

15 LYNDHURST TERRACE, LONDON, NW3 5QA

**APPEAL BY MR & MRS MOND AGAINST LONDON BOROUGH OF
CAMDEN DECISION TO REFUSE PLANNING APPLICATION
2017/2471/P**

**GROUND OF APPEAL AND FULL STATEMENT OF CASE on behalf of
the Appellant**

February 2018

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Contents

1	Introduction and Summary of Case	3
2	Site and Surrounding Context	6
3	Planning History	8
4	The Proposed Development	14
5	Reason for Refusal 1	15
6	Reason for Refusal 2	27
7	The proposed basement development and private garden space introduction	32
8	Reason for Refusal 3	37
9	Reason for Refusal 4	47
10	Reasons for Refusal 5, 6, and 7	52
11	Conclusion	53

Appendices

Appendix 1 – Decision Notice in respect of the application the subject of this appeal

Appendix 2 – Decision Notice in respect of a previous application

Appendix 3 – Delegated Report in respect of a previous application

Appendix 4 – Pre-application written advice from the Council

Appendix 5 – Delegated Report in respect of the application the subject of this appeal

Appendix 6 – 50 Redington Road, NW3 – appeal decision

Appendix 7 – Appeal Decision in respect of 22 Frognal Way appeal

Appendix 8 – Schedule of responses to specific points raised in Delegated Report

Appendix 9 – Examples of application of policy A5(l) in recent decision making by London Borough of Camden

Appendix 10 – Draft Section 106 Agreement

Appendix 11 - CV's / Professional experience of Peter Stewart and Stephen Bates

1. Introduction and Summary of Case

Introduction

- 1.1. This appeal is submitted on behalf of Mr and Mrs Mond (“the Appellants”) against the decision of the London Borough of Camden (“the Council”) to refuse an application for full planning permission for development at 15 Lyndhurst Terrace (“the Site”) described as:

‘Replacement two storey residential dwelling with basement, following demolition of existing dwelling; associated works’ (“the Development”)

- 1.2. The planning application was submitted to the Council on the 2nd May 2017 and validated with the reference 2017/2471/P. The application was subsequently refused by officers of the Council under their delegated powers on the 11th October 2017, with seven reasons for refusal given (see Appendix 1).
- 1.3. This statement sets out the case for the Appellants in response to the reasons for refusal and, drawing upon the detailed information and assessment submitted as part of the planning application, sets out why the proposed development is considered to comply with the development plan policies and the National Planning Policy Framework for the purpose of Section 38(6) of the Planning and Compulsory Purchase Act 2004.
- 1.4. It should be noted that the Camden Local Plan was adopted on the 3rd July 2017 during the determination of the application. The planning application submission documents assessed the Development against the provisions of the submission draft Local Plan, and that assessment remains valid. References to the now superseded Camden Core Strategy and Development Policies in the planning application submission documents can be discounted.

Summary of case

1.5. The case for the Appellants is summarised below:

- i) The existing building at the Site does not contribute positively to the Conservation Area and does not represent high quality design, nor does it provide good quality residential accommodation or make efficient use of land.
- ii) The existing building at the Site does not constitute a non-designated heritage asset.
- iii) No evidence has been put forward that the existing building at the Site was designed by Ted Levy .
- iv) The proposed replacement building represents the highest quality architecture and landscape design which will enhance the character and appearance of the Conservation Area.
- v) The proper application of paragraph 134 of the NPPF requires a single stage holistic assessment of any demolition and proposed replacement dwelling taken together to assess whether there is any harm to the significance of a designated heritage asset. In this case the demolition of the existing building at the Site and its replacement with the proposed building would not cause harm of any degree to the designated heritage asset (the Conservation Area). NPPF paragraph 134 is therefore not engaged.
- vi) In the alternative, if it is considered that, taken in isolation, the loss of the existing building will cause harm to the Conservation Area, :
 - a. The positive contribution of the existing building is only minimal;
 - b. The positive contribution of the proposed building would be significant, representing a considerable enhancement;
 - c. The enhancement to the Conservation Area constitutes a public benefit for the purpose of the application of paragraph 134 of the NPPF;
 - d. It is clear that the enhancement to the Conservation Area (as a public benefit) will demonstrably outweigh any limited harm that is considered to be caused by the loss of the existing building in isolation..
- vii) The Development will make efficient use of land, provide high quality residential accommodation, reduce surface water runoff, reduce private car usage associated with the Site, and increase biodiversity.

- viii) The basement development proposed is of an appropriate scale to the site and context, and the lightwell / amenity terraces proposed are an integral part of the high quality design which will not cause harm to the architectural quality of the host building nor to the Conservation Area.
- ix) The Development will provide adequate amenity space for future occupants, will not impact upon the visual attractiveness and environmental wellbeing of the area, and will not conflict with the Council's open space and biodiversity objectives
- x) A draft legal agreement has been agreed with the Council to address reasons for refusal 5, 6, 7.
- xi) For the purpose of Section 38(6) of the Planning and Compulsory Purchase Act 2004 the Development is compliant with the statutory development plan and the National Planning Policy Framework. There are no other material considerations that indicate planning permission should be refused. The Development represents high quality sustainable development and should be granted planning permission.

2. Site and surrounding context

The Site

- 2.1. The Site is located on the west side of Lyndhurst Terrace, a short road that is aligned approximately north / south and runs from Lyndhurst Road in the south to terminate in a dead end to the north, just beyond the junction with Thurlow Road.
- 2.2. The Site area is 0.025 hectares.
- 2.3. There is an existing dwelling house upon the Site, extending in footprint fully across the width of the plot. The dwelling is understood from historic Ordnance Survey maps to have been built in the early 1970s. A search of the Council's planning files has revealed no records relating to construction of the existing dwelling.
- 2.4. In terms of design, the existing building is two storeys in height and built in yellow brick, with large window openings defining the façades of the two storey element. The plan is effectively split along the centre of the building, with a single storey element to the north, offset forward in plan.
- 2.5. Further detailed assessment of the existing building is provided in the *Design and Access Statement* ('DAS') and *Heritage Assessment* documents submitted in support of the application.
- 2.6. The existing building at the Site is not listed, nor is it included upon the Council's Local List which was adopted on the 21st January 2015.

Context

- 2.7. The Site falls within the designated Fitzjohns Netherall Conservation Area (the 'CA'). The Council adopted the Fitzjohns Netherall Conservation Area Statement (the 'CA Statement'), in 2001.

- 2.8. The CA Statement sets out the essence of the character of the CA at page 10 which describes how:

‘Long views along the Avenues combine with substantially scaled properties and generous grounds to create an imposing district.’

- 2.9. It goes on to divide the area into two distinctive sub-areas for the purposes of assessment, with the Site falling within *Sub Area Two: Rosslyn*, introduced within the opening summary as:

‘The street layout in this sub-area has a smaller and more intimate character, with gentler gradients, and the architecture ranges from the earlier period of the 1860s to the 1880s.’

- 2.10. The CA Statement makes brief commentary upon Lyndhurst Terrace, with the block of 1960s flats at no.11 noted as being *unsympathetic* in terms of design, scale and detail, as is the two storey house at no.9. The Site at no.15 is then mentioned briefly, and noted by way of comparison to the aforementioned unsympathetic buildings as *‘fitting better in the streetscape’* and being a *‘narrow brick and glass building’*.

- 2.11. At page 31 of the CA Statement no.15 Lyndhurst Terrace is identified as making a positive contribution to the character and appearance of the area. No.11 is identified as a negative feature. The categorisation of the existing building at no.15 as making a positive contribution is challenged by the Appellants, as set out in detail in the *Heritage Assessment* submitted (and addressed in response to Reason for Refusal 1 below).

3. Planning history

Existing building

- 3.1. We understand from enquiries made to London Borough of Camden that there are no records held on their files relating to the approval of the existing building upon the Site during the 1970s.

2015 application for a replacement dwelling

- 3.2. An application for full planning permission for development described as ‘*Demolition of existing house to provide a new dwelling*’ was submitted in 2015 (ref 2015/6278/P). The proposed new dwelling was noted by the Council to be 2.5 storeys in height with basement, and maintained the modest form of the existing building. The design was characterised by two interlocking elements, with a brick faced module projecting forward from a limit glazed rear, taller, element.
- 3.3. The application was refused under delegated powers (see Appendices 2 and 3) on the 11th February 2016 for the following reasons:
- 1) Principle of loss of existing building, considered to make a positive contribution to the CA, which would cause harm to the character and appearance of the CA
 - 2) The proposed development, by reason of its massing, footprint and detailed design would fail to preserve or enhance the character and appearance of the conservation area
 - 3) The applicant has failed to demonstrate that the proposed basement would avoid adversely affecting drainage and run-off or causing other damage
 - 4) Absence of legal agreement to secure a construction management plan
 - 5) Absence of legal agreement to secure contributions towards public highway works
 - 6) Basement excavation would result in harm to the root protection area of a mature chestnut tree in the front garden of 17 Lyndhurst Terrace

- 3.4. Each of these reasons for refusal was carefully considered in formulating a revised proposal for the Site as presented in the planning application that is the subject of this appeal. Full details of how the proposed development addresses these previous reasons for refusal of the earlier scheme are set out in the Planning Statement submitted, making reference where necessary to other submitted documents.

Pre-application consultation with LBC

- 3.5. Following the February 2016 refusal of planning permission, the Appellants appointed a new architect and professional team to formulate a new approach to redevelopment of the Site.
- 3.6. A formal pre-application submission was made to LBC on the 28th July 2016, comprising a detailed Design and Access, Heritage and Planning Statement, architects drawings, and a revised Tree Report which included the findings of air spade investigations at the site. A fee of £3,800 was paid as requested by the Council. The design of the dwelling proposed has not changed significantly since that pre-application submission.
- 3.7. Given the importance of design matters to the project, it was requested in the pre-application submission that the proposals be taken to the Camden Design Review Panel for expert appraisal as part of the pre-application process. That request was denied.
- 3.8. A pre-application meeting with LBC officers was held on the 4th October 2016, and a written note of advice received on the 7th November 2016 (Appendix 4). The advice set out the following LBC officer views (summarised and sequenced here):
- Reasons for refusal 3,4,5,6 of the previous application could likely be overcome relatively straightforwardly
 - Loss of existing building which is considered to make a positive contribution to the CA is a key issue

- Applying the NPPF para 134 test, no public benefits were considered to be associated with the proposals to outweigh the harm caused by the loss of the existing building
- Therefore the principle of development is unacceptable

3.9. In response to the case set out in the pre-application submission that the existing building did not contribute positively to the CA, the Council set out in detail the qualities of *architectural, historic, townscape and social interest in the building, which make up its positive contribution to the character and appearance of the conservation area* as:

- It is characteristic of the post-war development in the CA, yet provides a notably more imaginative and successful response to its site and context than nearby near-contemporaries (such as nos 9 and 11);
- The building was designed by a well-known architect, Ted Levy, who had some associations with the CA, and the commissioning original occupiers of the house bring some interest through their own reputations and as residents in many ways typical of the Hampstead society ... during the C20;
- The architecture of the building has merit as an architect-designed modernist house using brick, timber and glazing and an esoteric combination of forms and proportions to create an interesting, contextual and modest detached dwelling;
- The building contributes to the rhythm of the street scene and it helps to preserve the sense of a gap between the larger C19 buildings;
- The smaller size of no.15 allows no.17 and its setting to be viewed and fully appreciated from the street corner and as part of the street scenes;
- The building is small and tucked away as intended and this is a critical part of its contribution to the CA. The building was designed to be discreet and we consider it provides a welcome contrast with the ‘louder’ buildings in the area.

3.10. These points are all addressed in the *Heritage Assessment* by PSC.

- 3.11. It is important to note that the advice from LBC officers included the overarching logic (in the final two bullet points under the heading *Other considerations*) that, whilst the proposed contemporary design had architectural merit, the principle of replacing the existing building is not supported, as its loss would have a harmful impact on the CA. It is clear from this approach that officers of the Council were not considering the development proposal as a whole (demolition *and* new dwelling) in terms of impact upon the CA.
- 3.12. This is reinforced in the final bullet point of that section of the pre-application response, where the officer states:
- ‘We do not consider that outstanding design of a replacement dwelling would constitute public benefit to outweigh the abovementioned harm to the conservation area (rather this is a requirement of the Act). Therefore there remains no public benefit justification which would outweigh the harm caused by the demolition and the proposals remain unacceptable in principle. To be clear, officers do not consider that there are likely to be any circumstances where the principle objection would be overcome by proposals for residential re-development of the site.’*
- 3.13. The Appellants consider that the Council’s approach does not constitute the proper interpretation and application of paragraph 134 of the NPPF. The Council’s approach is challenged as set out in paragraphs 5.26-5.44 of this statement.
- 3.14. We consider that officers’ assessment of the qualities of the existing building in the pre-application response is flawed in that its relative significance within the CA has been overstated, and the applicable policy tests should be applied to the totality of the proposed development not the demolition in isolation (examined further in Section 5).
- 3.15. The pre-application advice did confirm a number of useful aspects of the proposals, including that the proposed design:

- has architectural merit;
- would provide a good standard of living accommodation for future occupiers;
- would not cause undue harm to the amenities of nearby and neighbouring properties;
- would promote sustainable transport choices through reduction of car parking spaces;
- included a welcome enhancement to the landscape at the front of the site; and, in subsequent written correspondence; and
- would not cause harm to trees adjacent to the Site

Other pre-application consultation

- 3.16. As the Appellants' request to Camden Council for the proposed design to be assessed by the Council's Design Review Panel was rejected at the pre-application stage, the architects undertook a private Peer Review process, engaging a number of recognised experts in the fields of architecture, townscape, and heritage. Responses to that engagement are included in the Appendix to the DAS and confirm that the design represents the highest standard of architecture which will enhance the character and appearance of the CA.
- 3.17. Representative extracts of commentary upon the proposed design are provided below by way of summary:

‘...I believe that a more important contribution is made by the individuality of the design which avoids easy analysis but will provide a valued new element within the streetscape’ *Sir Jeremy Dixon AADipl Hons RIBA, Partner, Dixon Jones Architects*

‘The architectural character of the area is eclectic, and only the more careful observer would see the distinctiveness of the new house, and appreciate the ingenuity with which it provides an original further addition to the variety

present thereabouts.’ *Professor Adrian Forty FRIBA, Professor Emeritus of Architectural History UCL*

‘...an intriguing and charismatic potential addition to the streetscape of Lyndhurst Terrace. Its particular blend of materials and tectonic references to British architecture from John Soane to Edwin Lutyens would make it a considered and appropriate intervention which, in my opinion, would complement and refine the character of this part of Hampstead.’ *Edwin Heathcote, Architecture Critic, The Financial Times*

‘The result promises to be a true enhancement of the conservation area’
Sunand Prasad PPRIBA, Senior Partner Penoyre & Prasad, Founding CABE Commissioner, Member of the London Mayor’s Design Advisory Panel.

- 3.18. The Appellants also sought to engage directly with those neighbours and other parties who objected to the first planning application, and wrote to all objectors offering to meet in person and present to them and discuss the revised proposals.
- 3.19. Only one neighbour (17-19 Lyndhurst Terrace) agreed to meet (16.06.17), and only with the Appellants architect. That neighbour reiterated his objections to redevelopment of the site, expressed concern that the Appellants were ‘developers’ seeking to maximise value, the proposed basement would harm the water table, and that trees had been removed from the Site some years prior.
- 3.20. The Appellants did seek to engage with the highest profile objector to the first and second planning applications (whose parents previously lived in the house until circa 2002), but their repeated attempts received no response.
- 3.21. In summary, the Appellants attempts to engage with neighbours and interested parties who had previously objected to redevelopment of the site were all rejected except for the neighbour at 17-19 Lyndhurst Terrace with whom a meeting was held attended by architect Stephen Bates.

4. The proposed development

- 4.1. The client brief for the project is to replace a house of low architectural merit, poor layout, and poor energy efficiency, that fails to make efficient use of the site, with one of high architectural merit, providing outstanding internal spatial qualities, high levels of energy efficiency, that maximises efficient use of land whilst also delivering an enhanced contribution to the character and appearance of the CA.
- 4.2. The DAS prepared by Sergison Bates architects provides a thorough description of the proposed development, including how the design of the proposed dwelling responds to the specific site context and the qualities of the CA.
- 4.3. The Heritage Assessment provides a detailed appraisal of the architectural qualities of the proposal, and its impact upon the CA.
- 4.4. These documents, together with the architect's drawings submitted, fully set out the proposed development.

5. Reason for refusal 1 – demolition of existing building

5.1. Reason for refusal 1 states:

“The proposed demolition, by reason of the loss of the existing building which makes a positive contribution to the Fitzjohns / Netherall Conservation Area, would cause harm to the character and appearance of the conservation area, contrary to Policy D2 of the Camden Local Plan 2017”

5.2. A *Heritage Assessment* prepared by Peter Stewart Consultancy (PSC) was submitted in support of the application and provides a full assessment of the significance of the heritage assets engaged, and an assessment of the impact of the proposed development upon that significance.

5.3. As evidenced in the *Heritage Assessment* the Appellants’ case in relation to demolition is that:

- i. The existing building makes at best a neutral contribution to the significance of the CA – it does not make a positive contribution
- ii. Demolition of the existing building is not considered to cause any degree of harm to the significance of the CA, subject to the replacement building proposed being of equal (neutral) or greater contribution – an outcome that would leave the CA unharmed
- iii. The existing building is not a non-designated heritage asset (NDHA) when assessed against Planning Practice Guidance
- iv. Even if it were determined to be a NDHA it would have very low significance, and its loss would (in NPPF para 135 terms) be readily outweighed by proposed replacement as a result of the high quality of the latter’s design

Statutory and Policy Framework

- 5.4. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act requires that decision makers, in exercising their planning functions in relation to buildings or land in a conservation area pay special attention to the desirability of preserving or enhancing the character or appearance of that area.
- 5.5. The courts held in the *South Lakeland* decision that the test of preservation can be satisfied by development which does not cause harm to a conservation area, thus leaving character and appearance preserved. Therefore the statutory threshold of acceptability of a proposed development is that it must not cause harm to the character and appearance of a conservation area.
- 5.6. The NPPF at Section 12 *Conserving and enhancing the historic environment* sets out how heritage assets should be conserved in a manner appropriate to their significance, and that local planning authorities should take account the desirability of new development making a positive contribution to local character and distinctiveness. Paragraph 17 of the NPPF confirms that conserving heritage assets in a manner appropriate to their significance is a ‘Core planning principle’.
- 5.7. The definition of *Heritage Asset* provided in Annex 2 of the NPPF is:
- ‘A building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest. Heritage asset includes designated heritage assets and assets identified by the local planning authority (including local listing).’*
- 5.8. The Planning Practice Guidance (PPG) provides further guidance on the matter under the heading *What are non-designated heritage assets and how important are they?* (para ref ID: 18a-039-20140306). It sets out how a substantial majority of buildings have little or no heritage significance and

thus do not constitute heritage assets, and only a minority have enough interest for their significance to be a material consideration in the planning process.

- 5.9. The approach set out in NPPF Section 12 is that applicants should describe the significance of any heritage assets engaged (para 128), local planning authorities should identify and assess the particular significance of any heritage asset that may be affected (para 129), a series of particular considerations should be taken account of (para 131), and that great weight should be given to the asset's conservation (para 132).
- 5.10. In relation to *designated* heritage assets a distinction is then made between '*substantial harm to or total loss*' of an asset and '*less than substantial harm*'. Para 134 states that where development would result in less than substantial harm, the harm should be weighed against the public benefits of the proposal. The PPG provides further guidance upon what public benefits might result from a development proposal (see below).
- 5.11. In relation to non-designated heritage assets, NPPF para 135 sets out how '*a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset*'.
- 5.12. NPPF para 138 clarifies that loss of a building which makes a positive contribution to the significance of the CA should be treated as substantial harm or less than substantial harm as appropriate, taking into account the relative significance of the element affected and its contribution to the significance of the CA as a whole.
- 5.13. Local Plan policy D2 *Heritage* sets out how the Council will preserve and, where appropriate, enhance Camden's rich and diverse heritage assets and their settings. It states that:

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

And, in relation to Conservation Areas in particular:

‘The Council will:

...

f. resist the total or substantial demolition of an unlisted building that makes a positive contribution to the character or appearance of a conservation area.’

- 5.14. The supporting text to policy D2 at paragraphs 7.49-7.50 is also relevant, stating that:

‘The Council will resist the total or substantial demolition of buildings which make a positive contribution to a conservation area unless circumstances are shown that outweigh the case for retention. Applicants will be required to justify the demolition of a building that makes a positive contribution to a conservation area, having regard to the National Planning Policy Framework... When considering applications for demolition, the Council will take account of group value, context and setting of buildings, as well as their quality as individual structures...’

Assessment

Whether the existing building makes a positive contribution to the Conservation Area?

- 5.15. Taking the existing building on the Site first, it has been suggested in the past by one objector that it was designed by the architect Ted Levy. No evidence to support this claim has been found by PSC in their extensive research. At paragraph 4.10 of the Delegated Report (see Appendix 5) the Council note that ‘evidence suggests’ the building may have been designed by Ted Levy. The Appellants have repeatedly asked the Council to share such evidence and none has been provided. It is noteworthy that a number of websites dedicated to scheduling and showcasing the work of Ted Levy do not include 15 Lyndhurst Terrace as an example of his work. As set out in the *Heritage Assessment*,

even if the building were demonstrated to be the work of Ted Levy it would be a poor example of his work. None of his better examples of work are on the statutory list, while only two are locally listed in Camden (one of which at 50 Redington Road, NW3 7RS has been granted permission for redevelopment at appeal – ref APP/X5210/A/12/2188302 – decision provided at Appendix 6). Finally, it is important to note that an initial concept sketch or design by an architect, without any further involvement in detailed design development or construction supervision, is unlikely to result in a fully resolved and high quality execution of the original design intent.

5.16. The Council also considers (para 4.10 of the Delegated Report) the following qualities of interest to comprise the building's positive contribution to the CA:

- It is noted in the CA Statement as an example of C20th infill, characteristic of post-war development, notably more imaginative and successful response to its site and context than nearby near-contemporaries
- Notwithstanding internal layout and functionality limitations, externally the architecture has merit as a modernist house using brick, timber and glazing and an esoteric combination of forms and proportions to create an interesting, contextual and modest detached dwelling
- The building contributes to the rhythm of the street scene (large buildings interspersed with small buildings) and it helps to preserve the important sense of a gap between the larger C19th buildings
- The smaller size of no.15 allows no.17 and its setting to be viewed and fully appreciated from the street corner and as part of the street scenes along Lyndhurst Terrace and Thurlow Road

5.17. The *Heritage Assessment* finds the building to:

- Lack a cohesive appearance and form
- Be muddled in design, with many details unresolved and crudely executed

- Have the appearance of an unsophisticated self-build project or a building that has been extended in successive phases over time
- Lack street presence
- Be of very limited architectural interest, lacking the rigour and sophistication of the other post-war infill buildings in the local area (such as those illustrated in the DAS)

5.18. In the context of the PPG guidance set out above (para ref ID: 18a-039-20140306) these findings are considered to fall within the ‘little or no heritage significance’ category and thus the existing building does not constitute a non-designated heritage asset. In these circumstances paragraph 135 of the NPPF is not engaged.

5.19. In the alternative if it is considered that the existing building does constitute a non-designated heritage asset (‘NDHA’), it could only reasonably be concluded that the existing building has a low degree of heritage significance that would just exceed the threshold to be considered a NDHA.

5.20. Even if NPPF paragraph 135 were to be engaged, a balanced judgement having regard to the scale of any harm or loss and the significance of the heritage asset would need to be applied. As set out in the *Heritage Assessment* and further evidenced in the Peer Review responses provided in the DAS the proposed development will provide a dwelling of high architectural quality and townscape benefits which will enhance the character, appearance and significance of the CA. These qualities and benefits are considered to exceed any minor harm that could be attributed to loss were the building considered to be a NDHA.

Impact of the proposed demolition on the character and appearance of the CA

5.21. In terms of the designated heritage asset, the *Heritage Assessment* describes the significance of the CA at Section 4, noting ‘*large houses generally conform to a common layout pattern, are of a similar scale and massing and*

share a broad palette of materials. This brings an overall cohesion to the townscape which has a distinctive grain and richness derived from the varied detailed design of houses'. It goes on to note a number of post-war infill developments, redevelopments and extensions, which vary in quality, are isolated and scattered around the area and consequently the dominant townscape character of large houses remains, including upon Lyndhurst Terrace.

5.22. Moving on to examine the contribution of the existing building at the Site, the *Heritage Assessment* finds that it:

- Does not conform to the prevailing character and appearance of residential architecture in the conservation area, or along the street
- Does not reflect the more ordered and accomplished elevation design of the larger houses along the street, nor their materiality
- Is of limited architectural interest in its own right, with muddled composition, unresolved and crudely executed details such as junctions between walls and flat roofs, and incorporation of standard elements in an unremarkable fashion

5.23. The *Heritage Assessment* also appraises the proposals against the criteria of the Historic England guidance document *Conservation Area Designation, Appraisal and Management* (2016) which sets out a number of questions to assess the value and contribution of an unlisted building to the significance of a conservation area.

5.24. The *Heritage Assessment* concludes that the existing building at the Site makes at best a neutral contribution to the significance of the CA. It notes that the Council's positive assessment of the existing building at the Site relative to nos 11 and 9 in the Council's adopted Conservation Area Statement (2001)

appears to be heavily influenced by how visible those buildings are in the local street scene, as opposed to their detailed design and architectural quality¹.

- 5.25. It follows that the demolition of the existing building at the Site is not considered to cause harm (of any degree) to the significance of the CA (the designated asset), subject to the replacement building proposed being of equal (neutral) or greater contribution – an outcome that would leave the CA unharmed. The NPPF paragraph 134 test is not engaged, and there is no conflict with Local Plan policy D2. The replacement building and its contribution to the character and appearance of the conservation are fully assessed in the next section (Reason for Refusal 2), and found to offer a positive contribution.

The Council's application of paragraph 134 of the NPPF

- 5.26. In determining a previous application at the Site and in subsequent pre-application engagement (2016/4281/PRE, 7th November 2016, *see Appendix 4*), and then in determining this application the Council have disagreed with the 'single stage' application of NPPF paragraph 134, the sequence of their argument being – the existing building contributes positively to the CA; demolition of it would cause harm to significance of the CA; there are no public benefits associated with the proposal which would outweigh this harm.
- 5.27. The correct application of NPPF paragraph 134 requires a single holistic assessment of the impact of 'a development proposal' in its entirety – taking the demolition of existing and construction of a new dwelling together to consider whether any harm arises.

¹ It is not uncommon for officers at application stage to take a different view upon the contribution of a building to the character and appearance of a conservation area to that set out in an adopted Conservation Area Statement. This is because further detailed evidence and appraisal of an individual building can be examined carefully when focusing in upon that building, beyond that which is feasible when assessing a whole Conservation Area. There are many examples in LB Camden where buildings identified as *positive contributors* in an adopted CAS have then at application stage been considered by officers to be *neutral contributors*, such as redevelopment of 18 Redington Road, NW3 7RG – 2010/5099/P.

- 5.28. The Council has considered demolition in isolation first, as a threshold test, with no consideration of the merits (including potential heritage benefits) of the proposed replacement dwelling in determining whether harm will be caused to the CA. That is not the correct approach to applying the NPPF, which states that when assessing the impact of proposals upon the significance of a heritage asset it is the ‘proposed development’ - meaning the proposal as a whole - that falls to be assessed. .
- 5.29. In a recent appeal decision in a case involving the demolition of an existing dwelling and its replacement in a conservation area at 22 Frogna Way in LBC, (see Appendix 7 - APP/X5210/W/16/3150327, Allowed, 9th March 2017) the Inspector applied a single stage, combined, assessment of impact of the totality of proposals (i.e. demolition and replacement) in considering whether any harm would be caused to the conservation area in that case. At paragraph 16 of the decision letter the Inspector noted in relation to the existing building ‘...*the net effect of the provision of the new dwelling and thereby its removal would at worst be neutral as what is special about the HCA (Hampstead Conservation Area) would not be lost.*’
- 5.30. We consider that the approach taken by the Inspector in the 22 Frogna Way appeal was the correct approach to the assessment of the impact of development proposals on the significance of a heritage asset in accordance with the requirements of the NPPF.
- 5.31. As set out above, it is the Appellants’ case that NPPF para 134 is not engaged as the ‘development proposal’ – being demolition of the existing and the replacement with the proposed building taken together – does not result in any harm to significance of the designated heritage asset, the CA.
- 5.32. The Council’s stance implies a different two stage approach, where any perceived harm from demolition of the existing building is taken straight to the para 134 test (without any consideration of the impact of the proposed replacement building) to be weighed against public benefits of the proposal.

- 5.33. Whilst the Appellants' disagree with the Council's approach, it is considered that the proposals fully comply with paragraph 134 of the NPPF even as applied by the Council.
- 5.34. The NPPF at para 138 makes it clear that it is the '*relative significance of the element affected and its contribution to the significance of the Conservation Area ... as a whole*' that is to be considered. In this case, the relative significance of the existing building could only be considered very low at best, and being largely alien in form and design to its surroundings, and 'tucked away', its contribution to the CA minimal. Any such perceived or claimed harm to the significance of the CA would therefore be extremely limited.
- 5.35. The Delegated Report at paragraph 4.7 confirms that the Council consider the harm from demolition of the existing building to cause less than substantial harm to the designated heritage asset, the Fitzjohns / Netherall Conservation Area. Even on the Council's analysis paragraph 133 of the NPPF is not engaged.
- 5.36. On the Council's approach it is then necessary to weigh this limited degree of harm against any public benefits that the proposals would deliver. Paragraph 4.7 of the Delegated Report asserts:
- 'In this case, the Council does not consider there to be any public benefits associated with the proposal; for example, there would be no net gain in residential units, the development would only benefit the applicant. As such, there is no justification for the loss of the positive contributor.'*
- 5.37. The concept of a public benefit in the context of NPPF heritage policy and specifically paras 133 and 134 is explained in some detail in the PPG at para reference ID: 18a-020-20140306 under the heading *What is meant by the term public benefits?* That guidance clearly identifies that public benefits '*could be anything that delivers economic, social or environmental progress*' and specifically that '*Public benefits may include heritage benefits, such as ... sustaining or enhancing the significance of a heritage asset...*'.

5.38. The Appellant's case, as evidenced in the *Heritage Assessment* and *DAS*, is that the proposed replacement dwelling is of the highest architectural merit, which would provide an enhancement to the character and appearance of the CA. That positive contribution to the CA would be greater than that the Council attribute to the existing building, and therefore the significance of the designated heritage asset would be enhanced. This enhancement is a clear public benefit in NPPF and the PPG terms.

5.39. Further, whilst achieving such heritage benefits, other sustainable development objectives would be achieved by the development including:

- making more efficient use of land and delivering a larger dwelling;
- replacing a low energy efficient building with a highly energy efficient building and thus reducing future carbon emissions;
- increasing rainwater retention on site to reduce flood risk elsewhere;
- and increasing planted areas to enhance biodiversity.

These all deliver economic, social and environmental progress, and whilst secondary to the primary heritage benefits, are nonetheless valid public benefits.

5.40. Even on the Council's approach, the heritage and other public benefits associated with proposal would demonstrably outweigh any limited harm to the significance of the CA arising from demolition of the existing building.

5.41. There would also be no conflict with Local Plan policy D2 (which essentially follows NPPF policy) as it is the Appellants' case that the existing building at the Site does not make a positive contribution to the character and appearance of the CA, and the proposed replacement building makes a significant positive contribution.

5.42. Even if the starting point of no positive contribution were not agreed, the supporting text to policy D2 at paragraph 7.49 makes provision for demolition

of a positive contributor where '*circumstances are shown that outweigh the case for retention*'. Reference is then made to having regard to the NPPF, and therefore in broad terms the same tests apply as set out above in relation to the NPPF: the contribution of the existing to significance is minimal; the replacement building will provide a significant positive contribution; that heritage benefit and other planning benefits are public benefits that convincingly outweigh any minimal initial harm from demolition. Paragraph 7.50 of the Local Plan further clarifies how the Council considers applications for demolition within a conservation area, and states that they will take into account:

- Group value
- Context and setting of buildings
- Their quality as individual structures
- Any contribution to the setting of listed buildings

5.43. As a poor quality post-war infill building situated in a CA characterised by late C19th large dwellings, the existing building at the Site does not have any group value, does not relate to the immediate context or contribute to the setting, has been evidenced above to be a poor quality example of post-war domestic architecture, and does not contribute to the setting of any listed buildings.

5.44. There is demonstrably no conflict with Local Plan policy D2.

6. Reason for refusal 2 – design of proposed replacement dwelling

6.1. Reason for refusal 2 states:

“The proposed replacement dwelling, by virtue of its scale, massing, form and detailed design, would cause harm to the character and appearance of the street scene and the wider area and would fail to preserve or enhance the character and appearance of the Fitzjohns / Netherall Conservation Area, would cause harm to the character and appearance of the conservation area, contrary to Policies D1 and D2 of the Camden Local Plan 2017”

- 6.2. The design of the proposed replacement dwelling together with its landscape setting is described in detail and assessed in the *Design and Access Statement* and *Heritage Assessment*. It is the Appellants’ case that the proposed dwelling is of an appropriate scale, massing, form and detailed design, represents high quality design, and will provide a positive contribution to the character and appearance of the CA. In doing so it will enhance the significance of the CA. The Development therefore fully meets the objectives and requirements of Local Plan policies D1 and D2, and the relevant NPPF policies.

Policy

- 6.3. Local Plan policy D1 *Design* seeks to secure high quality design in development. It states that the Council will require that development:
- a. respects local context and character;*
 - b. preserves or enhances the historic environment and heritage assets in accordance with Policy D2 Heritage;*
 - c. is sustainable in design and construction, incorporating best practice in resource management and climate change mitigation and adaptation;*
 - d. is of sustainable and durable construction and adaptable to different activities and land uses;*
 - e. comprises details and materials that are of high quality and complement the local character;*

- f. integrates well with the surrounding streets and open spaces, improving movement through the site and wider area with direct, accessible and easily recognisable routes and contributes positively to the street frontage;*
- g. is inclusive and accessible for all;*
- h. promotes health;*
- i. is secure and designed to minimise crime and antisocial behaviour;*
- j. responds to natural features and preserves gardens and other open space;*
- k. incorporates outdoor amenity space*
- l. preserves strategic and local views;*
- m. for housing, provides a high standard of accommodation; and*
- n. carefully integrates building services equipment.*

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

- 6.4. Local Plan policy D2 *Heritage* sets out how the Council will preserve and, where appropriate, enhance Camden's rich and diverse heritage assets and their settings.

Assessment

- 6.5. The *Heritage Assessment* finds that the proposed design is based upon a thorough understanding of the character and context of the Site and the significance of the CA, has a distinctive residential character, and will provide a valuable addition to the rich tradition of 'one off' architect designed homes in the area. It offers architecture of a high quality, and will remain subservient to the neighbouring grand villas as a result of its size and restrained façade design. The 'fold' in the street elevation will help define the northern end of the dead-end street, enhancing the townscape. The requirements of Local Plan policy D1 *Design* are all fully satisfied, as the design proposed is responsive to context and character in scale, form, massing and appearance, provides visual interest, and includes provisions of appropriate hard and soft landscaping

including boundary treatments (all as set out in detail in the DAS). Overall, the proposed building will significantly enhance the significance of the CA.

- 6.6. It is noted that the supporting text to Local Plan policy D1 at 7.3 sets out explicit support for high quality contemporary design which responds to its context, outside of *'places of homogenous architectural style (for example Georgian Squares) where it is important to retain it'*. Lyndhurst Terrace is not considered to be a place of homogeneity, as evidenced in the *Heritage Assessment*.
- 6.7. The quality of the architecture and its contribution to the CA is further evidenced in the Peer Review responses received from a range of recognised experts (see Appendix of DAS). Those written responses from experts reinforce the assessment set out in the DAS of how the proposed design will successfully deliver the various criteria set out in policy D1.
- Sir Jeremy Dixon AA Dipl RIBA comments upon the high standard of accommodation proposed, the response to context and character, quality of materials and details, and the form preserving local views
 - Tim Ronalds comments upon the architectural language and materiality responding to local context and character
 - Professor Adrian Forty comments upon the quiet distinctiveness of the architecture, ingenuity of form, the quality of accommodation, and how as an intelligent response to context and character it will enhance the surroundings
 - Edwin Heathcote sets out how the proposed design is considered and appropriate in its materiality and tectonic references to architectural history, and will complement and refine the character of the area
 - Meredith Boles notes an engagement with and intelligent response to context, quality of architectural detailing, resulting in an enhancements to the character of the street
 - Sunand Prasad (a founding CABE Commissioner) notes the subtle design on every facet to the surrounding built geometries including the offset bay providing an enhanced setting to no.17, an overall exceptionally

thoughtful design, and one that will be a worthy replacement to the existing building and will result in a true enhancement to the conservation area

6.8. A number of specific points relating to the proposed design are made in the Delegated Report in paragraphs 5.3-5.18. These points are all considered to be addressed fully in the application supporting material, but for completeness are set out and addressed by Peter Stewart Consultancy and Sergison Bates architects in Appendix 8 to this statement. A summary of the Council's key issues in terms of the proposed design, and the Appellants' response to them (drawing upon the DAS and Heritage Assessment submitted) is provided below:

- Scale, and prominence in the street scene – the proposed design retains a notably subordinate relationship with its neighbours, and preserves the rhythm of small and large houses along the street. The simplicity of the elevation design contributes to this, and the prominence of the proposed building remains within the parameters of the character and appearance of the CA.
- Layout, form and details in relation to context – the proposed design is explicitly referenced (in the DAS) to the forms, materials and details found within the street and the wider area. The plan form includes provision for views to no.17 to be maintained.
- Specific elements of appearance: angled bay and solid to void ratio of street elevation – both of these attributes relate and respond to architectural approaches found in neighbouring buildings, and are components of an integrated and intelligent design response to the site.
- Increased footprint of development upon the plot – the proposed design relates closely to the building lines established, and the resulting garden is of high quality, appropriate in scale to the accommodation provided, and an enhancement to the townscape character of the area.

- 6.9. The requirements of policy D2 would also be fully met as the existing building does not make a positive contribution to the CA and there is no harm arising from its demolition and replacement with the proposed building. The proposed development will preserve and enhance the character and appearance of the CA.
- 6.10. In summary on the impact upon the CA there is no harm identified from the loss of the existing building (subject to an equal or greater contributing replacement), and the replacement of a, at best, neutral building with one of high architectural merit that will enhance the local streetscape will positively enhance the significance of the CA.
- 6.11. The Development, fulfils the NPPF core planning principle (para 17) of conserving heritage assets in a manner appropriate to their significance. The further NPPF requirements for new development to make a positive contribution to local character and distinctiveness (para 126), and to ensure the conservation of the designated heritage asset - to which great weight should be given (para 132), are met. Local Plan policies D1 and D2 are fully complied with, and their objectives of securing high quality design and enhancement to significance of conservation areas are secured by the proposed development.

7. The proposed basement development and private garden space – introduction

Local Plan Policy A5

- 7.1. As part of the adopting of the new Camden Local Plan in 2017, Council introduced a new development plan policy specifically in respect of basement development – Policy A5. Policy A5 is a long and prescriptive policy, containing twenty-one criteria (a) to (u) and four further un-lettered sub-points.
- 7.2. Criteria (a) to (e) of Policy A5 are core overarching considerations, and the policy states that development will only be permitted where harm would not be caused to each. It is the Appellants’ case as set out in the following section that no harm is caused by the Development in terms of those considerations (a) to (e).
- 7.3. The subsequent group of sub-points (f) to (m) are preceded with the wording ‘*Basement development should:*’. The use of the word ‘*should*’ in this context as opposed to a more definitive term such as ‘*must*’ or ‘*will only*’ (as used earlier in the same policy), indicates that (f) to (m) are criteria for general application, but that other approaches or solutions could also be acceptable. This is a logical approach and interpretation given the variety of site sizes and shapes found across the borough. That variety cannot be fully and reasonably accommodated by strict adherence to each and every criteria within the policy that – as shown by the diagrams in pages 11-17 of the draft CPG4 *Basements* – was formulated to principally manage basement development being carried out to existing dwellings in linear street arrangements.
- 7.4. Policy A5 was not adopted *primarily* to address cases such as the Development where the original host building is proposed to be demolished in its entirety. It is important to note that Policy A5 has no application in respect of above-ground development.

- 7.5. Planning decisions made by the Council applying Policy A5 since adoption in July 2017 have been examined and in a number of cases it can be seen (see examples at Appendix 9) that criterion (1) of the policy has been applied with flexibility. These examples of Policy A5 criteria being applied in decision making by the Council with flexibility demonstrates how the Policy cannot be reasonably applied in rigid terms to all types of site and situation.
- 7.6. The underlying aims and objectives of Policy A5 are to manage the overall scale of basements to limit disturbance from construction; to maintain adequate drainage capacity of soil; and to maintain sufficient planting within open space to ensure that the townscape character of areas and habitat diversity are not harmed. In order to assess the basement element of the proposed Development against these objectives it is important to fully understand the role the existing garden makes to meeting these objectives as well as its contribution to the wider townscape character of the area surrounding the Site.

The character of development and open space in the area surrounding the site

- 7.7. The form of urban blocks and plots to subdivide those blocks has a general uniformity in the area, a result of the planned development of the area in the 19th century. Plots are *generally* 40-50 metres in depth, and 10-15 metres in width, with some notable double-width plots. This general morphology can be seen, for example, along Lyndhurst Terrace, Thurlow Road, and Lyndhurst Road.
- 7.8. Examining the west side of Lyndhurst Terrace, where the Site is located, in greater detail, there is a very clear structure to the urban block hosting nos.1-15 odd (the final property at 17-19 being slightly different in siting and orientation as it pre-dated the broad residential development of the area). That block structure is of 50 metre deep plots, with the western half open and providing mature gardens, and the eastern half hosting buildings of approximately 15 metre depth and then 10 metre front gardens. The front and

rear building lines of the properties are generally consistent along the block, with some minor deviation. This is shown in the plan below.



Plan diagram to illustrate the block structure within which the Site is located

- 7.9. At the appeal Site, and also at no.5 to the south, those plots do not extend the full depth of the block and are ‘truncated’, giving uncharacteristically short rear gardens. In both cases, the area of land to the west beyond the plot remains as garden land, but belongs to the adjacent plot (which thus have a L-shape plot, and a double-width garden).
- 7.10. The key point is that the gardens to no.15 and no.5 are uncharacteristically small for the area, being truncated in depth, and do not conform to the ‘norm’ for the area. Crucially though, this in no way affects the overall structure of the block, and the long run of mature rear gardens and their planting remain a key attribute of the townscape character of the area. The image below, taken from the alleyway to the west of the Site, shows just how truncated the rear garden at no.15 is. It also shows the broad rear garden to no.13, extending across the rear of no.15.



Image: View eastwards from alleyway showing the double-width rear garden to no.13

The rear garden at no.15 Lyndhurst Terrace

7.11. For reference a photograph of the existing rear garden at the Site is provided below.



Image: view (partial) of the existing garden at the Site (note position of shed in the two photos for reference between the two)

- 7.12. The rear garden area comprises areas of paving and other hard surfaces, and the majority is surfaced with gravel. There are no trees located within the Site. There is no significant garden planting of any recognisable form, although some scrub and large weed growth can be found around the perimeters, climbing the fence and wall. This is the same condition in which the Site was found when purchased by the Appellants.
- 7.13. The overall character and appearance of the garden as existing is hard-surfaced, barren and unplanted. It is accordingly considered to have low biodiversity value. It is against this background that the impact of the proposed basement development falls to be considered.

8. Reason for refusal 3 – basement size and external manifestation represents poor design and would be harmful to the Conservation Area

8.1. Reason for refusal 3 states:

“The proposed basement, by virtue of its excessive size and external manifestation in relation to the size of the site and host dwelling, would represent poor design and be harmful to the character and appearance of the wider Fitzjohns / Netherall Conservation Area, contrary to Policies D1, D2, and A5 of the Camden Local Plan 2017.”

8.2. Section 6 of the Delegated Report sets out in detail the Council’s assessment in relation to the above reasoning, noting at paragraph 6.6:

“...the proposed basement would manifest itself externally by way of 2x lightwells, 1x at the front and 1x at the rear of the property. Although neither of the lightwells would be visible from the street scene (the one to the front is effectively hidden from view by one of the angled elements jutting out from the centre of the new building), it is worth noting that the lightwells would nevertheless express the existence of the large basement below the building and would further highlight the overly large scale of the new building within the site and the sense of overdevelopment of the plot. It is considered that the manifestation of the basement above ground level would be harmful to the architectural character of the new building, as it would further reduce the sense of subservience of the building in this sensitive location.”

8.3. As a preliminary matter it should be noted that where the Council refer to a ‘front’ lightwell, this is considered to be in fact a *side* lightwell that is located between the proposed dwelling and the northern side boundary to the Site.

8.4. A full description of the design quality of the proposed dwelling including the basement accommodation and associated lightwells is provided in the *Design and Access Statement* submitted, and further described and assessed in terms of its contribution to the Conservation Area in the *Heritage Assessment* submitted.

- 8.5. A summary assessment specifically addressing Reason for Refusal 3 is provided below.

Policy

- 8.6. Policy A5 of the Camden Local Plan states the Council will only permit basement development where it is demonstrated that the proposal will not cause harm to:
- a. neighbouring properties;*
 - b. the structural, ground, or water conditions of the area;*
 - c. the character and amenity of the area;*
 - d. the architectural character of the building; and*
 - e. the significance of heritage assets.*
- 8.7. Policy A5 goes on to state that:
- “The siting, location, scale and design of basements must have minimal impact on, and be subordinate to, the host building and property. Basement development should:”*
- A number of detailed criteria are then set out in sub-points to the policy.

Assessment

The ‘objective’ criteria of Policy A5 – points a and b.

- 8.8. A *Basement Impact Assessment* (BIA) was submitted as part of the planning application and was independently audited by the Council’s specialist consultants and found to be acceptable in addressing the matters the subject of parts (a) and (b) of policy A5. This is confirmed in paragraph 6.4 of the Delegated Report.

Size of proposed basement

- 8.9. The first part of Reason 3 alleges ‘excessive size’ of the proposed basement, in relation to the size of the site and the host dwelling. The proposed development – above and below ground elements – has been carefully

designed to respond to the particularities of the site and townscape context as set out in the *Design and Access Statement* and *Heritage Assessment*. The Site is unusual compared to neighbouring plots in that it does not extend deep rearward but rather has a truncated garden, and also that the neighbouring building to the north is set well back from the frontage. As described earlier in this Statement, the design of the proposed dwelling responds to that townscape condition by following the general front and rear building lines of houses to the south, and then making use of an angled bay to turn the northern corner and reveal the set-back neighbouring house beyond. The size of the proposed basement is a logical out-turn of the siting, layout and form of the host dwelling proposed, together with consideration of other site specific factors noted below. The basement accommodation is located below the maximum extent of the building to the front and rear, and two modest and discretely located lightwells are provided. It is noted in the Delegated Report at paragraph 7.6 that *‘the footprint of the proposed basement would be larger than that of the host building but not significantly’*.

- 8.10. The proposed basement can be assessed against the Policy A5 criteria (f) – (m) as follows:

f. not comprise of more than one storey – complies

g. not be built under an existing basement – complies

h. not exceed 50% of each garden within the property – The Delegated Report confirms that the Council does not consider there to be any side garden at the Site. This is correct and the area to the north side of the existing dwelling is a covered storage area and therefore falls outside of the definition of ‘gardens and garden space’ in paragraph 6.111 of the Local Plan. Taking the supporting text at paragraph 6.132 of the Local Plan into account, this calculation of percentage of garden affected by basement development should be based upon the existing garden.. The proposed basement only marginally extends into the front garden, significantly less than 50% of the area. The proposed basement, including the accessible rear lightwell, extends to some 58% of the area of the

existing rear garden. Whilst this is acknowledged to exceed the 50% noted in criterion (h), there are a number of material considerations that justify this minor departure from this particular sub-point of the policy:

- The unusual plan form of the existing building results in an L-shape rear garden area that is similarly unusual for the area – had the existing building taken a square or rectangular plan form familiar to other buildings in the area then the existing rear garden would be considerably smaller, and the proposed development – which follows the general building lines of the area – would then impact on much less than 50% of the rear garden area. Further, whilst the Site has a truncated garden when compared to other plots to the south, it should be noted that the area of land to the west that could be reasonably expected to have formed part of the plot for no.15 remains as part of a very large L-shaped garden to no.13 Lyndhurst Terrace. Due to the shape and size of the garden to no.13 the area to the rear of no.15 could not be the subject of basement development under the current Camden Local Plan policy A5, and therefore it is extremely likely to remain free of basement development. The net result is that the openness and absence of basement development in the garden area to the west of the Site will likely be maintained.
- The rear lightwell area (5.2 sqm) is responsible for taking the proposed basement over the 50% of existing rear garden threshold. This lightwell is located discretely in one corner of the garden, hidden from all public and almost all private views by virtue of location, the proposed building, and the existing boundary wall to the north. It is in a location where proximity to buildings (on the site and adjacent property) and boundary wall would prevent any significant size of tree planting for basic structural reasons, and the lightwell itself will form a useable and enjoyable amenity area for occupants that will enjoy a greater degree of privacy than the rear garden at ground level. It is therefore a case of re-provision of usable amenity space at a lower level as opposed to ‘loss’ of garden space.

- The policy wording takes no account of existing garden that could be developed making use of permitted development rights available to single dwelling houses for rear extensions or even outbuildings. For example, a rear extension totalling some 15 sqm could be added to the existing building under those provisions, resulting in much greater loss of unbuilt garden area than that ‘lost’ by provision of a 5.2 sqm accessible lightwell.

We would note that the Delegated Report confirms that the Council considers the development complies with criteria h.

i. be less than 1.5 times the footprint of the host building in area – complies

j. extend into the garden no further than 50% of the depth of the host building measured from the principal rear elevation – complies

k. not extend into or underneath the garden further than 50% of the depth of the garden – complies. The Council’s assessment set out in the Delegated Report at 6.13 is not agreed. As noted above the only element of basement development that extends beyond the rear footprint of the proposed dwelling is a modest lightwell, and that lightwell is set in from the northern side boundary by approximately 0.5m and from the rear boundary by 1.1m. As noted in the Delegated Report the rear garden at its narrowest point is 1.9m deep. At that point the lightwell extends to some 0.8m which is 42% of the depth of the garden.

l. be set back from neighbouring property boundaries where it extends beyond the footprint of the host building – complies. The Council’s assessment set out in the Delegated Report at 6.14 is not agreed. The proposed basement only extends marginally beyond the footprint of the host building to form the rear and side lightwells, and to provide a logical square form to front part of the basement, where the ground floor above has a more complex form. The Council’s Draft *Camden Planning Guidance 4: Basements* confirms in relation to A5(l) that:

‘The policy objective is to provide significant space free from basement development to enable water drainage and area for planting ... Providing a setback to neighbouring properties will generally not be required where built form or a basement on the neighbouring property extends up to the property boundary.’

In the case of the proposed side lightwell and area of front basement marginally beyond the footprint of the ground floor, the neighbouring garage forms that northern boundary and therefore a set back is not required.

In the case of the proposed rear lightwell / amenity area, there are two boundary conditions – the north and west. The adjacent property at 17-19 to the north is so close to the boundary we consider it ‘extends up to the property boundary’ for the purposes of assessment. Clearly the property is so close that no significant scale of planting could take place in that area without risking structural damage and amenity issues associated with shading. To the west, the rear lightwell is set back from the rear boundary of the Site by 0.5m, which is considered to be sufficient to facilitate water drainage and planting as the policy seeks.

m. avoid the loss of garden space or trees of townscape or amenity value – complies. We do not agree with the Council’s assessment, which simply states how the proposed development would reduce the rear garden from ‘nearly 60sqm to approximately 20sqm (plus a sunken lightwell measuring approximately 5sqm)’. It is important to confirm that no trees will be lost as a result of the development as there are none on the Site. The proposed rear garden area is 27.6sqm at ground level, plus 5.2sqm of accessible lightwell at basement level, totalling 32.8sqm. In terms of garden space of townscape or amenity value:

- The existing rear garden comprises paved terrace areas and gravel areas with only limited scrub growth around the boundaries. It is not considered to be of any townscape value and has little amenity value.

- It is not the proposed basement that results in the majority of the reduction of rear garden space but rather the footprint of the proposed building, the size and form of which is justified in other parts of this Statement and supporting material. As set out above Policy A5 has no application in respect of above ground development.
- It is only the 5.2sqm of accessible lightwell that is ‘basement development’ that results in a reduction of garden space. As noted above the existing garden is of no discernible value and the replacement of 5.2sqm of poor quality ground level garden space with 5.2sqm of usable terrace with an increased degree of privacy at a lower level causes no harm to the townscape of the area, nor to the overall amenity value of the site for the future occupants.

8.11. For these reasons the size of the proposed basement is considered to be appropriate to the Site within its immediate context, and meets the objectives of policy A5 of the Local Plan. The size of the basement accommodation, including lightwells, is considered to be modest and will not cause harm to the character and appearance of the Conservation Area.

External manifestation of proposed basement

8.12. The second part of Reason for Refusal 3 relates to the *external manifestation* of the proposed basement being harmful to the character and appearance of the Conservation Area. Two lightwells, one to the side and one to the rear, form the only external manifestation of the proposed basement.

8.13. As noted in the quote above from paragraph 6.6 of the Delegated Report, the Council accepts that neither of the two lightwells are visible from the street. However, they still assert that the lightwells ‘*nevertheless express the existence of the large basement below the building*’. This statement is in conflict with other opinions set out in the Delegated Report as:

- the lightwells are hidden from all public views and almost all private views, as acknowledged by the Council, and therefore cannot *express the existence of the large basement*
 - the basement itself cannot be reasonably termed *large* as it is restricted in accommodation terms to the maximum extents of the footprint of the host building, and in Camden's own assessment (paragraph 7.6 of the Delegated Report) where it does project beyond some areas of footprint this would not be significant
- 8.14. The proposed lightwells have been carefully designed as integral components of the proposed building and its landscape setting, as documented in the *DAS*. Further assessment of the proposed lightwells in terms of their relationship to the proposed building and the resulting contribution to the character and appearance of the Conservation Area is provided in the *Heritage Assessment*.
- 8.15. Paragraphs 6.144-6.146 of the Local Plan provide supporting text to Policy A5 *Basements* and specifically address lightwells, stating that where visible lightwells are *not* part of the prevailing character of the street, new lightwells should be discreet and not harm the architectural character of the building or the surrounding area. It goes on to state that lightwells to the side or rear of a property should be set away from the boundary of a neighbouring property, and that excessively large lightwells will not be permitted in any garden space.
- 8.16. CPG4 *Basements and Lightwells* (SPD, adopted July 2015) adds that '*a lightwell to the side or rear of a property is often the most appropriate way to provide a means of providing light to a new or extended basement development, and can often provide a link to the rear garden*' (para 2.23).
- 8.17. The draft amended CPG4 *Basements* (consultation draft November 2017) at page 15 provides useful guidance upon application of criterion (l) of Policy A5. It indicates a narrow strip around the perimeter of a notional plot and notes '*The policy objective is to provide significant space free from basement development to enable water drainage and area for planting ... Providing a setback to neighbouring properties will generally not be required where built*

form or a basement on the neighbouring property extends up to the property boundary.’

8.18. The proposed lightwells are:

- Located to the side and rear as recommended by CPG4 as the most appropriate location;
- Both small in scale, being 4.1 sqm (side) and 5.2 sqm (rear). Combined, they represent only 8% of the total unbuilt area of the proposed development of the site;
- Set in from the northern side boundary of the site by 0.3 metres and 0.5 metres respectively at ground level, although in both cases this setback is not required as neighbouring built form extends up to or very close to the boundary. To the rear boundary the set-back is 0.5metres to the structure and 1.1m at ground level. A range of recent comparable planning decisions regarding basement development and lightwells made by Camden since the July 2017 adoption of the Local Plan are provided as context (Appendix 9) to demonstrate how the policy (A5(1)) and guidance (CPG4) requiring lightwells to be set back from boundaries has been applied in practice – these show that in other cases lightwells have been approved extending right up to side boundaries in rear gardens, where neighbouring gardens are found the other side of the boundary.
- Located in discreet positions within the proposed design, being either completely or largely obscured from neighbouring private views by the form of the host building and the existing boundary wall and garage to the north.

8.19. The proposed lightwells therefore comply with Policy A5 and both the adopted and draft amended CPG4 SPD. As further assessed in the *DAS* and *Heritage Assessment* accompanying the application and this appeal, the lightwells are an integral design component of a high quality design proposition that will contribute positively to the character and appearance of the Conservation Area. Accordingly there is no conflict with policies D1, D2 or A5 of the Camden Local Plan.

Summary on reason 3

- 8.20. As set out above the Appellants consider that the basement element of the Development taken as whole complies with the requirements of Policy A5, those criteria (f) to (m) of A5 not requiring strict compliance to achieve compliance with the overarching points (a) to (e). Such an approach to application of Policy is not only considered reasonable and necessary, but as evidenced in Appendix 9 and explored above, it is an approach that the Council has taken to date in decision making upon other planning applications when applying Policy A5 criterion (l), for example.
- 8.21. In the alternative, should the above not be agreed, for the purpose of S38(6) of the Planning and Compulsory Purchase Act (2004) the Appellants consider that the Development complies with the development plan as a whole even if it is considered that there is technically a breach of one or more of the numerous components parts of Policy A5.
- 8.22. In the further alternative if it is considered that the Development does breach the development plan for the purpose of S38(6), there are strong material considerations specific to this site and the scheme that make clear that planning permission should be granted. Those material considerations include the unusual shape and form of the site that precludes easy reference to the criteria of Policy A5, the design quality of the proposed replacement building, and the enhancement offered by the Development to the CA.

9. Reason for refusal 4 – proposed basement deprives dwelling of amenity space

9.1. Reason for refusal 4 states:

“The proposed basement, by virtue of its size and external manifestation would deprive the proposed dwelling of sufficient open amenity space and be detrimental to the visual attractiveness and environmental wellbeing of the area generally contrary to the open space and biodiversity objectives of policies A2, A3, and A5 of the Camden Local Plan 2017.”

9.2. Read alongside the Delegated Report (paras 8.1-8.3), this reason is understood to relate to the size of the rear garden proposed and specifically:

- Whether that rear garden provides sufficient amenity space for future occupants of the proposed dwelling
- Whether the reduction in size of the rear garden will be detrimental to open space objectives, including visual attractiveness, of the Local Plan
- Whether the proposed development will conflict with biodiversity objectives of the Local Plan

Sufficient amenity space for future occupiers

9.3. Policy D1 *Design* of the Local Plan states at point (l) that the Council will require that development ‘*incorporates outdoor amenity space*’. The supporting text at 7.23 sets out how a range of types of outdoor amenity space can add to quality of life and applicants are therefore encouraged to explore all options for the provision of new private outdoor space.

9.4. CPG2 *Housing* (adopted SPD) sets out at paragraph 4.29 detailed guidance for the provision of *Private outdoor amenity space* and states:

- *All new dwellings should provide access to some form of private outdoor amenity space, e.g. balconies, roof terraces or communal gardens*
- *Private gardens should be allocated to family dwellings*

...

9.5. There is no minimum level of private outdoor amenity space set out in the adopted CPG2. The draft amended CPG2 *Housing* (November 2017) provides reference to the London Mayors *Housing* SPG (adopted March 2016) which does provide detailed guidance upon levels of private outdoor amenity space, (in support of London Plan Policy 3.5 *Quality and Design of Housing Developments*) as Standard 26 & 27:

- *Standard 26 – A minimum of 5sqm of private outdoor space should be provided for 1-2 person dwellings and an extra 1sqm should be provided for each additional occupant.*
- *Standard 27 – The minimum depth and width for all balconies and other private external spaces should be 1500mm*

9.6. The proposed development contains 3 bedrooms and therefore could host 6 occupants. The relevant minimum private outdoor amenity space applying Standard 26 would therefore be 5sqm (2 persons) + 4 x 1sqm = 9sqm.

9.7. The proposed ground level rear garden area (including planted beds) is 27.6sqm and is entirely of a depth and width greater than 1500mm. This area is 300% of the minimum level required by the Mayors *Housing* SPG. A further 5.2sqm lower level terrace is provided within the proposed rear lightwell.

9.8. Accordingly we consider that the proposed amenity space for future occupants to be sufficient in size and quality and to fully comply with Camden's adopted and draft CPG2 *Housing*, Policy D1 of the Local Plan, Policy 3.5 of the London Plan, and the Mayors *Housing* SPG.

Open space objectives

9.9. Policy A2 *Open space* of the Local Plan is generally aimed at larger scale open spaces, but does at point (e) state that the Council will:

e. protect non-designated spaces with nature conservation, townscape and amenity value, including gardens, where possible;

- 9.10. The existing rear garden at the site measures 58.9sqm and is a combination of hard terrace and larger areas of gravel, with only limited scrub growth around the perimeter. It is not considered to hold any nature conservation or townscape value, and is of limited amenity value. Accordingly Policy A2(e) does not apply to this garden.
- 9.11. Further, it should be noted that Policy A5(h) in relation to basement development states that basement development should not exceed 50% of an existing garden area. The proposed development only marginally exceeds this threshold, and therefore it is only that small additional garden area (c.5sqm) that is replaced by a lower level amenity terrace / lightwell that can be of concern here.
- 9.12. It is important to note in terms of townscape and *visual attractiveness* (the term used in reason 4) that despite the small reduction in rear garden area at the site the overall urban structure of the west side of Lyndhurst Terrace, and the contribution of rear gardens to the wider townscape quality of the area, will clearly be preserved. As described in the introduction to this section of the Statement, this is a linear block structure orientated loosely north-south and spanning between Spring Path and Lyndhurst Terrace. Along that north-south axis the block is split approximately in half, with buildings then front gardens to the east and open rear garden to the west. The proposed development remains well within those established parameters that characterise the urban block of which the site forms a part, and the large (private) open area of gardens forming the west side of that block remains wholly intact and undisturbed.

Biodiversity objectives

- 9.13. Policy A3 *Biodiversity* of the Local Plan sets out how

‘The Council will protect and enhance sites of nature conservation and biodiversity. We will:

...

c. seek the protection of other features with nature conservation value, including gardens, wherever possible;

d. assess developments against their ability to realise benefits for biodiversity...’

9.14. The existing paved and gravel surfaced rear garden is not considered to be a feature with nature conservation value, and therefore does not attain protection under policy A3(c).

9.15. The proposed development will replace the existing barren front and rear garden areas with landscaped front and rear gardens offering a range of planting and habitats. Together with the extensive green roof proposed, this is considered to offer a significant enhancement to biodiversity at the site, fully meeting the objectives of Policy A3 and paragraph 118 (point 4) of the NPPF.

9.16. The Council’s Delegated Report acknowledges correctly both the existing condition and the benefits and acceptability of the proposed in biodiversity terms. At 7.2 it states:

‘There are no trees / vegetation of significance at the application site itself. The front garden is mostly covered with gravel, with some planting beds around the edges, and the rear garden is mostly covered with concrete flagstones...’

It then concludes at 7.6-7.8:

‘... this is considered to be acceptable on the basis that the proposal would not result in a reduction of biodiversity at the application site given the existing hardstanding at the front and rear of the site. Furthermore, although the proposal would significantly reduce the size of the rear garden ... the proposal would incorporate new planting to the front of the

property, where there is currently a gravel driveway. This is welcomed in terms of increasing biodiversity at the application site.

Overall, the proposal is considered to be acceptable in this respect.'

- 9.17. This clearly demonstrates that in the Council's own assessment the proposed development will result in an overall enhancement to biodiversity and is acceptable in that respect and therefore there is no conflict with *biodiversity objectives* of policy A3 as alleged by reason for refusal 4.

10. Reasons for refusal 5, 6, 7

- 10.1. Reasons for refusal 5, 6, and 7 are addressed by a draft legal agreement negotiated with LB Camden during the course of the determination of the planning application.
- 10.2. The draft legal agreement has been updated to reflect the determination by way of planning appeal, and will be discussed further with LB Camden following submission of this appeal.
- 10.3. A copy of the draft agreement is attached as Appendix 10 and subject to any comments or questions the Inspector may have a signed version will be handed in during the hearing.

11. Conclusion

- 11.1. The proposed replacement dwelling at no.15 Lyndhurst Terrace presents an opportunity to secure a number of tangible and important planning benefits for the Site and surrounding area.
- 11.2. Peter Stewart Consultancy conclude that the development will replace a house of low architectural merit and neutral contribution to the significance of the conservation area with one of high architectural merit, that will enhance the character and appearance of the CA.
- 11.3. The proposed new dwelling, designed by award winning practice Sergison Bates architects, has been the subject of a thorough, inclusive and critical design process. As the Appellants' request to Camden Council for the proposed design to be assessed by the Council's Design Review Panel was rejected at the pre-application stage, the architects undertook a private Peer Review process, engaging a number of recognised experts in the fields of architecture, townscape, and heritage. Responses to that engagement are included in the DAS and confirm that the development represents the highest standards of architecture and will enhance the conservation area.
- 11.4. In conclusion upon other relevant planning considerations, the proposed development will also:
- deliver a dwelling that makes efficient use of land whilst providing excellent quality living accommodation;
 - secure enhancements to the landscape within the front garden area of the site;
 - provide a dwelling of high sustainability and low energy usage;
 - secure SUDS approach that will reduce rainwater run-off from the site, reducing the risk of flooding elsewhere;
 - not cause any harm to the amenity of neighbours, including through the construction of the basement as evidenced in the BIA; and
 - promote sustainable travel choices through the reduction of parking on site from 3 spaces to 1 space

- 11.5. As set out in detail in this Statement, the proposed development is considered to be in accordance with the relevant statutory and policy provisions, including those within the NPPF and the adopted Development Plan for the area. Where there are minor departures from compliance with small sub-points within Policy A5 of the Local Plan there are site specific material considerations that justify such departure, and the Development remains fully compliant with the core objectives and requirements of that Policy (A5 points a. to e.). Further, the evidence presented analysing comparable decisions by the Council applying Policy A5 indicate that such flexibility in application has been applied on a number of occasions.
- 11.6. As the proposal overwhelmingly compliant with the policy framework and represents sustainable development we therefore request that planning permission be granted to allow the development to proceed.