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Date	21 December 2015
Our ref	0621/AG-J
Your ref	APP/X5210/W/3133389 & APP/X5210/Y/3133369

Dear Ms Martin

18 Grove Terrace, London, NW5 1PH

I refer to your letter of the 7 December 2015 enclosing copies of the LPA Statement and comments from third parties. Your letter invited comments on the points raised to be submitted by the 21 December 2015. This letter contains the Appellant's comments and applies to both the planning and listed building appeals.

I note that three third parties have requested to attend the site visit. Whilst the Appellant has no objection to their attendance at the site visit, they are not in agreement to allowing the residents association representative to enter the appeal property.

In general terms the comments of third parties cover a wide range of matters that are considered to fall outside the remit of the appeal process – namely party wall matters; compliance with the building regulations; ecological matters (not a matter on which the appeal proposal have been rejected) and the introduction of additional material in the appeal. On the latter point this information forms part of the Appellant's grounds of appeal and is a legitimate attempt to address the Council's reasons for refusal.

The remaining comments of third parties major on the impact on the listed building and since these have been dealt with in the appeal submissions and are set out in the LPA Statement they are not specifically responded to in this final comments submission. Instead comments are focussed on the LPA Statement and are cross referenced by page and paragraph number where possible.

Paragraph 1.3 – in the Appellants Appeal Statement an assessment of the character and appearance of the conservation area was provided based on the Council's own Conservation Area Assessment. The open character of the rear gardens was not a key feature identified by the Council. This statement therefore

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contradicts their own considered assessment. In the appeal decision for No 19 the Inspector also did not identify the open character of the rear gardens as a key feature.

19 Grove Terrace Appeal Decision – the Council has not substantiated why they consider that the implemented basement extension for No 19 has resulted in a significant level of harm. They have provided no evidence to justify this claim or indicate why they consider that the No 19 Appeal Inspector made the wrong decision.

Section 4.0 – it has already been highlighted in the Appellant's grounds of appeal that the proposals do not conflict with the National Planning Policy Framework or the London Plan, since the neither decision notice identifies any conflict.

Paragraph 4.3 – the Council invite the Inspector to give substantial weight to the LDF Policies and supporting text. There is no justification provided as to why their policies should be afforded any different weight to that necessary to meet the statutory test.

Paragraph 5.1 – the Council suggest that they did in fact produce a delegated report to support and justify their decisions. However, this was no benefit to the Appellant who could only respond to the decision notices. It remains unclear when this was produced and how it is linked to the decision notices.

Paragraph 5.3 – the matters of common ground are only relevant to the appeal and therefore it ordinarily would not be something that the Council would be party to and see any earlier that the submission of the appeals. The Council claim that some of the matters of common ground are not accepted. However they do not explain why and which ones.

Paragraph 6.4 – the claim of significance was not a matter accepted by the No 19 Appeal Inspector or included within the Council's own CACA.

Paragraph 6.7 – this is a generic reference rather than something that is specific to the appeal property.

Paragraphs 6.10 & 6.11 – the Council are incorrect. The legal test for determining applications affecting listed buildings or conservation areas has not changed. They refer to recent court judgements which have provided interpretation on the application of the statutory legal test. This may be the case but the legal test remains the same. The courts have not changed the legal test merely provided interpretation on how it should be applied. In the recent case of Howell v Secretary of State for Communities and Local Government. Case Number: C1/2014/4276, a planning inspector's decision was upheld and this confirms the principle that court of appeal decisions are not without the prospect of challenge rather than defining a position that becomes prescriptive in legal terms.

On this issue the extent to which substantial harm can be considered to be a 'high test' has been confirmed within a number of recent legal decisions, most notably Bedford Borough Council v Secretary of State for Communities and Local Government and NUON UK Ltd [2012] ('Nuon'), and the decision by the Secretary of State for Communities and Local Government relating to the site known as Land at Chapel Lane, Wymondham, Norfolk ('Wymondham').

In the Nuon case, focusing on setting issues, the Inspector originally identified that:

There is no specific guidance as to the level at which harm might become substantial but on a fair reading, it is clear that the author(s) must have regarded substantial harm as something approaching demolition or destruction. ('Nuon' Judgement, para. 22).

While it was queried whether this was setting too high a bar for substantial harm, Mr Justice Jay identified that the above statement, given that the harm under consideration was indirect, and based on setting, rather than physical intervention, the above quotation was clearly intended to be appended by the words

'to significance'. Mr Justice Jay therefore concluded that: *What the inspector was saying was that for harm to be substantial, the impact on significance was required to be serious such that very much, if not all, of the significance was drained away.*

Plainly in the context of physical harm, this would apply in the case of demolition or destruction, being a case of total loss. It would also apply to a case of serious damage to the structure of the building. In the context of non-physical or indirect harm, the yardstick was effectively the same. One was looking for an impact which would have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced. ('Nuon' Judgement, para. 24-25)

As such, the Nuon judgement provides context for the PPG's identification that substantial harm will occur where an 'adverse impact seriously affects a key element of its special architectural or historic interest'; such an adverse impact would have to impact upon a 'key element' of the building's significance, such that the significance of the asset as a whole was 'either vitiated altogether or very much reduced'.

Additionally, the Wymondham judgement has provided further clarification of the meaning of substantial harm, and the 'draining away' of significance. In this case, again focused on an impact upon the setting of a heritage asset (in this case, the Grade I listed Wymondham Abbey), it was identified by the Inspector that it was 'untenable to say the scheme would cause substantial harm to the significance of the Abbey', and this was then upheld by the Secretary of Statement for Communities and Local Government. It was concluded that:

The scheme would not call into question the Grade 1 status of the building, and when in the immediate environs of the Abbey its special architectural and historic interest would be unaffected. I therefore do not share the Council's view that substantial harm would be caused to the setting of this listed building. Rather, the harm caused by the development in this regard would be less than substantial.

As such, it is quite clear that substantial harm is only relevant where harm will be caused to a 'key element' of the building's significance, such that its significance is 'drained away' to such an extent that its statutory designation should either be reduced or removed. It can logically concluded that while, in the case of the Grade I Wymondham Abbey, it might be considered appropriate to degrade the building's listing to Grade II*, and to similarly treat other assets; in the case of a Grade II listed building or Conservation Area, 'substantial harm' can be identified as harm sufficient to challenge its statutory designation.

It is clear therefore that there are other court of appeal decisions that provide interpretation on how the statutory and policy tests should be applied, not just those that the Council refer to. However the principle remains that the legal test is the same now as it was when the No 19 appeal was determined.

Paragraphs 6.12 – 6.19 – the fact that the NPPF was not specifically referred to in the Appellant's Grounds of Appeal was simply the fact that the Council did not claim that it was offended in their rejection of the appeal proposals. They question the integrity of the Heritage Assessment and DAS. However the Council validated and registered the applications on the basis of the submitted material. They not challenge their findings during the application processes or request further information from the Appellant or Agent.

Paragraphs 6.23 – it is instructive that the Council chose to not reject the appeal proposals on the basis that they did not comply with the Camden CPG1. They have therefore accepted that there is no conflict with its provisions.

Paragraphs 6.24 – there is no conflict with the provisions of the London Plan and the Council have accepted this in formulating their reasons for refusal.

Paragraph 6.31 – this statement by the Council fails to recognise that the extensions is designed by an architect who has extensive experience of working in listed buildings – their dismissal of these credentials is

derogatory and unjustified. The entire section dealing with the impact on the listed building and reasons for refusal under listed building should be set aside as the proposed work to the main building has already been approved under a separate application.

Basement Issues, paragraphs 6.47 – 6.63. The structural stability of the listed building is a civil matter that is normally and can be dealt with under Party Wall Act. Surface water treatment and impact on the ground is dealt with under BIA report and soil investigation to show that the introduction of basement is not detrimental to ground water.

Paragraph 6.47 – Independent verification of BIA was carried out by independent chartered engineers. The Council's preferred consultant engineers are no better qualified to provide an independent assessment than the engineers appointed by the Appellant.

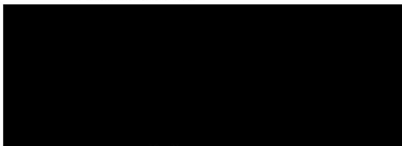
Paragraph 6.49 – A BIA is a self-explanatory assessment undertaken by a consultant engineer. It is not necessary for the Council to have any involvement in its commissioning.

Paragraphs 6.64-6.67 – it is a matter of fact that green roofs because of their structure are not conducive to being used as amenity areas and the Appellant is committed to providing one for biodiversity reasons rather than to provide a sitting out area. Preclusion by condition is therefore appropriate and self-regulating. Access via the French Doors is considered appropriate for maintenance purposes.

Paragraphs 6.68-6.72 – the Council claim that a CMP must be provided by legal agreement because conditions cannot be used to require works on land that is not controlled by the Applicant. However no such works are proposed or required. The matters that the Council refer to that are off-site – deliveries; noise; vibration – are not matters that require physical work on land that is not within the application site. Each of these matters involves other legislation which provides an effective enforcement tool. The Council are therefore incorrect in suggesting that the imposition of a condition requiring a CMP to be submitted would fail the tests of reasonability or enforceability. Enforceability is possible by the failure to adhere to an approved CMP; reasonableness is met by the requirement for a CMP in the first instance. The Council has failed to provide any adequate rationale as to why the CMP is not an appropriate matter for dealing with as a condition and it is not an uncommon practice – hence the model condition which has been used elsewhere and is suggested in this case.

I trust that these comments are clear. If there are any queries or additional information is required please let me know.

Yours sincerely



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