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Our ref: 2016/3495/P  
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Dear Mr Hill,

**Town and Country Planning Acts 1990 (as amended)  
Planning Appeal Statement (Authority)  
Appellant: Ms. Caroline Nourani  
Site: Land adjacent to 1 Elsworthy Terrace, London, NW3 3DR**

I write in connection with the above appeal against the Council's refusal to grant planning permission for the following:

*'Erection of single 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 for pedestrian access on site.(Amended description)'*

Please note that the decision notice for the appealed planning application reads in relation to the "erection of two storey building". However it is confirmed that the assessment was made on the revised drawings submitted on 09/11/2016 showing the building projecting with one storey above ground.

The Council's case is set out primarily in the delegated officer's report (ref: 2016/3495/P) that has already been sent with the questionnaire and is to be relied on as the principal Statement of Case. Copies of the relevant LDF policies and accompanying guidance were also sent with the appeal questionnaire.

In addition, the Council would be grateful if the Inspector would consider the contents of this letter which includes confirmation of the status of policy and guidance, comments on the Appellant's grounds of appeal and suggested conditions and S106 matters, without prejudice, if the Inspector is minded to grant permission.

### **1.0 Summary of the Case**

1.1 The application site occupies part of the rear garden 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.

1.2 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. The site hosts 3 protected trees, two limes and one birch.

1.3 During the planning application process, the proposed scheme was revised with a reduction in height by one floor. On receipt of the revisions the officers contacted the neighbours by telephone to advise about the change. As the proposal was a reduction in development, and any impact on the neighbouring properties would be less, additional reconsultation was not necessitated.

1.4 The appellant did not consult the Council under a pre-application advice process prior to making the formal planning application.

1.3 Planning permission was refused on 6<sup>th</sup> of December 2016 on the following grounds:

- 1) 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. The application is therefore contrary to Policies CS1 (Distribution of growth), CS5 (Managing the impact of growth and development), CS14 (Promoting high quality places and conserving our heritage), DP24 (Securing high quality design) and DP25 (Conserving Camden's heritage) of the London Borough of Camden Core Strategy and Development Policies 2010, and contrary to policies G1 (Delivery and location of growth) , D1 (Design) and D2 (Heritage) of Camden Local Plan 2017.
- 2) 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 contrary to policy CS5 (Managing the impact of growth and development) of the London Borough of Camden Local Development Framework Core Strategy and policies DP23 (Water) and DP27 (Basements and lightwells) of the London Borough of Camden Local Development Framework Development Policies, and contrary to policies A1 (Managing the impact of development), DM1 (Delivery and monitoring), CC3 (Water and flooding) and A5 (Basements) of Camden Local Plan 2017.
- 3) 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 and is therefore contrary to policies CS5 (impact of growth and development) and DP26 (impact of development on occupiers and neighbours) of the London Borough of Camden Core Strategy and Development Policies 2010, and contrary to policy A1 (Managing the impact of development) of Camden Local Plan 2017.
- 4) The proposed development, in the absence of a legal agreement securing a construction management plan, would be likely to give rise to conflicts with other road users, and be detrimental to the amenities of the area generally, contrary to policies CS5 (Managing the impact of growth and development), CS11 (Promoting sustainable and efficient travel) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policies DP20 (Movement of goods and materials), DP21 (Development connecting to highway network) and DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Policies, and contrary to policies A1 (Managing the impact of development), DM1 (Delivery and monitoring), T4 (Sustainable movement of goods and materials) of Camden Local Plan 2017.

- 5) 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, contrary to policies CS11 (Promoting sustainable and efficient travel) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Core Strategy DP16 (The transport implications of development), DP17 (Walking, cycling and public transport) and DP21 (Development connecting to the highway network) of the London Borough of Camden LDF Development Policies and contrary to policies DM1 (Delivery and monitoring), A1 (Managing the impact of development), T1 (Prioritising walking, cycling and public transport) of Camden Local Plan 2017.
- 6) 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 contrary to policies CS14 (Promoting high quality places and conserving our heritage), CS15 (Protecting and improving our parks and open spaces and encouraging biodiversity) of the London Borough of Camden Local Development Framework Core Strategy and policies DP24 (Securing high quality design) and DP25 (Conserving Camden's heritage) of the London Borough of Camden Local Development Framework Development Policies and contrary to policies D1 (Design), D2 (Heritage), A3 (Biodiversity), DM1 (Delivery and monitoring), A1 (Managing the impact of development) of Camden Local Plan 2017.
- 7) The proposed development, by reason of inadequate level of outlook would result in poor standards of accommodation, contrary to policies CS5 (Managing the impact of growth and development), CS14 (Promoting high quality places and conserving our heritage) of the London Borough of Camden Local Development Framework Core Strategy and policies DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Policies and Mayor of London Housing SPG Schedule of Design Standards (March 2016) and contrary to policies G1 (Delivery and location of growth), A1 (Managing the impact of development) of Camden Local Plan 2017.
- 8) The proposed development, by reason of its cycle storage provision, would result in sub-standard cycling facilities on site, contrary to policies CS11 (Promoting sustainable and efficient travel) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Core Strategy DP16 (The transport implications of development), DP17 (Walking, cycling and public transport) and DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden LDF Development Policies, and contrary to policies A1 (Managing the impact of development), T1 (Prioritising walking, cycling and public transport) of Camden Local Plan 2017.
- 9) 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, contrary to policies CS11 (Promoting sustainable and efficient travel), CS19 (Delivering and monitoring the Core Strategy) and DP18 (Parking standards and limiting the availability of car parking) of the London Borough of Camden Core Strategy and Development Policies 2010 and contrary to policies T1 (Prioritising walking, cycling and public transport), T2 (Parking and car free development), DM1 (Delivery and monitoring) of Camden Local Plan 2017.

1.5 The Council's case is largely set out in the officer's report, a copy of which was sent with the questionnaire (see appendix 1). In addition to this information, I would ask the inspector to take into account the following comments.

## **2.0 Relevant History**

2.1 There are no previous records of planning applications at the application site.

2.2 The previous decisions made at the addresses below show that the Council is consistent in resisting erection of new single-family dwelling houses, which are not compliant with the criteria of the adopted policies and design guidance regarding backland development, subordination and impact to local context and neighbouring amenity. It also shows that the Council will grant planning permission when it is considered that no harm would result from development.

### **Refused**

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 self-contained 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)**

*Reasons for refusal: height, bulk, mass and detailed design and the relationship that it has with the other buildings in the terrace of which it forms a part and would impact on Elsworthy Conservation Area.*

2016/0758/P - 17 Boscastle Road:

Construction of a single storey 1 bedroom dwellinghouse (Class C3) following demolition of garages and a garden store. – **Refused – Appeal Dismissed (07/04/2017)**

*Reasons for refusal: use, size, massing, location and layout detrimental to the conservation area; increase level of associated residential activity; substandard accommodation due to poor outlook; car free legal agreement and CMP.*

2013/8245/P - Site at rear of 194a Fordwych Road London NW2 3NX

Erection of 2 storey house (Class C3). – **Refused – 01/07/2014**

*Reasons for refusal: height, bulk, scale, footprint and detailed design appear incongruous development detrimental to the conservation area; harm to the amenity in terms of loss of sunlight and daylight, and sense of enclosure with harm to outlook; overlooking; car free, sustainability plan and CMP s106 legal agreement*

### **Granted**

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 single-family 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)**

## **3.0 Status of Policies and Guidance**

3.1 The planning permission was refused under the Local Development Framework policies adopted in 2010. However this has subsequently been superseded by the Camden Local Plan adopted July 2017. This new plan raises 2 new issues.

Firstly there is a subsequent new affordable housing policy which planning applications now need to meet. This issue was not originally a reason for refusal, but it would now have to be addressed under the new Local Plan.

Secondly, there are new basement policy requirements that are more restrictive than when reason for refusal for refusal No 2 was drafted for the refusal notice. These matters are addressed for the inspector below under relevant headings.

Before looking at these new policies, the following sets out progress of the new plan adoption. It identifies at what stage the process was at when planning permission was refused.

- The submission draft was approved by Cabinet and Full Council after a period of public consultation from 08/02/2016 to 04/04/2016.
- On 24 June 2016 the Council submitted the Camden Local Plan and supporting documents for public examination.
- In accordance with Section 20 of the Planning & Compulsory Purchase Act 2004, the public hearings for the Examination were held at the Camden Town Hall during October 2016.
- Between 30 January and 13<sup>th</sup> March 2017, the Council consulted on Main Modifications to the Local Plan. These were proposed in light of the inspector's comments during the examination, public representations made about the Plan, and discussions at the public hearings. The Local Plan was at this stage referred to in reports and decisions as a material considerations, however was still given limited weight in decisions until the publication of the Inspector's report into the examination.
- During May 2017, the Council received the Planning Inspector's report who found the Local Plan Submission Draft 'sound', subject to modifications to the Local Plan Submission Draft. At this stage, substantial weight was given to the Local Plan policies.
- The appealed planning application was registered by the Council on 15<sup>th</sup> July 2016 and decision was made on 6<sup>th</sup> December 2016.

3.2 The assessment of the appealed scheme was made in relation to the Council's previous Core Strategy and Development Policies. As shown the above, at the time of the assessment the currently adopted Local Plan was at an early stage in its adoption and therefore it was not referred to in the Officer's Delegated Report or Decision Notice.

3.3 **Affordable housing:** in line, , with the new Camden Local Plan 2017, the proposed development (227.5 sqm) would now fall under the affordable housing policy contribution given by Policy H4 (Maximising the supply of affordable housing) which states that the Council will expect a contribution to affordable housing from all developments that provide one or more additional homes and involve a total addition to residential floorspace of 100sqm GIA or more. This is amplified in paragraphs 4.60 and 4.61. The Council has sought to encourage the appellant to address this in the form of a bilateral s106 agreement, but the appellant refused to do so.

3.4 **Basement excavation**: additional requirements were added in the new Local Plan in relation to basement excavations. Policy, A5, as indicated in paragraph 3.5 below. This is expanded upon under Reason for refusal No2 , beginning in paragraph 4.14

3.5 The following policies from the Camden Local Plan 2017 are relevant to this appeal:

- Policy D1 (Design)
- Policy D2 (Heritage)
- Policy A1 (Managing the impact of development)
- Policy G1 (Delivery and location of growth)
- Policy H1 (Maximising housing supply)
- Policy H4 (Maximising the supply of affordable housing)
  - This policy represents a material change in consideration of the proposal as financial contribution would now be required towards affordable housing.
- Policy H5 (Protecting and improving affordable housing)
- Policy H6 (Housing choice and mix)
- Policy T1 (Prioritising walking, cycling and public transport)
- Policy CC1 (Climate change mitigation)
- Policy CC3 (Water and flooding)
- Policy A5 (Basements)
  - This policy has additional restrictions for basements in relation to the siting, location, scale and design (points f. - u.) and also additional requirements to demonstrate their acceptability
- Policy A4 (Noise and Vibration)
- Policy C6 (Access)

3.6 With regard to supporting documentation in Camden Planning Guidance adopted 2010 and last updated 2015 , the specific clauses most relevant to the proposal are as follows:

- CPG1 (Design) – Sections 2 Design Excellence, 3 Heritage.
- CPG2 (Housing) – Section 4 Residential development standards.
- CPG3 (Sustainability) – Sections 8 Sustainable use of materials, 12 Adapting to climate change.
- CPG4 (Basements and lightwells) – Sections 2 Basements and lightwells, 3 Assessing the impact of basement development, 4 Impacts to neighbours from demolition and construction.
- CPG6 (Amenity) – Sections 4 Noise and vibration, 6 Daylight and sunlight, 7 Overlooking, privacy and outlook, 8 Construction management plans, 11 Open space, outdoor sport and recreation facilities.
- CPG7 (Transport) – Sections 4 Car free and car capped development, 9 Cycling facilities.
- CPG 8 (Planning Obligations) – Sections 6 Affordable Housing and housing in mixed-use development, 10 Transport.

#### **4.0 Comments on the appellant's grounds of appeal**

4.1 The following attempts to summarise the appellant's grounds of appeal under relevant headings set in bullet points and *italics* . This is followed by the Council's comments.

##### **Reason for Refusal 1:**

##### **Scale and external appearance of the proposal**

- *In relation to site and surroundings (para 2.5), the appellant argues that the Conservation area statement in the reference to "integral visual relationship with the complementary, open rural aspect of Primrose Hill is a marked characteristic of the Conservation Area. Any rear extensions or harmful alterations will be strongly discouraged" – it is just in reference to the view up the roadway itself towards Primrose Hill and that there are no views of Primrose Hill from the appeal site across the rear gardens of the houses in Elsworthy Terrace.*

4.2 The Council points out that this is incorrect. The Conservation Area statement clearly refers to the views along the rear gardens as it makes reference to "rear extensions and harmful alterations", and therefore reference is about the relationship between the built environment and the open rural character of Primrose Hill. The aerial view included in Appendix A shows how the rear gardens of the properties along Elsworthy Terrace create a corridor of greenery which expands into the open space of Primrose Hill.

### **Design and appearance in comparison with other sites**

- *The appellant argues that there are a number of similar developments within Camden Council, were similar matters such as form, height, scale, setting and external appearance/materials, have been considered acceptable and they form a precedent for this proposal. The appellant lists and argues on 5 of such examples which will be detailed below.*

4.3 The Council highlights that every application is assessed on its own merits and whilst it is acknowledged that there are examples of similar development within Camden in terms of bulk, mass and scale, the context and setting of the application site and neighbouring ones differ materially and therefore the assessment of a scheme would be based on different considerations.

- *Site at 1b Ellerdale Road, NW3 6BA (2015/7036/P) – The appellant refers to a quote from private conversation with the officers, and argues that the proposed single-storey dwelling house with two storey basement to the rear garden of No. 81 Fitzjohn's Avenue was considered acceptable, even though more harm would have been caused by this proposal than the currently appealed one, in terms of loss of outlook for the neighbouring residents and views towards the rear gardens, compared to views towards Primrose Hill.*

4.3 The Council disagrees. The above example that the appellant puts forward is located within Fitzjohns/Netherhall Conservation Area, where the pattern and local grain would have a different character and appearance than the Elsworthy Conservation Area. At this site, the principle of a new dwelling was deemed acceptable in 2005 under application reference number 2005/1168/P, and followed by several permissions in the following years 2010, 2011, 2014 and 2015. As such, the assessment of the proposed new dwelling under application 2015/7036/P considered the fall-back position of the previous decisions as detailed by officers in the Members Briefing report

4.4 As the currently appealed site is the back garden of No. 1 Elsworthy Terrace with no previous records of planning permission, it is considered unreasonable to compare the considerations included in the assessment of the new dwelling at No. 1b Ellerdale Road and the appealed site.

4.5 In relation to the harm to the outlook of the neighbouring residents, the structure proposed at 1b Ellerdale Road was designed in such manner to protect the amenity of the neighbouring residents. As such it would sit in between the boundary line of No. 1 Ellerdale Road and the rear of Nos. 81 and 83 Fitzjohn's Avenue, with a distance of approximately 15m from the rear window of Nos. 81 and 83 to the boundary of the proposed new unit, and would be dropped down

significantly from the garden level to not obstruct views from No. 1 Ellerdale Road. Therefore, the two cases are materially different as the appealed scheme would sit at the rear of No. 1 Elsworthy Terrace at a distance of 7m (to the side wall of the structure) and would project along the boundary with No. 2 Elsworthy Terrace by 3m in height. .

4.8 In relation to the views towards Primrose Hill, as included in the Officer's Delegated Report, the history of the properties along Elsworthy Terrace and Elsworthy Road indicate a strong relation with the natural and green environment which was aimed to be protected over years. It is therefore considered that the comparison of the rear gardens of the properties along Elsworthy Terrace and Road which lead the path towards the greenery of Primrose Hill, with the rear garden of 2 properties along Fitzjohn's Avenue (Nos. 81 and 83 Fitzjohn's Avenue) it is not considered appropriate.

- *The appellant argues that the Council gives less or no weight to previous similar decisions merely because they were determined pre-NPPF and that the objection in principle to back garden development of this appeal is based mainly if not only on the London Plan, and therefore this is contrary to what the inspector decided in the appeal decision (Appeal ref: APP/X5210/A/12/169260) at 100a Fellows Road (land fronting King's College Road) (2010/3972/P)*

4.6 This is incorrect. Planning policies, guidance and national legislative framework are continuously updated, in order to respond to the current challenges and needs of the ever-changing economic, social and environmental factors that the borough deals with as a whole. NPPF is a National Policy and it is a material consideration in the assessment of development and in making a planning decision. The fact that the examples given by the applicant were determined before NPPF it is another consideration besides several others as detailed in the current statement.

4.7 The principle of back garden development it is discussed in the London Plan and this is highlighted in the Officer's Delegated Report. In this instance the principle it is also contrary to the Camden Local Plan 2017 adopted policies D1 and D2 and CPG1 for the reasons stated in the Officer's Delegated Report. To reiterate, the Council raised an in principle objection to a residential development at the appeal site as it would not preserve or enhance the surrounding character and appearance of wider Elsworthy Conservation Area, but it would have a harmful impact on the relationship between the built environment and open character of Primrose Hill.

4.8 The quote taken by the appellant and included in the Appeal statement regarding No. 100a Fellows Road is isolated from the main discussion of the Hearing and the context of the determination of this proposal, which makes it difficult to follow and relate to the current appeal. However, despite the discussion in the appeal at No. 100a Fellows Road, the Council has raised in the Officer's Delegated Report (Land Use) of this appeal the link between the adopted policies and London Plan.

4.9 Furthermore, in this instance, there is no ambiguity between the assessment of the proposed scheme in terms of design, appearance and impact on heritage, in line with policies D1 and D2 of the Camden Local Plan 2017 which correspond to policies DP24 and DP25 Camden Development Management Policies and Core Strategy 2010, NPPF 2012 or London Local Plan 2016. Policies D1 and D2 continue to stress the importance of high quality design in any proposed development, which retains the distinctive characteristics of conservation areas and respects the setting, form and context of the neighbouring buildings and pattern.

- *Site at No. 53 Eton Avenue (2012/5729/P) – the appellant argues that this proposal is very visible from the street in comparison with the appealed case which is set back significantly and sits behind the tree cover, Furthermore it is argued that in this case the officers agreed*



*that there is little material difference between the Local Plan policies pre-NPPF and post-NPPF, and therefore the current proposal should be acceptable as well.*

4.10 The site at No. 53 Eton Avenue lies within Belsize Park Conservation Area, where the pattern and typology of development is significantly different than Elsworthy Conservation Area. Furthermore, the Members Briefing report for the planning application at No. 53 Eton Avenue included by the appellant in Appendix 6, presents an extended planning history of the site and shows that the principle of a residential dwelling was considered acceptable in 2010, under application reference number 2009/5483/P. As such, as in the case of the site at 1b Ellerdale Road, the principle of a dwelling on the site was previously established so the assessment of the proposed dwelling under application 2012/5729/P considered the fall-back position of previous permissions; which is not the case for the appealed proposal. Regardless of the differences between the policies pre-NPPF and post-NPPF, the planning history at the appealed site does not have an in principle agreement of a dwelling.

- *Site at No. 41 Ferncroft Avenue (2012/2736/P) – argues that notwithstanding the presence of an existing garage on site, the proposal for a new dwelling was acceptable and therefore the appealed proposal should be acceptable as well.*

4.11 The Council disagrees. The application site at No. 41 Ferncroft Avenue lies within Redington Froggnal Conservation Area. The officer's delegated report included by the appellant in Appendix 7, details the assessment of this proposal and the judgement for its acceptability. At No. 41 Ferncroft Avenue the site was occupied by garages which were demolished as part of this proposal. As such, the land use of domestic premises in form of garages at this application site is materially different than the back garden of No. 1 Elsworthy Terrace, and therefore a comparison between the two would not be sustained.

- *Site to the rear of No. 15 Elsworthy Terrace (2011/1828/P) – the appellant argues the appealed scheme it is similar in terms of bulk and scale, design and appearance with the one approved at the No. 15 and therefore the appealed scheme should be acceptable as well, regardless of the existing garages at No. 15 Elsworthy Terrace.*

4.12 This example is similar with No. 14 Ferncroft Avenue and the Council sustains its opinion. The development at the rear of No. 15 was determined by the Development Control Committee and the it is discussed in the Officer's Committee Report the assessment of the principle of the demolition of the garages and the proposed use, which is considered materially different than the principle of developing the back garden of No. 1 Elsworthy Terrace. The garages at No. 15 were referred to in the Conservation Area Statement as detracting from Elsworthy Conservation Area, and therefore their replacement was desirable.

4.13 In addition, the Elsworthy Conservation Area Statement highlights that "new development should reflect and reinforce the original rhythm and density of development of the streetscape. Subdivision of existing plots will be discouraged where it interrupts the rhythm and form of development of both buildings and boundary treatments" (para 12.4). As such, the appealed proposal would interrupt and existing rhythm and pattern of development being developed in the back garden of a property, whilst the development granted at No. 15 was replacing existing domestic buildings which were identified by the Conservation Area Statement as sites suggested for redevelopment.

## **Reason for Refusal 2**

### **Land stability, floor risk and impact on the proposed basement**

4.14 The proposed basement excavation was determined in line with policy DP27, now superseded. Policy A5 includes additional criteria and these are more restrictive, of which the relevant ones are:

- f. not comprise of more than one storey;
- h. not exceed 50% of each garden within the property;
- l. be set back from neighbouring property boundaries where it extends beyond the footprint of the host building;
- m. avoid the loss of garden space or trees of townscape or amenity value.

4.15 The appealed basement excavation it is found to be contrary to the above as:

- it would comprise more than one storey
- it would extend on more than 50% of the garden (plot are 194sqm, proposed basement 100sqm),
- it would not be set back from neighbouring property boundaries (No. 1 Elsworthy Terrace) were it extends beyond the footprint of the ground floor element.
- would result in loss of a garden space and trees (See Reason for refusal 6 paragraphs: 4.23 to 4.26)

4.16 Furthermore, new policy A5 states that the “Council will not permit basement schemes which include habitable rooms and other sensitive uses in areas prone of flooding”. The proposal includes habitable rooms (bedrooms) at the basement level, and as detailed below the appellant did not demonstrate the acceptability of the basement in terms of flooding.

- *The appellant argues that sufficient information has been provided to the Council to demonstrate the acceptability of the basement extension, in response to the Campbell Reith’s Audit Tracker.*

4.17 The Council disagrees. In order to provide greater certainty over the potential impact of basement excavations, the Council has appointed an independent technical audit of Basement Impact Assessments (BIA), Campbell Reith, at the applicant’s expense. Policy A5 of Camden Local Plan 2017, highlights that the Council will requires independent verification of BIA funded by the applicant where:

- A scheme requires applicants to proceed beyond the screening stage of Basement Impact Assessment
- Where the proposed basement development is located within an area of concern regarding slope, stability, surface water or groundwater flow
- Where there is conflicting evidence
- For any other basement applications where the Council feels that independent verification would be appropriate.

4.18 The appellant has firstly submitted the scheme accompanied by a BIA which indicated (para. 4.1 Potential Impacts) that the screening process revealed that several high risk impacts would be caused to the land stability, damage to the road, pathway and underground services and structural damage to the neighbouring properties. In line with Policy A5, the officer considered that the proposed scheme has to be verified independently by Campbell Reith. As such, the BIA submitted including BIA form (Appendix B) were submitted to Campbell Reith. Subsequently, Campbell Reith quoted the scheme under Category A (£997.50) and indicated if the audit finds significant impact that require assessment, the officers will be notified of any additional fees). The appellant agreed to the fees and the audit started. The audit revealed that BIA was not undertaken by a qualified engineer, as policy A5 and CPG 4 require, and also there are several impacts from the basement proposal such as land stability, hydrogeology, hydrology, which

require further consideration; which would trigger the Category B basement, subject to an additional fee (£2047.50) The appellant was informed as such on 22/08/2016.

4.19 The appellant's agent confirmed on 01/09/2016 to proceed with further audit investigation, however no additional documents were provided to support the audit assessment. Confirmation was received from the appellant's agent that additional information would be provided by 30/09/2016, however additional information was received from the appellant and the appellant's agent in numerous subsequent emails starting with 13/10/2016 up to 24/10/2016.

4.20 As such, despite the preparation of additional information in light of Campbell Reith Query Tracker, the appellant refused on 09/11/2016 to pay the additional fees required to finalise the audit. Subsequently, the additional information provided was not included within the approved documents as part of the Refused decision, as it has not been assessed by the technical third-party audit Campbell Reith. Therefore, the information received and agreed to be assessed by the audit failed to demonstrate the effect of proposed basement extension on the drainage, run-off water, existing protected trees, adjoining sites or other damage to the water environment and cumulative impacts upon the structural stability and/or water environment in the local area and built environment.

4.21 It is highlighted that Appendix 9 indicated by the appellant does not constitute the original Audit Query Tracker, and the comments section was included by the appellant.

- *The appellant argues that the council is inconsistent in its approach in relation to the BIA audit assessment. It is claimed that certain aspects of the BIA should be dealt with by means of condition. For example, as in the case of the Royal Free Hospital on Pond Street application ref number: 2014/6845/P the hydrological details concerning drainage were required by conditions or part of s106 legal agreement. Or in another example at No. 24 Redington Gardens (2016/1015/P) where the Basement Construction Plan was secured via the Section 106 Legal Agreement., whilst ignoring floor risk issues.*

4.22 The Council's approach in relation to the assessing the impact of basement excavations in Camden as part of an independent audit was fully formalised when CPG4 (Basements and lightwells) was issued on July 2015. The application at Royal Free Hospital on Pond Street was determined at the Development Control Committee on the 19/02/2015. Additional reviews and amendments of the proposal took place as part of the threat of Judicial Review. The Supplementary Agenda Report dated 06/08/2015 concludes that the officers have considered the emergence of CPG4 guidance relating to basements and that that the scheme continues to comply with the revised CGP4 and the BIA does not need to be reassessed or independently reviewed again by external consultants.

4.23 Campbell Reith audit assessed the BIA for proposed basement excavation at No. 24 Redington Gardens and concluded based on the information provided and assessed that the risk is accepted as being low. In CPG4, pg. 22, details that in some circumstances the Council may require a basement construction plans to be secured via s106 agreement, if the proposed development involves excavation or construction that if improperly undertaken could cause damage to neighbouring properties. The technical details included in the Campbell Reith audit for No. 24 Redington Gardens, indicate that the Ground Movement Assessment was considered acceptable as far as planning purpose are concerned (para 4.15) and that movement monitoring requirements would be dealt with under a Basement Construction Plan prior to construction commencement.

4.24 The fact that in that in the circumstances the risk of flooding was considered as being low, based on the information provided by the applicant, does not change the fact in the current

situation the appellant refused to continue the BIA audit and receive confirmation in relation to the additional information provided.

4.25 The Council therefore disagrees with the appellant and stresses that the additional information provided by the appellant in relation to the BIA did not provide sufficient certainty that the proposed excavation would not cause significant harm to neighbouring properties, ground water and surrounding environment, which is contrary to Policies A1 and A5 of Camden Local Plan 2017.

### **Reason for Refusal 3**

#### **Impact on the neighbouring amenity**

- *The appellant argues that the proposed dwelling would not cause harm to the amenity of the neighbouring property at No. 1 Elsworthy Terrace. The existing views from No. 1 are towards a much taller building than the proposed structure, which is not imposing, with a softened visual impact given by the variety of materials used and low planting.*

4.26 The Council disagrees. The siting of the appealed development appears as an encroachment of the existing garden space, which impacts directly the amenity of the occupants at No. 1 Elsworthy Terrace. Currently the residents of No. 1 Elsworthy Terrace have a clear view of 23.4m towards the neighbouring property at No. 23 Elsworthy Road, surrounded by trees and vegetation. This compares to a 6.2m distance to the boundary wall proposed and 7m distance to the proposed building side wall. It is therefore considered that the proposed structure due to its bulk, mass and scale would harm the existing level of outlook to the neighbouring property at No. 1 Elsworthy Terrace.

- *The appellant argues that the amenity of the residents at No. 2 Elsworthy Terrace would not be impacted by the proposed scheme due to the distance and angle from the habitable rooms at No. 2 Elsworthy Terrace to the proposed scheme, the set back of the highest part of the roof by 4m, low height of the proposal projecting with less than 0.5 above the existing timber fence, and proposed materials (living green roof).*

4.27 It came to the Council's attention, raised by third parties, that the drawings submitted by the appellant at the application stage do not show the exact situation on site in relation to the boundary fence between No. 2 Elsworthy Terrace and the garden at No. 1 Elsworthy Terrace, and the proposal projection. The situation remains unclear and it raises concerns in relation to the accuracy of the drawings submitted.

4.28 In relation to the impact of the appealed scheme on the amenity of the residents at No. 2 Elsworthy Terrace, the Council disagrees with the appellant. The proposed development due to its long extension of 13.6m along the shared boundary wall and the mass of built structures added to the height projecting above the existing fence and trellis would materially affect the current views from the windows and balcony at ground floor level of No. 2, to a significant degree of harm. Furthermore, it is highlighted that the trellis in itself allows light and views through it, which is materially different than a concrete wall as the appealed scheme proposes.

4.29 CPG6 stresses that development should be designed "to ensure the proximity, size or cumulative effect of any structures do not have an overbearing and/or dominating effect that is detrimental to the enjoyment of their properties by adjoining residential occupiers". Whilst it is acknowledged that the living green roof proposed on the side facing No. 2 Elsworthy Terrace and on the top of the property, would contribute to a nicer view, this is not considered to overcome the

cumulative impact caused by the actual proposed structure compared to the current situation. It is therefore sustained that the proposed dwelling would appear as an overbearing and dominating structure to the detriment of the amenity of the residents No. 2 Elsworthy Terrace.

## **Reason for Refusal 6**

### **Impact on trees**

- *The appellant argues that sufficient information and evidence has been provided to the Council to demonstrate that the existing three TPOs on site would not be affected by the basement excavation and construction works.*

4.30 The Council disagrees. The shape and location of the root protection areas detailed in the arboricultural report submitted with the application are not an accurate reflection of where the rooting activity of T3, T4 and T5 is likely to be. The application site is far more likely to be hospitable to root growth than the area encroachment than the tree constraints plans would suggest. The plan is annotated with the phrase “few roots likely to be under the highway” but does not reflect this visually.

4.31 Trial pits along the proposed line of excavation nearest T3, T4 and T5 would be a simple, cost effective and instantaneous way for the appellant to demonstrate that the T3, T4 and T5 will not be adversely affected by the scheme. The appellant had the opportunity to carry out trial pit investigation prior to the refusal of the application but elected not to. It is noted that one trial pit was undertaken by the appellant along the boundary with No. 2 Elsworthy Terrace, as shown on the Tree survey and constraints plan 15/045 Rev a, as the appellant refers to in para. 6.3; however, this is outside the root protection areas of T3, T4, T5.

4.32 In addition, BS5837:2012 – “Trees in relation to design, demolition and construction – Recommendations” states in section 4.6.2 that “Where *pre-existing site conditions or other factors indicate that rooting has occurred asymmetrically, a polygon of equivalent area should be produced. Modifications to the shape of the RPA should reflect a soundly based arboricultural assessment of likely root distribution*”. The tree constraints plan does not reflect the above statement and therefore the Council sustains the impact on the existing TPOs as a reason for refusal.

## **Reason for Refusal 7**

### **Poor standards of accommodation proposed**

- *The appellant argues that the quality of accommodation proposed by this scheme is acceptable, and compares it with the approved scheme at No. 41 Ferncroft Avenue and No. 15 Elsworthy Terrace.*

4.33 The Council disagrees. Policy D1 seeks to secure high quality design in all development and policy A1 seeks to protect the quality of life of occupiers. The proposed scheme includes a bedroom at the lowest floor of the basement, which would open into the lighthwell and have an obstruction of 15m high into the ground, with an opening angle of outlook above 50degrees. It is therefore considered that the level of outlook proposed by this development would result in poor standard of accommodation, contrary to policies A1 and D1 of Camden Local Plan 2017.

4.34 In addition, it is noted that no details have been provided within the Daylight and Sunlight assessment submitted by the applicant in relation to the vertical sky component (VSC) as seen from the proposed bedroom windows at the basement levels.

4.35 In relation to the development granted consent at No. 15 Elsworthy Terrace and No. 41 Ferncroft Avenue, the officers considered that sufficient information was provided for the assessment of those proposals, to demonstrate that the proposed habitable rooms would be able to achieve an adequate level of outlook.

## **Reason for Refusal 8**

### **Cycle storage provision**

- *The appellant argues the proposed cycle storage would replace the existing timber shed, would provide space for two bicycles to be locked together, would receive natural surveillance from the windows at the ground floor level, and further security can be provided by way of conditions.*

4.36 The Council disagrees. In relation to the design of the cycle parking, CPG7 details that “there must be at least 750mm between the stand and the physical obstruction to enable both sides of the stand to be used.” The distance from the stand to the shed walls measure 0.6 and 0.5m which is contrary to CPG7 and Policy T1, with specific regard to point h.

4.37 As included in the officer’s report, CPG7 states that “Parking for residents should be within the building. Parking for residents may take the form of a space within an individual dwelling provided that the space is close to the door of the dwelling, and access to the dwelling is level, or by a ramp or lift that can accommodate a bike”. Considering the type of development, and internal layout of the property proposed, it cannot be argued that due to the site constraints, the cycling facilities cannot be accommodated within the proposed building. The appellant does not give enough justification of why the cycle store was not proposed within the building.

4.38 The appellant makes reference to the approval granted at No. 15 Elsworthy Terrace where the two bicycles provided were located outside the building. The approved plans for No. 15 Elsworthy Terrace, application ref no 2011/1828/P, show the design of the stands in accordance with CPG7, covered and located adjacent to the building wall on the eastern side. It is noted that additional details of the cycling storage area was required by means of condition in the permission granted at No. 15 Elsworthy Terrace.

## **Reasons for refusals 4,5 and 9**

### **Section 106 legal agreement in regards to contribution towards public highway, construction management plan, car-free**

#### **Comment on the Appellant’s Unilateral Undertaking**

4.39 The Council has approached the Appellant to see if they would be willing to enter into a S106 agreement **or** if they wanted to receive formal comments as to the acceptability of the submitted Unilateral Undertaking (UU).

4.40 In his email dated the 25<sup>th</sup> September 2017, the Appellant’s agent refused to offer a cost undertaking to cover the Council’s legal fees, whilst the Council had hoped that the Appellant would change their position, this has not been the case. This is in spite of the Appellant requesting formal comments on their UU in the same email.

4.41 The Council is entitled to charge an Appellant for reviewing and amending the legal obligations that are being offered by the Appellant. This is a discretionary service and the

Council can legitimately charge for such a service in accordance with Section 93 of the Local Government Act 2003.

4.42 The Council has a policy which set out the charges for securing S106 obligations to which it much adhere to, and any deviation from Council policy, legislation sets a dangerous precedent for other local authorities across the country.

4.43 It is the Council's opinion that without payment of the Council's legal fees (payment of which the Unilateral Undertaking does not account for) that these S106 obligations have not been secured in accordance with paragraphs 2.30 to 2.32 of the Camden Planning Guidance 8 (July 2015) relating to Planning Obligations, stated below:

*Legal and preparation charges*

*2.30 To facilitate preparation of consistent agreements standard legal templates can be made available to give an indication of the likely format of an agreement, but the final drafting will be carried out by Camden Legal Services and a charge will be levied. Legal and Preparation Charges are contained in a schedule of fees agreed by the Council's Cabinet on an annual basis and available on the Council's website or from Camden Legal Services upon request. All Legal and Preparation Charges will be payable prior to or at the time that a Section 106 agreement is completed.*

*Processing and monitoring charges*

*2.31 The processing, monitoring and implementation of planning obligations before and after completion of the Agreement requires the input of significant Council resources. This relates to a range of activities which arise directly from the grant of planning permission for development and are necessary to ensure that details of measures required to mitigate the development impacts are submitted and approved, and the measures are properly carried out.*

*2.32 Costs associated with this work are distinct from any costs associated with processing a planning application and legal fees for preparation of the Agreement, and in many cases will be ongoing after a development has been implemented and would not have arisen were it not for the specific planning impacts of the development and related obligations. Hence it is appropriate that Processing and Monitoring charges relating to such obligations are borne by the developer.*

4.44 We reiterate that the Council would seek to secure planning obligations by a S106 agreement executed by the parties in accordance with Council policy (CPG8, as it shows consensus having been reached between the parties).

4.45 This approach offers certainty between the parties as to the terms of the legal agreement, which has been entered into by the parties on a without prejudice basis if the Inspector was minded to grant planning permission; the Council's belief is that this in turn assists the Inspector with his/her decision-making.

4.46 Therefore, it is unclear to the Council as to why the Appellant does not want to secure these planning obligations in a manner, which does not lead to any confusion for the parties or the Inspector.

The Council wishes to assist the Inspector and to this end has offered the following comments to highlight that at present the Appellant's UU is not in an acceptable form.

### **General comments**

4.47 The Council is concerned that the Appellant has copied the clauses from a S106 agreement at an adjoining site to the Property, which was historically was granted planning permission in 2011:

- This means that the clauses and obligations in the UU are at the very least 6 years out of date and do not account for revision to Council policy, updates to legislation and new case law that have resulted in the Council's standard planning obligations being amended numerous times in the intervening six years. The Council is concerned that the obligations that have been offered in the UU do not reflect current policy and law and this would not result in the planning obligations being offered to the Council being secured in a lawful manner. Therefore it should be clear that the Secretary of State's Inspector is not in a position to grant planning permission on the basis of the UU, should they be inclined to do so.

- Additionally, the Council is concerned that the planning obligations offered in the UU having been copied word for word from another S106 agreement and that it does not directly relate to the proposed Development in question.

- The appellant has offered a planning obligation securing a sustainability plan; however, this does not form part of the current s106 agreement, and this reiterates the comments that the UU has been copied from another s016 agreement.

- The Council is concerned that the Appellant has not approached the Council in advance and sought to verify the acceptability of the UU's planning obligations. The UU was only recently sent by PINS to the Council following a specific request for it.

- It should be clear from the comments set out below about the obligations that there is a need to update the terms and obligations in the UU;

- It is unclear why the Appellant has proceeded by way of a unilateral undertaking without prior notice of it to the Council; the correct approach is stated in PINS' appeal guidance at para N.7.5:

*The Planning Inspectorate Procedural Guide for Appeals dated 5<sup>th</sup> of August 2016, states that "Great care should be taken in preparation, before executing a unilateral undertaking, so as to avoid any need to modify it subsequently. However, sometimes during the course of an appeal it becomes clear that changes are required to an executed unilateral undertaking to ensure that it will deliver what is intended. The strong preference is for this to be done by an agreement with the local planning authority as that can provide for the original unilateral undertaking to be superseded. If an application is made the original unilateral undertaking will remain in force (as it cannot be "withdrawn" or "superseded" other than by agreement with the local planning authority), but it will be for the local planning authority to secure enforcement of the preferred version."*

4.48 The UU that has been offered by the Appellant is not in a form that the Inspector should accept for consideration, but the Council is concerned that they do adequately overcome the Council's planning objections.



4.49 Finally, the Council reiterates that the UU is considered deficient because it remains in draft form, is incomplete and does not lawfully secure the necessary planning obligations to the benefit of the Council.

4.50 In addition the Councils notes that clauses 5.2, 5.6 and 5.7 of the submitted UU contains provisions which would require the Council's monitoring officer to respond to requests made by the Appellant so as to ensure that compliance with the S106 obligations were being undertaken. These on-going monitoring duties are over and above standard development management function duties and would be covered through the payment of the monitoring fees. Similarly at clause 6.3, the costs of registering the UU at the Council's land charges by the Council's legal department and have been incorporated into its required legal fees.

4.51 The following set out the council's justification for the S106 requirements. To assist the inspector, a new Head of Term regarding a contribution to affordable housing is also added for consideration.

### **S106 Highways contribution**

4.52 The Local Plan states that works affecting Highways are expected to repair any construction damage to transport infrastructure or landscaping and reinstate all affected transport network links and road and footway surfaces following development. The Council will undertake highway works connected to a development proposal at the developer's expense in accordance with paragraph 6.11 of the Local Plan. An estimate for this work was prepared by the Borough Engineer

4.53 The Council maintains that a payment for highways work should be secured through a Section 106 legal agreement, which would also combine as an agreement under Section 278 of the Highways Act 1980. CPG8 – Planning Obligations states that public highways works on Borough Roads are to be undertaken through a Section 106 or 278 obligation. The guidance also states that the Council will secure payment for required works by preparing an estimate (including fees) for the scheme that the developer will be required to pay before commencing development (paragraph 5.14). The most effective way of both securing sufficient payment and ensuring the works are carried out to the Council's procedures and standards is for a financial contribution to be paid by the developer on commencement of the development and secured by an obligation under Section 106 legal agreement. It is not possible to secure a financial contribution for highway works by condition as it relates to land outside the application site and is not under the control of the applicant.

4.54 It is necessary in planning terms as identified in the Local Plan to mitigate against the increased impact that will be generated by the development. The contribution will be calculated taking into account the particular characteristics of the development, it is directly related to the development and is fairly and reasonably related in scale and kind to the development. It is also directly related to the development and fairly and reasonably related in scale and kind as it will provide for the new residents and mitigate impacts of the development.

4.55 The proposal is considered likely by highways officers to lead to significant levels of damage to the public highway directly adjacent to the site on Elsworthy Road. The Council would need to repair any such damage at the expense of the appellant. For the avoidance of doubt, the highway works would be undertaken by the Council's highways contractor following substantial completion of the development.

4.56 The cost to repave the footway directly adjacent to the site on Elsworthy Road has been re-calculated at £10,060.97 see Appendix B. The highway works would be implemented by the Council via a section 278 agreement. It should be noted that the appellant would be eligible for a rebate if the Council subsequently deem highway remedial works to be unnecessary following substantial completion of the development.

4.57 Finally, the draft UU provided by the applicant indicates that there is a significant shortfall in the Highways contribution calculated by the Council; justification for this has not been offered.

### **S106 construction management plan**

4.58 Policy T4, which seeks to promote the sustainable movement of goods and materials and to minimise the movement of goods and materials by road, refers to the need for Construction Management Plans (CMPs) in certain cases (albeit it is generally referring to larger schemes than this). Policy A1 also refers to the need for CMPs.

4.59 The sub-text to Policy A1 notes that disturbance from development can occur during the construction phase and measures to reduce the impact of demolition, excavation and construction works must be outlined in a CMP. A list of reasons why a CMP may be required is provided and it includes developments with poor or limited access on site; developments that are accessed via narrow residential streets; developments in areas with a high number of existing active construction sites; and, developments that could cause significant disturbance due to their location.

4.60 The site is located on a narrow street (Elsworthy Road) corner with a dead end residential street with residents parking on both sides, and there is also currently no vehicular access to the site. Access to the site is restricted by these factors and servicing during construction will be difficult. There is also a primary school in the vicinity of the site (St Paul's Primary School), and Elsworthy Road and Elsworthy Terrace are well used by pedestrians and cyclists to access Primrose Hill from the north. Due to the scope of the potential works, which include substantial excavation works, and the factors outlined above, the council would require a Construction Management Plan to be secured via a legal agreement, bringing the application in accordance with Policy A1 of the Local Plan.

4.61 Whilst it is recognised that CPG6 notes that CMPs can sometimes be secured by condition, the sub-text to Policy A1 of the new Local Plan (which is a later document) notes that CMPs will usually be secured via planning obligations between the developer and the Council after an application is approved. This is because the details that the appellant proposes to cover in their CMP include measures that affect land outside of the red line site boundary (such as road closures and arrangements for deliveries) which could not be covered by condition. Furthermore, securing the CMP through a legal agreement would allow it to be a live document that could be continuously updated as required, which is more suited to its requirements. The CMP implementation support contribution to be secured via s106 is of £1,140.

4.62 The UU provided by the application does not secure the necessary contribution that is required by Camden policies and guidance, and therefore the obligation in relation to Construction Management Plan needs updating.

### **S106 agreement for Car-free development**

4.63 Development Policy DP18 seeks to secure developments as car free in areas that are easily accessible by public transport. The site is within 300m of the nearest bus top and the bus routes on Adelaide Road, giving access to Chalk Farm and Swiss Cottage underground stations, and is therefore considered to be easily accessible by public Transport.

4.64 The councils car free policy requirement is also detailed in Policy T2 (Parking and car free development) of our Local Plan which was adopted on 3rd July 2017. Policy T2 differs from DP18 in that it requires all new developments in the borough to be car free, regardless of ease of accessibility to public transport.

4.65 The councils car free policy is not merely aimed at reducing parking stress and traffic congestion. It plays a fundamental part in our efforts to address air quality problems in the borough by encouraging a reduced reliance on motor vehicles. It also plays an important part in our efforts to encourage active and healthy lifestyles by encouraging and promoting trips by sustainable modes of transport. This includes walking and cycling, in addition to public transport. Walking and cycling helps to improve the health and wellbeing of people who live and/or work in and/or visit the borough. The application would need to be secured as a car free development by a legal agreement, in order to be in accordance with T2 of the Local Plan.

4.66 The obligation and agreement provided by the appellant has not been updated following the Court of Appeal decision in R (Khodari) v. RB Kensington and Chelsea [2017] EWCA Civ 333.

### **S106 agreement for affordable housing contribution**

4.60 Local Plan policy H4 requires a contribution to affordable housing from all developments providing one or more additional residential units with an increase in floorspace of 100m<sup>2</sup> (GIA) or more. The sliding scale target, starting at 2% for one home and increasing by 2% for each home added to capacity, is applied to the additional floorspace proposed. The affordable percentage is calculated on the basis that 100m<sup>2</sup> (GIA) is sufficient 'capacity' for a single home. Schemes providing between 1-9 units are expected to make a payment in lieu (PIL) of affordable housing, subject to viability. The proposed GIA of the development is 227.5m<sup>2</sup>, with the GEA being 277.3m<sup>2</sup>. On this basis a PIL of £29388.5 would be required and secured via a Section 106 legal agreement. The calculation for the PIL is below:

- Based on a GIA of 227.5m<sup>2</sup> the percentage target would be 4%
- The existing PIL figure is £2,650 per m<sup>2</sup>, based on GEA
- The proposed increase of floorspace in GEA is 277.3m<sup>2</sup>
- GEA floorspace target is 4% x 277.3m<sup>2</sup> = 11.09m<sup>2</sup>
- Financial contribution calculated as 22.02m<sup>2</sup> x £2,650 per m<sup>2</sup> = £29388.5

4.61 The Council would request that an affordable housing contribution is secured for the reasons set out in section 3.0 of this statement. The Council has sought to encourage the Appellant to address these deficiencies in the form of a bilateral s106 agreement, but they have refused to do so.

## **5 Conclusions**

5.12 Based on the information set out above, and having taken account of all the additional evidence and arguments made, the Council sustains its view that the proposed residential unit in the back garden of No. 1 Elsworth Terrace is unacceptable in principle.

5.13 The appellant tried to justify the acceptability of the appealed scheme through previous development considered similar that was granted permission, however the Council highlights that every scheme is assessed on its own merits, and the cases presented by the appellant differ from the outset and their acceptability is not considered a precedent in this instance.

5.14 The appellant claims that the proposed scheme would sit behind the existing trees (TPOs), located at the front of the site, however insufficient information was provided by the appellant to demonstrate that the trees would be able to be retained by the proposed development.

5.15 The height, bulk, scale, footprint and detailed design of the proposed structure 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.

5.16 In relation to basement excavation, the appellant refused to finalise the audit in relation to the additional information required by Campbell Reith in the intermediate audit, and therefore failed to demonstrate its acceptability, contrary to Camden Local Plan 2017 policy A5 and A1.

5.17 The appellant failed to demonstrate that the appealed scheme would still allow sufficient level of outlook to be received by the neighbouring residents at No. 1 and 2 Elsworthy Terrace.

5.18 The appellant failed to enter into a S106 agreement with the Council. In addition, following adoption of subsequent updated policies, a contribution would now be required towards affordable housing.

5.19 The information submitted by the appellant in support of this appeal does not overcome or address the Council's concerns. For these reasons, the proposal fails to meet the requirements of policy and therefore the Inspector is respectfully requested to dismiss the appeal.

**6.0 Conditions:** should the inspector be minded to allow the appeal.

6.1 If the inspector were mindful to overrule the Council's determination, it is requested that the following conditions are applied in order to limit visual impact in terms of design and conservation:

1. 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 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.

Reason: To safeguard the appearance and structural stability of neighbouring buildings and the character of the immediate area in accordance with the requirements of policies A1 (Managing the impact of development), A5 (Basements) of Camden Local Plan 2017.

2. Prior to the commencement of any works on site, details demonstrating how trees to be retained shall be protected during construction work shall be submitted to and approved by the Council in writing. Such details shall follow guidelines and standards set out in BS5837:2012 "Trees in Relation to Construction". 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 in accordance with the approved protection details.

Reason: To ensure that the development will not have an adverse effect on existing trees and in order to maintain the character and amenity of the area in accordance with the requirements of policy A3 (Biodiversity) of Camden Local Plan 2017.

3. Prior to the commencement of any works on site, a detailed plan of the hard and soft landscaping should be submitted to and approved by the Council in writing. The relevant part of the works shall be carried out in accordance with the details thus approved and retained thereafter.

Reason: To ensure that the development will not have an adverse effect on the existing garden area and in order to maintain the character and amenity of the area in accordance with the requirements of policy D1 (Design), D2 (Heritage), A3 (Biodiversity) of Camden Local Plan 2017.

4. Prior the commencement of any works on site manufacturer's specification details and samples of all facing materials proposed, shall be submitted to and approved in writing by the Council. The relevant part of the work shall be carried out in accordance with the details thus approved.

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policies D1 and D2 of Camden Local Plan 2017.

5. Prior the commencement of the relevant part of the work, detailed drawings (scale 1:50, 1:20) should be provided in relation to the cycle storage provision. The relevant part of the works shall be carried out in accordance with the details thus approved and retained thereafter.

Reason: To ensure the development provides adequate cycle parking facilities in accordance with the requirements of policy T1 (Prioritising walking, cycling and public transport) of Camden Local plan 2017.

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

Reason: To ensure that the green roof is suitably designed and maintained in accordance with the requirements of policies CC1 (Climate change mitigation), CC3 (Water and flooding), D1 (Design) and CC4 (Air quality) of Camden Local Plan 2017.

7. The green roof areas shall not be used as a roof terrace and shall only be accessed for maintenance purposes.

Reason: In order to prevent unreasonable overlooking of neighbouring premises in accordance with the requirements of policies A1 (Managing the impact of development) of Camden Local Plan 2017.

**7.0 S106 Legal Agreement:** should the inspector be minded to allow the appeal

7.1 Similarly to the above, if the inspector were mindful to overrule the Council's determination, it would be requested that a section 106 legal agreement is secured including the following heads of terms:

- Car free development
- Construction management plan
- Highways Contribution
- Affordable housing PIL

If any further clarification or submissions are required, please do not hesitate to contact Nora-Andreea Constantinescu by the direct dial telephone number or email address quoted in this letter.

Yours faithfully,

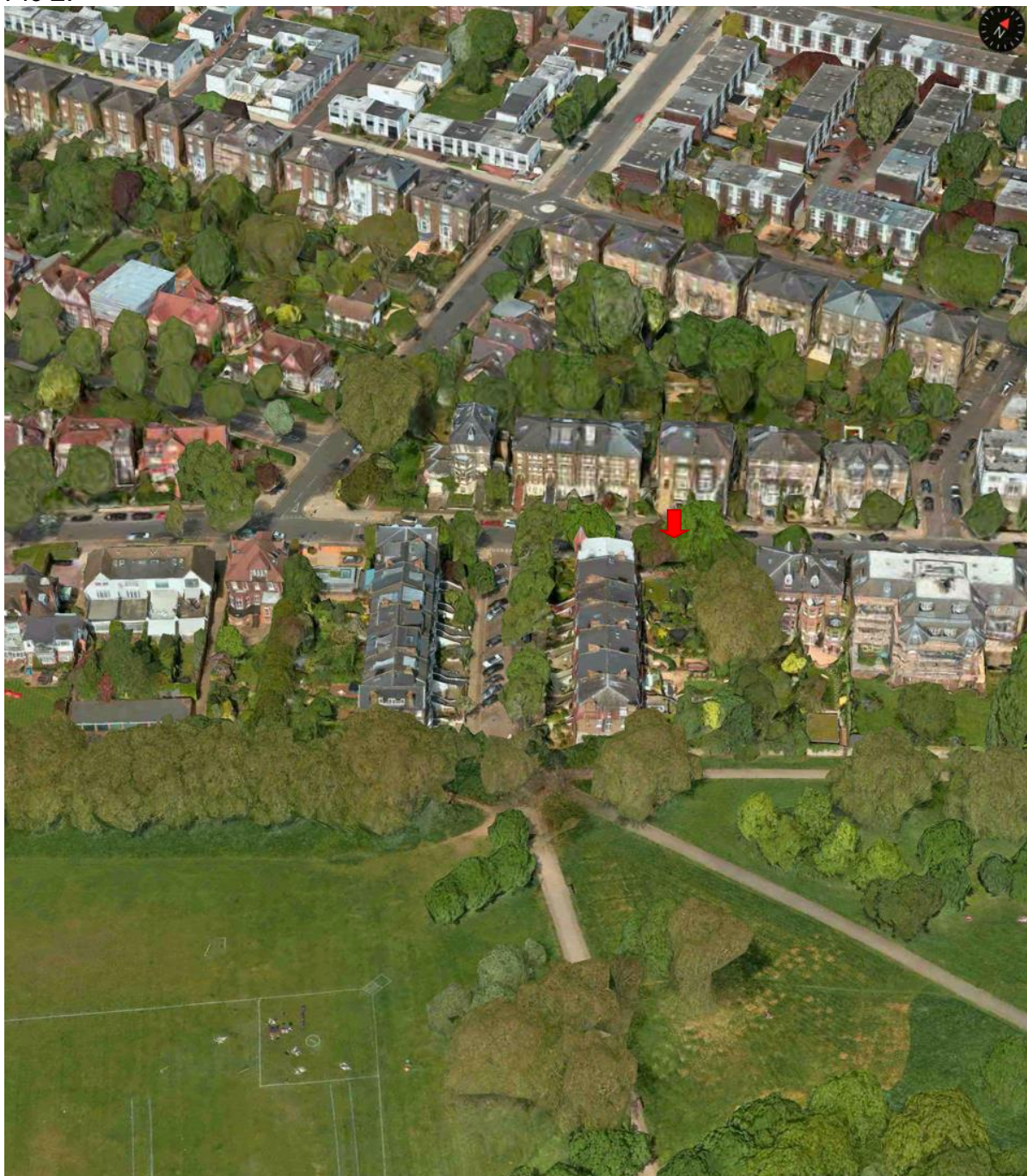
**Nora-Andreea Constantinescu**  
Planning Officer  
Supporting Communities Directorate

Appendix A:

Pic. 1



Pic 2.



Appendix B:

These are the item nos used to determine the cost of New 300x200 granite flat kerbs with 25% officer fees and 15% contingency.

| ITEM     | DESCRIPTION   | QUANTITY | UNIT |
|----------|---|----------|------|
| 200.018  | Take up or down and remove to tip off site granite flat, edge or standard profile bus boarder kerb    | 1.00     | m2   |
| 1100.001 | Granite flat kerb 300x200mm, 'fine picked' finish, laid straight or curved exceeding 12 metres radius | 1.00     | m    |



These are the items numbers used to determine the cost of New ASP footway with 25% officer fees and 15% contingency.

| ITEM     | DESCRIPTION  | QUANTITY | UNIT |
|----------|--|----------|------|
| 200.003  | Take up or down and remove to tip off site precast concrete or york stone paving slabs any size type including fiber reinforced up to 65mm thick | 1.00     | m2   |
| 600.001  | Excavation of any material in footways, verges and other pedestrian areas  | 0.23     | m3   |
| 600.008  | Extra over excavation for excavation in hard material in footways, verges and other pedestrian areas.  | 0.10     | m3   |
| 600.015  | Disposal of any material.(except class U1B and U2 material)  | 0.23     | m3   |
| 600.023  | Completion of formation on material other than Class 1C, 6B or rock in cuttings  | 1.00     | m2   |
| 1100.025 | 65 mm thick Artificial Stone Paving, any BS size A,B,C or D on existing base or base measured separately and sand bedding 30mm thick             | 1.00     | m    |
| 1100.058 | 100mm ST1 concrete base in footways  | 1.00     | m2   |
| 1100.062 | 100 mm type 1  | 1.00     | m2   |