

Statement of Case

66 Fitzjohn's Avenue, London, NW3 5LT

January 2018



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Executive Summary

This appeal is submitted on behalf of Mr Ellis Green against the London Borough of Camden's refusal of planning permission for the erection of a pair of semi-detached 3-bedroom dwellings, following the demolition of the existing pair of semi-detached dwellings.

Permission was granted for these replacement dwellings on site on 28th March 2017 (reference: 2015/5847/P). The only substantive difference between the appeal scheme and that granted permission on 28th March 2017 is the addition of the roof extension. The purpose of applying for the additional storey is to 'future proof' the dwellings. The existing dwellings on site are currently occupied by Mr Green's children and their families and it is intended that they will continue to live in the dwellings once they have been redeveloped. The addition of the roof extension would allow their families to grow and remain in the dwellings for longer, rather than needing to move as they have more children and as the children grow older etc.

The basement, ground and first floors remain broadly as per the approved application, as does the outside space. The refusal notice issued by the Council includes 3 reasons for refusal which contradict directly the extant permission on site which was granted only 10 months ago. This is on the basis that planning policy has now changed as a result of the adoption of the Camden Local Plan.

The appellant appreciates that the planning policy position has moved on in the 10 months since permission was granted on 28th March 2017 however the fact remains that there is an extant permission on site which allows for the construction of the basement and two parking spaces on site. Furthermore, the Council now object to the use of the existing access road, and two parking spaces on site, despite the fact that it is currently in use and is not proposed to change under the extant planning permission. The appellant has 27 months in which to implement this permission. This is a significant material consideration that the appellant does not consider the Council has adequately addressed.

It is not unreasonable to consider an alternative option for this appeal whereby planning permission 2015/5847/P is implemented thereby securing the permission and the corresponding basement, access road and parking spaces that officers now object to. A new full application or S73 application could then be submitted to request the changes that are the subject of this appeal i.e. the roof extension. The appellant is resistant to this approach as he would prefer the certainty of having all planning matters settled prior to commencing development as this has the potential to add significant costs and delays to the build programme.

1.0 Introduction

- 1.1 This appeal statement is submitted on behalf of Mr Ellis Green in support of a planning appeal to the Planning Inspectorate following refusal of planning permission 66 Fitzjohn's Avenue, by the London Borough of Camden (LBC) for the following development:

'Erection of pair of semi-detached, three storey (plus basement) 3-bed dwellings following demolition of existing pair of semi-detached dwellings.'

- 1.2 The planning application was refused under delegated powers on 15th November 2017. The Council cited the following 7 reasons for refusal on the formal decision notice:

1. *The proposed development by virtue of its height, bulk, siting and detailed design would appear overly dominant and harmful to the character and appearance of adjacent dwellings and of the conservation area generally. The development would therefore remain contrary to policies D1, D2 and A5 of the London Borough of Camden Local Plan 2017.*
2. *The proposed basement excavation by virtue of its siting, scale and design would fail to be subordinate to the host building and property harming the character and appearance of the conservation area contrary to policies D1, D2 and A5 of the London Borough of Camden Local Plan 2017.*
3. *The proposed development by virtue of its height, width, bulk and siting would result in loss of outlook to 64 Fitzjohn's Avenue and 12 Akenside Road contrary to policy A1 of the London Borough of Camden Local Plan 2017.*
4. *The proposed landscaping and access arrangement would fail to enable vehicles to leave the site in a forward gear impacting on pedestrian and highway safety contrary to policy T1 and A1 of the Camden Local Plan 2017.*
5. *In the absence of a legal agreement to secure car free housing and by virtue of the proposed on-site parking provision in this highly accessible location, the development would fail to encourage car free lifestyles, promote sustainable ways of travelling, help to reduce the impact of traffic and would increase the demand for onstreet parking in the CPZ, all contrary to policy T2 of the London Borough of Camden Local Plan 2017.*
6. *The proposed development, in the absence of a legal agreement to secure a Construction Management Plan and associated monitoring fee, 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 A1, A5 and T4 of the London Borough of Camden Local Plan 2017.*

7. The proposed development, in the absence of a legal agreement to secure contributions towards public highway works, would be likely to harm the Borough's public realm, contrary to policies A1 of the London Borough of Camden Local Plan 2017

1.3 This statement provides background information on the site and an assessment of the proposals in relation to planning policy and other material considerations. It sets out the appellant's case that the proposed development would provide high quality dwelling houses of a standard of design, making best use of previously developed land and providing a much needed family accommodation in a sustainable location.

1.4 This statement should be read in conjunction with the application drawings, Design and Access Statement, Sunlight and Daylight Report, Tree Survey and Arboricultural Method Statement and Basement Impact Assessment, associated correspondence and addendum letter which were submitted to accompany the planning application.

1.5 The statement is set out in the following sections:

Section 2 provides a description of the appeal premises and the surrounding area;

Section 3 sets out the planning history and background as it is relevant to the appeal;

Section 4 provides an outline of the application proposals;

Section 5 details of the planning policy context of the site;

Section 6 examines the main planning considerations, and;

Section 7 draws our conclusions in respect of the proposals.

2.0 Site and Surroundings

- 2.1 The appeal site is located to the rear (east) of No. 64 Fitzjohn's Avenue. The site is currently occupied by a pair of semi-detached two storey residential dwellings.



Site Location Plan

- 2.2 It is believed that the existing dwellings were converted from outbuildings to residential use in the 1980's, with further alterations undertaken in the mid 1990's.
- 2.3 The existing dwellings have two floors (ground and first) with living and kitchen accommodation at ground floor level and bedroom and bathroom at first floor level. There is hard standing to the front of the dwellings which is used for car parking and amenity space.
- 2.4 The dwellings are brick built and the front elevation painted white. There is no evidence that the style of the front façade has any relation with the building that occupied the site prior to residential use in the 1980s. Three of the facades are against the property boundary and are unadorned fair-faced brickwork.

- 2.5 Planning permission was granted for the demolition of the two dwellings and the erection of a pair of semi-detached, two storey 3-bed dwellings with basements on 28th March 2017 (ref: 2015/5847/P). The planning permission has not yet been implemented.
- 2.6 Access to the application site and the existing semi-detached properties is via a private road from Fitzjohn's Avenue. There are electronic gates to prevent unauthorised access.

Surrounding Area

- 2.7 The existing dwellings are located to the rear of No. 64 Fitzjohn's Avenue, which is a large Victorian Villa displaying Gothic and Queen Anne revival style of the 1870s and 1880s. The rear of this property has been subjected to a number of modifications. The property is divided into flats and includes a basement / lower ground floor level over the entire footprint of the property and with basement lightwells to the rear and front. A tall screen of planting (bamboo and birch tree) exists between 64 Fitzjohn's Avenue and 66 Fitzjohn's Avenue.
- 2.8 To the north of the appeal site on Fitzjohn's Avenue is Medresco House, a 1960's, four storey, red brick block of flats (14 units) and associated car park. The site is well screened by close boarded fencing around the perimeter. To the rear of the application site is No. 12 Akenside Road.
- 2.9 Fitzjohn's Avenue is a main road running from Swiss Cottage to Hampstead. The avenue typically has large villa style properties which have largely been divided into flats, alongside a number of new build properties and backland developments. There is a wide range of architectural styles in the avenue.
- 2.10 The site lies within the Fitzjohn's and Netherhall Conservation Area. The application site is within the Fitzjohn's Netherhall Conservation Area. While No. 66 Fitzjohn's Avenue is identified as making a negative contribution to the character and appearance of the Conservation Area, this appears to relate to the adjoining Medresco House and not the application site. Nos. 54-64 Fitzjohn's Avenue (which front the main street) are identified as making a positive contribution to the special character and appearance of the area.
- 2.11 In terms of accessibility, the site has a PTAL of 5 and is within walking distance of a number of Underground stations including Hampstead Heath, Finchley and Frognal and Belsize Park and there are a number of bus stops along Fitzjohn's Avenue serving the number 46 bus to Lancaster Gate.

3.0 Planning History and Background

3.1 The table below summarises the planning history at the application site, with the planning history of most relevance to the application site set out in more detail below.

Reference no.	Site Address	Description of development	Decision
2015/5847/P	66 Fitzjohn's Avenue	Erection of pair of semi-detached, two storey 3-bed dwellings with basements, following demolition of existing pair of semi-detached dwellings	Planning permission 28 March 2017
9501009R3	Studios 1 and 2 66 Fitzjohn's Avenue NW3	Retention of various works of alteration.	Planning permission 19.07.1996
9560129R3	Studios 1 and 2 66 Fitzjohn's Avenue NW3	Partial demolition in association with works of alteration.	Conservation Area Consent 19.07.1996
8804740	Land at the rear of 64 Fitzjohn's Avenue NW3	Submission of details of design external appearance and landscaping pursuant to Condition 1a of the Appeal decision dated 14.11.88 for the conversion of the existing garage block to form two self-contained one bedroom homes with integral garages	Reserved matters approved 14-06-1989
8803741	Land at rear of 64 Fitzjohn's Avenue NW3	Conversion of existing garage block to provide 2 one-bedroom houses each with	Granted planning permission on appeal 14.11.88

		integral garage	single	
P9601477	64-66 Fitzjohn's Avenue, NW3	Retention of refuse store		Planning permission 06-09-1996
2015/0565/P	64 Fitzjohn's Avenue London NW3 5LT	Partial extension of the rear ground floor wall to align with existing rear elevation		Planning permission 24-03-2015
2015/0564/P	64 Fitzjohn's Avenue London NW3 5LT	Rear casement window replaced with timber framed French door and side windows.		Planning permission 11-02-2015

3.2 The most recent planning permission was recently granted in March 2017 (reference: 2015/5874/P) for the demolition of the existing pair of semi-detached dwellings and the erection of a pair of semi-detached, two storey 3 bedroom dwellings, including basement, on the application site. The planning permission is subject to a S106 Agreement which includes planning obligations for a car free development (i.e. no residential parking permits will be allowed for residents) and a requirement to supply the Council with a Construction Management Plan for approval before implementation of the planning permission. The officers report for this scheme can be found at Appendix 1 and the relevant drawings at Appendix 2.

3.3 The Officers report concludes:

- The proposal results in no net loss of housing and the existing building is identified as being a negative feature of the conservation area. As such there is no 'in-principle' objection to its loss. The principle of the development is considered to be acceptable.
- The replacement dwellings provide housing at a higher priority level than those to be demolished which is welcomed.
- The new units would exceed the required space standards.
- There would be space to park 2x cars at the front of the building, in a similar position to the current parking arrangements on site.
- The arrangement of rooms and living spaces is considered to be acceptable.
- All habitable rooms would have access to natural daylight.
- Although the new dwellings would not benefit from private amenity space, this is the situation with the existing dwellings, the site is relatively screened from the main road and therefore feels very private in nature.
- Overall, it is considered that the new dwellings would provide an acceptable standard of residential accommodation, in accordance with Policy DP26.
- The proposed development would appear subordinate to the main building as it would still be significantly lower in height than the main building.

- The contemporary design of the building is acceptable and is considered to make more of a positive contribution to the character and appearance of the conservation area than the existing building at the application site.
- Overall, it is not considered that the proposal would cause harm to the character and appearance of the wider area, including the Fitzjohn's Netherhall Conservation Area.
- The impact on the flats at Medresco House is limited due to the separation distance and the intervening car-park.
- Overall, the impact on nearby and neighbouring properties in terms of overlooking, outlook, daylight, sunlight, light pollution and noise is considered to be acceptable.
- The proposed basement is acceptable.

Pre-Planning Application Advice

3.4 The applicants have sought advice from the Council on the proposed additional storey subject to this planning application. The proposals at pre-application stage were slightly different from these proposals in that they were for two four bed dwellings. The Council issued a pre-application advice letter which made the following points:

- in my opinion, the proposal to add another storey to the building, would not comply with guidance in the Emerging Local Plan (or current guidance). This is because the proposal would fail to respect local context and character (the backland position requires a subordinate building, substantially lower in height than the main building at the front of the site);
- the proposal would fail to conserve or enhance the historic environment and heritage assets (it is unusual to find such a tall building in a backland position such as this and the building would visually compete with No. 64, the main building facing into Fitzjohn's Avenue);
- the proposal would not contribute positively to the street frontages of Fitzjohn's Avenue or Akenside Road (the 3 storey building would be visible and prominent in both street scenes);
- the proposal would fail to preserve the garden and open space or provide sufficient outdoor amenity space appropriate to the dwelling sizes.
- In terms of visual and residential amenities of the occupiers of nearby and neighbouring residential properties, the proposal to add another storey, even though it would be set back, would exacerbate concerns raised at the time of the previous application;
- It may be possible to overcome the extra level of perceived overlooking through careful design (i.e. facing windows away from neighbouring properties). However, I have concerns about overshadowing and loss of light to neighbouring properties because the proposed building would be substantially larger than the existing building on site.
- the rear of the building, with the tall blank façade, would appear overbearing to the occupiers of 12 Akenside Road.
- a larger house should generally provide more amenity space as it is more likely to accommodate families. I do not think that the amount of amenity space,

and its location at the front of the building rather than the rear, it suitable for a larger dwelling.

- Policy T2(a) notes that the Council will restrict off-street parking to spaces designed for disabled people, and operational or servicing needs. I recommend that the parking spaces are omitted from the scheme and more soft landscaping is provided instead.
- It is not clear whether the proposed Field Maple would be visible from Akenside Road above the proposed taller building. It is considered that the taller building would detract from the leafy and verdant character of this part of the conservation area.
- The Dwelling Size Priorities Table within Policy H7 of the Emerging Local Plan identifies 3-bed housing as having a higher priority than 4 (or more) bed dwellings. As such, the 2015 scheme is preferable in terms of its contribution to housing in the borough.
- If you choose to submit a formal planning application, the Basement Impact Assessment (BIA) will need to be updated to demonstrate that the additional weight of the taller building would not impact on the basement construction.

3.5 As far as possible, the appellant fully took on board the pre-application advice provided by officers and this is set out in detail in the Design and Access Statement. However, it is worth highlighting briefly the following amendments:

- The second floor level was set back at the front and rear to minimise any impact on neighbouring properties;
- A Sunlight and Daylight Report was submitted demonstrating that there would be no detrimental loss of light to neighbouring properties;
- The materiality of the proposed roof extension was carefully designed so as to ensure the verdant character of the surroundings were maintained and to avoid any potential perception of the proposal being over-bearing;
- The proposals were retained as 3 bedroom dwellings;
- The structural engineer who authored the Basement Impact Assessment (BIA) reviewed it in the light of the additional weight that would result from the roof addition. The structural engineer confirmed that there would be no impact on the basement as proposed.

3.6 In addition, as part of this appeal, the appellant has submitted a plan which moves the entrance gate thus creating more private amenity space for the dwellings.

3.7 The appellants submitted a planning application on 13th September 2017 which was refused under delegated powers on 15th November 2017.

4.0 Description and need for the proposed development

4.1 The appeal proposal seeks full planning permission for:

'Erection of pair of semi-detached, three storey (plus basement) 3-bed dwellings following demolition of existing pair of semi-detached dwellings.

4.2 The proposed development is for the demolition of the existing pair of semi-detached dwellings and replacement with another pair of semi-detached dwellings. The proposals are similar to those recently approved (planning permission ref: 2015/5847/P) but include an additional storey at second floor level for each proposed dwelling which would include a bedroom and en-suite. The design of the front elevation has also been amended at ground floor level. The changes comprise an amendment to the glazing at this level with larger windows and the incorporation of cladding. The amount of glazing remains the same as that approved, but has simply been rearranged.

4.3 The footprint of the proposed development, basement/ lower ground, upper ground and first floor will remain the same as the approved scheme. The only difference will be the addition of a second floor, set back from the building line of the lower floors to both dwellings, and the minor changes to the front elevation at ground floor as described above.

4.4 The second floor addition would be set back approximately 2.5m from the front elevation of the lower floors and 0.2m at the rear, to ensure an appropriate overall bulk and massing of the scheme and that the proposals result in no adverse impacts on residential amenity of neighbouring occupiers. It would resemble an attic storey.

4.5 Concerns of overlooking to and from the proposed second storey habitable rooms have been addressed by using projecting bays with obscure glazing facing out and clear glass (and openable) oriented to the sides (i.e. not towards 64 Fitzjohn's Avenue). This device was used for the first floor windows in the previous (approved) scheme and was considered to be an acceptable solution by the Council. Bathrooms at the proposed second floor have obscure glass and are only openable above 1700mm from finished floor level.

The proposed second floor extension would have a height of 2.7m, approximately 2.4m taller than the approved scheme but set back 2.5m from the front elevation. The maximum height of the proposed development (i.e. the roof of the second storey level set back from the elevations at the front and rear) would be approximately 8.5m. This is still significantly lower than the height of No. 64 Fitzjohn's Avenue which has a lower ground floor, three storeys and dormer windows in the roof and has a height of approximately 15.75m when measured from the ground floor level.

4.6 The roof of the second floor will, like the approved proposals, have a flat roof with rooflights. The second floor will be clad in grey timber (Siberian Larch) to match the proposed cladding on the lower levels and to complement the immediate

surroundings. As described above, the elevational treatment at ground floor level has been amended. The elevational treatment on the first floor will be the same as the approved scheme.

- 4.7 The proposed second floor level would be a bedroom with en-suite bathroom. The proposed development would continue to have a kitchen/dining area at basement level. There would be a living/reception room at ground floor level. The original proposal for a bedroom on this floor has been omitted due to the provision of an additional bedroom at the second floor level and to provide a more useable living space at ground floor level. Two bedrooms will be provided on the first floor as per the approved proposed development.
- 4.8 Access will continue to be via the private road from Fitzjohn's Avenue and two parking spaces, as per the approved scheme are proposed.
- 4.9 The proposed dwelling will be highly sustainable. The re-building of the two houses will enable an upgrade of the current energy efficiency performance beyond the minimum U value requirement of the Building Regulations and will include the following where possible:
- Installation of new efficient gas condensing boilers with a SEDBUK 'A' rating.
 - Installation of solar panels for electricity generation may be possible on the second floor roof as this is south facing and faces an open car-park that is not overshadowed.
 - Insulation will be used in excess of recommended standards for all building elements.
 - Argon gas double glazing with low emissivity glass will reduce heat loss.
 - Underfloor heating will be supplied to all floors which will optimise energy efficiency due to its lower temperature requirement (i.e. 35 degrees compared to 75 degrees for conventional radiators).
 - The construction of the junctions to the external envelope will be detailed to minimise air leakage and therefore heat loss.
- 4.10 Mechanical ventilation with heat recovery (MVHR) will be explored as an option - this will ensure excellent air quality with minimum energy lost through exhaust air. Materials with low embodied energy sourced responsibly will be used where possible for the new-build construction for example the proposed Siberian larch and use of reclaimed London stock brickwork. Procedures will be put in place during construction to minimise the amount of waste that goes to landfill.
- 4.11 The use of Sedum planting for the roof will help the building fall back, not stand out or make a statement within the context of the green corridor within which it sits. The roof will absorb rainfall to enable evaporation and reduce amount of water lost to the mains drainage. The green roof will also add to and encourage natural diversity on the site.
- 4.12 Full details of the proposals are contained on the application drawings and on the 3D images which have been submitted to accompany this planning application.

4.13 Having considered the formal reasons for the refusal of the application and the content of the LPA Officers report, it is clear that a number of planning issues were considered acceptable and remain so. The appellant contends that these acceptable elements are:

- The principle of development is acceptable.
- The provision of 2 x 3 bed dwellings is acceptable.
- The proposed development would accord with the DCLG (2015) minimum internal floorspace standards.
- The proposed basement is considered acceptable in terms of the approved Basement Impact Assessment which demonstrates that the structural implications to all surrounding properties would be limited to 1 on the Burland scale and is therefore acceptable.
- There would be no detrimental overlooking as a result of this development.
- There would be no loss of sunlight or daylight on adjacent residential properties.
- There were no concerns in relation to the replacement tree and maintenance of trees.

5.0 Planning Policy Context and Framework

- 5.1 Under section 38(6) of the Planning and Compulsory Purchase Act 2004, if regard is to be had to the development plan determination must be had within accordance with the plan unless material considerations indicate otherwise.
- 5.2 The Development Plan comprises:
- The London Plan (2016)
 - London Borough of Camden Local Plan (2017)
- 5.3 Other material planning policy and guidance which are relevant to this application are set out below:
- National Planning Policy Guidance (March 2012)
 - DCLG National Practice Guidance.
 - Camden Planning Guidance
 - Fitzjohn's Netherhall Conservation Area Statement (2001)
- 5.4 This section considers the relevant planning policies at national, regional and local levels.
- 5.5 At the heart of the NPPF is a focus on achieving sustainable development which includes supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and creating a high quality built environment (paragraph 7). Pursuing sustainable development includes widening the choice of high quality homes (paragraph 9). Decisions need to take local circumstances into account, so that they respond to the different opportunities for achieving sustainable development in different areas.
- 5.6 With regard to decision-taking, the NPPF advises that local planning authorities should approach decision-taking in a positive way to foster the delivery of sustainable development and should look for solutions rather than problems. Decision-takers at every level should seek to approve applications for sustainable development where possible (paragraphs 186 and 187). The presumption in favour of sustainable development is the golden thread that runs through the NPPF. One of the core principles of the NPPF given in paragraph 17 is that planning should not simply be about scrutiny but instead be a creative exercise in finding ways to enhance and improve the places in which people live their lives.
- 5.7 Paragraph 17 also requires planning to: always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings and conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations.

- 5.8 Paragraph 14 of the NPPF states that there is a presumption in favour of sustainable development. Paragraph 49 of the NPPF requires housing applications to be considered in the context of the presumption in favour of sustainable development.
- 5.9 Paragraph 56 advises: 'The Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.'
- 5.10 Paragraphs 60 and 61 of the NPPF state; 'Planning policies and decisions should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles. It is, however, proper to seek to promote or reinforce local distinctiveness... Although visual appearance and the architecture of individual buildings are very important factors, securing high quality and inclusive design goes beyond aesthetic considerations. Therefore, planning policies and decisions should address the connections between people and places and the integration of new development into the natural, built and historic environment'.
- 5.11 Paragraph 128 relates to heritage assets and states: '*In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary.*'
- 5.12 Paragraph 131 adds: 'In determining planning applications, local planning authorities should take account of:
- 'the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation; the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and the desirability of new development making a positive contribution to local character and distinctiveness.'*
- 5.13 Paragraph 134 of the NPPF states: '*Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.*'
- 5.14 Paragraphs 186 and 187 of the NPPF advise that '*local planning authorities should approach decision-taking in a positive way to foster the delivery of sustainable development and should look for solutions rather than problems. Decision-takers at every level should seek to approve applications for sustainable development where possible.*'

London Plan (2016)

- 5.15 **Policy 3.3 (Increasing Housing Supply)** recognises the pressing need for more homes in London. Part B of the policy advises that the Mayor will seek to ensure that the housing need identified in the Plan in paragraphs 3.16a and 3.16b is met through provision consistent with at least an annual average of 42,000 net additional homes across London. Boroughs should seek to achieve and exceed the relevant minimum borough annual average housing target in Table 3.1. The annual average housing target in Camden is 889 from 2015/25.
- 5.16 **Policy 3.4 (Optimising Housing Potential)** states that *'taking into account local context and character, the design principles in Chapter 7 and public transport capacity, development should optimise housing output for different types of location within the relevant density range shown in Table 3.2.'*
- 5.17 **Policy 3.5 (Quality and Design of Housing Developments)** requires housing developments to be of the highest quality internally, externally and in relation to their context and to the wider environment, taking account of strategic policies in their Plan to protect and enhance London's residential environment and attractiveness as a place to live. Part B of the policy requires: *'The design of all new housing developments should enhance the quality of local places, taking into account physical context; local character; density; tenure and land use mix.....'*. Part C of the policy requires new homes to have adequately sized rooms and convenient and efficient room layouts which are functional and fit for purpose, meet the changing needs of Londoners over their lifetimes and address climate change adaptation...Part D of policy permits development proposals which compromise the delivery of elements of this policy if they are demonstrably of exemplary design and contribute to achievement of other objectives of the Plan.
- 5.18 **Policy 7.4 (Local Character)** requires development to have regard to the form, function, and structure of an area, place or street and the scale, mass and orientation of surrounding buildings. It should improve an area's visual or physical connection with natural features. In areas of poor or ill-defined character, development should build on the positive elements that can contribute to establishing an enhanced character for the future function of the area. Part B of the policy requires buildings to provide a high quality design response that: a has regard to the pattern and grain of the existing spaces in orientation, scale, proportion and mass; b contributes to a positive relationship between the urban structure and natural landscape features, including the underlying landform and topography of an area; c is human in scale, ensuring buildings create a positive relationship with street level activity and people feel comfortable with their surroundings; d allows existing buildings and structures that make a positive contribution to the character of a place to influence the future character of the area; and e is informed by the surrounding historic environment.
- 5.19 **Policy 7.6 (Architecture)** requires architecture to make a positive contribution to a coherent public realm, streetscape and wider cityscape. It should incorporate the

highest quality materials and design appropriate to its context. Part B of the policy requires 'buildings and structures to: be of the highest architectural quality; b be of a proportion, composition, scale and orientation that enhances, activates and appropriately defines the public realm; c comprise details and materials that complement, not necessarily replicate, the local architectural character; d not cause unacceptable harm to the amenity of surrounding land and buildings, particularly residential buildings, in relation to privacy, overshadowing, wind and microclimate; e incorporate best practice in resource management and climate change mitigation and adaptation; f provide high quality indoor and outdoor spaces and integrate well with the surrounding streets and open spaces; g be adaptable to different activities and land uses; h meet the principles of inclusive design; and i optimise the potential of sites.'

- 5.20 Policy 7.8 (Heritage Assets and Archaeology) requires development to identify, value, conserve, restore, re-use and incorporate heritage assets, where appropriate. Part D of the policy states: '*Development affecting heritage assets and their settings should conserve their significance, by being sympathetic to their form, scale, materials and architectural detail.*'

Camden Local Plan (2017)

- 5.21 The Camden Local Plan was adopted in July 2017. The policies of relevance to this planning application are set out below.
- 5.22 **Policy G1 Delivery and Location of Growth** seeks to deliver growth by securing high quality development and promoting the most efficient use of land and buildings in Camden by: supporting development that makes best use of its site, taking into account quality of design, its surroundings, sustainability, amenity, heritage, transport accessibility and any other considerations relevant to the site.
- 5.23 **Policy H1 Maximising Housing Supply** aims to secure a sufficient supply of homes to meet the needs of existing and future households by maximising the supply of housing and exceeding a target of 16,800 additional homes from 2016/17 - 2030/31.
- 5.24 **Policy H6: Housing Choice and Mix** seeks to secure high quality accessible homes. The Council will encourage design of all housing to provide functional, adaptable and accessible spaces; expect all self-contained homes to meet the nationally described space standard.
- 5.25 **Policy H7: Large and Small Homes** seeks to ensure that all housing development contributes to meeting the priorities set out in the Dwelling Size Priorities Table. This table indicates that there is a high need for market houses with two or three bedrooms. There is a lower need for market dwellings with one or four bedrooms.

- 5.26 **Policy A1: Managing the Impact of Development** seeks to protect the quality of life of occupiers and neighbours. Planning permission will be granted for development unless this causes unacceptable harm to amenity. The policy states:

'We will:

- a. seek to ensure that the amenity of communities, occupiers and neighbours is protected;*
- b. seek to ensure development contributes towards strong and successful communities by balancing the needs of development with the needs and characteristics of local areas and communities;*
- c. resist development that fails to adequately assess and address transport impacts affecting communities, occupiers, neighbours and the existing transport network; and*
- d. require mitigation measures where necessary*

The factors we will consider include:

- e. visual privacy, outlook;*
- f. sunlight, daylight and overshadowing;*
- g. artificial lighting levels;*
- h. transport impacts, including the use of Transport Assessments, Travel Plans and Delivery and Servicing Management Plans;*
- i. impacts of the construction phase, including the use of Construction Management Plans;*
- j. noise and vibration levels;*
- k. odour, fumes and dust;*
- l. microclimate; m. contaminated land; and*
- n. impact upon water and wastewater infrastructure.'*

- 5.27 **Policy A3: Biodiversity** in relation to trees and vegetation states:

The Council will protect, and seek to secure additional, trees and vegetation.

'We will:

- j. resist the loss of trees and vegetation of significant amenity, historic, cultural or ecological value including proposals which may threaten the continued wellbeing of such trees and vegetation;*
- k. require trees and vegetation which are to be retained to be satisfactorily protected during the demolition and construction phase of development in line with BS5837:2012 'Trees in relation to Design, Demolition and Construction' and positively integrated as part of the site layout;*
- l. expect replacement trees or vegetation to be provided where the loss of significant trees or vegetation or harm to the wellbeing of these trees and vegetation has been justified in the context of the proposed development;*
- m. expect developments to incorporate additional trees and vegetation wherever possible.'*

5.28 **Policy A4:** Noise and Vibration seeks to ensure that noise and vibration is controlled and managed. Planning permission will not be granted for development likely to generate unacceptable noise and vibration impacts.

5.29 **Policy A5:** Basements states:

'The Council will only permit basement development where it is demonstrated to its satisfaction that the proposal would not cause harm to:

- a. neighbouring properties;*
- b. the structural, ground, or water conditions of the area;*
- c. the character and amenity of the area;*
- d. the architectural character of the building; and e. the significance of heritage assets.*

In determining proposals for basements and other underground development, the Council will require an assessment of the scheme's impact on drainage, flooding, groundwater conditions and structural stability in the form of a Basement Impact Assessment and where appropriate, a Basement Construction Plan.

The siting, location, scale and design of basements must have minimal impact on, and be subordinate to, the host building and property. Basement development should:

- f. not comprise of more than one storey;*
- g. not be built under an existing basement;*
- h. not exceed 50% of each garden within the property;*
- i. be less than 1.5 times the footprint of the host building in area;*
- j. extend into the garden no further than 50% of the depth of the host building measured from the principal rear elevation;*
- k. not extend into or underneath the garden further than 50% of the depth of the garden;*
- l. be set back from neighbouring property boundaries where it extends beyond the footprint of the host building; and*
- m. avoid the loss of garden space or trees of townscape or amenity value*

Exceptions to f. to k. above may be made on large comprehensively planned sites. The Council will require applicants to demonstrate that proposals for basements:

- n. do not harm neighbouring properties, including requiring the provision of a Basement Impact Assessment which shows that the scheme poses a risk of damage to neighbouring properties no higher than Burland Scale 1 'very slight';*
- o. avoid adversely affecting drainage and run-off or causing other damage to the water environment;*
- p. avoid cumulative impacts;*
- q. do not harm the amenity of neighbours;*
- r. provide satisfactory landscaping, including adequate soil depth;*
- s. do not harm the appearance or setting of the property or the established character of the surrounding area;*
- t. protect important archaeological remains; and*

u. do not prejudice the ability of the garden to support trees where they are part of the character of the area.

The Council will not permit basement schemes which include habitable rooms and other sensitive uses in areas prone to flooding. We will generally require a Construction Management Plan for basement developments. Given the complex nature of basement development, the Council encourages developers to offer security for expenses for basement development to adjoining neighbours.'

5.30 **Policy D1: Design** states:

The Council will seek to secure high quality design in development. The Council will require that development:

- a. respects local context and character;*
- b. preserves or enhances the historic environment and heritage assets in accordance with "Policy D2 Heritage";*
- c. is sustainable in design and construction, incorporating best practice in resource management and climate change mitigation and adaptation;*
- d. is of sustainable and durable construction and adaptable to different activities and land uses;*
- e. comprises details and materials that are of high quality and complement the local character;*
- f. integrates well with the surrounding streets and open spaces, improving movement through the site and wider area with direct, accessible and easily recognisable routes and contributes positively to the street frontage;*
- g. is inclusive and accessible for all;*
- h. promotes health;*
- i. is secure and designed to minimise crime and antisocial behaviour;*
- j. responds to natural features and preserves gardens and other open space;*
- k. incorporates high quality landscape design (including public art, where appropriate) and maximises opportunities for greening for example through planting of trees and other soft landscaping,*
- l. incorporates outdoor amenity space;*
- m. preserves strategic and local views;*
- n. for housing, provides a high standard of accommodation; and o. carefully integrates building services equipment.*

The Council will resist development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

5.31 **Policy D2: Heritage** states:

The Council will preserve and, where appropriate, enhance Camden's rich and diverse heritage assets and their settings, including conservation areas, listed buildings, archaeological remains, scheduled ancient monuments and historic parks and gardens and locally listed heritage assets.

Designated heritage assets

Designed heritage assets include conservation areas and listed buildings. The Council will not permit the loss of or substantial harm to a designated heritage asset, including conservation areas and Listed Buildings, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:

- a. the nature of the heritage asset prevents all reasonable uses of the site;*
- b. no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation;*
- c. conservation by grant-funding or some form of charitable or public ownership is demonstrably not possible; and*
- d. the harm or loss is outweighed by the benefit of bringing the site back into use.*

The Council will not permit development that results in harm that is less than substantial to the significance of a designated heritage asset unless the public benefits of the proposal convincingly outweigh that harm.

Conservation areas

Conservation areas are designated heritage assets and this section should be read in conjunction with the section above headed 'designated heritage assets'. In order to maintain the character of Camden's conservation areas, the Council will take account of conservation area statements, appraisals and management strategies when assessing applications within conservation areas.

The Council will:

- e. require that development within conservation areas preserves or, where possible, enhances the character or appearance of the area;*
- f. resist the total or substantial demolition of an unlisted building that makes a positive contribution to the character or appearance of a conservation area;*
- g. resist development outside of a conservation area that causes harm to the character or appearance of that conservation area; and*
- h. preserve trees and garden spaces which contribute to the character and appearance of a conservation area or which provide a setting for Camden's architectural heritage.*

5.32 **Policy CC1 Climate Change Mitigation** requires all development to minimise the effects of climate change and encourage all developments to meet the highest feasible environmental standards that are financially viable during construction and occupation. The Council will: ensure that the location of development and mix of land uses minimise the need to travel by car; require all proposals that involve substantial demolition to demonstrate that it is not possible to retain and improve the existing building and expect all developments to optimise resource efficiency.

5.33 **Policy CC2 Adapting to climate change** requires development to be resilient to climate change. All development should adopt appropriate climate change adaptation

measures such as: a. the protection of existing green spaces and promoting new appropriate green infrastructure; b. not increasing, and wherever possible reducing, surface water runoff through increasing permeable surfaces and use of Sustainable Drainage Systems; c. incorporating bio-diverse roofs, combination green and blue roofs and green walls where appropriate; and d. measures to reduce the impact of urban and dwelling overheating, including application of the cooling hierarchy.

- 5.34 **Policy CC5 Waste** seeks to ensure that developments include facilities for the storage and collection of waste and recycling.
- 5.35 **Policy T1 Prioritising walking, cycling and public transport** seeks to promote sustainable transport by prioritising walking, cycling and public transport in the borough. In order to promote cycling in the borough and ensure a safe and accessible environment for cyclists, the Council will seek to ensure that development provides for accessible, secure cycle parking facilities exceeding minimum standards outlined within the London Plan (Table 6.3) and design requirements outlined within our supplementary planning document Camden Planning Guidance on transport.
- 5.36 **Policy T2 Parking and Car Free Development** seeks to limit the availability of parking and require all new developments in the borough to be car-free.

The Council will:

- a. not issue on-street or on-site parking permits in connection with new developments and use legal agreements to ensure that future occupants are aware that they are not entitled to on-street parking permits;*
- b. limit on-site parking to: i. spaces designated for disabled people where necessary, and/or ii. essential operational or servicing needs;*
- c. support the redevelopment of existing car parks for alternative uses; and*
- d. resist the development of boundary treatments and gardens to provide vehicle crossovers and on-site parking.*

Fitzjohn's/Netherhall Conservation Area Statement

- 5.37 The Fitzjohn's/Netherhall Conservation Area Statement was adopted in 2001. It advises that the street layout is dominated by Fitzjohn's Avenue running through the centre of the Conservation Area and the parallel streets running to the east and west of it. Overall the urban grain shows large houses with generous gardens surrounded by the denser areas of Hampstead Village, Belsize Village and Finchley Road.
- 5.38 The Statement on page 10 describes how the majority of houses in the Conservation Area are detached or semi-detached and the gaps between the gardens provide views to the rear gardens. The presence of mature trees in the Conservation Area is identified as being characteristic of the Conservation Area appearing between gaps between properties and in gardens.
- 5.39 In relation to the east side of Fitzjohn's Avenue, the Statement identifies that gaps in between properties give glimpsed views of rear gardens (page 17). Medresco House,

a 1960's building is considered to offer very little interest in its design and harms the area by the poor wooden fence surrounding it.

- 5.40 No's 54-64 are identified as making a positive contribution to the special character and appearance of the Conservation Area.

6.0 Planning Considerations

6.1 The appellant considers that the issues on which this appeal turns to be are:

1. Whether the proposed development, by virtue of its height, bulk, siting and detailed design would appear as over-dominant and would be harmful to the character and appearance of the adjacent dwellings and conservation area generally.

2. Whether the proposed basement excavation, by virtue of its siting, scale and design would fail to be subordinate to the host building and property thereby harming the character and appearance of the conservation area.

3. Whether the proposed development, by virtue of its height, width, bulk and siting would result in the loss of outlook to 64 Fitzjohn's Avenue and 12 Akenside Road.

4. Whether the proposed landscaping and access arrangement would fail to enable vehicles to leave the site in a forward gear impacting on pedestrian and highway safety.

5. Whether the absence of a legal agreement to secure car free housing and the proposed on-site parking provision in this highly accessible location, the development would fail to encourage car free lifestyles, promote sustainable ways of travelling, help to reduce the impact of traffic and would increase the demand for on-street parking in the CPZ.

6. Whether the proposed development, in the absence of a legal agreement to secure a Construction Management Plan and associated monitoring fee, would be likely to give rise to conflicts with other road users, and be detrimental to the amenities of the area generally.

7. Whether the proposed development, in the absence of a legal agreement to secure contributions towards public highway works, would be likely to harm the Borough's public realm.

6.2 The response to these issues are set out in turn in the below section.

1. Whether the proposed development, by virtue of its height, bulk, siting and detailed design would appear as over-dominant and would be harmful to the character and appearance of the adjacent dwellings and conservation area generally.

- 6.3 The NPPF seeks positive improvements in the built and historic environment. Planning should always seek to secure high quality design and conserve heritage assets in a manner appropriate to their significance. Housing applications should be considered in the context of the presumption in favour of sustainable development. Planning decisions should not attempt to impose architectural styles and should not stifle innovation, originality or initiative, however it is proper to seek to promote or reinforce local distinctiveness. In determining applications, great weight should be given to outstanding or innovative designs.
- 6.4 In respect of Conservation Areas, Local planning authorities should look for opportunities for new development to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to or better reveal the significance of the asset should be treated favourably (NPPF paragraph 137).
- 6.5 London Plan Policy 7.4 requires development to have regard to the form, function, and structure of an area, place or street and the scale, mass and orientation of surrounding buildings. It should improve an area's visual or physical connection with natural features. Buildings should provide a high quality design response. London Plan Policy 7.6 advises that architecture should make a positive contribution to the streetscape and incorporate the highest quality materials and design appropriate to its context.
- 6.6 Policy D1 seeks to secure high quality design in development. Development is required to respect local context and character, preserve or enhance the historic environment and heritage assets in accordance with "Policy D2 Heritage"; comprise details and materials that are of high quality and complement the local character; integrate well with the surrounding streets and contribute positively to the street frontage; respond to natural features and preserve gardens and other open space; incorporate high quality landscape design and maximise opportunities for greening for example through planting of trees and other soft landscaping, and preserve strategic and local views.
- 6.7 Policy D2 requires the Council to preserve and, where appropriate, enhance Camden's rich and diverse heritage assets and their settings, including conservation areas. The Council will not permit development that results in harm that is less than substantial to the significance of a designated heritage asset unless the public benefits of the proposal convincingly outweigh that harm.
- 6.8 In respect of Conservation Areas, in order to maintain the character of Camden's conservation areas, the Council will take account of conservation area statements,

appraisals and management strategies when assessing applications within conservation areas. The Council will: require that development within conservation areas preserves or, where possible, enhances the character or appearance of the area; resist the total or substantial demolition of an unlisted building that makes a positive contribution to the character or appearance of a conservation area; and preserve trees and garden spaces which contribute to the character and appearance of a conservation area or which provide a setting for Camden's architectural heritage.

- 6.9 The application site is within the Fitzjohn's Netherhall Conservation Area, wherein the Council has a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the area. The existing building on site is identified as having a negative contribution towards the Conservation Area in the Fitzjohn's Netherhall Conservation Area Statement (FNCAS). Nos. 54-64 Fitzjohn's Avenue are identified as making a positive contribution to the special character and appearance of the area.
- 6.10 A general description of the character and appearance of the Conservation Area is provide on page 10 of the FNCAS. Large mature trees have a presence in nearly every view. Trees are an inherent and characteristic part of the Conservation Area. Although not always visible from the street, the rear gardens form large blocks of open land making a significant contribution to the character of the area.
- 6.11 The FNCAS notes on pages 16 and 17 that on properties on the east side of Fitzjohn's Avenue are mostly semi-detached properties of two/three storeys with semi-basements. Gaps between the properties show off the tall chimneys and give glimpse views of rear gardens.
- 6.12 The appeal site comprises a backland brownfield site that currently comprises a pair of semi-detached dwellings, and planning permission has been granted for a replacement of these dwellings under application reference: 2015/5847/P. The rear garden of no. 64 Fitzjohn's Avenue now contains the application site which currently comprises the existing poor quality semi-detached dwellings, to be replaced.
- 6.13 The proposal site is not characteristic of the Conservation Area in that it does not comprise a rear garden and is already built up. It does however maintain a verdant character and views of both the existing semi-detached houses and the rooftops of properties can be glimpsed from Fitzjohn's Avenue.
- 6.14 The proposal that is the subject of this appeal increases the height of the permitted development by an additional storey, in all other respects the development remains broadly as permitted under application reference: 2015/5847/P, which was approved by the Council. The second storey level is 2.4m in height and is set back from the front elevation by 2.5m. The overall height of the building is 8.5m. This storey would be clad on all sides with grey timber cladding (Siberian Larch).

- 6.15 The proposed development would replace the existing poor quality buildings on site with a high quality development, the principle of which was considered acceptable by officers under application reference: 2015/5847/P. application reference: 2015/5847/P. The proposed building and, in particular the roof extension, have been carefully designed to take account of its backland position, relationship with no. 64 Fitzjohn's Avenue, and the character of the surrounding Conservation Area.
- 6.16 The proposal would remain substantially lower than the original Victorian building at no. 64. This building is 15.75m high and the proposal would be 7.25m lower than this property. The difference between the height of then approved scheme and the proposal is 2.4m, and the proposed roof extension is set back by 2.5m further reducing its impact. It would therefore be clearly and visibly subordinate to the frontage building.
- 6.17 With regard to Akenside Road, the building would clearly be set in a backland position, and therefore appear as a subordinate dwelling. Furthermore, it would be well screened by the substantial vegetation and trees along in the surrounding gardens.
- 6.18 In terms of design, no. 64 has a formality that is expressed through a hierarchy of elements, traditional building forms, use of ornate details and complex mix of materials, such as different brick types. This is also reflective of the properties along Akenside Road.
- 6.19 The form of the proposed houses is non-traditional. The absence of features such as pitched roofs, timber sash windows and bay windows avoids the building competing with the dominant, original building stock on Fitzjohn's Avenue and Akenside Road. The pared back, simple style helps reference the proposed building back to the non-domestic roots of the original building on site. With regard to the roof extension, the simple design, flat roof and choice of timber cladding would not compete with the much larger, bulkier, taller and grander building of no. 64 Fitzjohn's Road, would remain subordinate to the host building and respect the local context and character of the Conservation Area.
- 6.20 The proposed roof extension comprises a simple, informal timber cladding which would be well-detailed but without decorative detail. It will identify the building as being subservient to those around it and the association that timber cladding has with utilitarian buildings will reinforce the connection the proposal has with the non-domestic nature of the original building on site.
- 6.21 With regard to the fenestration, this has also been treated in a manner which avoids a pastiche of the traditional windows of the original properties surrounding the site. The glazing is intended to form 'gaps' within and between materials rather than stand out as details. At ground floor the glazing reads as a void between the masonry flank walls and masonry on the first floor. Timber clad projections at first floor provide simple elements behind which windows are concealed. The structural glass boxes of the second floor have glass to glass junctions that avoid the details that window framing would create. This approach creates a simplicity of form that reinforces the

proposed building as subservient to the larger original buildings on Fitzjohn's Avenue and Akenside Road.

- 6.22 The main entrances to the properties in Fitzjohn's Avenue and Akenside Road are a point of focus through the use of architectural devices of porches, decorative fascia boards, columns, steps, pitched roofs and symmetrical positions within larger architectural features. It is proposed that the entrances to the proposed houses read as subservient to these existing 'grand' entrance doors. They will use the same materials as elsewhere (timber boarding), will be minimally detailed and will share larger openings within the masonry with glazing and they will not be symmetrically placed.
- 6.23 The application site, as referenced in the officer's report for the approved scheme is relatively well screened from the main road (Fitzjohn's Road). Glimpses of the existing building are only visible from the top of the private access road and a gap in the trees to the south of Medresco House. Views into the site are dominated by the large mature tree by the side of the private access road, the large tree on the boundary with Medresco House and other trees to the side and rear of the application site.
- 6.24 As shown in the 3D images submitted to accompany the planning application, the simple design of the proposed development and natural timber cladding would appear visually subordinate to No.64 Fitzjohn's Avenue and views into the site from Fitzjohn's Avenue would continue to be dominated by the large mature trees, which are characteristic of the Conservation Area. The proposed development with its simple design and sympathetic materials, which sits behind the dominant building of No.64 Fitzjohn's Avenue and within a mature trees, would only be visible in a limited number of glimpsed views from the street on Fitzjohn's Avenue. It is therefore not considered that the proposed development would be visually prominent from Fitzjohn's Avenue.
- 6.25 In terms of the potential visual impact when viewed from Akenside Road, the submitted 3D image demonstrates that the proposed development would not be visible from Akenside Road and the views are dominated by an existing mature tree. The proposed development would not be visible or prominent from the street scene from Akenside Road. It is not considered that the addition to the approved scheme would detract from the leafy and verdant character of this part of the Conservation Area.
- 6.26 On the basis of the above, it is not considered that first reason for refusal is well-founded. The proposal replaces an existing building, and planning permission exists for a similar scheme on the site therefore the siting of the proposal is established. It has been carefully designed so that it is architecturally and visually subordinate to the surrounding host buildings and materiality and setback of the proposed roof extension ensures it's subservience. It is not considered that the appeal proposals would cause harm to the host buildings or to the character and appearance of the wider area, including the Fitzjohn's Netherhall Conservation Area. It is considered that the

proposed building with its simple contemporary design and choice of materials would integrate with the surrounding area and enhance this part of the Conservation Area.

2. Whether the proposed basement excavation, by virtue of its siting, scale and design would fail to be subordinate to the host building and property thereby harming the character and appearance of the conservation area Policy A5 of the Camden Local Plan comprises a criteria based policy whereby the Council will permit basement development.

- 6.27 Policy A5 relates to basements and will only permit basement development where it will cause no harm. In determining proposals for basements and other underground development, the Council will require an assessment of the scheme's impact on drainage, flooding, groundwater conditions and structural stability in the form of a Basement Impact Assessment and where appropriate, a Basement Construction Plan. Basement development should meet a number of criteria as set out in the policy including.
- 6.28 The first part of Policy A5 requires that it is demonstrated to its satisfaction that the proposal would not cause harm to:
- a. neighbouring properties;
 - b. the structural, ground, or water conditions of the area;
 - c. the character and amenity of the area;
 - d. the architectural character of the building; and
 - e. the significance of heritage assets.
- 6.29 The basement for the approved scheme remains unchanged as part of this appeal submission. The approved scheme was accompanied by a Basement Impact Assessment (BIA), which has been independently audited by Campbell Reith. Campbell Reith concluded that the BIA adequately identifies the potential impacts from the basement proposals and provided suitable mitigation. The appeal application included this BIA and an accompanying letter confirming that the additional storey proposed would not have any impact on the proposed basement. This was accepted by officers and the proposals are therefore considered to comply with parts a and b of Policy A5.
- 6.30 The impacts of the proposal in terms of design and its impact on the conservation area are discussed at paragraphs 6.3 – 6.26 above. There would be no element of the basement that would be visible from the public realm. The basement does not rely on lightwells or other significant structures and is lit by rooflights which are flush with the ground and do not impact the ability to use this forecourt space. It is therefore not considered that the proposals would have any impact on the character and amenity of the area, the architectural character of the building and the significance of heritage assets, and it therefore complies with parts c, d and e of Policy A5.
- 6.31 The second part of Policy A5, and specifically in regard to reason for Refusal 2, requires that the siting, location, scale and design of basements should have a minimal impact

on, and be subordinate to, the host building and property. In respect of this, basement development should:

- f. not comprise of more than one storey;
- g. not be built under an existing basement;
- h. not exceed 50% of each garden within the property;
- i. be less than 1.5 times the footprint of the host building in area;
- j. extend into the garden no further than 50% of the depth of the host building measured from the principal rear elevation;
- k. not extend into or underneath the garden further than 50% of the depth of the garden;
- l. be set back from neighbouring property boundaries where it extends beyond the footprint of the host building; and
- m. avoid the loss of garden space or trees of townscape or amenity value.

- 6.32 In response to these requirements, the proposed basement does not comprise of more than one storey, it and will not be built beneath an existing basement and it will not result in the loss of garden space or trees of townscape or amenity value. The proposal therefore complies with parts f, g and m of Policy A5. It is set back from the majority neighbouring property boundaries, and does not directly adjoin neighbouring buildings, thereby satisfying part l.
- 6.33 In terms of the extent of the basement in comparison to the proposed dwelling, the GIA of the basement is 53sqm and the GIA of the ground floor is 143sqm. The basement therefore is 37% of the dwellings and meets criteria i. The Council have suggested that the area including piling should be included in this measurement. This seems to be an onerous requirement, particularly as it would be highly unlikely that there would be a requirement for the floor area of a new building to be measured including the foundations/ piling area.
- 6.34 The basement extends 5m into the garden/ shared spaces to the front. This area varies in depth and it is possible that the gate could be moved to allow for an increased area of private space in front of the dwellings (see drawing 1069.01.10 (G)). This can be done without the need for planning permission and the land is within the ownership of the appellant. However, as set out in the Basement CPG (see Appendix 3), the purpose of restricting the depth of basements is to protect planting in garden areas and biodiversity. The current area to the front of the dwellings is a shared parking and patio area and this is to be retained albeit with additional planting and landscaping. It is therefore considered that the situation in this instance is unique and the landscaping is actually being improved as a result of the development as the front area will comprise a mandatory level of soil allowing for planting.

- 6.35 Nevertheless, the basement extension has been approved under planning reference: 2015/5847/P and can therefore be constructed. This is a significant material consideration, given the extant permission, and should be given considerable weight in respect of this matter. Furthermore, the basement would have no visual impact on the character or appearance of the Conservation Area and would remain subordinate to the host building, in this unique backland situation.
- 6.36 The Council has stated at paragraph 4.10 of their statement that the scale of the basement had not previously been found objectionable as the superseded policy DP27 did not allow for the Council to apply specific limitations upon the acceptable extent of such extensions. The paragraph goes on to state that a major factor behind the revision to the policy as reflected in policy A5 is to allow for additional control of such development. Given that permission exists to construct the basement as proposed, it is unclear as to what this 'additional control' would achieve.
- 6.37 Given the extant permission, the unique site layout and the fact that the proposed basement complies with the majority of policy A5, it is considered that this reason for refusal is unjustified.

3. Whether the proposed development, by virtue of its height, width, bulk and siting would result in the loss of outlook to 64 Fitzjohn's Avenue and 12 Akenside Road.

- 6.38 Policy A1 seeks to protect the quality of life of occupiers and neighbours. Planning permission will be granted for development unless this causes unacceptable harm to amenity. The Council will seek to ensure that the amenity of communities, occupiers and neighbours is protected. Factors the Council will consider include: visual privacy, outlook; sunlight, daylight and overshadowing; artificial lighting levels; odor, fumes and dust, impacts of the construction phase, including the use of Construction Management Plans and noise and vibration levels.
- 6.39 The officers report in relation to this scheme raises no objection in regard to loss of daylight and sunlight, overlooking or overshadowing. The reason for refusal relates specifically to the impact that the modest roof extension would have on the neighbouring properties at no. 64 Fitzjohn's Avenue and 12 Akenside Road.
- 6.40 With regard to the impact on these properties, the roof extension is set back 2.5m from the front of the property and is 2.4m taller than the approved scheme on site. A 25 degree line taken from the lower windows of 12 Akenside Road is only marginally greater than the approved scheme, given the modest height increase and the set back on the front and rear elevations. In addition the principle rear windows of 12 Akenside Road do not face the proposal and are angled towards the south. There is therefore unlikely to be any discernible loss of outlook for these properties. The ground and first floor rear windows at 64 Fitzjohn's Avenue will maintain a similar outlook to existing while the second floor windows will easily accommodate a 25 degree line demonstrating a good outlook. The upper windows of 64 Fitzjohn's Avenue will be unaffected by the development.

- 6.41 In addition, the non-traditional form and simple style of the proposed building, informal natural materials, simplicity of the fenestration and glazing and the position of the trees allows the proposed development to fall back and not stand out against the backdrop.
- 6.42 The proposals will not result in any loss of sunlight or daylight, or overshadowing and will not result in any detrimental overlooking. Any loss of outlook is minimal and tempered by the simple design and materiality of the proposals. The third reason for refusal is therefore considered to be unjustified.

4. Whether the proposed landscaping and access arrangement would fail to enable vehicles to leave the site in a forward gear impacting on pedestrian and highway safety.

- 6.43 The parking and access arrangement for the appeal proposal reflects the existing situation on site and the scheme approved under planning reference: 2015/5847/P. The officer’s report for the approved scheme does comment on and certainly does not raise any concerns in regard to the access road (see Appendix 1).
- 6.44 The Council now refers to new fencing that has been erected alongside the access drive which provides a new refuse store and replaces the old refuse store. There is no record of planning permission for this new structure and it is not in the ownership of the appellant, although the appellant does have the use of the refuse store (see drawing: 1169.SK06). However, it is no taller than 1m and replaces an existing structure of similar height and significant evergreen planting. The photographs below set out the previous situation alongside the current situation. It is therefore not considered that the fencing would have any impact on highways safety.



Previous refuse area/ fencing

Current refuse area/ fencing

- 6.45 Nevertheless, the new fencing reflects the existing situation and the scheme approved under application reference 2015/5847/P can be implemented. Furthermore, this has been raised effectively as a new issue by the Council given the previous approval on site. On this basis it is not considered that this reason for refusal is justified.

5. Whether the absence of a legal agreement to secure car free housing and the proposed on-site parking provision in this highly accessible location, the development would fail to encourage car free lifestyles, promote sustainable ways of travelling, help to reduce the impact of traffic and would increase the demand for on-street parking in the CPZ.

- 6.46 The application site has a Public Transport Accessibility Level (PTAL) of 5, which means it is easily accessible by public transport; and it is within the Belsize controlled parking zone (CAB) which operates between 0900 and 1830 hours on Monday to Friday and 0930 to 1330 on Saturday.
- 6.47 Policy T2 seeks to limit the availability of parking and require all new developments in the borough to be car-free. The Council will not issue on-street or on-site parking permits in connection with new developments and use legal agreements to ensure that future occupants are aware that they are not entitled to on-street parking permits and limit on-site parking to: i. spaces designated for disabled people where necessary, and/or ii. essential operational or servicing needs.
- 6.48 The existing two dwellings have two car parking spaces on site. The approved scheme for 2 x 3 bedroom dwellings has planning permission for two car parking spaces on the site. The approved scheme can be built out and the car parking spaces laid out in accordance with the approved plans. The fact that there is existing car parking on the site and an approved scheme with two car parking spaces which can be built out, is a significant material consideration. The appellant considers that the provision of two car parking spaces in connection with the proposed development, which is effectively an alteration to the approved scheme, is acceptable.
- 6.49 A S106 Agreement was secured with the approved scheme ensuring that the dwellings permitted are subject to a car capping clause (i.e. the future occupiers would have no access to on-street parking permits but would be able to park on site). This same clause will be secured through a legal agreement for the appeal scheme. This would prevent the proposed development from having an additional impact on parking stress within the CPZ.
- 6.50 A Unilateral Undertaking will be submitted as part of this appeal to secure car-capping on-site.
- 6.51 On this basis it is not considered that this reason for refusal is justified.

6. Whether the proposed development, in the absence of a legal agreement to secure a Construction Management Plan and associated monitoring fee, would be likely to give rise to conflicts with other road users, and be detrimental to the amenities of the area generally.

- 6.52 The approved scheme secured a Construction Management Plan as part of the associated S106 Agreement. A Construction Management Plan was submitted as part of the planning application submission. A Unilateral Undertaking will be submitted as part of this appeal to secure the Construction Management Plan. This is considered sufficient to overcome this reason for refusal.

7. Whether the proposed development, in the absence of a legal agreement to secure contributions towards public highway works, would be likely to harm the Borough's public realm.

- 6.53 The approved scheme secured a contribution towards highways works as part of the associated S106 Agreement. A Unilateral Undertaking will be submitted as part of this appeal to secure a contribution towards public highways works. The appellant will seek to agree the clause with the Council. This is considered sufficient to overcome this reason for refusal.

7.0 Conclusions

- 7.1 This statement of case has been prepared to support a planning appeal at 66 Fitzjohn's Avenue, by the London Borough of Camden for the following development:

'Erection of pair of semi-detached, three storey (plus basement) 3-bed dwellings following demolition of existing pair of semi-detached dwellings.

- 7.2 The proposed development that is the subject of this appeal is effectively an amendment to planning permission 2015/5847/P which was granted planning permission on 28th March 2017 of the same description. The scheme that is the subject of this appeal seeks to add an additional storey on what is an extant planning permission. The principle of development, including the car parking spaces on site, and the basement, have therefore been fully accepted by the Council and there is a very recent, extant permission that can be implemented. This is a significant and material consideration.
- 7.3 With regard to reason for refusal 1, the additional storey has been designed to the highest standard with materials that are in keeping with and reflective of the verdant nature of the site as well as the character and appearance of the surrounding Conservation Area. The overall design is also considered to be of the highest quality in design terms. This statement of case and the accompanying planning application documents clearly demonstrate that the proposed development would result in a positive addition to the wider streetscape and enhance the character and appearance of the Fitzjohn's Netherhall Conservation Area.

- 7.4 Reason for refusal 2 refers to the proposed basement which is now considered to be unacceptable in terms of Policy A5. Planning permission was granted on 28th March 2017 for a basement on site and no changes to this approved basement are proposed as part of this appeal. The fact that there is an extant and recent permission for the basement on site is a significant and material consideration and on this basis it is not considered that this reason for refusal is justified. Nevertheless, this statement of case does make an assessment of how the proposed development complies with Policy A5. On balance, given the unique location and characteristics of the development site, it is considered that the proposed basement is in broad compliance with Policy A5.
- 7.5 Reason for refusal 3 refers to the impact on neighbouring properties. The proposals have been carefully designed to ensure that there will be no detrimental impact on neighbouring properties. The second floor addition is set back at the front and rear, and glazing off-set, to minimise any impact on neighbouring properties. The sunlight and daylight report submitted with the planning application demonstrates that there will be no detrimental impact in terms of sunlight and daylight impact.
- 7.6 Reasons for refusal 4 refers to the access road on site. The access into the site is not proposed to change as part of this appeal submission and the proposed access therefore reflects both the existing situation and that found to be acceptable as part of the extant permission on site. The Council cite new fencing adjacent to the access road as impacting highways safety. As the photographs above demonstrate, the low level fencing does not have any impact in terms of visibility given the significant planting and fencing it replaced. In any event, it is outside the control of the appellant, and it reflects the existing situation, and that of the extant planning permission on site.
- 7.7 With regard to reason for refusal 5, the Council objects to the provision of 2 parking spaces on site. These parking spaces currently exist on site and have been approved as part of the extant planning permission. While strictly speaking the parking spaces are now contrary to planning policy, the fact that the extant permission can be implemented is a significant and material consideration and on this basis it is considered that this reason for refusal is not justified. A unilateral undertaking will be submitted with this appeal to secure 'car capping' ensuring that the development would not be eligible for on street parking permits.
- 7.8 With regard to reasons for refusal 6 and 7, the appellant will submit a unilateral undertaking to address these points, and will seek to agree the clauses with the Local Planning Authority prior to submission to the Inspectorate.
- 7.9 This report clearly sets out the benefits of the proposals, and highlights the high quality design and the fact that there will be no detrimental impact on the neighbouring properties. Of further note is the fact that there is an extant permission on site. This is particularly relevant to reasons for refusal 2 (basement), 4 (access) and 5 (car free). It is not unreasonable to consider an alternative option for this appeal whereby planning permission 2015/5847/P could be implemented thereby securing

the permission and the corresponding basement, access road and parking spaces that officers now object to. A new full application or S73 application could then be submitted to request the changes that are the subject of this appeal i.e. the roof extension. This would secure the basement, access road and on-site car parking spaces. The appellant is however resistant to this approach as he would prefer the certainty of having all planning matters settled prior to commencing development as this has the potential to add significant costs and delays to the build programme.

- 7.10 However, this does demonstrate the significant materiality of the existing situation and the approved scheme on site, and it is considered that significant weight should be attached to this. It is therefore considered that these objections by the Council are unnecessary.
- 7.11 On the basis of the above, it is considered that Council's reasons for refusal are ill-founded and the Inspector is respectfully requested to allow the appeal and grant planning permission for the proposed development.