31 Willoughby Road, London, NW3 1RT

'Final Comments' on behalf of the Appellant relating to appeal reference: APP/X5210/W/3320884

on behalf of Manuela Eleuteri

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1.0 Introduction

1.1 These Final Comments are provided on behalf of Manuela Eleuteri (the Appellant) in relation to 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 Appellant is in receipt of the Council's Statement of Case and a number of third-party representations. These Final Comments seek to respond to the points raised therein, including by referring the Inspector to the relevant sections of the Appellant's Statement, where a matter has been addressed in that document.

1.3 The Appellant has not sought to expand upon or add to its case through these Final Comments. However, the Council has clearly expanded its own case beyond the reasons for refusal (by introducing concern over groundwater flooding, where the reason for refusal relates only to surface water flooding). Accordingly, the Appellant has needed to respond to those new concerns in this document.

1.4 Some third-party representations have been lodged with the Inspectorate, including from the 'Willow Cottages Group' (a collection of neighbouring property owners). The vast majority of the information submitted by that Group was before the Local Planning Authority at the point that it made its decision and had been addressed by the Appellant's BIA to the satisfaction of the Council's appointed independent expert advisors, Campbell Reith, and the Planning Officer. 'New' documents are a document titled 'Willow Cottages Objection' dated 11th October 2023 and a letter from Geotechnical Consulting Group dated 10th October 2023 ('Doc06' of the Willow Cottages Group submission). Themes raised in these two documents are addressed in this document.

1.5 Rather than providing technical evidence to seek to counter the Appellant's case, the Inspector will see that both the Council's Statement and third-party representations rely on unsubstantiated assertions about the evidence base that supported the planning application via the Basement Impact Assessment. The objective appears to be to introduce sufficient doubt as to its methodology so that it cumulatively discredits the findings of the report.

1.6 Notwithstanding that the Council's appointed independent experts considered the BIA in full and meticulous detail, the Appellant would like the point reinforced that the engineers appointed to the project are of the highest professional standing. Throughout this project they have retained the services of the pre-eminent engineering geologist (De Freitas) and consulting engineer (Eldred). They are experts in their field, with deep local knowledge, and were specifically instructed to ensure that all aspects of this project were carried out to the highest possible standard.

2.0 Surface Water Drainage (Reason for Refusal 1)

2.1 The Appellant has clearly set out its case in respect of surface water flooding at paragraphs 6.12 – 6.19 of their Statement of Case. In summary, that case is that the development would not result in any increase to surface water flooding risk because there would be no material change in impermeable area at the site (the basement would be constructed beneath the footprint of the existing house). That position was agreed by Council's independent expert advisor (see paragraph 4.12 of the Campbell Reith Audit of the Appellant's BIA) and the case officer in their Committee Report (paragraph 9.11).

The Council's Case

2.2 The only remark in the Council's Statement relating to surface water flood risk is that a superseded version of the BIA submitted to support the planning application identified the probability of surface water flood risk at Willow Cottages as being 1:1000. This was regularised during the application process where it was confirmed by the Appellant's engineer that the surface water flood risk varies from 1:100 to 1:1000 (please see paragraph 8 on page 2 of the BIA Supplementary Note dated February 2021 at APP/10 of the Appellant's Statement).

2.3 The Note identifies that this is immaterial to the conclusions reached as to the risk of surface water flooding for the reasons described above (the development would not increase the risk of surface water flooding because there would be no material change in the amount of impermeable area).

2.4 The Councils' Statement, at paragraph 4.7, describes this conclusion as '*worrying*' but does not say why it is worrying, or that it is wrong. The Statement says that the conclusion reached '*does not seem to have considered the special circumstances of Willow Cottages*'. Whether a building is a heritage asset or not has no bearing on whether or not it is at risk of surface water flooding from an adjacent development – it is the effects of the development that matter, not the status of the neighbouring building. In this case, the development would have no effects on surface water flooding for the reasons described.

2.5 The Council's Appeal Statement presents no case whatsoever on the risk of surface water flooding at or near the site or any comment on the Appellant's case on this matter. This is clearly an unacceptable position that it addressed in Section 5 on the Appellant's application for a costs award, below.

2.6 Instead, the Council's entire case as presented in its Statement on matters of perceived flood risk relate to groundwater flooding. That is an entirely separate concern to that raised in the Council's reason for refusal. The Appellant has needed to respond to those concerns (Section 4, below) and again, address this matter in the context of their costs application.

2.7 Given that the Council has not substantiated the concerns of its Planning Committee with regard surface water flood risk, the Appellant can only assume that this is no longer a matter in dispute between the main parties.

3.0 Heritage (Reason for Refusal 2)

3.1 The Appellant's case on heritage matters is set out in detail at paragraphs 6.20 – 6.32 of the Statement of Case. This describes the detailed technical analysis that has been undertaken to show that there would be no harm caused to the listed Willow Cottages or to the boundary retaining wall as a consequence of the development. Importantly, it explains the robust and comprehensive measures that would be put in place to control and monitor the construction process and over which the Local Planning Authority would have ultimate control, including:

- The detailed Construction Sequence for the development (APP/12 to the Appellant's Statement).
- A Construction Management Plan that would be secured through the S106 Agreement.
- A Basement Construction Plan (also secured by the S106 Agreement).
- Financial contributions towards independent expert monitoring of the development.
- The appointment of an independent, qualified engineer (who the Council would approve) to inspect, monitor and approve the construction of the basement as it was taking place.

3.2 These are clearly extremely rigorous controls on the development to ensure that it would not cause harm to the listed structures. Both the Council's independent expert advisor and the Planning Officer agreed that these were appropriate and proportionate measures. The Appellant has provided a Unilateral Undertaking to that effect and agrees with the Council's suggested planning conditions.

The Council's Case

3.3 The Council provides no evidence to dispute the conclusions reached in the BIA that there would be no harm caused to the listed wall, or the cottages. It makes sweeping, unsubstantiated claims that '*inevitably there will be movement associated with removing the lateral support of…the wall*' (paragraph 4.25) and that the foundations of the wall and the cottages '*can be expected to shift*' (paragraph 4.26) but no information is given to why the Council now consider this to be the case, or indeed, why the protective measures that would be secured by a S106 agreement and conditions would not remedy any concerns.

3.4 The Council's case is vague and unsubstantiated, does not respond to the Appellant's case and does not explain why the detailed evidence set out in the BIA or the Council's Audit of it is now considered to be wrong. That, the Appellant says, is because it is not wrong.

3.5 The Council's Statement then goes on to describe the policy position in the event that harm was caused to the heritage assets, and the Framework's public benefits test. No such test is required because no harm would be caused. Indeed, it is not the Council's case that it would be – just that there 'could' be.

3.6 The Appellant recognises the sensitivity of basement developments, with or without nearby heritage assets. That is why such comprehensive work has been done to establish that no harm would be caused and that such extensive protective measures would be put in place to manage construction.

4.0 Other matters

4.1 In this Section of these Final Comments we describe the Appellant's case on matters not raised in the Council's reasons for refusal. In that context, the Appellant could not have responded to them in their Statement of Case.

Clarification

4.2 At paragraph 4.2 of the Council's Statement, it states that:

Matters considered to be in doubt within the Basement Impact Assessment (BIA) were as follows:

(a) Not enough was known about ground and groundwater conditions for the design of the basement, for site specific assessment of subsidence risk and for protection of neighbouring property and the boundary retaining wall.

(b) The potential for the risk of groundwater flood affecting other property to be increased by the basement construction.

4.3 This appears to seek to give the impression that these matters were of concern to the Council, or 'in doubt' and that is the reason that planning permission was refused. For the avoidance of any doubt, that is not the case. That text has been copied directly from the Basement Impact Assessment that was submitted in support of the planning application (please see paragraph 5 on pages 3 and 4 of the BIA, which is provided at APP/9 of the Appellant's Statement).

4.4 With the context of the rest of that paragraph, the Inspector will see that the author of the BIA was saying that these were matters that should be addressed through further ground investigation because not enough was known about them from existing records (i.e., before ethe BIA was carried out). That work was carried out and the results and conclusions presented in the BIA. Those conclusions were that the development would be acceptable.

4.5 The Inspector will see from the Council's reason for refusal and the transcripts of the relevant Planning Committee meetings (APP/5 and APP/11 of the Appellant's Statement of Case) that these were not concerns expressed by the Council in any form. The Appellant anticipates that the inference to the contrary by the Council in its Statement must have been inadvertent.

Groundwater flood risk

4.6 The supporting text to Policy CC3 (Water and Flooding) of the Camden Local Plan says that:

'*The key flood risk in Camden is from surface water flooding. This arises following periods of intense rainfall when the volume and intensity of a rainfall event exceeds the capacity of the drainage system, resulting in localised flooding*' (paragraph 8.58).

4.7 This describes the risk of surface water flooding, which is referenced in the Council's first reason for refusal.

4.8 The supporting text goes on to explain, at paragraph 8.60 that:

Camden also has a small risk of groundwater flooding, which takes two principal forms. The most common form of groundwater flooding in Camden is from 'perched' groundwater, water that becomes lodged between the top layer and the impermeable London clay layer. The risk of this type of flooding is difficult to model but has been recorded in parts of the borough, notably Kilburn, Fortune Green and West Hampstead, and will need to be considered and mitigated against in any new development. Aquifer based groundwater flooding is relatively rare in Camden, but it is possible in areas around Hampstead Heath and in the very south of the borough. This occurs when the water table rises due to prolonged heavy rain.

4.9 This describes the risk of groundwater flooding, an entirely different risk to surface water flooding, and not a concern raised in the Council's reasons for refusal. Nevertheless, the Appellant is obligated to respond to this new concern through these Final Comments.

The Council's Case

4.10 The Council's case on groundwater flood risk is not based on any form of technical analysis of the site and the proposed development. The Council does have access to technical specialists (including its own advisors, Campbell Reith) who could have carried out such analysis to substantiate these new concerns if they were able to be evidenced.

4.11 The Council's case is not even presented as an allegation that the proposed development would cause groundwater flooding at or near the site. Instead, the Council's case is a series of vague and unsubstantiated remarks relating to the content of the Appellant's Basement Impact Assessment. The Inspector appears then to be invited to try to piece these together to arrive at a point that the conclusions of the BIA (and indeed, the Council's appointed independent experts) was unsound. The Appellant does not consider that to be an appropriate or reasonable approach to appeal case making.

4.12 The Appellant has drawn out and responded to the various assertions made by the Council in the table below:

Para Ref.	LPA Comment	Appellant response
4.2	The possible presence of residual pipes or a culvert associated with the presence of a tributary of the River Fleet running beneath the site does not appear to have been considered.	Sections 3.2, 3.6 and 9 of the BIA refer to the known history of the matters raised by 4.2 to 4.5.
4.4	No further details of an underground stream beneath the valley floor have been presented and therefore remains some considerable uncertainty about what water flows have or have not been diverted, and how the present natural and artificial drainage systems now operate. There is therefore significant uncertainty surrounding what type of flooding may result in future significant rain events.	
4.5	There were several springs located on the hillside below Flask Walk. Even if the main flow from one or several springs were diverted into pipes, there would inevitably have been residual sub-surface flow that was not captured and would follow any available permeable pathway along the original stream, including underneath the subject site.	
4.9	The BIA further recognises that the potential for "an increase of groundwater flood risk in the low-level access between the dwellings and the boundary retaining walls" but, after numerical modelling, concludes that neither the groundwater flood risk or the surface water flood risk will	This distorts the wording of the BIA which quite properly recognises the need to examine the possibility of increased groundwater flood risk and then shows that the risk will not be increased.

	increase. It is considered that the robustness and clarity of the groundwater modelling contained in Appendix E of the BIA are questionable.	
4.11	Analytical soil mechanics are difficult to apply to heterogeneous natural deposits such as it can be almost meaningless in made ground. Thus, a wide variety of theoretical assumptions need to be tested simply to provide a range of possible behaviours and the consequent level of uncertainty concerning any prediction of the behaviour of a basement foundation dug into made ground is under underestimated.	The BIA makes what are considered reasonable provisions for the ground and water conditions and it was judged to be satisfactory for its purpose by engineering consultants advising the LPA. Therefore, the BIA fulfilled its purpose of demonstrating that the risk of damage to neighbouring property was within the limits set by the LPA.
4.12	The surface water flood risk to Willow Cottages may increase as a result of the development obstructing a pipe, culvert, or former stream course or associated subsurface flow through more permeable alluvial deposits in the immediate vicinity of the stream course. The present FRA has relied on numerical modelling the ground behaviour as a material with relatively uniform engineering properties; this may not reflect the true ground water regime.	It is accepted that, as always, and particularly in a city the construction process may encounter conditions different from those expected at the planning stage. They can be dealt with by engineering methods if they arise.
4.13	The initial proposal to install diversionary water mitigation measures around the basement were omitted following subsequent additional modelling; however, the proposal included some form of dewatering to prevent or limit unacceptable groundwater flows into the basement excavation. This implies an expectation that there will be possible encounters with more permeable natural or man-made water conduits than have previously been modelled. A large degree of reliance has been placed on this modelling, but it has not been made clear whether its robustness is at all limited in the face of extremely variable, non-uniform made ground that may be subject to intermittent saturation and contain conduits that have not been contemplated. There does not appear to have been a specific sensitivity analysis	

	conducted of the modelling input assumption.	
4.15	The BIA initially considered temporarily lowering the groundwater table by some means. Following omission of the originally proposed permanent arrangement for external drainage below the structure, the construction method statement was subsequently amended to state that "sub-formation collector drains and filtered sump pumps will be required to manage groundwater and prevent instability of formation" and envisaged discharge of the collected water to the TW sewer. Groundwater controls were introduced into the modelling but it is understood that the model indicated that it would take approximately 2000 years to fully equilibrate. It is considered this may not be realistic.	
4.18	Given the account of substantial filling of the valley above the site, it may be conjectured that the Willow Cottages were set on the natural hillside and that the higher ground seen around them, including Willoughby Road, has resulted from subsequently upfilling to suit subsequent development. This then suggests that the listed rear boundary walls of the cottage yards may not necessarily have been built as full earth retaining structures, a feature that may add to their fragility.	This is conjecture. It is not possible to comment.
4.19	Despite the analysis presented in the BIA, the Planning Committee did not consider the BIA to have sufficiently demonstrated that the proposed basement would not result in harm to the listed Willow Cottages. The BIA considered the scale of potential damage to both Willow Cottages and the rear retaining wall only by means of reporting the ground movements predicted by numerical modelling. In practice, although the outputs from numerical modelling need to be taken into consideration, all numerical modelling tools have limitations to their applicability and their output must therefore be subjected to	The BIA assessment of building damage accords with best current practice and consideration of the nature and apparent condition of Willow Cottages and the retaining wall. The final comment in item 4.19 is completely misleading. The BIA did account for all causes of ground movement and the scheme does not involve underpinning. As noted previously, the BIA was judged to be satisfactory for its purpose by engineering consultants advising the LPA.

	reality and sensitivity checks. This type of analysis was challenged by Campbell Reith as it did not account for the possibility of ground movements caused during the installation of the basement underpinning.	
4.22	The Willow Cottages have likely been subject to damaging past historic movements; however, the extent to which they or the rear retaining wall may suffer as a result of the development have been based on modelling the soil if it were to behave in a defined manner according to a set mode. There are therefore substantial uncertainties associated with this concept.	
4.25	Although the construction methodology has been described as relieving pressures that might presently be disturbing the wall, there does not appear to have been recognition that the wall must be withstanding lateral forces.	
4.26	Both the boundary retaining wall and cottages themselves are undoubtedly frail structures and the foundations of each can be expected to shift merely as a result of changes in soil moisture levels, let alone by any potential hydrostatic effects or the consequences of flooding.	Quite so. That is why the changing ground conditions were analysed to ensure that worst conditions were accounted for.
4.27	The BIA has not satisfactorily demonstrated that the proposal will not cause underground disturbance such that harm may befall the listed buildings as a consequence.	Refer to comments at item 4.19
4.33	Assumptions that might in other circumstances be acceptably made in terms of configuration of the ground, hydrology, and below ground conduits and structure cannot be safely established where unusual past construction and drainage demand a correspondingly cautious approach.	

The Appellant's Case

4.13 The Appellant's Case on groundwater flood risk, and the technical reasoning for that is set out in significant detail in the submitted Basement Impact Assessment, but is summarised succinctly in the letter prepared by the Appellant's Engineer and issued to the Local Planning Authority in November 2022 to assist the Planning Committee (provided at APP/6 to the Appellant's Statement of Case), where it explains that:

Naturally occurring surface water flood happens quickly after rainfall as water flows over impervious or sparingly absorbent ground to accumulate in an area from which it cannot readily escape. Willow Cottages rear access is a confined area with a concrete paved surface and the probability of the area being affected by surface water flood depends on the adequacy of its drainage system, not on water draining into the ground. Surface water from 31 Willoughby Road will drain. as at present, to the public sewer and will not affect Willow Cottages.

Elsewhere, surface water which does penetrate the ground becomes groundwater. It drains down through unsaturated ground to the water surface at "groundwater level" below which the ground is fully saturated. Unless the ground is a large area of free draining gravel or coarse sand, the drainage is a slow process; much too slow to influence the occurrence of surface water flood due to rainstorms. There are no such large free draining areas of land near Willoughby or Willow Roads. Instead, there is ground of low permeability and there are considerable areas of quite steeply sloping impervious surfaces, which carry rainwater away to lower ground.

In these circumstances, the notion that diminishing the water storage capacity of ground above groundwater level by the volume of the basement will affect surface water flood risk at Willow cottages or elsewhere is wrong.

Groundwater flood only happens when the groundwater level rises above the ground surface. The BIA flood risk assessment concludes that is unlikely to occur naturally in the area relevant to the application. The BIA also shows that installing the proposed basement will cause a maximum local rise in groundwater level of 22mm on the upstream side and that this rapidly diminishes with distance from the basement location. The effect of that on groundwater flood risk will be negligible.

4.14 The proposal for 31 Willoughby Road does not increase the risk of flood in Willow Cottages or elsewhere, which complies with the requirement of Camden's planning policies.

4.15 These findings were considered, and agreed with by the Council's independent expert consultant engineers, who at paragraph 1.9 of their Audit (APP/2 to the Appellant's Statement), conclude that:

The BIA confirms that the basement will extend below the water table, and further discussion of groundwater levels is provided. Modelling has been undertaken which shows a maximum change to groundwater levels of 25mm due to the basement proposals. The addendum submission confirms that the modelling considers the cumulative effect of surrounding basements and cellars and that there will be no adverse impacts to the sewer network and flood risk.

4.16 The Council's Planning Officer also agreed with this position, concluding at paragraph 9.7 of the Committee Report (APP/3 to the Appellant's Statement) that:

The addendum submission confirms that the risk of flooding will not be exacerbated by changes to groundwater flow. The BIA confirms that the basement will extend below the water table, and further discussion on groundwater is provided within the addendum submission, which confirms that the modelling considers the cumulative effect of surrounding basements and cellars and that there will be no adverse impacts on the sewer network and flood risk.

4.17 Despite these concerns relating to groundwater having been raised at a late stage, the Appellant has responded to them. The potential effects of the development on groundwater flooding was considered in substantial detail as part of the submitted BIA and the conclusions reached supported by the Council's appointed independent experts. The Council's Statement does not actually say that there would be a harm caused by groundwater flooding. Instead, it relies on speculative and unsubstantiated criticisms of the work that has been undertaken to reach the technical conclusion that it would not.

Flood Risk Assessment

4.18 At paragraph 4.8 of the Council's Statement, it is queried why a Flood Risk Assessment was not submitted with the planning application that is the subject of this appeal. That is not a matter raised in the Council's reasons for refusal and it was not a matter raised when the planning application was validated in March 2020, or indeed, at any point since then.

4.19 Contrary to the assertion in the Council's Statement, the Basement Impact Assessment submitted with the planning application clearly contains an incredibly detailed assessment of flood risk matters in significant technical detail. That must have been the case because the applicant and their engineer has been engaging with the Council's officer and their independent advisors since March 2020 on the application, including on flood risk matters. To suggest the contrary at this stage is, the Appellant would suggest, quite disingenuous.

5.0 Third Party Representations

'Willow Cottages Group'

Flood risk

5.1 The report prepared by Geotechnical Consulting Group dated 10th October 2023 disagrees with the position of the Appellant, the Council's appointed experts and the planning officers on the matter of whether there will any change to flood risk as a consequence of the development. The Appellant's case on this matter is clear and is set out both above and in the Appellant's Statement of Case. The Willow Cottages Group has provided no technical evidence or modelling to contradict the submitted BIA. Even in picture pained by GCC, '*the volume of water storage being lost within the ground may be small*.

The Burland Scale

5.2 The Willow Cottages Group disagrees with the use of the Burland Scale as a measure of identifying risk through ground movement to the buildings near to the site, including the boundary wall. This matter is addressed clearly in the letter issued to the Local Planning Authority by the Appellant's engineer in November 2022 (see APP/6 of the Appellant's Statement of Case), which explains that:

> *Item 3.6 on page 14 of the BIA is devoted to a preliminary assessment of the Willow Cottages structure. Paragraph 48 states "The front and rear walls of the houses are not overly perforate, and they are restrained by the party walls at regular intervals Some distortion has occurred, however, seemingly necessitating the installation of tie bolts, which are evident on the face of some units. One resident's objection also refers to a surveyor's opinion that expansion of front and rear walls has caused damage to one of the end houses." My brief external inspection revealed nothing to prevent normal assessment of damage risk.*
>
> *The damage risk assessed by the Burland method in the BIA report is Category 0, or negligible. Use of the Cording method in G1808-SN-01-E1 found the same category for the rear wall and a borderline case between Categories 0 and 1 for an internal cross wall. As stated in the above Supplementary Note, the effect of the wall foundation will be to reduce the risk to Category 0.*

From this and the previous section, it may be concluded that the application proposal represents a negligible risk of damage for Willow Cottages.

I agree with GCG that the Burland method, and for that matter, the Cording method also, are usually unsuited to estimation of damage risk to retaining walls. However, in this case the lateral ground movement is expected to relieve pressure on the retaining wall whilst an extremely small vertical and longitudinal distortion affects the wall. In these circumstances it is reasonable to illustrate the risk of damage to the wall that the basement construction represents using one of the above two methods. In this case the Cording method gave the more onerous result and showed the risk of damage to be Category 0.

5.3 This evidence shows that when using either the Burland or the alternative Cording method (which is more onerous assessment), the risk to Willow Cottages and the retaining wall would be classified as 0 (i.e., negligible). The Willow Cottages Group has provided no evidence to indicate that these conclusions are not sound or accurate. The Group appear to indicate that it is not appropriate to rely on the modelling of potential impacts when dealing with a development near to heritage assets. That simply cannot be right. In this case, the modelling undertaken has been extremely robust and if the Group are correct, and modelling cannot be used to identify and predict outcomes, no subterranean development could ever be consented near to heritage assets, which must not be the case.

5.4 In any event, this development would be subject to comprehensive protective measures during the construction process, which are described elsewhere. If the risk was any greater than the modelling indicates (which the Appellant does not accept that it would be), this would be captured and mitigated against during the build process.

Heritage policy

5.5 There is a fundamental misunderstanding on heritage policy set out in the representations. The letter from the Willow Cottages Group seeks to equate impact with reference to the Burland Scale (which is an engineering reference) with harm to a heritage asset.

5.6 Notwithstanding that the engineering impact would be categorised as 0 by the Burland Scale, even if it were higher than that, they are entirely different measures. If the structural impact was, say, 1

(with reference to Burland), that does not mean that there would necessarily be harm to the significance of the heritage asset.

5.7 In this case, there would be no physical impact to the listed wall in engineering and structural terms (with reference to the Burland Scale), or harm to the heritage asset in the terms of the National Planning Policy Framework. No 'balancing' exercise is required, in the terms of the Framework, because no harm would be caused to the significance of the asset.

5.8 The Willow Cottages Group refer to appeal decisions where harm to heritage assets was not found to be outweighed by public benefits. Those are not relevant to this appeal because this development would not cause harm to any heritage assets, unlike in the cases identified.

Hampstead Neighbourhood Forum

5.9 The Hampstead Neighbourhood Forum has said that the Forum 'plans to strengthen the language of the Neighbourhood Plan on flood risks'. The appeal scheme has demonstrated that there would be no additional risk of flooding as a consequence of the appeal development, in accordance with the requirements of the Development Plan and other material planning considerations as they exist now. The Appellant has not seen any drafts of a potential future Plan to which the Forum refers and so no weight can be attached to that in this case. But given that the development would not increase the risk of flooding, it is difficult to imagine that it would not also comply with any potential future Neighbourhood Plan policy on the matter.

6.0 The Appellant's Application for a Costs Award

6.1 The justification for the Appellant's application for a full award of costs associated with this appeal is set out in Section 9 of their Statement. The Council has sought to respond to that application in its own Statement.

6.2 At paragraph 5.4 the Council's Statement describes the 'unenviable task' of 'choosing between opposing technical submissions put forward by engineering professionals of repute'. That is not an accurate representation of what was being asked of the Planning Committee in this case. Indeed, it could not possibly be. Basement construction is a highly technical area of engineering and to the best of the Appellant's knowledge, no members of the Planning Committee are qualified engineers.

6.3 It is for that very reason that the Council has a process of appointing expert and independent advisors (Campbell Reith) to provide technical advice on basement proposals. It is their job to reach an informed view on opposing technical submissions (in this case, the Appellant's Basement Impact Assessment and the analysis of it by a third-party consultancy appointed by neighbours of the Appeal Site). Campbell Reith describe that they did that, at paragraph 1.4 of their Audit (APP/2 of the Appellant's Statement of Case) where they say:

Subsequent to the issue of the initial audit report, Campbell Reith was instructed to consider a detailed review of the BIA by the Geotechnical Consulting Group (GCG) submitted to LBC by neighbours to the proposed basement, and summarise any pertinent information in an updated audit'.

6.4 It clearly would not have been appropriate for the Planning Committee to carry out this exercise because its members are (as far as we are aware) not qualified to do so.

6.5 The Planning Committee is, of course, entitled to have disagreed with an officer's recommendation and the independent technical advice provided, but it needs to have substantiated that position. To do that would necessarily require a technical understanding of the matters at hand. The transcript of the Committee meetings (APP/5 and APP/11 of the Appellant's Statement) shows that no such technical discussion took place by members of the Committee and at no point, was it explained why the Committee disagreed with the expert, independent advice being provided (when, as described

above, that advice had carried out the task of balancing the competing views of the appellant's engineer and that representing the neighbour of the site).

6.6 Importantly, whilst the Planning Committee resolved to refuse the planning application at its meeting in September 2022 (Minutes provided at APP/4 of the Appellant's Statement), the Committee was not able to decide why the application should be refused and so the item was deferred until the December meeting. Members of the Planning Committee had three months to consider the detail of the case and to take any advice that they felt was needed to provide an informed view on why they felt that their appointed independent advisors were wrong. There is no evidence that this happened in either the transcript or the minutes of the December meeting. The Appellant says that in circumstances such as this, the onus is on the Local Planning Authority to clearly articulate why the Committee felt that its independent advice was wrong. That has not happened and it is the Appellant's position that this clearly constitutes unreasonable behaviour.

6.7 The Council's Statement has not taken these matters any further. Reason for Refusal 1 relates to surface water, and a perceived absence of mitigation resulting in a risk of surface water flooding. The Council's position on surface water flood risk is not expanded upon from the reason for refusal. We do not know why the Council thinks that the Appellant or the Council's independent advisors are wrong that there would be no increase in the risk of surface water at or near the site.

6.8 Similarly, the Council's case on heritage is vague and unsubstantiated. Some general statements are made around risk, but we do not know why the BIA was considered inaccurate, why Campbell Reith were wrong, or why the robust protective measures that would be secured by a S106 Agreement and planning conditions would not alleviate any concerns.

6.9 The Council should have substantiated its reasons for refusal in its Statement and it clearly has not done so. The Council had access to expertise to assist them if needed because they have retained expert engineer consultancy support.

6.10 Further, the Council has taken the opportunity to introduce a new area of concern on groundwater flooding risk. That was not a reason for refusing planning permission. Notwithstanding that the concerns raised are without merit, do not address the technical analysis presented by the BIA or the Council's audit of it, the Appellant has needed to respond to these additional matters. That is

another example of unreasonable behaviour, which has added to the Appellant's unnecessary expense.

7.0 Planning Conditions

7.1 For the avoidance of doubt, the Appellant agrees with the suggested planning conditions put forward by the Local Planning Authority.

8.0 Conclusions

8.1 These Final Comments have been prepared to respond to matters raised by the Local Planning Authority and third parties that could not have been addressed at the time the Appellant lodged this appeal. They do not seek to expand upon or repeat the Appellant's case in this appeal but have needed to address new matters that were not part of the Council's reasons for refusal.

8.2 The Council has not substantiated its reasons for refusal. The Statement represents a collection of vague and unevidenced criticisms of an extraordinarily comprehensive and robust Basement Impact Assessment process, that was guided and endorsed by the Council's independent expert advisors. We are not told why that the Council thinks that there would be a risk of flooding or of damage to the neighbouring heritage assets – just that it may be so.

8.3 The Council has also introduced an entirely new concern relating to groundwater flood risk. Again, this is not substantiated, and we are not told that, or why, there would be an increase in ground water flood risk – just that the Appellant hasn't demonstrated that there won't be. That is simply not borne out by the facts.

8.4 In the Appellant's view, the Council was wrong to refuse planning permission for this development. Doing so constituted unreasonable behaviour. The Council's attempt to defend its Planning Committee's decision has only exacerbated this unfair and unreasonable conduct.

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