



**PLANNING APPEAL STATEMENT IN RESPECT OF
LAND ADJACENT TO NO.1 ELSWORTHY TERRACE,
LONDON NW3 3DR**

Dated: June 2017

Planning Inspectorate reference: Not yet known

LPA reference: 2016/3495/P

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1.0 INTRODUCTION

- 1.1 We are instructed by Mrs. Caroline Nourani to appeal against the refusal of planning permission in respect of the proposed *“Erection of two storey building with two basement levels and front lightwell for use as a single-family dwellinghouse (Class C3) and alteration to the front boundary wall to allow pedestrian access on site”* on land adjacent to No.1 Elsworthy Terrace, London NW3 (“the property”). The proposals as they stood on the date of refusal comprised only one storey above ground with two basement levels, albeit that the Council did not amend the description in the meantime to reflect this change.
- 1.2 The planning application (Council reference 2016/3495/P) was submitted on 22nd June 2016 and notice of refusal was dated 6th June 2016.
- 1.3 The Council’s reasons for refusing planning permission may be summarised as follows:
- (i) The proposed development by virtue of its height, bulk, scale, footprint and detailed design would appear as an incongruous development that would have an adverse impact on the character and appearance of the adjacent buildings and the Elsworthy Conservation Area.
 - (ii) The proposed development, by reason of its depth (2-storeys) and insufficient information, would fail to demonstrate its effect on the protected trees on or adjoining the site, drainage, run-off or other damage to the water environment and cumulative impacts upon the structural stability and/or the water environment in the local area and built environment.
 - (iii) The proposed development, by reason of its relationship to its adjacent neighbours, would result in loss of outlook which would be harmful to the amenity of occupants of nos. 1 and 2 Elsworthy Terrace.
 - (iv) The proposed development, in the absence of a legal agreement securing a construction management plan, would be likely to give rise to conflicts with other road users, and be detrimental to the amenities of the area generally.
 - (v) The proposed development, in the absence of a legal agreement to secure contributions towards public highway works for the remediation of pavement, would be likely to harm the Borough's transport infrastructure.
 - (vi) The proposed development by virtue of the basement excavation and lack of detailed information and site investigation in relation to the root protection areas of the protected trees would result in harm to the root protection area

of the mature limes and birch trees which would impact upon the visual amenity and character of the Elsworthy Conservation Area.

- (vii) The proposed development, by reason of inadequate level of outlook would result in poor standards of accommodation.
- (viii) The proposed development, by reason of its cycle storage provision, would result in sub-standard cycling facilities on site.
- (ix) The proposed development, in the absence of a legal agreement for car-free housing, would be likely to contribute unacceptably to parking stress and congestion in the surrounding area.

1.4 A copy of the Council's refusal notice and the officer's delegated report are attached at **Appendix 1** and **Appendix 2**, respectively.

1.5 Each of these reasons for refusal is addressed in turn in the following sections within these Grounds of Appeal set out in full herein, and divided as follows in this statement:

- (i) Scale and external appearance of the proposal
- (ii) Land Stability, Flood Risk and Impact of the proposed basement
- (iii) Impact on Trees
- (iv) Outlook of neighbours and future occupiers of proposal
- (v) Highways, Cycle Storage and Access

1.6 Each of the above issues distils or groups some of the above reasons for refusal into particular sections. The first section deals with the first reason for refusal. The second section deals with the second reason for refusal. The third section deals with the sixth reason for refusal. The fourth section deals with the third and seventh reasons for refusal. The fifth section deals with the eighth reason for refusal. The sixth section deals with the fourth, fifth and ninth reasons for refusal.

1.7 This appeal statement is accompanied by supplementary information, reports and plans not previously submitted to the Council, as summarised below and referred to further on in this statement.

2.0 SITE AND SURROUNDINGS

- 2.1 The property is not listed (either as a designated or as a non-designated heritage asset) but it is situated in the Elsworthy Conservation Area.
- 2.2 The application site occupies part of the rear of no 1 Elsworthy Terrace and is located on the eastern side of Elsworthy Road. The site lies within the Elsworthy Conservation Area and no 1 Elsworthy Terrace is considered a positive contributor, as identified in the Conservation Area Appraisal. The site hosts 3 protected trees, two limes and one birch.

(A) Elsworthy Conservation Area

- 2.3 The local townscape context comprises large villas with rear gardens and the original degree of openness and separation between buildings has been largely retained throughout time and is worthy of protection as it characterises the surrounding area.
- 2.4 The character of the area comprises historic Victorian terraced, detached and semi-detached properties with reasonable sized gardens, relative to the size of the properties. Numerous properties surrounding the application site including the site itself have been considered as positive contributors within the Elsworthy Conservation Area Statement such as: nos 1 to 15 along Elsworthy Terrace, nos 21, 23 and from 28 to 42 along Elsworthy Road.
- 2.5 It is identified within the Elsworthy Conservation Area Statement that the view out of the Conservation Area towards the summit of Primrose Hill from the end of Elsworthy Terrace are notable views and landmarks within the Conservation Area; and also points out that the “integral visual relationship with the complementary, open rural aspect of Primrose Hill is a marked characteristic of the Conservation Area. However, this view relates to the view up the roadway itself toward Primrose Hill, and not to the view over or across Primrose Hill. There is no view of Primrose Hill from the side of the appeal site across the rear gardens of houses in Elsworthy Terrace.
- 2.6 It is acknowledged that the rear gardens of nos. 1 to 7 Elsworthy Terrace which back onto Primrose Hill contribute to the biodiversity and wildlife of Primrose Hill.

2.7 The application site is bordered by a brick wall on the west towards Elsworthy Road, and it can currently be accessed through the garden of no 1 Elsworthy Terrace. The wall is registered as an element of streetscape interest within the Elsworthy Conservation Area Statement.

(B) No.1 Elsworthy Terrace

2.8 No.1 Elsworthy Terrace is regarded as making a positive contribution to the character and appearance of the Conservation Area. However, it is not proposed to alter No.1, only to develop a house in part of the open land to the rear of No.1.

2.9 The proposed dwelling would comprise 5 bedrooms over ground and double basement level totaling 211.7 sqm GIA, which exceeds the London Plan standards and those set out in the Mayor of London's Housing SPG.

3.0 PLANNING HISTORY

3.1 There is no recent relevant planning history to this site.

3.2 Other recent decisions referred to by the Council in its delegated/officer's report concern the following:

- (i) 2011/1828/P – Garages to the rear of 15 Elsworthy Terrace, NW3 3BT: *Erection of single-storey building with two basement levels and front lightwells for use as a singlefamily dwellinghouse (Class C3) and alterations to boundary raising the brickwork and installing sliding timber gates (following the demolition of existing garages) – Granted Subject to Section 106 Agreement (24/11/2011)*
- (ii) 2010/2968/P - 18-20 Elsworthy Road: *Erection of building comprising sub-basement, basement, ground, first, second floor and roof storey with front and rear lightwells onto Elsworthy Road to provide 2 x 5-bedroom and 2 x 2-bedroom selfcontained flats/maisonettes, following demolition of existing building at 18-20 Elsworthy Road, and erection of a single storey rear extension to existing residential building at Elsworthy Rise, comprising ground, first floor and roof storey, to provide 1 x 1-bedroom and 1 x 2-bedroom self-contained flats/maisonettes – Refused – Appeal Dismissed (27/09/2011)*

3.3 The appellant referred to the case of land to the rear of No.15 Elsworthy Terrace in its representations to the Council during the application, and does so further in this appeal, below.

3.4 However, it is not clear to us as to why the Council has referred to a decision involving the development of 4no dwellings over two addresses and up to 4 storeys in height above ground. The proposed development relates only to a single storey above ground level and one dwelling only, to the rear of one property. The appellant has not referred to this case before and considers it not material to the current case.

3.5 The appellant has referred to three other cases involving similar developments of single dwellings to back garden land elsewhere in this area, at 1B Ellerdale Road, 100a Fellows

Road and 53 Eton Avenue (see further below in this appeal statement). All of these cases are material to this appeal and were raised by the appellant with officers prior to this decision. However, the Council has not included these decisions as relevant factors taken into account in the planning history. Therefore, we put the Council to proof that it has had full and proper regard to these other cases in determining this application.

4.0 SCALE AND EXTERNAL APPEARANCE OF THE PROPOSAL

4.1 The Council has raised a number of objections about this proposal related to land use, impact on the character and appearance of the Conservation Area, and detailed design or external appearance:

- (i) Development would build on previously undeveloped back garden land and there is little in the way of other examples of similar development in the area.
- (ii) It would result in the unacceptable loss of external amenity area from No.1 Elsworthy Terrace.
- (iii) Impact on the setting of No.1 Elsworthy Terrace as a positive contributor to the character and appearance of the Conservation Area.
- (iv) Impact on the view out of the Conservation Area toward the summit of Primrose Hill from Elsworthy Terrace and the view via back gardens to the rear of houses in Elsworthy Terrace toward Primrose Hill.
- (v) The form and scale of the proposed development would be visually discordant with its neighbours with regard to its front building line, external appearance.
- (vi) The materials used in the design of the development would not be in keeping with the appearance of this part of the Conservation Area or sympathetic to neighbouring properties.

4.2 The main thrust of the Council's argument in this respect is that development of this nature is entirely inappropriate to the character of development both in this area in general and also to the street scene, and that there are no other examples of similar development in the area. It should be noted also that the Council's opening comments in the officer's report under the heading "*Design*" are similar to or repeat to some extent what it has already stated regarding the impact on the character of development in this part of the Conservation Area, especially with regard to the setting of the larger Victorian houses on Elsworthy Terrace and the townscape gap between these buildings and those on Elsworthy Road.

4.3 We have raised a number of examples of similar such development with the Council and we again set these out below, in comparison to the currently proposed development in this case. With regard to matters such as siting, form, height, scale, setting and external

appearance/materials, we consider that there are several other precedents in the area. Photographs of some of these properties are attached at **Appendix 3**.

- 4.4 Policy CS14 of the adopted Core Strategy requires that development should be of the highest standard of design and that it respects local context and character. This is reinforced through Policy DP24 which states that “all development, including alterations and extensions to existing buildings, should be of the highest standard of design” (emphasis added), with regard to (inter alia) the character, form, scale, context and setting of neighbouring buildings, the provision of visually interesting frontage at street level, the quality of materials to be used, and existing natural features such as topography and trees. In the context of development in Conservation Areas, this is added to through Policy DP25 which seeks that development should preserve *and* enhance the character and appearance of conservation areas, regard should be had to conservation area management plans and preserve trees and garden spaces that contribute to the character of a conservation area and provide a setting for Camden’s architectural heritage.

1b Ellerdale Road, London NW3 6BA

- 4.5 A planning application was made for a proposal at No.1B Ellerdale Road (2015/7036/P) – described as “*Erection of new single-storey dwelling house with two storey basement on land to the rear garden of No. 81 Fitzjohn's Avenue, with access off Ellerdale Road (Class C3)*” on a site described as ‘*Garden House Land adjacent to 1 Ellerdale Road London NW3 6BA*’. Permission was granted subject to a Section 106 Agreement on 29th July 2016.
- 4.6 With regard to the elevations, floor plans, and Members’ Briefing report (see **Appendix 4**), we summarise some of the key points as follows:
- Officers had regard to a previous consent for planning permission on this site in 2005, which established the principle of a house in this location: 2005/1168/P (granted 23rd August 2005): copy of approved site plan attached, but the officer’s report was not available.
 - The lack of visual impact of the house from the public realm, well-screened appearance and small scale and footprint were seen as, in principle, positive factors in support of a house in this location.

- The proposal would also have impacted on the character and appearance of a Conservation Area (Fitzjohns/Netherhall).

4.7 Officers responded in respect of the relevance of this to the current case in the following manner:

“The main difference between your proposal and 1b Ellerdale Road is that the principle of a dwelling was already considered acceptable since 2005. In the current case the principle is unacceptable, therefore I do not consider that the example can be taken into consideration.”

4.8 However, as we see in the following two cases in particular, the Council unreasonably seeks to rely on the fact that this was granted prior to the NPPF policies which do not support a presumption in favour of development on back gardens and would therefore not constitute a reasonable precedent in this case. Unfortunately, this tends to be the Council’s stock response to any examples put before it which were not determined against current LDF policies, without considering whether there has been any material change in relevant policies over this time. For reasons explained further below, we say that there has been no such change.

4.9 No.1b Ellerdale Road was approved at least similar in distance from the rear of No.1 Ellerdale Road compared to as is proposed in this case vis-à-vis the side of the proposed house and the rear of No.1 Elsworthy Terrace.

4.10 In addition, its height would be greater than the existing boundary fencing to the rear of houses at Nos. 81 and 83 Fitzjohns Avenue. It therefore, would be noticeable to occupiers in the rear of those houses, who would have otherwise enjoyed outlook comprising an uninterrupted ‘green strip’ of garden land along the rear of houses in Ellerdale Road, all the way to Nos.7 and 7a at the end of the block (see approved location plan). This should be compared to the outlook from the rear of No.2 Elsworthy Terrace, which would continue to enjoy an uninterrupted outlook south along the rear gardens toward the summit of Primrose Hill, whereas the view from No.2 to the north would be toward Elsworthy Road and would not be materially harmed in this respect.

100a Fellows Road (land fronting King’s College Road), London NW3 3JG

4.11 In the case of 100a Fellows Road (land fronting King’s College Road), London NW3 3JG, this proposal was allowed on appeal on 17th July 2012. When this case (as well as the one below relating to 53 Eton Avenue) was initially canvassed with officers, the officer at first responded verbally that they did not provide good precedents in this case as they were determined under pre-NPPF policies and that the Council’s policies regarding back garden development have since materially changed against such proposals as the London Plan has since been revised and adopted in line with the NPPF and would not support the principle of development on such land now that the NPPF has come into force.

4.12 However, the decision letter, Appeal Ref: APP/X5210/A/12/2169260, stated that in that case:

“The development plan comprises the London Plan and the Camden Core Strategy and Development Policies adopted in 2010. Although they predate the National Planning Policy Framework, there was no suggestion at the hearing of there being any conflict with the Framework and the relevant policies have the full weight of Section 38(6).”

4.13 See further at **Appendix 5** for a copy of the appeal decision and the approved floor plans and site plan.

4.14 Therefore, giving less or no weight at all to an otherwise materially similar decision merely because it was determined pre-NPPF would plainly be wrong in the context of the Inspector’s decision on 100a Fellow’s Road – an appeal that was allowed with a full award of costs against the Council.

4.15 Furthermore, following through this rationale, the similar grant of planning permission earlier in June 2010 for a two storey house comprising upper and lower ground floors (reference 2009/5483/P) to the rear of 53 Eton Avenue, was taken into account as a material consideration by the Inspector in the same appeal, with full weight. We also note that at the time the Council did not take issue with the grant of permission for the house to the rear of No.53 as a material consideration and, in fact, this was accepted as common ground in the appeal (see paragraphs 11 and 12), even though the Council was fully aware

that the decision on No.53 Eton Avenue had been taken before the NPPF or the London Plan; a position that seems to contradict the Council's position in this case.

4.16 Lastly, not only did the Inspector in the case of 100a Fellows Road consider that the proposal before him fell to be decided (at least partly) against the London Plan (policy 3.5 being relevant at the time) as well as the NPPF in 2012 (when the appeal had to be determined), but also that, notwithstanding that he now had to have regard to the London Plan in the case of 100a Fellows Road, this did not diminish the weight to be given to the earlier grant of permission in favour of No.53 Eton Avenue, which of course was determined prior to the London Plan. Given that the Council's objection to 1B Ellerdale Road as a precedent was similarly based on its initial grant of permission dating from 2005, before the NPPF and current London Plan, we again raise a similar point in respect of this example.

4.17 Accordingly, if the Council was to object to the principle of development in this case mainly if not only due to an objection in principle against back garden development/London Plan Policy 3.5, then on this point, this decision would go against a point already decided by an Inspector in a recent planning appeal, and against common ground accepted by the Council in the same case with reference to another similar permission granted on a neighbouring site.

53 Eton Avenue, London NW3 3EP

4.18 As can be seen from photographs, this house is very visible from the street. In comparison, the site to the proposed development to the rear of 1 Elsworthy Terrace at ground floor and basement/sub-basement level only would also be set back significantly from the frontage with at least as much (if not more) tree cover and no separate vehicular access.

4.19 The Council's officer in this case rejected these examples as precedents, notwithstanding that they clearly represent modern designs developed on backland sites, open to clear views from the public realm.

4.20 In any event, officers have already accepted that there are other examples of back garden/backland development in this area, albeit that they now seek to distinguish this site from others in terms of distance from neighbouring houses and overall setting.

- 4.21 Copies of the approved plans, decision notice and officer's report to this decision are attached at **Appendix 6**. It was granted on 21st March 2013 (LPA reference: 2012/5729/P). It should be noted in respect to the relevance of earlier similar proposals determined against earlier Local Plan policies, that there is little material difference in relevant Local Plan policies pre-NPPF and post-NPPF, as stated by officers in the delegated report concerning this application affecting No.53 Eton Avenue:

“Although the original permission was granted before the current policies were adopted there is not considered to have been a significant change of approach: policies CS6 and DP2 provide a general encouragement for new housing across the Borough, and subject to other considerations (such as design and impact on neighbouring properties) there is not considered to be any objection to the use proposed.” [Emphasis added]

- 4.22 Therefore, considering this group of consents affecting land to the rear of 1B Ellerdale Road, 100a Fellows Road and 53 Eton Avenue, they are all material to this application and cannot be distinguished on the basis of the relative weight in Local Plan and development plan policies.
- 4.23 They therefore fall to be considered on their merits against the current proposal and accordingly provide an example of other similar, contemporary back land development in the area.

Site adjacent 41 Ferncroft Avenue, London NW3 7PG

- 4.24 Planning permission was granted on this site for the erection of a single storey building with basement for use as a single family dwelling, following the demolition of the existing garage on this site (LPA reference: 2012/2736/P; granted on 12th February 2013).
- 4.25 Notwithstanding the presence of an existing garage on this site, the case for the proposed house in this case still had to be acceptable on its merits; e.g. an earlier application for a two storey dwelling house on the same site (LPA reference 2009/1081/P) was refused on 6th October 2009.
- 4.26 A copy of the decision notice, officer's report and approved plans for this case are attached at **Appendix 7**.

Land to rear of 15 Elsworthy Terrace, London NW3 3DR

- 4.27 On the other side of Elsworthy Terrace, a similar break in the terrace existed, albeit that several small garages were located on this land. Planning permission was granted for the development of this land, situated to the rear of No.15 Elsworthy Terrace, subject to a Section 106 Agreement (2011/1828/P). A copy of the approved planning and demolition drawings and the decision letter is attached at **Appendix 8**.
- 4.28 We have submitted previously to the Council that the appeal site has the potential to re-balance the rhythm in the street frontage as a ‘mirror image’ of this approved development, albeit by way of a very sensitively sited and well-proportioned new dwelling that would be set back from the street frontage and veiled from views from the public realm by several mature trees.
- 4.29 Similar to the approved development to the rear of No.15 Elsworthy Terrace, the current proposal in this case would include a lightwell to the front of the property, although it would be sited sensitively further back from the road when compared to the approved development to the rear of No.15. The proposed development would follow the front building line to neighbouring buildings along the same frontage. However, the Council has sought to distinguish both cases principally on the basis that the land to the rear of No.15 Elsworthy Terrace already comprised several garages. The Council also raises concern about light pollution from the lightwell and from the glass walls on the front elevation to the proposed building. We do not agree with either as a basis for distinguishing this example or limiting its weight as a material consideration.
- 4.30 The Elsworthy Road Conservation Area Appraisal and Management Strategy (adopted 14th July 2009) identified this site as one where the existing form of development (disused lock-up garages) might provide an opportunity for redevelopment; paragraph 7.8. However, this required that only “**sensitive redevelopment**” might be acceptable and thus did not give carte blanche to developers to propose anything they like just because there happened to already be a few unattractive garages on the land. Furthermore, given that the garages were too narrow to accommodate most modern cars, and had been disused mostly for this reason for several years, the benefits to the highway referred to by officers through the loss of these garages was very limited and would have had very little weight on the final

decision. It should also be noted that this was not regarded as an ‘opportunity site’; the Council merely noted the potential for enhancement, subject to sensitive redevelopment.

4.31 By comparison with the approved house, this development would be at least as sensitive to its surroundings in terms of its design:

- The area of the appeal site would be about 197 sqm compared to the area of the rear of No.15, which is 232 sqm
- The approved footprint of the development to the rear of No.15 (including lightwells) is 117.5 sqm (51% site coverage), whereas the proposed footprint to the appeal site would be 96.6 sqm (49% site coverage).
- Both sets of proposals span the width of the respective plots, but the width of the proposed appeal building would be 13.5m compared to the width of the approved dwelling to the rear of No.15 at just under a metre less at 12.5m (at least 2m wider than the previous garages on the same site).
- The approved development to the rear of No.15 would be situated no more than 4.5m from the public footway at its nearest point, whereas the appeal proposal would be located nearly 2m further back into the site at nearly 6.5m away from the public footway.
- The height of the appeal proposal would be approximately 3.25m from finished external ground floor level, compared to the house approved to the rear of No.15, which appears one storey higher at a height of 4m, which is double the height of the previous garages which were situated on the site.
- There is more tree coverage to the front of the appeal site than there is retained to the front of the approved proposal at No.15, and therefore, it would be more heavily obscured in public views through a combination of its lower height, further siting away from the public footway, retained boundary wall and heavy tree cover to the front.
- The house to the rear of No.15 is set about 2.25m away from the side of 25 Elsworthy Road and about 4m from the side of 15 Elsworthy Terrace, and positioned at a greater height than the current appeal proposal, which in contrast would sit about 3.5m away from the side of No.23 Elsworthy Road and about 6.25m away from the rear of No.1 Elsworthy Terrace. It should be noted that Nos.23 and 25 Elsworthy Road and Nos.1 and 15 Elsworthy Terrace are all positive contributors to the Conservation Area and, therefore, the impact of any new building to the rear of No.15 on its setting and on the setting of No.25 Elsworthy Road would still have

been a material consideration that the Council would have had to have regard to in approving any new development on this site, as the Council notes itself in the Conservation Area Audit and Management Strategy and in its Local Policies (e.g. the reference to “*sensitive redevelopment*” proposals).

- 4.32 The approved development at No.15 is not only more visually prominent for the reasons set out above, compared to the appeal proposal, but also because it also very noticeable on approach to Elsworthy Road from its junction with Lower Merton Rise. The large timber gates and vehicular access further add to its visual impact on the street scene.
- 4.33 It should also be noted that the use of glazing to the front elevation to the approved building at the rear of No.15 is prominent and positioned at a higher level than in the current proposal. The Council also approved two substantial lightwells to the front of this building.
- 4.34 The Council’s approval of the lightwells to the property at the rear of No.15 is inconsistent with its position adopted in this appeal. The proposed lightwell in this case would be roughly the same size and depth as the left-side approved lightwell to the house to the rear of No.15. Furthermore, the house to the rear of No.15 would be served by two lightwells both comprising voids together of at least 33 sqm, compared to less than half of that in the case of the appeal scheme (approximately only 14 sqm). Given that the house to the rear of No.15 would have more glazing to the front and would comprise a greater area of lightwells, sitting 2m closer to the footway than the appeal site, then the appeal proposal would in our opinion be likely to cause much less light pollution to the street scene than the house approved at No.15.
- 4.35 The Council has claimed that the proposed development would compete visually with the surrounding development as it would not match with neighbouring houses in terms of scale, form, design, siting and external appearance. The Council also criticises the materials used in the design of the proposed house as unsympathetic to neighbouring properties and offering no visual enhancement to the street scene. However, it is appropriate that neither the house to the rear of No.15 Elsworthy Terrace nor the appeal proposal in this case should comprise either a pastiche design or seek to mimic or compete with the Victorian houses either side.
- 4.36 The use of yellow stock brick and painted render echoes similar materials found elsewhere in the Victorian development in this area, whilst the use of glazing gives it a more

'lightweight' feel that might also be found in conservatory-style, subordinate buildings in the rear gardens to many of the houses in this area.

4.37 Similar proposals for back garden development as referred to herein have shown that a contemporary approach to design is capable of responding successfully to the challenge of development on such sites between existing buildings. Some of these buildings are more prominently sited than the proposed development, such as on land to the rear of 15 Elsworthy Terrace and to the rear of 53 Eton Avenue, and land to the rear of 41 Ferncroft Avenue. All comprise an extensive use of glazing, are prominently situated sites, have significantly less front boundary tree cover than the appeal site, and incorporate car access and off-street car parking.

4.38 Therefore, we submit that the Council's approach to this application has been wholly inconsistent with approvals on other sites, in the following respects:

- (i) It would cover a smaller proportion of the plot and be set in and away further from neighbouring houses.
- (ii) It would retain a greater degree of tree cover, would be set back further away from the street, would be of a lower height and would incorporate less glazing and lightwell voids than other similar, approved developments.
- (iii) It would not provide any off-street car parking and would be hidden from public view to a greater degree than other similar approved developments.
- (iv) It would have less impact on the visible setting of neighbouring 'positive contributors' to the Conservation Area than other similar approved developments.
- (v) It would not be located on a prominent site facing a junction and would follow a similar building line to its neighbours.

4.39 The Council has commented that the Conservation Area is characterised by:

"large villas with rear gardens and the original degree of openness and separation between buildings has been largely retained throughout time and is worthy of protection as it characterises the surrounding area."

- 4.40 We respectfully submit that, in this case, given the proposed height, design, set back from the frontage and distance from neighbours, the sense of townscape ‘gap’ or break in the building line would not be harmed and there would be no harm to the appearance of the street scape. With regard to the heavy tree cover to the front of the site and the existing boundary wall and wooden fence to the rear separating No.1 Elsworthy Terrace from No.2 Elsworthy Terrace, views of the majority of the rear gardens from the street as an ‘unbroken’ green gap all the way through to Primrose Hill just do not exist.
- 4.41 In any event, given the low height of the proposed building, the proposed green sedum roof and that the views from the upper storeys of neighbours would be over the proposed new house and across gardens in the other direction (i.e. south toward Primrose Hill, instead of north toward the road and the proposed site), the proposed new dwelling would not be in the same line of sight and would not block the overall appreciation of the line of back gardens to the rear of houses along Elsworthy Terrace up to Primrose Hill.
- 4.42 The Council has indicated that it is concerned that the waste and recycling bin store could impact negatively on the street scene. Given its smaller footprint and likely much smaller scale relative to the proposed cycle store, and its positioning behind the proposed cycle store, this is very unlikely. Furthermore, with regard to the height of the retained boundary wall and retention of the mature trees on site, it is very likely that views of this waste and recycling store will be almost fully obscured from views of passers-by in the street. However, we have suggested a planning condition could be imposed seeking further details from the appellant if the Inspector is minded to approve this appeal.

5.0 LAND STABILITY, FLOOD RISK AND IMPACT OF THE PROPOSED BASEMENT

5.1 In support of Core Strategy Policy CS14, Policy DP27 specifically addresses proposals for new basements to residential development in the Borough. The appellant has also had regard to the Council's SPD policies relating to Basements and Lightwells.

5.2 Local Plan Policy DP27 and supplementary guidance set out in CPG4 require the appellant to have submitted a Basement Impact Assessment (BIA). This was submitted to the Council along with other application documents. The Council's BIA auditors, Campbell Reith, undertook an initial review and provided comments on the BIA.

5.3 These comments are summarised by the officer in their report as follows:

1. Input of an individual with C.WEM or CEng MICE qualification with respect to hydrology
2. Works programme not included
3. Factual site investigation data not provided
4. Incomplete screening carried forward, inconsistent and incorrect information provided not linked with the Flood Risk Assessment
5. No definitive proposals on surface water management plan
6. Presence or absence of basement beneath neighbouring properties not confirmed in BIA and foundations depth not determined
7. No structural details or construction sequence sketches provided
8. Stiffness parameters not included in retaining wall parameters
9. Full input and output from Oasys Xdisp not provided
10. Further mitigation measures required for walls indicated to fall within Category 1 damage
11. Heave movements not calculated
12. Movement monitoring proposal not provided

5.4 This list would appear to be very extensive. However, it does not appear to be consistent with the actual up-to-date position as reflected in Campbell Reith's Audit Tracker, updated on 7th October 2016 by the appellant's team, a copy of which is attached at **Appendix 9**.

5.5 Following the contributions made to the Audit Tracker by the appellant's technical team in early October 2016, an up-dated BIA, Building Damage Assessment (BDA) report, and

Appendices were submitted to the Council and form part of the final application papers on which this decision has been based.

5.6 The appellant's full and final BIA now comprises:

- 350 pages
- 7 figures and Appendices
- Historical and Environmental Data and Site Photographs
- A Ground Appraisal Report comprising 26 further pages and 7 figures and appendices, gas assessments, engineering logs, geotechnical laboratory assessments, extensive desk studies and intrusive physical inspection results
- A Flood Risk Assessment comprising a further 13 pages and 9 Figures or Appendices
- Map extracts from geological, hydrogeological and hydrological surveys

5.7 In addition, the appellant's BDA runs to a total of 547 pages, including more than 30 supporting assessments, figures, appendices and surveys, including building damage interaction charts, displacement graphs, Pdisp and Xdisp reports, and Vertical and Horizontal Movement analysis.

5.8 Furthermore, the appellant's FRA of June 2016 comprises a total of 95 pages including factual analysis and assessment, relevant data and supporting appendices and figures and charts.

5.9 In contrast, Campbell Reith's audit runs to 26 pages, comprising just over two pages of actual discussion.

5.10 Following Campbell Reith's Audit Tracker, it would therefore appear that the key aspects to be resolved related to the following:

- (i) Sign off of the BIA by an engineer with CEng MICE qualifications
- (ii) Estimate of the construction duration
- (iii) Factual site investigation data
- (iv) Proposals for any surface water management plan
- (v) Structural details or construction sequence sketches

Engineer with CEng and MICE Qualifications

- 5.11 The updated BIA report from October 2016 was reviewed and signed-off by Mark Naumann BEng(Hons) CEng MICE.

Estimate of duration of the construction works & Construction Sequence

- 5.12 The Council requested an outline of the duration of the construction works, with a more detailed assessment of the construction programme to be provided at a later date by the appointed contractor.
- 5.13 A copy of the full construction sequence and estimate of time for each stage in the construction programme is attached at **Appendix 10**, as prepared by Ko and Partners (Architects) in consultation with Matthew Smith of BCS Consulting (Civil and Structural Engineers and Party Wall Surveyors). This sets out both the timing aspects and includes technical drawings setting out how it is expected that the basement would be constructed and a typical piled wall section. Section 1.3 of the Building Damage Assessment (BDA) also sets out the proposed construction sequence and methodology, and this is broadly consistent in all material respects with the technical drawings provided by Matthew Smith.

Hydrology and Consistency between BIA and FRA

- 5.14 The BIA was revised and BDA prepared such that its details are consistent with the Flood Risk Assessment, especially with regard to the hydrology screening. Campbell Reith's comment in this respect (paragraph 5.5 of its report) has now been addressed. Appendix D of the BIA sets out a Level 1 Flood Risk Assessment carried out by GESL. The advice as summarised in this report is as follows:
- (i) The development is located in Flood Zone 1, which is an acceptable location for 'more vulnerable' residential development.
 - (ii) The primary flood risk is expected to be from surface water flooding, although EA records suggest that this is low and only affecting the north easternmost portion of the site.

- (iii) A drainage strategy has been recommended suggesting the use of SUDS measures to control surface water runoff from the site, as the exact position of culverts from the former River Tyburn is not yet known and cannot be determined at this scale of mapping without a more detailed topographical survey of the area first and infiltration tests conducted at the low points of the site where attenuation measures would be situated.
- (iv) The development is acceptable from a flood risk perspective and would not increase the risk of flooding to adjacent areas as a result of the development.

5.15 Furthermore, details in respect of surface water management were requested by Campbell Reith. Section 8.4 of the BIA (October 2016) sets out further details in respect of SUDS.

5.16 The Flood Risk Assessment (June 2016) is consistent and supplemental to the conclusions on surface water management and SUDS set out in the BIA and includes a site plan indicating the proposed location of the cellular storage for the SUDS. Paragraphs 6.8 to 6.12 of the FRA sets out how it would be possible for a safe, effective and sustainable surface water management system to be incorporated as part of the construction of this development.

5.17 Accordingly, we propose that this is best dealt with by means of a planning condition given that it would generally be unreasonable to expect applicants/developers to go to the lengths of more detailed topographical mapping and infiltration tests without knowing whether or not they first have a planning permission in hand. This would also be consistent with the Council's approach to the need for a more detailed construction programme, which it has already confirmed may be submitted to the Council at a later date. Therefore, the Council's approach to these different aspects of the BIA is inconsistent and lacks any reasonable justification.

Stability and Structural Details

5.18 The BDA is an extensive and very detailed report that sets out in full the anticipated impact of the proposed development on its neighbouring buildings.

5.19 Table 3.1 of Section 3 (Ground Movements) to the BDA sets out in full the structures that were assessed and their character and distance from the proposed development.

5.20 Section 4 of the BDA sets out the anticipate level of damage as a *worst case scenario* to neighbouring buildings, with regard to the Burland Scale, including full input and output analysis, such as Oasys Xdisp and stiffness parameters to retaining wall analysis. The impact on almost all would be at the lowest level, as a worst case; i.e. NEGLIGIBLE /NIL IMPACT. There might be some very slight cracking to the side wall of No.1 Elsworthy Terrace (again, as a worst case) but only to the degree which is easily treated during normal construction. The garage elevation to No.23 might suffer some slight damage, which at worst might require some repointing or redecoration, although this is only to the garage and would not affect any habitable part of the building. XDisp results are presented in Appendix C to the BIA, and heave movements calculated using Pdisp software and the results included with the reports.

5.21 Overall, the BDA concludes as follows:

*“In summary, the analysis indicates that the predicted ground movements in response to the basement excavation would cause **negligible to slight damage** to the adjoining structures. It is anticipated that, cross-propping of the excavation will be introduced early in the works, providing a **very stiff support system** to the walls. Furthermore, it has been assumed that the wall construction will be carried out to a **high standard of workmanship** and measures will be taken to avoid instability of excavations and keep ground loss to a minimum. Furthermore, it is acknowledged that with good construction and controls the **actual movements may be significantly less than those predicted by the CIRIA C580 methodology**. As such it is considered likely that **all structures will fall into the Negligible or Very Slight** Categories of the Burland Scale. It should be noted that the structure where a slight damage category is predicted is a garage, and a non-habitable room. Therefore, minor cracking is unlikely to require any subsequent remedial measures such as filling cracks in plaster and re-decorating as would be the case in a habitable room.” [emphasis added]*

5.22 In respect of adjacent basements, section 5 of the BIA states that:

“It should be noted that although several of the surrounding properties including the adjacent no.1 Elsworthy Terrace contain a lower ground floor, no obvious evidence of basements was recorded in neighbouring properties.”

- 5.23 As referred to above, full factual site investigation data has been provided with the BIA and is included with the Appendices.
- 5.24 We wrote to the Council’s planning officers on 13th October 2016, raising apparent inconsistencies in the approach taken to this development compared to other developments in respect of an estimation of the construction duration, structural details of construction sequences and the need for ‘definitive proposals’ regarding a surface water management plan. A copy of this email is attached at **Appendix 11**. The Council’s officers do not appear to have responded to the specific points raised by the appellant in this regard at all in the officer’s report.
- 5.25 To summarise the points made, planning permission was granted recently for the extension to the Royal Free Hospital on Pond Street, subject to a Section 106 Agreement, on 25th April 2016 (reference: 2014/6845/P). Campbell Reith has been directly involved in this matter – although it did not advise the Council at the time, it is engaged by the applicant, seemingly as a ‘Certifying Engineer’. It appears that further hydrological details concerning drainage were required by way of a planning condition: conditions 16 (SUDS), 19 (Drainage strategy including off-site and on-site drainage works). Information regarding drainage had been submitted by the applicant prior to the Committee decision to grant, but certainly nothing in the way of a ‘definitive proposal’ for surface water management. In respect of the approved and sealed s106 Agreement, clause 4.3 required the applicant to enter into and have approved prior to commencement of works on site a Detailed Basement Construction Plan, and this was defined in Clause 2.16 of this Agreement to include the later provision of a “detailed construction methodology and sequence”. A copy of the planning permission for this development including the approved planning conditions is attached to this appeal at **Appendix 12**.
- 5.26 The Council has taken such an approach on smaller, minor applications involving basement excavation, such as involving the grant of permission subject to s106 agreement for a replacement dwellinghouse at No.24 Redington Gardens, with lower ground floor and basement accommodation (2016/1015/P), where further matters relating to construction methodology were required through the Detailed Basement Construction Plan, which was

included with the Section 106 Agreement (see attached planning permission). I would add that the FRA in the current case opined at page 35 that “*the risk of flooding from all sources appears to be low*”, thereby negating the need at this stage for a detailed surface water management strategy – a similar conclusion was drawn by the consultants in 2016/1015/P (24 Redington Gardens), which appears was accepted by Campbell Reith without the need for any further detail, not even by condition or obligation. A copy of the planning permission for this development is attached at **Appendix 13**.

- 5.27 Officers did revert by email of 4th November 2016 that No.24 Redington Gardens was assessed on different grounds as this was a demolition and rebuild. However, this does not provide any reasonable distinction from the current case, as it would still have involved a new basement and part sub-basement level.
- 5.28 Therefore, securing any further necessary measures as may be required through a planning condition, as proposed below, would be wholly consistent with the Council’s SPD on Basements at CPG4 paragraphs 3.35-3.38.
- 5.29 Overall, the BIA and the BDA fully and adequately assess the likely impacts of the proposed development and demonstrate that the proposed basement excavation would not materially harm neighbouring properties and would be safe, secure and within acceptable technical tolerances, in compliance with the Council’s Local Plan policies and supplementary guidance on basement excavation.

6.0 IMPACT ON TREES

- 6.1 Core Strategy Policy CS14 seeks to promote high quality places and Policy CS15 seeks to encourage biodiversity. The retention and care of the existing mature trees on this site are therefore important to these policies, especially as these trees also make a positive contribution to the character of the street scene to this part of the Conservation Area. Policies DP24 (Securing high quality design) and DP25 (Conserving Camden’s heritage) further support these policy objectives.
- 6.2 The application site comprises 3 trees protected through Preservation Orders (TPOs), two lime trees (T3 and T4) and a birch (T5). An additional thorn TPO (T2) is located close to the boundary of the application site with the garden of no 1 Elsworthy Terrace. An Arboricultural Report was prepared by Simon Pryce in respect of this proposal, date 20th August 2015.
- 6.3 Site inspections were undertaken by Simon Pryce and his observations about the health, maturity and structural condition of the trees assessed and noted. Trial pits were also dug and observations made regarding the root system to the trees, including in relation to the nearby boundary wall. Overall, Simon Pryce concluded as follows:
1. It is reasonable to treat the RPAs as circles, but root spread of the limes, which are the biggest and most significant trees, will be reduced by the carriageway to the front, which slightly reduces the scope for adjusting their RPAs.
 2. The proposed building makes insignificant incursions into the lime RPAs, even allowing for some restriction of root spread by the road.
 3. The incursion into the birch’s RPA is also within tolerable limits, but it has structural defects which limit its useful life and is damaging the side wall, which would be hard to repair with it in situ. There is a strong case for removing it and planting a replacement.
 4. The trees create some shade, but that can be reduced by suitable pruning without adverse effects on their condition or amenity value.
 5. Site investigation showed that no significant roots from the holly at the rear had grown under the wall into the site so it is not a constraint.
 6. This proposal involves excavation but is a small scale project and there are well developed techniques for that and the trees can be safeguarded with suitable protective measures, which can be detailed in a method statement.

- 6.4 The Council contends that the report by Simon Pryce lacks sufficient detail, particularly regarding as to how the RPAs have been calculated and the Council considers that trial pits should be dug as the Council speculates that the tree roots are more likely to grow toward the garden than toward the road or wall.
- 6.5 Notwithstanding the apparent logic to the Council's argument, our case, unlike the Council's is based on actual evidence and not on mere speculation.
- 6.6 Firstly, it should be noted that Simon Pryce is a highly experience expert in this field. He has been a Fellow of the Arboricultural Association for nearly 30 years. He is a Chartered Forester, Chartered Biologist and Chartered Environmentalist. Furthermore, from 1993 he was an Arboricultural Inspecting Officer for Tree Preservation Order Appeals, retained by the Department of the Environment and its successors. In 2008 this was taken over by the Planning Inspectorate and he has continued as one of their Inspectors. He is the Arboricultural Association's representative on BSI Committee B/213 producing the current British Standards relating to trees including BS3998:2010 – Recommendations for Treework and BS5837:2012, Tree in Relation to design, demolition and construction and BS8545:2014 Trees: from nursery to independence in the landscape. Therefore, his report is based on years of experience and expertise in the field.
- 6.7 In addition, he sets out in section 5 of his report how he has calculated the RPAs in this case:

“The size of the RPA is based on the size of the tree concerned. The starting point is that for a single trunked tree it has an area equivalent to a circle with a radius 12 times the trunk diameter measured at 1.5m above ground. The shape of the RPA can be modified where there is evidence that root spread is uneven or where there is sufficient rooting space in other directions to compensate for working closer to the tree on one side.”

- 6.8 In paragraphs 5.2 to 5.6 of his report, he refers to his observations of cracking to the walls, and the direct physical evidence that the roots have spread in the trees, at least to some significant degree, toward the wall and the footway. This evidence is supported by photographs and, in particular, a trial pit that actually shows roots spreading underneath the

wall (see photograph no.1 to his report). This is directly contradictory to the Council's speculative belief that *"the close proximity of the trees to the street pavement it is more likely that the roots have grown towards the garden being a more hospitable space"* and the Council's claim that trial pits *"have not been accomplished"* on site is clearly not correct as a plain matter of fact.

6.9 In criticising the appellant's tree report, a consultant instructed by the occupiers of No.2 Elsworthy Terrace commented in terms of the following:

- Some further detail is required as to the appropriate excavation techniques that could be deployed in this case.
- Confirmation is required that the stem diameters are correct for the RPA purposes bearing in mind the apparent differences in scale between the architect's and the appellant's tree consultant's drawings.
- The ground conditions might significantly alter and affect the trees after an excavation of this degree.

6.10 Whilst further detail regarding appropriate excavation techniques is a material consideration, the prospect of such techniques being applied in this case with regard to the known scope of works, has been duly considered by Simon Pryce with the benefit of his extensive experience and expertise in this area (paragraphs 5.7 and 5.8 of his report). Furthermore, Simon Pryce rightly states that such matters need not always be provided at this stage but can be provided as a planning condition and that such a condition may also require that any further arboricultural method statement be agreed in writing by the Council prior to the commencement of any development on site.

6.11 In respect of major excavations, such as of the basements, the footprint can be formed by using either sheet or contiguous piling to cut any roots cleanly, then excavate with the vertical sided "box" formed by this. This avoids the sloping sides and enlarged footprint that is often created by using more conventional excavation techniques.

6.12 For smaller scale excavation, such as the brick wall foundation, it is recommended to excavate and prune any roots by hand to create clean cuts, or to break the soil with a compressed air spade, which does not harm the roots. The loose soil is then removed by hand or vacuum pump. The brick wall foundation can be trenched by either method, and

significant roots (i.e. of 50mm or more in diameter) retained and bridged over with lintels. The other option would be to support the wall on a ground beam spanning between concrete bases or piles. There are purpose designed inverted T beams that can be used instead of concrete for this kind of job. Further details can be requested and then supplied by means of a planning condition.

- 6.13 In respect of the stem diameters to the trees, Simon Pryce has confirmed his opinion with regard to a separate plan, which was supported by a site inspection. The fact that the architect's site plan might be at a different scale is, quite frankly, neither here nor there. The third party consultant's scepticism is mostly due to the fact that, unlike Simon Pryce, the consultant did not have access to the site to check these measurements for himself. Simon Pryce has undertaken check measurements on site and confirmed that his conclusions based on this and his own drawings are accurate. To question this any further is both irrational and utterly unreasonable. By siding with the third party opinion in this respect, the Council has taken the view of someone who has not been able to take check measurements on site over an expert who has! Furthermore, this apparent bias is completely unjustified.
- 6.14 Simon Pryce plotted the trunk and RPA diameters as per the tree schedule in the reports, i.e. RPA radius 12x trunk diameter. Although in the proposed plan the layout title block says 1:125 at A3, it is actually printed at 1:100, the same as the existing plan. The scale bar in model space in the drawing is correct, and an amended plan is attached at **Appendix 14**. It should be noted that there is no peer reviewed scientific evidence for the 12x multiplier used in BS5837, but in most cases it gives a considerable safety margin.
- 6.15 The ground conditions have to some degree also been considered above in respect of the BIA and flood risk assessments. However, Simon Pryce has taken this into account and has provided his own professional opinion as to the impact of such works. Neither the Council nor the third party consultant offers any evidence to provide any reasonable doubt to the expert opinion of Simon Pryce and provide no examples to demonstrate that there is a probability of such damage occurring to the trees in this case. The opinion put by the Council with reference to a third party is both pithy and highly speculative.
- 6.16 Simon Pryce has considered the longer term effect of the proposal and since confirmed this to us. He has not seen any details of the springs, but from being involved in numerous subsidence and new build cases in this area, he does not recall one where that was

relevant, at least within foundation or tree rooting depths. Limes are highly resilient and these will have far more open ground than many urban trees, particularly those in streets.

- 6.17 Furthermore, the catchment area of the north side of Primrose Hill at higher elevation than the site is not very large. Unlike Hampstead and Highgate hills it does not have a cap of Bagshot sand, which tends to have springs round the interface where it lies over the clay. Therefore, the concern raised by the Council and third parties is largely supposition underpinned by little in the way of actual evidence to support such a theory.

7.0 OUTLOOK OF NEIGHBOURS AND FUTURE OCCUPIERS OF PROPOSAL

Outlook for future occupiers of the proposed development

- 7.1 The Council comments on the quality of the proposed residential accommodation with regard to the size of the house, the size of habitable rooms, daylight and sunlight impact to occupiers and the outlook from the proposed habitable rooms.
- 7.2 The proposed new dwelling would meet or exceed the London Plan required minimum for all room sizes and would significantly exceed the minimum size for a 4-bedroom 8-person house.
- 7.3 Notwithstanding the orientation of the proposed house toward north-west, the Council accepts that the Daylight and Sunlight report submitted with the planning application confirms that all rooms would meet acceptable standards in terms of sunlight and daylight with regard to the BRE Guidance (Building Research Establishment (BRE) Site Layout for Daylight and Sunlight – A Guide to Good Practice (1991)) in this respect. Therefore, with the benefit of this report, there is sufficient daylight and sunlight to conclude that there would be enough passive solar gain to these rooms.
- 7.4 The Council objects however on the basis that none of the rooms would be dual aspect and that they all look out on to the light well.
- 7.5 In respect of the dining room and the living room, both of these rooms would have wide glass walls that would look directly out on to the mature trees some 5m to 6m ahead and would present an attractive and well-lit aspect. These rooms would be further served by roof lights that would enhance the daylight and sunlight conditions to these rooms.
- 7.6 There are three bedrooms located at the first basement level (labelled 2, 3 and 4 on the floor plans) and a further bedroom and cinema room located at the second basement level. Two of the bedrooms, nos.4 and 5 on the floor plans, would have a distance of about 5.25m from the bedroom windows to the far wall of the courtyard in the lightwell.
- 7.7 It should be noted that the Council did not consider that the proposed development would lead to harmful loss of outlook to No.23 Elsworthy Terrace, which would be positioned

about 3.5m away from the proposed development at its nearest point. Therefore, it is difficult to reconcile this with why the Council considers that at a distance of 5.25m from the courtyard wall (bedrooms 4 and 5), or just under 3m from the courtyard wall in other cases (bedrooms 2 and 3), the Council considers that there would be poor outlook for future occupiers, if a similar distance is apparently acceptable to immediate neighbours.

- 7.8 The windows to the other two bedrooms would be marginally less than 3m away from the facing wall to the courtyard. However, these bedrooms would be at only the first lower ground floor level and there would still be a significant amount of vertical sky seen as part of the outlook from these windows. Furthermore, these windows would look toward the mature trees approximately 6m away. The windows to these bedrooms would also be at least 1/10th of the floor area of each of the rooms and they would be openable to at least an area of 1/20th of the floor area of each room (CPG2, paragraph 4.23).
- 7.9 In any event, paragraph 4.26 of CPG2 indicates that habitable room windows can be positioned closer than 3m to the side walls of lightwells depending on the prospect of adequate natural light being provided to these rooms. The Daylight and Sunlight reports confirm that sufficient daylight and sunlight would serve the basement rooms.
- 7.10 In order to improve the outlook further to these rooms, which are bedrooms and a cinema room, we would be prepared to agree to a condition that the courtyard be landscaped. Notwithstanding the sunken and enclosed nature of this lightwell, it could still provide a potential home for evergreen plants or shrubs and soft landscaping – a sort of ‘pocket garden’. This could significantly improve the outlook from the lowest bedroom (which would be over 5m from the far wall of the courtyard) and for the bedrooms on the first basement level, which either are over 5m from the far wall of the courtyard or enjoy a sufficient degree of vertical sky in any event.
- 7.11 It should also be noted that the sunken courtyard at basement level to the approved new dwelling on the site adjacent to 41 Ferncroft Avenue comprised only 6 sqm, but was regarded as sufficient for the bedrooms in the basement in that case; albeit only a 2-bedroom house, the proposed courtyard in this case would be more than double this area at 13 sqm minimum. Furthermore, in the case of the approved dwelling at the rear of No.15 Elsworthy Terrace, the lower basement rooms would have no access to direct natural sunlight and daylight and no outlook, and would be served only by roof lights. In addition,

the bedrooms in the first basement level would each be served by lightwells of roughly the same size as that proposed in this case and would thus provide no greater outlook to occupiers of this house than the lightwell proposed to the house in this appeal.

Outlook of immediate neighbours

- 7.12 In respect of impact on neighbouring occupiers, the Council accepted that the proposed development would not harm No.23 Elsworthy Terrace. The proposed development would be located a distance of 3.6m away at its nearest point and 5.4m away at its furthest point from No.23. The Daylight and Sunlight report confirmed that no adverse impact would be caused from the proposed extension in terms of sunlight and daylight and no significant impact in terms of outlook as the side windows do not appear to serve habitable rooms.
- 7.13 In respect of No.1 Elsworthy Terrace, no issue is taken with the Council's estimate of the height of the proposed development or the distance of the development from the lower ground floor (or garden level) window to No.1. However, the proposed development would only stand at a height of approximately 3m from more than 7m away from this window, as there would be a small shelf with a low-level planter approximately 1 metre closer. Therefore, it is important that the proximity of the main wall of the house to neighbours is not misrepresented. As with No.23, the Council accepts that there would be no harmful daylight and sunlight impact on the occupants of the lower ground floor unit to No.23.
- 7.14 The angle of view from the centre of the lower ground floor window over the highest part of the roof of the proposed development would be 17 degrees, 13 degrees over the nearest or lowest part of the roof. The current view from No.1 is toward another building, much taller than the scale of the building which is herewith proposed. Occupants of the garden level flat at No.1 would still look over garden space, and the proposed structure would not be imposing. Low planting and green roofs would help to soften the visual impact and the variety of materials used – brick walls, white painted render and oak beams – would add interest and would be sympathetic to this location. Although the proposed screen to the garden of the proposed new house would be frosted glass, the appellant would be prepared to consider a different form of boundary fencing instead if necessary, such as 'hit and miss' timber fencing.

7.15 However, it is in respect of No.2 Elsworthy Terrace that the Council rather overstates the degree of any harm. The Council summarises this impact, as it sees it, in the following terms in the officer's report:

“The garden length of the property at no 2 Elsworthy Terrace has 20.9m whilst the proposed dwelling would project with the length of 13.6m along the side boundary. As such, more than half of the neighbouring garden would have the outlook blocked on northern side by the proposed unit. It is therefore considered that due to siting and projection, the proposed scheme would have adverse impact on the levels of outlook from the windows and rear garden of no 2 Elsworthy Terrace.” [emphasis added]

7.16 Firstly, officers analyse the supposed impact on No.2 only with reference to the view from the neighbouring garden. However, there is no analysis of the view from neighbouring windows. As far as the view from neighbouring windows is concerned the nearest habitable room window at garden level in No.2 Elsworthy Terrace would be more 8m away, which would not be unreasonable given the high density of development which is a character of this area. Furthermore, this would not be a direct view but instead oblique/at an angle. This compares to a distance of 3.6m to 5.4m from No.23, which was regarded as an acceptable distance in that case. We appreciate of course that in the case of No.2, habitable room windows might be affected. However, for the following reasons, we consider that the proposed impact in outlook on No.2 would still not be harmful.

- (i) There would be a distance of over 8m minimum between the proposed building and the nearest affected habitable room window.
- (ii) With regard to the angle of view from the garden level windows of No.1 toward the development, the angle of view from any such windows at this level in No.2 toward the nearest part of the roof of the proposed development will be significantly less and is likely to be at an angle of 10% or less from the centre of any such windows.
- (iii) From most parts of the garden to No.2, if not barely noticeable, at the most only a very slight slither of the top of the new house would be noticeable above the existing retained timber fence and low brick wall, which already divides No.1 from No.2 Elsworthy Terrace.

- (iv) The view of this part of the garden would be further softened by the green roofs proposed to the new building and the new living green wall to the south elevation of the building facing toward No.2.
- (v) The highest part of the roof would be set back from the boundary with No.2 by 4m and the nearest part of the roof would be less than 0.5m above the existing timber fence (with a green wall).

7.17 Therefore, the outlook from No.2 is would not be blocked at all and certainly not harmed compared to the existing outlook from the neighbouring garden.

Other points on amenity

7.18 With regard to the accompanying report from Herrington Consulting Ltd, the proposed development would not have a notable impact on the daylighting enjoyed by neighbouring residents, nor would it cause an unacceptable loss of sunlight hours with regard to the standards set by the Building Research Establishment (BRE).

7.19 The proposed development would not include any windows to the side or south-facing elevations and thus would not overlook neighbouring rear gardens nor would it cause overlooking into neighbouring habitable room windows.

7.20 In respect of its impact on its neighbours, the lightwells proposed to the house at the rear of No.15 sit further forward of its neighbouring building line, than the appeal proposal. In contrast, the appeal proposal provides a more staggered building line, which seeks to create a transition from No.23 Elsworthy Road to No.1 Elsworthy Terrace, although there is little difference in building line within this margin. The proposed appeal building at or above ground floor level would sit along a similar front building line to its neighbour at No.23 Elsworthy Road.

7.21 The proposed lightwell, would be located to the other side of the site, nearest to the rear of No.1 Elsworthy Terrace and along a similar building line to this building. The main living room windows to the development would generally be set on a line forward of any habitable room windows in either No.1 Elsworthy Terrace or No.23 Elsworthy Road and, along with the lightwell void, would be shielded from its neighbours by both the proposed boundary screen as well as possible planting to the edges of the lightwell or the house, which we

suggest could be secured by way of a planning condition seeking an appropriate landscaping plan.

8.0 HIGHWAYS, CYCLE STORAGE AND ACCESS

8.1 The site falls within a PTAL of 1b and has a very low level of public transport accessibility. It is not currently proposed to provide off-street car parking as part of this proposal, especially given the current positions of the mature trees to the front of the site.

8.2 However, the site is only 10 mins walk or 5 minutes by bicycle to Swiss Cottage London Underground Station (Jubilee Line) or about the same to Chalk Farm London Underground Station (Northern Line). Both Finchley Road and Haverstock Hill are of course well-served by a number of local bus routes. Pedestrian access along a gravelled path comprising permeable material will be provided via the front of the site.

8.3 The London Plan Policy 6.13D requires development to meet the minimum standards for cycle parking set out in Table 6.3 to the London Plan. Given that this development would comprise a house of more than 3 bedrooms, a minimum of 2 cycle spaces are required. TFL's London Cycling Design Standards sets out further relevant guidance as follows (see **Appendix 15**); references in brackets are to section numbers in the extract to this guidance:

- (i) Cycle parking should be located in secure locations which are visible, accessible, well-overlooked and well-lit (8.3.1).
- (ii) Cycle parking may be located outside of buildings but they need to be:
 - In locations where they are well-overlooked, with high level of natural surveillance (and CCTV where possible) and clearly visible.
 - Designed with consideration of sight lines into and out of the cycle store.
 - Adequately lit and overlooked, particularly at night time.

8.4 Therefore, subject to these further conditions, it is possible to provide acceptable cycle storage. Furthermore, section 8.4.4 of the TFL guidance requires that there should be at least 600 mm clearance between the bicycle stand and any object higher than the kerb face, in order to provide for a minimum satisfactory clearance for the bicycle and manoeuvre it in and out.

8.5 Paragraph 9.8 of Camden Transport Guidance CPG7 acknowledges that in general cycle spaces can be located outside of buildings and might be acceptable subject to similar

conditions. However, for residents' cycle parking, the Council stipulates that cycle parking must be located in the building and infers that this is without exception. This is a subtle but material departure from the London Plan TFL Guidance and no reason is given for why the Council considers it reasonable in the case of Camden not to allow the flexibility built in to the TFL Guidance.

8.6 In addition, Figure 4 under paragraph 9.24 of CPG7 requires only a 500 mm clearance for each cycle space to allow room for working for locking the bike to the stand, albeit 750 mm is recommended where the stand is next to a physical obstruction, such as a wall or vehicular path.

8.7 In the case of this proposal, the following characteristics should be noted:

- (i) The cycle store replaces an existing timber shed on the site.
- (ii) The cycle store would have double doors that open wide to allow for maximum access and manoeuvring of bicycles in and out of the store.
- (iii) Only two bicycles at most would be stored in the shed and therefore it would be relatively easy to place or manoeuvre both bikes and lock them both without having to stand on the far side of the shed.
- (iv) The ground floor plan indicates that the proposed ground floor dining room/kitchen looks directly out toward the bicycle shed and provides natural surveillance.
- (v) Further security (e.g. lighting) and surveillance can be secured if necessary by way of planning conditions, if the Inspector considers this appropriate.

8.8 Therefore, overall, we consider that the proposed bicycle store is acceptable in the circumstances. It should be further noted that the Council approved plans for the storage of two bicycles as part of the development to the rear of No.15 Elsworthy Terrace, whereas these are shown outside of the building on the approved floor plans.

8.9 The Council's Highways objections also related to the need to secure obligations by way of Section 106 Agreement toward the following:

- (i) Construction Management Plan

- (ii) Prohibition of residents' permits for on-street parking for future residents of the development
- (iii) Financial contribution toward remediation of pavement post-construction.
- (iv) Sustainability Plan

8.10 All of these matters have been set out in a Section 106 Unilateral Undertaking submitted as part of this appeal. The Section 106 Undertakings provided with this appeal are consistent with the terms set out in the Section 106 Agreement agreed in respect of the development of land to the rear of 15 Elsworthy Terrace.

9.0 PROPOSED PLANNING CONDITIONS

9.1 In the event that the Inspector is minded to allow this appeal, we propose the following planning conditions in order to address some of the planning issues raised herein. These conditions are similar to those that were attached to planning permissions for the land to the rear of 1b Ellerdale Road and land to the rear of 15 Elsworthy Terrace.

- (a) The development hereby permitted must be begun not later than the end of three years from the date of this permission.
- (b) A sample panel of all facing materials (including brickwork to dwelling boundary walls demonstrating the proposed colour, texture, face-bond and pointing) shall be provided on site and approved by the Council before the relevant parts of the works are commenced and the development shall be carried out in accordance with the approval given. The sample panel shall be retained on site until the work has been completed.
- (c) No development shall take place until full details of hard and soft landscaping, including tree planting and means of enclosure of all un-built, open areas have been submitted to and approved by the Council in writing. Such details shall include any alterations to boundary treatment, including design of new or altered boundary footings in so far as they may affect trees adjoining the site. The relevant part of the works shall not be carried out otherwise than in accordance with the details thus approved.
- (d) All hard and soft landscaping works shall be carried out to a reasonable standard in accordance with the approved landscape details by not later than the end of the planting season following completion of the development or any phase of the development. Any trees or areas of planting which, within a period of 5 years from the completion of the development, die, are removed or become seriously damaged or diseased, shall be replaced as soon as is reasonably possible and, in any case, by not later than the end of the following planting season, with others of similar size and species, unless the Council gives written consent to any variation.
- (e) Noise levels at a point 1 metre external to sensitive facades shall be at least 5dB(A) less than the existing background measurement (LA90), expressed in dB(A) when

all plant/equipment (or any part of it) is in operation unless the plant/equipment hereby permitted will have a noise that has a distinguishable, discrete continuous note (whine, hiss, screech, hum) and/or if there are distinct impulses (bangs, clicks, clatters, thumps), then the noise levels from that piece of plant/equipment at any sensitive façade shall be at least 10dB(A) below the LA90, expressed in dB(A).

- (f) All trees on the site, or parts of trees growing from adjoining sites, unless shown on the permitted drawings as being removed, shall be retained and protected from damage to the satisfaction of the Council. Details shall be submitted to and approved by the Council before works commence on site to demonstrate how trees to be retained shall be protected during construction work: such details shall follow guidelines and standards set out in BS5837:2005 "Trees in Relation to Construction".
- (g) Before the development commences, details of the proposed cycle storage area for two cycles shall be submitted to and approved by the Council. The approved storage shall thereafter be provided in its entirety prior to the first occupation of any of the new units, and thereafter permanently maintained and retained thereafter.
- (h) Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 as amended by the (No. 2) (England) Order 2015 or any Order revoking and re-enacting that Order, no development within Part 1 (Classes A-H) [and Part 2 (Classes A-C)] of Schedule 2 of that Order shall be carried out without the grant of planning permission having first been obtained from the Council.
- (i) Full details in respect of the green roof in the area indicated on the approved roof plan shall be submitted to and approved by the local planning authority before the relevant part of the development commences. Such details to include sections through the roof showing drainage, specifications/ manufacturers details of the green roof, details of species and a scheme of maintenance. The buildings shall not be occupied until the approved details have been implemented and these works shall be permanently retained and maintained thereafter.

- (j) The development hereby approved shall not commence until such time as a suitably qualified chartered engineer with membership of the appropriate professional body has been appointed to inspect, approve and monitor the critical elements of both the permanent and temporary basement construction works throughout their duration to ensure compliance with the design which has been checked and approved by a building control body. Details of the appointment and the appointee's responsibilities shall be submitted to and approved in writing by the Council prior to the commencement of development. Any subsequent change or reappointment shall be confirmed forthwith for the duration of the construction works.

- (k) Prior to commencement of development, design details of all on site Sustainable Urban Drainage (SUDs) demonstrating how the site would achieve a maximum combined (surface and foul water) discharge rate of less than 3.83l/s in the event of a 1 in 100 year storm, shall be submitted to and approved by the Council in writing. Such system shall be implemented as part of the development and thereafter retained and maintained.

- (l) Before the use commences, a detailed report prepared by a suitably qualified engineer including details of existing noise levels on site and demonstrating how the noise from any mechanical equipment installed on site shall meet with the Council's noise standards as set out in condition [5], shall be submitted to and approved in writing by the Council. Any acoustic or vibration mitigation measures recommended as necessary in the report shall be installed prior to first use of the equipment and shall thereafter be retained and maintained in accordance with the manufacturer's standards.

- (m) Further details of the proposed waste and recycling store including elevations to indicate its impact on the street scene shall be submitted to the local planning authority and approved in writing prior to the erection of this store.

10.0 CONCLUSIONS

- 10.1 The site is located adjacent to No.1 Elsworthy Terrace and No.23 Elsworthy Road in the Elsworthy Conservation Area.
- 10.2 The Council has failed to give significant weight to other similar examples of contemporary backland development in the same area and the visual impact of the proposed development on the street scene, use of glazing and lightwells, size, massing and scale, and distance from neighbouring houses is at least as sensitive, if not more so, than the new house built to the rear of No.15 Elsworthy Terrace.
- 10.3 With regard to the heavy tree cover that would be retained to the front of the site, the single storey nature of the proposal, its siting deep in to the plot, its height relative to an existing boundary fence line, green 'sedum' roof and distance from neighbours in this high density urban environment, the proposed development is of an appropriate size and scale for this plot and is consistent with other similar schemes on backland sites in the same area granted planning permission by the Council.
- 10.4 In respect of the Basement Impact Assessment and Building Damage Assessment, the BIA and the BDA fully and adequately assess the likely impacts of the proposed development and demonstrate that the proposed basement excavation would not materially harm neighbouring properties and would be safe, secure and within acceptable technical tolerances, in compliance with the Council's Local Plan policies and supplementary guidance on basement excavation. Securing any further necessary measures as may be required through a planning condition, would be wholly consistent with the Council's SPD on Basements and other proposed basement excavations determined and approved by the Council.
- 10.5 The proposed development would provide adequate outlook, sunlight and daylight to future occupiers, with regard to the character of the rooms (bedrooms), dimensions of the proposed lightwell, scope for internal landscaping to the lower ground courtyard, and considering the similar standards applied to development to the rear of 41 Ferncroft Avenue and to the rear of 15 Elsworthy Terrace. The outlook of neighbours would not be harmed given the low-set nature of the proposed dwelling and its distance and relationship with neighbours, with regard to the similar distances approved in the case of the new house to

the rear of No.15 Elsworthy Terrace and the current height of the boundary fence shared with No.2 Elsworthy Terrace.

- 10.6 The development proposals have been assessed by a highly experienced and competent Arboriculturalist. The calculation of the relevant RPAs has been carefully assessed and is supported by on-site investigation and trial pits. We have proposed a number of possible construction techniques that are widely-accepted in the industry in similar situations. Further details can be provided through planning conditions. The comments of third parties regarding ground water sources and the possible impact of the basement excavation on conditions affecting the root system to the trees is highly speculative, lacks any supporting evidence, and is entirely contradictory to the very detailed and comprehensive Flood Risk Assessment already provided with the development proposals.
- 10.7 The proposed development would not cause harm to the highway, with regard to proposed planning conditions, plans and Section 106 Undertakings including Construction Management Plans, restriction of on-street car parking and the delivery of safe, secure and convenient bicycle storage on site. It should be noted that the bicycle storage approved to the development to the rear of No.15 Elsworthy Terrace was not located inside the approved dwelling, but down the side on the outside.
- 10.8 Therefore, with regard to all of the above matters, the proposed planning conditions and suggested s106 Undertakings, we respectfully submit that this appeal should be allowed.