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URGENT

Dear Sirs,

**The Potential Claimant: Jeffrey Gold and Michael Taylor on behalf of the Hampstead Green Neighbourhood Group and St Stephen's Restoration & Preservation Trust
Planning Application No. 2014/6845/P. Proposed new Institute of Immunology, Pears Building, Royal Free Hospital Charity, Pond Street, London**

We write further to our emailed letter dated 4th April 2016 and your email reply dated 4th April 2015 (15:35).

Our clients have now received further advice from their Counsel, John Pugh-Smith of 39 Essex Chambers, London, in the light of which we write in advance of this evening's Committee Meeting, and yet again in the hope that common sense will prevail.

Contrary to the choice of phraseology used by Officers, and, the message conveyed to Members in the latest Report your Council has not worked proactively to resolve the very serious structural issues affecting the heritage resource (the Grade I listed St Stephens Church) raised by this Application. They remain outstanding. Again, the recommended approach of leaving "the details" to be outworked through planning conditions and a revised draft section 106 agreement remains legally flawed; for the Applicant's professional team has still not sufficiently demonstrated that their construction scheme will maintain the structural stability of neighbouring heritage properties. Furthermore, the Council is not yet in a position to know technically whether the heritage risks are capable of being sufficiently mitigated to allow the principle of development to be granted.

To date, "exceptionally", (see below), given the professional standing of the design team, Council officers have taken the view that the BIA and CMS deficiencies could be corrected by condition and section 106 obligations in this case. However, that benevolent approach demonstrably failed when our Clients, at considerable cost, commissioned and published their technical evidence from acknowledged "reputable professionals".

It also remains clear that the Applicants' professional advisers have still left serious gaps in their coverage either because of the way their work was commissioned or because of their failure to encompass the larger picture. This is apparent from a fair reading from the LBH Wembley March 2016 Report.

However, this important document is not an attachment to the latest Officers Report. Rather, Members are reliant upon the selected references made in the section entitled "Current LBH Review". Accordingly, there are a number of the telling comments made by LBH which will otherwise remain unknown or cannot be appreciated in context by Members unless a copy of the LBH report is circulated.

For now, we draw the attention of Members to the following passages which provide a more cautious approach that needs to be taken than that suggested by Officers.

Contextually and historically, at Section 4 (**'Deficiencies reported by the Independent BIA Review of February 2015'**) LBH comment, in relation to their independent BIA Review:

[It] ... concluded that the BIA was not complete despite revisions being made in February 2015. The Planning Officer's report to committee stated that the report was incomplete as a result of the designs not having been progressed sufficiently at that stage. However, given the professional standing of the design team, it was suggested exceptionally that this could potentially be corrected by condition in this case"

At para. 6.2 (**'Withholding of planning permission'**):

" ... there are nevertheless clearly a number of areas that have been identified where further investigation and assessment are going to be required and these activities could undoubtedly be progressed in advance of planning permission" .

At Section 7 (**'Conclusions'**):

" ... the new evidence heightens the uncertainty and it is noted that Council policy does not require an objector to prove that the application will harm the church and neighbouring buildings, but rather requires the applicant to demonstrate by methodologies appropriate to the site that schemes will maintain the structural stability of neighbouring properties. The latter has not yet been done and the submitted design proposals do not demonstrate adequate safeguards".

Accordingly, LBH Wembley concludes that the BIA needs further revision. However, it is the way in which that conclusion is then phrased that is not properly conveyed by Officers at para. 21. What LBH Wembley actually states (but only as an engineering consultancy) is:

"Further studies and a revised BIA will need to be produced for Council's approval prior to any works commencing and, although it could be secured by condition or a S106 legal agreement, given the new evidence and the weight of expert opinion expressed by the objectors, it is increasingly evident that significant further investigation and geotechnical assessment will need to be undertaken before a contractor can proceed to the detailed design of mitigation measures. It is therefore strongly recommended that those parts of the BIA that can be progressed at this stage (as identified in Section 6.2) should be progressed as soon as possible"

Such an approach may be pragmatic. However, legally, in the context of whether or not planning permission should be granted or withheld, it is wrong; for there is still no technically sound evidence that these (same) arrangements will work under the proposed section 106 agreement. Indeed, in view of the seriousness of the shortcomings, and, the time still required to resolve them (especially those involving groundwater) they must be dealt with before approval is given. We also note that the draft section 106 Agreement still relies upon an outdated Memorandum from Historic England (9th September 2015), and, that further advice from this statutory consultee has not been sought or received by the Council on the matters reviewed by LBH Wembley.

Accordingly, it is misleading and wrong for Officers to state, at para. 30 of the Report, that *"the objectors do not raise new material considerations that the DCC were not aware of before, that they do not tip the balance of assessing such considerations so that the matter needs reporting back to DCC for an entirely new determination; and that they cannot be satisfactorily addressed by revised S106 clauses"*. That is factually inaccurate. It is also not the correct approach, given that the previous resolution to grant was acknowledged to have been legally flawed (see Report @ para. 3). Furthermore, it is misleading to continue to rely upon an historic counsel's opinion in mid 2015 the light of the different material circumstances and considerations that now apply in April 2016.

It would also be an irrelevant material consideration if the Members were now to place weight on the Applicants' comments (at para. 22 of the Report) concerning expectations and financial penalties, and, to accept Officer advice (para. 30) regarding *"the need to reduce the risk of any further delays with financial penalties for an important publicly funded institution"*. Rather, the Applicants are the authors of their own current difficulties; and we would re-iterate that Council development planning policy (as well as National policy and guidance) places the burden upon an applicant to demonstrate *"by methodologies appropriate to the site that schemes will maintain the structural stability of neighbouring properties"*. As the latter has not yet been done and the submitted design proposals still do not demonstrate adequate safeguards it would be perverse of the Council to grant planning permission at this stage with such uncertainties remaining about its impacts, especially upon the heritage resource.

Accordingly, as matters stand at present, if Members accept the Officers recommendation the Council, as local planning authority, will not have adequately safeguarded the affected heritage assets so will not have met the legal duty imposed by the Planning (Listed Buildings and Conservation Areas) Act 1990. It will also have materially misdirected itself.

Therefore, as a matter of sound planning judgment, and, common sense it follows that Officer recommendation should now be (and our recommendation) that the Committee should either refuse permission, or, defer determination again, or, request the Applicants to withdraw the application and to resubmit it when it is technically "fit for purpose".

In contrast, accepting the Officers current recommendation, and, resolving to grant planning permission will then lead, upon the publication of the decision notice, to our Clients being forced to pursue judicial review proceedings at further considerable cost to themselves, albeit with Aarhus protection, and to the Council, and, delay to this project for considerably longer than a mere six weeks.

Yours faithfully



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