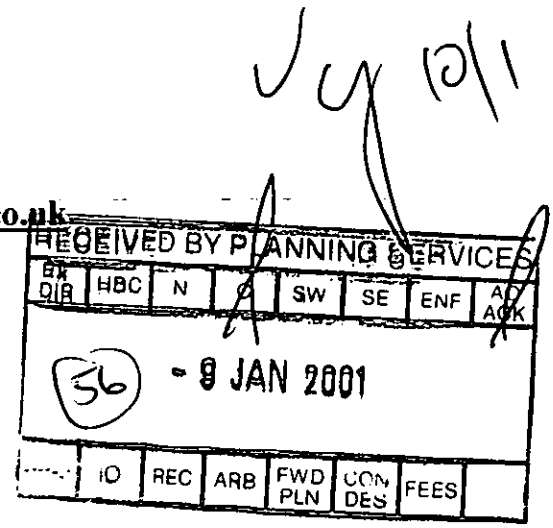
2 Douro Place,
London, W8 5PH.
Tel: 0207 937 1407
Fax: 0207 795 6930
Email: cormack@dircon.co.uk



7th January 2001

YOUR REF: DPS/DCC/PP/00/02785/LR

M.J. French, FRICS, Dip, TP, MRTPU, Cert TS
Executive Director, Planning and Conservation
The Royal Borough of Kensington and Chelsea
The Town Hall, Hornton Street
LONDON W8 7NX

By Facsimile to: 0207 361 3463 (and by post)

Dear Sir,

Town and Country Planning Act 1990
Proposed Development at 13 Albert Place, London, W8 5PD

We write in response to the proposed development at 13 Albert Place. Our property is immediately south of it and our rear elevation is approximately 20 metres away.

We wish to record the strongest possible protest against the alterations proposed for the rear elevation and for the proposed new basement floor and extension of swimming pool into the garden. Not only do these represent, in our view, a significant invasion of privacy but they also bring with them considerable practical problems. Furthermore, since both of these properties are in a conservation area we view the proposed alterations as unacceptable exceptions to that spirit of conservation that we all value.

The invasion of privacy is a profound issue because the principal living areas of our house all face north and would thus be staring into a three-storey glass 'observation tower'. We would feel extremely vulnerable to visual intrusion.

We believe that the practical problems are considerable. The engineering works would have to take into consideration the minimisation of damage to surrounding properties such as subsidence caused by excavation, as well as the implications of access. The extension of the swimming pool into the garden will potentially affect tree roots and shrubbery in the adjoining properties, all of which add to the ambience and attractiveness of the immediate area. That would have the effect of reducing any remaining privacy afforded by these plants.

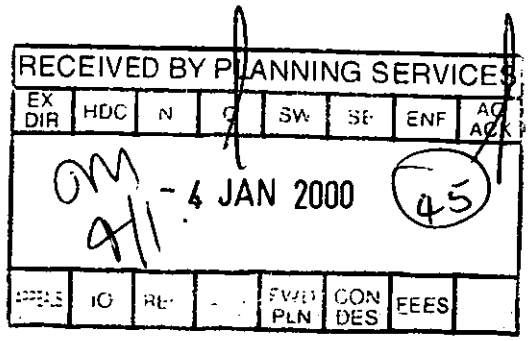
The operation of the swimming pool, with all of its pumping noise and vibration, would represent another major intrusion into our otherwise peaceful and harmonious environment. These Victorian semi-detached properties were never intended to house swimming pools.

In summary, we view the proposed alterations as representing a fundamental reduction in our quality of life and in the value of the peaceful environment that has made this a happy home and, until now, a contented neighbourhood.

Yours faithfully

Ian and Caroline Cormack

14 ALBERT PLACE
LONDON
W8 5PD
Tel 020 79379676



The Director of Planning
RBK & C
Hornton Street
London
W8

Date: 2 January 2001

Dear Sir

13 ALBERT PLACE, W8 5PD

We are the semi-detached partner of the above property and are alarmed and dismayed to receive the Councils notice of the planning application for what must be regarded as a massive over development,

Originally both the front and rear elevations of the two houses were similar if not identical, but the whole of the rear of No 13 has been extended southwards between 8 and 15 feet into the garden, breaking the uniformity of the joint elevation.

The fourteen houses in Albert Place were built in or around 1851 and have formed an architectural feature of the De Vere Conservation Area. The rear gardens of Albert place and those to the south are an integral open space for all the residents to enjoy. This latest proposal alters the unique character of the area.

Members of the Planning Committee will remember that a similar application was made for a swimming pool at No. 10 Albert Place, this was objected to by local residents and turned down by the Council particularly on the grounds of noise from the circulating pumps and the contamination of the atmosphere from chlorine fumes.

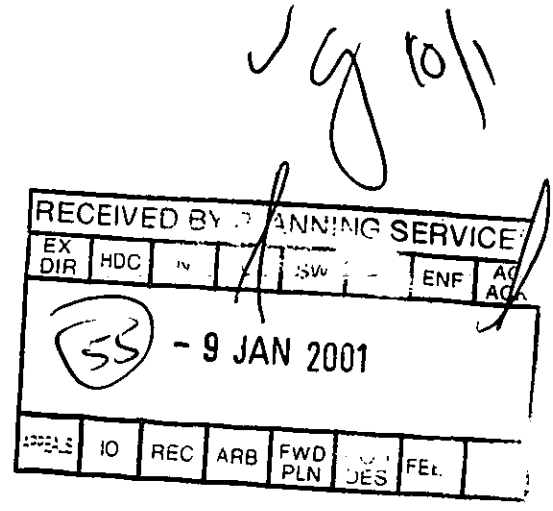
A further significant factor which must cause great concern is the proposed excavation some 10 foot below the basement floor to provide space for the pool, this will inevitably affect the security of the structure of our house only some twenty five feet away.

The Victoria Road Area Association has already expressed their opposition to this application and we wish to urge the Council Planning Committee to unconditionally refuse consent.

Yours faithfully,

K.N. Woodward-Fisher.

3 DOURO PLACE
Flat 1
LONDON, W8 5PH
TEL: 7937 9535



7th January 2001

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Executive Director, Planning and Conservation
The Royal Borough of Kensington and Chelsea
The Town Hall, Hornton Street
LONDON W8 7NX

By Facsimile to: 0207 361 3463 (and by post)

Dear Sir,

Town and Country Planning Act 1990
Proposed Development at 13 Albert Place, London, W8 5PD

I write in response to the proposed development at 13 Albert Place. I would like to register a firm protest against the proposed alterations to the rear of number 13 Albert Place. My property sits facing that house at an angle and I would be able to both see and hear the effects of the proposed changes.

The top to bottom glass rear elevation would represent an intrusion of privacy in an otherwise relatively quiet and discreet relationship between rear facing houses. It would profoundly alter the character of what is otherwise a harmonious and uniform Victorian perspective represented by the rear of the houses on Albert Place.

I am also concerned about the plans to create a swimming pool in such a closely confined urban space. The noise of pumps and the general maintenance required for a swimming pool would risk making a permanent and negative change in our quiet environment. The excavation works would risk damaging the trees and shrubs that adorn the rear between our houses, increasing significantly the risk of our privacy being destroyed. I also worry about subsidence and structural impact on these neighbouring buildings.

The proposals undermine the values that make this area so harmonious in every way.

Yours faithfully,

Estelle Jacobs

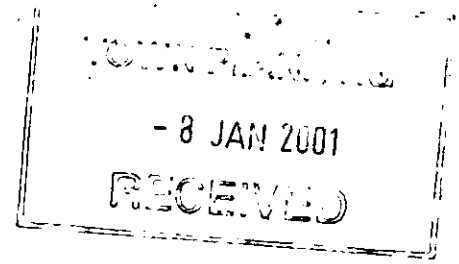
1 DOURO PLACE
LONDON
W8 5PH
TEL: 7937 2977
FAX: 7376 1290

DCC JG 9/1.

7th January 2001

YOUR REF: DPS/DCC/PP/00/02785/LR

M.J. French, FRICS, Dip, TP, MRTPU, Cert TS
Executive Director, Planning and Conservation
The Royal Borough of Kensington and Chelsea
The Town Hall
Hornton Street
LONDON W8 7NX



By Facsimile to: 0207 361 3463 (and by post)

Dear Sir,

Town and Country Planning Act 1990
Proposed Development at 13 Albert Place, London, W8 5PD

I write in response to the proposed development at 13 Albert Place.

I must add my voice to the protest about alterations to the above property. My property adjoins the above property on its south east border and the proposed 3 floor glass "tower" would seriously affect my privacy. I would have the feeling of being constantly under observation and equally it would be like living in a glass house as well as being an architectural eyesore.

I have great concern about the roots of trees in the garden and the noise and vibration that would undoubtedly emanate from the operation of the swimming pool in such close proximity. I do not believe that these houses and their environment were ever designed to cope with changes of such magnitude.

Yours faithfully

Cromer

The Dowager Countess of Cromer

1 DOURO PLACE
LONDON
W8 5PH
TEL: 7937 2977
FAX: 7376 1290

7th January 2001

YOUR REF: DPS/DCC/PP/00/02785/LR

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Yours faithfully

The Dowager Countess of Cromer

6 ALBERT PLACE
LONDON W8 5PD
01-937 6733

JG 25/1

23/01/01

RECEIVED BY PLANNING SERVICES

EX DIR				SW	SE	ENF	AO ACK

25 JAN 2001

				PWT PLN	CON DES	FEES	

Dear Sir

I am writing regarding the planning application from No 13 Albert Place and to lodge my objection.

I am aware that the house needs modernisation and am very supportive of

that, but bearing in mind this is a conservation area and open space is at a premium, I feel it would be a terrible mistake to spoil the garden area by installing a pool. I therefore am unsupportive of this application.

Yours faithfully

Mary Buckley.

Booth
Pink LR.
Ag 17/7

1623

CLIFTON NURSERIES
LONDON ENGLAND

Ms Louise Reed
Planning & Conservation
Royal Borough of Kensington & Chelsea
Town Hall
Hornton Street
LONDON W87NX

FILE PP/00/2785

13 July 2001

Dear Ms Reed,

Re: 13 ALBERT PLACE, W8

On behalf of my client Mrs Caroline Amrolia and to comply with planning conditions, please find enclosed 4no copies of our landscape proposals (Dwg. CN1623/1 Rev. A) for the front and rear gardens at 13 Albert Place.

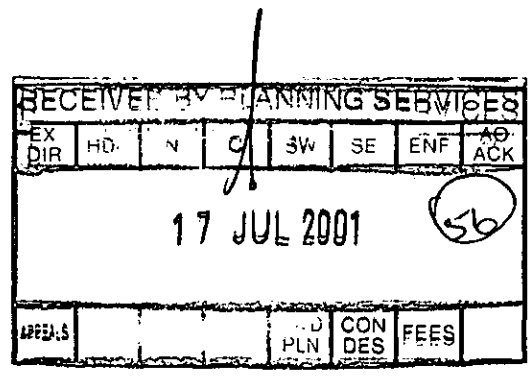
I am also sending a copy of this drawing to Mr. Chris Colwell together with an application to remove 3no existing trees at the front and 1no at the rear in order to implement the proposed scheme. NB

If anything is unclear or you wish to discuss anything, please ring me.

Yours sincerely
On behalf of Clifton Nurseries Ltd

Mark Lutyens

MARK LUTYENS MLI
Principal Landscape Architect



C.C. Mrs Amrolia

Clifton Nurseries Limited: (Head Office), 5A Clifton Villas, London W9 2PH Tel: 020 7289 6851 Fax: 020 7286 4215
Registered in England & Wales 697600. VAT no 239088439
Waddesdon Plant & Garden Centre: Queen Street, Waddesdon, Bucks HP18 0JW Tel: 01296 658586 Fax: 01296 658852
Registered in England & Wales 2240744. VAT no 239088439
Clifton Nurseries: 20 Avenue de la Liberté, 06360 Eze sur Mer, Nice Tel: 0033 493 015381 Fax: 0033 493 015761
S.E. Au capital de £100 SIRET 414 417 063 00040 APE 014B
Website: www.clifton.co.uk **E-mail:** name@clifton.co.uk Clifton Nurseries Ltd. is a Clifton Nurseries (Holdings) company

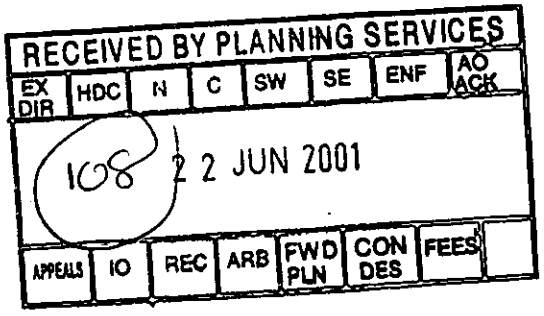
Chelsea Flower Show Gold Medal 1986 1994 1995 1996 1999

alan
conisbee
and associates

consulting
structural
engineers

1-5 Offord Street London N1 1DH

tel 020 7700 6666
fax 020 7700 6686
email tec@conisbee.co.uk
web www.conisbee.co.uk



STRUCTURAL COMMENTS ON THE PROPOSED FORMATION OF NEW BASEMENT LEVEL AT 13 ALBERT PLACE, LONDON W8

Ref. No.: **000475/BC**

Date: **JUNE 2001**

PP/00/2785/LR

FOR INFORMATION ONLY

1.0 INTRODUCTION

1.1 Alan Conisbee and Associates were appointed to act as structural engineers on behalf of Mr and Mrs Z Amrolia, of No13 Albert Place, to advise on the structural aspects of the proposed refurbishment of their property and the proposal to construct a new basement level with swimming pool under the existing building.

2.0 PROPOSED WORKS

2.1 The proposed works consist of two distinct parts. Firstly, structural alterations within the existing building and repair works to the roof structure. The other body off works being the formation of a new basement level under the existing house.

2.2 The proposed works being carried under phase one, the repairs and alterations to the building as it stands, will not be considered further in this report.

2.3 The proposed structural scheme for the formation of the new basement is shown on Alan Conisbee and Associates drawings 000475/SC01 and SC02. It should be noted that these drawings are preliminary scheme drawings and were produced to allow a budget figure for carrying out the works and are not intended for construction purposes. To get to this stage a significant amount of time will be required to carry out a detailed structural design, including the modelling of possible ground movements by a specialist geotechnical engineer. The aim of this being to minimise any structural movements which may cause damage to the building above or to those adjacent.

3.0 PROPOSED BASEMENT

3.1 The proposed basement extends from approximately 2m inside the front wall to the property back into the garden behind, with the width of the new level reducing behind the rear wall of the property on the number 14 side.

3.2 The new basement level is to be approximately 3m below the level of the existing lower ground-floor with the pool being a further 1.5m in depth. The maximum depth of the excavation required to construct the new basement, including an allowance for the new slab and underlying build up being approximately 5m below the existing lower ground floor level. This is assumed to be similar to that in the two adjacent properties.

3.3 The ground conditions on the site, as based on geology maps and previous experience of working in the area, are taken at this stage to consist of sand and gravel over London Clay. As an initial part of the basement works a full site investigation will be carried out to confirm the underlying ground conditions over the site and the depth and extent of the existing foundations. For a building of this type and age these are likely to consist of brick corbelled footings extending approximately 150mm from the face of the wall at a depth of approximately 300 to 400mm below the existing blower ground floor level.

3.4 The structural design assumes the formation of the new lower ground floor to be carried out in the following sequence:

i) Expose existing lower ground floor walls and infill any chimney breasts, flues or similar openings and carry out any brickwork repairs required.

ii) Install temporary works to the existing walls in the existing lower ground floor.

iii) Remove existing slab in lower ground floor.

iv) Install Pynford beams to existing internal walls to be supported. To be carried out by specialist sub-contractor. Install plunge piles internally to support Pynford beams and provide temporary propping positions. Jacking to be allowed for to pre-load the new columns and minimise any settlement.

v) Install new secant pile wall around perimeter of new basement. These works are be carried out by specialist piling sub-contractor. The new piles are to be set inside line of corbel footings to existing walls and are to be off a hard-soft construction to minimise ground loss due to seepage between the piles. The hard piles are to be reinforced to allow them to cantilever from the proposed basement slab level to provide support to the retained ground behind. Ground grouting will be used locally to stabilise the existing ground in any areas where there is a risk of ground loss. The full extent of this will be determined once a site investigation has been carried out to confirm the ground conditions over the site.

vi) Excavate locally at the pile positions and cast the new reinforced concrete capping beam to the top of the piled wall. The capping beam will be tied back to the existing foundations behind to provide lateral restraint to the existing wall but allow it to movement vertically relative to the new construction.

vii) Excavate to a reduced level over the area of the lower ground floor to allow the casting of the new reinforced concrete ground floor slab, leaving suitable access holes in the slab to allow for excavation under. The ground floor slab is to be tied to the capping beam and designed to act as prop to the new pile wall and existing foundations behind.

viii) Remove temporary propping at lower floor level once new slab has gained strength. The new slab providing the lateral support required by the existing foundations.

ix) Excavate below the new lower ground floor slab down to the reduced basement level installing temporary propping to the walls as required. Cast front section of new basement slab.

x) Excavate down to the formation level for the pool, installing temporary propping if required. Cast the new reinforced concrete slab and walls to the pool, tying it into the piled wall.

3.5 The use of the secant pile wall has been chosen as a widely used form of construction on sites where similar ground conditions are encountered in London. It also minimises the passage of any ground water which may be present in the gravel to reduce the risk of any ground loss occurring.

3.6 The works to form the new piled wall, the Pynford beams and the reinforced concrete works will all be carried out by specialist sub-contractors with a recognised track record in difficult job of a similar nature.

issue sheet

alan conisbee and associates

consulting structural engineers

1-5 Offord Street
London N1 1DH
tel 020 7700 6666
fax 020 7700 6686
email tec@conisbee.co.uk
web www.conisbee.co.uk

information issues to:	no of copies:
PLANNING CONSERVATION LONDON BOROUGH OF KENSINGTON & CHELSEA. Ref PP/00027785	(1)
CRAWFORD & GRAY	(1)

job no: 000475 date: 22/06/01.

project: 13 ALBERT PLACE.

title	reference no	rev
PROPOSED FORMATION OF NEW BASEMENT LEVEL.	SC 01.	
SECTIONS THROUGH PROPOSED FORMATION OF NEW BASEMENT.	SC02	
STRUCTURAL COMMENTS ON PROPOSED FORMATION OF NEW SUB-BASEMENT.		

signed:

PP/00/27851/LR.

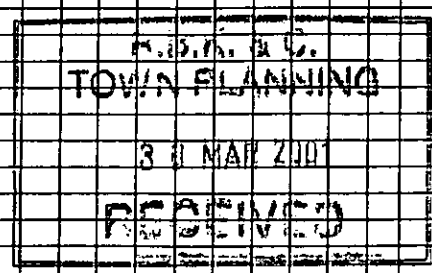
CRAWFORD & GRAY ARCHITECTS

3A Portobello Mews
Notting Hill Gate London W11 3DQ
tel: 0207 221 5966 fax: 0207 221 6288
email: cgarchs@aol.com
Website: www.crawford-gray.co.uk

Drawing Schedule

Project: 13 Albert Place, W11 — **Date:** 17/10/00

			24/10/2000	04/12/2000	08/12/2000	08/12/2000	18/12/2000	09/01/2001	22/02/2001	27/02/2001	19/03/2001	29/03/2001	29/03/2001
Copies to:													
	Client	Mr & Mrs Z Amrolia	1	1			1		1	1	1	1	
	Main Contractor												
	Planning Dept.	Kensington & Chelsea		8							8	4	
	Building Control	Kensington & Chelsea											
	Structural Engineer	Alan Conisbee & Associates			1								1
	Party Wall Surveyor	Anstey Horne & Co.						1					1
	Specialist Contractors	Rainbow Pools				1							
Drwg No.	**Scale:**	**Description**											
191/P01		Existing Photographs		/	/			/					
191/P02		Existing Photographs		/	/			/					
191/S01	1:50	Existing Floor Plans	/	/	/	/		/				A	A
191/S02	1:50	Existing Floor Plans	/	/	/	/		/					
191/S03	1:50	Existing Elevations	/	/	/	/		/					
191/S04	1:50	Existing Sections	/	/	/	/		/				A	A
191/S10	1:1250	Location Plan		/									
191/01	1:50	Proposed Floor Plans	/	/	/	/		/			A	B	B
191/02	1:50	Proposed Floor Plans	/	/	/	/		/			A	B	B
191/03	1:50	Proposed Floor Plans	/	/	/	/		/			A		A
191/04	1:50	Proposed Elevations	/	/	/	/		/			A	B	B
191/05	1:50	Prop. Section A - A	/	/	/	/		/			A		A
191/06	1:50	Prop. Section B - B	/	/	/	/		/				A	A
191/07	1:50	Prop. Section C - C											
191/21	1:20	Prop. Master Bathroom					/						
191/22	1:20	Prop. Bathroom 2					/						
191/23	1:20	Prop. Cloakroom					/						
191/24	1:20	Prop. Bathroom 3					/						
191/25	1:20	Prop. Bathroom 4					/						
191/26	1:20	Prop. Bathroom 5 / WC							/				
191/50	1:20	Family Room - Elevation AA											
191/51	1:20	Family Room - Elevation BB											
191/52	1:20	Family Room - Elevation CC											
191/53	1:20	Utility & Wine Elevation								/			
191/56	1:20	Garage Elevations											
191/60	1:20	Window GW5											
191/61	1:20	Window FW7											
191/62	1:20	Window SW1 & 2											
191/63	1:20	Window SW3											
191/64	1:20	Window SW4 & 5											
191/65	1:20 & 1:5	Glazed canopy											
191/66	1:20 & 1:5	Glazed canopy											
191/70	1:20	Cupboards FC1, 2 & 3											
191/71	1:20	Cupboards FC4 & 5											
191/72	1:20	Cupboards SC1, 2 & 3											
191/75	1:20	Metalwork - GW...											
191/76	1:20	Metalwork - Front Garden											



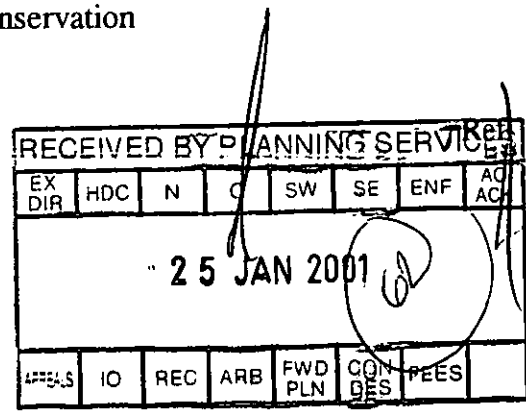
Victoria Road Area Residents Association

Please reply to

25 Victoria Grove, London W8 5RW

Mr. M.J. French FRICS
Royal Borough of Kensington & Chelsea
Department of Planning and Conservation
Room 325, Town Hall
Hornton Street
Kensington, London W8 7NX

24th January 2001



Ref. No. PP/00/02785

Dear Mr. French,

13 Albert Place

I have discussed this application with Miss Louise Reid and I gathered she was about to make an 'on site' inspection.

I do agree with the points made in the letter you received from Mr. & Mrs. Slowe dated 2nd January 2001. In particular, the proposal to instal a swimming pool in the back garden is ludicrous and totally unsuitable for a property of this type and in this location. The members of my Committee representing both Albert Place and Douro Place (residents of which would back onto the development) object strongly to the proposal and we all support the objection.

Yours sincerely,

Peter Dixon

(P.R.H. Dixon)

JG 5/14

The Director of Planning
RBK&C
W8 7NX

14 ALBERT PLACE
W8 5PD
0171-937 9676

April 3rd 2001

Your Ref DPS/DCC/PP/00/02785/LR

Dear Sir

Proposed development
13 Albert Place, W8 5PD

The latest amended planning proposals do not appear to be an improvement on the original ones.

The whole amounts to an unacceptable over development in this residential conservation area.

The building out of the new flat roof over the garden is objectionable & the proposed air conditioning units generate noise which, in close proximity are intrusive & most unpleasant & be understand did not comply with planning regulations. The proposed

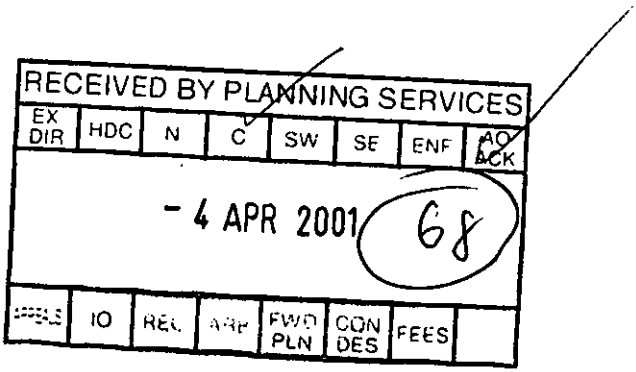
high window on the rear of the house is completely out of keeping with the existing architecture.

We urge you to reject this amended application, an undesirable proposal in a small residential area.

Yours faithfully

Anne Woodward-Fisher

(MRS WOODWARD-FISHER).



1 DOURO PLACE
LONDON
W8 5PH
TEL: 7937 2977
FAX: 7376 1290

4TH April 2001

YOUR REF: DPS/DCC/PP/00/02785/LR

M.J. French, FRICS, Dip, TP, MRTPU, Cert TS
Executive Director, Planning and Conservation
The Royal Borough of Kensington and Chelsea
The Town Hall
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LONDON W8 7NX

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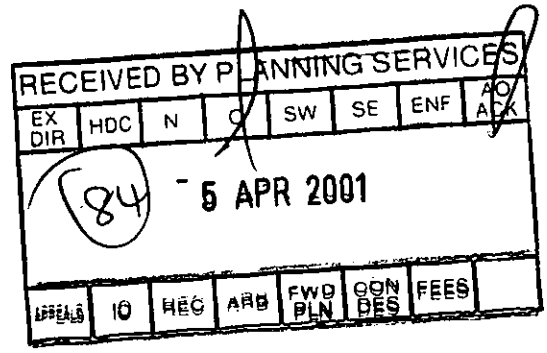
I would like to voice my deep concern about the proposed air conditioning plant on the roof. This constant noise would be an unacceptable intrusion in all our lives. We live in a conservation area and I feel most strongly that this should be the prime concern of all the residents.

Yours faithfully

Jane Cromer

The Dowager Countess of Cromer



1 DOURO PLACE
LONDON
W8 5PH
TEL: 7937 2977
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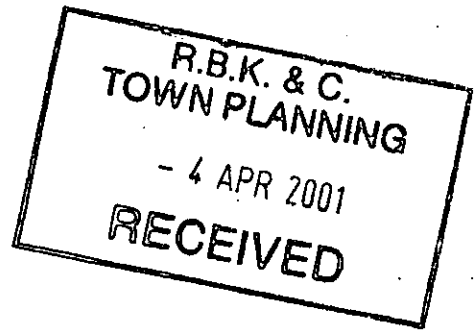
4th April 2001



YOUR REF: DPS/DCC/PP/00/02785/I.R

M.J. French, FRICS, Dip, TP, MRTPU, Cert TS
Executive Director, Planning and Conservation
The Royal Borough of Kensington and Chelsea
The Town Hall
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Yours faithfully

Jane Cromer

The Dowager Countess of Cromer

2 Douro Place,
London, W8 5PH.
Tel: 0207 937 1407
Fax: 0207 795 6930
Email: cormack@dircon.co.uk

4th April 2001

YOUR REF: DPS/DCC/PP/00/02785/LR

M.J. French, FRICS, Dip, TP, MRTPU, Cert TS
Executive Director, Planning and Conservation
The Royal Borough of Kensington and Chelsea
The Town Hall, Hornton Street
LONDON W8 7NX

By Facsimile to: 0207 361 3463 (and by post)

Dear Sir,

Town and Country Planning Act 1990
Proposed Development at 13 Albert Place, London, W8 5PD

We write in response to the proposed development at 13 Albert Place. We once again must record the strongest possible protest to the amended proposals.

While all our original objections still stand, the invasion of our privacy is a deeply concerning issue and we too would like to draw to your attention to the glare that the sun has on the existing windows, let alone a glass tower.

Our original objection to the swimming pool and its operations still stands and we would further like to strongly object to the air conditioning unit on the roof, which will create more constant noise.

This is a conservation area and we have all worked hard to create and live in a quiet and harmonious society. We care about our houses and properties and are now faced with a very real threat of a fundamental reduction in the quality of our life and peace.

Yours faithfully

IAN AND CAROLINE CORMACK

3 DOURO PLACE
Flat 1
LONDON, W8 5PH
TEL: 7937 9535

4th April 2001

YOUR REF: DPS/DCC/PP/00/02785/LR

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Executive Director, Planning and Conservation
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I cannot object more strongly to the intrusion of privacy that will be caused by the glass front of the proposed new building.

I, too, would like to object to the proposal to install an air conditioning plant on the roof. This is an exceptionally quiet neighbourhood and this noise would be a constant intrusion. I am a semi-invalid and basically housebound. This constant noise would be most unacceptable.

We live in a conservation area and have paid over the years to add to its maintenance. This proposed plan is not in keeping with the area or its spirit of conservation.

Yours faithfully

ESTELLE JACOBS

3 DOURO PLACE
Flat 1
LONDON, W8 5PH
TEL: 7937 9535

4th April 2001

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ESTELLE JACOBS

2 Douro Place,
London, W8 5PH.
Tel: 0207 937 1407
Fax: 0207 795 6930
Email: cormack@dircon.co.uk

Jg 5/4

4th April 2001

YOUR REF: DPS/DCC/PP/00/02785/LR

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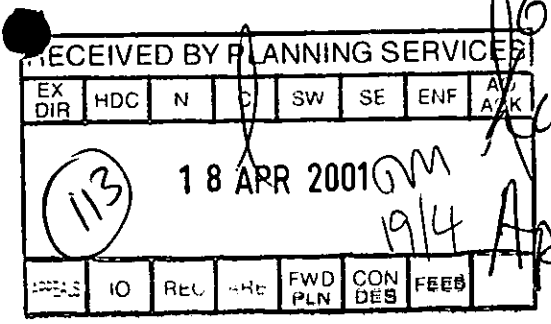
Yours faithfully

Caroline Cormack

IAN AND CAROLINE CORMACK



6 Albert Place.
London W8 5PD.

April 6th 2001.

00/2785.

Dear Mr French.

Regarding the application for development at 13 Albert Place. The amended proposals dont convince me that I should change my mind that I strongly object to the proposals for 13

Albert Place apart from essential modernization to the interior.

Yours Sincerely

Mary Buckley

12 ALBERT PLACE
LONDON
W8 5PD

Tel: 020 7937 3610
Fax: 020 7795 6094

Jy 24/4

23 April, 2001

YOUR REF: DPS/DCC/PP/00/02785/LR

Planning and Conservation
The Royal Borough of Kensington and Chelsea
The Town Hall
Hornton Street
LONDON
W8 7NX

DCC

By Facsimile to: 020 7361 3463 (and by post)

Dear Sir

Town & County Planning Act 1990
Proposed Development at 13 Albert Place, London, W8 5PD

Thank you for sending me the revised drawings regarding the above.

The principal objections already recorded in my letter of 2 January 2001 still stand.

I have two further objections:

1 **The proposed hard standing**

Unlike a driveway to a garage, which gives the appearance of being an integral part of a property, a level hard standing, particularly when there is a car on it, gives an unattractive cluttered appearance. An example can be seen at number 10 Albert Place and I would hope that this will not be repeated at number 13.

Furthermore, in order to create sufficient hard standing, damage will be done to the trees and the balanced appearance of the front garden wall.

Finally, and of most significance, the proposal involves the loss of a residents parking bay, presently available to all residents. It is proposed that this should be replaced by hard standing within the curtillage of number 13, which will be available only to the occupiers of that property.

2 **Air Conditioning units**

It is now proposed that there should be air conditioning on the roof of the building. This is both unsighty and noisy, abutting my property at number 12.

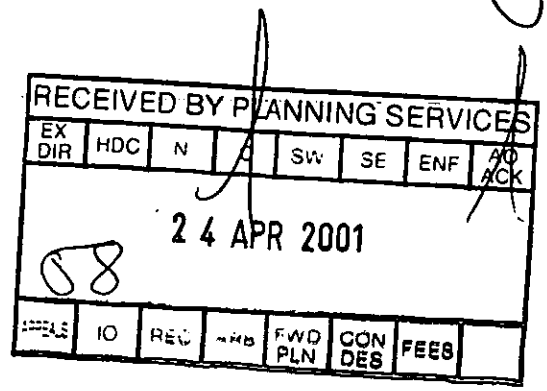
Yours faithfully

Mr & Mrs Richard Slowe

235/A0.8/LT:156777.1/sabm

12 ALBERT PLACE
LONDON
W8 5PD

Tel: 020 7937 3610
Fax: 020 7795 6094



23 April, 2001

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Yours faithfully

Mr & Mrs Richard Slowe

235/A0.8/LT:156777.1/sabm

WP/00/02785

~~KBS~~ LR Ack.

Victoria Road Area Residents Association

Please reply to

25 Victoria Grove, London W8 5RW

23rd May 2001

Dear Mr French.

13 Albert Place London W8 5PD

This Association is very concerned with the proposed development of this property including the Enclosure proposal to put a swimming pool in the basement area. We should like strongly to support the objection of Mr Woodward - Fisher and other neighbours in Albert Place and also to support the objections of the Residents in Domo Place who back on to this property. The proposal constitutes an over-development of this property and I hope it will recommend to the Planning Committee that it should be rejected

Yours sincerely

Peter Dixon

RBKC
District Plan Observations
CONSERVATION AND DESIGN

Address	Appl. No.	L.B.	C.A.	N ✓ C S
13, Albert Place, W8	PP/00/02785	—	9C	
Description	**Code**			
Alterations to the building envelope	—	—	—	—

Site meeting to be arranged to consider the scheme in the building context - LBR initial response is of strong reservation

The re-fenestration does not seem accurate - & will need to be addressed in terms of the period & style of the house; The proposed rear addition would neither preserve nor enhance the architectural character of the Conservation area.

The degree of excavation & the grade may be unacceptable in principle.

TJB

15.12.00

RBK&C TRANSPORTATION COMMENTS

PP Number:	Address:			Date of obs:	
00/2785	13 Albert Place			9 March 2001	
Proposal: New garage at basement level, *inter alia.*				**Obj** √	**No Obj**
File Number	**Initial Observations**		**Transportation Officer:**	**D C Officer:**	
As above	**Full Observations**	√	Steve Lauder	**LR**	
Supplementary information:					

Comments:

- In order to access the proposed garage it would be necessary to construct a vehicular footway crossover.
- The installation of a footway crossover at the proposed location would result in the loss of a 4 metre section of on-street residents parking, from a bay which presently measures 19.5 metres.
- TR48 of the emergent UDP states that we are '*normally to resist development which would result in the net loss of on-street residents parking'.*
- Whilst the provision of off-street parking is desirable, this is outweighed in this instance by the loss of on-street parking.

Relevant transportation policies: TR48

Recommendation: objection

Signed: Steve Lauder

RBKC ARBORICULTURAL OBSERVATIONS

Address	Application No.	DC Officer	Date of Obs
13 Albert Place, W8	PP/00/2785	L.R.	5/6/01

Development	Obj.	No Obj.

Status of Tree(s):

C.A. No.(if any)	T.P.O. No. & Details (if any)	Tree Work Applications
13/01		

Comments :

The proposed development should not adversely affect a mature cherry tree and two crab apple trees provided that they are adequately protected during the development. The cherry tree is subject to a confirmed tree preservation order and the two crab apples are subject to a tree preservation order, which is still within the period for objection.

The proposed planning application will result in the loss of an apple tree situated near to the rear elevation of the property and a bay situated in the southwest corner of the rear garden. The size and location of both trees affords some benefit in terms screening between nearby properties but I do not consider that the trees are of sufficient amenity value to warrant the protection of a tree preservation order.

However, to maintain the character and appearance of the Conservation Area I recommend that planning permission should it be granted is subject to a landscaping condition to incorporate the planting of two replacement trees in the rear garden.

To ensure that the trees situated within the front garden are protected from harm during the development and that the character and appearance of the conservation area is maintained I recommend that planning permission, should it be granted, is subject to the following conditions.

C21, C23 and C16

For reason **R20 and R17**

Signed: C. Colwell Date : 5.6.01

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13 Albert Place, W8	PP/00/2785	L.R.	5/6/01

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Signed: Date :

6. Representations received from consultees, owners of the land, and the public

Every duty to "consult" imposed on the local planning authority implies an obligation to take into account the representations the authority receives from the consultee: *R. v. Secretary of State for Social Services, ex p. Association of Metropolitan Authorities* [1986] 1 All E.R. 164, noted in the Commentary to s.62. But the legislation also imposes four specific duties to take representations into account: **P70.07**

(1) *owners and agricultural tenants of the land*: subs. (3) provides that an authority's functions under this section are subject to s.65 (ownership certificates), and that effect is further reinforced by the Town and Country Planning (General Development Procedure) Order 1995 (S.I. 1995 No. 419), art. 19, which requires them to take into account any representations received by them within 21 days from the latest date of service or publication of the relevant notice;

(2) *responses from the public*: the authority must take into account any representations received by them within 21 days from the date of service of notice or posting of a site notice, or 14 days where notice has been given by local advertisement (General Development Procedure Order 1995, art. 19).

(3) *development affecting conservation areas and the setting of listed buildings*: in determining any application for planning permission for development which would affect the setting of a listed building, or the character or appearance of a conservation area, the authority are required to have regard to any representations relating to the application received by them within 21 days from when notice of the application was first displayed (Planning (Listed Buildings and Conservation Areas) Act 1990, ss.67(7), 73(1));

(4) *applications for use of land as caravan site*: under s.71(3) the authority are required to consult the site licensing authority, if it is a different authority, before granting permission for use of land as a caravan site.

The specific duties outlined above do not absolve an authority from any obligation to have regard to other representations received by them, or entitle them simply to ignore relevant representations that are received after the expiry of the prescribed period. An obligation to take representations into account may arise separately by reason, for example, of the procedural requirements of fairness, and under the overall duty under subs. (1) to have regard to all material considerations (see further below).

7. Other material considerations: general approach to construction

The requirement to have regard to "any other material considerations" is, in effect, a statutory adaptation of the formula devised by the courts in reviewing the validity of administrative action, that all relevant matters should have been taken into account. The courts have therefore assumed the converse test to be equally applicable, and have accepted that a determination under this section may be invalid if based upon an irrelevant consideration. **P70.08**

Whether or not a particular consideration is material is a matter for the court; it is, however, a matter for the decision-maker to decide what weight to accord to a material consideration: *Bolton Metropolitan Borough Council v. Secretary of State for the Environment* [1991] J.P.L. 241; *Fairclough Homes Ltd & Rayford Properties Ltd v. Secretary of State for the Environment* [1992] J.P.L. 247; *Wansdyke District Council v. Secretary of State for the Environment* [1993] 1 P.L.R. 15.

There are two limbs to materiality. The authority are required to have regard to all considerations which are material to the application; and to be material they must be planning considerations. But the Act offers no further **P70.08**

that too narrow a construction would bring the courts too far into matters of planning policy rather than law, and run the risk of substituting bare legalism for the broad flexibility that Parliament must have intended by adopting so loose a formula. But some general principles have emerged, and these are analysed below. The breadth of the statutory formula was re-emphasised by the House of Lords in *Great Portland Estates plc v. Westminster City Council* [1985] A.C. 661; [1985] J.P.L. 108, which accepted that while the general principle should be that planning should be concerned only with the development and use of land, this approach should be tempered where appropriate by having regard to the circumstances of individuals. Lord Scarman (in whose opinion the other members of the House concurred) insisted that there must be exceptions:

> "Personal circumstances of an occupier, personal hardship, the difficulties of businesses which are of value to the character of a community are not to be ignored in the administration of planning control. It would be inhuman pedantry to exclude from the control of our environment the human factor. The human factor is always present, of course indirectly as the background to the consideration of the character of land use. It can, however, and sometimes should, be given direct effect as an exceptional or special circumstance. But such circumstances, when they arise, fall to be considered not as a general rule but as exceptions to a general rule to be met in special cases. If a planning authority is to give effect to them, a specific case has to be made and the planning authority must give reasons for accepting it. It follows that, though the existence of such cases may be mentioned in a plan, this will only be necessary where it is prudent to emphasise that, notwithstanding the general policy, exceptions cannot be wholly excluded from consideration in the administration of planning control."

In that case, their Lordships upheld a provision of Westminster's local plan which sought to protect certain specified industrial activities in central London from disappearance in the face of the competitive pressure to redevelop their sites for other more profitable uses, being uses which did not assist the viability of other important central London activities. Although the effect of the policy would be effectively to confer security of tenure on existing tenants, there was a genuine planning purpose for doing so: indeed, in Lord Scarman's opinion it was "a powerful piece of positive thinking within a planning context", and although it meant that certain occupiers would be protected, that was a consequence rather than the purpose of the policy.

8. Material considerations: specific instances

P70.09 The general principles as to material considerations that have emerged from the case law may be summarised as follows:

(1) *the protection of purely private interests*: the planning authority may refuse planning permission in order to protect a purely private interest, provided there is a planning purpose or other special consideration involved (*Great Portland Estates plc v. Westminster City Council*

P70.08

requirements of proposed developments, involving conversion of single dwelling houses into flats). But see also *Brewer v. Secretary of State for the Environment* [1988] J.P.L. 480, where the court (David Widdicombe, Q.C., sitting as Deputy Judge) took the view that in general planning was concerned with land use from the point of view of the public interest, and as a generality was not concerned with private rights. Thus, the court held, the existence or absence of private rights of light was an irrelevant consideration in determining a planning application. So too where rights are separately protected by other legislation. For example, in *R. v. Solihull Borough Council, ex p. Berkswell Parish Council* (Sullivan J., April 28, 1998) a decision to grant planning permission for development that involved the removal of lengths of hedgerow was challenged on the ground that the hedgerows affected were subject to the Berkswell Enclosure Act 1812, and that the local planning authority had failed to have proper regard to this fact. The court was clear that this could not be a material consideration, following *British Railways Board v. Secretary of State for the Environment* [1993] 3 P.L.R. 125 and *Vasiliou v. Secretary of State for Transport* [1991] 2 All E.R. 77. Whether the 1802 Act created public or merely private rights, and questions as to the legal status of the hedgerows generally, were not relevant for the purposes of the planning merits; nor did the grant of planning permission override any protection the 1802 Act might create. But it is not always possible to draw the line so sharply. It may be necessary for an applicant to overcome some problem of private rights if the development is to proceed, such as the acquisition of alternative access to the site; and the authority will only be able to impose a *Grampian* condition (see further below) to secure that development should not commence in advance of the rights being acquired if satisfied that there is a reasonable probability that they can be acquired, or other objections overcome, within the normal development commencement period. The authority will also need to bear in mind that the grant of planning permission may result in a change in the character of a neighbourhood, and that if local residents or the local authority thereafter sue for nuisance, they will be faced with a *fait accompli* by virtue of the planning permission: their action will fall to be determined by reference to a neighbourhood with that development in it, and not as it was previously (*Gillingham Borough Council v. Medway (Chatham) Dock Co. Ltd* [1992] 1 P.L.R. 113). However, this doctrine was heavily qualified by the Court of Appeal in *Wheeler v. J.J. Saunders Ltd* [1995] 2 All E.R. 697, which noted that, unlike Parliament, a local planning authority had no jurisdiction to authorise a nuisance save in so far as it had a statutory power to permit a change in the character of a neighbourhood. Hence, a planning permission would not normally confer any immunity from action in nuisance. See the discussion below at para. P70.33. Similarly, in *West Midlands Probation Committee v. Secretary of State for the*

planning control); *Hoveringham Gravels Ltd v. Secretary of State for the Environment* [1975] Q.B. 754 (protection of ancient monument); *Ladbroke (Rentals) Ltd v. Secretary of State for the Environment* [1981] J.P.L. 427 (overlap between planning control and gaming licensing); *City of Aberdeen District Council v. Secretary of State for Scotland* [1992] 2 P.L.R. 1 (problems of litter in public places where permission granted for shop for retail of hot food). The materiality of such a consideration is not affected by the fact that under the alternative code the applicant may be able to seek compensation for the restriction: see *e.g.*, *Westminster Bank Ltd v. Minister of Housing and Local Government* [1971] A.C. 508 (planning permission refused on ground that the land might be required in the future of road widening scheme, notwithstanding that an alternative procedure was prescribed by the Highways Act, the imposition of an improvement line, for which compensation would have been payable); and cf. the following cases relating to the imposition of planning conditions restricting existing use rights: *Kingston-upon-Thames Royal London Borough Council v. Secretary of State for the Environment* [1974] 1 All E.R. 193; *Peak Park Joint Planning Board v. Secretary of State for the Environment* [1980] J.P.L. 114; *British Airports Authority v. Secretary of State for Scotland* [1980] J.P.L. 262. Similarly, the fact that an authority might have to pay compensation under this Act for the use of its discontinuance power under s.102 to secure the relocation of an industrial use does not disable it from granting planning permission under this section for residential development on adjoining land knowing that this will increase pressure on industrial uses to relocate from the area (*R. v. Exeter City Council, ex p. Thomas (J.L.) & Co. Ltd* [1989] 3 P.L.R. 61).

The relationship between planning control and the specific environmental controls under the Environmental Protection Act 1990 is inherently difficult. There is clearly an overlap between the two: in taking planning decisions, local planning authorities and the Secretary of State are entitled to have regard to the need to protect the environment. Yet separate controls, including integrated pollution control, are exercisable over emissions into the environment. In *Gateshead Metropolitan Borough Council v. Secretary of State for the Environment* [1994] 1 P.L.R. 85 the Court of Appeal dismissed an appeal against a decision of the High Court ([1993] 3 P.L.R. 100) and accepted that the Secretary of State had been justified, in a planning

the judgment should not be regarded as carte blanche for applicants for planning permission to ignore the pollution implications of their proposed development and say "leave it all to the E.P.A.". Moreover, there might well be cases where the evidence disclosed not merely a lack of information, or uncertainty, or a marginal excess over standards and hence public concern, but positive evidence of a serious risk of harm, where it would be right to refuse planning permission.

The issue was revisited by the Court of Appeal in *R. v. Bolton Metropolitan Borough Council, ex p. Kirkman* (Auld and Schiemann L.JJ.; May 5, 1998), dismissing, but with certain qualifications, an appeal against a first instance decision by Carnwath J. not to grant an application for judicial review. The judge had held that the impact of discharges to the atmosphere from a proposed incineration plant was a material consideration, but that the local planning authority had been entitled to take into account the system of IPC controls, and that "unless it appears on the material before the planning authority that the discharges will, or will probably, be unacceptable to the Environment Agency, it is a proper course to leave that matter to be dealt with under the IPC system". The matter came before the Court of Appeal only on an application for leave to appeal, but the court expressed some inclination to accept that the local planning authority should also specifically have addressed the objectives of Sched. 4 to the Waste Management Licensing Regulations 1994, which required them to ensure that waste was recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and that the judge had been wrong to hold that Sched. 4 added nothing to the *Gateshead* principles. But the local planning authority were not in breach of those duties in allowing the details of environmental control to be handled by the IPC authorisation process operated by the Environment Agency.

(3) *the retention of an existing use*: the value in planning terms of the existing use (or existing use rights) of land is clearly a material consideration in determining a planning application involving any change in the use, unless there is no possibility that the refusal of planning permission will result in its retention: see, *e.g. Clyde and Co. v. Secretary of State for the Environment* [1977] 1 W.L.R. 926 (existing permission for residential use, permission validly refused for change of use to offices, even although the premises have never actually been put to residential use); *Granada Theatres Ltd v. Secretary of State for the Environment* [1981] J.P.L. 278 (permission refused for change of use from cinema to bingo hall). The test suggested by Sir David Cairns in the Clyde case was to ask whether there was a "fair chance" if office use were refused that the building would be used for housing rather than being allowed to stand empty. That test was adopted as "as good a test of likelihood as any" by Hodgson J. in *Finn (L.O.) & Co. v. Secretary of State for the Environment* [1984] J.P.L. 734 at 736. But in *Westminster City Council v. British Waterways Board* [1985] A.C. 676; [1985] J.P.L. 102 Lord Bridge (in whose speech the other members of the House of Lords concurred) expressed the view that the phrase **P70.11**

"suggests, in my respectful opinion, an unduly and, on the facts,

sjberwin

facsimile

Date	18 June 2001	Our ref	235/235/A0.8/LT:188834.1/sabm
To	The Director of Planning	Your ref	DPS/DCC/PP/00/02785/LR
Of	The Royal Borough of Kensington and Chelsea	From	Richard Slowe
Fax	0207 361 3463		
Tel	0207		
Pages	4		
Cc	K Woodward Fisher Esq - By Hand: -: - (tel: -)		

Message

Please see attached.

RECEIVED BY PLANNING SERVICES

EX DIR	HDC	[illegible]	[illegible]	SW	[illegible]	ENF	AO ACK
19 JUN 2001							
[illegible]	[illegible]	[illegible]	[illegible]	[illegible] PLN	CON DES	FEES	

222 Gray's Inn Road
London WC1X 8XF
T +44 (0)20 7533 2222
F +44 (0)20 7533 2000
E info@sjberwin.com
www.sjberwin.com
DX 255 London

Destination A - Local

sjberwin

Date 18 June 2001
Our ref 235/235/A0.8
Your ref DPS/DCC/PP/00/02785/LR
Partner Richard Slowe

By Facsimile 0207 361 3463

Dear Sir

Town & County Planning Act 1990
Proposed Development at 13 Albert Place
Hearing 19 June 2001

I confirm my phone call that I would wish to address the committee on the issue of risk of permanent structural damage to neighbouring properties, including my own (12 Albert Place).

In this regard, I have obtained the preliminary views of my surveyors, appointed under the party wall award, and a copy is attached. I had been hoping that the applicants would have produced by now some structural engineers' drawings to address this issue but these are still not to hand and accordingly, my concerns remain as set out in the attached letter.

As is apparent from paragraphs 70.08 to 70.10 inclusive of the Encyclopaedia of Planning Law and Practice, this is a matter which the planning committee are entitled to and should take into account.

Yours faithfully

TCP Act 1990

Richard Slowe

2 - 3265

cc
K Woodward Fisher Esq - By Hand

The Director of Planning
The Royal Borough of Kensington and Chelsea
The Town Hall
Hornton Street
LONDON W8 7NX

22 Gray's Inn Road
London WC1X 8XF
T +44 (0)20 7533 2222
F +44 (0)20 7533 2000
E info@sjberwin.com
www.sjberwin.com
DX 255 London

LT:188834.1/sabm

Martin Slowe

CHARTERED SURVEYORS

Martin A M Slowe FRICS
Alan Karbritz FRICS
Donald S Bird FRICS
Ian P Redfern BSc BA(Hons) ARICS

Jeff Wyman - Account Manager

Star House
104/108 Grafton Road
London NW5 4BD
Tel (020) 7267 4291
Fax (020) 7482 4116
Email ms@martinslowe.demon.co.uk
Regd. In England. Regd. No. 1216016 Regd. office 5th Floor Charles House 108/110 Finchley Road London NW3 5JJ

Ian Redfern Direct Line 020 7284 9403

Mr. R. Slowe,

12 Albert Place,

London W8 5PD.

Date. 31st May 2001

Our ref. IPR/MF/SloweR

Dear Richard,

RE; 13 ALBERT PLACE, LONDON W8 5PD.

I confirm that, as your appointed surveyors under the Party Wall Award, Notice of which you have received from the owners of 13 Albert Place, we have reviewed the plans that they have provided to you. We have been waiting for some while now for the structural engineer's plans in relation to the proposed new basement floor and underground swimming pool. We are concerned that these are not yet to hand and we have not been able to consult structural engineers ourselves.

You have asked our opinion, as your surveyors, as to the viability of the proposed underground development. We have had the benefit of being your appointed surveyors when you built the extension to your property, which abuts number 13, and have been able to refer to our notes taken at that time.

We have to tell you that we are extremely concerned about the likely structural damage to your property. We question whether work of the nature proposed could be undertaken without there being a real risk of damage to your property and some risk of collapse. We note that number 13 is a semi-detached property and our remarks would equally apply to a potential risk to number 14 Albert Place. The footings of properties built in the first part of the last century, the method of construction and the fabric of such buildings were not constructed to withstand the trauma which a development such as that envisaged is likely to cause. In our experience, however imaginative the engineering and underpinning, there remains an appreciable risk of substantial subsidence and possible collapse of at least the proximate side walls.

The position is exacerbated in relation to the party wall between numbers 12 and 13 Albert Place as this was, until you constructed your extension, merely a garden wall with very modest footings. The pressure on your extension inevitably created by the work envisaged could cause it to move away from the main building with inevitable permanent damage being occasioned.

Cont'd.....

I understand that there is a planning application with which the owners of number 13 wish to proceed even before a structural engineer's report is available. While, of course, I shall review that report as soon as it is to hand and instruct a structural engineer to advise on it, you may wish to put before the planning committee my professional view that permitting this development runs a real risk of the permanent structural damage to which I have alluded above. I cannot, without a structural engineer's report, put a percentage to that risk but, at this stage, and in the absence of that report, I can only say that it is appreciable.

Yours sincerely

IAN REDFERN

c.c. Mr. Martin Slowe

sjberwin

facsimile

Date	19 June 2001	Our ref	235/235/A0.B/LT:189009.1/sabm
To	**Paul Kelsey, Planning Department**	Your ref	DPS/DCC/PP/00/02785/LR
Of	**The Royal Borough of Kensington and Chelsea**	From	**Richard Slowe**
Fax	**0207 361 3463**		
Tel	**0207**		
Pages	8		

Message

Please see attached.

222 Gray's Inn Road
London WC1X 8XF
T +44 (0)20 7533 2222
F +44 (0)20 7533 2000
E info@sjberwin.com
www.sjberwin.com
DX 255 London

Destination A - Local

sjberwin

Date 19 June 2001
Our ref 235/235/A0.8
Your ref DPS/DCC/PP/00/02785/LR
Partner Richard Slowe

By Facsimile 0207 361 3463

Dear Mr Kelsey

Town & County Planning Act 1990
Proposed Development at 13 Albert Place
Hearing 19 June 2001

As requested, I attach an extract from the Encyclopædia which we have discussed on the telephone.

For the avoidance of doubt my position is as follows:

1. The only evidence before the committee is that provided by the chartered surveyors appointed under the Party Wall Award who have concluded that in their professional opinion "however imaginative the engineering and underpinning, there remains an appreciable risk of substantial subsidence and possible collapse of at least the proximate side walls" of the adjoining buildings, that is numbers 12 and 14 Albert Place.

2. The risk of collapse of the side walls to properties in a conservation area would clearly have an adverse visual impact and it is accordingly a planning consideration.

3. The fear and apprehension felt by the occupiers of neighbouring land is also a proper matter to take into account.

4. The existence of other regulatory machinery, such as the Building Regulations, does note entitle the Planning Committee to ignore the issue.

5. Failure to take these matters into account could be challenged in the courts.

6. While it may suit the applicant not to incur the cost of a structural engineer's report before planning permission is granted, as the only evidence before the planning committee is that there is an appreciable risk of the collapse of party walls, the planning committee cannot indulge the applicants in their approach to this matter.

222 Gray's Inn Road
London WC1X 8XF
T +44 (0)20 7533 2222
F +44 (0)20 7533 2000
E info@sjberwin.com
www.sjberwin.com
DX 255 London

7. The application should be stood over until structural engineers' drawings are available either allaying the present apprehensions of the neighbouring occupiers or establishing that there is an appreciable risk of damage, resulting in the refusal of the application.

Yours faithfully

Richard Slowe

Paul Kelsey
Planning Department
The Royal Borough of Kensington and Chelsea, The Town Hall
Hornton Street
LONDON W8 7NX

6. Representations received from consultees, owners of the land, and the public

Every duty to "consult" imposed on the local planning authority implies an obligation to take into account the representations the authority receives from the consultee: *R. v. Secretary of State for Social Services, ex p. Association of Metropolitan Authorities* [1986] 1 All E.R. 164, noted in the Commentary to s.62. But the legislation also imposes four specific duties to take representations into account: **P70.07**

(1) *owners and agricultural tenants of the land*: subs. (3) provides that an authority's functions under this section are subject to s.65 (ownership certificates), and that effect is further reinforced by the Town and Country Planning (General Development Procedure) Order 1995 (S.I. 1995 No. 419), art. 19, which requires them to take into account any representations received by them within 21 days from the latest date of service or publication of the relevant notice;

(2) *responses from the public*: the authority must take into account any representations received by them within 21 days from the date of service of notice or posting of a site notice, or 14 days where notice has been given by local advertisement (General Development Procedure Order 1995, art. 19).

(3) *development affecting conservation areas and the setting of listed buildings*: in determining any application for planning permission for development which would affect the setting of a listed building, or the character or appearance of a conservation area, the authority are required to have regard to any representations relating to the application received by them within 21 days from when notice of the application was first displayed (Planning (Listed Buildings and Conservation Areas) Act 1990, ss.67(7), 73(1));

(4) *applications for use of land as caravan site*: under s.71(3) the authority are required to consult the site licensing authority, if it is a different authority, before granting permission for use of land as a caravan site.

The specific duties outlined above do not absolve an authority from any obligation to have regard to other representations received by them, or entitle them simply to ignore relevant representations that are received after the expiry of the prescribed period. An obligation to take representations into account may arise separately by reason, for example, of the procedural requirements of fairness, and under the overall duty under subs. (1) to have regard to all material considerations (see further below).

7. Other material considerations: general approach to construction

The requirement to have regard to "any other material considerations" is, in effect, a statutory adaptation of the formula devised by the courts in reviewing the validity of administrative action, that all relevant matters should have been taken into account. The courts have therefore assumed the converse test to be equally applicable, and have accepted that a determination under this section may be invalid if based upon an irrelevant consideration. **P70.08**

Whether or not a particular consideration is material is a matter for the court; it is, however, a matter for the decision-maker to decide what weight to accord to a material consideration: *Bolton Metropolitan Borough Council v. Secretary of State for the Environment* [1991] J.P.L. 241; *Fairclough Homes Ltd & Rayford Properties Ltd v. Secretary of State for the Environment* [1992] J.P.L. 247; *Wansdyke District Council v. Secretary of State for the Environment* [1993] 1 P.L.R. 15.

There are two limbs to materiality. The authority are required to have regard to all considerations which are material to the application; and to be material they must be planning considerations. But the Act offers no further **P70.08**

guidance as to what considerations might be regarded as material in the latter sense, and it has therefore fallen to the courts to set the limits of discretion in
P70.08 development control. The starting point is the broad interpretation adopted by Cooke J. in *Stringer v. Minister of Housing and Local Government* [1971] 1 All E.R. 65, at 77:

> "In principle, it seems to me that any consideration which relates to the use and development of land is capable of being a planning consideration. Whether a particular consideration falling within that broad class is material in any given case will depend on the circumstances."

That formula is cast in broad terms, and the courts have generally sought to avoid prescribing *a priori* limitations to the statutory discretion, recognising that too narrow a construction would bring the courts too far into matters of planning policy rather than law, and run the risk of substituting bare legalism for the broad flexibility that Parliament must have intended by adopting so loose a formula. But some general principles have emerged, and these are analysed below. The breadth of the statutory formula was re-emphasised by the House of Lords in *Great Portland Estates plc v. Westminster City Council* [1985] A.C. 661; [1985] J.P.L. 108, which accepted that while the general principle should be that planning should be concerned only with the development and use of land, this approach should be tempered where appropriate by having regard to the circumstances of individuals. Lord Scarman (in whose opinion the other members of the House concurred) insisted that there must be exceptions:

> "Personal circumstances of an occupier, personal hardship, the difficulties of businesses which are of value to the character of a community are not to be ignored in the administration of planning control. It would be inhuman pedantry to exclude from the control of our environment the human factor. The human factor is always present, of course indirectly as the background to the consideration of the character of land use. It can, however, and sometimes should, be given direct effect as an exceptional or special circumstance. But such circumstances, when they arise, fall to be considered not as a general rule but as exceptions to a general rule to be met in special cases. If a planning authority is to give effect to them, a specific case has to be made and the planning authority must give reasons for accepting it. It follows that, though the existence of such cases may be mentioned in a plan, this will only be necessary where it is prudent to emphasise that, notwithstanding the general policy, exceptions cannot be wholly excluded from consideration in the administration of planning control."

In that case, their Lordships upheld a provision of Westminster's local plan which sought to protect certain specified industrial activities in central London from disappearance in the face of the competitive pressure to redevelop their sites for other more profitable uses, being uses which did not assist the viability of other important central London activities. Although the effect of the policy would be effectively to confer security of tenure on existing tenants, there was a genuine planning purpose for doing so: indeed, in Lord Scarman's opinion it was "a powerful piece of positive thinking within a planning context", and although it meant that certain occupiers would be protected, that was a consequence rather than the purpose of the policy.

8. Material considerations: specific instances

P70.09 The general principles as to material considerations that have emerged from the case law may be summarised as follows:

(1) *the protection of purely private interests*: the planning authority may refuse planning permission in order to protect a purely private interest, provided there is a planning purpose or other special consider-
P70.08 ation involved (*Great Portland Estates plc v. Westminster City Council*

[1985] A.C. 661) and the Act does not require the drawing of any distinction between private and public interests: see, *e.g. Stringer v. Minister of Housing and Local Government* [1971] 1 All E.R. 65 (policy of planning authority to restrain development within several square miles around Jodrell Bank radio telescope); *R.M.C. Management Services Ltd v. Secretary of State for the Environment* (1972) 222 E.G. 1593 (refusal of permission for ready-mixed concrete plant on site adjacent to high precision engineering plants requiring especially clean air); *Barratt Developments (Eastern) Ltd v. Secretary of State for the Environment* [1982] J.P.L. 648 (permission refused for retention of dwelling house whose wrong siting was detrimental to another house in a nearby road); *Newham London Borough Council v. Secretary of State for the Environment* [1986] J.P.L. 607 (sound insulation requirements of proposed developments, involving conversion of single dwelling houses into flats). But see also *Brewer v. Secretary of State for the Environment* [1988] J.P.L. 480, where the court (David Widdicombe, Q.C., sitting as Deputy Judge) took the view that in general planning was concerned with land use from the point of view of the public interest, and as a generality was not concerned with private rights. Thus, the court held, the existence or absence of private rights of light was an irrelevant consideration in determining a planning application. So too where rights are separately protected by other legislation. For example, in *R. v. Solihull Borough Council, ex p. Berkswell Parish Council* (Sullivan J., April 28, 1998) a decision to grant planning permission for development that involved the removal of lengths of hedgerow was challenged on the ground that the hedgerows affected were subject to the Berkswell Enclosure Act 1812, and that the local planning authority had failed to have proper regard to this fact. The court was clear that this could not be a material consideration, following *British Railways Board v. Secretary of State for the Environment* [1993] 3 P.L.R. 125 and *Vasiliou v. Secretary of State for Transport* [1991] 2 All E.R. 77. Whether the 1802 Act created public or merely private rights, and questions as to the legal status of the hedgerows generally, were not relevant for the purposes of the planning merits; nor did the grant of planning permission override any protection the 1802 Act might create. But it is not always possible to draw the line so sharply. It may be necessary for an applicant to overcome some problem of private rights if the development is to proceed, such as the acquisition of alternative access to the site; and the authority will only be able to impose a *Grampian* condition (see further below) to secure that development should not commence in advance of the rights being acquired if satisfied that there is a reasonable probability that they can be acquired, or other objections overcome, within the normal development commencement period. The authority will also need to bear in mind that the grant of planning permission may result in a change in the character of a neighbourhood, and that if local residents or the local authority thereafter sue for nuisance, they will be faced with a *fait accompli* by virtue of the planning permission: their action will fall to be determined by reference to a neighbourhood with that development in it, and not as it was previously (*Gillingham Borough Council v. Medway (Chatham) Dock Co. Ltd* [1992] 1 P.L.R. 113). However, this doctrine was heavily qualified by the Court of Appeal in *Wheeler v. J.J. Saunders Ltd* [1995] 2 All E.R. 697, which noted that, unlike Parliament, a local planning authority had no jurisdiction to authorise a nuisance save in so far as it had a statutory power to permit a change in the character of a neighbourhood. Hence, a planning permission would not normally confer any immunity from action in nuisance. See the discussion below at para. P70.33. Similarly, in *West Midlands Probation Committee v. Secretary of State for the*

Environment (*The Independent*, November 13, 1997) the Court of Appeal held that the Secretary of State had been entitled to take into account the fear and apprehension felt by the occupiers of neighbouring land in relation to the development being proposed: see further the discussion below at para. P70.22/1/1.

P70.10 (2) *matters regulated by other statutory codes*: provided a consideration is material in planning terms, the authority are entitled to have regard to it under this section notwithstanding that other machinery may exist for its regulation: see, *e.g. Esdell Caravan Parks Ltd v. Hemel Hempstead Rural District Council* [1966] 1 Q.B. 895 (overlap between planning and caravan sites licensing controls under the Caravan Sites and Control of Development Act 1960); *Maurice v. London County Council* [1964] 2 Q.B. 362 (overlap between building control and planning control); *Hoveringham Gravels Ltd v. Secretary of State for the Environment* [1975] Q.B. 754 (protection of ancient monument); *Ladbroke (Rentals) Ltd v. Secretary of State for the Environment* [1981] J.P.L. 427 (overlap between planning control and gaming licensing); *City of Aberdeen District Council v. Secretary of State for Scotland* [1992] 2 P.L.R. 1 (problems of litter in public places where permission granted for shop for retail of hot food). The materiality of such a consideration is not affected by the fact that under the alternative code the applicant may be able to seek compensation for the restriction: see *e.g.*, *Westminster Bank Ltd v. Minister of Housing and Local Government* [1971] A.C. 508 (planning permission refused on ground that the land might be required in the future of road widening scheme, notwithstanding that an alternative procedure was prescribed by the Highways Act, the imposition of an improvement line, for which compensation would have been payable); and cf. the following cases relating to the imposition of planning conditions restricting existing use rights: *Kingston-upon-Thames Royal London Borough Council v. Secretary of State for the Environment* [1974] 1 All E.R. 193; *Peak Park Joint Planning Board v. Secretary of State for the Environment* [1980] J.P.L. 114; *British Airports Authority v. Secretary of State for Scotland* [1980] J.P.L. 262. Similarly, the fact that an authority might have to pay compensation under this Act for the use of its discontinuance power under s.102 to secure the relocation of an industrial use does not disable it from granting planning permission under this section for residential development on adjoining land knowing that this will increase pressure on industrial uses to relocate from the area (*R. v. Exeter City Council, ex p. Thomas (J.L.) & Co. Ltd* [1989] 3 P.L.R. 61).

The relationship between planning control and the specific environmental controls under the Environmental Protection Act 1990 is inherently difficult. There is clearly an overlap between the two: in taking planning decisions, local planning authorities and the Secretary of State are entitled to have regard to the need to protect the environment. Yet separate controls, including integrated pollution control, are exercisable over emissions into the environment. In *Gateshead Metropolitan Borough Council v. Secretary of State for the Environment* [1994] 1 P.L.R. 85 the Court of Appeal dismissed an appeal against a decision of the High Court ([1993] 3 P.L.R. 100) and accepted that the Secretary of State had been justified, in a planning

appeal, to conclude that it was possible to design and operate a plant of the type proposed by the applicants to meet the standards that were likely to be required by Her Majesty's Inspectorate of Pollution (now the Environment Agency) if an authorisation under Part I of the Environmental Protection Act 1990 were granted. Those controls were adequate to deal with emissions from the proposed plant and the risk of harm to human health. The High Court stressed, however, that the judgment should not be regarded as carte blanche for applicants for planning permission to ignore the pollution implications of their proposed development and say "leave it all to the E.P.A.". Moreover, there might well be cases where the evidence disclosed not merely a lack of information, or uncertainty, or a marginal excess over standards and hence public concern, but positive evidence of a serious risk of harm, where it would be right to refuse planning permission.

The issue was revisited by the Court of Appeal in *R. v. Bolton Metropolitan Borough Council, ex p. Kirkman* (Auld and Schiemann LJJ.; May 5, 1998), dismissing, but with certain qualifications, an appeal against a first instance decision by Carnwath J. not to grant an application for judicial review. The judge had held that the impact of discharges to the atmosphere from a proposed incineration plant was a material consideration, but that the local planning authority had been entitled to take into account the system of IPC controls, and that "unless it appears on the material before the planning authority that the discharges will, or will probably, be unacceptable to the Environment Agency, it is a proper course to leave that matter to be dealt with under the IPC system". The matter came before the Court of Appeal only on an application for leave to appeal, but the court expressed some inclination to accept that the local planning authority should also specifically have addressed the objectives of Sched. 4 to the Waste Management Licensing Regulations 1994, which required them to ensure that waste was recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and that the judge had been wrong to hold that Sched. 4 added nothing to the *Gateshead* principles. But the local planning authority were not in breach of those duties in allowing the details of environmental control to be handled by the IPC authorisation process operated by the Environment Agency.

(3) *the retention of an existing use*: the value in planning terms of the existing use (or existing use rights) of land is clearly a material consideration in determining a planning application involving any change in the use, unless there is no possibility that the refusal of planning permission will result in its retention: see, *e.g. Clyde and Co. v. Secretary of State for the Environment* [1977] 1 W.L.R. 926 (existing permission for residential use, permission validly refused for change of use to offices, even although the premises have never actually been put to residential use); *Granada Theatres Ltd v. Secretary of State for the Environment* [1981] J.P.L. 278 (permission refused for change of use from cinema to bingo hall). The test suggested by Sir David Cairns in the Clyde case was to ask whether there was a "fair chance" if office use were refused that the building would be used for housing rather than being allowed to stand empty. That test was adopted as "as good a test of likelihood as any" by Hodgson J. in *Finn (L.O.) & Co. v. Secretary of State for the Environment* [1984] J.P.L. 734 at 736. But in *Westminster City Council v. British Waterways Board* [1985] A.C. 676; [1985] J.P.L. 102 Lord Bridge (in whose speech the other members of the House of Lords concurred) expressed the view that the phrase **P70.11**

"suggests, in my respectful opinion, an unduly and, on the facts,