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## Appeal Decision

Site visit made on 11 September 2024

by **Thomas Shields DipURP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 April 2025

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### Appeal Ref: APP/X5990/F/23/3319608

### 74 Park Street, London, W1K 2JX

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991 (“the Act”).
- The appeal is made by Stefano Menconi against a listed building enforcement notice issued by the City of Westminster Council.
- The listed building enforcement notice was issued on 24 February 2023.
- The contravention of listed building control alleged in the notice is, without the benefit of listed building consent and after the date the building was listed, the creation of a sub-basement beneath the property; alterations to the basement, front lightwell and pavement vaults, including the alteration of floor/ground and ceiling levels and the installation of two glass floor lights in the kitchen floor at basement level; the removal of wooden panelling and detailing from the first floor level front room, the erection of a partition wall and the installation of a sliding pocket door and cupboard in the first floor level front room; alterations to the ceilings and cornices in the Property, including the installation of dropped ceilings and recessed lighting at ground, first and second floor levels; alterations to the fireplace hearths in the ground floor front room and first floor front room and the removal of a cast iron grate, fireplace surround, mantel and hearth from the second floor level front room; alterations to the wooden panelled cupboard doors at second floor level; the installation of paving in the rear courtyard of the Property, contrary to Condition 4 of listed building consent granted on the 29th October 2010 (LPA Ref: 10/07318/LBC), which required that the courtyard be paved with natural York stone; and, the installation of plant equipment in the rear courtyard of the property and associated timber slatted screening (“the Unauthorised Works”).
- The requirements of the notice are:
  - 1) Bring the parts of the Property identified in requirements (a) to (t), below, into accordance with the scheme of development approved on the 29th October 2010 by grant of planning permission, referenced 10/07317/FULL, for ‘Excavation under rear part of building and rear courtyard to extend existing lower ground floor; erection of a mansard roof extension on existing terrace at rear first floor level’, and by grant of listed building consent, referenced 10/07318/LBC, for ‘Excavation under rear part of building and rear courtyard to extend existing lower ground floor; erection of a mansard construction on existing terrace at rear first floor level; and internal alterations’ (“the October 2010 Permissions”), as shown in drawings T04, T05.B, T06.A, T06.B, T04.bis and T05.A.bis of 10/07317/FULL and 10/07318/LBC, attached, by undertaking the following:-
    - (a) Completely and permanently infill the unauthorised sub-basement built beneath the Property, outlined red in **Drawing Set A** and shown, in part, in **Photograph Set A**.
    - (b) Remove the unauthorised alterations at basement level (which includes the pavement vaults and front basement lightwell) shown, in part, in **Photograph Set B**, and also shown in the plan drawing, outlined red, in **Drawing Set B**, as well as in plan drawing 711\_GA\_101 of application 22/01904/LBC, which was refused on the 07th October 2022.
    - (c) Remove the two glass floor lights installed in the basement kitchen floor, between the basement and sub-basement, shown, annotated in **Photograph Set B**.
    - (d) Bring the basement into accordance with the October 2010 Permissions, as shown in the plan drawing, outlined blue, in **Drawing Set B**, and shown in approved drawing T04 of the October 2010 Permissions.
    - (e) Remove the unauthorised alterations to the floor and ceiling levels of the basement, which are shown in the section drawing, outlined red, in **Drawing Set B**, and shown in section drawing 711\_GA\_203 of application 22/01904/LBC, which was refused on the 07th October 2022.

- (f) Bring the floor and ceiling levels of the basement into accordance with the floor and ceiling levels shown in the areas outlined blue and annotated in **Drawing Set B**, and also shown in approved drawings TO5.A.bis, T05.B and T06.A of the October 2010 Permissions.
  - (g) Bring the first floor level front room into accordance with the October 2010 Permissions, as shown in approved drawing T04 of 10/07317/FULL and 10/07318/LBC, and also shown, outlined blue, in **Drawing Set C**, by removing the unauthorised partition wall, sliding pocket door and cupboard installed in the first floor level front room shown, outlined red, in **Drawing Set C** and **Photograph Set C**.
  - (h) Reinststate the wooden panelling and detailing removed from the first floor front room, shown, in part, outlined blue and annotated in **Photograph Set C**. If the original wooden panelling and detailing cannot be reinstated, install wooden panelling and detailing to match the size, materials, design, profile and details of the original timber panelling shown in **Photograph Set C** and retained in other parts of the first floor level front room.
  - (i) Bring the rear elevation of the Property into accordance with the October 2010 Permissions, as shown in approved drawing T06.A of 10/07317/FULL and 10/07318/LBC, and also shown, outlined blue, in **Drawing Set D**, by removing from the area outlined red and annotated in **Drawing Set D** all unauthorised plant equipment installed in the courtyard to the rear of the Property, which is shown, outlined red, in **Photograph Set D**.
  - (j) Remove the timber slatted screening installed in the courtyard to the rear elevation of the Property, shown outlined red in **Photograph Set D**.
  - (k) Remove any fixtures and fittings associated with the works cited in Parts (i) and (j) above, and repair any damage to the Property caused by the installation and/or removal of the unauthorised plant equipment and timber slatted screening installed to the rear elevation of the Property, with materials, detailing and finishing to match the original.
  - (l) Remove the paving, shown outlined red in **Drawing Set D**, from the rear courtyard area of the Property and, in accordance with the requirements of Condition 4 of listed building consent granted on the 29th October 2010 (LPA Ref: 10/07318/LBC) pave the courtyard with natural York stone.
  - (m) Remove all the dropped ceilings installed at ground, first and second floor levels, shown, in part, in **Photograph Set E**, restoring the ceilings to their previous heights.
  - (n) Remove the concealed/recessed lighting installed above the dropped ceilings shown, in part, in **Photograph Set E**.
  - (o) Repair and replace any removed or damaged original ceilings using materials and finishing to match that of the original ceilings.
  - (p) Where damaged or removed, repair and/or replace the cornices at ground, first and second floor levels to match the size, materials, design, profile and details of the cornices previously in situ, shown, in part, in **Photograph Set E**.
  - (q) Reinststate the cast iron grate, fireplace surround, mantel and hearth removed from the second floor front room, and shown in **Photograph Set F**. If the original cast iron grate, fireplace surround, mantel and hearth cannot be reinstated, install a replica cast iron grate, fireplace surround, mantel and hearth to match the size, materials, design, profile and details of those shown in **Photograph Set F**.
  - (r) Restore the fireplace hearths in the ground floor front room and first floor front room to their previous appearance and condition, as shown in **Photograph Set F**, by reinstating both hearth surrounds and by replacing the hearth slab at first floor level, using materials which match the hearth surrounds and slab previously in situ in terms of size, materials, design, profile and detail.
  - (s) Remove the unauthorised vented doors installed in the panelled cupboards at second floor level, shown outlined red and annotated in **Photograph Set G**, and reinststate doors to match those previously in situ, as shown, outlined blue, in **Photograph Set G**.
  - (t) Upon completion of the foregoing requirements remove from the Property all waste materials resulting from the required remedial works.
- The period for compliance with the requirements is 12 months.
  - The appeal is made on grounds (e), (h) and (j) within section 39(1) of the Act.

**Summary of Decision: The appeal is dismissed and the listed building enforcement notice is upheld with corrections and variations in the terms set out below in the Formal Decision.**

## Application for Costs

1. An application for costs was made by the Council against the appellant. This is subject of a separate Decision.

## The Listed Building Enforcement Notice

2. The notice with its schedule of requirements and various attached drawings and photographs runs to 74 pages. It is important for a notice to clarify the purposes of its requirements within s38 of the Act so that there is no confusion as to the relevant grounds of appeal upon which an appeal might be made.
3. In this case the contraventions of listed building control relate to the carrying out of a range of works as specified in Section 3 of the notice. They are a combination of having been carried out as wholly unauthorised works and/or being in breach of the conditions (and approved plans) of the listed building consent granted in 2010, Council Ref: 10/07318/LBC. Correspondingly, the requirements at Section 5(1) and (a) to (t) of the notice are intended partly to restore the building to its former state [s38(2)(a)], partly to alleviate the effect of the works that have been carried out [s38(2)(b)], and partly for bringing the building to the state in which it would have been if the terms and conditions of listed building consent 10/07318/LBC had been complied with [s38(2)(c)].
4. In this regard the appellant's arguments made on ground (j) are only applicable to s38(2)(b) requirements. However, there would be no injustice to the Council if I were also to consider them, where appropriate, as also having been made under grounds (g) and (k) relevant to s38(2)(a) and s38(2)(c) respectively.
5. Listed building consent 10/07318/LBC was approved in 2010 in tandem with planning permission Ref: 10/07317/FULL. The requirements of a notice issued under s38 of this Act cannot extend to remedying a breach of planning control under the Town and Country Planning Act 1990. In this regard some of the requirements in Section 5 of the notice are erroneously phrased as also seeking compliance with planning permission Ref: 10/07317/FULL or to both the "October 2010 Permissions". However, since the plans<sup>1</sup> and numbering are identical in both there has been no confusion as to what the notice properly requires pursuant to s38 of the Act. As such, the references to the planning permission in the notice requirements are no more than an administrative error. Therefore, using powers available to me under s41(1) of the Act, I can correct Section 5 of the notice by deleting the planning permission references without injustice to any party.
6. There are other additional drawings (and photographs) attached to the notice referred to in Section 5(1)(a) to (t) which are also not part of the approved plans attached to 10/07318/LBC, however their purpose is simply to help illustrate and clarify the difference between authorised and unauthorised works and graphically assist in illustrating what is required to be done in order to comply with the notice requirements.
7. The Council has referred to a number of its Development Plan policies in the notice and in its statement of case which relate to listed buildings. They reflect the provisions of the Framework<sup>2</sup> and as such are a material consideration I take into account in so far as they seek to interpret and fulfil the requirements of the Act.

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<sup>1</sup> T04, T04.bis, T05.A.bis, T05.B, T06.A, T06.B,

<sup>2</sup> National Planning Policy Framework (2024) updated 2025.

## The Listed Building

8. No. 74 Park Street is a 3 storey and basement terraced house constructed around 1729 and has been listed in Grade II since 1987. The grandeur of the architectural finish of the frontage is described in detail in the official listing description, including construction in brown brick with rusticated stucco at ground floor, left side entrance doorway with stucco pilastered architrave and top semi-circular pediment, sash and French casement windows, use of stucco quoins and window dressings and first floor wrought iron balcony. Also noted is the intact completely panelled interior with bolection chimney pieces and box cornices. All of these physical features contribute to forming part of the building's special architectural and historic interest, or its 'significance' in the language of the Framework.
9. The appellants 'statement of significance'<sup>3</sup> is based on a quite thorough historical analysis of the house and its location, including that it is a rare surviving example of an early 18<sup>th</sup> century house from the early period of the Grosvenor Estate. I agree with that view. However, other features also contribute to its significance. These include the arrangement of internal spaces, with low ceiling height basement rooms reflecting their service function in contrast to the relative prestige of the taller and more spacious rooms at ground and first floor levels. These features are physical evidence of the building's design reflecting the social history of the era in which it was constructed.
10. The works authorised under 10/07318/LBC included a mansard roof extension over the rear first floor level terrace, and excavation under the rear part of the building and rear courtyard to extend the existing basement (which was referred to at the time as the lower ground floor). However, the works carried out subject of the appeal have gone significantly beyond those authorised by 10/07318/LBC.
11. They include excavation and construction of a sub-basement level (beneath the basement level) providing gymnasium, sauna, bathroom, cinema and storage areas; alterations to the basement level, and other internal and external works as set out in more detail at Section 3 of the notice and under the 4<sup>th</sup> bullet of the banner heading of this Decision.

## Grounds of Appeal and Main Issues

12. Ground (e): An appeal on this ground is that listed building consent ought to be granted for the works carried out. Section 16(2) of the Act requires that special regard be paid to the desirability of preserving the special architectural and historic interest of the listed building. As such, the main issue for this ground is the effect of the works on the special architectural and historic interest of the listed building.
13. Ground (g): An appeal on this ground, and the main issue, is whether the notice requirements exceed what is necessary for restoring the building to its condition before the works were carried out.
14. Ground (h): An appeal on this ground, and the main issue, is whether the period specified in the notice as the period within which any step required by the notice is to be taken falls short of what should reasonably be allowed.

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<sup>3</sup> Appellant Statement, page 14

15. Ground (j): An appeal on this ground, and main issue, is whether the steps required to be taken by virtue of s38(2)(b) exceed what is necessary to alleviate the effect of the works executed to the building.
16. Ground (k): An appeal on this ground, and the main issue, is whether the steps required to be taken by virtue of section 38(2)(c) exceed what is necessary to bring the building to the state in which it would have been if the terms and conditions of the listed building consent had been complied with.
17. No appeals are made in respect of the following requirements at Section 5(1) of the notice:
  - (m), (n) and (o) - remove installation of dropped ceilings and recessed lighting at ground, first and second floor levels and related works for repair and replacement;
  - (p) - reinstatement or repair of cornices at ground, first and second floor levels;
  - (r) – restoration/reinstatement of fireplaces at ground floor front room and first floor front room;
  - (t) – removal of all waste materials resulting from the required remedial works.
18. I will deal with the matters subject of the appeal grounds in the same order as set out by the parties in their submissions.

**Sub-basement** - notice requirement 5(1)(a)

19. The sub-basement has created an additional storey below basement level. The appellant's submissions do not provide convincing justification in terms of how this design of the sub-basement took account of the special interest of the listed building. There is no explanation of how its design, including its surprisingly tall ceilings, proportions and layout were considered to enhance or otherwise be sympathetic to the special interest of the listed building, particularly with regard to the historic vertical hierarchy and proportions of rooms. I accept that the modern day use of accommodation within the property is no longer socially hierarchical, but that does not justify adding a disproportionately large extra storey, together with altering floor to ceiling heights in other rooms above, to the extent that important evidence of the historical social ordering and function of rooms becomes indistinct.
20. Notwithstanding the above, I am not persuaded the sub-basement was a necessary requirement for modern living standards, as expressed: *... "repurposed to meet 21st century needs. This ensures the viability of these historic buildings, keeping them in residential use"*. Given its 3 storeys plus basement, and as already extended to the rear, there is no convincing evidence before me as to why the house did not already provide adequate living conditions to meet the needs of existing or future occupiers. As such, I find the provision of the large sub-basement and its facilities (mostly for recreation and entertainment purposes) were unnecessary for the continued and future viability of the building and its use as a residential dwellinghouse.
21. The design and appearance of the sub-basement significantly detracts from the historic character of the listed building (being an early and rare example of a 3 storey modest house, still remarkably intact at the time of listing) due to it adding an inappropriate extra storey. While the appellant states that conditions could be imposed to mitigate impacts none are proposed in respect of the works as carried out. Moreover, conditions could not overcome or adequately mitigate the effect of

the additional storey which I have found to be harmful to the character and special interest of the listed building. The appeal on ground (e) must therefore fail.

22. The appellant also argues that infilling the sub-basement is an excessive remedy and that instead it could be sealed off internally. Additionally, a scheme for access via the permitted basement extension from the rear courtyard is suggested. However, that the sub-basement is not readily visible does not mean there is no harm to the listed building. Sealing the sub-basement off (by any method) would not alleviate the harmful impact I have previously described since it would still be intact and remain in place. With regard to providing an access from the courtyard through the basement, the sub-basement would again still remain intact. Furthermore, such a detailed scheme is not before me and would need to be subject of an application to the Council in the first instance.
23. To conclude, the infilling of the sub-basement does not exceed what is necessary to alleviate the effect of the works executed to the building. The appeal on ground (j) therefore fails.

**Basement** – notice requirements 5(1)(b), (c), (d), (e), (f)

24. The requirements at 5(b) through to (f), taken together, seek to undo the unauthorised works that have been carried out and also to bring the basement to the condition it would have been in if listed building consent 10/07318/LBC had been complied with.
25. The most significant of these unauthorised works are those to the floor and ceiling levels, including the basement. The pre-existing differences in the heights and proportions of rooms and spaces were important visible evidence of how they functioned, thereby providing an ability to experience and understand the hierarchical social functions of the building and the era in which the building was constructed. In contrast the works carried out, in conjunction with the alterations to upper floors, have significantly disrupted and blurred the functional hierarchy that existed between principal habitable rooms and the lower level service rooms. This results in considerable harm to the significance of the listed building.
26. I acknowledge making full use of a listed building is a public benefit and, as with many listed buildings, there may be a requirement for adaptations and alterations to suit contemporary needs. However, there is no convincing evidence before me as to what any contemporary 'needs' were in this case, or how the works carried out were considered and designed as part of a sensitive approach with the intention of preserving the character and special interest of the listed building as far as possible. For all these reasons the appeals on ground (e) must fail.
27. With regard to the appeals on ground (j) they are more appropriately considered under grounds (g) or (k).
28. The glass floor lights in the basement floor over the sub-basement below can only be justified as being needed in the context of the sub-basement, which I have previously found to be harmful and should be infilled. As such, the floor lights by themselves are unnecessary modern alterations which do not preserve the special interest of the listed building. In this regard there is no compelling reasoning provided as to why they should be retained, or why their removal would be an excessive requirement.

29. The notice requirements to carry out works so as to achieve compliance with the approved drawings (condition 1 of listed building consent 10/07318/LBC) would in my view clearly remedy the harm that has occurred, and are limited to the minimum necessary steps in order to achieve such compliance. As such, they are not excessive. The appeals on grounds (g) and (k) therefore fail.

***First floor front room – notice requirements 5(1)(g),(h)***

30. The appellant's case in (g) as argued relates to the modern partition wall with pocket door, no argument is made against removing the cupboard.

31. In respect of (h) the appellant argues that not all of the panelling may have originated in the 18<sup>th</sup> century. However, beyond this assertion there is no detailed evidence before me as to demonstrate which areas of panelling may not be original. Moreover, requirement (h) to reinstate the panelling and detailing relates to all panelling that was present since listing in 1987.

32. I acknowledge that the modern partition wall with pocket door has very likely reinstated a historical separation of the two rooms, and the Council do not argue otherwise. In this regard I find the principle of such a separating wall acceptable in term of preserving the special interest and character of the listed building.

33. However, its insertion appears to have resulted in the removal of some of the original panelling (as existed at the date of listing) and corncicing. In addition, the partition wall connects at both sides to where panelling is required to be reinstated or replaced as shown on Drawing Set C and Photographs Set C attached to the notice. Consequently, in the absence of a detailed scheme including detailed drawings of the partition wall (as existing or as maybe revised) and how it would connect to the replacement panelling and corncicing at both sides, I find that listed building consent for the partition wall and pocket door should be withheld.

34. The appeals on ground (e) therefore fail.

***Rear elevation - plant equipment – notice requirement 5(1)(i), (j), (k),***

35. The cooling/heating plant equipment enclosed by timber slatted screening is a permanent fixture and an alteration to the listed building.

36. The equipment is positioned to the rear wall of the building and runs vertically between ground and first floor. While the location is fairly discreet, the equipment and screening are of considerable size and prominence and have a dominating effect to the rear aspect of the listed building and the small courtyard, harmful to its character and appearance. I do not know whether the equipment can be reconfigured to reduce overall height. Additionally, there is no evidence before me to demonstrate there are no alternative equipment designs which would have no or less harmful impact than that installed. Consequently, I find that listed building consent should be withheld. Any revised scheme would first need to be the subject of an application to the Council. For these reasons the appeal on ground (e) fails.

37. Given the ground (e) appeal does not succeed the requirement to remove the equipment and screening does not exceed what is necessary to restore the building to its former condition, or what is necessary to secure compliance with the terms and conditions of listed building consent 10/07318/LBC. No lesser steps have been proposed by the appellant. Hence the appeal on ground (g) and/or ground (k) fail.

***Rear courtyard – paving - notice requirement (l)***

38. The paving covers most of the rear yard and abuts and joins at ground level the rear elevations of the building, against which it is seen. As such, contrary to the appellant's view, it is an alteration to the listed building affecting its character and hence listed building consent is required. Had an appeal on ground (c) been made that there was no contravention it would have failed for this reason.
39. The appellant argues there is nothing in the material used to suggest it is inappropriate. However, it is for the appellant to make his case and justify why the material used is appropriate. In this regard no details of the particular material used are before me and no justification provided as to why it was appropriate. The appeal on ground (e) fails.
40. The requirement to replace the installed paving with natural York stone would achieve compliance with condition 4 of listed building consent 10/07318/LBC, and there is no lesser step that would do so. Hence the appeal on ground (k) fails.

***Second floor front room – fireplace – notice requirement (q)***

41. The appellants argument here is that there is no contravention of listed building control because the removal of the cast iron grate, fireplace surround, mantel and hearth were already authorised by listed building consent 10/03242/LBC, referring to the existing and proposed drawings of that consent attached to the notice. However, I can see no such removal shown in those drawings and there is no other evidence to suggest otherwise. Consequently, had an appeal been made on ground (c) that there was no contravention it would have failed.

***Second floor level – vented cupboard doors – notice requirement (s)***

42. The appellant disputes whether listed building consent is required, which is an implied appeal on ground (c).
43. Although not identical, the cupboard doors that have been installed are very similar in material, dimensions, profile and finish to the doors they have replaced. The main difference is that the uppermost part of the new doors are vented in a slightly raised section comprising 4 horizontal openings. In my view this very minimal difference in appearance and effect is such that the new doors do not affect the character of the building as one of special architectural or historic interest. The appeal on ground (c) therefore succeeds. I will vary the notice by removing the reference to the cupboard doors in Section 3, and deleting requirement 5(1)(s).
44. Given these circumstances there is no requirement for me to consider the appeal on ground (e).

***Ground (h)***

45. The period of time specified in the notice for compliance with all the requirements is 12 months. The appellant seeks a period of 24 months.
46. I accept the property will probably require vacating for at least some of the time that remedial works are undertaken, and that separate authorisations may be required for infilling the sub-basement. Additionally, the various remedial works required on different floors will likely need to be carefully sequenced and coordinated (project managed) to minimise risk of works on one storey interfering or impeding those on

others. Scheduling of different specialist contractors with their own availability may itself lead to delays in carrying out particular works.

47. However, I am also mindful that the notice should be complied with as soon as reasonably possible. In this context 24 months seems excessive and there is no convincing evidence before me to suggest such a long period of time is justified.
48. On balance, and in the light of all the circumstances, I consider that 16 months would be more reasonable. I will therefore vary the notice accordingly.

### **Overall Conclusion**

49. For the reasons I have set out previously the appeals on ground (e) have failed. In this regard all of the unauthorised works subject of the notice (as corrected and varied) have resulted in harm to the special interest (or significance) of the listed building. Individually and cumulatively the harm, although serious, is less than substantial in terms of paragraph 215 of the Framework.
50. In this regard the property has always been in use as a dwellinghouse and is currently occupied, hence its optimum viable use is already established. Furthermore, the harms I have described, individually and cumulatively, are not outweighed by the very limited public benefits suggested by the appellant.

### **FORMAL DECISION**

51. It is directed that the listed building enforcement notice be corrected by:
- in Section 5 deleting all of 5(1) and substituting instead the following words: “Bring the parts of the building identified in requirements (a) to (t) below into accordance with listed building consent Ref: 10/07318/LBC, for ‘Excavation under rear part of building and rear courtyard to extend existing lower ground floor; erection of a mansard construction on existing terrace at rear first floor level; and internal alterations’ as shown in drawings T04, T05.B, T06.A, T06.B, T04.bis and T05.A.bis of 10/07318/LBC, attached, by undertaking the following:”
  - in Section 5(1) (d), (f), (g), (i) delete the words “October 2010 Permissions” wherever they appear and substitute instead the words “listed building consent 10/07318/LBC”.
  - in Section 5(1) (g) and (i) delete ...“10/07317/FULL and”..
52. It is directed that the notice be varied by:
- in Section 3 deleting the words “alterations to the wooden panelled cupboard doors at second floor level;”
  - in Section 5 deleting all of requirement (s); and
  - in Section 5 deleting “TWELVE MONTHS” and substituting “16 MONTHS”.
53. Subject to the corrections and variations the appeal is dismissed and the listed building enforcement notice is upheld. Listed building consent is refused for the retention of the works carried out in contravention of section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended).

*Thomas Shields* INSPECTOR