[redacted]

16th February 2017

Mr. Michael Cassidy
Development Control
London Borough of Camden
Town Hall
Judd Street
London
WC1H 8ND

Dear Sir

100 AVENUE ROAD LONDON NW3 – VARIATION OF CONDITION NO 31 – APPLICATION NO 2016/6699/P

I write to lodge objections to the new application submitted by Essential Living regarding demolition of the present building at 100 Avenue Road, London NW3 under condition 31 of the conditions in planning application no. 2014/1617/P.

I agree with other objectors that this is in fact an application to vary Condition 31, as there are new proposals to close the tube access to Swiss Cottage tube station access from Eton Road and Avenue Road for unspecified periods whilst the work is carried out, and also to use Market area for lorry access to the site.

The application must therefore be immediately deregistered as a compliance with Condition 31 and reregistered as a variation of conditions as otherwise the council is proceeding without jurisdiction.

The Inspector specifically only approved lorry access from the pedestrianized area of Eton Avenue. There is also a new noise report, although this was again not considered by the Inspector.

The Applicant has also given no proper reasons as to why these changes of conditions are required, and there has been no consultation with the public at all regarding these ill-conceived proposals.

Neither of these conditions were considered or approved of by the Inspector, and so if the application went ahead under these conditions, Condition 31 would clearly be required to be varied.

The Inspector went into great detail regarding the imposition of these conditions, notwithstanding the very serious environmental concerns of objectors raised at the public inquiry, and the lack of a full EIA assessment in this particular case. The Inspector's intention was that demolition of the existing building should be included.

This is another misguided and abusive attempt to obtain conditions that the Inspector didn't award them at the Appeal.

The conditions were imposed to ensure that no irreversible development, including demolition, could take place before all of the plans and reports had been considered and approved. Mr. Warren QC, counsel appearing on behalf of Essential Living, also raised no objections whatsoever at the conclusion of the Appeal Inquiry.

I can see no reason whatsoever to depart from what the Inspector quite properly imposed, and no evidence or change of circumstances have been identified in the Applicant's letter dated 6th December 2016.

Once these have been submitted, the Inspector directed that the development proceeds in accordance with the submitted reports and plans. The Inspector is deemed to have imposed all of these conditions for perfectly sound and good reasons, and there are no grounds to now challenge these.

It is right that conditions imposed in previous planning applications may be subsequently varied under section 73(1) of the Town and Country Planning Act 1990, but it is contended that this should apply to previous decisions of the same council, and shouldn't be used as a vehicle to in effect overturn an Inspector's decision made at a previous appeal hearing.

If the Applicant wasn't satisfied with the Inspector's decision, they could also have sought a legal challenge under section 288 of the Town and Country Planning Act 1990, but they didn't do so. The reason for that was that they had no legal grounds upon which to do so, as the Inspector's conditions were perfectly lawful and reasonable.

It is therefore contended that to seek to vary these conditions that were most carefully considered by the Inspector at the appeal, is tantamount to an abuse of the planning system.

In addition, it is contended that the Council has no power to do so in any event, as it is legally bound by the Inspector's previous determination accordingly, which is in effect and all but name, *res judicata* in respect of the matter.

In any event, no evidence has been submitted by the Applicant that London Underground are even agreeable to the closing of Swiss Cottage Station. Also, no evidence has been submitted that any of the stall holders in the market area have consented to the market being used for access.

It is not at present known on what basis the stall holders have access to the market area, or whether they have leases from Camden.

In any event, Camden would have to grant such access, and it is contended that this should be refused, due to the inconvenience to the stall holders and the adverse effect on the local community and loss of the market facility, something that the Applicants never raised with the Inspector.

What the application highlights, is the necessity for a full environmental impact assessment under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011

as amended by the 2015 regulations relating to the schedule 2 development criteria of "150 dwellings" in paragraph 10b, which is satisfied in this particular case.

It is accepted that this was not the case when Camden originally carried out the original EIA screening process in 2013 and 2014.

It is not accepted that the Secretary of State's own EIA screening decision was sufficient in this particular instance, as this was obtained without notifying any of the objectors and then rule 6 parties, in breach of the rules of "Natural Justice" and the requirements for public participation under article 6.1(b) of the Aarhus Convention, as applied in Council Directive 85/337/EEC as amended by Directive 2003/35/EC and Directive 2011/92/EU as amended by Directive 2014/52/EU.

It has become apparent that this area raises serious environmental concerns regarding the safety of building this building of 24 stories at this juncture over a railway tunnel on soft London clay, and for these reasons apart from any issues relating to the settings of nearby listed buildings and conservation areas, now necessitates a fresh EIA screening exercise.

Any such EIA screening exercise should be notified to all of the current objectors and fully advertised, so that there can be full "public participation" in accordance with article 6.1(b) of the Aarhus Convention.

Finally, the Secretary of State's decision dated 18th February 2016 is currently the subject of an application for permission to appeal and/or a renewed application for Planning Statutory Review in the Court of Appeal.

It is contended therefore that it would be wholly inappropriate for the present application to proceed or any decision to be given in respect of it whilst that application is before the court, notwithstanding that at the moment, there is no formal stay of the Secretary of State's decision.

As changes are now being sought to Condition 31, it is also appropriate that this application be referred to the Planning Committee and not dealt with under delegated powers.

The Council is therefore requested to register this application and thereafter dismiss it under section 73(2)(b) of the Town and Country Planning Act 1990.

Yours faithfully

Terence Ewing