
Appeal Decisions

Inquiry opened on 2 December 2014

Site visit made on 4 December 2014

by Stephen Brown MA(Cantab) DipArch RIBA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 February 2015

Appeal Ref: APP/X5210/C/14/2214983

The Stay Club, 2-12 Harwood Street, London NW1 8AJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is by Risetall Ltd against an enforcement notice issued by the Council of the London Borough of Camden.
- The Council's reference is EN12/0622.
- The notice was issued on 27 January 2014.
- The breach of planning control alleged in the notice is construction of a building materially different from approved plans so as to be without planning permission.
- The requirements of the notice are to make the development comply with the terms (including conditions and limitations) of the planning permissions granted in respect of the land; namely planning permissions ref. [2008/2981/P], [2009/1976/P], [2009/5964/P], [2010/1756/P], [2010/5199/P], [2012/1511/P], [2012/4135/P], and [2012/4249/P].
- The period for compliance with the requirements is 12 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of decision: the appeal is dismissed, except to a limited extent on ground (f), and the enforcement notice is upheld with variations.

Appeal Ref: APP/X5210/A/14/2214988

2-12 Harwood Street and 34 Chalk Farm Road, London NW1 8DJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is by Risetall Ltd against the decision of the Council of the London Borough of Camden.
- The application ref. 2013/0392/P, dated 17 January 2013, was refused by notice dated 15 January 2014.
- The application sought planning permission for the erection of a part 2-storey and part 4-storey building with two basement levels to provide student accommodation comprising 192 self-contained study rooms and ancillary facilities (sui generis) (following demolition of existing buildings) without complying with a condition attached to planning permission 2008/2981/P, dated 23 September 2008 as amended by planning permission ref. 2012/4135/P dated 2 October 2012, granting an application for a non-material amendment.

- The condition in dispute is Condition 11 of planning permission ref. 2008/2981/P (as amended by planning permission ref. 2012/4135/P), which states that:

'The development hereby permitted shall be carried out in accordance with the following approved plans: 01; 308-20-P7; 308-21-P7; 308-22-P7; 308-23-P7; 308-24-P7; 308-25P7; 08; 09; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21 (all drawings dated August 2008); Sunlight and Daylight Study by BMT Fluid Mechanics dated 29/05/08; Planning Energy Statement by Fulcrom Consulting Issue B dated 03/06/08; Planning Sustainability Statement by Fulcrom Consulting; and Planning Statement by Alkis Riziotis dated June 2008'.

The reason given for imposing the condition is:

'For the avoidance of doubt and in the interest of proper planning'.

Summary of decision: the appeal is dismissed.

The Inquiry

1. The enforcement appeal included the legal ground (b), with matters of fact in dispute, so evidence at the Inquiry was taken under oath or solemn affirmation.

Preliminary matters

2. The planning application form relating to the Section 78 appeal gives the site address as '34 Harmood Street'. However, it is clear that this is an error, and the site address should be as recorded on the Council's decision notice – that is '2-12 Harmood Street and 34 Chalk Farm Road'. I have amended the heading above accordingly, and am satisfied that no party is significantly prejudiced by this amendment.
3. The reasons for issuing the notice also refer to the poor quality appearance and finish of the railings fronting Harmood Street. However, subsequent to issue of the notice the railings have been replaced, and the Council accept that they are now satisfactory.

Background

4. The appeal site lies on the eastern side of Harmood Street, with another short frontage onto Chalk Farm Road to the south. The site wraps around the Lock Tavern public house, which stands at the corner of the two streets.
5. In 2008 planning permission was granted, subject to conditions, for the erection of a part 2-storey, part 4-storey building with two basement levels to provide student accommodation comprising 192 self-contained study rooms and ancillary facilities (*sui generis*) following the demolition of existing buildings¹. For the purposes of these decisions I refer to this as 'the 2008 permission'. The proposal was for a building with two principal residential wings, one facing onto Harmood Street, and the other parallel and to the rear, separated by an internal courtyard excavated about two full storeys below general street level. The two wings connected at the southern end, where another part of the building containing residential rooms and the reception area extended out to Chalk Farm Road. It is the wing facing Harmood Street that is the principal concern in this case.
6. In the approved scheme the wing onto Harmood Street comprised a basement level, with communal rooms towards the street, and residential rooms facing the internal courtyard. The lower ground floor level had residential rooms to

¹ Decision notice ref. 2008/2981/P, dated 23 September 2008.

both sides of the spine corridor, and there were three similar floors of accommodation above that. At the third floor there were also residential rooms to either side of a corridor, but this storey would be set back from the principal elevations, and be of a different form of construction. At the northern end of the Harmood Street block a stair tower provided the emergency exit to the street. In terms of general organisation, the scheme now built is broadly similar to that approved in 2008, but with significant changes.

7. Approvals of details pursuant to conditions on the 2008 permission were granted in June 2010². These related to Conditions 3 (bicycle storage), 6 (landscaping), and 8 (bird and bat boxes). In November 2010 permission was granted for non-material amendments (NMAs) to the 2008 permission³. These comprised identification of 20 wheelchair bedrooms and alterations to internal staircore 1; correction of the boundary to the Lock Tavern public house; details of the basement bike store and laundry; the ground floor reception, and landscaping at lower ground floor level within the lightwells.
8. In September 2012 a further approval pursuant to part of Condition 2(a) was granted for details of facing materials for the stair enclosure⁴. In October 2012 permission was granted for a NMA, being the addition of Condition 11 to the 2008 permission⁵. This required that the scheme should be carried out in accordance with the approved plans.
9. Other approvals pursuant to conditions have been granted in respect of details of contamination and remediation (Condition 9)⁶; details of railings and the green roof⁷ (Conditions 2(c), and 5); details of facing materials and Cor-Ten run-off (part Condition 2(a), and Condition 2(b))⁸.
10. The building now built differs significantly from the plans approved under the 2008 permission. Notably, the main block facing Harmood Street is greater in terms of overall height, and the increased height of the second floor parapet above street level at the northern end; the third floor set-back has been reduced; the set-back and detailing of the stair tower are significantly different, and framed opening windows similar to those used in virtually all residential rooms have been introduced into the third floor elevation.

The enforcement notice

11. The appellants argue that the notice is a nullity. This is principally on the grounds of imprecision and that the steps require compliance with several permissions, rather than a single permission that has been varied by non-material amendments, and supplemented by approval of conditions. Furthermore, there are many more variations of the as-built scheme from the approved scheme than are identified by the Council as matters of concern in their reasons for issuing the notice. As a result the appellants claim they are unable to know with any certainty with which version of the design they are required to comply.

² Decision notice ref. 2010/1756/P, dated 16 June 2010.

³ Decision notice ref. 2010/5199/P, dated 8 November 2010.

⁴ Decision notice ref. 2012/4249/P, dated 28 September 2012.

⁵ Decision notice ref. 2012/4135/P, dated 2 October 2012.

⁶ Decision notice ref. 2009/1976/P, dated 8 June 2009.

⁷ Decision notice ref. 2009/5964/P, dated 15 February 2010.

⁸ Decision notice ref. 2012/1511/P, dated 28 May 2012.

12. The Council's objections to the development – as expressed in the reasons for issuing the notice – are the height of the second floor parapet; the siting, scale, detailed design and inappropriate use of materials of the third floor; the height, massing and inappropriate materials of the stair tower fronting Harmood Street, and the poor quality of the external finishing material of the Harmood Street elevation.
13. The notice itself does not lack any of the key elements set out in Section 173(1), (3), (8) and (9) of the Act. In particular, I consider the allegation quite properly describes the breach as development without planning permission. With regard to the NMAs to the original permission, those relating to such matters as provision of wheelchair access and various alterations and corrections (approval ref. 2010/5199/P) are already incorporated into the building, and do not present the appellants with any unknown factors. The imposition of Condition 11 as a NMA is again not a matter that is unknown, and does no more than tie the 2008 permission to the application drawings.
14. Furthermore, in considering the ground (b) appeal below I have come to the conclusion that the appellants have not gained authorisation for the several variations to the design that they claim – including the levels and height of the building, the changed design of the stair tower, the third floor set-back, the inclusion of windows other than shown on the 2008 approved drawings, or the change to the external cladding materials. These matters do not therefore represent conflicts with the 2008 permission, nor do I see any ambiguity in the requirements.
15. The variations to the as-built scheme to which the Council do not object include such matters as the principal façade, which is narrower and set back further from the road, and changes to the 'saw-tooth' plan of the inner block. It is clearly not intended to enforce against such things, and the Council accept that this is the case. However, this is properly dealt with under a ground (f) appeal, and is not sufficient to make the notice a nullity, or make it invalid due to uncertainties that cannot be corrected.

The enforcement appeal on ground (b)

16. This ground is that the alleged breach has not occurred as a matter of fact. The appellant argues that planning permission has been obtained for the principal variations to the 2008 permission.
17. The 2008 approved drawings showed the site to be effectively level along its length. However, following a site survey it was found that the level at the Chalk Farm Road entrance was some 0.97 of a metre higher than at the emergency exit onto Harmood Street
18. It is argued that the express reason that planning permission ref. 2010/5199/P was sought was to amend the internal arrangements of the building to take account of its relationship to Chalk Farm Road in terms of levels. However, that application was for NMAs to the scheme identifying which residential rooms were to provide the required wheelchair access; alterations to staircore 1, at the southern end of the building; the boundary to the Lock Tavern public house; the basement bike store and laundry; the ground floor reception, and the landscaping at lower ground floor level.

19. In order to deal with the levels difference the architect introduced a change of level by means of a short flight of steps within the entrance/reception area. I note that the ground floor plan submitted with application ref. 2010/1756/P shows a drop in level of 0.945 of a metre, the cycle store plan submitted with the same application shows a drop of 0.780, and the ground floor plan submitted with application ref. 2010/5199/P again shows a drop of 0.780 of a metre.
20. The NMAs are identified on the approved drawings, with each amendment surrounded by a coloured balloon, and with a descriptive note. The change of level in the entrance/reception area is not related to any other site or building levels – notably the level on Harmood Street adjacent to the stair tower. Furthermore, there are no elevations, or sections through the building to illustrate the consequences of this change. Prior to granting permission for the NMAs the Council had requested in writing that the proposal drawings should conform to the 2008 approved drawings in all other respects. Furthermore, an informative note on the decision notice advises that the permission relates only to the changes highlighted on the plans and set out in the description, and should only be read in the context of the 2008 permission and the associated conditions and obligations. In these circumstances I do not accept that the drawings submitted with application ref. 2010/5199/P superseded the 2008 approved floor plans, but consider they only permitted specific NMAs.
21. A site levels survey had been submitted to the Council as part of a site investigation report in connection with the contamination and remediation measures and related conditions. While it would be possible – and with some difficulty – to infer from the levels survey and the ground floor plan submitted with the NMA application that the level in relation to Harmood Street would be changed as compared with the 2008 permission, there was no information at all as to consequences of the change – particularly in terms of the appearance and bulk of the building.
22. Regarding the level of the second floor parapet, the appellants say that had the building been constructed with the top of the second floor aligned with the parapet of no 14 Harmood Street – as shown on the 2008 approved drawings – it would have been 1.5 metres lower than the parapet of the Lock Tavern, rather than 0.35 of a metre shown on the approved elevation. Had it been constructed in the approved relationship to the Lock Tavern, the second floor parapet would have been 1.15 of a metre above that of 14 Harmood Street. It was decided to adopt a mean between these extremes, with the result that the top of the second floor is 540mm higher than the no. 14 parapet, and 514mm below that of the Lock Tavern.
23. However, in my view the approved elevation onto Harmood Street shows a precise alignment between the top of the second floor and the parapet of nos. 14-35 Harmood Street, whereas it does not indicate such a particular relationship with the Lock Tavern – it is merely shown to be lower by an indeterminate amount.
24. The problem of the site levels must have been apparent to the appellants at the time of the Site Investigation Report of March 2009, before construction started, and the suggestion that changes to the building had to be made as a matter of urgency to avoid disruption of the construction programme is disingenuous.

25. It was argued that in the light of the High Court case of *Martin Grant Homes*⁹ the appellants were entitled to do this in the situation where the site levels prevented them from building the approved scheme – that is, on the assumption that the ground was flat - and in the absence of any condition defining approved building levels.
26. In the *Martin Grant Homes* case houses had been built at a higher level than originally permitted in order that connections could be made to the public sewer, and this had been approved by the Council's Building Control Department prior to the grant of planning permission. It was held that the Council, as a single body, were deemed to have known of the Building Regulations approval, and that the planning permission must be taken to include what was permitted by that approval. I do not consider this situation is comparable with that before me. While I appreciate that the fall across the site presents a design problem that requires resolution, the appellants are not awarded a free hand as a result, nor is the planning permission in some way negated. I can see no compelling physical reason to adopt the levels chosen by the appellants – as existed in the *Martin Grant Homes* case - nor have the Council expressly approved those levels.
27. It is also argued that the appellants had a choice as to which version of the scheme they could lawfully adopt on the basis of the judgement in the case of *Dunfermline*¹⁰. In that case the council had granted a planning permission for development in accordance with two application drawings that were inconsistent. It was held that in those circumstances the developer had a valid choice as to which version of the proposal was constructed. In the case before me it appears that there is effectively a single scheme. The fact that this does not accurately depict site levels, does not predicate the existence of some other approved scheme that the appellants can choose as an alternative. They appear to have made their own decision to execute a scheme significantly different from that approved.
28. Furthermore, it is argued that permission to vary the overall height of the building was granted by reason of planning permission ref. 2009/5964/P. That application was for approval of details pursuant to Conditions 2(c) and 5 of the 2008 permission. These related to the Harwood Street railing details, and details of the green roofs. One of the drawings submitted includes a detail section through a roof edge, showing a raised parapet behind which are a drainage channel and the sedum roof covering.
29. The detail for the sedum roof does not show any dimensions apart from the 100mm thickness of the sedum covering – not dissimilar to what is indicated on the approved drawings. The detail does not relate the parapet to any other part of the building, nor does the title of the detail - 'Extensive Green Roof' – identify to which part of the building the detail relates. Furthermore, the major part of the overall depth is accounted for by falls and structure, which could conceivably have been designed otherwise. I was told at the Inquiry that the detail had the effect of raising the overall height of the building by about 430mm. However, the detail provided gives no indication at all that the overall appearance of the building would be affected in such a significant way.

⁹ Regina v Basildon District Council ex parte Martin Grant Homes Ltd [1987] JPL 863.

¹⁰ Dunfermline District Council v Secretary of State for Scotland [1990] SLT 469.

30. I cannot accept that the express reason for submitting the NMA application was to take account of general building levels in relation to Chalk Farm Road – it was clearly for the purpose of making minor changes to the building. Similarly, I cannot accept that an application to approve relatively minor details required by conditions can be used as a vehicle to make significant but inexplicit changes. In my opinion it is not enough to rely upon drawings ostensibly submitted for other minor reasons to justify gaining permission for changes to such important matters as the height and overall appearance of the building.
31. A substantial property developer and their architect can reasonably be expected to be aware of the meaning of a non-material amendment, and the extent of a permission granted for discharge of a condition. Furthermore, they can be expected to understand the implications of significant changes to floor and/or roof levels for the appearance of a building, and the consequences in planning terms. It appears to me that when resolving problems to do with the physical setting-out of the building the appellants adopted solutions that were most convenient for them at the time. No proper attempt was made to bring the problem to the Council's attention, and little regard was paid to the effects of those solutions on the wider environment.
32. As I note above, a fall across the site will almost certainly result in significant alterations to a scheme designed for a level site. However - as was aired at the Inquiry – it would have been conceivable to maintain the relationship between the Harmood Street parapet and the second floor of the new building by reducing the general ground floor level by 540mm. It was objected that this would have reduced daylight levels in the lower ground floor habitable rooms. However, the reduction of the ground floor level would bring about the situation shown on the 2008 approved drawings – at least at the northern end of the block adjacent to no.14 Harmood Street – when the daylight levels were considered satisfactory. While the rooms at the southern end of the Harmood Street block would be about 0.26 of a metre lower relative to pavement level, these rooms would still not have restriction of daylight to the same extent as the basement level rooms of the inner parallel block.
33. The further reduction in level would probably have led to deeper foundation structures. While this may have been difficult, and led to more extended party wall negotiations, virtually nothing was put forward as to why this would not have been practicable. Overall it appears to me that the solution adopted was somewhat arbitrary and more likely to be a matter of convenience for the developer rather than there being any significant regard for the appearance of the scheme.
34. Regarding the set-back of the third floor, no application was made for any variation, although it is shown – not dimensioned - on plans submitted for approval of the landscaping condition (decision notice ref. 2010/1756/P). The as built dimension is 950mm as compared with the approved set-back of 1.4 metres. The appellants sought to explain this by arguing that the main front elevation of the block had itself been built about 200mm further back than anticipated – a change not objected to by the Council - while the top floor remained located at the same absolute position in space, thereby reducing the set-back to about 1.2 metres. The remaining 250mm reduction should then be seen as no more than a marginal change. This argument demonstrates a naïve conception of building design and construction. Parts of relatively complex

buildings such as this cannot readily 'slide' across each other horizontally without causing significant changes to other parts – notably elements of vertical structure, circulation spaces, and utilities. Furthermore, the set-back of the top storey is seen relative to the elevation of the block below, not in some abstract relation to its distance back from the street.

35. A more ready and realistic explanation of the change lies in the front to back dimensions of the top floor rooms. Whereas the maximum overall depth of the block is virtually the same in the approved and as-built schemes – about 14 metres – the combined depth of the third floor rooms has been increased from 9.51 metres to 10.7 metres – as shown on dimensioned drawings – an increase of approximately 1.2 metres. It is not surprising that the set-backs at both front and back of the block have been reduced as compared with the approved scheme. I understand the widths of third floor rooms to the front of the building were reduced in order to make use of pre-fabricated modular units – actually shipping containers – of a width that could be transported through the streets. This had necessitated an increase in their depth so that the room areas were maintained. However, again this was a convenience for the developer, and did not take proper account of the planning consequences.
36. Considering the stair tower at the northern end of the block, it is considerably wider and higher than shown on the approved drawings, and set back from the main block by a lesser distance. Furthermore, the proportions of windows are markedly different, and the cladding is more prominent as a result of its colour and extent. No approval was sought for these changes until the recent application to substitute Condition 11 of the original permission. The appellants argue that the changes were necessitated largely in order for the staircase to comply with regulations. While I can see that additional treads and risers have been introduced in the as-built scheme, this by no means fully explains why the set-back of the tower from the main façade has been reduced by 1.4 metres, nor why there is no set-back at ground floor level. The elevations of the stair tower have also been significantly changed in that the window transoms do not coincide with the half-landings, as in the approved scheme, but are positioned at the main floor levels. It appears that the increased width of the tower results mainly from the reduced length of the main block.
37. The appellants claim the finish material for the stair tower generally is the same as for the main façade – and was approved under the application relating to Condition 2(a). However, I note that there is an informative attached to that decision (ref. 2012/1511/P) to the effect that it does not include approval of samples for cladding to the stair enclosure. A later application for approval of a facing material for the stair tower was granted, under decision ref. 2012/4249/P, but this was for an aluminium grille cladding with an etched finish, quite different from the material used on the main façade and the stair tower.
38. As regards the finishing material of the main façade, this is not the same as that approved under decision ref. 2012/1511/P, principally in that it is from a different manufacturer. The appellant claims that the change was made because the approved material was unavailable. However, after enquiry with the manufacturer the Council established this was not the case. I have scant knowledge of the comparative performance characteristics of the two materials. However, I saw that the cladding on the building has warped seriously.

Furthermore, the fixings have a clumsy and prominent appearance, and the panels are not set out in the herringbone type pattern shown on the 2008 scheme, but with all panels straight-jointed both horizontally and vertically. The cladding material has a wood grain pattern, and the installation pattern results in a quite different visual texture to the walls from that envisaged.

39. A further departure from the 2008 approved drawings is the inclusion of approximately square opening windows and frames within the third floor glazing, whereas the approved drawings show a fully glazed storey with minimal vertical framing. The appellants claim these were shown on drawings submitted for under the approval ref. 2010/1756/P. While the third floor plan shows outlines of what may or may not be opening windows, there are no elevations to show any change, or any description of such a change. In any case I can not accept that drawings submitted in relation to matters of bicycle storage, landscaping, and bird and bat boxes can enable permission to be granted for a significant change to this principal elevation of the building.
40. It was also argued that it would have been impossible to have the fully glazed third storey elevation shown on the 2008 approved drawings for reasons of ventilation. However, there is nothing to prevent rooms in student accommodation being mechanically ventilated, and there is no good reason why suitable plant could not have been incorporated within the building.
41. A third party raised the matter of the projecting bays on the main elevation. These consist of pressed metal boxes with glazed fronts, and ventilation grilles in their sides attached to the wall in front of windows of standard rooms. This has changed from the 2008 scheme, which showed the rooms themselves projecting from the face of the building. Again this is a matter that significantly affects the appearance of the building, but for which no planning permission has been granted.
42. Overall, I consider the changes to floor levels and the consequent changes to the main Harmood Street elevation; the changes to the set-back of the third floor, and the total height of the building; the changes to the stair tower, and the inclusion in the third floor of opening windows set in an opaque external wall have altered the design to such a degree that it must be regarded as a different building from that for which the 2008 permission was granted. I do not consider planning permission has been obtained for these changes, and in my opinion on the balance of probabilities a breach of planning control has occurred. The appeal on ground (b) therefore fails.

The enforcement appeal on ground (f)

43. The appellants argue that the requirements of the notice are excessive since they seek conformity with mutually exclusive planning permissions, and there is no indication which permissions and which conditions should now be executed. This is to a great extent a repeat of the arguments raised on the nullity or invalidity of the notice. However, as I have concluded above, the appellants have not gained planning permission for the variations to the design that they claim, and there is little to support their claim concerning mutually exclusive permissions.
44. Nevertheless, it is clear that there are variations to the approved scheme to which the Council do not object, and which they do not intend to enforce against. In the light of this I consider it would be reasonable to redraft the

requirements of the notice to specify the elements of the building that the Council require to be changed to accord with the 2008 permission. The Council submitted a schedule of proposed variations. These are, in outline, the height of the third floor above the second floor; the height of the second floor parapet; the set back of the third floor in relation to the principal Harmood Street façade; removal and reconstruction of the stair tower; and removal and replacement of the finishing material on the Harmood Street elevation.

45. I appreciate that drafting the requirements in this way creates a new planning permission, and I consider it would be necessary to draft the requirements such that the various elements should comply with the terms of the 2008 permission and NMA permissions – including conditions, limitations and obligations/agreements.
46. The appellants sought to resist entering into a further deed of variation to a Section 106 Agreement entered into in relation to the 2008 permission. The object of this further deed was to ensure the original obligations continued to apply following replacement of Condition 11. In general, I do not consider a Section 78 appeal on a determination under Section 73A is the appropriate forum to review as significant a matter as a Section 106 Agreement on the original planning permission. However, in the event the appellants did not advance any substantial argument as to why they should be released from their agreement. Since a similar situation arises as a result of varying the requirements of the notice, for the sake of clarity I consider it necessary to include reference to the existing Agreement within the varied requirements.
47. As noted above, the Council are satisfied that the replacement railings now comply with the planning permission. However, the redrafted requirements would not refer to replacement of the railings, and by virtue of Section 173(11) planning permission for them is treated as having been granted.
48. The appeal on ground (f) therefore succeeds, and I intend to vary the requirements of the notice accordingly.

The enforcement appeal on ground (g)

49. It is suggested that the compliance period of 12 months does not reflect the seasonal nature of student accommodation with the rooms unoccupied in the summer, and that a period of 18-24 months should be allowed.
50. Compliance with the requirements would entail complex construction works for which planning and implementation could well take 12 months. I do not consider such an undertaking would necessarily be unfeasible. Furthermore, it is a period that would include a summer vacation.
51. While it is conceivable that a longer period would be needed, no justification has been put forward for the very broad suggestion of 18-24 months. Without any such reasoned argument I do not consider an extended period would be appropriate. However, under Section 173A(b) of the Act it is open for the Council to extend the compliance period. Should this be necessary, and subject to full substantiation for any requested extension, I see no reason why the Council should not do this. The appeal on ground (g) therefore fails.

The Section 78 appeal

52. The Section 78 appeal in this case is against the refusal of the 2014 application to carry out the scheme approved in the 2008 permission without complying with Condition 11 to planning permission ref. 2008/2981/P - imposed as a non-material amendment to that permission, under Section 96A of the Act, by planning permission ref. 2012/4135/P, dated 2 October 2012. It is proposed to substitute a new condition listing the as-built drawings. This would have the effect that the building would be granted planning permission as it stands.

The main issue

53. From my inspection of the appeal site and its surroundings, and from the representations made at the Inquiry and in writing I consider the main issue in this appeal to be the effect of the proposals on the street scene in the vicinity of the appeal site, and on the setting of the Harmood Street Conservation Area.

Reasons

54. The site lies immediately adjacent to the Harmood Street Conservation Area at its southern end. The Conservation Area takes in the greater part of Harmood Street on both sides, together with streets to its east up to the railway line. It is principally a residential area, but features a substantial school on the western side of the street, a public house at the northern end, and a bookshop. A substantial block of flats on the western side is excluded from the Conservation Area.
55. The street is developed with more or less continuous two or three-storey terraces of houses on both sides. They were mainly built from about 1840 onwards, and are constructed of brown/yellow stock brick, mostly with butterfly or 'M' profile slate roofs concealed behind horizontal parapets at the front, and multi-pane sash windows. Some have stucco window and door surrounds, or fanlights over the front doors. Many are set behind small front gardens with low walls, and are attractively planted, augmenting the mature trees in the street. On the western side there is a group of relatively modern short terraces, which reflect the style and detailing of the 19th century houses in a very satisfactory manner. The area derives its particular qualities from the high proportion of buildings developed during a relatively short period in the 19th century, which are largely unaltered, and retain their domestic, cottage-like character and scale.
56. The 2008 approval was for a design that would introduce a carefully conceived and detailed modern building into this environment. In particular, the top of the second floor would align with the parapet of the adjacent terrace – nos. 14-34 Harmood Street; the third floor would be set back about 1.4 metres from the main façade, and have a lightweight recessive character. The stair tower immediately next to 14 Harmood Street would also be recessed, and largely glazed. These features would have assisted in making the main body of this large building appear of broadly similar scale to the adjacent terrace, with the potential impact of the top floor and the stair tower minimised by their neutral and recessive nature.
57. In contrast the second floor parapet of the as-built scheme is 0.55 of a metre higher than the parapet of 14-34 Harmood Street, and the top of the third floor parapet is about 0.4 of a metre higher above the second floor – an increase in

the overall height of the building of 0.95 of a metre. Furthermore, at third floor level the reduction in the set-back, the dark-framed opening windows and the opaque glass facing combine to make a somewhat oppressive top storey, which has effectively become part of a monolithic four storey block.

58. As a result of these changes the overall bulk of the building has been significantly increased, physically and visually. The approved design would have appeared as a long horizontal block of similar scale to the domestic terrace to its north, with a recessive and somewhat de-materialised attic storey above. This relied to a great extent upon the expression of the strong horizontal line of the second floor parapet aligning with that of nos. 14-35, and the strongly expressed set-back of the third floor.
59. As built, it appears effectively as a four-storey block. When viewed along Harmood Street from the north or south the strong horizontal line is lost, and the overall height and bulk of the building dwarfs the adjacent terrace of cottages. When standing opposite the building, or looking towards it from the north, the stair tower is a dominating feature. The incongruous proportions of the glazing, its clumsy connections to the main block and at its abutment to no.14, give it an alien and over-assertive appearance. The substantial areas of prominent orange-coloured cladding serve to emphasise this incongruity, and to merge the appearance of the stair tower with the main mass of the building. Given that the appeal site occupies such a significant proportion of the length of the street, the building tends to dominate the street and the Conservation Area, reducing its significance to a considerable degree.
60. The cladding of the principal elevation is of poor quality, has been fixed in a clumsy and all too prominent way, and has weathered badly, exhibiting extensive surface warping. This compares unsatisfactorily with the clear intention to provide a carefully detailed building that would complement the simple and elegant detailing of the adjacent cottages. Furthermore, the green metal boxes attached to the front face of the building lack any apparent function or meaning, and in the context of the pared down design of the historic street are superfluous and alien encrustations.
61. The changes between the approved scheme and the as-built scheme cannot reasonably be described as minor amendments to the design – they have resulted in a building that relates to its surroundings in a quite different way from that clearly intended. While it is readily apparent that the new building cannot be likened to a terraced cottage, and that there is a different land-use of the site, the building as realised fails to take account of the scale or refinement of terraces in the Conservation Area. I accept that variation in parapet heights may be a fairly common feature in built-up areas. However, many of the examples put forward for the appellants were not within this or any other conservation area. Furthermore, the harm in this case arises not only from the mismatch in parapet heights, but from the bulk and overall impact of the building on Harmood Street and the Conservation Area.
62. I conclude on the main issue that the proposal to retain the building as built would cause significant harm to the street scene in the vicinity of the appeal site, and to the setting of the Harmood Street Conservation Area. The proposal would not accord with the aims of Policy CS14 of the Camden Local Development Framework Core Strategy 2010-2025, which seeks to ensure to preserve and enhance the Borough's heritage assets and their settings

amongst other things. Nor would it accord with the aims of Policies DP24 and DP25 of the Camden Local Development Framework Development Policies, which seek to secure high quality design, and to maintain the character of the Borough's conservation areas – including preventing development outside a conservation area that would harm its character and appearance.

63. This cannot be regarded as substantial harm in the terms envisaged in the National Planning Policy Framework (NPPF). However, I do not consider the scheme as built is of a nature or scale that benefits the public at large to a degree that would justify the harm caused.

Conclusions

64. For the reasons given above and having regard to all other matters raised, I consider neither appeal should succeed, except the enforcement appeal to the limited extent on ground (f). I intend to uphold the enforcement notice with variations, and to refuse permission for development of the land without complying with Condition 11.

Formal decisions

Appeal Ref: APP/X5210/C/14/2214983

65. I direct that the enforcement notice is varied by:

OMISSION of the requirement set out in paragraph 5 of the notice; and,
SUBSTITUTION with the following requirements:

- i. Reduce the height of the 3rd floor of the Harmood Street elevation by 422mm and make the Harmood Street elevation of the development comply with the terms (including conditions, limitations and agreements) of permission 2008/2981/P as amended by non-material amendments made under 2010/5199/P and 2012/4135/P.
- ii. Reduce the height of the second floor parapet of the Harmood Street elevation by 540mm and make the Harmood Street elevation of the development comply with the terms (including conditions, limitations and agreements) of permission 2008/2981/P as amended by non-material amendments made under 2010/5199/P and 2012/4135/P.
- iii. Increase the set back of the third floor in relation to the second floor on the Harmood Street elevation by 550mm and make the Harmood Street elevation of the development comply with the terms (including conditions, limitations and agreements) of permission 2008/2981 as amended by non-material amendments made under 2010/5199 and 2012/4135.
- iv. Remove the stair tower between the Harmood Street elevation and number 14 Harmood Street and make the stair tower element of the development comply with the terms (including conditions, limitations and agreements) of permission 2008/2981/P as amended by non-material amendments made under 2010/5199/P and 2012/4135.

- v. Remove the external finishing material on the Harmood Street elevation and make the Harmood Street elevation of the development comply with the terms (including conditions, limitations and agreements) of permissions 2012/1511/P and 2008/2981/P as amended by non-material amendments made under 2010/5199/P and 2012/4135/P.

66. Subject to those variations the appeal is dismissed and the enforcement notice is upheld.

Appeal Ref: APP/X5210/A/14/2214988

67. The appeal is dismissed.

Stephen Brown

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Paul Tucker	QC, instructed by Kieran Rafferty of KR Planning.
He called: Dyar Lally BA(Hons) DipArch RIBA Kieran Rafferty BA(URP) CUKPL MPIA MRTPI	Chartered Architect, Director of Contemporary Design Solutions LLP. Chartered Town Planner, Principal of KR Planning.

FOR THE LOCAL PLANNING AUTHORITY:

Giles Atkinson	Of Counsel, instructed by The Head of Law The London Borough of Camden Council.
He called: David Glasgow LLB BBE Post Grad Dip(URP) Michelle O'Doherty MSc	Planning Officer, The London Borough of Camden Council. Conservation and Urban Design Officer The London Borough of Camden Council.

INTERESTED PERSONS:

Cllr Alison Kelly	Borough Councillor for Haverstock Ward.
Paul Whitley MA DipArch DipICarb RIBA FCIARB	Architect, and nearby resident.
Peter Clapp	Architect (retired), and nearby resident.

INQUIRY DOCUMENTS

- 1 Attendance list for each day.
- 2 The Council's letters of notification of the appeal, dated 21 May and 27 October 2014, with the circulation list.
- 3 Letters of representation.
- 4 Statement of Common Ground.
- 5 Bundle of legal authorities put in for the appellants.
- 6 Appendices to Mr Rafferty's proof of evidence.
- 7 Mr Lally's proof of evidence.
- 8 Appendices to Mr Glasgow's proof of evidence.
- 9 Appendices to Ms O'Doherty's proof of evidence.
- 10 Appendices to Mr Whitley's statement.
- 11 Proposed variation to the requirements of the enforcement notice.
- 12 Suggested planning conditions, and revised suggested conditions.
- 13 Section 106 Obligation dated 23 September 2008; deed of variation to that obligation dated 8 November 2010, and proposed deed of further variation.
- 14 Officers' report to committee on planning application ref. 2007/6339/P.
- 15 Note of the High Court case *Copeland v SoSE and Ross* [1976] 31 PCR 403.

CORE DOCUMENTS

- | | |
|-----|------------------------|
| CD1 | Core Document 1 |
| CD2 | Core Document 2 |
| CD3 | Supporting Document 1 |
| CD4 | Supporting Document 2. |

PLANS

- A Plans approved under planning permission 2008/2981/P.
- B As-built plans.

If you require an alternative accessible version of this document (for instance in audio, Braille or large print) please contact our Customer Services Department:

Telephone: 0370 333 0607

Fax: 01793 414926

Textphone: 0800 015 0516

E-mail: customers@HistoricEngland.org.uk