

31 Willoughby Road, London, NW3 1RT

Statement of Case of the Appellant

on behalf of Manuela Eleuteri

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1.0 Introduction

- 1.1 This Statement of Case is provided on behalf of Manuela Eleuteri (the Appellant) in support of an appeal against the decision of London Borough of Camden (the LPA) to refuse planning permission for the excavation of a basement with rear lightwell below the existing house and the reconstruction of a single storey side extension (the Appeal Scheme) at 31 Willoughby Road, London, NW3 1RT (the Appeal Site).
- 1.2 The Council's planning officers, guided by their independent expert advice, recommended that planning permission should be granted for the appeal development, subject to planning conditions and planning obligations. The Appellant is in agreement with the recommended conditions and s106 heads of terms.
- 1.3 The Council's Planning Committee did not follow that recommendation and instead resolved to refuse planning permission. This decision was in direct conflict with the advice that the Committee was provided with from the Council's own officers and their independent advisors.
- 1.4 The Appellant is lodging this appeal because they consider that the LPA made the wrong decision in refusing planning permission for the reasons set out in the Statement of Case. In summary, it is the Appellant's position that:
- the Council's Development Plan allows the construction of basements, subject to meeting certain criteria, which the appeal development would meet without exception.
 - contrary to the Council's reasons for refusal, the appeal development would not result in a risk of surface water flooding and would not result in harm to any heritage assets.
 - that is plainly the case upon an objective assessment of the facts of this case.
- 1.5 Accordingly, planning permission should be granted, subject to planning conditions and a legal agreement being secured.
- 1.6 The Appellant's position is also that the Local Planning Authority has behaved unreasonably by refusing planning permission when the Council planning officers, and their independent advisors had recommended approval.

- 1.7 The Appellant has made an application for a full award of their costs in preparing and lodging this appeal as a consequence.

2.0 The appeal site and the surrounding area

The appeal site and the surrounding area

- 2.1 The appeal site is located at the northern end of Willoughby Road and contains a 3-storey house with a garden to the rear. The house has an existing small dry basement which was historically used as a coal cellar.
- 2.2 There is a garden to the rear of the house separating the lower patio level of the house from No's 38 – 40 Willow Cottages, a terrace of dwellings located to the north of the site that front Willow Road. Owing to a difference in ground levels between Willow Cottages and the appeal site, there is a retaining wall that runs along the northern boundary of the appeal site. Willow Cottages are Grade II listed buildings, and the retaining wall is listed by virtue of its siting within the curtilage of those buildings.

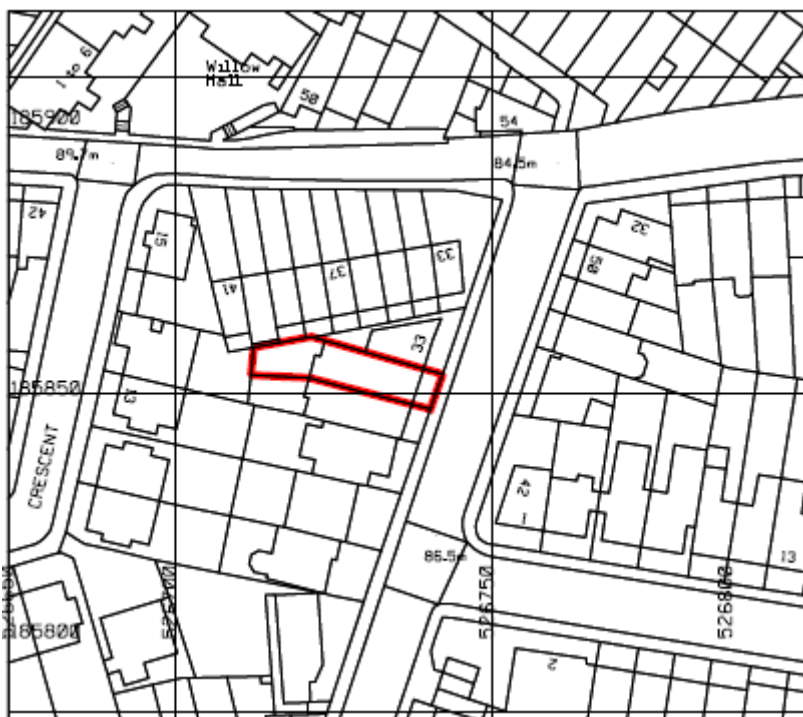


Figure 1: Location of the site

- 2.3 The site is located within the Hampstead Conservation Area but is not specifically identified within the corresponding Conservation Area Appraisal.

Planning history at the appeal site

2.4 The table below shows the relevant planning history at the appeal site:

Application Reference	Proposal	Decision
2016/7146/P	Excavation of basement with rear lightwell below dwellinghouse and demolition and reconstruction of single storey side extension	Withdrawn: 11/04/2018

Figure 2: relevant planning history at the site

2.5 The application above also sought permission for a basement extension but was withdrawn on the advice of the Council's officers to allow for additional information to be provided as part of a Basement Impact Assessment in support of the application. The new application was lodged with that additional information.

3.0 The appeal proposal, the planning application and the reasons for refusal

The appeal proposal

3.1 This appeal application sought full planning permission for:

Excavation of basement with rear light well below existing house, and demolition and reconstruction of single storey side extension.

3.2 The appeal proposal comprises:

- The excavation of a basement level extension to the dwelling with a footprint of circa 90m² to improve the residential accommodation provided by the family home.
- A small (4,7m²) lightwell.
- The reconstruction of an existing side extension to the property.

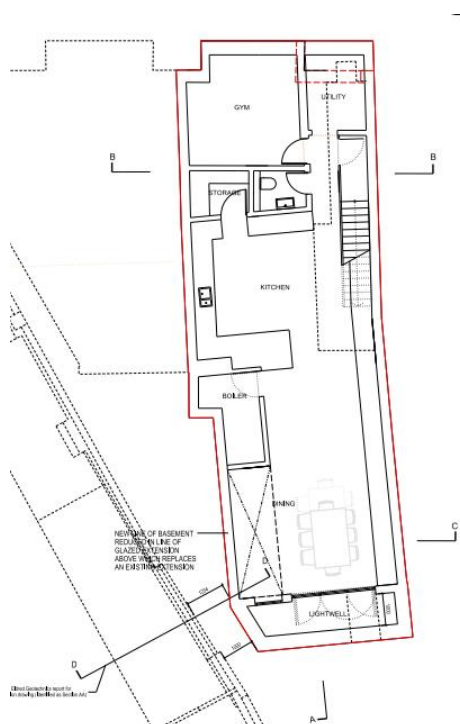


Figure 3: Extract from proposed basement level plan

The planning application

- 3.3 An application for full planning permission was submitted to the Local Planning Authority on 24 February 2020 and validated by the LPA on 24 March 2020. The description of the development as described by the Local Planning Authority was:

'Excavation of basement with rear lightwell below dwellinghouse (Class C3), demolition and reconstruction of single storey side extension.'

The Council's process for determining basement applications

- 3.4 Basement extensions are a common means of providing additional living accommodation, particularly in urban areas where plot sizes can be smaller than in less developed areas. They can, however, raise concern amongst nearby residents of such proposals, and given the engineering principles involved, can raise relatively complex matters for consideration when compared with other forms of residential development proposals.
- 3.5 For those reasons, London Borough of Camden has a system in place where it instructs independent, expert engineers to audit Basement Impact Assessments submitted alongside planning applications and provide impartial advice to the Council on whether a BIA complies with its planning policies, and so should be granted planning permission.
- 3.6 That process was carried out as part of the appeal application and the Council instructed a firm called Campbell Reith (CR), a highly respected and independent engineering practice to undertake and audit.

Engagement with the Local Planning Authority

- 3.7 The Appellant's first dialogue with the LPA in connection with these proposals was in 2016, where an application (2016/7146/P) was submitted for a similar form of development to the appeal scheme. Under advice from CR, the Council informed the Appellant that further information was required to support the Basement Impact Assessment submitted alongside the application. The Applicant followed the suggestion of the Local Planning Authority and withdrew that application in 2018 to allow for those updates to be made.

- 3.8 The new application was submitted in February 2020, so three years before it was determined. That is clearly a very substantial amount of time for a planning application to be with a Local Planning Authority. The Appellant does not criticise the LPA for that because, whilst there were some long delays during the process, the time was generally used as part of positive and constructive dialogue with planning officers and their expert independent advisors to reach consensus on technical matters.
- 3.9 The planning application was, as basement proposals often are, locally contentious, and the Appellant was in the unusual position of being asked by the Council to respond in detail (as part of the BIA) to criticisms being raised by third parties (some of whom instructed consultants to act on their behalf), despite that the Council and its expert independent advisors were satisfied that the scheme was acceptable. The Appellant was prepared to do that so as to assist officers in progressing the application.
- 3.10 The details of the basement were revised during the application process to make it smaller and set it further away from the retaining wall along the boundary with Willow Cottages. That is not because the Appellant was asked to so by planning officers, who had already reached the professional conclusion that the scheme as originally submitted was acceptable but because the Appellant was unilaterally interested in seeking to appease the concerns of some of their neighbours, even though there was no legitimate technical foundation for them to do so.
- 3.11 Campbell Reith, as independent, expert advisors to the Council prepared a report (reference: 13398-16 revision F1 dated June 2021) (Appendix 2) that concluded that subject to various safeguards to be secured through conditions and planning obligations, the development proposals would meet the Council's policy requirements (including with regard drainage and protecting the neighbouring listed structures).
- 3.12 That advice was reflected in the Planning Officer's Report to Committee in September 2022 (Appendix 3), that recommended the approval of the application, and explained in significant detail how the development was acceptable and met the Council's expectations.
- 3.13 This positive recommendation was the result of genuine and positive engagement between the Appellant and the Council and their advisors over a prolonged period of time.

Planning Committee

- 3.14 Notwithstanding the positive recommendation and clear advice being provided to Committee Members by both planning officers and Campbell Reith (who were in attendance at the meeting), the Committee resolved to refuse the application against that professional advice. The minutes for this meeting (Appendix 4) and a full transcript of the meeting (Appendix 5) clearly demonstrate how each question or concern raised by Members was addressed and explained not to be problematic by the Council's independent expert advisors.
- 3.15 Whilst the Committee resolved that it wanted to refuse the application, it was not unfortunately able to articulate reasons for that decision. Needing more time to consider why it wanted to refuse permission, the actual reasons for refusal were deferred for a later meeting. That is, clearly, quite an extraordinary situation for a Local Planning Authority to arrive at.

The reasons for refusal

- 3.16 The Appellant's engineer (Appendix 7), and the Appellant themselves (Appendix 6) wrote to the Committee to try and specifically further address matters that had been raised at the September meeting. The case was presented back to Planning Committee on 15 December 2022 (Appendix 8) and the application was eventually refused, for the following reasons:
1. *In the absence of adequate surface water drainage mitigation the proposed basement excavation would result in an unacceptable risk to surface water flooding, contrary to policies A5 (Basements) and CC3 (Water and flooding) of London Borough of Camden Local Plan 2017.*
 2. *The proposed basement excavation, by virtue of the extent, depth and proximity to neighbouring listed buildings and the complexity of the construction sequence is considered to result in the potential for harm to Willow Cottages a heritage asset contrary to policies A5 (Basements) and D2 (Heritage) of London Borough of Camden Local Plan 2017 and BA2 of Hampstead Neighbourhood Plan 2018.*

- 3.17 The Minutes of the December Meeting are not available on the Council's website at the time of writing but will be provided to the Inspector when they are published.
- 3.18 The Appellant strongly disagrees with the decision that the Local Authority made, despite the recommendations of the Planning officers and their independent advisors, for the reasons set out in this Statement of Case. Accordingly, they have exercised their right of appeal against that decision.
- 3.19 Further, given all of the expert, independent advice that was provided to decision makers in this case, that they chose to discard it with no legitimate or justifiable reason for doing so represents clearly unreasonable behaviour in the opinion of the Appellant. The reasons for refusal make vague allegations that simply cannot be substantiated by the facts of the case. The advice to Members by their own officers and advisors made it clear that there would be no harm caused by the development to surface water flooding or neighbouring heritage assets – but they chose to refuse the application for those reasons nevertheless.

4.0 The appeal procedure

- 4.1 The Appellant has carefully considered the advice provided at Annexe K of the Planning Inspectorate Procedural Guidance and is of the opinion that the Written Representations Procedure would be the most appropriate means of determining this appeal.
- 4.2 This is because whilst basement proposals can generally be complex, the matters in dispute in this appeal are actually narrow and relate only to surface water drainage and 'potential' (in the terms of the second reason for refusal) harm to heritage assets.
- 4.3 The Inspector will have access to:
- the Appellant's Basement Impact Assessment (Appendix 9) and Supplemental Note (Appendix 10).
 - the Council's independent audit of the Assessment.
 - the planning officer's objective analysis of the proposals in their Committee Report.
 - the minutes of the September Committee Meeting and transcripts of both meetings (December transcript at Appendix 11), to demonstrate the clear professional advice that Members were given.
- 4.4 The Appellant's position is that with this information:
- the planning issues raised can be clearly understood for the appeal documents and a site inspection; and
 - the issues are not complex, and the Inspector is not likely to need to test the evidence by questioning or to clarify matters.
- 4.5 Accordingly, the Appellant would respectfully request that the Written Representation Procedure is utilised for this appeal.

5.0 The Development Plan and other relevant policy and guidance

- 5.1 This section of this Statement of Case provides an overview of the key planning policies and other material considerations relevant to the Proposed Development.

The Development Plan

- 5.2 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires all planning applications to be determined in accordance with the Development Plan unless material considerations indicate otherwise.
- 5.3 The Development Plan for Camden comprises the following:
- a. Camden Local Plan (2017)
 - b. Hampstead Neighbourhood Plan 2018 - 2033
 - c. The London Plan (2021).
- 5.4 The Development Plan policies that the Local Planning Authority alleges the appeal development would conflict with are set out below:

Camden Local Plan (2017)

A5	Basements
CC3	Water and Flooding
D2	Heritage

Hampstead Neighbourhood Plan 2018 - 2033

BA2	Basement Construction Plans

Other Material Considerations

5.5 The following were material to the appeal application, although no conflicts with them have been alleged by the Council in its Decision Notice:

- National Planning Policy Framework (2021)
- National Planning Practice Guidance
- Camden Planning Guidance (CPG) Design
- CPG Home Improvements
- CPG Basements
- CPG Amenity
- CPG Transport
- CPG Developer Contributions
- CPG Trees.

6.0 The Main Issues in this appeal

Matters not in dispute between the parties

- 6.1 Given the circumstances surrounding this application, and that it was recommended for approval, the Appellant has needed to rely on the reasons for refusal and discussions at the two relevant Planning Committee Meetings to understand the Council's case in respect of this appeal.
- 6.2 The development proposal includes the removal and replacement of a single-storey side extension at the site. The Appellant understands that there is no dispute between the main parties as to the acceptability of this element of the appeal scheme.
- 6.3 The Camden Local Plan recognises that '*with a shortage of development land and high land values in the borough, the development of basements is a popular way of gaining additional space in homes*' (para. 107, pg. 2013). The Plan supports basement developments in the borough, subject to compliance with a broad range of requirements that are set out at Policy A5 (Basements) of the Local Plan. The requirements are labelled 'a – u') and we have summarised them, and our understanding of whether they are matters in dispute or not below:

a.	No harm to neighbouring properties.	In dispute, only with regard to physical impacts on Willow Cottages and the retaining wall.
b.	No harm to the structural, ground or water conditions in the area.	In dispute, with regard to surface water only.
c.	No harm to the character and amenity of the area.	Not in dispute.
d.	No harm to the architectural character of the building.	Not in dispute.
e.	No harm to the significance of heritage assets.	In dispute, with regard Willow Cottages.
f.	Should not be more than one storey.	Not in dispute.
g.	Should not be built under an existing basement.	Not in dispute.
h.	Should not exceed 50% of the garden area.	Not in dispute.
i.	Should be less than 1.5 times the footprint of the building.	Not in dispute.
j.	Should not extend into the garden by more than 50% of the host building.	Not in dispute.
k.	Should not extend under more than 50% of the garden.	Not in dispute.
l.	Should be set back from neighbouring property boundaries.	Not in dispute.
m.	Should avoid the loss of garden space or trees.	Not in dispute.

n.	Should not cause harm to neighbouring properties, with a Burland Scale score of no more than 1.	In dispute, with regard Willow Cottages.
o.	Should avoid affecting drainage and run-off.	In dispute, with regard to surface water only.
p.	Should avoid cumulative impacts.	Not in dispute.
q.	Should not cause harm to the amenity of neighbours.	Not in dispute.
r.	Should provide satisfactory landscaping.	Not in dispute.
s.	Should not harm the established character of the area.	Not in dispute.
t.	Should protect important archaeology.	Not in dispute.
u.	Should not cause harm to trees.	Not in dispute.

6.4 Accordingly, our understanding is that the only matters in dispute between the main parties are:

1. whether the effect of the appeal development on surface water would be acceptable.
2. whether the appeal development would have an acceptable relationship with heritage assets.

6.5 The Local Planning Authority has therefore (in addition to Policy A5) identified perceived conflicts with policies CC3 (Water and Drainage) and D2 (heritage) of the Camden Local Plan in its Decision Notice.

6.6 The Council has also identified an alleged conflict with Policy BA2 (Basement Construction Plans) of the Hampstead Neighbourhood Plan. That Policy requires that Basement Construction Plans are prepared and secured where identified as being necessary by a Basement Impact Assessment.

6.7 In this case a Basement Construction Plan would be secured by a s106 planning obligation. That is reflected in the agreement that has been submitted alongside this appeal, and that has been agreed with the Local Planning Authority.

6.8 It is not therefore clear why the Council has identified an alleged conflict with this policy because the appeal scheme would comply with it. The Appellant anticipates that the LPA may withdraw reliance on this policy when preparing its Statement of Case, and the Appellant reserves the right to provide a response if that is not the case.

6.9 In the following sections of this Statement of Case we explain why the Council's concerns in respect of surface water and heritage are unfounded and that there would be no conflict with relevant policies of the Development Plan, or the Development Plan when taken as a whole.

- 6.10 The appeal application was supported by a comprehensive Basement Impact Assessment (version E4, dated October 2020 at Appendix 9) and this was supported by a Supplementary Note (G1808-SN-01-E1, dated March 2021 at Appendix 10) Note. The nature of these documents is that they are highly technical. To avoid providing and repeating extensive technical information provided by the BIA and given that its content and conclusions have been corroborated by the Council's offers and expert advisors, this Statement will rely on relevant key conclusions on the Main Issues.
- 6.11 The Appellant has not seen any reasoned justification for the Council's concerns at this stage. It would of course be highly irregular should the LPA Case take a different approach or reach different conclusions on detailed technical matters than it did in its committee reports (informed by independent expert advice), and the Appellant does not anticipate that they would do so. However, the Appellant reserves the right to describe technical matters in more detail should the Council decide to do so.

Surface water

- 6.12 The Council's reason for refusal alleges that the appeal development would result in an unacceptable risk to surface water flooding because surface water drainage mitigation would be inadequate.
- 6.13 Policy CC3 (Water and Flooding) of the Local Plan states that '*where an assessment of flood risk is required, developments should consider surface water flooding in detail...*'
- 6.14 The BIA submitted in support of the appeal application clearly did consider surface water in significant detail, in line with that policy requirement.
- 6.15 The basement extension would sit directly beneath the existing footprint of the house but for a small lightwell. There would be no material effect on the amount of surface water collected at the site, because the amount of impermeable area at the site would not be materially changing as a consequence of the development.
- 6.16 This conclusion is accepted by Campbell Reith in their independent Audit of the BIA on behalf of the Council, where they say '*the impact of the basement on the flood risk is considered in the BIA and concludes that, as the extent of impermeable areas is remaining unchanged, the proposals do not exacerbate the risk of surface water flooding. This was accepted...*' (para. 4.12, pg. 9).

- 6.17 The Council's planning officer reached the same conclusion, describing that '*in relation to the impact on the surface water run-off...as the extent of impermeable areas is remaining unchanged the proposal would not exacerbate the risk of flooding*' (para. 9.11).
- 6.18 That is clearly the correct position, and it is not at all clear why the Council's opinion as expressed in its Decision Notice is different to that. The reason for refusal criticises the efficacy of mitigation, but no mitigation is required because there would be no impact to mitigate.
- 6.19 The appeal development would, in fact, comply with the requirements of Policy CC3 (Water and Flooding) and would not result in any harm to surface water flooding in the area.

Heritage

- 6.20 The Council's reason for refusal alleges that the appeal development would cause '*potential harm*' to Willow Cottages because of the extent and siting of the proposed basement and because of the '*complexity of the construction sequence*'.
- 6.21 Policy D2 (Heritage) of the Camden Local Plan states that '*the Council will not permit the loss of or substantial harm to a designated heritage asset...unless it can be demonstrated that the substantial harm is necessary to achieve substantial public benefits that outweigh that harm or loss*'. It goes on to set out that '*the Council will not permit development that results in harm that is less than substantial to the significance of a designated heritage asset unless the public benefits of the proposal convincingly outweigh that harm*'.
- 6.22 The first thing to say is that the Council's reason for refusal does not actually allege any degree of harm (substantial or less than substantial, in the terms of Policy D2) to heritage assets, rather it alleges '*potential harm*'. That in itself, is a vague, and unsubstantiated suggestion. Nor does the reason identify what heritage asset would potentially be harmed (i.e., would it be the boundary wall, or the houses, and if so, which houses?).
- 6.23 Regardless, the appeal scheme would not cause harm to neighbouring heritage assets, *potentially* or otherwise. Basements are routinely constructed near to heritage assets, and indeed, to buildings that are themselves heritage assets. Protecting those assets needs to be carefully managed by qualified experts, which is what would happen here.

6.24 At its nearest points, the basement would be between 1.2 and 1m from the listed retaining wall. The BIA submitted in support of the application describes at Section 11.2 that:

- Changes of the groundwater regime by the proposed basement will be insignificant, which means that water pressure upon the retaining walls will not be increased (para. 187).
- Ground pressure against the older wall at 39 and 40 Willow Cottages will not be affected by the basement development (para. 188).
- Ground pressure against the short length of the newer wall which bounds the site will reduced by the presence of the basement (para. 189).
- Construction of the remaining part of the basement will not affect the existing retaining wall bounding No 33 Willoughby Road (para. 190); and
- Execution of the scheme will not decrease the resilience of any of the walls to destabilising forces exerted by the retained soils (para. 191).

6.25 The BIA describes that the construction phase of the works would protect the listed wall from any effects. This is because a Construction Sequence (Appendix 12) has been proposed that would see the wall propped and isolated during construction to mitigate against damage. There would also be extensive monitoring during the construction period to ensure that the wall was protected. Bracing of the wall would be permanently retained thereafter.

6.26 Turning to Willow Cottages themselves (as opposed to the retaining wall), the BIA sets out detailed analysis of potential impacts on their structural stability and concludes that '*the risk of these properties suffering damage which is the consequence of the basement development fall within Category zero-negligible*' (para. 193). Again, Campbell Reith, and the Council's planning officers agreed with this conclusion.

6.27 The detailed design of construction methods would be controlled by a Construction Management Plan (a framework of which was submitted in support of the application) and a very robust Basement Construction Plan (the requirements of which can be found within the legal agreement), both of which would be secured by a s106 agreement, and which would be submitted for approval to the Local Planning Authority. Financial contributions would ensure that the Council was able to seek expert

independent advice on these submissions. If the LPA was not satisfied that the measures set out in the BIA would be satisfactorily provided for, they would not approve the plans, and development would not commence. This is exactly the approach advocated by CR (para. 4.32), and the Appellant agrees with those recommended processes.

- 6.28 Campbell Reith's Audit confirms that '*a construction sequence is described that adequately addresses the queries related to load transfer, temporary works and propping*'.
- 6.29 The BIA Audit says that because of the nature of the construction sequence proposed and the sensitivity of nearby listed structures, a Basement Construction Plan should be prepared prior to construction (para. 4.32). This should provide detailed design of the works that would be undertaken to ensure that the listed structures would be protected, as described in the BIA.
- 6.30 It is not at all clear why following the advice of the planning officers and CR should not be the right thing to do. The protection measures have been agreed as being suitable by all experts, and would be designed in detail, and secured through the legal agreement. These measures would protect the heritage assets from any harm during and after the development had been undertaken.
- 6.31 New development, including basement development can be built safely whilst preserving the significance of nearby heritage assets. Such projects are completed routinely up and down the country. The important thing is that there is a robust strategy in place to protect the assets in question. That is very much the case here, where a sensitive construction sequence has been designed. That has been heavily scrutinised and is agreed by the Council's advisors as being suitable and appropriate. Those measures would be secured, and indeed, closely monitored, through a robust regime secured by s106 agreement.
- 6.32 To suggest that there would be harm (albeit 'potential' harm) to heritage assets as a result of this development is not supported by the facts of this case. The development would comply with Policy D2 (Heritage) of the Local Plan.

Conclusions on the Main Issues

- 6.33 For the reasons we have set out, it is plain that the Local Planning Authority's positions on the Main Issues in this appeal are wholly unjustified and that – contrary to its assertions – the scheme would

comply with all the development plan policies that are referred to in the Council's reasons for refusal and the Development Plan when read as a whole.

6.34 The Council's Committee Report concluded that:

'The proposed development...would comply with the Local Plan policies and Hampstead Neighbourhood Plan policies. The BIA in support of the basement excavation by the applicant, as well as neighbours' objections and the technical letters from third parties, have been considered by Officer and Campbell Reith in their assessment and audit. When applying the statutory duty of preserving the heritage assets and their setting and in line with NPPF requirements, there is no harm identified from the proposed basement excavation. As such, the proposed basement excavation would preserve the significance of listed buildings and their setting and preserve the character and appearance of Hampstead Conservation Area. The proposal complies with the development plan policies (para. 15.1).'

6.35 It is the Appellant's position that the planning officer was correct in reaching that conclusion and that planning permission should have been granted, in line with the Council's planning officer's recommendation.

Third party representation

6.36 A wide range of third-party representations were received by the Local Planning Authority when considering the planning application. In many cases, they did not relate to the reasons that the Council's ultimately refused planning permission. The Council's Committee Report and Appendix 1 (Residents Consultation responses) to the Campbell Review BIA Audit addressed those responses and concluded that they were not justifiable concerns that should prevent planning permission from being granted.

6.37 The Appellant has nothing of substance to add to those responses at this time because they agree with the Planning Officer and CR. Should additional representations be received during the course of this appeal, the Appellant reserves the right to respond to them in detail.

7.0 Other material planning considerations

7.1 For the reasons that we have set out in this Statement of Case, the Appellant strongly contends that the appeal proposal would be entirely consistent with the Development Plan and so planning permission should be granted.

7.2 Without prejudice to the above, the Appellant would also invite the Inspector to consider the following material planning considerations which should weigh in favour of the development:

- The development would help to deliver significant personal benefit to the Appellant through improvements to their family home.
- The development would bring forward benefits to the local economy through employment opportunities.
- The Appellant has genuinely engaged positively with the planning process, accepting and responding to the advice of the Council's officers at every turn for a prolonged period of time. They have also fully addressed all the points made by third party representations made by neighbours of the site (including through their appointed consultants). They, frankly, should have been able to have confidence in the planning system to approve their application having done so.

8.0 Statement of Common Ground

- 8.1 The Appellant will work with the Local Planning Authority to seek to agree a Statement of Common Ground to assist the Inspector.

Planning conditions

- 8.2 The Council's Committee Report set out seven recommended planning conditions that it would have imposed in the event that the application was approved. The Appellant anticipates that the Council would support the imposition of these conditions in the event that the appeal is allowed, and would agree to each of them, including where they require attention prior to the commencement of the development.

Planning obligations and CIL

- 8.3 The Council's Committee Report identified the need for a s106 agreement to secure the following heads of terms:
- Construction Management Plan (CMP) (including a contribution to allow its independent review by the Council and a bond to allow the Council to intervene should the Plan to not be followed).
 - Detailed Basement Construction Plan (BCP), prepared to ensure that surface and ground water and the structural integrity of neighbouring buildings is protected during construction, in line with the measures set out in the submitted BIA).
 - A Highways Contribution.

8.4 The Appellant has agreed with the Local Planning Authority a s106 agreement to secure the following planning obligations and that has been provided in support of this appeal (provided at Appendix 13):

- The submission and approval of a Basement Approval in Principle Application and the payment of a Basement Approval in Principle contribution and a Construction Management Plan Bond.
- The submission and approval of a draft and then a final Construction Management Plan and the payment of a Construction Management Plan Implementation Support Contribution.
- The submission and approval of a Detailed Basement Construction Plan.
- A post-completion review of the implementation of the Basement Construction Plan.

8.5 That agreement is with the Local Planning Authority for completing at the time of writing (although it has been agreed between the parties) and a final copy will be provided to the Inspector as soon as it becomes available.

8.6 The Inspector will note that the obligations in respect of the CMP and BCP are extremely robust and would clearly serve to address the concerns expressed by the Council in its Decision Notice. Indeed, clause 4.4.3 of the agreement states in respect of the Basement Construction Plan that '*the Council will not approve the Detailed Basement Construction Plan unless it demonstrates by way of certification by the suitably qualified engineers from relevant professional body to the Council's reasonable satisfaction that the development can be constructed safely in light of the ground and water conditions and will not cause any structural problems with Neighbouring Properties nor the Development itself*' (our emphasis).

8.7 This clearly demonstrates why the Council's reasons for refusal are inappropriate. The legal agreement requires that Council will only permit the construction of the basement if it is satisfied that the effects of the development on water conditions and neighbouring structures were satisfactory and the Appellant has agreed to that obligation.

9.0 Costs

- 9.1 It is the Appellant's firm position that the Local Planning Authority has acted unreasonably in refusing this planning application, and that wasted and unnecessary expense has been incurred as a consequence of them needing to lodge this appeal.
- 9.2 The Appellant has provided transcripts of the two Committee meetings where the planning application was considered to help demonstrate this unreasonable behaviour. With reference to the transcript for the first meeting (Appendix 5), from page 8 onwards (where the application is opened to debate by Committee Members) the Inspector will see that where a Member of the Committee raised a question or concern it was responded to on each and every occasion in full detail by the Planning Officer (Mr Alex Bushell) and/or Campbell Reith (represented by Ms Liz Brown). This is all in the context of that Campbell Reith are expert engineers instructed by the Council to provide them with advice on technical basement matters.
- 9.3 From Page 22, the Inspector will see that the Committee turns to looking to vote to refuse the planning application in spite of all the advice it had received throughout the meeting. Mr Richard Limbrick, the Head of Planning at the Council says to the Committee:
- 'And just to come in here as well, I think, you know, obviously the motion needs to be really clear why you're refusing it. So, there needs to be a clear reason for that. And obviously conscious of the advice you've received from Liz [Campbell Reith] on it, so you need to be confident in that motion. So, I guess the discussion has primarily been around the safeguards put in place. I'm not sure there's been a massive amount of discussion about any identified heritage harm in it. So, it seems like it's more of a technical basement reason. So, I think, you know, in the absence of much of a discussion around how that translates to any kind of a heritage harm on the assets, I think any motion needs to be clear on what it is about the advice you heard that means you can't rely on it'.*
- 9.4 He is strongly advising the Members that they should have regard to the advice provided by Campbell Reith and that his interpretation of the Member's discussion was that there was no clear allegation of the development causing heritage harm.
- 9.5 On page 23, it can be seen that Counsellor Andrew Parkinson (a Member of the Planning Committee) introduces a proposed reason for refusal relating to surface water flooding, where he says:

- 9.6 *'Well, my concern is that as set out in the report from GCG [a report commissioned by a neighbouring objector to the developer], that the property is in an area with a medium risk of surface water flooding as opposed to a low risk. And that with the reduction in the volume of soil which rainwater can infiltrate into, there's a risk of increased surface water run-off and flooding. So, that's a flood risk point. So, yeah, that's the flooding.'*
- 9.7 That is despite the advice provided by Campbell Reith earlier in the meeting relating to surface water flooding where Members were told:
- 9.8 *'And unfortunately, with the more intense rainfall events that we're expecting, actually there's likely to be more surface water flooding. But that's going to be primarily for the two reasons I gave. Either the water can't get into the sewers because it's running down the road so quickly, it's running basically on the impermeable areas so quickly, there's very little soft landscaping in these areas for the water to permeate into the ground. And this development is not changing that; this development is not changing the amount of hard surfacing. So, it's not restricting water going into the ground. So, unfortunately with the more extreme events that we're getting, we're likely we're going to get there will probably be more surface flooding, but that's because, as I say, the water can't get into the sewers. Or if it does get into the sewers, the sewers aren't able to cope' (pg. 11).*
- 9.9 Councillor Parkinson subsequently introduced concern relating to possible harm to heritage assets, where he said:
- 9.10 *'Well, the officers' report and also the assessment from Campbell Reith proceeds on the basis that there would be negligible damage to the wall, and my concern is that there is a greater risk of damage and, therefore, there would be an impact on significance of the cottages individually and as a group. And in the absence of any public benefit outweighing that harm, the proposal should be refused in accordance with Paragraph NPPF. But that was just my personal view. I don't know whether that was shared by members of the committee' (pg. 24).*
- 9.11 That was despite very detailed advice provided earlier in the meeting from Campbell Reith, who explained that:

'Now we went through a very rigorous process of scrutinising the ground movement and building damage assessments that were put forward in the BIAs. I think we maybe ended up having about four or five versions of it. The ground movement assessments ultimately predicted less than two millimetres' movement to the rear wall of the cottages and that seems quite reasonable, bearing in mind the differential depth and the distance that movement of less than two millimetres is...appears quite reasonable. And I think you have to bear in mind that when Burland talks about crack widths, which some of you will be aware of, that's not talking about wall movement; that's talking about crack width. So, a wall movement of two millimetres doesn't equate to crack widths of two millimetres. And wall movements of two millimetres would expect to result in negligible damage. And actually, the ground movement assessment has predicted negligible damage for the cottages. So, we're talking about really damage that actually can't really be identified. So, it's not as though damage has been predicted and it might be wrong by a factor of one or two. What's actually being predicted is negligible damage to category 0 damage to the cottages.

There is a different situation though, in respect of the listed boundary retaining wall, which is obviously much closer to the basement, and it does have shallower foundations. So, the construction sequence has been detailed very carefully to deal with this. Quite rightly, it's been pointed out that the retaining wall is subject to loading from the side, so horizontal loading rather than a wall to a house which has loading coming down onto it from the top and so if you change that horizontal loading and a wall is in poor condition, is cracked, you can imagine that you could quite easily dislodge or cause significant movement of this fragile wall.

So, what's being proposed is that the applicant's team will dig by hand behind the existing retaining wall. They'll brace it –you can see a note there in the drawing – they'll brace it, and it's being confirmed that that bracing will be retained permanently, if that's needed, so that bracing will support the wall. Down at the lower level, there's going to be trench sheeting put in against the foundation of the retaining wall and then mass concrete placed against that to protect the foundation to the retaining wall and to prevent it being undermined.

And then when the basement's being constructed that void behind the wall will be loosely backfilled with soil. So, you can see they've really taken a lot of effort, they've taken a lot of steps to ensure that there's no increase in horizontal load on the wall. And another way that additional horizontal load on the wall has been avoided is by having piled foundations to the basement. And those piled foundations will take the structural loads from the basement down into a depth of soil much greater than the retaining walls. So, there'll be no additional load from the basement on the back of the retaining wall. So that I think may answer that question. And then the third question was about the propping, which Alex has probably answered, and I've just referred to.

So, what's intended is not propping the wall from the Willow Cottages' gardens or rear yards, but actually attaching bracing to the wall on the applicant side of the property and retaining that in the permanent case' (pages 11 and 12)'.

- 9.12 The Council's planning officers, and their appointed expert advisors clearly explained to the Committee Members that there would be no harm caused either through an increase in surface water flooding or to heritage assets as a consequence of the appeal development.
- 9.13 Members, without any reasonable justification, did not accept that expert advice. The Inspector will see that the discussion took a highly unusual turn, whereby Members could not determine what the reasons for refusing the application should actually be. The conclusion being that the Council's officers would return to a later Committee with 'suggested' reasons for refusal to assist the Members.
- 9.14 As the transcript from the second Committee Meeting shows (Appendix 11), the Committee swiftly voted on the suggested reasons for refusal presented by the officers and the application was refused.
- 9.15 That was despite yet further information being provided by the Appellant's engineer, highlighting where in the submission material the two concerns raised had been clearly addressed (Appendix 6).
- 9.16 The National Planning Practice Guidance set out the types of behaviour that might give rise to a substantive award of costs against a local planning authority. Those that the Appellant considers apply to this case are described below:

Preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.

- 9.17 This development should clearly have been permitted. The Council's officers thought the same thing, informed by very detailed guidance from experts whom the Council themselves instructed to provide them with advice on matters related to basement construction.
- 9.18 Whether a development will increase the level of impermeable surface, and so could have an effect on surface water flooding, is not a matter of subjective judgement. It is a matter of fact. The Council's officers and Campbell Reith explained that there would be no increase in surface water flooding as a consequence of the development, but Members refused the application for that reason anyway.
- 9.19 The Committee's concerns relating to heritage assets was not a judgement relating to the effect on setting, or some other facet where subjectivity could be factor. The concern was that the appeal development would cause physical harm to the listed wall and cottages. Again, the Council's officers and expert advisors explained that this would not be the case. They set out that there would be no harm caused to the cottages themselves and that the retaining wall would be specifically protected through and after the construction period. The Committee resolved to refuse the application for this reason in the face of that advice.

Vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.

- 9.20 Reason for refusal 1 criticises the lack of 'adequate surface water drainage mitigation', which is vague, and alleged an 'unacceptable risk of surface water flooding', which is inaccurate, given the facts of the case which have been explained in detail in this Statement.
- 9.21 Reason for refusal 2 alleges 'potential' harm to a heritage asset, which is vague, and in any event, inaccurate given the facts of the case, which have been described above.
- 9.22 In neither case were the reasons for refusal supported by any objective analysis. On the contrary, they were directly in conflict with the objective analysis that was before the Members.

Refusing planning permission on a planning ground capable of being dealt with by conditions.

- 9.23 Planning officers had recommended that planning permission was granted subject to conditions relating to the appointment of a Basement Engineer (Condition 5) and compliance with the submitted BIA and the CR Audit (6) and planning obligations requiring detailed a Construction Method Statement (a framework Plan was submitted with the application) and a Basement Construction Pan (both of which would have robustly secured the proper carrying out of the development with special regard to the proximity of heritage assets). These obligations, together with additional safeguards are secured by the legal agreement at Appendix 13.
- 9.24 If Members were not content accepting the advice of their independent expert advisors, they should have relied upon those conditions and obligations to resolve their concerns.
- 9.25 A decision relating to the award of costs for schemes in Southsea is provided at APP/19. Whilst the detail of the development proposals is different to this appeal, at Paragraph 10, that Inspector describes that:
- ‘While it is a fundamental principle of local decision making that a planning committee is not bound to follow the advice of its officers, there is a reasonable expectation that where this occurs it should show reasonable planning grounds for taking a contrary decision and produce sound, substantive and defensible evidence on appeal to support the decision in all respects. That very clearly did not happen in this instance’.*
- 9.26 That principle applies equally well to this case. Planning Committees do not need to follow the advice of their officers, but where they do not, their conclusions need to be reasonably justifiable based on the facts of the case and evidence. That has not happened here. The Planning Committee overturned the advice of their officers, and ignored the detailed technical advice provided by their own expert independent consultants. That position is clearly unreasonable and has necessitated the lodging of this appeal, which should not have been required.
- 9.27 For all of these reasons, the Appellant respectfully requests that a full award of their costs in preparing and lodging this appeal are made against the Local Planning Authority.

10 Conclusions

- 10.1 This appeal has been lodged by the Appellant because they strongly feel that the Council made the wrong decision in refusing this planning application.
- 10.2 For the reasons set out in the Statement of Case, the appeal proposals would have no effect on surface water flooding and would cause no harm to heritage assets near to the site. These were the conclusions reached by planning officers and by the Council's own independent expert advisors on basement construction matters. The Planning Committee disregarded this advice, with so reasonable justification for doing so.
- 10.3 The Local Planning Authority has acted unreasonably in refusing planning permission. Its reasons simply are not founded on an objective analysis of the facts of the case.
- 10.4 This is particularly disappointing to the Appellant, who has in the very best of faith, proactively engaged with the Local Planning Authority over a period of three years since the application was lodged. They have invested significantly financially and emotionally in this process and deserved more from the planning system.
- 10.5 The Council has behaved unreasonably and alongside respectfully requesting that this appeal is allowed, is seeking a full award of their costs associated with this appeal.

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