

APCAR SMITH PLANNING

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STATEMENT IN SUPPORT OF

PLANNING APPEAL

IN RESPECT OF

CAROB TREE, 15 HIGHGATE ROAD

LONDON NW5 1QX

LPA REF: 2014/6953/P

Our Ref: CA/2821

SEPTEMBER 2015

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Appendices

- A.** Permission Ref: 2011/3819/P and accompanying S106 Agreement.
- B.** Relevant approved plans from permission Ref: 2011/3819/P.
- C.** Officer's report in respect of permission Ref: 2011/3819/P.
- D.** Appeal Decision letter dated 22 September 2014.
- E.** Application Ref: 2014/0409/P – submitted plans.
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- G.** Officer's report for Application Ref: 2014/6953/P.
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- I.** Drwg No's. 15HR/P/133-2 and /133-3.
- J.** Draft Deed of Variation.
- K.** Draft Unilateral Undertaking.

1.00 Introduction

- 1.01 This Statement is submitted in support of an appeal relating to The Carob Tree, 15 Highgate Road, London, NW5 1QX. The appeal relates to the refusal of the London Borough of Camden to refuse details submitted to discharge Conditions 9 and 10 (relating to cycle and refuse storage) of planning permission Ref: 2011/3819/P. That permission was for the change of use of upper floors of the property from ancillary restaurant accommodation together with extensions to the building to create 3 self-contained flats..
- 1.02 All relevant planning history is considered in Section 2. Section 3 describes the application the subject of this appeal. The appeal site and the surrounding area are described in Section 4. Section 5 contains a summary of relevant planning policies. Our appraisal of the merits of the appeal, having regard to the forgoing, is set out in Section 6 followed by our conclusions in Section 7.

2.00 Planning History

2.01 Planning permission Ref: 2011/3819/P, to which the conditions in question relate, was dated 30 March 2012. The description of development was:

Change of use of upper floors from ancillary restaurant accommodation (Class A3) to create three (2 x 2 and 1 x 3 bed) self-contained flats (Class C3) including rear (south) extensions at first and second floor levels and roof extension to create new third floor level with external terrace areas and associated alterations including new entrance on Highgate Road (west) elevation.

2.02 Condition 9 stated:

Notwithstanding the details hereby approved and prior to commencement of development, details of the location, design and method of waste storage and removal (including recycled materials) shall be submitted to and approved by the Council and the approved facility shall therefore be provided prior to the first occupation of any of the new residential units and permanently maintained and retained thereafter.

2.03 Condition 10 stated:

Notwithstanding the details hereby approved and prior to commencement of development details of a cycle storage area for a minimum of 4 cycles shall be submitted to and approved by the Council and the approved facility shall therefore be provided prior to the first occupation of any of the new residential units and permanently maintained and retained thereafter.

2.04 A copy of the planning permission, which includes the reasons for the imposition of these conditions, is contained at Appendix A. Also included at Appendix A is the S106 Agreement that this permission was subject to. The stated reason for Condition 9 referred to safeguarding the amenities of the adjoining properties and the area generally. The stated reason for the imposition of Condition 10 referred to ensuring that the development provides adequate cycle parking facilities.

- 2.05 Relevant approved plans relating to permission Ref: 2011/3819/P are contained at Appendix B.
- 2.06 From the Officer's report in respect of that permission (Appendix C) it is noted (from Para 6.10) that the Council's Street Environment Services Team were satisfied in respect of the waste and recycling storage facilities as shown on the approved plans in terms of both sufficiency of space and location. The proposed cycle parking was commented upon at Para 6.33. This confirmed that the 4 spaces proposed on the Highgate Road frontage were sufficient in terms of location, design and layout and suggested that they would be secured via a condition. Both refuse and cycle storage were shown on the Highgate Road frontage.
- 2.07 Following this grant of planning permission there were various applications submitted to the LPA to discharge these conditions – application Ref: 2104/0409/P which related to Condition 9, application Ref: 2014/0416/P which related to Condition 10, application Ref: 2014/0422/P which related to both Conditions 9 and 10 and application Ref: 2014/0738/P which again related to both Conditions 9 and 10.
- 2.08 Application Ref: 2014/0409/P showed refuse and recycling bins in an enclosed store on the Highgate Road frontage to the rear of proposed planting. Application Ref: 2014/0416/P showed a cycle store on the Highgate Road frontage to the rear of the refuse and recycle bins shown on application Ref: 2014/0409/P. Application Ref: 2014/0422/P showed the cycle spaces in front of the refuse and recycling storage. Lastly application Ref: 2014/0738/P showed refuse and cycle storage at the front of the existing yard on the Swain's Lane frontage, in front of a single storey side extension to the existing ground floor restaurant premises. All these applications to discharge Conditions 9 and 10 were refused by the Local Authority. Appeals were submitted but were all dismissed by way of a joint decision letter dated 22 September 2014. A copy of this Appeal Decision is contained at Appendix D. We comment on relevant aspects of this appeal decision letter in our consideration of the merits of this appeal at Section 6 of this Statement.
- 2.09 The same joint appeal decision letter also allowed an appeal against the Council's refusal of application Ref: 2013/5645/P which was for a single storey side extension to the restaurant. This was subject to a condition that the area in front of the extension should be kept free for storage of refuse in connection with the restaurant (Condition 4).

2.10 Prior to the determination of that appeal, the Local Authority approved alternative details to discharge Conditions 9 and 10 (permission Ref: 2014/3461/P) which showed both bin and cycle storage adjacent to the side of the building and accessed from Swain's Lane. All conditions precedent have therefore been discharged but, in view of the comments made by the previous Appeal Inspector in the decision dated 22 September 2014 (Appendix D) the Applicant sought revised details to discharge Conditions 9 and 10 of permission Ref: 2011/3189/P. It is the Council's refusal to discharge the revised details of those conditions to which this appeal relates.

3.00 Current Proposals

- 3.01 In view of the Inspector's very clear comments in the appeal decision (as contained at Appendix D) the current proposals show the waste and cycle storage in the same positions as previously shown on application Refs: 2014/0409/P and 2014/0416/P but with significantly greater detail in respect of landscaping and also showing covered cycle storage. So that the Inspector appointed to determine this fresh appeal can properly compare the current proposals which those previously considered we are attaching at Appendix E the plans considered for application Ref: 2014/0409/P and, at Appendix F, the plans considered for application Ref: 2014/0416/P
- 3.02 The submitted plan for this current proposal (Drwg No. 15HR_MJ01-Rev 3) incorporates all details of the proposed waste and cycle storage, landscaping and alterations to boundary wall. It shows the side wall being lowered to match the height of the existing front wall – ie; a reduction from the existing 1,950mm to 950mm. This was specifically recognised by the previous Inspector as being a benefit (at Para 12 of the appeal decision at Appendix D)..
- 3.03 As regards landscaping the plan shows a variety of planting to include a tree, shrubs, grasses and bulbs. The tree (a Ligustrum Lucidum Variegata) is a small evergreen tree that thrives well in restricted areas with little maintenance required once it is established. The shrubs include Ivy, providing an instant 1.8m high screen, and lower level Hebei. There would be two types of grasses as well as spring flowering bulbs. These will ensure interesting landscaping with excellent screening providing colour and interest throughout the year.

4.00 Site and Surroundings

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

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

- 4.06 Along the southern elevation of the building is a single storey extension which encloses a sub-station. This has not been affected by planning permission Ref: 2011/3819/P. The bin and cycle parking as proposed would be situated in front of this sub-station building.
- 4.07 Along the southern side of the former patio area to the restaurant – that which now forms the area to be utilised as the entrance to the residential accommodation in accordance with planning permission Ref: 2011/3819/P – is a 1.8m high brick wall. This has not changed as a result of the development nearing completion. The proposed cycle and refuse facilities would be sited immediately to the north of this 1.8m high wall.
- 4.08 Along the eastern side of the building is a service yard. This is situated adjacent to 2 Swain's Lane. It is enclosed at its Swain's Lane frontage by a 2.5m high wall and a solid wooden gate. This wall and gate existed prior to the implementation of planning permission Ref: 2011/3819/P. The service yard has previously had little use apart from housing a cold storage unit, refuse for the restaurant and external staircase (the latter to be removed as part of permission Ref: 2011/3819/P). It is within this area that the single storey side extension as allowed on appeal (LA Ref: 2013/5645/P) is to be built and where also the Local Authority have approved details of cycle and refuse storage to discharge Conditions 9 and 10 (as approved under Reference: 2014/3461/P as referred to in Section 2). Clearly these latter two permissions cannot both be implemented. The Appellant wishes to implement permission Ref: 2013/5645/P on this part of the site.
- 4.09 The appeal site and surroundings lie within the north-western corner of the Dartmouth Park Conservation Area. Highgate Road, opposite the appeal site, forms the western boundary in the vicinity. The Local Authority have produced a Conservation Area Appraisal and Management Plan. This includes a Townscape Appraisal Map which shows listed buildings, buildings considered to make a positive contribution to the Conservation Area and negative buildings/sites. The appeal premises are not specifically identified on this map nor are

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

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

5.00 Planning Policies

5.01 We comment below on the policies referred to in the two reasons for refusal of planning permission.

LB Camden Core Strategy

5.03 Policies CS11 and CS14 are referred to.

5.04 Policy CS11 is a lengthy policy entitled “Promoting Sustainable and Efficient Travel”. Criterion (h) is relevant to cycle storage. It refers to the Council continuing to improve facilities for cyclists, including increasing the availability of cycle parking, helping to deliver the London Cycle Hire Scheme and enhancing cycle links.

5.05 Policy CS14 relates to the promotion of quality places and heritage conservation. It requires development to respect local context and character (Criterion (a)); preserve and enhance the Borough’s heritage assets (Criterion (b)); promote high quality landscaping (Criterion(c)); buildings and places to be “inclusive and accessible” (Criterion (d)); and protecting important views (Criterion (e)); Criterion (a) and (b) are of relevance to the proposals. The Council have not raised any concern in respect of the detailing of the proposed landscaping incorporated with the application the subject of this appeal – the second reason for refusal of planning permission refers to the absence of “a suitable control mechanism” to ensure that that landscaping is implemented and maintained.

LB Camden Development Policies

5.06 Policies DP18, DP24 and DP25 are referred to.

5.07 Policy DP18 refers to limiting the availability of car parking and an expectation that development meets the Council’s minimum standard for cycle parking as set out in Appendix 2. This Appendix requires 1 storage or parking space per unit for residents. It also refers to visitor cycle parking but this only being required for developments of 20 or more units. Given the development is only of 3 units there is thus no requirement for visitor parking and only 3 cycle parking spaces are actually needed – despite that 4 spaces are incorporated in the proposals.

5.08 Policy DP24 requires high quality design in all developments. Criterion (a) requires developments to consider the character and setting of

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

5.09 Policy DP25 is entitled “Conserving Camden’s Heritage”. It is only Criterion (a) and (b) that are of relevance. The former refers to taking account of Conservation Area Statements; the latter requires development to preserve and enhance the character and appearance of the area.

5.10 For the reasons discussed in Section 6 it is considered that these policies are all complied with.

6.00 Planning Appraisal

6.01 The main issues to which this appeal gives rise are as follows:

- Whether the proposed cycle and refuse stores are physically constrained and inadequate.
- Whether the cycle and refuse store would be harmful to visual amenities including the street scene and Conservation Area.

6.02 In respect of the latter the Council have not raised any concerns in respect of the detailing of the proposed landscaping itself. It is clear from the second reason for refusal of planning permission that their sole issue in this respect is in respect of a mechanism to ensure that the proposed landscaping (as shown on Drwg No. 15HR_MJ01 Rev 3) will in fact be implemented and retained.

Relevance of September 2014 Appeal Decision Letter

6.03 A copy of this appeal decision is contained at Appendix D with the matters to which it relates having been discussed in Section 2.

6.04 It is evident from the decision that the Inspector was happy for both the waste and cycle storage to be on the Highgate Road frontage. Furthermore Condition 4 of the planning permission he granted for the single storey side extension to the restaurant (LA Ref: 2013/5645/P) specifically stated that the area in front of the extension should be kept free for storage of refuse in connection with the restaurant; not refuse for the flats.

6.05 It is clear from the Inspector's comments at Para's 11 to 13 that he was satisfied with the waste and cycle storage on the Highgate Road frontage in the positions shown on the plans submitted in respect of application Refs: 2014/0409/P and 2014/0416/P. The current appeal thus keeps these in the same positions.

6.06 At Para 11 the Inspector stated:

Whilst the enclosure would reduce some of the openness of the forecourt, it would not be in front of the main part of the building, but in front of the electricity sub-station, which is of secondary importance on the frontage.

6.07 At Para 12 he stated:

I consider that the small loss of openness would be outweighed by its beneficial effect on the character and appearance of the area by virtue of opening up the frontage through the reduction in height of the side wall and through providing landscaping that would add to the attractiveness of the area and, in time, assist in hiding the unsightly curved, rotating metal blades on top of the front wall of the sub-station.

6.08 It is clear from Para 13 that the Inspector considered the acceptability of the proposals shown on application Refs: 2014/0409/P and 2014/0416/P as being dependent on the provision of substantial landscaping at the front of the site. Concern was raised at Para 13 that the submitted plans at that time did not provide sufficient detail of the size and species of plant, whether they would be in containers or planted in the ground, or a timetable for implementation or arrangements to secure their retention and replacement if necessary. The Inspector also noted at this paragraph that it is not possible to impose a condition to secure the submission of further details on the discharge of a condition application.

6.09 It was solely on this basis, as far as matters in respect of character and appearance are concerned, that the Inspector dismissed the appeals into application Refs: 2014/0409/P and 2014/0416/P.

6.10 The Inspector's comments at Para's 20 to 23 regarding the adequacy of the cycle storage in application Ref: 2014/0416/P are also of relevance to these resubmitted details. At Para 20 the Inspector drew attention to the fact that the Council's only concern in respect of the adequacy of the cycle storage in that proposal related to the stands not being covered. At Para 21 he drew attention to the fact that the Council accepts that external cycle storage would be acceptable. At Para 23 he stated:

...as I have found that Appeal C [*the appeal into application ref: 2014/0416/P*] would provide a satisfactory location for a cycle store for residents, subject to the provision of a suitable cover, there is no necessity for cycle storage to be provided in the service yard off Swain's Lane.

- 6.11 No concern was raised by the Local Authority or the Inspector on the adequacy of the waste storage arrangement as shown in application Ref: 2014/0409/P.

Whether the Proposed Cycle and Refuse Stores are Physically Constrained and Technically Inadequate

- 6.12 This relates to the first reason for refusal of the application the subject of the current appeal. The Council alleges that the proposals do not incorporate a secure and waterproof structure. Whilst the first part of this first reason for refusal refers to both proposed cycle and refuse stores, it is evident from the remainder of the reasons for refusal, that the Council's only concern in this respect relates to the cycle storage.
- 6.13 The Officer's report relating to the application the subject of this appeal is contained at Appendix G. It confirms, at Para 3.1, that the refuse store is not technically inadequate or constrained. The report acknowledges the refuse storage meets all relevant requirements in terms of capacity and location.
- 6.14 With regard to the cycle storage Camden Planning Guidance 7 (Transport) is referred to at Section 4.0 of the report. The relevant aspects of it are summarised at Para's 4.1, 4.2, 4.3 and 4.5.
- 6.15 Para 4.1 of the Officer's report refers to no details having been included with the application as to what type of cycle stands would be provided. Para 4.2 summarises the supplementary guidance in respect of types of stands and space around.
- 6.16 Attached at Appendix H is Drwg No. 15HR/P/133-1 which shows each of the cycle stores being fitted with an appropriate Sheffield Stand. Attached at Appendix I are two additional plans (Drwg No's 15HR/P/133-2 and /133-3) that show track plots of cycles into each of the four cycle stores proposed. These drawings were not submitted with the application but are provided now to respond to the reason for refusal. As the details at Appendices H and I demonstrate the proposed cycle storage is entirely appropriate in terms of the cycle stands themselves and with their being sufficient manoeuvring space in order for all four to be accessible.

- 6.17 The details at Appendix H that show the Sheffield Stand note that the cycle stores will be built from thick weatherproof steel panels with a large single access door and with the cycle users utilising their own padlocks to secure their bicycles to the Sheffield Stands inside the stores.
- 6.18 Given the above and as the details demonstrate, there is no reason to suspect that the occupiers of the flats are unlikely to use the cycle storage. The storage areas will be sufficiently robust and secure. Furthermore, as the Officer's report acknowledges at Para 4.6, the extant approval (Ref: 2014/3461/P) incorporates precisely the same type of storage for the bicycles. We would also draw attention to the fact that the previous appeal Inspector was not concerned with the security and usability of the cycle storage. Indeed previously both the Council and the Inspector were only concerned about the cycle stands not being covered. They are now proposed to be covered but the Council still object and indeed raise a wholly new and unjustified concern.
- 6.19 In view of the above it is considered that all aspects of both cycle stores and refuse stores are entirely adequate to meet the Council's standards. There is no reason to suspect that the proposed cycle store would discourage the ownership and use of bicycles.

Proposed Landscaping and Visual Amenities

- 6.20 The second reason for refusal of planning permission raises no concern in respect of the details of the proposed landscaping itself.
- 6.21 We would draw attention to Drwg No. 15HR_MJ01 Rev 3 – listed on the decision to refuse permission as one of the application drawings. This drawing incorporates full details of the proposed planting – types of plants, quantity, size and maintenance requirements. It is quite clear from the drawing that the planting is within permanent beds with the plan showing the positioning and height of the walls around these beds. In terms of timetable for implementation the intention would be that the landscaping be implemented during the next possible planting season.
- 6.22 The original planning permission (Ref: 2011/3819/P) was subject to a Legal Agreement (contained at Appendix A with the planning permission). Attached at Appendix J is a draft Deed of Variation to the

above mentioned Section 106 Agreement. Its effect is to supplement that original Agreement. The Schedule to it refers to the planting scheme shown on the submitted plan (Drwg No. 15HR_MJ01 Rev 3) and adds new provisions in respect of landscaping obligations – to implement the planting scheme shown on the above mentioned drawing (which was included with the original planning application documents) during first planting season and re-plant and replace any plants which may die during the following planting season. It also incorporates an obligation to maintain, cultivate, replace and re-plant as appropriate in perpetuity.

- 6.23 As an alternative to this Deed of Variation we attach, at Appendix K, a draft Unilateral Undertaking to provide an additional Obligation to the original Section 106 Agreement. This is put forward should the LPA not be willing to sign the Deed of Variation. As can be seen from the Schedule the additions to the original Agreement are identical to those incorporated in the Schedule to the Deed of Variation. Either the Deed of Variation or the Unilateral Undertaking will be completed in due course.
- 6.24 In view of the above it is considered that, despite the allegation in the second reason for refusal of planning permission, there can be a suitable control mechanism to ensure that the proposed landscaping is implemented and maintained thereafter. Thus with this appeal it is considered that not only is an appropriate landscaping scheme incorporated in the proposals but that an appropriate mechanism will be in place to ensure the implementation and retention of that landscaping scheme. Since the previous Appeal Inspector (Appeal Decision at Appendix D) was otherwise satisfied that there would be no adverse impact on visual amenities, street scene and Conservation Area it is considered that this proposals overcomes all previous concerns in this respect.

7.00 Conclusions

- 7.01 The proposals incorporate entirely adequate and appropriate refuse/recycle storage – this is not disputed by the Local Authority.
- 7.02 The proposals also incorporate entirely appropriate cycle storage that will be safe, secure and with all four cycle parking spaces easily accessible. Indeed the proposals incorporate 4 cycle parking spaces whereas, to comply with the Council's standards, only 3 such spaces are needed. There is no legitimate reason to suspect that the proposed cycle storage will not be used by residents.
- 7.03 The Council are happy in terms of the detail of the proposed landscaping. Their concern in respect of landscaping related to the absence of a mechanism to ensure that the planting will be carried out at an appropriate time and maintained thereafter. Either the intended Deed of Variation or Unilateral Undertaking will ensure this.
- 7.04 The September 2014 appeal decision made it clear that refuse and cycle parking in the position proposed was acceptable in principle. This is evident from Para's 11 to 13 of the appeal decision (Appendix D). The landscaping proposals incorporated in the application the subject of this appeal provides sufficient detail and thus overcome the concerns that previous Inspector raised at Para 13 of his decision. The intended Deed of Variation or Unilateral Undertaking overcome the fact that it is not possible, when discharging conditions, to impose another condition in respect of timing of planting/replacement planting etc.
- 7.05 It is clear from the Inspector's comments at Para's 20 to 23 that he was happy in respect of cycle storage in the manner which the current appeal proposals provide for (this being the same as previously proposed in application Ref: 2014/0416/P which the Inspector confirmed to be acceptable subject to provision of a suitable cover – now incorporated in the proposals.
- 7.06 For these reasons we consider that the proposals, with the cycle storage now covered and with the additional landscaping detailing and the Deed of Variation/Unilateral Undertaking overcome all previous concerns.