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**TOWN & COUNTRY PLANNING ACT 1990
PLANNING (LISTED BUILDING & CONSERVATION AREAS) ACT 1990**

PLANNING STATEMENT

in support of

**PLANNING AND CONSERVATION AREA APPLICATIONS BY AVONHEAD
INVESTMENTS LIMITED FOR ADDITIONS AND ALTERATIONS
INCLUDING A FULL WIDTH REAR EXTENSION AT GROUND LEVEL, A
REAR EXTENSION AT FIRST AND SECOND FLOORS, A ROOF
EXTENSION WITH DORMER WINDOWS AND AN ENLARGED
BASEMENT EXCAVATION TO COMPRISE 1 X ONE-BEDROOM, 3 X TWO-
BEDROOM AND 5 X THREE-BEDROOM SELF-CONTAINED FLATS TO
THE EXISTING RESIDENTIAL BUILDING, FOLLOWING SUBSTANTIAL
DEMOLITION OF THE EXISTING PROPERTY**

at

11 NETHERHALL GARDENS, LONDON NW3

Prepared by

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Ref: 09056

**PLANNING STATEMENT IN RESPECT OF PLANNING AND
CONSERVATION AREA APPLICATIONS AT 11 NETHERHALL GARDENS,
LONDON NW3**

1.0 INTRODUCTION

- 1.1 This statement has been prepared to support the resubmission of the proposals for additions and alterations to the existing structure at 11 Netherhall Gardens to provide nine in total self-contained flats in place of the ten existing substandard residential units, following substantial demolition of the existing property but retention of certain elements, more particularly much of the front elevation.
- 1.2 The statement is to manage planning issues relevant to the development, following the dismissal on appeal of an identical scheme (L.A. Ref: 2009/3889/P), the Inspector's decision being dated 22nd March 2010. In the light of the Inspector's comments in his decision, much of the evidence submitted in respect of the earlier scheme is produced in the same form on the basis that the scheme itself was found acceptable and in accordance with Council and national policy in respect of all design, environmental and conservation matters. The only issue outstanding, as identified by the Inspector is the matter of affordable housing and whether or not the extent of development proposed breaches the threshold as set out in strategic (London Plan) and local (Camden Unitary Development Plan) policy in respect of the contribution required from market housing schemes to either on-site or off-site affordable housing provision.
- 1.3 This statement sets out the background situation as has risen through the Inspector's decision and links together the various reports etc. presented in support of the new applications in a manner which deals comprehensively with all issues surrounding the development, particularly those related to affordable housing. Accordingly, this

statement should be read in conjunction with all those reports/statements previously resubmitted, together with the drawings as provided again by the agent/architects (PKS Architects LLP), together with additional information in the form of an Economic Viability Appraisal Report, prepared by Jones Lang LaSalle (which includes a GLA Toolkit Appraisal) and also a Supplementary Report: PPS5 Implications, prepared by Dr Mervyn Miller.

2.0 BACKGROUND

2.1 The starting block for consideration of these planning and conservation area applications is the Inspector's decision in respect of the earlier applications dated 12th August 2009, albeit that at that time, the Council missed registering the conservation area application for demolition, which was picked up on appeal on the basis of the Council's non-determination of that application. It should be noted on this occasion that again both planning and conservation area applications are submitted and it is requested that these be registered accordingly and considered by the Council.

2.2 In assessing the Inspector's decision, three issues can be identified:-

1. The need for a planning obligation.
2. The effect of development on the conservation area.
3. Affordable housing.

The second two are perhaps the main issues with the first a subsidiary but nevertheless important matter in terms of the submission of the current applications. The inspector also raised the matter of overlooking of adjoining properties and car parking and concluded the scheme was acceptable in both these respects.

2.3 A copy of the Inspector's decision is included as part of the application submissions. It can be identified from his decision (in his paragraph 7-

13) that the scheme met all national and local policy and other guidance in respect of demolition of much of the existing structure, the retention of those parts deemed necessary for conservation purposes and the construction of substantial extensions and alterations in a manner fully in keeping with the character and appearance of the area and, in the Inspector's view, enhancing the appearance of the Fitzjohn's/Netherhall Conservation Area. He also concluded (paragraphs 5 and 22) that the Planning Obligation provided by the applicant dealt effectively with those issues raised in the Council's previous reasons 2 and 3 of the Council's earlier planning refusal and also car parking effectively. Accordingly, it is assumed, on the basis that the Council accepted that Planning Obligation (insofar as it met the two middle reasons for refusal and the car parking issue), that a Unilateral Undertaking (or Agreement) under Section 106 of the Town & Country Planning Act 1990 can form the basis of a new planning obligation related to the current applications.

2.4 The matter of the need for a contribution to affordable housing had first been raised by the Council in the fourth reason for refusal of the previous planning application. The applicant/appellant's view at the time was that the scheme was such that it did not breach the thresholds identified in policy triggering a contribution (whether financial or otherwise) towards affordable housing. Much of the debate at the hearing centred on this issue and, ultimately, the Inspector took the view that the Council was correct and that the scheme was of sufficient size to trigger a need for contribution. However, the applicant company remains unclear as to how the Inspector reached his decision in this respect or indeed what sort of contribution he was anticipating in his decision. Accordingly, following obtaining counsel's opinion, the Inspector's decision has been challenged in the High Court and his decision is awaiting judicial consideration.

2.5 In the meantime, with a view to resolving issues with the Council, the applicant company has been advised to resubmit the applications for

exactly the same development found acceptable by the Inspector but this time in conjunction with a full financial appraisal identified necessary by the Inspector to ascertain the viability of the scheme and its ability to make a contribution to affordable housing.

3.0 RE-APPRAISAL OF RELEVANT PLANNING ISSUES

3.1 The three issues set out above in paragraph 2.2 are those which require some further comment in association with the current applications.

3.2 Legal Agreement

3.2.1 The Council and the applicant entered into a Legal Agreement under Section 106 of the Town & Country Planning Act 1990 in respect of the previous scheme and the Inspector on appeal confirmed that it dealt with the issues of a construction management plan, a sustainability plan and car-capped housing effectively. That Agreement relates specifically to the earlier planning application reference. The applicant company confirms that it is willing to enter into either a Deed of Variation being agreement to encompass the current planning application and development, or to provide and agree a new Agreement in the same form as before but recognising the new planning application. It is assumed that the procedure for this can be resolved during the processing of the current applications.

3.3 Conservation Area Matters

3.3.1 The Council will be aware that on 23rd March 2010 (the day after the Inspector's decision was issued) Planning Policy Statement 5: Planning for the Historic Environment was published, superseding PPG15. Although the principal legislation relating to conservation areas remains unchanged, the new PPS is clearly "new policy" since the decision was taken on the last applications/appeals. In resubmitting the scheme to

the Council, it is recognised that the new policy document needs to be considered, notwithstanding the fact that the Inspector was fully satisfied that the PPG15 appraisal presented by Dr Mervyn Miller in association with the Burke Hunter Adams Feasibility Costs Report represented a fair assessment of the situation in respect of refurbishment of the existing building.

3.3.2 As stated, the new PPS5 is not the result of any legislative change and thus the obligation under Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 remains unchanged but the methodology adopted and assessments required under the new PPS5, albeit ultimately leading to the same conclusion, require scrutiny at this time.

3.3.3 In the light of the publication of PPS5, Dr Mervyn Miller has been asked to revisit his earlier PPG15 appraisal and to present a Supplementary Report dealing effectively with the implications of the requirements of PPS5 in relation to the work he had already carried out and which had been found to be acceptable by the Council and the Inspector. Accordingly, in addition to, rather than as a replacement of, his earlier PPG15 appraisal, Dr Mervyn Miller has carried out a rigorous reassessment of his earlier report and provided a demonstration that his previous work remains valid. Accordingly, his previous appraisal is re-submitted with the current applications, accompanied by his Supplementary Report which provides effective cross-referencing with PPS5 to demonstrate that the scheme is compliant with the policies and provisions of the new government policy document.

3.4 Affordable Housing

3.4.1 The Inspector, in his paragraph 20 concluded on the matter of affordable housing as follows:-

I concur with the view expressed by the Council that this proposal, which is for the substantial

redevelopment and extension of this already large property, should make provision for affordable provision in line with the adopted development plan guidance. In its current form, without convincing evidence to the contrary, the proposal is in conflict with Policy H2 of the UDP and Policy 3A.11 of the London Plan.

- 3.4.2 Whilst the Inspector's decision on this matter has been challenged by the applicant company in the High Court, the view has been taken (without prejudice to the High Court action) that it should be assumed, for the purposes of the current applications, that the Council and the Inspector are correct in their assessment of current policy and, therefore, that the scheme is such that it triggers the threshold for a requirement for a contribution to affordable housing as provided for in Policy H2 of the UDP and Policy 3A.11 of the London Plan. However, the Inspector's conclusion in this respect was tempered by his comment in paragraph 18 of his decision that:-

There is no financial evidence before me to indicate that affordable provision of the kind envisaged by the adopted development plan would render the scheme financially unviable.

He thus reached his conclusion that the appeal should be dismissed but again, in his paragraph 20 reaching such conclusion, he raised the issue of the lack of convincing evidence to allow him to take a contrary view.

- 3.4.3 The applicant company and its agents remain of the view that it would have been more helpful had the Council raised this issue earlier in the previous application/appeal progress. However, in order to progress matters as rapidly as possible to a satisfactory conclusion and to enable development of a satisfactory nature to take place at as an earlier date as possible, the applicant company has instructed that full research in respect of the viability of the scheme in relation to its ability to contribute towards affordable housing be instigated. In this respect, Jones Lang LaSalle have been instructed to carry out an Economic

Viability Appraisal Report in association with a Financial Appraisal of the scheme through utilisation of the GLA Toolkit. This is the recognised way of calculating the financial viability of a scheme and, through this, its ability under planning policy to make a contribution towards affordable housing where that policy would indicate that the threshold for such provision in terms of the scale of the development, has been reached.

3.4.4 The Economic Viability Appraisal Report, together with its appendices (including the GLA Toolkit Appraisal) is now presented to fill the gap, as identified by the Inspector, in terms of the evidence presented to him on the affordable housing question. The report gives a detailed appraisal of costs and valuations, set against the standard assessments provided through the GLA Toolkit. The results of this detailed assessment demonstrate that the unusual costs of the scheme, when set against anticipated sales values of the nine new flats, results in a deficit. It demonstrates that, whether or not the scheme at 11 Netherhall Gardens breaches the threshold for the consideration of a contribution to affordable housing through Policy H2 of the UDP and/or Policy 3A.11 of the London Plan, the financial implications demonstrated by Jones Lang LaSalle clearly indicate that any contribution towards affordable housing will render the scheme unviable.

3.4.5 In the light of the presentation of this new and comprehensive evidence, it can be concluded that the scheme, whether it needs to or not, cannot comply with the requirements of Policies H2 and 3A.11. The scheme should be allowed to proceed on the basis that there is now, in response to the comments made in paragraph 18 of the Inspector's decision, financial evidence to indicate that affordable provision of the kind envisaged by the adopted development plan would render the scheme financially unviable.

4.0 CONCLUSION

- 4.1 Planning application ref: 2009/3889/P was refused by the Council for four reasons. In the subsequent appeal reasons 2 and 3 were satisfactorily and effectively discharged through a Section 106 Agreement, as was the matter of car-capped housing, not included initially as a reason for refusal.
- 4.2 So far as the first reason for refusal given by the Council at that time was concerned, that relating to the height, bulk, mass and detailed design of the proposed development and its impact upon the character and appearance of the Conservation Area, the Inspector concluded that remodelled building would enhance the appearance of the Conservation Area. Immediately after the issue of his decision, new government policy in respect of the historic environment was published in PPS5. A reappraisal of the evidence submitted in respect of the earlier application in compliance with PPG15 has now been carried out by Dr Mervyn Miller with effective cross-reference to the new PPS5 to demonstrate continued compliance with policy in respect of design and conservation matters.
- 4.3 It is accepted that at the time of the previous appeal the applicant company took the view the scheme was not of a sort which reached the thresholds set out in Policy H2 of the UDP and Policy 3A.11 of the London Plan, thus requiring a contribution to affordable housing. The Inspector took an opposing view and concurred with the Council in this respect and, in the absence of evidence to the contrary, concluded that the scheme was such that it should make contribution to affordable housing. The additional evidence now presented as part of the current application process deals effectively with this matter and demonstrates that there is evidence to show that a contribution to affordable housing, if it is technically required by policy, would render the scheme unviable.

- 4.4 In the light of the reappraisal of the scheme in terms of conservation policy and in respect of policy relating to affordable housing, together with the applicant's continuing commitment to vary the earlier Agreement with the Council to relate to the current applications, the Council is requested to consider favourably both the planning and conservation area applications and to grant the necessary consents.
- 4.5 In considering the applications, the Council is required under Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. In this respect, it is a material consideration that the Inspector who considered the earlier appeal confirmed that the existing building on site detracts from the character and appearance of the Conservation Area and that the scheme the subject of the applications will represent an enhancement.