period. This would enable Undercover Architecture Ltd to seek alternative studio/office accommodation including agreeing terms of lease.

7. Conclusion

- 7.1. The mixed use of the basement for residential and as an architectural and design studio does not constitute a material change of use. This is the basis of the Ground (b) appeal.
- 7.2. Should the Ground (b) appeal fail, planning permission should be granted for the use of the basement for the reasons set out at section 6.4 above.
- 7.3. Should the appeals on Grounds (b) and (a) fail the requirements of the Notice to remove all fixtures and fittings that facilitate the use is excessive.
- 7.4. Should the appeals on Grounds (b), (a) and (f) fail the timeframe for compliance with the Notice is unreasonable and disproportionate to the scale and impact associated with the alleged breach.

Appendix A – Enforcement Notice (reference EN20/0163)

Date: 12 October 2020
Our Reference: 1800.1712
Enquiries to: Hadiza Mohammed

Law and Governance
London Borough of Camden
Town Hall
Judd Street
London WC1H 9LP



1896117_01/6071/000/25/9/1-9

FIRST CLASS RECORDED POST
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NW1 7RT

Direct 020 7974 5680
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www.camden.gov.uk

IMPORTANT- THIS COMMUNICATION AFFECTS YOUR LAND

Dear Sir/Madam

**TOWN AND COUNTRY PLANNING ACT 1990
SECTION 171A (AS AMENDED BY THE PLANNING AND COMPENSATION ACT 1991)
ENFORCEMENT NOTICE: EN20/0163
LAND AND PREMISES AT: 48 MORNINGTON TERRACE LONDON NW1 7RT**

The Council has issued an Enforcement Notice relating to the above land and I now serve on you a copy of that Notice, in view of your (or your client's) interest in the land. (Copies of the Notice are also being served on others who, it is understood, have an interest in the land).

Unless an appeal is made to the Secretary of State, as described below, the Notice will take effect on **23 November 2020** and you (or your client) must ensure that the required steps are taken within the period specified in the Notice.

Should you wish to make an appeal, the enclosed information sheet published by the Planning Inspectorate gives details of how to make an appeal. This can be accessed via the following website; <http://www.planningportal.gov.uk/uploads/pins/eninfosheet.pdf>.

Your appeal (or your client's) must be received by the Planning Inspectorate before the date shown in paragraph 2 above as that is the date when the notice will take effect i.e. **23 November 2020**.

Finally, please forward a copy of any appeal form direct to the Regeneration and Planning, Development Management, London Borough of Camden, Town Hall, Judd Street London WC1H 9JE.

If you have any queries regarding this notice or would like to discuss compliance please contact ANGELA RYAN of the Planning Enforcement team at Supporting Communities, Regeneration and Planning, Development Management, London Borough of Camden, Town Hall, Judd Street London WC1H 8JE or on **020 7974 3236** or angela.ryan@camden.gov.uk.

Yours faithfully



**Hadiza Mohammed
Legal Assistant
For the Borough Solicitor**

**Borough Solicitor
Andrew Maughan**

607100000901

1896117_01/6071/000/25/9/1-9

IMPORTANT – THIS COMMUNICATION AFFECTS YOUR PROPERTY**TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED BY THE PLANNING AND
COMPENSATION ACT 1991)****ENFORCEMENT NOTICE****ISSUED BY: THE LONDON BOROUGH OF CAMDEN**

1. **THIS IS A FORMAL NOTICE** which is issued by the Council because it appears to them that there has been a breach of planning control, under Section 171 A (1) (a) of the above Act, at the land described below. They consider that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material planning considerations. The Explanatory Note at the end of the Notice and the enclosures to which it refers contain important additional information.

2. **THE LAND TO WHICH THE NOTICE RELATES**

Land at: 48 Mornington Terrace London NW1 7RT as shown outlined in black on the attached plan ("the Property").

3. **THE BREACH OF PLANNING CONTROL ALLEGED**

Without planning permission: The material change of use of the basement of the property from part of a residential dwelling (Use class C3) to an office (Class E).

4. **REASONS FOR ISSUING THIS NOTICE:**

- a) The change of use has occurred within the last 10 years.
- b) The change of use of the basement to an office results in the net loss of residential floorspace and would set an unacceptable precedent for the rest of the buildings along this terrace of buildings and is thereby contrary to policy H3 of Camden's Local Plan 2017;
- c) In the absence of a S106 legal agreement to secure car-free development, it would be likely to contribute unacceptably to parking stress in the surrounding area and is thereby contrary to policies T2 and DM1 of Camden's Local Plan 2017

5. WHAT YOU ARE REQUIRED TO DO

Within a period of **ONE (1) month** of the Notice taking effect:

1. To cease the unauthorised office use, and remove all fixtures, fittings and equipment that facilitate the unauthorised office use.

6. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on **23 NOVEMBER 2020** unless an appeal is made against it beforehand.



DATED: 12 OCTOBER 2020 Signed:

**Chief Planning Officer, Supporting Communities on behalf of the London
Borough of Camden, Town Hall, Judd Street, London WC1H 8JE**

Explanatory Note Pursuant to Regulation 5 of the Town and Country (Enforcement Notices and Appeals) (England) Regulations 2002

An appeal may be brought on any of the following grounds—

- (a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;
- (b) that those matters have not occurred;
- (c) that those matters (if they occurred) do not constitute a breach of planning control;
- (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
- (e) that copies of the enforcement notice were not served as required by section 172;
- (f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;

Council reference: EN20/0163

(g) that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.

Not all these grounds may be relevant to you.

If you appeal against the notice on Ground (a) "That planning permission should be granted for what is alleged in the enforcement notice, or that the condition which is alleged not to have been complied with should be discharged" there is a fee payable under Regulation 10 of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012/No.2920 for the deemed application for the planning permission for the development alleged to be in breach of planning control in the enforcement notice.

The fee is payable twice to the "London Borough of Camden", as the Local Planning Authority.

If you wish to appeal under Ground (a), the fee payable to the "London Borough of Camden" should accompany the copy of the appeal form sent to the Council at the following address:

Appeals and Enforcement
Supporting Communities
Regeneration and Planning
Development Management
London Borough of Camden
Town Hall
Judd Street
London
WC1H 9JE

The fee is £924.00

The TOTAL FEE payable is £924.00 (i.e. £462.00 x 2)

STATEMENT ON GROUNDS OF APPEAL

You must submit to the Secretary of State, either when giving notice of appeal or within 14 days from the date on which the Secretary of State sends him a notice so requiring, a statement in writing specifying the grounds on which you are appealing against the Enforcement Notice and stating briefly the facts on which you propose to rely in support of each of those grounds.

ANNEX**YOUR RIGHT OF APPEAL**

You can appeal against this notice, but any appeal must be received, or posted in time to be **received**, by the Planning Inspectorate acting on behalf of the Secretary of State **before** the date specified in paragraph 6 of the notice.

The enclosed information sheet published by the Planning Inspectorate gives details of how to make an appeal

link to <http://www.planningportal.gov.uk/uploads/pins/eninfosheet.pdf>

WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this enforcement notice, it will take effect on **23 November 2020**, and you must then ensure that the required steps for complying with it, for which you may held responsible, are taken within the period specified in the notice. Failure to comply with an enforcement notice, which has taken effect, can result in prosecution and/or remedial action by the Council.

The information contained within this notice is a summary of sections 171A, 171B and 172-177 of the Town and Country Planning Act, 1990.

For the full sections of the act please see: <http://www.legislation.gov.uk/ukpga/1990/8/part/VII>

THIS ENFORCEMENT NOTICE HAS BEEN SERVED ON:

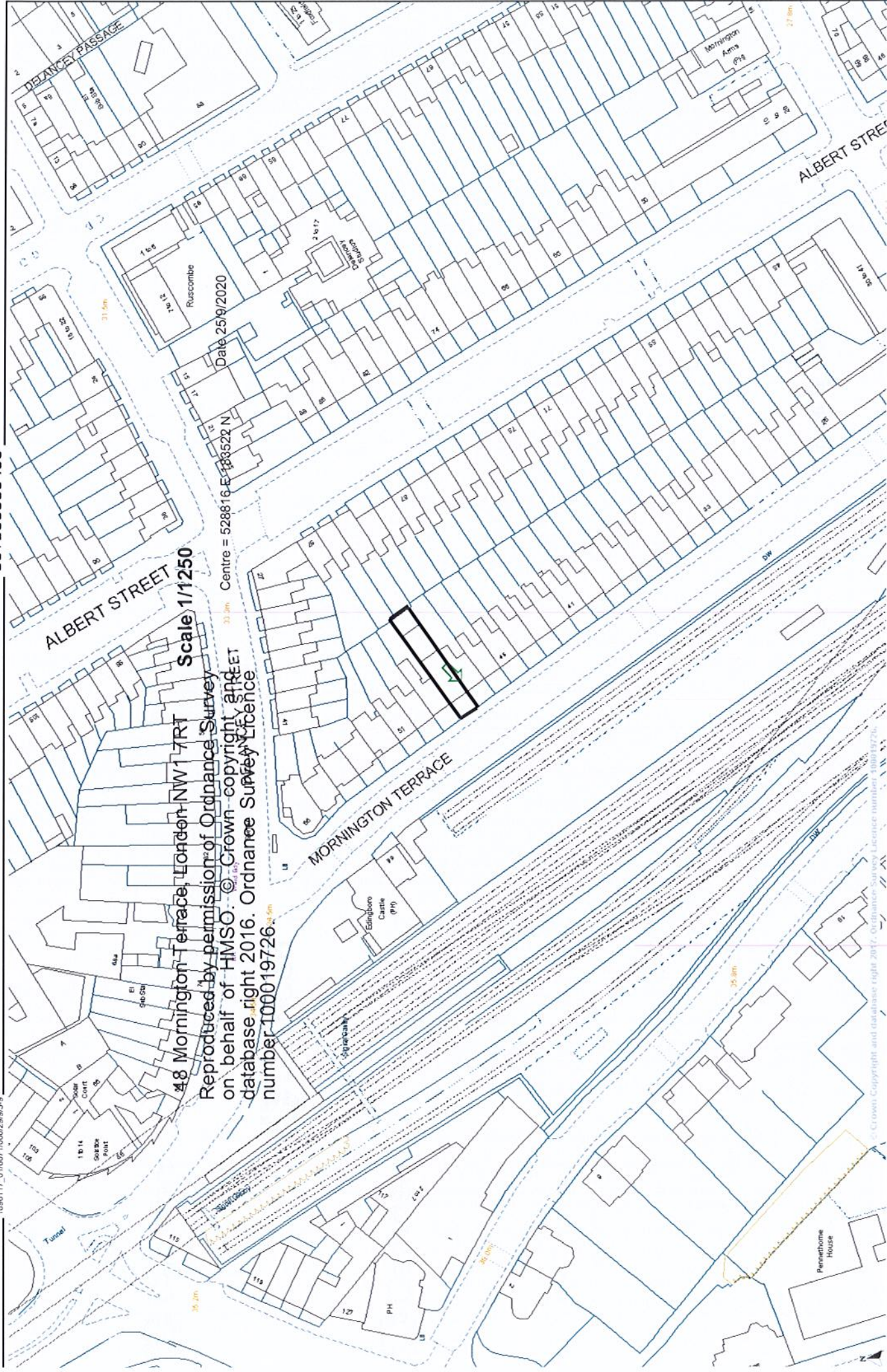
1	Owner 48 Mornington Terrace London NW1 7RT
2	Occupier 48 Mornington Terrace London NW1 7RT
3	Lankendra Chandresinghe and Estelle Elise MARIE-EMMANUELLE CHANDRESINGHE 48 Mornington Terrace London NW17RT
4	ONESAVINGS BANK PLC Reliance House, Sun Pier, Chatham, Kent ME4 4ET, trading as Kent Reliance Banking Services, Kent Reliance and krbs

If you believe that there is someone else who should be served or any of those listed above has not received a copy of the notice or any other document please let that person and the Council know of this omission as soon as possible.

Council reference: EN20/0163

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The Planning Inspectorate

Customer Support Team
Temple Quay House
2 The Square
Temple Quay Bristol
BS1 6PN

Direct Line 0303-444 5000
Email enquiries@planninginspectorate.gov.uk

THIS IS IMPORTANT

If you want to appeal against this enforcement notice you can do it:-

- on-line at the Appeals Casework Portal
(<https://acp.planninginspectorate.gov.uk/>); or
- sending us enforcement appeal forms, which can be obtained by contacting us on the details above.

You MUST make sure that we RECEIVE your appeal BEFORE the effective date on the enforcement notice.

Please read the appeal guidance documents at
<https://www.gov.uk/appeal-enforcement-notice/how-toappeal>.

In exceptional circumstances you may give written notice of appeal by letter or email. You should include the name and contact details of the appellant(s) and either attach a copy of the Enforcement notice that you wish to appeal or state the following:

- the name of the local planning authority;
- the site address; and
- the effective date of the enforcement notice.

We MUST receive this BEFORE the effective date on the enforcement notice. This should immediately be followed by your completed appeal forms.

Appendix B – Appeal Decision APP/X5210/C/17/3191981, 3191982 & 3191983 in respect of the garden room at 48 Mornington Terrace, Camden



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

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.

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 superseded¹. So whilst the Council rely on the delegated report², 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 7.8³, 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 Strategy⁴ 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 description⁵, 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 either⁶. In these circumstances I find that the significance⁷ 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 Map⁸ 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 listed⁹. In

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

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

³ 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.

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

⁵ Submitted with the Council's questionnaire.

⁶ One could only gain access to the rear via the interior[s].

⁷ As defined in the Glossary in Annex 2 to the Framework.

⁸ Appendix 6 to the CAA.

⁹ 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 realm¹⁰. However, having reviewed the CAA, I disagree. In these circumstances I set out the passage that might have been overlooked¹¹: *"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"*¹² [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'¹³ 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.

¹⁰ Paragraphs 5.6.3-5.6.5 of the grounds of appeal.

¹¹ 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.

¹² 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".

¹³ 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 roof¹⁴ 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*"¹⁵. 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*"¹⁶. 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

¹⁴ As per annotation on drawing No A 301.

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

¹⁶ 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 ground¹⁷ that the outbuilding has a footprint of approximately 20 m². 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 permitted¹⁸ at No 50 appears to fill the width of that plot, albeit I acknowledge that it appears to taper such that it might be narrower¹⁹, and takes up a not dissimilar proportion of that rear garden²⁰. 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 m²¹. 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 floor²². 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

¹⁷ 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 m² on the first page of the letter from the Council dated 2 May 2018.

¹⁸ 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.

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

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

²¹ 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.

²² 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]²³. 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"²⁴ 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.

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

²⁴ 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 appeal²⁵. 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

²⁵ Appeal Ref. APP/X5210/W/15/3063786.