From: tanya shukla
Sent: Sunday, October 13, 2024, 10:27 PM
To: Ewan Campbell
Cc: Andrew Parkinson (Councillor); Steve Adams (Cllr); Planning
Subject: 2024/1122/P

Hi Ewan,

Please find our comments attached regarding the basement impact assessment and "legal advice".

Kind regards,

Tanya

Comments in response to the legal advice uploaded on 10.10.2024

1. The barrister has been instructed by the developer (as stated at paragraph 1.1) and is under a professional duty to act within the best interests of their client. It is important therefore to note that their opinion is not independent and does not reflect the legal position of those that oppose this development.

2. The developer seeks to persuade the council to consider the garage ownership constraints at the site. The developer has done this by instructing a barrister who has opined that because such constraints are mentioned in the Redington Frognal Neighbourhood Plan then the council must take them into consideration. In the same way, the council must also take into consideration section 1.1 of the Redington Frognal Neighbourhood Plan which reads:

   > *"The incorporation of design policies seeks to ensure that the Redington Frognal Conservation Area is not blighted by, in the words of Heath and Hampstead Society, "architecturally uninspiring, corporate looking development" of "luxury flats with double basement garages..."""*

   In light of the specific reference to "luxury flats with double basement garages", it is fanciful for the developer (a corporation not an individual) to be proposing a scheme for two luxury flats sitting above double garages.

   The undesirable nature of the scheme's impact is compounded further by the likelihood that possession or ownership of some or all of the new garages will at some point transfer to the owners of the flats above. This is obvious.

   The two garages that are let on licences will certainly be let or sold to the owners of the two new flats. If this were not case, there would be no purpose in including them in the scheme. It is common knowledge that those who can afford to buy luxury properties such as these will be are more likely than not to have expensive cars and will use them in place of public transport.

3. There are aspects of this advice that call for an explanation. The advice opens at paragraph 1.1 with:

   > *"There are two particular points which I am asked to consider, in response to pre- and post-application communications with planning officers."*

   However, the "two particular points" are never set out, so it is unclear what the barrister has been asked to advise on. This is odd. One guesses from paragraph 1.7 which states:

   > *"I am to consider the lawfulness of the officers' approach to land control."*

   that this is one of the points, but it is unclear.

Under the heading “Conclusion”, there are no conclusions. Instead, there is the statement:

> *“I shall be happy to advise further if necessary.”*

which certainly is not a conclusion. This is also odd. The public is left with advice that fails to disclose what questions were put to the barrister to advise on and what the barrister’s conclusions on those questions were. One can only assume that the original advice has been edited removing anything which goes against the developer.

4. At paragraph 2.3 the barrister wrote:

> *“In this case, the issue in question is neither the potential impact of a development on some private third party interest nor the ability of a proposed building to meet the personal needs of the applicant.”*

This is incorrect. The neighbouring properties have rights to light that will be infringed. This is a private issue for those affected by the loss of light.

5. At paragraph 2.8 the barrister wrote:

> *“Lawful application of the policies relied on by officers requires them to take account of all material considerations.”*

A failure to take into account the site constraints would not make the council’s decision unlawful if the decision to reject the application would have been the same had the site constraints been taken into consideration.

The fact that there are garage ownership constraints at the site does not bind the council to approve a scheme where those constraints have not been overcome and in any case the scheme presented is unsatisfactory by failing to comply with policy in several ways.

It is common sense that the constraints mentioned in Redington Frognal Neighbourhood Plan are matters that are meant to be overcome and not bypassed.

It does not follow that if the site cannot at present be optimised for residential homes then the developer’s scheme should be approved. The description of the scheme as a piecemeal development would appear to be accurate.

6. At paragraph 2.8 the barrister wrote:

> *“As part of the development plan, the Neighbourhood Plan’s RF9 is a statutory material consideration to which the S.38(6) presumption applies. It accurately identifies the existence of a constraint and does not impose any requirements as to the comprehensivity or form of development, other than that it should be ‘low*

level residential'. What is proposed are two residential units of part 2 / part 3 storeys, which constitutes 'low level' development in both senses of the phrase."

It is not correct that there is a requirement for low-level residential development. It is not correct to say that the development "should" be low-level. This is misstating what the Redington Frognal Neighbourhood Plan says. What the Redington Frognal Neighbourhood Plan does is merely present an "opportunity" as follows:

*"The site **could** be utilised for a low-level residential development, **subject to** any impacts on amenity being satisfactorily addressed."*

To the extent that there is a requirement, the requirement is that any impacts on amenity are to be satisfactorily addressed. The present scheme fails to satisfactorily address the impacts on amenity.

It is unclear what the barrister's reference to RF9 is.

Viewed from the south each flat has four storeys not three. Viewed as one building because the scheme is stepped, shown below, it actually appears as at least five storeys. It is wrong to portray this as a three-storey low-level development.

7. At paragraph 2.9 the barrister wrote:

> *"In this instance, in the absence of planning permission, the site will continue to be underused entirely for a landuse which is not favoured in policy."*

This statement is unjustified. The site is not underused and to suggest otherwise is self-serving. If the land owner wants to reduce the number of cars, then some of the garages could be repurposed for bicycle storage or for general storage without any adverse loss of amenity to neighbouring properties. The land could also be repurposed as a communal green space. There is a reason why no buildings higher than one storey were ever built on the subject site: to do so would compromise the amenity of the neighbouring buildings. In that regard the current use is consistent with current policy.

8. At paragraph 2.10 the barrister wrote:

> *"The scheme's architects have tested various different dispositions of space in response, specifically, to officers' suggestions that it might be possible to increase the numbers of dwellings on the site. The results of this process are set out within a document prepared by the architects which is to be submitted to the planning officers, as I understand it, along with this Advice. Whilst design is not my professional expertise, it is clear from the architects' document that the practical implications of very narrow properties resulting from the suggested approach would lead to constrained units suffering from a number of relevant defects, such as serious daylight/sunlight infringements. The material contained in the Note provides sufficient evidential basis for a finding that the process required by Policy D3 has been undertaken and has led to a sound design decision."*

a. The first issue with paragraph 2.10 is that the architect's note that has been uploaded is dated after the date of the advice, so it is unclear what work the advice is based on.

b. The second issue is that the barrister relies on "serious daylight/sunlight infringements" to discount the alternative arrangements, but at the same time must concede that there are serious daylight/sunlight infringements on the neighbouring properties of the present scheme which are also unacceptable.

   It is worth pointing out that the superlative "serious" is the barrister's own adjective, whereas the architect actually said "insufficient light" without specifying how insufficient.

c. The barrister at paragraph 1.7 initially appeared to suggest that they were not going to comment on design:

> *"I am not asked to comment on design implications as such."*

But at paragraph 2.10 they now decide to comment on design implications, but omit that the consequences of all of the architect's schemes are a significant loss of amenity for neighbouring properties, and a loss of an opportunity to build low-rise affordable housing (which was the intent of Redington Frognal Neighbourhood Plan).

d. The third issue is that the architect's note is so brief that it is unclear how the officer's question that the site could be capable of delivering more, smaller homes has been adequately investigated. The architect's note shows the LBC recommended design having multiple bathrooms but only two kitchens. It appears the architect has continued to present a scheme comprising of two homes which is contrary to the question posed by the officer.

e. The fourth issue is that the material contained in the architect's note does not provide sufficient evidential basis for a finding that the process required by Policy D3 has been undertaken and has led to a sound design decision. The architect's note states:

> *"Process required by London Plan Policy D3 has been undertaken and has led to a sound design decision:*
> *- Scheme is optimised to use all available space*
> *- All primary rooms have aspect*
> *- Generous living rooms open directly onto private courtyard gardens."*

The architect's material does not show compliance with D3 Part A which requires

> *"All development must make the best use of land by following a design-led approach that optimises the capacity of sites, including site allocations. Optimising site capacity means ensuring that development is of the most appropriate form and land use for the site."*

The policy does not say "optimise to use all available space".

The architect's material does not show compliance with D3 Part D. In particular the scheme does not deliver appropriate outlook, privacy and amenity, contrary to D3 Part D(7).

The scheme does not provide conveniently located green and open spaces for social interaction, play, relaxation and physical activity, contrary to D3 Part D(8).

The scheme does not achieve outdoor environments that are comfortable and inviting for people to use, contrary to D3 Part D(10).

The scheme does not respect, enhance the neighbouring heritage assets and architectural features that contribute towards the local character, contrary to D3 Part D(11).

The scheme does not aim for high sustainability standards, contrary to D3 Part D(13).

The scheme does not provide spaces and buildings that maximise opportunities for urban greening to create attractive resilient places that can also help the management of surface water, contrary to D3 Part D(14).

The scheme is not inclusive, contrary to the London Plan D5. The scheme will detrimentally reduce the inclusivity of the green communal area behind 18-25 Palace Court placing it in shade, imposing on it and overlooking. The scheme is contrary to the London Plan 3.5.6, which reads:

> *"Inclusive design creates spaces and places that can facilitate social integration,*
> *enabling people to lead more interconnected lives. Development proposals should help to create inclusive neighbourhoods that cumulatively form a network in which people can live and work in a safe, healthy, supportive and inclusive environment."*

The scheme does not provide affordable housing, contrary to the London Plan policy H4.

Comments on the Basement Impact Assessment Rev 2.3

1. Unless and until the existing damage in the buildings of Palace Court and Ashley Court are taken into consideration in the Burland calculations, the BIA is inaccurate and has failed to take into consideration relevant information. The policy does not allow for monitoring of movement as a substitute for carrying out an accurate calculation using all of the information available. The existing damage in Palace Court and Ashley Court are a relevant consideration in this application.

   Paragraph 4.34 of *Camden Planning Guidance: Basements* requires cumulative impacts of basement development to be considered. Palace Court and Ashley Court both have basements (lower ground floors). There has been an impact caused by those basements on their buildings. The cumulative impact of existing damage and damage caused by the scheme must be considered.

2. The BIA has been prepared on the basis that:

   > *"It was not possible to accurately state if the water main or sewer were at more or less than 3m from the outer face of the proposed piles."*

   This makes the BIA speculative and as a consequence the developer has not demonstrated that the scheme will not cause harm. Therefore, paragraph 4.1 of *Camden Planning Guidance: Basements* has not been complied with, which states:

   > *"The Council will only permit basements and other underground development where the applicant can demonstrate it will not cause harm to the built and natural environment and local amenity, including to the local water environment,*
   > *ground conditions and biodiversity."*

3. The BIA has been prepared on the basis that:

   > *"The structural design of piled foundations was not yet available at the time of issuing BIA Rev 2.3."*

   Again, this makes the BIA speculative and as a consequence the developer has not demonstrated that the scheme will not cause harm.

4. The engineers have doubled the pile loads since Rev 2.1. This is odd given that Rev 2.1 was signed off as final by three engineers. It appears as if a concerted effort has been made to lower the damage category at 18-25 Palace Court, which was borderline acceptable, and clearly would be unacceptable once existing damage is considered. The damage category at 18-25 Palace Court is now presented as significantly less. This calls for an explanation. If the structural design of piled foundations are still unknown then it follows that the pile loads are still unknown.

5. For the assessment of the impact at 18-25 Palace Court it is under-conservative to use an average retained height. It is noted that this approach has been introduced

since Rev 2.1, which had been signed of as final. Using an average retained height may simplify calculations but can result in less accurate predictions for ground movement. Using an average height can mask critical points where ground movement may be more pronounced. In such cases, it is imperative to perform localised assessments at different sections with varying heights.