

Application Ref: 2017/6884/P 100 Avenue Road - CLEUD

January 27 2018

Dear Jonathan

I am writing to object to Essential Livings's [EL] removal of the front steps and ramp at 100 Avenue Road as constituting the lawful implementation of their planning permission and to the subsequent application for a Certificate of Lawful Existing Use or Development [CLEUD].

CLEUD:

*"a legal document (not a planning permission) issued by the Local Planning Authority that is generally used to **regularise unauthorised development** and **prevent enforcement action** being taken by that Authority against any **breach of planning policy or conditions**"*
[Samuel & Son Chartered Surveyors]

*"... a building... could be **in contravention of conditions that have been attached to a consent**...apply for a CLEUD; if granted, this **regularises the use.**"* [The Telegraph: 27.07.2009]

EL's application for a CLEUD strongly indicates that they understand that time is fast running out for approval of their current Construction Management Plan [CMP] before their planning permission for 100 Avenue Road runs out twelve months from now.

That EL have run out of time is entirely their own fault. Had they spent the last two years trying to satisfy the conditions laid down by the Secretary of State in Condition 31 and more recently the conditions in their CMP – they might not have had to stoop to this underhanded CLEUD.

Instead, they tried time and again to avoid meeting these conditions by lodging time-wasting applications and amendments all of which were either refused or withdrawn:

- ∞ **Application 2016/2128/P** to amend condition 31 To allow discharge of the conditions prior to the commencement of **below ground** works
- ∞ **Application 2016/2048/P** To amend conditions 27 and 31
- ∞ **Application 2016/2803/P** Variation of condition 31 to change the point at which full details are submitted
- ∞ until **Application 2016/6699/P** Discharging Details pursuant to Condition 31 for demolition of existing building - which was granted in February 2017.

And here we are dealing with their latest attempt to avoid compliance with pre-commencement conditions:

- ∞ **Application 2017/6884/P** – a final 'Custer's Last Stand' - to register pre-emptive demolition.

If Camden awards – no, **rewards** – EL by granting them this stay of execution on their planning permission, they are condemning Swiss Cottage and the local community to the possibility of a 24 storey tower until such time as EL decides it can realize its profit margins or sell it on more lucratively at a later date with planning permission intact.

I understand that as I write Camden's legal team is still trying to establish whether EL are right to claim that the decision should only be based on "legal interpretation" and whether 'legal interpretation' alone must lead to Camden's decision that EL have right on their side:

"decision on this matter [whether a CLEUD certificate should be permitted or refused] is a "matter of legal interpretation." [Lee Jameson: Polity: 23.12.2017]

Even if Camden's officers and legal team conclude that EL are 'legally' in the right - it is difficult if not impossible to understand why Camden officers at the same time could see fit to ignore **Camden's own legal obligations** as in its Section 106 legal agreement with EL:

"Not to implement or permit Implementation of the Development until such time as the Council has approved the Construction Management Plan as demonstrated by written notice to that effect." [3.5.2]

- which EL has already breached by its cynical calculation to remove the stairs and ramp. Here is EL's barrister advising EL on their best way to bypass the conditions prohibiting pre-demolition:

"As for the mode of commencement, what is required is a "material operation" (see s.56(4) of the Town and Country Planning Act 1990). [4]

"... EL has identified the entrance steps and ramp at the front of the existing building as a material operation. I agree. There is no doubt that the removal of such a structure would (1) be judged of sufficient scale to count as a "material" operation If EL demolished the steps/ramp, it would commence the Permission.

And even if Camden's officers and legal team conclude that EL are 'legally' in the right - it is difficult if not impossible to understand why Camden officers at the same time could see fit to ignore their own requirements of this CMP.

Camden has not yet approved the 'submitted' CMP. And they might yet not do so given the following outstanding CMP issues that have yet to be resolved:

- ∞ No evidence of permission applied for or granted for use of the Restrictive Covenant area for construction vehicles passing through the park
- ∞ No resolution of the number 1 community request for all demolition/construction Access to be limited to the A41 instead of through the pedestrian area of Eton Avenue.
- ∞ Lack of evidence of consultation with Swiss Cottage and farmer's markets stallholders
- ∞ Lack of evidence of consultation with residents and Management at Mora Burnet House

- ∞ Dispute over the adequacy of the CMP consultation which fell far short of Camden's statutory requirements
- ∞ Evidence that HS2 has confirmed their understanding that EL changed the wording from '**before demolition**' to '**after demolition**' in regard to the discharge of HS2's conditions as stated in the original 2014/1617/P planning application.
- ∞ Evidence that HS2 has confirmed that they agree that their conditions can now be discharged '**after demolition**' and not **before** it.
- ∞ Acknowledgement that EL changed HS2's original wording from "**none** of the development hereby permitted shall be commenced until..." to "works **below ground level** shall not start until..." and evidence that HS2 realizes this.
- ∞ Clarification of the 'vice versa' assurances offered re HS2 works adversely affecting the proposed build. Term vice-versa is not a good enough answer for such a potentially damaging situation.
- ∞ Residents have yet to see written confirmation from HS2 that HS2 will not adversely impact the 100 Avenue Road development – irrespectively of condition 17
- ∞ Unapproved plans [ref 2017/4036/P] which are not based on the original plans approved by the secretary of state, but on EL's proposed plans for the removal of two fire exits and reduced hallways
- ∞ Still no planning permissions to vary condition 21: i.e. the original planning application for the removal of cherry trees
- ∞ Solution to widening of public path along the hoardings without taking away public space, i.e. the hedges
- ∞ Proof of EL's Access agreements with TfL in regard to all vehicle movements via the A41
- ∞ Proof of EL's Access agreements with TfL in regard to the CS11
- ∞ EL's threats to rescind the community benefits they had promised if CMP not approved
- ∞ Resubmission of shambolic frequency charts and graphs in a format whereby comparisons can be made
- ∞ Discrepancies in vehicle movement charts and graphs and still in the submitted CMP.
- ∞ Concerns over safety of cyclists when vehicles come out of access 2 on to the A41
- ∞ Concerns that traffic banksmen will not be able to keep pedestrians safe in the busy pedestrian area
- ∞ Tight squeeze for construction vehicles and cement mixers passing through cramped and displaced market stalls
- ∞ Loss of footfall to the thriving markets which could lead to their disappearance from the site
- ∞ Proof of agreement with nearby building sites undergoing extensive re-cladding works on Winchester Road
- ∞ Proof that CS11 traffic diversions onto Winchester Road will not cause unacceptable congestion on Winchester Road
- ∞ Proof that the combination of CS11 traffic diversions onto Winchester Road and the CMP construction vehicles will not cause unacceptable congestion on Winchester Road

Remarkably, it is possible that EL's barrister, Rupert Warren, was **not aware** of all these unresolved CMP issues when he advised EL to apply for CLEUD. Perhaps he was not aware that Essential Living were being economical with the truth when they instructed him that the Section 106 pre-commencement stipulations "**have now been satisfied, insofar as they would have precluded a lawful start on site by demolition.**" [Rupert Warren: camdocs.camden.gov.uk/HPRMWebDrawer/Record/6956016]

And perhaps had he known he would never have concluded that:

“Due to the discharge of pre-commencement conditions... I consider that the demolition would lawfully commence the Permission.” [ibid]

The fact is that there are still at least four Section 106 pre-commencement conditions that have not yet been satisfied: The CMP, The Service Management Plan, The External Public Open Space Plan and The Travel Plan.

Why set a 3 year time limit if a developer can override it so easily; if all that is required is to demolish a few stairs – notify the Council after you have done it – and then request a retrospective certificate from the Council to allow it?

This cannot be right. Surely clever legalese justification of the cynical removal of a few stairs and a ramp cannot be allowed to carry more legal weight than the legal constraints imposed by a Secretary of State, Section 106 Agreements, and the Council’s own requirements of the Construction Management Plan.

One final consideration:

When assessing EL’s legal position in regard to the demolition they have already carried out, shouldn’t Camden question the legitimacy of EL’s removal of the only dedicated wheelchair ramp access for the southern section of the building, which is separated internally from the northern section? Should this not be challenged on the grounds of flouting safe and equal access for all construction workers working on the site?

Equality Act 2010:

“If a physical feature within the workplace creates a disadvantage for a disabled employee, steps must be taken to amend or remove the obstruction. Physical adjustments can include changes such as: The addition of a ramp rather than steps to access buildings.”

Essential Living have done the exact opposite by taking the ramp away.

For all the above reasons, I ask Camden Council to reject Essential Living’s CLEUD application.

Kind Regards

Edie Raff
Chair, Cresta House Residents Association
Former Chair of Save Swiss Cottage

Dike, Darlene

From: sachs janine [REDACTED]
Sent: 29 January 2018 11:28
To: McClue, Jonathan
Cc: Planning; Leyland, Claire-Louise (Councillor); Bucknell, Jonny (Councillor); Freeman, Roger (Councillor); Rea, Flick (Councillor); Nayra Bello O'Shanahan; Leo Cassarani; Sucharita Sethi
Subject: 2017/6884/P CLEUD - Removal of 100 Avenue road steps poses fire safety risk
Importance: High

Dear Jonathan

Please can you kindly include these points in your summary for CLEUD?

Further to my previous Comment re CLEUD ref: 2017/6884/P

It is evident from looking at the plans of the current 100 Avenue road building that **the middle self contained section is only serviced by one fire exit** – namely the main entrance that has just had its steps and disabled ramp removed on 8th December 2017

The removal of these steps poses a fire safety risk for all workers on site during the pre demolition phase which requires 'soft strip' of the building and asbestos removal – prior to 'structural demolition', according to the developers' CMP.

Removing the dedicated disabled ramp is also highly contentious because doing so contravenes the Equality Act for disabled workers.

Yet Camden are considering retrospective approval for this action that will secure full planning permission for the developers which would otherwise time out in February 2019 if works haven't started by then.

One might also wonder how Camden can on the one hand admit that a "staircase and ramp would in most cases not require planning permission", while on the other agree that their removal would constitute a 'material' change to the development that would implement commencement of that planning permission?

The Secretary of State stipulated a condition that no demolition shall take place until the council approves the developers' Construction Management Plan – a legal obligation that has not yet been satisfied, which might all too easily end up in the long grass and slip under the radar altogether if implementation is granted now.

We urge Camden to see sense and not buy into some convoluted legal wangle for fear of a possible appeal by the developers (or indeed the lure of the £1million in CIL payment due to the council once implementation is granted).

The developers should not be granted implementation of full planning permissions until the CMP and the other remaining pre-commencement conditions have been approved.

Otherwise what is point of having conditions at all?

Janine Sachs

SAVE SWISS COTTAGE (Chair)



BE REALISTIC-PLAN FOR A MIRACLE

Dike, Darlene

From: Tim Herbert-Smith [REDACTED]
Sent: 29 January 2018 15:52
To: Essential Living; Planning; Planning Obligations
Cc: Peter Symonds; Janine Sachs
Subject: 100 Avenue Road NW3 3HF Development - Essential Living's Construction Management Plan

Dear Sirs ,

As a resident of South Hampstead who has not been consulted about this scheme , I write once again regarding the unsatisfactory proposals for constructing this development . Essential Living's proposal to access the site via Winchester Road & Eton Avenue will cause enormous disruption & disturbance to the residents & community in general for reasons which have been made clear to EL on many occasions . The failure to take these into account & come up with a proper coherent plan which safeguards the local community & the public generally is extremely concerning. Before any further demolition takes place (unauthorised demolition such as has already occurred must not be repeated) , Camden Council must insist on a proper plan which addresses the following points :

- 1 Written assurance is required from HS2 that there will be no detrimental impact on the carrying out of the development arising from HS2 works
- 2 Access by HGV's must be from the A41 , not from Winchester Road & Eton Avenue to protect residents & prevent disruption to the market stall holders & customers , school children & other pedestrians, as well as trees in Eton Avenue . The access from the A41 must take into account bus & cycle lanes & ensure that public safety & amenity is protected.
- 3 The 3 category A cherry trees by the library should remain & in any event proper planning approval must be obtained to any proposal to deal with them
- 4 CMP21a which requires details of size of vehicles, frequency & times of day when they will need site access for each phase of construction must be properly & unambiguously answered. Information provided to date has been vague & contradictory
5. Assurance is required that EL will make public to all interested parties & objectors the results of the consultation process

The broader local community will be severely affected during the development & it is vital that their views are properly taken into account rather than only lip service paid. The combination of HS2 , CS11 & this development will create enormous disruption , pollution , nuisance & potential harm & it is the responsibility of the developer & the local authority to do everything required to mitigate this.

Tim Herbert-Smith
NW6 3DB

Dike, Darlene

From: Kumiko Matsuoka [REDACTED]
Sent: 29 January 2018 16:58
To: McClue, Jonathan
Cc: Planning
Subject: Ref: 2017/6884/P 100 Avenue Road

Dear Mr McClue,

I should like to request that Essential Living's retrospective application for approval be rejected by Camden. The developer demolished the front steps and the disabled access ramp in December 2017 before the CMP was properly and fully consulted with the local community (hardly anyone was invited to their meeting) and approved by Camden. Also, the CMP that the Secretary of State approved is not the same one as the CMP put forward by Essential Living, as they are now proposing **the removal of two fire exits and reduced hallways**. Camden has made clear that: *"Not to implement or permit Implementation of the Development until such time as the Council has approved the Construction Management Plan as demonstrated by written notice to that effect"*.

Approving such an application and approving their CMP without a proper consultation with the public/local community first and amended where necessary, if any accidents and/or disasters happen to the new 24 storey building (or whilst it is being built), Camden will be held equally responsible as the developer.

Yours sincerely,

Kumiko Matsuoka
105 Greencroft Gardens
London Nw6 3PE

Dike, Darlene

From: McClue, Jonathan
Sent: 30 January 2018 10:14
To: Planning
Subject: Fwd: Objection: 100 Avenue Road 2017/6884/P

Please upload in the correct place as requested. Thanks.

From: sarah howard [REDACTED]
Sent: Tuesday, January 30, 2018 10:01:01 AM
To: McClue, Jonathan
Cc: Joyce, David; Planning Obligations
Subject: Objection: 100 Avenue Road 2017/6884/P

Dear Mr McClue,

The following objection to the planning application 2017/6884/P does not appear on the relevant section of the website. I am told it has been incorrectly placed with the CMP objections.

I'd be very grateful if you could ensure it is put with comments in the correct planning application.

Thank you in advance.

Sarah Gottlieb

Dear Mr. McClue

I am writing to alert Camden Council to a serious breach of planning control. I understand that earlier in the year, Essential Living informally asked Camden Council if they could demolish part of 100 Avenue Road before completing the Construction Management plan regarding demolition. This was refused.

Just as the Christmas break started, I was informed through Camden's e-alert system that under application 2017/6884/P, EL have carried out a partial demolition. This demolition has a particularly deleterious effect on the community because it removes the only dedicated wheelchair ramp access for the building. There are very strong grounds to object to this in the absence of a construction management plan that provides equal access for disabled people and workers taking part in any demolition.

It is obviously important that no one, including wealthy developers, are above the law. There has been no explanation by Essential Living why they could not apply for planning permission in the proper way.

I would ask you to enforce Camden's planning regime with the same rigour you would for any ordinary resident of the Borough.

As usual, I would be grateful if you could redact my personal details if this objection is published on your website.

Thank you in advance,

Sarah Gottlieb

Dike, Darlene

From: Edie Raff [REDACTED]
Sent: 30 January 2018 18:20
To: McClue, Jonathan; Planning
Subject: Addition to Objection to CLEUD Application 2017/6884/P

Dear Jonathan

I would like to add a further comment to my January 27th objection to CLEUD :

It has only just come to my attention - but it seems to me to be a very important point - that there is - or shall I say - WAS - only the **one** fire exit for the middle section of 100 Avenue Road onto the street and that this **one** fire exit no longer exists because it was this entrance's disabled ramp and steps that Essential Living recently removed in their underhanded attempt to retain their planning permission.

It is obvious that the removal of these steps from the main entrance and exit out of this part of the building poses a fire safety risk for all workers on the site (and not only the disabled who of course have no access at all) during the pre demolition phase which evidently requires [according Appendix M] 'soft strip' of the building and asbestos removal before developers begin 'structural demolition'.

I consider this yet another reason for Camden to refuse to grant Essential Living's CLEUD application.

Kind regards

Edie

p.s. My CLEUD comment still not-posted on website,
Couldn't raise 2017/6638/CMP - at all. "No records found."

Dike, Darlene

From: karin fernald [REDACTED]
Sent: 30 January 2018 18:54
To: McClue, Jonathan; Planning
Subject: re: 2017/6884/P 100 Avenue Road CLEUD

29.1.18

DEAR JONATHAN MCCLUE,

I HEREWITH RESEND THE FOLLOWING, PLEASE INCLUDE IT IN YOUR SUMMARY

05 January 2017

Dear Jonathan McClue,

I am writing to protest against EL's plan to route up to 14 demolition trucks per day for 3 years over the heavily-used spaces, some of them pedestrian, around Swiss Cottage. These demolition and construction trucks are proposing to go along narrow Winchester Road; along the widely-used Eton Avenue pedestrian space; and around the Swiss Cottage Green Space, the one vital lung of our increasingly badly polluted area,e. Every day for 3 years. It really is unthinkable. The only bearable alternative is to route all demolition and construction traffic exclusively via the A41.

We residents all understand that Camden has tough choices to make. Money is urgently needed and this need will increase. Nonetheless, the health hazards ofEL's current scheme are obvious and it would be irresponsible of Camden to ignore these.

I wish to protest equally strongly against EL's unauthorized demolition of the steps and access ramp to 100 Avenue Road, in breach of the advice they had received from your office .. This unauthorized step was disrespectful of Camden and augurs badly for your future dealings, in which there will need to be some measure of trust.

etc

[REDACTED]

Dike, Darlene

From: McClue, Jonathan
Sent: 30 January 2018 20:00
To: Planning
Subject: FW: 2017/6638/CMP 100 Avenue Road. and Ref: 2017/6884/P 100 Avenue Road

From: mallory wober [REDACTED]
Sent: 30 January 2018 19:54
To: McClue, Jonathan <Jonathan.McClue@camden.gov.uk>
Subject: Ref: 2017/6638/CMP 100 Avenue Road. and Ref: 2017/6884/P 100 Avenue Road

Dear

Mr McCLue

I absolutely want you to insist that any construction work on the above address must be served by demolition and supply

traffic via access to and from the A 41 directly - and NOT via the (so-called) market area and Winchester Road.

It has not augured well that EL has already started even minor demolition works on the site, a move that was not

allowed in their original planning permission, and for which the developers are said to be asking for retrospective approval.

It is essential planning that Camden should deal with these matters proactively and not retrospectively.

yours sincerely

J.M Wober PhD

Lancaster Grove. NW3 4EU