

**PLANNING APPEAL**

**GROUND OF APPEAL**

**THE WATER HOUSE, MILLFIELD LANE,  
LONDON N6 6HQ**

**ON BEHALF OF  
MR PAUL MUNFORD**

**PREPARED BY  
ASSERSON LAW OFFICES**

**OCTOBER 2016**

## **Enclosures**

1. Site Plan
2. Committee Report (April 2016)
3. Decision notice dated 12 April 2016
4. Statement of Case of Mr Alan Lewis of WSP Parsons Brinkerhoff (October 2016)
5. Statement of Case of Mr Adam Hollis of Landmark Trees (October 2016)
6. Statement of Case of Mr Paul Burley of Montagu Evans (October 2016)
7. Guidance document produced by RTPI in conjunction with the DCLG
8. Statutory Declarations of Mr Simon Moore dated 21<sup>st</sup> January 2011 and Mr Paul Munford dated 11 October 2016
9. Extract of advice from Mr Stephen Sauvain QC dated 11 October 2016

## **1.0 INTRODUCTION**

- 1.1 These Grounds of Appeal relates to an appeal (the **“Appeal”**) made by Mr Paul Munford (the **“Appellant”**) against the refusal of an application made under section 70 of the Town and Country Planning Act 1990 for planning permission (LPA reference: 2011/4390/P) by the London Borough of Camden (the **“Council”**) for *“Erection of a new 2 storey plus basement dwellinghouse (Class C3) with garage, including associated green roofs and landscaping works, following the demolition of the existing dwellinghouse”* (the **“Proposed Development”**) at the Water House, Millfield Lane, London N6 6HQ (the **“Property”**).
- 1.2 These Grounds of Appeal will set out the Appellant’s case with reference to the Property, its location and the considerations that are material to this Appeal.

## **2.0 APPEAL SITE CONTEXT**

- 2.1. The Property is located between Millfield Lane and Fitzroy Park, both private roads. The property is located in the Highgate conservation area. It is not a listed building.
- 2.2. The Property has its sole access from Millfield Lane.
- 2.3. A site plan is appended to this Statement of Case at enclosure 1.

## **3.0 PLANNING HISTORY**

- 3.1. The relevant planning history is as follows:
- 3.1.1. 26.7.90- pp granted for erection of a two storey detached dwelling house, garage and new access (Fitzroy Farm Cottage, the previous name of Water House).
- 3.1.2. 21.7.94- pp granted for remodelling of the front and rear elevations plus erection of a one-storey extension at ground floor level to provide a swimming pool (Fitzroy Farm Cottage)(designed by Paxton architect).

- 3.1.3. 23.5.08- planning and CA consent applications submitted - (2008/1303/P, 1396/C) for Demolition of existing 2 storey dwelling and single storey swimming pool building, and replacement with new dwelling with accommodation over basement, ground and first floor levels with single room located within roof space at second floor level.

**4. THE APPLICATION**

- 4.1. The Application was submitted to the Council in on 22 August 2011 and was reported to Committee in April 2016. A copy of the Committee report is enclosed with this statement at enclosure 2.
- 4.2. Planning permission was refused on 12 April 2016. A copy of the decision notice is enclosed at enclosure 3.
- 4.3. The Grounds of refusal are as follows:
- 4.3.1. Ground 1 - It is considered that, on the basis of submitted CBR data taken from Millfield Lane, the proposed intensive use of the lane for construction traffic would cause physical damage to the Lane's surface and would harm the longterm survival of the adjoining trees along the lane. It is also considered that, in the absence of further information to demonstrate otherwise, necessary mitigation measures to facilitate construction access, such as ground guards and vegetation pruning, would be likely to be harmful to the rural landscaped character and appearance of Millfield Lane and the wider conservation area. This is contrary to policies CS11 (Promoting sustainable and efficient travel), 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 DP20 (Movement of goods and materials), DP21 (Development connecting to the highway network) and DP25 (Conserving Camden's heritage) of the London Borough of Camden Local Development Framework Development Policies.

- 4.3.2. Ground 2 It is considered that the proposed access by construction vehicles at the site's entrance, by reason of the associated vehicular movements within Millfield Lane, is likely to cause harm to users of the Lane and Ladies Pond and may cause harm to adjoining trees and thus the landscaped character and appearance of the lane and conservation area. This is contrary to policies CS5 (Managing the impact of growth and development), CS11 (Promoting sustainable and efficient travel) 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 DP20 (Movement of goods and materials), DP21 (Development connecting to the highway network), DP25 (Conserving Camden's heritage) and DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Policies.
- 4.3.3. Ground 3 - In the absence of sufficient evidence in the arboricultural report to demonstrate adequately to the Council's satisfaction that the veteran oak tree (T5) on the site will not be significantly harmed, it is considered that the development and its construction would harm the longterm survival of the tree which has a high amenity value, which would be detrimental to the character and appearance of Millfield Lane and the wider conservation area. This is contrary to policy CS15 (Protecting and improving our parks and open spaces and encouraging biodiversity) of 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.
- 4.3.4. Ground 4 - 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 is 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.

4.3.5. Ground 5 - The proposed development, in the absence of a legal agreement securing car-capped housing, would be likely to contribute unacceptably to parking stress and congestion in the surrounding area and fail to promote more sustainable and efficient forms of transport. This is contrary to policies 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 DP17 (Walking, cycling and public transport), DP18 (Parking standards and the availability of car parking) and DP19 (Managing the impact of parking) of the London Borough of Camden Local Development Framework Development Policies.

4.3.6. Ground 6 - The proposed development, in the absence of a legal agreement securing necessary highway works of resurfacing and pedestrian safety measures to mitigate the impacts of construction traffic, both on Millfield Lane and Merton Lane, would fail to secure adequate provision for and safety of pedestrians, cyclists and vehicles. This is contrary to policies 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 DP17 (Walking, cycling and public transport) and DP21 (Development connecting to the highway network) of the London Borough of Camden Local Development Framework Development Policies.

4.4. A related application for conservation area consent (application ref: 2011/4392/C) was also refused on 12 April 2016. The Appellant is not submitting a separate appeal in relation to this refusal because the planning system no longer requires separate conservation area consent in order to develop in a conservation area.

## **5. THE STATUTORY AND POLICY FRAMEWORK FOR DETERMINING THE APPEAL**

- 5.1. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states that:

*“If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise”.*

### **National Policies**

- 5.2. Paragraphs 14 – 17 of the National Planning Policy Framework introduce a presumption in favour of sustainable development, and set out 12 core principles underpinning the planning system.
- 5.3. Paragraph 14 states that: “At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.” For decision taking this means approving development proposals that accord with the development plan without delay.”
- 5.4. Paragraph 56 of the National Planning Policy Framework states that “The Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.”
- 5.5. Paragraph 57 of the National Planning Policy Framework states that: “It is important to plan positively for the achievement of high quality and inclusive design for all development, including individual buildings, public and private spaces and wider area development schemes.”
- 5.6. Paragraph 187 of the National Planning Policy Framework “Local planning authorities should look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible. Local planning authorities should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area.”

### **Local Policies**

5.7. The following Council policies are relevant to the Appeal:

*Adopted Policy*

5.7.1. Policy CS5 of the Council's Core Strategy states that:

*"The Council will protect the amenity of Camden's residents and those working in and visiting the borough by: e) making sure that the impact of developments on their occupiers and neighbours is fully considered; f) seeking to ensure development contributes towards strong and successful communities by balancing the needs of development with the needs and characteristics of local areas and communities; and g) requiring mitigation measures where necessary".*

5.7.2. The supporting text to the policy states that *"We will expect development to avoid harmful effects on the amenity of existing and future occupiers and nearby properties or, where this is not possible, to take appropriate measures to minimise potential negative impacts".*

5.7.3. Policy CS11 of the Core Strategy states that:

*"Promoting the sustainable movement of freight*

*The Council will seek to reduce freight movement by road; encourage the movement of goods by canal, rail and bicycle; and minimise the impact of freight movement on local amenity, traffic and the environment".*

5.7.4. The supporting text to that policy states that *"The Council will also seek to ensure that the impact of construction traffic and the servicing of future developments are kept to a minimum".*

5.7.5. Policy CS14 of the Core Strategy states that:

*"Promoting high quality places and conserving our heritage*

*The Council will ensure that Camden's places and buildings are attractive, safe and easy to use by: a) requiring development of the highest standard of design that respects local context and character; Camden Core Strategy 2010 90 b) preserving and enhancing Camden's rich and diverse heritage assets and their settings, including*

*conservation areas, listed buildings, archaeological remains, scheduled ancient monuments and historic parks and gardens; c) promoting high quality landscaping and works to streets and public spaces; d) seeking the highest standards of access in all buildings and places and requiring schemes to be designed to be inclusive and accessible; e) protecting important views of St Paul's Cathedral and the Palace of Westminster*

5.7.6. Policy CS15 of the Core Strategy states that:

*"The Council will preserve and enhance the historic, open space and nature conservation importance of Hampstead Heath and its surrounding area by: k) working with the City of London, English Heritage and Natural England to manage and improve the Heath and its surrounding areas; l) protecting the Metropolitan Open Land, public and private open space and the nature conservation designations of sites; m) seeking to extend the public open space when possible and appropriate; n) taking into account the impact on the Heath when considering relevant planning applications; o) protecting views from Hampstead Heath and views across the Heath and its surrounding area; p) improving the biodiversity of, and habitats in, Hampstead Heath and its surrounding area, where opportunities arise".*

5.7.7. Policy DP20 of the Council's Development Policies states that:

*"Minimising the impact of the movement of goods and materials by road*

*The Council will expect development that would generate significant movement of goods or materials by road, both during construction and in operation, to: d) be located close to the Transport for London Road Network or other Major Roads; e) avoid any additional need for movement of vehicles over 7.5 tonnes in predominantly residential areas; f) accommodate goods vehicles on site; and g) seek opportunities to minimise disruption for local communities through effective management, including through the optimisation of collection and delivery timings and the use of low emission vehicles for deliveries".*

5.7.8. The supporting text to the policy states that *"Goods vehicles manoeuvring, loading and unloading add to pollution, and may cause obstructions and*

*congestion, inconvenience and danger to pedestrians and other road users, and damage to pavements. The Council actively encourages a number of measures with potential to mitigate these impacts” and that “Where appropriate, the Council will ensure that applicants provide Construction Management Plans to demonstrate how a development will minimise impacts from the movement of goods and materials during the construction process”.*

5.7.9. Policy DP21 of the Development Policies states that:

5.7.10. *“The Council will expect works affecting highways to: d) avoid disruption to the highway network and its function, particularly use of appropriate routes by emergency vehicles; e) avoid harm to on-street parking conditions or require detrimental amendment to Controlled Parking Zones; f) ensure adequate sightlines for vehicles leaving the site; g) address the needs of wheelchair users and other people with mobility difficulties, people with sight impairments, children, elderly people and other vulnerable users; h) avoid causing harm to highway safety or hinder pedestrian movement and avoid unnecessary street clutter; i) contribute to the creation of high quality streets and public spaces; and j) repair any construction damage to transport infrastructure or landscaping and reinstate all affected transport network links and road and footway surfaces following development”.*

5.7.11. Policy DP25 of the Development Policies states that:

*“Conservation areas In order to maintain the character of Camden’s conservation areas, the Council will: a) take account of conservation area statements, appraisals and management plans when assessing applications within conservation areas; b) only permit development within conservation areas that preserves and enhances the character and appearance of the area; c) prevent the total or substantial demolition of an unlisted building that makes a positive contribution to the character or appearance of a conservation area where this harms the character or appearance of the conservation area, unless exceptional circumstances are shown that outweigh the case for retention; d) not permit development*

*outside of a conservation area that causes harm to the character and appearance of that conservation area; and e) preserve trees and garden spaces which contribute to the character of a conservation area and which provide a setting for Camden's architectural heritage".*

5.7.12. Policy DP26 of the Development Policies states that:

*"The Council will protect the quality of life of occupiers and neighbours by only granting permission for development that does not cause harm to amenity. The factors we will consider include: a) visual privacy and overlooking; b) overshadowing and outlook; c) sunlight, daylight and artificial light levels; d) noise and vibration levels; e) odour, fumes and dust; f) microclimate; g) the inclusion of appropriate attenuation measures".*

5.7.13. The supporting text to the policy states that *"Disturbance from development can also occur during the construction phase. Measures required to reduce the impact of demolition, excavation and construction works must be outlined in a Construction Management Plan. We will require Construction Management Plans to identify the potential impacts of the construction phase of the development and state how any potential negative impacts will be mitigated".*

5.7.14. The Council's Planning Guidance 6 (Amenity) states that *"The purpose of this guidance is to give details on how construction management plans can be used to manage and mitigate the potential impacts of the construction phase of a development. All construction and demolition work will cause at least some noise and disturbance. Where construction impact is particularly significant Camden will ensure it is managed through a legally binding construction management plan", and that "Construction management plans are used to set out the measures a developer should take (both on-site and off-site) in order to reasonably minimise and manage the detrimental effects of construction on local amenity and/or highway safety".*

*Emerging Policy*

5.7.15. The Council is in the process of adopting a new Local Plan (a draft was submitted for examination in mid-2016). The following policies are relevant:

5.7.16. A draft Highgate Neighbourhood Plan has been submitted to the Council. Policy TR2 states that:

5.7.17. *“Where planning permission has been granted, development that would generate significant movement of goods or materials by road, both during construction and in operation, must: I. Have a construction management plan (CMP) and – where appropriate because they are likely to generate delivery vehicles and/or refuse trucks – servicing management plan (SMP) showing the proposed logistics of heavy goods vehicle movements – this will be required for any significant development. For smaller developments, the Councils will consider the requirement for a CMP or SMP, having regard to access issues and the potential impact on the local road network. It will be designed to keep disruption to a minimum, will be a condition attached to the permission and must be agreed with the council prior to the commencement of works; II. Wherever possible, avoid the need for additional movement of vehicles over 7.5 tonnes in predominantly residential areas; III. Must make every effort to accommodate goods and service vehicles on site, during and after construction; and IV. Seek opportunities to minimise disruption for the local community through effective management, including through the optimisation of collection and delivery timings, cleaning roads of building-related waste and the use of low emission vehicles for deliveries”.*

5.8. The Appellant has demonstrated that the Application complies fully with the relevant development plan and that no material considerations exist that would overturn the statutory and policy presumption that planning permission should be granted for the Proposed Development.

## 6. **THE PLANNING MERITS OF THE PROPOSED DEVELOPMENT**

6.1. The Council’s officers in their report to Committee gave a detailed appraisal of the planning merits of the Proposed Development, and stated the following:

- 6.1.1. There is no objection to the building's demolition...It is of little architectural merit and of no historic merit (paragraph 6.14).
- 6.1.2. The reduced height of the building compared to the existing one, combined with the proposed landscaping and green roofs, will ensure that the building will be barely, if at all, visible from the public realm outside the site such as along Millfield Lane (paragraph 6.19).
- 6.1.3. The proposed contemporary design is simple and rational, relying on the high quality natural materials to help the development sit comfortably within its surroundings. Given the secluded and verdant nature of the site and existing modern dwellings surrounding it (including ones very recently built such as no.51) this approach is welcomed and respectful of the character and appearance of area (paragraph 6.21).
- 6.1.4. [The Proposed Development] will not harm the open character and setting of the adjacent Heath open space and it will preserve the openness of the Metropolitan Open Land (MOL) (paragraph 6.28).
- 6.1.5. The distances from neighbours means that there will be no loss of daylight or sunlight and no increased sense of enclosure (paragraph 6.45)
- 6.1.6. The Basement Impact Assessment (as revised) is adequate in demonstrating that the scheme will not harm local hydrology, geology and land stability conditions (paragraph 6.61).

## **7. REASONS FOR REFUSAL 1 to 3**

- 7.1. The reasons for refusal 1 to 3 relate to the impact of the construction process on Millfield Lane and the wider conservation area.
- 7.2. The Council maintain that, on the basis of the information submitted with the Application, it is possible that harm might be caused to Millfield Lane itself, to trees (both within and adjoining the site) and to the users of the Lane and Ladies Pond, by virtue of the construction method proposed in the Application.
- 7.3. The construction method and its effects are explained and clarified in the Statements of Case of Mr Alan Lewis of WSP Parsons Brinkerhoff (WSPPB) (enclosure

4) of Mr Adam Hollis of Landmark Trees (enclosure 5) and Mr Paul Burley of Montagu Evans (enclosure 6) that are submitted with this Appeal. These Statements demonstrate that any damage that might arise during the construction of the Proposed Development is proportionate to the Proposed Development and can be mitigated without significantly prejudicing the integrity of Millfield Lane or the users of the Lane and without causing any long term harm to the trees adjoining it.

- 7.4. It must be emphasised that the part of the decision to refuse to grant planning permission because of temporary impacts is misconceived. Decision makers should only give weight to temporary impacts which go beyond the inevitable impact of any development taking place, which is not the case in relation to the Proposed Development.
- 7.5. It is submitted that the temporary impacts of construction measures should not be considered to be a material planning consideration by the Inspector. Indeed, Planning Aid have produced a document (in conjunction both with the DCLG and RTP1) which specifically states that problems arising from construction are non-material considerations and are not relevant to a decision (enclosure 7).
- 7.6. As is demonstrated below, the temporary impacts arising from the construction of the Proposed Development, taking account of the mitigation strategy proposed in the Application and the Statements of Case submitted with this Appeal and the location of the Property, are proportionate and reasonable. Every effort has been made to minimise the impact of the construction process on Millfield Lane.
- 7.7. It is also the Appellant's contention that the Council has misdirected themselves in refusing planning permission for reasons relating to a Construction Management Plan. The measures proposed in the CMP were entirely feasible and could have been finalised subject to further discussion and clarification following the grant of planning permission. The CMP complies in all respects with the Council's policy requirements in relation to the pre-consent requirements and the requirement to finalise and approve the CMP should have been addressed by way of a planning condition attached to a planning permission, not by way of a reason for refusal. This point is emphasised in the Statement of Case of WSPPB.

- 7.8. Nothing within the Council's policy states that they are entitled to refuse permission for an application for construction-related reasons. Indeed, the Council's policies specifically acknowledge that construction will cause disturbance, and that the purpose of a CMP is to mitigate and negate such disturbance.
- 7.9. That said, it is not disputed that Millfield Lane is constrained by virtue of its size, location and state of repair. This is the very reason that the construction strategy has been refined so many times prior to the decision. This is a responsible Appellant who understands the duty he is under to minimise the impact of the Proposed Development during the construction period. The CMP and the Arboricultural Report/Method Statement submitted with the Application and the Statements of Case submitted with this Appeal demonstrate that the Appellant has approached the construction strategy seriously and thoroughly. Indeed, it was noted in the Council's report to committee (paragraph 6.72) that "it can be considered that the draft CMP is a comprehensive document and provides a good deal of information about the development and how it will be constructed- indeed it is considerably more detailed and developed in certain areas than many other such documents for large schemes due to the sensitive context here".
- 7.10. The result is an entirely robust construction strategy that demonstrates conclusively that it is entirely feasible for the Proposed Development to be delivered in such a way that will not undermine the Lane, the trees adjoining the Lane or the people that use the Lane. This position is supported in the Statement of Case of WSPPB. As the Council stated in its report, it is a working document and there will naturally be an element of uncertainty until a contractor is appointed (which in accordance with standard practice will only be once permission is granted). The Council should not therefore be able to use this fact as a reason for refusing the application.
- 7.11. The reasons cited by the Council for refusing to grant planning permission are, it is submitted, entirely unsustainable. The appeal should therefore be granted.
- 7.12. We will now address each reason for refusal in more detail.

#### **Reason for refusal 1**

- 7.13. *“It is considered that, on the basis of submitted CBR data taken from Millfield Lane, the proposed intensive use of the lane for construction traffic would cause physical damage to the Lane’s surface and would harm the long-term survival of the adjoining trees along the lane. It is also considered that, in the absence of further information to demonstrate otherwise, necessary mitigation measures to facilitate construction access, such as ground guards and vegetation pruning, would be likely to be harmful to rural landscaped character and appearance of Millfield Lane and the wider conservation area.”*
- 7.14. The CMP submitted with the Application and the Statement of Case of WSPPB that analyses this CMP demonstrates that the proposed access along Millfield Lane during the construction of the development would not cause unacceptable or irreversible physical damage to the Lane’s surface, if a suitable mitigation strategy is deployed.
- 7.15. It must also not be forgotten that this site can only use this lane for all construction and vehicular access – to prevent reasonable access would be to sterilise a development which, in all other respects has been found to be suitable and appropriate by the Council.
- 7.16. The mitigation strategy adopted in the Arboricultural Report and the CMP, and elaborated upon in the Statements of Case submitted with the Appeal, propose, as examples, a minimal intervention of ground guards, repairs with granular material as and when necessary and pruning trees and vegetation where necessary. This approach both addresses the potential for damage from construction traffic and takes account of the private rights of the three frontagers along Millfield Lane (see below, Section 9).
- 7.17. It is acknowledged that the Committee Report at paragraph 6.41 states that “The [arboricultural] report is somewhat confused on the need for additional ground protection along the Lane in order to protect tree roots underneath from heavy construction traffic, based on new CBR data...and this could be clarified; however it notes that this situation may be subject to change and that ground guards may be used to protect tree roots. It is considered that suitable temporary ground protection methods would enable construction access while reducing the impacts on trees to acceptable levels. Nevertheless there are numerous conflicts identified

between the CMP and the Arboricultural Report and they need to properly reflect each other before they can be finally approved.”

- 7.18. It is submitted that any perceived conflict between the CMP and the Arboricultural Report submitted with the Application is addressed in the Statements of Case submitted by Landmark Trees and WSPPB as part of this Appeal.
- 7.19. With regard to harm caused by construction traffic, it is acknowledged that the CBR data prepared in December 2015 stated that there were a number of points on the Lane where mitigation would be appropriate. However, this was suggested as a precautionary measure (i.e. with no definitive analysis as to the potential harm to sub-surface roots).
- 7.20. It is submitted that it is in fact unlikely that sub-surface roots will be significantly harmed for the following reasons (see paragraphs 2.1.3 – 2.1.7 of Landmark Trees’ Statement of Case)
- 7.20.1. Given the anticipated coarse texture of the local topsoil (as per the brown sandy silty clay with occasional fragments of flint, brick and ash found in the site boreholes and sandy soils upon the heath) overlying the Unit D of the London Clay Formation, the risks of compaction and its implications for roots is less severe;
- 7.20.2. it is reasonable to assume that the trees along the lane are not utilising the upper soil horizons immediately below the road section (i.e. those areas at risk from further compaction) as a priority area for root development;
- 7.20.3. The gross architecture of the Lane is indicative of preferential rooting within the woodland rather than towards the Lane with the overwhelming majority of buttresses developing in that direction; and
- 7.20.4. even though ash are not as renowned as being as deep-rooting or tolerant of compact as oak, the site conditions have dictated that minimal roots will be distributed beneath the Lane.
- 7.21. It is in any event acknowledged at paragraph 6.84 of the Committee Report that (emphasis added) “The installation of large ground guards along the lane would be

acceptable as sufficient measures to protect tree roots and road surfaces in themselves.”

- 7.22. The concern however, is that “Their retention on a longterm basis during the construction period, depending on the location and nature and appearance of the guards, would be likely to harm the rural landscaped character of the lane and consequently the conservation area, as well as possibly creating a pedestrian safety hazard. In addition, as indicated above, significant pruning and clearance of vegetation could also be harmful to this landscaped character of the lane.”
- 7.23. The Inspector will note the uncertain basis of the reason for refusal both in terms of the guards themselves and any potential hazards. It is submitted that this is not the correct basis on which to refuse an application, and emphasises the Appellant’s contention that the CMP should have been subject to further discussion before the Application was determined.
- 7.24. It should be pointed out that, whilst the Property falls within a designated conservation area, neither Millfield Lane nor Hampstead Heath itself have the benefit of such designation. Whilst the Lane may fall within the setting of the Conservation Area, it should be noted that it is barely visible from the conservation area (which ends at the boundaries to the properties frontaging the Lane).
- 7.25. Montagu Evans have assessed the impact of ground guards on the conservation area and its setting, and have concluded that “There will be a temporary effect which I would place at neutral given that the use of ground guards would neither be an especially urbanising feature nor a feature that would be alien in the countryside”.
- 7.26. In addition, it is proposed that the grounds guards only be laid at the times when HGVs require the use of the Lane, meaning that there will be no ongoing impact in terms of visibility within the conservation area, and that there will not be any safety hazard.
- 7.27. It is therefore submitted that the proposed mitigation measures will not cause any harm to the Lane or the conservation area – no long term damage will be caused to trees and the temporary measures themselves will have a neutral impact.

7.28. However, Landmark Trees have in any event considered alternative mitigation measures that are even more sympathetic to the setting of the Lane, namely “a 100-200mm deep pink-camouflage, cellular confinement system (web) could be laid over the road and filled with inert, colourless no-fines stone”, which would give a similar appearance to the Lane itself.

7.29. **Reason for refusal 2**

*“It is considered that the proposed access by construction vehicles at the site’s entrance, by reason of the associated vehicular movements within Millfield Lane, is likely to cause harm to users of the Lane and Ladies Pond and may cause harm to adjoining trees and thus the landscaped character and appearance of the lane and conservation area.”*

7.30. WSPPB address Reason for refusal 2 in section 8 of their Statement of Case. The swept path analysis submitted with the Application was based on the movement of a HGV into/out of the Property i.e. the worse case scenario. As WSPPB set out in section 5 of their Statement of Case, there are various alternative delivery options available, that would demonstrate a different movement and turning pattern.

7.31. In any event, it must surely be the case that the right of access to the Property includes a right to use the Lane beyond the northern boundary, if this is required for any vehicle to access and exit the Property safely.

7.32. In relation to the trees adjoining Millfield Lane, it is relevant to note that paragraph 6.40 of the Committee Report acknowledges that: *“A walkover survey and trial vehicle runs of Millfield Lane have indicated that significant damage to trees bordering this lane is unlikely although some contact may occur. However it is considered that light pruning of branches where necessary to facilitate lorry movements would be preferable to minor damage caused by them and will not seriously harm the amenity value of the trees or the Lane.”* It is demonstrated in the Statement of Case of Landmark Trees submitted with this appeal that any damage to the trees along Millfield Lane is likely to be minimal and temporary.

7.33. **Reason for refusal 3**

*“In the absence of sufficient evidence in the arboricultural report to demonstrate adequately to the Council’s satisfaction that the veteran oak tree (T5) on the site will not be significantly harmed, it is considered that the development and its construction would harm the long-term survival of the tree which has a high amenity value, which would be detrimental to the character and appearance of Millfield Lane and the wider conservation area.”*

- 7.34. Montagu Evans have assessed the impact of harm (though the existence of any harm is disputed as set out below) to the relevant tree on the conservation area, and have concluded that any such harm would be less than substantial. In addition, any damage would not undermine the reason why the Conservation Area was designated and would be relatively imperceptible from most parts of the Conservation Area and certainly from all publicly-accessible parts.
- 7.35. It is submitted that any harm caused is outweighed by the public benefits of the Proposed Development, most notably replacing a building with little architectural merit with one of exemplar design which will sit comfortably within the conservation area.
- 7.36. In any event, the Arboricultural report (which accompanied the Application) acknowledged the significance of this tree at paragraphs 1.2 – 1.5, and provided more than adequate evidence that the veteran oak tree on the site will suffer no significant, long term harmful effects from the development and its construction, stating that “The protection of the veteran tree T5 has remained a priority”.
- 7.37. As further demonstrated in the Statement of Case provided by Landmark Trees:
- 7.37.1. Without disputing the veteran status of the tree, we simply draw attention to the range of conditions that term implies and the confusion in the literature of ancient trees and trees that may be relatively young in the context;
- 7.37.2. T5 qualifies as potentially interesting, rather than valuable in terms of conservation or truly ancient, and that BS5837 even moots the removal of such trees;

7.37.3. It is perfectly acceptable that a tree of only potential interest to nature conservation, standing within an existing garden, next to a drive and house, incur a sustainable impact from redevelopment, where the risk is assessed as low and recognised constructional variations have been recommended by way of mitigation. There is no question of the tree being significantly harmed;

7.37.4. The council also appears to have overlooked the potential for part of the development to potentially result in betterment to T5. The installation of a new driveway utilising a porous surface, laid over a cellular confinement system, will be an improvement over the current driveway as well as provide greater protection to roots than the lawn currently provides

7.38. It is clear therefore that construction impacts are not a “significant negative” as suggested in paragraph 6.37 of the Committee Report because the long term survival of the oak tree on site is not in jeopardy.

## **8. REASON FOR REFUSAL 4 TO 6**

8.1. The Council acknowledge in the informative included in the Decision Notice that “*the reasons for refusal numbered 4-6 could be overcome by entering into a Section 106 Legal Agreement for a scheme that was in all other respects acceptable.*”

8.2. The Appellant agrees with this submission and will enter into negotiations with the Council following the submission of this Appeal to produce a Section 106 Agreement that addresses reasons for refusal 4 -6.

8.3. A copy of the planning obligation will be submitted to the Planning Inspectorate in accordance with the requirements and timetable set down in the PINS guidelines

## **9. OTHER PLANNING CONSIDERATIONS**

### **Private rights of Millfield Lane**

9.1. It is acknowledged that Millfield Lane is a private road which is owned jointly by the owner of the Property, the other frontagers and the Corporation of London.

- 9.2. It is not, we believe, disputed that each frontager owns that part of the Lane up to the midway line and has acquired prescriptive rights of way to use Millfield Lane to access the relevant property by motor vehicle or on foot. Statutory declarations evidencing these rights have been provided by Mr Simon Miller and the Appellant (enclosure 8).
- 9.3. This right of access is available for all purposes connected with the use of the properties fronting Millfield Lane.
- 9.4. It therefore must be the case that the right of access extends to delivery vehicles and light or heavy goods vehicles, to the extent that access is required in relation to the use of the properties.
- 9.5. The Appellant therefore maintains that HGVs can use Millfield Lane for access to the Property, in connection with its redevelopment. The right for construction traffic must also logically extend to entering and exiting the construction Property in either direction, in a safe manner.
- 9.6. The Appellant further maintains that this right of access for HGVs enables him to carry out certain preventative measures and works of maintenance and repair to Millfield Lane, in order to mitigate any potential damage to the Lane and the trees on the Lane and therefore, by extension, to protect the rights of access of the properties along Millfield Lane.
- 9.7. The measures proposed in the CMP and the Arboricultural Report submitted with the Application and further explored in the Statement of Case of WSPPB and Landmark Trees have been designed solely to protect Millfield Lane during the construction period and the rights of the residents to use the Lane.
- 9.8. The measures proposed do not go beyond a minimum level of intervention necessary to reduce the risk of damage to Millfield Lane and to ensure the continued use of Millfield Lane during the construction of the Proposed Development.
- 9.9. There is no substantial, permanent change in the rights of the Appellant, or an increase in burden for the other residents, which would go beyond the prescriptive rights enjoyed by the Property.

- 9.10. It cannot be right that that the private rights of the residents over Millfield Lane, enable them to frustrate the equal rights of the Appellant. Indeed the Appellant is proposing reasonable, temporary measures to protect the very rights that the residents are claiming against him.
- 9.11. Construction vehicles for any development or refurbishment of the Property will have to use Millfield Lane and therefore some disruption is inevitable .It is clear from the CMP and the Statement of Case of WSPPB that the Appellant has sought to reduce the disruption to an acceptable level and is more than willing to continue the dialogue with the Council and to consider the reasonable requests of the residents in this regard during the course of the Appeal and to document this as appropriate.
- 9.12. In light of the fact that this issue was raised by both objectors to the Proposed Development and the Council, the Appellant has obtained a legal opinion from Mr Stephen Sauvain QC which concurs with the above position (extract enclosed at enclosure 9).
- 9.13. It must also be argued that the private rights of the frontagers are not relevant to a planning decision. The Planning Policy Guidance 2014 (para 008 ID: 216-008-2014 0306) states that: “The scope of what can constitute a material consideration is very wide and so the courts often do not indicate what cannot be a material consideration. However, in general they have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property or loss of private rights to light could not be material considerations.” A comparison can be drawn between the private rights specified in this guidance and the private rights claimed by the frontagers at Millfield Lane.
- 9.14. In the event that the residents take action to interfere with or block the prescriptive rights of the Appellant, there are in any event powers available under Sections 205 and 230 of the Highways Act 1980 to repair damage to the surface of the road, if this is deemed appropriate on completion of the development, whereby the cost of repair will fall on the developer rather than the frontagers. It is submitted that this option cannot be the preferred option given that the Appellant are themselves willing to mitigate against damage and repair the Lane as necessary, and would be a

waste of public money. However the powers are relevant to the question of the deliverability of the Proposed Development.

#### **Public use of Millfield Lane**

- 9.15. It is acknowledged that Millfield Lane is used by the public and that health and safety is therefore an important part of the construction management strategy.
- 9.16. A detailed banksman strategy was therefore included in the CMP. The Council's committee report concluded that (paragraph 6.77) *"given the unique circumstances of this case whereby this site can only use this lane for all construction and vehicular access and given the revisions that have been made to the CMP to minimise its impact as much as reasonably possible, it is considered on balance that in general terms the access strategy along the Lane is broadly acceptable"*.

#### **10. APPEAL FORUM**

- 10.1. The Appellant submits that the Appeal should be heard by way of written representations, for the following reasons:
- 10.1.1. The reasons for refusal relate only to complex technical issues regarding construction and access. These matters can best be dealt with by way of written evidence.
- 10.1.2. The Council has already accepted that the Proposed Development is appropriate for in terms of its bulk, size and massing, and will represent a sympathetic addition to the conservation area.
- 10.1.3. The Council has also accepted that the majority of the reports prepared by the Appellant, including the Basement Impact Assessment, were satisfactory, and also that the CMP is in many respects policy-compliant.
- 10.1.4. It is acknowledged that there is likely to be a high level of public interest in the Appeal. However, it is submitted that the majority of objections have already been considered by the Council at application stage. It is not the place of a public hearing or inquiry to re-determine matters which have already been deemed satisfactory by the Council.

10.1.5. The planning issues raised can be clearly understood from the appeal documents and a site inspection.

10.1.6. The Inspector is not likely to need to test the evidence by further questioning.

## **11. SUMMARY & CONCLUSIONS**

11.1. These Grounds of Appeal have unequivocally demonstrated that this proposal complies with the relevant legislation and local and national policy and guidance.

11.2. The measures proposed in the CMP and the Statement of Case of WSP are entirely feasible and would enable the Proposed Development to be constructed without undermining the integrity or setting of Millfield Lane or the rights of the people who use Millfield Lane.

11.3. The impact on the trees on Millfield Lane is insignificant in planning terms.

11.4. The justification required by the Council in relation to the impact on the oak tree within the Site (T5) and the trees adjoining the site during the construction period, has been provided in the Statement of Case of Landmark Trees. This Statement of Case demonstrates categorically that there will be no long term harm to the oak tree or the trees adjoining the Site as a result of the Proposed Development.

11.5. It has been demonstrated that no harm will be caused to the conservation area and there is no conflict with local or national policy. This part of the reasons for refusal is therefore entirely unsustainable.

11.6. In accordance with section 38(6) of the PCPA 2004, it is respectfully requested that the appeal should be allowed and permission for the Proposed Development should be granted.

**Asserson Law Offices**

**11 October 2016**

