



PLANNING SERVICES

TOWN & COUNTRY PLANNING ACT 1990 (as amended)

HEARING STATEMENT OF CASE

APPEAL SITE

11A Primrose Hill Road, London, NW3 3DG

APPELLANT

Mr O Osoba

SUBJECT OF APPEAL

1) Appeal against refusal of planning permission (ref: 2014/4514/P) on 5th of September 2014 for:

“Erection of a three-storey plus basement single family dwelling house and associated landscaping works (Class C3)”

2) Appeal against refusal of planning permission (ref: 2014/7856/P) on 7th of April 2015 for:

“Erection of a 3-storey dwelling house & associated landscaping works (Class C3)”

COUNCIL REFERENCE: 2014/4514/P and 2014/7856/P

PLANNING INSPECTORATE REFERENCE: APP/X5210/W/15/3005758 and APP/X5210/W/15/3016537

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1.0 SUMMARY

- 1.1 The appeal site is located within the side garden of the dwelling at 11 Primrose Hill Road. It lies within a prominent corner site near the junction of King Henry's Road and Primrose Hill Road. 11 Primrose Hill Road is an end of terrace dwelling forming part of 11-37 (odd numbers only) Primrose Hill Road. The appeal site lies within the eastern end of the Chalcot Estate in what is known as the "Quickswood" sector. It is subject to a surface water flow and flooding designation and is above a Network Rail tunnel.
- 1.2 The site is located adjacent to a grade II listed building (Church of St Mary the Virgin) and the Elsworthy Road Conservation Area.
- 1.3 Planning permission has been refused for two schemes on the appeal site which are both the subject of this appeal:
 - 1) 2014/4514/P was refused on 5/09/2014 for the "Erection of a three-storey plus basement single family dwelling house and associated landscaping works (Class C3)"
 - 2) 2014/7856/P was refused on 7/04/2015 for the "Erection of a 3-storey dwelling house & associated landscaping works (Class C3)"
- 1.4 The main reasons for refusal for 2014/4514/P are:
 - 1) Design and siting of the new dwelling harming the character and appearance of the locality and the adjacent conservation area;
 - 2) The submitted Basement Impact Assessment did not demonstrate that the basement excavation would not cause harm to the built and natural environment, local amenity nor result in flooding or ground instability
- 1.5 The main reason for refusal for 2014/7856/P is:
 - 1) Design, siting and appearance of the new dwelling
- 1.6 The remaining reasons for refusal relating to both applications are regarding the absence of a legal agreement for a Construction Management Plan, car-free development and a post-construction sustainability review. These reasons for refusal could be overcome with an appropriate Section 106 Legal Agreement.

2.0 SITE AND SURROUNDINGS

- 2.1 The appeal site is located within the side garden of the dwelling at 11 Primrose Hill Road. It lies within a prominent corner site near the junction of King Henry's Road and Primrose Hill Road.

- 2.2 To the south of the appeal site on the opposite corner lies a grade II listed building known as the Church of St Mary the Virgin. This building is a red brick structure adhering to an Early Gothic style dating from 1871-2.
- 2.3 The appeal site lies opposite the Elsworthy Road Conservation Area to the south meaning any development would affect its character and appearance.
- 2.4 11 Primrose Hill Road is an end of terrace dwelling forming part of 11-37 (odd numbers only) Primrose Hill Road. The terrace comprises of 3 storey flat roofed buildings. The adjoining buildings do not contain basements.
- 2.5 The appeal site lies within the eastern end of the Chalcot Estate in what is known as the “Quickswood” sector.
- 2.6 The appeal site is subject to a surface water flow and flooding designation and is above a Network Rail tunnel.

3.0 RELEVANT PLANNING HISTORY

- 3.1 **2005/0353/P:** Planning permission was refused for a 3 storey dwelling on 11/04/2005. The reason for refusal was:

“The proposed 3 storey single family dwelling house, by reason of its siting being located beyond the established building line on King Henry's Road and its height and bulk would be detrimental to the established character and appearance of the townscape and adjacent Elsworthy Conservation Area. The proposal is therefore considered to be contrary to policies EN1 (General environmental protection and improvement), EN14 (Setting of new development), EN16 (Site Layout), EN18 (Design of infill developments), EN23 (Reduction of garden amenity) and EN37 (Proposals outside conservation areas) of the London Borough of Camden Unitary Development Plan 2000.”

- 3.2 **2013/7112/P:** A full planning application for a 3 storey dwelling was withdrawn on 21/03/2014.

4.0 PLANNING POLICY FRAMEWORK

National Policy Documents

- 4.1 On the 27th of March 2012 the Government published the National Planning Policy Framework (NPPF). The policies contained in the NPPF are material considerations which should be taken into account

in determining planning applications. Paragraphs 14, 17, 47-55, 56-68, 109-125 and 126-141 are most relevant.

Local and Regional Planning Policy Framework

- 4.2 The Development Plan for the area comprises the London Plan March 2015, consolidated with alterations since 2011, and the Local Development Framework, containing the Camden Core Strategy and the Camden Development Policies.
- 4.3 The London Plan Policies most applicable here include policies 3.3, 3.4, 3.5, 5.3, 5.12, 5.18, 6.9, 6.10, 6.13, 7.4, 7.6 and 8.2.

Local Development Framework

- 4.4 Camden's Core Strategy and Development Plan Documents (Local Development Framework) were adopted in November 2010. The 4 Strategic objectives of the LDF are;
- A sustainable Camden that adapts to a growing population;
 - A strong Camden economy that includes everyone;
 - A connected Camden where people lead healthy active lives; and;
 - A safe Camden that is a vibrant part of our world city.
- 4.5 The relevant LDF policies as they relate to the reasons for refusal of the applications are listed below:

Core Strategy

CS5 (Managing the impact of growth and development)
CS11 (Promoting sustainable and efficient travel)
CS13 (Tackling climate change through promoting higher environmental standards)
CS14 (Promoting high quality places and conserving our heritage)
CS16 (Improving Camden's health and well-being)
CS19 (Delivering and monitoring the Core Strategy)

Development Policies

DP18 (Parking standards and the availability of car parking)
DP19 (Managing the impact of parking)
DP20 (Movement of goods and materials)
DP21 (Development connecting to the highway network)
DP22 (Promoting sustainable design and construction)
DP23 (Water)
DP24 (Securing a high standard of design)
DP25 (Conserving Camden's Heritage)
DP26 (Managing the impact of development on occupiers and neighbours)
DP27 (Basements and Lightwells)

- 4.6 The full text of each of the policies has been sent with the questionnaire documents.

Supplementary Guidance (Camden Planning Guidance)

- 4.7 The Council will also, where appropriate, rely on supplementary planning guidance as set out in the Camden Planning Guidance (CPG) insofar as it is material.
- CPG1 (Design)
 - CPG2 (Housing)
 - CPG3 (Sustainability)
 - CPG4 (Basements and lightwells)
 - CPG6 (Amenity)
 - CPG7 (Transport)
 - CPG8 (Planning obligations)

- 4.8 A copy of the above Camden Planning Guidance documents were sent with the questionnaire.

5.0 REASONS FOR REFUSAL

- 5.1 Planning application **2014/4514/P** (for a dwelling with basement) was refused on 5th of September 2014 for the following 5 reasons:

1. The proposed 3 storey plus basement single family dwelling house, by reason of its siting being located beyond the established building line on King Henry's Road and its height and bulk would be detrimental to the established character and appearance of the townscape and adjacent Elsworth Conservation Area. The proposal is therefore considered to be contrary to policies CS14 (Promoting high quality places and conserving our heritage) of the London Borough of Camden Local Development Framework Core Strategy and policies DP25 (Securing a high standard of design and DP25 (Conserving Camden's Heritage) of the London Borough of Camden Local Development Framework Development Policies.

2. The submitted basement impact assessment fails to demonstrate that the proposed basement excavation would not cause harm to the built and natural environment and local amenity and does not result in potential flooding or ground instability, contrary to policies CS5 (Managing the impact of growth and development) and CS14 (Promoting high quality places and conserving heritage) of the London Borough of Camden Local Development Framework Core Strategy and policies DP23 (Water), DP26 (Managing the impact of development on occupiers and neighbours) and DP27 (Basements and Lightwells) of the London Borough of Camden Local Development Framework Development Policies.

3. The proposed development, in the absence of a legal agreement to secure car-free development, would be likely to contribute unacceptably to parking stress and congestion in the surrounding area, contrary to policies CS11

(Promoting sustainable and efficient travel) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policies DP18 (Parking standards and the availability of car parking) and DP19 (Managing the impact of parking) of the London Borough of Camden Local Development Framework Development Policies.

4. The proposed development, in the absence of a legal agreement to secure the submission and implementation of a Construction Management Plan, would be likely to contribute unacceptably to traffic disruption and dangerous situations for pedestrians and other road users and be detrimental to the amenities of the area generally, contrary to policies CS5 (Managing the impact of growth and development), CS11 (Promoting sustainable and efficient travel) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policies DP20 (Movement of goods and materials), DP21 (Development connecting to the highway network) and DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Policies.

5. The proposed development, in the absence of a legal agreement securing a design stage and post-construction sustainability review, would fail to be sustainable in its use of resources, contrary to policies CS13 (Tackling climate change through promoting higher environmental standards), CS16 (Improving Camden's health and well-being) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policies DP22 (Promoting sustainable design and construction) and DP23 (Water) and of the London Borough of Camden Local Development Framework Development Policies.

5.2 Planning application **2014/7856/P** (for a dwelling without basement) was refused on 7th of April 2015 for the following 4 reasons:

1. The proposed 3 storey single family dwelling, by reason of its siting being located beyond the established building line on King Henry's Road and its height and bulk would be detrimental to the established character and appearance of the townscape and adjacent Elsworthy Conservation Area. The proposal is therefore considered to be contrary to policies CS14 (Promoting high quality places and conserving our heritage) of the London Borough of Camden Local Development Framework Core Strategy and policies DP25 (Securing a high standard of design and DP25 (Conserving Camden's Heritage) of the London Borough of Camden Local Development Framework Development Policies.

2. The proposed development, in the absence of a legal agreement to secure the submission and implementation of a Construction Management Plan, would be likely to contribute unacceptably to traffic disruption and dangerous situations for pedestrians and other road users and be detrimental to the amenities of the area generally, contrary to policies CS5 (Managing the impact of growth and development), CS11 (Promoting sustainable and

efficient travel) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policies DP20 (Movement of goods and materials), DP21 (Development connecting to the highway network) and DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Policies.

3. The proposed development, in the absence of a legal agreement to secure car-free development, would be likely to contribute unacceptably to parking stress and congestion in the surrounding area, contrary to policies CS11 (Promoting sustainable and efficient travel) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policies DP18 (Parking standards and the availability of car parking) and DP19 (Managing the impact of parking) of the London Borough of Camden Local Development Framework Development Policies.

4. The proposed development, in the absence of a legal agreement securing a design stage and post-construction sustainability review, would fail to be sustainable in its use of resources, contrary to policies CS13 (Tackling climate change through promoting higher environmental standards), CS16 (Improving Camden's health and well-being) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policies DP22 (Promoting sustainable design and construction) and DP23 (Water) and of the London Borough of Camden Local Development Framework Development Policies.

5.3 It is noted that there is an error within the first reason for refusal of both decision notices. Policy DP25 is referenced twice when policies DP24 and DP25 should both be referenced. The incorrect line is “*policies DP25 (Securing a high standard of design and DP25 (Conserving Camden's Heritage) of the London Borough of Camden Local Development Framework Development Policies.*” This should read “policies **DP24 (Securing high quality design)** and DP25 (Conserving Camden's Heritage) of the London Borough of Camden Local Development Framework Development Policies. The Council wrote to the appellant and the Planning Inspectorate on 02/06/2015 to advise them of the error made.

5.4 Reasons 1 and 2 of 2014/4514/P and reason 1 of 2014/7856/P will be addressed within sections 6 and 7 below. Reasons 3-5 and 2-4 of the refusals can be addressed by way of a Section 106 Legal Agreement with the heads of terms cited. Justification for why these planning obligations are required is contained within section 6 below. Copies of the draft Legal Agreements are included in Appendices 3 and 4. The Council considers that refusal reason 2 of 2014/4514/P cannot be overcome by way of a planning condition or planning obligation. Further justification is provided below.

6.0 THE COUNCIL'S STATEMENT OF CASE

Design and Impact on the Character and Appearance of the Locality and Adjacent Conservation Area

- 6.1 The Council considers that a new dwelling at this location would be unacceptable in principle given its location on a prominent corner plot and its extension towards the junction of Primrose Hill Road and King Henry's Road. It would therefore result in an unacceptably detrimental impact upon the established building line, wider streetscape, local character and distinctiveness and the adjacent Elsworthy Road Conservation Area.
- 6.2 The appeal site consists of an open area of space to the south of an existing terrace. The open area of space creates a setback from King Henry's Road and allows a gap to be formed. This is a characteristic of all of the Chalcot Estate dwellings along King Henry's Road and within the wider Chalcot Estate, which all maintain a setback from the road. The Chalcot Estate's well-considered layout and detailed design is considered to create local character and distinctiveness.
- 6.3 The estate building line along King Henry's Road is staggered, due to the angled layout of the streets leading off to the north, and as such, the size of the gap between the building and the back edge of the pavement varies to some degree. However, these green spaces are of a notable depth, and serve to provide a sense of openness within the streetscene. This sense of openness and open space against the pavement edge echoes - and is balanced by - the gardens of the buildings on the south side of the road (within the Elsworthy Road Conservation Area), and is considered to contribute to the Estate's local distinctiveness. It is also considered to help preserve the character and setting of the Elsworthy Road Conservation Area.
- 6.4 The formation of an additional building within this gap would see the end elevation of the new building positioned very close to King Henry's Road, and would significantly erode this sense of openness. This arrangement would be contrary to the general pattern of development in this part of the estate and within this part of King Henry's Road, and is therefore considered to be harmful to the streetscene, local character and distinctiveness.
- 6.5 The slim gap which would be retained between the gable end of the new building and the site boundary is not considered to be significant enough to retain this sense of openness and relief from the built edge, nor would the installation of a living wall help to mitigate the loss of the gap to any notable degree.
- 6.6 The appeal proposal is therefore considered to be contrary to the NPPF, in particular paragraph 60, which seeks to "promote or reinforce local distinctiveness."

- 6.7 The appeal proposal is also clearly contrary to the aims of Camden's policy DP24 which states that, *"Designs for new buildings, and alterations and extensions, should respect the character and appearance of the local area and neighbouring buildings. Within areas of distinctive character, development should reinforce those elements which create the character,"* (24.12) and that, *"Development should not undermine any existing uniformity of a street or ignore patterns or groupings of buildings"* (24.13).
- 6.8 As stated above, the established building line and gap created by the position of the Chalcot Estate buildings along King Henry's Road is considered to reflect the immediate built context of the buildings which form the northern edge of the Elsworthy Road Conservation Area. This positive relationship helps to enhance the setting around this northern part of the Elsworthy Road Conservation Area. Its character is leafy, comprising residential dwellings set behind front and rear gardens. It retains much of its historic form and character, identified as *"Terraced townhouses, large semi-detached villas, and latterly large detached houses following a 'garden suburb' pattern [...] built for well-to-do families wishing to live in spacious, pleasant, leafy surroundings within easy reach of central London"* (Elsworthy Road Conservation Area Appraisal and Management Strategy (Elsworthy CAAMS), July 2009, para. 3.4).
- 6.9 Paragraph 137 of the NPPF states that, *"Local planning authorities should look for opportunities for new development within Conservation Areas and World Heritage Sites and within the setting of heritage assets to enhance or better reveal their significance."* The proposal is not considered to meet this ambition as it erodes the character of the streetscene by introducing a significant amount of built form into a characteristic gap, reducing the gap to a minimal 1m strip.
- 6.10 With regard to views into, of and around the Conservation Area, the Elsworthy CAAMS identifies a number of notable views, vistas and landmarks. Of relevance to this site are the following:

"i) The views of the Church of St. Mary the Virgin to the west and north-west along King Henry's Road and Primrose Hill Road respectively.

iii) The view west along King Henry's Road."

(Elsworthy CAAMS, paragraph 3.9)

The introduction of a significant amount of built form in the location proposed is considered to impair these views of the Church, and the views along the leafy King Henry's Road, particularly as one moves around the site from the north east, towards the junction of King Henry's Road and Primrose Hill Road. The Council considers that the

impact of the proposal upon these identified local views causes harm to the setting of the Elsworthy Road Conservation Area, and that the proposal therefore does not meet the requirements of the NPPF nor the Council's policy DP25.

Basement

- 6.11 The Land Stability Report and Basement Impact Assessment (BIA) that were submitted under 2014/4514/P do not provide enough technical information and analysis as required by policy DP27 and CPG4. The information is required at the application stage which needs to be independently audited then considered by the Council.
- 6.12 The submitted application under 2014/4514/P was refused for the failure to produce the necessary details. A subsequent independent audit from Campbell Reith confirmed that the BIA was unacceptable, the details that would be required and further rationale as to why site specific investigation and analysis is imperative in this instance. The following details are absent from the submitted Land Stability Report and BIA:
- There was not an overview on construction methodology or a construction programme
 - A lack of information regarding temporary works and/or basement retaining wall construction
 - There is no clear indication provided of the location of the listed Network Rail tunnel below the site. It is not possible to determine whether the basement would lie within the exclusion zone of the tunnel
 - No soil investigation works have been undertaken. As the depth of made ground overlying London Clay differs significantly between the historic information used from nearby sites, there is potentially a shallow groundwater table making site specific investigation imperative
 - A Ground Movement Analysis has not been completed to ensure the basement development would not damage neighbouring properties
 - A trial pit investigation has not been undertaken to determine the depth of the existing flank wall foundations
 - As Primrose Hill road was subjected to surface water flooding in 2002 and its surrounding streets in 1975, and given the appeal site is adjacent to a Critical Drainage Area, a topographical survey of the general area is required to assist in the likely impact of the appeal proposal.
- 6.13 As the above information has not been submitted, the submitted BIA is not in accordance with DP27 and CP4 which requires this level of detail to be submitted as part of the application. Furthermore, these submitted details need to be subject to independent verification. The Council can therefore not guarantee that the basement proposals

would not cause harm to the built and natural environment and local amenity nor result in potential flooding or ground instability.

Section 106 Reasons for Refusal

- 6.14 The appellant has agreed to the heads of terms of the draft Section 106 Agreements for the refusals in principle. Despite this, the Council will provide evidence below to demonstrate that the requirements are justified against relevant planning policy and meet the tests laid out in the Community Infrastructure Levy (CIL) Regulations 2010 in particular Regulation 122(2) which require that for a planning obligation to constitute a reason for granting planning permission it must be (a) necessary to make the development acceptable in planning terms, (b) directly related to the development, and (c) fairly and reasonably related in scale and kind to the development, and the National Planning Policy Framework (particularly paragraphs 203-206). The reasons for refusal included the absence of a legal agreement to secure: a car free development; a Construction Management Plan and a design stage and post-construction sustainability review. While not a reason for refusal, the Council would also seek a highways contribution for repaving the footway on King Henry's Road adjacent to the site to repair damage caused during the construction process.

Car Free

- 6.15 The Council requires this obligation to facilitate sustainability and to help promote alternative, more sustainable methods of transport. Considering the site has moderate links to public transport, is a new build dwellinghouse and is located within a Controlled Parking Zone which is considered to suffer from parking stress, the development should be secured as car-free through a S106 legal agreement if the appeal were allowed.
- 6.16 This is in accordance with key principle 4 of the National Planning Policy Framework, Promoting sustainable transport, and policies CS11 (Promoting sustainable and sufficient travel); CS19 (Delivering and monitoring the Core Strategy); DP18 (Parking standards and availability of car parking); and DP19 (Managing the impact of parking) of the LDF.
- 6.17 A planning obligation is considered the most appropriate mechanism for securing the development as car free as it relates to controls that are outside of the development site and the ongoing requirement of the development to remain car free. The level of control is considered to go beyond the remit of a planning condition. Furthermore, the Section 106 legal agreement is the mechanism used by the Council to signal that a property is to be designated as "Car Free". The Council's control over parking does not allow it to unilaterally withhold on-street parking permits from residents simply because they occupy a particular property. The Council's control is derived from Traffic Management Orders ("TMO"), which have been made pursuant to the Road Traffic Regulation Act 1984. There is a formal legal process of advertisement

and consultation involved in amending a TMO. The Council could not practically pursue an amendment to the TMO in connection with every application where the additional dwelling needed to be designated as car free. Even if it could, such a mechanism would lead to a series of disputes between the Council and incoming residents who had agreed to occupy the property with no knowledge of its car free status. Instead, the TMO is worded so that the power to refuse to issue parking permits is linked to whether a property has entered into a “Car Free” Section 106 Obligation. The TMO sets out that it is the Council’s policy not to give parking permits to people who live in premises designated as “Car Free”, and the Section 106 legal agreement is the mechanism used by the Council to signal that a property is to be designated as “Car Free”.

- 6.18 Use of a Section 106 Agreement, which is registered as a land charge, is a much clearer mechanism than the use of a condition to signal to potential future purchasers of the property that it is designated as car free and that they will not be able to obtain a parking permit. This part of the legal agreement stays on the local search in perpetuity so that any future purchaser of the property is informed that residents are not eligible for parking permits.

- 6.19 CIL Compliance: The Car Free requirement complies with the CIL Regulations as it ensures that the development is acceptable in planning terms to necessarily mitigate against the transport impacts of the development as identified under the Development Plan for developments of the nature proposed. This supports key principle 4 of the National Planning Policy Framework: Promoting sustainable transport. It is also directly related to the development and fairly and reasonably related in scale and kind as it relates to the parking provision for the site and impact on the surrounding highway network.

Construction Management Plan

- 6.20 Both of the appeal proposals would involve the construction of a new dwelling with 2014/4514/P including a basement. Given the nature and scale of the development, the method and type of construction that would be involved and the appeal site’s location above a Network Rail tunnel, on a corner site and within a private estate that has narrow roads and access, the construction would be likely to have a significant impact on the surrounding residents and highways within and around the private Chalcot Estate and the management of the construction would need to be planned and monitored. This could be achieved through a Construction Management Plan (CMP) in accordance with policies CS5, CS11, CS19, DP20, and DP26 specifically paragraph 26.10, and CPG7 – Transport.
- 6.21 A planning obligation is considered to be the most appropriate mechanism for securing compliance with a CMP in this case simply because a considerable extent of the activity during construction could cause conflict with other road users or be detrimental to the amenity of the area and will necessarily take place outside the curtilage of the

planning unit of the appeal site. Potential impacts for the proposed demolition/construction works which should be controlled by a CMP include traffic generation from removal and delivery of materials to the site. This could result in traffic disruption and dangerous situations for pedestrians and road users.

- 6.22 Under the Planning Act conditions are used to control matters on land within the developers' control. However, a CMP is designed to be an enforceable and precise document setting out how measures will be undertaken not just on site but also around the site in order to minimise as far as reasonable the detrimental effects of construction on local residential amenity and/or highway safety on the nearby roads hence, using a condition to secure the type of off-site requirements usually included in a CMP would in this case be unenforceable.
- 6.23 Conditions can only lawfully be used to control matters on land within the developer's control. Many of the CMP provisions will relate to off-site requirements, particularly public highway (which is not land within the developers' control). As such, a Section 106 Agreement (rather than a condition) is the most appropriate mechanism. This is in accordance with Planning Practice Guidance which states that conditions requiring works on land that is not controlled by the applicant often fails the tests of reasonability and enforceability. (PPG, Use of Conditions paragraph 9 – Appendix 6)
- 6.24 CIL Compliance: The CMP requirement complies with the CIL Regulations as it ensures that the development is acceptable in planning terms to necessarily mitigate against the transport impacts of the development as identified under the Development Plan for developments of the nature proposed. It is also directly related to the development and fairly and reasonably related in scale and kind as it relates to managing impacts to neighbours and on the surrounding highways from construction at the site.
- Design stage and post-construction sustainability review
- 6.25 Paragraph 93 of the NPPF states that planning plays a key role in reducing greenhouse gas emissions, minimising vulnerability and providing resilience to the impacts of climate change and supporting the delivery of renewable and low carbon energy. Paragraphs 96 and 97 require LPA to expect to meet local requirements to link up to decentralised energy supplies and encourages use and supply of low carbon technologies.
- 6.26 Policy CS13 sets out the Council's overall approach to tackling climate change, which includes tackling higher environmental standards in design and construction. Policy DP22 provides details of the sustainability standards. The LDF is in accordance with Chapter 5 of the London Plan – London's response to climate change.

6.27 If the appeal were to be allowed the Council would require a design stage and post- construction review to be carried out by an impartial assessment body. The Section 106 agreement would also secure the ongoing maintenance and retention of the sustainability measures. This would involve ongoing maintenance of a range of measures which may be updated or varied as agreed with the Council. This would not only be the responsibility of the developer, but that of subsequent owners and occupiers. The Council consider a planning obligation would be the most appropriate tool to ensure on-going compliance. The Council's standard procedure is to not permit occupation of the development until a satisfactory post-construction review has been provided and any issues identified in that review have been satisfactorily addressed. Given the complexity of the requirement a S106 rather than a condition is considered the most appropriate measure to secure this.

6.28 CIL compliance: This obligation complies with the CIL Regulations as it ensures that the development is acceptable in planning terms to facilitate sustainable development. This supports the National Planning Policy Framework key principle to achieve sustainable development. It is also directly related to the development and fairly and reasonably related in scale and kind as it ensures that the development itself is sustainable.

Highways contribution

6.29 Policy DP21 states that the Council will expect development connecting to the highway to repair any construction damage to the transport infrastructure or landscaping and reinstate all affected transport network links, road and footway surfaces following development. In order to cover the Council's cost to repair any highway damage as a result of construction and to tie the development into the surrounding urban environment a financial contribution should be required to repave the footway adjacent to the site in accordance with policy DP16 and DP21.

6.30 The estimate for this work, prepared by the Borough Engineer, is £8,534.57. It is considered that this amount is justified given the size and scale of the development. (See appendix 6 for the highways works estimate).

6.31 The Council maintains that a payment for highways work should be secured through a Section 106 legal agreement, which will also combine as an agreement under Section 278 of the Highways Act 1980. CPG8 – Planning Obligations states that public highways works on Borough Roads are to be undertaken through a Section 106 or 278 obligation. The guidance also states that the Council will secure payment for required works by preparing an estimate (including fees) for the scheme that the developer will be required to pay before commencing development (paragraph 5.14). The most effective way of both securing sufficient payment and ensuring the works are carried out to the Council's procedures and standards is for a financial

contribution to be paid by the developer on commencement of the development and secured by an obligation under Section 106 legal agreement. It is not possible to secure a financial contribution for highway works by condition as it relates to land outside the application site and is not under the control of the applicant. The Planning Practice Guidance advises that financial contributions cannot be secured by condition (PPG, Using Planning Conditions, paragraph 5 –Appendix 8).

- 6.32 CIL Compliance: The contribution is considered to be CIL compliant. It is necessary in planning terms as identified in the development plan to mitigate against the increased impact that will be generated by the development. The contribution has been calculated taking into account the particular characteristics of the development, it is directly related to the development and is fairly and reasonably related in scale and kind to the development. It is also directly related to the development and fairly and reasonably related in scale and kind as it will provide for the new residents and mitigate impacts of the development.

Conclusion

- 6.33 The Council has set out above the reasons why both planning applications were refused and why it upholds the reasons for refusal on the grounds of the unacceptably detrimental impact on the character and appearance of the Chalcot Estate, the surrounding area and the adjacent Elsworthy Road Conservation Area along with the failure of the Basement Impact Assessment to demonstrate that the proposed basement excavation would not harm the built and natural environment, local amenity nor result in flooding or ground stability.
- 6.34 The Inspector is therefore respectfully requested to dismiss both of the appeals against the refusal of planning permissions 2014/4514/P and 2014/7856/P.

7.0 APPELLANT'S GROUNDS OF APPEAL

The appellants have split their grounds of appeal into 10 sections over their 'Appeal Full Statement of Case' submitted for both of the appeals. Both of the refusals share similar reasons for refusal save for the basement, therefore, the below applies to both appeals apart for section 4 (basement development) which only covers the relevant appeal under APP/X5210/W/15/3005758. The key planning considerations as part of the Statement of Case are:

1. Impact on the King Henry's Road building line;
2. Streetscape impact / impact of height and bulk on the local townscape;
3. Impact on heritage assets;
4. Basement Development;
5. Car parking stress;
6. Construction Management Plan;
7. Design Stage and Post Construction Sustainability Review;

8. Loss of daylight and sunlight, overlooking and privacy;
9. Drainage Strategy;
10. Railway tunnels.

Impact on the King Henry's Road building line

- 7.1 The appellant contends that there is no pronounced building line along King Henry's Road, that the buildings do not form a straight building line and that the appeal proposal would not harm the plan form of the Chalcot Estate. The Council considers that the building line is taken to mean the predominant position and alignment of building frontages. A building line is not always formed by a straight terrace frontage. In this case, the relationship of the buildings to the street on King Henry's Road is established by their position away from the edge of the pavement, separated from the pavement by open space. The appeal proposal to significantly diminish the amount of space separating the building's side elevation from the street is at odds with the established pattern of the Chalcot Estate and the surrounding area. It would therefore denude the quality of the Chalcot Estate which was carefully planned with the open space and setbacks from King Henry's Road being intentional.
- 7.2 The Council considers that there is a pronounced building line across this part of King Henry's Road between Primrose Hill Road and Elsworthy Rise, with all the buildings in this area of the Chalcot Estate maintaining a staggered and generous setback from the road frontage. The host building at 11 Primrose Hill Road, from which the appeal proposal would extend, projects slightly further forward of the remaining properties which front this area of King Henry's Road. The nature of this building line is clearly shown in figure 1 (below) with the red line indicating the frontage of 11 Primrose Hill Road. The setback of the adjacent buildings is staggered to follow the angled King Henry's Road, with their street facing elevations all sharing a similar setback from the road. It is considered that this building line and the distance of the buildings setback from the road is an established feature of this part of the estate that was intentionally planned to provide a sense of openness within the streetscene. Therefore, due to the width of the proposed dwelling and its close proximity to King Henry's Road, it would be significantly out of keeping the general pattern of development (i.e. the pronounced building line) in this part of the Chalcot Estate and within this part of King Henry's Road.

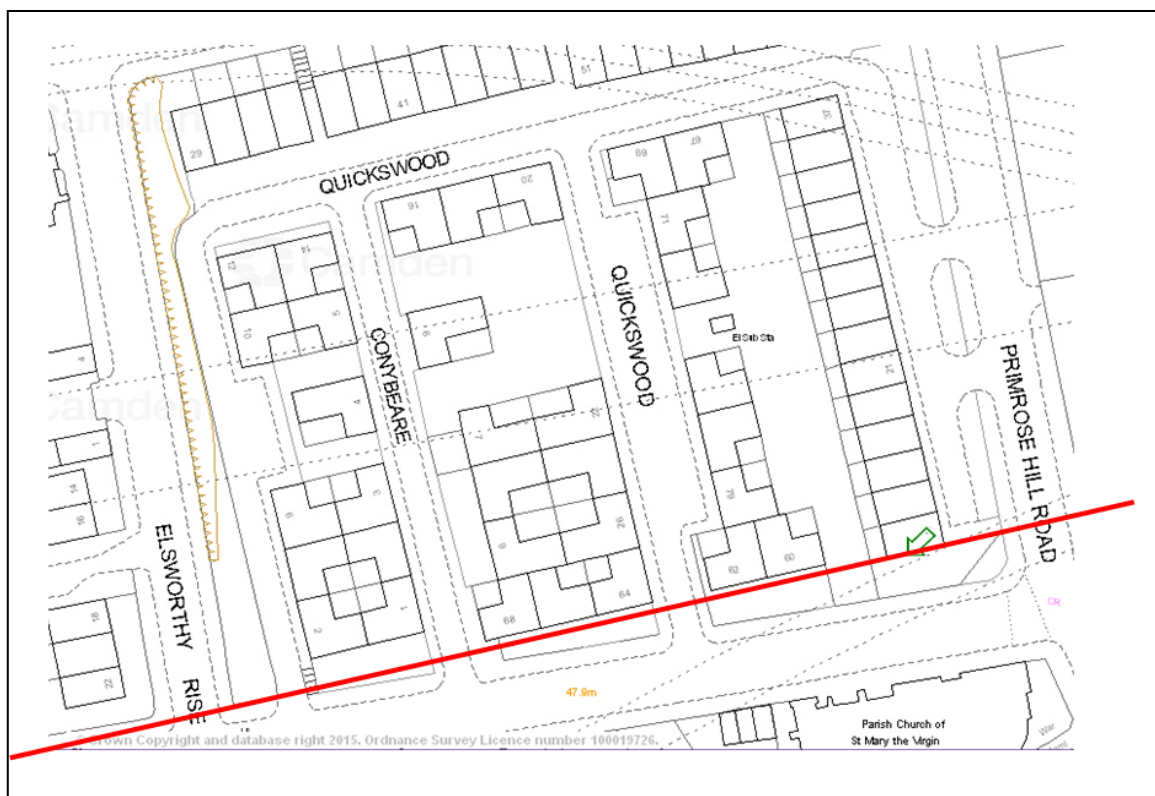


Figure 1 (above): The building line of this area of the Chalcot Estate which faces King Henry's Road. The buildings are staggered to reflect the angled King Henry's Road and all maintain similar setback distances from the street. 11 Primrose Hill currently sits slightly forward of the staggered building line but not in a prominent manner. The proposed dwelling would significantly reduce the gap between the building at 11 Primrose Hill Road and King Henry's Road, harming the openness of the building line on this prominent corner plot and unbalancing the established pattern of these buildings. The resulting dwelling would be prominent on this corner plot and would detract from the currently open setbacks found within the building line.

- 7.3 The pronounced building line mentioned above continues along both sides of King Henry's Road (see figure 2 below) from Primrose Hill Road to Hawtrey Road. The setback of the buildings from King Henry's Road is a characteristic of the buildings within Chalcot Estate and those within the Elsworth Road Conservation Area on the adjacent side of the road.



Figure 2 (above): Location map showing the established building line along both sides of King Henry's Road.

- 7.4 The appellant contends that the proposed dwelling would be setback by 1 metre from the road fronting boundary to ensure a noticeable gap would be provided. They argue that there would not be a lost sense of openness, especially given the resulting blank side elevation would have a green wall. According to the appellant, this green wall would help ensure that the 'green connection' of the area would not be lost. The Council does not accept that a noticeable gap would be provided. The existing setback between 11 Primrose Hill Road and King Henry's Road is between 6.8-7.5m which is similar to the other buildings within this part of the Chalcot Estate. A gap of 1m is not considered to be noticeable. The new building would be prominent on the road frontage with a minimal gap provided. This would not only be detrimental to the openness of this corner, it would also be out of keeping with the established pattern of the surrounding area. As for the creation of a green wall, this would not prevent any loss of openness or help retain the 'green connection'. The green wall would be attached to a built structure which would extend over the current side garden of 11 Primrose Hill Road which provides the open character. A new dwelling would erode this character and the green wall would not sufficiently outweigh this harm through the use of planting.
- 7.5 The appellant contends that the principal building line of the appeal site is 11-37 Primrose Hill Road terrace. While this building line would be retained as the appeal proposal would be a linear extension of this terrace, it would be a prominent structure within this highly visible corner site. The Council considers the building line along this part of King Henry's Road to be of great importance, the proposed extension would disrupt this building line and the established pattern of what was a planned feature of the Chalcot Estate.
- 7.6 The appellant considers that the dwelling approved at 65 Quickswood (ref: 2006/1426/P) is justification for not preserving the current plan form of the Chalcot Estate. Similarities between the approved development at 65 Quickswood and the appeal scheme are suggested by the appellant. Whilst both the approved development and the appeal proposal seek an infill end of terrace dwelling, the set of site circumstances and characteristics are materially different. The dwelling approved at 65 Quickswood in 2006 was positioned within a gap which measured 12.5m between the building's side elevation and the street frontage, leaving a generous 6.5m between the end of the terrace and the site boundary on Primrose Hill Road. This is in contrast to the appeal proposal where the existing gap is 6.9m, and will be reduced to 1.0m with the installation of additional building.
- 7.7 Therefore, the original building at 65 Quickswood benefitted from a large corner plot with the building well setback from the corner and the

street frontage of Primrose Hill Road. The approved development maintained the main established building line along Adelaide Road and a large setback from Primrose Hill Road, with the new dwelling still benefitting from a wide side garden in keeping with the host and other corner properties within the Chalcot Estate. The resulting setback of the new dwelling with Primrose Hill Road is similar to that of the setback and relationship of 29 Quickswood Road to Elsworthy Rise on the opposite corner of this part of the Chalcot Estate. This generous setback from the road does not exist at the appeal site. The above is shown in the existing and proposed site plans in figures 3 and 4 below and the plan showing the terraces on Quickswood which front Adelaide Road in figure 5.

- 7.8 The Council does not consider that the approval at 65 Quickswood justifies the appeal proposal. In terms of setting a precedent, the appeal proposal is considered to represent a harmful and unwanted one as it would erode the pattern of maintaining a large setback for buildings on a corner plot and be out of keeping with the buildings fronting King Henry's Road. Each application must be determined on its own merits and the appeal proposal here is not acceptable in light of the site circumstances.

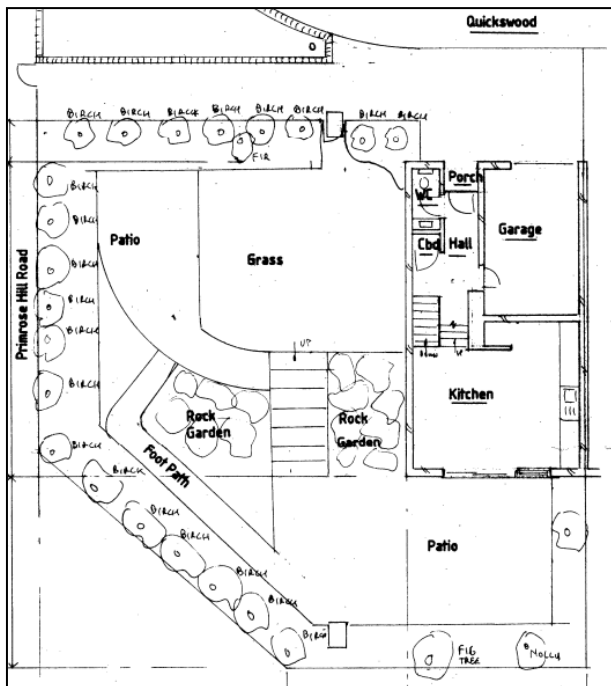


Figure 3 (above): Existing site and ground floor plan at 65 Quickswood (before the approved development commenced). This plan shows the large setback of the building from the junction of Adelaide Road and Primrose Hill Road. The noticeable gap was much greater than the existing gap at the appeal site.

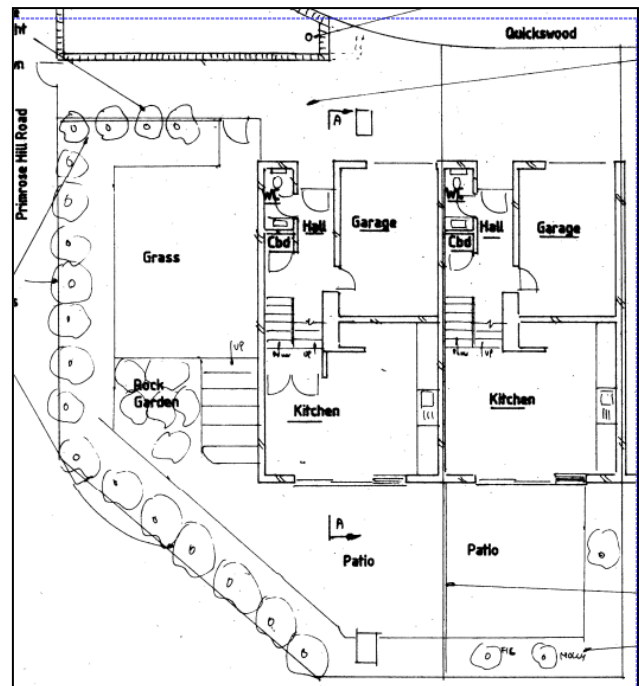


Figure 4 (above): Proposed site and ground floor plan at 65 Quickswood for 2006/1426/P. This plan shows that a large setback is retained for the proposed building in relation to the junction of Adelaide Road and Primrose Hill Road. The retention of a noticeable gap is in keeping with the general pattern of the Chalcot Estate and the surrounding area.



Figure 5 (above): Site plan showing the terraces on Quickswood which front Adelaide Road. It is noted that the plan does not show the approved development at 65 under 2006/1426/P. This plan illustrates the setback of the dwelling at 65 Quickswood in relation to the 29 Quickswood on the opposite corner.

Streetscape impact / impact of height and bulk on the local townscape

- 7.9 The appellant contends that the protection of the prominent and sensitive nature of the appeal site needs to be balanced by the necessity to provide additional housing. The Council considers that an additional dwelling here would not outweigh the significant harm caused to the character and appearance of the surrounding area.
- 7.10 The appellant contends that due to the street pattern and screening provided by other properties and mature trees, the appeal proposal would only be visible from a relatively small number of views. The Council considers that the appeal proposal would be prominent on this corner site and mature vegetation cannot be guaranteed in perpetuity and could be subject to decay or removal. It is therefore not a permanent source of screening. In any event, the appeal proposal would be out of keeping with the established pattern of the Chalcot Estate and the existing level of screening would not outweigh the resulting harm.
- 7.11 Paragraph 6.16 of the appellant's 'Appeal Full Statement of Case' refers to the width, depth and height of the appeal proposal sitting comfortably within the Chalcot Estate. The detailed elevational design of the proposal is not considered to be out of keeping, but rather the Council considers that the appeal proposal would - by virtue of forming a building within the existing open townscape gap - create unacceptable height and bulk in the proposed position.

- 7.12 The appellant states in paragraph 6.18 of the 'Appeal Full Statement of Case' that they do not consider the use of policy DP24 as appropriate within the reason for refusal. The Council considers that the use of this policy as a reason for refusal is justified. The appeal proposal is considered to be contrary to DP24(a) as it would be out of keeping with the character, setting and context of the neighbouring buildings which preserve a much greater setback from King Henry's Road. It would also be contrary to DP24(b) as the character and proportions of the existing building at 11 Primrose Hill Road would not be maintained by eroding its setback and the open character of the prominent corner property. Due to the appeal proposal's proximity to the road and use of a green wall, it would not promote a visually interesting frontage at street level which would fail to comply with DP24(d). Paragraph 24.5 of the corresponding text states that the design and layout of proposals should respond creatively to its site and context by taking into account the pattern and size of blocks, open spaces, gardens and streets in the surrounding area. The appeal proposal would not be in accordance with the prevailing open spaces and gardens within this part of the Chalcot Estate. Paragraph 24.7 of the Camden Development Policies 2010 states that development should consider the character and constraints of the site; the prevailing pattern and scale of the surrounding development; the impact on existing rhythms, symmetries and uniformities in the townscape and the contribution to the public realm and its impact on views and vistas. Further paragraphs within the same document also relate to the reason for refusal including 24.11, 24.12, 24.13, 24.17 and 24.20. While the detailed design elements may reflect the buildings within the adjoining terrace at 11-37 Primrose Hill Road, the appeal proposal is considered to be unacceptable in principle and would fail to comply with policy DP24 due to it contravening with the above clauses and paragraphs.

Impact on heritage assets

- 7.13 The appellant contends that the appeal proposal would result in a modest benefit to the character and appearance of the adjacent Elsworthy Road Conservation Area, resulting in an enhancement. The appeal site lies immediately adjacent to the conservation area and as it is harmful to the character and appearance of this part of Chalcot Estate, the wider area and out of keeping with the Elsworthy Road Conservation Area, the appeal proposal would neither preserve nor enhance the conservation area.

Basement Development

- 7.14 The appellant contends that the Land Stability Report submitted as part of the planning application under 2014/4514/P confirms that the risk to ground stability will be low. The Land Stability Report and Basement Impact Assessment (BIA) have now been independently audited by Campbell Reith in a report released in June 2015 (see appendix 5). The report concluded that no site specific soil investigation works have been undertaken which is unacceptable. The submitted BIA relies on historical data from nearby sites by making reference to borehole

information from sites at Adelaide Road in 1962 and Elsworthy Road in 1990. The depth of made ground overlying London Clay differs significantly between the locations and a site specific investigation is therefore crucial. Furthermore, there is no clear indication of the location of the listed Network Rail tunnel which lies below the appeal site. To confirm that ground stability would not be an issue a Ground Movement Analysis is required based on the results of a soil investigation, the Network Rail survey and foundation inspection pits.

- 7.15 The appellant also considers that the development of the basement would be unlikely to have any impact to surface water flows in the surrounding area, flood risk in the area or to groundwater flows and related flooding. As per the above, no site specific soil investigation has been undertaken in the form of boreholes and groundwater monitoring. There is potentially a shallow groundwater table on-site and further analysis is required. The appeal site is located within a Critical Drainage Area and a topographical survey of the development site and adjacent areas of the Critical Drainage Area would assist an assessment of likely impact of a further incidence of flooding on the development.
- 7.16 Paragraphs 6.32-6.34 of the 'Appeal Full Statement of Case' consider that due to the scale of the appeal proposal and the timescales and costs associated with necessary Network Rail surveys, that a reasonable level of detail has already been submitted within the BIA and Land Stability Report and that the necessary site investigation works and independent review of the information could be reserved by way of a planning condition or legal agreement.
- 7.17 Policy DP27 states that the Council will only permit basement and other underground development that does not cause harm to the built and natural environment and local amenity, and does not result in flooding or ground instability. Applicants are required to demonstrate via methodologies that are appropriate to the site that a scheme would maintain the structural stability of the building and neighbouring properties; avoid adversely affecting drainage and run-off or causing other damage to the water environment and avoid cumulative impacts upon structural stability or the water environment in the local area. This is required through a BIA to be submitted in accordance with CPG4 (Basements and Lightwells). The BIA is specific to the site and particular development.
- 7.18 The appeal site is subject to a surface water flow and flooding site constraint, is within 5m of a highway or pedestrian right of way, would significantly increase the differential depth of foundations relative to neighbouring properties, is located over the exclusion zone of a Network Rail tunnel and it is unknown whether London Clay is the shallowest stratum at the site. Based on the above site specific ground investigation, survey data of the underground tunnels, trial pit investigation and Ground Movement Analysis is required to assess

whether the basement would be acceptable. This information is then subject to independent verification. Therefore, the submitted BIA is not in accordance with DP27 and CP4 which requires this level of detail to be submitted as part of the application and not reserved via planning condition or legal agreement. The information is required prior to the approval of planning permission to guarantee that the basement proposals would not cause harm to the built and natural environment and local amenity nor result in potential flooding or ground instability.

Car parking stress

- 7.19 In the event the appeal is upheld, a legal agreement to secure a car-free development would be required. Copies of the draft Section 106 Agreements are attached in appendices 2 and 3.

Construction Management Plan

- 7.20 In the event the appeal is upheld, a legal agreement to secure a Construction Management Plan (CMP) would be required. Copies of the draft Section 106 Agreements are attached in appendices 2 and 3. The appellant submitted a draft CMP in good faith as part of 2014/7856/P. A Transport Planner considered the details to be acceptable at that point of time although further information would be required prior to work commencing on site. These details would be secured by a Section 106 Agreement.

Design Stage and Post Construction Sustainability Review

- 7.21 It is noted that following a Housing Standard Review, the Ministerial Statement released on 27/03/2015 states that changes to the 2008 Climate Change Act in the Deregulation Bill 2015 have removed the requirement for a Code for Sustainable Homes pre-assessment for applications submitted after 27/03/2015. If the appeal were to be upheld it would be after this date so the appellant would no longer be obliged to secure a level 4 Code for Sustainable Homes requirement by legal obligation. The appellant would be able to decide whether to continue with this requirement or to submit a post construction sustainability review in accordance with policies DP22 and DP23. This would be secured via a Section 106 Agreement.

Loss of Daylight and Sunlight, Overlooking and Privacy

- 7.22 While concerns regarding neighbouring amenity were submitted by third parties, they do not form part of the Council's case and no comments are offered.

Drainage Strategy

- 7.23 The Council would impose a pre-commencement condition as per the request of Thames Water. A list of the recommended conditions should the appeal be upheld are provided in appendices 1 and 2.

Railway Tunnels

- 7.24 The appellant would need to demonstrate that the appeal proposal would not detrimentally harm Network Rail's underground tunnel. It is

considered that these details could be reserved for a planning condition if the appeal were to be upheld. For any development to eventuate on site, the details would have to adequately satisfy the Council and Network Rail. A list of the recommended conditions should the appeal be upheld are provided in appendix 1 and 2.

8.0 CIL

- 8.1 The London Borough of Camden introduced the Community Infrastructure Levy (CIL) on the 1st of April 2015 to help pay for local infrastructure. This is in addition to the Mayoral CIL which helps fund the Crossrail introduced on 1st April 2012. Any permission granted after this time which adds more than 100sqm of new floorspace or a new dwelling will need to pay the CIL charge.
- 8.2 Both of the appeal proposals, 2014/4514/P and 2014/7856/P, would be CIL liable if they were to be granted permission. The Council understands that if the appeal were to be upheld by the Inspector, that it would be granted permission from that date and would therefore be CIL liable under the Camden and Mayoral charges.
- 8.3 The appeal proposal under 2014/4514/P would have a total gross internal floor space of 205.8m² and 2014/7856/P would have a floor area of 154.7m². As the appeal proposals are below 10 dwellings (or 1000m²) and located within Zone B (Rest of Camden), they would be required to pay £500 per square metre in addition to the Mayoral CIL charge of £50 per square metre. This would result in CIL charges of £113,190 and £85,085 respectively.

9.0 LIST OF APPENDICES

Appendix 1 – Suggested conditions for 2014/4514/P

Appendix 2 - Suggested conditions for 2014/7856/P

Appendix 3 – Draft Legal Agreement for 2014/4514/P

Appendix 4 – Draft Legal Agreement for 2014/7856/P

Appendix 5 – Basement Impact Assessment Audit (Project Number: 12066-09) dated June 2015, by Campbell Reith

Appendix 6 – Highways estimate

Appendix 7 – Photos of the site and context

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Telephone: 020 7974 5826

Appendix 1 – Suggested conditions for 2014/4514/P

- 1) The development hereby permitted must be begun not later than the end of three years from the date of this permission.

Reason: In order to comply with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).

- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan (Ref: Fig.1); Block Plan (Ref: Fig. 2); A99; A100 Rev B; A101 Rev B; A102 Rev B; A103; Rev B; A200 Rev B; A201 Rev B; A300 Rev B; A301 Rev B; A302 Rev B; Existing site photo dated August 2013; Front montage dated October 2013; Rear montage dated August 2013; Garage photos dated August 2013; Design and Access Statement by Undercover Architecture LTD dated July 2014; Planning statement by Geraldeve dated 10th July 2014 (Ref: GAO/GBR/J7292); Appendix 1a to planning statement; Appendix 1b to planning statement; Heritage Statement by Donald Insall Associates dated July 2014; Lifetime Homes Statement by Adrian Salt and Pang Limited; Aboricultural Impact Appraisal and Method Statement by Barrell Tree Consultancy dated 22nd January 2014 (Ref: 14020-AIA-DC); Tree Protection Plan by Barrell Tree Consultancy (Ref: 14020-BT1); Basement Impact Assessment - Screening and scoping report "land stability" by Soil Consultants dated 27th June 2014 Rev 0 (Ref: 9613/AW/SCW); Basement Impact Assessment- Surface water and Ground Water by ESI Environmental Specialists dated June 2014 (Ref: 62633R1); Code for Sustainable Homes Assessment by Breglobal; Sustainability and Energy Assessment by Metropolis dated 18th November 2013 (Ref: 5240); Daylight and Shadow Assessment by Behan Partnership LLP dated 14th November 2013 (Ref: 20131380); Letter by Geraldeve dated 10th July 2014 (Ref: GAO/GBR/J7292)

Reason: For the avoidance of doubt and in the interest of proper planning.

- 3) Sample panels of the facing materials demonstrating the proposed colour, texture, face-bond and pointing shall be provided on site and approved in writing by the local planning authority before the relevant parts of the works are commenced and the development shall be carried out in accordance with the approval given. The approved panel shall be retained on site until the work has been completed.

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policy CS14 of the London Borough of Camden Local Development Framework Core Strategy and policy DP24 and DP25 of the London Borough of Camden Local Development Framework Development Policies.

- 4) Before the development commences, details of secure and covered cycle storage area for 2 cycles shall be submitted to and approved by the local planning authority. The approved facility shall thereafter be provided in its

entirety prior to the first occupation of any of the new unit, and permanently retained thereafter.

Reason: To ensure the development provides adequate cycle parking facilities in accordance with the requirements of policy CS11 of the London Borough of Camden Local Development Framework Core Strategy and policy DP17 of the London Borough of Camden Local Development Framework Development Policies.

- 5) No lights, meter boxes, flues, vents or pipes, and no telecommunications equipment, alarm boxes, television aerials or satellite dishes shall be fixed or installed on the external face of the building, without the prior approval in writing of the local planning authority.

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policy CS14 of the London Borough of Camden Local Development Framework Core Strategy and policy DP24 and DP25 of the London Borough of Camden Local Development Framework Development Policies.

- 6) Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 as amended by the (No. 2) (England) Order 2008 or any Order revoking and re-enacting that Order, no development within Part 1 (Classes A-H) [and Part 2 (Classes A-C)] of Schedule 2 of that Order shall be carried out without the grant of planning permission having first been obtained from the local planning authority.

Reason: To safeguard the visual amenities of the area and to prevent over development of the site by controlling proposed extensions and alterations in order to ensure compliance with the requirements of policies CS14 and CS5 of the London Borough of Camden Local Development Framework Core Strategy and policies DP24 and DP26 of the London Borough of Camden Local Development Framework Development Policies.

- 7) Before the development commences, a risk assessment and method statement for all construction works on site must be submitted to and approved in writing by the local planning authority in consultation with the Network Rail Asset Protection Team. The risk assessment and method statement shall include details of all excavation and earthworks on the site; the type and method of construction of foundations; any increase/decrease of loading on the tunnel both temporary and permanent; certified proof that the proposals shall have no detrimental effect upon the tunnel; details of drainage arrangement (surface water and foul water) and details of any piling work on site. No works are to commence on site until the Network Rail Asset Protection Team is satisfied that they will not impact upon the tunnel and associated infrastructure. Subject to the details being acceptable, any works on site must be in accordance with the terms of the risk assessment and method statement.

Reason: To ensure that the tunnel and associated infrastructure would remain safe during construction works and as a permanent arrangement, in accordance with the requirements of policies CS5 (Managing the impact of growth and development) and CS9 (Achieving a successful Central London) of the London Borough of Camden Local Development Framework Core Strategy and policies DP26 (Managing the impact of development on occupiers and neighbours) and DP28 (Noise and vibration) of the London Borough of Camden Local Development Framework Development Policies.

- 8) Development shall not commence until a drainage strategy detailing any on and/or off site drainage works, has been submitted to and approved by, the local planning authority in consultation with the sewerage undertaker. No discharge of foul or surface water from the site shall be accepted into the public system until the drainage works referred to in the strategy have been completed.

Reason: To safeguard the amenity of existing and future occupiers in the area as the proposed works are in close proximity to underground sewerage utility infrastructure and to safeguard existing below ground public utility infrastructure and controlled waters, in accordance with the requirements of policies CS5 and CS13 of the London Borough of Camden Local Development Framework Core Strategy and policy DP26 of the London Borough of Camden Local Development Framework Development Policies.

- 9) The lifetime homes features and facilities, as indicated on the drawings and documents hereby approved shall be provided in their entirety prior to the first occupation of any of the new residential units.

Reason: To ensure that the internal layout of the building provides flexibility for the accessibility of future occupiers and their changing needs over time, in accordance with the requirements of policy CS6 of the London Borough of Camden Local Development Framework Core Strategy and policy DP6 of the London Borough of Camden Local Development Framework Development Policies.

- 10) Before the development commences, a detailed Basement Impact Assessment in accordance with policy DP27 and CPG4 shall be submitted to and approved by the local planning authority. The Basement Impact Assessment must include:

- An overview on construction methodology and a construction programme
- Details regarding temporary works and/or basement retaining wall construction
- Surveys of the Network Rail tunnel to determine whether the basement would lie within the exclusion zone of the tunnel
- Site specific soil investigation works
- A Ground Movement Analysis
- A trial pit investigation

- A topographical survey of the general area

No works are to commence on site until the detailed Basement Impact Assessment has been submitted to the Council and independently audited by a qualified chartered engineer. Once the details are confirmed as being acceptable, any basement development subsequently approved shall not commence until such time as a suitably qualified chartered engineer with membership of the appropriate professional body has been appointed to inspect, approve and monitor the critical elements of both permanent and temporary basement construction works throughout their duration to ensure compliance with the design which has been checked and approved by a building control body. Details of the appointment and the appointee's responsibilities shall be submitted to and approved in writing by the local planning authority prior to the commencement of development. Any subsequent change or reappointment shall be confirmed forthwith for the duration of the construction works.

Reason: To safeguard the appearance and structural stability of neighbouring buildings and the character of the immediate area in accordance with the requirements of policy CS14 of the London Borough of Camden Local Development Framework Development Policies and policy DP27 (Basements and Lightwells) of the London Borough of Camden Local Development Framework Development Policies.

Appendix 2 – Suggested conditions for 2014/7856/P

- 1) The development hereby permitted must be begun not later than the end of three years from the date of this permission.

Reason: In order to comply with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).

- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan (Ref: Fig.1); Block Plan (Ref: Fig. 2); A99; A100 Rev B; A101 Rev B; A102 Rev B; A103; Rev B; A200 Rev B; A201 Rev B; A300 Rev B; A301 Rev B; A302 Rev B; Existing site photo dated August 2013; Front montage dated October 2013; Rear montage dated August 2013; Garage photos dated August 2013; Design and Access Statement by Undercover Architecture LTD dated July 2014; Planning statement by Geraldeve dated 10th July 2014 (Ref: GAO/GBR/J7292); Appendix 1a to planning statement; Appendix 1b to planning statement; Heritage Statement by Donald Insall Associates dated July 2014; Lifetime Homes Statement by Adrian Salt and Pang Limited; Aboricultural Impact Appraisal and Method Statement by Barrell Tree Consultancy dated 22nd January 2014 (Ref: 14020-AIA-DC); Tree Protection Plan by Barrell Tree Consultancy (Ref: 14020-BT1); Basement Impact Assessment - Screening and scoping report "land stability" by Soil Consultants dated 27th June 2014 Rev 0 (Ref: 9613/AW/SCW); Basement Impact Assessment- Surface water and Ground Water by ESI Environmental Specialists dated June 2014 (Ref: 62633R1); Code for Sustainable Homes Assessment by Breglobal; Sustainability and Energy Assessment by Metropolis dated 18th November 2013 (Ref: 5240); Daylight and Shadow Assessment by Behan Partnership LLP dated 14th November 2013 (Ref: 20131380); Letter by Geraldeve dated 10th July 2014 (Ref: GAO/GBR/J7292)

Reason: For the avoidance of doubt and in the interest of proper planning.

- 3) Sample panels of the facing materials demonstrating the proposed colour, texture, face-bond and pointing shall be provided on site and approved in writing by the local planning authority before the relevant parts of the works are commenced and the development shall be carried out in accordance with the approval given. The approved panel shall be retained on site until the work has been completed.

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policy CS14 of the London Borough of Camden Local Development Framework Core Strategy and policy DP24 and DP25 of the London Borough of Camden Local Development Framework Development Policies.

- 4) Before the development commences, details of secure and covered cycle storage area for 2 cycles shall be submitted to and approved by the local planning authority. The approved facility shall thereafter be provided in its

entirety prior to the first occupation of any of the new unit, and permanently retained thereafter.

Reason: To ensure the development provides adequate cycle parking facilities in accordance with the requirements of policy CS11 of the London Borough of Camden Local Development Framework Core Strategy and policy DP17 of the London Borough of Camden Local Development Framework Development Policies.

- 5) No lights, meter boxes, flues, vents or pipes, and no telecommunications equipment, alarm boxes, television aerials or satellite dishes shall be fixed or installed on the external face of the building, without the prior approval in writing of the local planning authority.

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policy CS14 of the London Borough of Camden Local Development Framework Core Strategy and policy DP24 and DP25 of the London Borough of Camden Local Development Framework Development Policies.

- 6) Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 as amended by the (No. 2) (England) Order 2008 or any Order revoking and re-enacting that Order, no development within Part 1 (Classes A-H) [and Part 2 (Classes A-C)] of Schedule 2 of that Order shall be carried out without the grant of planning permission having first been obtained from the local planning authority.

Reason: To safeguard the visual amenities of the area and to prevent over development of the site by controlling proposed extensions and alterations in order to ensure compliance with the requirements of policies CS14 and CS5 of the London Borough of Camden Local Development Framework Core Strategy and policies DP24 and DP26 of the London Borough of Camden Local Development Framework Development Policies.

- 7) Before the development commences, a risk assessment and method statement for all construction works on site must be submitted to and approved in writing by the local planning authority in consultation with the Network Rail Asset Protection Team. The risk assessment and method statement shall include details of all excavation and earthworks on the site; the type and method of construction of foundations; any increase/decrease of loading on the tunnel both temporary and permanent; certified proof that the proposals shall have no detrimental effect upon the tunnel; details of drainage arrangement (surface water and foul water) and details of any piling work on site. No works are to commence on site until the Network Rail Asset Protection Team is satisfied that they will not impact upon the tunnel and associated infrastructure. Subject to the details being acceptable, any works on site must be in accordance with the terms of the risk assessment and method statement.

Reason: To ensure that the tunnel and associated infrastructure would remain safe during construction works and as a permanent arrangement, in accordance with the requirements of policies CS5 (Managing the impact of growth and development) and CS9 (Achieving a successful Central London) of the London Borough of Camden Local Development Framework Core Strategy and policies DP26 (Managing the impact of development on occupiers and neighbours) and DP28 (Noise and vibration) of the London Borough of Camden Local Development Framework Development Policies.

- 8) Development shall not commence until a drainage strategy detailing any on and/or off site drainage works, has been submitted to and approved by, the local planning authority in consultation with the sewerage undertaker. No discharge of foul or surface water from the site shall be accepted into the public system until the drainage works referred to in the strategy have been completed.

Reason: To safeguard the amenity of existing and future occupiers in the area as the proposed works are in close proximity to underground sewerage utility infrastructure and to safeguard existing below ground public utility infrastructure and controlled waters, in accordance with the requirements of policies CS5 and CS13 of the London Borough of Camden Local Development Framework Core Strategy and policy DP26 of the London Borough of Camden Local Development Framework Development Policies.

- 9) The lifetime homes features and facilities, as indicated on the drawings and documents hereby approved shall be provided in their entirety prior to the first occupation of any of the new residential units.

Reason: To ensure that the internal layout of the building provides flexibility for the accessibility of future occupiers and their changing needs over time, in accordance with the requirements of policy CS6 of the London Borough of Camden Local Development Framework Core Strategy and policy DP6 of the London Borough of Camden Local Development Framework Development Policies.

Appendix 3 - Draft Legal Agreement for 2014/4514/P

DATED

2015

(1) MAGNET S.A

and

**(2) THE MAYOR AND BURGESSES OF
THE LONDON BOROUGH OF CAMDEN**

A G R E E M E N T
relating to land known as
11 Primrose Hill Road Hampstead London NW3 3DG
pursuant to Section 106 of the Town and Country Planning
Act 1990 (as amended)
Section 278 of the Highways Act 1980

Andrew Maughan
Head of Legal Services
London Borough of Camden
Town Hall
Judd Street
London WC1H 9LP

Tel: 020 7974 1918
Fax: 020 7974 2962

CLS/COM/ESA/1781.TBA
v1

THIS AGREEMENT is made the day of 2015

B E T W E E N:

- i. **MAGNET S.A** care of 11 Primrose Hill Road, London NW3 (hereinafter called "the Owner") of the first part

- iv. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN** of Town Hall, Judd Street, London WC1H 9LP (hereinafter called "the Council") of the second part

1. WHEREAS

- 1.1 The Owner is registered at the Land Registry as the freehold proprietor with Title absolute of the Property under Title Number NGL745534.

- 1.2 The Owner is the freehold Owner of and is interested in the Property for the purposes of Section 106 of the Act.

- 1.3 A Planning Application for the development of the Property was submitted to the Council and validated on 10 July 2014 under reference number 2014/4514/P.

- 1.4 The Council refused the Planning Application on 4 September 2014.

- 1.5 An appeal under section 78 of the Act in respect of the refusal of the Planning Application was submitted by the Owner to the Planning Inspectorate and was given reference number APP/X5210/W/15/3016537/8.

- 1.6 The Council is the local planning authority for the purposes of the Act for the area in which the Property is situated and considers it expedient in the interests of the proper planning of its area that the development of the Property should be restricted or regulated in accordance with this Agreement.

- 1.7 As local highway authority the Council considers the Highways Works to be carried out pursuant to this section 278 Agreement to be in the public benefit.

- 1.8 For that purpose the Owner is willing to enter into this Agreement pursuant to the provisions of Section 106 of the Act.

2. **DEFINITIONS**

In this Agreement the following expressions (arranged in alphabetical order) shall unless the context otherwise requires have the following meanings:-

- | | | |
|-----|---|---|
| 2.1 | "the Act" | the Town and Country Planning Act 1990 (as amended) |
| 2.2 | "the Agreement" | this Planning Obligation made pursuant to Section 106 of the Act |
| 2.3 | "the Certificate of Practical Completion" | the certificate issued by the Owner's contractor architect or project manager certifying that the Development has been completed |
| 2.4 | "Construction Management Plan" | <p>a plan setting out the measures that the Owner will adopt in undertaking the construction of the Development using good site practices in accordance with the Council's Considerate Contractor Manual to ensure the Construction Phase of the Development can be carried out safely and with minimal possible impact on and disturbance to the surrounding environment and highway network including (but not limited to):-</p> <p>(i) a statement to be submitted to Council giving details of the environmental protection highways safety and community liaison measures proposed to be adopted by the Owner in order to mitigate and offset potential or likely effects and impacts arising from the</p> |

demolition structures on the Property and the building out of the Development;

- (ii) incorporation of the provisions set out in the First Schedule annexed hereto
- (iii) proposals to ensure the protection and preservation of the listed building during the Construction Phase;
- (iv) proposals to ensure there are no adverse effects on the Conservation Area features
- (v) effects on the health and amenity of local residences site construction workers local businesses and adjoining developments undergoing construction;
- (vi) amelioration and monitoring measures over construction traffic including procedures for notifying the owners and or occupiers of the residences and businesses in the locality in advance of major operations delivery schedules and amendments to normal traffic arrangements (if any);
- (vii) the inclusion of a waste management strategy for handling and disposing of construction waste; and
- (viii) identifying means of ensuring the provision of information to the Council and provision of a mechanism for

monitoring and reviewing as required
from time to time

2.5 "the Construction Phase"

the whole period between

- (i) the Implementation Date and
- (ii) the date of issue of the Certificate of Practical Completion

2.6 "the Council's Considerate Contractor Manual"

the document produced by the Council from time to time entitled "Guide for Contractors Working in Camden" relating to the good practice for developers engaged in building activities in the London Borough of Camden

2.7 "the Development"

erection of a three-storey plus basement single family dwelling house and associated landscaping works (Class C3) as shown on drawing numbers Site Location Plan (Ref: Fig.1); Block Plan (Ref: Fig. 2); A99; A100 Rev B; A101 Rev B; A102 Rev B; A103; Rev B; A200 Rev B; A201 Rev B; A300 Rev B; A301 Rev B; A302 Rev B; Existing site photo dated August 2013; Front montage dated October 2013; Rear montage dated August 2013; Garage photos dated August 2013; Design and Access Statement by Undercover Architecture LTD dated July 2014; Planning statement by Geraldeve dated 10th July 2014 (Ref: GAO/GBR/J7292); Appendix 1a to planning statement; Appendix 1b to planning statement; Heritage Statement by Donald Insall Associates dated July 2014; Lifetime Homes Statement by Adrian Salt and Pang Limited; Aboricultural Impact Appraisal and Method Statement by

Barrell Tree Consultancy dated 22nd January 2014 (Ref: 14020-AIA-DC); Tree Protection Plan by Barrell Tree Consultancy (Ref: 14020-BT1); Basement Impact Assessment - Screening and scoping report "land stability" by Soil Consultants dated 27th June 2014 Rev 0 (Ref: 9613/AW/SCW); Basement Impact Assessment- Surface water and Ground Water by ESI Environmental Specialists dated June 2014 (Ref: 62633R1); Code for Sustainable Homes Assessment by Breglobal; Sustainability and Energy Assessment by Metropolis dated 18th November 2013 (Ref: 5240); Daylight and Shadow Assessment by Behan Partnership LLP dated 14th November 2013 (Ref: 20131380); Letter by Geraldeve dated 10th July 2014 (Ref: GAO/GBR/J7292)

2.8 "the Highways Contribution"

the sum of £8,534.57 (eight thousand five hundred and thirty four pounds and fifty seven pence) to be paid by the Owner to the Council in accordance with the terms of this Agreement and to be applied by the Council in the event of receipt for the carrying out of works to the public highway and associated measures in the vicinity of the Property and as are required due to the Development ("the Highways Works") these to include costs associated with the following:-

- (a) repaving the footway adjacent to the site;
and
- (b) any other works the Council acting reasonably considers necessary as a direct result of the Development

all works will be subject to final measure and for the avoidance of doubt the Council in accepting this sum does not undertake any responsibility in connection with any required statutory undertakers works and excludes any statutory undertakers costs

2.9 "the Implementation Date"

the date of implementation of the Development by the carrying out of a material operation as defined in Section 56 of the Act and references to "Implementation" and "Implement" shall be construed accordingly

2.10 "the Level Plans"

plans demonstrating the levels at the interface of the Development the boundary of the Property and the Public Highway

2.11 "Occupation Date"

the date when any part of the Development is occupied and the phrases "Occupy", "Occupied" and "Occupation" shall be construed accordingly

2.12 "the Parties"

mean the Council and the Owner

2.13 "the Planning Application"

a planning application in respect of the development of the Property submitted to the Council and validated on 10 July 2014 under reference number 2014/4514/P

2.14 "Planning Obligations Monitoring Officer"

a planning officer of the Council from time to time allocated to deal with all planning obligations pursuant to S106 of the Act to whom all notices, correspondence, approvals etc must

be sent in the manner prescribed at clause 6.1 hereof

- 2.15 "the Planning Permission" any planning permission granted for the Development by the Secretary of State under reference APP/X5210/W/15/3016537/8 pursuant to the appeal against the refusal of the Planning Application
- 2.16 "the Property" the land known as 11a Primrose Hill Road London NW3 3DG the same as shown shaded grey on the plan annexed hereto
- 2.17 "the Public Highway" any carriageway footway and/or verge adjoining the Property maintainable at public expense
- 2.18 "Residents Parking Bay" a parking place designated by the Council by an order under the Road Traffic Regulation Act 1984 or other relevant legislation for use by residents of the locality in which the Development is situated
- 2.19 "Residents Parking Permit" A parking permit issued by the Council under section 45(2) of the Road Traffic Regulation Act 1984 allowing a vehicle to park in Residents Parking Bays
- 2.20 "the Sustainability Plan"
- (a) a plan securing the incorporation of sustainability measures in the carrying out of the Development in its fabric and in its subsequent management and occupation based which shall include:-
- (a) an assessment under the Code for Sustainable Homes achieving at least Level 4 and attaining

at least 50% of the credits in each of the Energy Water and Materials categories;

- (b) include a pre-Implementation review by an appropriately qualified and recognised independent verification body in respect of the Property certifying that the measures incorporated in the Sustainability Plan are achievable in the Development and satisfy the aims and objectives of the Council's strategic policies on sustainability contained within its Development Plan; and
- (c) measures to secure a post construction review of the Development by an appropriately qualified and recognised independent verification body in respect of the Property certifying that the measures incorporated in the Sustainability Plan have been achieved in the Development and will be maintainable in the Development's future management and occupation

3. **NOW THIS DEED WITNESSETH** as follows:-

- 3.1 This Agreement is made in pursuance of Section 106 of the Act, and is a planning obligation for the purposes of Section 106 as aforesaid, and shall be enforceable by the Council against the Owner as provided herein and against any person deriving title to any part of the Property from the Owner and insofar as it is not a planning obligation its provisions may be enforceable by the Council under any relevant statutory powers.
- 3.2 Words importing the singular shall include the plural and vice versa and any words denoting actual persons shall include companies corporations and other artificial persons.

- 3.3 Any reference to a specific statute or statutes include any statutory extension or modification amendment or re-enactment of such statute and any regulation or orders made under such statute.
- 3.4 The clause and paragraph headings do not form part of this Agreement and shall not be taken into account in its construction of interpretation.
- 3.5 It is hereby agreed between the Parties that save for the provisions of clauses 1, 2, 3, 5, 6 and 7 hereof all of which shall come into effect on the date hereof the covenants undertakings and obligations contained within this Agreement shall become binding upon the Owner upon the Implementation Date.
- 3.6 The Council hereby agrees to grant the Planning Permission on the date hereof.
- 3.7 The Parties save where the context states otherwise shall include their successors in title.
- 3.8 The Parties acknowledge that the Development shall be treated as being permanently designated as "car free" housing in accordance with Clause 4.1 for all relevant purposes.

4. **OBLIGATIONS OF THE OWNER**

The Owner hereby covenants with the Council as follows:-

4.1 **Car Free**

- 4.1.1 To ensure that prior to occupying any residential unit forming part of the Development each new resident of the Development is informed by the Owner of the Council's policy that they shall not be entitled (unless they are the holder of a disabled persons badge issued pursuant to Section 21 of the Chronically Sick and Disabled Persons Act 1970) to be granted a Residents Parking Permit to park a vehicle in a Residents Parking Bay and will not be able to buy a contract to park within any car park owned, controlled or licensed by the Council.
- 4.1.2 The Owner for itself and its successors in title to the Property hereby acknowledges that the provision in Clause 4.1 above will remain permanently.

4.1.2 On or prior to the Occupation Date the Owner shall inform the Council's Planning Obligations Monitoring Officer of the official unit numbers of the residential units forming part of the Development (as issued and agreed by the Council's Street Name and Numbering Department), identifying those residential units that in the Owner's opinion are affected by the Owner's obligation in Clause 4.1 of this Agreement.

4.2 **Construction Management Plan**

4.2.1 On or prior to the Implementation Date to provide the Council for approval a draft Construction Management Plan.

4.2.2 Not to Implement nor allow Implementation of the Development until such time as the Council has approved the Construction Management Plan as demonstrated by written notice to that effect.

4.2.3 The Owner acknowledges and agrees that the Council will not approve the Construction Management Plan unless it demonstrates to the Council's reasonable satisfaction that the Construction Phase of the Development can be carried out safely and with minimal possible impact on and disturbance to the surrounding environment and highway network.

4.2.4 To ensure that throughout the Construction Phase the Development shall not be carried out otherwise than in strict accordance with the requirements of the Construction Management Plan and not to permit the carrying out of any works comprised in demolition or building out the Development at any time when the requirements of the Construction Management Plan are not being complied with and in the event of non compliance with this sub-clause the Owner shall forthwith take any steps required to remedy such non-compliance.

4.3 **Highways Contribution**

4.3.1 On or prior to the Implementation Date to pay to the Council the Highways Contribution in full.

4.3.2 On or prior to the Implementation Date to submit to the Council the Level Plans for approval.

- 4.3.3 Not to Implement or to permit Implementation until such time as the Council has received the Highways Contribution in full.
- 4.3.4 Not to Implement nor permit Implementation until such time as the Council has approved the Level Plans.
- 4.3.5 The Owner acknowledges that the Council has the right reserved to it to construct the Public Highway to levels it considers appropriate.
- 4.3.6 On completion of the Highway Works the Council may provide to the Owner a certificate specifying the sum ("the Certified Sum") expended by the Council in carrying out the Highway Works.
- 4.3.7 If the Certified Sum exceeds the Highway Contribution then the Owner shall within fourteen days of the issuing of the said certificate pay to the Council the amount of the excess.

4.4 Sustainability Plan

- 4.4.1 On or prior to the Implementation Date to submit to the Council for approval the Sustainability Plan.
- 4.4.2 Not to Implement nor permit Implementation until the Sustainability Plan has been approved by the Council as demonstrated by written notice to that effect
- 4.4.3 Not to Occupy or permit Occupation of the Property until a satisfactory post-completion review has been submitted to and approved by the Council in writing confirming that the measures incorporated in the Sustainability Plan as approved by the Council have been incorporated into the Property.
- 4.4.4 Following the Occupation Date the Owner shall not Occupy or permit Occupation of any part of the Development at any time when the Development is not being managed in strict accordance with the Sustainability Plan as approved by the Council and shall not Occupy or permit Occupation of the Development otherwise than in strict accordance with the requirements of the Sustainability Plan.

5. NOTICE TO THE COUNCIL/OTHER MATTERS

- 5.1 The Owner shall give written notice to the Council on or prior to the Implementation Date specifying that Implementation of the Planning Permission has taken or is about to take place.
- 5.2 Within seven days following completion of the Development the Owner shall certify in writing to the Planning Obligations Monitoring Officer in the manner outlined at clause 6.1 hereof quoting the Planning Permission reference 2014/4514/P the date upon which the Development is ready for Occupation.
- 5.3 The Owner shall act in good faith and shall co-operate with the Council to facilitate the discharge and performance of all obligations contained herein and the Owner shall comply with any reasonable requests of the Council to have access to any part of the Property or any requests to provide documentation within the Owner's possession (at the Owner's expense) for the purposes of monitoring compliance with the obligations contained herein.
- 5.4 The Owner agrees declares and covenants with the Council that it shall observe and perform the conditions restrictions and other matters mentioned herein and shall not make any claim for compensation in respect of any condition restriction or provision imposed by this Agreement and further shall indemnify the Council for any expenses or liability arising to the Council in respect of breach by the Owner of any obligations contained herein save to the extent that any act or omission of the Council its employees or agents has caused or contributed to such expenses or liability.
- 5.5 If satisfied as to the compliance of the Owner in respect of any obligation in this Agreement the Council shall (if requested to do so in writing and subject to payment of a fee of £1,000 in respect of each such obligation) provide through its Head of Legal Services a formal written certification of compliance, partial compliance or ongoing compliance (as and if appropriate) with the provisions of any such obligation.
- 5.6 Submission of any plan for approval by the Council under the terms of this Agreement shall be made by the Owner to the Council sending the full document and any appendices in electronic format (where practicable) to the Planning Obligations Monitoring Officer referring to the names dates and Parties to this Agreement and

citing the specific clause of this Agreement to which such plan relates quoting the Planning Permission reference 2014/7856/P.

5.7 Payment of the Highways Contribution pursuant to Clause 4.8 of this Agreement shall be made by the Owner to the Council sending the full amount via electronic transfer (where practicable). The owner shall notify the Planning Obligations Monitoring Officer that payment has been made referring to names date and Parties to this Agreement and citing the specific clause of this Agreement to which such contribution relates quoting the planning reference 2014/4514/P. Electronic Transfer is to be made directly to the National Westminster Bank of Hampstead Village quoting Sort Code 50-30-03 and London Borough of Camden General Account no. 24299480.

5.8 All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable in respect thereof and all parties other than the Council shall pay and indemnify the Council against any such value added tax properly payable on any sums paid to the Council under this Agreement upon presentation of an appropriate value added tax invoice addressed to the Owner.

5.9 Any sums referred to in this Agreement as payable or to be applied by any party other than the Council under this Agreement shall be paid or applied TOGETHER WITH if such payment or application is made more than three months from the date of this Agreement a further sum ("A") being equal to the original sum payable ("B") multiplied by a figure being a fraction of which the All Items of Retail Prices ("the AllRP") figure last published by the Central Statistical Office at the date hereof is the denominator ("X") and the last AllRP figure published before the date such payment or application is made ("Y") less the last published AllRP figure at the date hereof ("X") is the numerator so that

$$A = B \times \frac{(Y-X)}{X}$$

5.10 All costs and expenses payable to the Council under this Agreement shall bear interest at the rate of 4% above the Base Rate of the National Westminster Bank plc from time to time being charged from the date such payment is due until payment is made.

6. **IT IS HEREBY AGREED AND DECLARED** by the Parties hereto that:-
- 6.1 The provisions of Section 196 of the Law of Property Act 1925 (as amended) shall apply to any notice or approval or agreement to be served under or in connection with this Agreement and any such notice or approval shall be in writing and shall specifically refer to the name, date and Parties to the Agreement and shall cite the clause of the Agreement to which it relates and in the case of notice to the Council shall be addressed to the London Borough of Camden, Planning Obligations Officer, Urban Design and Renewal, Planning and Public Protection, Culture and Environment Directorate, Town Hall Annex, Argyle Street, London WC1H 9LP quoting the Planning Permission reference number 2014/4514/P and in the case of any notice or approval or agreement from the Council this shall be signed by a representative of the Council's Environment Department.
- 6.2 This Agreement shall be registered as a Local Land Charge.
- 6.3 The Owner agrees to pay the Council its proper and reasonable legal costs incurred in preparing this Agreement on or prior to the date of completion of the Agreement.
- 6.4 The Owner hereby covenants with the Council that it will within 28 days from the date hereof apply to the Chief Land Registrar of the Land Registry to register this Agreement in the Charges Register of the title to the Property and will furnish the Council forthwith on written demand with official copies of such title to show the entry of this Agreement in the Charges Register of the title to the Property.
- 6.5 Nothing contained or implied in this Agreement shall prejudice or affect the Council's powers to enforce any specific obligation term or condition nor shall anything contained or implied herein prejudice or affect any provisions, rights, powers, duties and obligations of the Council in the exercise of its functions as Local Planning Authority for the purposes of the Act or as a local authority generally and its rights, powers, duties and obligations under all public and private statutes, bye laws and regulations may be as fully and effectually exercised as if the Council were not a party to this Agreement.
- 6.6 Neither the Owner or their successors in title nor any person deriving title from them shall be bound by the obligations in this Agreement in respect of any period during

which it no longer has an interest in the Property but without prejudice to liability for any breach committed prior to the time it disposed of its interest.

6.7 For the avoidance of doubt the provisions of this Agreement (other than those contained in this sub-clause) shall not have any effect until this Agreement has been dated.

6.8 If the Planning Permission is quashed or revoked or otherwise withdrawn or expires before effluxion of time for the commencement of development this Agreement shall forthwith determine and cease to have effect.

7. **RIGHTS OF THIRD PARTIES**

7.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement

IN WITNESS whereof the Council has caused its Common Seal to be hereunto affixed and the Owner have executed this instrument as their Deed the day and year first before written

EXECUTED AS A DEED BY)
MAGNET S.A)
in the presence of:)

.....
Witness Signature

Witness Name

Address

Occupation

THE COMMON SEAL OF THE MAYOR)
AND BURGESSES OF THE LONDON)
BOROUGH OF CAMDEN was hereunto)
Affixed by Order:-)

.....
Authorised Signatory

THE FIRST SCHEDULE

Construction Management Plan

Highway Measures

A Construction Management Plan outlines how construction work will be carried out and how this work will be serviced (e.g. delivery of materials, set down and collection of skips), with the objective of minimising traffic disruption and avoiding dangerous situations and minimising the impact on local amenity. A Construction Management Plan should cover both demolition and construction phases of development. Details of the Construction Management Plan will relate to the scale and kind and location of the development and they should assess the impact on transport and on local amenity including road user amenity. Should any one of these criteria be considered not to be relevant, then specific justification, as to why that particular criterion is not relevant, will need to be provided. The Construction Management Plan should demonstrate that the following has been considered and where necessary the impacts mitigated:

(Note the term 'vehicles' used here refers to all vehicles associated with the implementation of the development, e.g. demolition, site clearing, delivering of plant, material and construction, staff parking etc)

- a) A brief description of the site, surrounding area and development proposals for which the Construction Management Plan applies.
- b) Proposed start and end dates for each phase of construction.
- c) The proposed working hours within which vehicles will arrive and depart.
- d) The access arrangements for vehicles.
- e) Proposed routes for vehicles between the site and the Transport for London Road Network (TLRN). Consideration should also be given to weight restrictions, low bridges and cumulative affects of construction on the highway. A map of the TLRN can be downloaded from the following site:-

http://www.tfl.gov.uk/assets/downloads/TFL_Base_Map_Master.pdf
- f) Typical sizes of all vehicles and the approximate frequency and times of day when they will need access to the site, for each phase of construction.
- g) Swept path drawings for any tight manoeuvres on vehicle routes to the site.

- h) Details (including accurate scaled drawings) of any highway works necessary to enable construction to take place.
- i) Parking and loading arrangement of vehicles and delivery of materials and plant to the site.
- j) Details of proposed parking bays suspensions and temporary traffic management orders.
- k) Proposed overhang (if any) of the public highway (scaffolding, cranes etc.).
- l) Details of hoarding required or any other occupation of the public highway.
- m) Details of how pedestrian and cyclist safety will be maintained, including any proposed alternative routes (if necessary), and any Banksman arrangements.
- n) Details of how traffic associated with the Development will be managed in order to reduce congestion.
- o) Details of any other measures designed to reduce the impact of associated traffic (such as the use of construction material consolidation centres).
- p) Details of how any significant amounts of dirt or dust that may be spread onto the public highway will be cleaned or prevented.
- q) Details of consultation on a draft Construction Management Plan with local residents, business, local groups (e.g. residents/tenants and business associations) and Ward Councillors. Details should include who was consulted, how the consultation was conducted and the comments received in response to the consultation. In response to the comments received, the Construction Management Plan should then be amended where appropriate and where not appropriate a reason should be given why not. The revised Construction Management Plan should also include a list of all the comments received. You are advised to check your proposed approach to consultation with the Council before carrying it out.
- r) Details of any Construction Working Group that will be set up, addressing the concerns of surrounding residents, as well as contact details for the person responsible for community liaison on behalf of the developer, and how these contact details will be advertised to the community.
- s) Details of any schemes such as the “Considerate Contractors Scheme” that the project will be signed up to should form part of the consultation and be notified to the Council.

Contractors will also be required to follow the “Guide for Contractors Working in Camden” also referred to as “Camden’s Considerate Contractor’s Manual”

- t) Details of other construction sites in the local area and how your Construction Management Plan takes into consideration the cumulative effects of construction local to your site.
- u) All contractors and sub-contractors operating large vehicles over 3.5 tonnes must meet all of the following conditions:-

- 1) Operators must be a member of TfL’s Fleet Operator Recognition Scheme (www.tfl.gov.uk/fors) or similar at the Bronze level.
- 2) All drivers must have undertake cycle awareness training such as the Safe Urban Driver module through FORS or similar.
- 3) All vehicles associated with the construction of the Development must:
 - i. Have Side Guards fitted, unless it can be demonstrated to the reasonable satisfaction of the Employer, that the Lorry will not perform the function, for which it was built, if Side Guards are fitted.
 - ii. Have a close proximity warning system fitted comprising of a front mounted, rear facing CCTV camera (or Fresnel Lens where this provides reliable alternative), a Close Proximity Sensor, an in-cab warning device (visual or audible) and an external warning device to make the road user in close proximity aware of the driver’s planned manoeuvre.
 - iii. Have a Class VI Mirror
 - iv. Bear prominent signage on the rear of the vehicle to warn cyclists of the dangers of passing the vehicle on the inside.

- v) Any other relevant information with regard to traffic and transport.

- w) The Construction Management Plan should also include the following statement:-

"The agreed contents of the Construction Management Plan must be complied with unless otherwise agreed with the Council. The project manager shall work with the Council to review this Construction Management Plan if problems arise in relation to the construction of the Development. Any future revised plan must be approved by the Council and complied with thereafter."

It should be noted that any agreed Construction Management Plan does not prejudice further agreement that may be required for things such as road closures or hoarding licences

Appendix 4 - Draft Legal Agreement for 2014/7856/P

DATED

2015

(1) MAGNET S.A

and

**(2) THE MAYOR AND BURGESSES OF
THE LONDON BOROUGH OF CAMDEN**

A G R E E M E N T
relating to land known as
11 Primrose Hill Road Hampstead London NW3 3DG
pursuant to Section 106 of the Town and Country Planning
Act 1990 (as amended)
Section 278 of the Highways Act 1980

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- iv. **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF CAMDEN** of Town Hall, Judd Street, London WC1H 9LP (hereinafter called "the Council") of the second part

1. WHEREAS

- 1.1 The Owner is registered at the Land Registry as the freehold proprietor with Title absolute of the Property under Title Number NGL745534.

- 1.2 The Owner is the freehold Owner of and is interested in the Property for the purposes of Section 106 of the Act.

- 1.3 A Planning Application for the development of the Property was submitted to the Council and validated on 23 December 2014 under reference number 2014/7856/P.

- 1.4 The Council refused the Planning Application on 7 April 2015.

- 1.5 An appeal under section 78 of the Act in respect of the refusal of the Planning Application was submitted by the Owner to the Planning Inspectorate and was given reference number APP/X5210/W/15/3016537/8.

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- (ii) incorporation of the provisions set out in the First Schedule annexed hereto
- (iii) proposals to ensure the protection and preservation of the listed building during the Construction Phase;
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the document produced by the Council from time to time entitled "Guide for Contractors Working in Camden" relating to the good practice for developers engaged in building activities in the London Borough of Camden

2.7 "the Development"

erection of a 3-storey dwelling house & associated landscaping works (Class C3) as shown on drawing numbers:- A 100 Rev B; 101 Rev B; 102 Rev B; 103 Rev B; 150; 200; 201; 300 Rev B; 301 Rev B; 302 Rev B, FIG.1 Rev 00, FIG. 2 Rev 00, 14020-BT (Tree protection plan), Proposed & Existing View, Front Elevation Montage, Existing Site Photo, Camden Local Area Requirement for Lifetime Homes and Wheelchair Housing, Arboricultural Impact Appraisal and Method Statement (ref: 14020-AIA-DC) dated 22/01/2014, Code for Sustainable Homes Pre Assessment Estimator Tool, Daylight & Shadow Neighbouring Assessment (ref: 20131380) dated 14/11/2013, Design & Access Statement dated November 2014, Heritage Assessment dated November 2014, Town Planning Statement (GAO/GBR/J7292) dated December 2014, Sustainability and Energy

2.8 "the Highways
Contribution"

the sum of £8,534.57 (eight thousand five hundred and thirty four pounds and fifty seven pence) to be paid by the Owner to the Council in accordance with the terms of this Agreement and to be applied by the Council in the event of receipt for the carrying out of works to the public highway and associated measures in the vicinity of the Property and as are required due to the Development ("the Highways Works") these to include costs associated with the following:-

(a) repaving the footway adjacent to the site;
and

(b) any other works the Council acting reasonably considers necessary as a direct result of the Development

all works will be subject to final measure and for the avoidance of doubt the Council in accepting this sum does not undertake any responsibility in connection with any required statutory undertakers works and excludes any statutory undertakers costs

2.9 "the Implementation
Date"

the date of implementation of the Development by the carrying out of a material operation as defined in Section 56 of the Act and references to "Implementation" and "Implement" shall be construed accordingly

2.10	"the Level Plans"	plans demonstrating the levels at the interface of the Development the boundary of the Property and the Public Highway
2.11	"Occupation Date"	the date when any part of the Development is occupied and the phrases "Occupy", "Occupied" and "Occupation" shall be construed accordingly
2.12	"the Parties"	mean the Council and the Owner
2.13	"the Planning Application"	a planning application in respect of the development of the Property submitted to the Council and validated on 23 December 2014 under reference number 2014/7856/P
2.14	"Planning Obligations Monitoring Officer"	a planning officer of the Council from time to time allocated to deal with all planning obligations pursuant to S106 of the Act to whom all notices, correspondence, approvals etc must be sent in the manner prescribed at clause 6.1 hereof
2.15	"the Planning Permission"	any planning permission granted for the Development by the Secretary of State under reference APP/X5210/W/15/3016537/8 pursuant to the appeal against the refusal of the Planning Application
2.16	"the Property"	the land known as 11a Primrose Hill Road London NW3 3DG the same as shown shaded grey on the plan annexed hereto
2.17	"the Public Highway"	any carriageway footway and/or verge adjoining the Property maintainable at public expense

- 2.18 "Residents Parking Bay" a parking place designated by the Council by an order under the Road Traffic Regulation Act 1984 or other relevant legislation for use by residents of the locality in which the Development is situated
- 2.19 "Residents Parking Permit" A parking permit issued by the Council under section 45(2) of the Road Traffic Regulation Act 1984 allowing a vehicle to park in Residents Parking Bays
- 2.20 "the Sustainability Plan" a plan securing the incorporation of sustainability measures in the carrying out of the Development in its fabric and in its subsequent management and occupation based which shall include:-
- (a) an assessment under the Code for Sustainable Homes achieving at least Level 4 and attaining at least 50% of the credits in each of the Energy Water and Materials categories;
 - (b) include a pre-Implementation review by an appropriately qualified and recognised independent verification body in respect of the Property certifying that the measures incorporated in the Sustainability Plan are achievable in the Development and satisfy the aims and objectives of the Council's strategic policies on sustainability contained within its Development Plan; and
 - (c) measures to secure a post construction review of the Development by an appropriately qualified and recognised independent verification body in respect of the Property certifying that the measures incorporated in the

Sustainability Plan have been achieved in the Development and will be maintainable in the Development's future management and occupation

3. **NOW THIS DEED WITNESSETH** as follows:-

- 3.1 This Agreement is made in pursuance of Section 106 of the Act, and is a planning obligation for the purposes of Section 106 as aforesaid, and shall be enforceable by the Council against the Owner as provided herein and against any person deriving title to any part of the Property from the Owner and insofar as it is not a planning obligation its provisions may be enforceable by the Council under any relevant statutory powers.
- 3.2 Words importing the singular shall include the plural and vice versa and any words denoting actual persons shall include companies corporations and other artificial persons.
- 3.3 Any reference to a specific statute or statutes include any statutory extension or modification amendment or re-enactment of such statute and any regulation or orders made under such statute.
- 3.4 The clause and paragraph headings do not form part of this Agreement and shall not be taken into account in its construction of interpretation.
- 3.5 It is hereby agreed between the Parties that save for the provisions of clauses 1, 2, 3, 5, 6 and 7 hereof all of which shall come into effect on the date hereof the covenants undertakings and obligations contained within this Agreement shall become binding upon the Owner upon the Implementation Date.
- 3.6 The Council hereby agrees to grant the Planning Permission on the date hereof.
- 3.7 The Parties save where the context states otherwise shall include their successors in title.

- 3.8 The Parties acknowledge that the Development shall be treated as being permanently designated as "car free" housing in accordance with Clause 4.1 for all relevant purposes.

4. **OBLIGATIONS OF THE OWNER**

The Owner hereby covenants with the Council as follows:-

4.1 **Car Free**

- 4.1.1 To ensure that prior to occupying any residential unit forming part of the Development each new resident of the Development is informed by the Owner of the Council's policy that they shall not be entitled (unless they are the holder of a disabled persons badge issued pursuant to Section 21 of the Chronically Sick and Disabled Persons Act 1970) to be granted a Residents Parking Permit to park a vehicle in a Residents Parking Bay and will not be able to buy a contract to park within any car park owned, controlled or licensed by the Council.

- 4.1.2 The Owner for itself and its successors in title to the Property hereby acknowledges that the provision in Clause 4.1 above will remain permanently.

- 4.1.2 On or prior to the Occupation Date the Owner shall inform the Council's Planning Obligations Monitoring Officer of the official unit numbers of the residential units forming part of the Development (as issued and agreed by the Council's Street Name and Numbering Department), identifying those residential units that in the Owner's opinion are affected by the Owner's obligation in Clause 4.1 of this Agreement.

4.2 **Construction Management Plan**

- 4.2.1 On or prior to the Implementation Date to provide the Council for approval a draft Construction Management Plan.

- 4.2.2 Not to Implement nor allow Implementation of the Development until such time as the Council has approved the Construction Management Plan as demonstrated by written notice to that effect.

- 4.2.3 The Owner acknowledges and agrees that the Council will not approve the Construction Management Plan unless it demonstrates to the Council's reasonable

satisfaction that the Construction Phase of the Development can be carried out safely and with minimal possible impact on and disturbance to the surrounding environment and highway network.

- 4.2.4 To ensure that throughout the Construction Phase the Development shall not be carried out otherwise than in strict accordance with the requirements of the Construction Management Plan and not to permit the carrying out of any works comprised in demolition or building out the Development at any time when the requirements of the Construction Management Plan are not being complied with and in the event of non compliance with this sub-clause the Owner shall forthwith take any steps required to remedy such non-compliance.

4.3 Highways Contribution

- 4.3.1 On or prior to the Implementation Date to pay to the Council the Highways Contribution in full.
- 4.3.2 On or prior to the Implementation Date to submit to the Council the Level Plans for approval.
- 4.3.3 Not to Implement or to permit Implementation until such time as the Council has received the Highways Contribution in full.
- 4.3.4 Not to Implement nor permit Implementation until such time as the Council has approved the Level Plans.
- 4.3.5 The Owner acknowledges that the Council has the right reserved to it to construct the Public Highway to levels it considers appropriate.
- 4.3.6 On completion of the Highway Works the Council may provide to the Owner a certificate specifying the sum ("the Certified Sum") expended by the Council in carrying out the Highway Works.
- 4.3.7 If the Certified Sum exceeds the Highway Contribution then the Owner shall within fourteen days of the issuing of the said certificate pay to the Council the amount of the excess.

4.4 Sustainability Plan

- 4.4.1 On or prior to the Implementation Date to submit to the Council for approval the Sustainability Plan.
- 4.4.2 Not to Implement nor permit Implementation until the Sustainability Plan has been approved by the Council as demonstrated by written notice to that effect
- 4.4.3 Not to Occupy or permit Occupation of the Property until a satisfactory post-completion review has been submitted to and approved by the Council in writing confirming that the measures incorporated in the Sustainability Plan as approved by the Council have been incorporated into the Property.
- 4.4.4 Following the Occupation Date the Owner shall not Occupy or permit Occupation of any part of the Development at any time when the Development is not being managed in strict accordance with the Sustainability Plan as approved by the Council and shall not Occupy or permit Occupation of the Development otherwise than in strict accordance with the requirements of the Sustainability Plan.

5. NOTICE TO THE COUNCIL/OTHER MATTERS

- 5.1 The Owner shall give written notice to the Council on or prior to the Implementation Date specifying that Implementation of the Planning Permission has taken or is about to take place.
- 5.2 Within seven days following completion of the Development the Owner shall certify in writing to the Planning Obligations Monitoring Officer in the manner outlined at clause 6.1 hereof quoting the Planning Permission reference 2014/7856/P the date upon which the Development is ready for Occupation.
- 5.3 The Owner shall act in good faith and shall co-operate with the Council to facilitate the discharge and performance of all obligations contained herein and the Owner shall comply with any reasonable requests of the Council to have access to any part of the Property or any requests to provide documentation within the Owner's possession (at the Owner's expense) for the purposes of monitoring compliance with the obligations contained herein.

- 5.4 The Owner agrees declares and covenants with the Council that it shall observe and perform the conditions restrictions and other matters mentioned herein and shall not make any claim for compensation in respect of any condition restriction or provision imposed by this Agreement and further shall indemnify the Council for any expenses or liability arising to the Council in respect of breach by the Owner of any obligations contained herein save to the extent that any act or omission of the Council its employees or agents has caused or contributed to such expenses or liability.
- 5.5 If satisfied as to the compliance of the Owner in respect of any obligation in this Agreement the Council shall (if requested to do so in writing and subject to payment of a fee of £1,000 in respect of each such obligation) provide through its Head of Legal Services a formal written certification of compliance, partial compliance or ongoing compliance (as and if appropriate) with the provisions of any such obligation.
- 5.6 Submission of any plan for approval by the Council under the terms of this Agreement shall be made by the Owner to the Council sending the full document and any appendices in electronic format (where practicable) to the Planning Obligations Monitoring Officer referring to the names dates and Parties to this Agreement and citing the specific clause of this Agreement to which such plan relates quoting the Planning Permission reference 2014/7856/P.
- 5.7 Payment of the Highways Contribution pursuant to Clause 4.8 of this Agreement shall be made by the Owner to the Council sending the full amount via electronic transfer (where practicable). The owner shall notify the Planning Obligations Monitoring Officer that payment has been made referring to names date and Parties to this Agreement and citing the specific clause of this Agreement to which such contribution relates quoting the planning reference 2014/7856/P. Electronic Transfer is to be made directly to the National Westminster Bank of Hampstead Village quoting Sort Code 50-30-03 and London Borough of Camden General Account no. 24299480.
- 5.8 All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable in respect thereof and all parties other than the Council shall pay and indemnify the Council against any such value added tax properly payable on any sums paid to the Council under this Agreement upon presentation of an appropriate value added tax invoice addressed to the Owner.

- 5.9 Any sums referred to in this Agreement as payable or to be applied by any party other than the Council under this Agreement shall be paid or applied TOGETHER WITH if such payment or application is made more than three months from the date of this Agreement a further sum ("A") being equal to the original sum payable ("B") multiplied by a figure being a fraction of which the All Items of Retail Prices ("the AllRP") figure last published by the Central Statistical Office at the date hereof is the denominator ("X") and the last AllRP figure published before the date such payment or application is made ("Y") less the last published AllRP figure at the date hereof ("X") is the numerator so that

$$A = B \times \frac{(Y-X)}{X}$$

- 5.10 All costs and expenses payable to the Council under this Agreement shall bear interest at the rate of 4% above the Base Rate of the National Westminster Bank plc from time to time being charged from the date such payment is due until payment is made.

6. **IT IS HEREBY AGREED AND DECLARED** by the Parties hereto that:-

- 6.1 The provisions of Section 196 of the Law of Property Act 1925 (as amended) shall apply to any notice or approval or agreement to be served under or in connection with this Agreement and any such notice or approval shall be in writing and shall specifically refer to the name, date and Parties to the Agreement and shall cite the clause of the Agreement to which it relates and in the case of notice to the Council shall be addressed to the London Borough of Camden, Planning Obligations Officer, Urban Design and Renewal, Planning and Public Protection, Culture and Environment Directorate, Town Hall Annex, Argyle Street, London WC1H 9LP quoting the Planning Permission reference number 2014/7856/P and in the case of any notice or approval or agreement from the Council this shall be signed by a representative of the Council's Environment Department.
- 6.2 This Agreement shall be registered as a Local Land Charge.
- 6.3 The Owner agrees to pay the Council its proper and reasonable legal costs incurred in preparing this Agreement on or prior to the date of completion of the Agreement.

- 6.4 The Owner hereby covenants with the Council that it will within 28 days from the date hereof apply to the Chief Land Registrar of the Land Registry to register this Agreement in the Charges Register of the title to the Property and will furnish the Council forthwith on written demand with official copies of such title to show the entry of this Agreement in the Charges Register of the title to the Property.
- 6.5 Nothing contained or implied in this Agreement shall prejudice or affect the Council's powers to enforce any specific obligation term or condition nor shall anything contained or implied herein prejudice or affect any provisions, rights, powers, duties and obligations of the Council in the exercise of its functions as Local Planning Authority for the purposes of the Act or as a local authority generally and its rights, powers, duties and obligations under all public and private statutes, bye laws and regulations may be as fully and effectually exercised as if the Council were not a party to this Agreement.
- 6.6 Neither the Owner or their successors in title nor any person deriving title from them shall be bound by the obligations in this Agreement in respect of any period during which it no longer has an interest in the Property but without prejudice to liability for any breach committed prior to the time it disposed of its interest.
- 6.7 For the avoidance of doubt the provisions of this Agreement (other than those contained in this sub-clause) shall not have any effect until this Agreement has been dated.
- 6.8 If the Planning Permission is quashed or revoked or otherwise withdrawn or expires before effluxion of time for the commencement of development this Agreement shall forthwith determine and cease to have effect.

7. **RIGHTS OF THIRD PARTIES**

- 7.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement

IN WITNESS whereof the Council has caused its Common Seal to be hereunto affixed and the Owner have executed this instrument as their Deed the day and year first before written

**CONTINUATION OF SECTION 106 AGREEMENT IN RELATION TO 11A
PRIMROSE HILL ROAD LONDON NW3 3DG**

EXECUTED AS A DEED BY)
MAGNET S.A)
in the presence of:)

.....
Witness Signature

Witness Name

Address

Occupation

**THE COMMON SEAL OF THE MAYOR
AND BURGESSES OF THE LONDON
BOROUGH OF CAMDEN was hereunto
Affixed by Order:-**

.....

Authorised Signatory

THE FIRST SCHEDULE
Construction Management Plan
Highway Measures

A Construction Management Plan outlines how construction work will be carried out and how this work will be serviced (e.g. delivery of materials, set down and collection of skips), with the objective of minimising traffic disruption and avoiding dangerous situations and minimising the impact on local amenity. A Construction Management Plan should cover both demolition and construction phases of development. Details of the Construction Management Plan will relate to the scale and kind and location of the development and they should assess the impact on transport and on local amenity including road user amenity. Should any one of these criteria be considered not to be relevant, then specific justification, as to why that particular criterion is not relevant, will need to be provided. The Construction Management Plan should demonstrate that the following has been considered and where necessary the impacts mitigated:

(Note the term 'vehicles' used here refers to all vehicles associated with the implementation of the development, e.g. demolition, site clearing, delivering of plant, material and construction, staff parking etc)

- a) A brief description of the site, surrounding area and development proposals for which the Construction Management Plan applies.
- b) Proposed start and end dates for each phase of construction.
- c) The proposed working hours within which vehicles will arrive and depart.
- d) The access arrangements for vehicles.
- e) Proposed routes for vehicles between the site and the Transport for London Road Network (TLRN). Consideration should also be given to weight restrictions, low bridges and cumulative affects of construction on the highway. A map of the TLRN can be downloaded from the following site:-

http://www.tfl.gov.uk/assets/downloads/TFL_Base_Map_Master.pdf
- f) Typical sizes of all vehicles and the approximate frequency and times of day when they will need access to the site, for each phase of construction.
- g) Swept path drawings for any tight manoeuvres on vehicle routes to the site.

- h) Details (including accurate scaled drawings) of any highway works necessary to enable construction to take place.
- i) Parking and loading arrangement of vehicles and delivery of materials and plant to the site.
- j) Details of proposed parking bays suspensions and temporary traffic management orders.
- k) Proposed overhang (if any) of the public highway (scaffolding, cranes etc.).
- l) Details of hoarding required or any other occupation of the public highway.
- m) Details of how pedestrian and cyclist safety will be maintained, including any proposed alternative routes (if necessary), and any Banksman arrangements.
- n) Details of how traffic associated with the Development will be managed in order to reduce congestion.
- o) Details of any other measures designed to reduce the impact of associated traffic (such as the use of construction material consolidation centres).
- p) Details of how any significant amounts of dirt or dust that may be spread onto the public highway will be cleaned or prevented.
- q) Details of consultation on a draft Construction Management Plan with local residents, business, local groups (e.g. residents/tenants and business associations) and Ward Councillors. Details should include who was consulted, how the consultation was conducted and the comments received in response to the consultation. In response to the comments received, the Construction Management Plan should then be amended where appropriate and where not appropriate a reason should be given why not. The revised Construction Management Plan should also include a list of all the comments received. You are advised to check your proposed approach to consultation with the Council before carrying it out.
- r) Details of any Construction Working Group that will be set up, addressing the concerns of surrounding residents, as well as contact details for the person responsible for community liaison on behalf of the developer, and how these contact details will be advertised to the community.
- s) Details of any schemes such as the “Considerate Contractors Scheme” that the project will be signed up to should form part of the consultation and be notified to the Council.

Contractors will also be required to follow the “Guide for Contractors Working in Camden” also referred to as “Camden’s Considerate Contractor’s Manual”

t) Details of other construction sites in the local area and how your Construction Management Plan takes into consideration the cumulative effects of construction local to your site.

u) All contractors and sub-contractors operating large vehicles over 3.5 tonnes must meet all of the following conditions:-

1) Operators must be a member of TfL’s Fleet Operator Recognition Scheme (www.tfl.gov.uk/fors) or similar at the Bronze level.

2) All drivers must have undertake cycle awareness training such as the Safe Urban Driver module through FORS or similar.

3) All vehicles associated with the construction of the Development must:

i. Have Side Guards fitted, unless it can be demonstrated to the reasonable satisfaction of the Employer, that the Lorry will not perform the function, for which it was built, if Side Guards are fitted.

ii. Have a close proximity warning system fitted comprising of a front mounted, rear facing CCTV camera (or Fresnel Lens where this provides reliable alternative), a Close Proximity Sensor, an in-cab warning device (visual or audible) and an external warning device to make the road user in close proximity aware of the driver’s planned manoeuvre.

iii. Have a Class VI Mirror

iv. Bear prominent signage on the rear of the vehicle to warn cyclists of the dangers of passing the vehicle on the inside.

v) Any other relevant information with regard to traffic and transport.

w) The Construction Management Plan should also include the following statement:-

"The agreed contents of the Construction Management Plan must be complied with unless otherwise agreed with the Council. The project manager shall work with the Council to review this Construction Management Plan if problems arise in relation to the construction of the Development. Any future revised plan must be approved by the Council and complied with thereafter."

It should be noted that any agreed Construction Management Plan does not prejudice further agreement that may be required for things such as road closures or hoarding licences

**Appendix 5 - Basement Impact Assessment Audit (Project Number:
12066-09) dated June 2015, by Campbell Reith**

**11A Primrose Hill Road
London NW3 3DG**

**Basement Impact Assessment
Audit**

For
London Borough of Camden

Project Number: 12066-09

June 2015

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Project Number	12066-09
Project Name	11A Primrose Hill Road, London NW3 3DG
Planning Reference	2014/4515/P

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Appendix 1: Residents' Consultation Comments

Appendix 2: Audit Query Tracker

Appendix 3: Supplementary Supporting Documents

1.0 NON-TECHNICAL SUMMARY

- 1.1. CampbellReith was instructed by London Borough of Camden (LBC) to carry out an independent review of the Basement Impact Assessment submitted as part of the Planning Submission documentation for 11A Primrose Hill Road, Camden Reference 2014/4514/P following its refusal and the lodging of an appeal, Camden Reference APP/X5210/W/15/3005758.
- 1.2. The review assessed the Basement Impact Assessment for potential impact on land stability and local ground and surface water conditions arising from basement development in accordance with LBC's policies and technical procedures.
- 1.3. CampbellReith was provided with relevant information and it was reviewed against an agreed audit check list.
- 1.4. The BIA Reports submitted do not contain an overview on construction methodology and programme.
- 1.5. There is a lack of information regarding temporary works and/or basement retaining wall construction and no clear indication of the location of the listed Network Rail tunnel which lies below the development site. It is not possible to determine whether the proposed basement lies within the exclusion zone of the tunnel.
- 1.6. No soil investigation works have been undertaken and instead the BIA relies on historical data from nearby sites. The depth of made ground overlying London Clay differs significantly between locations and a site specific investigation is recommended.
- 1.7. A critical phase of construction which will affect adjoining properties, the tunnel and the adjacent highway, is during basement excavation when ground heave of the London Clay is likely to occur. Additionally the structural loads associated with the proposed new building will impact the surrounding structures and infrastructure. With information from a site specific soil investigation, a line and level survey commissioned from Network Rail, and foundation inspection pits, a Ground Movement Assessment could be completed to allow horizontal and vertical movements to be estimated. Their impact on surrounding structures and infrastructure and the Burland category of damage could then be assessed.
- 1.8. No indication is provided of the intended method of constructing the basement retaining walls and floor slab other than standard underpinning details for the flank wall to no. 11A. There has been no trial pit investigation to determine the depth of the existing flank wall foundations.
- 1.9. Primrose Hill Road was subjected to surface water flooding in 2002 and its surrounding streets in 1975 and the development site is adjacent to a Critical Drainage Area. A topographical survey of the general area would be beneficial to assist on the likely impact of the development on surface water flow.

2.0 INTRODUCTION

CampbellReith was instructed by London Borough of Camden (LBC) on 20 May 2015 to carry out an independent review of the Basement Impact Assessment (BIA) submitted as part of the Planning Submission documentation for 11A Primrose Hill Road, Camden Reference 2014/4514/P for which an appeal had been lodged, following refusal of the Planning Application, under APP/X5210/W/15/3005758. CampbellReith was provided with a series of attachments by email on 20 May 2015 as follows for audit purposes:

- BIA – Surface Water and Groundwater
- BIA – Screening and Scoping Report: Land Quality
- Aborigicultural Impact Appraisal and Method Statement

The LBC Planning Portal was inspected but contained no additional relevant information.

- 2.1. One of the reasons for refusal was based on the BIA failing to demonstrate that it would not cause harm to the built and natural environment or local amenity, as well as flooding or ground stability.
- 2.2. The Audit was carried out in accordance with the Terms of Reference set by LBC. It reviewed the Basement Impact Assessment for potential impact on land stability and local ground and surface water conditions arising from basement development.
- 2.3. A BIA is required for all planning applications with basements in Camden in general accordance with policies and technical procedures contained within
 - Guidance for Subterranean Development (GSD). Issue 01. November 2010. Ove Arup & Partners.
 - Camden Planning Guidance (CPG) 4: Basements and Lightwells.
 - Camden Development Policy (DP) 27: Basements and Lightwells.
 - Camden Development Policy (DP) 23: Water.
- 2.4. The BIA should demonstrate that schemes:
 - a) maintain the structural stability of the building and neighbouring properties;
 - b) avoid adversely affecting drainage and run off or causing other damage to the water environment; and,
 - c) avoid cumulative impacts upon structural stability or the water environment in the local area.

and evaluate the impacts of the proposed basement considering the issues of hydrology, hydrogeology and land stability via the process described by the GSD and to make recommendations for the detailed design.

- 2.5. LBC's Audit Instruction described the planning proposal as the "*Erection of a 3 storey dwelling plus a basement under the footprint of the new building.*"

and confirmed that the basement proposals did not involve a listed building nor did the site neighbour any listed buildings.

3.0 BASEMENT IMPACT ASSESSMENT AUDIT CHECK LIST

Item	Yes/No/NA	Comment
Are BIA Author(s) credentials satisfactory?	Yes	
Is data required by Cl.233 of the GSD presented?	Yes	Little information on construction methodology and programme.
Does the description of the proposed development include all aspects of temporary and permanent works which might impact upon geology, hydrogeology and hydrology?	No	No information regarding temporary works and/or retaining wall construction.
Are suitable plan/maps included?	Yes	
Do the plans/maps show the whole of the relevant area of study and do they show it in sufficient detail?	Yes	
Land Stability Screening: Have appropriate data sources been consulted? Is justification provided for 'No' answers?	Yes	Network Rail tunnel locations not determined.
Hydrogeology Screening: Have appropriate data sources been consulted? Is justification provided for 'No' answers?	Yes	No site investigation undertaken.
Hydrology Screening: Have appropriate data sources been consulted? Is justification provided for 'No' answers?	Yes	Adjacent to a critical drainage area.
Is a conceptual model presented?	Yes	
Land Stability Scoping Provided? Is scoping consistent with screening outcome?	Yes	

Item	Yes/No/NA	Comment
Hydrogeology Scoping Provided? Is scoping consistent with screening outcome?	Yes	
Hydrology Scoping Provided? Is scoping consistent with screening outcome?	Yes	BIA had identified that flooding has occurred in the past.
Is factual ground investigation data provided?	Yes	Historical BGS borehole information.
Is monitoring data presented?	No	
Is the ground investigation informed by a desk study?	Yes	
Has a site walkover been undertaken?	No	
Is the presence/absence of adjacent or nearby basements confirmed?	No	No information provided regarding presence of basements.
Is a geotechnical interpretation presented?	Yes	Based upon BGS borehole information.
Does the geotechnical interpretation include information on retaining wall design?	No	No information provided.
Are reports on other investigations required by screening and scoping presented?	Yes	Surface Water and Groundwater Land Quality
Are baseline conditions described, based on the GSD?	Yes	
Do the base line conditions consider adjacent or nearby basements?	No	
Is an Impact Assessment provided?	Yes	
Are estimates of ground movement and structural impact presented?	No	Other than unsubstantiated comment.

Item	Yes/No/NA	Comment
Is the Impact Assessment appropriate to the matters identified by screen and scoping?	No	Inadequate basic information.
Has the need for mitigation been considered and are appropriate mitigation methods incorporated in the scheme?	No	
Has the need for monitoring during construction been considered?	No	
Have the residual (after mitigation) impacts been clearly identified?	No	
Has the scheme demonstrated that the structural stability of the building and neighbouring properties and infrastructure been maintained?	No	
Has the scheme avoided adversely affecting drainage and run-off or causing other damage to the water environment?	Yes	
Has the scheme avoided cumulative impacts upon structural stability or the water environment in the local area?	No	
Does report state that damage to surrounding buildings will be no worse than Burland Category 2?	No	No estimate undertaken.
Are non-technical summaries provided?	Yes	

4.0 DISCUSSION

- 4.1. Although Basement Impact Assessments for Land Stability and Surface Water, and Groundwater, have been produced by persons having suitable qualifications, they do not contain an overview of construction methodology and programme as usually provided by a firm of consulting civil and/or structural engineers.
- 4.2. This has led to a lack of information regarding temporary works and/or retaining wall construction during the excavation and construction of the basement. This is particularly important considering the adjacency of a Network Rail listed Grade 2* tunnel which appears to be located immediately below the development site and the proximity of the excavation to King Henry's Road highway and pavement.
- 4.3. Until surveys are commissioned from Network Rail for line and level and, in due course, structural condition of the tunnel, the proximity of the crown of the tunnel to the underside of basement construction is unknown. It is, therefore, in doubt as to whether the basement excavation is possible without encroaching upon the exclusion zone of the tunnel.
- 4.4. No soil investigation works have been undertaken in the form of boreholes or trial pits to investigate the existing foundations to the flank wall of no. 11. Instead reference has been made to historical borehole information within the Surface Water and Groundwater Report by ESI Environmental Specialists. These boreholes are taken from development sites at Adelaide Road in 1962 and Elsworthy Road in 1990. Unfortunately their locations have been transposed on the ESI Borehole Location Plan.

The borehole closest to 11A Primrose Hill Road shows approximately 1.4 metres (4' 6") of made ground above the London Clay strata whereas the Elsworthy Road borehole indicates 3.3 metres of made ground above London Clay. It also indicates a water strike at 3.3 metres, ie. at the top of the London Clay.

This variation indicates the necessity of a specific soil investigation for this site.

- 4.5. Although diagrams are provided of a typical underpinning solution to the flank wall of no. 11, no indication is provided as to how the remainder of the basement walls are to be constructed, nor the basement floor, given the construction constraints of the tunnel below and the highway in King Henry's Road.
- 4.6. A critical design consideration for the excavation and construction of the basement will be in the temporary condition, when heave of the underlying London Clay stratum is likely to occur. Which would affect the underlying tunnel and adjacent property. Dependent on the foundation and retaining wall solution, the tunnel and adjoining property will also be impacted by the

structural loads imposed by the new building. A Ground Movement Analysis, based upon the results of the soil investigation, the Network Rail survey, and foundation inspection pits, should be carried out in order to evaluate the effects on the adjoining property, the adjacent highway and the tunnel below. The category of damage as defined on the Burland scale could then be estimated.

- 4.7. Standpipes installed in, say, two boreholes would provide an indication of perched water for the excavation and design of the basement and give an indication of direction of any groundwater flow.
- 4.8. The conclusions within the Surface Water and Groundwater Report state *"There is a moderate overall risk of surface water flooding at the Site when considering the high risk in the adjacent Primrose Hill Road and historical flooding in this area due to past sewer flooding events."* Primrose Hill Road was subject to surface water flooding in 2002 and some of the streets surrounding the development site were subject to flooding in 1975. While it is accepted that the impact of the development to surface water flows and related flooding will be low, LBC's Surface Water Management Plan indicates the site to be adjacent to a Critical Drainage Area. A topographical survey of the development site and adjacent areas of the Critical Drainage Area would assist an assessment of likely impact of a further incidence of flooding on the development.

5.0 CONCLUSIONS

- 5.1. The BIA Reports submitted do not contain an overview on construction methodology and programme.
- 5.2. There is a lack of information regarding temporary works and/or basement retaining wall construction and no clear indication of the location of the listed Network Rail tunnel which lies below the development site. It is not possible to determine whether the proposed basement lies within the exclusion zone of the tunnel.
- 5.3. No soil investigation works have been undertaken and instead the BIA relies on historical data from nearby sites. The depth of made ground overlying London Clay differs significantly between locations and there is potentially a shallow groundwater table. A site specific investigation is recommended.
- 5.4. A critical condition phase of construction which will affect adjoining properties, the tunnel and the adjacent highway, will be during basement excavation when ground heave of the underlying London Clay is likely to occur. The structural loads associated with the new building will also have an impact on the surrounding structures and infrastructure. With information from a site specific soil investigation, together with a line and level survey commissioned from Network Rail and information on the foundations to the adjoining property, a Ground Movement Analysis could be completed which would allow an assessment of the impact horizontal and vertical movements to be made. The Burland category of damage to affected properties could then be estimated.
- 5.5. No indication is provided to review the intended method of constructing the basement retaining walls and floor slab other than standard underpinning details for the flank wall to no. 11A. There has been no trial pit investigation to determine the depth of the existing flank wall foundations.
- 5.6. Primrose Hill Road was subjected to surface water flooding in 2002 and its surrounding streets in 1975 and the development site is adjacent to a Critical Drainage Area. A topographical survey of the general area would be beneficial to assist on the likely impact of the development.

Appendix 1: Residents' Consultation Comments

None reviewed

Appendix 2: Audit Query Tracker

Query No	Subject	Query	Status	Date closed out
1	Stability and water environment	No site specific data	Intrusive ground investigation and ground water monitoring required	
2	Stability	No information on proposed method of construction	Construction method statement required	
3	Stability	No information of adjoining foundations	Foundation inspection pits to affected properties required	
4	Stability	Depth and location of tunnel unknown	Details to be obtained and assessed	
5	Stability	No assessment of category of damage	Ground movement assessment required	
6	Surface water	Site levels not determined	Topographic survey required	

Appendix 3: Supplementary Supporting Documents

None

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Appendix 6 – Highways estimate

Appendix 7 – Photos of the site and context



Photo 1 – View of the appeal site from Primrose Hill Road, showing the existing side space between 11 Primrose Hill Road and King Henry's Road.



Photo 2 – View of the appeal site from King Henry's Road showing the blank gable at 11 Primrose Hill Road and its relationship to the street.



Photo 3 – View of the new dwelling being built adjacent to 65 Quickwood. This photo shows that a generous amount of side space is being retained with Primrose Hill Road.



Photo 4 – View of the new dwelling being built adjacent to 65 Quickwood. This photo shows that a generous amount of side space is being retained with Primrose Hill Road.



Photo 5 – Aerial photo showing current setback of 11 Primrose Hill Road from the junction (bottom right of photo) and the corresponding building line along King Henry's Road running to the right of the photo.