



PLANNING SERVICES

TOWN & COUNTRY PLANNING ACT 1990 (as amended)

HEARING

STATEMENT OF CASE

APPEAL SITE 26 Netherhall Gardens, London, NW3 5TL

APPELLANT Dome Assets

SUBJECT OF APPEAL

1) Appeal against non-determination of planning application for:

Erection of 4 storey plus basement detached building to provide 5 flats (4 x 2-bed and 1 x 3-bed) including front and rear roof terraces, hard and soft landscaping, boundary treatment and 3 car parking spaces, following demolition of the existing building (Class C3).

COUNCIL REFERENCE: 2015/3314/P

PLANNING INSPECTORATE REFERENCE: APP/X5210/W/16/3145922

Summary

The site is identified as making a positive contribution to the character and appearance of the Fitzjohns/Netherhall Conservation Area in which it is located. Policy DP25 of Camden's LDF outlines a clear presumption in favour of retention of buildings that make a positive contribution to the character and appearance of a conservation area. Their loss will only be acceptable where "exceptional circumstances are shown that outweigh the case for retention."

No. 26 Netherhall Gardens is a large three storey detached building on a substantial plot, originally constructed as a single family dwellinghouse. The front elevation is an informal and asymmetric composition reflecting the Freestyle and Arts and Crafts influences of its construction period. It is enlivened with features such as an oriel window, bracketed timber porch over the main entrance door and plaster pargetting to the dormer gables. The building is an attractive composition of high quality purple/brown brick with rubbed red brick window heads, aprons, eaves detailing and decorative string course, and a prominent red clay tiled roof with decorative ridge tiles and tall expressed chimneystacks. The Conservation Area Statement emphasizes the features which contribute to the architectural quality of the area and No.26 evidently incorporates several of the forms and decorative motifs referred to.

The roofscape of the buildings along Netherhall Gardens have a dramatic impact due to the steep incline of the road (as noted in the Conservation Area Statement) and No.26 undoubtedly contributes to this roofscape. The gap to the south of the site is a positive feature which gives views to the rear elevations of the houses located on Maresfield Gardens and to mature trees.

This dwelling's appointing and design clearly reflects the local character, dating from the first phase of development of the area, and is demonstrably contextual in terms of its grain, scale, form, appearance and detailing, having aesthetic and historical value in its own right. As such, its demolition would cause harm to the character and appearance of the Fitzjohns/Netherhall Conservation Area and its loss is therefore unacceptable in principle.

In addition, the basement extends under the majority of the garden (57%), extending to the rear of the site. The southern edge of the basement footprint would be within 57cm of the southern boundary. The extent of the basement would reduce the scope of garden planting, contrary to CPG4 and policy DP27 as sufficient margins would not be retained at the site boundaries to sustain the growth and mature development of characteristic tree species and vegetation of the area. This would harm the biodiversity and the landscape character of the conservation area.

Finally, the development would not provide an acceptable standard of accommodation for future occupiers. Bedroom 1 (duplex 1) would look out onto the wall of the lightwell (with only 2m separating the wall and the windows) and would have a ground floor projecting bay immediately above which would cover 62% of the lightwell. The projecting bay would result in the bedroom below having reduced light levels and an unacceptable outlook.

1.0 SITE AND SURROUNDINGS

- 1.1. The site is located on the east-side of Netherhall Gardens and comprises a detached three storey building, with additional accommodation located within the roof space. The property is located within the Fitzjohns/Netherhall Conservation Area and is identified as making a positive contribution to its character and appearance. It was built as a single dwelling house in late 1870s to late 1880s. It reflects the Freestyle and Arts and Crafts influence of the period. It is a large dwelling on a substantial plot. The building clearly reflects the local character of the conservation area, dating from the first phase of development, and is considered to be demonstrably contextual in terms of its grain, scale, form, appearance and detailing, having aesthetic and historical value in its own right. The building incorporates several of the forms and decorative motifs highlighted in the Conservation Area Statement as contributing to the architectural quality of the area. Primarily these include the appeal building's rubbed brickwork embellishment, oriel window, projecting porch and elevated ground floor.

2.0 RELEVANT PLANNING HISTORY

- 2.1 Planning permission was granted 20/12/1957 for the erection of a basement garage and ground and first floor extension to be used in connection with the residential occupation of the existing building (planning reference: 13774).
- 2.2 A certificate of lawfulness for an existing use was granted 12/11/2012 for the use as 5 x self-contained residential units (Class C3) (planning reference: 2012/4478/P).
- 2.3 Planning permission was refused 19/01/2015 for the erection of a four-storey plus basement detached building to provide 5 self-contained residential units comprising 4 x 2 bedroom and 1 x 3 bedroom units, including hard and soft landscaping, new boundary treatment and the provision of off street car parking, following demolition of the existing building (Class C3) (planning reference: 2014/6224/P). The reasons for refusal were:
- 1) The proposed demolition would result in the loss of a building which makes a positive contribution to the Hampstead Conservation Area to the detriment of the character and appearance of this part of the Hampstead Conservation Area

- 2) The proposed basement, by reason of its site coverage and proximity to the boundaries of adjacent sites/buildings, coupled with the absence of a basement verification study and a S106 legal agreement to secure a basement construction plan would fail to sustain growth of vegetation and trees on the site boundaries harming the character and appearance of site, and fail to demonstrate that the proposal would maintain the structural stability of the neighbouring buildings, and would not adversely impact the local water environment and drainage.
- 3) The proposed residential units 1& 2 which include accommodation at basement level, by reason of their poor outlook and access to natural light to habitable rooms at basement level would result in sub-standard accommodation that would fail to provide an acceptable level of residential amenity to their occupants.
- 4) The proposed development, by reason of the felling of the mature category 'B' Lime tree (referred to as T6) would be detrimental to the character and appearance of the conservation area.
- 5) The proposed development, by virtue of the increased in on-site parking proposed at the site would fail to meet the Council's parking standards and would fail to promote the use of sustainable modes of transport.
- 6) The proposed development, in the absence of the provision of 10 cycle parking spaces fails to meet the Council's cycle parking standards
- 7) In the absence of accurate information in relation to the relocation of the vehicular cross over and associated level changes, the applicant has failed to demonstrate that the proposal would not impact on the existing street tree on the pavement outside the site, and that that the resultant changes to the relocated crossover would not result in impeding site lines and visibility splays by virtue of the existing street tree which would be detrimental to the safety of pedestrians and road users.

A further 8 reasons related to the lack of legal agreement securing various necessary requirements.

- 2.4 The appellant cites that the following appeal decision for another site is of relevance. Permission was refused 24/03/2011 at 18 Redington Gardens for the erection of a new single dwelling house (Class C3) following the demolition of existing dwelling house (planning reference 2010/5099/P). The appeal was allowed 14/03/2012 (appeal reference: APP/X5210/E/11/2161175). The inspector's decision included an assessment of 18 Redington Road and concluded "I concur with the view expressed

by English Heritage that the existing building, considered on its own, makes a neutral contribution to the character and appearance of the Conservation Area”.

- 2.5 Whilst this application was refused the officer report clearly identified that the building’s contribution to the conservation area was not as much as other buildings and that English Heritage concurred with this view. It states:

‘Whilst the building is identified as a positive contributor in the Redington/Frogna Conservation Area Statement, on fuller assessment its contribution is considered to be more limited than that of other buildings in the area, which have not been subject to inappropriate alteration and are of a more consistent scale. English Heritage concur with this assessment and consider the building to make a neutral contribution to the character and appearance of the conservation area’.

- 2.6 This is clearly different from the assessment of the contribution made by the current appeal building to its conservation area.

3.0 PLANNING POLICY FRAMEWORK

Local Development Framework

- 3.1 The Council’s Local Development Framework (LDF) adopted on 8th November 2010. The LDF comprises Core Strategy and Development Policies documents. These documents have been through an Examination in Public, and the appointed Inspector found the documents to be sound. The relevant LDF policies as they relate to the reason for refusal of the applications are listed below:

Core Strategy

CS1 Distribution of Growth

CS5 Managing the Impact of Growth and Development

CS6 Providing quality homes

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 and encouraging biodiversity

CS16 Improving Camden’s health and well-being

CS18 Dealing with our waste and encouraging recycling

CS19 Delivering and monitoring the Core Strategy

Development Policies

DP2 Making full use of Camden's capacity for housing

DP5 Homes of different sizes

DP6 Lifetime homes and wheelchair homes

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

DP29 Improving access

3.2 The full text of each of the policies has been sent with the questionnaire documents.

Supplementary Guidance (CPG)

3.3 The following Camden Planning Guidance is relevant.

Camden Planning Guidance 1 Design (As amended 2013 and 2015)

Camden Planning Guidance 2 Housing (As amended 2013 and 2015)

Camden Planning Guidance 3 Sustainability (As amended 2013 and 2015)

Camden Planning Guidance 4 Basement and Lightwells (As amended 2013 and 2015)

Camden Planning Guidance 6 Amenity (2011)

CPG7 Transport (2011)

CPG8 Planning Obligations (As amended 2015)

These Supplementary Planning Documents were adopted following extensive public consultation.

- 3.4 In addition, the guidance contained in the Fitzjohns Netherhall Conservation Area Statement is relevant to this appeal. This was adopted February 2001.
- 3.5 A copy of the above Camden Planning Guidance documents and the Fitzjohns Netherhall Conservation Areas Statement were sent with the questionnaire.
- 3.6 The National Planning Policy Framework (NPPF) 2012 is also relevant to the Council's decision and to this appeal. The policies and guidance contained within Camden's LDF 2010 are up to date and fully accord with paragraphs 214 – 216 (Annex 1) of the NPPF and should therefore be given substantial weight in the decision of this appeal. The National Planning Policy Framework was adopted in April 2012 and states that development should be refused if the proposed development conflicts with the local plan unless other material considerations indicate otherwise. There are no material differences between the Council's policies and the NPPF in relation to this appeal.

4.0 SUBMISSIONS

- 4.1 The council confirms that had appeals against non-determination not been made, planning permission for the erection of 4 storey plus basement detached building to provide 5 flats (4 x 2-bed and 1 x 3-bed) including front and rear roof terraces, hard and soft landscaping, boundary treatment and 3 car parking spaces, following demolition of the existing building (Class C3) would have been refused for the following reasons.

Reason 1

- 4.2 The proposed demolition would result in the loss of a building which makes a positive contribution to the Fitzjohns Netherhall Conservation Area to the detriment of the character and appearance of this part of the Fitzjohns Netherhall 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.

Reason 2

- 4.3 The proposed basement, by reason of its site coverage and proximity to the boundaries of adjacent sites/buildings would undermine the ability of the rear garden to contribute to the biodiversity function and landscape character of the site, harming the wider conservation area, contrary to policies CS14 (Promoting High Quality Places and Conserving Our Heritage) and CS15 (Protecting and improving our parks and open spaces and encouraging biodiversity) 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.

Reason 3

- 4.4 The proposed residential unit '1', by reason of the overhanging ground floor bay obstructing the lightwell, would provide poor outlook and reduced natural light resulting in sub-standard accommodation that would fail to provide an acceptable level of residential amenity to future 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.

Reason 4

- 4.5 In the absence of sufficient information, the applicant has not demonstrated that trees along the side boundary at 24A Netherhall Gardens would not be harmed by the development contrary to policy CS15 (Protecting and improving our parks and open spaces and encouraging biodiversity) 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.

Reason 5

- 4.6 The proposed development, in the absence of a legal agreement securing a Basement Construction Plan, would fail to protect the water environment and the

structural integrity of neighbouring properties contrary to policy CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policies DP23 (Water) and DP27 (Basements and lightwells) of the London Borough of Camden Local Development Framework Development Policies.

Reason 6

- 4.7 The proposed development, in the absence of a legal agreement requiring the development to incorporate sustainability measures to reduce carbon emissions and minimise use of energy, water and resources, would fail to be sustainable in its use of its resources and meet the challenge of climate change, contrary to policy 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 policy DP22 (Promoting sustainable design and construction) of the London Borough of Camden Local Development Framework Development Policies.

Reason 7

- 4.8 The proposed development, in the absence of a legal agreement securing an energy efficiency plan including on-site renewable energy facilities, would fail to be sustainable in its use of resources and fail to take sufficient measures to minimise the effects of, and adapt to, climate change, contrary to policies CS13 (Tackling climate change through promoting higher environmental standards), CS16 (Improving Camden's health and well-being) 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), DP23 (Water) and DP32 (Air quality and Camden's Clear Zone) of the London Borough of Camden Local Development Framework Development Policies.

Reason 8

- 4.9 The proposed development, in the absence of a legal agreement securing a highway contribution for necessary highway works, would fail to secure adequate provision for the safe movement of pedestrians and have an unacceptable impact on the public highway, 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 DP16 (Transport implications of development), DP17 (Walking, cycling and public transport), DP21 (Development connecting to highway network) and DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Policies.

Reason 9

- 4.10 The proposed development, in the absence of a legal agreement securing the submission and implementation of a Construction Management Plan, would be likely to contribute unacceptably to traffic disruption and road safety hazards 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), DP21 (Development connecting to the highway network) and DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Policies.

Reason 10

- 4.11 The proposed development, in the absence of a legal agreement to secure the residential units as 'car-capped' 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.

5.0. THE APPELLANT'S GROUNDS OF APPEAL

The appellant's grounds of appeal can be summarized as follows:

Demolition of the existing building

The existing building is considered to be of limited architectural quality and interest. It is not a good example of the local building tradition and has an unsatisfactory relationship with its surroundings. There are a number of more grand and better designed houses in the street and wider Conservation Area.

- The building has been substantially altered including the excavation of the basement level, flat roofed extension at ground floor level and the unsatisfactory arrangement of steps to the front elevation.
- “Architecturally, the principal elevation of no. 26 is muddled, with an inelegant and unbalanced arrangement of windows of different widths and proportions, which appear to be part of the original design intent for the house.”
- There is “an uncomfortable pattern of openings in the main front wall of the house” which is “exacerbated by the position of the two dormers above the two southern bays which serves to further unbalance the composition which was later compromised further by the visible basement level”.
- Altogether, the features do “not make a good building”.
- An appeal (ref no. APP/X5210/E/11/2161175) allowed for the demolition of a ‘positive contributor’ at 18 Redington Road. The Inspector outlined that the building made only a neutral contribution to the Conservation Area. This principle applies to the current application; 26 Netherhall Gardens makes only a neutral or very limited contribution to the Conservation Area given its muddled principal elevation and as such, demolition is acceptable in this case.

Replacement with a new residential building

During the previous planning application (ref no. 2014/6224/P) no issues or concerns were raised by the Council in terms of land use, density, design or architectural detailing. As such, these matters are considered to be agreed.

Suitability of the residential accommodation for future residents

All dwellings are considered to have acceptable levels of outlook.

Basement development

A Basement Impact Assessment has been provided as a part of the planning application. This demonstrates the basement is secondary to the main building

The Basement Impact Assessment concludes it is understood that any potential impacts arising from the construction of the basement can be ‘managed through the proper design and construction of mitigation measures’.

The appellant also addresses ‘impact on neighbors’ and ‘highways and sustainability’.

The Council will address each of the appellants’ grounds of appeal individually replicating the format used above.

- 5.1 **The existing building is considered to be of limited architectural quality and interest. It is not a good example of the local building tradition and has an unsatisfactory relationship with its surroundings. There are a number of more grand and better designed houses in the street and wider Conservation Area.**
- 5.2 The Council does not accept the existing building is of limited architectural quality and interest. The Council also rejects the appellant’s assertion that the existing building is not a good example of the local building tradition. No.26 incorporates several of the forms and decorative motifs highlighted in the Conservation Area Statement as contributing to the architectural quality of the area. Primarily these include the appeal building’s rubbed brickwork embellishment, oriel window, projecting porch and elevated ground floor. The large dwelling on a substantial plot clearly reflects the local character of the conservation area, dating from the first phase of development, and is considered to be demonstrably contextual in terms of its grain, scale, form, appearance and detailing, having aesthetic and historical value in its own right.
- 5.3 **The building has been substantially altered including the excavation of the basement level, flat roofed extension at ground floor level and the unsatisfactory arrangement of steps to the front elevation. “Architecturally, the principal elevation of no. 26 is muddled, with an inelegant and unbalanced arrangement of windows of different widths and proportions, which appear to be part of the original design intent for the house.” There is “an uncomfortable pattern of openings in the main front wall of the house” which is “exacerbated by the position of the two dormers above the two southern bays which serves to further unbalance the composition which was later compromised further by**

the visible basement level”. Altogether, the features do “not make a good building”.

- 5.4 It is acknowledged the building has been unsympathetically modified during the late 1950s or 1960s with the addition of a 1.5 storey structure to the south. Although this extension is considered to be out of keeping with the surrounding buildings in its own right, its impact is not so great as to detract from the positive contributor status of the original house. Due to its reversible nature, the structure need not be retained and a sympathetic replacement could enhance this portion of the site and the host building.
- 5.5 It is also acknowledged that the front forecourt of the building has also been unsympathetically altered, beginning in 1930 when an integral garage was incorporated into the building at lower ground floor level. This opening has now been infilled with a utilitarian metal window and retains its concrete lintel. Furthermore, it seems from historic maps that the building was originally encircled by a lightwell and the lower ground floor level elevation (that we currently see from the street) which was not readily visible, with the ground previously being ramped up to the main ground floor entrance. These alterations were in place as shown on the 1954 OS map and consequently formed part of the conservation area when it was designated and when the building was identified as making a positive contribution. It is accepted that the forecourt parking and the re-grading of the front garden undermines the setting of the building to a degree, but not to such an extent to detract from its positive contributor status. However, these arrangements are not considered to be insurmountable and works could clearly be undertaken to improve the landscaped setting to the front of the building in a way which would enhance its character and appearance.
- 5.6 The overall informality and asymmetry of the front elevation reflects the Freestyle and Arts and Crafts influence of the period and which can be seen on many of the buildings within the conservation area, whereby the expression of the exterior facades reflects the use and status of the spaces within. These features reinforce the positive contributor status of the existing house.
- 5.7 **An appeal (ref no. APP/X5210/E/11/2161175) allowed for the demolition of a ‘positive contributor’ at 18 Redington Road. The Inspector outlined that the building made only a neutral contribution to the Conservation Area. This principle applies to the current application; 26 Netherhall Gardens makes only**

a neutral or very limited contribution to the Conservation Area given its muddled principle elevation and as such, demolition is acceptable in this case.

- 5.8 The appeal at 18 Redington Road is not comparable, and each case needs to be considered on its own merits. Whilst the application was refused by the members of the Development Control Committee, the officer's committee report noted the following: *Whilst the building is identified as a positive contributor in the Redington/Frogna Conservation Area Statement, on fuller assessment its contribution is considered to be more limited than that of other buildings in the area, which have not been subject to inappropriate alteration and are of a more consistent scale. English Heritage concur with this assessment and consider the building to make a neutral contribution to the character and appearance of the conservation area.* The inspector's decision included an assessment of 18 Redington Road and concluded "I concur with the view expressed by English Heritage that the existing building, considered on its own, makes a neutral contribution to the character and appearance of the Conservation Area". Therefore the assessment made by the inspector agreed with the assessment made both by the planning officer (in their committee report) and English Heritage. In this appeal Historic England (the successor to English Heritage) were not consulted due to the changes to consultation following the April 2015 amendment to the Town and Country Planning General Regulations 1992. Therefore there is no Historic England assessment of the contribution the appeal building makes to the conservation area. Furthermore, the Council's conservation officer does not accept that the building makes a neutral contribution; rather she has concluded it makes a positive contribution to the character and appearance of the conservation area.
- 5.9 **During the previous planning application (ref no. 2014/6224/P) no issues or concerns were raised by the Council in terms of land use, density, design or architectural detailing. As such, these matters are considered to be agreed.**
- 5.10 Whilst there is no objection to the architectural design of the proposed building, there is an objection to the size of the basement which extends to the site boundaries at the rear and would be within 0.57m of the southern boundary. The extent of the basement would reduce the scope of garden planting, contrary to CPG4 paragraph 2.16 and policy DP27 (paragraph 27.9) as sufficient margins would not be retained at the site boundaries to sustain growth of vegetation and trees. This was referred to in the reason for refusal (reason 2) for the previous planning application (2014/6224/P)

which stated: **The proposed basement, by reason of its site coverage and proximity to the boundaries of adjacent sites/buildings**, coupled with the absence of a basement verification study and a S106 legal agreement to secure a basement construction plan **would fail to sustain growth of vegetation and trees on the site boundaries harming the character and appearance of site**, and fail to demonstrate that the proposal would maintain the structural stability of the neighbouring buildings, and would not adversely impact the local water environment and drainage.

5.11 **All dwellings are considered to have acceptable levels of outlook.**

5.12 The Council does not accept that all the proposed dwellings would have an acceptable outlook. Bedroom 1 (duplex 1) would look out onto the wall of the lightwell and have a bay window immediately above it covering more than 60% of the lightwell. This room would therefore have an unacceptably poor outlook.

5.13 **A Basement Impact Assessment has been provided as a part of the planning application. This demonstrates the basement is secondary to the main building. The Basement Impact Assessment concludes it is understood that any potential impacts arising from the construction of the basement can be ‘managed through the proper design and construction of mitigation measures’.**

5.14 The basement impact assessment (BIA) has been prepared in accordance with the processes and procedures set out in Camden Planning Guidance 4. The basement impact assessment looks at the potential impact on land stability and ground water and surface water conditions. The BIA does not demonstrate the basement is secondary to the main building. As stated previously the extent of the basement would reduce the scope of garden planting, contrary to CPG4 paragraph 2.16 and policy DP27 (paragraph 27.9) as sufficient margins would not be retained at the site boundaries to sustain growth of vegetation and trees.

5.15 The basement impact assessment has been independently audited by Campbell Reith (the Council appointed assessor). This states that because a number of conclusions in the BIA are based on necessary assumptions at present, it is recommended that a Basement Construction Plan is provided and approved prior to commencement on site and should include:

- trial pits to confirm assumptions regarding the depths of adjacent foundations or the greatest differential depth assumed between the basement and the neighbouring properties
- Justification for the approach used in the GMA
- design calculations for the rear garden L-shaped retaining walls
- assessment of the lateral movements of the front retaining walls to form lightwells and the effect of the construction activities on the adjacent highway
- an assessment of heave as a result of demolition and excavation
- measures to control heave arising from basement excavation
- mitigation measures to reduce potential movements down to a maximum of Burland Category 1 (very slight)
- results of condition surveys of potentially affected structures
- detailed monitoring scheme for potentially affected structures.

The basement construction plan would need to be secured by legal agreement.

6.0 THE COUNCIL'S STATEMENT OF CASE

6.1. Proposal

6.2. The applicant seeks planning permission to erect a four-storey building with basement following demolition of the existing building. The building would provide 5 flats (4 x 2-bed and 1 x 3-bed) with front and rear roof terraces and 3 car parking spaces.

6.3. The scheme is broadly similar to the application refused planning permission 19/01/2015 (2014/6224/P) but has been altered to respond to the reasons for refusal relating to parking, cycle parking, trees and amenity.

6.4. Principle of demolition and impact on the conservation area

6.5. The site is located within the Fitzjohns/Netherhall Conservation Area and is identified as making a positive contribution to its character and appearance. Policy DP25 of Camden's LDF outlines a clear presumption in favour of buildings that make a positive contribution to the character and appearance of a conservation area. Their loss will only be acceptable where "exceptional circumstances are shown that outweigh the case for retention." Furthermore, any replacement building must

preserve and enhance the character and appearance of the conservation area to an appreciably greater extent.

- 6.6. Paragraph 134 of the NPPF is relevant in this case. It states that “where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.” The loss of a single building in a conservation area of this size is considered to cause ‘less than substantial harm’. However, the value of the existing building and the degree of harm that would derive from its loss, as well as an assessment of the benefits of the scheme is a judgement that must be made by the Council taking into account the overall planning balance of the scheme. The Council must however be mindful of the statutory duty to “preserve and enhance” the character and appearance of the conservation area and accord it significant weight in this balanced judgement.
- 6.7. The Fitzjohns/Netherhall Conservation Area lies on the southern slopes of Hampstead, between Rosslyn Hill and Finchley Road. The area consists of wide roads with detached or semi-detached houses laid out on substantial plots, and is characterised by its generous tree cover and plentiful soft landscaping.
- 6.8. The site is located in sub area 1 (Fitzjohns), and is described in the Conservation Area Statement as: “Built predominantly over a ten year period, from the late 1870s to the late 1880s, it marks the style and pre-occupations of the 1880s. Generally the architectural influences are the Queen Anne and Domestic Revival with purple and red brick, decorative ironwork, rubbed and carved brick, bargeboards and roof details.”
- 6.9. 26 Netherhall Gardens is a substantial detached building, originally constructed as a single family dwelling house. The property is now of 3 main storeys, including a lower ground level and additional accommodation within the roof lit by dormers on the front and rear slopes. The building is an attractive composition of high quality purple/brown brick with rubbed red brick window heads, aprons, eaves detailing and decorative string course, and a prominent red clay tiled roof with decorative ridge tiles. The front elevation is an informal and asymmetric composition, enlivened with features such as an oriel window at 1st floor level, bracketed timber porch over the main entrance door and plaster pargetting detail to the dormer gables. The side elevation to the south is fairly prominent within the streetscene given the wide gap between no.26 and no.24a Netherhall Gardens. Whilst it is plain, it is not utilitarian or

unattractive, with its tall expressed chimneystacks and red brick banding detail following through from the projecting string course on the front elevation. The north elevation has the same expressed chimney and brick banding but with unusually large windows. The rear elevation is simple and more symmetrical than the front, however it is also considered to be of quality, with rubbed brick window arches, pedimented dormers and red brick banding.

- 6.10. The Conservation Area Statement (p10) highlights in some detail the features which contribute to the architectural quality of the area and which include “...fine rubbed brickwork, terracotta enrichments, stained glass, fine wrought iron work, Tudor-style chimney stacks, extensive tiling and tile hanging, Oriel windows, stone mullions to windows, bay windows, large studio window for artists, well-detailed front walls gate piers, decorative tiled front paths, doorways and large porches, elevated ground floors.” Whilst this is a lengthy inventory of features it is intended to cover the full range of architectural form and style that can be found within the conservation area. Many of the buildings in the conservation area are impressive in terms of scale, yet are relatively plain, exhibiting only a small number of the features referred to above, for example those at 19-34 Netherhall Gardens which the appellant’s Heritage Statement consider to be “lively and well fenestrated”. No.26 incorporates several of the forms and decorative motifs referred to in the Conservation Area Statement, primarily its rubbed brickwork embellishment, oriel window, projecting porch and elevated ground floor.
- 6.11. The appellant’s Heritage Statement considers that the front elevation is “muddled” due to its fenestration of varying widths and styles. It also suggests that the façade is “inelegant and unbalanced” and that the position of the front dormers aligned with the two southern most bays serve to exacerbate this perceived uncomfortable layout and design. However, the informality and asymmetry of the front elevation reflects the Freestyle and Arts and Crafts influence of the period and which can be seen on many of the buildings within the conservation area, whereby the expression of the exterior facades reflects the use and status of the spaces within.
- 6.12. The ridge height of the building is taller than its immediate neighbours however its general scale and form are in line with the prevailing character of the conservation area which is essentially a large detached house. The Conservation Area Statement (p19) makes reference to the roofscape of the buildings along Netherhall Gardens

which have a dramatic impact due to the steep incline of the road. No.26 Netherhall Gardens is considered to contribute to this character.

- 6.13. As stated previously, there is a generous gap located to the south of the site between no.26 and no.24a Netherhall Gardens. It is clear from historic map regression that this was the original layout of the plots along Netherhall Gardens. It is acknowledged that this is atypical, and wider than many of the gaps between buildings. However, this does not necessarily lead to the conclusion that the gap is harmful *per se*. The building has been unsympathetically modified during the late 1950s or 1960s with the addition of a 1.5 storey structure to the south. This is considered to be out of keeping with its surroundings, drawing attention to the gap between buildings. However, this structure is of a reversible nature so need not be retained and a sympathetic replacement could enhance this portion of the site. Nonetheless, the gap above the structure gives views to the rear elevations of the houses located on Maresfield Gardens and to mature trees which is considered to be a positive feature.
- 6.14. It is acknowledged that the front forecourt of the building has also been unsympathetically altered, beginning in 1930 when an integral garage was incorporated into the building at lower ground floor level. This opening has now been infilled with a utilitarian metal window and retains its concrete lintel. Furthermore, it seems from historic maps that the building was originally encircled by a lightwell and the lower ground floor level elevation (that we currently see from the street) was not readily visible, with the ground previously being ramped up to the main ground floor entrance. These alterations were in place as shown on the 1954 OS map and consequently formed part of the conservation area when it was designated and when the building was identified as making a positive contribution. It is accepted that the forecourt parking and the re-grading of the front garden undermines the setting of the building to a degree, however, this is not considered to be insurmountable and works could clearly be undertaken to improve the landscaped setting to the front of the building in a way which would enhance the character and appearance of the conservation area.
- 6.15. The appellant seeks to demonstrate that there are higher quality buildings within the conservation area, some of which are statutorily listed, and others that make a positive contribution to a greater extent. However, the Conservation Area Statement (p30) is clear and stipulates that "The distinct quality of Filtzjohns/Netherhall is that it largely retains its homogenous mid-late 19th century architectural character. For this

reason, most of the 19th century buildings make a positive contribution to the character and appearance of the Conservation Area.” Thus, the character and appearance of the conservation area is a function of the sum of its parts and the cumulative contribution of all of its historic buildings, giving it cohesion and integrity. The positive contribution made by no.26 is partly derived from its group value with other buildings sharing common architectural characteristics.

6.16. This large dwelling on a substantial plot clearly reflects the local character, dating from the first phase of development, and is considered to be demonstrably contextual in terms of its grain, scale, form, appearance and detailing, having aesthetic and historical value in its own right. As such, the Council considers that its demolition would cause harm to the character and appearance of the Fitzjohns/Netherhall Conservation Area and its loss is therefore considered to be unacceptable in principle. As such the proposal is contrary to policies CS14, and DP25 of Camden’s LDF.

6.17. Impact on bio-diversity

6.18. Basement development that extends below garden space can reduce the ability of that garden to support trees and other vegetation leading to poorer quality gardens and a loss in amenity and to the character of the area.

6.19. Council policy requires sufficient margins to be left between the site boundaries and any basement construction to enable natural processes to occur and for vegetation to grow naturally. These margins should be wide enough to sustain the growth and mature development of the characteristic tree species and vegetation of the area. The Council seeks to ensure that gardens maintain their biodiversity function for flora and fauna and that they are capable of continuing to contribute to the landscape character of an area so that this can be preserved or enhanced (Camden Planning Guidance CPG4 Basements and Lightwells paragraph 2.15).

6.20. Rear gardens contribute to the townscape of the Fitzjohn Netherhall Conservation Area and provide a significant amenity to residents and habitat for wildlife (policy F/N32 of the Conservation Area Statement, page 42). The conservation area statement emphasizes that trees are an inherent and characteristic part of the Conservation Area. As well as appearing as formal street planting they appear in front gardens, in gaps between properties and in rear gardens. Throughout the Conservation Area there are trees of mixed size and species. The presence of street

trees does not diminish the importance of trees in private gardens. The conservation area statement underlines the contribution to the character of the area made by trees and private landscape, visible from public places or from surrounding properties (page 10 of the Conservation Area Statement). The conservation area statement states that extending into basement areas will only be acceptable where it would not involve harm to the character of the building or its setting.

- 6.21. The basement development would extend to the rear of the site and the majority of the basement would be within 0.57m of the southern boundary. It is noted that the basement does not extend to a 9sqm triangle in the south east corner of the site however the basement extends under the majority of the garden (57%). The extent of the basement would reduce the scope of garden planting, contrary to CPG4 paragraph 2.16 and policy DP27 (paragraph 27.9) as sufficient margins would not be retained at the site boundaries to sustain growth of vegetation and trees.
- 6.22. This was referred to in the reason for refusal (reason 2) for the previous planning application (2014/6224/P) which stated: **The proposed basement, by reason of its site coverage and proximity to the boundaries of adjacent sites/buildings, coupled with the absence of a basement verification study and a S106 legal agreement to secure a basement construction plan would fail to sustain growth of vegetation and trees on the site boundaries harming the character and appearance of site**, and fail to demonstrate that the proposal would maintain the structural stability of the neighbouring buildings, and would not adversely impact the local water environment and drainage.
- 6.23. While it is accepted the audit has confirmed there would be no hydrogeological or hydrological concerns and a basement construction plan would be required, this does not resolve the aspect of the reason for refusal which related to the basement's site coverage and the proximity to the boundaries of adjacent sites which would fail to sustain growth of vegetation and trees on the site boundaries and so harm the character and appearance of the area.
- 6.24. Quality of residential accommodation
- 6.25. The amenity provided to one proposed flat is unacceptable. Bedroom 1 (duplex 1) would look out onto the wall of the lightwell (with only 2m separating the wall and the windows) and would have a ground floor projecting bay immediately above which would cover 62% of the lightwell. This obstruction can be seen most clearly in section

CC (drawing number GC645_S_CC_002 Rev B). The projecting bay would result in the bedroom below having reduced light levels and an unacceptable outlook. It would have an overbearing impact on the future occupiers of duplex 1. Due to its location directly above the lightwell, the projecting bay would dominate the outlook from this bedroom resulting in a negative impact on the amenity of future occupiers. For these reasons, the development would not provide an acceptable standard of accommodation for future occupiers contrary to Policy DP26.

6.26. The Council also has significant concerns regarding the credibility of appellant's Daylight and Sunlight Study provided by 'Right of Light Consulting'. The light report states the Average Daylight Factor (ADF) for Duplex 1 Bedroom 1 would be 1.3% and would therefore meet BRE guidelines. However this does not appear credible given the obstruction to the lightwell from the projecting bay. It is also noted that one of the objectors has submitted evidence from their own daylight and sunlight consultant (GIA) in an email dated 9th August 2015. GIA have commented on the appellant's 'Right of Light' report and have noted '*at the lower ground level the ADF results are in some cases reaching nearly 3% for bedrooms, when usually only 1% would be required and likely at a higher level where the room would receive better levels of daylight. This seems unusually high for a basement/lower ground level room, and therefore it is questions their methodology on how they arrived at these results*'.

6.27. Impact on neighbouring trees

6.28. An objector has raised a concern regarding trees along the boundary of 24A Netherhall Gardens which have not been shown on the appellant's tree constraints plan. The details of this objection are included in appendix B (although the objection is not dated, according to Council records it was received 3/8/15 from the occupant of 24A Netherhall Gardens). These trees could be affected by the proximity of the basement excavation (which is approximately 0.57m from the boundary). Without an accurate tree constraints plan and an impact assessment which addresses these trees it is not possible to confirm they would not be harmed by the development. The information about these boundary trees and the possible inaccuracy of the tree constraints plan was not brought forward during the assessment of the previous application and therefore represents new information which the Council only become aware of during the appeal against non-determination.

6.29. Basement Construction Plan

6.30. The independent audit of the Basement Impact Assessment states that a Basement Construction Plan is required. This is because 'a number of conclusions are based on necessary assumptions at present'. The audit recommends that a Basement Construction Plan is approved prior to commencement on site and should include:

- trial pits to confirm assumptions regarding the depths of adjacent foundations or the greatest differential depth assumed between the basement and the neighbouring properties
- Justification for the approach used in the GMA
- design calculations for the rear garden L-shaped retaining walls
- assessment of the lateral movements of the front retaining walls to form lightwells and the effect of the construction activities on the adjacent highway
- an assessment of heave as a result of demolition and excavation
- measures to control heave arising from basement excavation
- mitigation measures to reduce potential movements down to a maximum of Burland Category 1 (very slight)
- results of condition surveys of potentially affected structures
- detailed monitoring scheme for potentially affected structures.

6.31. Basement construction plans are required to be secure by legal agreements as the scope of its control extends beyond the application site. Under s72 of the Town and Country Planning Act 1990 planning conditions can only be lawfully imposed on grant of planning permission for regulating the development or use of any land under the control of the applicant or requiring the carrying out of works on any such land. However, a BCP 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 basement construction on neighbouring properties. Using a condition to secure the type of off-site requirements usually included in a BCP would in this case be unenforceable.

6.32. *Compliance with CIL reg 122*

6.33. The BCP is: (i) necessary to mitigate against the adverse impacts of the basement construction stage; (ii) directly relates to the basement construction stage of the proposed development; and (iii) is fairly and reasonably related in scale and kind to development in that it address relevant aspects of basement construction phase of

the development as identified under the Council's development plan for developments of the nature proposed.

6.34. Sustainability Plan

6.35. The Council requires development to incorporate sustainable design and construction measures (policy DP22). Any new residential development is expected to achieve a 19% reduction in carbon emissions from 2013 building regulations. The applicant has provided an Energy & Sustainability Statement. The sustainability measures including the 19% reduction in CO2 emissions should be secured by legal agreement.

6.36. Promoting a sustainable Camden is an integral element of the Council's planning policies. Core Strategy policy CS13 – 'Tackling climate change through promoting higher environmental standards' sets out a key part of the Council's overall approach to tackling climate change, which includes promoting higher environmental standards in design and construction.

6.37. A planning obligation is considered appropriate as there will be monitoring necessary to confirm that the relevant environmental measures have been implemented successfully and maintained during the life of the development.

6.38. *Compliance with CIL Reg 122*

6.39. The Council considers that securing the sustainability measures (by way of a sustainability plan) through an obligation under a legal agreement under section 106 of the TCPA 1990 complies with regulation 122 in that: the detailed sustainability requirements are necessary to make the proposed development acceptable (with reference to the Council's planning policies) in planning terms; the obligation would secure sustainability measures in respect of the proposed development and so would be directly related to the development; and the obligation would not require the developer to address an existing wider sustainability deficiencies, rather it would be fairly and reasonably related in scale and kind to the proposed development. The Council's firm view is that an obligation under section 106 would secure the detailed requirements (which provides the local planning authority and the appellant with certainty) to an extent which is not satisfactorily achievable by a planning condition.

6.40. Energy Efficiency Plan

- 6.41. The Council requires development to incorporate sustainable design and construction measures (policy DP22). Any new residential development is expected to achieve a 19% reduction in carbon emissions from 2013 building regulations. The Council also expects developments to achieve a reduction in carbon dioxide emissions of 20% from on-site renewable energy generation. The applicant has provided an Energy & Sustainability Statement.
- 6.42. Although the Energy & Sustainability Statement considers on-site renewables it discounts all options. The report also states 'there is no specific target set for developments to achieve in regards to renewable energy systems' (paragraph 4.3). This is not correct and as stated above the Council expects developments to achieve a reduction in CO2 emissions of 20% from on-site renewable energy generation unless it can be demonstrated such provision is not feasible (policy CS13 paragraph 13.11). It has not been demonstrated the provision is not feasible and an energy efficiency plan which would be required to include details of on-site renewable energy facilities should be secured via legal agreement.
- 6.43. The s106 Agreement will secure a reduction in carbon energy emissions through the incorporation of various measures in the energy efficiency plan (EEP) including the use of a combined heat and power (CHP) unit. The use of CHP in itself requires a further air quality assessment because all of the London Borough of Camden is within an air quality management area. CHP units can have a potentially detrimental impact on air quality and in order to ensure this is not the case the Council require further air quality assessments prior to implementation.
- 6.44. A planning obligation is also considered appropriate as there is additional monitoring work necessary to confirm that relevant environmental measures have been implemented successfully and maintained during the life of the development.
- 6.45. The Council's development plan identifies several policies that apply to this obligation, which are: CS13 (Tackling climate change through promoting higher environmental standards); CS16 (Improving Camden's health and well-being); CS19 (Delivering and monitoring the Core Strategy); DP22 (Promoting sustainable design and construction); DP23 (Water) and DP32 (Air quality and Camden's Clear Zone).
- 6.46. Core Strategy Policy CS13 identifies measures to minimise the effects of climate change, including by reducing carbon emissions from the redevelopment, and requires that the effects of construction and occupation of buildings are minimised by

ensuring developments use less energy and generate renewable energy on-site. The supporting text to CS13 provides: “Buildings can also generate energy, for example, by using photovoltaic panels to produce electricity, or solar thermal panels, which produce hot water. Once a building and its services have been designed to make sure energy consumption will be as low as possible and the use of energy efficient sources has been considered, the Council will expect developments to achieve a reduction in carbon dioxide emissions of 20% from on-site renewable energy generation (which can include sources of site-related decentralised renewable energy) unless it can be demonstrated that such provision is not feasible”.

6.47. *Compliance with CIL reg 122*

6.48. The Council considers that securing an EEP through an obligation under a legal agreement under section 106 of the TCPA 1990 complies with regulation 122 in that: the detailed requirements (as described above) are necessary to make the proposed development acceptable (with reference to the Council’s planning policies) in planning terms; the obligation would secure energy efficiency measures in respect of the proposed development and so would be directly related to the effects of the development; and the obligation is not requiring the developer to address an existing wider energy efficiency deficiency, rather it is fairly and reasonably related in scale and kind to the proposed development. The Council’s firm view is that an obligation under section 106 would secure the detailed requirements (which provides the local planning authority and the appellant with certainty) to an extent which is not satisfactorily achievable by a planning condition.

6.49. Highways Contribution

6.50. The Council expects works affecting Highways to repair any construction damage to transport infrastructure or landscaping and reinstate all affected road and footway surfaces following development. The footway directly adjacent to the site could be damaged as a direct result of the proposed works. To allow the proposal to comply with Development Policy DP21, a financial contribution for highway works would be sought. A cost estimate (£9,951.80) for highway works has been provided by the Highways Delivery Team and is included in appendix A. The highways contribution is required to be secured by legal agreement.

6.51. *Compliance with CIL reg 122*

6.52. The Highways Contribution is: (i) necessary to mitigate construction damage to the footway following the demolition and construction stage; (ii) directly relates to the construction stage of the proposed development; and (iii) is fairly and reasonably related in scale and kind to development in that it address relevant aspects of construction phase of the development as identified under the Council's development plan for developments of the nature proposed.

6.53. Construction Management Plan

6.54. This site is located in the Fitzjohns Netherhall Conservation Area and located next to South Hampstead Junior School, Southbridge International School and Northbridge House School. The Council's primary concern is public safety but we also need to ensure that construction traffic does not create (or add to existing) traffic congestion in the local area. In addition, the proposal is also likely to lead to a variety of amenity issues for local people (e.g. noise, vibration, air quality). The Council needs to ensure that the development can be implemented without being detrimental to amenity or the safe and efficient operation of the highway network in the local area.

6.55. Impact on the highway network and immediate environment is likely during construction. Given the size of the proposed development the proposal is likely to represent a detrimental impact on the highway network during its construction period. This likely level of works is considered sufficient to require a Construction Management Plan (CMP) in order to mitigate any adverse impacts.

6.56. 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.

6.57. Under s72 of the Town and Country Planning Act 1990 planning conditions are used to control matters on land within the developer's 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.

- 6.58. 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 Circular 11/95, where it states at Appendix B (7) as an example of an unacceptable condition, is one requiring loading and unloading and the parking of vehicles not to take place on the highway, as it purports to exercise control in respect of a public highway which is not under the control of the applicant.

Compliance with CIL reg 122

- 6.59. The CMP is: (i) necessary to mitigate against the adverse impacts of the construction stage; (ii) directly relates to the construction stage of the proposed development; and (iii) is fairly and reasonably related in scale and kind to development in that it address relevant aspects of construction phase of the development as identified under the Council's development plan for developments of the nature proposed. Further, the CMP will ensure that the effects of construction are managed in an appropriate manner.

6.60. Car Capped

- 6.61. The site has a PTAL rating of 6 which indicates that the site has excellent access to the public transportation network. The site also lies within a controlled parking zone (CPZ) which operates between 09:00-18:30 Monday-Friday, and between 09:30-13:30 on Saturday. 110 parking permits have been issued for every 100 estimated parking bays within the zone. This means that this CPZ is highly stressed.

- 6.62. The proposal would retain 3 car parking spaces previously associated with the existing residential dwelling. This meets our parking standards for low parking provision areas which require a maximum provision of 0.5 spaces per residential dwelling. As the scheme is a new development in an area of high on-street parking stress, the Council would expect it to be car capped (in accordance with policy DP18). A legal agreement under Section 106 ("s106") for car-capped development (with a maximum of 3 on-site car parking spaces) is therefore required to ensure that

that the development does not create additional parking stress and congestion. This is in accordance with 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).

- 6.63. Camden Planning Guidance CPG 7 Transport sets out when existing parking rights can be maintained. It states existing parking rights can normally be retained on development sites, where it can be demonstrated that existing occupiers are to return to the address when it is completed (paragraph 5.19). If a development is to have new occupiers, existing parking rights will not apply, and the Council will apply its car-free / car-capped policies as set out in Development Policies DP18 and DP19 (paragraph 5.20).
- 6.64. A planning obligation is considered the most appropriate mechanism for securing the development as car capped as it relates to controls that are outside of the development site and 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 capped”. 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 Capped” 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 Capped”, and the Section 106 legal agreement is the mechanism used by the Council to signal that a property is to be designated as “Car Capped”.
- 6.65. 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 capped 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.

6.66. *Compliance with CIL reg 122*

6.67. The proposed restriction on the development being secured as “car-capped” meets the requirements of the CIL Regulations in being: (i) necessary to make the development acceptable in planning terms as identified by the relevant development plan policies; (ii) is directly related to the occupation of the residential units being part of the development; and (iii) is fairly and reasonably related in scale and kind to the residential units. This supports key principle 4 of the National Planning Policy Framework: Promoting sustainable transport.

6.68. Conclusion

6.69. This large dwelling on a substantial plot clearly reflects the local character, dating from the first phase of development of the area, and is considered to be demonstrably contextual in terms of its grain, scale, form, appearance and detailing, having aesthetic and historical value in its own right. As such, the Council considers that its demolition would cause harm to the character and appearance of the Fitzjohns/Netherhall Conservation Area and its loss is therefore considered to be unacceptable in principle. There is no evident public benefit which could be considered to outweigh such harm; therefore the proposal is contrary to the NPPF and the aims of policy CS14 of the core strategy and policy DP25 of the development policies. In addition, the development would provide substandard accommodation, harm biodiversity and undermine the garden setting of the appeal property, harming the wider conservation area contrary to policies CS5, CS14 and CS15 of the core strategy and policies DP24, DP25, and DP26 of the development policies.

7.0 APPROPRIATE CONDITIONS

Planning permission

7.1 The development hereby permitted must be begun not later than the end of three years from the date of this permission.

Reason: In order to comply with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).

- 7.2 The development shall be carried out in accordance with the following approved plans:

Reason: For the avoidance of doubt and in the interest of proper planning.

- 7.3 Detailed drawings, or samples of materials as appropriate, in respect of the following, shall be submitted to and approved in writing by the local planning authority before the relevant part of the work is begun:

a) Details including sections at 1:10 of all windows (including jambs, head and cill), external doors and gates;

b) Manufacturer's specification details of all facing materials including windows and door frames and roof tiles (to be submitted to the Local Planning Authority) and samples of those materials (to be provided on site) with a sample panel of not less than 1m by 1m demonstrating, the proposed colour, texture, face-bond and pointing of brickwork.

c) Typical details of new railings at a scale of 1:10 including materials and finish.

The relevant part of the works shall be carried out in accordance with the details thus approved and all approved samples shall be retained on site during the course of the works.

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policy CS14 of the London Borough of Camden Local Development Framework Core Strategy and policy DP24 and DP25 of the London Borough of Camden Local Development Framework Development Policies.

- 7.4 Prior to the commencement of any works on site, details demonstrating how trees to be retained shall be protected during construction work shall be submitted to and approved by the Council in writing. Such details shall follow guidelines and standards set out in BS5837:2012 "Trees in Relation to Construction". All trees on the site, or parts of trees growing from adjoining sites, unless shown on the permitted drawings

as being removed, shall be retained and protected from damage in accordance with the approved protection details.

Reason: To ensure that the development will not have an adverse effect on existing trees and in order to maintain the character and amenity of the area in accordance with the requirements of policy CS15 of the London Borough of Camden Local Development Framework Core Strategy.

- 7.5 The cycle storage area for 10 cycles hereby approved shall be provided in its entirety prior to the first occupation of any of the new units, and permanently retained thereafter.

Reason: To ensure the development provides adequate cycle parking facilities in accordance with the requirements of policy CS11 of the London Borough of Camden Local Development Framework Core Strategy and policy DP17 of the London Borough of Camden Local Development Framework Development Policies.

- 7.6 The demolition hereby permitted shall not be undertaken before a contract for the carrying out of the works of redevelopment of the site has been made and full planning permission has been granted for the redevelopment for which the contract provides.

Reason: To protect the visual amenity of the area in accordance with the requirements of policy CS14 of the London Borough of Camden Local Development Framework Core Strategy and policy DP25 of the London Borough of Camden Local Development Framework Development Policies.

- 7.7 Prior to first occupation of the development a plan showing details of bird and bat box locations and types and indication of species to be accommodated shall be submitted to and approved in writing by the local planning authority. The boxes shall be installed in accordance with the approved plans prior to the occupation of the development and thereafter retained.

Reason: In order to secure appropriate features to conserve and enhance wildlife habitats and biodiversity measures within the development, in accordance with the requirements of the London Plan March 2015, consolidated with alterations since

2011 and Camden Planning Guidance 2006 and policy CS15 of the London Borough of Camden Local Development Framework Core Strategy.

- 7.8 No impact piling until a piling method statement, prepared in consultation with Thames Water or the relevant statutory undertaker, detailing the depth and type of piling to be undertaken and the methodology by which such piling will be carried out including measures to prevent and minimise the potential for damage to subsurface water infrastructure, and the programme for the works, has been submitted to and approved in writing by the local planning authority. Any piling must be undertaken in accordance with the terms of the approved piling method statement.

Reason: To safeguard existing below ground public utility infrastructure and controlled waters in accordance with the requirements of policy CS13 of the London Borough of Camden Local Development Framework Core Strategy.

- 7.9 All units hereby approved shall be designed and constructed in accordance with Building Regulations Part M 4 (2).

Reason: To ensure that the internal layout of the building provides flexibility for the accessibility of future occupiers and their changing needs over time, in accordance with the requirements of policy CS6 of the London Borough of Camden Local Development Framework Core Strategy and policy DP6 of the London Borough of Camden Local Development Framework Development Policies.

- 7.10 Prior to first occupation of the development, an electric vehicle charging point shall be provided at the front of the site adjacent to the southern boundary.

Reason: To make the car parking provision more sustainable in accordance with the requirements of policy CS11 of the London Borough of Camden Local Development Framework Core Strategy and policy DP18 of the London Borough of Camden Local Development Framework Development Policies.

- 7.11 Sustainable urban drainage:

A) Prior to commencement of development details of a sustainable urban drainage system shall be submitted to and approved in writing by the local planning authority. Such system shall be designed to accommodate all storms up to and

including a 1:100 year storm with a 30% provision for climate change, and shall demonstrate that greenfield run off rates (5l/s) will be achieved.

- B) Prior to occupation of the development, evidence that the sustainable drainage system has been implemented shall be submitted to the Local Authority and approved in writing. The systems shall thereafter be retained and maintained in accordance with the approved maintenance plan.

Reason: To reduce the rate of surface water run-off from the buildings and limit the impact on the storm-water drainage system in accordance with policies CS13 and CS16 of the London Borough of Camden Local Development Framework Core Strategy and policies DP22, DP23 and DP32 of the London Borough of Camden Local Development Framework Development Policies.

Contact:

David Peres da Costa (Senior Planning Officer) 020 7974 5262

Catherine Bond (Principal Conservation Officer) 020 7974 2669

May 2016

Appendix A

Project Title	S106 Works
Location:	26 Netherhall Gardens
Client:	
Correspondence File:	

ESTIMATED/MEASURED BILL OF QUANTITIES

ITEM	DESCRIPTION	QUANTITY	UNIT	SELECTED RATE	TOTAL
200.006	Take up or down and remove to tip off site precast concrete or york stone paving slabs any size or type including steel reinforced between 66 and 80mm thick	87.90	m2		
200.022	Take up or down and set aside for reuse granite standard profile high containment kerb	22.50	m		
200.021	Take up or down and remove to tip off site granite flat, edge or standard profile bus boarder kerb	7.50	m		
500.081	Raising the level of any class of cover and frames in the footway, area of cover exceeding 0.1m2 but not exceeding 0.5m2, 50mm or less	5.00	nr		
500.082	Raising the level of any class of cover and frames in the footway, area of cover exceeding 0.1m2 but not exceeding 0.5m2, exceeding 50mm but not exceeding 150mm	2.00	nr		
500.083	Raising the level of any class of cover and frames in the footway, area of covers exceeding 0.5m2 but not exceeding 1.0m2, 50mm or less	2.00	nr		
600.001	Excavation of any material in footways, verges and other pedestrian areas	26.37	m3		
600.007	Extra over excavation for excavation in hard material in footways, verges and other pedestrian areas	8.79	m3		
600.012	Disposal of any material.(except class U1B and U2 material)	35.16	m3		
600.020	Completion of formation on material other than Class 1C, 6B or rock in cuttings	87.90	m2		
1100.001	Granite flat kerb 300x200mm, 'fine picked' finish, laid straight or curved exceeding 12 metres radius	7.50	m		
1100.052	65mm thick Artificial Stone Paving, any BS size A,B,C or D on existing base or base measured separately and sand bedding 30mm thick	87.90	m2		
1100.079	Extra and any item of paving sand bedding 30mm thick for sand cement mortar	87.90	m2		
1100.080	100mm ST1 concrete base in footways	87.90	m2		
1100.112	Additional ST1 concrete for any kerbs, channels or edgings	3.00	m3		
1100.031	Remove from set aside area and relay flat granite kerb, laid straight or curved exceeding 12 metres radius	22.50	m		
	TMO	0.00	no		
				Sub Total	
Contractor Adjustment			%	£0.00	
Fees			%	£0.00	
Contingencies			%	£0.00	

GRAND TOTAL £9,951.80

Produced By:	Yuksel Arikan	Date: 15/10/15	
Checked by:		Date:	
Approved by:		Date:	
Revision:		Date:	

Appendix B

COMMENTS ON APPLICATION FOR 26 NETHERHALL GARDENS 2015/3314/P

THIS REPORT IS PREPARED ON BEHALF OF THE OWNERS OF 24A NETHERHALL GARDENS WHICH ADJOINS THE APPLICATION SITE

A very similar proposal was submitted reference 2015/3314/P which was refused for the following reasons

LOSS OF THE EXISTING BUILDING

Reasons 1

The proposed demolition would result in the loss of a building which makes a positive contribution to the Fitzjohns and Netherhall Conservation Area to the detriment of the character and appearance of this part of the Fitzjohns and Netherhall 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.

This reason for refusal still stands as the existing building is being demolished in the current application.

OVER DEVELOPMENT OF BASEMENT

Reasons 2

The proposed basement, by reason of its site coverage and proximity to the boundaries of adjacent sites/buildings, coupled with the absence of a basement verification study and a S106 legal agreement to secure a basement construction plan would fail to sustain growth of vegetation and trees on the site boundaries harming the character and appearance of site, and fail to demonstrate that the proposal would maintain the structural stability of the neighbouring buildings, and would not adversely impact the local water environment and drainage. The proposal is thereby contrary to policy CS14 (Promoting high quality places and conserving our heritage), CS15 (Protecting and improving our parks and open spaces and encouraging biodiversity), CS19 (delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policies DP23 (Water), DP24 (Securing high quality design), DP25 (Conserving

Camden's heritage) DP27 (Basements and Lightwells) and of the London Borough of Camden Local Development Framework Development Policies.

The proposed drawings show a 3 storey basement being constructed, right on the boundary with No 24A

This would appear to be an unacceptable form of development due to

- **The effects of construction traffic and muck away Lorries on a quiet residential street over a prolonged period.**
- **The relatively different depths of adjacent foundations having a destabilising effect on adjacent properties, particularly No 24A**
- **The removal of trees on site, coupled with the excavation below the level of the water table would have an effect on the soil characteristics , and destabilise the foundations of adjacent buildings. The owner at No 24A is aware that consent would have to be agreed under the party wall process, however it is understood that it is not appropriate to grant planning consents for developments which cannot be implemented due to technical constraints.**





Whilst a single basement level may be appropriate as it would be above the water table and have less impact on neighbouring properties and disruption during construction; the current proposal for a 2/3 storey basement is considered unacceptable.

Reasons 3

The proposed residential units 1& 2 which include accommodation at basement level, by reason of their poor outlook and access to natural light to habitable rooms at basement level 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.

This would still appear to be a valid reason for concern as the proposed basement plan below demonstrates. Bedrooms do count as habitable rooms.

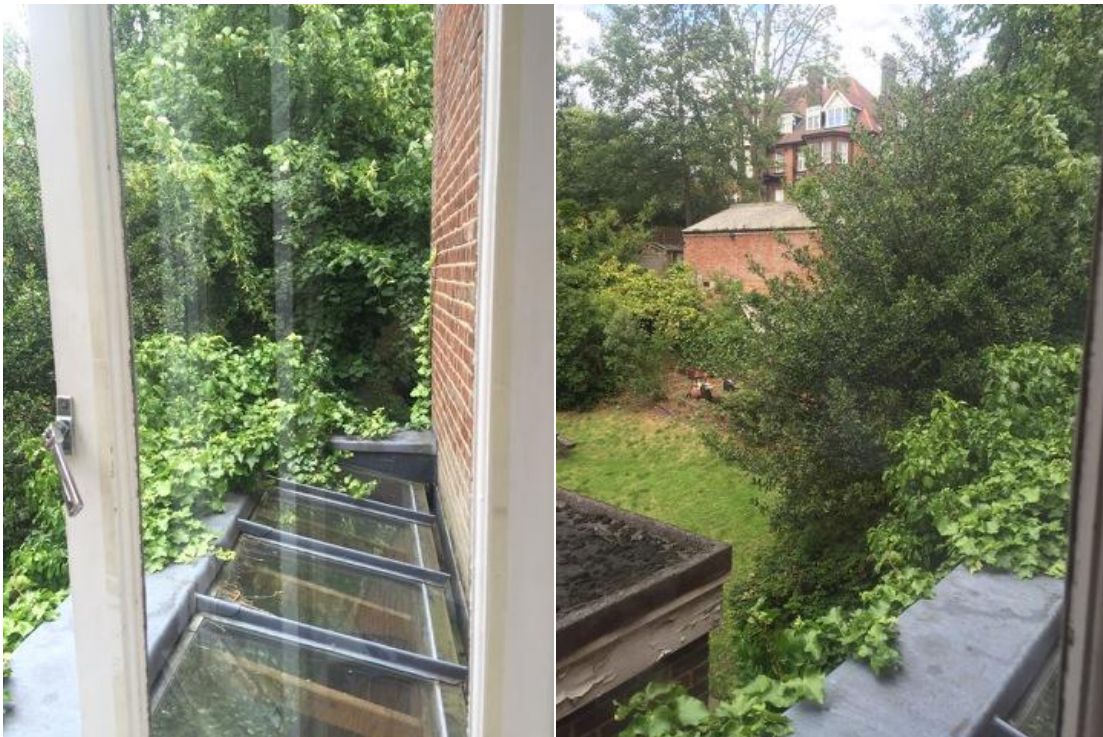


Reasons 4

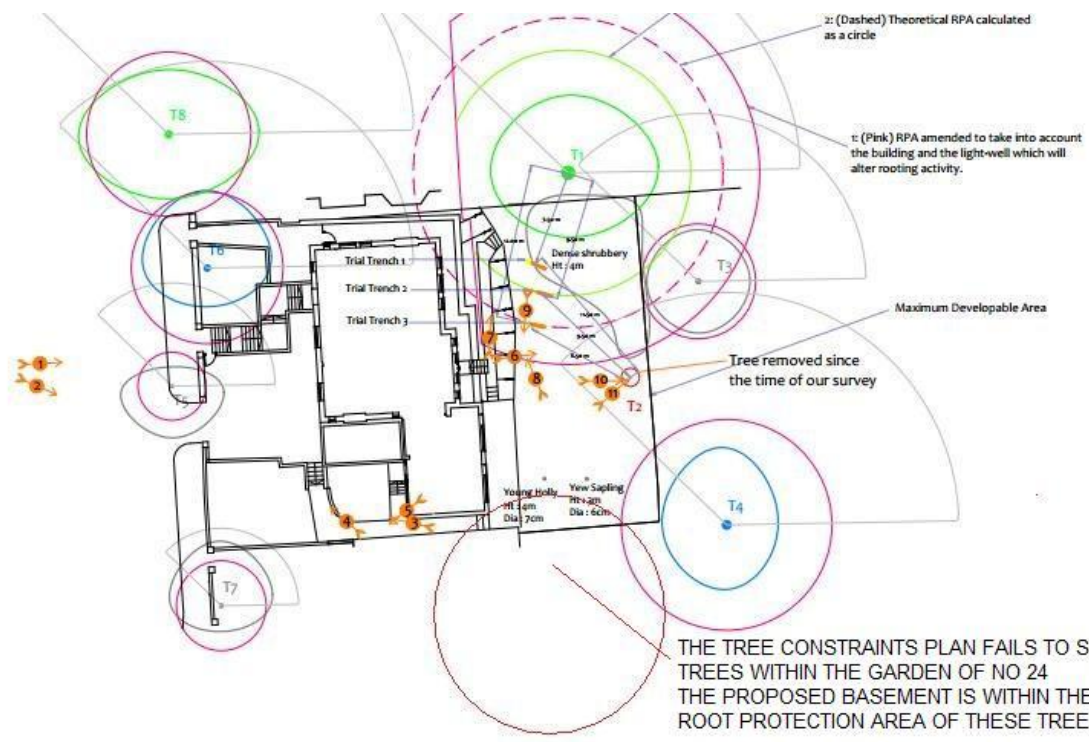
The proposed development, by reason of the felling of the mature category 'B' Lime tree (referred to as T6) would be detrimental to the character and appearance of the conservation area and is thereby contrary to policy CS14 (Promoting high quality places and conserving our heritage) and DP25 (Conserving Camden's heritage) of the London Borough of Camden Local Development Framework Development Policies.

DAMAGE TO TREES

This reason for refusal is still valid as the proposed application fails to take account of trees which are in the garden of No 24A on the boundary



TREES VIEWED FROM THE FIRST FLOOR REAR / SIDE WINDOW TO 24A NETHEHALL GARDENS



2: (Dashed) Theoretical RPA calculated as a circle

1: (Pink) RPA amended to take into account the building and the light-well which will alter rooting activity.

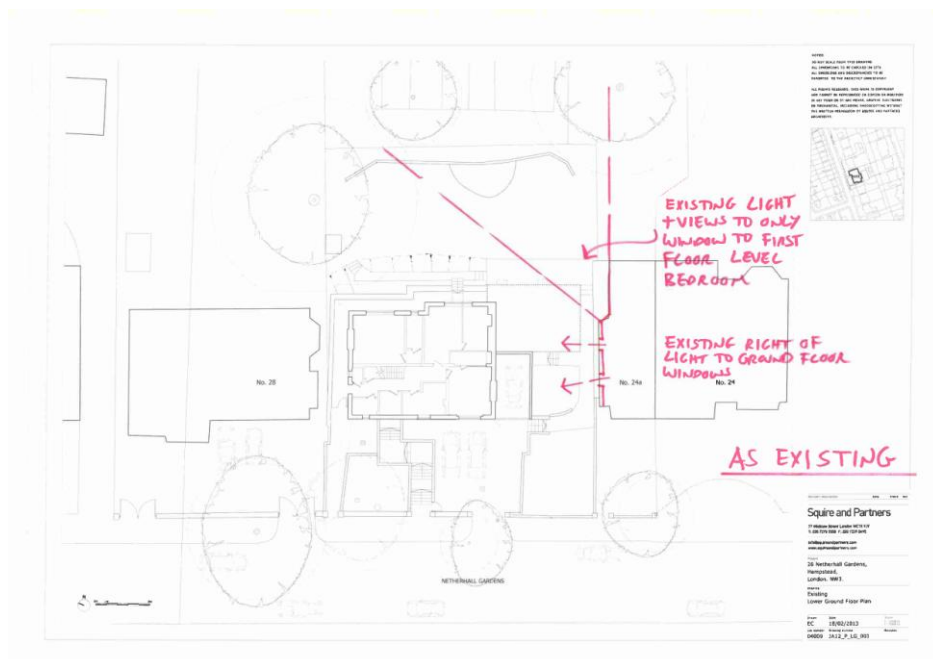
Maximum Developable Area

Tree removed since the time of our survey

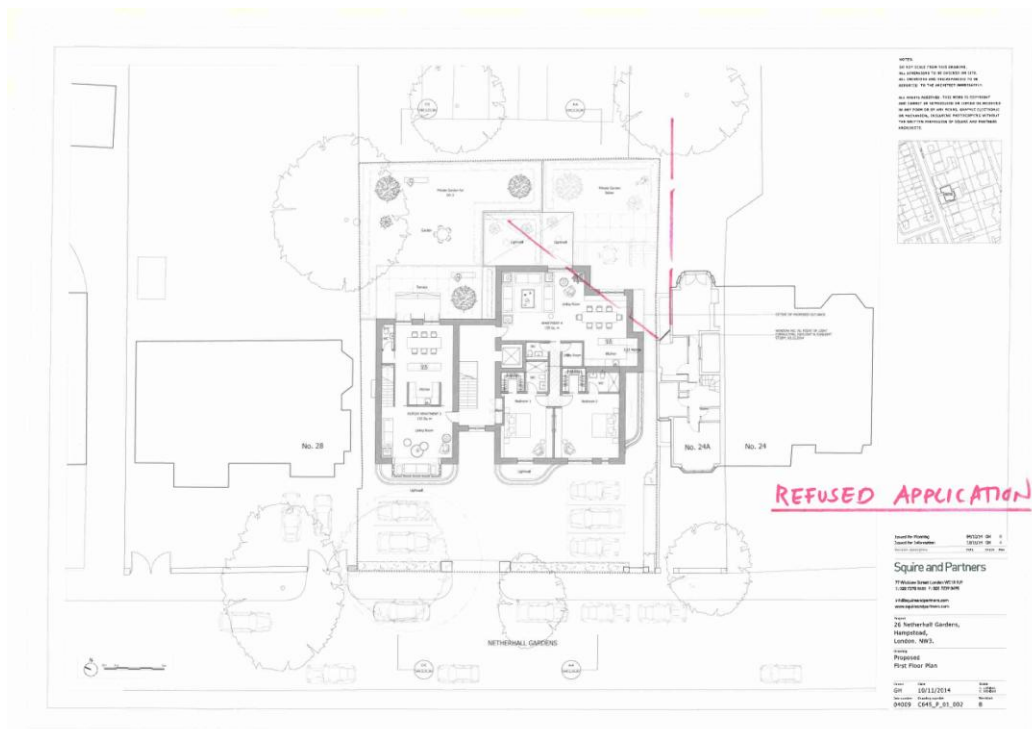
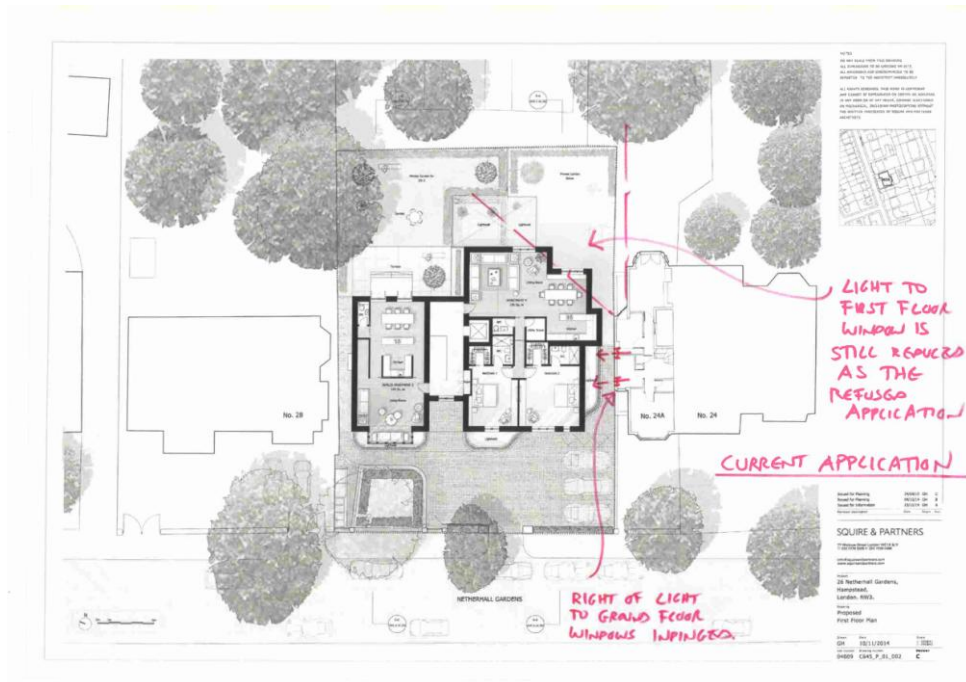
THE TREE CONSTRAINTS PLAN FAILS TO SHOW TREES WITHIN THE GARDEN OF NO 24 THE PROPOSED BASEMENT IS WITHIN THE ROOT PROTECTION AREA OF THESE TREES

LOSS OF LIGHT AND OUTLOOK TO NO 24A NETHERHALL GARDENS

The existing first floor window to the bedroom at No 24A has a window which is at 45deg to the boundary, and currently enjoys light and views as illustrated below.



The relationship between the first floor windows, and the ground floor windows on the boundary has not altered since the previously refused application.



RIGHT TO LIGHT

It is likely that the windows to the ground floor on the boundary have an established right to light which will be infringed by the proposed development.