

# Appeal Decision

Site visit made on 1 March 2017

**by George Mapson DipTP DipLD MRTPI**

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

**Decision date: 31 March 2017**

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**Appeal Ref: APP/V5570/C/16/3147037**  
**313 Highbury New Park, London, N5 2LB**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by HUQQA London Limited against an enforcement notice issued by the Council of the London Borough of Islington.
  - The Council's references are E/2015/0504 and 16/2016.
  - The notice was issued on 29 February 2016.
  - The breach of planning control as alleged in the notice is: "*Without planning permission, the insertion of uPVC encasement (sic. 'casement') windows in the Premises on the land.*"
  - The requirements of the notice are: "*Remove all of the uPVC encasement (sic. 'casement') windows, including all associated fixtures and fittings from the premises, and remove any resulting debris from the land.*"
  - The period for compliance with the requirements is six months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended.
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## Decision

1. The enforcement notice is corrected:
  - 1) by adding Plans A1, A2, A3 and A4 annexed to this decision to the plan attached to the enforcement notice;
  - 2) by adding the words "*as shown on Plans A1, A2, A3 and A4 annexed to this decision*" after the word "*Land*" in Schedule 2; and
  - 3) by deleting the words "*encasement*" from Schedules 2 and 4.
2. Subject to these corrections, the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

## Background

### *The appeal site and surroundings*

3. No. 313 Highbury New Park was formerly a public house, which – according to the Council – dates from the 1930s. The ground floor is now vacant and is secured in places by roller shutters.
4. The appellant's agent says that when the appellant company bought the property in 2014 the building contained nine flats on the upper floors.

5. The company refurbished those flats, added a mansard roof to the front of the building and extended a rooftop rear addition to provide a further three flats in the roof space. The building's timber windows were removed and replaced by uPVC windows. As a result of works carried out since 2014, the first, second and third floors of the building each contain four flats.

### **Procedural matters**

#### *Matters relating to the enforcement notice*

6. In 2015 an invalid application (Ref. 2015/2607) was submitted for retrospective planning permission for the works that are the subject of the notice.
7. The Council has supplied copies of the drawings that accompanied that application. Drawing Nos. 14015-TWH-FB P04, P06, P07 and P08 ('the existing plans') show the unauthorised uPVC windows<sup>1</sup>. These drawings are annexed to my decision as Plans A1, A2, A3 and A4.
8. The Council has requested that these drawings be added to the notice. I am satisfied that to do so would not cause injustice to any party. Accordingly, the notice is corrected as set out in paragraph 1 above.

#### *'Pre-existing plans'*

9. The Council has also submitted copies of the application drawing Nos. 14015-TWH-FB E04, E06, E07 and E08 ('the pre-existing plans'), which show the building before the unauthorised works were carried out. For completeness, these drawings are annexed to my decision as Plans B1, B2, B3 and B4.

#### *The scope of the requirements of the notice*

10. The enforcement notice requires the removal of the uPVC windows without specifying a replacement. That is the correct approach to take. Although the requirement would potentially leave the building open to the elements or insecure, it will be for the appellant to seek planning permission from the Council for further works that may be required.

### **The appeal on ground (c)**

11. An appeal on ground (c) is there has not been a breach of planning control; for example, because (1) the matters alleged in the notice do not constitute 'development'; or (2) planning permission has already been granted; or (3) the works are 'permitted development'.
12. The gist of the appellant's case is that the alteration to the appeal building by the installation of uPVC windows does not constitute 'development' as defined in the 1990 Act.

#### *Relevant planning law - the meaning of 'development' in the 1990 Act*

13. Section 55(1) of the Act defines 'development' as "*the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change in the use of any buildings or other land*".
14. Section 55(2) excludes from the definition of 'development' a number of operations and uses. The first of these, in section 55(2)(a), refers to "*... the carrying out of maintenance, improvement or other alteration of any building or works which (i) affect*

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<sup>1</sup> The plans also show an unauthorised mansard roof and dormer roof extension that have been constructed and which are the subject of a separate enforcement notice and appeal (Ref. APP/V5570/C/16/3147035).

*only the interior of the building, or (ii) do not materially affect the external appearance of the building ...".*

*Relevant case law – the judgment in 'Burroughs Day'*

15. Guidance on the interpretation of section 55(2)(a)(ii) is found in the judgment of the High Court in *Burroughs Day v Bristol City Council*<sup>2</sup>. The case turned on the meaning of the words "*do not materially affect the external appearance of the building*". The judgment established three tests that must be applied in cases such as this.
16. The first test was that the effect on "*the external appearance of the building*" had to be considered, not just the effect on the exterior. In other words, it was not sufficient for the external surface of the building to be affected. The alteration had to be one that was visible from a number of normal vantage points. Visibility from the air or a single building would not suffice to make the change one that would materially affect external appearance.
17. The correct meaning of this part of the judgment is that the extent to which an alteration is visible, and from where it is visible, may affect how material the effect of the alteration is.
18. The second test is that both the nature of the building and the nature of the alterations can be relevant to whether the effect is material. The Court considered whether a different test of materiality applied to listed buildings and buildings in conservation areas.
19. Counsel for the plaintiffs submitted that in section 55 'development' was defined in respect of all kinds of buildings and therefore the same test applied irrespective of whether the building in question was listed. The Court held that whether the external appearance was materially affected is likely to depend on both the nature of the building which it was proposed to alter and the nature of the alteration. It was essentially a subjective approach.
20. The third test is that the effect on the external appearance must be judged in relation to the building as a whole, not by reference to a part of the building taken in isolation. The effect had to be more than '*de minimis*'.

*Reasons and conclusions on the appeal on ground (c)*

21. I saw that the appeal building is prominently located at the junction of several roads<sup>3</sup> and that its elevations are visible from a number of normal vantage points. The windows occupy large areas of all four elevations. They are an integral part of the design of the appeal building and contribute to the building's visual character.
22. The parties have supplied photographs of the elevations before and after the replacement of the traditional timber framed windows by the uPVC windows. These assist in assessing the effect of the changes.
23. Deciding whether replacement windows materially affect the external appearance of a building as a whole involves a measure of subjective judgment, but there are a number of factors that distinguish traditional windows from modern replacements. For example, buildings of the age of the appeal property tend to have sliding sash windows with slender box frames set into the reveals. The top sash projects over the bottom

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<sup>2</sup> *Burroughs Day v Bristol City Council* [1996] 1PLR 78; 1 EGLR 167. In this case the development concerned a listed building, which was used as offices by the applicants. They applied for listed building consent to carry out certain works, including a lift installation that necessitated an alteration to the roof. The application was refused and an appeal was dismissed. The applicant applied for a declaration that the works did not constitute development within section 55 of the Act. The High Court granted the declaration.

<sup>3</sup> The converging roads in this locality are Highbury Quadrant /Highbury New Park; Highbury Quadrant/Green Lanes; and Riversdale Road/Green Lanes.

sash. The glazing beads divide the windows into separate panes and thin putty filets seal the panes.

24. In contrast, uPVC windows in older buildings can have a material effect through the bulk of their frames, the arrangement of glazing bars and meeting rails, their setting within the window reveals, and their opening method.
25. Having regard to the extent of these changes, which affect all four main external walls, and the high degree of visibility from many public vantage points, I find, as a matter of fact and degree, that the uPVC windows have brought about a noticeable change to the external appearance of the building as a whole. I conclude that the works constitute development within the meaning of section 55 of the 1990 Act and, accordingly, the appeal on ground (c) fails.

### **The appeal on ground (a)**

26. An appeal on ground (a) is that planning permission should be granted for what is alleged in the notice.

#### *Main issue*

27. The main issue is whether the uPVC windows significantly harm the character and appearance of the appeal building and the surrounding area.

#### *Planning policy*

28. No special policies, controls or designations apply to the appeal building or the immediate locality. The development plan policy cited as relevant to the appeal is policy DM2.1 of Islington's Development Management Policies (2013).
29. This policy requires all forms of development to be of high quality and make a positive contribution to the local character and distinctiveness of an area, based upon an understanding and evaluation of its defining characteristics.

#### *Reasons and conclusions on the appeal on ground (a) and the deemed planning application*

30. The appeal building is a particularly conspicuous and imposing element in the street scene. In its heyday, as a busy public house, bedecked with hanging baskets and canopies, it would have been a local landmark. That grandeur has faded, but because of its size and prominent position, the building continues to draw the eye of passers-by and exposes unsympathetic alterations to public scrutiny.
31. The traditional character and appearance of the building are derived mainly from the scale, design, proportions and detailing. The symmetrical arrangement of the windows and individual decorative details give the façade an ordered and refined character and appearance. With such a clearly defined unity of design, changes or additions to the building can be disruptive. Different parts of a building can have varying degrees of sensitivity to changes and with increased height comes greater sensitivity.
32. The photographs of the appeal building appear to show that the main windows were double hung sliding sash windows with horns to the top sash; a design that was typical of period properties.
33. The uPVC windows appear to be top-hung casement windows (they open outwards from the top). This method of opening contrasts with the original windows in the building. The top casements are almost on the same plane as the bottom ones, so they lack the traditional appearance of one sash sliding over the other. Furthermore, the double-glazing of the replacement windows has a different reflective quality from single-glazed timber windows.

34. The agent has drawn attention to uPVC windows in other buildings nearby and contends that these windows, rather than traditional timber windows, are more commonplace in the locality.
35. I accept that the thermal performance of uPVC windows was a factor in the appellant's decision to install them. I accept also that with some modern buildings, windows and frames of uPVC might not appear out of place. But in this period building, in this prominent location, they are unacceptable. They significantly harm the character and appearance of the appeal building and the surrounding area and conflict with the design objectives of the development plan. For these reasons, the appeal on ground (a) fails.

**Overall conclusions**

36. I have taken account of my observations at the site and the written representations made. For the reasons given, the appeal is dismissed, the enforcement notice (as corrected) is upheld and planning permission is refused on the deemed application.

*George Mapson*

INSPECTOR

## Plan A1

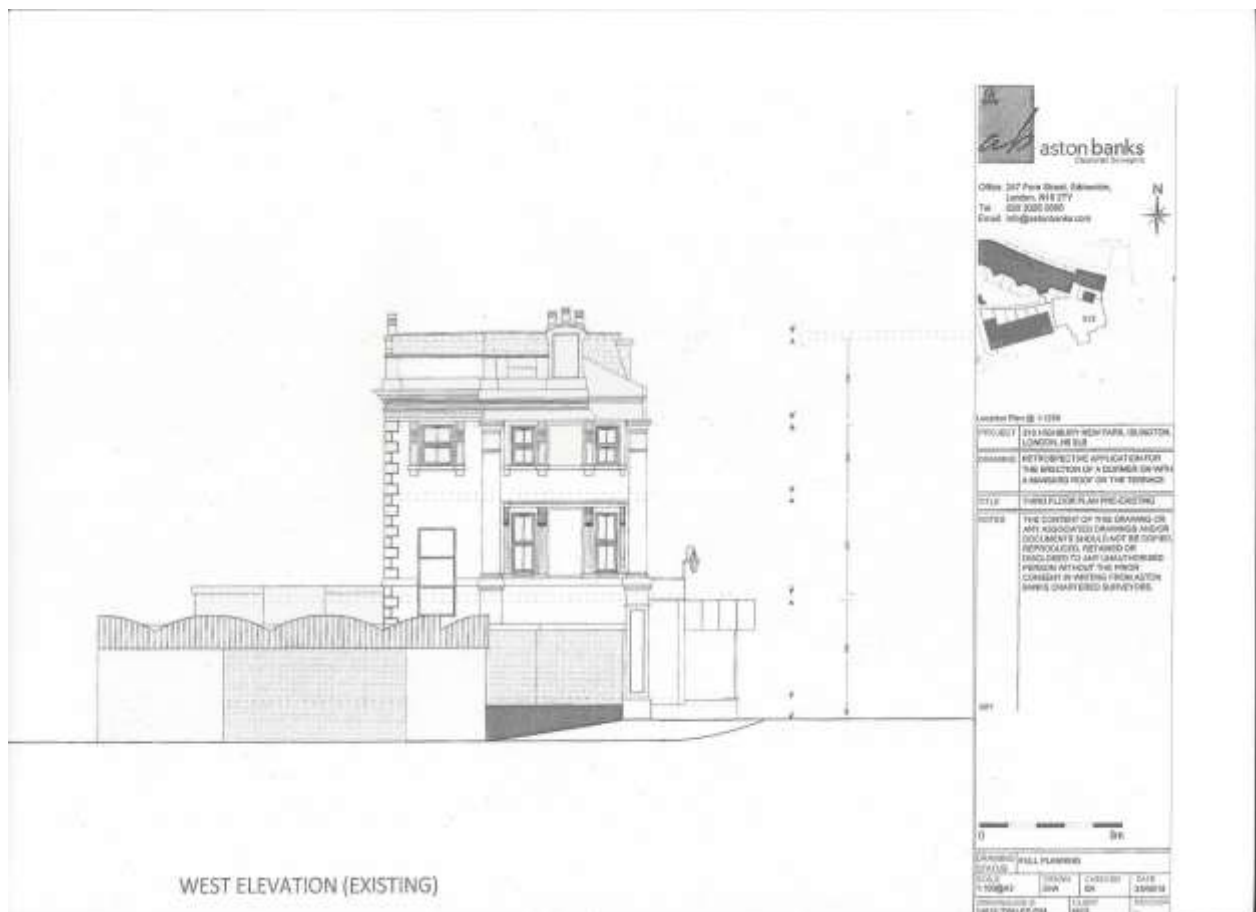
This is Plan A1 (Drg No. 14015-TWH-FP-P04) referred to in my decision dated: 31 March 2017

by **George Mapson DipTP DipLD MRTPI**

**Land at: 313 Highbury New Park, London, N5 2LB**

**Reference: APP/V5570/C/16/3147037**

Scale: NTS



*George Mapson*

INSPECTOR

## Plan A2

This is Plan A2 (Drg No. 14015-TWH-FP-P06) referred to in my decision dated: 31 March 2017

by **George Mapson DipTP DipLD MRTPI**

**Land at: 313 Highbury New Park, London, N5 2LB**

**Reference: APP/V5570/C/16/3147037**

Scale: NTS



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INSPECTOR

## Plan A3

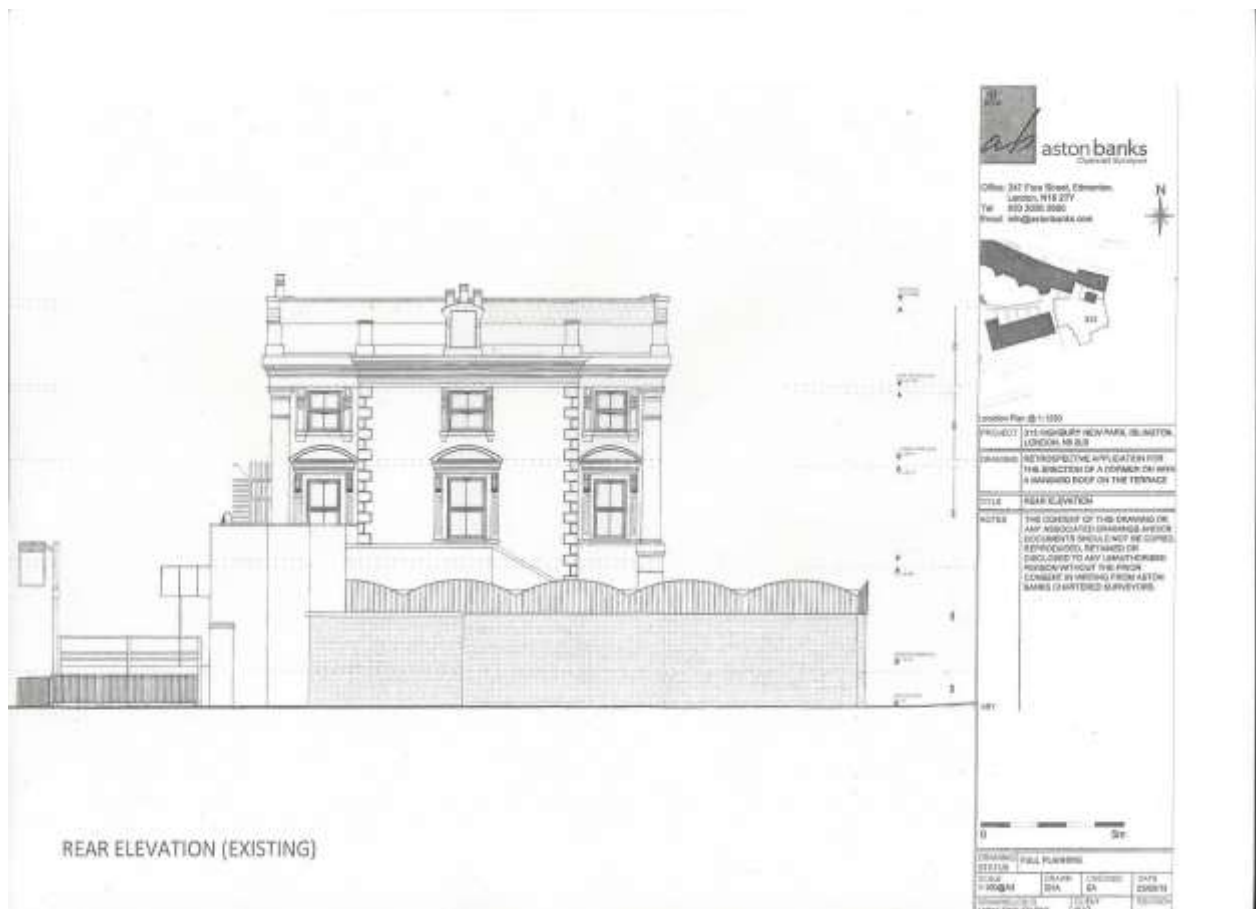
This is Plan A3 (Drg No. 14015-TWH-FP-P07) referred to in my decision dated: 31 March 2017

by **George Mapson DipTP DipLD MRTPI**

**Land at: 313 Highbury New Park, London, N5 2LB**

**Reference: APP/V5570/C/16/3147037**

Scale: NTS



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INSPECTOR

## Plan A4

This is Plan A4 (Drg No. 14015-TWH-FP-P08) referred to in my decision dated: 31 March 2017

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## Plan B1

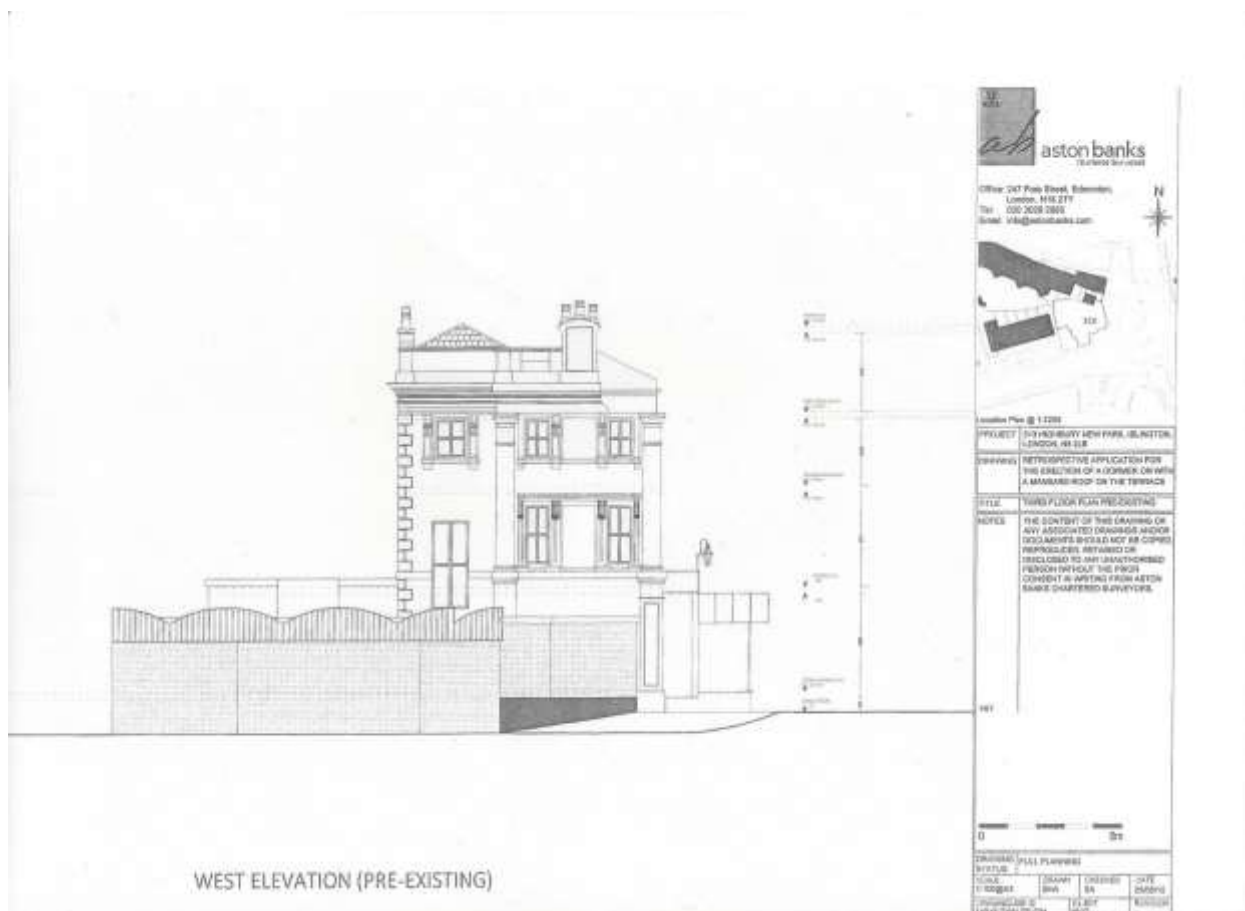
This is Plan B1 (Drg No. 14015-TWH-FP-E04) referred to in my decision dated: 31 March 2017

by **George Mapson DipTP DipLD MRTPI**

**Land at: 313 Highbury New Park, London, N5 2LB**

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Scale: NTS



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## Plan B2

This is Plan B2 (Drg No. 14015-TWH-FP-E06) referred to in my decision dated: 31 March 2017

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Scale: NTS



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INSPECTOR

## Plan B3

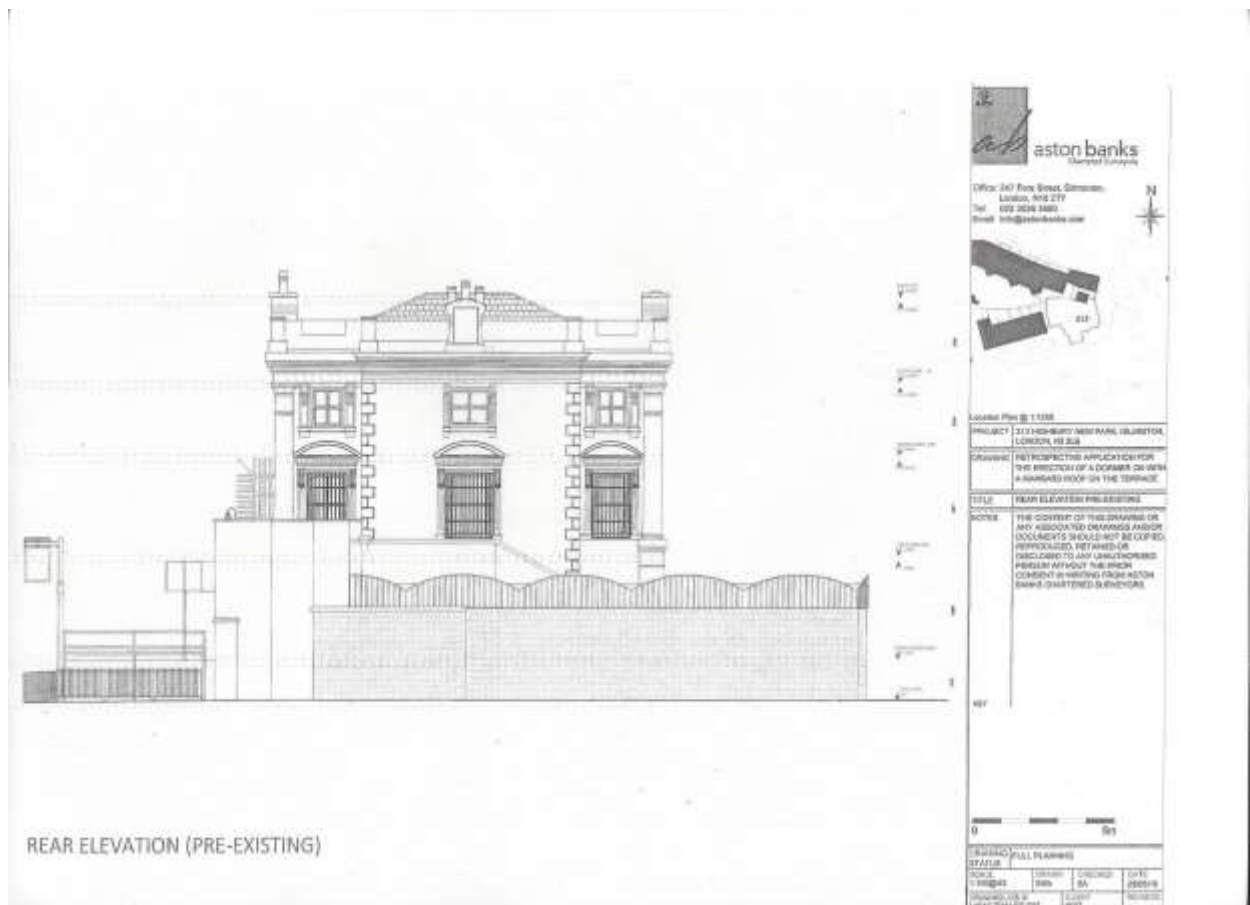
This is Plan B3 (Drg No. 14015-TWH-FP-E07) referred to in my decision dated: 31 March 2017

by **George Mapson DipTP DipLD MRTPI**

**Land at: 313 Highbury New Park, London, N5 2LB**

**Reference: APP/V5570/C/16/3147037**

Scale: NTS



*George Mapson*

INSPECTOR

## Plan B4

This is Plan B4 (Drg No. 14015-TWH-FP-E08) referred to in my decision dated: 31 March 2017

by **George Mapson DipTP DipLD MRTPI**

Land at: **313 Highbury New Park, London, N5 2LB**

Reference: **APP/V5570/C/16/3147037**

Scale: NTS



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