



**PLANNING SERVICES**

**Town & Country Planning Act 1990 (as Amended)**

**Town & Country Planning Appeals (Determination by Inspectors)  
(Inquiries Procedure) (England) Rules 2000**

**PROOF OF EVIDENCE**

**Jenna Litherland BA (Hons) Planning Studies, MA Planning**

**FOR PUBLIC INQUIRY COMMENCING ON 30 July 2014**

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**APPEAL SITE**

38 Heath Drive, London, NW3 7SD

**APPELLANT**

**Zen Development Ltd.**

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**SUBJECT OF APPEAL**

Appeal against London Borough of Camden's refusal of the application for planning permission 26/02/2014.

**Proposed Development:**

Erection of a part 3, 4 and 5 storey building as well as basement level comprising 21 residential units (3x 1 bed, 13x 2 bed and 5x 3 bed), basement swimming pool area as well as associated landscaping and formation of refuse recycling storage area adjacent to Heath Drive and conversion of existing garage to bike storage following demolition of existing dwelling house.

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**COUNCIL REFERENCES: 2013/7355/P**

**PLANNING INSPECTORATE REFERENCES: APP/X5210/A/14/2215857**

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## INTRODUCTION

- i. I, Jenna Litherland, have prepared this proof of evidence for presentation at the Public Inquiry into the appeal. I hold a BA (Hons) degree in Planning Studies and a MA in Planning from Sheffield Hallam University.
- ii. I have over 6 years of experience in town planning in Local Government. I have been employed by the London Borough of Camden since August 2008. From August 2008 to February 2010 I worked in the Planning Enforcement Team. From March 2010 to March 2011 I held the position of Major Development Implementation Officer in the Kings Cross Team. In March 2011 I joined the West Area Development Management Team where I undertake development management work on enquiries, applications and appeals. In June 2012 I was promoted to Senior Planner.
- iii. I am familiar with the appeal site. The evidence that I have provided for this appeal is accurate to the best of my ability and I confirm that any professional opinions expressed are my own.

## **STRUCTURE OF THE PROOF**

iv. In my evidence I provide a summary of the application which is the subject of the appeal and the process undertaken leading to the refusal. I identify and summarise the legislative and policy framework under which the Council's decision was made. I deal with the Council's reasons for refusal nos. 4, 6-14. Reasons for refusal 3 and 5 are withdrawn following the submission by the appellant of revised layout plans during the course of the appeal.

v. My evidence will be divided into six sections:

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

Section 2: (Planning history) I shall provide a brief summary of the planning history relating to the site.

Section 3: (Legislation, Planning policy and guidance) I shall identify the relevant legislation, national, and local planning policies and guidance relevant to the reasons for refusal and the issues discussed in my proof.

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

Section 5: (Assessment of proposal) I will provide an assessment of the proposed development in the context of legislation and policy in relations to reasons for refusal nos. 4,6-14. I will also explain that the Council is conceding reasons for refusal nos. 3 and 5, following submission of revised plans. My colleague Hannah Walker will explain in detail assessment in relation to reasons for refusal nos. 1 & 2 in her Proof of Evidence.

It should be noted that both parties agreed in principle to a s106 agreement to cover reasons for refusal nos. 7-14, as indicated in the Statement of Common Ground and without prejudice to the outcome of the appeal.

Section 6 (Conclusion) I will summarise the arguments made in this proof of evidence.

vi. In addition to myself and as indicated above, the Council will call one witnesses:

- Hannah Walker, Principal Conservation Officer for LB Camden. Ms. Walker's evidence will support the Council's reasons for refusal nos. 1 & 2.

## 1.0 SUBJECT OF APPEAL

1.1 The appeal is against London Borough of Camden's refusal of an application for planning permission dated 26 February 2013.

1.2 The application for planning permission (ref: 2013/7355/P) was received by the Council on 11 November 2013 and registered on 27 November 2013. The application sought planning permission for the following development:

*'Erection of a part 3, 4 and 5 storey building as well as basement level comprising 21 residential units (3x 1 bed, 13x 2 bed and 5x 3 bed), basement swimming pool area as well as associated landscaping and formation of refuse recycling storage area adjacent to Heath Drive and conversion of existing garage to bike storage following demolition of existing dwelling house.'*

1.3 A press notice was placed in the Ham and High (The Hampstead and Highgate Express) on 05/12/2013 (expired 26/12/2013) and a site notice was displayed from 28/11/2013 until 19/12/2013. 5 neighbours were notified by letter.

1.4 7 consultation responses were received during the course of the application all of which were objections. Letters of objection were also received from the Redington and Frognal Conservation Area Advisory Committee and the Heath and Hampstead Society. A copy of all representations received during the course of the application was sent to the Planning Inspectorate with the Questionnaire.

1.5 The application was refused by officers under delegated powers on the 26 February 2014. The reasons for refusal are as follows:

1. *The proposed demolition would result in the loss of a building which makes a positive contribution to the Redington/Frognal Conservation Area to the detriment of the character and appearance of the Redington/Frognal Conservation Area, 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.*

2. *The proposed building, by reason of its excessive height, mass and bulk, inappropriate design and extent of site coverage, fails to relate to the context of the Redington/Froggnal Conservation Area, to the detriment of the character and appearance of the Redington/Froggnal Conservation Area, 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 residential units at basement level, by reason of their poor outlook would result in sub-standard accommodation that would fail to provide an acceptable level of residential amenity to their occupants, contrary to policies 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.*
4. *The Basement Impact Assessment fails to demonstrate that the proposed development would maintain the structural stability of the neighbouring properties and would not adversely impact upon the local water environment and drainage, contrary to policies CS5 (Managing the impact of growth and development) and CS13 (Tackling climate change through promoting higher environmental standards) of the London Borough of Camden Local Development Framework Core Strategy; and to policies DP23 (Water), and DP27 (Basements and lightwells) of the London Borough of Camden Local Development Framework Development Policies.*

5. *The proposed development, by reason of the layout of the residential units, fails to meet the requirement to provide any easily adaptable wheelchair accessible units and therefore is contrary to policies CS6 (Providing quality homes) and CS19 (Delivering and monitoring the Core Strategy) of the Local Development Framework Core Strategy and policy DP6 (Lifetime homes and wheelchair housing) of the Local Development Framework Development Policies.*
6. *The proposed development, in the absence of a legal agreement to secure a contribution to the supply of affordable housing, would be contrary to policies CS6 (Providing quality homes) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Core Strategy, and policy DP3 (Contributions to the supply of affordable housing) of the London Borough of Camden LDF Development Policies.*
7. *The proposed development, in the absence of a legal agreement to secure residential units as 'car-free' housing, would be likely to contribute unacceptably to parking congestion in the surrounding area and promote the use of non-sustainable modes of transport, contrary to policies CS11 (Promoting sustainable and efficient travel) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Core Strategy and DP18 (Parking standards and limiting the availability of car parking) of the London Borough of Camden LDF Development Policies.*
8. *The proposed development, in the absence of a legal agreement to secure a Construction Management Plan, would be likely to give rise to conflicts with other road users, and be detrimental to the amenities of the area generally, contrary to policies CS5 (Managing the impact of growth and development), CS11 (Promoting sustainable and efficient travel) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policies DP20 (Movement of goods and materials) and DP26 (Managing the*



*impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Policies.*

9. *The proposed development, in the absence of a legal agreement to secure a Service Management Statement, would be likely to contribute unacceptably to traffic disruption and dangerous situations for pedestrians and other road users, and be detrimental to the amenities of the area generally, contrary to policies CS16 (Improving Camden's health and well-being) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Core Strategy and DP20 (Movement of goods and materials), DP26 (Managing the impact of development on occupiers and neighbours), DP28 (Noise and vibration) and DP32 (Air quality and Camden's Clear Zone) of the London Borough of Camden LDF Development Policies.*
  
10. *The proposed development, in the absence of a legal agreement to secure contributions towards public highway works and public realm and environmental improvements would be likely to harm the Borough's transport infrastructure, contrary to policies CS11 (Promoting sustainable and efficient travel) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Core Strategy DP16 (The transport implications of development), DP17 (Walking, cycling and public transport) and DP21 (Development connecting to the highway network) of the London Borough of Camden LDF Development Policies.*
  
11. *The proposed development, in the absence of a legal agreement securing a design and post-construction sustainability review achieving Level 4 in a Code for Sustainable Homes Assessment and the submission and compliance with an Energy Efficiency Plan securing the measure set out in the Energy Strategy, would fail to be sustainable in its use of resources, contrary to policies CS13 (Tackling climate change through promoting higher environmental standards) and CS19 (Delivering and monitoring the Core Strategy)*

*of the London Borough of Camden Local Development Framework Core Strategy and policies DP22 (Promoting sustainable design and construction) and DP23 (Water) of the London Borough of Camden Local Development Framework Development Policies.*

12. *The proposed development, in the absence of a legal agreement securing a Public open space contributions, would be likely to contribute to pressure and demand on existing open space in this area, contrary to policies CS15 (Protecting and improving our parks and open spaces and encouraging biodiversity) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Core Strategy and DP31 (Provision of, and improvements to, public open space and outdoor sport and recreation facilities) of the London Borough of Camden LDF Development Policies.*
  
13. *The proposed development, in the absence of a legal agreement securing an Educational Facilities contribution, would be likely to contribute unacceptably to pressure on the Borough's social infrastructure, contrary to policies CS10 (Supporting community facilities and services) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Core Strategy and DP15 (Community and leisure uses) of the London Borough of Camden LDF Development Policies.*
  
14. *The proposed development, in the absence of a legal agreement securing a Community Facilities contribution, would be likely to contribute unacceptably to pressure on the Borough's social infrastructure, contrary to policies CS10 (Supporting community facilities and services) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Core Strategy and DP15 (Community and leisure uses) of the London Borough of Camden LDF Development Policies.*

## **Amended Plans**

- 1.6 During the course of the appeal amended plans and documents have been submitted. The planning application, however, was assessed against the following documents:

(Prefix-2979-) 001, 002, 010, 020, 021, 050, 051, 052, 053, 054, 055, 056, 060, 061, 062; 1768-1; TPP/38HDHL/010-A; Affordable Housing Statement by Douglas Birt Consulting dated November 2012; Arboricultural Report: Arboricultural impact assessment and arboricultural method Statement by David Clarke Chartered Landscape Architect and Consultant Arboriculturist dated November 2013; Design and Access Statement by MR Partnership dated November 2013; Planning Statement by Cunnane town planning dated November 2013; Heritage Statement by Montagu Evans dated November 2013; Air Quality Assessment by Resource & Environmental Consultants Ltd dated 8 November 2013; Energy Strategy Report - Planning Application by Syntegra Consulting dated 8 November 2013; Basement Impact Assessment Report by soiltechnics dated 7 November 2013; Structural Stability Report by Jampel Davison & Bell dated 22 October 2013; Noise Impact Assessment by Resource & Environmental Consultants Ltd dated 5 November 2013; Daylight, Sunlight and Overshadowing Assessment by Nathaniel Lichfield & Partners dated November 2013.

- 1.7 The following revised plans have been submitted and supersede the plans in italics and underlined above:

050-B; 051-B; 052-A; 057; 058; letter from Chord Environmental Ltd reference 1127/LJE220414 dated 23 April 2014 (amendments to the BIA).

## 2.0 RELEVANT PLANNING HISTORY

### At the appeal site

- 2.1 TPBR7313/EES/MMW: The erection, in principle, of a block of flats on the site of 38, Heath Drive, Hampstead. Granted conditional permission on 30/09/1946.
- 2.2 8562: To erect a new two storey addition to the house over a portion of the space at the rear of the premises known as No. 38, Heath Drive, Hampstead. Granted conditional permission 16/01/1936.

### 264-270 Finchley Road

- 2.3 At the time of consideration of this application a redevelopment scheme was being considered at the adjoining site. This application was subsequently refused.
- 2.4 **2013/7184/P:** Erection of five storey building comprising 13 apartments (2 x 1 bed, 8 x 2 bed & 3 x 3 bed), following demolition of existing four terraced houses. **Refused planning permission on 03/03/2014 on design grounds amongst other matters.**

### **3.0 LEGISLATION AND PLANNING POLICY AND GUIDANCE**

#### **Legislation**

- 4.1 Town and Country Planning Act 1990 (as amended).
- 4.2 Town and Country Planning Act (Listed Building and Conservation Area) Act 1990

#### **Policy**

- 4.3 **The National Planning Policy Framework (the 'NPPF')**
- 4.4 The NPPF sets out the government's planning policy for England and was issued in March 2012. The following chapters are of relevance:
  - Core Planning Principles
  - Chapter 4 - Promoting sustainable transport
  - Chapter 6 - Delivering a wide choice of high quality homes
  - Chapter 7 - Requiring good design
  - Chapter 8 - Promoting healthy communities
  - Chapter 10 - Meeting the challenge of climate change, flooding and coastal change
  - Chapter 11 - Conserving and enhancing the natural environment
  - Chapter 12 - Conserving and enhancing the historic environment
  - Decision Taking
- 4.6 The Development Plan for the area comprises the London Plan 2011 and the Local Development Framework, containing the Camden Core Strategy and the Camden Development Policies. The Development Plan is up to date and in accordance with the NPPF.
- 4.8 **Local Development Framework**
- 4.9 The Local Development Framework was formally adopted on 8 November 2010. The following policies are of relevance:

### LDF Core Strategy

- CS1 Distribution of growth
- CS3 Other highly assessable areas
- CS5 Managing the impact of growth and development
- CS6 Providing quality homes
- CS10 Supporting community facilities and services
- CS11 Promoting Sustainable and efficient travel
- CS13 Tackling climate change through promoting higher environmental standards
- CS14 Promoting high Quality Places and Conserving Our Heritage
- CS15 Protecting and Improving our Parks and Open Spaces & encouraging Biodiversity
- CS16 Improving Camden's health and well-being
- CS18 Dealing with waste and encouraging recycling
- CS19 Delivering and monitoring the Core Strategy

### LDF Development Policies

- DP2 Making full use of Camden's capacity for housing
- DP3 Contributions to the supply of affordable housing
- DP4 Minimising the loss of affordable housing
- DP5 Homes of different sizes
- DP6 Lifetimes Homes and Wheelchair Housing
- 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
- DP27 Basements and Lightwells
- DP28 Noise and Vibration
- DP31 Provision of, and improvements to, open space and outdoor sport and recreation facilities
- DP32 Air quality and Camden's Clear Zone

### **Supplementary Planning Guidance (CPG)**

4.10 The Council will also, where appropriate, rely on supplementary planning guidance as set out in the Camden Planning Guidance 2011 (CPG) (updated 2013) insofar as it is material:

- *CPG1 – Design*
- *CGP2 – Housing*
- *CPG3 – Sustainability*
- *CPG4 - Basements*
- *CPG6 - Amenity*
- *CPG7 – Transport*
- *CPG8 – Planning Obligations*

4.11 Redington Froggnal Conservation Area Statement, adopted in 2003

### **London Plan**

4.12 The local policy framework has been considered against and alongside the strategic policies set out in the Mayor's London Plan which was formally adopted in **July 2011**.

#### **4.0 SITE AND SURROUNDINGS**

- 4.1 No. 38 Heath Drive is located on the corner of Heath Drive and Finchley Road. The application property is a substantial single family dwelling of two storeys with a third floor of accommodation within the roof. The building utilises the prevailing red brick, as well as architectural features such as a hipped clay tiled roof, tall chimney stacks, dormer windows and neo Georgian detailing. The dwelling is a large individual dwelling on a substantial plot with mature vegetation and trees.
- 4.2 The site is located within the Redington/Frognaal Conservation Area (sub area 5) and is identified as making a positive contribution to its character and appearance. One of the key characteristics of the site is its open and verdant quality, in contrast to the more urban and larger scale character of Finchley Road, creating a visual link to the residential hinterlands beyond located within the Redington/Frognaal Conservation Area.



## 5.0 Submissions

5.1 This section sets out Council's Case in respect of reasons for refusal 4, 6, and 7-14. Reasons for refusal 3 and 5 have been satisfactorily addressed by the amended plans submitted during the course of the appeal. This is expanded on in Section 5.13.

### 5.2 Reason 4 – Basement Impact

5.2.1 *Reason for refusal 4 states, 'The Basement Impact Assessment fails to demonstrate that the proposed development would maintain the structural stability of the neighbouring properties and would not adversely impact upon the local water environment and drainage, contrary to policies CS5 (Managing the impact of growth and development) and CS13 (Tackling climate change through promoting higher environmental standards) of the London Borough of Camden Local Development Framework Core Strategy; and to policies DP23 (Water), and DP27 (Basements and lightwells) of the London Borough of Camden Local Development Framework Development Policies.*

5.2.2 The Council considers that the Basement Impact Assessment (BIA) dated 7 November 2013, and the supporting Structural Stability Report dated 22 October 2013, originally submitted with the application was inadequate as it had not been compiled by an appropriately qualified professional in relation to subterranean (groundwater) flow; as such the finding in this section of the report could not be substantiated. The BIA did not take into consideration that the proposal would increase surface water run-off as a result in an increase in hard surfaced areas nor did it fully investigate the possibility of the site being located in close proximity to a tributary of the River Westbourne. The BIA did not adequately explore the existing ground conditions and potential impact on land stability.

5.2.3 The appellant submitted an additional review of the Subterranean Flow section as an addendum to the BIA (letter from Chord Environmental Ltd dated 23 April) to the Council to address the above concerns. Objections were raised by local residents during consultation on the application on the grounds of insufficient details regarding potential impact of the basement. As such, the Council considered it appropriate to re-consult on the revised

information submitted with the appeal. Consultation letters were sent to residents on the 30<sup>th</sup> April advising neighbours. No responses have been received at the time of drafting this document.

5.2.4 The Council has also had both the original BIA (dated 7 November 2013 and the Subterranean Flow addendum (dated 23 April 2014) independently verified in accordance with CPG4 – Basements, which states that in order to provide the Council with greater certainty over the potential impacts of proposed basement development, we will expect an independent verification, funded by the applicant, where a scheme requires applicant to proceed beyond the screening stage of the BIA, where the proposed basements is located in an area of concern regarding slope stability, surface water or ground water flow; or other situations where officers considered it appropriate.

5.2.5 The BIA have been reviewed by Seamus Lefroy-Brooks at LBH Wembley who is an appropriately qualified engineer to review all sections of the BIA including Surface flow and flooding, Subterranean (ground water) flow, and Land stability as required by CPG3 – Basements and Lightwells (see table at paragraph 2.11). Mr. Lefroy-Brooks's qualifications include CEng (Chartered Engineer), MICE (Members of the Institution of Civil Engineers), CGeol (Chartered Geologist).

5.2.6 LBH Wembley were given a brief (Appendix 3) by the Council to assess whether:

- a) the submission contains a Basement Impact Assessment, which has been prepared in accordance with the processes and procedures set out in DP27 and CPG4 , for both temporary and permanent works;
- b) the methodologies have been appropriate to the scale of the proposals and the nature of the site;
- c) the conclusions have been arrived at based on all necessary and reasonable evidence and considerations, in a reliable, transparent manner, by suitably qualified professionals, with sufficient attention paid to risk assessment and use of conservative engineering values/estimates;

- d) the conclusions are sufficiently robust and accurate and are accompanied by sufficiently detailed amelioration/mitigation measures to ensure that the grant of planning permission would accord with DP27, in respect of:
- a. maintaining the structural stability of the building and any neighbouring properties;
  - b. avoiding adverse impact on drainage and run-off or causing other damage to the water environment; and
  - c. avoiding cumulative impacts on structural stability or the water environment.

5.2.7 LBH Wembley were also asked to highlight any other considerations/steps/measures which they considered would be appropriate to test or apply. In particular comments on whether the submission represents a sufficiently robust and comprehensive approach to the design that the Council should seek to ensure that the construction measures and design approach should be used as the basis for the final design stage and thereafter carried through to implementation.

5.2.8 Details of what the Council assesses when considering the acceptability of a BIA is contained within Chapter 8 of the Camden Geological, Hydrogeological and Hydrological Study by ARUP (Appendix 4) and includes the following:

- 'Check qualifications / credentials of author
- Check BIA scope against flowcharts (Section 6.2.2)
- Does the description of the proposed development include all aspects of temporary and permanent works which might impact upon geology, hydrogeology and hydrology?
- Have the appropriate issues been investigated? This includes assessment of impacts with respect to DP27 including land stability, hydrology, hydrogeology.
- Is the scale of any included maps appropriate? That is, does the map show the whole of the relevant area of study and does it show sufficient detail?

- Have the issues been investigated using appropriate assessment methodology? (Section 7.2)
- Has the need for mitigation been considered and are appropriate mitigation methods incorporated in the scheme? (Section 5)
- Has the need for monitoring been addressed and is the proposed monitoring sufficient and adequate? (Section 7.2.3)
- Have the residual (after mitigation) impacts been clearly identified?’

(Page 79, Camden Geological, Hydrogeological and Hydrological Study)

5.2.9 LBH Wembley confirmed in their verification that the BIA and additional information submitted with the appeal do not satisfactorily demonstrate sufficient detail and certainty to ensure the proposal would maintain the structural stability of the building and any neighbouring properties; avoid adverse impact on drainage and run-off or cause other damage to the water environment; or avoid cumulative impacts on structural stability or the water environment. The full report is at Appendix 5. However, the main issues are summarised below.

5.2.10 Relevant qualifications - LBH Wembley confirm that the original BIA was compiled by an individual with relevant qualifications to undertake the assessment in relation to Surface flow and flooding and the supplementary review of the Subterranean Flow section of the BIA dated 23 April 2014 was undertaken by an individual with relevant qualifications to undertake the assessment in relation to Subterranean (groundwater) flow. However, the original BIA was not undertaken or reviewed by an individual with the relevant qualifications to undertake the assessment in relation to Land stability as a Chartered Geologist. The supplementary review of the Subterranean Flow section of the BIA dated 23 April 2014 was compiled by a Chartered Geologist, however this addendum did not go as far as to corroborate the section on Land stability.

5.2.11 In accordance with CPG4 in order to undertake the section on Land stability the individual must be a Civil Engineer with the CEng qualification or a

Member of the Institution of Civil Engineers (MICE) and a Geotechnical Specialist as defined by the Site Investigations Steering Group, AND the report must include demonstrable evidence that the assessment has been made by them in conjunction with an Engineering Geologist with the CGeol qualification from the Geological Society of London. The BIA does not demonstrate that the assessments have been made in conjunction with an Engineer Geologist. As such, without the appropriate qualifications the findings of Land Stability section cannot be substantiated.

5.2.12 In accordance with CPG4 – Basements and Lightwells the BIA should include the following sections:

- Stage 1 – Screening;
- Stage 2 – Scoping;
- Stage 3 – Site investigation and study;
- Stage 4 – Impact assessment; and
- Stage 5 - Review and decision making (undertaken by the Council).

#### Stage 1 - Screening

5.2.13 Screening is a process of determining whether or not a full BIA is required. The original BIA and the addendum cover only the screening stage and does not take the BIA through to the scoping stage. This would be considered appropriate if the screening did not identify matters which require further investigation. However, in this case, a number of issues were identified at the screening stage which indicates that it is necessary to undertake a full BIA through the above 5 stages in this case.

5.2.14 The matters identified include: that:

- London Clay is the shallowest stratum at the site This is a concern because London Clay is most prone to seasonal shrink-swell (subsidence and heave);
- a number of trees would be felled as part of the development and works are proposed within the Root Protection Zone of a number of trees. This could impact on soil strength and slope stability; and

- there could be differences in ground/basement level floors between the new building and adjacent properties; structural damage may occur to neighbouring properties if there is a significant differential depth between adjacent foundations.

5.2.15 The BIA verification by LBH Wembley identifies the following additional concerns which should have been taken forward to the scoping stage of the BIA:

- the site may be within 100m of a watercourse. Ground water flow may increase, decreased or be diverted if affected by a proposed basement;
- the basement would result in a change in the proportions of hard surfaced/paved area which can affect rain water run-off;
- the proposed basement may result in changes to the profile of the inflows (instantaneous and long-term) of surface water being received by adjacent properties or downstream watercourse. Reduced flow could affect eco-system increase flows could increase risk of flooding.

5.2.16 Historic maps indicate that there was a former watercourse which crosses the site. This may be truncated by the new basement. Mapping also indicates two ponds to have been present on the site. However, this has not been fully investigated.

#### Stage 2 – Scoping

5.2.17 The scoping stage of the BIA is to identify the potential impacts of the matters identified through the screening process which require further investigation. This stage may require preliminary data collection and field work. A conceptual ground model is also often useful at this stage as it can include the known and suspected features on, below and adjacent to a proposed site.

5.2.18 As the BIA has not been taken beyond the screening stage the issues highlighted in the screening stage are not considered or addressed any further. No further investigation or conceptual ground model is provided.

#### Stage 3 – Site investigation and study

5.2.19 Following scoping, site investigations should be undertaken to develop an understanding of the site and its immediate surroundings in relation to the potential impacts identified through the previous stages.

5.2.20 In accordance with CPG4 site investigations should include: a desk study, including a site walkover; field investigations, including intrusive investigations; monitoring reporting, and interpretation. The Camden Geological, Hydrogeological and Hydrological Study contains further details on how investigations should be carried out and how the information should be report (see appendix 4).

5.2.21 The submitted BIA does not include a desk study or any evidence that site investigations have actually been undertaken. No groundwater investigation or monitoring has been carried out. As such, there is insufficient information to gain a full understanding of the geology and hydrology of the site to ensure that the impacts have been adequately assessed and mitigated against. This is of particular concern given that there is a potential watercourse running through the site.

#### Stage 4 – Impact Assessment

5.2.22 This stage evaluates the direct and indirect implications of the proposed project which should involve a comparison between the present situation (the baseline) and with the proposed situation. The BIA should describe, quantify and then aggregate the effects of the development on those attributes or features of the geological, hydrogeological and hydrological environment which have been identified as potentially being affected.

5.2.23 This stage of the report, in accordance with CPG4, should have three main sections being: detailed site geology; the geotechnical properties of the ground; and an engineering interpretation of the implications of the ground conditions for the development site. One would expect the latter section to contain details of the retaining wall design and calculations of predicted ground movements at and adjoining the site. If the identified consequences are not acceptable, mitigation should then be incorporated and the new net consequences determined. CPG4 suggest that the Burland scale is used for assessing damage to neighbouring buildings.

5.2.24 In this case these issues have not been assessed at all. Potential issues have only been partially identified and have not been investigated any further. No ground movement or wall movement analysis has been undertaken and there is no assessment of the possible cumulative effects.

5.2.25 The submitted structural stability report dated 22 October 2013 indicates that a contiguous piled wall would be installed around the perimeter of the proposed basement to act as a retaining structure both in temporary and permanent conditions, however the assessment has not been progressed sufficiently for a definitive construction methodology and mitigations methods to be presented.

5.2.26 There could be issues of ground movement and surface flooding but these potential issues have not been investigated or mitigated for either. Neither have any structural monitoring proposals been made.

#### Stage 5 – Review and decision making

5.2.27 The final stage of the BIA is undertaken by LB Camden and consists of an audit of the information supplied by the application. The assessment of the BIA by LBH Wembley is set out above and it is concluded that while some of



the information that has been submitted appears sound, insufficient evidence has been submitted to properly conclude the BIA. Also, there are inconsistencies in the statements including with regard to the amount of hard cover associated with the proposal.

5.2.28 The BIA must be considered only as a screening document rather than a complete Impact Assessment concluding with the setting out of mitigation measures. The document itself states that “we are of the opinion, based on available information, that the impact assessment needs only to be taken to stage 1 –‘screening’.” It is not entirely clear why this conclusion was reached when a detailed desk study had not been completed and there were clearly some issues of potential concern identified by the screening process.

5.2.29 It is considered that in order for the submission to ensure accordance with DP27, this assessment must be progressed to include a site investigation based upon desk study researches, an assessment of the potential impacts of the issues of concern and the development of a more comprehensive reasoned construction methodology that, where necessary, demonstrates appropriate mitigation measures.

5.2.30 It is considered that the present submission does not demonstrate sufficient detail and certainty to ensure accordance with DP27 (a), (b) and (c), in respect of:

- Maintaining the structural stability of the building and any neighbouring properties;
- Avoiding adverse impact on drainage and run-off or causing other damage to the water environment;
- Avoiding cumulative impacts on structural stability or the water environment

5.2.31 Notwithstanding the above it is considered that in order to meet the requirements of DP27 the following further information would be required:

- A site investigation designed to address all the issues of potential concern.
- A quantitative Ground Movement Analysis.
- An assessment by appropriately qualified persons of all potential impacts, including any potential cumulative impacts.
- A reasoned Construction Methodology and details of any mitigation required.
- A monitoring and contingency plan.

5.2.32 It is considered that if the above additional works were to be undertaken and the BIA updated accordingly the above reason for refusal could potentially be overcome. This would be subject to the finding of the investigations and the details structural design of the basement. The Council has provided the appellant with a copy of the independent verification which sets out the additional information required to fully assess the proposal, however there is not sufficient time within the appeal process for this additional work to be undertaken.

5.2.33 In its current form the BIA is considered unacceptable as such it is requested that the inspectorate up holds this reason for refusal.

### 5.3 Reason 6 – Affordable housing

5.3.1 *The proposed development, in the absence of a legal agreement to secure a contribution to the supply of affordable housing, would be contrary to policies CS6 (Providing quality homes) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Core Strategy, and policy DP3 (Contributions to the supply of affordable housing) of the London Borough of Camden LDF Development Policies.*

- 5.3.2 Policy DP3 expects all developments with a capacity to provide 10 units or more to make a contribution to affordable housing. It also indicates that any additional floorspace of 1,000 sqm (GEA) is capable of accommodating 10 dwellings. DP3 introduces a sliding scale for developments between 10 and 50 units. In accordance with CPG2 – Housing (paragraph 2.33), when assessing capacity, the Council will look at the number of additional homes proposed and the additional built floorspace (GEA). As a minimum, an acceptable development has capacity for the number of additional homes proposed. In terms of floorspace, 1,000 sqm (GEA) of built development is considered to have capacity for 10 dwellings. Each additional 100 sqm (GEA) added to the development is considered to create capacity for an additional dwelling). We will round floorspace to the nearest 100 sqm to give capacity in terms of the nearest whole number.
- 5.3.3 The current proposal comprises 21 units with a total floor area of 2,591 sqm (GEA). As such, based on the amount of floorspace provided the development has capacity to provide 25 homes. Therefore, in accordance with Policy DP3 and CPG2 25% of the units on site should be affordable. Policy CS6 targets 60% of affordable housing to be for social rent and 40% to be intermediate provision, and the promotion of mixed and inclusive communities. Policy DP3 also recognises factors relating to the individual circumstances of a site taking account of site costs and constraints, the availability of public subsidy, financial viability and other scheme requirements that will affect the scale, nature and location of affordable housing.
- 5.3.4 In accordance with Policy DP3 provision of affordable housing is expected on site, but where this cannot be practically achieved on the site the Council may accept off site affordable housing or exceptionally a payment in –lieu. Where a proposal does not meet the affordable housing target a submission of a financial viability appraisal is required to justify the proportion proposed. The proposal includes no on site affordable housing. The application was accompanied by a financial viability appraisal which seeks to justify a payment in lieu of £300,000 which is equivalent to a 17% contribution.

- 5.3.5 In order to confidently assess the approach, evidence and conclusions of the appraisal it was necessary to instruct an independent financial assessor to robustly scrutinise and review the appraisal. In this regard BPS Surveyors were instructed and produced a report in response during the course of the application. BPS undertook an in-depth review of the assessment which was supplemented by additional evidence and sensitivity information from the applicant at the request of BPS. As such it is considered that the BPS Report is a comprehensive and astutely detailed assessment of the appraisal.
- 5.3.6 BPS are in broad agreement with the approach taken to model viability, and consider the costs and values applied in the appraisal to be broadly reasonable. The proposed sales value rates are based on sales evidence. The sales value for the 1 bed, 2 bed and 3 bed flats all appear reasonable. However, they advise that it is possible that the units which face away from Finchley Road may have an enhanced value. On the whole BPS considers that the proposed offer of £300,000 maximises delivery of affordable housing consistent with the viability of the proposed scheme.
- 5.3.7 The case officer's report expressed concern that the option of providing affordable housing on site had not been appropriately explored. The appellant considers that on-site affordable units would not be appropriate as the service charge for the units is estimated to be up to £7,500 per unit which would be unaffordable for social/affordable rented and shared ownership tenants. This cost is high as it would partly cover the concierge service and maintenance of the swimming pool. Other matters raised include the exceptional costs of the scheme and the high values of the units.
- 5.3.8 However, the appellant has not explored the opportunity of having units with a separate entrance or restricting access to the pool facility. This could substantially reduce the service charge and make affordable units on site a possibility. The applicant has not approached any Registered Providers to inquire whether they would be willing to take space within the development.

As such, it was considered that at the time of determination of the applicant the possibility of providing affordable units on site had not been fully explored.

5.3.9 During the course of the appeal this matter has been considered further. From the BPS report it is clear that the appeal scheme would be in deficit if assessed against a target profit of 20% on Gross Development Value, which is a commonly used target. BPS also suggest that the applicant could potentially argue that a higher benchmark land value should be used, sending the scheme further into deficit.

5.3.10 The applicant had offered a payment-in-lieu of £300,000 prior to the refusal. This was included within the submitted viability appraisal – although this contribution could not be supported if the 20% profit rate or a higher benchmark value was employed.

5.3.11 There is a 1-bed flat on the ground floor (unit 6) valued at £510,000 and another on the second floor (unit 16) valued at £455,000. Reducing the market value to what a Registered Provider (Housing Association) could afford to pay could reduce these figures by 60% or more.

5.3.12 This must be considered alongside the fact that there is no evidence in front of the Council to suggested there is a registered provider who would be willing take on an individual unit at this site and bridge the gap between the £300,000 offer and the market value, as well as the secondary matter being that the current layout would mean that the affordable units would be subject to a high service change. In this instance, given the scale of the development as a whole and the materials considerations outlined above the Council would be willing to agree to provision of a payment in lieu of £300,000, and a deferred affordable housing contribution based on reappraisal of viability at or around completion, as BPS have suggested in their report. BPS indicate that the payment falls short of the policy requirement by £1,416,538, so that would be the maximum sum of any deferred affordable housing contribution. Both the payment in lieu and the deferred payment should be secured through a

S106 legal agreement. The benchmark value in the submitted appraisal is £4,648,000, so this would be used to define a surplus or deficit in the S106 legal agreement

5.3.13 London Plan policy 3.12 and Policy DP3 of the LDF indicate that the Council should seek the maximum reasonable amount of affordable housing in negotiations on residential developments. Many factors can have a significant impact on the maximum viable contribution to affordable housing, including changes to sales values, changes to build costs, changed specifications for materials and finishes and changes to the cost of finance. These factors can change quickly, and changes of a few percentage points can have a significant impact on the viability of a development. The Council therefore seek to negotiate deferred affordable housing contributions for developments where the provision of affordable housing falls significantly short of targets in Policy DP3 due to financial viability, and there is a prospect of viability improving prior to completion.

5.3.14 The deferred contribution is not a fixed amount, but is capped at the shortfall between the amount of additional housing/ affordable housing proposed and the Council's policy targets. The actual contribution is determined by a further viability appraisal undertaken at an agreed point after approval of the development but before the scheme is fully occupied.

5.3.15 The deferred contribution of up to £1,416,538, would be secured through a S106 legal agreement. Securing a deferred affordable housing contribution is considered to meet the CIL tests: it is necessary to make the development acceptable in planning terms to ensure the maximum level of affordable housing is provided in accordance with policy; and it is directly related to the development, and fairly and reasonably related in scale and kind, as the requirement is calculated based on the floorspace and use of the proposed development.

5.3.16 As such, without prejudice to the Council's case it is requested that should the Inspector allow the appeal it should be subject to a S106 agreement to provide a payment in lieu of £300,000 and a deferred affordable housing contribution of up to £1,416,538, subject to viability.

### **S106 reasons for refusal**

5.4 Reasons for refusal 7-14 could be addressed by an appropriate section 106 planning obligation. The Council is working with the appellant to prepare a legal agreement which addresses RfR nos. 7-14 in respect of the planning appeal. However, in the event that some/all matters cannot be agreed in this way then the Council provide evidence to demonstrate that the requirements are justified against relevant planning policy and meet the tests laid out in the Community Infrastructure Levy (CIL) Regulations 2010 in particular Regulation 122(2) which require that for a planning obligation to constitute a reason for granting planning permission it must be (a) necessary to make the development acceptable in planning terms, (b) directly related to the development, and (c) fairly and reasonably related in scale and kind to the development, and the National Planning Policy Framework (particularly paragraphs 203-206).

#### 5.5 Reason 7 – Car Free

5.5.1 *The proposed development, in the absence of a legal agreement to secure residential units as 'car-free' housing, would be likely to contribute unacceptably to parking congestion in the surrounding area and promote the use of non-sustainable modes of transport, contrary to policies CS11 (Promoting sustainable and efficient travel) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Core Strategy and DP18 (Parking standards and limiting the availability of car parking) of the London Borough of Camden LDF Development Policies.*

5.5.2 The reasons for this are to facilitate sustainability and to help promote alternative, more sustainable methods of transport. Considering the site has a Public Transport Accessibility Level of (PTAL) of 5 (very good), and is located within a Controlled Parking Zone which is considered to suffer from parking stress, the development should be secured as car free through a s106 legal agreement if the appeal were allowed.

- 5.5.3 This is in accordance with key principle 4 of the National Planning Policy Framework, Promoting sustainable transport, and policies CS11 (Promoting sustainable and sufficient travel); CS19 (Delivering and monitoring the Core Strategy); DP18 (Parking standards and availability of car parking); and DP19 (Managing the impact of parking) of the LDF.
- 5.5.4 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. Furthermore, the Section 106 legal agreement is the mechanism used by the Council to signal that a property is to be designated as “Car Free”. The Council’s control over parking does not allow it to unilaterally withhold on-street parking permits from residents simply because they occupy a particular property. The Council’s control is derived from Traffic Management Orders (“TMO”), which have been made pursuant to the Road Traffic Regulation Act 1984. There is a formal legal process of advertisement and consultation involved in amending a TMO. The Council could not practically pursue an amendment to the TMO in connection with every application where the additional dwelling (or dwellings) ought properly to be designated as car free. Even if it could, such a mechanism would lead to a series of disputes between the Council and incoming residents who had agreed to occupy the property with no knowledge of its car- free status. Instead, the TMO is worded so that the power to refuse to issue parking permits is linked to whether a property has entered into a “Car Free” Section 106 Obligation. The TMO sets out that it is the Council’s policy not to give parking permits to people who live in premises designated as “Car Free”, and the Section 106 legal agreement is the mechanism used by the Council to signal that a property is to be designated as “Car Free”.
- 5.5.5 Further, use of a Section 106 Agreement, which is registered as a land charge, is a much clearer mechanism than the use of a condition to signal to potential future purchasers of the property that it is designated as car free and that they will not be able to obtain a parking permit. This part of the legal agreement stays on the local search in perpetuity so that any future purchaser of the property is informed that residents are not eligible for parking permits.



5.5.6 CIL Compliance: The Car Free requirement complies with the CIL Regulations as it ensures that the development is acceptable in planning terms to necessarily mitigate against the transport impacts of the development as identified under the Development Plan for developments of the nature proposed. This supports key principle 4 of the National Planning Policy Framework: Promoting sustainable transport. It is also directly related to the development and fairly and reasonably related in scale and kind as it relates to the parking provision for the site and impact on the surrounding highway network.

5.6 Reason 8 – Construction Management Plan

5.6.1 *The proposed development, in the absence of a legal agreement to secure a Construction Management Plan, would be likely to give rise to conflicts with other road users, and be detrimental to the amenities of the area generally, contrary to policies CS5 (Managing the impact of growth and development), CS11 (Promoting sustainable and efficient travel) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policies DP20 (Movement of goods and materials) and DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Policies.*

5.6.2 The proposal would result in significant demolition and construction works on a site located within a Conservation Area, close to neighbouring residential properties and Finchley Road which is a Transport for London Road Network (TLRN) for which TfL are the highway authority. The construction is likely to have a significant impact and the management of the construction will need to be planned in order to minimise any impact on Finchley Road and neighbours. This could be achieved through a Construction Management Plan (CMP) in accordance with policies CS5, CS11, CS19, DP20, and DP26 specifically paragraph 26.10, and CPG7 – Transport.

5.6.3 A planning obligation is considered to be the most appropriate mechanism for securing compliance with a CMP in this case simply because a considerable extent of the activity during construction could cause conflict with other road

users or be detrimental to the amenity of the area and will necessarily take place outside the curtilage of the planning unit of the appeal site. Potential impacts for the proposed demolition/construction works which should be controlled by a CMP include traffic generation from removal and delivery of materials to the site. This could result in traffic disruption and dangerous situations for pedestrians and road users.

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

5.6.5 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 Planning Practice Guidance which states that conditions requiring works on land that is not controlled by the applicant often fails the tests of reasonability and enforceability. (PPG, Use of Conditions paragraph 9 – Appendix 6)

5.6.6 CIL Compliance: The CMP requirement complies with the CIL Regulations as it ensures that the development is acceptable in planning terms to necessarily mitigate against the transport impacts of the development as identified under the Development Plan for developments of the nature proposed. It is also directly related to the development and fairly and reasonably related in scale and kind as it relates to managing impacts to neighbours and on the surrounding highways from construction at the site.

5.7 Reason 9 – Servicing Management Plan

- 5.7.1 *The proposed development, in the absence of a legal agreement to secure a Service Management Statement, would be likely to contribute unacceptably to traffic disruption and dangerous situations for pedestrians and other road users, and be detrimental to the amenities of the area generally, contrary to policies CS16 (Improving Camden's health and well-being) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Core Strategy and DP20 (Movement of goods and materials), DP26 (Managing the impact of development on occupiers and neighbours) , DP28 (Noise and vibration) and DP32 (Air quality and Camden's Clear Zone) of the London Borough of Camden LDF Development Policies.*
- 5.7.2 The proposal development would result in significant servicing requirements following completion of the development including refuse collection, supermarket and other deliveries associated with residential use. The site partly fronts on to Finchley Road which is a Transport for London Road Network (TLRN) for which TfL are the highway authority. Servicing has the potential to have a significant impact and deliveries will need to be managed in order to minimise any impact on Finchley Road and neighbours. A Servicing Management Plan (SMP) is therefore required to manage and minimise impact. This is in accordance with policies CS16, CS19, DP20, and DP26 and CPG7 – Transport.
- 5.7.3 A planning obligation is considered to be the most appropriate mechanism for securing compliance with a SMP in this case simply because servicing could cause conflict with other road users or be detrimental to the amenity of the area and will necessarily take place outside the curtilage of the planning unit of the appeal site. Potential impacts for the proposed serving which should be controlled by a SMP include traffic generation from delivers to the site. This could result in traffic disruption and dangerous situations for pedestrians and road users.
- 5.7.4 Under the Planning Act conditions are used to control matters on land within the developers' control. However, a SMP is designed to be an enforceable and precise document setting out how measures will be undertaken not just on site but also around the site in order to minimise as far as reasonable the detrimental effects of servicing on local residential amenity and / or highway safety on the nearby roads hence, using a condition to secure the type of off-

site requirements usually included in a SMP would in this case be unenforceable.

5.7.5 Conditions can only lawfully be used to control matters on land within the developer's control. Many of the SMP 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 Planning Practice Guidance which states that conditions requiring works on land that is not controlled by the applicant often fails the tests of reasonability and enforceability. (PPG, Use of Conditions paragraph 9 – Appendix 6)

5.7.6 CIL Compliance: The SMP requirement complies with the CIL Regulations as it ensures that the development is acceptable in planning terms to necessarily mitigate against the transport impacts of the development as identified under the Development Plan for developments of the nature proposed. It is also directly related to the development and fairly and reasonably related in scale and kind as it relates to managing impacts to neighbours and on the surrounding highways from servicing of the development.

5.8 Reason 10 -highway works and public realm and environmental improvements

5.8.1 *The proposed development, in the absence of a legal agreement to secure contributions towards public highway works and public realm and environmental improvements would be likely to harm the Borough's transport infrastructure, contrary to policies CS11 (Promoting sustainable and efficient travel) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Core Strategy DP16 (The transport implications of development), DP17 (Walking, cycling and public transport) and DP21 (Development connecting to the highway network) of the London Borough of Camden LDF Development Policies.*

5.8.2 This reason comprises two issues, firstly highways works surrounding the site and secondly public realm and environmental improvements, each will be discussed in turn.

- 5.8.3 **Highways works** - 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. In order to cover the Council's cost to repair any highway damage as a result of construction and to tie the development into the surrounding urban environment a financial contribution should be required to repave the footway adjacent to the site in accordance with policy DP16 and DP21. The site also current has vehicular access from gates and a cross over on to Heath Drive. In order to ensure that the forecourt is not used for parking in the future it would be necessary to secure the removal of cross over.
- 5.8.4 The estimate for this work, prepared by the Borough Engineer is £18,618. It is considered that this amount is justified given the size and scale of the development. (See appendix 7 for the highways works estimate).
- 5.8.5 The Council maintains that a payment for highways work should be secured through a Section 106 legal agreement, which will also combine as an agreement under Section 278 of the Highways Act 1980. CPG8 – Planning Obligations states that public highways works on Borough Roads are to be undertaken through a Section 106 or 278 obligation. The guidance also states that the Council will secure payment for required works by preparing an estimate (including fees) for the scheme that the developer will be required to pay before commencing development. (paragraph 5.14). The most effective way of both securing sufficient payment and ensuring the works are carried out to the Council's procedures and standards is for a financial contribution to be paid by the developer on commencement of the development and secured by an obligation under Section 106 legal agreement. 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. The Planning Practice Guidance advises that financial contributions cannot be secured by condition ( PPG, Using Planning Conditions, paragraph 5 – Appendix 8).
- 5.8.6 **Public realm and environmental improvements** - Policy DP17 states that development should make suitable provisions for pedestrians, cyclists, public transport and wider environmental improvements.

- 5.8.7 Given the scale of the proposed development, in order to ensure the development makes suitable provision to address the significant increase in trip rates generated by the occupiers of the development, which would have an impact on the surrounding footways and public transport facilities, a financial contribution of £40,000 is required towards Pedestrian, Cycling and Environmental Improvements in the local area. This would be used to help to mitigate against such impacts while also helping to encourage sustainable transport choices. This could be used towards cycle improvement schemes or other public realm improvements in the local area. Improvements to pedestrian and cycling facilities would be directly related to the proposed development. Site users would walk and cycle on roads in the near vicinity of the proposed development.
- 5.8.8 Finchley Road is located on the Cycle Superhighway Network (Route CS11). The proposal is likely to increase the number of cycling trips on Finchley Road. At present, TfL is developing proposals for the Swiss Cottage gyratory which include the introduction of new cycle facilities on all arms of the gyratory in order to facilitate cycle movements in all directions. TfL will also look to improve the pedestrian crossing facilities, urban realm and provide additional cycle parking facilities in the locality. The scheme is planned for delivery by 2016 and in line with Camden Planning Guidance 8. Details of the scheme can be found in the Camden Transport Strategy, 2011 (Appendix 9). The public realms contribution could contribute towards this scheme.
- 5.8.9 There is also a Legible London scheme on Finchley Road, the contribution could be used to extend this further north of Finchley Road around Frognal Overground Station. TfL may also want to utilise funding for bus stop improvement in the vicinity of the development site.
- 5.8.10 Improvements to pedestrian and cycling facilities would be directly related to the proposed development. Site users would walk and cycle on roads in the near vicinity of the proposed development, specifically Finchley Road.
- 5.8.11 In addition, the financial contribution would be used to improve conditions for walking and cycling in the local area with a focus on the routes likely to be used by site users.

5.8.12 It is not possible to secure a financial contribution for environmental improvements by condition as it relates to land outside the application site and is not under the control of the applicant. Furthermore, the Planning Practice Guidance advises that financial contributions cannot be secured by condition ( PPG, Using Planning Conditions, paragraph 5 –Appendix 8).

5.8.13 CIL Compliance: The contribution is considered to be CIL compliant is necessary in planning terms as identified in the development plan to mitigate against the increased impact that will be generated by the development. The contribution has been calculated taking into account the particular characteristics of the development, it is directly related to the development and is fairly and reasonably related in scale and kind to the development. It is also directly related to the development and fairly and reasonably related in scale and kind as it will provide for the new residents and mitigate impacts of the development.

#### 5.9 Reason 11 - Sustainability.

5.9.1 *The proposed development, in the absence of a legal agreement securing a design and post-construction sustainability review achieving Level 4 in a Code for Sustainable Homes Assessment and the submission and compliance with an Energy Efficiency Plan securing the measure set out in the Energy Strategy, would fail to be sustainable in its use of resources, contrary to policies CS13 (Tackling climate change through promoting higher environmental standards) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policies DP22 (Promoting sustainable design and construction) and DP23 (Water) of the London Borough of Camden Local Development Framework Development Policies.*

5.9.2 Paragraph 93 of the NPPF states that planning plays a key role in reducing greenhouse gas emissions, minimising vulnerability and providing residence to the impacts of climate change and supporting the delivery of renewable and low carbon energy. Paragraphs 96 and 97 require LPA to expect to meet local requirements to link up to decentralised energy supplies and encourages use and supply of low carbon technologies.

- 5.9.3 Policy CS13 sets out the Council's overall approach to tackling climate change, which includes tackling higher environmental standards in design and construction. Policy DP22 provides details of the sustainability standards. The LDF is in accordance with Chapter 5 of the London Plan – London's response to climate change.
- 5.9.4 Energy Efficiency Plan - This requires developments to make the fullest contribution to tackling climate change in the following hierarchy: firstly by minimising carbon dioxide emissions, adopting sustainable design and construction measures (be lean), secondly prioritising decentralised energy (be clean) and thirdly incorporating renewable technologies (be green). The Energy Strategy submitted broadly follows the energy hierarchy.
- 5.9.5 In accordance with the London Plan and CPG3- Sustainability development should make a 40% improvement of the current 2010 Building Regulations with regard to carbon dioxide reduction targets. A full assessment of the proposed Energy Efficiency Plan is contained within the case officer's report.
- 5.9.6 To summarise, combined be lean, be clean and be green measures would reduce the CO2 emissions per annum, or 32% beyond what would be expected for a 2010 Building Regulations compliant scheme. There is a shortfall between what would be achieved and the 40% target set out in the London Plan. The applicant has not demonstrated that they have explored options to bring the CO2 reduction up to 40% beyond what is expected in the 2010 Building Regulations.
- 5.9.7 If this appeal were to be allowed it should be subject to a S106 agreement to secure that reasonable endeavours are made to bring the CO2 reduction up to 40% beyond what is expected in the 2010 Building Regulations.
- 5.9.8 An Energy Efficiency Plan is required in order to make the proposal acceptable in sustainability terms. It is necessary to secure this is undertaken, installed and maintained and the most appropriate way of doing so is by a S106 agreement.



5.9.9 Code for Sustainable Homes - A Code for Sustainable Homes pre-assessment has been provided, which confirms that a rating of 'level 4' would be achieved. CPG3 also requires that 50% of the un-weighted credits should be achieved in the categories of Energy, Water and Materials. 65% of the credits would be achieved in the Energy category, 67% in water and 50% in materials.

5.9.10 If the appeal were to be allowed the Council would require a post construction review to be carried out by an impartial assessment body. The Section 106 agreement would also secure the ongoing maintenance and retention of the sustainability measures. This would involve ongoing maintenance of a range of measures which may be updated or varied as agreed with the Council from time to time. This would not only be the responsibility of the developer, but that of subsequent owners and occupiers. The Council consider a planning obligation would be the most appropriate tool to ensure on-going compliance with the Code for Sustainable Homes assessments. In addition, in order to ensure compliance with the measures identified in the Code for Sustainable Homes assessments, 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 satisfactorily addressed. Given the complexity of the requirement a S106 rather than a condition is considered the most appropriate measure to secure this.

5.9.11 CIL compliance: This obligation complies with the CIL Regulations as it ensures that the development is acceptable in planning terms to facilitate sustainable development. This supports the National Planning Policy Framework key principle to achieve sustainable development. It is also directly related to the development and fairly and reasonably related in scale and kind as it ensures that the development itself is sustainable.

#### 5.10 Reason 12 – Public open space

5.10.1 *The proposed development, in the absence of a legal agreement securing a Public open space contributions, would be likely to contribute to pressure and demand on existing open space in this area, contrary to policies CS15 (Protecting and improving our parks and open spaces and encouraging*

*biodiversity) and CS19 (Delivering and monitoring the Core Strategy)of the London Borough of Camden Core Strategy and DP31 (Provision of, and improvements to, public open space and outdoor sport and recreation facilities) of the London Borough of Camden LDF Development Policies.*

- 5.10.2 The NPPF seeks to secure the provision of adequate open space to meet local needs for open space. Paragraph 58 states that provision of green space and public open space should be incorporated in developments. Paragraph 73 states that high quality open spaces and opportunities for sports and recreation can make an important contribution to the health and well-being of communities.
- 5.10.3 The LDF Policies CS15, CPG 6 and DP31 require development to mitigate against increase demand for and use of public open spaces. The polices requires provision of 9 sqm of open space per person for residential developments providing 5 or more additional dwellings and this will initially be expected to be provided on site. Where it is not possible to provide this open space provision on site the preferred option would be to provide suitable open space off-site. If either of the above are not practical a financial contribution to open space will be acceptable.
- 5.10.4 The current proposed unit mix would generate an open space requirement of 396sqm. As a payment in lieu (including all capital costs, maintenance and design/admin) the Council would expect £30,998 as financial contributions for the absence of the provision of open space for the 21 residential units. The contribution could be used to improve nearby public open space.
- 5.10.5 The financial contribution is based on the capital cost of providing new open space, the cost of maintenance for the first five years and the cost for the open space team to administer the contribution and design schemes. CPG6 states that all types of residential development are considered to generate requirements per occupier of 9m<sup>2</sup> (refer paragraph 11.5). The amount of the contribution has been calculated in accordance with the formula set out in the guidance.
- 5.10.6 Such a contribution has to be secured by S106 obligation. This contribution would be in accordance with chapters 7 and 8 of the National Planning Policy

Framework: Promoting healthy communities. The National Planning Practice Guidance advises that financial contributions cannot be secured by condition (Appendix 8, PPG, Using Planning Conditions, paragraph 5).

5.10.7 CIL Compliance: The contribution is considered to be CIL compliant is necessary in planning terms as identified in the development plan to mitigate against the increased pressure on open spaces as a direct result of the extra demand created by the occupation of the development. The contribution has been calculated taking into account the particular characteristics of the development, it is directly related to the development and is fairly and reasonably related in scale and kind to the development. This supports key principle 8 of the National Planning Policy Framework: Promoting healthy communities

#### 5.11 Reason 13 – Educational facilities

5.11.1 *The proposed development, in the absence of a legal agreement securing an Educational Facilities contribution, would be likely to contribute unacceptably to pressure on the Borough's social infrastructure, contrary to policies CS10 (Supporting community facilities and services) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Core Strategy and DP15 (Community and leisure uses) of the London Borough of Camden LDF Development Policies.*

5.11.2 Paragraph 72 of the NPPF states that LPAs should ensure that a sufficient choice of school places is available to meet the needs of existing and new communities. The London Plan states LPAs should ensure the adequate social infrastructure provision is made to support new developments.

5.11.3 Policy CS19, and Camden Planning Guidance 8 (Planning Obligations) sets out at paragraph 4.5 that “All residential development (Class “C3” of the Town and Country Planning Use Classes) including new build, change of use and conversion where the scheme results in a net increase of five or more dwelling units will normally be expected to provide a contribution towards education provision”.

- 5.11.4 The occupiers of the new residential units are likely to place an increased burden on educational facilities in the area and a contribution to education infrastructure is necessary to mitigate against the extra demand and increased pressure on local schools created by the occupation of the development.
- 5.11.5 The proposed scheme, comprising 13 x 2-bed dwellings and 5 x 3-bed dwellings would attract a requirement for £60,379 [13 (2-beds) x £2213 = £28,769 + 5 (3-beds) x £6322 = £ 31,610 = £ 60,379] as a contribution towards provision of education facilities in the borough, for which there is a pressing need in the locality.
- 5.11.6 Such a contribution, calculated in accordance with the formula in figure 1 of the Camden Planning Guidance would be necessary in this case due to the scale and mix of housing proposed. Such a contribution has to be secured by S106 obligation. The Planning Practice Guidance advises that financial contributions cannot be secured by condition (Appendix 8, PPG, Using Planning Conditions, paragraph 5).
- 5.11.7 CIL compliance: It is considered that the education contribution meets the requirements of the CIL Regulations. It is necessary to make the development acceptable in planning terms as identified by the Development Plan to mitigate against the extra demand and increased pressure on local schools created by the occupation of the development. The contribution has been calculated with reference to Guidance but taking into account the specific characteristics of the development as outlined above and accordingly the contribution is considered to relate fairly and reasonably in scale and kind to the development. This supports key principle 8 of the National Planning Policy Framework: Promoting healthy communities.

5.12 Reason 14 – Community facilities.

- 5.12.1 *The proposed development, in the absence of a legal agreement securing a Community Facilities contribution, would be likely to contribute unacceptably to pressure on the Borough's social infrastructure, contrary to policies CS10 (Supporting community facilities and services) and CS19 (Delivering and*

*monitoring the Core Strategy) of the London Borough of Camden Core Strategy.*

5.12.2 Paragraph 70 of the NPPF states that LPA should development community facilities the serve the needs of the community. London Plan states LPAs should ensure the adequate social infrastructure provision is made to support new developments. Policy DP15 of the LDF states that schemes which create additional demand for community facilities should make an appropriate contribution towards community (including healthcare) infrastructure either on site or in the immediate area.

5.12.3 A development of this nature, providing 21 new units, is considered to place a substantial demand on existing facilities in the area. Based on local guidance contained within CPG8- Planning Obligations the Council would seek £980 per bedroom and £53,120 for the whole development. In the absence of a legal agreement for such a contribution the proposal fails to comply with the NPPF and local policy. This is considered the most effective way of both securing sufficient payment. The Planning Practice Guidance advises that financial contributions cannot be secured by condition (Appendix 8, PPG, Using Planning Conditions, paragraph 5).

5.12.4 CIL compliance - The contribution is considered to be CIL compliant is necessary in planning terms as identified in the development plan to mitigate against the increased pressure on community facilities as a direct result of the extra demand created by the occupation of the development. The contribution has been calculated taking into account the particular characteristics of the development, it is directly related to the development and is fairly and reasonably related in scale and kind to the development. This supports key principle 8 of the National Planning Policy Framework: Promoting healthy communities.

### 5.13 **Reasons for refusal which have been overcome.**

5.13.1 The appellant has submitted additional information and amendments to the scheme during the course of the appeal to overcome reasons for refusal 3

and 5. The Council's considers that that amended submitted to addresses there reasons are acceptable and overcome these reasons for refusal.

5.13.2 *Reasons 3 –The proposed residential units at basement level, by reason of their poor outlook would result in sub-standard accommodation that would fail to provide an acceptable level of residential amenity to their occupants, contrary to policies 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.*

5.13.3 The appellant has submitted revised layout plans during the course of the appeal. The plans on which permission was refused included 3 residential units located at lower ground floor level only. Whilst these units would receive acceptable levels of daylight their outlook would be very poor, a lightwell wall at a distance of 1.4 metres away. Outlook from all windows serving the units would be the same, as such, the units would have no windows with an acceptable outlook. This would likely to result in severe harm the amenity of future occupiers.

5.13.4 The revised plans submitted with the appeal address the above issue by converting flats 1, 2 3, 4, 5 and 7 into duplex units at lower ground and ground floor level. The total number of units would remain the same. The rooms at lower ground floor level would still have poor outlook, however as these units will also have rooms at ground floor level with good outlook (largely the main living areas), this would be considered acceptable. If the Inspector were to accept these amended plans the Council would withdraw this reason for refusal.

5.13.5 The amendments proposed are not of a scale that they would require further public consultation. While they do address the reason for refusal they remain relatively minor changes to the internal layout and would not impact on the envelope of the building.

5.13.6 Reason 5 - *The proposed development, by reason of the layout of the residential units, fails to meet the requirement to provide any easily adaptable wheelchair accessible units and therefore is contrary to policies CS6 (Providing quality homes) and CS19 (Delivering and monitoring the Core Strategy) of the Local Development Framework Core Strategy and policy DP6 (Lifetime homes and wheelchair housing) of the Local Development Framework Development Policies.*

5.13.7 The appellant has submitted revised layout plans during the course of the appeal. The plans on which permission was refused did not demonstrate that 10% of the units, in this case 2 units, would be easily adaptable to meet wheelchair accessible standards as required by Policy DP6. No units were shown as wheelchair accessible.

5.13.8 The revised layout submitted during the course of the appeal demonstrates that flats 11 and 13 at first floor level have been amended to be easily adaptable to meet wheelchair standards. The proposed layouts are considered acceptable. Therefore, if the Inspector were to accept these amended plans the Council would withdraw this reason for refusal.

5.13.9 The amendments proposed are not of a scale that they would require further public consultation. While they do address the reason for refusal they remain relatively minor changes to the internal layout and would not impact on the envelope of the building.

## 6. CONCLUSION AND SUMMARY

- 6.1 The appeal is against London Borough of Camden's refusal of an application for planning permission dated 26 February 2013.
- 6.2 *'Erection of a part 3, 4 and 5 storey building as well as basement level comprising 21 residential units (3x 1 bed, 13x 2 bed and 5x 3 bed), basement swimming pool area as well as associated landscaping and formation of refuse recycling storage area adjacent to Heath Drive and conversion of existing garage to bike storage following demolition of existing dwelling house.'*
- 6.3 The application was refused on 14 grounds. This submission sets out the Council's Case in respect of reasons for refusal 4, 6, and 7-14. Reasons 1 and 2 are addressed in the Proof of Evidence of my colleague Ms. Hannah Walker. Reasons for refusal 3 and 5 have been satisfactorily addressed by the amended plans submitted during the course of the appeal.
- 6.4 **Reason 4 - Basement Impact Assessment (BIA)** - The proposed submission fails to demonstrate compliance with Policy DP27 which requires basement development to: maintain the structural stability of the building and any neighbouring properties; avoid adverse impact on drainage and run-off or causing other damage to the water environment; and avoid cumulative impacts on structural stability or the water environment.
- 6.5 The BIA has been independently verified by LBH Wembley who recommend that in order to make a full assessment as to whether the proposal complies with policy the following additional information is required: a site investigation designed to address all the issues of potential concern; a quantitative Ground Movement Analysis; an assessment by appropriately qualified persons of all potential impacts, including any potential cumulative impacts; a reasoned Construction Methodology and details of any mitigation required; and a monitoring and contingency plan.
- 6.6 It is considered that if the above additional works were to be undertaken and the BIA updated accordingly the above reason for refusal could potentially be



overcome. This would be subject to the finding of the investigations and the details structural design of the basement.

6.7 **Reason 6 - Affordable housing** - Policy DP3 expects all developments with a capacity to provide 10 units or more to make a contribution towards affordable housing. The appeal proposal has capacity to provide 25 homes. As such, in accordance with Policy DP3 and CPG2 25% of the units on site should be affordable. It is considered that there is sufficient evidence to advocate that it is not possible to provide on-site affordable housing on the current scheme. This is owing to the layout, high service charge and viability, amongst other matters which are explained more thoroughly in Section 5 of this submission. As such, the Council seeks to secure a payment in lieu of £300,000 and a deferred affordable housing contribution of £1,416,538 based on reappraisal of viability at or around completion should the inspector be minded to allow the appeal. This should be secure through a S106 legal agreement.

6.8 **Reasons 7-14 S106 obligation** - Reasons for refusal 7-14 could be addressed by an appropriate section 106 planning obligation. The Council is working with the appellant to prepare a legal agreement which addresses RfR nos. 7-14 in respect of the planning appeal. However, in the event that some/all matters cannot be agreed in this way then the Council has provided evidence to demonstrate that the requirements are justified against relevant planning policy and meet the tests laid out in the Community Infrastructure Levy (CIL) Regulations 2010 in particular Regulation 122(2) which require that for a planning obligation to constitute a reason for granting planning permission it must be (a) necessary to make the development acceptable in planning terms, (b) directly related to the development, and (c) fairly and reasonably related in scale and kind to the development, and the National Planning Policy Framework (particularly paragraphs 203-206).

6.9 **Planning Balance** - The merits of the application are recognised and include that the development would create additional homes which is a priority of the LDF. However, the public benefit would not out weight the harm caused to the character and appearance of the the Conservation Area; the potential harm to the structural stability of the neighbouring properties and impact upon the

local water environment and drainage; or the harm caused by not proving an appropriate contribution towards affordable housing.

6.10 Considering the above, it is requested that the Inspector dismisses this appeal.

**LIST OF APPENDICES** (attached as a separate document)

<b>Appendix 1</b>	Officers report and decision notice for the prior approval application
<b>Appendix 2</b>	Site location plan
<b>Appendix 3</b>	Brief for Basement Impact Assessment verification
<b>Appendix 4</b>	Camden Geological, Hydrogeological and Hydrological Study by ARUP
<b>Appendix 5</b>	Independent verification of Basement Impact Assessment by LBH Wembley
<b>Appendix 6</b>	PPG, Use of Planning Conditions paragraph 9
<b>Appendix 7</b>	Highways estimate
<b>Appendix 8</b>	PPG, Use of Planning Conditions, paragraph 5
<b>Appendix 9</b>	Camden Transport Strategy, 2011