



PLANNING SERVICES

TOWN & COUNTRY PLANNING ACT 1990 (as amended)

HEARINGS APPEAL

STATEMENT OF CASE

APPEAL SITE

138 - 140 Highgate Road, London, NW5 1PB

APPELLANT

Mr G Meehan

SUBJECT OF APPEAL

Appeal Statement in Support of the Council's decision on 2nd June 2014 to refuse planning permission for the "Erection of 3 storey building to provide 3 Class A1 retail units at ground floor and 9 Class C3 residential units (5 x 2 bedroom flats, 4 x 3 bedroom flats) at first and second floor, following demolition of petrol station and MOT garage (Sui Generis)."

The main reasons for refusal are the absence of justification for the loss of employment floorspace, harm to the street scene and character and appearance of the Dartmouth Park Conservation Area, harm to the adjoining designated open space, and harm to the visual amenity of a nearby tree. A further eight reasons for refusal relate to the absence of a legal agreement for car-free housing, construction management plan, sustainability review, energy measures, highways contribution, open space contribution, education contribution, and employment plan.

COUNCIL REFERENCE: 2014/1692/P

PLANNING INSPECTORATE REFERENCE: APP/X5210/A/14/2223057

Council Officers: Rob Tulloch, Charles Rose and Nicholas Bell

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1.0 SUMMARY

- 1.1 The application site is on the eastern side of Highgate Road and comprises a petrol station with covered forecourt and single storey building to the rear incorporating a shop and MOT garage. The site lies within the Dartmouth Park conservation area and is identified in the conservation area appraisal as making a negative contribution to the character and appearance of the conservation area.
- 1.2 To the north and south of the site is designated open space known as Grove Terrace Squares. The space contains mature trees which surround and overhang the site making a significant contribution to the green an open character of the immediate area, the site obtrudes into this open space leaving a pocket of greenery to the south. Further south is a vehicle repair garage and railway viaduct forming the terminus of the open space.
- 1.3 To the west of the site, on the opposite side of Highgate Road, is the Highgate Road Neighbourhood Centre, and to the north of that is Highgate Enclosures which is also designated public open space.
- 1.4 The Council refused planning permission for the “Erection of 3 storey building to provide 3 Class A1 retail units at ground floor and 9 Class C3 residential units (5 x 2 bedroom flats, 4 x 3 bedroom flats) at first and second floor, following demolition of petrol station and MOT garage (Sui Generis).” on 2nd June 2014.
- 1.5 The four principle reasons for refusal were the loss of employment floorspace, harm the character and appearance of the Dartmouth Park conservation area, harm to the adjacent designated open space, and the impact on an adjacent tree. A further eight reasons for refusal relate to the absence of a legal agreement for sustainability and energy efficiency, education and public open space contributions, a construction management plan, car-free housing, a highways contribution and a local labour agreement. The Council wishes to withdraw the final reason for refusal which relates to a local labour agreement.

- 1.6 The Council's Local Development Framework seeks to protect employment floorspace, unless it can be demonstrated that a site is no longer suitable for a continued use and that the possibility of an alternative business use has been fully explored. It is the Council's contention that the appellant has not justified the loss of employment floorspace as required by the relevant policies and guidance.
- 1.7 The proposal is considered to be contrary to the policies and guidance which require new development to preserve and enhance the character and appearance of conservation areas and other heritage assets. Due to the height, scale, design and location of the proposed building it is considered harmful to the Dartmouth Park conservation area and designated public open space without delivering a scheme of genuine quality or architectural interest. Furthermore, the proposal would block views of the adjoining designated open space thereby harming the setting and public enjoyment of this space.
- 1.8 The proposed reduction in height of a nearby London Plane, and associated pruning regime, would harm the visual amenity of the tree and its contribution to the street scene and public open space.
- 1.9 It is the Council's assessment that the proposal would be acceptable, except for the reasons set out above. The remaining reasons for refusal could be overcome with an appropriate section 106 agreement.

2.0 SITE AND SURROUNDINGS

- 2.1 The application site is on the eastern side of Highgate Road and comprises a petrol station with covered forecourt and single storey building to the rear incorporating a shop and MOT garage.
- 2.2 The open space to the north and south of the site is designated open space. The site is adjacent to Grove Terrace Squares which comprises a linear open space along the eastern side of Highgate road dissected by Chetywnd Road and Dartmouth Park Road. The space is designated public open space and listed in the London Square preservation Act 1931. The space contains mature trees which surround and overhang the site making a significant contribution to the green an open character of the immediate area, the site obtrudes into this open space leaving a pocket of greenery to the south. Adjacent to this is a vehicle repair garage and railway viaduct forming the terminus of the open space.
- 2.3 The structures on the site have a utilitarian form and function consistent with their use. The structures are of no architectural merit however their low scale; the position of the buildings at the back of the site; and the open aspect of the forecourt and canopy allow visual permeability through and over the site allowing the designated open space either side of the site to remain dominant and largely uninterrupted.
- 2.4 To the west of the site, on the opposite side of Highgate Road, is the Highgate Road Neighbourhood Centre, and to the north of that is Highgate Enclosures which is also designated public open space.
- 2.5 The site sits directly in front of Denyer House, an early 20th century residential block in a neo-Georgian style which is noted as making a positive contribution to the character and appearance of the Conservation Area. Grove End Lodge and Highgate Road Baptist Chapel are to the north of the site, and also noted as making a positive contribution.

2.6 Further to the north, on the other side of Chetwynd Road, are Grove End House and nos. 1-5 Grove Terrace which are all listed grade II. Beyond this are nos. 6-27 Grove Terrace an elegant terrace of grade II* listed Georgian town houses.

2.7 The site is located in the Dartmouth Park Conservation Area and is identified in the December 2013 Character Appraisal and Management Plan for Dartmouth Park Conservation Area as a negative feature in the conservation area.

2.8 The site is described in paragraph 7.10 of the Dartmouth Park Conservation Area Appraisal and Management Plan (DPCAAMP) document as:

“7.10 North of the railway bridge on the east, and from the junction with Gordon House Road on the west the character of Highgate Road changes as it opens to a wide tree-lined section with formal public gardens to the west, a wide strip of green to the east and buildings set some distance back. This expanse of grass on either side is a crucial visual feature as well as an important lung within the conservation area.”

2.9 A Statement of Significance of the conservation area is set out in section 4.0 of the document and includes the following points:

“The area’s close proximity to heath and hills contributes a sense of greenness, with glimpses of open land beyond. What few public open spaces exist are scattered in tiny pockets; the most notable being the long strip of green on the east, and statutory London squares on the west sides of Highgate Road. (Paragraph 4.4 of the DPCAAMP)

2.10 The site is included in the all 3 of the views identified in sub area 1 of the conservation area statement set out below paragraph 7.23 of the CAAMP

- Long views along Highgate Road
- Views centre on the Green in front of Grove Terrace

- View of west front of former Baptist Chapel from Gordon House Road (obscured by trees in the summer)

3.0 RELEVANT PLANNING HISTORY

2014/1945/P - Erection of 4 storey (plus basement) building to provide 9 residential units (1 x 2 bed flat, 1 x 3 bed flat, 2 x 3 bed houses, 5 x 4 bed houses) with basement parking (access via Highgate Road) and associated hard and soft landscaping, following demolition of petrol station and MOT garage – Withdrawn 11/06/2014.

PE9700403 - Continued use of the site as a petrol filling station. Granted 11/09/97

PE9700830 - Renew underground storage tanks, pipe work and petrol separator. Granted 09/01/1997

E11/13/A/26154 Minor alterations and the erection of an extension to the existing garage forecourt canopy. Granted 17/04/1978

CTP/E11/13/A/16228 Raising the level of the rear of the forecourt of the petrol filling and service station at 138-140 Highgate Road, N.W.5. Removal of existing island and pumps and construction of 2 new pump islands with 4 new pumps, all covered by a new canopy. Granted 10/07/1973

E11/13/A/14015 Erection and retention of a pump island canopy at 138-140 Highgate Road, N.W.5, and concreting over of part of landscaping area in front of service bay. Granted 06/09/1972

E11/13/A/4040 Redevelopment of the existing petrol filling/service station at 138-140 Highgate Road, Camden, by the erection, and retention for a limited period, of a single-storey workshop, repair and office building. Granted 05/10/1967

23367/28453 The erection and retention for a limited period of a single-storey workshop and new sales building with new underground petrol storage tanks at the Parliament Hill Service Station, Nos. 138-140 Highgate Road, St. Pancras. Granted 16/01/1965

23367/21695 The erection and retention for a limited period of an extension to garage premises at Nos. 138-140, Highgate Road, St. Pancras. Granted 20/04/1955

23367/16401 The erection and retention for a limited period of a temporary extension to the garage premises at Nos. 138-140, Highgate Road, St. Pancras. Granted 07/12/1953

23367/16390 The erection and retention for a limited period, of an extension to the garage premises at Nos. 138-140, Highgate Road, St. Pancras. Granted 23/01/1953

4.0 PLANNING POLICY FRAMEWORK

4.1 Local Planning Authorities have a duty under the Planning (Listed Building and Conservation Areas) Act 1990 (section 69 and 72) to designate as conservation areas any “areas of special architectural or historic interest, the character or historic interest of which it is desirable to preserve or enhance” and pay special attention to the preserving or enhancing the character or appearance of those areas. Designation provides the basis for policies designed to preserve or enhance the special interest of such an area.

4.2 National Planning Policy Framework (NPPF) (2012)

On 27th March 2012 the Government published the National Planning Policy Framework (NPPF). The policies contained in the NPPF are material considerations which should be taken into account in determining planning applications.

Core planning principles:

- 1 Building a strong competitive economy
- 4 Promoting sustainable transport
- 6 Delivering a wide choice of quality homes
- 7 Requiring good design
- 8 Promoting healthy communities
- 10 Meeting the challenge of climate change, flooding and coastal change
- 11 Conserving and enhancing the natural environment
- 12 Conserving and enhancing the historic environment

Paragraph 7 is relevant to reason 1 as it highlights the first dimension of sustainable development in that the planning system by contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation.

Chapters 7 and 12 of the NPPF are the most relevant in dealing with reasons for refusal 2 and 3.

Paragraph 64 of chapter 7 is clear that “Permission should be **refused** for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.”

Paragraph 126 sets out that local authorities should ‘set out in the Local Plan a positive strategy for the conservation and enjoyment of the historic environment’. In doing this, they should take into account:

- The desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- The wider social, cultural, economic and environmental benefits that conservation of the historic environment can bring;
- The desirability of new development making a positive contribution to local character and distinctiveness; and,
- Opportunities to draw on the contribution made by the historic environment to the character of a place.

Paragraph 131 states that in determining planning applications, local authorities should take account of:

- The desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- The positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and,
- The desirability of new development making a positive contribution to local character and distinctiveness.

Paragraph 133 states where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:

- the nature of the heritage asset prevents all reasonable uses of the site; and
- no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and
- conservation by grant-funding or some form of charitable or public ownership is demonstrably not possible; and
- the harm or loss is outweighed by the benefit of bringing the site back into use.

Paragraph 134 states where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.

Paragraph 137 sets out that 'Local Planning Authorities should look for opportunities for new development within Conservation Areas...and within the setting of heritage assets to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive

contribution to or better reveal the significance of the asset should be treated favorably.

4.3 **London Plan (2011)**

At the time of the decision the adopted regional plan was the Mayor's London Plan July 2011, and the following specific policies are relevant to the appeal scheme:

- 3.5 (Quality and design of housing developments)
- 3.6 (Children and young people's play and informal recreation facilities))
- 4.1 (Developing London's economy)
- 4.4 (Managing industrial land and premises)
- 4.12 (Improving opportunities for all)
- 5.1 (Climate change mitigation)
- 5.2 (Minimising carbon dioxide emissions)
- 5.3 (Sustainable design and construction)
- 5.7 (Renewable energy)
- 6.9 (Cycling)
- 6.13 (Parking)
- 7.4 (Local character)
- 7.6 (Architecture)
- 7.8 (Heritage assets and archaeology)
- 7.18 (protecting local open space and addressing local deficiency)
- 7.19 (Biodiversity and access to nature)
- 7.21 (Tress and woodlands)
- 8.2 (Planning obligations)

4.4 **The Development Plan** for the purposes of Section 38(6) of the Planning and Compulsory Purchase Act 2004 will be the Core Strategy and Development Policies of the London Borough of Camden Local Development Framework. The 4 Strategic objectives of the LDF are;

- A sustainable Camden that adapts to a growing population;
- A strong Camden economy that includes everyone;
- A connected Camden where people lead healthy active lives; and;
- A safe Camden that is a vibrant part of our world city.

The LDF was adopted on November 2010. It is therefore recent and up to date in accordance with paragraphs 214 and 216 of the NPPF should be given full weight. The policies of relevance to the appeal site, having regard to all material considerations, are listed below. Extracts of the policies have been provided with the appeal questionnaire.

4.5 **Core Strategy**

CS1 Distribution of growth

CS5 Managing the impact of growth and development**

CS6 Providing quality homes

CS7 Promoting Camden's centres and shops

CS8 Promoting a successful and inclusive Camden economy**

CS10 Supporting community facilities**

CS11 Promoting sustainable and efficient travel**

CS13 Tackling climate change and promoting higher environmental standards**

CS14 Promoting high quality places and conserving our heritage**

CS15 protecting and improving our parks and open spaces and encouraging biodiversity**

CS16 Improving Camden's health and well-being**

CS17 making Camden a safer place

CS18 Dealing with our waste and encouraging recycling

CS19 Developing and monitoring the Core Strategy**

4.6 **Development Policies**

DP1 Mixed use development

DP2 Making full use of Camden's capacity for housing

DP5 Homes of different sizes

DP6 Lifetime homes and wheelchair homes

DP10 Helping and promoting independent shops

DP12 Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses

DP13 Employment premises and sites**

- DP15 Community and leisure uses**
- DP16 The transport implications of development
- DP17 Walking, cycling and public transport**
- DP18 Parking standards and limiting the availability of car parking**
- DP19 Managing the impact of parking**
- DP20 Movement of goods and materials**
- DP21 Development connecting to the highway network**
- DP22 Promoting sustainable design and construction**
- DP23 Water**
- DP24 Securing high quality design**
- DP25 Conserving Camden's heritage**
- DP26 Managing the impact of development on occupiers and neighbours**
- DP28 Noise and vibration
- DP29 Improving access
- DP30 Shopfronts**
- DP31 Provision of, and improvements to, open space and outdoor sport and recreation facilities**
- DP32 Air quality and Camden's Clear Zone**

**denotes policies which relate to the reasons for refusal

4.7 **Supplementary Planning Guidance**

After extensive public consultation Camden Planning Guidance documents were approved by the Council on September 2011. Following further public consultation in May and June 2013 the Council adopted amendments to the Camden Planning Guidance documents CPG1, CPG2, CPG3, CPG4 and CPG5 on 4 September 2013.

The relevant guidance is set out at:

- CPG1 – Design (Sections 1, 2, 6, 7, 10)
- CPG2 – Housing (Sections 1, 4, 5)
- CPG3 – Sustainability (Sections 1-3, 7-13)
- CPG5 – Town Centres, Retail and Employment (Sections 1, 2, 5, 7. 8)

CPG6 – Amenity (Sections 1, 3-9, 11, 12)

CPG7 – Transport (Sections 1, 2, 5, 7, 9)

CPG8 – Planning Obligations (Sections 1-4, 7, 8, 10, 11)

- 4.8 **Dartmouth Park Conservation Area Appraisal and Management Statement.** The Character Appraisal and Management Plan for Dartmouth Park was adopted, after public consultation, in January 2009.

5.0 REASONS FOR REFUSAL

- 5.1 The Planning Application was refused on 2nd June 2014 the Council for the following primary reasons:

1 In the absence of adequate justification for the loss of employment floorspace, the proposal would result in the loss of an existing employment use in the form of a petrol station and MOT garage, and the associated loss of employment opportunities within the Borough, contrary to policy CS8 (Promoting a successful and inclusive Camden economy) of the London Borough of Camden Local Development Framework Core Strategy and policy DP13 (Employment premises and sites) of the London Borough of Camden Local Development Framework Development Policies.

2 The proposed building, by reason of its height, scale and detailed design, would be harmful to the streetscene and the character and appearance of the Dartmouth Park Conservation Area, which is contrary to 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.

3 The proposed building, by reason of its height and scale, would block views across the site of adjoining designated public open space to north and south and thereby harm the setting and public enjoyment of these areas of open

space, contrary to policy CS15 (Protecting and improving our parks and open spaces and encouraging biodiversity) of the London Borough of Camden Local Development Framework Core Strategy.

4 The proposed pruning and associated reduction in size of a mature London plane tree (T9), as indicated in the submitted Arboricultural Impact Assessment (by Bosky Trees, 20th February 2014), would harm the visual amenity of the tree and its contribution to the streetscene and public open space and would harm the character of the Dartmouth Park Conservation Area, which is contrary policies CS14 (Promoting high quality places and conserving our heritage) 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 policy DP25 (Conserving Camden's heritage) of the London Borough of Camden Local Development Framework Development Policies.

- 5.2 Without prejudice to the appeal, reasons for refusal numbers 5 - 11 (relating to sustainability and energy efficiency, education, public open space, construction management, car-free housing, and a highways contribution) could be overcome by entering into a Section 106 Legal Agreement for a scheme that was in all other respects acceptable.
- 5.3 The Council wishes to withdraw reason for refusal number 12 which relates to the absence of a legal agreement securing a local labour agreement, as although this is something the Council would have sought to negotiate if the proposal were acceptable, there is no policy justification for a contribution for a scheme of this size.

6.0 THE COUNCIL'S CASE AND COMMENTS ON THE GROUNDS OF APPEAL

- 6.1 The Council considers that the appeal scheme fails to meet national and regional planning policy and guidance, and the Council's objectives as expressed in the policies contained within the London Borough of Camden Local Development Framework (November 2010) and Camden Planning Guidance and no material considerations that indicate otherwise.

Reason 1 (Loss of employment floorspace):

- 6.2 Camden Core Strategy Policy CS8 (Promoting a successful and inclusive Camden economy) sets out the Council's overall strategy for Camden's economy. It aims to make sure that the borough's economy will be stronger and more diverse while helping more residents to have the skills, education and training to take up local job opportunities and bridge Camden's skills gap. Development Policy DP13 (Employment premises and sites) supports the delivery of the Core Strategy by ensuring that sufficient sites are retained to enable a variety of commercial and industrial business to find premises and continue to operate.
- 6.3 Further guidance is provided in the supplementary planning guidance document on employment (CPG5 – Town centres, retail and employment) (para 6.18) which, to support of a loss of employment floorspace requires, among other things, evidence of marketing over a continuous two year period at rents and lease terms which reflect market expectations to be accompanied by a commentary on the interest shown, including any details of why the interest was not pursued and why measures could not be taken to address any issues raised from this (e.g. updating or improving the condition of the premises).
- 6.4 The appellant's planning statement states that "there can be no objection to the removal of the existing building on-site" as "the site's current use is as a petrol station, which is a sui generis use and not provided any policy

protection within the development plan". As mentioned in the officer's report, it is considered that the site comprises two associated uses, the petrol station, which it is agreed is Sui Generis, and the MOT service centre which is considered to fall within the B2 use Class. As such there is clear policy protection for both uses, as policy DP13 states that the terms business and employment are used to refer collectively to B1, B2, and B8 uses "*and other unclassified uses of similar nature to those above, such as depots or live/work (classified as sui generis)*". (13.11)

- 6.5 Policy DP13 takes a two pronged approach to dealing with applications that involve a loss of employment floorspace. Firstly, applicants must demonstrate that a site is no longer suitable for its existing business use, and secondly, evidence must be provided to show that the possibility of retaining, reusing or redeveloping the site for a similar or alternative business use has been fully explored
- 6.6 The appellant has not demonstrated that the site is no longer suitable for its existing use. The site is not vacant and no evidence has been provided that the occupiers intend to leave. Furthermore, the appellant has submitted no evidence that the possibility of retaining, reusing or redeveloping the site or building for similar or alternative business use has been explored.
- 6.7 Therefore, in the absence of adequate justification for the loss of employment floorspace, the proposal would result in the loss of an existing employment use in the form of a petrol station and MOT garage, and the associated loss of employment opportunities within the Borough, contrary to policies CS8 and DP13 of the LDF.
- 6.8 The requirement for evidence to justify a loss has been supported by the Planning Inspectorate. An appeal against the Council's refusal for a change of use from offices to residential in Charlotte Street (APP/X5210/A/13/2198656) (Appendix 1) was dismissed as the appellant had not demonstrated that the site was no longer suitable for a continued use. The Inspector determined that marketing evidence was necessary to identify the strength of any economic

argument against a change of use, as this would inform an assessment of whether the loss could be justified against relevant material considerations including the Council's aim of maximising the supply of additional housing.

- 6.9 The appellant refers to paragraph 17 of the NPPF which states that planning should encourage the effective use of land by reusing land that has been previously developed (brownfield land). However this paragraph acknowledges that there are other core planning principles that need to be considered. The appellant also refers to paragraph 51 which advises that planning authorities should normally approve planning applications for a change to residential use and any associated development from commercial buildings (currently in the B use classes) where there is an identified need for additional housing in that area, provided that there are not strong economic reasons why such development would be inappropriate.
- 6.10 The NPPF defines the three dimensions to sustainable development. Although one of these dimensions is supporting strong, vibrant and healthy communities by providing the supply of housing, the other dimensions are equally important and relevant to this appeal, namely contributing to protecting and enhancing our natural, built and historic environment and contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation (paragraph 7).
- 6.11 In their appeal statement, the appellant states that it is common ground that the whole site is sui generis. It is not common ground, but if the Inspector adjudges that the site comprises a single sui generis use, the Council contends that such a use remains an employment use that policy DP13 seeks to protect due its similar nature to other B2 uses. The appellant, now seemingly accepting that the employment floorspace is protected by policy, seeks to justify the loss by assessing it against criteria outlined in policy DP13 and CPG5.

- 6.12 The appellant refer to parts (a) – (e) of policy DP13 (although the sections the appellant refers are actually (c) – (g)) which state that the Council will consider mixed use schemes provided that, among other things, the level of employment space is maintained or increased and premises suitable for new, small or medium enterprises are provided, or space for light industry or warehousing is re-provided. As mentioned previously, the terms “business” and “employment” are defined by the LDF as uses within the B use class, or other similar sui generis uses, not retail uses. Thus, the appellant incorrectly considers that the proposal would not result in a loss of employment floorspace and would provide premises suitable for new small or medium enterprises.
- 6.13 Policy CS8 notes that the skills required for industrial sectors are fundamentally different from other sectors with similar qualification level requirements, such as retail, leisure and hospitality. The policy states that it is unlikely that retail or hospitality sectors can provide straightforward alternative job opportunities for people losing industrial/warehousing jobs in the borough.
- 6.14 The appellant also seeks to demonstrate that the site is no longer suitable for a continued business use due to its poor quality with reference to CPG5. This guidance categorises employment sites by their location and design features, with the highest category (Category 1) being the most valuable to the borough and therefore most worthy of protection. The appellant selects some of the criteria across the three categories such as constrained servicing, poor access and being an isolated site, which is contested as the site has good servicing and transport links. Its location, on a busy road opposite a neighbourhood centre, is not considered to be isolated, and although the surrounding area is predominantly residential, there are other nearby commercial uses such as the adjacent neighbourhood centre and additional motor vehicle uses such as an MOT centre and a coachworks under the arches of the railway viaduct. Furthermore, light industrial uses are, by definition, uses that can co-exist alongside residential uses without causing harm to residential amenity. As such, it is not considered that the site should be in the lowest classification (Category 3) as it meets criteria across all three categories.

- 6.15 As mentioned above, CPG5 recognises that there is a restricted supply of sites and premises suitable for light industrial storage and distribution uses, and categorises such sites according to their design features and location. However, the criteria (7.8 – 7.13) specifically refer to light industrial, storage and distribution. Small businesses such as garages and MOT centres, which DP13 recognises may not fall within the B use class, but are similar uses that require similar protection, traditionally occupy smaller premises which would not necessarily meet the criteria for prime light industrial sites. For example, it is acknowledged that the site has low floor to ceiling heights and no goods lifts, but these features would not prevent a continued use, nor would they prevent small businesses occupying the site. Regardless of this, such sites are considered to be valuable employment sites and are afforded protection in other sections of the relevant policies.
- 6.16 In conclusion, the appellant has failed to demonstrate that the site is no longer suitable for a continued use, nor has he shown that an alternative business use has been explored, contrary to policies CS8, DP13 and the associated supplementary planning guidance.

Reason 2 (character and appearance of the area) and 3 (impact on open space).

- 6.17 The chapters below consider the reasons for refusal numbers 2 and 3 which deal with the impact on the heritage assets affected by the scheme including the conservation area; designated open space and the setting of adjoining listed buildings. The issues relating to reason for refusal 2 and 3 are closely linked and overlap, and as such the argument for the Council has been set out and should be read together to aid understanding of the Councils case and to prevent duplication.
- 6.18 Understanding the designated heritage assets that characterise and define the wider context of the site is essential in understanding the impact of the appeal scheme on its setting. Conservation Principles establishes that significance

can be derived from a series of values. These values may be historic, aesthetic, evidential or communal. The following consideration of significance of the relevant designated assets therefore takes into account the above values that may be attributed in each case.

The Site and its Significance

- 6.19 Dartmouth Park lies in part of the old parish of St. Pancras that stretched from Tottenham Court Road to Highgate. The early settlement of Kentish Town was established immediately south of the current conservation area in the 13th century or earlier.
- 6.20 The area of Dartmouth Park, separated from Kentish Town by fields and meadows, was the site of the first building development in the 17th century. Building initially formed a ribbon development with individual properties strung out along the road to Highgate following the course of the river Fleet. The road was an important route and various inns were established to serve the many travellers going between London and the north. These stretched from where the former Castle pub (now The Verve) stood at the entry to Kentish Town northwards along Highgate Road to Swain's Lane.
- 6.21 During the 18th Century much of the area was copyhold tenure of the Manor of Cantelowes, belonging to the Chapter of St Paul's Cathedral. The principal copyholder in this area, Lord Dartmouth, enclosed part of the common around Highgate Road in 1772. Land was then released for development and as a result Grove Terrace was built between 1777 and 1824.
- 6.22 The first phase of development in the area saw houses built on the green in the 18th century known as The Grove, an elegant line of detached and semi-detached villas with extensive gardens. The terrace of properties on the north east of the open space are Grade II and Grade II* listed Georgian townhouses. The church is also listed grade II. The early c20 Denyer residential block was built along the established building line to the south in a neo-Georgian style.

- 6.23 A remnant of the common land survives as a slim strip fronting Grove Terrace and Grove End, as well as the pocket of open land directly opposite on the west side of Highgate Road protected under the London Squares Preservation Act, 1931.
- 6.24 The site is considered to form part of the strip of open land which is a remnant of open fields and meadows around central London before the high road was constructed and development arrived in the 18th Century. This can be seen in appendix X. Moreover it does not form the southern end of the open land, as suggested by the appellants. The open land physically continues south as does the public open space designation (the land to the south forming designated public open space site 47 "Grove Terrace Squares" this can be seen in appendix Z).
- 6.25 The appeal site is not specifically designated; this is not in itself any reflection as to its value within the Conservation Area. The openness of the site, as well as its function, help define the character and appearance of the immediate surroundings and wider Conservation Area.
- 6.26 The site is also considered to form part of the green around which the first phase of development in the area was based. This has formed the basis for all future development in the area and has shaped the established pattern of development for the area with particular regard to the set back position of the built development along the east side of Highgate Road at this point. This has created the distinctive open land described in the Dartmouth Park CAAMP as "the most notable being the long strip of green on the east, and statutory London squares on the west sides of Highgate Road" (paragraph 4.4)
- 6.27 The CAAMP goes on to say "**North of the railway bridge** on the east, and from the junction with Gordon House Road on the west the character of Highgate Road changes as it opens to a wide tree-lined section with formal public gardens to the west, a wide strip of green to the east and buildings set some distance back. **This expanse of grass on either side is a crucial**

visual feature as well as an important lung within the conservation area
[our emphasis].

- 6.28 Historic maps would suggest the first building on the site was constructed in the 1920s. There was no development on the land in the 1914 OS map and the garage first appeared in the 1935 OS (refer to appendix V). The existing canopy was added in the late C20.
- 6.29 The use of the site as a petrol station is consistent with and reinforces the historic and evidential value of Highgate Road as an important route from London to the north, particularly given its formation in the 1920s when the motor car was replacing horse drawn carriages previously serviced by the inns commonly found along the road.
- 6.30 While the architectural quality and presentation of the structure on the site is poor and unsightly, resulting in it being described as a negative feature in the CAAMP, the form and function of the site adds to the historic development of the area and the low scale and open nature of the site along with the position of the workshop at the back of the site afford open views through and over the site. This preserves the open setting character; appearance and aspect adjoining open space and preserves the original open land.

Significance

- 6.31 The site is at the heart of the conservation area and forms part of all of the key stages of the development from its origins as meadows and fields, to the identification and accentuation of the importance of Highgate Road cutting through the agricultural land connecting London to the north. The road and 'common' land shaped the ribbon of development upon which today's established pattern of development exists. This includes the location and setting of key heritage assets such as those on Grove Terrace.
- 6.32 The open land, of which the site forms a part, is undoubtedly of significance to the character and appearance of the conservation area as well as the setting

of the adjoining listed buildings. It has dictated the local buildings' position and architectural interest and contributes significantly to local character.

6.33 It is no surprise therefore that this particular stretch of Highgate Road was designated in 1985 prior to the conservation area designation in 1992. The grain of the area immediately around the open land has changed over time and the wider setting of the listed buildings and conservation area has been altered. However the open land remains a distinctive and constant reminder of the past. The strip of land also retains a strong sense of enclosure formed by Highgate Road to the west; 1-27 Grove Terrace, Lyton Villa, Grove End House, Grove view apartments, Grove End Lodge, and Denyer House to the east; the railway line to the south and 29-30 Highgate Road to the north.

6.34 The openness and verdant nature of the open land, including the mature trees, also contributes significantly to the value of the area from an amenity and character and appearance perspective. Its value in bringing about key environmental, communal, benefits in addition to heritage benefits should not be in question.

The Proposals

6.35 The proposed scheme seeks to demolish the existing canopy and associated petrol garage and other buildings on the site. The site would be redevelopment to provide 3 storey mixed use building to provide retail (Class A1) at ground floor and 9 residential units (5 x 2, 4 x 3 beds) at first and second floor, following demolition of petrol station.

6.36 The structure being replaced consists of a 3.5m high building set 19.5m back from Highgate Road and a 4.9m high canopy partially covering the forecourt.

6.37 The development would be finished in brick with vertical strips of glazing's including vertical metal fins separating the brick elements to provide a series of asymmetrical brick 'dwellings'. The development would be three storeys in height presenting itself as two storeys facing east due to the rise in ground level.

- 6.38 The ground floor would comprise 3 retail units with fully glazed shopfronts facing Highgate Road. The flank would be finished in brick with the rear set into the slope of the land. At ground floor level the development would cover 85% of the site retaining only 1 small strip of land along the front (Highgate Road) side of the site a 2 small pockets to the rear (College Lane) corners.
- 6.39 At first floor level, the development contains projecting balconies to the front and would be stepped back at the rear allowing for a central communal access and access to 2 flats at this level. This floor would contain 5 flats. The second floor would have to same footprint at the first floor except for cut outs in the centre of each flank to provide balconies for each unit at this level.

Evaluation and Impact of the proposals

- 6.40 As set out above, the area has always attracted settlement due to its position, topography and relative proximity to London. From the Georgian period, the area grew in popularity and became an increasingly fashionable and desirable place to live. This trend continued into the early 18th century and onwards with Georgian villas and terraces becoming increasingly commonplace amongst the vales and hills of Hampstead and Highgate. An area that had been characterised by more dispersed development was becoming increasingly developed with more formal examples of 18th century building types integrating with the existing topography and naturalistic form of the local area.
- 6.41 The Grove, along with Southampton House and Grove End House, are examples of the villa model of housing. These, along with the terraces of Grove Terrace are amongst the earliest buildings within their wider setting. The properties individually and as a group are of intrinsic architectural value for their form, composition and elevational appearance. The position of the listed buildings set back from the road behind the buffer strip of open land, which allows the greatest understanding and appreciation of the historic development of the area, enhance the setting of the buildings and allows them

to be rightly appreciated and recognised as buildings of considerable historic and architectural interest.

6.42 The proposed development would breach the established residential development boundary created with the formation of the open land to the east of Highgate Road during the first phase of development in the area. This is considered to significantly disrupt the character and appearance of the open land; the wider conservation area; as well as the setting of the listed buildings in the immediate vicinity. The result would be a negative and discordant element within the conservation area and the wider setting of the listed buildings.

6.34 It is the Council's view that view any development which breaches the formal layout and allows residential development inside the established perimeter of residential dwellings, forward of the listed building front building line and within the verdant and open aspect created by the strip of the land, would harm the character of the area and the special architectural and historic interest of the listed buildings and their setting.

Height and footprint

6.35 The existing structures on the site are considered to be a negative feature because of their architectural quality and the abruptness of the canopy. While retaining some negative features, the diminutive scale of the existing buildings, their position at the back of the site and their relatively simplicity and openness of the canopy afford views through and over the site which allows the value of the open space of which the site forms a part to be appreciated and recognised. The layout of the site and the existing buildings also allow for the mature trees, a key part of the open space, to flourish.

6.36 As such while the existing site structures are unsightly, their scale and form does not unduly impact on the wholeness, setting, or harm public enjoyment of the adjoining open space.

6.37 Supporting text paragraph 15.6 of policy CS15 is clear that the Council will “only allow development on sites adjacent to an open space that respects the size, form and use of that open space and does not cause harm to its wholeness, appearance or setting, or harm public enjoyment of the space. We will take into account the cumulative impact of development where appropriate.”

6.38 The current site, although developed upon, retains the openness and allows for the continuation of the strip of original strip of open land. The proposed development would significantly increase the prominence of development on the site.

6.39 This would physically reduce the wholeness of the site and accompanying open land. It would also reduce the original and current continuation of the strip of land, severing the arm of land to the south from its main body to the north. The proposed development would therefore fail to be subservient to that open nature which is of value of the area which is currently at a low scale and open setting to the designated open space. This would harm the setting of the designated open space which is designated as ‘Grove Terrace Square’ to north and south of the appeal site. As a result the understanding and appreciation of the designated open space would reduce and result in a harmful impact on the character, appearance and enjoyment of the open space.

Use

6.40 The function of any redevelopment on the site becomes key to the character and appearance of the area in this instance.

6.41 Notwithstanding the issue of scale, it is our view that providing residential development outside the established perimeter of development (Highgate Road to the west; 1-27 Grove Terrace, Lyton Villa, Grove End House, Grove view apartments, Grove End Lodge, and Denyer House to the east; the railway line to the south and 29-30 Highgate Road to the north) would significantly interrupt and disrupt the character the space and area as well as

compete with the architectural and historic primacy of the development set back from the road. This fails to take proper account of the context in line with supporting paragraph of 24.13 of policy DP24 which states “Development should not undermine any existing uniformity of a street or ignore patterns or groupings of buildings.”

- 6.53 In urban design terms the use of the site would have a significant impact on the character and appearance of the conservation area and protection of open space. The existing low impact ‘public use’ as a largely open forecourt is considered appropriate for the ‘common’ nature of the land and has some historic link with its development.
- 6.54 The use of the site for residential is considered to significantly impact on the character and established pattern of development in the Conservation area and is considered less appropriate in urban design and landscape terms. The harm caused by an inappropriate use within the open land is made worse in this instance because of the ‘domestic’ appearance of the development which would accentuate the inappropriate development outside the established development boundary.

Impact on the setting of listed buildings

- 6.55 The development would be physically separate and visually distinctive from the listed buildings however the listed buildings form the first phase of development in the area and helped to establish the ribbon of development and relationship to the open space which will now be compromised by the proposed development. This affects the setting of the listed buildings, fundamentally altering the set piece, townscape arrangement and which adds to the value of the listed terrace at Grove Terrace as well as the listed former Highgate Chapel.
- 6.56 The proposed scheme would represent a less than substantial harm to the setting of the listed buildings surrounding the site, using the terminology as set out in the NPPF. It is considered that the proposals do cause harm to the setting of the listed buildings but this harm would not be substantial if using the

NPPF distinction. The proposals are only less than substantial due to its distance from the building themselves, within the southern strip of open space. Nevertheless the development should be weighed against the public benefits of the proposal, according to the policy test set out in the NPPF, including securing its optimum viable use for which there is no justification.

- 6.57 The limited public benefit of providing housing is not considered to outweigh the harm caused and the optimum viable use is probably as an ancillary publicly accessible development, at the very most, and not the undue maximisation of the site as proposed.

Detailed design

- 6.58 In overall terms the proposed scheme is considered to be contrary to policies CS14, CS17, DP24 and DP25. The policies seek to promote high quality places by building attractive and safe development of a high standard of design. The proposal is not considered to be of sufficient architectural quality in its current form and thus this forms the basis of a reason for the refusal of the application. The following sections fully explain the Council's rationale in reaching this view
- 6.59 The LDF states at paragraph 24.4 that the Council is committed to design excellence and a key strategic objective of the borough is to promote high quality, sustainable design. Policy DP24 is thus applied to ensure proposals are of the highest standard of design. This is considered particularly important in this instance.
- 6.60 As already discussed in the site and surroundings section, the site is located in a prominent location: Highgate Road is a two-way Borough distributor road connecting the North with central London and; the adjoining public open space provides an open setting to the site. Any development would be seen in three dimensions and will be prominent due to its position, setting and visibility
- 6.61 The proposed architectural approach attempts to provide a contemporary design that relates to the width and vertical emphasis of residential buildings

which are commonly found in the area. Each 'townhouse' is defined through a clearer division of materials and more typically sized domestic window openings.

- 6.62 However, the success of the development is considered to depend on the appropriate use of high quality materials, detailed design and finished appearance. When looking closely at the detailed design, the proposals are not considered to be of sufficient quality to result in high quality architectural response necessary for the site and its surroundings.
- 6.63 The façade design gives the impression of four vertical dwellings to the Highgate Road elevation and its opposite façade. Unfortunately in this instance the architectural approach presented on the exterior does is not carried through internally. The glazed strip which is used as a tool to separate the brick elements fails to relate to its external function (except for partition to the right of the double bedroom in flat One at first floor level. In all other cases the glazed strip does not separate the units which are lateral flats and not townhouse style dwellings as suggested by the design.
- 6.64 Moreover the glazed strips fail to separate rooms in most cases preventing it acting as the external architectural expression suggests. The function of the rooms behind the strips varies from floor to floor and element to element. Bedrooms and living rooms both occupy the space behind the glazed strip allowing the function of the accommodation to betray to external manifestation resulting in a dishonest architectural expression.
- 6.65 Moreover the shadow across the infill panels to front and rear facades give the impression of recessed glazed elements. However in plan and section the vertical glazing is the identical with the other windows in relation to its position within the reveals. This not only reduces the distinction of this element but the drawings also show the floor structure to be forward to the glazing resulting in exposed structure forward of the glazing line and the vertical strip as represented on the elevational drawings. In reality the front and rear façade would appear as a flat horizontal block which would not distinguish itself as a

series of vertical elements. There would not be the depth or visual interest suggested by the elevation drawings.

- 6.66 The sections do not show a parapet to the roof and thus the infill sections which are currently shown lower in height than the brick elements would need to have lower ceiling heights and awkward waterproofing detail to allow these sections on the upper floor to conform with the drawings.
- 6.67 In addition some partitions are located in the middle of windows. Not only does this create a very unfortunate external appearance, it would not pass building regulations and couldn't be built as shown. To allow the current external design to be maintained it would require the reconfiguration of the internal layout which would affect the size and mix of the units. The re-planning of the internal layout could not, in the view of the Council, be achieved without a significant impact on the scheme. This in-turn would take the scheme significantly away from the specific 'townhouses' design concept.
- 6.68 The pilasters between the shopfronts fail to ground the development facing Highgate Road and the ubiquitous fully glazed shopfronts fail to relate to the architectural design of the facades above or the traditional character of the area. This is contrary to policy DP30 and CPG1.
- 6.69 The first floor projecting balconies are not consistent with the character or appearance of the area and appear at odds with the streetscene.
- 6.70 In addition the first floor plans do not align with the 2nd floor plans or east elevation of the proposed development.
- 6.71 The building's function and layout fail to satisfactorily relate to its external appearance. This results in a unsuccessful design unforgivable for a new build development of the quality expected for the area.
- 6.72 The proposed design is considered to be poor quality architecture which should not be supported in line with Paragraph 64 of chapter 7 of the NPPF

which is clear that “Permission should be refused for development of poor design.”

Landscaping

- 6.73 The Council will also encourage the restoration and management of Parks and Gardens of Special Historic Interest and London Squares to enhance their value. No proposals have been provided in this regard. No proposal have been provided for the landscaping of the site. In fact no landscaping proposals have been provided to show how the houses would respond to the adjoining designated open space.
- 6.74 The development would also harm the mature trees which surround and overhang the site. The impact and effect on the tree has been covered in reason for refusal 4 below.

Development site

- 6.75 The appellants continually refer to the appeal site as a ‘development site.’ The site is not a development site. The site is not included in the adopted Camden Site Allocations document (published 9th September 2013).
- 6.76 The site is highlighted below para 7.23 of the Dartmouth Park CAAMP as a ‘Negative feature’ in sub area 1 of the. The list also identifies:
- Unsympathetic replacement windows
 - Unsympathetic shopfronts including signage and blinds (however in many cases the original fascia and pilasters survive).
 - Satellite dishes (especially on Denyer House)
 - Advertising hoardings on eastern wall under the railway bridge.
 - Unsympathetic repairs
 - Hoarding on College Lane opposite Denyer House
- 6.77 This is clearly not a list of development sites. The appellants have misunderstood the meaning of the ‘negative features’ and are using it as a carte blanche approach to development.

6.78 Page 53 of the Management Plan does say that, “The Council will particularly encourage proposals which seek to redevelop those buildings and spaces which are considered to have a negative impact on the special character or the appearance of the conservation area”.

6.79 Appendix 3 (Page 47) states:

Appendix 3 – Negative Buildings

*Buildings and spaces which detract from the character or appearance of the Conservation Area and **could**, through sensitive **enhancement or redevelopment**, contribute more positively, are identified on the townscape appraisal map and listed below.*

Croftdown Road Mansfield Bowling Club building

Dartmouth Park Hill Crestview

Dartmouth Park Road 32

Highgate Road 134, 138-140

Appendix 3 does not require redevelopment but allows for ‘could’ allow for enhancement or redevelopment.

Summary

6.80 A number of policy considerations have to be taken into account when considering the proposed scheme. These relate to the setting of nearby listed buildings, the Highgate Conservation Area and the need to deliver good quality and contextual design through new development. In weighing up the significance of the site and its context and the impact of the proposals against the relevant policy considerations, it is evident that the proposed scheme causes less than substantial harm to the setting of the listed buildings. The prominence of the site and its importance as part of the wider conservation area could arguably mean substantial harm is caused to the Dartmouth Park Conservation Area as a whole. Nevertheless harm is caused without delivering a genuine quality, architectural interest or public benefits.

6.81 There is no policy justification for the developments from an architectural or historic perspective and the observation made by the specialist consultants to

justify the works is that a garage exists on the site and has done in the past! This is insufficient justification to outweigh the clear harm caused to the particular significance identified in the constraints.

- 6.82 The scheme fails to understand or positively respond to the architectural and historic context of the area. The scheme would result in significant harm being caused to the Conservation Area and adjoining designated open space. The proposal fails to demonstrate that the harm is necessary to achieve substantial public benefits. In this regard the applicants have failed to demonstrate the scheme would comply with our policies or the NPPF.
- 6.83 It should be noted that ***English Heritage Response*** has objected to the proposed scheme for the same reasons the Council consider it to be unacceptable. A copy of their response is attached in appendix Y.

Reason 4 (Impact on trees)

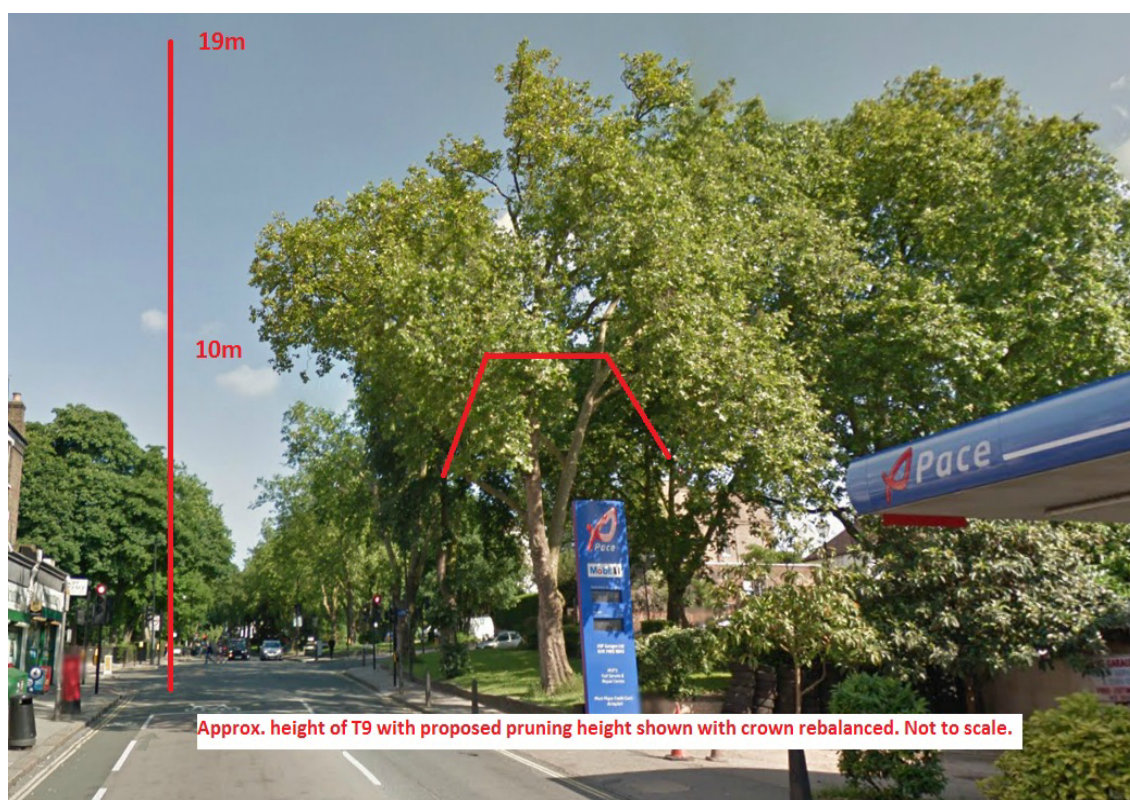
- 6.84 There are no trees on site but the surrounding open space contains many mature trees. The closest tree (T9) is located to the north west of the site and would be directly affected by the proposal.
- 6.85 T9 is a large, mature London plane tree in good structural condition and fair physiological condition. The tree has long, safe useful life expectancy and is of typical form for its species with a well-balanced, broadly spreading, pleasing growing crown which appears to be free from structural defects.
- 6.86 T9 is amongst similar large, mature London plane trees which have huge value both individually and as a group. When travelling north on Highgate Road, T9 is highly visible and is situated immediately by the side of highway, overhanging the middle of the road. T9 is the first tree of a large group which begins as the road levels out, T9 is the “gateway” to the leafy, densely wooded part of the conservation area which continues north on both sides of the highway.

- 6.87 *BS3998:2010 – Tree work recommendations* is the principle guidance document for tree work in the UK. In section 3.21, BS3998:2010 defines pollarding as: “*cutting a tree so as to encourage formation of numerous branches arising from the same height on a main stem or principal branches. NOTE 1 This process is initially carried out on trees that have not yet reached maturity. The form of the tree can then be maintained by cycles of cutting. This is not the same as topping (3.28).*”
- 6.88 Section 3.28 defines topping as: “*removal of most or all of the crown of a mature tree by indiscriminately cutting through the main stem(s) NOTE 2 This is not the same as pollarding (3.21).*”
- 6.89 In section 7.10 of the same document, it is stated that: “*If pollarding is to be carried out, it should preferably start soon after the tree has become established and is between 25 mm to 50 mm in diameter at the selected height of pollarding (often 2 m to 3 m).*” It then goes on to state that: “*Larger (more than 200mm in diameter) trees should not normally be treated in this way*”. Due to the size and maturity of T9 the proposed pruning is considered to match the BS3998:2010 definition of “topping” not “pollarding” and is therefore considered not to be best practice.
- 6.90 In Section 2.3.2 of Mr Rose’s proof of evidence, he states: “*It is widely accepted that initiating pollarding to older trees should be avoided*”. The London Borough of Camden is in agreement with this statement. London planes can tolerate this type of pruning but it is the visual amenity that T9 provides that will be permanently lost. It is the loss of visual amenity that T9 provides that contributed to the refusal of the application, not the adverse effect on the proposed pruning on the heath of T9.
- 6.91 Section 2.4.9 of Mr Rose’s evidence states that: “*There have been numerous applications for pollarding and heavy reductions of London plane trees that have been approved, with no conditions, by Camden Council within the past year*” This statement is correct, however each tree/application is assessed

on a case by case basis. If a 211 notice were to be submitted to reduce T9 to 10m it would be refused unless it was on the grounds of health and safety.

- 6.92 T9 significantly contributes to the character of this part of the Dartmouth Park conservation area. The proposed pruning of T9 would permanently remove its pleasing, broadly spreading, balanced crown and leave it with unsightly pollard points. The form of T9 would never return to its current state, instead it is likely a cyclical pruning regime of reducing the tree in size back to the same points on a biennial or triennial basis would have to be undertaken for the remaining life of the tree. The neighbouring trees, both in this area of open space and also further north along Highgate Road, are largely of their natural form i.e. they have not been reduced. The pollarding of T9 would result in not only a loss of visual amenity in a high profile location but also a loss of uniformity with other trees in the area. This would be damaging to the Dartmouth Park Conservation Area and therefore contrary to policy CS14, CS15, DP25 of the LDF.

- 6.93 Image showing approx. degree of proposed pruning of T9 in relation to height:



Approx. height of T9 with proposed pruning height shown with crown rebalanced. Not to scale.

Reasons 5-12

- 6.94 It is the Council's assessment that the proposal would be acceptable, except for the reasons set out above. As such, reasons 5-12 were included in the decision because in the absence of a section 106 agreement the scheme would be unacceptable. The Council is currently drafting a Section 106 agreement that addresses reasons 5-11. As mentioned in paragraph 4.3, the Council wishes to withdraw reason for refusal number 12.

7.0 CONCLUSION

- 7.1 The main issues in determining this appeal are whether the applicant has sufficiently justified the loss of commercial floorspace and demonstrated that the proposal would preserve and enhance the character and appearance of the Dartmouth Park Conservation Area in terms of its impact on the conservation area, adjoining designated open space and nearby tree.
- 7.2 The appellant has not demonstrated that the site is no longer suitable for a continued use and has failed to submit any evidence that the possibly of reusing or redeveloping the site for a similar or alternative business use has been explored.
- 7.3 The proposal would harm the conservation area and public open space without delivering a scheme of genuine quality or architectural interest. Furthermore, the proposal would block views of the adjoining designated open space thereby harming the setting and public enjoyment of this space.
- 7.4 The proposed reduction in height of the London Plane, and associated pruning regime, would harm the visual amenity of the tree and its contribution to the street scene and public open space.
- 7.5 The inspector is therefore respectfully requested to dismiss the appeal against the refusal of planning permission.

8.0 THE COUNCIL'S CASE IN RESPECT OF THE PLANNING OBLIGATIONS

8.1 Notwithstanding the Council's case as set out above should the Inspector be minded to grant planning permission the, Council would require the following to be secured by a Section 106 agreement:

- Post-construction sustainability review
- Energy efficiency measures
- Construction management plan
- Car-free housing
- Highways contribution of £22,639.26
- Open Space Contribution of £15,788
- Education contribution of £36,353

8.2 Government guidance on planning obligations is contained within the Community Infrastructure Levy (CIL) Regulations 2010 which came into effect on 6 April 2010 and the National Planning Policy Framework (particularly paragraphs 203-206).

8.3 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.

8.4 The Council considers that each of the obligations as referred to above would meet these tests for the reasons set out below:

Code for Sustainable Homes post-construction review

8.5 Policy CS13 (Tackling climate change through promoting higher environmental standards) sets out a key part of the Council's overall approach to tackling climate change, which includes tackling higher environmental

standards in design and construction. In line with policy DP22 (Promoting sustainable design and construction), and CPG3 (Sustainability), new build housing is expected to meet Code Level 4 of the Code for Sustainable Homes.

- 8.6 The applicant has submitted a Code for Sustainable Homes pre-assessment that indicates the proposal would meet a minimum of Code Level 4. The assessment involves an initial review of the development to determine how sustainable it will be.
- 8.7 In line with CPG3 a design stage assessment would be required to review the detailed design specifications of a development. More detailed site specific information is generally available at this stage, in comparison to the pre-assessment stage, which allows the assessor to make a more precise estimate of the Code rating. A post-construction assessment reviews the design stage assessment and compares it with the completed development to ensure that all the specified credits have been achieved.

Energy measures

- 8.8 CPG3 advises that if energy efficiency measures cannot be implemented through the approved design or satisfactorily secured through conditions, such design features may be specified through a sustainability plan required to be submitted as part of a s106 Agreement.
- 8.9 A Section 106 would also secure the on-going maintenance and retention of the sustainability measures. Circular 11/95 on planning conditions clearly states that 'maintenance conditions' should not normally be imposed when granting permission for the erection of buildings or for works other than works of a continuing nature such as minerals extraction. In addition, in order to ensure compliance with the measures identified in the CfSH assessment, the Council's standard procedure is to not permit occupation of the development until a satisfactory post-construction review has been provided and any issues identified in that review have been satisfactory addressed.

Car free housing

- 8.10 Policies CS11 (Sustainable and efficient travel) and DP18 (Parking standards and limiting the availability of car parking) aim to limit the supply of car-parking as a key factor in addressing congestion in the borough and encouraging people to use more sustainable ways to travel. The site has a Public Transport Accessibility Level of (PTAL) of 5 (very good) and is within the Highgate Controlled Parking Zone. In line with policy DP18 developments within CPZs and with good accessibility are expected to be car-free.
- 8.11 A planning obligation is considered the most appropriate mechanism for securing the development as car-free as it relates to controls that are outside of the development site and the ongoing requirement of the development to remain car-free. The level of control is considered to go beyond the remit of a planning condition.

Construction management plan

- 8.12 The applicant submitted a draft construction management plan which Transport Officer's advised was sufficient for the application stage, but requested a more detailed plan to be submitted prior to works commencing on site. A full construction management plan needs to be submitted in line with the guidance provided in supplementary planning guidance (CPG6 – Amenity).
- 8.13 Conditions can only lawfully be used to control matters on land within the developer's control. Many of the CMP provisions will relate to off-site 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. This is in accordance with Circular 11/95, where Appendix B.7 gives an example of an unacceptable condition: one requiring loading and unloading and the parking of vehicles not

to take place on the highway, as it purports to exercise control in respect of a public highway which is not under the control of the applicant. (Appendix 2)

- 8.14 It is also true that as a matter of planning practice in Camden the level of detail required and secured through a planning obligation is usually greater and more specific than through a condition. This is an important consideration in respect of a construction management plan which should be seeking to tailor requirements to managing the specific construction impacts arising from a particular development.

Financial contributions

- 8.15 Were the Inspector minded to allow the appeal, financial contributions would also be sought as part of the Section 106 Agreement in relation to highways, open space and education contributions in line with the policies and guidance referred to in this statement. Circular 11/95 advises that financial contributions cannot be secured by condition (Appendix 3).

Highways Works Adjacent to the Site

- 8.16 Policy DP21 states that the Council will expect development connecting to the highway to repair any construction damage to the transport infrastructure or landscaping and reinstate all affected transport network links, road and footway surfaces following development. Officers identified in the course of assessing the application, that in order to mitigate against the impact of construction on the existing footway works to the footway would be required to repair any damage adjacent to the site.
- 8.17 The estimate for this work, prepared by the Borough Engineer, is £22,639.26. It is considered that this amount is justified given the size and scale of the development. 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.

- 8.18 If the contribution is not fully utilised and the agreement of the developer or landowner has not been obtained so that funds can be spent on complementary and similar works in the vicinity of the site, then the Council will repay any unspent monies. The calculation for the contribution can be found in appendix 4.

Open space

- 8.19 Where developments cannot realistically provide sufficient open space to meet the needs of their occupants on or off site the Council will ask a financial contribution. The contribution will be used to improve existing public open spaces or towards the provision of new public open spaces. When considering which open space to improve as a result of contributions, the Council will consider nearby deficiencies and under-provision in open space and existing plans for the management of open space.
- 8.20 In line with policies CS15 and DP32, and CPG8, a contribution to public open space provision is required when a scheme results in a net increase of five or more dwellings. The current financial contributions are £1,304 per 2-bed unit and £2,317 per 3-bed unit. As such, the proposal would be required to contribute the sum of £15,788 $((£1,304 \times 5) + (£2,317 \times 4))$.

Education

- 8.21 In line with Camden Planning Guidance CPG8, a contribution to education is required when a scheme results in a net increase of five or more dwellings. The figure for education contributions are £2,213 per 2-bed unit and £6,322 per 3-bed units, thus the education contribution would be £36,353 $((£2,213 \times 5) + (£6,322 \times 4))$.
- 8.22 The contributions sought do not vary by the location of the development within the Borough as it is difficult to predict the age of children who will actually occupy new housing, because they may move through the Borough's

education sectors, and because educational need arises and is planned for at Borough level.

9 CIL

- 9.1 If the appeal is allowed the proposed scheme would be liable for MoL's CIL as the development would result in the provision of more than one residential unit.

10 CONDITIONS TO BE IMPOSED

- 10.1 If the Inspector allows the appeal it is recommended that following conditions should be imposed:

1) 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).

2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1021-P-001 (Site Location Plan);

Existing: 1021-P-011; 1021-P-012; 1021-P-013

Proposed: 1021-P-020; 1021-P-021; 1021-P-022; 1021-P-023; 1021-P-024; 1021-P-030; 1021-P-031; 1021-P-032; 1021-P-033; 1021-P-034; 1021-P-035; 1021-P-040; 1021-P-041; 1021-P-042; 1021-P-043; 1021-P-044;

Documents: External Noise Assessment by Sound Advice Acoustics Ltd (dated 23 February 2014); Design and Access Statement by Brooks/Murray Architects (dated February 2014); Arboricultural Impact Assessment by Bosky Trees (dated 20th February 2014); Archaeological Desk-based Assessment (October 2013); Code for Sustainable Homes Pre-Assessment Report by Richard Hodgkinson Consultancy (28 February 2014); Energy and Sustainability Statement; Preliminary Construction Management Plan by Create Consulting (dated February 2014); Contamination Report Phase 1

Desk Study by Soils Limited (dated February 2014); Daylight and Sunlight Report by David Maycox & Co (dated 27th February 2014); Bat Assessment by LUC (dated February 2014); Historical Report by AHP; Planning Statement by KR Planning (dated February 2014); Transport Statement by Create Consulting (dated February 2014); Statement of Community Involvement by Curtin & Co (dated February 2014).

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

3) The lifetime homes features and facilities, as indicated on the drawings and documents hereby approved shall be provided in their entirety prior to the first occupation of the new residential unit.

Reason: To ensure that the internal layout of the building provides flexibility for the accessibility of future occupiers and their changing needs over time, in accordance with the requirements of policy CS6 (Providing quality homes) of the London Borough of Camden Local Development Framework Core Strategy and policy DP6 (Lifetime homes and wheelchair homes) of the London Borough of Camden Local Development Framework Development Policies.

4) Detailed drawings, or samples of materials as appropriate, in respect of the following, shall be submitted to and approved in writing by the local planning authority before the relevant part of the work is begun:

a) Plan, elevation and section drawings, including jambs, head and cill, of all windows, and window and door openings at a scale of 1:10 with typical moulding, architrave and glazing details at a scale of 1:1.

b) Plan, elevation and section drawings, including fascia, cornice, pilasters, stallrisers and glazing panels of the new shopfronts at a scale of 1:10;

c) Typical details of new railings and balustrading at a scale of 1:10, including materials, finish and method of fixing into the plinth .

The relevant part of the works shall then be carried out in accordance with the details thus approved.

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.

5) A sample panel of all facing materials should be erected on-site and approved by the Council before the relevant parts of the work are commenced and the development shall be carried out in accordance with the approval given. The panel must include facing brickwork demonstrating the proposed colour, texture, face-bond and pointing.

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.

6) Prior to first occupation of the development, details of secure and covered cycle storage area for 13x cycles shall be submitted to and approved by the local planning authority in writing. The approved facility shall thereafter be provided in its entirety prior to the first occupation of the new dwellings, and thereafter permanently retained.

Reason: To ensure the development provides adequate cycle parking facilities in accordance with the requirements of policy CS11 (Promoting sustainable

and efficient travel) 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) Prior to first occupation of the development a plan showing details of bird and bat box locations and types and indication of species to be accommodated shall be submitted to and approved in writing by the local planning authority. The boxes shall be installed in accordance with the approved plans prior to the occupation of the development and thereafter retained.

Reason: In order to secure appropriate features to conserve and enhance wildlife habitats and biodiversity measures within the development, in accordance with the requirements of the London Plan 2011, Camden Planning Guidance 2013 and policy CS15 (Protecting and improving our parks and open spaces & encouraging biodiversity) of the London Borough of Camden Local Development Framework Core Strategy.

8) Prior to first occupation of the units, detailed plans showing the location, extent and manufacturer's specifications of photovoltaic cells to be installed on the building shall have been submitted to and approved by the Local Planning Authority in writing. The cells shall be installed in full accordance with the details approved by the Local Planning Authority and permanently retained and maintained thereafter.

Reason: To ensure the development provides adequate on-site renewable energy facilities in accordance with the requirements of policy CS13 (Tackling climate change and promoting higher environmental standards) of the London Borough of Camden Local Development Framework Core Strategy and policy DP22 (Promoting sustainable design and construction) of the London Borough of Camden Local Development Framework Development Policies.

9) No development shall take place until full details of hard and soft landscaping and means of enclosure of all un-built, open areas have been submitted to and approved by the Council. Such details shall include details of any proposed earth works including grading, mounding and other changes in ground levels. The relevant part of the works shall not be carried out otherwise than in accordance with the details thus approved.

Reason: To ensure that the development achieves a high quality of landscaping which contributes to the visual amenity and character of the area in accordance with the requirements of policies CS14 and CS15 of the London Borough of Camden Local Development Framework Core Strategy and policy DP24 of the London Borough of Camden Local Development Framework Development Policies.

10) All hard and soft landscaping works shall be carried out to a reasonable standard in accordance with the approved landscape details by not later than the end of the planting seasons following completion of the development or prior to the occupation for the permitted use of the development, whichever is sooner. Any trees or areas of planting which, within a period of five 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 Council 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 and CS15 of the London Borough of Camden Local Development Framework Core Strategy, and policy DP24 of the London Borough of Camden Local Development Framework Development Policies.

11) All trees on the site, or parts of trees growing from adjoining sites, unless shown on the permitted drawing as being removed, shall be retained and

protected from damage to the satisfaction of the Council. Details shall be submitted to and approved by the Council before works commence on site to demonstrate how trees to be retained shall be protected during construction work: such details shall follow guidelines and standards set out in BS5837:2012 "Trees in relation to design, demolition and construction"

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 of the London Borough of Camden Local Development Framework Core Strategy.

12) At least 28 days before development commences:

(a) a written programme of ground investigation for the presence of soil and groundwater contamination and landfill gas shall be submitted to and approved by the local planning authority in writing; and

(b) following the approval detailed in paragraph (a), an investigation shall be carried out in accordance with the approved programme and the results and a written scheme of remediation measures [if necessary] shall be 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 arising in connection with the previous industrial/storage use of the site 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.

13) In the event that additional significant contamination is found at any time when carrying out the approved development it must be reported in writing

immediately to the local planning authority. An investigation and risk assessment must be undertaken in accordance with the requirements of the Environment Agency's Model Procedures for the Management of Contamination (CLR11), and where mitigation is necessary a scheme of remediation must be designed and implemented to the satisfaction of the local planning authority before any part of the development hereby permitted is occupied.

Reason: To protect future occupiers of the development from the possible presence of ground contamination arising in connection with the previous industrial/storage use of the site 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.

Rob Tulloch **Senior Planning Officer**

rob.tulloch@camden.gov.uk 020 7974 2516

January 2015