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**04 March 2018**

**Dear Sir,**

**RE: The Water House, Millfield Lane, London N6 6HQ**

**Application Ref: 2017/3692/P**

Nexus Planning is acting on behalf of the City of London Corporation ('the City') and makes the following representations in relation to the above application. The City is aware that the application is being put forward to a Members Briefing to determine whether it should be determined under delegated powers, or whether it should be reported to the Planning Committee on the 22nd March 2018. The City hereby requests that this letter be brought to the attention of the relevant Members at the Members Briefing, and that the application be reported to the Planning Committee rather than being determined under delegated powers. The City also wishes to make the Council aware of several contradictions and inconsistencies in the documents that are due to be approved as part of the draft recommendation.

Following the publication of the Members Briefing Report, and the Applicant's fundamental change in position regarding the proposed tree protection, the City now formally **objects** to the application, as in the City's opinion, the impact the proposed development on the trees along Millfield Lane would not be acceptably mitigated without the cellular root protection being installed prior to the commencement of the development.

### Background

Hampstead Heath is a 275 hectare open space owned and managed by the City of London as a registered charity. It comprises a mosaic of habitats including woodland, grassland, scrub and open water. Close to the centre of London, it is one of the most important areas for nature conservation and recreation in the capital.

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London

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Birmingham

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Manchester

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Thames Valley

The City of London Corporation is obliged by virtue of various Acts of Parliament and specifically, the provisions of the London Government Reorganisation (Hampstead Heath) Order 1989 to manage the Heath, protect it and make it available as open space.

The foundation legislation, the Hampstead Heath Act 1871, brought the original Heath into public ownership with the following obligations:

- Forever to keep the Heath open, unenclosed, unbuilt upon and by all lawful means prevent, resist and abate all encroachment on the Heath and attempted encroachment and protect the Heath and preserve it as an open space;
- At all times preserve as far as maybe the natural aspect of the Heath and to that end protect the turf, gorse, heather, timber and other trees, shrubs and brushwood thereon;
- Not to sell, lease, grant or in any manner dispose of any part of the Heath; and
- To drain. Level and improve the Heath, as far only as may be from time to time requisite, with a view to its use for purposes of health and unrestricted exercise and recreation.

There are in excess of 7 million visits to Hampstead Heath every year, and the site hosts many services and facilities, including outdoor swimming, sports pitches, tennis courts and play areas.

### **Site Context and Proposal**

The Water House site consists of a detached dwelling and out building in very close proximity to Hampstead Heath. The site has pedestrian access from Fitzroy Park, but the main frontage and vehicle access is via Millfield Lane. Millfield Lane adjoins the eastern boundary of Hampstead Heath, and is partly owned by the City of London Corporation.

The site is situated within the Highgate Conservation Area, and is also designated within an area of Private Open Space.

### **Proposal**

The current application is for the following aspects of development:

- Refurbishment of the existing house and outbuilding;
- An extension at the rear on ground floor to accommodate level access and the required internal areas;
- A 3.75m rear extension on 1st floor;
- To align existing full height glazing to the front of the property with the existing glass canopy; and
- For the existing pool house to be used as family space.

The proposal also involves moving the main access to the building to the western elevation, and incorporating a pedestrian entrance to allow disabled access from the main site access.

To undertake these works, significant disruption is likely to Millfield Lane and the eastern parts of Hampstead Heath for the duration of the construction works. The Kenwood Ladies' Pond in particular, is located in close proximity to where the works will take place. Further, there are a number of veteran and mature trees located along Millfield Lane which are of great importance to the local environment.

### **Key Issues**

Following the publication of the Members Briefing Report, and the Applicant's fundamental change in position (Landmark Trees letter dated 28/2/18) regarding the proposed tree protection, the City now formally **objects** to the application, as in the City's opinion, the impact the proposed development on the trees along

Millfield Lane would not be acceptably mitigated without the cellular root protection being installed prior to the commencement of the development.

In addition, the City considers that through its recommendation to grant Planning Permission, the Council has failed to recognise the biological, heritage and conservation value of the three veteran oak trees on Hampstead Heath that will be directly impacted upon as a result of the development at the Water House.

### **Veteran Trees on Millfield Lane within Hampstead Heath land**

The City of London manage some of the most important sites for veteran and ancient trees in and around the London area, including Epping Forest, and Burnham Beeches and are recognised internationally for their expertise in this area of tree management. Hampstead Heath has approximately 800 veteran trees many of which are old field boundary trees, dating back to the eighteenth century and earlier when the Heath was still farmland. Hampstead Heath's population of veteran trees is the one of London's most important natural assets and a significant amount of resources are expended every year maintaining and conserving these trees.

The three veteran trees impacted by the Water House development are located on the south side of Millfield Lane, within the perimeter fence line that protects the Bird Sanctuary. The trees are clustered around the eastern end of the Lane just south west of the intersection with Merton Lane. Two of the trees are growing on the south-east corner of the Bird Sanctuary, an area that is recognised as probably the most valuable conservation area on the Heath, due to its rich mosaic of both terrestrial and aquatic habitats. The third tree is located just behind the existing Millfield Lane toilets. All three veteran trees are located within 1.5 metres of the edge of Millfield Lane and their respective root protection areas (RPA) lie directly under the Lane.

The City would like to draw the Council's attention to the Government Planning Policy Guidance from the Forestry Commission and Natural England:

### **Ancient woodland and veteran trees: protecting them from development (update 04.01.2018)**

What planning authorities should consider for developments affecting ancient woodland and veteran trees:-

- Avoid impacts, reduce impacts, and compensate as a last resort
- You and the developer should identify ways to avoid negative effects on ancient woodland or veteran trees, such as selecting an alternative site for development, or redesigning the scheme.
- You should decide on the weight given to ancient woodland and veteran trees on a case-by-case basis, taking account of the NPPF and relevant development plan policies.

### **Industry Standards and Planning Guidance**

Recommendations for the protection of Root Protection areas in BS:5837 (2012) 'Trees in relation to design, demolition, and construction – Recommendations'

- Sections 6.2.1 All trees that are being retained on the site should be protected by barriers and/or ground protection before any materials or machinery are brought on the site, and before any demolition, development or stripping of soil commences.
- Section 6.2.3.3 New temporary ground protection should be capable of supporting and traffic entering the site without being distorted or causing compaction of underlying soil.
- c) for wheeled or tracked construction traffic exceeding 2t gross weight, an alternative system (e.g. proprietary systems or pre-cast reinforced concrete slabs) to an engineering specification designed in conjunction with arboricultural advice, to accommodate the likely loadings to which it will be subjected.

The City's main concerns relating to the proposed development and the subsequently revised documentation are identified below:

- Appropriate tree protection must be installed prior to works being undertaken as set out in BS 5837:2012 Trees in Relation to design, demolition and construction;
- The permanent 'no dig' cellular confinement system solution as specified by Geosynthetics Limited should be installed prior to the commencement of the development; and
- Should the Council be minded to grant permission for the application, the City requests that a requirement to install the cellular confinement system be added to the Section 106 Agreement Condition 7, along with a requirement that the cellular web protection system needs to be closely monitored and maintained during the works and retained permanently on completion of the construction works.

The Single Joint Arboricultural Expert (SJAE) report by Treework Environmental Practice (draft dated 23rd February 2018) undertakes a full independent study of the impacts of the proposed development, and has been jointly commissioned by the City and the Applicant. This report clearly recommends that the cellular confinement system is required, as detailed on page 5:

*13.3 I am of the opinion that the health and longevity of the three veteran trees (namely T1, T2 & T3) would be best served by installing a permanent 'no dig' cellular confinement system solution as specified by Geosynthetics Limited (shown in Figure 1 below), a minimum of 59.5 metres in length, delineated on the Tree Plan (Appendix C). In addition, I recommend the system also incorporates the specification set out in my Recommendation' (paragraph 4.1.7).*

The City also wishes to make the Council aware of several contradictions and inconsistencies in the documents that are due to be approved as part of the draft recommendation.

The Applicant's own Arboricultural Method Statement dated 15th December 2017 prepared by Landmark Trees proposes the installation of a 3-D cellular confinement system prior to the commencement of construction works, as detailed on page 9:

*2.3.2 It is proposed to provide protection from construction traffic to the trees along Millfield Lane by installing a 3-D cellular confinement system on top of the existing surface. This will be installed prior to the commencement of construction works and remain in situ following their completion. The protection will extend from the start of the unmetalled section of Millfield Lane to the entrance to The Waterhouse as necessary.*

The Construction Management Plan (pro forma v2.2) updated 12/02/2018, and in particular the Z Brunel letter dated 05 February 2018, contradicts the two above reports as it states:

*The Applicant is assured that elaborate tree protection measures with extensive use of resources (plastic web, geotextile, timber stone and gravel) are unnecessary for the purposes of the proposed development at the Water House. However, the Applicant is prepared to support the City of London in their long-term proposal for the lane in the spirit of cooperation and neighbourliness. This support is relevant to the future upgrade of the lane, rather than the immediate use for construction.*

This CMP letter, and the Landmark Trees letter dated 28/2/18, represent a fundamental change in the Applicant's position regarding the tree protection system for the veteran oak trees, compared to the Applicant's Arboricultural Method Statement dated the 15th December 2017. The Applicant's new position also contradicts the findings of the SJAE report that has been jointly commissioned by the City and the Applicant.

The Landmark Tree Report December 2017 made specific recommendations for the protection of the three veteran trees on Millfield Lane as well as the other 30 trees extending down Millfield Lane to the Waterhouse site. A separate survey was carried out of these trees and was the subject of a report by Landmark Trees 14.07.2017. This survey followed from a request made by the City of London and Stakeholders. A meeting was held which was attended by Landmark Trees and the Waterhouse Planning team 02.11.2017 with Geosynthetics, a company specialising in tree root protection systems. Following the meeting a specification was developed by an Engineer and Arboriculturist from Geosynthetics.

Despite longstanding engagement and agreement with the City and other Stakeholders, it appears that the Applicant has now changed their position regarding the need for the mitigation system required to ensure the construction activity related to the development does not have a harmful impact on the veteran oak trees adjoining Millfield Lane. This primarily relates to the requirement to have the cellular system in place prior to the commencement of the development. The Applicant appears to suggest that this system is not required, despite saying this would be implemented according to the Applicant's own Arboricultural Report, and the findings of an independent Arboricultural Expert (the SJAE report), therefore, the City now has raised objections to the proposed development.

In reaching their recommendation to grant permission, it appears that the Council have placed undue reliance on Professor Andrew Dawson's report (Construction Management Plan (CMP) revised December 2017), which is detailed on the structural condition and material composition of Millfield Lane, however, there is little information on the implications for the roots of the trees. Professor Dawson suggests that roots are 350mm below the surface of the Lane, however, the Tree Radar Survey carried out in March 2017 indicates that there are significant roots at 150mm below the surface at the southern end of the route, near the Millfield Lane toilets.

The key point to make in this regard is that the City have advocated the 'Precautionary Principle' and pre-emptive approach to tree root protection on Millfield Lane. The Lane surface must be reinforced and protected before the demolition and construction phases of the development start in order to adequately protect the tree roots of the three veteran trees managed by the City of London. It is critically important to stress that a significant percentage of each of the veteran trees root protection areas lies directly under the footprint of the Lane.

It is acknowledged that the Waterhouse Team are trying to reduce the loadings on the surface by reducing the axle weight of construction vehicles to 3.5 tonnes, however, the total construction transport loadings over 59 weeks is still 27,657 tonnes. This is based on the 7,902 total movements stated in the CMP, multiplied by 3.5 tonnes. The City acknowledge that this is a worst case scenario, however, it is the City's opinion that this is the most realistic way to approach this issue, and highlight the situation that there is a significant risk that the sustained use of vehicles of this weight over 59 weeks will cause damage to the Lane in its current condition. The City cannot accept a situation where the works commence without adequate root protection in place, and then the surface starts breaking up, as the tree root damage will have already happened.

## Recommendations

Following the publication of the Members Briefing Report, and the Applicant's fundamental change in position regarding the proposed tree protection, the City now formally **objects** to the application, as in the City's opinion, the impact the proposed development on the trees along Millfield Lane would not be acceptably mitigated without the cellular root protection being installed prior to the commencement of the development.

Engineered Root protection installations are now recognised as standard practise in the construction industry and this development is no exception. The assumption that the Lane surface will hold up to construction

traffic is ill-advised. The general approach should be precautionary and pre-emptive. Veteran trees like Ancient Woodland are irreplaceable, and the guidance outlined above is clear on this and is being ignored.

The City is aware that the application is being put forward to a Members Briefing to determine whether it should be determined under delegated powers, or whether it should be reported to the Planning Committee on the 22nd March 2018. The City hereby requests that this letter be brought to the attention of the relevant Members at the Members Briefing, and that the Application be reported to the Planning Committee rather than being determined under delegated powers to allow sufficient time for the Applicant to implement the following recommendations and for Stakeholders to be consulted.

1. The Treework Environmental Practice report dated 23/2/2018 is submitted as a formal addition to the planning documents and the recommendations are embedded into the Arboricultural Method Statement and the CMP.
2. Landmark Trees letter dated 28/2/2018 should be withdrawn.
3. The letter from Z Brunel, Zenab Haji-Ismail should be withdrawn and the references to good practice incorporated into the CMP including:-
  - Banks person will be given relevant training by the Project Team and made aware of the key issues and thereafter will be responsible for visually inspecting the condition of the Lane each day.
  - Any issues will be recorded and reported to the Site Manager
  - The Site Manager will make his/her own thorough inspection of the Lane on a fortnightly basis and inform the Community Working Group, which may involve photographs.
  - Any significant issues will be reported to the City of London immediately.

An additional clause is added to the Section 106 agreement to deal specifically with Millfield Lane, this should include the following provisions: -

4. Prior to the commencement of all works a no dig cellular confinement system as specified by Geosynthetics Limited covering a minimum of 59.5 metres in length, delineated on the Tree Plan (SJAE Report dated 23/02/18 Appendix C). The construction of the cellular confinement system will be installed by a specialist Contractor and take account of the additional recommendations which are set out in sections 4.15 to 4.17 including the nine sub-points on pages 20 – 21. The City of London will be notified 7 days before commencement of the works in order to monitor the construction.
5. The cellular confinement system will be regularly maintained in line with the Geosynthetics Limited specification for the duration of the works and retained on completion as a permanent measure to protect the RPA's of the three veteran trees on Hampstead Heath.
6. The Applicant will seek written consent from the land owner at 55 Fitzroy Park and the City of London to install a drain at 155m chainage to direct surface water beneath Millfield Lane.
7. The CMP will be updated to clarify the requirement to monitor and maintain the condition of the Lane. It will involve a pre-commencement photo survey, fortnightly visual inspections, which will be reported to the Community Working Group and localised repairs undertaken throughout the construction programme. It is accepted that, should there be any obvious and significant signs of damage to the Lane as a result of the construction, the Project Team will implement a long-term solution such as cell web, trackway or ground protection units before proceeding any further with construction. The SJAE additional recommendations which are set out in sections 4.19 will also be adhered to (page 22-23).

8. The Developer will monitor the boundary structures for Apex Lodge, Fitzroy Lodge and 55 Fitzroy Park as detailed in the Building Surveyors Recommendations.

## **Conclusion**

The City is seeking to ensure that any development that occurs has minimal impacts on the adjoining Hampstead Heath, and in particular to the trees along Millfield Lane. Large numbers of construction vehicles are expected along Millfield Lane for the duration of construction works, which could result in damage to the root systems of trees along this Lane should appropriate mitigation measures not be installed.

A comprehensive root protection system should be employed along Millfield Lane for the entirety of the construction process, particularly as the Tree Radar Survey carried out in March 2017 indicates that there are significant roots at 150mm below the surface, rather than the 350mm indicated by Professor Andrew Dawson's report.

The City strongly requests that a requirement to install the cellular confinement system be mandatory should the Council be minded to grant permission for the development, along with a mandatory requirement that the cellular web protection system needs to be closely monitored and maintained during the works and retained permanently on completion of the construction works.

Yours faithfully,

A handwritten signature in dark ink that reads "Nexus Planning". The signature is written in a cursive, flowing style.

**NEXUS PLANNING**