

Delegated Report (Refusal)		Analysis sheet		Expiry Date:		18/03/2025	
		N/A / attached		Consultation Expiry Date:		23/02/2025	
Officer					Application Number(s)		
Sam FitzPatrick					2024/5731/P		
Application Address					Drawing Numbers		
34a Netherhall Gardens London NW3 5TP					Please refer to decision notice.		
PO 3/4		Area Team Signature		C&UD		Authorised Officer Signature	
Proposal(s)							
Demolition of existing dwellinghouse and erection of three storey replacement house, including excavation of basement. Associated works including replacement of front boundary wall and erection of cycle and waste storage.							
Recommendation(s):		Refuse planning permission					
Application Type:		Full Planning Permission					

Conditions or Reasons for Refusal:	Refer to Draft Decision Notice			
Informatives:				
Consultations				
Adjoining Occupiers:	No. of responses	09	No. of objections	09
Summary of consultation responses:	Site notices were displayed from 29/01/2025 to 22/02/2025 and a press notice was published on 30/01/2025 that expired on 23/02/2025.			
	<p>Nine objections were received from neighbours in the surrounding buildings and streets, as well as two objections from ‘Netherhall Property Management Limited’ (where the group is the 34 Netherhall Gardens freeholder) and ‘Anstry Home’ (on behalf of the residents of 30-32 Netherhall Gardens). The concerns raised can be summarised as follows:</p> <ol style="list-style-type: none">1) The proposed dwelling has a much increased footprint, massing, and height compared to what was proposed and assessed at pre-application stage, which has not been justified;2) The increased massing of the proposal will result in significant impacts to the daylight and sunlight of neighbouring properties, in particular to the north facing windows and rooms of 30-32 Netherhall Garden, and the south facing windows and garden of 36 Netherhall Gardens;3) It is noted that objectors have instructed a separate consultant to review the submitted BRE Daylight and Sunlight report, who has subsequently produced a letter to express concerns with the information contained within the report and its conclusions. Many of these concerns with the methodology and findings of the Daylight and Sunlight report are repeated in other objections;4) The submitted Daylight and Sunlight assessment does not assess the impact of the proposed dwelling on residential units in building on the opposite side of the road. It also incorrectly shows the garden of 36 Netherhall Gardens as under the ownership of the application site;5) The windows to the rear of the proposed dwelling will impact on the privacy of properties to the rear and result in light spill. It will also result in an impact to outlook from neighbouring windows and will be an eyesore to look at;6) The proposed basement may result in subsidence impacts such as destabilisation of the ground and damage to neighbouring properties due to the excavation required;7) The proposed basement may impact nearby trees, such as those large protected trees to the front of the site. <p><u>Officer response:</u></p> <ol style="list-style-type: none">1. For concerns relating to design and heritage, please see section 5;2. For concerns relating to amenity impacts, including daylight and sunlight, please see section 6;3. Section 6 of this report also responds to the letter produced by Smith Marston;4. The Daylight and Sunlight report does assess one property (no.39) on the opposite side of Netherhall Gardens. This is the building that sits directly opposite the application site, with all buildings opposite being slightly offset from this. Given that no.39 would be most directly affected, it is assumed that the properties also on the opposite side of the road and adjacent to this would experience the same or less			

	<p><i>impact. Additionally, the applicant has also provided a follow-up letter regarding the daylight and sunlight impacts, which confirms that the development would sit below the 25 degree line, as measured from the middle of the basement window of no.43, which is directly opposite and next to no.39. The error in land ownership is noted, but would not impact the assessment in terms of daylight and sunlight availability;</i></p> <p><i>5. For concerns relating to amenity impacts, including light spill, outlook, and privacy, please see section 6;</i></p> <p><i>6. For concerns relating to basement impacts, please see section 7;</i></p> <p><i>7. For concerns relating to trees and biodiversity, please see section 10.</i></p>
Netherhall Neighbourhood Association	<p>The Netherhall Neighbourhood Association (NNA) wrote to object to the proposal, raising the following concerns:</p> <ol style="list-style-type: none"> 1) The design of the proposed building is too bulky, tall, and aggressive, with a much larger footprint than existing. It would be disproportionate in scale to the area and surrounding properties; 2) The proposed basement may give rise to groundwater drainage issues and risk damaging trees and the stability of neighbouring properties. The BIA audit by Campbell Reith does not appear to involve much independent examination; 3) The proposed building would lead to overshadowing and overlooking, particularly with regards to 34 Netherhall Gardens and Flat 8 of this property; 4) The cumulative levels of construction and development in this area would have a significant impact on the health of residents and permissions should receive staggered start dates to combat this. <p><u>Officer response:</u></p> <ol style="list-style-type: none"> 1) <i>For concerns relating to design and heritage, please see section 5;</i> 2) <i>For concerns relating to basement impacts, please see section 7;</i> 3) <i>For concerns relating to amenity impacts, please see section 6;</i> 4) <i>For concerns relating to construction impacts, please see section 9. It should be noted that the Council assesses applications separately and does not control dates at which schemes can be implemented, other than to use conditions to ensure that implementation takes place within three years of a permission.</i>

Site Description

The site is a two-storey dwelling with three garages at ground floor level and a living area above. The building is situated on the east side of Netherhall Gardens, in the section of the street that runs north to south, not the section running southwest to northeast. It was constructed in the 1950s in the former rear garden of 34 Netherhall Gardens. As a result, the building itself takes up a large amount of the plot, leaving a very small rear garden, and is in close proximity to both 34 Netherhall Gardens and 30-32 Netherhall Gardens.

The application site sits within the Fitzjohns Netherhall Conservation Area and is recognised as being a negative contributor to the area. The surrounding area is primarily residential, through there area a number of small-scale independent schools and other uses, including employment, religious, and educational. To the southwest is the more commercial area of Finchley Road.

Relevant History

Application site

2022/5367/PRE – Demolition of existing detached residential dwelling (with garages below); and erection of replacement detached residential dwelling. **Pre-application advice issued 08/06/2023.**

TP2628/14910 – The erection of an additional storey comprising one self-contained flat over the existing garages at the rear of No. 34, Netherhall Gardens, Hampstead. **Planning permission granted 13/12/1964.**

2628/24230 – Permission to convert into flats the premises known as 34, Netherhall Gardens, Hampstead. [*by way of erection of rear extension*]. **Planning permission refused 05/04/1935.**

Reasons for refusal:

- 1) The extension would in effect be a new block of flats which is not an appropriate development of the site;
- 2) The siting of the extension approximately seven feet from the boundary of the adjoining property would adversely affect that property having regard to the proximity of the proposed extension.

Other relevant sites

71 Avenue Road

2022/2529/P – Erection of a two storey, single family dwellinghouse (Class C3) with basement and accommodation in the roof space, following the demolition of existing. **Planning permission refused 21/12/2023 and dismissed at appeal 23/10/2024.**

Reasons for refusal (only relevant reasons shown):

- 1) The proposed development, through insufficient evidence to justify the demolition of the existing building, would result in an unsustainable development that fails to contribute to a low carbon future through efficient use of resources;
- 2) The proposed development, in the absence of a legal agreement securing a construction management plan and construction impact bond, would be detrimental to the amenity of neighbouring occupiers;
- 3) The proposed development, in the absence of a legal agreement securing financial contributions towards highways works, would fail to secure adequate provision for and safety of pedestrians, cyclists and vehicles.

Frogna! Garages on land west of Ashley Court

2024/1122/P – Demolition of existing garages and the erection of 2 x dwellinghouses (Class C3) with excavation of basement, associated amenity space, four new garage spaces, front and rear landscaping and associated works. **Planning permission refused 15/10/2024.**

Reasons for refusal (only relevant reasons shown):

- 1) The proposed design by reason of design, form and fenestration pattern, would be detrimental to the character and appearance of the area. The design and form would result in an incoherent and unordered building, failing to contribute positively to the area;
- 2) The proposed terraces and massing of the buildings would result in unacceptable impact on residential amenity of neighbouring properties by way of overlooking, loss of privacy, and impact on light;
- 3) The proposed development, in the absence of a legal agreement securing financial contributions towards highways works, would fail to secure adequate provision for and safety of pedestrians, cyclists and vehicles;
- 4) The proposed development, in the absence of a legal agreement securing a Construction Management Plan (CMP), associated contributions to support the implementation of the CMP, and an impact bond, would be likely to give rise to conflicts with other road users and be detrimental to the amenities of the area generally;

- 5) The proposed development, in the absence of a legal agreement securing car-free housing, would contribute unacceptably to parking stress and congestion in the surrounding area and fail to promote more sustainable and efficient forms of transport and active lifestyles.

The Anna Freud Centre, 21 Maresfield Gardens

2018/3110/P (APP/X5210/W/18/3219150) – Roof extension to include creation of crown roof with two rooflights on top, replacement of rear dormer with two dormers, one new front rooflight, reinstatement of chimneybreast on southern side, increase in height of the chimneybreast on the northern side, all to non-residential institution (Class D1). **Planning permission refused 09/10/2018 and dismissed at appeal 05/04/2019.**

Reasons for refusal:

- 1) The proposed roof extension, by reason of its resulting bulk, mass, form and detailed design would have a detrimental impact on the character and appearance of the host building, the group of buildings of which it forms a part and the wider Fitzjohns/Netherhall Conservation Area;
- 2) The proposed 5th floor rooflight on the front slope, by reason of its location and size, would have a detrimental impact on the character and appearance of the host building, streetscene and wider Fitzjohns/Netherhall Conservation Area.

66 Fitzjohn's Avenue

2017/4366/P (APP/X5210/W/18/3193541) – Erection of pair of semi-detached, three storey (plus basement) 3-bed dwellings following demolition of existing pair of semi-detached dwellings. **Planning permission refused 15/11/2017 and dismissed at appeal 23/04/2018.**

Reasons for refusal (*only relevant reasons shown*):

- 1) The proposed development by virtue of its height, bulk, siting and detailed design would appear overly dominant and harmful to the character and appearance of adjacent dwellings and of the conservation area generally;
- 2) The proposed development by virtue of its height, width, bulk and siting would result in loss of outlook to 64 Fitzjohn's Avenue and 12 Akenside Road;
- 3) In the absence of a legal agreement to secure car free housing and by virtue of the proposed on-site parking provision in this highly accessible location, the development would fail to encourage car free lifestyles, promote sustainable ways of travelling, help to reduce the impact of traffic and would increase the demand for on-street parking in the CPZ;
- 4) The proposed development, in the absence of a legal agreement to secure a Construction Management Plan and associated monitoring fee, would be likely to give rise to conflicts with other road users, and be detrimental to the amenities of the area generally;
- 5) The proposed development, in the absence of a legal agreement to secure contributions towards public highway works, would be likely to harm the Borough's public realm.

Relevant policies

National Planning Policy Framework 2024

The London Plan 2021

Camden Local Plan 2017

- **G1** Delivery and location of growth
- **H1** Maximising housing supply
- **H6** Housing choice and mix
- **H7** Large and small homes
- **A1** Managing the impact of development
- **A2** Open space
- **A3** Biodiversity
- **A4** Noise and vibration
- **A5** Basements
- **D1** Design

- **D2** Heritage
- **CC1** Climate change mitigation
- **CC2** Adapting to climate change
- **CC3** Water and flooding
- **T1** Prioritising walking, cycling, and public transport
- **T2** Parking and car-free development
- **T4** Sustainable movement of goods and materials

Camden Planning Guidance

- CPG Amenity (Jan 2021)
- CPG Basements (Jan 2021)
- CPG Biodiversity (Mar 2018)
- CPG Design (Jan 2021)
- CPG Energy efficiency and adaptation (Jan 2021)
- CPG Home Improvements (Jan 2021)
- CPG Transport (Jan 2021)
- CPG Trees (Mar 2019)

Fitzjohns Netherhall Conservation Area Appraisal and Management Strategy 2022

Draft Camden Local Plan

A [Submission Draft Camden Local Plan](#) (updated to take account of consultation responses) was reported to Cabinet on 2 April 2025 and the Council on 7 April 2025. The Council resolved to agree the Submission Draft Local Plan for publication and submission to the government for examination (following a further period of consultation). The Submission Draft is a significant material consideration in the determination of planning applications but still has limited weight at this stage.

Assessment

1. Proposal

- 1.1. Planning permission is sought for the demolition of the existing structure and the erection of a replacement dwelling (Class C3), consisting of a three storey house plus basement. Alongside this, associated alterations are proposed, including works to the front boundary, landscaping, and erection of cycle/waste storage to the front garden.

2. Background

- 2.1. It is noted that pre-application advice was sought for the demolition of the existing dwelling and construction of a replacement dwelling, which the Council issued to the applicant in June 2023. The scheme proposed then was similar with respect to the fact that demolition and rebuild was proposed, however had a different design. The Council's feedback and response letter has been published as part of this application in the interests of transparency. In summary, the view communicated by officers with regards to the acceptability of the scheme can be summarised as follows:

- The principle of demolishing and replacing the existing dwellinghouse is acceptable as long as it is justified in sustainability terms;
- The proposed design required revision and justification to evidence the relationship with the character and appearance of the surrounding buildings and conservation area, and how this has informed the design;
- The impact on amenity may be acceptable, however care needs to be taken to ensure the impact in terms of overlooking and loss of privacy is acceptable.

3. Assessment

- 3.1. The considerations material to the determination of this application are as follows:

- Land use
- Design and heritage
- Impact to residential amenity
- Basement impact
- Sustainability
- Transport
- Trees, landscaping, and biodiversity

4. Land use

- 4.1. The Local Plan clearly sets out that housing is the priority land use within the borough, as supported by policies G1 and H1. The latter of these policies sets out a 10-year housing target for Camden to provide 10,380 additional homes from 2019/20 to 2028/29, and states that the Council will regard self-contained housing as the priority land use of the Local Plan. Policy H As such, the proposal to replace the existing house with a larger single-family dwelling is not resisted in land use terms.
- 4.2. Irrespective of the above, the acceptability of demolition is an important aspect in the principle of development, including in terms of whether this is justified on sustainability grounds. For clarity, this consideration is covered in section 8 of this report.
- 4.3. It is also noted that policy H4 makes clear that the Council will seek to maximise the supply of affordable housing in the borough; a contribution towards affordable housing would be expected where development provides one or more additional homes and a total addition of more than 100sqm gross internal area (GIA) of floorspace. Although this proposal involves the addition of more than 100sqm GIA, the new dwelling would replace an existing dwelling, so there is no net increase in homes. As such, there is no requirement for a contribution towards affordable housing.

5. Design and heritage

- 5.1. Local Plan Policy D1 (Design) states that the Council will aim to achieve the highest standard of design in all developments and requires development to be of the highest architectural and urban design quality, which improves the function, appearance, and character of the area. Local Plan Policy D2 (Heritage) states that the Council will seek to preserve and, where possible, enhance Camden's rich and diverse heritage assets and their settings, including conservation areas and the setting of its listed buildings. In order to comply with this policy, the Council will require that development within conservation areas preserve or, where possible, enhance the character and appearance of the area.
- 5.2. The application site is located within the Fitzjohns Netherhall Conservation Area, wherein the Council has a statutory duty to pay special attention to the desirability of preserving or enhancing the character and appearance of that area. The property is recognised as a negative contributor by the Fitzjohns Netherhall Conservation Area Appraisal and Management Strategy, wherein it is referred to as a building that is not synonymous with the established character of the area. The same document goes on to establish development principles, including with regards to the landscape and townscape character and building design.
- 5.3. Although varied and diverse in architecture, the Fitzjohns Netherhall conservation area is generally characterised by Queen Anne Revival and Arts and Crafts influences. Additionally, the townscape of the area tends to be defined by residential development set-back behind small front gardens with low front walls and hedges, with some larger-scale mansion blocks. Generally, the majority of houses are large detached or semi-detached dwellings, often constructed with red or yellow brick and plain clay tiles, and most properties feature pitched roofs and chimneys. The statement also outlines that an identified source of harm in the conservation area is the impact on group value of buildings with similar architectural language and materials from replacement dwellings that fail to

respect the character of surrounding properties. The road that the application site is located on, Netherhall Gardens, is a Victorian suburban street that is architecturally mixed, though features a great deal of verticality with many, if not most, properties having expressive pitched and gabled roofs.

- 5.4. The existing structure is clearly of mid-20th century design and does not align with the neighbouring properties or wider conservation area, including in terms of design, materiality, appearance, or character. This in part explains the negative contribution that it has been acknowledged as making by the conservation area statement. As noted by the pre-application advice, no objection is raised to the demolition of the existing building in design or heritage terms, subject to the provision of an appropriately designed and high quality replacement (notwithstanding the sustainability issues).
- 5.5. The proposed replacement dwelling would consist of a larger, more classical influenced three-storey structure with a flat-topped roof, appearing as more similar to a mansard or neo-Georgian roof than the pitched gables that are common features of the conservation area. The front façade is notably symmetrical and grand in form, which appears as overly dominant within its plot and alien to the identified character of this particular street and the wider conservation area. The new dwelling reads as attempting to compete with the surrounding development, including the house which it is located within the (former) back garden of; although the existing building fronts onto Netherhall Gardens, it was constructed originally as garages within the rear of 34 Netherhall Gardens. Although it is accepted that the building's status on the street is not necessarily as a garden building, it should nonetheless remain recessive in the context of its neighbours, rather than trying to compete with and assert itself as a larger and more dominant structure.
- 5.6. It is noted that, although the pre-application advice indicated that the height was acceptable, this was when the building predominantly read as flat-topped with a slight domed roof that just rose higher than the eaves of the neighbouring property at 32 Netherhall Gardens. Although the roof form of the proposed dwelling was not supported, the general height was noted as appearing to be acceptable, given it would largely align with the adjacent eaves and therefore read as subordinate. However, the roof form now proposed would show a pitch that rises above the eaves, with the flat top portion of the roof sitting clearly higher than the adjacent eaves. This results in an inappropriate roof form that is overly dominant in the streetscene and would very obviously compete with the neighbouring properties by way of the incongruous form, scale, and height.
- 5.7. In addition to the clear issues with the roof, the overall design of the property features a number of insensitive features that fail to integrate with the streetscene and wider area. The balconies/terraces to the front of the property situated to the roof of the bays are an alien feature to Netherhall Gardens, where bays do not serve to provide amenity space. Additionally, the front façade features a number of instances of floor-to-ceiling glazing, the extent of which would serve as an uncharacteristic addition to the front elevation that is overly grand in this more residential street. Similarly, although not directly visible from the public realm (as with the front elevation), both side elevations and the rear elevation all feature significant amounts of glazing, which cumulatively result in a confused character that is partly classical and partly contemporary, exacerbating the awkward relationship that the proposed dwelling would have with the streetscene and surrounding conservation area.
- 5.8. With regards to materiality, the proposed structure is mainly constructed of red brick, with timber windows and doors and slate roof tiles. Cast stone would be used for features such as window and doors surrounds, copings, and sills. These materials would all be appropriate for the context of the building and the streetscene, and clearly draw from surrounding development in the Fitzjohns Netherhall conservation area. As such, there is no objection to the proposed materials of the house.
- 5.9. The proposal also involves works to the front boundary of the application site, which

would see the introduction of large metal vehicular access gates and two pedestrian gates – one metal and one timber. The front boundary wall to the south of the site would also be raised to approximately meet the level of the boundary wall to the north, resulting in a more even level across the entirety of the front boundary. Although the conservation area statement makes clear that boundary treatments that increase the height such that the appearance is out of character with the area are considered to cause harm to the conservation area, it is noted that this portion of the Netherhall Gardens frontage was not originally a front boundary, but rather the side boundary to the garden of 34 Netherhall Gardens. As such, the increase in height would be more characteristic of the recessive side boundary, and would not be resisted. However, the installation of large metal vehicular gates and multiple pedestrian entrances have the result of advertising this area as a grand entrance; either there should be no vehicular gates (as existing), or the barrier should read as more solid, so that the character of the boundary is retained as a garden wall, rather than a substantial entrance to the property. The resultant boundary treatment is inappropriate in the streetscene and fails to preserve or enhance the character and appearance of the conservation area and plot.

5.10. The National Planning Policy Framework provides guidance on the weight that should be accorded to harm to a heritage asset and in what circumstances such harm might be justified, reflecting the statutory duty in s72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. Paragraph 215 states that “*where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use*”. Local Plan Policy D2 states 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 the harm.

5.11. Given the reasons that have been outlined in the paragraphs above, the proposal would fail to preserve or enhance the heritage asset (the Fitzjohns Netherhall conservation area). The harm would constitute less-than-substantial harm to the designated heritage asset towards the moderate to lower end of the scale (given the comparison to the current site). Public benefits are somewhat limited given there is no additional housing, and there are no demonstrable public benefits to the proposal that would be considered to outweigh this harm.

5.12. Overall, the proposed new dwelling and boundary alterations are considered to harm the character and appearance of the streetscene and wider conservation area, regardless of the negative impact that the existing building currently has. The proposed new dwelling, in particular its classical appearance and inappropriate roof form, would read as an alien and incongruous addition that is overly dominant in relation to the neighbouring properties and in the streetscene, and would therefore fail to integrate with the character of the wider area. Therefore, the proposal fails to comply with Policies D1 and D2 of the London Borough of Camden Local Plan.

6. Impact to residential amenity

6.1. Policy A1 (Managing the impact of development) seeks to protect the amenity of Camden’s residents by ensuring the impact of development is fully considered. It seeks to ensure that development protects the quality of life of occupiers and neighbours by only granting permission for development that would not harm the amenity of neighbouring residents. This includes privacy, outlook, light availability, and noise. The Council’s guidance contained within ‘CPG Amenity’ provides specific guidance with regards to these aspects.

6.2. As previously noted, the fact that the proposed dwelling is located within the historic rear garden of 34 Netherhall Gardens means that the plot is quite constrained, and as a result any structure will be in close proximity to the neighbouring properties. Most notably,

the south elevation of the proposed structure is very close to the north elevation of 32 Netherhall Gardens, with a separation distance of approximately 2.3m. The following shows a block plan:

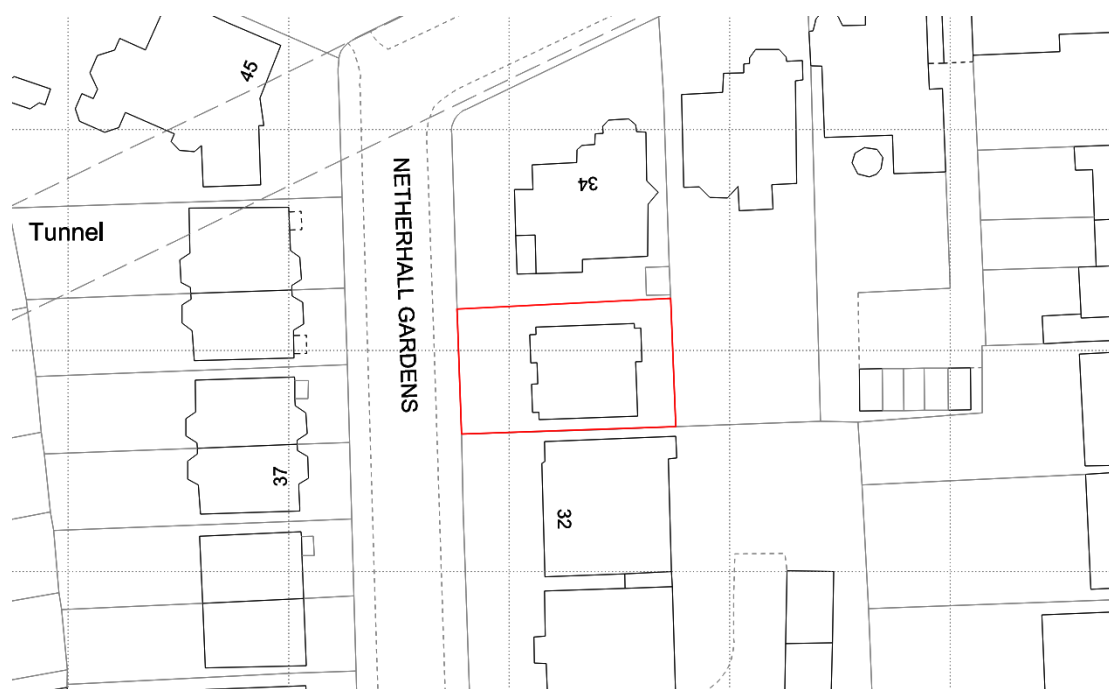


Figure 1: Block plan showing development site and surrounding properties.

- 6.3. With regards to privacy and overlooking, the proposed dwelling has been designed so that windows to the south elevation above ground level are kept to a minimum, with the rooms primarily being served by windows to the east (rear) and west (front) elevations. Where south facing windows are proposed, these are obscure glazed. As such, it is not expected that there would be any harmful overlooking or impacts to privacy for residents located to 32 Netherhall Gardens, facing the south elevation. Similarly, the windows to the west elevation only serve the staircase and are also proposed to be obscure glazed, so would not allow for harmful impact to amenity in terms of privacy or overlooking.
- 6.4. To the rear, it is noted that there is a small balcony proposed serving the master bedroom, accessed by an external staircase running up the side and rear of the house. There would also be a larger amount of glazing to the rear of the property, with large floor-to-ceiling windows. Notwithstanding the design concerns with the extensive glazing as noted in the previous section of the report, it is considered that this would not result in any significant or harmful impact in terms of overlooking or privacy impacts. Whilst the rear of the proposed dwelling and the rear of 34 Netherhall Gardens are clearly in close proximity, they do not face each other, with the rear of the proposed building facing east and the rear of 34 facing south, meaning there would be no direct views or opportunities for overlooking between the two. The rear terrace is very small and would appear to function primarily as an external means of access, rather than an amenity space. The separation distance between the rear of the proposed dwelling and the rear of 36 Netherhall Gardens is much larger, and although the angles of overlooking are slightly less oblique, the distance would mean there is no significant concern regarding overlooking. It is also worth noting that the existing planting, including trees and shrubbery, to the gardens of the neighbouring properties provide a good amount of natural screening to mitigate any impact with regards to overlooking and privacy. As such, it is considered that the impact on privacy and overlooking from the proposed dwelling is acceptable.
- 6.5. Although the glazing is more extensive that would be preferred for the design reasons noted in the previous section, it is considered that the extent of glazing would not result in unacceptable levels of light spill. There are a number of windows that are floor-to-ceiling, however there would still be a sufficient level of 'solid' elevation, such that the light spill would not be unreasonable or significant enough to warrant a reason for refusal.

6.6. Regarding the impact of the proposed development to outlook, the most affected windows would be the windows to the upper floors of the north elevation of 30-32 Netherhall Gardens, and the windows to the upper floors of the south elevation of 34 Netherhall Gardens. The windows at ground floor level of both of these buildings are already obstructed by boundary treatment or hedges, so there would be little change from the proposed dwelling to these windows. Elsewhere, the separation distance would be great enough that there would be very limited impact to outlook. At the upper levels of the building to the south, the separation distance would be approximately 4.7m, which is around 1.1m more than the existing separation distance. At the upper levels of the building to the north, the separation distance would be the same as existing, though there would obviously be an increase in height. Although the increased height and massing (along with the reduced separation distance to the south) would have some impact to the outlook from windows facing the proposed development, the nature of the elevations as recessive side elevations does mean that it is accepted that there would be reduced outlook at this location. Additionally, the topography would mean that the building to the north would still have a reasonable level of outlook, as the first floor would be broadly at a similar level to the roof level of the proposed dwelling. With respect to the building to the south, there would be some impact to outlook, however the context of the side elevation, along with the fact that planning history appears to indicate that the flats have aspects to the front and rear (and do not face only this side), mean that the impact to outlook is considered to be acceptable and not significant such as to warrant a reason for refusal.

6.7. The applicant has provided a daylight and sunlight report with the application, as the proposal clearly meets the requirements for a screening test affecting adjacent neighbouring properties. This report tests the properties immediately adjacent to the north and south (34 and 32, respectively), and well as the property directly opposite (39). As noted in the consultation section of this report, it is considered a fair assumption that the properties opposite the application site and offset (i.e. those adjacent to 39) would have a lesser impact than the property directly opposite, so these have not been tested. It is assumed that 39 would be the most impacted property directly opposite, with the adjacent properties to experiencing the same or less significant impacts.

6.8. The methodology and criteria used for the daylight and sunlight report is based on the approach set out by BRE guidance. The report makes use of several standards in its assessment of surrounding buildings, which are described in the BRE guidance:

Vertical Sky Component (VSC) – The BRE considers that daylight may be adversely affected if, after development, the VSC is both less than 27% and less than 0.8 times (a reduction of more than 20%) its former value.

No Sky Line (NSL) – Also known as daylight distribution (DD), the BRE considers that daylight may be adversely affected if, after development, the NSL is less than 0.8 times (a reduction of more than 20%) its former value.

Annual Probable Sunlight Hours (APSH) – The BRE considers 25% to be acceptable APSH, including at least 5% during the winter months. Impacts are noticeable if less than these targets, and after development annual sunlight hours are reduced by more than 4 percentage points and annual or winter hours are reduced to less than 0.8 times (a reduction of more than 20%) their former value.

6.9. The table below demonstrates the measured impact associated with the VSC, NSL, and APSH analysis.

Address	VSC				NSL				APSH			
	No. of windows analysed	BRE compliant		Total % BRE compliant	No. of rooms analysed	BRE compliant		Total % BRE compliant	No. of rooms analysed	BRE compliant		Total % BRE compliant
		Yes	No			Yes	No			Yes	No	
32 Netherhall Gardens	5	1	4	20	3	1	2	33	1	1	0	100
34 Netherhall Gardens	14	11	3	79	7	6	1	86	7	7	0	100
39 Netherhall Gardens	13	13	0	100	4	4	0	100	3	3	0	100

Table 1: Summary of results of daylight and sunlight assessment, including VSC, NSL, and APSH

- 6.10. The results of the daylight and sunlight assessment show that all windows at 39 Netherhall Gardens opposite meet BRE guidelines.
- 6.11. Most windows at 34 Netherhall Gardens would meet the target values for VSC, as established by BRE guidelines. The only windows at 34 that do not meet the BRE guidelines would only see their VSC reduced by between 22-26%, just marginally over the guideline reduction for significant impact, and would be considered minor negative reductions. Furthermore, the retained levels of daylight would be around 22% to 24% VSC which is considered good in an urban area. Similarly, only 1 room at 34 Netherhall Gardens would have an NSL reduction of more than 20%, with a 21% reduction marginally over the BRE marker for adverse impacts to daylight. The impact on sunlight would also be BRE compliant.
- 6.12. However, the daylight and sunlight assessment does clearly indicate that there would be a more significant impact to the daylight and sunlight of 32 Netherhall Gardens, located to the south. The assessment shows that four windows would fail to meet BRE guidelines for VSC (W1, W2, W3, W4) and two rooms would fail to meet BRE guidelines for NSL (R1 and R2). The initial assessment was not able to confirm the use of any of the impacted rooms – though regardless of the use, this does present significant concerns, given it appears that R1 and R2 are not served by any other windows. The relative reductions in VSC are all greater than 40%, so would be major negative reductions. The rooms at 32 Netherhall Gardens that would be significantly impacted would have reductions of 51% and 50%, which again are sizeable relative losses. The windows are facing north so there would be no impact on sunlight. Although there would be significant relative reductions, all the windows have low existing values, ranging from around 14%VSC to 10%VSC. This means the actual reductions in all cases are less than 7 percentage points. Therefore, whilst there will be noticeable major adverse relative impacts, the actual reductions will be less severe.
- 6.13. The daylight and sunlight assessment makes the case that the BRE guidelines urge flexibility when assessing against targets, noting that factors such as the relative height of the existing and proposed buildings and the proximity of windows in the existing building to the site boundary should be acknowledged. When considering relative heights, the BRE suggests utilising a ‘mirror image’ to define targets where the building can be of a similar height and scale of adjacent buildings.
- 6.14. It is noted that an objector to the proposed development has commissioned a separate ‘Right to Light’ surveyor to review the submitted daylight and sunlight assessment, to which a number of concerns have been raised through a formal letter. Firstly, the letter suggests that the NSL test should not be carried out if the windows serving it have not passed the VSC test. The applicant’s light consultant has responded to this by way of a letter, arguing that the BRE Decision Chart makes clear that it is normal practice to test and report on VSC and NSL separately; the Council agrees with this position and does not take issue with the use of the NSL test for rooms which feature a window that has failed the VSC test.
- 6.15. The objection letter also notes that there has not been a mirror image assessment to create an obstruction that can be used to set new VSC target values for each window. As such, the letter argues that conclusions cannot be drawn without the exercise of the mirror image. The letter also raises concerns with the assessment of 34 Netherhall

Gardens as one property and its designation of garden space, due to the presence of trees and positioning close to the boundary with the street.

6.16. In response, the applicant's light consultant has utilised a mirror image approach to demonstrate that all windows and rooms are fully BRE compliant. In every test (VSC, NSL, and APSH), the results show that the proposed building would provide more light to 34 Netherhall Gardens than is found by the mirror image. The consultants have also provided an updated overshadowing assessment of the exterior garden of this property, however officers consider that the presence of mature trees and proximity to the street do not mean that these parts of the garden should be excluded from the overshadowing assessment, and as such, a revised overshadowing assessment is not required. The response letter also details the impacts to no.32, noting the existing building's extremely close proximity to the common boundary, as well as acknowledging the layout of the residential unit most affected (which was not previously provided). This appears to show that the affected windows mostly serve non-habitable rooms. Whilst these points are acknowledged, and it is accepted that there would likely be some reduction in light availability to the residential unit at ground level, the extent of the reductions in both VSC and NSL is very significant. The nature of this side elevation does mean that there will likely be impact exceeding BRE guidelines for any replacement structure, however the nature of the proposed dwelling appears to result in an impact that would be excessive and harmful to the amenity of neighbouring residents. It is also important to note that, although this is a side boundary between two properties, the application site was originally the rear of the garden to no.34 and the existing house has been constructed as an extension to backland garages. As such, the nature of the relationship between the application site and no.32 would be more appropriate to characterise as that of a house and a neighbouring garden building, rather than two adjacent houses. This echoes what has already been outlined in the design and heritage section of the report with respect to the recessive relationship with the neighbouring property, but is relevant to amenity considerations too, as a more appropriately designed scheme would likely have less of a substantial impact to the light availability of the neighbouring residential units at 32 Netherhall Gardens.

6.17. Although the proposal would be considered not to result in significant or harmful impacts to amenity in terms of privacy, outlook, or overlooking, the impact with regards to daylight and sunlight impact would be considered to conflict with the Council's policies and guidance in respect of some windows at number 32. However, given the impacts of the wider scheme, and the particular circumstances of the site, the development would be in compliance with policy A1 of the London Borough of Camden Local Plan on balance and would not justify a reason for refusal.

7. Basement impact

7.1. Policy A5 of the Local Plan notes that the Council will only permit basement development where it is demonstrated to its satisfaction that the proposal would not cause harm to:

- a) Neighbouring properties;
- b) The structural, ground, or water conditions of the area.

7.2. The policy goes on to note that, in determining proposals for basements and other underground development, the Council will require an assessment of the scheme's impact on drainage, flooding, groundwater conditions, and structural stability in the form of a Basement Impact Assessment (BIA) and, where appropriate, a Basement Construction Plan (BCP).

7.3. The following underground development constraints apply to the application site: subterranean (groundwater) flow and slope stability. The application is accompanied by a Basement Impact Assessment which has been independently audited by Campbell Reith, in line with the requirements of CPG 'Basements'.

7.4. Campbell Reith have concluded that the BIA complies with the requirements of CPG 'Basements'. The BIA confirms that the basement would be founded within the Claygate Member, which is a suitable founding stratum, and that there is the potential for a limited amount of groundwater to be encountered during excavation, but this can be mitigated through sump pumping. Overall, it is demonstrated that the proposed basement would not have a significant impact on the local and wider hydrogeological environment, and that the new drainage design would reduce the risk due to surface water flooding. The Ground Movement Assessment predicts potential damage to neighbouring properties due to basement construction, and this has been shown to be Category 1 (Very Slight), in accordance with the Burland scale. The BIA does indicate the need for a movement monitoring strategy during excavation and construction.

7.5. The audit provided by Campbell Reith confirms that the BIA complies with the requirements of CPG Basements. Campbell Reith acts as an independent auditor for BIAs submitted to the Council, and the Council accepts its findings accordingly.

7.6. Policy A5 also sets out various criteria against which to assess proposed basement development. Basement development should not:

- f) not comprise more than one storey;
- g) not be built under an existing basement;
- h) not exceed 50% of each garden within the property;
- i) be less than 1.5 times the footprint of the host building in area;
- j) extend into the garden no further than 50% of the depth of the host building measured from the principal rear elevation
- k) not extend into or underneath the garden further than 50% of the depth of the garden;
- l) be set back from neighbouring property boundaries where it extends beyond the footprint of the host building; and
- m) avoid the loss of garden space or trees of townscape or amenity value.

7.7. In this case, the proposed basement would comply with the policy A5 criteria, insofar as it would be only one storey tall, not built under an existing basement, less than 1.5 times the footprint of the host building, would not extend further than 50% of the depth of the garden, and would be set back from neighbouring property boundaries.

7.8. Were the application to have been approved, the basement works would be ensured to be carried out in accordance with the BIA and methods outlined within by way of a condition. This would secure compliance with the BIA, and a further condition would have been required to secure the details of a suitably qualified engineer to oversee the works.

7.9. On the basis of the above, the works would be considered to comply with policy A5 of the London Borough of Camden Local Plan and the Council's requirements with respect to basement development, as set out in CPG 'Basements'.

8. Sustainability

8.1. Policy CC1 of the Local Plan requires that all development make the fullest contribution to the mitigation of and adaptation to climate change, to minimise carbon dioxide emissions and contribute to water conservation and sustainable urban drainage. Policies CC2 and CC3 are also relevant with regards to sustainability and climate change, and are echoed by the NPPF's commitment to a low carbon future.

8.2. More specifically, policy CC1 promotes zero carbon development and requires the steps in the energy hierarchy to be followed. It also requires that all proposals involving substantial demolition to demonstrate that it is not possible to retain or improve the existing building, expecting all development to optimise resource efficiency. Policy CC2 ensures that development will be resilient to climate change, including through incorporating

measures such as biodiverse roofs and reducing the impact of urban and dwelling overheating, including application of the cooling hierarchy.

- 8.3. Regarding the principle of demolition, CPG 'Energy efficiency and adaptation' makes clear that development proposing demolition should clearly explore and demonstrate that it is not possible to retain and improve the existing building. In assessing the opportunities for retention and refurbishment, the condition of the existing building and structure should be assessed, and the potential to retain and refurbish should be clearly explored. This should be explored in the form of a condition and feasibility study, and a structural assessment of the existing building should be made to focus on the appropriateness of retaining the structure.
- 8.4. The applicant has provided a brief review of the existing building as part of the Whole Life Carbon Assessment, which gives some detail as to the construction of the existing building. However, there is no structural assessment that gives clear reasoning as to why the existing building cannot be retained. There is also no thorough condition and feasibility statement, and the argument put forward by the applicant mostly rests on the claim that the building is near the end of its functional life and that large parts will need to be replaced due to issues such as lack of air tightness and poor thermal performance. Section 6 of the Whole Life Carbon Assessment actually goes on to explore how the building could be retained and repurposed, with very limited rationale as to why this has not been pursued, other than the works would be significant.
- 8.5. In the absence of a more detailed and complete condition and feasibility study, it is difficult to ascertain whether the existing condition of the building would allow it to be retained and improved or retained an extended, incorporating improvements to the thermal performance and air tightness which is commonly incorporated into any retrofit works, with replacement being the final outcome only. Retaining existing buildings where possible is crucial in ensuring the efficient use of resources and in minimising the release of embodied carbon in order to move to a low carbon economy. This hierarchy and decision flow is set out within the London Plan Circular Economy guidance.
- 8.6. The information provided is therefore insufficient to clearly demonstrate or justify why it is not possible to retrofit the existing building through a more holistic approach. There is limited evidence to support the assertion that the building cannot be retained and improved like other homes of its age, and given this, officers consider that a case for demolition has not been clearly demonstrated to the Council's satisfaction. As a result, the demolition of the existing building has not been demonstrated through sufficient information, contrary to policy CC1 of the London Borough of Camden Local Plan.
- 8.7. As noted above, the applicant has provided a Whole Life Carbon Assessment. However, without the demolition of the building having been justified by way of a condition and feasibility statement, this cannot be reviewed to confirm acceptability. The policy makes clear that demolition needs to be justified through a complete conditions and feasibility study first, prior to the Council reviewing a Whole Life Carbon Assessment and accepting this as justification. The latter cannot be accepted without the former.
- 8.8. The applicant has also provided a Dynamic Thermal Comfort Model, which concludes that mechanical cooling through air conditioning/cooling cassette will be required to ensure compliance with internal comfort conditions criteria. New buildings should be designed to not overheat without the need for mechanical/active cooling and cooling will only be permitted where there is a clear need for it after preferred measures are incorporated in line with the cooling hierarchy. It is not accepted that mitigation measures have been fully considered; for example, the dwelling has been designed with extensive floor-to-ceiling glazing to the east and west elevations, which will inevitably result in more heat entering the building and have a negative impact on thermal comfort. Similarly, there is no clear investigation of alternative passive means of cooling through application of the cooling hierarchy. Despite the findings of the Dynamic Thermal Comfort

Model, the applicant has provided an Energy and Sustainability proforma that indicates that active cooling is not proposed. As such the building will not be suitable to a changing climate. Irrespective of this, the use of active cooling for a new build home is not acceptable and has not been clearly justified, and would not be supported.

8.9. Given that the proposal is for one new dwelling, policy CC1 requires that the development reduces carbon dioxide emissions through following steps in the energy hierarchy. The Energy and Sustainability proforma indicates a total reduction of 76.6%, which is supported. Renewables including air source heat pumps and solar panels are proposed, which would be supported. However, there is no clear indication of air source heat pumps in the submitted plans. Details of any air source heat pumps, including siting, scale, and detailed design would also need to be provided for assessment, and a condition would need to be attached to prevent its use for active cooling purposes.

8.10. In summary, the proposal has not been clearly justified in terms of demolition and has not been designed to adapt to climate change, which means that the development is contrary to policies CC1 and CC2 of the London Borough of Camden Local Plan. Irrespective of the Whole Life Carbon Assessment findings and details included in the submitted proforma, the principle of demolition needs to be justified in order for the development to be considered acceptable.

9. Transport

9.1. Policy T1 of the Local Plan states that the Council will seek to promote sustainable methods of transport, including through prioritising cycling; development should provide for accessible, secure cycle parking facilities in accordance with the London Plan requirements. Policy T2 (Parking and car-free development) sets out that new residential development should be secured as car-free and that the Council will resist the development of boundary treatments and gardens to provide vehicle crossovers and on-site parking. The CPG 'Transport' also makes clear that any car parking spaces located on-site must be designed in such a way that vehicles are not prioritised over pedestrian users and the new means of access do not cause harm to the safety of other users of the development and the highway.

9.2. The applicant has shown on the plans that a cycle store providing space for two cycles would be provided in the front garden of the property. The provision of two cycle parking spaces would be in accordance with the London Plan requirements for residential units of this size. As such, this would be supported and, in the event of an approval, the provision of such cycle storage would have been secured by condition.

9.3. As indicated at application stage, new development would usually need to be secured as car free through the means of a Section 106 legal agreement. However, given that the applicant is returning to the property following completion of the development, in this instance car-free development would not need to be secured in the usual way. However, the applicant would be required to enter into a legal agreement with the Council to ensure that the development is 'car capped' and that returning residents will be named within a Section 106 agreement. This way, they would be excluded from the parking permit exemption for so long as they remain at the property, but any future residents would be prevented from obtaining Resident parking permits from the Council, in line with policy T2. The failure to enter into a legal agreement to secure this is considered to be a reason for refusal.

9.4. The reduction of on-site, off-street parking spaces from three spaces within the structure of the building is supported. Although the plans do not indicate a specific number of car parking spaces, it is considered that the front garden area would be able to accommodate two cars parked within the site boundary. This means that there would only be a net reduction of one car parking space. Whilst an exception would be able to be made for one on-site parking space (as indicated in the pre-application advice), the retention of

two car parking spaces is not acceptable and contrary to policy T2.

- 9.5. Given the extent of construction works required for this development to take place, it is considered that the proposal should be subject to a Construction Management Plan (CMP) and associated Implementation Support Contribution of £4,194 and Impact Bond of £8,000, which would all be secured by means of a Section 106 legal agreement. This would help prevent the construction works from unduly affecting the amenity of neighbouring occupiers and the operation of the local highway network. The absence of a CMP and the associated contributions would be contrary to policy A1 and would constitute a reason for refusal.
- 9.6. In order to cover the cost of repaving the footway and crossover which serve the site on Netherhall Gardens, a highways contribution would be required. The absence of this contribution would also constitute a reason for refusal.
- 9.7. Therefore, the proposal would not be secured as car free, contrary to policy T2 of the London Borough of Camden Local Plan. In the absence of a legal agreement to secure a CMP, associated contributions, and a highways contribution, the development would also be contrary to policies A1 and T2 of the London Borough of Camden Local Plan.

10. Trees, landscaping, and biodiversity

- 10.1. The Council will aim to preserve existing tree and canopy coverage while increasing and improving tree coverage where possible and appropriate. Policy A2 (Open space) aims to protect and enhance open spaces and green infrastructure, including non-designated spaces with nature conservation, townscape, and amenity value, including gardens. Policy A3 (Biodiversity) looks to protect and enhance sites of nature conservation and biodiversity by assessing developments against their ability to realise biodiversity benefits, protect existing trees where possible, and provide replacement planting where necessary. These policies are supported by CPG 'Trees' and CPG 'Biodiversity'.
- 10.2. The applicant has provided a Tree Report in support of the application, which includes an Arboricultural Impact Assessment and an Arboricultural Method Statement, including tree protection details throughout. The proposal does not involve the removal of any trees to facilitate the development, and the tree protection details provided appear to be sufficient to ensure that trees to be retained would not be harmed. The documents have been reviewed by the Council's Trees and Landscaping Officer, who has confirmed that the details are acceptable. Were the application to be approved, conditions would secure compliance with the tree protection measures and further details of the landscaping scheme. It is noted that the development does not propose additional tree planting, and there are missed opportunities to maximise the biodiversity offering of the site, such as by planting a tree to the front left corner of the site and relocating the bin store to accommodate this. It is unfortunate that the proposal does not go further to enhance biodiversity, however this would not constitute a reason for refusal.
- 10.3. It is noted that the Biodiversity Net Gain (BNG) requirement came into effect for major applications on 12th February 2024, and for small sites on 2nd April 2024. However, there are a number of statutory exemptions and transitional arrangements which mean that the BNG condition does not always apply.
- 10.4. It is not clear that this application would be exempt from BNG, and no evidence has been submitted to demonstrate exemption. Were the application to be approved, it would need to be shown that the proposal is exempt from BNG. If the proposal were not exempt from BNG, then a Biodiversity Gain Plan would need to be submitted to and approved by the Council prior to development beginning.

11. Recommendation

- 11.1. Refuse planning permission for the following reasons:

- 1) The proposed development, through insufficient evidence to justify the demolition of the existing building, would result in an unsustainable development that fails to contribute to a low carbon future through efficient use of resources, contrary to policy CC1 (Climate change mitigation) of the London Borough of Camden Local Plan 2017 and policy SI 7 (Reducing waste and supporting the circular economy) of the London Plan 2021.
- 2) The proposed development, by reason of its scale, roof form, detailed design, and fenestration pattern, would result in an incongruous and overly dominant building that fails to integrate with the existing streetscene and pattern of development, thus failing to preserve or enhance the character and appearance of the application site, neighbouring buildings, and the wider Fitzjohns Netherhall conservation area, contrary to policies D1 (Design) and D2 (Heritage) of the London Borough of Camden Local Plan 2017.
- 3) The proposed development, in the absence of a legal agreement securing the development as 'car-capped' housing to prevent residents other than the named returning resident from obtaining residents parking permits, would contribute unacceptably to parking stress and congestion in the surrounding area and fail to promote more sustainable and efficient forms of transport and active lifestyles, contrary to policies T2 (Parking and car-free development) and DM1 (Delivery and monitoring) of the London borough of Camden Local Plan 2017.
- 4) The proposed development, in the absence of a legal agreement securing a Construction Management Plan (CMP), associated contributions to support the implementation of the CMP, and an impact bond, would be likely to give rise to conflicts with other road users and be detrimental to the amenities of the area generally, contrary to policies A1 (Managing the impact of development), T4 (Sustainable movement of goods and materials), and DM1 (Delivery and monitoring) of the London Borough of Camden Local Plan 2017.
- 5) The proposed development, in the absence of a legal agreement securing financial contributions towards highways works, would fail to secure adequate provision for the safety of pedestrians, cyclists, and vehicles, contrary to policies T3 (Transport infrastructure) and A1 (Managing the impact of development) of the London Borough of Camden Local Plan 2017.