**Application Ref:**[**2017/6884/P**](http://camdocs.camden.gov.uk/HPRMWebDrawer/PlanRec?q=recContainer:2017/6884/P)[**100 Avenue Road**](https://maps.google.com/?q=100+Avenue+Road&entry=gmail&source=g) **- 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avoid meeting these conditions by lodging time-wasting applications and amendments all of which were either refused or withdrawn: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 31To 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