

PLANNING SERVICES

TOWN & COUNTRY PLANNING ACT 1990 (as amended)

**STATEMENT OF CASE
INFORMAL HEARING: 15 NOVEMBER 2016**

APPEAL SITE: 22 Frognal Way, London NW3 6XE

APPELLANT: Mr Jeremy San

SUBJECT OF APPEAL

Appeal against the refusal of a planning application for demolition of the existing detached dwelling house at 22 Frognal Way and redevelopment to provide a single detached dwelling house.

COUNCIL REFERENCE: 2015/3530/P

PLANNING INSPECTORATE REFERENCE: APP/X5210/W/16/3150327

1.0 SITE AND SURROUNDINGS

- 1.1 This appeal relates to a single-storey detached dwelling located at the end of Frogna Way, a private cul-de-sac, located within Sub Area Five of the Hampstead Conservation Area. The existing building is located on a generous plot of land, with a large garden to the rear. Dating from 1975, the building was designed for Harold Cooper and his wife by Philip Pank, a prominent local modernist architect and artist.
- 1.2 The building consists of a central rotunda with three wings, which radiate out in a modernist style. The layout was designed to cater for Harold Cooper's wife, who was wheelchair-bound. The building has been vacant since 2007 and is currently protected from the elements by a temporary roof.
- 1.3 The site is prominent in views from all sides: from the west along Frogna Way itself; from the north along the Public Footpath linking Church Row to Frogna Way; from St John's Churchyard to the north-west; and from residential properties at a higher ground level along Church Row to the north-east.
- 1.1 The siting and design of the existing single-storey building ensures the retention of uninterrupted long views from Frogna Way towards the rear of the listed terrace of houses on the south side of Church Row, which is an important local view.
- 1.2 The character of the surrounding area is predominantly residential, with properties in Hampstead village core and outlying areas dating from different periods ranging from the Eighteenth to late Twentieth Centuries, many of them listed (at grades I, II* and II). St John's Church in Church Row, which is in close proximity to the site, is listed at grade I.
- 1.3 Frogna Way was laid out in the 1920s and is characterised by a number of distinctive houses dating from different decades of the Twentieth Century, in a range of styles from the traditional to the overtly modern, some of which were

designed by notable architects. However, they are generally consistent in scale and form, being large houses on generous sites with front and rear gardens

2.0 RELEVANT PLANNING HISTORY

2.1 **April 2008:** Erection of 2 x two-storey single-family dwellings, together with basement parking and associated landscaping following demolition of existing house, garage and swimming pool (Refs: 2007/3790/P & 2007/3791/C. Had a non-determination appeal not been submitted, the Council would have refused this application on the following grounds:

- design of proposed dwellings;
- excessive off-site parking;
- failure to enter into a legal agreement to secure car-capped housing; and
- failure to enter into a legal agreement to secure a Construction Management Plan.

However, this application was not determined by the Council as an appeal against non-determination was lodged by the applicant.

2.2. **October 2008:** The appeals against non-determination of the above applications (Refs: 2007/3790/P and 2007/3791/C) were considered by a planning inspector at a two-day public inquiry and dismissed by way of a decision letter dated 22 October 2008 (PINS Ref: APP/X5210/A/08/2069663).

2.3 **September 2009:** Planning permission granted by way of a decision notice dated 28 September 2009 (Ref: 2009/3168/P) for development comprising an extension to existing basement, conservatory extension at ground floor level, insertion of car lift to basement, introduction of green roof, lightwells, lantern light roof extension and associated works to existing dwelling house. The following matters were reserved for later submission of details:

- Condition 3 - Design details
- Condition 4 - Landscape details
- Condition 5 - Construction management plan
- Condition 6 - Green roof details

- 2.4 **April 2010:** Approval of details granted (Ref: 2010/0915/P), pursuant to condition 4 (details of tree protection measures) and condition 5 (construction management plan) of planning permission (Ref: 2009/3168/P).
- 2.5 **March 2012:** Planning permission granted (Ref: 2011/0924/P) for replacement of existing external brickwork of existing residential dwelling with custom manufactured bricks as an amendment to planning permission granted on 28 September 2009 (Ref: 2009/3168/P).
- 2.6 In **Summer 2012** the flat roofs to the three wings of the house were removed. The then owner argued that these works constituted repairs/ maintenance and that the works were permitted under the extant permission (Ref: 2009/3168/P). However, the works exposed the interior of the dwelling to the elements, threatening its structural stability through water penetration and weathering. Officers advised the owner to rebuild the roof or put in place a protective roof. In order to ensure that the works were carried out within a strict timeframe, the following notice was served:
- 2.7 **December 2012:** Untidy Land Notice issued under section 215 of the 1990 Act on 10 Dec 2012, requiring the owner to remedy the poor condition of the land (Ref: EN12/0238). Specifically, the section 215 Notice required the following works to be carried out within 2 months:
- “Either:*
- 3.1.1 *Fit a watertight permanent roof which matches the previous roof in design and materials; or*
 - 3.1.2 *Fit a temporary watertight roof.*
 - 3.2 *In respect of any external window and door openings of the dwellinghouse where the windows and or doors have been damaged or removed, board up fully all external window and door openings. Paint all installed boarding to match the adjacent brickwork in colour.*
 - 3.3 *Remove permanently from the land all litter and debris and keep the land clear of all litter and debris.*

3.4 *Cut back all vegetation on the land so that such vegetation does not overhang or encroach upon any adjoining land or highway."*

2.8 During a site visit in January 2013 officers verified that a temporary roof had been fitted to the building; the site had been tidied up, with litter and debris removed; and vegetation was cut back. None of the door or window openings were open to the elements. The measures required by the section 215 Notice had been complied with.

2.9 **March 2016:** Planning permission refused for demolition of existing dwelling house at 22 Frognaal Way redevelopment to provide a single detached family dwelling house and all other necessary works (Ref: 2015/3530/P).

Reasons for Refusal:

1. *The proposed demolition by reason of the loss of the existing building which makes a positive contribution to the Hampstead Conservation Area would cause harm to the character and appearance of the Conservation Area contrary to policies CS14 (Promoting high quality places and conserving our heritage) of the London Borough of Camden Local Development Framework Core Strategy and policy DP25 (Conserving Camden's heritage) of the London Borough of Camden Local Development Framework Development Policies.*
2. *The proposed development, in the absence of a legal agreement securing a construction management plan, would be likely to give rise to conflicts with other road users, 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 highway network) and DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Policies.*
3. *The proposed development, in the absence of a legal agreement securing a Basement Construction Plan requiring appropriate detailed drainage design, construction method statements, and mitigation and monitoring measures, would be likely to harm local hydrology, geology and land stability conditions and would cause harm to the built and natural environment and local amenity. This would be contrary to policies CS5 (Managing the impact of growth and development), CS14 (Promoting high quality places and conserving our heritage) and CS19*

(Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policy DP27 (Basements and lightwells) of the London Borough of Camden Local Development Framework Development Policies."

2.10 **May 2015:** Enforcement Notice issued under delegated authority; this was subsequently withdrawn and reissued on **14 September 2015**. The alleged breach of planning control was described in the Notice as:

"The removal of the original roof and fascia boards from the three wings of the dwelling house".

2.11 The reasons for issuing the Notice were as follows:

- " i) The breach has occurred within the last 4 years.*
- ii) The alterations to the dwelling house, which include the removal of the original roof and the original fascia boards, have a detrimental impact on the appearance of the building and the character and appearance of the Hampstead Conservation Area. As such the works are contrary to policies CS14 (Promoting High Quality Places and Conserving Our Heritage) of the London Borough of Camden Local Development Framework Core Strategy; policy DP24 (Securing High Quality Design) and DP25 (Conserving Camden's Heritage) of the London Borough of Camden Local Development Framework Development Policies."*

2.12 The Notice required the owner of the land, within four months, to:

"Completely reinstate the original roof and fascia boards to the three wings of the dwelling house."

2.13 The owner of the land appealed against the Notice on the following grounds:

- Ground A - that planning permission should be granted for the works;
- Ground C - that there has not been a breach of planning control;
- Ground F - that the steps required to comply with the Enforcement Notice are excessive and lesser steps could

overcome the objections;

- Ground G - that the period of compliance is too short

2.14 The appeal was considered by the appointed planning inspector, Bridget M Campbell, BA(Hons) MRTPA at a hearing on 26 of May 2016. By way of a decision letter dated 14 of June 2016, the Inspector allowed the appeal under Ground C, on the basis that the works that had been carried out at the site formed part of the scheme granted permission on 28 September 2009 (Ref: 2009/3168/P) and that this scheme had been implemented. As the appeal succeeded on Ground C, it was unnecessary for the Inspector to consider the other appeal grounds.

2.15 The Appellant submitted the present section 78 appeal on 13 May 2016, before the hearing of its enforcement notice appeal on 26 of May. As a result, the Appellant's Statement of Case does not take into consideration the outcome of that enforcement notice appeal. Moreover, as the Appellant's Ground C appeal against the enforcement notice was allowed, parts of the Appellant's Statement of Case are no longer relevant, in particular, paragraphs 3.10 to 3.11 and 3.18 to 3.23.

3.0 PLANNING POLICY FRAMEWORK

Local Development Framework

3.1 The London Borough of Camden Local Development Framework (LDF) was formally adopted on the 8 November 2010. There are no material differences between these policies and the National Planning Policy Framework (NPPF).

3.2 The LDF policies relevant to his appeal as are listed below:

Core strategy

CS5 Managing the Impact of growth and development

CS14 Promoting high quality places and conserving our heritage

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

- 3.3 The full text of each of these policies was included within the Council's questionnaire documents submitted to the Planning Inspectorate.

Supplementary Guidance (Camden Planning Guidance)

- 3.4 Camden Planning Guidance No 1 - Design (as amended in 2013 and 2015) ("CPG1")

- Chapter 2 - Design Excellence
- Chapter 5 - Roofs, Terraces and Balconies

Camden Planning Guidance No 2 - Housing ("CPG2")

Camden Planning Guidance No 3 - Sustainability (as amended in 2013 and 2015) ("CPG3")

Camden Planning Guidance No 4 - Basement and Lightwells (as amended in 2013 and 2015) ("CPG4")

Camden Planning Guidance No 6 – Amenity ("CPG6")

Camden Planning Guidance No 7 - Transport ("CPG7")

Camden Planning Guidance No 8 - Planning Obligations ("CPG8")

- 3.5 These Supplementary Planning Documents were adopted following extensive public consultation.

Hampstead Conservation Area Statement 2001

- 3.6 The Council also refers to guidance in the Hampstead Conservation Area Statement. This statement was formally adopted in 2001 and published in 2002. In particular, the Council refers to the guidance under the following

headings: History, 20th Century (p 11); Character and Appearance, Sub Area Five Froggal (p 41); and the Design Guidelines relating to Materials and Maintenance, New Development, Roof Extensions (H17 to H24 and H31 to H33, pp. 61-3). A copy of the relevant sections was sent with the Council's Questionnaire.

National policy and guidance

National Planning Policy Framework 2012 (NPPF)

- 3.7 The NPPF 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.

Planning Practice Guidance (PPG)

- 3.8 - Design
- Conserving and Enhancing the Historic Environment

4.0 THE COUNCIL'S STATEMENT OF CASE

The appeal proposal

- 4.1 The Appellant applied for planning permission to demolish the existing dwelling house at 22 Frognal Way and to erect a three-storey detached single family dwelling house which would include upper ground, lower ground and basement floor levels to provide a seven-bedroom single family dwelling. The proposal includes a vehicular entrance from Frognal Way in the position of the existing gates, with garaging to be located to the left as one enters the site – the previous garaging (now demolished) was located to the right of the entrance, next to the boundary with 20 Frognal Way.
- 4.2 Planning permission was refused because the proposed demolition by reason of the loss of the existing building which makes a positive contribution to the Hampstead Conservation Area would cause harm to the character and appearance of the Conservation Area contrary to policies CS14 (Promoting high quality places and conserving our heritage) of the London Borough of Camden Local Development Framework Core Strategy and policy DP25 (Conserving Camden's heritage) of the London Borough of Camden Local Development Framework Development Policies.
- 4.3 Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, in relation to conservation areas, requires that *“special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.”* As the Council concluded that the proposed development would result in harm to the character and appearance of the Conservation Area, section 72 duly required the Council to attach considerable importance and weight to the preservation of the character and appearance of the conservation area and harm identified when balancing the material planning consideration relevant to the determination of the application.
- 4.4 Paragraph 129 of the NPPF states *“Local planning authorities should identify and assess the particular significance of any heritage asset that may be*

affected by a proposal (including by redevelopment affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this assessment into account when considering the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal.” Paragraph 135 reads, *“The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”*

- 4.5 NPPF paragraph 138 states that the *“Loss of a building that makes a positive contribution to the significance of a Conservation Area ... should be treated either as substantial harm under paragraph 133 or less-than-substantial harm under paragraph 134, as appropriate, taking into account the relative significance of the element affected and its contribution to the significance of the Conservation Area ...”*
- 4.6 Paragraph 134 of the NPPF is clear 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.”*
- 4.7 LDF Policy DP25 outlines a clear presumption in favour of retaining 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.”*(para. 25.6) Paragraph 128-138 of the NPPF sets out the decision making tests for works that affect a heritage asset, in particular paragraph 134 quoted above

- 4.8 Paragraph 3.36 of Camden Planning Guidance 1 (Design) notes there is a presumption in favour of retaining non designated heritage assets.

Merits of the existing building

- 4.9 Hampstead Conservation Area Statement (Appendix 7 of the Appellant's submission) deals with the character and appearance in the Conservation Area in detail. The appeal site is located in sub-area five Frognaal within the Hampstead Conservation Area, in an area to the west of Hampstead Village where the density of development associated with the historic core of the village gradually gives way to a less dense pattern of large houses with generous gardens. The CA Statement recognises that within the wide variety of building styles in the Conservation Area there are striking examples of modern architecture and design (p.62). This property, as a commissioned house from an architect of local importance, with a distinctive layout of rotunda and fingers responding to the contours of the large site, is a very good example of modern architecture within the Hampstead Conservation Area.
- 4.10 The considerable architectural and townscape merit of the existing building is also recognised by the Inspector in the 2008 Appeal decision. The designer of the building, Philip Pank, was a well-regarded modernist architect and another of his designs in the area (38 Millfield Lane) has been statutorily listed grade II. In 2007, the appeal property was considered for listing by English Heritage (now Historic England). Although the building was not listed, it was recognised as a building of local importance that made a positive contribution to the Conservation Area as a good example of an architect-designed house dating from the 1970s which complements the remarkable houses of earlier decades in the same street.¹

¹ This comment is taken from the October 2008 Inspector's Report, paragraph 9, Appendix 10 of Appellant's submission.

- 4.11 It is worth repeating the assessment of the Inspector as set out in his 2008 report (paragraph 14):

"In my view, the building is of interesting and distinctive design and appearance, designed by an architect of some local importance following a commission from a specific client with a disabled wife. Its form and design are assimilated into the site without detracting from the adjoining house and with little impact on important local views of Church Row and surrounds. As a commissioned house, it continues and adds to the theme of individual houses in Frogal Way, which define its character. English Heritage, in considering listing, indicated that the house makes a positive contribution to the Conservation Area and this reflects my own assessment of the building. Its inclusion in 'Buildings of England' further indicates its significance. In my opinion, it falls within the defined criteria for making a positive contribution contained within Appendix 2 of 'Guidance on Conservation Area Appraisals'".

The Inspector goes on to state (at paragraph 15);

"I conclude, for the above reasons, that the existing building makes a positive contribution to the character and appearance of the Hampstead Conservation Area."

- 4.12 It is noted that the Inspector's assessment and conclusions were made when the building was intact and weatherproof, with its original roof and cornicing in place; and prior to the completion of later (consented) alteration to the external appearance of the building. However, it is the Council's view that these alterations, which were the subject of planning permissions granted after 2008, in principle, do not detract from the building's significance, including the positive contribution it makes to the Conservation Area. This positive contribution is based on its appearance and layout and on its having been designed by an architect of local and London-wide renown who played an important part in the evolution of modern 20th Century architecture in the Conservation Area. The property has been skilfully designed in terms of overall form and detail to successfully integrate into the landscape.
- 4.13 Applications were granted permission by the Council in 2009 and 2011 for alterations at basement and ground floor levels, including excavation for

lightwells, a glazed infill extension and bespoke brick cladding. In granting these permissions, careful consideration was taken of the impacts of all elements of the proposals on the existing building, which had already been recognised by the Planning Inspector as making a positive contribution to the Hampstead Conservation Area. The 2009 consent preserved and enhanced the character and appearance of the conservation area, by sensitively extending and adapting the positive contributor rather than remodelling the existing building to such a degree that it takes on the appearance of a new building. The above-ground structure was allowed to retain most of its original character, whilst the below-ground alterations and infill extensions were discreetly designed so as not to detract from integrity or geometry of the 1970s house. Whilst the Council granted the recladding of the external walls in a continental-size bricks, they do match the colour and texture of the original bricks, meaning that the overall appearance is a matter of detailed design not detracting from the significance of the non-designated heritage asset and its positive contribution to the Conservation Area.

- 4.14 The existing Philip Pank building, taking account of the consented alterations, is thus considered by the Council to make a positive contribution to the significance of the Hampstead Conservation Area and to reinforce its special character and appearance, in particular that of sub-area five Frognaal. It therefore follows that the effect of demolition on the significance of the Hampstead Conservation Area considered as a whole, would result in less than substantial harm to the significance of the Conservation Area as the designated heritage asset.

Replacement Building

- 4.15 The proposed replacement building is a contemporary house, which proposes some elements of design quality, and seeks to be contextual in terms of its height, bulk and massing. It will be visible in views from Frognaal Way, from the path accessing Church Row, in views from St John's Churchyard, and in private views from the rear of the listed residential properties on the south side of Church Row. However, the overall architectural form of the proposed building, including detailed design, noticeably differs from, and lacks the distinct characteristics of, the 1970s Philip Pank house, such as the central

rotunda and lantern-style metal clad feature, the merits of which in design terms have stood the test of time (despite the building's current poor condition).

- 4.16 Whilst no in-principle objections are raised over the design of the proposed new house in its own right, and this was not considered to be a reason for refusing planning permission, the Council objects to the demolition and complete loss of the existing Pank-designed building as a notable positive contributor in the Hampstead Conservation Area, which falls at the higher end of the positive contributor spectrum (despite neglect in recent years), as outlined above. The existing house is characteristic of a later 20th Century phase of residential development in the Conservation Area, often on infill sites, and as such is one of many modern buildings dating from various decades of the 20th and 21st Centuries, as can be found in Frogal Way.
- 4.17 On this basis, it is considered that the proposed development does not constitute an improvement over the existing building (and taking into account the 2009 and 2011 consented changes) in preserving and enhancing the character and appearance of the Conservation Area. The proposed development does not warrant the loss of the existing building which is considered to make a contribution to the Conservation Area as outlined above.
- 4.18 Account has been taken in making this assessment of LDF Policy DP25 (Conserving Camden's Heritage), the supporting text of which states that any proposed replacement building "*should enhance the conservation area to an appreciably greater extent than the existing building*". Paragraph 138 of the NPPF states that "*Loss of a building which makes a positive contribution to the significance of the Conservation Area... should be treated either a substantial harm under paragraph 133 or less than substantial harm under paragraph 134, as appropriate, taking into account the relative significance of the element affected and its contribution to the significance of the Conservation Area as a whole*". For the reasons stated above, the replacement building is not considered to be a sufficient improvement on the existing building to appreciably enhance the conservation area, and thus the overall proposal fails to comply with these policy tests.

- 4.19 Furthermore, the proposal puts forward no strong public benefits that outweigh the less than substantial harm caused by the demolition of the positive contributor to the Hampstead Conservation Area, the designated heritage asset. It should also be noted that the proposal does not sustain and enhance the significance of the existing positive contributor, as the non-designated heritage asset.
- 4.20 In applying the statutory tests and national and local policy, the Council considers that although the replacement scheme aims to be of a high quality contextual design, the loss of the existing building would have an adverse impact on the character and appearance of the Hampstead Conservation Area as a whole. Considerable weight has been given to assessing the merits of the proposed replacement dwelling against the loss of the existing dwelling and in the absence of public benefit of the proposal, the proposal is considered unacceptable.

5.0 RESPONSE TO THE APPELLANT'S GROUNDS OF APPEAL

5.1 The appellant's grounds of appeal / key considerations of the case can be summarised as follows (with Council's response in italics).

5.2 Whilst the building is not listed, the site falls within the Hampstead Conservation Area. The only substantive objection to the proposed scheme, which cannot be addressed by a Section 106 obligation, relates to the loss of the existing building which is considered by the LBC to cause harm to the character and appearance of the Hampstead Conservation Area. (Paras. 9-1-9.3 of the Appellant's Statement of Case SOC)

Response: *The Council agrees in principle.*

5.3 The proposed development meets the statutory duty under Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. (Paras 8.2 and 9.10 of SOC)

Response: *The Council disagrees as it considers the proposal does not meet Section 72 on the grounds that it considers harm is caused to the character and appearance of the conservation area, to which it gives considerable importance and weight when making a balanced judgement of the application.*

5.4 The scheme complies with the applicable heritage policy tests of the National Planning Policy Framework in that the proposal is considered to provide an enhancement to the Conservation Area in terms of the following

- Sensitive design, layout and appearance of the replacement building;
- improved public views; and
- bringing the site back into use (para 6.6, 6.7 and 9.11 of SOC).

Response: *The Council disagrees that the proposed development does not cause harm to the character and appearance of the Hampstead Conservation Area, as the designated heritage asset in*

question. It follows that the Council disagrees that the proposed development enhances the Conservation Area.

The replacement building does not provide sufficient improved appearance to allow the demolition of the existing positive contributor. Reference is made by the Appellant to improved public views, however the Council disagrees and is of the view that it does not provide improved views from any viewpoints in the Conservation Area. That the existing building is vacant and unoccupied and been allowed to deteriorate over recent years is the responsibility of its owners and is capable of being restored and upgraded either in its existing form or subject to the 2009 planning permission.

- 5.5 The scheme is for a family, who intend for the development to proceed to accommodate their requirements (para 6.1 of SOC)

Response: *That the proposed development is for a particular family is not a guarantee that the development will be implemented or that the site will not be sold on.*

- 5.6 The scheme will provide a number of benefits to the Hampstead Conservation Area (para. 6.7 of SOC):

Response: *The Council considers the scheme will not preserve and enhance the character and appearance of the Conservation Area, as set out in this Statement of Case. The scheme will thus fail to meet the requirements of paragraph 137 of the NPPF which states, “Local planning authorities should look for opportunities for new development within Conservation Areas ... and within the setting of heritage assets to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to or better reveal the significance of the asset should be treated favourably.”*

5.7 The existing building on the site makes a limited positive contribution to the Conservation Area (para. 4.1-4.7 of SOC):

Response: *The Council disagrees that the positive contribution of the existing building to the conservation is limited; rather it considers the building makes a sizeable contribution to the Conservation Area due to its notable architectural and historic interest as outlined in this Statement of Case.*

5.8 The proposed development provides an improvement to the Conservation Area, and therefore there is no requirement to outweigh any harm arising from the demolition of the existing building and its replacement by the proposed new dwelling and its gardens (para 9.10 of SOC):

Response: *The Council disagrees that the replacement building would provide an improvement to the Conservation Area; rather, in a balanced assessment of the proposed scheme, it is concluded that its contribution to the character and appearance of the Conservation Area would be insufficient to justify the total demolition of the existing building.*

5.9 A number of benefits would be secured as a result of the proposed development (para 9.11 SOC), including:

- (i) the regeneration of the site;
- (ii) the high quality design of the proposed architecture;
- (iii) improvements to the local townscape;
- (iv) bringing the site back into use; and
- (v) the strength of local connections in that a local award winning architect has designed a house for a local family, including a nationally-recognised cultural figure committed to this part of London.

Response: *The Council considers that (i) the appellant has failed to demonstrate that the sensitive regeneration, upgrading and restoration of the existing building, rather than its demolition and replacement, is not viable; (ii) the replacement scheme is not considered to be of sufficient high quality to warrant the demolition of the existing building; and (iii) the strength of local connections of both the current site owner and team of built environment professionals is not a material consideration when assessing the merits of the proposed development with reference to current policy and guidance.*

- 5.10 The scheme is consistent with the evolution of Frogmal Way. The street contains bespoke, architect commissioned houses, such as the proposed development (para 9.8 of SOC):

Response: *The Council disagrees. Although Frogmal Way is characterised by distinct, individually designed houses dating from various decades of the 20th Century, this is not a reason to allow the total demolition of a positive contributor from such a period of development.*

- 5.11 The proposals are for a local family, who intend to build and occupy the dwelling (para 6.1 of SOC).

Response: *There is no acknowledged public benefit from the replacement building being for any specific client group or future occupier, which would outweigh the harm caused by the loss of the positive contributor; there is no way of ensuring that the development would be implemented or that the site would not be sold on.*

- 5.12 The proposed dwelling has been designed to meet the requirements of the Appellant, who has a long term disability with progressive conditions. This is relevant in that site was originally developed for a client whose wife had a

disability, and therefore the site will continue to provide an accessible house (para. 6.1 of SOC):

Response: *Notwithstanding that the existing house was built with level access to cater for an occupier with a disability, and is capable of adaptation to cater for specific requirements. Furthermore, the individual needs of the Appellant are not considered to be a public benefit, which might outweigh any harm identified under Paragraph 134 of the NPPF.*

- 5.13 The Appellant is willing to accept a personal planning permission if the Inspector considers it necessary to impose such a requirement (para. 9.28 of SOC):

Officer response: *A personal planning permission would still cause the harm identified by the Council through the loss of the positive contributor. A personal planning permission if implemented, depending on its terms, would still have a long-term and irreversible adverse impact on the character and appearance of the Hampstead Conservation Area. Even if such a consent stipulated that a replica building to the existing be reconstructed once the replacement building was no longer required, it would never bring back the Pank-designed 1970s building and the positive contribution it makes to the Conservation Area.*

The Application process

- 5.14 In Section 5 of the Statement of Case, the Appellant refers to discussions that took place before and after the application was submitted. A draft report is also appended (Appendix 4 of Appellant's submission). These discussions took place between senior planning officers, conservation officers and the appellant's representatives and some of them indicated officer support for the application (para. 5.1- 5.21)

Response: discussions did take place before and during the application period. These indicated the thinking of the officer dealing with the case and gave the owner reason to believe that the case would be recommended for approved, as was indicated in the draft report. These discussions and documents do not, however, represent a formal decision by the Council. This is because consideration of a planning application is not complete until a final decision is made. In this case, the Council is satisfied that the final decision that was taken for this application is the correct and appropriate planning decision taking into consideration all relevant local and national policies and guidance.

6.0 CONDITIONS

Without prejudice to the Council's case as set out above, the following conditions are proposed, should the Inspector find in favour of the Appellant:

- 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).

- 2 The development hereby permitted shall be carried out in accordance with the following approved plans: KSR Architects Design and Access Statement (dated June 2015), Skelly and Couch Energy and Sustainability Report (dated June 2015), Heritage Collective Archeological Desk Based Study (dated June 2015), Draft CMP, Deloitte Daylight and Sunlight Report (dated June 2015), DP9 Planning Statement (dated June 2015), Transport Statement (dated June 2015) and Price and Myers Basement Impact Assessment and Construction Method Statement (dated April 2015).

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

- 3 No development shall take place until full details of hard and soft landscaping and means of enclosure of all un-built, open areas have been submitted to and approved by the local planning authority in writing. [Such details shall include details of any proposed earthworks including grading, mounding and other changes in ground levels.] The relevant part of the works shall not be carried out otherwise than in accordance with the details thus approved.

Reason: To ensure that the development achieves a high quality of landscaping which contributes to the visual amenity and character of the area in accordance with the requirements of policy CS14 and CS15 of the London Borough of Camden Local Development Framework Core Strategy and policy DP24 [if landscape details] of the London Borough of Camden Local Development Framework Development Policies.

- 4 All hard and soft landscaping works shall be carried out in accordance with the approved landscape details by not later than the end of the planting season following completion of the development. Any trees or areas of planting which, within a period of 5 years from the completion of the development, die, are removed or become seriously damaged or diseased, shall be replaced as soon as is reasonably possible and, in any case, by not later than the end of the following planting season, with others of similar size and species, unless the local planning authority gives written consent to any variation.

Reason: To ensure that the landscaping is carried out within a reasonable period and to maintain a high quality of visual amenity in the scheme in accordance with the requirements of policy CS14 and CS15 of the London Borough of Camden Local Development Framework Core Strategy and policy DP24 of the London Borough of Camden Local Development Framework Development Policies.

- 5 All work shall be carried out in accordance with the relevant recommendations of British Standard 3998: 2010. (Recommendation for Tree Work)

Reason: To ensure the preservation of the amenity value and health of the tree(s).

- 6 Details of the design of building foundations and the layout, with dimensions and levels, of service trenches and other excavations on site in so far as these items may affect trees on or adjoining the site, shall be submitted to and approved in writing by the local planning authority before any works on site are commenced. The relevant part of the works shall not be carried out otherwise than in accordance with the details thus approved.

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

- 7 Prior to the first occupation of the building a plan showing details of the green roof including species, planting density, substrate and a section at scale 1:20 showing that adequate depth is available in terms of the construction and long term viability of the green roof, and a programme for a scheme of maintenance shall be submitted to and approved in writing by the local planning authority. The green roof shall be fully provided in accordance with the approved details prior to first occupation and thereafter retained and maintained in accordance with the approved scheme of maintenance.

Reason: To ensure that the green roof is suitably designed and maintained in accordance with the requirements of policies CS13, CS14, CS15 and CS16 of the London Borough of Camden Local Development Framework Core Strategy and policies DP22, DP23, DP24 and DP32 of the London Borough of Camden Local Development Framework Development Policies.

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