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1<sup>st</sup> February 2018

Dear Mr. Fowler

**Planning Application: 2017/6306/P**

I am writing to register my objection to this application which seeks to vary Condition 2 only of the Decision made at Appeal on 2<sup>nd</sup> February 2015. There is no reference or request in the application to amend or vary any of the other conditions set out by the Inspector.

**Roof Plant Enclosure**

Of the proposed changes, this above all others is likely to have the greatest impact on the surrounding area and public realm. This is not an enlargement of a previously permitted enclosure but an entirely new and highly visible structure. No attempt appears to have been made through design to soften its impact or show sensitivity to the local context – the only concession has been to keep the overall height of the building approximately the same but that does little to mitigate the bulk of the proposed enclosure which would effectively create an additional level on the top of the building.

It is unfortunate that no new 3D views have been provided to aid consultation but even without these, it is clear that the enclosure will be highly visible from Hampstead Square, Holford Road and Christchurch Passage. Whilst the solar panels might soften the impact from a part of New End, this will not be the case from the lower slopes of that road.

The 2013 Site Allocations Plan for 29 New End provides that:

Development will be expected to:

Ensure that the character of this part of the Hampstead Conservation area is preserved and enhanced;

Ensure there are no adverse impacts on the setting of the Grade II Listed Christ Church to the north, Lawn House to the west and Kendalls Hall to the south.

The proposed enclosure fails to either preserve or enhance the character of the Hampstead Conservation Area and indeed the setting of the surrounding and nearby listed buildings. This is contrary to policy CS14 (promoting high quality places and conserving our heritage, DP14 (securing high quality design) and DP25 (conserving Camden's heritage).

In the context of the soon-to-be-adopted Camden 2017 Local Plan, the design clearly falls below the standards required by Policy D1 (and D2) which provides that the Council will require Development that:

respects local context and character;

preserves or enhances the historic environment and heritage assets in accordance with Policy D2 Heritage;

preserves strategic and local views;

carefully integrates building services equipment.

Policy D1 also goes on to provide that design for tall buildings must incorporate:

how the building relates to its surroundings, both in terms of how the base of the building fits in with the streetscape and how the top of a tall building affects the skyline;

the historic context of the building's surroundings;

the relationship between the building and hills and views;

the degree to which the building overshadows public spaces, especially open spaces and watercourses.

The 2017 Local Plan also states that:

Building services equipment, such as air cooling, heating, ventilation and extraction systems, lift and mechanical equipment, as well as fire escapes, ancillary plant and ducting should be contained within the envelope of a building or be located in a visually inconspicuous position.

Given that this is a newly constructed building there is no reason why all of the equipment required in this location should not be incorporated within the building's existing envelope. If this means that part of the top floor's habitable area has to be reduced then this is a smaller price to pay than the imposition of the proposed rooftop equipment enclosure on the surrounding area and heritage assets.

It is inconceivable that any of the buildings adjoining the site would ever gain permission to add an enclosure in similar proportions to any roof to incorporate plant and no less consideration should be applied here.

In addition, no detail has been supplied to show where the connecting ducts and pipework that feed this enclosure will run as per Condition 14 (and potentially Condition 4).

Judging the overall impact of the proposals without this detail is therefore impossible.

Furthermore, granting permission to what is presented as only a variation of Condition 2 may therefore render the subsequent application and enforcement of Condition 14 (and 4) impossible.

### **Plant Noise**

As well as the additional roof plant for air conditioning condensers, a further installation is proposed to run the entire length of the garden of the adjoining Grade II listed Lawn House.

No revised noise report has been submitted with the application to demonstrate that the newly proposed plant locations satisfy the Planning Inspectorate's Condition 13 that states:

Noise generated by plant or equipment shall not exceed 5dB(A) (or 10dB(A) where there is a distinguishable continuous note or distinct impulse) lower than the existing background level (LA90) expressed in dB(A), when measured at 1m external to any facade containing openings of a dwelling within the development hereby approved or any occupied building on adjoining land.

It would seem therefore that, until such time as a suitable noise report or assessment has been submitted covering all of the surrounding buildings, the Council should not approve permission for the proposed air conditioning plant locations.

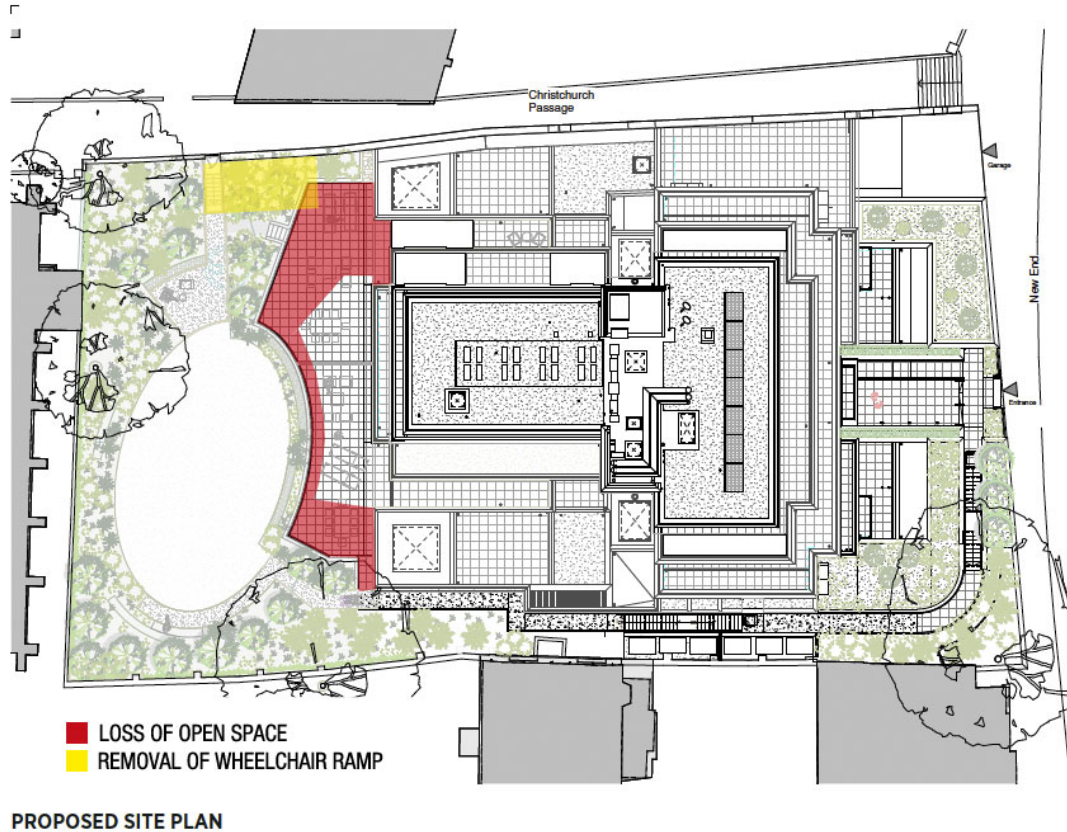
It is worth recalling the applicant's original Sustainability Statement that promoted, as satisfaction of the Mayor's Essential Standard on impacts of noise:

Building services such as air extract will be positioned away from sensitive locations.

Mitigation measures will be investigated during M&E design and construction phase to ensure that the baseline ambient noise levels are not negatively affected by the building and to evaluate how the plant noise can be attenuated.

## Development of Christchurch Passage Private Open Space

Despite not being specifically referred to in the application, the proposed drawings clearly show a development of a large part of the Private Open Space behind the building as private terraces for Apartments 8 and 9. As well as detracting from the communal use of the garden this will remove a significant area of planting (and the approved plan to provide wheelchair access at this end of the garden).



Whilst a paved area was shown on the previously agreed plans, this was stated in the 2012 Design and Access Statement as being a part of the garden's communal use:

The rear open space will be landscaped to a high standard, for the communal use of the residents, improving the current situation of this under used and neglected Private Open space.

This change of use of the paved area to exclude communal use - and its enlargement - clearly constitute new development of the private open space and is a material change from the previously agreed plans.

The Adopted Camden Site Allocations Local Development Document (2013) specifies that any replacement to the Nurses Hostel should:

Protect the Christchurch Passage Open Space which lies to the north of the site.

with further clarification that:

No inappropriate development should take place on the designated open space which sits to the north of the site, nor intrude or detrimentally affect the open space and opportunities to enhance the qualities of this space should be addressed.

This was acknowledged by the Applicant on page 2.5 of the 2012 Design and Access Statement (which applies no less now):

Policy CS15 of the adopted Core Strategy (2010) seeks to secure improvements to open space from developments that create an additional demand for open space.

Policy DP31 of the adopted Development Policies (2010) seeks to increase the quantity and quality of open space in Camden.

The Draft Site Allocations document requires development on the proposal site to protect the Christchurch Passage Open Space which forms the northern part of the site.

The landscaping improvements and refurbishment of the Christchurch Passage Open Space to the north of the site will ensure that open space provision in the area is significantly enhanced and is in accordance with policy requirements.

The recognition that the private open space must be fully preserved is further encapsulated within that statement's Design Principles:

The proposed new building on the site is kept to the similar area of site as the existing building, replicating approximately the T-shaped plan of the existing and retaining the open space to the rear.

It is also further referred to as a 'Main Design Principle', particularly its common use to all residents of the development:

Protection of the Private Open Space to the rear and landscaping to provide a common garden for residents while enhancing the outlook from adjacent properties and the setting for the church.

With the forthcoming adoption of the 2017 Camden Local Plan, the protection of open spaces has become no less important where it is identified as one of the Council's main strategic objectives:




10. To improve and protect Camden's Metropolitan Open Land, parks and open spaces, and protect and enhance biodiversity, in addition to providing for new habitats and open space.

Policy A2 Open Space identifies that the Council will seek to "protect all designated public and private open spaces as shown on the Policies Map" on which the Christchurch Passage Private Space is clearly shown:

### Planning policy map

Find planning policies by clicking the map or using the address / postcode search

#### Map key

-  Archaeological Priority Area  
Hampstead
-  Conservation Area  
Hampstead
-  Open Space  
Christchurch Passage Open Space

For more information, or if you are unable to view the map, please contact the [Forward Planning and Projects Team](#)

### Find an address

Please enter a Camden postcode or street:



Policy A2 further states an intention to "conserve and enhance the heritage value of designated open spaces and other elements of open space which make a significant contribution to the character and appearance of conservation areas or to the setting of heritage assets;"

In the context of the Christchurch Passage Open Space's direct proximity to Christ Church itself, this is important.

The open space was also originally considered by the applicant to form an essential part of seeking to maintain or increase the biodiversity of the development. In Hoare Lea's Sustainability Statement, the Executive Summary stated under Biodiversity that "The presence and overall increase in the amount of planting of trees and plants around the development will result in a net increase of biodiversity." These plans reduce the amount of planting.

In seeking to satisfy the Mayor of London's essential standard in respect of Climate Change Mitigation, Hoare Lea further promised that "the private open space will have

vegetation planted to mitigate the effect of the urban heat island and of climate change.”

Paved terraces will not only undermine this promise but also detract rather than add to the stated objective under Natural Environment and Biodiversity that “a commitment has been made to provide a positive minor increase in the ecological value of the site.” Combined with the threat of increased run-off on the site of water it seems that this part of the plan lies contrary to Policy CC2 of the 2017 Local Plan:

All development should adopt appropriate climate change adaptation measures such as;

the protection of existing green spaces and promoting new appropriate green infrastructure;

not increasing, and wherever possible reducing, surface water runoff through increasing permeable surfaces and use of Sustainable Drainage Systems;

The applicant has previously made persuasive arguments citing the Council’s own development policies for the retention and protection of the Christchurch Passage Open Space. No argument has been presented here as to why that should not now apply nor has any updated Sustainability Statement been submitted in support.

### **Accessibility Changes**

The application proposes a disappointing downgrading of the development’s accessibility.

The plans show the removal of the previous two-part 1:20 ramp to the entrance of the building and its replacement by a single ramp to the front entrance. No gradient is shown on the plan nor are any measurements given that would indicate compliance with the Lifetime Homes Standard which provides that “all slopes should have top and bottom level landings of not less than 1.2 metres, excluding the swing of doors and gates.” It would be prudent to check compliance prior to any approval for this change being granted.

Justification for the change appears to be related to the need to “clear the root protection area” of the (presumably) neighbouring Horse Chestnut tree rather than a need to find space for additional air conditioning condensers abutting Lawn House which seems far more likely. The recently approved Arboricultural Method Statement (2016/6436/P) shows, in Part 2, that the already accepted ramp location is in fact clear of the root protection area of this tree.

The Council should not be encouraging loss of access for wheelchair users to the communal outdoor area from within the building itself. The only access for a wheelchair user now is to come out of the building, down the ramp and then take a long path using two platform lifts to get to the garden.

Restricting wheelchair access even further, and despite not being referred to in the covering letter, the ramp access at the rear of the garden from Christchurch Passage is shown as now being removed under the revised plans with no alternative means of access for wheelchair users to the rear of the communal garden.

The original 2012 Design and Access Statement made much of the garden being “designed to be level, accessible and enjoyed by all.” The proposed changes result in anything but and should therefore be resisted.

The proposed new width of the lift shaft in the plans appears to be much narrower than previously agreed but the absence of scaled drawings makes this hard to judge. No measurements or accompanying narrative have been provided but the Council must clearly ensure that any new lift shaft remains Part M compliant before consenting to any changes.

Apartments 8 and 9 have had the potential for through-the-floor lift access removed. This renders both apartments inaccessible to wheelchair users unless by exit to the main public lift to change levels (subject to comments above in respect of the revised lift being suitably wide for wheelchairs). The potential upper floor access area for a through-the-floor lift has been replaced by plumbed in washing machines and a revised new layout of the walls – preventing any future modification.

The 2012 Design and Access Statement previously made reference to a study in each of Apartments 8 and 9 that could be converted to bedrooms – these have both been removed as have the “WCs large enough to accommodate showers”.

As a result of the proposed amendments both apartments 8 and 9 will be rendered effectively unusable by wheelchair users which means that all duplex apartments within the building have no suitable wheelchair access.

Policy H6 of the 2017 Local Plan commits that “The Council will aim to minimise social polarisation and create mixed, inclusive and sustainable communities by seeking high quality accessible homes.”

Policy C6 requires that all buildings and places meet the highest standards of accessible and inclusive design stating inter alia that the Council will:

expect all buildings and places to meet the highest practicable standards of accessible and inclusive design so they can be used safely, easily and with dignity by all;

expect spaces, routes and facilities between buildings to be designed to be fully accessible.

The 2012 Design and Access Statement made great play of conforming to the Lifetime Homes Standard proclaiming that “the proposed scheme meets Lifetime Homes Standards, being fully accessible for disabled people both internally and



externally.”

I would disagree that this is now the case and would argue that the proposed plans run contrary to the Planning Inspectorate’s condition 26 that “The lifetime homes features and facilities, as indicated on the approved drawings and at para 6.1 of the KSR Design and Access Statement, shall be provided in their entirety prior to the first occupation of any of the new residential units.”

The application has not sought to vary the requirements of Condition 26 but by permitting the variation of Condition 2 the Council will be tacitly consenting to the variation of Condition 26 which will no longer be applicable or enforceable.

### **Loss of Green Roof**

The addition of engineering plant on the roof of the building will result in the loss of a significant area of the green roof, a key promise of the original application to not only improve the scheme’s environmental credentials but also soften the visual impact of the building.

Policy CC2 of the 2017 Local Plan promotes the incorporation of green roofs in all new developments with a specific requirement that “any development involving 5 or more residential units or 500 sqm or more of any additional floorspace is required to submit a Sustainability Statement demonstrating the development’s green credentials”.

The applicant has not provided any alternative proposal for the loss of green roof area in order to maintain the scheme’s environmental credentials and the Council should request a revised Sustainability Statement to gain a clearer understanding of how the loss is to be mitigated.

The reduction of green roof space combined with the proposed paved terraces on the Private Open Space will result in a loss of potentially valuable habitats and result in a decrease in biodiversity.

### **Expansion of Terraces, Removal of Planting and Overlooking**

The plans show a number of fixed windows that are now to be replaced with French Windows. This is a not insubstantial change to the original plans - and again not specifically highlighted, explained or justified in the application.

Specifically, French Windows are now showing as giving access to:

- |                        |  |
|------------------------|--|
| 1 <sup>st</sup> floor: | A new terrace on the eastern elevation.<br>All other existing terraces on the eastern and northern elevations. |
| 2 <sup>nd</sup> floor: | Terraces on the eastern elevations.  |
| 3 <sup>rd</sup> floor: | Terraces on the eastern and northern elevations.   |
| 4 <sup>th</sup> floor: | The terrace on the northern elevation.   |

That the majority of these changes are on the eastern elevation of the building is of particular concern as it will override measures put in place to prevent overlooking of both neighbouring buildings and the playground of Christ Church school, the overlooking of which might be considered to be sensitive.

In addition, close examination of the plans shows that planting on terraces that was originally part of the original plans appears to have been removed. This would effectively amend Condition 7:

Roofs, roof terraces and parts of roof terraces shown in Appendix 1 of Appeal Document A14 to be roofs, planting areas or non-accessible roof terraces shall provide access only for maintenance or planting and shall not be used as amenity space.

Condition 9 also makes specific reference to planting on roof terraces requiring prior consultation and approval with Camden.

The Planning Inspector further stressed, at paragraph 46 of his decision, that “the restrictions on the use of roofs and terraces ... are necessary to protect the amenity of adjoining residents”.

And once again this is at odds with the 2012 Design and Access Statement that stated:

Parapet levels are raised so as to reduce overlooking and reduce balustrades.

Terraces facing Lawn House, Carnegie House and Christ Church Cottage have restricted access, are landscaped to avoid overlooking.

Terraces facing Lawn House and part of the terrace in front of the Christ Church Cottage are fully landscaped to restrict the access and avoid overlooking

CPG 6 states that “Development should be designed to protect the privacy of both new and existing dwellings to a reasonable degree. Spaces that are overlooked lack privacy. Therefore, new buildings, extensions, roof terraces, balconies and the location of new windows should be carefully designed to avoid overlooking.”

Granting permission to this application will be allowing for Conditions 7 and 9 to be varied despite not being applied for. Furthermore it will render Condition 8 pointless and it will no doubt be argued later that the opaque glazing required by the Planning Inspectorate will make no difference and should be abandoned.

## **Sustainability**

The application requests that the development's sustainability commitments be lessened by a deed of variation to the Section 106 agreement. No justification has been given for this request and nor should it be accepted.

Whilst the Code for Sustainable Homes has been now been withdrawn, a Ministerial Statement clarified that where planning has been granted before March 27<sup>th</sup> 2015 and whilst there are existing arrangement or developments that are within the process of building to the Code these should be continued as before.

## **Summary**

There are a great number of changes incorporated within the amended plans that, if approved, would vary more than just Condition 2. Granting permission to change this one condition would also permit the variation and lessen the effectiveness of Conditions 4, 7, 9, 13, 14 and 26 (and effectively render Condition 8 ineffectual). These changes are fundamental and I am not sure that this application should ever have been submitted as a Section 73 amendment but rather as a full planning application outlining all of the changes complete with justification for each amendment and with supporting documentation and expert reports where necessary. More simply put, the proposed plans are contrary to National Planning Policy Guidance on Section 73 applications in that they differ substantially from those already approved.

In Camden's Local Area Requirements for Planning Applications (February 2014), the Council clearly states that a schedule setting out the differences between proposed and amended should be including with a Section 73 application. This is missing on many of the points that this application covers as is the further condition that reasons are stated why these changes are required.

Section 73, paragraph 2(b) quite clearly states that if the local planning authority decides "that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application".

Unless I have misunderstood the legal context of this paragraph and subsection it seems quite clear to me that this applies in this case.

It is accepted that "materiality" in any Section 73 application is one of fact and degree, along with taking into account the likely impact of the amendment on the local environment. Materiality is considered against the development as a whole, not just part of it. Looking at Section 73 interpretations elsewhere in the UK it seems to be accepted that this application must not test positive on a number of key tests. This application specifically fails the following tests that have been widely adopted;

- Is the proposed change material/significant in terms of its scale (magnitude, degree etc) in relation to the original approval?

- Would the proposed change result in a materially detrimental impact either visually or in terms of amenity?
- Would the interests of any third party or body who participated in or were informed of the original application be disadvantaged in any way?
- Would the amendment be contrary to any relevant development plan policy?
- Is the proposed change contrary to a restrictive condition on the original approval?
- Would there be significant increases in site coverage, height of building or site levels?
- Would there be additional and/or repositioned windows/doors/openings that will have an impact on neighbouring properties?
- Would the amendments reverse design improvements secured during the processing of the original application?
- Would there be increased impact on existing trees or any proposed landscaping scheme?

That so many of the key tests have been failed is again clear indication that the application should be refused.

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