

20 New End Square, London NW3 1LN Tel [REDACTED]

Zenab Hadji-Ismael  
Development Management  
London Borough of Camden  
2nd Floor, 5 Pancras Square  
c/o Town Hall, Judd Street  
London WC1H 9JE

1 March 2016

Your ref 2016/0849/P

Dear Zenab

**Garages to the rear of 26, New End Square London NW3 1LS**

Thank you for your consultation letter following the submission of the application for this site and have now had the opportunity of looking at the drawings and documents.

In general we support this application. We have always expected this site to be developed and it will be good to have it tidied up as it looks awful at present.

**Good process but maximal design – permitted development rights must be curtailed** We also think that the design arrived at is a good one. This is a very difficult site, with many constraints and the process which the developers and their agents have followed, and the consideration and sensible approach which the Planning Department has followed has resulted in a good design. The quality of the design is without doubt a function of the good process which has been followed, and we do very much hope that this development is built in accordance with a planning permission granted on a satisfactory basis pursuant to this application. We do not think there is room for tweaks or alterations which would have the effect of altering the design.

For this reason we think that when planning permission is granted there should be no additional permitted development rights allowed.

There are several other points which either need to be dealt with or clarified.

**Daylight to window W2** First there is an effect on daylight to my wife's study - shown as window W2. This is regrettable and will be noticeable. It could be solved by a small setback or alteration to the eaves detail at the appropriate point.

**Size of windows** We think the size of windows generally is too large, and especially that looking westwards

**Construction Management Statement** This is a rather discouraging document from our point of view and shows little appreciation or local knowledge. It must be re-issued and consulted upon. Interestingly it does not identify us being sensitive receptors, but does identify the White Bear pub as one, notwithstanding it has been closed for some two years. A hot line contact to the contractors/project managers for us and very clear times as to deliveries will be most useful.

We would also like to explore the possibility that the hoarding will not extend to the western end of the site so that we do not have to live behind it for too long.

**Basement Impact Assessment** The Basement Impact Assessment is of concern to us. The Assessment says *The maximum expected damage on the adjoining properties is predicted to be Category 2 'slight' on the Burland scale as described in CIRIA C580*

Burland 2 is cited in Camden CPG4 Basements and Lightwells as follows

*2 Slight Cracks easily filled. Redecoration probably required. Several slight fractures showing - inside of building. Cracks are visible externally and some repointing may be required externally to ensure weathertightness. Doors and windows may stick slightly. Approx crack width in mm <5.0*

Just for reference 5mm is approximately the length of 'mm' (without the quotation marks), so these are not small cracks.

Our house is very fragile and has had considerable movement as the result of a highway collapse outside in 1974. When we purchased it we put in a tie to avoid potential problems. We are concerned about the proximity to our house of the three piles along the north boundary of the site and would ask that they be omitted and the structure cantilevered from the three piles further from our house – see below Fig 1

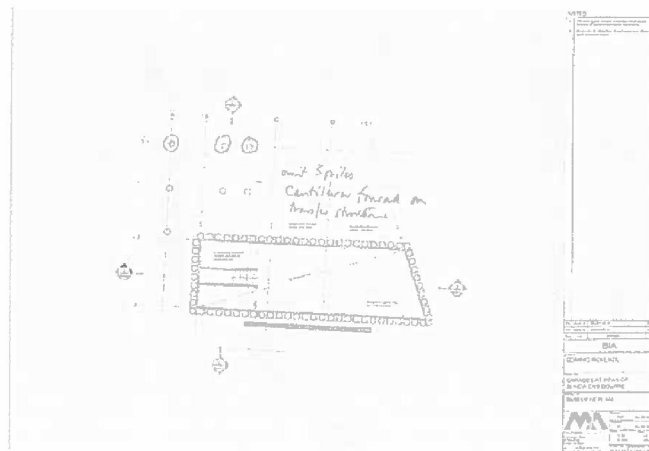


Fig 1 Extract from Basement Impact Assessment showing piles we would prefer to see removed. A3 copy attached.-

**Highways Matters**

As you will recall the older OS maps show the pre-war delineation of highways with the western part of the site within highway boundaries. Fig 2 shows an extract from the 1915 OS with the three buildings that preceded 26 New End Square facing north west. Notably no historic maps are shown in the Design and Access Statement, and the applicants are silent on the point although it has been put to them several times. Equally there is no Heritage Statement included with the application which properly assesses the effect of the proposal on listed buildings.



Fig 2 Extract from 1915 OS map showing alignment of buildings on the site facing north west and highway boundary

Since the site was rebuilt in the 1960s, the land in question has formed part of the forecourt of the garages but has been differently surfaced. Although it has not been maintained as highway, highway rights have never been formally extinguished. Certainly we and our neighbours regularly walked over it until it was hoarded.

This issue needs to be dealt with prior to construction being commenced by formal decision of the Council to close the highway under s247 Town and Country Planning Act 1990.

I have been in correspondence with the Council since December 2014 when the site was hoarded and sold but have received no satisfactory answer. If the Council feels that it has an argument that stands up to the effect that the land in question is not highway, I should like to know it. I should say that I will not object to the closure, provided that the balance of the site which is not built on is dealt with properly. I attach a copy of my letter to Andrew Maughan of 13 February 2016.

Fig 3 shows the pieces of land in question. I have attached an A3 version.

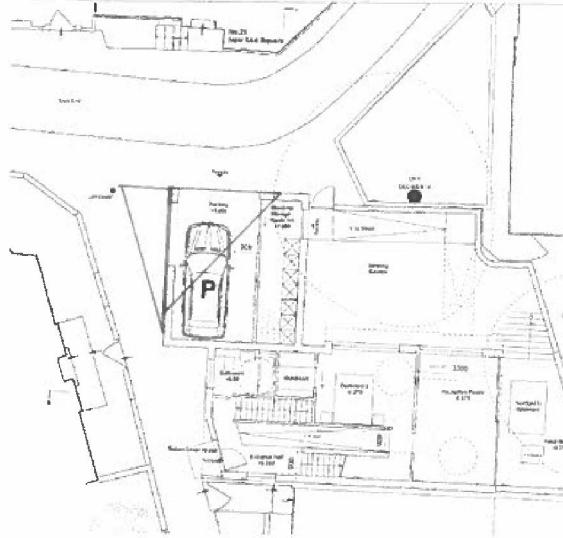


Fig 3 The land edged red and blue

is currently in the highway.

Fig 3 shows the land edged blue where highway must be closed for the development to proceed. The land edged red will be outside the house and little useable. But it relates closely to the two listed items in the area which are 20 New End Square – our house – and the Victorian lamp post shown on Fig 4 below. These, and the Hampstead Conservation Area itself are all heritage assets and the effect of the development on these assets needs to be assessed properly in a Heritage Impact Assessment. Paras 6.12-6.16 of NLP's Planning Statement fail to do this.



Fig 4 Extract from Camden's listed building map showing listed 20 New End Square and Victorian lamp post

In our view the proposed western alignment of the building avoids harm to the conservation area and the listed building and lamp post but it would be harmful for the land within the red edged triangle to be enclosed. It will be much better for the triangle edged red to be levelled and paved appropriately so that the lamp post stands free and pedestrians walking from New End Square to Flask Walk Cottages passage can do so in a reasonably direct fashion.

It will be recalled that in the recent *Barnwell Manor* case, the Court of Appeal emphasised that there is a strong presumption against granting planning permission which will harm the setting of a listed building. The case emphasised the duty of the decision taker and the local planning authority to give considerable importance and weight to the setting of listed buildings and it is quite clear that the same issues arise in respect of conservation areas (see *R(Forge Field Society) v Sevenoaks DC (2015)JPL 22*). It is not enough for this to be treated as just another material consideration, and if the local planning authority finds any harm it must be avoided

For this reason the permission should either be subject to closure of the blue edged land or it should require the dedication or rededication of the red edged land to the highway. These will require a highway agreement under s278 Highways Act 1980 as well as potentially a road closure under s 247 Town and Country Planning Act 1990. Either way the red edged land should be left open and paved appropriately at the developers expense to match the York stone of the passage. In this way the conservation area will be both preserved and enhanced.

Just to summarise

- No permitted development sights
- Improved daylight to window W2
- Size of windows
- Construction management statement must be resubmitted and consulted upon
- Remove piles close to 20 New End Square from design and cantilever structure in this area
- Either require closure of highway in blue edged area or if there is a acceptable evidence as to why there are no highway rights require dedication of red edged area to highway

We would like to know where we get to with these points and I will telephone you towards the end of the month to discuss them

Yours sincerely

**Ian and Madeleine Trehearne**

**NOTES**

1. This drawing shall be used in conjunction with all relevant contracts & program drawings and specifications.
2. Do not make any alterations. If changes are required, please refer to the relevant drawings.


REV	DATE	DESCRIPTION	BY
P2	12.12.15	ISSUE FOR BIA	MZ
P1	12.12.15	ISSUE FOR BIA	MZ

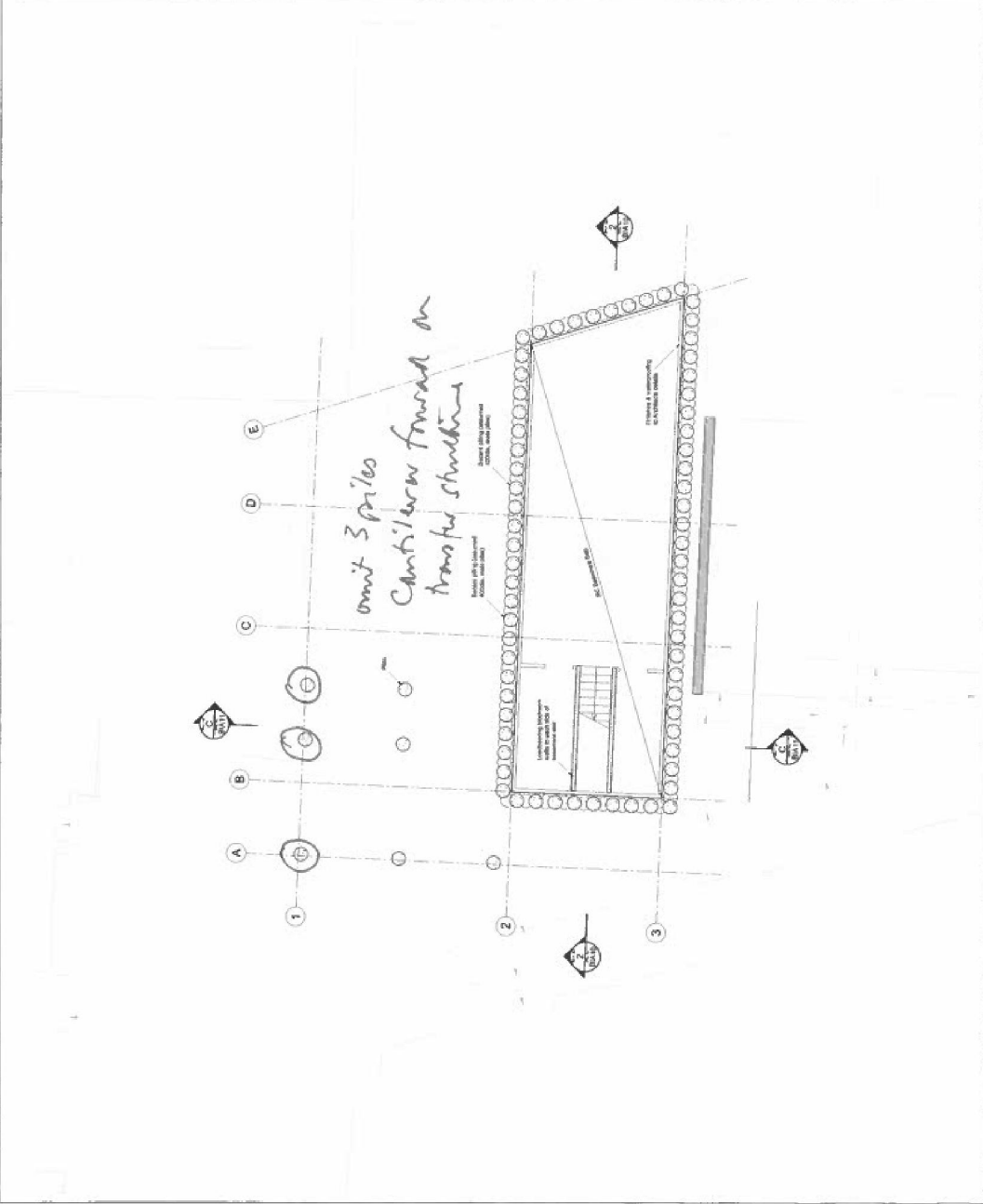
**BIA**

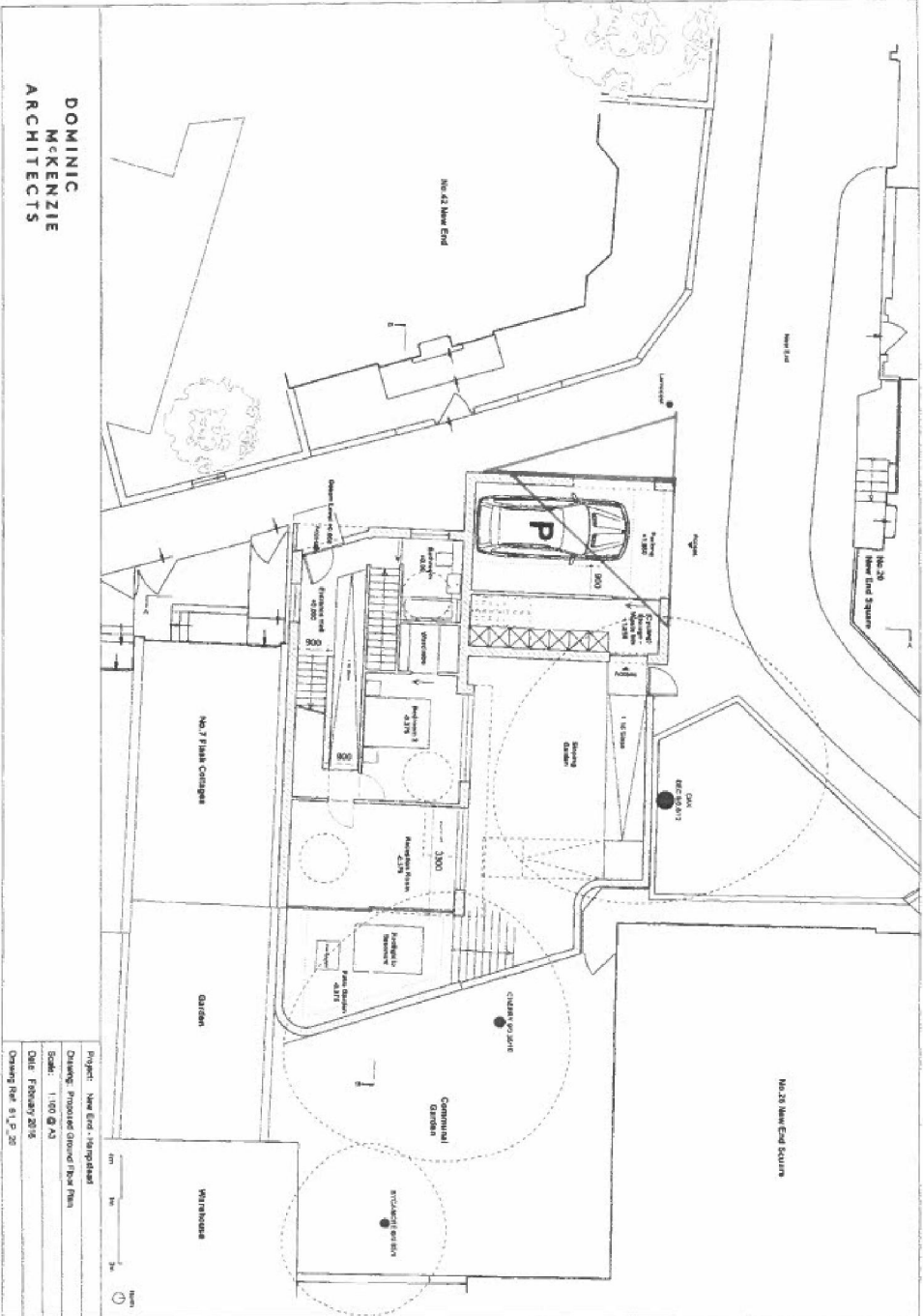
ARCHITECT  
**DOMINIC MCKENZIE**

PROJECT  
**GARAGES AT REAR OF 28 NEW END SQUARE**

DESCRIPTION  
**BASEMENT PLAN**

	DATE	REV	BY
	19/01/2016	1	MZ
PROJECT NO. 1501 ARCHITECT 1501 CONTRACTOR 1501 CLIENT 1501			
DRAWING NO. P3133 BIA01 P2			





**DOMINIC  
McKENZIE  
ARCHITECTS**

Project:	New End - Hampstead
Client:	Private Owner Trust Fund
Scale:	1:100 @ A3
Date:	February 2016
Drawing No.:	SLP_25



**20 New End Square, London NW3 1LN** 

Andrew Maughan  
Borough Solicitor  
London Borough of Camden  
Camden Town Hall,  
Judd Street,  
London WC1H 9JE

13 February 2016

Dear Mr Maughan

**Flask Walk Garages Cottages NW3**

My wife and I live opposite this site which Camden sold in December 2014.

Over the intervening period I have on many occasions made the point to the Council that Camden has unlawfully closed the highway by hoarding, and that when the developers who have purchased the site have obtained planning permission, the Council will have to make a resolution to enable the site to be stopped up under s247 Town and Country Planning Act 1990. To do this the highway will have to be unblocked, so the hoarding will have to be taken down for the period of the consideration of the closure order.

I had thought from talking to the planners that the point had been accepted by the developers, but I understand from a recent conversation that this is not the case and that it has been referred to you.

I thought it would help for you to have the materials which I sent to Camden in the first place. This doesn't include everything but it does include enough (Document 1). You will note that neither Mr Loureda, nor Mr Della from the Highways Department ever replied.

I have attached these together with (at Document 2) three draft statutory declarations to be sworn by my me, my wife, and Louise Marie Howard who lives at 4 Flask Walk Cottages. We have all lived here since respectively 1985 and 1986 and are thus in a position to say from personal knowledge how the land in question has been used. They will be delivered in signed form in early March when we return from abroad.

The plans show the area in question hatched blue

Camden originally considered marketing the site in 2012 or earlier, and I attach as Document 3 the letter dated 29 October 2012 sent to us then. This shows the extent of the Camden ownership as it was until re-registered on 11 January 2013.

Document 4 is an exchange of emails with Rob Cotton your Senior Technical and Records Officer which makes the point on 27 July 2013 that *'...the registration didn't encroach on the highway..'*

I think it is clear that the land in question was not maintained by the highway authority.

So it is the case is that the land in question was undoubtedly part of the highway until the site of Flask Walk Cottages was developed in the mid 1960s. At that time the land in question was not formally

stopped up, and was left out of the title for this reason until it was included in the title for sale in January 2013. We were consulted in 2012 on the basis of the ownership as it was then, but not subsequently. All this time the land was open and available to pass and re-pass over and it was only when it was hoarded on December 2014 that this became impossible.

Even if the highway in question had been properly closed in the 1960s, rights over it would have arisen by prescription subsequently. There were and are changes in paving materials, but there are no signs that suggest that rights to pass and re-pass over the land were limited. The Council did not close the land from time to time to deny passage and re-passage.

It is impossible to conclude that that the land in question is other than highway which the Council has unlawfully blocked with the hoarding. It can be closed by a s247 order when planning permission has been granted and to enable that permission to be implemented. But of course it must not be blocked at that time.

We are not against the development of the site, but this is a very sensitive and tightly developed location, and the precise alignment of buildings and use of the resultant space around buildings is very important. It will not make sense for small triangular pieces of land not built on to be out of the highway.

I spoke last week with your colleague Paidá Dube and asked to speak to the person dealing with this, but have heard nothing. I would like to know who is dealing with this matter and to speak to them.

Camden has a good reputation for doing the right thing. It would not be the right thing for an expedient highways solution in the 1960s to be left as a problem. As you know there is no means of closing a highway after it has been built over, so the existence of the problem will remain as a blot on the title of the house and it is not something that should just be glossed over now. The only way for it to be dealt with is for it to be properly acknowledged – as the planners appear to have done – and dealt with by a s247 order with a properly made resolution at the time permission is granted.

I would appreciate a reply from you, either by telephone (it is best to call my mobile number [REDACTED] or email to [REDACTED] to respond to the matter raised in this letter.

I look forward to hearing from you.

Yours sincerely

**Ian Trehearne**