

# APCAR SMITH PLANNING

Chartered Town Planning Consultants

**STATEMENT IN SUPPORT OF**

**PLANNING APPEALS**

**IN RESPECT OF**

**CAROB TREE, 15 HIGHGATE ROAD**

**LONDON NW5 1QX**

**LPA REFS: 2013/5645/P, 2014/0409/P,  
2014/0416/P, 2014/0422/P AND 2014/0738/P**

Our Ref: CA/2821

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### **Appendices**

- A.** PA Ref: 2010/2274/P – Plans and Appeal Decision.
- B.** PA Ref: 2011/3819/P – Planning permission, Officer's report and plans.
- C.** PA Ref: 2013/5646/P – Officer's report.
- D.** PA Ref: 2014/0409/P – Officer's report.
- E.** PA Ref: 2014/0416/P – Officer's report.
- F.** PA Ref: 2014/0422/P – Officer's report.
- G.** PA Ref: 2014/0738/P – Officer's report.
- H.** Draft 106 Undertaking, Letter dated 25/6/14 from DWFM Beckman and Title Deeds.
- I.** Extract from CPG1.
- J.** Extract from CPG7.

## **1.00 Introduction**

- 1.01 This Statement is submitted in support of 5 separate appeals relating to the Carob Tree, 15 Highgate Road, London, NW5 1QX. The appeals are all related, generally with the same main issue of relevance and thus one statement has been prepared in respect of all five.
- 1.02 Relevant planning history (in particular application Ref: 2011/3819/P) is considered in Section 2. Section 3 describes the applications the subject of the five appeals. The appeal site and the surrounding area are described in Section 4. Section 5 contains a summary of relevant planning policies. Our appraisal of the merits of the five appeals, having regard to the forgoing, is set out in Section 6 followed by our conclusions in Section 7.

## **2.00 Planning History**

- 2.01 Relevant history dates back to 2010. Application Ref: 2010/2274/P sought permission for the retention of a restaurant at basement and ground floor levels and change of use of the upper floors from ancillary residential accommodation to create five (1 x 1 bed and 4 x 2 bed) self-contained flats. The proposals included extensions at first and second floor levels on the Swain's Lane frontage, a three storey side extension on the eastern elevation to incorporate a new stair core and a first and second floor extension on the southern (rear) elevation. In addition the proposals provided an additional floor in the form of a roof extension.
- 2.02 Planning permission was refused by the Local Authority in October 2010 for reasons relating to the scale, bulk, height and design of the proposed extensions resulting in an overbearing form of development harmful to the appearance of the building, its setting, the Conservation Area within which it is situated and neighbouring Conservation Areas, together with the absence of a Legal Agreement in respect of car free housing, energy efficiency, contributions to public open space and education.
- 2.03 This decision was taken to appeal with the appeal being dismissed in December 2010. Whilst the Inspector was happy in respect of the proposed additional floor there were concerns in respect of the impact on Swain's Lane by the erosion of the gap adjacent to 2 Swain's Lane as a result of the infilling of the roof terrace at first and second floor levels (ie; the extension to the northern elevation) and, more significantly, the stair core extension (on the east elevation). At Para 10 of his decision letter the Inspector referred to this extending upwards to the full four storey height linking directly with the additional roof storey.
- 2.04 All plans, the Local Authority's decision letter and the appeal decision letter in respect of Application Ref: 2010/2274/P are contained at Appendix A.
- 2.05 Subsequently a revised application was submitted reducing the number of residential units on the upper floors to 3. The proposed roof extension was reduced in size on the east elevation, the eastern four storey extension was removed as was the second floor northern elevation extension, in order to overcome the previous Appeal

Inspector's concerns. This application (Ref: 2011/3819/P) was approved in March 2012 subject to a number of conditions. Attached at Appendix B is a copy of the decision letter and the approved proposed plans (the existing plans are the same as those contained at Appendix A).

- 2.06 Of particular relevance to the subsequent applications and the current appeals are Conditions 9 and 10. These required that, notwithstanding the details shown on the approved plans, proposals for waste storage (including recycled materials) and cycle storage (for a minimum of 4 cycles) be submitted to the Local Authority for their approval and to be provided prior to first occupation of any of the residential units. As can be seen from the approved plans the drawings showed refuse and cycle storage within an existing enclosed area in front of the building on the Highgate Road frontage. The stated reason for Condition 9 (that which related to waste storage) referred to safeguarding the amenities of the adjoining premises and the area generally. The stated reason for the imposition of Condition 10 (in respect of cycle storage) referred to ensuring that the development provides adequate cycle parking facilities. It is clear from the reason for the imposition of both conditions that there were no concerns in respect of the visual impact of the refuse storage or cycle parking on the Highgate Road frontage.
- 2.07 From the Officer's report in respect of this application (also included in Appendix B) it is noted (from Para 6.10) that the Council's Street Environment Services Team were satisfied in respect of the waste and recycling storage facilities as shown on the approved plans in terms of both sufficiency of space and location.
- 2.08 The proposed cycle parking is commented upon at Para 6.33 of the Officer's report. As can be seen this confirms that the 4 spaces proposed on the Highgate Road frontage were sufficient in terms of location, design and layout and suggested that they would be secured via a condition.
- 2.09 The Officer's report does not make any specific reference to the conditions that were being recommended, were the Committee minded to follow the recommendation and grant planning permission. However we assume, given the comments in the Officer's report at Para's 6.10 and 6.33, that Officers themselves were satisfied in respect of the refuse and cycle parking as shown on the plans and that Conditions 9 and 10 were therefore put forward by Councillors when granting the planning permission.

### **3.00 Current Proposals**

#### **Application Ref: 2013/5645/P**

- 3.01 This application seeks planning permission for the erection of a single storey side extension along the eastern side of the building as an extension to the restaurant. This retains an open yard area on the Swain's Lane frontage to provide for the commercial and residential refuse through which access is to be obtained to a second enclosed area providing for cycle parking spaces for the residential units.
- 3.02 The application followed pre-application advice and the submitted plans accorded with the advice given at the pre-application meeting
- 3.03 Planning permission was refused for two reasons. The first reason for refusal referred to the size, layout and location for the combined refuse/recycling and cycle storage facilities being inadequate and inconvenient likely to result in refuse and bicycles on the highway or elsewhere on the property to the detriment of visual amenities and the Conservation Area. The second reason for refusal referred to the absence of a Legal Agreement to secure the submission and implementation of a Construction Management Plan.
- 3.04 As can be seen from the Officer's report in respect of that application (Appendix C), the recommendation was that planning permission be granted. Para 6.17 of that report confirms that the space provided for the refuse and cycle storage was sufficient and Para 6.19 confirmed there was sufficient space for the 4 cycle stands and that element complied with Guidance. This is discussed further in Section 6.

#### **Application Ref: 2014/0409/P**

- 3.05 This application submitted details in response to Condition 9 of planning permission Ref: 2011/3819/P – ie; details in respect of the location, design and method of waste storage and removal, including recycled materials. The details show 2 refuse and 1 recycling bin in an enclosed covered store within the existing enclosed area on the Highgate Road frontage. The plans show the refuse storage being situated to the rear of proposed planting, the existing surrounding wall being improved and with a new 0.9m high wall (that element being within permitted development tolerances) in front of the enclosure.

- 3.06 Permission was refused for one reason – that the size and location of the proposed refuse/recycling store facilities would be harmful to visual amenities, the wider street scene and the Conservation Area. It is of relevance to note that the reason for refusal relates to visual matters whereas the reason the condition was imposed in the first instance related to residential amenities (not visual issues and the Conservation Area).

**Application Ref: 2014/0416/P**

- 3.07 This related to the submission of details pursuant to Condition 10 of planning permission Ref: 2011/3819/P – details of the proposed cycle storage. The proposed plans show the same details as the plans submitted with application Ref: 2014/0409/P with the four cycle spaces being located on the Highgate Road frontage to the rear of the refuse and recycle bins referred to at Para 3.05 above. The plans show the same details in respect of the landscaping and changes to the boundary wall.
- 3.08 Permission was refused on the basis of the cycle storage facilities being harmful to visual amenities, the wider street scene and the Dartmouth Park Conservation Area and also that the un-covered cycle stands proposed would fail to provide secure sheltered cycle provision. In this respect it should be noted that the cycle parking proposed as part of application Ref: 2011/3819/P was not sheltered with its security being no different to that which formed part of this application. Despite this no objection was raised on this issue and the reason for Condition 10 makes no reference to this matter.

**Application Ref: 2014/0422/P**

- 3.09 This application again related to the approval of details – pursuant to both Conditions 9 and 10 of planning permission Ref: 2011/3819/P. The details submitted referred to those shown within application Refs: 2014/0409/P and 2014/0416/P. They remain shown on the Highgate Road frontage. The refuse and recycling storage is shown at the rear of the forecourt area with the 4 secure cycle spaces in front of this. In front of the cycle parking is shown landscaping.
- 3.10 The reason for refusal refers to the size and location of the proposed refuse/recycling store facilities being harmful to visual amenities, the street scene and the Conservation Area; the location of the cycle storage facilities again being harmful to visual amenities of the property, the street scene and the Conservation Area; and the

uncovered cycle stands failing to provide secure and sheltered cycle provision for future occupants of the flats.

**Application Ref: 2014/0738/P**

- 3.11 Again this application sought to approve details in accordance with Conditions 9 and 10 of planning permission Ref: 2011/3819/P in respect of the waste and cycle storage. The details shown are the same as those shown as part of application Ref: 2013/5645/P (as summarised at Para 3.01 above). The sole reason for refusal of planning permission referred to the size, layout and location of the combined refuse/recycling and cycle storage being inadequate and inconvenient and likely to result in storage of refuse and bicycles on the highway or elsewhere on the property to the detriment of visual amenities and the Conservation Area.
- 3.12 It was clear from the Officer's report in respect of application Ref: 2013/5645/P (Appendix C) that the space provided for the cycle and refuse storage was sufficient (Para's 6.17 and 6.19 of that report refer). In view of this we were surprised to note that the Officer's report in respect of application Ref: 2014/0738/P (Appendix G) suggested that the space is too restricted, fails to provide sufficient refuse/recycle facilities, would be inconvenient for refuse collectors and that the cycle area has a cramped layout. There is thus a clear inconsistency amongst Officers in their consideration of application Refs: 2013/5645/P and 2014/0738/P.



#### **4.00 Site and Surroundings**

- 4.01 The site is situated on the eastern side of Highgate Road, to the south of its junction with Swain's Lane. On the western side of Highgate Road, to the south of the site, is the eastern edge of the Parliament Hill area of Hampstead Heath. To the north of this, on the western side of Highgate Road in proximity to the site, is a terrace of four storey buildings with retail and commercial uses at ground floor level and residential accommodation on the upper floors. Immediately opposite the site, and forming the southernmost unit of this parade, is Bistro Laz which, on the street frontage, has a projecting canopy, a dense row of planters and, beneath the canopy and to the rear of the planters, external seating.
- 4.02 On both sides of Swain's Lane are a variety of retail and other commercial units. On the northern side of Swain's Lane, closer to its junction with Highgate Road, the buildings are single storey, as is the neighbouring building on the southern side of the road (No.2 Swain's Lane). Other buildings vary in height – two and three storeys.
- 4.03 On the eastern side of Highgate Road immediately to the south of the appeal site is a three storey block of flats. This follows the same building line as the Highgate Road elevation of the appeal premises and is set behind a brick front boundary wall to a height of 0.6m above which is hedgerow to a height of approximately 1.6m/1.7m.
- 4.04 The appeal premises comprise a four storey plus basement building. The ground and basement floors are in restaurant use (the Carob Tree). The basement does not contain any seating and is only used partially for ancillary purposes. The kitchen, servery, bar, tables/chairs and WC's are all located at ground floor level. There is an enclosed patio area on the Highgate Road frontage, at its corner with Swain's Lane. Building works are nearing completion in accordance with planning permission Ref: 2011/3819/P as discussed in Section 2.
- 4.05 The appeal premises has its longest frontage Swain's Lane and it is from this frontage that the restaurant is accessed. There is a second door leading to the enclosed patio area on the Highgate Road frontage. The patio area is surrounded by a rendered wall which has a height of 0.9m. There is a wrought iron gate on the Highgate Road part of this enclosure to the patio area. Prior to the implementation of planning permission Ref: 2011/3819/P the entire area in front of the Highgate

Road frontage formed part of the patio with tables and chairs having always been sited in this area. The 0.9m high wall extends all along this frontage at the back edge of the pavement. The restaurant has a projecting canopy that covers most of this patio area.

- 4.06 Along the southern elevation of the building is a single storey extension which encloses a sub-station. This has not been affected by planning permission Ref: 2011/3819/P. The bins and cycle parking as proposed in application Refs: 2014/0409/P, 2014/0416/P and 2014/0422/P would be situated in front of this sub-station building.
- 4.07 Along the southern side of the former patio area to the restaurant – that which now forms the area to be utilised as the entrance to the residential accommodation in accordance with planning permission Ref: 2011/3819/P – is a 1.8m high brick wall. This has not changed as a result of the development nearing completion. The proposed cycle and refuse facilities as shown on application Refs: 2014/0409/P, 2014/0416/P and 2014/0422/P are sited immediately to the north of this 1.8m high wall.
- 4.08 Along the eastern side of the building is a service yard. This is situated adjacent to 2 Swain's Lane. It is enclosed at it Swain's Lane frontage by a 2.5m high wall and a solid wooden gate. This wall and gate existed prior to the implementation of planning permission Ref: 2011/3819/P. The service yard has previously had little use apart from housing a cold storage unit, refuse for the restaurant and external staircase (the latter to be removed as part of permission Ref: 2011/3819/P). It is within this area that the restaurant extension is proposed in application Ref: 2013/5645/P and the refuse and cycle storage are proposed for that same application and also for application Ref: 2014/0738/P. The eastern boundary of this service yard is delineated by the unperforated wall which forms the western flank elevation of the commercial unit at 2 Swain's Lane.
- 4.09 The appeal site and surroundings lie within the north-western corner of the Dartmouth Park Conservation Area. Highgate Road, opposite the appeal site, forms the western boundary in the vicinity. The Local Authority have produced a Conservation Area Appraisal and Management Plan. This includes a Townscape Appraisal Map which shows listed buildings, buildings considered to make a positive contribution to the Conservation Area and negative buildings/sites. The appeal premises are not specifically identified on this map nor are

any of the neighbouring buildings. The appeal premises are referred to at Para 7.91 of the Conservation Area Character Appraisal and Management Statement as a “1950’s rebuilding of the Duke of St Albans Pub”.

- 4.10 The site is located within a Controlled Parking Zone. On-street parking is restricted to pay and display and resident permit holders.

## **5.00 Planning Policies**

- 5.01 The reasons for refusal of planning permission refer to a variety of policies of the Local Authority's Core Strategy and the Development Policies. We comment below on all policies referred to in the five decisions.

### **Core Strategy**

- 5.02 Policy CS5 is referred to in the refusal of application Refs: 2013/5645/P and 2014/0738/P. The policy is entitled "Managing the Impact of Growth and Development". It is assumed that it is Criterion (d) that is of relevance; that referring to protecting and enhancing the environment and heritage and the amenity and quality of life of local communities.
- 5.03 Policy CS11 is referred to in the refusals of application Refs: 2013/5645/P, 2014/0422/P and 2014/0416/P. The policy is entitled "Promoting Sustainable and Efficient Travel". We assume it to be Criterion (h) that is of relevance – this referring to continuing to improve facilities for cyclists including increasing the availability of cycle parking.
- 5.04 Policy CS14 is referred to in the refusal of application Refs: 2014/0409/P and 2014/0422/P. The policy relates to the promotion of quality places and heritage conservation. It requires development to respect local context and character (Criterion (a)); preserve and enhance the Borough's heritage assets (Criterion (b)); promote high quality landscaping (Criterion(c)); buildings and places to be "inclusive and accessible" (Criterion (d)); and protecting important views (Criterion (e)); Criterion (a) and (b) are of relevance to the proposals. In respect of Criterion (c) the Council have not raised any issue in respect of landscaping. We would point out that in application Refs: 2014/0409/P, 0422/P and 0416/P landscaping is introduced onto the Highgate Road frontage between the refuse and cycle parking and the back edge of the pavement. Criterion (d) and (e) are not of relevance.
- 5.05 Policy CS19 is referred to in the refusal of application Ref: 2013/5645/P. This policy relates to the delivery and monitoring of the Core Strategy and includes reference, at Criterion (b), to using planning obligations where appropriate to mitigate the impact of development.
- 5.06 For the reasons discussed in Section 6 we consider all relevant aspects of these policies are complied with.

### **Development Policies**

- 5.07 Policy DP17 is referred to in the refusals of application Refs: 2013/5645/P and 2014/0738/P. The policy is entitled “Walking, Cycling and Public Transport” and requires development to make suitable provision where appropriate. It is Criterion (b) that is of relevance; this referring to developments incorporating high quality cycle parking where needed. As the policy is not referred to in the refusals of application Refs: 2014/0416/P or 2014/0422/P (both of which include details of proposed cycle parking) it is clear that, for those proposals, the Local Authority were satisfied in terms of the proposed cycle parking in terms of its quality and quantity.
- 5.08 Likewise Policy DP18 is only referred to in the refusals of application Refs: 2013/5645/P and 2014/0738/P. The policy refers to limiting the availability of car parking and an expectation that developments meet the Council’s minimum standard for cycle parking as set out in Appendix 2. Appendix 2 refers to “one storage or parking space per unit” for residents. The appendix also refers to visitor cycle parking but this is only required for developments of 20 or more units where 1 space per 10 units or part thereof is required. Given that the development is only of 3 units there is thus no requirement for visitor parking and thus only 3 cycle parking spaces are actually needed – not the 4 spaces that all five appeals provide and Condition 10 of permission Ref: 2011/3819/P requires.
- 5.09 Policy DP20 is referred to in the refusal of application Ref: 2013/5645/P. The policy is entitled “Movement of Goods and Materials” with Criterion (a) referring to this being expected during construction as well as in operation.
- 5.10 Policy DP21 is, again, only referred to in the refusal of application Ref: 2013/5645/P. It is entitled “Development Connecting to the Highway Network”. However the proposals do not involve any development connecting to the highway network and therefore it is not considered that the policy is of relevance. It does not appear to be relevant to the issue of a Construction Management Plan in connection with which it quoted.
- 5.11 Policy DP24 is referred to in the reasons for refusal of applications Refs: 2014/0409/P, 0416/P and 0422/P. The policy requires high quality design in all developments. Criterion (a) requires developments to

consider the character and setting of neighbouring buildings. Criterion (d) requires the provision of visually interesting frontages. Criterion (e) requires consideration of appropriate location for building services equipment. These are considered to be the most relevant aspects of the policy.

- 5.12 Policy DP25 is referred to in the refusals of application Refs: 2014/0409/P, 0416/P and 0422/P. The policy is entitled “Conserving Camden’s Heritage”. It is only Criterion (a) and (b) that are of relevance. The former refers to taking account of Conservation Area Statements; the latter requires development to preserve and enhance the character and appearance of the area.
- 5.13 Lastly, Policy DP26 is referred to in the refusals of application Refs: 2013/5645/P and 2014/0738/P. The policy is entitled “Managing the Impact of Development on Occupiers and Neighbours”. The only relevant aspects of the policy are Criterion (i) and (j). These require developments to provide facilities for storage/recycling/waste and bicycle storage respectively.
- 5.14 For the reasons discussed in Section 6 all of these policies are complied with in the case of each proposal.

## **6.00 Planning Appraisal**

6.01 The main issues which these 5 appeals give rise to are as follows:

- Whether the proposals provide adequate and convenient facilities for refuse and recycling (application Refs: 2013/5645/P and 2014/0738/P).
- Whether the proposals provide adequate and convenient cycle parking provision (application Refs: 2013/5645/P, 2014/0416/P, 2014/0422/P and 2014/0738/P).
- Whether the proposals will have a detrimental impact on visual amenities and the Conservation Area (all applications).
- Whether the proposals would result in traffic disruption and hazards as well as harm to the amenity of the area as a result of the absence of a Construction Management Plan (application Ref: 2014/5645/P).

6.02 With regard to the latter the intention is that a completed Section 106 Undertaking requiring the submission of an appropriate CMP will be submitted. A draft of this is attached at Appendix H together with an explanatory letter from the Appellant's solicitor and Title Deeds. As this is believed to adequately cover the matter it is not considered that this issue needs further consideration.

6.03 We comment on the other three issues below.

### **Adequacy and Convenience of Refuse/Cycling Provision**

6.04 This is only referred to in the reasons for refusal of those two applications that include the refuse/recycling provision in the yard accessed from Swain's Lane.

6.05 It has been noted that the Officer's report in respect of application Ref: 2013/5645/P (Appendix C) quite clearly states at Para 6.17:

An area of approximately 6.5sqm has been shown within the remaining service yard for the storage of both residential and commercial waste. Although this area is smaller than the existing service yard, this is still considered to be in line with the external storage requirements set out in CPG1 (Figure 15, Chapter 8). It also meets the external storage area requirements set out in Table 16 of CPG1, being located as close as possible

to street level where it can be collected most easily, whilst not impeding pedestrian or vehicular access. The area would also be located as front to the property as possible, but would be largely obscured by the front boundary wall and entrance gate.

6.06 Para 6.18 of this Report continues by stating:

This area is currently used for the storage of the restaurant bins, and the extension would not infringe on this space significantly, or cause refuse collection to be unviable.

6.07 The Officer's report makes it clear that that application was being recommended for approval but that recommendation was overturned by Councillors when the application was considered by the Planning Committee.

6.08 As regards application Ref: 2014/0738/P it is noted that it was refused under Officers delegated powers. This delegated report makes it seem as if Officers views have changed in the interim as the areas available and proposed facilities for the refuse/recycling provision had not changed. Unlike the detailed Report to committee in respect of application Ref: 2013/5645/P, this delegated report (Appendix G) contains no detailed consideration of the provision against CPG1 (to which the earlier report had referred and confirmed the provision to be acceptable in accordance with the requirements set out in this supplementary guidance). It therefore seems as if this delegated officer's report was written in view of the Councillors decision on application Ref: 2013/5645/P; not necessarily being a view of the Officers.

6.09 It is noted that neither refusal of planning permission makes any reference to CPG1 – presumably as the provision of refuse and recycling provision accords with its detailed requirements as confirmed by Para 6.17 of the Officer's report in respect of application Ref: 2013/5645/P.

6.10 Relevant extracts from CPG 1 are attached at Appendix I (as this document may not be provided by the Council with their Appeal Questionnaire in due course given that it is not referred to in any of the reasons for refusal of planning permission). It is noted that CPG1 was



adopted in September 2013 and was thus adopted guidance at the time when both the applications to which this issue relates were determined. We believe that the reference at Para 6.17 of the Officer's report in respect of application Ref: 2013/5645/P (Appendix C) to contain a typographical error where it refers to Chapter 8 since that chapter relates to "Advertisements, Signs and Hoardings". It is chapter 10 that relates to "Waste and Recycling Storage" and contains the figures 15 and 16 that are referred to.

- 6.11 Para 10.8 of CPG1 refers to residential development of 6 dwellings or fewer usually being serviced by "kerbside waste and recyclables collection". Reference is made to garden waste but this is clearly not applicable for the development under consideration as there are no external gardens. The last bullet point under this paragraph refers to external storage for both waste and recyclables outside the building within the curtilage. The proposals provide for this.
- 6.12 Para 10.9 acknowledges that dwellings above shops (which should also presumably include dwellings above restaurants such as at the appeal site) being provided with green recycling bags due to restricted access to them. It is thus clear that for dwellings in such locations (such as the appeal premises) there is no need to provide for recycle storage within the curtilage. Para 10.9 requires that there be sufficient letterbox space to post these bags to avoid recycling/waste bags being left on the pavement after collection. The proposed development has such letterbox space. It is thus clear that whilst recyclable provision is included with the appeal proposals, it need not be.
- 6.13 Figure 13 sets out the external waste storage requirements for new developments. This is referred to as 27 litre external organic kitchen waste receptacle (W320 x D400 x H405). Thus for the 3 residential units a total of 81 litre capacity is required. The proposals provide for 940 litres capacity for the residential units (this being the same with both applications to which this issue relates).
- 6.14 Para's 10.14 to 10.17 and Figure 15 refer to external bins for waste and recycling storage. The Officer's report in respect of application Ref: 2013/5645/P confirms that there is sufficient provision to accord with the requirements of Figure 15. However, and in any event, it is clear from Para 10.9 that this need not be provided for dwellings above shops. It is clear from the way Para 10.9 is written that this would apply to new dwellings above shops (not just existing ones). The

Officer's report, regardless of this, confirms that the area available within the enclosed service yard will be sufficient to provide the storage containers required by Figure 15. With regard to the commercial waste it is clear from Para 10.18 of the CPG that this is acknowledged to vary dependent upon the nature of the use with guideline figures of 1 cubic metre storage space required for every 300sqm to 500sqm of commercial space. Again the proposals incorporate sufficient space to meet these requirements as the Officer's report in respect of application Ref: 2013/5646/P acknowledges.

6.15 Thus the proposals incorporate adequate provision for refuse and recycling provision. As regards convenience the proposals comply with the 6 relevant requirements set out at Figure 16 of CPG1. The external storage area is not located near any ground floor windows; is within 10m of an external access (albeit that it is acknowledged that it is only within 10m of an external access to the shop and not the residential unit); is as close as possible to a suitable place for a collection vehicle to stop; is at street level with level access; would be properly lit; will be unroofed; and is accessible for collection purposes without impeding pedestrian or vehicular access.

6.16 The only aspect of Figure 16 that is not complied with is that the storage area for waste is not within 10m of the access to the flats. However the refuse is still in very close proximity to the residential access on Highgate Road and would not deter residents from using the refuse storage available. Furthermore it is clear from the refusal of application Refs: 2014/0409/P and 2104/0422/P that the Local Authority are not happy with the refuse and recycling storage being situated on the Highgate Road frontage in proximity to the access to the flats. It is also clear from Para 2.26 of the Officer's report in respect of application ref: 2014/0738/P, which suggests a larger area for refuse accessed from Swain's Lane, that there is no concern about the distance from the entrance to the flats of this location. In view of this and given the site constraints with there being no other suitable location, it is considered that the proposed service yard accessed from Swain's Lane as proposed under application Refs: 2013/5645/P and 2014/0738/P must be considered acceptable.

#### **Adequacy and Convenience of Cycle Parking Provision**

6.17 This issue is raised in the refusal of all applications other than 2014/0409/P which relates solely to refuse. In application Refs:

2013/5645/P and 2104/0738/P the cycle parking is proposed to the rear of the refuse storage in the yard accessed from Swain's Lane. In application Refs: 2014/0416/P and 0422/P it is proposed on the Highgate Road frontage, albeit in different positions for each, close to the residential access.

- 6.18 As has been referred to at Para 5.08 the minimum cycle parking standards require only 3 spaces for the residential development (no visitor cycle parking is required as this is only a small development of less than 3 units). There is no requirement for cycle parking for the commercial unit. There has never been any and this has not been raised as an issue.
- 6.19 Despite this all applications provide for 4 bicycles to be parked on site. Para 6.19 of the Officer's report in respect of application Ref: 2013/5645/P confirms this to be sufficient and also confirms that the 4 cycle stands comply with the guidance set out in Chapter 9 of CPG7 (the relevant extract of which is contained at Appendix J).
- 6.20 In terms of location of cycle parking the Table at Para 9.8 refers, for stays of over an hour, the parking being sited within 50m of building entrances. In the case of all four applications (even those where the cycle parking is to the rear of the yard accessed from Swain's Lane) it is within this distance. Thus there is no justification for the assertion in the refusals of application Refs: 2013/5645/P and 2014/0738/P that the cycle storage is inconvenient and likely to result in bicycles on the highway or elsewhere on the property. Furthermore the cycle parking in all cases is clear of routes needed for pedestrian movement and at street level being step free.
- 6.21 We note that the Table under Para 9.8 in CPG7 refers to parking for residents being within the building. However the Council would have realised, when granting planning permission Ref: 2011/3819/P, that there was no space for cycles to be parked within the building with the submitted plans showing the cycle parking on the Highgate Road frontage. It is acknowledged that that application was approved prior to the adoption of CPG7. However the situation exists with the Council having approved a development where cycle parking has to be outside. Unfortunately they are now refusing to approve any of the details submitted to them. The cycle parking (unless it is to be forgone) has to be located on either the Highgate Road frontage, in front of the building, or within a service yard accessed from Swain's Lane. There is nowhere else on the appeal site for cycle parking to be located.

- 6.22 In terms of convenience it is not considered that there can be a more convenient location than as shown on applications Refs: 2014/0416/P and 0422/P – outside the residential entrance on the Highgate Road frontage. However both locations that have been put forward comply with the Local Authority's requirements in respect of convenience.
- 6.23 Given that the cycle parking has to be positioned externally CPG7 does not include any specific requirements in terms of the form of the cycle parking – types of stands etc. Para 9.8 of CPG7 refers to cycle parking needing to be accessible and that everyone that uses a bike being able to easily store and remove it, and secure in that both wheels and the frame can easily be locked to the stand. The proposals in all applications comply with this requirement.
- 6.24 We note that the Officer's report in respect of application Ref: 2014/0738/P includes, at Para 2.25, confirmation that the stands meet the minimum requirements as set out in CPG7 but alleges a cramped layout. However Para 6.19 of the Officer's report in respect of application Ref: 2013/5645/P, which showed exactly the same details, confirmed there to be sufficient space.
- 6.25 We note further that Para 2.26 of the Officer's report in respect of application Ref: 2014/0738/P suggests that a larger space can and should be designated for refuse and cycle storage with separate access provided to each area. However given the constraints of the service yard, with it only having a frontage width of 3m to Swain's Lane, this is impossible. There is insufficient width for two separate entrances – one to a refuse area and one to a cycle storage area – both wide enough to provide the access needed for the bins (for them to be wheeled out for collection) and to get bicycles in/out. Thus if the refuse and cycle storage are to be on the Swain's Lane frontage the arrangement has to be that one area of storage is accessed via the other.
- 6.26 It is noted that the Table under Para 9.8 refers to long stay parking being provided either within the building or otherwise protected from the weather. As referred to above the cycle parking cannot be included within the building given the previously approved layout. However should the Inspector be minded to allow Appeals Refs: 2013/5645/P and/or 2014/0738/P, a condition could be imposed requiring that part of the yard for the cycle storage be covered, the details of this be submitted to the Local Authority for their approval. Likewise some

form of canopy could be constructed over the proposed cycle parking shown in application Refs: 2014/0416/P and 0422/P and likewise this could also be conditioned with these two schemes, were the Inspector minded to allow one or both of those appeals.

**Impact on Visual Amenities and the Conservation Area**

- 6.30 This issue is raised in the reasons for refusal of all five applications. In applications Refs: 2013/5645/P and 2014/0738/P the issue relates to the alleged inconvenience of the refuse and cycle storage provision and thus the perception that this would be likely to result in refuse and bicycles being stored on the highway or elsewhere. However given the comments raised in respect of the first two issues there is no justification for this perception. There is no reason to assume that either refuse or bicycles would not be stored in the yard area accessed from Swain's Lane as both of these applications propose.
- 6.31 With application Refs: 2014/0409/P, 0416/P AND 0422/P this issue relates to the cycle and waste storage facilities being on the Highgate Road frontage. Para 2.1.4 of the Officer's report in respect of application Ref: 2014/0409/P raises concern about the fact that a bin store is proposed in this location, its bulk and height and materials. It is noted that Para 2.1.6 of the same Officer's report suggests that the more appropriate location would be in a service yard to the Swain's Lane side. However when applications with such facilities have been submitted to the Local Authority (2013/5645/P and 2014/0738/P) the Local Authority have not found them acceptable due to alleged inconvenience and inadequacy of facilities proposed.
- 6.32 In the Officer's report for application ref: 2014/0416/P the concern, as referred to at Para 2.1.3, is that the proposed cycle stands would provide visual clutter to the Highgate Road elevation. Para 2.1.4 refers to a more appropriate location being a service yard to the Swain's Lane elevation.
- 6.33 The Officer's report in respect of application Ref: 2014/0422/P comments similarly in respect of the proposed bin store, cycle stands and preference to the use of the service yard on the Swain's Lane elevation (Para's 2.14 to 2.17 of this Report discusses).
- 6.34 In the four applications where the cycle and refuse are proposed on the Highgate Road frontage the proposed plans show the provision of additional landscaping in front of the storage facilities – to the rear of

the boundary along the back edge of the pavement. Such landscaping would significantly reduce the visual impact of the proposals. It is evident that this has not been considered by Officers when refusing these three applications. It is suggested that if the Inspector is minded to allow any of these appeals then it would be appropriate to impose a condition requiring details of such landscaping to be submitted to the Local Authority for their approval with a standard form of condition to the effect that any landscaping which dies within a period of 5 years being replaced.

- 6.35 It should also be borne in mind that, prior to the construction of the flats in accordance with planning permission Ref: 2011/3819/P, this area contained tables and chairs for use by restaurant patrons. Therefore it has previously had “visual clutter” of some sort. Furthermore it is immediately adjacent to the retained restaurant garden where such tables and chairs remain with there also being the retractable restaurant canopy over this area. Similarly as referred to at Para 4.01 the restaurant immediately opposite has tables, chairs, canopy and a row of planters in its front garden area. The incorporation of various items within these properties forecourt areas is therefore already part of the street scene. Likewise there are bins and recycle bins on the pavement just to the south of the site. Given the location, surroundings and proposed layout with landscaping, the provision of cycle parking and bins within the Highgate Road forecourt would not impact in any detrimental way on the appearance of the building, the street scene or the Conservation Area.
- 6.36 We have reviewed the Dartmouth Park Conservation Area Appraisal and Management Statement. It is not considered that this incorporates any comments relevant to the proposals. The only reference that may be relevant is that at Page 56 in respect of gardens and front boundary treatment. This states that the Council will resist the loss of soft landscaping and original boundary walls and railings. The proposals do not involve loss of landscaping (there is no existing soft landscaping) or loss of boundary walls and railings.

## **7.00 Conclusions**

- 7.01 Given the nature of the appeal site there are only two potential locations for refuse and cycle storage. Either on the Highgate Road frontage, in front of the building or, alternatively, in the access yard serviced via the Swain's Lane elevation. Unfortunately neither have been found to be acceptable by the Local Authority with alternative proposals having been put forward for both locations.
- 7.02 In view of this the Council's continuing stance is considered unreasonable. Planning application Ref: 2011/3819/P was approved. The plans showed the refuse and cycle storage on the Highgate Road frontage albeit Conditions 9 and 10 made it clear that these details were not approved and that alternative details had to be submitted.
- 7.03 Unlike the details shown on the plans that formed part of the approved development, the refuse and cycle storage proposed on the Highgate Road frontage in application Refs: 2014/0409/P, 0416/P and 0422/P incorporate better use of the space and include a large area for landscaping to the rear of the boundary wall at the back edge of the pavement. All three applications are thus considered an improvement on the details shown when application ref: 2011/3819/P was submitted. All are considered to be appropriate in terms of visual amenities and to preserve the character and appearance of the Conservation Area. Likewise all are considered acceptable in terms of the adequacy and convenience of the cycle parking provision. For these three applications the Local Authority have not raised any concerns in respect of the adequacy and convenience of the refuse and recycling provision.
- 7.04 The Local Authority's Officer Reports in respect of application Refs: 2014/0409/P, 0416/P and 0422/P make it clear that the Council's preference is to see the facilities sited on the Swain's Lane access service yard. However with those applications the Local Authority still raised a concern in respect of the adequacy and convenience of the refuse and cycle parking provision. Officers had been clearly satisfied, however, (as is clear from the report in respect of application Ref: 2013/5645/P) that the proposed facilities were entirely acceptable.
- 7.05 For these reasons it is considered that all five applications now the subject of appeals are acceptable. As such the Inspector is respectfully requested to allow all appeals.