

Application for Variation of Condition

Volume 1

**51 Calthorpe Street
London
WC1X 0HH**

September 2022

1 Introduction

This statement has been prepared in support of an application for a variation to Condition 11 associated with the planning permission granted by the London Borough of Camden on 16 February 2018 in respect of 51 Calthorpe Street, London WC1X 0HH (the “**Property**”) under reference 2018/1142/P.

The condition in question (the “**Condition**”) provides as follows:

“The following windows shall be obscurely glazed and non-openable below a height of 1.7m.

- Lower ground floor, rear-facing windows (north elevation)
- All side-facing windows facing towards Pakenham Street (west elevation) from ground floor upwards
- Side facing windows facing towards the Hilton Hotel (east elevation)

The windows shall not thereafter be altered in any way without the prior written approval of the Local Planning Authority.

Reason: In order to prevent unreasonable overlooking of neighbouring premises in accordance with the requirements of Policy A1 of the Camden Local Plan 2017.”

The application is for the variation of the Condition so that it is replaced by the following:

“The following windows shall be obscurely glazed and non-openable below a height of 1.7m.

- Lower ground floor, rear-facing windows (north elevation)
- Side-facing windows in Bedroom 1 and the Living Room/Kitchen of Flat 5 (first floor) facing towards Pakenham Street (west elevation)

The windows shall not thereafter be altered in any way without the prior written approval of the Local Planning Authority.

Reason: In order to prevent unreasonable overlooking of neighbouring premises in accordance with the requirements of Policy A1 of the Camden Local Plan 2017.”

2 Key considerations

2.1 National Planning Policy Framework

Paragraph 56 of the National Planning Policy Framework provides that:

“Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.”

2.2 HM Government Guidance

The Guidance published by the Department for Levelling Up, Housing and Communities and the Ministry of Housing, Communities and Local Government, *Use of Conditions in Planning Permission*, states:

“Paragraph 55 of the National Planning Policy Framework makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:

1. necessary;
2. relevant to planning;
3. relevant to the development to be permitted;
4. enforceable;
5. precise; and
6. reasonable in all other respects.

These are referred to in this guidance as the 6 tests, and each of them need to be satisfied for each condition which an authority intends to apply...

Rigorous application of the 6 tests can reduce the need for conditions and it is good practice to keep the number of conditions to a minimum wherever possible...

Any proposed condition that fails to meet one of the 6 tests should not be used. This applies even if the applicant suggests or agrees to it, or it is suggested by the members of a planning committee or a third party”.

2.3 London Plan

Paragraph 1.3.46 of the Greater London Authority's Supplementary Planning Guidance – Housing (March 2016), which forms part of the London Plan Implementation Framework, states:

“The degree of harm on adjacent properties and the daylight targets within a proposed scheme should be assessed drawing on broadly comparable residential typologies within the area and of a similar nature across London. Decision makers should recognise that fully optimising housing potential on large sites may necessitate standards which depart from those presently experienced but which still achieve satisfactory levels of residential amenity and avoid unacceptable harm.”

Paragraph 2.3.36 of this guidance makes it clear that there needs to be a balance between the amenity of adjacent occupiers against the amenity of the occupiers of the development in question. It states:

“Design and access statements should demonstrate how the design as a whole uses a variety of measures to provide adequate visual and acoustic privacy for every home in a development. Designers should consider the position and aspect of habitable rooms, gardens and balconies, and avoid windows facing each other where privacy distances are tight. In the past, planning guidance for privacy has been concerned with achieving visual separation between dwellings by setting a minimum distance of 18 – 21m between facing homes (between habitable room and habitable room as opposed to between balconies or terraces or between habitable rooms and balconies/terraces). These can still be useful yardsticks for visual privacy, but adhering rigidly to these measures can limit the variety of urban spaces and housing types in the city, and can sometimes unnecessarily restrict density.”

2.4 Camden's Local Plan

Policy A1 of Camden's Local Plan 2017 provides that:

"The Council will seek to protect the quality of life of occupiers and neighbours. We will grant permission for development unless this causes unacceptable harm to amenity.

We will:

- a. seek to ensure that the amenity of communities, occupiers and neighbours is protected;
- b. seek to ensure development contributes towards strong and successful communities by balancing the needs of development with the needs and characteristics of local areas and communities;
- c. resist development that fails to adequately assess and address transport impacts affecting communities, occupiers, neighbours and the existing transport network; and
- d. require mitigation measures where necessary.

The factors we will consider include:

- e. visual privacy, outlook

[...]"

2.5 CPG 6

Paragraphs 2.2 to 2.4 of Camden's Supplementary Planning Guidance, CPG 6 (Amenity) provides:

"Interior and exterior spaces that are overlooked lack privacy, which can affect the quality of life of occupants. The Council will therefore expect development to be designed to protect the privacy of the occupants of both new and existing dwellings to a reasonable degree. Spaces that are overlooked lack privacy. Therefore, new buildings, extensions, roof terraces, balconies and the location of new windows should be carefully designed to avoid overlooking. The extent of overlooking will be assessed on a case-by-case basis.

The places most sensitive to overlooking are typically habitable rooms and gardens at the rear of residential buildings. For the purposes of this guidance, habitable rooms are considered to be residential living rooms; bedrooms and kitchens. The area of the garden nearest to the window of a habitable room is most sensitive to overlooking...

To ensure privacy, it is good practice to provide a minimum distance of 18m between the windows of habitable rooms in existing properties directly facing the proposed (either residential or non-residential development), assuming level topography... The 18m should be measured between the two closest points on each building (including balconies)."

Paragraph 2.7 states:

“They [sic] may be circumstances where a separation distance of 18m cannot be achieved. In these instances, mitigation measures should be incorporated to ensure overlooking is reduced to an acceptable level.

For example, buildings could be positioned at an angle to each other so it is less likely that people will be able to see into neighbouring habitable rooms and gardens of neighbouring buildings.”

2.6 Conclusions

The following conclusions can be drawn:

- planning policy protects the visual privacy of the occupiers of residential accommodation (i.e. “dwellings”) but not commercial occupiers;
- as the objective is to avoid unacceptable harm from the development, the extent to which visual privacy is already compromised by the existing building is a material consideration, so that it is only any *additional* loss of privacy that is relevant;
- in considering whether a planning condition should be imposed to protect the amenity of the occupiers of neighbouring dwellings but which would harm the amenity of the occupiers of the building in question, a balance must be struck between the two types of occupier;
- the objective is not to prevent *any* harm to the occupiers of neighbouring dwellings but to avoid “unacceptable harm”;
- there are no hard and fast rules requiring a minimum distance to be maintained between facing habitable rooms and, although such measurements can be “useful yardsticks” and represent “good practice”, they should not be adhered to rigidly;
- in any event, the “yardsticks” apply to habitable rooms (being living rooms, bedrooms and kitchens) that “directly face” each other, with the part of the garden nearest the house also being a sensitive area; and
- the angle of view must be taken into account.

2.7 Previous decisions

Reference is made in this document to certain previous decisions. These are material considerations, as was made clear in *North Wiltshire DC v Secretary of State for the Environment* (1993) 65 P&CR 137. In this case, Mann LJ explained:

“One important reason why previous decisions are capable of being material is that like cases should be decided in a like manner so that there is consistency in the appellate process. Consistency is self-evidently important to both developers and development control authorities. But it is also important for the purpose of securing public confidence in the operation of the development control system. I do not suggest, and it would be wrong to do so, that like cases *must* be decided alike. An inspector must always exercise his own judgment. He is therefore free upon consideration to disagree with the judgment of another but before doing so he ought to have regard to the importance of consistency and to give his reasons for departure from the previous decision.”

In *R (Midcounties Co-operative Limited) v Forest of Dean District Council* [2013] EWHC 1908 (Admin), Stewart J held that the principle in the *North Wiltshire* case also applies to decisions of a local planning authority. He said:

"The principle is not limited to decisions of an Inspector/the Secretary of State. It requires an earlier material decision to be taken into account. A decision is material unless it is distinguishable. A decision maker in a subsequent matter therefore should

- (a) decide whether the earlier decision is distinguishable;
- (b) if not distinguishable, then any disagreement must weigh the earlier decision and give reasons for departure from it."

3 Elevation facing Pakenham Street

3.1 Introduction

The Officers' Delegated Report, on which the decision to grant planning permission in respect of the Property was based (the "**Delegated Report**"), states:

"CPG6 (Amenity) notes that there should normally be a minimum distance of 18 metres between the windows of habitable rooms of different units that directly face each other to prevent overlooking, which cannot be achieved at the application site. The separation distance between the side-facing windows and the rear elevation of No. 4 Pakenham Street is approximately 13.5 metres. On this basis, it is considered necessary to attach a planning condition to any permission granted to ensure that all of the side-facing windows (ground floor level upwards) facing towards Pakenham Street are fitted with obscure glazing, to prevent any unacceptable overlooking towards this property. This would also prevent any undue overlooking into the rear gardens of Nos. 45, 47 and 49 Calthorpe Street, and Nos. 5 and 6 Pakenham Street, or towards the rear windows of these properties."

As explained in more detail below, this statement is open to the following objections:

- The Delegated Report has misinterpreted CPG 6 (Amenity). CPG 6 does not state that there should *normally* be a minimum distance of 18 metres between the relevant windows (which suggests a requirement that must generally be followed unless there is a good reason for departing from it). CPG 6 states that "it is *good practice* to provide a minimum distance of 18m". This makes it clear that the 18 metre figure is merely a yardstick, to be balanced against other considerations. As the Greater London Authority's Supplementary Planning Guidance notes, whatever the position in the past, it should no longer be regarded as a measure that should be adhered to rigidly.
- The Delegated Report appears to have assumed that all the windows that are overlooked serve habitable rooms. As explained below, this is not correct.
- The windows of the habitable rooms of the rear elevation of No. 4 Pakenham Street are not aligned with the side-facing windows of 51 Calthorpe Street. It is therefore not correct to say that the windows "directly face each other". No account has been taken of the angle of view and the fact that this significantly limits any overlooking, especially from the second floor.

- The quoted separation distance of 13.5 metres has been measured horizontally from the facing elevations. However, as the relevant windows are not aligned with each other, this results in a miscalculation. CPG 6 states that the separation distance “should be measured between the two closest points on each building (including balconies)”, which is plainly referring to the points between the potential viewer and the area being overlooked. As explained below, the distance between the relevant windows varies from window to window and is between 15.8 and 17.2 metres.
- No account has been taken of the screening effect at second floor level of the existing flank wall of the Property.
- No account has been taken of the fact that No.4 Pakenham Street is already overlooked and that, at ground floor level there will be no change at all because, both before and after the development, the windows serve offices.
- Insufficient weight has been placed on the impact on the amenity of the occupiers of the Property.

3.2 Second floor (Flat 7)

3.2.1 Distance

The second floor of the Property will be set back from the lower floors by approximately one metre. The distance from the flank wall at second floor level to the flank wall of the Pakenham Street properties, when measured horizontally, will therefore be 14.5 metres, not 13.5 metres, as stated in the Delegated Report.

The point 1.7 metres above the second floor of the Property is 25.78 OD. This is above the roof line of the Pakenham Street properties and 6.4 metres above the centre of the window of the closest habitable room in them (which is a kitchen). As can be seen from Appendix 1, the windows at higher levels of the Pakenham Street properties serve bathrooms or hallways. These are not regarded as habitable rooms under Camden’s planning policy. Confirmation of the layout of the properties is contained in Appendix 2. This can also be confirmed by the London Borough of Camden directly as it is the owner of No.4 Pakenham Street.

It follows, that the distance between the second floor windows of the Property and the centre of that kitchen window, when measured in a straight line, is between **15.8 and 17.2 metres**, depending on the second floor window in question.

3.2.2 Angles of view

Although the distance referred to in paragraph 3.2.1 above is less than the 18 metre yardstick mentioned in CPG 6, the windows on the second floor of the Property do not directly face any habitable rooms in the Pakenham Street properties. Furthermore, the vertical angle of view to the closest habitable room on Pakenham Street is **27 degrees**. The horizontal angle of view varies from window to window. In the case of the southernmost window of the Property, it is **20 degrees**. The way in which this has been applied in the past can be seen from the following decisions of the Camden Planning Authority.

(i) *11 Blackburn Road*

On 5 May 2017, planning permission was granted in relation to 11 Blackburn Road, London NW6 1RZ (reference 2015/3148/P). This involved the

construction of new residential accommodation facing a building that had been converted into flats pursuant to a prior approval in 2014. The proposed accommodation had windows to habitable rooms on the ground to second floors and the facing building had windows on the ground floor, at a distance of **15 metres** at the closest point. The orientation of the facing building was at an angle of **10 degrees** to the windows opposite it.

This orientation was considered to justify not imposing a condition requiring the use of obscure glazing. Paragraph 9.3 of the Committee Report stated:

“The townhouses were pulled back 2.6m, thereby increasing the separation distance to Asher House to 15m at the closest, increasing to 21.8m. 18m is the normal separation distance guideline between windows serving habitable rooms. Given that the closest distance is only marginally less than 18m, that Asher House/the Clockwork Factory is set at an oblique angle to the façade of the proposed townhouses and that each townhouse steps back, the separation distance is considered to be acceptable and it is considered that the outlook of the proposed flats to the front would be acceptable.”

A plan showing the relationship between the two buildings is set out in Appendix 4.

(ii) *60-70 Shorts Garden*

On 25 January 2018 Camden’s Planning Committee resolved to grant planning permission (subject to a Section 106 agreement) in respect of 60-70 Shorts Garden, London WC2 (reference 2017/2204/P). This involved a proposal to construct new office accommodation in proximity to an existing residential building. The proposed scheme involved a window directly facing one of the windows of this building at a distance of 17.3 metres and a series of other windows with angled views into the residential property. The closest of which was at a distance of **14.4 metres** and a horizontal angle of view of **26 degrees** (see Appendix 5). The vertical angle of view is not disclosed but appears to be zero, i.e. the windows are at the same level. This was determined to be acceptable (without the imposition of a condition requiring obscure glazing).

(iii) *10 Ferdinand Street, London NW1*

On 7 August 2014 planning permission was granted in respect of 10 Ferdinand Street, London NW1 (reference 2014/0816/P). This involved a new residential building facing some existing residential accommodation **16.6 metres** away. A second floor window of the new building had direct views towards one of the windows of the facing property but with a vertical angle of view of **20 degrees** (see Appendix 6). This was regarded as sufficient to avoid the imposition of a condition requiring obscure glazing. Paragraphs 6.32–6.34 of the Committee Report stated:

“CPG6 advises that there should normally be a minimum distance of 18m between the windows of habitable rooms of different units that directly face each other. The windows on the proposed building have been well positioned to mitigate overlooking between windows on the

rear of surrounding buildings. However, in this case there is one window where the separation distance to a neighbouring habitable room is slightly less than the recommended 18m.

The window in question is the northernmost rear window in Crowndale House which serves a living room; it is approx. 16.6m from the rear window of bedroom 2 of the second floor flat. The other rear windows at Crowndale House serve only a hallway.

Given the positioning and layout of the development there would only be oblique views of the rear window at Crowndale House from the application site and although slightly less than the recommended 18m distance the proposal is considered to be acceptable.”

3.2.3 Screening

In the case of the second floor windows, the top of the existing flank wall of the Property is at OD 25.24. This is 1.16 metres above the proposed second floor level of the Property and, as noted above, the second floor windows will be set back one metre from this wall. The consequence is that the centre of the window to the nearest habitable room of the Pakenham Street properties will only be capable of being seen by someone whose nose is pressed against the window at a point 1.6 metres above the second floor level or higher. If the viewer is standing 30 cm from the window, which would be a more normal position for someone looking out of a window, the centre of point would not be visible below 1.7 metres. This is the height below which obscure glazing is required under the Condition.

In the case of the window closest to the northern elevation of the Property, the presence of kitchen units will mean that any viewer will have to be at least 60 cm away from the window. It will therefore be impossible to view any habitable rooms from that window.

3.2.4 Existing overlooking

The Pakenham Street properties are already overlooked by the occupiers of the Property, from windows that are much closer to the habitable rooms of the Pakenham Street properties. As the Property currently has an office use, the overlooking will be more pronounced in the daytime and early evening. However, this has to be balanced against the fact that offices are occupied by more people than a flat.

That this is a material consideration can be seen from Camden’s decision to grant planning permission on 28 December 2012 in respect of Triad House, 18 Hanway Street, London W1T 1UF (reference 2011/5439/P). This involved a change of use of the upper floors of the property from offices to residential. Opposite the property (5.8 metres away) was a residential development and the fact that the development was already overlooked by the offices was used to justify a departure from the 18 metre yardstick. The Committee Report (paragraph 6.21) stated:

“Directly facing the application property on Hanway Street is an employment use, where, due to the positioning of windows, direct views between properties are not possible. To the rear of the application site, **approx 5.8m away**, on the opposite side of Hanway Place is a residential development, there would be a certain amount of mutual overlooking between the

properties from existing windows and terrace but no more so than already exists from the offices.”

3.2.5 Impact on amenity of occupiers of the Property

In determining whether a condition is reasonable in the present case, it is necessary to consider not only the impact on adjoining occupiers but whether the condition achieves the objective of providing a good standard of amenity for all existing and future occupants of the Property. The effect of the Condition is that all but one of the windows of Flat 7 of the Property will be required to be obscurely glazed. In view of the very limited impact of this flat on any loss of privacy to the residents of the Pakenham Street properties, this does not strike a reasonable balance between the amenity of the occupiers of that flat and the amenity of the occupiers of the Pakenham Street properties.

3.3 First floor (Flat 2), Bedroom 1

3.3.1 Distance

The first floor of the Property will be at 21.48 OD. The point 1.7 metres above it will be at 23.18 OD. This is 3.8 metres above the centre of the window of the closest habitable room of the Pakenham Street properties. Accordingly, the distance from that point to the centre of the nearest habitable room of the Pakenham Street properties will be **16.4 metres**.

3.3.2 Angles of view

The window of Bedroom 1 does not face any habitable rooms. The horizontal angle of view is **20 degrees** and the vertical angle of view is **17 degrees**. As noted in paragraph 3.2.2 above, these are material considerations and have been accepted by Camden as justifying the granting of planning permission without an obscure glazing condition in the past.

3.3.3 Existing overlooking

As noted in paragraph 3.2.4 above, the nearest habitable room of the Pakenham Street properties is already overlooked by first floor windows of the Property. These windows are closer to the habitable rooms of the Pakenham Street properties than the window to Bedroom 1 of Flat 2 and involve less oblique viewing angles. In view of this, the impact on the privacy of the occupiers of the Pakenham Street properties of the first floor accommodation is unlikely to be material, especially as the room in question is a bedroom.

3.4 Ground floor

The windows on the ground floor will serve office accommodation, as is the case at present. There will therefore be no material change in the degree of overlooking when compared to the existing position. Insofar as it relates to these windows, the development will therefore cause no harm to the amenity of the occupiers of neighbouring buildings. It follows that the Condition is neither necessary nor reasonable.

4 Elevation facing the hotel

4.1 Introduction

The reasons given in the Delegated Report for the imposition of a condition requiring obscure glazing to the side facing windows facing towards the hotel were:

“The separation distance between the side-facing windows in the rear part of the building and the side of the adjacent hotel building is upwards of 6.7 metres. In most cases, the windows on the application building do not align with windows at the hotel; however, Bedroom 2 in Flat 5’s side doors (first floor), the side facing doors in the living room of Flat 4 (first floor) and the upper windows within the living rooms of Flat 7 and Flat 6 (second floor) would face towards windows at the hotel. It is considered to be necessary to require these doors/windows to be fitted with obscure glazing to prevent undue overlooking into the hotel rooms. Flats 4 and 5 on the first floor also have roof terrace gardens proposed which would be overlooked by the hotel rooms, however as the hotel rooms are not permanent homes of residents and will only be occupied temporarily and a panel with obscure glazing will be constructed at the end of the garden of Flat 5, it is not considered undue harm with overlooking would be had on the hotel or on the new terrace gardens.”

4.2 Planning policy

As noted in paragraph 3 above, planning policy protects the amenity of *residential* occupiers. Hence, paragraph 1.3.46 of the GLA’s Supplementary Planning Guidance, *Housing* (March 2016) states, under the heading “Standards for privacy, daylight and sunlight”:

“The degree of harm on adjacent properties and the daylight targets within a proposed scheme should be assessed drawing on broadly comparable residential typologies within the area and of a similar nature across London”.

It goes on to state that optimising housing potential may:

“still achieve satisfactory levels of residential amenity and avoid unacceptable harm”.

Similarly, paragraph 2.2 of Camden’s planning guidance (which is expressly referred to in the sub-text to Policy A1 of Camden’s Local Plan) states:

“Development should be designed to protect the privacy of both new and existing dwellings to a reasonable degree”.

Commercial properties, including hotel rooms, fall outside the scope of this policy. Hence, paragraph 13.4 of the Officers’ Committee Report prepared in relation to 60-70 Shorts Gardens (2017/2204/P) states:

“it is noted that policy A1 does not include provisions for the protection of views from hotel accommodation (Use Class C1) on the basis that these rooms are used for a short period only and would not relate to ‘living conditions’”.

Paragraph 13.10 of that Report also explains that overlooking from a proposed terrace into hotel rooms directly facing it was acceptable partly because the terrace was to be used by office workers but also because:

“it should ... be reiterated that policy A1 / CPG6 does not afford protections to commercial properties and as such this relationship is not objectionable”.

In requiring the fitting of obscure glazing “to prevent undue overlooking into the hotel rooms”, Camden has misinterpreted, and accordingly misapplied, its own planning policy.

4.3 Previous decisions and guidance

The applicant’s original application for planning permission was made under reference 2012/6859/P. During the course of this application, concerns were expressed about the possibility of overlooking *into* the property from the adjacent hotel. The Officers’ Report stated:

“In order to assess whether there would be any potential privacy issues affecting the future occupiers of the site it was necessary to establish what the windows on the side elevation of the hotel serve. Whilst the submitted drawings stipulate that none of these windows serve bedrooms, a review of the daylight/sunlight assessment and a site visit has confirmed that there is a row of bedroom windows on the side elevation. The bedroom windows at first – third floor (serving Flats 12, 16 and 17) would therefore experience an unacceptable level of overlooking from the hotel bedrooms as the distance between directly facing windows would be around 7m. The application should therefore be refused on this basis.

No concerns were expressed about overlooking *from* the Property *towards* the hotel (in contrast to the windows on the west façade, which were flagged as giving rise to an issue which needed to be addressed).

To meet the concerns addressed in the Report, a revised proposal was developed under which the windows that directly face the bedrooms of the hotel would be fitted with a mirror film that would permit views *out* of the property but prevent anyone looking into it. Camden’s Planning Officers confirmed that this would be acceptable and a revised proposal incorporating this element was submitted under reference 2013/5445/P.

Although the application was refused, this was not on the grounds of privacy and overlooking. The Report stated:

“In order assess whether there would any potential privacy issues affecting the future occupiers of the site it was necessary to establish what the windows on the side elevation of the hotel serve. Whilst the submitted drawings stipulate that none of these windows serve bedrooms, a review the daylight/sunlight assessment and a site visit has confirmed that there is a row of bedroom windows on the side elevation. The bedroom windows at first – third floor (serving) would therefore experience overlooking from the hotel bedrooms as the distance between directly facing windows would be around 7m. Officer’s are however of the view that measures (such as the provision of one way glazing could be secured through condition in order to resolve this issue.”

This was confirmed in Camden’s Statement of Case at the subsequent appeal hearing. The conditions suggested by Camden should the Inspector have been minded to allow the appeal included the following:

“As illustrated on drawings 939-P2-112 and 939-P2-112, a mirrored film is required be provided over the windows on the west elevation at second and third floor levels serving Bedroom 2 of Flat 15 and Flat 16. The measures shall be fully implemented in advance of the first occupation of the relevant residential unit and shall be permanently retained thereafter.

Reason: In order to prevent unreasonable overlooking from the adjoining hotel windows into the new dwellings, in accordance with the requirements of policy CS5 of the London Borough of Camden Local Development Framework Core Strategy and policy DP26 of the London Borough of Camden Local Development Framework Development Policies.”

No condition requiring obscure glazing was suggested and no concerns were expressed about overlooking from the hotel into the Property.

No adverse comments were made by the Inspector about this approach. Although she identified potential overlooking issues into the Pakenham Street properties and the Cubitt Street Play Centre at the rear of the Property, as regards the elevation facing the hotel, the approach set out in the plans and agreed to by Camden was accepted. Hence, the appeal decision stated:

“The proposed dwellings include windows that face towards the dwellings in Pakenham Street. The submitted plans indicate that some of these windows could be obscure glazed to prevent overlooking, and it is proposed to use angled fins to screen views from the enclosed balconies. Whilst this may maintain privacy between the proposed dwellings and those within Pakenham Street, the proposal would be visually prominent in the outlook from these dwellings.

A number of the flats would directly overlook the playground to the nursery/playcentre. Whilst this is a large area, from my observations at the time of my visit, it would appear that the playground is used in its entirety. Therefore the windows within the rear elevation of the appeal property would directly overlook those using this space. Whilst obscure glazing to some of these windows may overcome any loss of privacy, on the basis of the available information, it seems that this would leave some of the proposed flats with little or no outlook.”

Against this background, it is clear from the fact that no adverse comment was made about the need to prevent overlooking into the hotel that the Inspector was satisfied with the proposals in relation to this.

4.4 Ground and lower ground floor

Insofar as it relates to the east elevation of the Property, the Condition requires the following windows to be obscurely glazed and non-openable below a height of 1.7 metres:

“Side facing windows facing towards the Hilton Hotel (east elevation)”.

This appears to go further than the unimplemented planning permission granted on 16 February 2018 (reference 2015/3049/P), which referred to:

“Side facing windows in Flat 10 (first floor) and Flat 12 (second floor) facing towards the Hilton Hotel (east elevation)” (emphasis supplied).

The hotel has no windows at ground or lower ground floor level (see Appendix 7). There is therefore no scope for any overlooking at these levels. Insofar as the Condition relates to the ground and lower ground floor windows of the Property, it is both unnecessary and unreasonable.

No explanation has been given for the apparent change in the text (contrary to *North Wiltshire DC v Secretary of State for the Environment*, mentioned in paragraph 2.7 above).

It is likely to have been an error, so that only the first and second floor windows were intended to be caught. However, the position needs to be remedied.

4.5 First floor

It is not clear whether the Condition is intended to apply at first floor level. It refers to “side-facing windows”. However, there are no side-facing windows at first floor level, only two sets of French doors (albeit containing glazing). The Delegated Report does appear to contemplate that the Condition will extend to these doors as it says:

“Bedroom 2 in Flat 5’s side doors (first floor), the side facing doors in the living room of Flat 4 (first floor) and the upper windows within the living rooms of Flat 7 and Flat 6 (second floor) would face towards windows at the hotel. It is considered to be necessary to require these doors/windows to be fitted with obscure glazing to prevent undue overlooking into the hotel rooms”.

Equally, however, it is clear from the Delegated Report that there is no objection to the use of the garden terraces. It states:

“Flats 4 and 5 on the first floor also have roof terrace gardens proposed which would be overlooked by the hotel rooms, however as the hotel rooms are not permanent homes of residents and will only be occupied temporarily and a panel with obscure glazing will be constructed at the end of the garden of Flat 5, it is not considered undue harm with overlooking would be had on the hotel or on the new terrace gardens”.

If the French doors are to be treated as “windows” for the purpose of the Condition, there will be a requirement for them to be “non-openable below a height of 1.7m”. This makes no sense because the terrace serving Flat 5 will *only* be accessible via the French doors. The effect of the Condition is therefore to prevent that terrace from being used. It is clear, therefore, that, in this respect, the Condition is unreasonable.

Leaving these points aside, at first floor level, measures will be taken to mitigate the potential for overlooking into the hotel rooms. As noted in paragraph 4.4 of the Delegated Report, a panel with obscure glazing will be constructed at the end of each garden. There will also be a privacy screen between the gardens of Flats 4 and 5.

The effect of this is not only to prevent any overlooking from the garden but also to prevent any overlooking from the inside of the Property. This can be seen from the drawings in Appendix 8. Views of the hotel windows at higher levels can only be seen at a very oblique angle (which would be the case even with the obscure glazing referred to in the Condition). It follows that, insofar as the Condition relates to these windows, it is neither necessary nor reasonable.

4.6 Second floor

While at second floor level there will be no privacy screens, given the transient occupancy of hotel rooms (a fact acknowledged in paragraph 4.4 of the Delegated Report), the fact the planning policy is directed at residential occupiers and the previous decisions discussed above, the Condition should be unnecessary. Overlooking *from* the hotel will be prevented by attaching a film to the relevant windows of the Property that will allow views from the windows but not views in the opposite direction.

Furthermore, the windows that are faced by the Living Room of Flat 6 serve a staircase. Due to the orientation of the western façade of the hotel and the fact that the other windows of

the hotel are not aligned with the Living Room of Flat 6, horizontal viewing angle is approximately 34 degrees (see Appendix 9). As noted in paragraph 2.5 above, Camden's Supplementary Planning Guidance advises that, where a separation distance of 18 metres cannot be achieved, one way of reducing overlooking to an acceptable level is for "buildings [to] be positioned at an angle to each other".

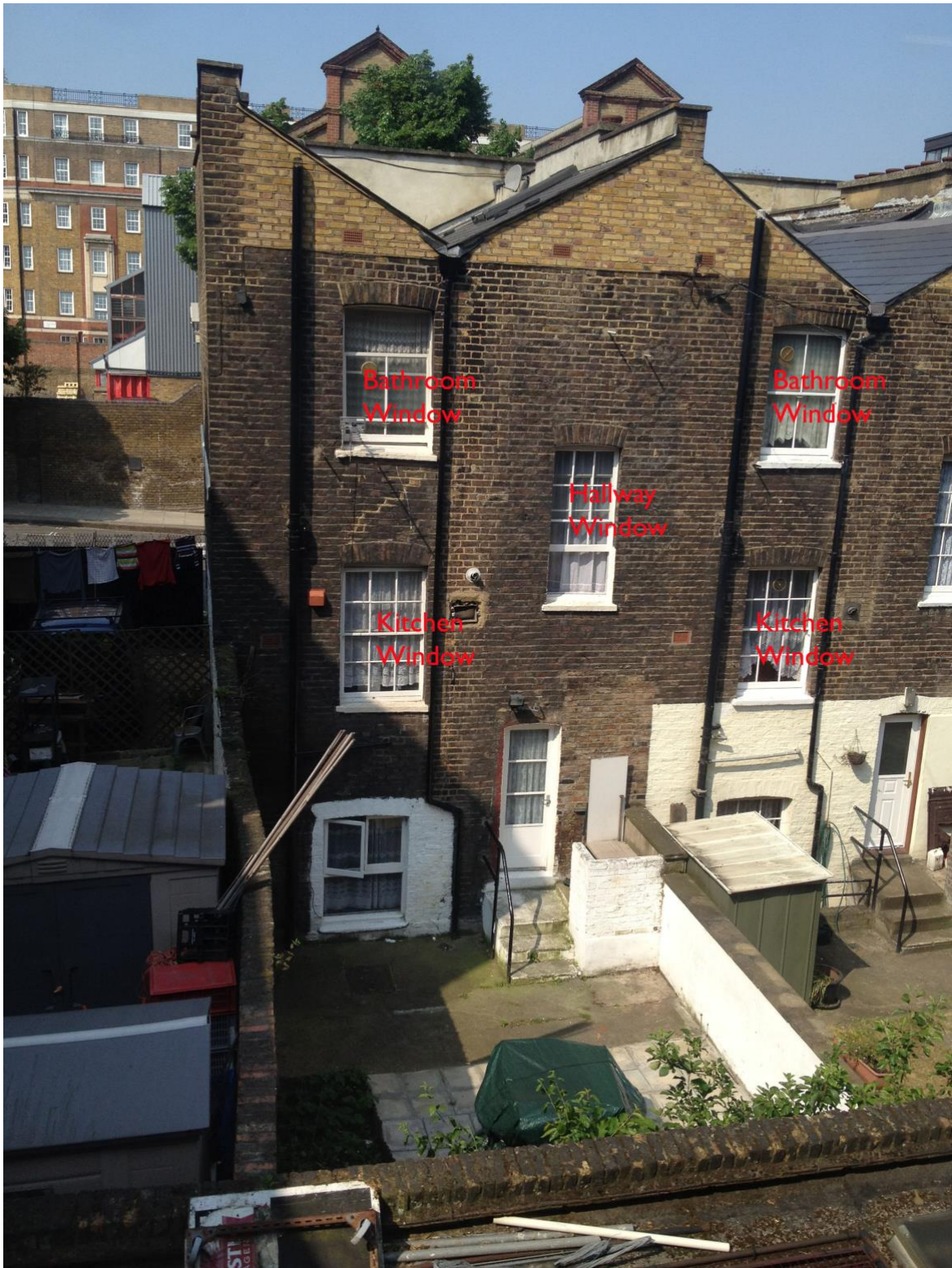
4.7 Amenity of the occupiers of the Property

As noted in paragraph 2.2.1 above, determining whether a condition is reasonable involves balancing the amenity of neighbouring occupiers against the amenity of the occupiers of the development in question. Conditions which would put a severe limitation on the freedom of owners to dispose of their property should be avoided.

This balancing process has not been carried out properly in the present case. Leaving aside the question of whether the policies relating to amenity apply at all (see paragraph 4.2 above), the fact that hotel rooms are typically used on a short-term basis and are primarily occupied at night means that any harm to the occupiers of those rooms resulting from any overlooking will be extremely minor. In contrast, the harm to the amenity of the occupiers of any rooms that must be fitted with obscure glazing will be substantial. This is particularly true in relation to Flat 7 (on the second floor) of the Property, given that the Condition requires all but one window of that flat to be obscurely glazed (see paragraph 3.2.5 above).

In light of this, it is considered that, even if the planning policy had been properly applied, the imposition of a condition requiring the windows facing the hotel to be obscurely glazed and non-openable below a height of 1.7m is unreasonable.

Appendix 1
Habitable rooms facing the property



Appendix 2

Confirmation of layout of Pakenham Street properties

From: Stephanie Brooks [<mailto:stephanie.brooks@brooksmurray.com>]
Sent: 15 March 2017 17:37
To: Firth, Simon N
Subject: Pakenham Street

Dear Simon, further to our discussion, I can confirm that I visited number 4 Pakenham Street with Ben Lemar (who was the planning officer at the time), and others, during the course of the first planning application, and we agreed on site, that all of the windows to the rear of this house were not serving habitable rooms. They were kitchens/cloakrooms/stairways. I have marked up a photograph showing what I believe the rooms are, from memory. I did not take photographs inside the house to protect the privacy of the occupant.

As a direct result of this site visit, it was agreed with Mr Lemar that your development would not affect the privacy of number 4 Pakenham Street.

Kind regards

Stephanie Brooks
Director



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Appendix 3

Relationship between second floor windows and Pakenham Street properties

