



TOWN AND COUNTRY PLANNING ACT 1990 (as amended)

APPEAL UNDER SECTION 78

APPEAL BY WAY OF A HEARING

SITE: 8 Pilgrim's Lane, London NW3 1SL

APPELLANT: Mrs Iyabode Abiola

SUBJECT OF APPEAL: Refusal of planning permission for "Excavation to create new basement level at rear with ground floor rooflight, erection of a roof extension, installation of 3x rooflights to rear roofslope, and alterations to fenestration, railings and front boundary walls of dwelling house"

London Borough of Camden

Reference: 2012/5825/P

Planning Inspectorate

Reference: APP/X5210/A/14/2223678

Statement for Appeal Hearing

Lead Officer

Rachel English

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Summary

I write in connection with the above appeal against the refusal of planning permission (Camden reference 2012/5825/P) dated 8th April 2014 for **“excavation to create new basement level at rear with ground floor rooflight, erection of a roof extension, installation of 3 x rooflights to rear roofslope, and alterations to fenestration, railings and front boundary walls of dwelling house.”**

The main substantive reasons for refusal relates to the:

- 1) basement works and its impact on the structural stability of the application site and adjacent properties,
- 2) the harmful impact of the development on the character and appearance of the conservation area as a result of the removal of a TPO tree and
- 3) the impact of the size and detailed design of the proposed basement on the host building.

The decision to refuse planning permission was made during a public meeting of the Development Control Committee (DCC) which was held on 3rd April 2014. An extract of the relevant minutes of the meeting including the 6 reasons for refusal are attached at Appendix B. The written depositions received by the Committee Clerk in advance of the DCC are included in Appendix C.

The decision notice and DCC report have been sent with the questionnaire, as have copies of the relevant LDF policies and accompanying Camden Planning Guidance. The planning application case officer recommended approval to the committee. As a result this statement of case sets out the Council's justification for the reasons for refusal following the Development Control Committee meeting. The Council and Appellant have agreed certain areas of “common ground” relating to this appeal. The agreed Statement of Common Ground can be found within Appendix G.

I would be pleased if the Inspector would consider the various matters set out below. The site has a detailed recent planning history, which is a significant material consideration in this appeal. This is discussed in section 2 (planning history). Furthermore, for reasons that will be amplified in section 6, this statement will focus

on matters relating to the basement works of the refused scheme, as set out in Reason for Refusal 1, 2 and 3. The remaining 3 reasons relate to s106 matters and will be dealt with in section 7.

The statement is set out as follows:

Section 1: (Subject of appeal) I shall provide a summary of the planning application and the reasons for refusal.

Section 2: (planning history and substantive matters). I shall provide a summary of the planning history relating to the site.

Section 3: (Status of policies and guidance). I shall confirm the national, regional and local planning policies and guidance relevant to the reasons for refusal and the issues discussed on this statement.

Section 4: (Site and surroundings). I will describe the appeal site and surrounding area.

Section 5: (Consultation responses).

Section 6: (Assessment of basement/tree/design matters). I will assess how the basement works would harm the structural stability of the application site and the adjacent properties, the harm to the conservation area if the TPO Cherry tree were to be removed and the harm to the host building and conservation area as a result of the proposed design changes at the rear of the building.

Section 7: (S106 planning obligations). I will outline the Council's position on the requirement for section 106 obligations are set out in order to overcome reasons for refusal numbers 4 to 6.

Section 8: (Planning balance and conclusion) I will conclude the arguments made in this statement.

Section 9: (Costs)

Appendices

The appendices contain supporting information as set out below, including proposed conditions, in the event that the Inspector is minded to allow the appeal.

A: Supporting statement in relation to reason for refusal 1 by Seamus Lefroy-Brooks on behalf of LBH Wembley Geotechnical and Environmental (separate document)

B: Minutes from Development Control Committee (3rd April 2014)

C: Written deputations, extracted from Supplementary Agenda of Development Control Committee (3rd April 2014). (separate document)

D: Context photos

E: Proposed conditions

F: Draft s106 legal agreement (separate document)

G: Statement of Common Ground agreed by Council and appellant (separate document)

1. Subject of appeal

1.1 The application for the “excavation to create new basement level at rear with ground floor rooflight, erection of a roof extension, installation of 3x rooflights to rear roofslope, and alterations to fenestration, railings and front boundary walls of dwelling house” which is the subject of the appeal was refused on 04th April 2014. The decision notice cited 6 reasons for refusal: the first three relating to the basement works and the remaining 3 relating to the absence of a s106 agreement to secure appropriate mitigation measures.

1.2 For reasons which will be clarified below in section 6 the substantive focus of this statement is on reasons for refusal 1 to 3, which are worded as follows:

- i) *“In the absence of sufficient information the applicant has failed to demonstrate that the proposed basement excavations would not have significant adverse impacts on the structural stability of the application site and adjacent properties. As such, the scheme is contrary to policies CS5 (Managing the impact of growth and development), CS13 (Tackling climate change through promoting higher environmental*

standards) and CS14 (Promoting high quality places and conserving our heritage) of the London Borough of Camden Local Development Framework Core Strategy and policies DP23 (Water), DP25 (Conserving Camden's heritage), DP26 (Managing the impact of development on occupiers and neighbours) and DP27 (Basements and Lightwells) of the London Borough of Camden Local Development Framework Development Policies.

- ii) The removal of the TPO tree would be harmful to the visual amenity it provides and harmful to the character and appearance of the conservation area, contrary to policies CS5 (Managing the impact of growth and development), CS13 (Tackling climate change through promoting higher environmental standards) and CS15 (Protecting and improving our parks and open spaces and encouraging biodiversity) of the London Borough of Camden Local Development Framework Core Strategy and policies DP24 (Securing high quality design), DP25 (conserving Camden's Heritage) and DP27 (Basements and Lightwells) of the London Borough of Camden Local Development Framework Development Policies.*
- iii) The proposed basement, patios, steps and associated excavation by virtue of their size, depth, bulk, mass and detailed design would have an adverse impact on the original proportions of the host building to the detriment of the quality of the building, contrary to policy CS14 (Promoting high quality places and conserving our heritage) of the London Borough of Camden Local Development Framework Core Strategy and policy DP25 (Conserving Camden's heritage) and DP27 (basements and lightwells) of the London Borough of Camden Local Development Framework Development Policies.”*

1.3 The remaining 3 reasons are set out and discussed in section 7. An informative was added on the decision notice which states: *Without prejudice to any future application or appeal, the applicant is advised that reasons for*

refusal numbered 4, 5 and 6 could be overcome by entering into a Section 106 Legal Agreement for a scheme that was in all other respects acceptable.

2. Site history

- 2.1 The site has been the subject of two previous planning applications, one of which was the subject of refusal and the other was withdrawn. The chronology is summarised below:
- 2.2 In November 2011 an application (2010/4644/P) was withdrawn for “erection of two storey rear extension at basement and ground floor levels, a roof extension, erection of front boundary wall and railings and excavation at the rear to extend the existing basement to incorporate an internal swimming pool to existing dwelling house (Class C3).
- 2.3 In April 2011 an application (2011/0526/P) was refused for excavation of basement extension with ground floor roof light, raising the ridge of the existing roofline to the south west elevation and erection of boundary wall and railings to front elevation as well as alterations to the fenestration and associated alterations to existing dwelling house (Class C3).
- 2.4 The primary reasons for refusal were:
- i) In the absence of sufficient information the applicant has failed to demonstrate that the proposed basement excavation would not have significant adverse impacts on the structural stability of the application site and adjacent properties, drainage and the local water environment.
 - ii) The proposed basement, patios, steps and associated excavation by virtue of their size, depth, bulk, mass and detailed design would have an adverse impact on the original proportions of the host building to the detriment of the quality of the building
- 2.5 Further reasons related to the failure to secure appropriate mitigation measures by way of a s106 legal agreement, relating to the following concerns:

- iii) The proposed development, in the absence of a legal agreement to secure contributions to ensure a highway contribution to mitigate against the impact of development.
 - iv) The proposed development, in the absence of a legal agreement to secure the provision of a Construction Management Plan, would be likely to contribute unacceptably to traffic disruption and dangerous situations for pedestrians and other road users.
- 2.6 Subsequent to the refusal of the application, the applicant submitted an application for a development which differed substantively only in changes to the external appearance of the basement supported by the submission of a Heritage Statement and a new Basement Impact Assessment.

3. Status of Policies and Guidance

Policy

- 3.1 On 8th November 2010 the Council formally adopted the Core Strategy (CS) and Development Policies (DP) documents of the Local Development Framework (LDF). These documents went through an examination in Public, and the appointed Inspector found the documents to be sound in a decision published on 13th September 2010.
- 3.2 The relevant LDF policies as they relate to the rear for refusal are set out in the Council's decision notice.
- 3.3 The Council's policies are recent and up to date and should be accorded full weight in accordance with paragraphs nos. 214-216 of the NPPF. There are no material differences between the NPPF and the Council's policies in relation to this appeal.
- 3.4 Statutory regional policy is established in the adopted London Plan 2011. In July 2011 the Mayor published the replacement of the spatial development strategy for London – known as the London Plan. On 11 October 2013, the Mayor published Revised Early Minor Alterations to the London Plan (REMA). From this date, the REMA are operative as formal alterations to the London

Plan (the Mayor's spatial development strategy) and form part of the development plan for Greater London.

Guidance

3.5 The Council adopted its Camden Planning Guidance (CPG), in eight documents, in 2011, as follows:

1. Design
2. Housing
3. Sustainability
4. Basements
5. Town Centres, retail and employment uses
6. Amenity
7. Transport
8. Planning obligations

3.6 The Council adopted revised CPG on four topics in September 2013 as follows:

1. Design
2. Housing
3. Sustainability
4. Basements and lightwells
5. Town centres, retail and employment

4. Site and surroundings

4.1 The appeal relates to a large Arts and Crafts influenced dwelling house dating from the 1880's. It is located on the east side of Pilgrim's Lane, just before the road bends north towards Kemplay Road. At the front, the house is double fronted and contains two storeys with a lightwell to an existing basement level. It is constructed in red brick and white render with hanging tiles at first floor level and a ship's figurehead and plaque at ground floor level commemorating William Johnston Cory (author and poet). At the rear the house is 3 storeys in height with a terrace leading down to the garden. Due to

the topography of the site, which slopes down in a south west direction, the garden is approximately 3 metres lower than street level. The site is L-shaped with the garden extending to the north east of the house between the rear gardens of the adjoining property at no. 10 Pilgrim's Lane, Downshire Studios and no. 3 Downshire Hill.

- 4.2 To the south west is a more modest terrace of red brick, two storey houses with double height bays (nos. 2-6 Pilgrim's Lane). To the north east is the carport of the house and adjacent to this is no. 10 Pilgrim's Lane, a modern dwelling dating from the 1960's that was refurbished in the late 1990's.
- 4.3 To the west of Pilgrim's Lane are a variety of buildings including nos. 1 and 3 which are four storey's in height and are Grade II* listed buildings, nos. 5 and 5A which are a pair of semi-detached properties which along with no. 7 date from the 1950's, and nos. 7 and 9 which date from the 18th century and are Grade II listed buildings.
- 4.4 The appeal site lies within sub area 3 of the Hampstead Conservation Area and is identified as making a positive contribution to the character and appearance of the conservation area. The site is also within the Borough's constraints for slope stability and groundwater flow.

5. Consultation

- 5.1 The application was the subject of public consultation. Letters were sent to 45 local addresses. A site notice was displayed on 09th November 2012 and a press notice was published in the Ham & High on 15th November 2012.
- 5.2 56 consultation responses including technical expert responses to the Basement Impact Assessment from third parties were received and have been included with the questionnaire previously submitted to the Inspectorate as well as a commentary on the consultation responses is found in the Development Control Committee report. Further deputations from third parties to the Development Control Committee on 3rd April 2014 can be found in Appendix C.

6.0 Summary of reasons for refusal

6.1 Paragraph 2 of the NPPF states that “Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.” Whilst Officers considered that the application was acceptable, this was subject to a number of conditions and S106 clauses. Members at Development Control Committee considered that there was insufficient evidence and soundness in the application submission in order to approve the application. The minutes from the meeting can be found at Appendix B. The Members considered that there was insufficient difference between the previously refused application (2011/0526/P) and this application in order to grant approval and that the proposals conflicted with the Council’s policies and guidance.

Reason for refusal 1

6.2 Reason 1 states: *In the absence of sufficient information the applicant has failed to demonstrate that the proposed basement excavations would not have significant adverse impacts on the structural stability of the application site and adjacent properties. As such, the scheme is contrary to policies CS5 (Managing the impact of growth and development), CS13 (Tackling climate change through promoting higher environmental standards) and CS14 (Promoting high quality places and conserving our heritage) of the London Borough of Camden Local Development Framework Core Strategy and policies DP23 (Water), DP25 (Conserving Camden's heritage), DP26 (Managing the impact of development on occupiers and neighbours) and DP27 (Basements and Lightwells) of the London Borough of Camden Local Development Framework Development Policies.*

6.3 The key point at issue between the Council and the appellant is the degree of detail required in order to properly apply the tests of DP27 and guidance within Camden Planning Guidance 4 (2013). In particular the appellants evidence submitted relating to the structural stability of the neighbouring properties is contested both by the Council and third party objectors. The Council has appointed Seamus Lefroy Brooks from LBH Wembley Geotechnical and Environmental to represent the Council as their basement

experts to defend reason for refusal 1. See Appendix A for his expert response on the basement issues.

- 6.3 At Development Control Committee on 3rd April 2014 a number of Members on the Committee expressed concerns about “whether the construction would work and queried the basement impact assessment and the proposed method of construction.” The Members sought reassurance that the proposed basement would not cause damage to neighbouring properties and queried whether it was legitimate in such a sensitive situation for such fundamental information to be provided through conditions after planning permission had been granted.
- 6.4 The Council contends that the physical context of the appeal site, although not unique or exclusive, is unusual. The appeal property is a mid-terrace property. However rather than being bounded by the boundary walls of the neighbouring properties of no. 06 and no. 10, the neighbouring property at no. 10 has a flying freehold over the appellant’s land. The part of the property ‘flying’ over the other forms part of the structural integrity of the flying freehold property. There are two structural columns that support the first floor of no. 10 which extends over the access passage that slopes down towards the rear garden of the appeal property.
- 6.5 As a result the owner of the neighbouring property at no. 10 relies on the appellant to maintain the neighbouring property so that the flying freehold property is not damaged. Taking this into consideration the Council considers that this calls for a commensurate level of detail in the basement impact assessment. It is considered that the technical reports submitted by the appellant during the course of the application contained a degree of uncertainty which was sufficient to justify withholding planning permission.
- 6.6 No structural appraisal of the adjoining properties, especially no. 10, had been carried out prior to the decision that now forms the basis of this appeal only an external visual assessment. Members considered at DCC that there was insufficient certainty regarding the scheme relating to the structural stability,

with certain essential omissions from the BIA being dealt with by condition or S106 clause only.

- 6.7 The appellant refers to another application decision at 26 Wedderburn Road (2013/6418/P) that was determined by the Development Control Committee on 20/03/2014. This was for the enlargement of a basement floor and was approved subject to a number of conditions including the submission of details of investigations of the foundations. The appellant suggests that there is no material difference between the applications to warrant the different decisions that were reached by the DCC committee. The appellant is claiming that the Council's decision was therefore inconsistent with decisions taken on other basement developments in Camden. However, as the particular circumstances affecting such decisions will vary considerably from site to site little weight should be given to this point.
- 6.8 Please refer to Appendix A for further commentary on this reason for refusal from Seamus Lefroy Brooks from LBH Wembley Geotechnical and Environmental.

Reason for refusal 2

This reason for refusal is examined by The Council's Tree and Landscape Officer James Remmington.

- 6.9 Reason 2 states: *The removal of the TPO tree would be harmful to the visual amenity it provides and harmful to the character and appearance of the conservation area, contrary to policies CS5 (Managing the impact of growth and development), CS13 (Tackling climate change through promoting higher environmental standards) and CS15 (Protecting and improving our parks and open spaces and encouraging biodiversity) of the London Borough of Camden Local Development Framework Core Strategy and policies DP24 (Securing high quality design), DP25 (conserving Camden's Heritage) and DP27 (Basements and Lightwells) of the London Borough of Camden Local Development Framework Development Policies.*

- 6.10 The Appellant considers that the effect of the removal and replacement of trees will have *“an overall positive effect upon visual amenity, the character and appearance of the Conservation Area and upon parks, open spaces and biodiversity.”* (para 1.12).
- 6.11 The tree, a Japanese cherry *Prunus serullata* ‘Kanzan’ was made subject to a TPO on 17/03/2011, following the submission of the first application (2011/0526/P dated 03/02/2011). The reason for this was *‘in order to provide additional protection for the Cherry’*.
- 6.12 No objections or representations to the making of the TPO were received from the applicant. A petition with 105 signatories was received in support of the TPO. The TPO was therefore confirmed on 21/09/2011.
- 6.13 The tree is highly visible from neighbouring properties, and is partially visible from Pilgrim’s Lane. The tree is a medium size, and semi mature in age. It provides almost year round interest through blossom, berries and autumn colour. The cultivar has been awarded the RHS Award of Garden Merit.
- 6.14 The tree has some minor to moderate defects, such as slight root girdling, tight branch unions (which show the early stage of included bark formation), and a secondary limb with moderate decay. These are typical defects for the species, and do not effect on the amenity value of the tree. If properly managed, the defects will not have a detrimental impact on the lifespan of the tree.
- 6.15 The reason given for the removal of the tree is to implement a drainage system – it has not been adequately shown that this is essential to the scheme, that the removal of the tree is essential to implement the drainage system, or that the benefits of the scheme outweigh the removal of this tree.
- 6.16 The appeal statement (para 4.10) makes statements such as ‘likely to affect’ and ‘may harm the health of the tree’ which are subjective, and it has not been conclusively proven to the council’s satisfaction that the tree cannot be successfully retained.

- 6.17 The appeal statement also indicates (para 4.11) that removal of the tree would have been approved under a separate TPO application. TPO applications require strong justification to gain approval, and as the justification for the removal of this tree relates directly to the proposed development it would be inappropriate to consider the two matters as separate.
- 6.18 There is a proposed replacement of a 14-16 cm girth *Magnolia grandiflora* 'Gallisoniere' this is a much smaller specimen than the existing Cherry tree. It will not provide a similar level of amenity for several years, and depending on the planting site, may never be visible from Pilgrim's lane. The councils view therefore is that the proposed replacement planting is inadequate.
- 6.19 The appeal statement states that canopy cover will not be affected in the 'medium term' (para 4.22) this is an ambiguous statement and depends on tree establishment and growth rates. It is also difficult to accept the statement in paragraph 4.24 that the biodiversity value of the garden will not be diminished: flowering cherries and plum trees support a variety of insect and birdlife (as can the dead and decaying wood also present), and evidence has not been submitted to allow argument that the replacement trees will provide equal or greater value in this respect.
- 6.20 Paragraph 4.30 of the appellant's statement says that "whilst the Cherry might attract attention during the relatively short flowering period in the spring, when other trees are not in full leaf, it is unremarkable at other times." The Council would like to draw attention to Appendix C in particular photographs 2, 3 and 4 which show the tree in the Autumn/Winter period from surrounding properties and from through the carport. The photographs clearly show the visual quality of the tree and the enhancement it makes to the conservation area. The loss of the tree would give rise to unacceptable harm to the Hampstead Conservation Area contrary to policies CS5, CS13 and CS15 of the LDF Core Strategy and policies DP24, DP25 and DP27 of the LDF Development Policies.

6.21 Given all of the above it is the council's view that the loss of the tree is unacceptable, and that the evidence to support the assertion in the second ground for the appeal is not of a high enough standard.

Reason for refusal 3 – design and impact on host building

This reason for refusal is examined by the Council's Conservation Officer Victoria Pound.

6.22 Reason 3 states: *The proposed basement, patios, steps and associated excavation by virtue of their size, depth, bulk, mass and detailed design would have an adverse impact on the original proportions of the host building to the detriment of the quality of the building, contrary to policy CS14 (Promoting high quality places and conserving our heritage) of the London Borough of Camden Local Development Framework Core Strategy and policy DP25 (Conserving Camden's heritage) and DP27 (basements and lightwells) of the London Borough of Camden Local Development Framework Development Policies.*

6.23 The existing rear raised ground floor terrace area sits comfortably within the building line formed by the side elevation of Downshire Studios adjacent. Its edge is protected by a simple red brick wall with decorative balustrade above. There is a stair access down to the lower garden area which is also simple in design, and positioned against the patio wall of no. 10. The existing brick wall and balustrade complements the building's rear elevation in terms of its materials and design, and the stair is unobtrusive in its scale and position.

6.24 The proposed basement level accommodation would sit directly under this existing terrace area. The formation of habitable space beneath the raised terrace necessitates glazing, which is proposed in the form of three French doors on the garden elevation, which would give light and also access onto a sunken patio area, and a glazed walk-on rooflight. It is also proposed to relocate the stair down to the garden, and to install a new balustrade to the edge of the terrace.

- 6.25 The building is identified in the Hampstead Conversation Area Statement as a positive contributor to the character and appearance of the conservation area. The Council remains of the view that the building contributes in this way, and does not agree with the Appellant's assertion that it is "of limited architectural merit" (para. 3.18). Irrespective of differences of opinion regarding the worth of the building, the Council's policies CS14 and DP24 seek to ensure a high standard of design, which certain elements of the appeal proposal are not considered to meet.
- 6.26 The Council notes that the design and scale of the external expression of the proposed new basement accommodation to the building's rear did not change significantly between the scheme refused on 1st April 2011 (2011/0526/P) and the appeal proposal, and that the appeal proposal therefore does not overcome the 2011 reason for refusal.
- 6.27 The retaining wall of the new sunken patio area would project beyond the existing building line formed by the terrace balustrade, and forms a lightwell within the existing lower garden area. This patio is required to have steps up to the garden level. These would be positioned adjacent to the relocated set of steps up to the raised terrace area. This arrangement would create a significant amount of additional built fabric within the garden, which would be separated in plane from the main rear elevation. In combination with the amount of glazing proposed within the lower ground elevation, this arrangement fails to visually relate to the upper floors of the host building. As a result of this arrangement, the building's additional storey would appear to be disconnected from the host building, and not providing visual support to the upper floors.
- 6.28 The detailed design of the French doors is considered to be overly simple and modern in appearance, and does not befit the more highly decorative elevation and fenestration of the host building above.
- 6.29 The detailed design of the proposed cast stone balustrade is taken from an

internal newel post, which is not considered to be appropriate as an external detail, and appears out of keeping in this context. In addition, the balustrade design is considered inconsistent and incorporates a glazed panel, and an additional glazed panel immediately below on the fascia. This detail is incongruous, and the combination of the two types of balustrade edging and materials gives a confused appearance, further harming the appearance and character of the building above.

6.30 Taken as a whole, the various individual elements of the proposal to form new subterranean space to the rear of the building are considered to be harmful to the character and appearance of the host building and the character and appearance of the wider conservation area due to their bulk, scale, position and detailed design. This element of the wider proposal is therefore not considered to meet the requirements of policies CS14 Promoting high quality places and conserving our heritage, DP24 Securing high quality design, DP25 Conserving Camden's heritage and DP27 Basements and lightwells.

6.31 The Appellant's statement refers to listed building impact (paras. 3.10 – 3.13). The host building is not listed, and the impact on the setting of nearby listed buildings does not form a part of the reason for refusal. This aspect of the Appellant's statement is therefore not considered to be relevant in this case.

7.0 Reasons for refusal 4, 5 and 6

7.1 The application subject to this appeal was refused on the grounds that the development had not entered into a planning obligation with the Council securing the following aspects of the development: submission of a Construction Management Plan, contributions towards highway works and the submission and implementation of a Construction Impact Plan.

7.2 The appellant considers that the absence of a legal agreement to secure the submission and implementation of a Construction Management Plan (CMP), necessary highway contributions and the submission and implementation of a Construction Impact Plan "do not amount to reasonable grounds to refuse the

application”.

- 7.3 Planning obligations are either agreements negotiated in the context of planning applications between local planning authorities and persons with an interest in a piece of land or a unilateral undertaking made by a landowner. Their purpose is to make acceptable development which would otherwise be unacceptable in planning terms.
- 7.4 The appellant has suggested that the reasons for refusal 4-6 can be overcome via entering into a unilateral undertaking and has submitted a draft unilateral undertaking in appendix F. The Council would prefer the use of a S106 legal agreement however plan to continue to negotiate the terms of any legal agreement with the appellant with a view to agreeing terms before the hearing date.
- 7.5 Government guidance on planning obligations is contained within Circular 05/2005 as amended by the Community Infrastructure Levy (CIL) Regulations 2010 (122 and 123) which came into effect on 6 April 2010 and the National Planning Policy Framework 2012 (particularly paragraphs 203-206). The CIL regulations limit the use of planning obligations so that a planning obligation must only be sought where it meets all of the following tests:
- Necessary to make the development acceptable in planning terms.
 - Directly related to the development.
 - Fairly and reasonably related in scale and kind to the development.
- 7.6 The Council considers that the three obligations (in reasons for refusal 4-6) would meet these tests for the reasons set out below:
- 7.7 The Appellant considers in paragraph 1.24 that the above “matters can be controlled by way of planning conditions without the need for a planning agreement” however as part of Appendix F has submitted a draft unilateral undertaking agreement in order to secure a final CMP, highways contribution and Construction Impact Plan therefore the appellant clearly recognises that these requirements cannot just be dealt with via condition.

- 7.8 In view of the advice in Circular 05/2005 as amended by the Community Infrastructure Levy (CIL) Regulations 2010 (122 and 123) the Council would not agree that the matters referred to can be dealt with by condition.

Reason for refusal 4

- 7.9 Reason 4 states: *The proposed development, in the absence of a legal agreement to secure the submission and implementation of a Construction Management Plan, would be likely to contribute unacceptably to traffic disruption and hazards for pedestrians, cyclists and other road users and would be detrimental to the amenities of the area generally, contrary to policies CS5 (Managing the impact of growth and development), CS11 (Promoting sustainable and efficient travel) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy; and policies DP20 (Movement of goods and materials), DP21 (Development connecting to the highway network) and DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Policies.*
- 7.10 The Appellant submitted a draft CMP as part of the application however a planning obligation is considered to be the most appropriate mechanism for securing a CMP in this case simply because to a considerable extent much of the activity during construction that could cause conflict with other road users or be detrimental to the amenity of the area will necessarily take place outside the curtilage of the planning unit of the appeal site.
- 7.11 The submitted Construction Management Plan is dated July 2012 (see appellant documents O4A.6). A key purpose of the CMP is to comment on the cumulative impact of construction within the surrounding area. The 2012 CMP does not cover any current permissions or proposals that would cumulatively impact on the appeal street together with the proposed works. The proposed basement excavation and other external alterations will result in a number of construction vehicle movements to and from the site, which will doubtless have a significant impact on the local transport network. In cases such as this

where the construction impact is particularly significant Camden will seek to ensure that impact is properly managed by the developer through a CMP. This is in accordance with policies CS5, CS11, CS19, DP20, DP21 and DP26 specifically paragraph 26.10, and CPG7 – Transport. Potential impacts for the proposed excavation/construction works which should be controlled by a CMP include traffic generation from removal and delivery of materials and deliveries to the site. This could result in traffic disruption and dangerous situations for pedestrians and road users.

7.12 Under the Planning Act conditions are used to control matters on land within the developers' control. However, a CMP is designed to be an enforceable and a precise document setting out how measures will be undertaken not just on site but also around the site in order to minimise as far as reasonable the detrimental effects of construction on local residential amenity and / or highway safety on the nearby roads hence, using a condition to secure the type of off-site requirements usually included in a CMP would, in this case be unenforceable. The up-to-date CMP submitted as part of the S106 would enable liaison with neighbours and the appointed contractor to meet with local residents just prior to commencement on site.

7.13 Conditions can only lawfully be used to control matters on land within the developer's control. Many of the CMP provisions will relate to offsite requirements, particularly public highway (which is not land within the developers' control). As such, a Section 106 Agreement (rather than a condition) is the most appropriate mechanism.

Reason for refusal 5

7.14 Reason for refusal 5 states: *The proposed development, in the absence of a legal agreement securing necessary highway works, would fail to secure adequate provision for and safety of pedestrians, cyclists and vehicles, contrary to policy CS11 (Promoting sustainable and efficient travel) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policy DP17 (Walking, cycling and public transport) of the London Borough of Camden*

Local Development Framework Development Policies.

- 7.15 The Council considers it essential for a legal agreement securing highway works in order to comply with policies CS11, CS19 of the LDF Core Strategy and policy DP17 of the LDF Development Policies. The Council maintains that a payment for highways work should be secured through a S106 agreement. CPG8 – Planning Obligations states that public highways works on Borough Roads are to be undertaken through a section 106 or 278 obligation. The guidance also states that the Council will secure payment for required works by preparing an estimate (including fees) for the scheme that the developer will be required to pay before commencing development. The most effective way of both securing sufficient payment and ensuring the works are carried out to the Council's procedures and standards is for a financial contribution to be paid by the developer on commencement of the development and secured by an obligation under S106. It is not possible to secure a financial contribution for highway works by condition as it relates to land outside the application site and is not under the control of the applicant. This also supports key principle 4 of the National Planning Policy Framework: Promoting sustainable transport. The 2014 estimate for this work has been prepared by the Borough Engineer and any excess will be repaid to the developer.
- 7.16 The width of Pilgrims Lane ranges between 7.04m at widest point (within the site boundary) and 4.7m at the lowest point and therefore whilst the road is able to accommodate the vehicles which are proposed to be used there is concern that there would be damage to the highway and pavement through the proposed number of lorry movements carry materials to and from the site. It is recommended that the contribution will enable any damage to be compensated for.

Reason for refusal 6

- 7.17 Reason 6 states: *The proposed development, in the absence of a legal agreement to secure the submission and implementation of a Construction Impact Plan, could have significant adverse impacts on the structural stability*

of the application site and adjacent properties contrary to policies CS5 (Managing the impact of growth and development), CS13 (Tackling climate change through promoting higher environmental standards), CS14 (Promoting high quality places and conserving our heritage) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy; and policies DP23 (Water), DP25 (Conserving Camden's heritage), DP26 (Managing the impact of development on occupiers and neighbours) and DP27 (Basements and Lightwells) of the London Borough of Camden Local Development Framework Development Policies.

- 7.18 This final reason for refusal refers to the submission of a Construction Impact Plan. The appellant considers there to be overlap between reason for refusal 1 and reason for refusal 6. It is considered that the Construction Impact Plan is essential and is correct to be separate to reason for refusal 1 in order to ensure appropriate monitoring during the construction and excavation process. Reason for refusal 1 refers to the aspects of the BIA that are inadequate in terms of detailed drainage design for the sub-basement and the detailed design and construction methodology. This is set out in the LBH Wembley report in Appendix A. The Council argues that these measures should be included as part of the BIA
- 7.19 The Construction Impact Plan should be secured via a S106 to ensure that the excavation works are carried out by qualified professionals and would allow further detailed information such as a pre-condition survey and investigations following further trial pits (where necessary) to be submitted which relates to the excavation and construction of the development. It would also provide a programme of detailed mitigating measures to be undertaken and put in place. If the BIA was considered adequate then the S106 would involve a plan to be designed with the objective of containing the impact of the development on the structural stability of the neighbouring properties and ensuring that the works provided by the main contractor and on-site engineer are covered within the Construction Impact Plan. The draft S106 can be found in Appendix F.

8 Conclusions

8.1 It is first acknowledged that the Council's hearing statement represents a different approach to that taken by the case officer at the application stage and the manner in which the application was reported to Council's Development Control Committee. However following the view of elected Members at the meeting in April 2014, the case has been considered afresh and the Council consider that this appeal should be dismissed for the reasons set out above. The inspector is therefore respectfully requested to dismiss the appeal, however, should the Inspector be minded to allow the appeal, the Council would suggest the conditions in Appendix E.

9 Costs

9.1 The appellants' application for costs will be addressed by the Council separately.

APPENDIX A

A: Basement expert commentary Seamus Lefroy Brooks from LBH Wembley Geotechnical and Environmental (see separate document)

APPENDIX B

B: Minutes from Development Control Committee meeting (3rd April 2014)

8 PILGRIMS LANE, LONDON NW3 1SL

- Meeting of Development Control Committee, Thursday, 3rd April, 2014 7.00 pm (Item 7a)

Application No: 2013/5825/P **Officer:** Rob Tulloch

Proposal: Excavation to create new basement level at rear with ground floor rooflight, erection of a roof extension, installation of 3x rooflights to rear roofslope, and alterations to fenestration, railings and front boundary walls of dwelling house.

RECOMMENDATION: Grant planning permission subject to a section 106 legal agreement.

Minutes:

Consideration was given to the deputation requests and written submissions referred to in Item 4 above.

The Planning Officer gave a presentation which highlighted the key features of the application.

In response to a query, the Planning Officer confirmed that three trees would be removed as part of the scheme and that there would be two trees planted to replace them.

A number of Members expressed concern about whether the construction would work and queried the basement impact assessment and the proposed method of construction. They sought reassurance that the proposed basement would not cause damage to neighbouring properties and queried whether it was legitimate in such a sensitive situation for such fundamental information to be provided through conditions after planning permission had been granted. They also queried whether there was sufficient expertise within the Council to sign-off the construction method. In response, the Legal Adviser stated that it was legitimate for approval to be granted subject to further information, unless there was a fundamental doubt regarding the method proposed.

Nick Langdon, from the Council's Basement Impact Assessment consultants CGL, stated that he recognised that this was an extremely sensitive site. He stated that it was not possible to assess the depth of the post which held up 10 Pilgrims Lane prior to construction and that it would be safest to do this during the construction process. He stated that nine boreholes had been dug as well as 8-10 trial pits, which was a significant amount of investigation.

A Member queried whether the Council would be liable should there be any damage to the buildings. The Legal Adviser stated that the Council would not be liable as long as it properly applied its policies. Nick Langdon stated that it was likely that these issues would be controlled through the Party Wall Agreement which would be required.

In response to a question regarding the lack of a requirement for Sustainable Urban Drainage, the Planning Officer stated that the application was not expected to generate a significant change in surface water movement which was why this was not being required.

On being put to the vote, with seven votes against and two abstentions, it was:

RESOLVED –

THAT planning permission be refused for the following reasons:

1. In the absence of sufficient information the applicant has failed to demonstrate that the proposed basement excavations would not have significant adverse impacts on the structural stability of the application site and adjacent properties. As such, the scheme is contrary to policies CS5 (Managing the impact of growth and development), CS13 (Tackling climate change through promoting higher environmental standards) and CS14 (Promoting high quality places and conserving our heritage) of the London Borough of Camden Local Development Framework Core Strategy and policies DP23 (Water), DP25 (Conserving Camden's heritage), DP26 (Managing the impact of development on occupiers and neighbours) and DP27 (Basements and Lightwells) of the London Borough of Camden Local Development Framework Development Policies.
2. The removal of the TPO tree would be harmful to the visual amenity it provides and harmful to the character and appearance of the conservation area, contrary to policies CS5 (Managing the impact of growth and development), CS13 (Tackling climate change through promoting higher environmental standards) and CS15 (Protecting and improving our parks and open spaces and encouraging biodiversity) of the London Borough of Camden Local Development Framework Core Strategy and policies DP24 (Securing high quality design), DP25 (conserving Camden's Heritage) and DP27 (Basements and Lightwells) of the London Borough of Camden Local Development Framework Development Policies.
3. The proposed basement, patios, steps and associated excavation by virtue of their size, depth, bulk, mass and detailed design would have an adverse impact on the original proportions of the host building to the detriment of the quality of the building, contrary to policy CS14 (Promoting high quality places and conserving our heritage) of the London Borough of Camden Local Development Framework Core Strategy and policy DP25 (Conserving Camden's heritage) and DP27 (basements and lightwells) of the London Borough of Camden Local Development Framework Development Policies.
4. The proposed development, in the absence of a legal agreement to secure the submission and implementation of a Construction Management Plan, would be likely to contribute unacceptably to traffic disruption and hazards for pedestrians, cyclists and other road users and would be detrimental to the

amenities of the area generally, contrary to policies CS5 (Managing the impact of growth and development), CS11 (Promoting sustainable and efficient travel) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy; and policies DP20 (Movement of goods and materials), DP21 (Development connecting to the highway network) and DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Policies.

5. The proposed development, in the absence of a legal agreement securing necessary highway works, would fail to secure adequate provision for and safety of pedestrians, cyclists and vehicles, contrary to policy CS11 (Promoting sustainable and efficient travel) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policy DP17 (Walking, cycling and public transport) of the London Borough of Camden Local Development Framework Development Policies.
6. The proposed development, in the absence of a legal agreement to secure the submission and implementation of a Construction Impact Plan, could have significant adverse impacts on the structural stability of the application site and adjacent properties contrary to policies CS5 (Managing the impact of growth and development), CS13 (Tackling climate change through promoting higher environmental standards), CS14 (Promoting high quality places and conserving our heritage) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy; and policies DP23 (Water), DP25 (Conserving Camden's heritage), DP26 (Managing the impact of development on occupiers and neighbours) and DP27 (Basements and Lightwells) of the London Borough of Camden Local Development Framework Development Policies.

Informative: Without prejudice to any future application or appeal, the applicant is advised that reasons for refusal numbered 4, 5 and 6 could be overcome by entering into a Section 106 Legal Agreement for a scheme that was in all other respects acceptable.

APPENDIX C

C: Deputation requests, extracted from Supplementary Agenda of Development Control Committee (3rd April 2014). See separate attached document for responses in full.

List of written submissions in objection have been received (pages 33-61) from:

- Julie Barnfather, a local resident
- Colin Barnfather, a local resident
- Jonathan Jamilly, local resident
- John Hersov, local resident
- Jenny Stevens, Rudall Crescent Residents' Association
- Frank and Belinda Harding, local residents
- Janine Griffis, Pilgrim's to Willoughby Residents Association
- Helen Evans, a local resident
- Caroline Compton, a local resident
- E Bourne and M Leavitt Bourne, local residents
- Robin Nagle, a local resident
- Barry Fox, a local resident
- Philip Slotkin, a local resident
- C Green, a local resident
- Margaret O'Keeffe, a local resident
- Vicki Harding, Heath and Hampstead Society
- Amber Barnfather, a local resident
- Philip Walker
- Christopher Wade
- Michael & Dvora Lewis, local residents
- Jessica Learmond-Criqui
- Peter Moores, a local resident

APPENDIX D

D: Context photos

Photograph 1: Front elevation with cherry tree shown through car port



Taken on 29th November 2011

Photograph 2: taken on 13th November 2014 from number 10 Pilgrims Lane



Cherry tree

Photograph 3: taken on 18th October 2010



View of side/rear elevation and protected Cherry tree.

Photograph 4: Taken on 29th November 2012



10 Pilgrims Lane

View of tree from Pilgrims Lane through car port

APPENDIX E

E: Proposed conditions - In accordance with Government advice and without prejudice to the Council's case, appropriate planning conditions for the proposal are listed below.

1. The development hereby permitted shall be carried out in accordance with the following approved plans: *Site Location Plan; 999/S01; S02; S03; S04; S05; S06; S07A; S08; S09; S10; 999-AP3-01A; 02A; 03B; 04; 05; 06; 07; 08B; 09; 10; 11; 12; 612 01; 02; 03; 04; 05; 06; 10; 11; 12; 612 SK01; Design and Access Statement by Doyle Town Planning dated November 2012; Heritage Assessment by KM Heritage; Ground Investigation Report by Geotechnical & Environmental Associates dated February 2011; Ground Movement Assessment by RKD Consultant Ltd on behalf of Greig-Ling dated 1st November 2012; Supplementary Ground Investigation by Listers Geotechnical Consultants dated April 2012; Plaxis Report; PKD Piling & Underpinning Data & Unloading Assessment; Greig-Ling Letter dated 5th February 2014; Construction Management Plan by A & I Construction dated July 2012; Parking Survey and Swept Path Analysis by Paul Mew Associated dated August 2012; Arboricultural Report by John Cromar dated 25th April 2013, Card Geotechnics Ltd Review of Basement Impact Assessment dated 4th March 2013; CGL email dated 29th November 2013.*

Reason: For the avoidance of doubt and in the interest of proper planning.

2. The development hereby permitted must be begun not later than the end of three years from the date of this permission.

Reason: In order to comply with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).

3. All new external work shall be carried out in materials that resemble, as closely as possible, in colour and texture those of the existing building, unless otherwise specified in the approved application.

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policy CS14 (Promoting high quality places and conserving our heritage) of the London Borough of Camden Local Development Framework Core Strategy and policies DP24 (Securing high quality design) and DP25 (Conserving Camden's heritage) of the London Borough of Camden Local Development Framework Development Policies.

4. All hard and soft landscaping works, including the replacement trees referred to in the revised Arboricultural Report by John Cromar dated 25th April 2013,

shall be carried out in accordance with the approved landscape details by not later than the end of the planting season following completion of the development or any phase of the development, whichever is the sooner. Any trees or areas of planting which, within a period of 5 years from the completion of the development, die, are removed or become seriously damaged or diseased, shall be replaced as soon as is reasonably possible and, in any case, by not later than the end of the following planting season, with others of similar size and species, unless the local planning authority gives written consent to any variation.

Reason: To ensure that the landscaping is carried out within a reasonable period and to maintain a high quality of visual amenity in the scheme in accordance with the requirements of policies CS14 (Promoting high quality places and conserving our heritage) and CS15 (Protecting and improving our parks and open spaces & encouraging biodiversity) of the London Borough of Camden Local Development Framework Core Strategy and policies DP24 (Securing high quality design) of the London Borough of Camden Local Development Framework Development Policies.

5. Prior to the commencement of any works on site, details demonstrating how trees to be retained shall be protected during construction work shall be submitted to and approved by the Council in writing. Such details shall follow guidelines and standards set out in BS5837:2012 "Trees in Relation to Construction". All trees on the site, or parts of trees growing from adjoining sites, unless shown on the permitted drawings as being removed, shall be retained and protected from damage in accordance with the approved protection details.

Reason: To ensure that the development will not have an adverse effect on existing trees and in order to maintain the character and amenity of the area in accordance with the requirements of policy CS15 (Protecting and improving our parks and open spaces & encouraging biodiversity) of the London Borough of Camden Local Development Framework Core Strategy.

6. Prior to the commencement of any works on site, detailed drawings of the proposed new terrace balustrade at a scale of 1:20, with materials annotated shall be submitted to and approved by the Council in writing. The balustrade shall be installed in accordance with the approved details.

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policy CS14 (Promoting high quality places and conserving our heritage) of the London Borough of Camden Local Development Framework Core Strategy and policies DP24 (Securing high quality design) and DP25 (Conserving

Camden's heritage) of the London Borough of Camden Local Development Framework Development Policies.

7. The development hereby approved shall not commence until such time as a suitably qualified chartered engineer with membership of the appropriate professional body has been appointed to inspect, approve and monitor the critical elements of both permanent and temporary basement construction works throughout their duration to ensure compliance with the design which has been checked and approved by a building control body. Details of the appointment and the appointee's responsibilities shall be submitted to and approved in writing by the local planning authority prior to the commencement of development. Any subsequent change or reappointment shall be confirmed forthwith for the duration of the construction works.

Reason: To safeguard the appearance and structural stability of the host building and neighbouring buildings and the character of the immediate area in accordance with the requirements of policy CS14 (Promoting high quality places and conserving our heritage) of the London Borough of Camden Local Development Framework Development Policies and policy DP27 (Basements and Lightwells) of the London Borough of Camden Local Development Framework Development Policies.

8. The development (including both excavation and construction) hereby approved shall not commence until further details relating to the basement construction (including further investigations, ground movement analysis, construction methodology and detailed design, construction sequence, drainage plan, etc), as itemised in CGL's correspondence dated 29th November 2013 have been submitted to and approved by the Council. The development shall thereafter be constructed and monitored in accordance with such approved details and with the basement information submitted thus far referred to in the drawing numbers above.

Reason: To safeguard the appearance and structural stability of neighbouring buildings and the character of the immediate area in accordance with the requirements of policy CS14 (Promoting high quality places and conserving our heritage) of the London Borough of Camden Local Development Framework Development Policies and policy DP27 (Basements and Lightwells) of the London Borough of Camden Local Development Framework Development Policies.

9. No development shall commence until:

(a) a written Preliminary Risk Assessment (PRA) and scheme of investigation has been submitted to and approved by the local planning authority in writing; the PRA must take account of the historical and environmental context of the

site and can be based on a desk study or the Enhanced Environmental Information Review detailed below; and

(b) following the approval detailed in paragraph (a), a written scheme of remediation measures has been submitted to and approved by the local planning authority in writing.

The remediation measures shall be implemented strictly in accordance with the approved scheme and a written report detailing the remediation shall be submitted to and approved by the local planning authority in writing prior to occupation.

Reason: To protect future occupiers of the development from the possible presence of ground contamination in accordance with policy CS5 (Managing the impact of growth and development) of the London Borough of Camden Local Development Framework Core Strategy and policy DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Policies.

APPENDIX F

F: Draft s106 legal agreement

See separate document

APPENDIX G

G: Statement of Common Ground

See separate document