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DATE: 11/10/96

TOWN AND COUNTRY PLANNING ACT, 1990

APPEAL ON: 17 CARKLEY GARDEN & REAR OF 21 CHEYNE WALK, LONDON

I attach for your information a copy of the decision for the appeal on on the above-mentioned premises.

EXECUTIVE DIRECTOR OF PLANNING AND CONSERVATION

* DISTRIBUTION LIST:

CHAIRMAN, PLANNING AND CONSERVATION COMMITTEE
VICE CHAIRMAN, PLANNING AND CONSERVATION COMMITTEE
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COUNCILLOR R.HORTON
COUNCILLOR I.DONALDSON
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RECEIVED BY PLANNING SERVICES

Director of Planning Services		DC	DC	DC	E	Ag
The Royal Borough of Kensington & Chelsea		Your Ref:				94/2638/ZZ/24/4244 + 4243
Dept. 701		Our Ref:				APP/K5600/E/95/811900
The Town Hall		APP/K5600/A/95/256643				
Hornton Street		APP/K5600/E/96/812472				
LONDON W8 7NX		Date: 8 October 1996				
Exec Dir		Recd		Forw'd		
	10	10		Plan		

Dear Sir or Madam

TOWN AND COUNTRY PLANNING ACT 1990
APPEAL BY CADOGAN HOLDINGS COMPANY
SITE AT 17 OAKLEY GARDENS & REAR OF: 21 CHEYNE WALK, LONDON

I enclose a copy of our inspector's decision letter.

Yours faithfully

P. Gordon

AP MR D SHORLAND

212A

ENC 1



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T/APP/K5600/A/95/256643/P7

Date: 8 OCT 1996

Dear Sirs

**TOWN AND COUNTRY PLANNING ACT 1990, SECTION 78 AND SCHEDULE 6 AND
PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990
SECTION 20 AND SCHEDULE 3**

LOCAL GOVERNMENT ACT 1972, SECTION 250(5)

APPEALS BY CADOGAN HOLDINGS COMPANY

APPLICATION FOR COSTS BY CADOGAN HOLDINGS COMPANY

1. I refer to your application for a partial award of costs against the Council of the Royal Borough of Kensington and Chelsea which was made at the inquiry held at The Town Hall, Kensington on 1, 2 and 13 May 1996. The inquiry was in connection with appeals by Cadogan Holdings Company against a refusal of planning permission on an application for alterations and extension to the existing house, a refusal of conservation area consent for alterations and extension to the existing house, demolition of parts of the house, part of the boundary wall and 4 garden buildings, and the failure of the Council of the Royal Borough of Kensington and Chelsea to give, within the prescribed period, notice of their decision in respect of an application for listed building consent for the insertion of a gateway into the existing wall, at 17 Oakley Gardens and part of 21 Cheyne Walk, London. A copy of my decision letter is enclosed.

THE APPELLANT'S CASE

2. In support of your application, you drew my attention to Paragraphs 8 and 14 of Annex 3 of Department of the Environment Circular 8/93, Awards of Costs incurred in Planning and Other (including Compulsory Purchase Order) Proceedings. The Council had not produced substantial evidence to show clearly why the summerhouse should not be permitted. The Reasons for Refusal were not made out factually, and there was a misapplication of facts. There must be a reasonable application of facts.

3. Paragraph 14 of the Circular deals with the impact of the development, including on townscape. English Heritage had commented on this. The Council's officer, Miss Seale, had suggested a building 2 m by 1 m. This was unreasonable. Any building, the officer

maintained, would cause harm. This was an unreasonable application of the Development Plan and unsupportable, particularly in view of other officers' views on other matters.

4. In the minutes of the meeting of 2 February 1995, Miss Benes of the Council had stated that it was possible consent might be given for a detached garden pavilion away from the boundary wall. She continued that she would not rule out a modest gateway. In the Council's letter of 30 March 1995, it stated that Miss Benes had made the point at the meeting that a building possibly less than half of that proposed might be considered appropriate. In the officers' report to committee, only one point was made concerning the Conservation Area. No other points were made. It was not accurate. In Paragraph 4.9 of the report, the Conservation Officer considered the proposal still to be of a substantial size, at some 7 m by 5 m. No comment was made that 27.5 sq m would be acceptable, nor were any other points drawn to the committee's attention from the letter of 30 March 1995.

THE COUNCIL'S RESPONSE

5. In response, the Council of the Royal Borough of Kensington and Chelsea stated that the officer, who was an experienced officer, was entitled to come to a view that the building would be visually intrusive. The site was open and undeveloped. The proposal represented a large percentage of the plan of 17 Oakley Gardens, and it covered a large part of this part of the garden. The Reasons for Refusal stood up.

6. One officer's views had been taken out of context, that less than half the original proposal may have been acceptable. The minutes of the meeting stated that it would be bulky in design terms. The officer was opposed in principle to the proposal and had given her reasons. She clearly had an objection to the summerhouse. The Council had acted reasonably.

MY CONCLUSION

7. The application for costs falls to be determined in accordance with the advice contained in Circular 8/93 and all the relevant circumstances of the appeal, irrespective of its outcome, and costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.

8. Paragraph 9 of the Circular states that planning authorities are not bound to adopt professional advice given by their officers. The Council took the decision, expressed in their Reasons for Refusal, that the proposed building, by reason of its size and location, would appear visually intrusive by encroaching into open garden area. Whilst the views of the officers might have been helpful or unhelpful in terms of your client's brief, they were not unreasonable. The officers were using their professional judgement.

9. The committee report states that no objection was raised on design grounds, although the proposed building was still a substantial size which was considered excessive, and the eaves detail was considered too heavy. It is not unreasonable to expect professional judgements to differ. The Council were not prejudiced in making their decision by having a summary of the situation. They also had the benefit of your visual appraisal.

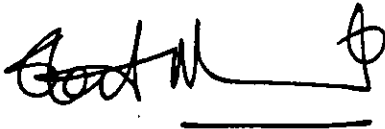
10. I conclude that the officers' approach was correct in terms of providing advice, albeit

that at a level of professional judgement the views of the officers differed. In areas where judgement is required, it would be unreasonable to necessarily expect an identical response. The fact the Council took their own decision to refuse the application was based on the scheme before them. They could have decided to grant planning permission if they considered that the scheme was acceptable. They chose not to do so. I therefore conclude that your application for an award of costs is unjustified.

FORMAL DECISION

11. For the above reasons, and in exercise of the powers transferred to me, I hereby refuse the application by Cadogan Holdings Company for an award of costs against the Council of the Royal Borough of Kensington and Chelsea.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Stuart M Reid', with a horizontal line underneath it.

STUART M REID D Arch (Hons) RIBA
Inspector

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Date:

8 OCT 1996

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 78 AND SCHEDULE 6 AND
PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990
SECTION 20 AND SCHEDULE 3
LOCAL GOVERNMENT ACT 1972, SECTION 250(5)
APPEALS BY CADOGAN HOLDINGS COMPANY
APPLICATION FOR COSTS BY THE COUNCIL OF THE ROYAL BOROUGH OF
KENSINGTON AND CHELSEA

1. I refer to your application for a partial award of costs against Cadogan Holdings Company which was made at the inquiry held at The Town Hall, Kensington on 1, 2 and 13 May 1996. The inquiry was in connection with appeals by Cadogan Holdings Company against a refusal of planning permission on an application for alterations and extension to the existing house, a refusal of conservation area consent for alterations and extension to the existing house, demolition of parts of the house, part of the boundary wall and 4 garden buildings and the failure of the Council of the Royal Borough of Kensington and Chelsea to give, within the prescribed period, notice of their decision in respect of an application for listed building consent for the insertion of a gateway into the existing wall, at 17 Oakley Gardens and part of 21 Cheyne Walk, London. A copy of my decision letter is enclosed.

THE COUNCIL'S CASE

2. In support of your application, for your first point you stated that the applicant had attempted to amend the listed building application 7 days before the committee meeting. You drew my attention to Paragraph 5 of Annex 1 of Department of the Environment Circular 8/93, Awards of Costs incurred in Planning and Other (including Compulsory Purchase Order) Proceedings. This concerns the extent to which an appellant obtained professional advice. The appellants had been professionally advised from September 1994, but it was not until March 1996 that they considered for the first time the need to consider listed building consent for the summerhouse. The appellants should know what is necessary.

3. You also raised the elevational alterations to 17 Oakley Gardens. These matters would



not have been necessary if the works had been thought out from the beginning, and it was unreasonable for the Council to have to deal with this in only 7 days. It was not possible to give residents and third parties adequate time with such a substantial alteration. This was not reasonable. Despite professional advice, the unreasonable behaviour had caused the Council costs. Letters had been sent from the appellant's agent concerning listed building consent required for the setting of the listed building.

4. For your second point, you stated that the applicant had refused to clarify the proposal, and that there had been correspondence in March concerning the summerhouse. Finally, you stated that the submission of the new Method Statement and drawings were only days before the inquiry. The appellants had stated that this was in response to third party representations.

THE APPELLANT'S RESPONSE

5. In response, Cadogan Holdings Company stated that they had taken instructions concerning the listed building amendment. There had been a cost to the applicant with the blatant refusal by the officers of the Council to progress procedures in assisting the proper advertising of the applications to third parties. What prejudice had there been to the Council by amending the applications - none. Why? The matters were already before the Council, local residents and English Heritage. The listed building consent applications were already dealt with in the planning application matters.

6. There was nothing new in the proposals. The Council already had all the responses. They were under an obligation to assist with procedural matters. The appellants had taken it upon themselves to advertise the applications.

7. Concerning the second point, the appellants had not refused to clarify the matter. They were neutral. The local planning authority had a too cluttered response, and the appellants sought only to provide what the Council required. There was nothing new needed.

8. On the third point, the Council had not requested an adjournment, or for the 2 facsimile transmissions from English Heritage. There had been no prejudice.

MY CONCLUSIONS

9. The application for costs falls to be determined in accordance with the advice contained in Circular 8/93 and all the relevant circumstances of the appeal, irrespective of its outcome, and costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.

10. I support your contention that the appellants should have ensured that the applications were correctly submitted. It was not until the facsimile from the appellants of 3 May 1996, during the course of the inquiry, that the applications were accurately defined. It is unreasonable that amendments should have been submitted to the Council only 7 days before the meeting. However, the appellants undertook the necessary advertising themselves, and I have no doubt that it was carried out correctly. The matters had already been raised in the earlier applications, and no matters were unexpected; the difference was connected with the type of application necessary. In connection with the listed building application, the Council

failed to determine that within the prescribed period. Whilst I find the appellant's behaviour unreasonable, and you have stated that this caused you costs, no evidence was put to me concerning the Council incurring or wasting expense unnecessarily.

11. For your second point, I agree that there was some difficulty with a clarification of the proposals by the appellants. The fact that they were neutral on the particular issues is not unreasonable, and it would be normal practice for the Council to assist with such matters.

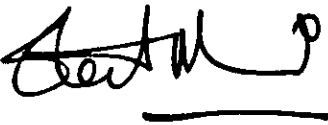
12. In connection with your third point, I have noted that no request for an adjournment was made by you. The matters referred to were not unexpected, although consideration would have been necessary for the content. Although late on in the course of the proceedings, I do not find this behaviour to have been unreasonable.

13. I therefore conclude that your application for an award of costs is not justified.

FORMAL DECISION

14. For the above reasons, and in exercise of the powers transferred to me, I hereby refuse the application by Council of the Royal Borough of Kensington and Chelsea for an award of costs against Cadogan Holdings Company.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Stuart M Reid', with a horizontal line underneath.

STUART M REID D Arch (Hons) RIBA
Inspector

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Our Ref:

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T/APP/K5600/E/96/812472/P7

T/APP/K5600/A/95/256643/P7

Date:

8 OCT 1996

Dear Sirs

TOWN AND COUNTRY PLANNING ACT 1990 SECTION 78 SCHEDULE 6 AND
PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990
SECTION 20 AND SCHEDULE 3
APPEALS BY CADOGAN HOLDINGS COMPANY
APPLICATION NOS: 94/2638/ZZ/24/4244, DPS/DCS/TP/96/0116 and 94/2637/M/24/4243

1. As you know, I have been appointed by the Secretary of State for the Environment to determine these appeals against the decisions of the Council of the Royal Borough of Kensington and Chelsea to:

- 1 refuse planning permission for alterations and extension to the existing house;
- 2 refuse conservation area consent for alterations and extension to the existing house, demolition of parts of the house, part of the boundary wall and 4 garden buildings;

and the failure of the Council of the Royal Borough of Kensington and Chelsea to give within the prescribed period notice of their decision in respect of an application for:

- 3 listed building consent for the insertion of a gateway into the existing wall;

at 17 Oakley Gardens and part of 21 Cheyne Walk, London, SW3. I held an inquiry into the appeals on 1, 2 and 13 May 1996, and a site inspection on 14 May 1996. At the inquiry, an application was made by Cadogan Holdings Company for an award of costs against the Royal Borough of Kensington and Chelsea and by the Royal Borough of Kensington and Chelsea for an award of costs against Cadogan Holdings Company. These are the subjects of separate letters.

BASIS OF THE APPEALS

2. The applications which are the subject of the 3 appeals were accompanied with drawings (plan nos: S/957/90, S/2095/94, 948/5, /6, /7, /8, /9, /10, /11, /12, /13, /13B,

/14, /18 and /20) (Plan A). Following these applications for planning permission, listed building and conservation area consents, both the description of the development and the works and the drawings accompanying the applications (plan nos: S/957/90, S/2095/94, 948/5, /6, /7, /8A, /9, /10A, /11B, /12A, /13D, /18C, /24A, /25 and /26) (Plan B) were amended. The latter 3 drawings are illustrative. At the inquiry, I established and the parties agreed that the 3 appeals before me were as follows:

(1) The first appeal is against the failure of the local planning authority to determine an application (application no: DPS/DCS/TP/96/0116) for listed building consent to carry out the following works of alteration, demolition and extension:

- (a) the partial demolition of the boundary wall at 17 Oakley Gardens by the formation of an opening and the insertion of a new doorway;
- (b) the demolition of the air raid shelter and the store/wc to the rear of 17 Oakley Gardens;
- (c) the erection of a ground floor rear extension to 17 Oakley Gardens;
- (d) the demolition of the potting shed and the existing summerhouse to the rear of 21 Cheyne Walk.

(2) The second appeal is against the refusal of conservation area consent (application no: 94/2638/ZZ/24/4244) to carry out the following works of demolition:

- (a) the demolition of the existing Wendy House at the rear of 21 Cheyne Walk.

(3) The third appeal is against the refusal of planning permission (application no: 94/2637/M/24/4243) for the following development:

- (a) The erection of a new summerhouse at the rear of 21 Cheyne Walk;
- (b) Rear alterations to 17 Oakley Gardens incorporating:
 - (i) railings around the existing second floor roof terrace;
 - (ii) an extension at ground floor level;
 - (iii) a new french window with a balcony at the rear ground floor level;
- (c) The insertion of a doorway into the boundary wall at 17 Oakley Gardens.

3. I shall determine these appeals on the basis of the applications as agreed at the inquiry, with the amended drawings relating thereto (Plan B).

THE MAIN ISSUES

4. From my inspection of the site and its surroundings and from the representations made at the inquiry and in writing, I consider the main issues in these appeals to be, firstly, the direct impact of the proposals on the special architectural or historic character of the listed buildings and, secondly, the effect the proposals would have on the character or appearance of the Cheyne and Thames Conservation Areas and the impact the proposals would have on the setting of the listed buildings.

THE FIRST ISSUE

5. Turning to my first issue, the boundary wall in which you propose to insert a doorway is listed Grade II. The listing description refers to it as a garden wall of the mid 16th

Century, partially rebuilt in the mid 18th Century. The first 11 courses visible above the ground on the south side are undisturbed Tudor brickwork. The upper 23 courses have been rebuilt, using original bricks and also additional harder, darker red bricks. The wall is generally in English bond at the lower level with Flemish and areas of irregular bond above, and is some 20 m long. It was originally built as a garden wall to the Chelsea Manor House of Henry VIII.

6. The north face of the wall to 17 Oakley Gardens is generally rendered. The ground level is substantially lower to this property than to 21 Cheyne Walk. The wall appears to finish level with the ground on the north side, and I was told that it had no foundations below this level. Abutting the north face are an air raid shelter and a store and wc. Your proposal would be to provide access for the occupiers of 17 Oakley Gardens to an area of garden to the south of the wall, currently used by the occupiers of 21 Cheyne Walk, and to reduce the garden of the latter to a size comparable to others in the area. Access to this area of garden is currently obtained from the rear of 21 Cheyne Walk as well as from Cheyne Mews. The gateway would be to a Tudor design and detail, with an oak gate. It would be set lower than the existing ground level on the south side, which would ease the transition in terms of levels to the property to the north.

7. Section 16 (2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that, in considering whether to grant listed building consent for any works special regard shall be paid to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Government advice is contained in Planning Policy Guidance: Planning and the Historic Environment (PPG 15).

8. Paragraph 3.3 of PPG 15 states that there should be a general presumption in favour of the preservation of listed buildings, except where a convincing case can be made out, against the criteria set out in the section, for alteration or demolition. The first criterion, in Paragraph 3.5, relates to the importance of the building and its intrinsic architectural interest and rarity. The wall is a particularly important stretch of Tudor and later brickwork. Its historical connections with Henry VIII are also particularly valuable. It represents one of the few fragments of the Manor House still visible above ground level. The second criterion relates to the particular physical features of the building. The quality of the original Tudor brickwork, and the later work, is of significant architectural interest, both in terms of the materials and in terms of the original work. The third criterion relates to the building's setting and its contribution to the local scene. The configuration of the surrounding buildings, and the location of the wall in a spacious area, enable it to be seen, to a greater or lesser degree, by a number of occupiers. The last criterion relates to the extent to which the proposed works would bring substantial benefits for the community. The essence of the proposal would be the loss of historic fabric, and a benefit in general only to the occupiers of 17 Oakley Gardens.

9. As against these criteria, which determine the case for preservation in the public interest, you raise the issue of private convenience. The occupiers of 17 Oakley Gardens need to have access to the garden, and the alternative way in from Cheyne Mews is clearly less convenient. However, this alternative does exist and its existence must be taken into account. My view is that the loss of historic wall fabric would be very substantially greater than the degree of inconvenience caused by the longer way to the garden.

10. Furthermore, at the inquiry, technical evidence was given in connection with the

formation of the opening. I saw that the bricks were particularly soft and friable, and the mortar was also very soft. Any work to be carried out to the wall would need to be undertaken with considerable care and expertise. Such work could be controlled by an appropriate condition. However, there was concern that the general stability of an area of the wall larger than the opening could be affected. The bond did not generally run through the wall. Difficulties could be experienced in construction, with damage caused to the bricks, due to drilling for support whilst the formation of the opening was being carried out. The potential for additional damage and harm to the wall add significant weight to my finding.

11. The Development Plan for the area consists of the adopted Royal Borough of Kensington and Chelsea Unitary Development Plan. Policies of the Council in the Unitary Development Plan, at Policy CD57 and CD58, seek to resist the demolition in part of listed buildings and to resist proposals to alter them. Although the proposed gateway would be in keeping with the style of the original wall, I do not find this of sufficient weight to overcome the presumption firmly in favour of preservation. The requirements of the policies in the Unitary Development Plan, in addition to Government advice, would not be met.

12. I therefore conclude that the loss of part of its fabric would have an unacceptably harmful effect, on balance, on the special architectural or historic character of the listed wall. Since it seems to me inappropriate to grant listed building consent for the works of demolition, it would appear logical similarly to withhold planning permission for the associated development. I say this in recognition of the relevant provisions of section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

13. Your second proposal for listed building consent is for the demolition of the air raid shelter and the store/wc to the rear of 17 Oakley Gardens. I saw that the air raid shelter was a substantial construction, generally of concrete and steel, in a curved configuration. Although the wall is rendered on this side, the brickwork would still be similar underneath it to the visible south side. Whilst you stated that work to the proposed opening could be undertaken with extreme care and delicacy, the removal of the air raid shelter would require the use of potentially damaging equipment to break up and remove the structure. This would undoubtedly cause considerable harm to the wall itself, and for that reason would not be acceptable. For this reason, I find that the proposal would not meet the requirements of the policies in the Unitary Development Plan.

14. I saw that the existing extension to 17 Oakley Gardens which contains the present store and wc could, with due care, relatively easily be removed without damage to the wall. The proposal would be unlikely to harm the listed wall, and would comply with the policies in the Unitary Development Plan.

15. I shall therefore grant consent for the demolition of the store/wc but not for demolition of the air raid shelter, due to the harm that removal of the latter could cause to the listed wall.

16. Your third proposal for listed building consent is for the ground floor rear extension to 17 Oakley Road. Listed building consent is concerned with the works to the wall itself. The proposal shows a minimum of interference with the wall. The Council have raised no objection to the works, and I see no reason to disagree with that view. I shall therefore grant consent for this proposal.

17. The first part of your fourth proposal for listed building consent is for the demolition of the potting shed which abuts the listed wall on the latter's south side. I saw that the internal wall had been painted white. It was agreed at the inquiry that no appropriate method of removal of the paint, which would not harm the brickwork, was available. If the potting shed was demolished, the white painted area would be a disfigurement to the listed wall as a whole. As it stands, it is not an unattractive garden building. On balance, therefore, I shall not grant consent for its demolition, due to the unattractive white painted area which would be left visible on the listed wall after its removal.

18. The second part of your fourth proposal for listed building consent relates to the demolition of the existing summerhouse in the garden of 21 Cheyne Walk. This is situated within the curtilage of 21 Cheyne Walk, which is listed Grade II. It was agreed at the inquiry that the summerhouse had been built before 1 July 1948, and it is therefore to be treated as part of the listed building by reason of section 1 (5) (b) of the Planning (Listed Buildings and Conservation Areas) Act 1990. I saw that the summerhouse was an attractive building in the garden, with extensive planting over and around it, with the exception of the elevation facing the house. The advice in paragraph 3.3 of PPG 15, as well as Policy CD57 and Paragraph 5.19 in the Unitary Development Plan, contain a presumption in favour of the preservation of listed buildings.

19. I heard at the inquiry that the building is of both architectural and historic interest. It contributes positively to the area in its own right, and in addition the flowers and foliage make an important visual feature for the residents of the surrounding properties. Its demolition would be a loss of a significant building in this garden, and would not therefore meet the requirements of the Policy in the Unitary Development Plan. I shall not therefore grant consent for its demolition.

20. In conclusion on my first issue, I have found that the proposals to insert a doorway into the boundary wall, to demolish the air raid shelter, to demolish the potting shed and to demolish the summerhouse would be harmful to the special architectural or historic character of the listed buildings, and I shall not therefore grant listed building consent for them. The proposals to demolish the store/wc to the rear of 17 Oakley Gardens and the erection of a ground floor rear extension to that property do not cause harm to the listed building, and I shall therefore grant listed building consent for them.

THE SECOND ISSUE

21. Turning to my second issue, your proposal for conservation area consent is to demolish the Wendy House in the grounds of 21 Cheyne Walk. It is situated in the Thames Conservation Area. The area is characterised by terraces of distinguished buildings, which back onto private gardens. Most of these are relatively small. The garden to 21 Cheyne Walk is unusual in that it occupies a very substantial part of the central private space onto which the houses around look. It contains open lawn areas, extensive mature planting including fine trees, and, by contrast, more secluded areas within its overall form.

22. The Wendy House is a diminutive building set against the east boundary wall of the property. It is a delightful garden building, with furniture and furnishings inside to complement the design. It is in a good condition and has been well maintained. Although generally insignificant in the area, it is an attractive addition to the area, and it makes a positive contribution to the garden and thus to the Conservation Area.

23. You stated at the inquiry that you were neutral concerning the demolition of the building. Policy CD51 reflects Government advice, and seeks to resist demolition of buildings in conservation areas. The Wendy House makes a positive contribution to the character and appearance of the Conservation Area, albeit it at a small scale, it is in good condition, and it would not be adversely affected by the proposals for new building if it was to remain.

24. I find that the proposal for conservation area consent would not meet the requirements of the Policy in the Unitary Development Plan and I shall not therefore grant consent for the demolition of the Wendy House.

25. Your first proposal for planning permission is for the erection of a new summerhouse. This would be located in a generally enclosed area of the garden, surrounded on 2 sides by garden walls, the north wall being the listed wall, and on the south side screened to some extent at ground level by the mound. It would be linked by a path to the opening proposed in the listed wall, in order that the occupiers of 17 Oakley Gardens would have access to it. Although I have earlier stated that I would refuse listed building consent and planning permission for the opening, that does not materially affect the consideration of the proposal before me.

26. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that, with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. The character and appearance of this part of the Conservation Areas has been described above. Policy CD48 follows Section 72(1), and Policy CD52 seeks to ensure that any development in a conservation area preserves or enhances the character or appearance of that area.

27. The importance of the garden of 21 Cheyne Walk to the area is the most significant matter with respect to the proposal. A large number of surrounding properties overlook the garden. Many of them have considerably smaller gardens, and the general view is often primarily of this garden, as it is by far the largest. The areas of open lawn and planting contrast with the more enclosed areas of trees, shrubs and water. I saw how attractive the view was to the local residents. The deciduous trees, whilst providing leaf cover during the summer months, would not do so in the winter.

28. The proposal would occupy a major part of the lawn area beyond the mound, in the north east corner of the garden. The design of the building has responded to the character of the existing houses, with a classical quality of proportion and detail. Although lowered to a reduced ground level, it would still be taller than the existing boundary walls. From the properties around, the pitched roofs and pediments would replace the character of lawn in this area. Although you stated that there was evidence that an earlier building had existed in this location, which was shown on maps of the area, I do not find that a sufficient justification to erect a new building if the latter is otherwise objectionable from a planning policy point of view.

29. Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that, in considering whether to grant planning permission for development which affects a listed building or its setting, special regard shall be paid to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it

possesses. Policy CD61 seeks to resist development which would adversely affect the setting of a listed building. The proximity of the proposed summerhouse would detract from the views of the listed wall as they are at present. The wall can be enjoyed as a garden wall, which would not be the case if the proposal was to be built. I therefore find that the proposal would be harmful to the setting of the listed wall.

30. Views from 21 Cheyne Walk at ground level would be relatively unaffected by the proposal. However, the effect on the occupiers of the neighbouring properties who look down onto this garden, and for whom it is an important part of the character of the area, would be a loss of attractive green garden space. This would be a harmful effect on the character and the appearance of the Conservation Areas. The proposal would appear to conflict with the relevant policies of the adopted Unitary Development Plan, in that it would have an adverse effect on the local character and appearance of the conservation area and accordingly this part of the appeal must fail.

31. Your second proposal for planning permission relates to the rear alterations at 17 Oakley Gardens. The Council raised no objection to them. I saw that they would be a sensible improvement to the property, in conjunction with the internal works that you propose to undertake. In my view, they would not have a harmful effect on the setting of the listed wall, and would thus meet the requirements of the Policy in the Unitary Development Plan. I have found no reason to disagree with the view of the Council, and I shall therefore allow this part of the appeal.

32. In conclusion on my second issue, I find that the proposal for demolition of the Wendy House would not meet the requirements of the Policy in the Unitary Development Plan and I shall not therefore grant conservation area consent for its demolition. The proposed new summerhouse would have an adverse effect on the character and appearance of the Conservation Areas, and I shall not therefore be allowing this part of this appeal. The proposal for the rear alterations to 17 Oakley Gardens is appropriate, and I shall therefore grant it planning permission. The third proposal for planning permission, for the insertion of a gateway into the boundary wall, I shall dismiss on listed building consent grounds, for reasons that I have given in connection with my first issue.

PROPOSED CONDITIONS

33. I have considered carefully the proposed conditions submitted by the Council, in the light of advice in Department of the Environment Circular 11/95, The Use of Conditions in Planning Permissions. Conditions 1, 2, 3 and 5 relate to matters which I am not allowing. Conditions 4 and 6 relate to archaeological matters, which are as significant to the works that I shall allow as those that I am dismissing, and which I consider to be necessary. I shall therefore impose them with the grant of planning permission. Condition 4 (which is Condition 2 below) is to enable the local planning authority to give notice to English Heritage of the commencement of works.

OTHER MATTERS

34. I have taken account of all the other matters raised at the inquiry and in the written representations but I have found no evidence that would outweigh the considerations which have led me to my decision.

FORMAL DECISIONS

35. For the reasons which I have given above and in exercise of the powers transferred to me, I hereby allow the first appeal in part and grant listed building consent to the extent that it relates to the following works:

- (b) the demolition of the store/wc to the rear of 17 Oakley Gardens;
- (c) the erection of a ground floor rear extension to 17 Oakley Gardens;

in accordance with the terms of the application (No: DPS/DCS/TP/96/0116) dated 9 January 1996 and the plans submitted therewith or later amended as agreed at the inquiry (Nos: 948/13B and /18C), subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of 5 years from the date of this letter;
2. Written notice of the intended start of the works shall be given to the local planning authority at least 7 days before the works hereby permitted are commenced;
3. No works on site shall take place until a design and method statement relating to the foundations and all new groundworks has been submitted to and approved in writing by the local planning authority. The development hereby permitted shall only take place in accordance with the detailed scheme approved under this condition.

Subject thereto, I hereby dismiss the remainder of the first appeal and refuse to grant listed building consent which relates to the following works:

- (a) the partial demolition of the boundary wall at 17 Oakley Gardens by the formation of an opening and the insertion of a new doorway;
- (b) the demolition of the air raid shelter to the rear of 17 Oakley Gardens;
- (d) the demolition of the potting shed and the existing summerhouse to the rear of 21 Cheyne Walk.

36. For the reasons which I have given above and in exercise of the powers transferred to me, I hereby dismiss the second appeal.

37. For the reasons which I have given above and in exercise of the powers transferred to me, I hereby allow the third appeal in part and grant planning permission to the extent that it relates to the following development:

- (b) Rear alterations to 17 Oakley Gardens incorporating:
 - (i) railings around the existing second floor roof terrace;
 - (ii) an extension at ground floor level;
 - (iii) a new french window with a balcony at the rear ground floor level;

in accordance with the terms of the application (No: 94/2637/M/24/4244) dated 16 December 1994 and the plans submitted therewith or later amended as agreed at the inquiry (Nos: S/957/90, S/2095/94, 948/5, /6, /7, /8A, /9, /10A, /11B, /12A, /13D, /18C, /24A, /25 and /26), subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of 5 years from the date of this letter;
2. Written notice of the intended start of the works shall be given to the local planning authority at least 7 days before the works hereby permitted are commenced;
3. No works on site shall take place until a design and method statement relating to the foundations and all new groundworks has been submitted to and approved in writing by the local planning authority. The development hereby permitted shall only take place in accordance with the detailed scheme approved under this condition.

Subject thereto, I hereby dismiss the remainder of the third appeal and refuse to grant planning permission which relates to the following development:

- (a) The erection of a new summerhouse at the rear of 21 Cheyne Walk;
- (c) The insertion of a doorway into the boundary wall at 17 Oakley Gardens.

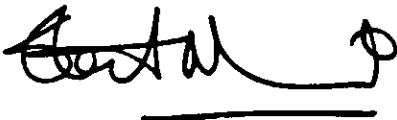
38. An applicant for any consent, agreement or approval required by a condition of this permission has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the authority fail to give notice of their decision within the prescribed period.

39. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990 and section 8 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

40. Your attention is drawn to the provisions of section 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires consent to be obtained prior to the demolition of buildings in a conservation area.

41. Your attention is also drawn to the provisions of section 7 of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires consent to be obtained for works for the demolition, alteration or extension of a listed building which would affect its character as a building of special architectural or historic interest.

Yours faithfully



STUART M REID D Arch (Hons) RIBA
Inspector

APPEARANCES

FOR THE APPELLANT

Mr John Steel QC - instructed by Lawson-Price

He called:

Mr Austin Mackie
BA (Hons) MRTPI

- Lawson-Price

Mr David Le Lay
Dipl Arch RIBA FRSA

- David Le Lay Architects Ltd
39 Old Church Street, London SW3 5BS

Mr John Chalkley
C Eng MICE MIStructE

- R T James and Partners Ltd
19/21 Palace Street, London SW1E 5HS

FOR THE LOCAL PLANNING AUTHORITY

Mr B Ryan - Solicitor with the Council of the Royal
Borough of Kensington and Chelsea

He called:

Miss J Seale
BA (Hons) M Phil DipUD
MRTPI

- Planning Officer with the Council of the
Royal Borough of Kensington and Chelsea

Mr T P Smith
BA MA MLitt

- Building Materials Specialist
The Museum of London Archaeology
Service

INTERESTED PERSONS

Mr D Strauss - Rule 11(1) Statutory Party
21 Cheyne Walk, London SW3

Mr J Craven - 20 Cheyne Walk, London SW3

Mr M N Bryan - 20A, Cheyne Walk, London SW3

DOCUMENTS

- Document 1.1, 1.2, 1.3 - List of persons present at the Inquiry
- Document 2 - Council's letter of notification of the Inquiry and list of persons notified
- Document 3 - Written representations received
- Document 4 - Appendices to Mr Mackie's evidence
- Document 5 - Appendices to Mr Le Lay's evidence
- Document 6 - Appendices to Mr Chalkley's evidence
- Document 7 - Appendices to Mr Harris' report
- Document 8 - Appendices to Miss Seale's evidence
- Document 9 - Appendices to Mr Smith's evidence
- Document 10 - Appendices to Mr Strauss' evidence
- Document 11 - Objections from local residents received from Mr Strauss
- Document 12 - Schedule of the appeals
- Document 13 - Letter from Dr Hunting dated 18 January 1994
- Document 14 - Extract from Statutory List for 21 Cheyne Walk
- Document 15 - Letter from Lawson-Price to Mr Bianco dated 30 April 1996
- Document 16 - Letter from Lawson-Price to Mr Ryan dated 30 April 1996
- Document 17 - Appendices to Mr Bianco's statement
- Document 18 - Letter from English Heritage dated 1 May 1996
- Document 19 - Practice information from Alan Baxter & Associates
- Document 20 - Letter from Alan Baxter & Associates dated 30 April 1996
- Document 21 - Pavilions at Tudor House
- Document 22 - Letter from English Heritage dated 13 May 1996
- Document 23 - Letter to local residents

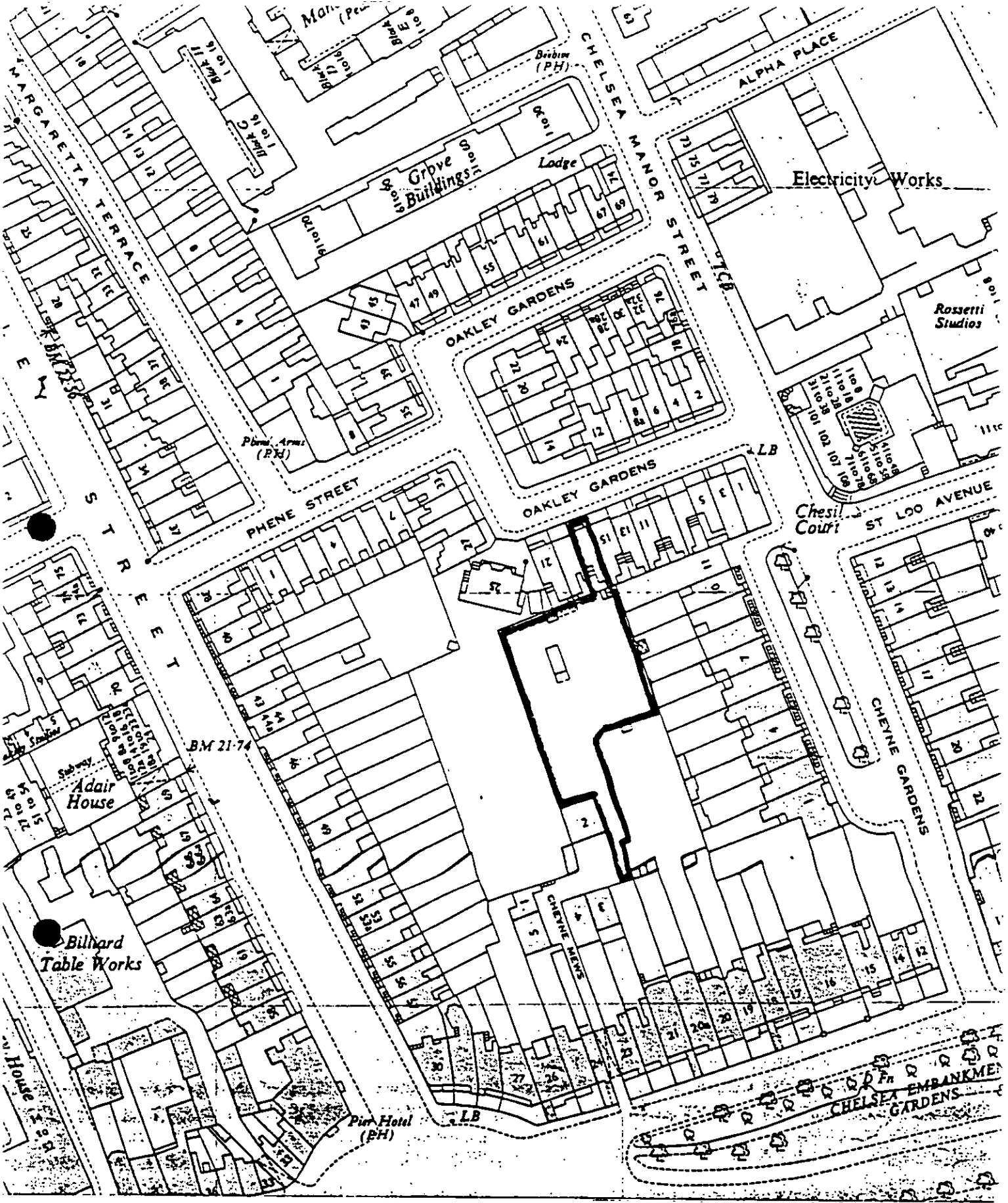
- Document 24 - Facsimile from Lawson-Price with Schedule of agreed conditions, Schedule of agreed application descriptions and Schedule of agreed drawing numbers.

PLANS

- Plan A - Application plans and Visual Appraisal
Plan B - Appeal plans

PHOTOGRAPHS

- Photo 1 - Bundle of A3 photographs from Mr Le Lay
Photo 2 - A4 photograph from Mr Strauss of the garden at 21 Cheyne Walk
Photo 3 - 2 A4 photographs from Mr Strauss of a gateway at Hampton Court Palace.



17 OAKLEY GARDENS

LOCATION PLAN

Scale 1:1250

Land to which application relates
outlined in red

Drawing no. 948/5



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PLAN B

SML