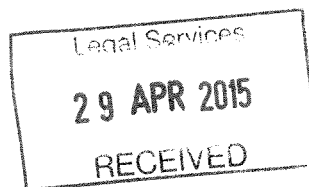


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Your Ref:  
Date: 24 April 2015



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Dear Sirs

**Pre Action Protocol Letter of Claim, in contemplation of Judicial Review.  
The Potential Claimant: Jeffrey Gold on behalf of the Hampstead Green Neighbourhood Group  
Planning Application No. 2014/6845/P. Proposed new Institute of Immunology, Pears Building,  
Royal Free Hospital Charity, Pond Street, London**

### Introduction

We act for Mr Gold acting both by himself as a local resident, and, in his capacity as representative of the Hampstead Green Neighbourhood Group ("HGNG"). HGNG is a group representing local residents, set up in October 2014 to protect, promote and improve the local environment and the interests of people living and working in the area. We write in respect of the Council's resolution (Development Control Committee of 19<sup>th</sup> February 2015) to grant planning consent for the Proposed new Institute of Immunology for the Royal Free Hospital. HGNG submitted detailed representations that were summarised in the Officer's report to committee. This letter draws on and adds to the issues raised in consultation, which were not, in our client's submission, adequately considered or considered at all. We recognise that the Decision Notice is not yet issued, pending the conclusion of S.106 Agreement negotiations; but we consider that it would be in the spirit of the Judicial Review Pre-Action Protocol of the Civil Procedure Rules to address our client's significant concerns as to the soundness of the proposed grant of permission now, which may serve to avoid the need for judicial review proceedings. You have, of course, the opportunity to remit the matter back to the Development Control Committee, which, for the reasons set out below, we strongly invite you to do.

### The details of the matters currently to be challenged:

1. The proposed planning permission was recommended for grant of planning permission for a new 7 storey building and ancillary development for the Royal Free Hospital. Our client currently intends to challenge the proposed grant of permission because of the failure of the Planning Committee to apply the correct tests and their failure to consider the matter fairly and with an open mind. In particular, it appears that the Development Control Committee, based on a flawed summary of the legal requirements in the Officer's Report, failed to apply the correct legal test that should have been applied to the impact of these proposals on heritage assets, in particular, the Grade I Listed Building, St Stephen's Church. In short, the Committee has not given sufficient consideration and the weight that it was legally required to give to the importance of the preservation of heritage assets.

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2. **Legal Duties:** Because of the acknowledged adverse impact of the proposals on the setting of St Stephen's, a Grade I listed Building (and potentially its fabric) s.66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 is engaged. This requires special regard to the desirability of preserving the (listed) building or its setting or any features of special architectural or historic interest it possesses. Recent case law confirms that this statutory duty gives rise to a strong presumption in favour of preservation. The desirability of preserving the setting of a listed building is not a mere material consideration to which the LPA may attach such weight as it sees fit. Preservation must be specifically considered and given considerable weight, and that such consideration must be expressed (*Mordue v SSCLG and South Northants Council (2015) EWHC 539 (Admin)*). Furthermore, the strong presumption against planning permission being granted still has to be applied, even if it is in tension with a relevant development plan policy (*Barnwell Manor Wind Energy Ltd v SSCLG and East Northamptonshire DC [2014] EWCA Civ 137*, as applied in e.g. *R (Forge Field Society) v Sevenoaks DC [2014] EWHC 1895 (Admin)*). The upshot of these authorities is that a specific exercise must be undertaken to consider whether the public benefit from a proposal outweighs the strong presumption against planning permission being granted.
3. **The NPPF:** The policies within the NPPF are an important material consideration, but they do not override or remove specific reference to, and application of, the s.66 statutory duty. The Officer's Report (paras. 6.59 to 6.67) simply drew attention to the NPPF's application without any reference to the statutory duty, and, its application, and so provided a wholly inadequate framework for the Members to have made their own assessment. It also needed to be borne in mind that NPPF para. 132 reminds us that the more important the asset (and this is a Grade 1 building) the greater the weight that should be given to its conservation, and, that as heritage assets are irreplaceable, "*any harm or loss should require clear and convincing justification*". Para. 133 advises that where the proposed development will lead to substantial harm, local authorities should refuse consent unless it can be demonstrated that the substantial harm is necessary to achieve substantial public benefits that outweigh that harm or loss. Para. 134 advises that where a development proposal will lead to less than substantial harm to the significance of the asset this harm should be weighed against the public benefits of the proposal. Both paragraphs require a careful and reasoned exercise to be undertaken.
4. The Officers' Report (para. 6.59) found that harm would be caused to the setting of St Stephen's but that it would be less than substantial harm. At para. 6.60 it refers to the public benefit that would be derived and concludes that, on balance, "*the scheme's various benefits compensate for the 'less than substantial harm' caused to heritage assets here*". However, the Report not only failed to mention the relevant statutory test but also applied the wrong weighting to the necessary balancing exercise, namely, that the public benefit should outweigh rather than simply compensate. Whilst para. 7.2 concludes that it is outweighed by the public benefits of the new health facility as well as specific benefits offered by the applicant to the listed church, no proper analysis was undertaken of these benefits. The simple and belated assertion constitutes a thoroughly inadequate discharge of the s.66 (1) statutory duty. The Committee were not presented with the correct test to apply, and went on to apply the wrong test, thus rendering the resolution unsafe.
5. Having identified harm (and thereby that the proposal was contrary to the development plan - Core Strategy policy DP25), the Officers' Report should have considered whether the Proposals are the least harmful to the setting of St Stephen's. In so doing, further justification of each element of the Proposals ought to have been sought and not simply accepted at face value, including the absence of alternative solutions (paras. 6.15; 6.60). It is further to be noted that the requirement to consider alternatives also arises under Core Strategy policy CS16 in respect of the need for new health and medical facilities which is not limited to polyclinics. Again, insufficient advice was provided to the Committee on the outworking of these requirements, and so the decision making framework at the Committee was fundamentally flawed. The Scheme, as proposed, will cause great harm to the setting of

St. Stephen's and Hampstead Green. It was suggested for the Applicant that the new block mirrors the old Hampstead General Hospital. It does not. That had only four storeys: three normal plus one in a steeply gabled roof. It was much lower. Its ground floor was founded much lower down, not up on a podium. This proposal has a vastly more intrusive bulk. It will change the character of the setting of St. Stephen's for the worse, for ever. The Council ought to have given more weight to its own Heritage Policy and the representations from English Heritage, The Victorian Society and the Ancient Monuments Society.

6. These shortcomings are reflected in the acceptance by the Officers at face value of the benefits offered to St Stephen's without any assessment as to whether material and substantial weight can be placed upon them. Indeed, that error was all the more significant by not further consulting St Stephen's Trust about these claimed 'benefits' In fact, little weight can be attributed in view of the already well-publicised community use of its facilities, as was apparent from the Trust's pre-Committee representations.
7. **The Basement Impact Assessment (BIA):** This is another significant omission; for the contents of the Report do not identify whether the impact of the construction works has or has not taken into account the Officer's assessment of "substantial harm". In any event, as the Council's own assessment (via its independent assessors) of the BIA was that it was inadequate in its detail and certainty, it read: "The Report does not appear to meet the requirements; lacking in detail or not included or ambiguous or uncertain: Hydrology, land stability, construction method, ground movement, residual impacts, mitigation, effect on neighbouring structures, mapping of neighbouring foundations, nearby damage assessment. The assessment of ground movement does not appear to have addressed the possibility of slope stability issues during the excavation. A conclusive statement on ground stability and neighbouring structure is required." (para. 6.83). Contrary to development plan policies DP27 and CPG4, it would be premature to make an overall judgment; for there still remains a significant level of uncertainty as to whether structural damage will be caused to the fabric of St Stephen's and/or to its boundary wall (Grade II). Furthermore, reliance upon planning conditions and s.106 obligations cannot provide the level of certainty required, for this key element of the decision-making process. Accordingly, in the continuing absence of further material to remedy this important technical omission, Members were not able, properly, to make their own assessment as to whether the effects of the Proposals would have "less than substantial harm" on these heritage assets. At the DCC Meeting the Independent Assessor himself stated that the application could not guarantee the safety of St. Stephen's.
8. The Esi BIA is considered inaccurate. It states (para 2.2.2) that there are "no existing or lost rivers within 100m of site". This is untrue. St Stephen's is very close to the aquifer, where water seeping through the Bagshot Sands and Claygate Beds of upper Hampstead comes to the surface as it meets the London Clay. When it was built (1869-71) a stream was found running W-E from just below the Rosslyn Hill / Pond St. corner, down the hill, along the main axis of the building, into the Fleet river.
9. Environmental Impact Assessment - Screening Opinion: Para.5.1 of the Officers' Supplementary Agenda Report reported that "the applicant has informed the Council that in fact the scheme requires an EIA Screening Opinion on account of its size exceeding 0.5 ha (even though the increase in size to 0.59 ha is marginal and includes a lot of hardstanding around the building)."
10. Para. 5.2 goes on to explain " ... Although this assessment has been done in the Committee report, it is considered that the EIA Screening Opinion does need to be more formally and clearly identified, thus this has been done in the document attached in the Appendix 4 (which is also placed on the web). The Opinion concludes that the scheme is not 'EIA development' as it does not have 'significant effects' on the environment, by virtue of its nature, size and location, and that an EIA is not necessary and consequently an Environmental Statement is not required",

11. From the email exchanges with the Applicant's planning agents, Savills, disclosed on 23rd April 2015 as a result of a Freedom of Information Act request, it is apparent that the screening exercise was very much a belated bolt-on procedural addition rather than a separate independent exercise, as expected by the TCP (EIA) Regulations 2011 and by established case law.
12. Furthermore, and more concerning, as the findings of the Screening Opinion mirror the flaws in the main Report identified above, the Council's judgment that the proposal would not have 'significant effects' was in error. We highlight regulation 4(6) and Schedule 3, para.2 where account needs to be taken of the environmental sensitivity of the geographical area likely to be affected by the development. Para.3 then requires consideration of the characteristics of the potential impact including the probability, impact, duration, frequency and reversibility of the impact. Simply accepting the Applicant's reports at para. 4 (and 6) was an inadequate discharge of the Council's duties in the particular circumstances; and to rely upon the contents of the main Report for this shorthand approach only compounds the error as none of these EIA factors was specifically and/or adequately addressed in that main Report in relation to St Stephen's, given the retrospective nature of the Screening Opinion.

### Related concerns

#### 13. Risk to Church Foundations

- 13.1 The Council failed to give proper regard to the proximity of the proposed scheme to the foundations of St Stephen's and St Stephen's Church Hall, which are at risk. Both St. Stephen's and the Hall were damaged by the building of the Royal Free, 1968-74, and the church had to be closed for worship, then remained derelict for nearly 25 years. Our client urges the planning authority to learn the lessons of history. Regard should be had to the community effort that has been invested to preserve the church and dedicate for community use. The St. Stephen's Restoration and Preservation Trust has spent sixteen years restoring St. Stephen's from a completely derelict hulk to an operational venue beloved by the community, raising £ 6,000,000 partly from public funds – English Heritage, Heritage Lottery Fund & Wolfson Foundation –and also large amounts donated by a supportive community.
- 13.2 The proposed building would be only 6m from the Grade II Listed Boundary Wall and 7m from the nearest classrooms of Hampstead Hill School which occupies St. Stephen's Church Hall. After previous work on the Royal Free the boundary wall collapsed in two areas and had to be rebuilt. The Church Hall also had to be underpinned twice, and that was a result of damage caused by workings further away than this proposed scheme. The Church Hall may be at as much risk as St. Stephen's.
- 13.3 The architect, S.S. Teulon, went to great lengths to design foundations to dispose of this water. The architects and engineers of St. Stephens's Restoration and Preservation Trust, in its three Major Works Contracts between 2002 and 2009, also took great care to deal with this danger. Complex foundations included sumps with pumps which automatically remove water coming into them under the ground slab. These frequently activate. There is more groundwater in the St. Stephen's site than the Applicant's consultants seem aware of. This will affect soil slippage.

#### 14. Loss of sunlight and daylight

- 14.1 The Council accepted uncritically the eb7 Daylight and Sunlight Report in spite of the fact that it failed to adhere to guidance in the Building Research Establishment good practice. The area is quite open, yet the Royal Free consultants have not based their calculations on the 'obstruction angle' of 25 degrees recommended by BRE. They have, instead, used an obstruction angle of 40 degrees, which is only advised by BRE for use 'in extremis'. For example in such confined spaces as a mews in an historic city centre. This is not such a

situation. Using this excuse they seek to justify building much higher and much closer to St. Stephen's Church Hall and St. Stephen's than 'good practice' dictates. The scheme is inconsistent with Camden Local Plan DP26.

- 14.2 The proposed scheme will substantially reduce the daylight and sunlight available to St. Stephen's Church Hall, which has been occupied since 1949 by Hampstead Hill School, a well-known and successful school for young children. It will also reduce daylight /sunlight to the recently expanded lower ground floor of St. Stephen's, which is also leased to the School.
15. **Failure to consider possible alternative schemes**
- 15.1 Given the impact on heritage assets and the need to evaluate the public benefit of the proposal, the council has failed to give proper regard to possible alternative schemes. It should be appreciated that the research facility will only take a little over 50% of the total of the proposed new accommodation, so there is considerable scope for diminishing the size of the new building. The Royal Free Site has a large amount of open space which could be more efficiently used by some small blocks for hotel and offices and a multi-storey car park.
- 15.2 The Council ought not to have considered that the tree removals are acceptable. 80% of all comments about this application were objections; and those writing would rather keep the situation as it is, with the Royal Free hidden largely by trees, some of which the Applicant is already cutting down. Most residents feel that the grove of large trees on Hampstead Green is an essential complement to St. Stephen's, which since its long and arduous restoration is now taking an ever larger part in community activities.
16. In the light of the foregoing, we believe that it would be legally unsafe for planning permission to be issued and that the Council must address the matters raised in this letter.

**The details of the action that the defendant is expected to take.**

1. Stay the proposed issue of planning permission and S.106 Agreement,
2. Consult fully on the issues raised in this letter in order properly to be able to remit this application back to committee
3. Review the EIA considerations
4. Ensure that when so remitted, the Committee members are supplied with an appropriately balanced and detailed Officer's Report.

Yours faithfully



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