

**THIS DOCUMENT CONSTITUTES THE FORMAL OBJECTION OF THE HIGHGATE
SOCIETY TO APPLICATION HGY/2021/3274**

TOWNSEND YARD DEVELOPMENT

ADVICE

Introduction

1. In this matter, I am asked to advise the Highgate Society in connection with an application for Listed Building Consent (“LBC”).
2. At the end of November 2020, the Developer was granted conditional planning permission by the London Borough of Haringey (“the Council”) for the following development at Townsend Yard, Highgate (HGY/2020/1326), namely *“demolition of existing buildings on site, excluding original folly, removal of communication mast and construction of 7 mews dwellings with associated landscaping”*. Subsequently, by an application (HGY/2021/3273) validated on 5th November 2021, the Developer applied for LBC, described by the Council as being for *“.... works abutting flank wall and garden wall of 36a Highgate High Street in association with the demolition of garages in line with planning consent... ”*. The Developer’s own narrower description given in its application is *“demolition of garages in line with planning consent...”*. As I hope to demonstrate in this Advice, the need for LBC is considerably wider and encompasses consideration, not only of 36a Highgate High Street (to which I refer in this Advice as “the Cottage”), but also of the garages and the garden walls of 40 and 42 Highgate High Street.
3. Before considering this matter in any detail, I must make a preliminary observation. I am critical of the fact that the applications for planning permission and LBC were not made, and considered, simultaneously. The Council is entirely correct when it asserts that there is no bar in law to the two applications being made separately. However, I would suggest that the decision-making process is infinitely more robust when the two applications are dealt with together, so that the decision-maker is able to consider the whole proposal globally and holistically. In the present case, there is a risk that, having granted planning permission, the decision-maker will feel

tempted to nod through approval of LBC. I cannot emphasise too forcibly that the fact that planning permission has been granted is wholly immaterial to the present application. If, as I shall suggest, LBC should be refused, then the Developer may need to return to the drawing board and revise its proposals. In short, the grant of planning permission cannot, and must not, determine the outcome of the present application.

Townsend Yard and the Cottage

4. The lane known as Townsend Yard is apparently an unadopted highway. It runs in a northerly direction from Highgate High Street to the area known as Highgate Bowl. The development site lies to the east of the lane. I am concerned with the southerly segment of the site which comprises an open rectangular tarmacked area (probably used mainly for parking) with a number of garages on its northern and southern sides. To the rear of the three southerly garages lie several listed properties fronting the High Street. Numbers 24-40 are listed as a group (listed on 7th February 1974) being a *“row of 18th century 3 storey, 2 window buildings with alterations....”*. It was to this group that the Developer’s heritage consultant largely directed her attention in her original (May 2020) and supplementary heritage statements.
5. The Cottage is a 400-year-old largely original shepherd’s cottage. It is accessed via a long, narrow passageway running off the High Street. The interior of the Cottage consists of 3 storeys plus basement, which was probably used to house sheep being driven from the country to London. An access hatch between the ground floor and the basement can still be discerned and a chute through which feed could be poured into the basement is in existence.
6. Eventually, on 18th August 2021 and after a certain amount of encouragement from the Highgate Society, Historic England listed the Cottage as a grade II listed building in its own right. The extent of the listing (more extensive a grade II listing than any I have previously experienced) is perhaps reflective of its overall importance as an historic asset. The Cottage is said to have architectural interest *“as a rare example in the capital of a surviving modest vernacular building of the period; for uncommon architectural features in a local context such as the gambrel roof and full-length*

undercroft which was possibly used as a byre for livestock; for its high degree of surviving historic fabric and plan form.” Its historic interest is said to be “as the last surviving building relating to Townsend Yard, one of the characteristic courts off Highgate High Street, and later a notorious London slum; as a reminder of the rural and pastoral origins of a village once on the edge of London and for its importance to London’s meat trade.” Its group value is said to be “with the Grade II C18 terrace 24-40 Highgate High Street, which it adjoins and is accessed from via a covered passage.” (All the underlining is mine.) The later listing meant, not only that the Cottage figured largely as an after-thought in the heritage consultant’s supplementary statement, but also that she could not possibly have been aware of its full heritage value. I note that regrettably the latest heritage statement, prepared for the LBC application, was made on 27th July 2021, prior to the Cottage’s final listing.

7. The Cottage itself lies to the immediate south-east of the development site. There is a party wall between the most easterly of the three garages and the western flank wall of the Cottage. The garage party wall extends northwards (not for any great distance) from the Cottage. The garden wall of the Cottage does not extend from the western flank wall of the Cottage (the party wall) but is offset slightly to the east. As a result, there is an area of render along the rear of the Cottage between the extended party wall of the garage and the garden wall of the Cottage.
8. The most southerly of the proposed terrace of mews houses would be a one-bedroom unit whose easterly flank wall would abut what is now the party wall between the garage and the Cottage. The outside amenity area of the new unit would be to the immediate west of the Cottage’s garden. The Developer’s three-dimensional block drawing illustrates the position [see attachment 3].

The law

9. Section 1 (5) of the Listed Building Act 1990 (“the Act”) defines “*listed building*” in the following terms:
“a building which is for the time being included in a list compiled or approved by the Secretary of State under this section; and for the purposes of this Act—

(a) *any object or structure fixed to the building;*
(b) *any object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so since before 1st July 1948,*
shall be treated as part of the building."

10. In **Attorney-General ex rel. Sutcliffe and Others v Calderdale Borough Council** (1983), 46 P&CR 399, a county council owned a terrace of cottages, a mill and a "bridge" linking those two structures. The county council conveyed the terrace to a district council but retained the mill and the bridge. Prior to the conveyance, the mill was listed as a building of special architectural or historic interest. The district council wished to demolish the cottages. However, the Court of Appeal accepted that the terrace, which was not expressly listed, was included in the listing of the mill and could not be demolished without the consent of the Secretary of State. In determining whether the cottages were within the curtilage of the mill, the Court (at 407) proposed three tests, namely: *"(1) the physical "layout" of the listed building and the structure, (2) their ownership, past and present, (3) their use or function, past and present. Where they are in common ownership and one is used in connection with the other, there is little difficulty in putting a structure near a building or even some distance from it into its curtilage."* The Court rejected the argument that, whatever might have been the position in the past, the present lack of common ownership meant that the cottages were no longer within the curtilage of the mill (at 409).
11. In **Debenhams Plc. v Westminster City Council**, [1987] AC 396, the issue for the House of Lords was whether a building on the opposite side of the street to the listed building but originally linked to it by a subway and overhead walkway was itself listed. The subway had been filled, the overhead walkway demolished and the building sold off separately. In rejecting the argument that the building was listed, the Lords held that the words "a structure fixed to a building" in the definition of a listed building referred only to structures ancillary to the listed building itself and not to structures constituting some other complete building. Lord Keith said (at

403) *"the word "structure" is intended to convey a limitation to such structures as are ancillary to the listed building itself, for example the stable block of a mansion house, or the steading of a farmhouse, either fixed to the main building or within its curtilage. In my opinion the concept envisaged is that of principal and accessory."*

12. By section 7 of the Act:

"Subject to the following provisions of this Act, no person shall execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised under section 8."

13. By section 8 of the Act:

*"Works for the alteration or extension of a listed building are authorised if—
(a) written consent for their execution has been granted by the local planning authority or the Secretary of State"*

14. Finally, by section 16 (2) of the Act:

"In considering whether to grant listed building consent for any works the local planning authority or the Secretary of State 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."

Impact of the proposal on the Cottage

15. In determining the extent of the impact of the proposal on the Cottage, which without doubt is a very important heritage asset, the structure of the Cottage, its garden wall and its setting must be considered.
16. It is probable that the existing garage building surcharges the Cottage's flank wall. Demolishing the garage would potentially result in unloading, soil movement and consequential damage to the structure of the Cottage. Similarly, construction of the one-bedroom mews house would surcharge the Cottage's flank wall, again potentially leading to damage. In section 3 of their statement, the architects briefly

touch upon the problem and make mention of a report from structural engineers. My difficulty (which will be shared by any third party referring to the application documents on the Council's website) is that I have not had sight of that report and, more significantly, the Council will consequently not have checked the structural engineer's calculations, either in house or using independent consultants.¹ In my opinion, that should be done before any decision is taken on the LBC application.

17. On the basis of section 1 (5) of the Act, the garden wall of the Cottage is part of the listed building. Indeed, it is specifically mentioned in the 21st August 2021 listing. Any alteration to it would require listed building consent. The Developer's plans show two new walls meeting the garden wall at right angles. No details whatsoever have been given as to how it is proposed the two extraneous walls would tie into the garden wall, the relative height of the proposed new walls as compared to the present wall, or whether it is proposed that the present wall should be heightened and, if so, how and by how much. Such details should be obtained from the Developer.
18. Overall, it seems to me that the setting of the Cottage is most at risk.
19. Historic England's publication *"The Settings of Heritage Assets"* contains some valuable advice. Part 1 *"Settings and Views"* includes the following: *"Setting is the surroundings in which an asset is experienced, and may therefore be more extensive than its curtilage. All heritage assets have a setting, irrespective of the form in which they survive and whether they are designated or not. The extent and importance of setting is often expressed by reference to visual considerations...."* Later, the advice continues: *"The contribution of setting to the significance of a heritage asset is often expressed by reference to views, a purely visual impression of an asset or place which can be static or dynamic, long, short or of lateral spread, and include a variety of views of, from, across, or including that asset."* (paragraph 10).

¹ As would be done, I suggest, if this was a proposal for a basement in a residential area.

20. The Cottage cannot be seen from Highgate High Street, but is fully visible from the yard containing the garages and as one walks north along Townsend Yard. I am instructed that, in the Council's former UDP, the latter view was specified as a view to be protected and if possible enhanced: *"Townsend Yard view over the car park to 36a, one of the oldest buildings in Highgate, this is the only public place from which this cottage can be seen"* (my underlining). That protection has now been removed from the latest Local Plan, no doubt in light of the provision identifying Townsend Yard as an area for future residential development. However, the description in the former UDP still holds good. Addressing the application for planning permission, the officer's report at paragraph 6.32 is clearly in error in advising that the Cottage is presently *"not highly visible with its functional and historic relationship being a building hidden behind others."* It would seem, assuming the case officer visited the site, that he did not pay sufficient attention to the visibility of this important heritage asset.
21. There is no dispute that the proposed development would completely hide the Cottage from views from Townsend Yard. In my opinion, that would be a significant drawback. Looking at the block drawings (*see attachment 3*), it would appear that the two most southerly of the proposed town houses would largely be responsible.
22. Page 13 of Historic England's publication suggests a checklist for assessing the effect of the proposal on the significance of the heritage asset or the ability to appreciate its significance. I note that in her original heritage statement (at paragraph 5.9), the heritage consultant sought to carry out the same exercise, but in my view her conclusions were unhelpful and, in many cases, simply wrong. In particular, she failed to note, or to comment on, the fact that, with the proposal, the Cottage would no longer be visible from the public realm.
23. I carry out the same exercise, addressing the following headings:
Proximity to asset: The development would be extremely close to the Cottage: the one-bedroom townhouse would be adjoining it.

Position in relation to relevant topography and watercourses: No material levels have been given by the Developer, who has sought to remove the condition regarding the provision of levels as a non-material amendment. The Society has objected: see its letter of 9th November 2021, and in particular paragraphs 1 to 3. Levels must now be provided.

Position in relation to key views to, from and across: At present, the Cottage is visible from Townsend Yard and from the vicinity of the garages. With the proposal, the Cottage would be totally obscured. The proposed townhouse would be 1.5 m higher than the existing garages. The present open view looking south-east from the yard and the roadway would be obstructed. The only windows in the Cottage are on its north façade. Views from the Cottage would consequently be highly restricted to a view due north along the length of the garden. The overall position can best be appreciated from the montages prepared by the architects [*see attachment 3*] and from cross-sections prepared by a member of the Society [*see attachment 2*].

Orientation: The bulk of the development would be at right angles to the listed building, but the one-bedroom townhouse would be immediately adjacent to it.

Degree to which location will physically or visually isolate asset: Manifestly, the Cottage would be physically and visually isolated: see the montages.

Prominence, dominance, or conspicuousness (of the development). The proposal would be extremely conspicuous and would entirely dominate Townsend Yard and the Cottage.

Competition with or distraction from the asset: The proposed development would compete with, and wholly distract from, the asset. The Cottage would hardly be visible.

Dimensions, scale and massing: The scale and massing of the proposal would be inimical to the importance of the Cottage as a heritage asset.

Visual permeability: The proposed development would not be visually permeable. Not only would views of the Cottage be obliterated, but it would also no longer be possible to see the rear aspect of the row of listed properties fronting the High Street.

Change to built surroundings and spaces: There would be considerable change to both the built surroundings and the surrounding spaces, causing views of and from the Cottage to be obscured.

Change to skyline, silhouette: The silhouette of the Cottage against the skyline would no longer be visible.

24. I have read SPAB's email dated 1st April 2021 objecting with particular reference to the Cottage to the application for planning permission. I find its objection compelling. I would hope that SPAB renew their objection to the current LBC application. Likewise, I have read the objection from the Highgate Conservation Areas Advisory Committee, which is highly relevant to the present application and also compelling. The Head of Development Control, in his email dated 18th June 2021 to Gail Waldman of Highgate CAAC, indicated that, in assessing any LBC submitted, the Council would have *"regard to the desirability of preserving the building, its setting and any features of special architectural or historic interest which it possesses."*

The garages

25. The Council's Planning Policy Map shows the listed building group as including, within the demarcation of the listing, the three southerly garages. That is a useful starting point. It demonstrates that, when the Policy Map (*see attachment 5*) was drafted, the Council's view for whatever reason was that the garages lay within the curtilage of the listed group.
26. The heritage consultant concluded that the garages had no heritage value and did not contribute to the significance of the listed buildings. The Society takes a different view as regards the two most easterly of the southerly garages. On the basis of the following facts, the Society believes that those garages may well have originally formed a single coach house:
- (a) A structure in the location of the two garages appears on the OS map for 1935, from which it can be deduced that part of the structure is at least over eighty years old.

- (b) The two garages were in all probability originally a single structure, a dividing wall having subsequently been erected.
 - (c) The floors of the two garages consist of fairly substantial paving blocks: not the sort of floor to be found in a recently constructed garage.
 - (d) On the westerly wall of the westerly of the two garages are a number of high-level windows some with distinct brick arching over them. Such windows would have no use in a conventional garage, but I am told are typical of a coach house.
27. The coach house, if indeed that is what it originally was, cannot, I think, have had any functional connection with the Cottage, but it may well have been used by the occupants of number 40. I would argue that word “building” in section 1 (5) of the Act includes the back garden wall of number 40 to which the coach house, a structure ancillary to the main building, was fixed. Alternatively, the coach house was originally within the curtilage of the main building. Either way, the coach house was therefore part of the listed building. Its association with no 40 as a coach house would suggest that it does indeed have some heritage value.
28. The heritage consultant concluded (at paragraphs 27 and 28 of her heritage statement) that the evidence was inconclusive regarding the listed status of the garages and that it would be for the Council to decide whether to treat them as such. I would invite the Council to consider the above evidence in determining the listed status of the two easterly garages. If the Council were to agree with the Society as regards their status as a heritage asset, it should be slow to permit their demolition.

The rear wall of the garden to no 40 Highgate High Street

29. There is a party wall comprising the rear garden wall of number 40 and the rear wall of one of the garages. The rear garden wall marks the boundary of number 40's present curtilage and has apparently been there since 1st July 1948 (but see further below). It serves the purpose of securing the building or its curtilage and is therefore an accessory to the principal building (see **Watts v SOE** (1991) 62 P&CR

366 at 380). On the basis of section 1 (5) of the Act, I advise that the rear garden wall is part of the listed building of number 40, so that any alteration to it would require listed building consent.

30. However, the matter goes further. I have been shown a series of maps, the earliest dated 1698 [*see attachment 4*], showing the boundary wall around the then land holding of Christ's Hospital, such land holding being situated to the east of Townsend Yard. The distinctive stepped wall, to which my attention has been drawn, is marked in orange on the maps. It would seem fairly certain that such wall has existed continuously since before 1698. One leg of the wall would appear to be the rear garden wall of no 40. It is therefore of significant heritage value.
31. It is unclear from the Developer's drawings whether demolition of the rear garden wall is proposed. Its demolition is certainly shown on revision P7 of the proposed ground floor plan. If so, consideration must be given as to whether LBC should be granted. In all the circumstances, I advise that it would be proper to refuse.

The garden walls to no 42 Highgate High Street

32. No 42 High Street is individually listed as grade II. It is not part of the group listing of 20-40 High Street. For the same reason that I gave for advising that the rear garden wall of no 40 was part of the listed building, I also advise that garden walls to no 42 are part of that listed building. Two of no 42's garden walls would be affected by the proposed development. The east wall would be demolished and rebuilt. The north wall would remain but would be built up to. Prima facie, it seems to me that LBC would be required.

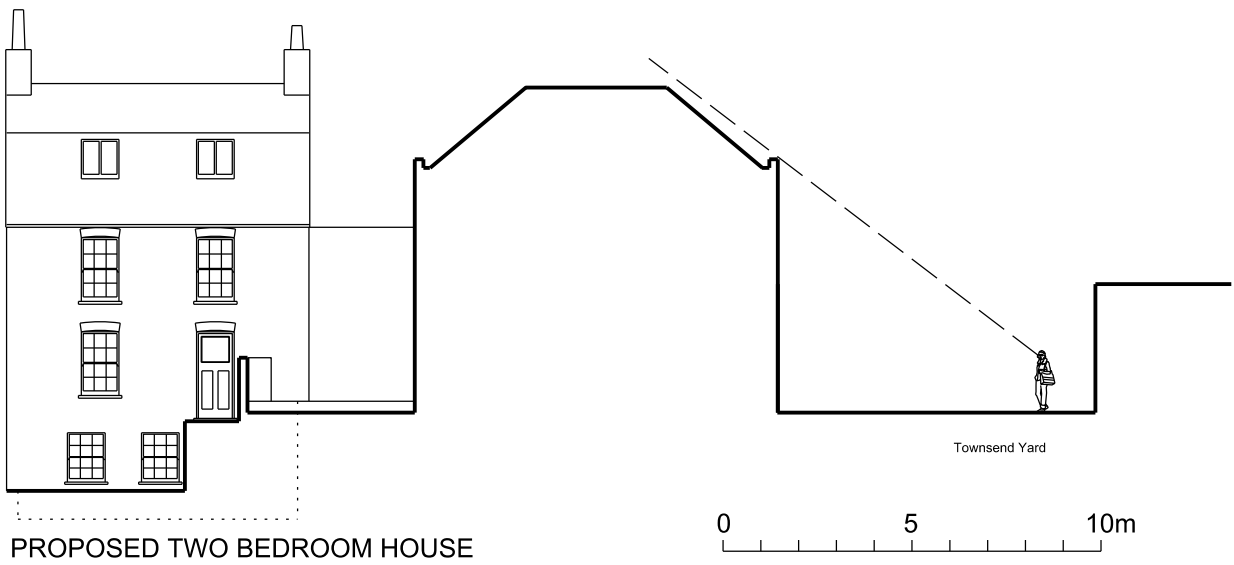
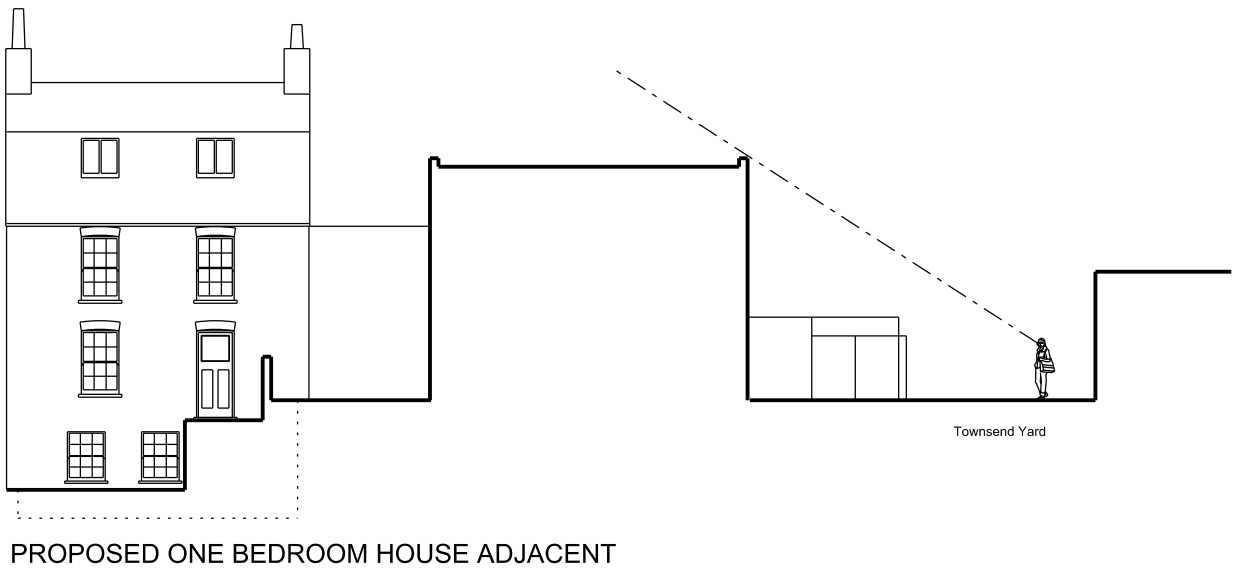
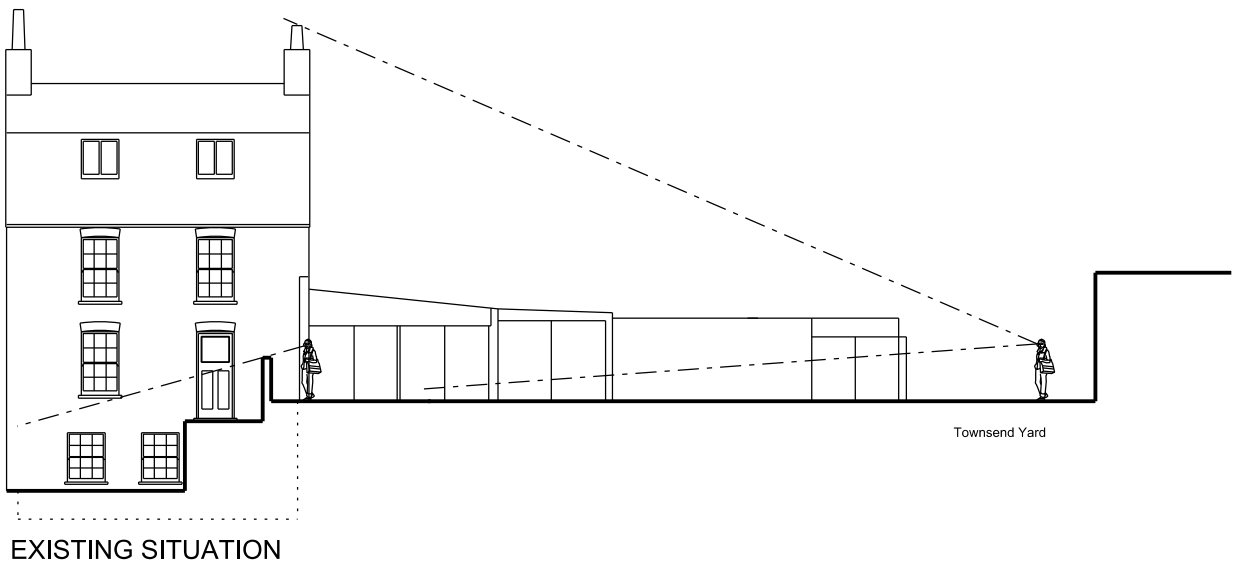
Conclusion

33. By its application, the Developer appears to want to limit the scope of the LBC inquiry. In fact, for the reasons given above, there are a number of matters to be considered by the Council. I have sought to address them in this Advice, but to my mind the impact of the proposal on the setting of the Cottage would be its most egregious consequence so far as listed buildings are concerned and by itself would

warrant the refusal of LBC. However, the other matters noted in this Advice, including the adverse impact on the setting of 22-40 and 42 High Street, are not without importance. Moreover, a more thorough historical and architectural survey of all standing walls, conspicuously absent from the present heritage analysis, is surely essential before any informed decision can be made. I have also noted the absence of certain other important information from the present LBC application. That too is of some concern, and I trust that it will be quickly remedied.

8th December 2021

David Altaras, 4 Field Court, Gray's Inn, WC1R 5EF





Windows A, B & C to be included in a condition requiring details of measures to minimise overlooking to adjacent Cottage

General Notes

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These proposals are subject to the approval of all Statutory Building Control requirements and the requirements of all Statutory Authorities and Service Providers.

The site boundaries and surroundings are based on the following:

- OS Map / Measured survey by Laser Surveys Ltd

The site boundaries are those described by the client.

These drawings are to be read in conjunction with all other relevant documentation produced by Stephen Davy Peter Smith Architects and other consultants employed by the client.

Specific Notes

Key

Rev	Drawn	Notes	Date	
Rev	Checked	Date	Approved	Date

REVISIONS

Client

Townsend Yard Ltd

	A - APPROVED
	B - APPROVED WITH COMMENTS
	C - DO NOT USE

CLIENT APPROVAL

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Project

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London
N6 5JF

Drawing Ref. TSY - DS - 01 - ZZ - DR - A - K062	Job No. 1944
Purpose of Issue PLANNING	Scale NTS @ -

Drawing Title

Image 5 - Windows to be included in condition

Project Ref - Drawing No - Status - Revision

TSY - K 0 6 2 - S 0 - P 0



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CLIENT APPROVAL

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Drawing Ref. TSY - DS - 01 - ZZ - DR - A - K063	Job No. 1944
Purpose of Issue PLANNING	Scale NTS @ -

Drawing Title

Image 6-7 - Aerial Views

Project Ref - Drawing No - Status - Revision

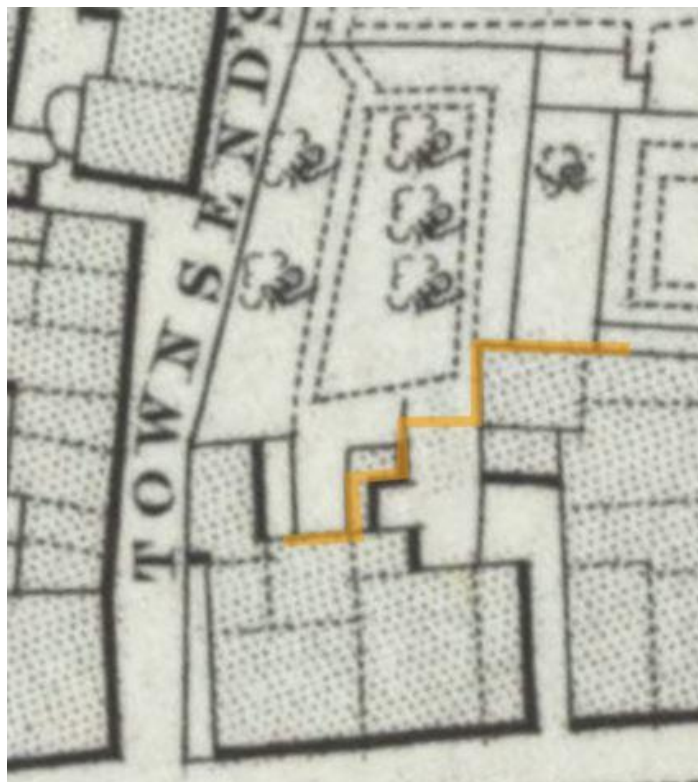
TSY - K 0 6 3 - S 0 - P 0

Pre 1698 Wall Highlighted in Orange

Christ's Hospital Estate Plan 1698. Baker's shop now No.42 Highgate High Street



OSmap 1863



Christ's Hospital Plan 1872



OS Map 1895



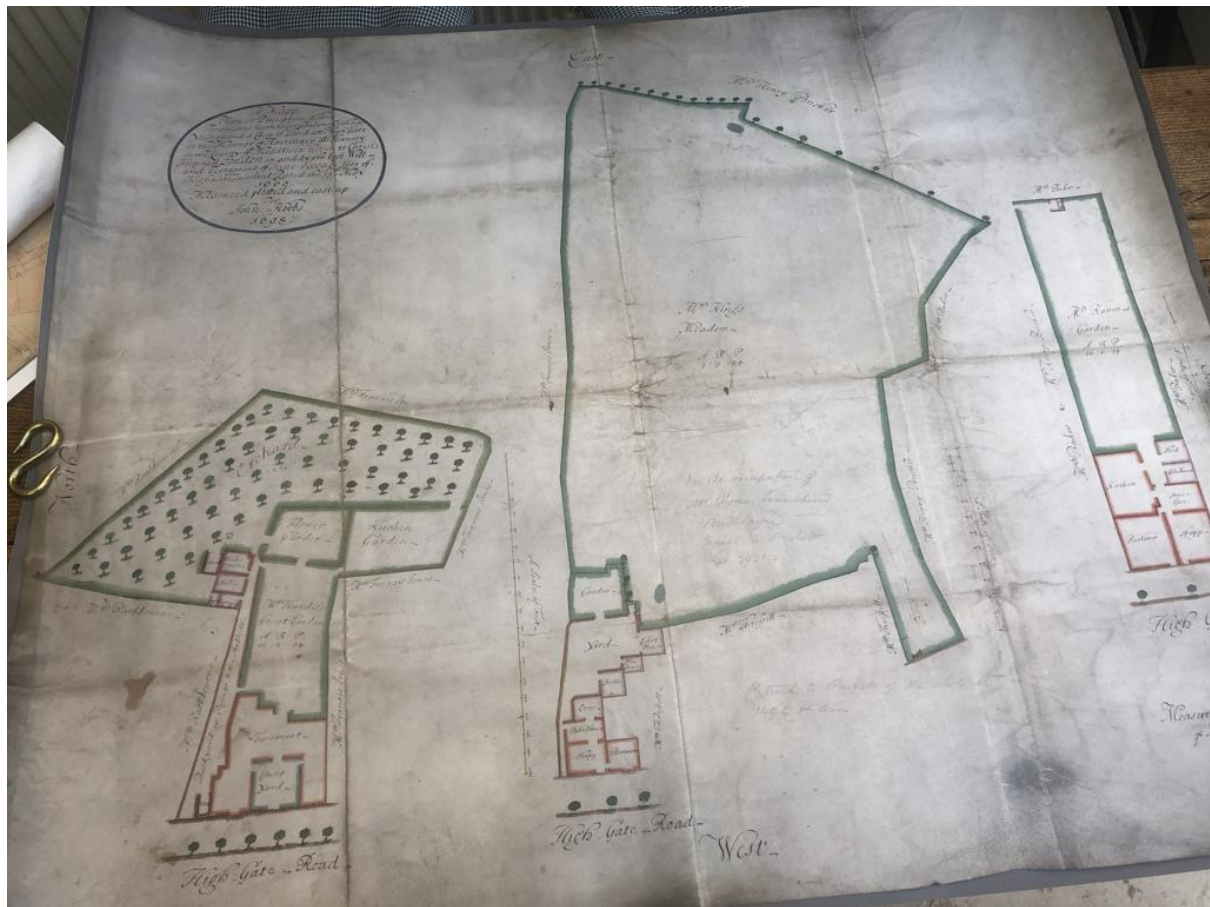
OS Map 1914



OS Map 1938



Total Christ's Hospital Plan



Planning Policy Maps

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Site Specific Proposal

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Town Centres

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Open Space and Biodiversity

0/14

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Employment

0/4

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-

Conservation

1/5

☒

Conservation Areas

☐

Archaeological Priority Areas

☐

Article 4 Direction (for alterations to front facades in conservation areas)

☐

Listed Buildings

☒

N

Locally Listed Buildings

☐

+

Culture and Leisure

0/1

☐

+

Views

0/2

☐

+

Water

0/3

☐

+

Other

0/8

☐

Selection tool

Please click on the **Draw** button to select an area of the map. Click on the corners of the area you wish to search in and double-click to finish drawing your area. Results will appear below the map.

