

ACGRA and AGSGA Steering Group
c/o Alan Lester
Flat One
74 Cornwall Gardens
London SW7 4BA

31 May 2026

Mr Martin Lomas
Strategic Developments Team Leader Planning and Place
Royal Borough of Kensington and Chelsea Town Hall
Hornton Street
London W8 7NX

By email to: martin.lomas@rbkc.gov.uk

Dear Mr Lomas

Re: Objection to Application GS/26/02009 under Section 4 of the London Squares Preservation Act 1931 — Land Exchange at Ashburn Gardens, 97–109 Cromwell Road; and Related Applications GS/26/02008 and PP/26/00066

We write on behalf of the Ashburn Courtfield Gardens Residents Association (ACGRA) and the Ashburn Gardens Square Garden Association (AGSGA) and the Steering Group chaired by ACGRA and AGSGA representing other garden committees and residents associations in South Kensington, the Kensington Society and a cross-section of local businesses in the area around Ashburn Gardens. Our objection is directed principally at application GS/26/02009, the s.4 land exchange application. However, as all three applications are interlinked, our objection extends to all three applications for the reasons set out below.

Whilst we welcome the principle of improving the garden through landscaping proposals, we are unable to support the land swap as currently proposed because, in our considered view, the substitute land does not meet the statutory test in s.4(1) of the London Squares Preservation Act 1931 ("**the 1931 Act**").

The Statutory Test

Section 4(1) of the 1931 Act provides that an owner who desires to rearrange property may offer to exchange other land for the protected square or part thereof, and the Council may by order declare that the provisions of the Act shall cease to apply to that part of the protected square, provided the owner secures to the Council's satisfaction the setting apart and laying out of other land which, "*having regard to its situation, extent and amenities and the time at which it will be so set apart and laid out will in the opinion of the Council be a sufficient substitute for the protected square or part thereof.*"

There is no guidance or legal authority on the construction or scope of s.4 and the only other known instance of a s.4 exchange being entered into was on this very site, by this Council, in 1971. That exchange was seriously flawed and resulted in a garden that was profoundly compromised. It is therefore essential that the Council does not repeat the mistakes of 1971. The breadth of the Council's discretion under s.4 means that the Council must exercise its own judgment rigorously and look beyond a simple comparison of area measured in square metres.

The Applicant's Approach

The Applicant's advisers, Broadfield, have set out in their covering letter which accompanies their application why they consider that the proposed swap constitutes a "*sufficient substitute.*" Their approach focuses primarily on measurement in square metres, noting that the existing designated garden area of approximately 2,680 square metres would be replaced by a proposed designated garden area of approximately 2,710 square metres. However, a pure measurement of the land given up and substituted is a crude and incorrect method of applying the test in s.4. Instead, the Act requires the Council to have regard to the substitute land's situation, extent, and amenities, not merely its size. We address each of these in turn.

The Applicant's proposal does not meet the test in Section 4 of the 1931 Act

Objection on the Grounds of Situation

The criterion of "*situation*" requires the Council to assess the geographical placement, accessibility, and local context of the replacement land compared to the land being given up.

The Northern Strip Along Cromwell Road

The principal area to be added to the garden under the Applicant's proposals is the strip of reclaimed pavement alongside the A4 Cromwell Road on the north of the site. This area sits directly adjacent to one of London's busiest and most polluted roads. Users of this strip would be exposed to very high levels of traffic noise, exhaust fumes, dust, and vibration throughout the day. The area is overshadowed for much of the day by the massive hotel building, receiving only between one and four hours of sunlight for most of the year, increasing somewhat in the height of summer. It is subject to wind tunnel effects created by the building and surrounding structures. Privacy is minimal, as users would be overlooked by passing traffic and the hotel's newly created terrace.

The conditions on this northern strip are fundamentally hostile to the purposes envisaged by the 1931 Act, which protects the garden for use as an ornamental garden, pleasure ground, or ground for play, rest, or recreation. A space defined by traffic noise, air pollution, overshadowing, wind, and a lack of privacy cannot realistically serve any of these authorised purposes to the standard required to constitute a "*sufficient substitute*" for the land being given up.

The Western Triangular Piece

The small triangular piece of land on the west of the site, situated next to an undercroft, is also offered as part of the substitute land. This area is very small and is dominated by concrete, tarmac, and hard surfaces on all sides. It does not have the character, scale, or environmental quality to function as a genuine garden in any meaningful sense. Its situation, hemmed in by built structures with limited sunlight and poor growing conditions, makes it unsuitable for use as an ornamental garden or pleasure ground.

Fragmentation

The Applicant's proposal would result in a garden that is not a unified, contiguous whole, but rather a collection of separate patches in the north, west, and south of the site, linked by a path or suspended walkway. Linking three disconnected patches with a walkway does not convert them into a single unified garden. It produces what is, in substance, a series of narrow, awkwardly

shaped perimeter strips and disconnected pockets of land rather than a single coherent space capable of supporting community gatherings, quiet recreation, or genuine horticultural activity. This fragmentation is a fundamental deficiency of situation and should weigh heavily against the application.

Objection on the Grounds of Extent

The criterion of "*extent*" requires the Council to consider the physical size, shape, and overall spatial usability of the replacement land, not merely the number of square metres proposed.

Net Reduction in Usable Space

Much of the substitute land is, as we have described, functionally unusable as genuine garden. When the northern strip and the western triangle are properly assessed for their actual utility as garden space - taking into account overshadowing, pollution, wind, noise, and fragmentation - the effective increase is illusory. The areas to be removed from the garden are in the southern part of the site, which is the area of highest quality and greatest utility for residents.

Shape and Configuration

The substitute land is not a single, well-proportioned parcel. The northern strip is long and narrow, bounded by the hotel building on one side and the A4 on the other. The western triangle is small and irregular. These shapes do not lend themselves to functional garden use, whether for ornamental planting, recreation, or quiet enjoyment. Consideration needs to be given to factors such as facility of use, integrity of space, accessibility, and freedom from interference, all of which are directly relevant to the statutory test.

Objection on the Grounds of Amenities

The criterion of "*amenities*" requires the Council to assess the environmental, recreational, ecological, and broader qualitative value of the substitute land.

Environmental Quality

As set out above, the northern strip is adjacent to the A4 Cromwell Road and is therefore subject to serious noise, air pollution, and dust. The conditions are unsuitable for many types of plants.

These environmental conditions significantly diminish the amenity value of this land compared to the southern garden areas that will be removed from the protected designation.

Soil Depth and Growing Conditions

The substitute land in the north of the site sits above the hotel's basement car park and underground infrastructure. Restricted soil depth above a concrete basement slab limits the growth of large trees and impedes proper natural water drainage. This is a structural constraint that no amount of landscaping can fully overcome. The existing mature trees on the perimeter of the site are acknowledged by the Applicant to be of high quality and are to be retained, but the ability to plant comparable trees in the substitute areas is severely constrained.

Loss of Quiet Enjoyment

The 1931 Act protects garden squares for use as ornamental gardens, pleasure grounds, or grounds for play, rest, or recreation. The Applicant's Design and Access Statement envisages the garden as an amenity area for the hotel, with direct access from the hotel building, and describes the gardens as a "*public and semi-private garden square*" and a "*local green attraction.*" The Applicant's proposals for the garden's boundary and access arrangements contemplate "*unlimited, but controlled public access*" and areas that "*can be locked at night.*" While we have no objection to public access to appropriate parts of the site, the absence of any mechanism to protect the garden from being subsumed into the business of the hotel is a matter of grave concern.

Without proper safeguards, the garden will become an extension of the hotel's operations rather than a space for quiet residential enjoyment. The absorption of protected garden into a commercial operation is fundamentally at odds with the purposes of the 1931 Act which are plainly not commercial in nature. The installation of ground-floor doors providing direct access from the hotel foyer, which the Applicant may seek to introduce in the future, would likely see hotel guests treating the garden as a hotel terrace in fine weather. This prospect diminishes the amenity value of the substitute land and should be taken into account in assessing whether the swap constitutes a "*sufficient substitute.*"

Absence of Management and Protection Mechanisms

The s.4 application deals only with an exchange of land. By its nature, it does not address the wider questions of how the garden will operate, who will manage it, and how it will be financed. The Applicant has offered no mechanism to ensure that the substitute garden is maintained to the standard of a genuine residential garden or protected from future encroachment. This is particularly significant given the history of this site, where successive landowners have progressively encroached upon the protected garden with little or no enforcement action by the Council.

Conclusion on the Section 4 Test

For all of the foregoing reasons, we submit that the substitute land proposed by the Applicant does not constitute a "*sufficient substitute*" for the currently protected garden, having regard to its situation, extent, and amenities within the meaning of s.4(1) of the 1931 Act. The northern strip and western triangle are of significantly lower quality than the areas of garden that will be released, and their inclusion cannot be treated as equivalent simply because the total area in square metres is marginally larger. The fragmented configuration of the resulting garden, the hostile environmental conditions of the northern strip, the restricted growing conditions above underground structures, and the complete absence of any protective management mechanism all point firmly to the conclusion that the Council should refuse this application.

The Alternative Proposal

We recognise that the Council can only determine the application that is before it, and we do not ask the Council to determine an application that has not been made. However, we wish to place on record that we have been engaging with the landowner and the Council for several years with a view to achieving a better outcome for all concerned, and we have developed an alternative proposal (which you and the Developer have already seen but can be found in Appendix 1 of this letter for ease of reference) which we believe represents a workable compromise that would genuinely satisfy the statutory test and which we could therefore support.

In 2022, architect Philip Gumuchdjian prepared detailed architectural drawings demonstrating how a unified garden of 2,690 square metres could be restored in the southern portion of the site by relocating the hotel's vehicular entrance and drop-off area from the south-east corner, where it

currently sits, to the north-east corner facing Cromwell Road. This would free up the southern portion of the site to accommodate a single, contiguous garden of the full area currently protected under the Act. The land in the north of the site would then become available as a hotel development site and for hotel use.

These proposals were supplied to Propco and to RBKC in December 2022, together with a copy of the 1971 Deed and supporting drawings. The proposal was presented in a collaborative spirit, and we invited Propco's participation in commissioning a measured survey to establish the precise current situation on the ground. Sadly, Propco rejected these proposals.

Our current alternative adapts to the reality that the hotel building will remain — envisages dividing the site's open space into two areas, which we refer to as "Garden A" and "Garden B."

Garden A would comprise the garden in the southern portion of the site, where much of the original Victorian garden once sat and where approximately half of it remains in the south-west corner. Garden A would be restored as a unified, high-quality, contiguous garden for the use of residents, set apart from the hotel, and placed under the management and control of a residents' garden committee. This is the area that receives the best sunlight — six or more hours for much of the year, and nine or more hours in summer. It is the area most capable of serving the purposes of the 1931 Act.

Garden B would comprise the remaining open areas offered by the landowner, namely the strip of land running parallel to Cromwell Road in the north of the site and the small triangular piece in the west. Garden B would remain under the control and management of the landowner and hotel operator and would be made publicly accessible, as it was before the site was closed for refurbishment in 2023. The rules for Garden B could be relaxed to permit uses such as dog walking and a children's play area.

Garden A would be properly restored and protected as a garden under the 1931 Act, with iron railings, gated key access for residents, and management by a residents' garden committee in the manner of nearly all similar communal gardens in South Kensington. Garden B would serve a different but complementary function as a more informal public open space.

We believe that this alternative would deliver a genuine "*sufficient substitute*" for the currently protected garden and would be a better outcome for the landowner, the hotel operator, the residents, and the wider community. It would ensure that the southern garden, which is by far the most suitable for genuine garden use, is properly protected and maintained for generations to come. It would also give the landowner greater flexibility in the management and use of the open spaces in the north and west of the site, which are better suited to the more varied uses associated with a hotel.

We therefore invite the Applicant, in the event that this application is refused, to consider submitting a fresh or amended application incorporating the Garden A and Garden B approach. We remain, as we always have been, fully ready and committed to entering into constructive discussions with the Applicant and the Council to devise a solution that works for both the landowner and the local community.

Proposal for a Section 9 Agreement

Upon the submission of this new proposal, we would urge both the Council and the Applicant to exercise the discretion available to them under s.9 of the 1931 Act to enter into an agreement securing appropriate management and protection arrangements for the garden.

Section 9(1) of the 1931 Act provides that the Council on the one hand, and the owner of any protected square or any person interested therein (i.e., a residents' association) on the other hand, may enter into and carry out agreements with reference to any matter which may be the subject of an order made by the Council under any provisions of the Act, and matters incidental thereto. Section 9(2) specifically provides that such an agreement may apply to the use of part of a protected square for ways for access to buildings erected on any other part thereof or to buildings surrounding or near to a protected square.

We would seek an agreement that secures the following outcomes. First, the garden (or Garden A, under our alternative proposal) should be managed and controlled as a private residential garden, under the management of a residents' garden committee, and not for the purposes of the hotel business. Second, residents and property owners in the surrounding streets should have key access

to the garden, with keys issued by the residents' garden committee in the manner customary for similar communal gardens in the Royal Borough. Third, the garden should be protected by appropriate boundary treatment — ideally railings with gated access — separating it from the hotel building, so that it does not become subsumed into the hotel's operations. Fourth, the agreement should include provisions to prevent future encroachment by the landowner or any hotel operator upon the protected garden, with meaningful accountability to the Council and the residents. Fifth, the landowner should contribute financially to the establishment and ongoing maintenance of the garden committee. We are looking for an endowment from the landowner to maintain the garden in consideration of the material reduction in its size (around 1,000 square metres smaller than the original) and, conversely, the increase in site area no longer set aside for lawful purposes (under the 1931 Act). This is all without prejudice to the whole area of open space comprising 2,690 square metres being protected from overdevelopment.

Conclusion

Our objection to this application and the related applications is made in good faith and with a genuine desire to achieve the best possible outcome for the garden, the residents, and the wider community. We have engaged with the landowner and the Council over several years and have consistently sought to be constructive and flexible. We have advanced detailed alternative proposals with full architect's drawings, which would have gone some way to restoring the protected garden in terms of size and quality.

Unfortunately, the landowner has been very reluctant to engage meaningfully with the local community, both in terms of being open and transparent with its plans for the hotel and the garden, and in terms of responding to our communications. This lack of engagement stands in stark contrast to the spirit of cooperation that the 1931 Act's framework, and section 9 in particular, contemplates.

We remain fully committed to a constructive dialogue and ready to work with both the Applicant and the Council to deliver a better outcome. We believe that the Garden A and Garden B alternative, combined with a s.9 agreement, represents a genuine opportunity for a solution that serves everyone's interests. The landowner secures certainty for its hotel operations, the residents

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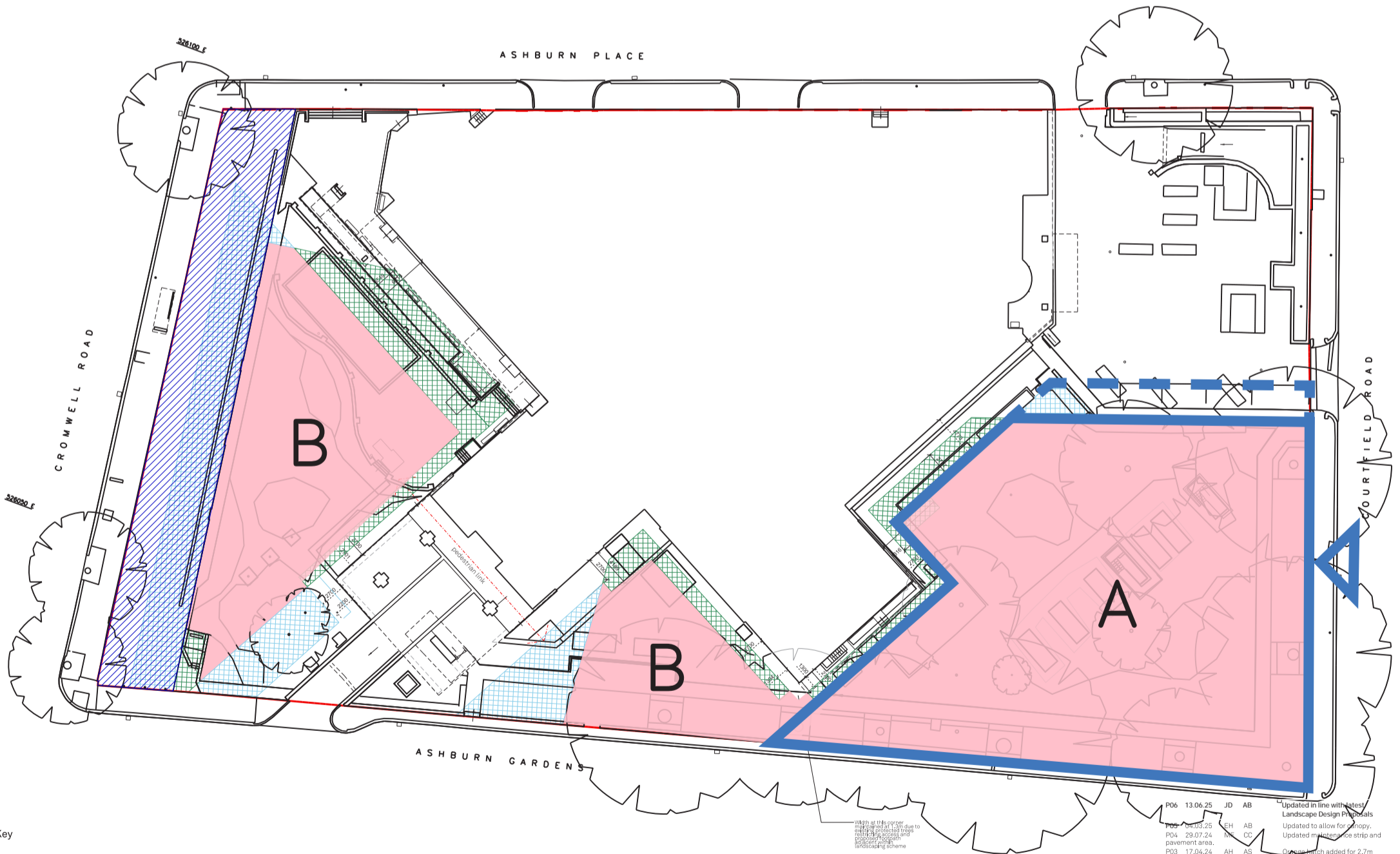
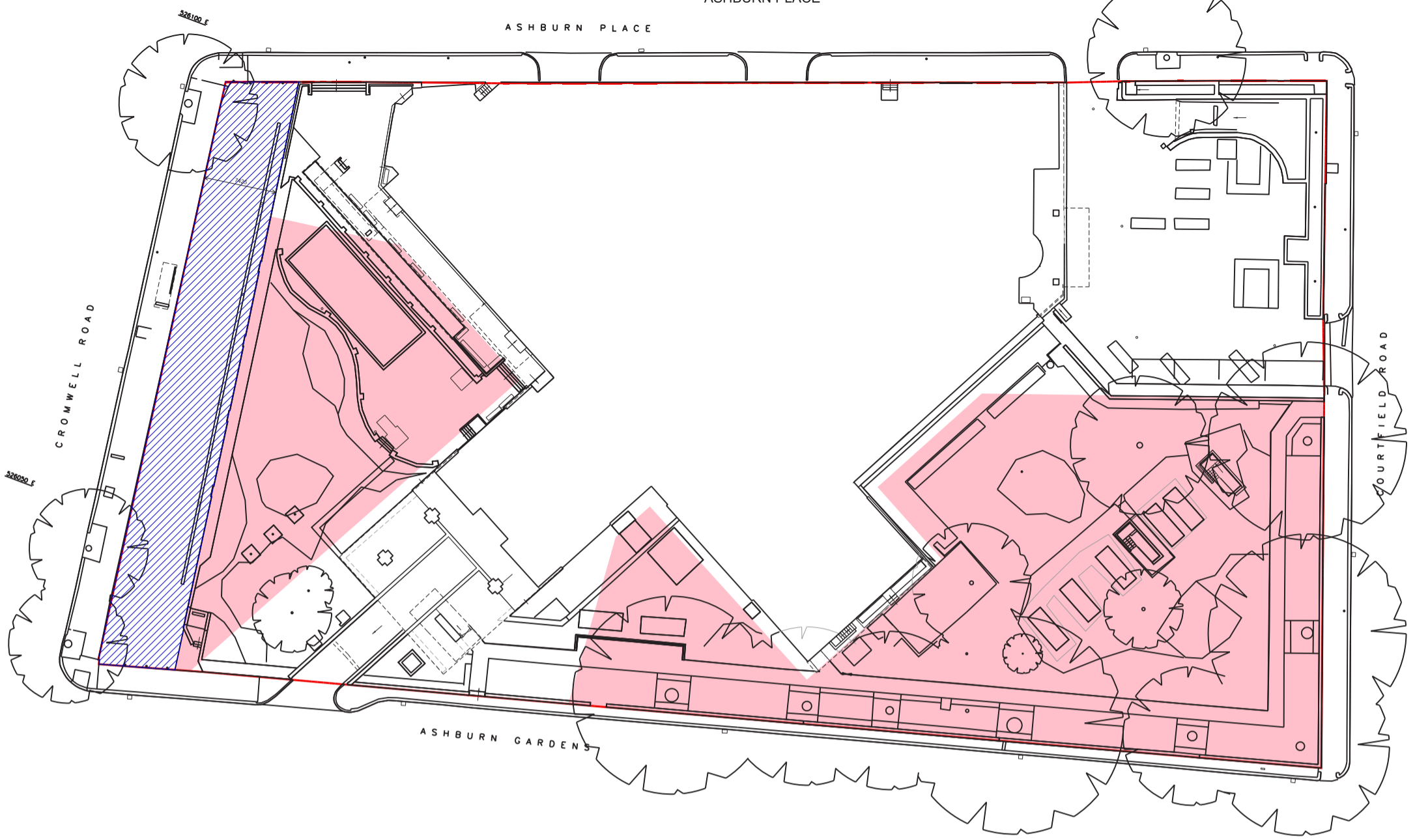
secure a properly protected and managed garden, and the Council fulfils its duty to enforce the provisions of the 1931 Act for the long-term benefit of the community.

Yours sincerely



Alan Lester

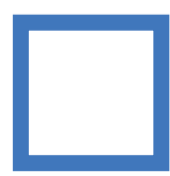
Secretary, Cornwall Gardens Residents Association and the Cornwall Gardens Garden Committee

Copy to: Beau Stanford-Francis, Director of Environment and Neighbourhoods, RBKC
Cheryl Saverus, Principal Planning Officer, RBKC



Key

	Footprint of Building		Area subtracted from existing square
	Area of existing square under the London Preservation Act 1931 as amended 01 February 1971		Area added to existing square
	Area of pavement within site boundary		Total area of proposed garden - 2710 sqm (including pavement area)
			Existing garden area - c.2680 sqm



AGSGA Enclosed Community Garden 1533sqm

Proposed Enclosed Community Garden

AGSGA Drawing No.01 02.06.26

P06	13.06.25	JD	AB	Updated in line with latest Landscape Design Proposals
P05	26.03.25	EH	AB	Updated to allow for canopy
P04	29.07.24	M	CC	Updated to allow for canopy
P03	17.04.24	AH	AS	Updated to allow for canopy
P02	17.04.24	AH	AS	Updated to allow for canopy
P01	15.03.22	AJS	AS	Updated to allow for canopy
Rev:	Date:	By:	Chk By:	Rev Note:

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Project Title	The Forum, South Kensington	Rev	P06
Client	Fragrance Group	Drawn By	AS
Drawing Title	Existing and Proposed Garden Areas	Checked By	-
Drawing No.	P21103-FCH-XX-XX-DR-A-0294		
Status	Issue suitable for Information	Date	April 2023
Job No.	P21-103	Drawing Stage	Scale
		Feasibility	1:250 @ A1

Notes
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