

November 2016

# Statement of Case

## Land at Chester Gate adjacent to Nos. 6-10 Cambridge Terrace, London NW1 4JL

Prepared by:

**Pinsent Masons LLP, Montagu Evans LLP, Caneparo Associates and Robert Myers Associates**

On behalf of:

**Mr and Mrs Candy**

In relation to a decision by:

**London Borough of Camden**

Planning Application Reference:

**2016/1479/P and 2016/1776/L**



Pinsent Masons

## CONTENTS

PARAGRAPH	TOPIC	PAGE
1	Introduction	4
2	Site and Surroundings	6
3	Development	7
4	Planning History	8
5	Planning Policy and Guidance	9
6	Merits of the Development	13
7	Appellant's Case on the First Reason for Refusal (Design and Heritage)	14
8	Appellant's Case on the Second Reason for Refusal (Transport)	25
9	Appellant's Case on the Third Reason for Refusal (Stopping Up)	30
10	Appellant's Case on Third Party Representations	31
11	Planning Conditions	33
12	Conclusions	35

APPENDIX	TOPIC	PAGE
1	Site Plan	37
2	Planning Permission Decision Notice 14 September 2016	38
3	Listed Building Consent Decision Notice 14 September 2016	39
4	Masterplan	40
5	Core Strategy extracts	41
6	Development Policies extracts	42
7	Conservation Area Appraisal and Management Strategy	43
8	London Plan extracts	44
9	Crown Estate Paving Commission – 'A Vision for Regent's Park'	45
10	National Planning Policy Framework extracts	46
11	Landscape Report	47
12	Heritage Statement	48

13	Committee Report	49
14	Approved Minutes from Planning Committee 8 September 2016 and transcript of webcast	50
15	Lease dated 15 July 2015	51
16	Sources Review	52
17	Lease 17 March 1827 and lease surrender 4 April 1873 with transcripts	53
18	<i>Barnwell Manor vs East Northamptonshire DC</i> [2014] EWCA Civ 137	54
19	<i>Forge Field (R (Forge Field Society) v Sevenoaks District Council</i> [2014] EWHC 189	55
20	<i>Jones v Mordue, Secretary of State for Communities and Local Government and South Northamptonshire Council</i> [2015] EWCA Civ 1243	56
21	Transport Statement	57
22	Department for Transport: Manual for Streets (2007)	58
23	Key consultation responses and summary table	59
24	Heritage response letter	60
25	Transport response letter	61

## 1. INTRODUCTION

- 1.1 This Statement of Case ("**SoC**") has been prepared by Pinsent Masons LLP, Montagu Evans, Caneparo Associates and Robert Myers Associates on behalf of Mr and Mrs Candy ("**Appellant**") in relation to a site at Chester Gate adjacent to No's 6-10 Cambridge Terrace, London NW1 4JL ("**Site**"). A plan of the Site is attached at **Appendix 1**.
- 1.2 The Appellant submitted a planning application ("**Application**") to the London Borough of Camden ("**Council**") on 16 March 2016 seeking full planning permission for the following development: "*the reinstatement of historic garden on Chester Gate and associated works at the land at Chester Gate adjacent to No's 6 10 Cambridge Terrace*" ("**Development**").
- 1.3 The planning application was accompanied by an application for Listed Building Consent ("**LBC Application**") for various works relating to reinstatement of historic garden on Chester Gate, including repositioning of railings and lamp posts, and associated works.
- 1.4 In a report ("**Committee Report**") to the Members of the Council's planning committee ("**Members**") officers recommended the Application for approval subject to conditions and a legal agreement to secure necessary planning obligations. Contrary to the officer's recommendation Members resolved to refuse the application on 8 September 2016.
- 1.5 The reasons for refusal of the Application were set out in a decision notice dated 14 September 2016. A copy of the decision notice is provided at **Appendix 2**. The reasons stated were as follows:
- "1. The proposed development, by reason of the design and the lack of historical evidence to support the proposed creation of a private garden, would cause harm to the character and appearance of the street scene and the wider area which would fail to preserve and enhance the character and appearance of the Regent's Park Conservation Area. The proposal would also result in the loss of public space and there is therefore no public benefit to outweigh the less than substantial harm caused to the heritage asset. The proposal is contrary to Policy CS14 (Promoting high quality places and conserving our heritage) of the London Borough of Camden Local Development Framework Core Strategy and Policy DP24 (Securing high quality design) and Policy DP25 (Conserving Camden's heritage) of the London Borough of Camden Local Development Framework Development Policies.*
- 2. The proposed development, by reason of the significant changes to the road and pavement layout on Chester Gate, would cause harm to vehicle and pedestrian safety, contrary to Policy CS11 (Promoting sustainable and efficient travel) of the London Borough of Camden Local Development Framework Core Strategy and Policy DP16 (The transport implications of development) and Policy DP17 (Walking, cycling and public transport) of the London Borough of Camden Local Development Framework Development Policies.*
- 3. The proposed development, in the absence of a legal agreement to secure the Stopping Up Order under Section 247 of The Town and Country Planning Act 1990, would be likely to cause harm to pedestrian and vehicle safety in the local area, contrary to policies CS11 (Promoting sustainable and efficient travel), CS19 (Delivering and monitoring the Core Strategy) and DP21 (Development connecting to the highway network) of the London Borough of Camden Core Strategy and Development Policies 2010."*
- 1.6 The first reason for refusal relates to design, historical evidence of the existence of an original garden, impact on character and appearance of heritage assets and impact on public space. In this SoC the design and heritage reason is referred to as "**Reason 1**".
- 1.7 The second reason for refusal relates to road and pavement layout and vehicle and pedestrian safety. In this SoC the transport reason is referred to as "**Reason 2**".
- 1.8 The third reason for refusal relates to stopping up the impact on pedestrian and vehicle safety. In this SoC the stopping up reason is referred to as "**Reason 3**".

1.9 The reason for refusal of the LBC Application was set out in a decision notice also dated 14 September 2016. A copy of the decision notice is provided at **Appendix 3**. The reason stated were as follows:

*1. The proposed development, by reason of the design, the lack of historical evidence to support the proposed creation of a private garden and the loss of historic curtilage fabric, would cause harm to the listed building and its setting and there is no public benefit to outweigh the less than substantial harm caused to the heritage asset. The proposal is contrary to Policy 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."*

1.10 The reason for refusal relates to the same issues as Reason 1. In this SoC the reason for refusal for the LBC Application is therefore addressed along with Reason 1.

1.11 The Appellant has decided to make an appeal against the refusal of the Application and the LBC Application ("**Appeal**").

1.12 This SoC sets out the Appellant's case for why the Appeal should be allowed and planning permission should be granted for the Development. It has been drafted in accordance with the guidance at Annex J of the Planning Inspectorate's Procedural Guide for Planning Appeals in England (5 August 2016).

## 2. SITE AND SURROUNDINGS

### Site

- 2.1 The Site is located within the Regent's Park Ward in LB Camden and is situated on Chester Gate on the corner of 6-10 Cambridge Terrace and 1-2 Chester Gate, Camden, London NW1 4JL. It is within the administrative area of LB Camden. The highway authority for Chester Gate is the Crown Estate Paving Commission ("**CEPC**").
- 2.2 Cambridge Terrace is a private road set behind a forecourt garden on the east side of the Outer Circle of Regent's Park, immediately south of its junction with Chester Gate. Chester Gate runs east/west linking the Outer Circle to Albany Street.
- 2.3 The Site includes some listed structures:
- 2.3.1 the entrance to nos. 6-10 Cambridge Terrace and attached railings (Grade I listed);
  - 2.3.2 railings to the forecourt of nos. 1-10 Cambridge Terrace that run parallel to Chester Gate (Grade II listed); and
  - 2.3.3 one of four lamp posts outside nos. 1-10 Cambridge Terrace (Grade II).
- 2.4 The Site lies within the immediate setting of Nos. 1-10 Cambridge Terrace, which is a Grade I listed terrace, and Nos. 1-2 Chester Gate, which are Grade II listed semi-detached buildings.
- 2.5 The Site is located within the Regent's Park Conservation Area.

### Surroundings

- 2.6 The Site is located immediately to the east of Regent's Park ("**Park**") which is a Grade I registered Park and Garden ("**RPG**").
- 2.7 This is a most sensitive location, and the assets under consideration are internationally recognised as comprising one of the most important planned developments in Europe.

3. **DEVELOPMENT**

- 3.1 The Development comprises the reinstatement of a historic garden at Chester Gate adjacent to Nos. 6-10 Cambridge Terrace.
- 3.2 The Development involves narrowing the road on Chester Gate, realignment of the pavement, alteration to the existing car parking layout, and repositioning of existing railings and lamp posts.
- 3.3 It is proposed that the garden will be enclosed with the existing iron railings that are to be repositioned and additional iron railings that will be designed to match the existing.
- 3.4 Planting within the garden is proposed to appear as a mixed shrubbery above a clipped yew hedge with ornamental trees above. This is consistent with the approved planting scheme for the adjacent Cambridge Terrace forecourt garden approved under an extant planning permission (ref. 2009/2041/P).
- 3.5 The masterplan for the Development is provided at **Appendix 4**.

#### 4. PLANNING HISTORY

4.1 The relevant recent permissions relating to the Site are:

##### *On 2010 Permission*

4.2 In September 2010 the Council granted planning permission (ref: 2009/3041/P) ("**2010 Permission**") for the "*Change of use of 6-10 Cambridge Terrace and 1-2 Chester Gate from offices (Class B1) to 3 x dwellinghouses (Class C3), excavation of basement, alterations at roof level, including rebuilding part of roof and installation of glazed sliding roof, lift overrun and rooflight to 6-10 Cambridge Terrace, rooflights on 1-2 Chester Gate and associated landscaping works to forecourt.*"

4.3 On the same date the Council granted listed building consent (ref: 2009/3051/L) for "*Excavation of basement, alterations at roof level, including rebuilding part of roof, installation of glazed sliding roof, lift overrun and rooflight to 6-10 Cambridge Terrace, rooflights on 1-2 Chester Gate, internal alterations to 6-10 Cambridge Terrace & 1-2 Chester Gate and associated landscaping works to forecourt all in connection with change of use of 6-10 Cambridge Terrace and 1-2 Chester Gate from offices (Class B1) to 3 x dwellinghouses (Class C3).*"

4.4 The 2010 Permission was implemented in August 2013 via the installation of a roof light. A Certificate of Lawfulness of Existing Development (ref. 2014/1837/P) was granted on 8 April 2014 confirming this.

##### *2015 Permission*

4.5 In November 2015 the Council granted planning permission (ref: 2015/1340/P) ("**2015 Permission**") for the "*Variation of condition 8 (approved plans) of planning permission 2009/3041/P dated 07/09/2010 (for change of use from offices to 3 x dwellinghouses) namely to reconfigure and enlarge basement.*"

4.6 On the same date the Council granted listed building consent (ref: 2015/1817/L) for "*Alterations to internal layout and reconfiguration of residential units to 'change of use of 6-10 Cambridge Terrace and 1-2 Chester Gate from offices (Class B1) to 3 x dwellinghouses (Class C3) including excavation of basement and alterations at roof level' approved under planning reference 2009/3041/P dated 07/09/2010.*"

##### *2016 Approval*

4.7 In January 2016 the Council granted permission for non-material amendments to the 2015 Permission (ref: ref. 2015/6946/P) ("**2016 Approval**") for "*Alterations to internal layout and reconfiguration of residential units to 'change of use of 6-10 Cambridge Terrace and 1-2 Chester Gate from offices (Class B1) to 3 x dwellinghouses (Class C3) including excavation of basement and alterations at roof level' approved under planning reference 2009/3041/P dated 07/09/2010.*"

4.8 In March 2016 the Council granted listed building consent (ref: 2015/6549/L) for works associated with the 2016 Approval.



## 5. PLANNING POLICY AND GUIDANCE

- 5.1 Planning law requires that applications for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise. To be in accordance with the development plan, a development does not have to comply with each and every relevant policy. The issue is whether the development is in accordance with the development plan as a whole (*City of Edinburgh Council v. Secretary of State for Scotland* [1997] 1 WLR 1447).
- 5.2 That assessment has to be made based on a proper interpretation of the relevant planning policy. Interpretation of policy is a matter of law. That is not based on what the local planning authority thinks the policy says or should say (*Tesco Stores v Dundee City Council* [2012] UKSC 13). A policy has to be interpreted objectively in accordance with the language used, read in its proper context.

### Development Plan

- 5.3 For the purpose of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the current development plan for the Site comprises:
- 5.3.1 The London Plan (The Spatial Development Strategy for London Consolidated with Alterations Since 2011) (adopted March 2015);
  - 5.3.2 Camden Core Strategy (adopted November 2010);
  - 5.3.3 Camden Development Policies (adopted November 2010).
- 5.4 The Appeal must be determined in accordance with the Development Plan unless material considerations indicate otherwise.

### Core Strategy

- 5.5 The Core Strategy forms part of the Development Plan for the Site. An extract setting out the relevant policies is provided at **Appendix 5**.
- 5.6 The Council Members' reasons for refusal identify the following potentially relevant Core Strategy policies.
- 5.6.1 Policy CS11 (Promoting sustainable and efficient travel:
- "The Council will promote the delivery of transport infrastructure and the availability of sustainable transport choices in order to support Camden's growth, reduce the environmental impact of travel, and relieve pressure on the borough's transport network.*
- In order to support Camden's growth and to promote walking, cycling and public transport, the Council will:*
- g) improve public spaces and pedestrian links across the borough...;"*
- 5.6.2 Policy CS14 (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;*
  - 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..."*

5.6.3 Policy CS19 (Delivering and monitoring the Core Strategy):

*"The Council will work with Camden's Local Strategic Partnership and its other partners to deliver the vision, objectives and policies of this Core Strategy. We will:*

*b) use planning obligations, and other suitable mechanisms, where appropriate, to*

*- support sustainable development,*

*- secure any necessary and related infrastructure, facilities and services to meet needs generated by development, and - mitigate the impact of development;."*

Development Policies

5.7 The Development Policies forms part of the Development Plan for the Site. An extract setting out the relevant policies is provided at **Appendix 6**.

5.8 The Council Members' reasons for refusal of the Application identify the following potentially relevant Development Policies:

5.8.1 Policy DP16 (The transport implications of development):

*"The Council will seek to ensure that development is properly integrated with the transport network and is supported by adequate walking, cycling and public transport links".*

5.8.2 Policy DP17 (Walking, cycling and public transport):

*"Where appropriate, the Council will expect proposals to provide information to indicate the likely impacts of the development and the steps that will be taken to mitigate those impacts, for example using transport assessments and travel plans."*

5.8.3 Policy DP21 (Development connecting to the highway network):

*"The Council will expect works affecting highways to:*

*f) ensure adequate sightlines for vehicles leaving the site;*

*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;..."*

5.8.4 Policy DP24 (Securing high quality design):

*"The Council will require all developments, including alterations and extensions to existing buildings, to be of the highest standard of design and will expect developments to consider:*

*a) character, setting, context and the form and scale of neighbouring buildings;*

*b) the character and proportions of the existing building, where alterations and extensions are proposed;*

*c) the quality of materials to be used;*

*d) the provision of visually interesting frontages at street level;*

*f) existing natural features, such as topography and trees;*

*g) the provision of appropriate hard and soft landscaping including boundary treatments;..."*

5.8.5 Policy DP25 (Conserving Camden's heritage):

*"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"*

*"To preserve or enhance the borough's listed buildings, the Council will:*

*g) not permit development that it considers would cause harm to the setting of a listed building.*

Regent's Park Conservation Area Appraisal and Management Strategy

5.9 The Council's Conservation Area Appraisal and Management Strategy for Regents Park ("**CAA**") was adopted on 11th July 2011. An extract setting out the relevant parts is provided at **Appendix 7**. The CAA comprises a character appraisal of the Regent's Park Conservation Area and relevant management proposals to ensure the ongoing preservation and enhancement of the Conservation Area. The document is a material planning consideration as a Supplementary Planning Document to the development plan.

5.10 The CAA notes of Cambridge Terrace at Part 1, paragraph 4.9 ('The quality of buildings and their contribution to the area'):

5.10.1 *"Designed by Nash, this stucco terrace is slightly eccentric. It has small alternating rusticated columns at the centre and at the ends of the ground floor; otherwise it has as decoration long incised patterns in the stucco, reminiscent of the work of Sir John Soane. Originally ten houses, it was badly damaged in the Second World War; the north end was only rebuilt in the 1980s, when it was constructed as offices: the southern, surviving five original houses were converted laterally into flats."*

5.11 In relation to the basement works permitted under the 2010 Permission, it is noted at Part 2, paragraph 7.2 ('Guidance'):

5.11.1 *"This work comprises 50% of the open space being excavated and reinstated with a new open space design in terms of planting and layout. Within all of this a large existing lime will be retained as a feature of the existing landscape structure. Future pressure on these spaces from basement development will need to ensure that the landscaping in front of the terraces is preserved or reinstated"*.

5.12 The CAA includes the following recommendations for action at Part 2, paragraph 4:

5.12.1 *"Continue to promote reinstatement of missing features and rectifying alterations, taking care of the rears as well as fronts of the terraces"*.

5.12.2 *"Improve streetscape at the exits from the area..."*.

London Plan

5.13 Relevant policies in the London Plan include:

5.13.1 Policy 6.2 (Providing public transport capacity and safeguarding)

*"B Development proposals that do not provide adequate safeguarding for the schemes outlined in Table 6.1 should be refused."*

5.13.2 Policy 7.8 (Heritage assets and archaeology)

*"C Development should identify, value, conserve, restore, re-use and incorporate heritage assets, where appropriate.*

*D Development affecting heritage assets and their settings should conserve their significance, by being sympathetic to their form, scale, materials and architectural detail."*

- 5.14 An extract setting out the policies referred to in this SoC is provided at **Appendix 8**.

#### CEPC Vision for Regent's Park

- 5.15 The CEPC commissioned and adopted a non-statutory strategy document 'A Total Work of Architectural and Landscape Art - A Vision for the Regent's Park' in 2014 ("**CEPC Vision**"). A copy of this is provided at **Appendix 9**. The vision calls for enhancements including the restoration of gardens, in line with the adopted CAA. Insofar as the Development is concerned, the CEPC is the strategic vehicle assisting the authority in implementing its policy for the asset. Hence the Appellant accords the CEPC Vision considerable weight in the planning decision making process.

#### National Planning Policy Framework ("**NPPF**")

- 5.16 The NPPF is a material consideration for the determination of this Appeal. An extract setting out the relevant paragraphs referred to in this SoC is provided at **Appendix 10**.
- 5.17 Within the NPPF are a set of twelve core land-use planning principles which should underpin plan-making and decision-taking and which planning should achieve. Paragraph 14 sets out that at the heart of the NPPF is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision taking.
- 5.18 Relevant parts of the NPPF include the following paragraphs:

Section 4 (Promoting sustainable transport)

*"32. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe."*

Section 12 (Conserving and enhancing the historic environment)

*"128. In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance..."*

*"129. Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development 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."*

*"132. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be..."*

*"137. Local planning authorities should look for opportunities for new development within Conservation Areas and World Heritage Sites 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."*

## 6. MERITS OF THE DEVELOPMENT

6.1 The key heritage benefits of the Development include:

6.1.1 Demonstrable design benefits; improvement to the setting of the listed building and the RPG; and enhancement of the conservation area by:

- (a) re-establishing the relationship between architecture and landscape in accordance with Nash's vision for the Park;
- (b) introducing an attractive green element into the streetscene;
- (c) creating a residential curtilage which reinforces the original pattern of uses at the Site and in the wider area;
- (d) removing a line of parked cars from a publicly accessible route over private land in a conservation area and providing a garden which will enhance the experience of road users;
- (e) improves the quality of the view from the east, thereby adding to the attractive landscape at the edge of the RPG, drawing those positive features into the road;
- (f) providing visitors with a better appreciation of the original artistic vision for the area and the cultural value of the listed buildings.

6.1.2 The Development clearly delivers the CAA objective of reinstating missing features and the CEPC Vision's call for restoration of gardens.

6.2 The key transport benefits of the Development include:

6.2.1 A safer, more formal turning arrangement for vehicles turning from Chester Gate onto Outer Circle resulting from the reduction of the carriageway width at Chester Gate to a single lane. This both encourages reduction in speed and improves driver visibility;

6.2.2 Improved safety for pedestrian users. Reduced carriageway width will bring the footway on the opposite side of Chester Gate closer, reducing the crossing distance for pedestrians; and

6.2.3 The garden and footway alignment will provide a higher quality environment for pedestrians than the existing.

## 7. APPELLANT'S CASE ON THE FIRST REASON FOR REFUSAL (DESIGN AND HERITAGE)

### Reason for Refusal

7.1 The Council Members' first numbered reason for refusal in its Decision Notice states as follows:

*"The proposed development, by reason of the design and the lack of historical evidence to support the proposed creation of a private garden, would cause harm to the character and appearance of the street scene and the wider area which would fail to preserve and enhance the character and appearance of the Regent's Park Conservation Area. The proposal would also result in the loss of public space and there is therefore no public benefit to outweigh the less than substantial harm caused to the heritage asset."*

### Policy

7.2 Core Strategy Policy CS4 (Promoting high quality places and conserving our heritage)

7.3 Development Policy DP24 (Securing high quality design)

7.4 Development Policy DP25 (Conserving Camden's heritage)

### Appellant's Assessment at the Application Stage

7.5 A copy of the Landscape Report submitted with the Application is provided at **Appendix 11**.

7.6 The report provided an overview of the design proposals for the Development, including:

7.6.1 Reinstatement of the garden at Nos. 6-10 Cambridge Terrace as originally intended by John Nash as identified on a detailed 1834-35 survey by Charles Mayhew;

7.6.2 The introduction of 'framed' views towards Cambridge Terrace from the Outer Circle and Regent's Park through the strategic planting of trees at the North end;

7.6.3 The creation of two distinct gardens spaces that interpret the historic path layout as documented in Charles Mayhew's 1834-35 plan whilst taking the opportunity to modify the design layout to accommodate the requirements of the Appellant;

7.6.4 Uniting gardens and architecture through the use of high quality materials in keeping with the CEPC's requirements;

7.6.5 The enhancement of biodiversity and improvement of habitats for wildlife across the Site and adjacent park;

7.6.6 The creation of a sensitive and appropriate setting for the listed buildings.

7.7 A copy of the Heritage Statement submitted with the Application is provided at **Appendix 12**.

7.8 The statement demonstrates that:

7.8.1 the Development will represent a significant conservation gain and will enhance the setting of the Grade I listed Cambridge Terrace and nearby terraces as well as the RPG and Regent's Park Conservation Area;

7.8.2 the Development is informed by a detailed historical analysis of the Site;

7.8.3 the Development is in line with Nash's original concept for Regent's Park to set the buildings surrounding the park within a parkland setting, enabling the integration of urban architecture and natural scenery based on his theory of the 'metropolitan picturesque';

- 7.8.4 the Development is in accordance with Nash's original plans for Cambridge Terrace that sought to flank Cambridge Terrace with gardens to extend the picturesque, parkland setting into the surrounding streets; and
- 7.8.5 the Development will result in no loss of important historic fabric and special regard has been had to the suitable preservation of listed structures that are to be repositioned as part of the Development.

#### Council Officer's Assessment

- 7.9 A copy of the Committee Report provided to Members is provided at **Appendix 13**.
- 7.10 The Committee Report concluded that there was evidence of there being a garden at the Site historically and that its reinstatement was therefore *"welcomed in heritage terms"* and that the Development *"offers a rare opportunity to substantially enhance the setting of the listed buildings and the character and appearance of the wider area, including the Regent's Park Conservation Area and Regent's Park itself"*.
- 7.11 The report noted:
- "The evidence provided by the applicant, namely the 1834 Mayhew survey, the original lease details, the subsequent surrender of the land for road widening in 1873, and a photograph showing the garden, are considered to prove beyond reasonable doubt that a garden in this location was part of the original plan for the layout of this part of Regent's Park.*
- The Crown Estates Paving Commission (CEPC) have also stated in their comments that they believe the original garden area did exist from quite early on in the development of Regent's Park, and in a similar form to that being proposed in this application."*
- 7.12 The Committee Report was clear in its conclusions that the Development would provide a heritage benefit and that there was therefore no trigger for the NPPF requirement to provide a public benefit to outweigh harm to a heritage asset. In any event, it concluded that:
- "...subject to the use of high quality and appropriate building materials (e.g. for the railings and new paving etc.), and the planting of appropriate vegetation within the garden, it is considered that the proposal would contribute positively to the street scene along this part of the Outer Circle, which represents a public benefit."*

#### Members' Debate

- 7.13 A copy of the Council's approved minutes of the planning committee meeting on 8 September 2016 is provided at **Appendix 14** along with a full transcript of the presentation of the Application prepared by Montagu Evans based on a webcast available on the Council's website.
- 7.14 Observations raised by Members on the night of the planning committee included the following (officer responses noted in brackets):
- 7.14.1 The Development will not replicate exactly what had been designed by Nash or the Victorian garden that was later installed (*reinstatement of a historical element into a setting with listed buildings nevertheless of benefit to the area*);
- 7.14.2 Loss of public space (*no decisive evidence whether the historic garden had been publicly accessible and private garden generally considered to be of benefit to public amenity as it gave a view of greenery such as trees*);
- 7.14.3 Need to balance benefit of garden with disadvantage to residents (*no substantial harm from the proposal so no need to assess public benefit*).

7.14.4 Support for the design; proposed garden was similar in size to the historic garden; road considered to have been narrow historically and widened in recent times.

7.15 In conclusion, Council officers agreed entirely with the planning and policy justification for the Development. They were overruled on the night by Members uncomfortable with what they perceived as the loss of public space.

#### Appellant's Submissions for the Appeal

##### *Land Ownership*

7.16 The land edged in red on Plan 1 below, which comprises the Site, is demised under a lease dated 15 July 2015 between Her Majesty the Queen (1), The Crown Estate Commissioners (the "Crown Estate") (2) and Emily Rose Crompton-Candy ("ERCC") (3). A copy of the lease is provided at **Appendix 15**.



7.17 The Lease is registered at the Land Registry under title number NGL953578 and the registered proprietor is ERCC.

7.18 The freehold to the Property is unregistered, but there is a Caution Against First Registration registered under caution title number NGL895348 in favour of the Crown Estate.

7.19 The term of the Lease is 150 year commencing on 15 July 2015 and ending on 14 July 2165.

7.20 The Property is let to ERCC from the Crown Estate.

7.21 A premium is payable by ERCC on the later of:

7.21.1 the grant of the "Consents" reasonably acceptable to ERCC. The "Consents" are all the statutory and other consents, licences etc necessary for:

- (a) carrying out the works necessary to convert the Property into a private garden with an accessway to the house (the "**Works**"), including but not limited to planning permissions or listed building consents for the Works and consent from the Crown Estate Paving Commission ("**Paving Commission**"); and
- (b) entitling ERCC or persons authorised by her to have exclusive use of the Property (excluding the such parts of the Property that the Paving Commission and ERCC may agree should be used as a public pavement or public highway or for any other use other than as a garden and accessway to the house ("**Peripheral Areas**")).



- 7.21.2 an agreement being entered into between ERCC, the Crown Estate and the Paving Commission in a form acceptable to those parties, giving ERCC exclusive use of the Property (excluding any Peripheral Areas) as a garden with an accessway to the house (or part of it) for the term of the Lease;
  - 7.21.3 an agreement being entered into between ERCC and the Crown Estate in a form acceptable to the parties giving ERCC consent to carry out the Works (the parties acknowledge that such consent could be in a form of a tripartite consent with the Paving Commissioners); and
  - 7.21.4 completion of the Works and commencement of the use of the Property (excluding the Peripheral Areas) by ERCC or persons authorised by her as a garden with an accessway to the house.
- 7.22 Certain provisions in the Lease (e.g repair, insurance, access etc) will not apply until the premium is paid and will never apply to the Peripheral Areas. However, other obligations (e.g. alterations) will apply throughout the Term.
- 7.23 The Lease does not deal with what happens if the Consent are never granted, there are no provisions to allow the term of the Lease to be terminated early.

*Evidence of existence of original garden*

- 7.24 A report of the historical sources referred to in this SoC and in the Heritage Statement and Landscape Report submitted with the Application is provided at **Appendix 16**.
- 7.25 Cambridge Terrace is one of the grand terrace of houses designed originally in 1825 and laid out around Regent's Park by architect John Nash on the south eastern edge of the Park on the Outer Circle. Section 3 of the Heritage Statement describes how the ground for Cambridge Terrace was let to the builder Richard Mott and that Mott was instructed by Nash not to deviate from his plans for the site. A plan of 1825 shows Nash's final thoughts for Cambridge Terrace and labels the site to the north of No. 10 Cambridge Terrace as 'Garden Ground to No.10' (see Figure 3.2 of the Heritage Statement and Figure 1 of the Sources Review). A corresponding garden is shown to the south of the terrace, which remains today.
- 7.26 An Indenture of 4th April 1873 refers to an Indenture of Lease dated 17th March 1827 which details that the Site "*was intended to be laid out as and for an ornamental garden for the exclusive use and enjoyment of the occupiers*". The plan contained within the original lease of 1827 shows a space labelled 'Garden' to the north of the terrace. A copy of the lease, the surrender and transcripts are provided at **Appendix 17**.
- 7.27 A detailed survey of Regent's Park carried out by Charles Mayhew between 1834-35 shows the garden in the same location as the 1827 lease plan (See Figures 34 and 41 of the Landscape Report and Figures 13 and 14 of the Sources Review). The survey shows the space laid out in the picturesque manner with two oval circuits flanking the north entrance to no. 1-2 Chester Gate. The garden is laid to lawn, surrounded by shrubberies and trees creating an enclosed and private space. There is an entrance to the garden from 1-2 Chester Gate itself and a gate to Cambridge Terrace on the south side of the garden. The consultation responses do not make reference to this plan.
- 7.28 It is important, when thinking about historiography, to interrogate the reason for a source's preparation. This plan was prepared for estate reasons, and so naturally like all surveys will have a high level of accuracy since it relates to land interests. The plan provides proof of the existence of the garden only a short time after the completion of Cambridge Terrace, which was finished in 1825. The passage of only a few years between completing a house and furnishing it with a garden is not significant. The two, house and garden, were part of one project. The garden was therefore very much part of the original layout of this part of Regent's Park.
- 7.29 The garden is clearly shown on the first edition Ordnance Survey plan of 1870 (See Figure 3.4 of the Heritage Statement and Figure 17 of the Sources Review), by which time the layout had evolved somewhat, with an axial path leading to an oval entrance space at the eastern end of the garden. An

undated stereoscopic photograph (See Figure 35 of the Landscape Report) from this time also shows the garden, with a large, mature tree framing the terrace as Nash had intended. The next available Ordnance survey of 1890 (See Figure 3.5 of the Heritage Statement and Figure 18 of the Sources Review) shows the garden removed with the pavement widened and a single railing between the entrance court to Cambridge Terrace and the carriageway of Chester Gate. It is likely that the garden was surrendered in 1873 for the widening of the road. The OS survey is a highly accurate and objective source. The first edition is well known for accurately displaying landscape features, even down to locating individual specimens of trees and types (between deciduous and coniferous).

- 7.30 The evidence for the existence of a garden in this location from early in the development of Regent's park is incontrovertible from the cartographic sources. At the very least a garden clearly existed from 1835 at the latest until 1873 at the earliest, a period of some 38 years. That it was an important part of Nash's original vision for the park in general and Cambridge Terrace in particular is clear from Nash's writing and his own plans for the site. Documentary evidence confirms that it was intended as a private garden for the residents of the adjacent house. It is not known to what extent the detailed layout of the garden was originally designed by Nash himself, but he clearly always intended a garden to be laid out in this location, and the garden shown on the Mayhew survey plan is typical of his style and follows his design philosophy for the wider park. It should be noted that it was not in any case unusual for Nash with his sizeable workload to hand the detailed design of his buildings and gardens to his many pupils and assistants.
- 7.31 This garden was conceived of as part of a single scheme, framing the terrace to the south, the west and on this side, the north. That scheme's intention was to draw the landscape qualities of the Park across the carriageway to frame the houses, and in this way the gardens were an integral part of the overall vision for the Park.
- 7.32 That vision, again incontrovertibly, was Nash's working for the Crown on what would prove to be one of the greatest planned ensembles in Europe, one noted for integrating buildings and landscape in an urban setting. Nash had a large office and most of the buildings around the Park were not from his hand. But he was the impresario and visionary. The fact that there is no drawing for the garden 'from his hand' is in no way relevant to this case.

#### *Historical development of the Site and vision*

- 7.33 The Heritage Statement submitted with the Application provides an overview of the historical background of the Site. This draws from primary sources including the Crown Estates papers held at The National Archives.
- 7.34 In 1811 John Nash was commissioned by Prince Regent (later George IV) to design a park studded with villas and a place for the Prince himself, fringed by grand terraces of houses, the Marylebone Park Estate. Nash submitted a compelling proposal for the development. It was proposed that the area, renamed the Regent's Park, would be designed as a 543-acre circular park with a lake, a canal with the new royal residence inside. To fund the scheme, fifty six villas and a series of grand terraces were planned within the park.
- 7.35 Nash's scheme proposed an integration of urban architecture and natural scenery based on his theory of the 'metropolitan picturesque'. At a time when urban developments resulted in terraced buildings and town squares, Nash's master plan followed a different set of principles: a seamless connectivity between interior parkland and residential developments fused together to create deliberate, composed views from not only the carriage drive, but so too from the proposed villas, terraces and parkland.
- 7.36 Planting was designed to frame both the villas and terraces so that they were viewed in a parkland setting, as individual palaces not a street. To this end, Nash proposed intervening groups of trees and planting between the terraces on the Outer Circle, with private gardens framing the terraces at either end:

*'Nash appears to have been in favour of the creation of private gardens at the ends of some of the terraces, and Chester Gate in particular. He presumably agreed to these*

*gardens on the condition that they complemented the terrace and adhered to the planting principles<sup>1</sup>.*

- 7.37 In 1832 Nash described in a letter how 'no two masses of building shall be seen from any one point at the same time'. When the visitor 'arrives opposite the middle of each range of buildings he will have a distinct view of its Architecture framed by the Plantations on either hand which Plantations will shut out every other building, creating so many distinct pictures<sup>2</sup>'. Thus it would be consistent with Nash's design principles for Cambridge Terrace to be flanked by private gardens at either end.
- 7.38 When construction was eventually completed in 1832 eight of the intended villas, most of the terraces around the fringes of the park, the ornamental lake and canal were in place. Together with the park, they form one of the architectural showpieces of London. They are renowned internationally and feature in any textbook about urban planning and architecture covering this period in English, and in many other languages besides.
- 7.39 Research carried out by the Appellant for the Application established that this part of the terraced had suffered bombed damage during the Second World War and was gutted by a fire that occurred when repair work was underway in the late 1940s. At the time the subsequent repair work was underway in the late 1940s, a serious fire then gutted Nos. 7-10 Cambridge Terrace. Both the Crown Estate and the Ministry of Works took steps to shore up the party wall to No. 6 Cambridge Terrace and demolish the upper floors of the fire damaged houses. By May 1949 the demolitions and stabilising work had been completed for its scenic or group value as an important element in the concept.
- 7.40 It is the Appellant's view that the facsimile quality of this part of the historic development does not diminish its importance or the weight to be given to enhancement. This is because the visual and architectural qualities of the exteriors, seen from and in relation to the Park, are what matter in this case. The material integrity or otherwise of the buildings themselves is not relevant. Indeed, a number of the terraces in the area are facsimile reconstructions, and listed grade I notwithstanding that.
- 7.41 A number of redevelopment proposals were put forward for the Site and wider area, including one which received planning permission in 1976, but it was a scheme granted in the early 1980s that was implemented. The scheme included the construction of a new building at Nos. 7-10 Cambridge Terrace with a basement level car park below Nos. 6-10, and works to extend and alter Nos. 1-2 Chester Gate to form offices. The façade of Nos. 7-10 Cambridge Terrace was rebuilt in facsimile and reinstated the important Regency backdrop to Regent's Park. The interior of Nos. 7-10 Cambridge Terrace was not reinstated and the internal spaces were plain and open plan to accommodate an office block that was laterally joined via doors in the party wall to Nos. 6 Cambridge Terrace on all floors and to Nos. 1 and 2 Chester Gate at ground floor level.
- 7.42 The further planning history of the Site is detailed at Paragraph 4 of this SoC.

#### *Significance of heritage assets*

- 7.43 Regent's Park and the surrounding terraces form the setting of the Site and contributes to its significance as part of the nineteenth century development of Regent's Park. The form and style of the other terraced properties, including their boundary treatments, around the Outer Circle provide a built context within which the history of the Site and Cambridge Terrace can be understood.
- 7.44 The Site and Cambridge Terrace as a whole are of very considerable historical interest as part of the development of Regent's Park. Nos. 6-10 Cambridge Terrace possesses aesthetic value in its exterior elevations. The exterior of Nos. 6-10 Cambridge Terrace creates the impression of a grand palace as part of a major Regency town planning scheme. The original landscaped space on the corner of Chester Gate and Cambridge Terrace that existed at the Site would have enhanced the setting of Nos. 6-10 Cambridge Terrace and the neighbouring terraces and contributed to Nash's aim

<sup>1</sup> ToddLongstaffe Gowan and David Lambert, 'A Total Work of Architectural and Landscape Art' A Vision for Regent's Park. CEPC June 2014

<sup>2</sup> Nash (letter, u.d.) quoted in ToddLongstaffe Gowan and David Lambert, 'A Total Work of Architectural and Landscape Art' A Vision for Regent's Park. CEPC June 2014

of seeking to integrate urban architecture and natural scenery. The landscaped space would have offered variety to the presentation of Cambridge Terrace and the landscaping would have softened the transition from Regent's Park to the terrace.

- 7.45 It is worth considering how such a garden would have been used. Early plans show it laid with walks, with access to the main door. Given the scale of the space it could have been used for leisure purposes occasionally, but it would always have been overlooked like the front garden areas in villa suburbs. Thus, the private life of the occupants would not be played out in this landscape. That would have violated C19 ideas of privacy and propriety, just as nowadays the owners of grand houses in historic streets do not tend to use them for daily activities. Such spaces are ornamental pieces of landscape providing visual relief, separation ensuring privacy to people in the house and, in this case, part of a wider aesthetic or artistic vision.
- 7.46 The landscaped space at the Site has since been removed with the pavement widened and a single railing erected between the forecourt to Cambridge Terrace and Chester Gate in the late 19th century. The Site therefore no longer provides the landscape setting originally intended for the terrace. Instead there are parked cars and spaces, which detract from the visual quality of the terrace and undermine the aesthetics of the Park's setting.
- 7.47 However, the existing paving, lamp posts and railings possess some aesthetic value as part of the formal street layout and boundary treatments, which contribute to the quality of the appearance of Cambridge Terrace and the wider area.
- 7.48 It is considered that the significance of the Site is largely derived from the aesthetic and historic value of its component parts, which although of lesser significance than the original intended purpose of the Site as a garden, present a formal street layout and boundary treatment that is in keeping with the development of Regent's Park, and generally reflects the prevailing character and appearance of this part of the Conservation Area.

#### *Design*

- 7.49 Whilst there is no definitive evidence one way or the other to prove whether Nash's office produced the detailed layout of the garden to No. 10 Cambridge Terrace, it is clear that a garden in the proposed location was an important part of his overall vision for Cambridge Terrace and this part of Regent's Park. That entailed the concerted attempt to integrate classically designed buildings in a picturesque landscape.
- 7.50 The Landscape Report submitted with the Application highlights that the proposed layout is very much in the Nash style and in keeping with his plan as a whole, and in that sense the Development is considered to be restoring Nash's design and vision for the garden to No. 10 Cambridge Terrace.
- 7.51 The Development does not purport to restore a specific original scheme expressly, but to provide something that reflects the character and style of the period, based on historical sources and understanding. The Development involves the reinstatement of the garden, narrowing of the existing carriageway, realigning the pavement, and laying out the garden to the exact same dimensions as shown on Nash's original site layout, and in the manner of the Mayhew survey plan, using an authentic early 19th Century palette of trees, shrubs and herbaceous planting. The new garden layout is not intended to be an exact facsimile of the Mayhew plan, but follows the spirit of Nash's wider vision for the Park, and follows his style of garden design and planting.
- 7.52 The design has been developed in accordance with the following design principles:
- 7.52.1 To re-establish the relationship between architecture and landscape in accordance with Nash's vision for Regent's Park;
  - 7.52.2 To introduce 'framed' views towards the terrace from the Outer Circle and Regent's Park through the strategic planting of trees within the restored garden

- 7.52.3 To create two distinct gardens spaces that interpret the historic path layout as documented in Charles Mayhew's 1834-35 plan whilst taking the opportunity to modify the design layout to accommodate the requirements of the client;
- 7.52.4 To use high quality materials in keeping with the CEPC palette, and re-using existing York stone paving and historic street furniture and railings;
- 7.52.5 To create a sensitive and more appropriate setting for the listed buildings and enhance the streetscape of the Conservation Area.
- 7.53 When viewed from the street and the park, this garden will appear as a mixed shrubbery above a clipped yew hedge with ornamental trees overhead. The entrance to the garden will be via a gate in the proposed railings at the eastern end leading to a formal oval space in front of the entrance to 1-2 Chester Gate. A second oval to the west will be laid out as a lawn surrounded by scattered trees and a mixed shrubbery. This is intended to be a space for quiet recreation and as a visual amenity when viewed from both the house and the street. The overall layout has been designed to reflect the original garden as seen in the 1834-35 Mayhew plan. Six new trees shall be introduced to create the effect of Nash's 'plantation', using larger forest trees at the western end to frame views of the terrace, separating it from the neighbouring Chester terrace, and visually connecting the garden with the parkland landscape of Regent's Park beyond.
- 7.54 The planting palette will portray the mixed shrubberies associated with the Nash 'grouped manner'. Nash's method of planting would have involved irregular massed groupings of plants, including deciduous and evergreen trees, shrubs, perennials and bulbs, combined to create 'pictures'. This was an innovative method of planting in the early nineteenth century, replacing the 'mingled' manner that preceded it. This planting style and selection of species will relate directly to that proposed for the restoration of the adjacent Cambridge Terrace garden in the scheme approved under the 2010 Permission, using authentic species of the period.
- 7.55 The officer's report recommended that the detail of the landscape scheme should be subject to a condition, requiring the submission and approval of all materials and planting, in order that the proposals can be coordinated with the CEPC's own emerging strategy for the reinstatement of historic elements of Nash's design more widely. This is a welcome opportunity to ensure that in terms of detail this proposal is in tune with other forthcoming restoration work in the vicinity. The Appellant would also be willing to extend the scope of such condition to include specifications of the positioning of garden furniture.
- 7.56 It should be noted that, because of the Site's location in the curtilage of a listed building and in a conservation area, the permitted development rights normally enjoyed by householders do not apply.

*Statutory provision, development plan policy and material consideration*

- 7.57 The over-arching duty incumbent on the decision maker regarding listed buildings is that in sections 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("**Listed Buildings Act**"), namely the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

s16(2) provides: *"In considering whether to grant listed building consent for any works the local planning authority or the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."*

s66(1) provides: *"In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."*

s72(1) provides: *"In the exercise, with respect to any buildings or other land in a conservation area, of any [functions under or by virtue of] any of the provisions mentioned*

*in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area."*

- 7.58 S16(2) applies to the determination of the LBC Application. The Council take no point against the proposals in respect of these works as works to a listed building. The LBC Application is refused, rather, on the basis the Development as a whole is unacceptable.
- 7.59 S66(1) and s72(1) apply to the determination of the Application. The Inspector will be familiar with recent judgments, in particular with High Court decision in the matter of *Barnwell Manor vs East Northamptonshire DC* [2014] EWCA Civ 137 as then elaborated in the Court of Appeal by Lindblom J in the matter of *Forge Field (R (Forge Field Society) v Sevenoaks District Council* [2014] EWHC 189. A copy of these cases is provided at **Appendix 18** and **Appendix 19** respectively.
- 7.60 Effectively, read together these confirm that the intention of s66(1) and s72(1) are to impose a strong presumption against development which is harmful to heritage interests. A more recent Court of Appeal judgment, *Jones v Mordue, Secretary of State for Communities and Local Government and South Northamptonshire Council* [2015] EWCA Civ 1243, held at paragraph 28 that the decision maker who turns his or her mind to the group of policies in the NPPF, paragraphs 132 through 134, will have discharged the totality of the statutory requirements in respect of designated heritage assets. A copy of this case is provided at **Appendix 20**.
- 7.61 The NPPF heritage policies of greatest application to the Application are 128 and 129, requiring decisions to be based on an understanding of the significance of a heritage asset. Significance is defined in the Glossary Annex as comprising architectural, artistic, historic or evidential values.
- 7.62 Paragraph 132 translates the statutory presumption against causing harm into what is sometimes called the 'great weight' provision. Thus, an effect on the significance of a heritage asset attracts particular weight relative to other land use planning benefits.
- 7.63 Whilst the judgments discussed look at weight in negative terms, in cases of harm, equal weight applies to development causing benefit.
- 7.64 Paragraph 137 particularly encourages local authorities to support works of enhancement, and that must include restoration works or other improvements to the way an asset appears or is appreciated.
- 7.65 Conservation is defined in the NPPF as either maintaining significance or enhancing it where appropriate. This embracing definition supports the application of great weight to beneficial and harmful works equally.
- 7.66 The planning weight to be given to an effect on a heritage asset is not just a function of statutory provision but also needs to be proportionate to the significance of the asset. Applied to the facts of the Application, the assets considered are a) of outstanding importance and b) assets whose settings and interests overlap materially. Thus, if the Inspector agrees with the Appellant that the Development provides an enhancement, the planning weight attached to that is very considerable indeed.
- 7.67 As set out in paragraph 5 of this SoC, the London Plan supports the conservation of heritage assets in a manner proportionate to the importance at paragraph 7.8. Further, Core Strategy Policy CS14 promotes the conservation of all the Borough's heritage and Development Policy DP25 deals expressly with the setting of listed buildings and effects the statutory requirement of section 66 (1). Likewise Development Policy DP25 deals with Conservation Areas and RPGs.
- 7.68 The CAA recommends the promotion of *"the reinstatement of missing features and rectifying alterations, taking care of the rears as well as fronts of the terraces"* and the improvement of *"streetscape at the exits from the area"*.
- 7.69 The CAA specifically endorses the restoration of those private garden areas on the edge of the Park which have been lost to traffic improvements and other developments over the years. Clearly the proposals deliver this objective, which point was made expressly to Members in the committee report and orally by officers.

*Assessment and performance against policy*

- 7.70 There are three distinct heritage considerations here, and they overlap to a significant degree:
- 7.70.1 First is the impact of the proposed development on listed buildings and structures and the conservation area. This has two aspects, comprising the impact of the physical works and the impact of the creation of a residential curtilage.
  - 7.70.2 Second is the impact of the proposals on the RPG, which falls within the conservation area. Relevant policy reflects Listed Buildings Act provisions in relation to assessment of setting effects.
  - 7.70.3 Third is the Development's impact on the setting, and therefore significance, of listed buildings, which comprises not just the Appellant's property, but others in the terrace, listed buildings to the east and the one to the north. The Site has a setting in common with all of those in varying degrees.
- 7.71 *Site:* Does the Site contribute to the architectural, historic or artistic value of the heritage assets? The use of the Site as roadway for car parking is not historic. Cars encroach on the setting of the listed buildings and undermine the experience of pedestrians moving along Chester Gate towards the Park.
- 7.72 For the same reasons, the parked cars and area of associated tarmac detract from the experience of the conservation area and from an appreciation of the listed buildings, particularly the Appellant's house and the one to the north, which were intended to be seen in association with a large area of landscape.
- 7.73 The Site in its current state therefore detracts from the special interest of these assets. It has no value in itself either from a heritage perspective.
- 7.74 *Conservation area:* The Development introduces an attractive green element into the streetscene, enhancing the pleasure of moving along the road. There is no harm to road safety or compromise to the quality of the pedestrian experience. Even assuming there were, which the Appellant does not, then that harm would have to be of very significant proportions to undermine or invalidate the weight to be given to restoring a missing piece in a work of town planning art.
- 7.75 This part of the Development takes the opportunity to enhance the asset and to realise one of the policy ambitions of the adopted CAA as well as the CEPC's masterplanning commitment to the Park. It improves the verdant quality of the view from the east, adding to the attractive landscape edge of the Park, and so drawing those positive features into the road as the Nash concept intended.
- 7.76 *RPG:* The setting of the RPG is enhanced for the same reasons. The Development leaves a visitor of the area with a better appreciation of the original artistic vision for the area, and the landscaping foreshadows the experience of the Park itself. The weight to be attached to this improvement is considerable in particular because of the Park's high grading, arguably augmented by its international reputation.
- 7.77 *Setting of the listed buildings:* This includes the Appellant's own house, the grade I listed building opposite and the other listed buildings to the rear, comprising the conservation area. The parked cars are an unattractive feature and the Development reinstates the originally intended setting of these buildings.
- 7.78 Considerable importance and weight attaches to that enhancement and to the conservation area enhancement under s66 (1) and s72(1) of the Listed Buildings Act respectively and under paragraphs 132 and 137 of the NPPF. The relocation of the listed (by attachment) railings and low wall is an impact of no consequence to the significance of the listed houses and terrace because they are being reinstated in their original position.
- 7.79 The Development, therefore, restores an important part of the original design for the Park. It restores the setting of an important grade I listed terraced which is part of the ensemble. In so doing it

enhances the conservation area. The Development is landscaped for visual amenity value. The space would be unlikely to be used as an ordinary private garden given its location beside the street. In any event, the land is private, in the ownership of the CEPC, and the Appellant has showed there are demonstrable public benefits to heritage and design benefits that come from removing a long line of parked cars from a publicly accessible route over private land in a conservation area.

7.80 The Appeal is not a case about harm versus benefit. The Development does not cause harm and clearly there is therefore no need for a balancing exercise. The benefit to the historic environment must, as a matter of law and policy, attract considerable importance and weight because of the provisions of s66(1) and s72(1) of the Listed Buildings Act.

7.81 The requirements of the Council's strategic and local policies are met fully. In accordance with Policies CS14 and DP24, the Development is of a high quality design that respects the local context and character of the Site. The Development also achieves the requirements of Policy DP25 which seeks to ensure the Borough's heritage assets are preserved or, where appropriate, enhanced.

7.82 The benefits are 'pure' benefits, in the sense there is no heritage harm for these benefits to be set against. Full weight must be given to them. It has therefore been clearly demonstrated that there is no reasonable basis for sustaining Reason 1.

#### *Conclusion*

7.83 The Appellant has demonstrated that the Development will not just preserve the setting of the adjoining and nearby listed buildings. It takes the opportunity to enhance that setting, increasing an appreciation of the cultural value of those highly graded assets.

7.84 The appearance and the character of the conservation area are enhanced by the visual characteristics of the Development and by the creation of a residential curtilage, reinforcing the original pattern of uses at the Site and in the wider area. A roadway is replaced by a garden that will enhance the experience of anyone using the road. In so doing the setting of the RPG is enhanced.

7.85 The Development is one of many small steps that should be taken over time to restore Nash's grand vision. Notwithstanding that its scale is modest relative to the overall task, the direct effects locally are pronounced and entirely positive and attract considerable importance and weight.

7.86 Dismissing the Appeal would in effect violate policy, because the effect of that decision would be not to take such a clear opportunity to enhance the cultural value of these overlapping assets. This should be taken into account in the decision making process.

7.87 In the circumstances, the Appellant is genuinely surprised at the approach which the Members have taken. It is the Appellant's view that the decision of the Members was motivated clearly by other considerations than planning policy and that this was apparent to anyone who attended the planning committee meeting on 8 September 2016.

7.88 There is no basis to sustain Reason 1 and there is no basis for dismissing the Appeal on heritage or design grounds.



## 8. APPELLANT'S CASE ON THE SECOND REASON FOR REFUSAL (TRANSPORT)

### Reason for Refusal

8.1 The Council Members' second numbered reason for refusal in its Decision Notice states as follows:

*"The proposed development, by reason of the significant changes to the road and pavement layout on Chester Gate, would cause harm to vehicle and pedestrian safety...".*

### Policy

8.2 Core Strategy Policy CS11 (Promoting sustainable and efficient travel)

8.3 Development Policy DP16 (The transport implications of development)

8.4 Development Policy DP17 (Walking, cycling and public transport)

### Appellant's Assessment at the Application Stage

8.5 A copy of the Transport Statement submitted with the Application is provided at **Appendix 21**.

8.6 The statement demonstrated that the Development is policy compliant and will not give rise to any material transport-related impacts.

8.7 The results of a junction capacity assessment concluded that the reduction from two lanes to one lane will not have an unacceptable impact on the operation of the junction at Chester Gate and Outer Circle and that the junction will continue to work efficiently. The assessment showed that the ratio of flow to capacity for both one lane and two lanes would fall well below the recommended threshold within which a junction is generally deemed to be working satisfactorily within capacity.

8.8 A swept path analysis concluded that vehicles will still be able to negotiate Chester Gate and the local highway network. The statement notes that CEPC has confirmed the resulting space to be acceptable.

8.9 A visibility splay confirmed the Development would cause no impediment to visibility.

### Council Officer's Assessment

8.10 The conclusion of the Committee Report stated:

*"The transport impacts of the development are considered to be sufficiently mitigated and it is not considered that the proposal would cause undue harm to the visual and residential amenities of nearby and neighbouring properties."*

8.11 The report concluded that the traffic impact assessment submitted with the Application was satisfactory:

*"The Council's Transport Officers are satisfied with the assessment that has been made, and CEPC, after examining the applicant's modelling of traffic congestion with Chester Gate, believe that reasonable conclusions have been drawn from what is known about the current traffic demands placed on that roadway. The proposal is therefore considered to be acceptable in this respect."*

8.12 The report stated that any cumulative impact of Cycle Superhighway 11 ("**CS11**") and High Speed Rail 2 ("**HS2**") would not be severe enough to warrant refusal of the Application:

*"Access to Chester Gate for motor vehicles is already heavily restricted (i.e. permit holders, taxis, and access to premises) and this is more than likely to remain the case even if CS11 and/or HS2 were to go ahead. Traffic flows on Chester Gate are therefore unlikely to*

*increase significantly and the CEPC would be able to take enforcement action against any inappropriate use."*

### Members' Debate

- 8.13 Observations raised by Members on the night of the planning committee included the following (officer responses noted in brackets):
- 8.13.1 Permission granted could not be subsequently removed if there was a significant impact from HS2 and the CS11 (*HS2 and CS11 had been considered but neither yet been approved. There was no evidence that CS11 would lead to a significant increase in traffic on Chester Gate.*);
- 8.13.2 Concerns over narrowing a busy short road and that it would close down options if cycling was to increase (*narrowing the road would help reduce the speed of vehicles and would be of benefit to pedestrians as they could cross the road more safely*).

### Appellant's Submissions for the Appeal

#### *Existing situation*

- 8.14 The Site is located on the south side and western end of Chester Gate, for which the CEPC is the highway authority. The Site currently comprises parts of the carriageway and footway on Chester Gate and is bound to the east and north by adjoining footway/carriageway. To the south lies the property at 6–10 Cambridge Terrace, with Outer Circle to the west, which forms the major arm of a T-junction with Chester Gate.
- 8.15 Chester Gate passes from east to west between Albany Street and Outer Circle respectively and is one-way westbound.
- 8.16 Chester Gate and the roads between Albany Street and Outer Circle are maintained by the CEPC. They are private roads with no parking except for CEPC permit holders.
- 8.17 Outer Circle north of Chester Gate provides Pay & Display parking on both sides of the carriageway with restrictions in place Monday to Saturday between 09:00 and 18:30 with a maximum stay of four hours. To the south of Chester Gate Pay & Display parking is provided on the west side with double yellow lines on the east side adjacent to Cambridge Terrace and beyond.
- 8.18 Access to Chester Gate is provided from Albany Street with restrictions in place stating 'no trade or business vehicles except permit holders, taxis and for access to premises'.
- 8.19 Footways are provided on both sides of Chester Gate and the connecting roads of Albany Street and Outer Circle at either end. Informal pedestrian crossing points are located at the junction between Albany Street and Chester Gate and also on Outer Circle adjacent to the junction with Chester Gate. The Site's location on the periphery of Regents Park in combination with the network of suitable footways and crossing points provides a high level of accessibility for pedestrians.
- 8.20 Outer Circle is designated by Transport for London ("TfL") as a cycle route on 'quieter roads that have been recommended by other cyclists that may connect other route sections'.
- 8.21 TfL's proposals for CS11 are currently at the consultation stage which ran between 8th February and 20th March 2016. The route extends between Swiss Cottage and the West End passing through Regent's Park on Outer Circle.
- 8.22 TfL asserts that through traffic in Regent's Park would be reduced by introducing access restrictions at a number of the Park's gates during the peak periods, with no access expected between 11:00 and 15:00. No changes are currently proposed at Chester Gate which would continue to operate as in the existing situation, with 'no trade or business vehicles except permit holders, taxis and for access to premises.'

- 8.23 From TfL's initial assessment there is no indication that traffic on Chester Gate will increase as a result of CS11. Rather, TfL states that there will be "a significantly lower volume of traffic in the park."

*Effects of the Development*

- 8.24 **Road Layout:** The proposals would result in the narrowing of the carriageway at the western end of Chester Gate at the junction with Outer Circle from two lanes to one. At present the two lanes provide an opportunity for two vehicles to wait at the stop line side by side, with the presumption being that the nearside lane is used to turn left to Outer Circle and the offside lane is used to turn right to Outer Circle. There are however, no road markings or signs to indicate this as a formal arrangement and vehicles are not precluded from using either lane to turn left or right. Through observing the operation of the junction it is evident that two vehicles at the stop line can and do both turn right or left simultaneously, with one vehicle then having to give way to the other into Outer Circle which has a single lane in each direction. The implications of this are that the lack of any formal turning restrictions (e.g. a dedicated left and right turn lane) results in unpredictable driver behaviour, which presents an increased risk to all highway users.
- 8.25 The Development would reduce the carriageway width to a single lane with the ability to turn either left or right to Outer Circle. This is a benefit compared to the existing situation which does not provide a formal turning arrangement for the use of the two lanes. The fact that only one vehicle can exit Chester Gate onto Outer Circle rather than two also provides a safer arrangement given that other highway users will only have to consider a single vehicle movement at a time from Chester Gate.
- 8.26 It is pertinent to note that Chester Gate has a single width access from Albany Street with signage stating '*no trade or business vehicles except permit holders, taxis and for access to premises.*' Not only is access restricted to Chester Gate, but the road is effectively already at single lane width at its origin.
- 8.27 As acknowledged in the Committee Report, the reduction in lanes would remove the current situation whereby two adjacent vehicles waiting at the stop line can potentially impair each other's sight lines. The Development therefore offers a benefit in this regard.
- 8.28 **Pavement/foot layout:** It is important to note that whilst the existing footway would be realigned as a result of reducing the carriageway width, it would be reprovided to the same specification as the existing in terms of its width, materials used and associated street furniture, such as railings and street lighting.
- 8.29 A planning condition was suggested by Council officers in the Committee Report requiring the Appellant to enter into a contract with CEPC prior to commencement to secure the proposed works to the highway, footway and parking layout. The draft condition states:
- "No development shall commence before a contract has been entered into with the Local Highway Authority (Crown Estate Paving Commission) to secure the proposed works to the highway, footpath and parking layout.
- Reason: to ensure that the safety and efficiency and quality of the road network is maintained in accordance with Policy CS11 of the London Borough of Camden Local Development Framework Core Strategy and policy DP21 of the London Borough of Camden Local Development Framework Development Policies."
- 8.30 There would be no loss of footway as a result of the proposal with the effect of the reduced carriageway width being the introduction of an approximate 3m dog leg in the footway at the eastern end. It is not considered that this will have any material impact on accessibility or highway safety for pedestrians. The reduced carriageway width will in fact bring the footway on the other side of Chester Gate closer, reducing the crossing distance for pedestrians, which represent a benefit of the Development.
- 8.31 At present the section of footway within the Site is bounded to the south by 1&2 Chester Gate and footway/carriageway forming part of the adjacent Cambridge Terrace. The north side which adjoins

the carriageway provides parking for resident permit holders. The Development would introduce a garden between the footway and 1&2 Chester Gate and Cambridge Terrace, with on-street parking on the north side relocated elsewhere (to be secured by condition). The introduction of the garden and subsequent changes to the alignment of the footway will provide a much more pleasant walking environment for pedestrians. The Department for Transport's Manual for Streets (2007) (relevant extract provided at **Appendix 22**) states that *"The propensity to walk is influenced not only by distance, but also by the quality of the walking experience."* It is the Appellant's clear view that walking alongside a garden leading to Regent's Park will provide a higher quality environment for pedestrians than the existing situation.

- 8.32 By reducing the carriageway width and retaining some on-street parking it is likely that vehicles will be encouraged to drive at lower speeds, which would be a benefit in terms of highway safety. The Manual for Streets sets out a number of psychological and perceptive factors that can influence the speed at which people drive. This includes a reduced carriageway width, on-street parking and pedestrian activity, all of which are features of the Development.
- 8.33 **Traffic impact:** The traffic impact assessment submitted with the Application as part of the Transport Statement assessed the impact of reducing the width of Chester Gate at the junction with Outer Circle. The conclusion was that the junction would still operate well within the recommended threshold and that there would not be an unacceptable effect on capacity or queuing.
- 8.34 In light of the conclusions in the assessment, and officer comments in the Committee Report that the Development is acceptable in this respect, it is reasonable to conclude that the Development and associated changes to the layout of the road and pavement will not cause harm to pedestrians or vehicles.
- 8.35 **Highway Safety:** A visibility splay was submitted with the Transport Statement which demonstrates that visibility in excess of that required for a 20mph road would be maintained following changes to the highway resulting from the Development.
- 8.36 A Stage 1 Road Safety Audit (RSA) was also submitted with the Transport Statement which included a Designer's Response commenting on the findings of the audit. The RSA did not identify any significant issues whereby harm would be caused to vehicle and pedestrian safety.
- 8.37 As noted previously, changes to the road layout and the reduction from two lanes to one would provide a benefit in terms of visibility, and therefore highway safety, removing the current situation whereby two vehicles are able to wait at the stop line side by side and potentially impair each other's sight lines.

#### *Conclusion*

- 8.38 It has been clearly demonstrated by this SoC that there is no reasonable basis behind Reason 2. The evidence in support of the proposals has shown that there would be no harm caused to vehicle and pedestrian safety. On the contrary, the proposals would in fact result in benefits to highway safety.
- 8.39 The conclusion of the Committee Report provides an important and well informed summation of the planning application, having been thoroughly considered by the Council's officers. It states at paragraph 7.1:

*"The proposal to reinstate the historic garden on Chester Gate, and the associated works, would not cause harm to any listed buildings or structures or their settings, and it is considered that the proposal would enhance the character and appearance of the Regent's Park Conversation Area and the setting of Regent's Park. The transport impacts of the development are considered to be sufficiently mitigated and it is not considered that the proposal would cause undue harm to the visual and residential amenities of nearby and neighbouring properties."*

- 8.40 In light of the above, the Development is considered to be acceptable in transport and traffic terms. The Development accords with national, regional and local policy, a view shared by the Council's

Officers and made evident in the Committee Report recommending the approval of the planning application.

- 8.41 The key message of the NPPF is a presumption in favour of sustainable development, with paragraph 32 stating that:

*“Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.”*

- 8.42 Throughout the planning application process and this SoC the Appellant has shown that the impacts of the Development would not be severe. In accordance with the NPPF and a presumption in favour of sustainable development, there is no basis for dismissing the Appeal on transport grounds.

## 9. APPELLANT'S CASE ON THE THIRD REASON FOR REFUSAL (STOPPING UP)

### Reason for Refusal

9.1 The Council Members' third numbered reason for refusal in its Decision Notice states as follows:

*"The proposed development, in the absence of a legal agreement to secure the Stopping Up Order under Section 247 of The Town and Country Planning Act 1990, would be likely to cause harm to pedestrian and vehicle safety in the local area..."*

### Policy

9.2 Core Strategy Policy CS11 (Promoting sustainable and efficient travel)

9.3 CS19 (Delivering and monitoring the Core Strategy)

9.4 DP21 (Development connecting to the highway network)

### Appellant's Assessment at the Application Stage

9.5 The need for a Stopping Up Order was made clear in the Application, with a plan showing the proposed area to be stopped up included within the Transport Statement. The Appellant was and still is entirely willing to enter into a legal agreement to secure the need for a Stopping Up Order prior to commencement.

### Council Officer's Assessment

9.6 The Committee Report states at paragraph 6.45 that:

*"The proposal would result in the loss of highway (the land is privately owned with a public right of way over it). A stopping up order (under Section 247 of The Town and Country Planning Act) would need to be approved by the Council prior to works commencing on site. This pre-commencement obligation can be secured by section 106 legal agreement. The applicant is willing to enter into such an agreement."*

9.7 Furthermore, the Committee Report concludes at paragraph 7.2 that:

*"Planning permission is recommended subject to a S106 Legal Agreement covering the following Heads of Terms:-*

*Stopping Up Order under Section 247 of The Town and Country Planning Act 1990."*

### Members' Debate

9.8 The minutes of the planning committee meeting do not record any discussion of stopping up.

### Appellant's Submissions for the Appeal

9.9 If the Inspector is minded to allow the Appeal and grant planning permission for the Development, the need for a Stopping Up Order would be secured by legal agreement.

9.10 It is therefore the Appellant's view that there is no basis at all for Reason 3. It is the Appellant's expectation that Reason 3 will be disposed with in the Statement of Common Ground.

## 10. APPELLANT'S CASE ON THIRD PARTY REPRESENTATIONS

- 10.1 Key responses by CEPC, Chester Terrace Residents Association and Historic England are provided at **Appendix 23** along with a summary table of representations made. The key responses are summarised and addressed below.

### Heritage

#### *CEPC*

- 10.2 CEPC stated in its consultation response that the reinstatement of the garden "*may well offer a unique and welcome opportunity for the park in terms of increased heritage value*". The opportunity for the Development was welcomed by CEPC in pre-application consultations with the CEPC's landscape advisor who promoted the idea of planting more, larger trees at the western end of the garden to help frame the terrace.

#### *Chester Terrace Residents Association*

- 10.3 Chester Terrace Residents Association object to the proposals and submitted in support of that a statement from Dr. Geoffery Tyack, who is an expert on Nash. Dr Tyack's report refers to views set out in publications from 1829 and 1831 which do not appear to show the garden on Chester Gate (see Figures 6 and 10 of the Sources Review). However, the existence or non-existence of the garden cannot be verified by reference to cartographic survey data. As is explained in the Sources Review the 1929 view was not, nor was it intended to be, an accurate architectural representation of the buildings. Rather, it was an artistic impression for a popular audience and intended to incorporate a level of creativity and edited visual reality. This is supported by views of neighbouring properties in the same publication which omit major aspects of the surroundings of their main object (see Figures 7 and 8 of the Sources Review). Similarly, the 1931 view was a panorama produced to be viewed and appreciated as an artwork. Neither view is therefore a credible authority for the existence or non-existence of the garden.
- 10.4 On behalf of the Appellant, Montagu Evans prepared a written response to the assertions in Dr Tyack's note. A copy of the response is provided at **Appendix 24**. This incorporated comments from Mr Myers who, like the Appellant, was surprised by the assertions it contained. Officers took the Appellant's comments into account in framing their recommendation to consent the proposals on the basis of their heritage and townscape benefits. Indeed, the chair of the planning committee herself recognised that the evidence supporting the existence of the garden over some period of time appeared incontrovertible.

#### *Historic England and the Garden History Society*

- 10.5 Both Historic England and the Garden History Society were consulted by the Council. Historic England responded stating they did not wish to offer comments. The Garden History Society did not respond. It is the Appellant's view that if either body had had the slightest reservation about the effect of the proposals on assets of such considerable importance, they would not have hesitated to raise it.

### Transport

#### *CEPC*

- 10.6 CEPC noted that the Appellant's modelling of traffic congestion within Chester Gate indicated that "*reasonable conclusions have been drawn for what is known about the current traffic demands placed on that roadway.*"
- 10.7 In respect of any potential cumulative impact of CS11 it stated that, because of the size of the park and the complexity of the CS11 proposals, forecasting actual traffic flows within Chester Gate was "*quite difficult*". It noted that there are currently insufficient details about the likely traffic flow impacts of HS2 to judge how Chester Gate might be impacted.

*Chester Terrace Residents Association*

- 10.8 Chester Terrace Residents Association's comments on the Development's traffic and transport impacts can be summarised as follows:
- 10.8.1 The reduction in lane capacity will mean that Chester Gate "*will almost certainly become traffic gridlocked*". This will be further impacted by HS2 and CS11;
  - 10.8.2 Traffic gridlocking will severely impact air pollution in the surrounding area to the detriment of cyclists, pedestrians and residents; and
  - 10.8.3 The reduction in lane capacity will give rise to safety concerns for cyclists and pedestrians.

*Appellant response*

- 10.9 On behalf of the Appellant, Caneparo Associates prepared a written response to the representations made on transport-related issues. A copy of the response is provided at **Appendix 25**.
- 10.10 The response reiterated the findings made in the Transport Statement submitted with the Application. In summary:
- 10.10.1 A junction capacity assessment concluded that the proposed junction layout would still operate well within capacity, with any increased queuing resulting from the proposals not considered to materially affect the operation of the local highway network;
  - 10.10.2 A swept path analysis concluded that the largest vehicles likely to require legitimate access to Chester Gate would still be able to navigate Chester Gate and adjoining roads;
  - 10.10.3 Visibility splays for the junction between Chester Gate and Outer Circle showed no obstructions to impair driver visibility. Rather, there would be a benefit to visibility as there will no longer be the option for two vehicles stopping side by side and impairing each other's sight lines;
  - 10.10.4 A road safety audit by an independent auditor did not raise any overriding highway safety issues;
  - 10.10.5 Whilst too uncertain to be a material consideration, CS11 would be likely to provide a benefit to traffic conditions on Chester Gate by way of reduced traffic volume in the park and the introduction of traffic calming measures; and
  - 10.10.6 Whilst too uncertain to be a material consideration, any construction traffic associated with HS2 would be temporary and there is nothing to show it would be on Chester Gate.
- 10.11 The response noted that comments by objectors were not supported by technical evidence.



## 11. PLANNING CONDITIONS

11.1 The Appellant is prepared to accept the following planning conditions:

	CONDITION
1	<p>The development hereby permitted must be begun not later than the end of three years from the date of this permission.</p> <p>Reason: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).</p>
2	<p>The development hereby permitted shall be carried out in accordance with the approved plans listed in the Schedule to this planning permission.</p> <p>Reason: For the avoidance of doubt and in the interests of proper planning.</p>
3	<p>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 to which those detailed drawings or samples relate is begun:</p> <p>a) Manufacturer's specification details of all building materials (to be submitted to the Local Planning Authority) and samples of those materials (to be provided on site).</p> <p>b) Drawings at 1:10 of new railings and positioning of garden furniture.</p> <p>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.</p> <p>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 policies DP24 and DP25 of the London Borough of Camden Local Development Framework Development Policies.</p>
4	<p>No development or part of development shall take place until full details of hard and soft landscaping have been submitted to and approved by the local planning authority in writing. The relevant part of the works shall not be carried out otherwise than in accordance with the details thus approved.</p> <p>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 policies CS14 and CS15 of the London Borough of Camden Local Development Framework Core Strategy and policies DP24 and DP25 of the London Borough of Camden Local Development Framework Development Policies.</p>
5	<p>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 the approval of details, unless otherwise agreed in writing with the local planning authority. 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.</p> <p>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 policies CS14 and CS15 of the London Borough of Camden Local Development Framework Core Strategy and policies DP24 and DP25 of the London Borough of Camden Local Development Framework Development Policies.</p>
6	<p>No development shall commence before a contract has been entered into with the Local Highway Authority (Crown Estate Paving Commission) to secure the proposed works to the highway, footpath</p>

<b>CONDITION</b>	
	<p>and parking layout.</p> <p>Reason: To ensure that the safety and efficiency and quality of the road network is maintained in accordance with policy CS11 of the London Borough of Camden Local Development Framework Core Strategy and policy DP21 of the London Borough of Camden Local Development Framework Development Policies.</p>
7	<p>The whole of the car parking provision shown on drawing number 622.01 (RP) 006 shall be provided prior to the commencement of works to create the garden. Thereafter the whole of the car parking provision shall be retained and used for no purpose other than for the parking of vehicles.</p> <p>Reason: To ensure that the use of the premises does not add to parking pressures in surrounding streets which would be contrary to policy CS5 and CS11 of the London Borough of Camden Local Development Framework Core Strategy and policy DP26 of the London Borough of Camden Local Development Framework Development Policies.</p>

11.2 The Appellant is prepared to accept the following listed building consent conditions:

<b>CONDITION</b>	
1	<p>The development hereby permitted must be begun not later than the end of three years from the date of this permission.</p> <p>Reason: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).</p>
2	<p>The development hereby permitted shall be carried out in accordance with the approved plans listed in the Schedule to this planning permission.</p> <p>Reason: For the avoidance of doubt and in the interests of proper planning</p>
3	<p>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:</p> <p>a) Manufacturer's specification details of all building materials (to be submitted to the Local Planning Authority) and samples of those materials (to be provided on site).</p> <p>b) Drawings at 1:10 of new railings.</p> <p>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</p> <p>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 policies DP24 and DP25 of the London Borough of Camden Local Development Framework Development Policies.</p>

## 12. CONCLUSIONS

- 12.1 The Development is in accordance with the Development Plan.
- 12.2 The Development is sustainable development, to which the NPPF presumption in favour of granting planning permission applies.
- 12.3 The Development will deliver the following heritage benefits:
- 12.3.1 Demonstrable design benefits; improvement to the setting of the listed building and the RPG; and enhancement of the conservation area by:
- (a) re-establishing the relationship between architecture and landscape in accordance with Nash's vision for Regent's Park;
  - (b) introducing an attractive green element into the streetscene;
  - (c) creating a residential curtilage which reinforces the original pattern of uses at the Site and in the wider area;
  - (d) removing a line of parked cars from a publicly accessible route over private land in a conservation area and providing a garden which will enhance the experience of road users;
  - (e) improves the quality of the view from the east, thereby adding to the attractive landscape at the edge of RPG, drawing those positive features into the road;
  - (f) providing visitors with a better appreciation of the original artistic vision for the area and the cultural value of the listed buildings.
- 12.3.2 The Development further delivers the CAA objective of reinstating missing features and the CEPC Vision's call for restoration of gardens.
- 12.4 The Development will deliver the following transport benefits:
- 12.4.1 A safer, more formal turning arrangement for vehicles turning from Chester Gate onto Outer Circle resulting from the reduction of the carriageway width at Chester Gate to a single lane. This both encourages reduction in speed and improves driver visibility;
- 12.4.2 Improved safety for pedestrian users. Reduced carriageway width will bring the footway on the opposite side of Chester Gate closer, reducing the crossing distance for pedestrians;
- 12.4.3 The garden and footway alignment will provide a higher quality environment for pedestrians than the existing.
- 12.5 Reason 1 (design and heritage) is not a valid or justified reason for refusing permission for the Development because:
- 12.5.1 The Appellant has clearly demonstrated that the Development will not result in any harm to heritage assets. It is therefore clear there is no policy requirement to show public benefit to balance against harm. Nonetheless, it has been shown that the Development will provide considerable public benefit by enhancing the setting of both the conservation area, the adjoining and nearby listed buildings and the RPG.
- 12.5.2 The Appellant has demonstrated that the Site is in private ownership and that there are no historical records of the Site being anything other than private. The Development does therefore not give rise to any issue of loss of public space.
- 12.6 Reason 2 (transport) is not a valid or justified reason for refusing permission for the Development because:

- 12.6.1 The transport impacts of the Development would not be severe. In fact, it has been demonstrated in this SoC that the Development would provide a number of transport benefits, including a safer environment for vehicles and pedestrians.
- 12.7 Reason 3 (stopping up) is not a valid or justified reason for refusing permission for the Development because:
  - 12.7.1 The Appellant is, as has been the case throughout the entire application process, willing to enter into a legal agreement to secure the making of a Stopping Up Order prior to commencement. It is clear that there is no basis at all for Reason 3 and it is the Appellant's expectation that Reason 3 will be dealt with in the Statement of Common Ground and by way of a legal agreement.
- 12.8 None of the reasons for refusing permission for the Development are sound or justified.
- 12.9 There are no other material considerations indicating that the Appeal should be refused.
- 12.10 The Appeal should be allowed and planning permission and listed building consent should be granted for the Development.

**APPENDIX 1**

**SITE PLAN**

**APPENDIX 2**

**PLANNING PERMISSION DECISION NOTICE 14 SEPTEMBER 2016**

**APPENDIX 3**

**LISTED BUILDING CONSENT DECISION NOTICE 14 SEPTEMBER 2016**

**APPENDIX 4**  
**MASTERPLAN**



**APPENDIX 5**  
**CORE STRATEGY EXTRACTS**

**APPENDIX 6**  
**DEVELOPMENT POLICIES EXTRACTS**

**APPENDIX 7**  
**CONSERVATION AREA APPRAISAL AND MANAGEMENT STRATEGY**

**APPENDIX 8**  
**LONDON PLAN EXTRACTS**

**APPENDIX 9**

**CROWN ESTATE PAVING COMMISSION – 'A VISION FOR REGENT'S PARK'**

**APPENDIX 10**

**NATIONAL PLANNING POLICY FRAMEWORK EXTRACTS**

**APPENDIX 11**  
**LANDSCAPE REPORT**

**APPENDIX 12**  
**HERITAGE STATEMENT**



**APPENDIX 13**  
**COMMITTEE REPORT**

**APPENDIX 14**

**MINUTES FROM PLANNING COMMITTEE 8 SEPTEMBER 2016 AND TRANSCRIPT OF WEBCAST**

**APPENDIX 15**  
**LEASE DATED 15 JULY 2015**

**APPENDIX 16**  
**SOURCES REVIEW**

**APPENDIX 17**

**LEASE 17 MARCH 1827 & LEASE SURRENDER 4 APRIL 1873 & TRANSCRIPTS**

**APPENDIX 18**

***BARNWELL MANOR V EAST NORTHAMPTONSHIRE DC [2014]***

**APPENDIX 18**

***FORGE FIELD V SEVENOAKS DISTRICT COUNCIL [2014]***

**APPENDIX 20**

***JONES V MORDUE, SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT AND  
SOUTH NORTHAMPTONSHIRE COUNCIL [2015]***



**APPENDIX 21**  
**TRANSPORT STATEMENT**

**APPENDIX 22**

**DEPARTMENT FOR TRANSPORT: MANUAL FOR STREETS (2007)**

**APPENDIX 23**

**KEY CONSULTATION RESPONSES AND SUMMARY TABLE**

**APPENDIX 24**  
**HERITAGE RESPONSE LETTER**

**APPENDIX 25**  
**TRANSPORT RESPONSE LETTER**