

PLANNING SERVICES

**TOWN & COUNTRY PLANNING (DETERMINATION BY INSPECTORS)
(INQUIRIES PROCEDURE) (ENGLAND) RULES 2000**

**PROOF OF EVIDENCE
John Diver BA(Hons) MPlan**

**FOR PUBLIC INQUIRY COMMENCING ON
15th January 2019**

APPEAL SITE

Gondar Gardens Reservoir, Gondar Gardens, London, NW6 1QF

APPELLANT

Life Care Residences

SUBJECT OF APPEAL

Appeal against London Borough of Camden's refusal of Planning Permission for the *'Partial demolition of the existing reservoir, including the roof and most of the internal structure, and the erection of six 4-6 storey buildings and four 2-3 storey link buildings with common basement levels within the retaining walls of the existing reservoir to include 82 Self contained extra care apartments (class C2); a 15 bed nursing home (Class C2). Associated communal facilities including reception area, guest suite, lounge, restaurant, café, bar, library, exercise pool, gym, therapy rooms and cinema; Associated support facilities including staff offices, welfare and training spaces, storage, laundry, kitchen, cycle storage, car parking and plant areas and a site-wide biodiversity-led landscaping and planting scheme including external amenity space, drop off area, retention pond and slope stabilization and associated engineering works'*.

COUNCIL REFERENCE: 2017/6045/P

PLANNING INSPECTORATE REFERENCE: APP/X5210/W/18/3198746

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INTRODUCTION

- i. I, John Diver, have prepared this proof of evidence for presentation at the Public Inquiry into the appeal. I hold a Bachelor of Arts with Honours in Urban Studies as well as a Masters degree in Town and Regional Planning from the University of Sheffield. I am a Licentiate member of the Royal Town Planning Institute.
- ii. Since September 2015 I have been working in Camden Council's Local Planning Authority and I was promoted to a Senior Planning Officer position in August 2017. Prior to this, I worked as a Planning Officer at the London Borough of Barnet. During my professional career as a planning officer I have dealt with a wide range of planning applications including major, minor and householder development proposals
- iii. I am familiar with the appeal site. The evidence that I have provided for this appeal is accurate to the best of my ability and I confirm that any professional opinions expressed are my own.

STRUCTURE OF EVIDENCE

- iv. In my evidence, I provide a summary of the application which is the subject of the appeal and the process undertaken leading to the refusal. I identify and summarise the policy framework under which the Council's decisions were made. I deal with the Council's main reasons for refusal before addressing the Appellant's grounds of appeal.
- v. My evidence will be divided into twelve sections:

Section 1: (Summary): I will provide an overview of the Council's position

Section 2: (Site and Surroundings) I will describe the appeal site and surrounding area.

Section 3: (Planning History) I shall provide a summary of the planning history relating to the site.

Section 4: (Planning Policy) I shall identify national, regional and local planning policies and guidance relevant to the reasons for refusal and the issues discussed in my proof.

Section 5: (The Application the Subject of this Appeal) I shall provide a summary of the planning application and the reasons for refusal.

Section 6: (Assessment of the Proposals) I will assess how the appeal proposal results in demonstrable harm.

Section 7: (Comments on Appellant's Statement of Case) I will respond to arguments made by the Appellant in their submitted documents to date.

Section 8: (Section 106 Planning Obligation) I will summarise the reasons for securing the planning obligations, which if the appeal is to be allowed will be essential to make the development more acceptable.

Section 9: (Planning Balance) I will balance the benefits provided by the scheme against the demonstrated harm.

Section 10: (Conclusions and Summary) I will summarise the arguments made in this proof of evidence.

Section 11: (List of Suggested Conditions)

Section 12: (List of Appendices)

vi. In addition to myself, the Council will call six witnesses:

- Andrew Jones, Director of BPS Chartered Surveyors, who will provide further evidence regarding viability and affordable housing matters;
- Carolyn Whittaker, Affordable Housing Development Co-ordinator at Camden Council, who will be providing further evidence regarding the and delivery and feasibility of onsite affordable housing;

- Frances Madders, Senior Planning Officer (Urban Design) with Camden Council, who will provide further evidence regarding the detailed design of the appeal proposal; its height, scale and massing and impact on the local streetscape and area;
 - Gabriel Berry-Khan, Senior Officer (Sustainability) with Camden Council, who will provide further evidence in relation to matters of sustainable design and construction;
 - Paul Losse, Director of Salix Ecology who will be providing evidence in relation to the ecological impacts of the proposed development; and
 - Philippa Jackson, Building Control Services Manager with Camden Council, who will be providing further evidence in relation to accessible and inclusive design matters.
- vii. Throughout my proof I will refer the inspector to various figures. These are provided within the body of the proof but are also listed in higher resolution format which is be easier to view at appendix one of this proof.

1. SITE AND SURROUNDINGS

1.1. Refer to the Site and Surrounding Area section of the Statement of Common Ground (SoCG) for a full description of the appeal site and the surrounding area.

1.2. With the exception of a 60m 'frontage' parcel of land running along Gondar Gardens (narrowing from 21m deep in the north to 13m in the south) the site is subject to a number of designations. The site's various destinations as well as the formal processes leading up to adoptions being made are summarised below:

Local Green Space (LGS)

1.3. A section of the site was designed as Local Green Space (ref.16d) via the adoption of the Fortune Green and West Hampstead Neighbourhood Plan which was formally adopted by the Council on 16 September 2015. The designated area excludes the frontage parcel as well as the footprint of the reservoir structure which are instead considered as 'developable land' within the Neighbourhood Plan.

1.4. On 9 May 2013 the Council approved the designation of the Fortune Green and West Hampstead Neighbourhood Area and Neighbourhood Forum. Public consultation on the applications for the Fortune Green and West Hampstead area and forum took place from 31 January to 15 March 2013.

1.5. The Fortune Green and West Hampstead Neighbourhood Forum submitted the final draft version of their Neighbourhood Plan and supporting documents to the Council in September 2014. The Council, with support from the Fortune Green and West Hampstead Neighbourhood Forum, appointed Mr John Parmiter to hold an independent examination on the Plan. A public hearing was held on 11 December 2014 at which time representatives took part in the discussions. Representations were submitted to on behalf of a previous owner of the site, asking for the Local Green space designation to reflect the then extant appeal permission for the redevelopment of the reservoir. The inspector supported this recommendation. The Examiner's report in January 2015 concluded that, subject to the policy modifications recommended being made; the Plan met the Basic

Conditions and should proceed to a referendum. The Council decided on 27 March 2015 that the Plan, as modified, would meet the relevant neighbourhood planning regulations and legal tests and should therefore proceed to a local referendum. To meet the requirements of the Localism Act 2011, a referendum was held on 9 July 2015. The referendum question was “Do you want London Borough of Camden to use the Neighbourhood Plan for Fortune Green and West Hampstead to help it decide planning applications in the neighbourhood area?”. The Neighbourhood Plan passed referendum with a YES vote of 93%.

Private open space (POS)

- 1.6. Other than its frontage to Gondar Gardens and the footprint of the reservoir structure, the remainder of the site is designated as two parcels of Private Open Spaces as set out within the Local Plan Policies map (2017). The designations are numbered 188 ‘Gondar Gardens’ and 189 ‘Gondar Gardens Reservoir’. The site had originally been designated to also include the land above the reservoir structure within Unitary Development Plan (2006) then subsequently within the Camden’s Local Development Framework Proposals Map 2010, however, given the adoption of the aforementioned Neighbourhood plan; the designated area was updated.
- 1.7. The Camden Local Plan was adopted by the Council on 3 July 2017 and replaced the Core Strategy and Camden Development Policies documents as the basis for planning decisions in the borough. Planning Inspector Ms Katie Child, BSc (Hons) MA MRTPI was appointed to examine the Local Plan, which took place between June 2016 and May 2017. Details of the examination process in relation to this site is summarised below:
- 1.8. The Submission Draft Local Plan was published by the Council in February 2016. On 24 June 2016 the Council submitted the draft Camden Local Plan and supporting documents to the Secretary of State. During October 2016, public examination of the draft Local Plan and supporting documents took place at Camden Town Hall. During the course of the examination, the Council identified and proposed a number of modifications to the Inspector.

1.9. Between 30th January and 13th March 2017, the Council consulted on 'Main Modifications to the Local Plan'. This provided an opportunity to comment on the changes the Council was proposing to the Submission Draft Local Plan (published in February 2016). These were proposed in light of the inspector's comments during the examination, representations made about the Plan, and discussions at the public hearings. During this second round of public consultation, representations were received from Line Planning requesting that the open space designation within the policies map for the appeal site should be updated to reflect the outcome of planning appeals for the site and the adopted Neighbourhood Plan¹. These changes were accepted by the Council and were incorporated into the main modifications proposed. During May 2017, the Council received the Inspector's report, who found the Plan 'sound', subject to modifications to the Local Plan Submission Draft. The Camden Local Plan was subsequently adopted by the Council on 3 July 2017

1.10. With regard to the open space designation, during the course of the Local Plan examination process, the Council accepted representations calling for the POS boundary to be updated to reflect the neighbourhood plan. After July 2017, work commenced to produce the new policies map, though disputes between various interested parties and the Council delayed its publication until spring 2018. In April 2018, the new Local Policies Map was published by the Council which realigned the Local and Neighbourhood Plan designation boundaries. The Policies Map was then updated again in June 2018, though these changes related to other part of the Borough to reflect changes elsewhere regarding newly emerging Neighbourhood Plans and site allocations.

Site Importance for Nature Conservation (SINC)

1.11. The entire site beyond the unallocated strip of land fronting Gondar Gardens was also a designated Site Importance for Nature Conservation (SINC) of Borough importance II and is identified as such on Camden's Local Plan policies map (formerly included within the Development Framework Proposals Map 2010 and original designated upon the adopted of the Unitary Development Plan 2006).

- 1.12. During the preparation of the Local Plan, the Council commissioned the London Wildlife Trust (LWT) to undertake a review of the Sites of Importance for Nature Conservation (SINC) in the Borough. Each surveyed site was reviewed for potential boundary changes (loss or gain of SINC valued habitat) and against the GLA Open Space and Habitat Survey for Greater London SINC Status Criteria to help form a part of the evidence base for the plan. The subsequent 'Camden Review of Sites of Importance for Nature Conservation (SINC)' was published in 2014 which suggested changes for the appeal site that are summarised as "*Minor reflecting ownership change and development proposals*". The updated description is provided in full below.

"This undisturbed covered reservoir is vegetated mostly with neutral grassland dominated by false oat-grass (Arrhen atherum elatius), with a moderate diversity of common wild flowers. Spiked sedge (Carex spicata), which is uncommon in Camden, is present in reasonable quantity. Typical grassland butterflies, including common blue and meadow brown, are present, as well as nests of yellow meadow-ant. The site is the only known location in Camden for slow-worms. Pipistrelle bats have been recorded flying over the site. There are small areas of woodland, mostly of sycamore (Acer pseudoplatanus) and ash (Fraxinus excelsior), with hawthorn (Crataegus monogyna) and plum (Prunus domestica) below, on the slopes at the eastern and western ends. This provides habitat for common birds. Part of the site is subject to a development proposal, with remainder to be managed as a nature reserve. There is no access to the general public but it can be seen from adjacent roads" (SINCB2 ref.CaBII10).

- 1.13. Within the Local Plan Consultation Statement (2016) issued in support of the Plan, the Council accepted that once development has been built out at the appeal site, the boundary of the SINC would be amended in line with LWT recommendations.

Local List

- 1.14. The entire site is designated as a locally listed space (ref.418) and is immediately adjacent to mansion blocks which are also designated within the local list (ref.602). The listing descriptions for these two non-designated assets are provided in full below:

'Gondar Gardens Covered Reservoir site ref.418

Significance: *Historical and Social Significance*

Type: *Natural Features or Landscape*

Description: *Covered reservoir, built in 1874 by Grand Junction Water Works and decommissioned when the ring main was built around London. Its site has been cherished as a "green lung" by the people of the area, as well as for the views it allows right across to Hampstead Parish Church and beyond. It has been designated as an SNIC and Open Space by Camden Council'.*

'Mansions of Gondar Gardens Ref.602

Significance: *Architectural and Townscape Significance*

Type: *Building or group of buildings*

Description: *Group of 12 mansion blocks set behind small front gardens dating to the turn of the 19th & 20th centuries. Full height projecting bays and particularly fine detailing in the fenestration which replicates that in the earlier houses to the east. Stock brick with red brick detailing to windows and slate roofs. Grand entrances at raised ground floor with the mansion's name painted on the top and decorative tiling to the entrance path. Form an impressive and unified group, and visually relate well to the houses further east'.*

- 1.15. The Camden Local List was adopted on 21st January 2015. Camden's Local List was produced following a period of public consultation inviting nominations (November 2012 to January 2013), extensive officer survey, research and assessment by conservation and planning officers. All nominations for the Local List were assessed against the Selection Criteria, which itself was adopted on 14 November 2012 following public consultation (July – September 2012). Once received, nominations for the list were reviewed against the Selection Criteria before being presented at the Selection Panel meeting where a draft list was compiled in May 2013. In the winter of 2013, a six week consultation period allowed comment to be made on the draft Local List, accompanying amendments to CPG1: Design and new nominations to be made. An updated CGP1: Design was subsequently adopted in Autumn 2014 to provide guidance on the local list. The Local List was updated in response to responses received as was subsequently formally adopted.

2. PLANNING HISTORY

- 2.1. Please refer to the Planning History section of the SoCG for the full planning history of the site.
- 2.2. In addition it should be noted that since the submission of this appeal an additional planning application has been submitted in relation to the site (LPA ref. 2018/3692/P, validation date 20 August 2018). This scheme represents a revision of the 'Second Frontage Scheme' which was allowed at appeal on the 16 December 2015 (expiring 16 December 2018). At the time of writing determinate of this application, hereafter referred to as the 'Third Frontage Scheme', is yet to have been made. This scheme was however submitted following pre-application discussions and has been revised to address a number of officers' concerns.
- 2.3. It is also pertinent to note that prior to the submission of the appeal scheme, pre-application discussions were held with the Council in 2015, 2016 and 2017 in relation to schemes involving the development of the site to provide a mixture of 'extra care' apartments and a nursing home. Copies of the pre-application advice report issued by the Council is included within appendix 2 of this document.

3. PLANNING POLICY

- 3.1 Please refer to section the Relevant Planning Policy section of the SoCG for the relevant policies and guidance that are applicable to the appeal.
- 3.2 Copies of all the Camden Local Plan and Neighbourhood Plan policies that formed part of the original reasons for refusal were sent as part of the Questionnaire. In determining the planning application, the Council had regard to relevant legislation, national planning policy and practice guidance, development plan policies, supplementary planning guidance and the particular circumstances of the case. In making any decisions as part of the planning process, account must be taken of all relevant statutory duties including section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

4. THE APPLICATION THE SUBJECT OF THIS APPEAL

- 4.1. Refer to The Application the Subject of this Appeal section of the SoCG for a brief summary of the proposal and a timeline of the planning application. Please also see appendix 2 for copies of the pre-application advice reports issued by the Council prior to the submission of the application.

5. STRUCTURE OF COUNCIL'S ASSESSMENT

- 5.1. The original decision notice included 16 reasons for refusal. My evidence deals primarily with reasons for refusal 1 (Impacts to open space/local green space), 2 (Impact to SINC), 3 (affordable housing), 5 (visual impact of proposed development), 6 (inclusive design), 7 (Residential amenity) and 8 (Artificial light spill).
- 5.2. Reason for refusal 2 (Impact to the site's ecological value) and 8 (Artificial light spill) will be covered in the proof of Paul Losse, Director of Salix Ecology.
- 5.3. Reason for refusal 3 (affordable housing and viability) will be covered further by Carolyn Whittaker, Affordable Housing Development Co-ordinator, (covering matters of onsite provision) as well as Andrew Jones, Associate Director of BPS Chartered Surveyors (covering viability matters) in their respective proofs.
- 5.4. Reasons 4 (active frontages and inwards-looking design) and 5 (visual impact of the proposed development) will be covered in the proof of Frances Madders.
- 5.5. Reason for refusal 6 (inclusive design) will be covered in the proof of Philippa Jackson. I will also discuss this reason with reference to inclusive design principles.
- 5.6. Reason for refusal 10 (Sustainable design and construction) and 16 (Sustainability and Energy plan obligations) will be covered in the proof of Gabriel Berry-Khan.
- 5.7. Reasons for refusal 9 (cycle parking) and 11 (noise and vibration) have been agreed through the provision of additional reporting/updated plans to the Council and are agreed within the SoCG. Furthermore, the matters in dispute in relation

to reasons for refusal 8 (artificial lighting) and 10 (Sustainable design and construction) have been reduced in scope as a result of the provision of additional reporting as outlined within the SoCG.

5.8. Reasons for refusal 12 (Construction Management Plan), 13 (financial contributions to highways works and public realm), 14 (car-free) and 15 (travel plan), are to be overcome by the completion of a section 106 legal agreement and relevantly worded conditions. At the time of writing, both parties had agreed to the principle of each of these terms, though the final wording of the agreement was still to be agreed. These matters are addressed in further detail within the SoCG as well as the within this proof.

6. ASSESSMENT OF THE PROPOSALS

Open space, local green space and SINC (Reasons for Refusal 1 and 2)

6.1. Reason for refusal 1 states the following:

“The proposed development, by virtue of the development on designated Open Space and designated Local Green Space, would result in the loss of, and harm to, land protected because of its local amenity, habitat and biodiversity importance, contrary to policy A2 (Open Space) of the London Borough of Camden Local Plan 2017; Policy 7.18 of The London Plan 2016 and Policies 16 and 17 of the Fortune Green and West Hampstead Neighbourhood Plan 2015”.

This reason for refusal alleges that the appeal proposal would, by virtue of the scale and extent of development proposed, cause a loss of, and harm to the remainder of, land designated due to its local amenity, biodiversity and ecological value.

6.2. Reason for refusal 2 states the following:

“The proposed development, by virtue of re-landscaping and redeveloping the Site of Nature Conservation, would result in the loss of the protected land and would harm the biodiversity and ecology of the site, contrary to policies A2 (Open Space) and A3 (Biodiversity) of the London Borough of Camden Local Plan 2017, Policy 7.18 of The London Plan 2016 and Policies 16 and 17 of the Fortune Green and West Hampstead Neighbourhood Plan 2015”

This reason for refusal alleges that the appeal proposal would, by virtue of the scale of redevelopment and relandscaping, cause a loss of, and harm to the remainder of, land designated due to its biodiversity and ecological value.

6.3. I have read the proof of Paul Salix, Director of Salix Ecology, who has provided detailed evidence regarding the ecological value and potential of the site, its importance at both a local and regional level as well as assessments of the resulting impacts from development and likely success of proposed mitigation measures. I agree with his conclusions that the development would result in unacceptable net harm to the ecological and biodiversity value of the site, despite the schemes of mitigation proposed.

6.4. In this section of my proof, I will set out an assessment of the resulting impact of the proposed development on the open space and impact on the site's amenity

value. Finally, in this section I will conclude on the overall impact of the proposals on the open space and area of nature conservation.

6.5. An overview of the various designations of the site is provided within the SoCG. Section 2 of this proof provides an overview for the formal processes leading up to the adoption of these various designations.

6.6. The appeal site is highly overlooked from a large number of dwellings and consequently provides amenity value to large population of local residents, as acknowledged by its various designations. In examining the merits of the site as an open space in the examination of the 2005 UDP, the inspector¹ expanded on this as follows: *“there are extensive views into the site from the housing all around, and whilst individually these are private views, collectively they amount to a considerable public asset”*. The acknowledgement of importance of the site for local amenity has been maintained ever since, and was upheld through the public examination and adoption process of three subsequent plans (Core Strategy/Development Management policies 2012; Neighbourhood Plan 2015; Local Plan 2017). The areas of the site designated as a Site of Importance for Nature Conservation (SINC) of Borough Grade II and Private Open Space (POS) are identified on the Local Plan Policies Map, an extract of which is provided below in figure one.



Figure 1 – Open Spaces and SINC boundaries (Local Plan policies map extract)

¹ UDP Inquiry report para 13.12.3 – core document ref. CD4.1

6.7. A portion of the site is also designated as a Local Green Space (LGS) within the Fortune Green and West Hampstead Neighbourhood Plan (2015), this is not disputed by the appellants. An extract of which is provided below in figure two. The boundary to the local green space (ref.D) was amended during the course of the Neighbourhood Plan examination and adoption process in response to written responses from the then landowner of the site in relation to the then extant planning permission for the redevelopment of the reservoir. This designation illustrates that the space is demonstrably special to the local community in line with paragraph 100 of the National Planning Policy Framework which was confirmed by an inspector in 2015 who, within their examination report, noted that *“I am persuaded that the plan’s Local Green Space (LGS) designations have sufficient regard to national policy”* (para.10.3).

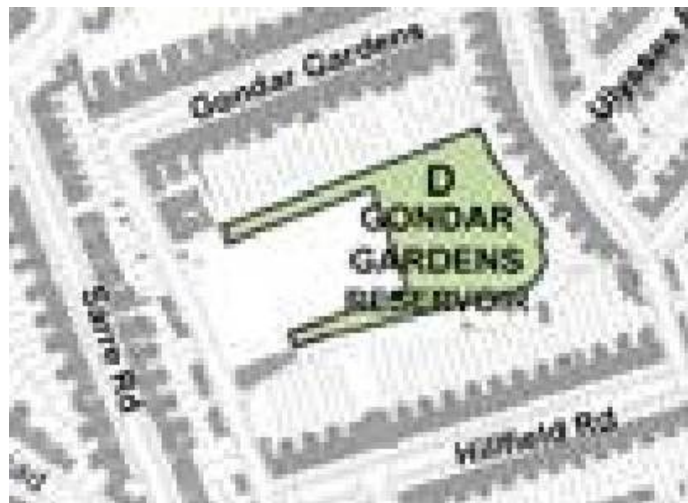


Figure 2 – Local Green Space boundary (Neighbourhood Plan 2015 extract)

Policy context

6.8. With regard to impact to biodiversity, paragraph 175 of the revised NPPF (adopted July 2018) states that when determining applications, LPAs should follow the principal that *“if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts) adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused”*.

6.9. Furthermore, with regard to Local Green Spaces, paragraph 101 states that *“Policies for managing development within a Local Green Space should be consistent with those for Green Belts”*. In relation to these two reasons for refusal, the following policies are therefore deemed applicable to the assessment:

London Borough of Camden Local Plan 2017;

- A2 (Open Space)
- A3 (Biodiversity)

The London Plan 2016;

- Policy 7.16 (Green belt)
- Policy 7.18 (Protecting open space and addressing deficiency)

Fortune Green and West Hampstead Neighbourhood Plan 2015;

- Policies 16 (Local Green Spaces)
- Policy 17 (Green / Open Spaces)

6.10. It is noted that the appellants dispute the inclusion of some of the above policies. The Council does not accept this allegation. Full comment on this matter will be provided later in my proof under section 8 (responses to appellants statement of case).

Impact to Open Space, Local Green Space and SINC

6.11. Local Plan Policy A2 (Open Space) seeks both to *“a) protect all designated public and private open spaces as shown on the Policies Map and in the accompanying schedule unless equivalent or better provision of open space in terms of quality and quantity is provided within the local catchment area”* as well as *“c) resist development which would be detrimental to the setting of designated open spaces”*. In relation to MOL land (the urban equivalence to green belt designation – as highlighted in para.6.40), it also states that the Council will seek to *“g) give strong protection to maintaining the openness and character of Metropolitan Open Land (MOL)”*.

6.12. Fortune Green and West Hampstead Neighbourhood Plan 2015 sets out 6 strategic objectives within its vision statement. Objective 6 (Natural Environment) seeks to ensure that *“Development will protect and enhance existing green/open space and the local environment”*. To deliver this objective, Policy 16 and supporting allocations map sets out the various sites for designation as Local Green Space (see figure two above). Policy 17 then sets out the policy aims of the forum for the protection and improvement to these spaces. Of particular relevance, it states that this shall be achieved by (inter alias);

“i) The protection of existing green/open space - from significant damage, or loss, through development; ...

iii) Appropriate contributions to the maintenance and enhancement;

iv) The offsetting of any loss of green/open space, ideally within the Area;

v) The protection and appropriate provision of green corridors through existing and new streetscapes;...”

6.13. In relation to the assessment of decisions affecting greenbelt land, policy 7.16 of the London Plan states that: *“B. The strongest protection should be given to London’s Green Belt, in accordance with national guidance. Inappropriate development should be refused, except in very special circumstances. Development will be supported if it is appropriate and helps secure the objectives of improving the Green Belt as set out in national guidance”*. Further, in relation to protecting open space policy 7.18 states that *“B. The loss of protected open spaces must be resisted unless equivalent or better quality provision is made within the local catchment area. Replacement of one type of open space with another is unacceptable unless an up to date needs assessment shows that this would be appropriate”*.

6.14. The Council maintains that the development would act to cause a net loss of open space and SINC without equivalent reprovion as well as significant harm to the openness, character, setting and biodiversity and amenity value of the retained areas of open space, local green space and SINC as discussed by Mr Losse.

Open Space ref.188

6.15. The development would lead to the loss in its entirety to open space parcel 188, with this area instead being stripped of all existing vegetation, levelled and hard surfaced to form the vehicular drop off area. To the Eastern edge of this space, a fence would be erected to prevent access to the rear areas of the site. The Northern and Southern edges of this space would be fully enclosed by built form rising 3-4 storey tall. The existing views across this space from Gondar Gardens would be severed as a result and the value of this parcel as an open space would be completely lost due to the level of enclosure and loss of openness. Figure three below illustrates the resulting enclosure to this space.



Figure 3 - existing / proposed section extract to show resulting impact to POS 188.

6.16. As outlined above, Local Plan Policy A2 stipulates that the loss of open spaces should be resisted unless equivalent or better provision of open space in terms of quality and quantity is provided within the local catchment area. Neighbourhood plan policy 17 seeks to protect existing green corridors and incorporate them into new schemes. In this instance, no replacement provision would be offered to compensate this loss and the scheme would sever an existing green corridor without its reprovision. While the scheme would include internal landscaping for future occupiers, these landscaped terraces would constitute amenity areas for residents and would not equate to an equivalent or better provision of open space or a green corridor.

6.17. The loss of this parcel of open space remains objectionable in the absence of measures to secure an identified area of off-site open space to compensate for the area lost as a result of the development. Both previous applications for the site (i.e. the reservoir scheme and the second frontage scheme) had not only

resulted in lesser impacts upon the open space, but each had also offered financial Public Open Space contributions to compensate against the net loss of open space by helping to improve other spaces locally. This is discussed further in paras. 6.27 to 6.31 below. No such compensation has been proposed in this case, despite the scheme having a greater impact upon the designated areas. In the absence of a compensatory mechanism, with a preference for new habitat land, this remains an obstacle to the acceptability of the proposal.

Open Space ref. 189 and Local Green Space D

6.18. To allow for natural light to reach two storey below current grade level, a significant proportion (approximately 1,577sqm) of open space parcel 189 and Local Green space parcel D towards the rear of the site would be excavated, regraded and relandscaped. As outlined in the description, engineering works to stabilise the resulting graded landscape would also be necessary in these areas. Following these operational development works, these areas would then be regraded and landscaped, meaning that the quantum of this plot of POS / LGS would not be reduced. However, its' setting, openness and character would be fundamentally undermined as a result of the development. Those areas of landscape to be restored after the development would also not equate to equivalent or better provision in biodiversity terms.

6.19. The footprint for the proposed buildings have been designed to predominantly sit within the footprint of the existing reservoir structure, other than some slight projections over the designated areas via East facing balconies. Notwithstanding this, the impacts formed by this built form upon the openness, setting and character of the areas of retained POS/LGS would be severe. These visual impacts are illustrated in figures four and five below.

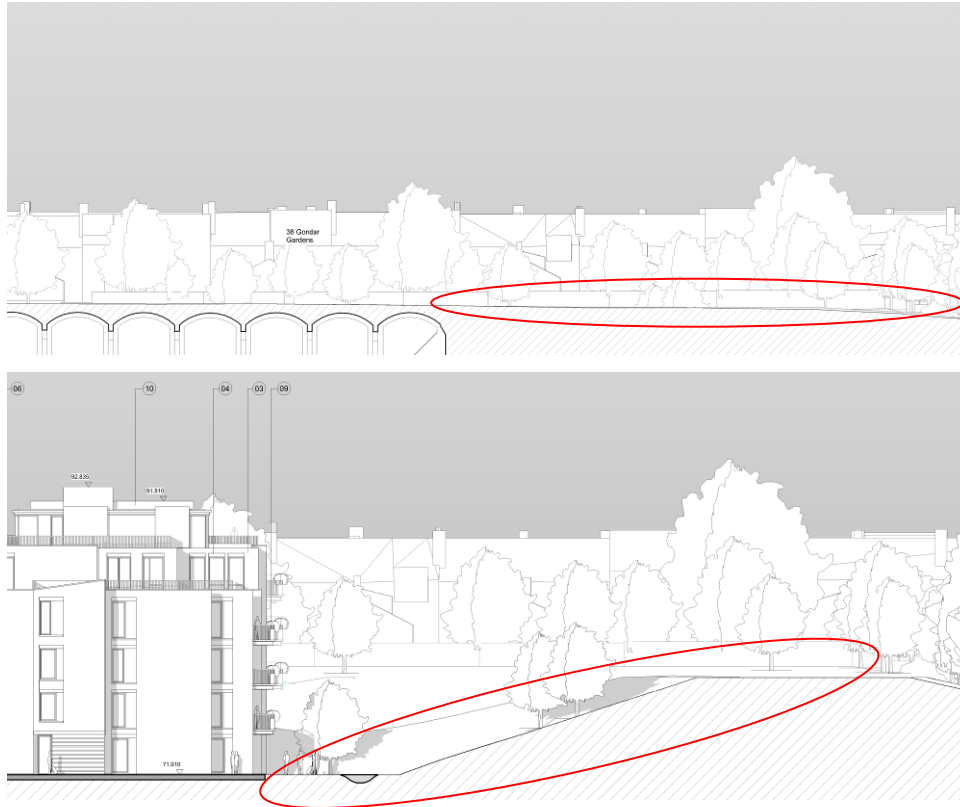


Figure 4 - existing / proposed longitudinal section extract to show resulting impact to POS 189 / LGS D / SINC.

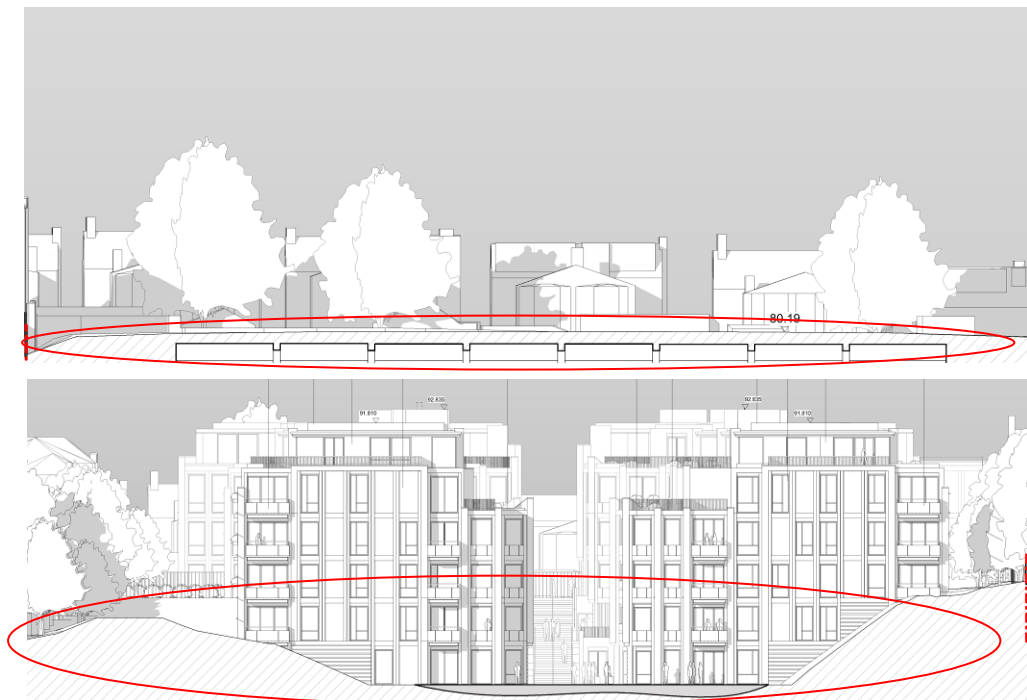


Figure 5 - existing / proposed lateral section extract to show resulting impact to POS 189 / LGS D / SINC.

6.20. The above extracts illustrates that the sheer bulk, height and mass of the scheme and its proximity to the boundary of the designated POS and LGS would mean that it would totally overwhelm the site and eliminate all sensation of openness. Views across the site would be severed. Rather than being maintained as an open and wild 'green lung' (a term used by the inspector of the 2005 UDP examination and included in the local list description) of relief from the surrounding urban form, it would instead appear as an extended landscaped garden ancillary to and heavily enclosed by the proposed residential development. Views into the site from Gondar Gardens would similarly be severed as a result of the minimum setback of facing blocks (as close of _m) as illustrated in figure 1 of the proof of Mrs Madders (para.3.6). Furthermore, the two designated POS and LGS ribbons running along the northern and southern boundaries would be even more drastically enclosed, by virtue of their narrow widths, relative to the height of the adjacent built form. The resulting impacts upon the retained/replaced Local Green Space and Open Space are stark and, from experience in dealing with the control of development within green belt land, could never be construed as 'appropriate development' on or adjacent to the Local Green Space.

6.21. Within the designated space itself, the engineering operations for excavation, stabilisation and regrading combined with the aforementioned enclosure would mean that whilst standing within this space, views in all directions would be blocked either by built form or sloping land rising over 7m above. These works would significantly disrupt the existing continuous plain of open space with views across to Hampstead and instead mean that the space would be subject to overbearing enclosure to all sides.

6.22. These works would similarly effect views into the POS and LGS from outside of the site. Whereas large areas of the existing site are currently visible in a continuous, open space; the excavation works would mean that a sizable portion would appear as a void falling out of sight towards the rising built form beyond rather than a continuous plain of open space. Notwithstanding the impact to setting and character formed by the rising built form, these works are considered harmful to the openness of the space in themselves. This is supported by para.146 of the NPPF which considers 'engineering operations' to represent

inappropriate development within the Green belt where they would not preserve its openness.

6.23. The resulting harm to the setting, openness and character of the retained areas of private space and Local Green Space is therefore seen contrary to the aims of the aforementioned local policies as well as the strategic objective 6 of the Neighbourhood Plan. The development is therefore considered an 'inappropriate' form of development both within as well as abutting the Local Green Space.

6.24. In line with London Plan policy 7.16, Local Plan policy A2(g) as well as paras.143-144 of the NPPF; *"Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances"...* *"Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations"*. As will be discussed in full within the planning balance section of this proof, the Council maintains that 'Very Special Circumstances' have not been demonstrated that might provide justification for this inappropriate form of development to the site and the resulting impacts upon the designated spaces.

SINC

6.25. Further to the above, as outlined within the proof of Paul Loss, the proposed development would result in the loss of 67% of the existing grassland habitat / SINC on site during construction. 21.6% will be restored, though the Council maintains that the relative value for ecology of the overall site would be significantly diminished. Even if the restored areas are included, the development would lead to a permanent loss of 45.4%, nearly half of the grassland habitat on site. Paul Loss, in his proof, has discussed the value of the site and its relative importance at the local and regional level and the importance of continuous and open habitat to support fauna. I do not intend to restate this matters here; however, I do wish to draw the inspectors attention to additional unstated negative externalities resulting to the retained areas of SINC. These include the resulting increases to levels of overshadowing as well as light pollution (to be covered in full in later parts). These additional impacts, combined

with the significant loss in the area of habitat, are considered to significant undermine the biodiversity value of the retained areas such that mitigate measures proposed would not prevent net harm to the site's value or to protected species.

Consideration of previous determinations in relation to designated land

6.26. The above should not be construed to suggest that the Council would not welcome the principle of the redevelopment of the site, particularly if it delivers acutely needed affordable housing. This is not the case. The Council has at no point raised objection to the principle of the redevelopment of the non-designated 'frontage' parcel of land. Since the determination of the first application for the development within the reservoir structure in 2011, the Council has also accepted the principle of the demolition of the reservoir structure roof and the infilling to this space, subject to minimising visual impacts upon the areas of designated land and securing appropriate mitigation measures. This has been clearly stated within formal pre-application responses (see appendix 2) and is explicitly stated within the 2015 neighbourhood plan. This position and the recent 'Other Sites' description does not, however, suggest that redevelopment of the site should be supported carte blanche as long the footprint of new buildings are contained within the former reservoir structure.

6.27. In the assessment of the original 'The Reservoir Scheme' application (which set the principle for the site's development potential), the resulting impact upon the retained areas of open space and SINC was deemed to be acceptable and the development was deemed appropriate. The dwellings approved under this scheme, the inspector noted, would have projected only 1.5m above the existing grade level and, thanks to the *"ingenious design of the scheme and the limited extent by which it would project above ground level"*² were considered to preserve the openness of the remaining open space and its setting. The scheme would have maintained views across the site in all directions and, due to their minimal heights and green roofs, the built form proposed would not have

² Para.21 of 'The Reservoir Scheme' Inspectors report, see OA2.16

appeared overbearing upon the retained and enhanced open space or neighbouring houses. This can be seen in figure six below:



Figure 6 - Reservoir scheme CGI

6.28. Similarly, in the following 'Second Frontage' scheme (2014), resulting impacts to open space / SINC did not form a reason for refusal. This was due to the limited encroachment of development into the site, the sensitive and contextual plans for landscaping as well as a comprehensive package of measures and contributions to improve and maintain the site's ecological value was secured long term. Figure seven below illustrates that this scheme would have retained an even greater proportion of open space and that the area of development would be set well away to the front of the site so as to mitigate its impacts. Under this scheme, the retained areas were to be gifted to the London Wildlife Trust with additional contributions towards the costs of equipment and upkeep of the retained space. Under this scheme, the retained open space was also to be made publically accessible on restricted days so as to further its contribution to the local community.



Figure 7 - Frontage 2 scheme CGI

6.29. These two permissions, demonstrate that it remains feasible to deliver housing within the site without causing undue harm to the site's value, both in terms of local amenity and ecology. For the second frontage scheme, this also made a significant contribution by delivering on site affordable housing. Indeed, given that since the appeal was submitted the appellants have undertaken to submit a new application for a scheme of similar scope and design to the second frontage scheme (but with an improved affordable offer), they themselves accept that such development remains viable³.

6.30. Whilst these previous permissions have therefore established the principle for the acceptability of the development potential of the site, they should not be seen as setting a precedent for development of any scale / level of resulting harm. The distinction between these two previous permissions and the appeal scheme in terms of resulting impact to open space, Local Green Space, SINC and neighbouring amenity is stark. I refer the inspector to appendix three of this proof for a visual comparison to illustrate this point. The development potential of the site has been clearly accepted and expectations for development are outlined within the Neighbourhood Plan. It is considered that, contrary to the two preceding approved schemes, in developing the appeal proposal the appellants have had little regard for the aims for the site stated in the Neighbourhood Plan or its value in terms of local amenity.

Reasons for refusal one and two conclusion

6.31. As outlined above, the appeal scheme would cause a loss of designated open space, without an equivalent or improved re-provision within the local area or compensation contrary to policy A2. It would also involve the redevelopment of the full extent of the former reservoir, with built form rising between 3-5 storeys high immediately abutting the retained areas of Local Green Space, Open Space and SINC. The resulting visual impact from the proximal relationship, scale, height and massing proposed would lead to a total loss of the sense of

³ 'Frontage scheme three' files are provided within the core documents list at OA1.0

openness to these retained areas, harming both the value and setting of the open space and constituting inappropriate development on and adjacent to the local green space. Furthermore, the Council maintains that the relative value of the areas of retained open space in terms of biodiversity and habitat potential would be severely diminished as a result of both the reduction in size of the SINC, combined with the overbearing relationship between the proposed build form and retained SINC land.

Affordable Housing (Reason for Refusal 3)

6.32. Reason for refusal 3 states the following:

“The proposed development, without the provision of affordable housing, would fail to maximise the contribution of the site to the supply of affordable housing in the borough, contrary to policy H4 (Maximising the supply of affordable housing) of the London Borough of Camden Local Plan 2017, policy 3.12 of the London Plan 2016 and Policy 1 of the Fortune Green and West Hampstead Neighbourhood Plan 2015”

The reason for refusal alleges that the appeal proposal fails to maximise the contribution of the site towards the supply of affordable housing in the borough. Primarily, this is in relation to a lack of adequate evidence to justify a nil onsite provision. The Council also maintains though that the appellants have not satisfactorily demonstrated that offsite provision remains unfeasible, nor that the appellants have suitably demonstrated that the economics of the development are such that their offer of payment in lieu of provision could viably be increased.

6.33. I have read the proof of Carolyn Whittaker, Affordable Housing Development Co-ordinator at Camden Council, who has discussed the ease to which the scheme could have been amended to make provision for onsite affordable units, the lack of any resulting conflict between different elements were this to occur. I note that she has evidenced the support offered from Registered Providers to the prospect of managing such units. I agree with her findings and conclusions that, contrary to the appellant's stated case, onsite provision could easily have been incorporated into the scheme with only minor alterations and that insufficient justification has been provided to support the claim that on site provision would not be feasible in this case.

6.34. I have also read the proof of Andrew Jones, Director of BPS Chartered Surveyors, who has discussed the multiple discrepancies and shortfalls within

the submitted viability assessment and reluctance to share information fundamental to the full appreciation of the economics of the development. I agree with his findings that the resulting lack of certainty calls into question the suggestion that the development could not viably support any increased financial contribution in lieu of affordable contribution.

6.35. I provide the local policy context to the above and to discuss the remaining matters in dispute in relation to this reason for refusal. I focus upon local and regional policy requirements as well as a discussion of trends in relation to affordable provision and use class designation in similar development types. The matter of the disputed use class definition and its implications for affordable housing will be discussed in full within section eight of this proof.

6.36. Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The Development Plan in this case is outlined within the SoCG. With particular reference to this reason for refusal, the following policies are applicable:

London Borough of Camden Local Plan 2017;

- H1 (Maximising housing supply)
- H4 (Maximising the supply of affordable housing)
- H8 (Housing for older people, homeless people and vulnerable people)

The London Plan 2016;

- Policy 3.10 (Definition of affordable housing)
- Policy 3.11 (Affordable housing targets)
- Policy 3.12 (Negotiating affordable housing on individual private residential and mixed use schemes)
- Policy 3.13 (Affordable housing thresholds)

Fortune Green and West Hampstead Neighbourhood Plan 2015;

- Policies 1 (Housing)

Requirement for affordable provision

6.37. The Council maintains that the residential element of the proposed scheme (i.e. excluding the nursing home and ancillary facilities) is most accurately described as falling within the Use Class C3 (Dwellinghouses). Notwithstanding the disputed definition of Use Class, the Council maintains that the Development Plan policies in relation to affordable housing would apply in either case and as such, that the development is expected to make the maximum reasonable contribution towards affordable housing.

6.38. Local Plan policy H4 states that *“We will expect a contribution to affordable housing from all developments that provide one or more additional homes and involve a total addition to residential floorspace of 100sqm GIA or more”* and that the Council will seek to secure the maximum reasonable amount of affordable housing, subject to the criteria outlined in criterion a) – p). The supporting text to this policy is expressly clear that its application should not be limited to developments within the C3 use class, stating at para.3.83 that: *“We will also apply Policy H4 to other types [non-C3] of housing, subject to the provisions of Plan policies relevant to the particular housing type, although the mechanics of considering and securing affordable housing provision may vary having regard to Policy H4 criteria (j) to (p). In particular, we will consider Policy H4 when assessing proposals for: ... housing for older people and vulnerable people (potentially in Use Classes C2 or C3, or outside any planning use class)”*.

6.39. This policy wording as well as the aforementioned supporting text was found to remain sound after public examination. It should also be noted that in examining the soundness of Housing policy H1, the inspector⁴ in their report required that the following insertion was made: *“Self-contained houses and flats are defined as homes where all the rooms, including the kitchen, bathroom and toilet, are behind a door that only one household can use (2011 Census Glossary of Terms). In most cases these homes fall in Use Class C3...”*.

⁴ Camden Local Plan Examination report 2017; alteration MM05, pg 1 – see core documents

6.40. Regardless of the final determination of the relevant use class, the proposed development would involve the creation of 82 self-contained homes. The prospective residents would occupy these homes on a full term, permeant basis, taking personal, long-term leases and would occupy the units as their primary residence. The units would be fully self-contained and would feature all facilities required for independent living, secured behind their own front door accessible only by the occupiers of that flat. The proposed units are also predominately two and three bedroom units, allowing for additional family member to stay on site in a fashion not akin to any institutional establishment. The resulting flats would also be liable for Council Tax payments. The appellants in their justification of the scheme on the basis that attracting older homeowners from the local area to release their existing homes and downsize into the development will free up existing local housing stock, have accepted this. If the type of accommodation were proposed to be transient in nature, even in mid-longer term, this stated benefit could not be claimed to be true. In light of the above, it is the Council's position that the policy requirements of H4 would apply regardless of the C2/C3 distinction in this instance.

6.41. Policy H15 of the draft London Plan as well as the London Plan Policy 3.12 seeks the maximum reasonable amount of affordable housing and Policy H6 of the draft London Plan and the Mayor's Affordable Housing and Viability SPG established a minimum pan-London threshold level of 35% affordable housing (without grant) with a strategic target of 50%. In the Stage One response from the GLA, it states the *"In accordance with Policy H15 of the draft London Plan, specialist older persons housing comprising extra care or sheltered accommodation must deliver affordable housing in accordance with Policies H5 and H6"*⁵. Where market housing is proposed for older people or vulnerable people, we will apply Policy H4 as far as possible to seek an equivalent amount of affordable provision for older people or vulnerable people, to meet more general needs. However, we acknowledge that such forms of housing are likely to have distinctive financial viability characteristics, particularly if an element of

⁵ GLA Gondar Gardens Stage one report (2017) paragraph 27 – see CD2.72.

care is involved, and we will take a flexible approach to the scale and nature of provision and whether the affordable provision should be made on site

6.42. Due to the scale of development policy H4 stipulates that an affordable housing target of 50% applies though, with the above in mind, the supporting text seeks to be flexible for schemes delivering specialist housing. It would therefore be reasonable to expect that the adjusted target would be less than 50%, though provision would still be expected. Criteria h) of policy H4 as well as New London Plan policy H5(b) gives the clear expectation that schemes delivering 10 or more homes should provide affordable on site. Criterion i) then confirms that where affordable provision *“cannot practically be provided on site, or offsite provision would create a better contribution (in terms quantity and/ or quality), the Council may accept provision of affordable housing offsite in the same area, or exceptionally a payment-in-lieu”*. Mrs Whittaker, in her proof, has outlined that by refuting the need to incorporate affordable provision, the appellants precluded discussions to determine the best solution for delivery as part of the scheme.

6.43. As such, the specifics of the Development Plan policies in this instance are such that an expectation for the provision of affordable housing remains in place despite the agreed use class of the appeal scheme (C2/C3). In order to accord with the policy requirements, the expectation would be for onsite provision unless it was comprehensively demonstrated to not be practical, though the level of contribution would likely be reduced from the usual 50% target in light of the specialist form of housing proposed. This position remains consistent with the GLA and decisions for similar developments within the Borough where contributions have been secured. Were on site provision shown to be genuinely impractical, then the Council would expect to see evidence that all options for second ‘donor sites’ within the region to provide off-site contributions had been fully explored and discounted based on robust reasoning prior to accepting a payment in lieu.

On site provision

6.44. In line with the NPPF and the Mayor, the Council’s strong preference for larger proposals is for affordable housing to be provided on-site alongside

market housing because this helps to create mixed and inclusive communities and ensure that the delivery of the affordable housing is secured to the same timescale as the market housing.

6.45. Carolyn Whittaker, in her proof, has illustrated that the appeal scheme could provide up to 22 affordable units onsite with only non-material amendments. This would equate to 27% by unit if the care home element is excluded. The evidence that she has presented shows that leading representatives from multiple Registered Providers would welcome an offer of such units and, after reviewing the marked up plans presented, see no conflict with the management of these blocks for affordable, separate from the rest of the scheme. I consider that significant weight should be afforded to this evidence provided.

6.46. It should also be noted that Mrs Whittaker's evidence in relation to this matter has focused upon a scheme amended via minor amendments only (i.e. with no changes to internal layouts, cores or position of entrances). It remains my view that should the appointed architects been instructed to incorporate the provision of onsite affordable housing into the brief, they would be likely have improved upon this offer further. For instance, I remain unconvinced that new entrances to the street could not have been designed into the frontage. This would not only have improved scope of onsite delivery, it would also have greatly improved the legibility of the scheme as a whole and its relationship to the street and surrounding area. As well as helping to address the acute need of affordable housing, this would have also gone some way towards addressing the harm outlined under reason for refusal 4 (lack of active frontage) as discussed by Mrs Madders. The site features a wide frontage which allows for plenty of opportunity for schemes to fully address the street and provide separate block/cores for affordable tenure, as demonstrated in the most recent approval for the site (Frontage Scheme 2), which remained extant between December 2015 – 2018. This is also true of the recent 'Frontage three' application submitted by the appellants.

6.47. Notwithstanding the ease at which frontage blocks A and B could be separated for the provisions of onsite affordable, the appellants maintains that the high costs associated with the delivery and maintenance of this form of development precludes the separation of distinct elements. They also maintain

that onsite provision would be unsuitable as it would have an adverse impact on market flat sales.

6.48. In response to this point, Mrs Whittaker has highlighted that it is standard practice for Registered Provider's to keep service charges for their residents to a minimum and that there would consequently be no desire or need to buy into the wider range of services that are proposed for the private residents. Quoting examples she highlights how, in a Borough with such as Camden, mixed use and residential schemes often include facilities for private residents to which access is withheld to affordable tenants so as to lessen service charges. She also noted that schemes are successfully delivered across the Borough incorporating on site affordable and private market units without harmfully affecting sales values. I agree and see no inherent reason why the provisions of such facilities on site should preclude the delivery of onsite affordable if the scheme were appropriately designed. This position was shared by the GLA who, in their Stage One Report, state that "*Whilst it is acknowledged that there are challenges associated with onsite affordable housing provision in this instance, it would be possible to design the scheme to accommodate affordable housing in a part of the structure which does not benefit from the shared facilities*"⁶.

6.49. Further to the above, it should be noted that provision of many of the ancillary facilities of the development / their extent have been made at the developers own volition to improve the desirability and resulting sales value of the new units and are not essential to the operation of the proposed use (i.e. housing for older persons). For instance, as outlined in the applicant's own areas schedule⁷, the appeal scheme would include the following facilities for residential occupiers: café, reception, lounge, libraries, restaurant, bar, cinema, 'flexible hobby spaces', hair salon, beauty treatment room, gym, swimming pool and spa. Not all of these facilitates are essential to the provision of housing for older people. That is not to say that such facilitates are not desirable, nor that they may indeed help to support independent living for older persons. The restaurant

⁶ Para.31 – Core Documents List CD2.72

⁷ Rapley's Viability Assessment pg 91, Appendix 4 – Cost Plan (Appendix F) – see SoCG

and communal lounges for instance would be particularly desirable in this regard. In my view, however, the level of '*hotel inspired amenities*' included are in excess of requirement and may act to dissuade residents from venturing outside of the development and making use of local services. Given that the development would be situated within an inner London Borough, these facilities are already in existence in the local area. Rather than encouraging residents to actively travel to use local facilities, supporting local business and helping to build social cohesion locally, the development would instead reinforce its perception as an '*exclusive enclave*'. Despite the clear objection to such forms of development set out local and regional design policies (as discussed by Mrs Madders), the appearance as an exclusive enclave seems intentional, given that these words are used by the developers themselves to describe the proposed development on their website page⁸ for the scheme. A commonly run argument for schemes of extra care accommodation is that a 'critical mass' of units is required to recoup the costs of facilities and services provided. Given that many of the facilities are not essential and/or already existing in the local area, I give this argument less weight⁹. Arguments that onsite affordable provision is unviable as a result of the cost of delivering these additional, non-essential facilities within the scheme in my mind introduces a strong element of circularity and should be given limited weight. I also see no inherent reason why onsite affordable provision should be detrimental to sales values, if properly designed and isolated from the rest of the development and so afford this argument limited weight also.

6.50. The courts have shown in a recent decision that the assessment of development costs requires careful consideration, particularly when these costs are borne of developers' own volition. Though assessing a separate matter relating to development costs (i.e. land acquisition value), within the Parkhurst Road appeal the inspector made clear that when designing schemes developers are expected to adequately demonstrate proper consideration of, or give adequate effect to, national guidance and the requirements of the development

⁸ <https://www.lifecareresidences.co.uk/residences/gondar-gardens/>

⁹ I discuss this matter further at para.7.71 when reviewing the appropriateness of this form of development for the site.

plan in relation to affordable housing. This position was upheld in the High Court in a subsequent second appeal¹⁰. In this instance, in addition to paying some £11m for the site compared to its benchmark value of £1.1m as discussed by Mr Jones, the scheme has also been designed to include a large array of facilities and services which are not deemed essential, choosing to inflate development and management costs at the expensive of the scheme's ability to maximise its contribution towards the delivery of affordable homes. This situation is exacerbated by sales values being depressed because of the imposition of significant event fees as discussed by Mr Jones.

In light of the above, to date no adequate evidence has been presented to the Council that might convincingly justify the position that the provision of onsite affordable units cannot be practically provided. In the absence of such information, the nil offer of onsite affordable housing remains wholly unacceptable and is maintained as adequate grounds for refusal. This position was shared by the GLA who, in summarising their perceived main issues of the scheme stated that in accordance with Policy H15 of the draft London Plan and the Mayor's Housing SPG "*The extra care accommodation constitutes C3 residential, as such a nil on-site affordable housing provision is wholly unacceptable. The applicant must provide on-site affordable housing and submit an updated viability assessment*". This position is upheld by the Council.

Offsite provision

6.51. As aforementioned, policy H4 notes that in situations where a developer is genuinely able to demonstrate that onsite provision is not feasibly practical, or offsite provision would create a better contribution (in terms quantity and/ or quality), the Council may accept provision of affordable housing offsite in the same area. A payment-in-lieu of on or off site provision would only be accepted on an exceptional basis.

¹⁰ Parkhurst Road Ltd v Secretary of State for Communities And Local Government & Anor (2018) – see appendix 4

6.52. Where an off-site provision is accepted, the Council will expect to achieve a significantly enhanced affordable housing contribution off-site (in terms of quantity and/ or quality), having regard to the net additional market floorspace across all sites. Alternative sites must be in the borough, and would initially be sought in the same ward as the development. Where the development is north of Euston Road as in this case, if no sites are available in the same ward, the Council would subsequently seek sites in an adjacent ward to the north of Euston Road, and finally seek the nearest appropriate site to the north of Euston Road. As part of the consideration of off- site options, the potential to deliver affordable housing on Council-owned land should also be explored.

6.53. As the appellants maintain that the scheme does not give rise to a requirement for affordable contribution, no evidence was submitted to illustrate that a robust site selection exercise has been completed that might justifiably discount off site provision. In the absence of any such evidence, officers maintain that the appellants have also failed to demonstrate that this delivery on a second 'donor site' within surrounding areas has been explored in a meaningful manner.

Payment in lieu of affordable

6.54. The Council has not accepted that options for onsite affordable provision have been fully explored and discounted for genuine reasons of practicality. The Council also maintains that the appellant have also failed to demonstrate that this delivery of off-site units on a second 'donor site' within surrounding areas has been explored in a meaningful manner and, as such, would not accept that a payment in lieu of provision would represent the maximum reasonable contribution.

6.55. Notwithstanding this, in order to narrow down the matters in dispute, the Council has instructed BPS to audit the appellant's financial viability assessment. Andrew Jones, Director of BPS, in his proof has concluded that the appellants, within submitted reporting, have not presented a fair reflection of the economics of the proposal which may have skewed their conclusions in relation to the scheme's ability to sustain a payment in lieu of affordable provision.

6.56. Para.57 of the NPPF states that *“All viability assessments, ...should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available”*. To sit alongside the revised NPPF (2018), National Planning Guidance on viability was also updated in July 2018 and sets out the government’s recommended approach to viability assessment for planning. This called for greater standardisation of inputs to viability assessments and ensure full transparency of data associated with viability assessment.

6.57. The Mayor’s Affordable Housing and Viability SPG (August 2017) sets out the Mayor’s preferred approach to implementing the London Plan. It is also a precursor to the likely content of the London Plan revision, which should happen in mid-2019 and will be undergoing public examination at the time of the appeal. It contains useful information on viability best practice, notably within part three (from page 33). This guidance is considered to be a material consideration for this appeal. Paras 1.18-1.25 of the SPG provides useful guidance on how the Transparency of Information within viability review exercises should be considered essential. Para.3.13 provides guidance on how Gross Development Values should be derived from: all relevant sales values (i.e. including event fees). National Planning Guidance also seeks to add clarity to the definition of gross development value definitions for the purpose of viability assessment. As discussed by Mr Jones, of particular relevance is the inclusion of the following:

“Gross development value is an assessment of the value of development. For residential development, this may be total sales and/or capitalised net rental income from developments. Grant and other external sources of funding should be considered. For commercial development broad assessment of value in line with industry practice may be necessary. For broad area-wide or site typology assessment at the plan making stage, average figures can be used, with adjustment to take into account land use, form, scale, location, rents and yields, disregarding outliers in the data. For housing, historic information about delivery rates can be informative. For viability assessment of a specific site or development, market evidence (rather than average figures) from the actual site or from existing developments can be used. Any market evidence used should be adjusted to take into account variations in use, form, scale, location, rents

and yields, disregarding outliers. Under no circumstances will the price paid for land be a relevant justification for failing to accord with relevant policies in the plan”¹¹.

6.58. It remains the Council’s position that, in line with the findings of Mr Jones, the developers have failed to provide information essential to the transparent and open-book review of the economics of the development. The assertion that the development could not viability sustain any financial contribution towards affordable housing is therefore seen as unfounded and contrary to the procedures outlined in the NPPF, NPPG, London and Local Plans. In the absence of such a review, the nil offer of onsite affordable housing remains wholly unacceptable.

Reason 3 conclusion

6.59. It is maintained by the Council that the scheme generates a requirement for the provisions of affordable housing. With this in mind, in the preceding section as well as the proofs of my peers, the Council has demonstrated that the appeal scheme has failed to maximise the supply of affordable homes in the Borough and provide a mix of affordable housing types to meet the needs of households unable to access market housing. Therefore, the appeal proposal remains contrary to Local Plan policy H4, Policy 1 of the Fortune Green and West Hampstead Neighbourhood Plan 2015, policy 3.12 of the London Plan 2016 and policies H5, H6 and H15 of the draft New London Plan.

Inappropriate design and resulting loss of amenity (Reason for Refusal 5)

6.60. Reason for refusal 5 states the following:

“The proposed development, by virtue of its height, mass, scale and detailed design, would be detrimental to the streetscene, the open space, the outlook of surrounding properties, and the character and appearance of the wider area while failing to preserve or enhance the character and appearance of the local

¹¹ NPPG: Paragraph: 011 Reference ID: 10-011-20180724, 24/07/2018 see [here](#)

area, contrary to policies G1 (Delivery and location of growth), D1 (Design), D2 (Heritage) and A1 (Managing the impact of development) of the London Borough of Camden Local Plan 2017 and Policy 2 of the Fortune Green and West Hampstead Neighbourhood Plan 2015”

6.61. The reason for refusal alleges that as a result of the mass, scale and detailed design of the development, the proposal would be inappropriate in this location and would cause detrimental harm to the amenities of surrounding occupiers and the character and appearance of the surrounding area.

6.62. I have read the proof of Frances Madders, Senior Urban Design Officer at Camden Council, who has discussed the approach taken to the design of the scheme and who has discussed its visual impact upon the character of the local area. It is noted that the position outlined by Frances Madders in her proof in relation to the inappropriate scale of development within the site was shared by the Camden Design Review Panel when reviewing an earlier scheme of housing for older people on the site. I share her above concerns and agree that demonstrable harm would be caused.

6.63. It falls upon me in my proof to discuss the remaining matters in dispute in relation to this reason for refusal. In particular, this section will focus upon the resulting harmful visual impact upon neighbouring amenity. I will also discuss matters relating to determining the most efficient use of land and consideration of the appropriateness of the proposed use class in this location. Matters of the impact to the openness of the open space have been discussed earlier in my proof.

Impacts to neighbouring amenity

6.64. It has been long acknowledged that the cumulative private views across the site constitute a significant public asset. At present, views towards the appeal site from the rear windows of the upper floors of houses along Gondar Gardens and Sarre road provides an attractive component of their rear aspect. Their rear garden spaces also preserve a sense of full privacy other than from adjoining neighbours with whom they would be familiar, providing significant amenity to the occupiers and their families. From the houses in Hillfield Road and

Agamemnon Road, the visibility of the site is lessened by the differences in levels, intervening trees, and the distances from the relevant windows meaning that, at present, these properties maintain a sense of privacy and openness in their rear aspects. During the night the appeal site results in a welcome and perhaps unexpected area of dark which complements the cityscape beyond to these properties from all of these streets.

6.65. The proposed development would feature six 4-6 storey blocks and four 2-3 storey 'link' buildings arranged in an east-west direction, which would project directly into these rear aspects. The height of the proposed buildings is three storeys above the street level and surrounding grade level with a set-back fourth floor, but the central and eastern blocks have two further storeys below grade level so the overall height ranges from 4 to 6 storeys across the site.

6.66. Due to its heights, massing and relative level of elevation, the rear parts of the development are considered to result in a significantly visually overbearing impact upon the retained areas of protected space as well as these cumulative views from a large number of adjoining occupiers. Due to the above reasons as well as the location of outwards facing habitable room windows and balconies, the development would also lead to an undue perception of overlooking for occupiers of neighbouring properties. In order to illustrate this, figures eight to nine and images one and two below illustrate some of the more severe effects.

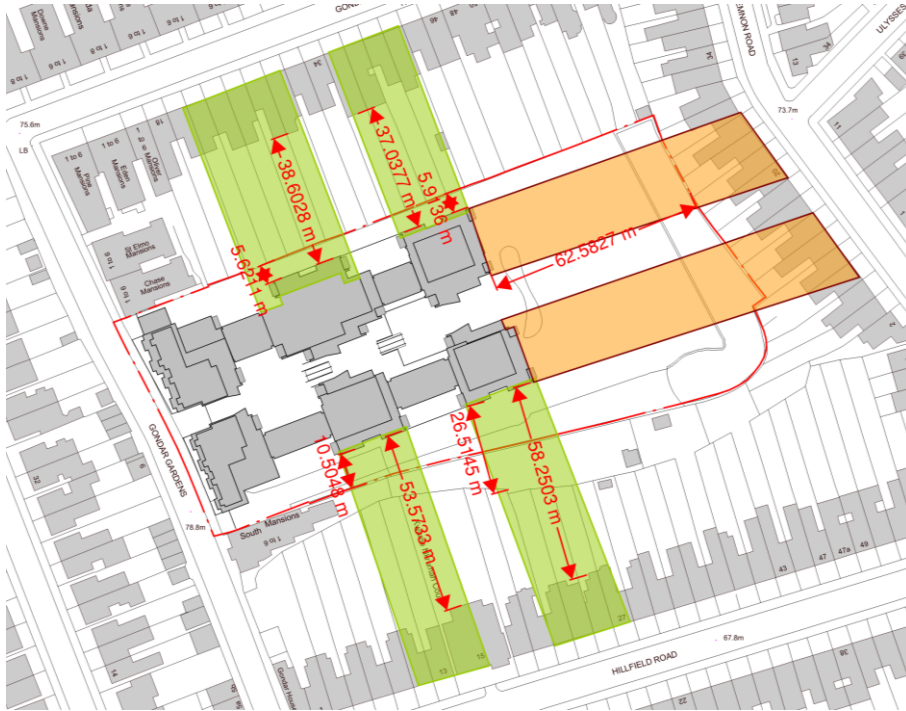


Figure 8 - Site plan with views from/to tallest blocks indicated.

Green indicates most severe perception of overlooking privacy / sense of overbearing and lightspill. Oranges indicates areas where issues of light pollution would persist as a result of the heights proposed

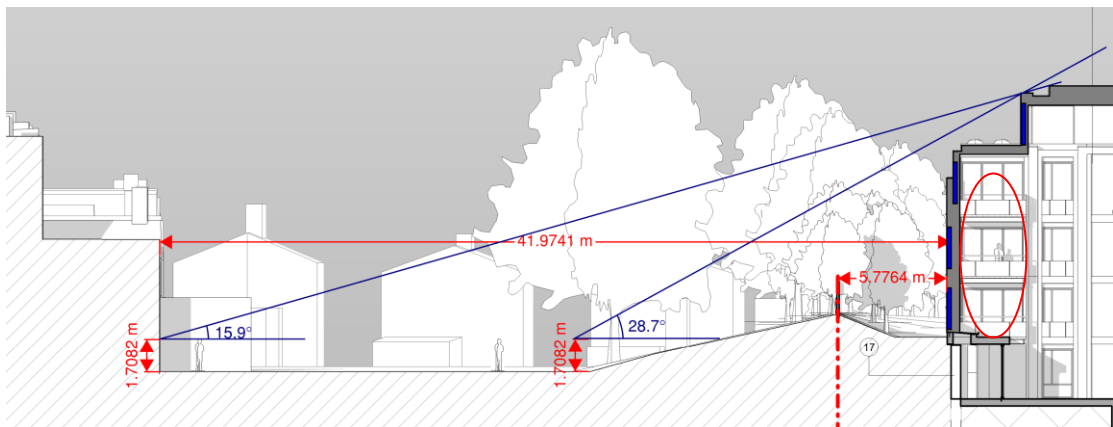


Figure 9 - sectional analysis to show resulting impacts from Block E to no.36 Gondar Gardens. Note balconies with unobstructed facing aspect and proximity of facing windows in blue.



Image 1 - relationship between Northern site boundary and dwellings along Gondar Gardens (taken September 2010)



Image 2 - relationship between Northern site boundary and dwellings along Gondar Gardens (taken July 2018)

6.67. It is considered that the sheer bulk and height of the scheme would have a detrimental impact on the outlook enjoyed by residents of properties which surround the site on Gondar Gardens and Hillfield Road. The inclusion external balconies with unobstructed views towards the rear gardens of these properties as well as facing habitable room windows would also result in both a direct as well as perceived sense of overlooking to the residents of properties along Gondar Gardens and Hillfield road. With regard to the balconies, set backs from the shared boundary would be as little as 6.5m and less than 6m in the case of

the outwards facing habitable room windows. Consequently, the appeal scheme is not considered to remain compliant with Local Plan policies D1 (Design) and A1 (Managing the impact of development) with regard to designing out amenity impacts.

Development potential of appeal site and appropriateness of intended C2 use

- 6.68. Local plan policy G1 (Delivery and Location of Growth) sets out that the Council will deliver growth by securing high quality development and promoting the most efficient use of land and buildings in Camden by *“supporting development that makes best use of its site, taking into account quality of design, its surroundings, sustainability, amenity, heritage, transport accessibility and any other considerations relevant to the site”*. Policy G1 sets out an expectation that most growth within the Borough will be focused within Growth Areas, other highly accessible locations, town centres as well as via the Council’s Community Investment Programme (CIP). It states that development should be consistent with the area priorities and principles set out within the plan.
- 6.69. The appeal site is not located within a growth area, town centre or CAZ and it does not benefit from high levels of public transport accessibility. When forming consideration of the most efficient use of this land, account much be made of the above criteria of policy G1 as well as the other considerations relevant to the site; in this case its value as an open space, local green space and locally listed space as well as its value for ecology.
- 6.70. The development potential for the site has been explicitly stated within the adopted Neighbourhood Plan. While not a formal designation or allocation, the Neighbourhood Plan acknowledges the potential for the site to support some level of development. This would help to support the development of the West Hampstead Growth Area as an outlying ‘Other Site’ (ref.C2). The most northerly point of the Growth Area’s boundary lies 0.75km to the South-East of the site. The relevant extract from the Neighbourhood Plan is provided below. In order to emphasis the stress placed upon the need for future development to avoid undue harm to this sensitive site, areas are underlined to show stress. Outdated

references to the number of applications and appeals are struck through for clarity.

“C2. Gondar Gardens Reservoir: in recent years, ~~three~~ [five] developments have been proposed for this site. All ~~three~~ [Four] have been rejected by Camden Council, although ~~one~~ [two of these] has been granted on appeal. ~~At the time of writing, an appeal on the third scheme is pending.~~ In light of its designation as a Site of Importance to Nature Conservation in existing planning documents, any development should retain as much open space as possible and offer limited, managed public access consistent with maintaining suitable conditions for biodiversity and wildlife. Due to the significant amount of open space the site provides, views across the site should be protected from significant damage or loss; of particular significance is the view to the east to Hampstead. Any development of the frontage on Gondar Gardens shall match the character of existing development and shall be no higher or deeper than adjacent buildings (see Policy 2)” (Neighbourhood Plan pg.35)

6.71. In line with policy G1 the above is considered to represent the area priorities for the appeal site and, as such, it would be expected that development proposals would remain consistent with this approach in order to ensure its most efficient use in line with the priorities of the Development Plan.

6.72. As has been discussed in previous sections and within the proofs of my peers, the appeal scheme is considered to result in significant harm to the site's amenity and biodiversity value as well as the character and appearance of the local area. A golden thread running throughout the Council's case is that the appeal scheme is of a scale and extent which is far beyond what is considered appropriate for a site with so many designations and such value to its local community. The appeal proposal then, is not considered to have addressed the above aims of Local Plan policy G1 or the aspirations for the site set out in the Neighbourhood Plan.

6.73. Notwithstanding this Council has maintained that no objection is raised to the principle of the redevelopment of areas of the site to deliver housing for older people. The extent to which development of this kind would remain appropriate would, however, be a matter of degree in order to ensure that it maintains or

enhances the site's value for local amenity and biodiversity ground. As discussed above, the Council reasons that the appeal scheme has failed to address these priorities for the site, is of excessive scale and would lead to resulting visual impact rendering it harmful in line with the aims of the development plan. This is in contrast to the two preceding approved schemes, each of which would have ensured that the site's value would be preserved and enhanced. I would suggest that the extreme disparity between the proceeding and appeal schemes in terms of their resulting visual impact may be a direct result of the form of development proposed which may render it inappropriate for the site.

6.74. In recent appeal decisions, developers specialising 'Extra Care' forms of housing have reasoned that the high costs associated with delivering the ancillary facilities needed for a genuine C2 use necessitates higher densities and scale of development. For instance, in determining an appeal made by PegasusLife relating to East Devon District Council's decision to refuse permission for Extra Care accommodation earlier this year, the inspector accepted the appellants case that such forms of development typically required a 'critical number of units' to support the level of care, services and facilities and remain viable¹². They accepted that the optimum size for extra care schemes was 50 units, but suggested that schemes should further to capitalise on economies of scale. This position is shared by the appellants who will suggest that the extent of development proposed is required in order for the scheme to remain viable.

6.75. If it genuinely were the case that the delivery of a C2 form of housing across the site would not be viable unless it included the density, scale and extent of development hereby proposed, then I would conclude that such a form of development must be considered inappropriate for the site. If this were the case, then schemes for the delivery of housing for older people under the C3 use class, where the range of facilities and services would be lower and the resulting need to maximise the development envelope to the detriment of local amenity

¹² Para.39: PegasusLife and East Devon District Council 2018 See Appendix 5

and ecology would not be necessary, would be most suitable. I would suggest instead that, if a 'critical number' of units were required in this instance then the appellants have not paid due regard to the requirements of the development plan in relation to the appeal site when choosing to purchase for this intended use and that such a use may remain inappropriate due to its resulting negative externalities.

Reason 5 conclusion

6.76. Frances Madders, within her proof, has discussed that the resulting visual impacts of the scheme would lead to detrimental harm to the character and appearance of the local area and would fail to prompt good design. In my proof, I have sought to demonstrate that the scheme has failed to address the priorities for the site set out within the Development Plan, is of excessive scale and would result in an undue loss of neighbouring amenity by virtue of its visually overbearing impact and loss of privacy or sense of privacy. The appeal scheme is consequently rendered harmful and inappropriate in line with the aims of the development plan.

Failure to deliver an inclusive design (Reason for Refusal 6)

6.77. Reason for refusal 6 states the following:

"The proposed development, by virtue of its failure to deliver an inclusive design for all, both internally and externally throughout the scheme would be contrary to policies D1 (Design), C1 (Health and wellbeing) and, C6 (Access for all) of the London Borough of Camden Local Plan 2017, and Policies 3.8 and 7.2 of the London Plan 2016"

6.78. The appeal proposal would fail to meet basic requirements in terms of inclusive design principles, both internally and externally throughout the scheme. Local Plan policy C6 (Access for all) states that the Council will expect: (a) all buildings and places to meet the highest practicable standards of accessible and inclusive design so they can be used safely, easily and with dignity by all; and that (c) spaces, routes and facilities between buildings to be designed to be fully accessible. This is supported by policy C1 (Health and Wellbeing) that requires:

(a) development to positively contribute to creating high quality, active, safe and accessible places.

6.79. Policy D1 (Design) requires a high quality of design in all developments. As a part of this, it requires that development: (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; and (g) is inclusive and accessible for all.

6.80. Policies 3.8 (Housing Choice) of the London Plan 2016 sets the requirements for 90% of units in scheme of residential development to be designed to meet optional Building Regulations requirements Part M (2) and 10% Part M (3). LP Policy 7.2 (An inclusive Environment) requires developers to demonstrate how the principles of inclusive design, including the specific needs of older and disabled people, have been integrated into the proposed development and how inclusion will be maintained and managed. Furthermore, it should be noted that emerging LP policy D3 (Inclusive Design) requires development to achieve the highest standards of accessible and inclusive design, ensuring they: (1) can be entered and used safely, easily and with dignity by all; and (2) are convenient and welcoming with no disabling barriers, providing independent access without additional undue effort, separation or special treatment.

6.81. Philippa Jackson, in her proof, has outlined various elements of the scheme which would fail to meet the optional Part M Building Regulations requirements. As a result of the lack of internal space, conditions to ensure compliance with the necessary standards (i.e. 90% Part M(2) & 10% PartM(3)) could not be reasonably applies as to adhere to such a condition would necessitate significant material alterations to internal layouts and possibly a reduction in unit numbers. I agree with her findings and her conclusion that to fail to provide this basic expectation in accessible design is wholly unacceptable for new build residential development. I also agree that this is of even greater harm in light of the intended use of the units for older persons for whom the ability to adapt their homes in later years to respond to their needs would be critical. Given the level of short fall to the standards outlined by Philippa, it would not be possible to address this via a condition or minor revision and is upheld as a reason for refusal in its own right.

6.82. Frances Madder, in her proof, has discussed that the inappropriate layout and design of the proposal has lead to the requirement for long and convoluted internal routes through the scheme that would not accord with best practises in terms of design. In the remaining section of this proof, I will highlight that both through these lengthy and highly convoluted step-free routes as well as the access arrangements to communal terraces, the developers have failed to ensure that their scheme adhered to principals of inclusive design and would in fact, discriminate against residents with mobility impairment.

6.83. As outlined in the officer's report, significant concerns are raised with the proposed layout of the site and, in particular, the step-free access arrangements both to residential units as well as to communal terraces. For example, whereas an ambulant resident occupying a flat in blocks E or F could enter the site and walk directly down the central steps to access their block, a resident with mobility impairment occupying the same unit would be forced to take a very long and convoluted internal route to reach their front door or nearest amenity terrace. To evidence this, officers have conducted an audit of the necessary step-free routes for residents and visitors to the worst affected blocks (E & F), full details of which are included within Mrs Jackson's proof, though figure ten below provides an extract of these comparative routes. This analysis has shown that to travel from the front reception of the development to their own front door, occupiers of these blocks would need to walk between 82 and 130 metres, navigate two sets of lifts, up to 23 internal corners and a between 5 and 10 sets of doors.

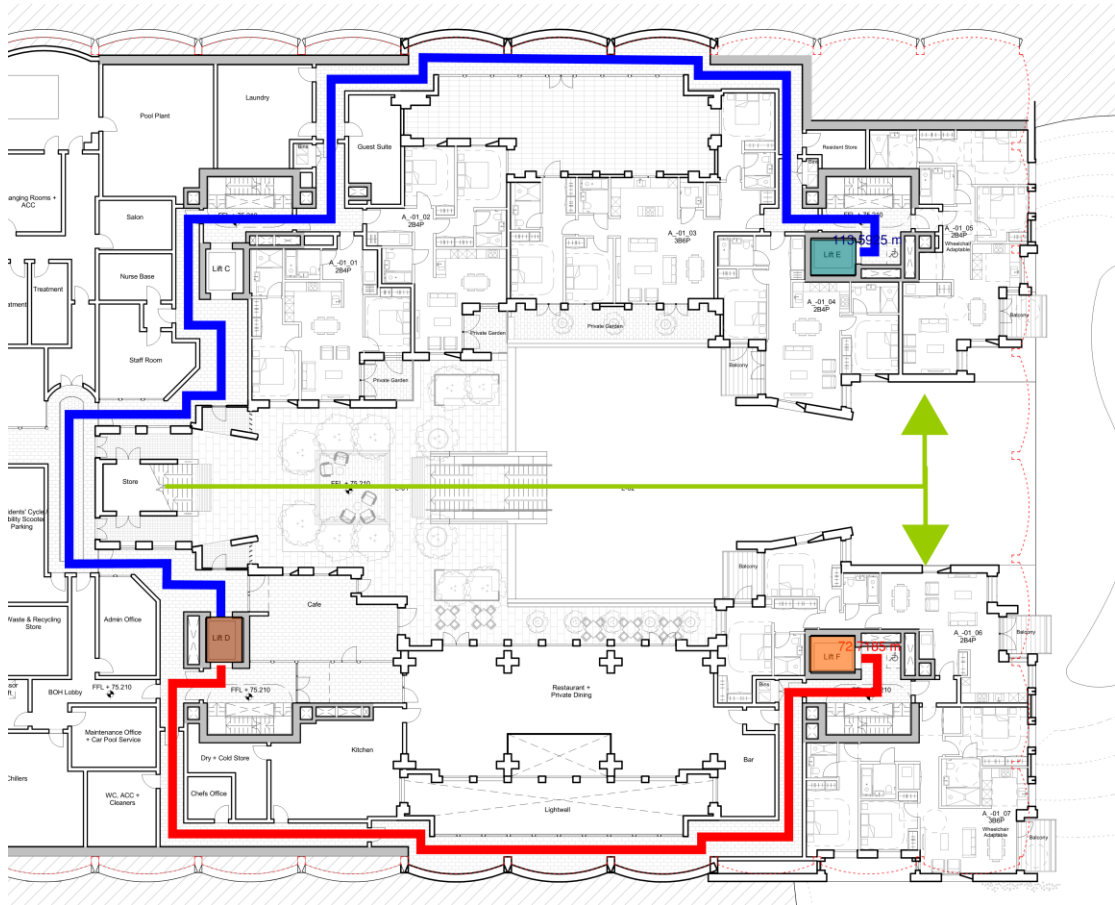


Figure 10: Marked up extract of -01 plan comparing step free (blue and red) and non-step free (green) routes to blocks E/F

6.84. Notwithstanding the poor sense of space created to these routes (as discussed by Frances Madders), such a lengthy and convoluted route would likely be difficult for more frail or disabled occupants to navigate and would subject them to undue additional effort, separation and special treatment. Conversely, ambulant residents could by-pass these routes and access these blocks in a much more direct route with improved spatial qualities (see green arrow in figure ten). As outlined by Philippa Jackson, one standard test during the application process for a 'Blue Badge' (a national scheme that offers special parking provision for some people with disabilities) is whether or not a person is able to walk unaided for a distance of 50m. If not, according to this national test, then that person may be eligible for a blue badge as discussed by Mrs Jackson. Given the lengths outlined within the routes audit, numerous units across the scheme, particularly those within blocks E and F may not be suitable for disabled residents who would be eligible for a blue badge. Given that over half of the

proposed wheelchair adaptable units (6/10) are proposed within blocks E and F, I would suggest that the scheme's design and layout does not fully address the needs of the intended occupiers (elderly residents).

6.85. The Council, as Local Planning Authority, is subject to a requirement to ensure that its determinations accord with the public sector equality duty (the equality duty) under the provisions of the Equality Act 2010. Specifically, section 149 of the Equality Act 2010 places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. A recent court judgement¹³ has made clear that there remains a clear onus upon the LPA to ensure that they have due regard to the equalities duties and the proportionate impact upon protected groups when forming planning decisions. In the case of *Buckley v Bath and North East Somerset Council* [2018], the courts of appeal held that the LPA had not fully considered the disproportionate impact upon protected groups, in particular, the impact on elderly or disabled residents.

6.86. In light of the above as well as the conclusions of my fellow witnesses, it seems evident to me that the appeal scheme has failed to address these tests. Requiring frail and elderly, or disabled residents (with mobility impairments) to take confusing and convoluted internal routes to apartments and communal terraces, whereas residents without such impairments are afforded more direct routes with higher spatial qualities, represents direct discrimination in accordance with this Act. The scheme would therefore disproportionately affect members of protected groups. It is also considered that in failing to demonstrate that the residential units could be built in compliance with the Approved Documents optional accessibility requirements, the development has failed to take proactive steps to meet the needs of people within affected protected groups (elderly and disabled) where these are different from the needs of other people. The development would consequently fail to address two out of the three of the overarching aims of the general equality duty.

¹³ *Buckley v Bath and North East Somerset Council* [2018] EWHC 1551 (Admin) –appendix 4

6.87. Either way, officers maintain that the development has not been designed in accordance with minimum accessibility or inclusive design standards and remains contrary to the aforementioned planning policies. Given that the development is intended for extra-care accommodation for older persons, this is of substantial concern, is not considered justifiable for a new build residential scheme in the absence of adequate justification and remains a strong objection of the Council.

Inadequate standard of accommodation by virtue of lack of privacy (Reason for Refusal 7)

6.88. Reason for refusal 7 states the following:

“The proposed development, due to its height, massing, positioning of windows and balconies/terraces and proximity and relationship between the proposed blocks, would result in an unacceptable amount of overlooking to and from the proposed units, contrary to policies A1 (Managing the Impact of development) and D1 (Design) of the London Borough of Camden Local Plan 2017”

6.89. The appeal proposal would result in an unacceptably detrimental impact on the living conditions of the prospective occupiers caused by mutual overlooking between a number of the proposed units. This would result in an inadequate degree of privacy for prospective occupiers.

6.90. Camden Planning Guidance – Amenity (2018) states as interior and exterior spaces that are overlooked lack privacy, which can affect the quality of life of occupants, the Council will expects development to be designed to protect the privacy of the occupants of both new and existing dwellings to a reasonable degree (para.2.2). In paragraph 2.4, the guidance states that to ensure privacy there should be a minimum distance of 18m between the windows of habitable rooms of different units that face each other. The minimum requirement is the distance between the closest points on each building and includes balconies. This approach is supported by the London Plan Housing SPG (2016).

6.91. The Council contends that given the appeal proposal is a new build scheme, it should be possible to design windows and balconies so that they maintain the

minimum separation distances and where this is not possible ensure sufficient design features are incorporated to prevent direct overlooking. The most applicable areas are outlined in the paragraphs and images below.

Overlooking from communal areas

6.92. In numerous locations, the communal terraces running through the centre of the site would immediately abut primary habitable room windows to flats, allowing users of the terraces unobstructed views into the sensitive areas. These would include: the bedrooms and living areas of units to units A_-02_03 and A_-02_04 at level -02; the living room and master bedroom of unit A_-01_01 and second bedroom of unit A_-01_06 at level -01; as well as the main living rooms in units A_00_12 and A_00_17 at ground floor level which would both open directly onto communal spaces. All but one habitable room to Units A_-01_02 and A_-01_03 at level -01 would also directly abut the internal communal space provided for residents. Furthermore, views into the main living room of unit A_00_02 would be afforded from the main reception to the nursing home (level 00). It is considered that these relationships would result in a poor standard of living by virtue of the lack of privacy, or resulting requirement to keep blinds/curtains drawn and the result lack of light and outlook. Whilst explored by the Council, the application of conditions to ensure that the glazing to these areas were obscured or screened in some other form would not address this harm as it would in turn result in a lack of outlook and/or natural light to primary spaces.

Overlooking from and to habitable rooms and external balconies

6.93. Further to the above, the proximity and siting of a number of external windows and balconies would lead to overlooking and poor levels of privacy to the prospective occupiers of the scheme. These primary habitable rooms and amenity spaces would be overlooked and would provide opportunities for overlooking into a number of the proposed units. This issue is prevalent throughout the scheme and affects numerous units on all floors other than level -02. This is in part due to the narrow separation distance between the sets of blocks throughout the scheme. I would suggest that this is also indicative of excessive density for the site. These relationships are outlined below.

6.94. Between levels +01 and +03 the east facing balconies and windows of units in blocks A would be within 18m of the West facing balconies or habitable rooms in block C. This would result in direct overlooking to habitable room windows of units (A__): 03_04; 02_04; 01_06; 01_05 and 01_03. This would also affect the balconies of units (A__): 03_01; 02_02; 02_04; 01_07; 01_06; 01_05; 01_03 and 01_02. One select relationship at level 02 from the above list is shown below.

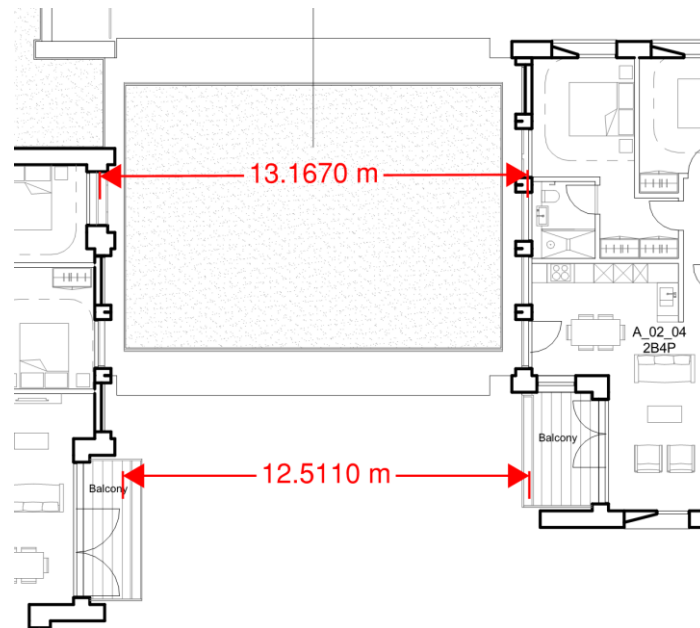


Figure 11 – One example of overlooking between blocks A and C

6.95. Similar issues persist between opposing windows and balconies between blocks C and E at all floors between 00 and 03. Private balconies to units (A__): 00_04, 00_05 and 00_08 are overlooked by west facing balconies within 18m from the nursing home. The only bedroom to unit A_01_16 would be overlooked by the balcony of unit A_01_09. The only bedroom to unit A_02_12 would be overlooked by the balcony of unit A_02_07. Unobstructed views of less than 18m would be afforded between bedrooms of (A__):02_07 and 02_10 / 02_12. Both bedrooms of unit A-03_05 would be overlooked from 03_03. Mutual overlooking between the balconies of units 01_09 and 01_16; 01_08 and 01_13; 02_06 and 02_10 as well as 03_03 and 03_05 are all within 18m of each other. One select relationship at level 01 is shown below.

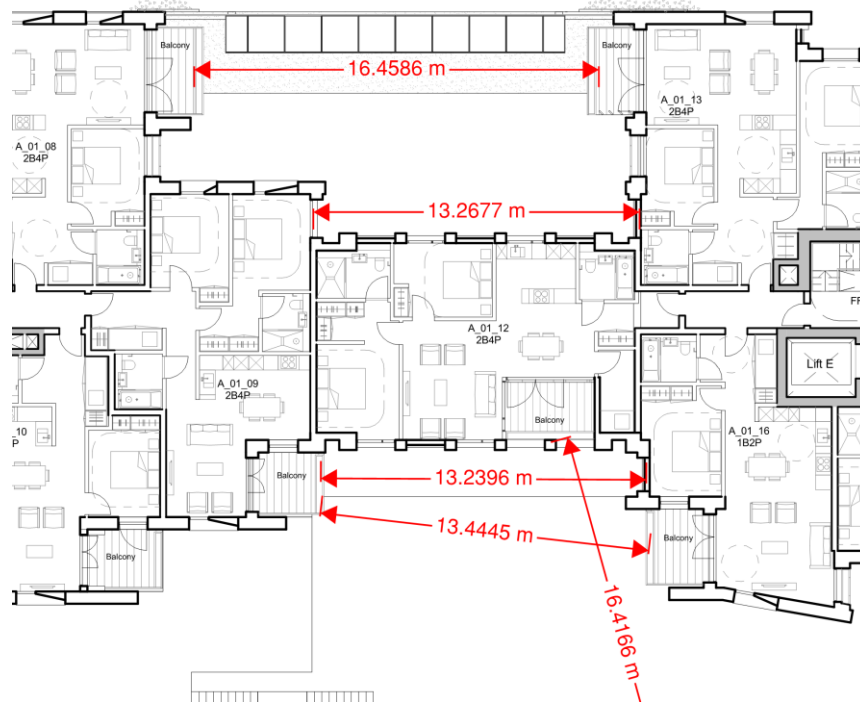


Figure 12 – One example of overlooking between blocks C and E

6.96. The southern row of blocks tends to have fewer harmful relationships due to wider link blocks. Harmful relationships are still present though between opposing balconies in blocks D and F at floors 00-02, affecting the amenity spaces of six units (00_11, 00_13, 01_19, 01_21, 02_14 and 02_16).

6.97. The harmful relationships between units set out above relate to flats on the same floors only. It should therefore be noted that these impacts would be compounded by views from multiple units into bedroom windows or terraces. For instance, the only bedroom window (west facing) to unit 01_16 at level 01 in block E would be overlooked not only from the balcony from the opposing flat, but also from the balcony for the opposing unit at the next floor. In total, the number of proximal relationships between windows and balconies with less than the 18m separation distances sought are seen throughout the scheme.

Conclusion – Reason for Refusal 7

6.98. As outlines above, a large number of the proposed residential units would result in sub-standard living accommodation for prospective occupiers as a result of a lack of privacy. The worst examples can be found where units would

directly abut communal terraces/areas, however, there also persisted many examples where habitable rooms and/or amenity spaces would be overlooked. In some cases this would include overlooking from multiple units. Officers have explored the potential for privacy screens or obscure glazing to address these concerns, however, given that such solutions would then in turn lead to unacceptable loss of outlook or light this was discounted.

- 6.99. The appeal scheme has not been designed in accordance with local or regional best practice guidance and, given that it is a new build development, it should be possible to design out the unacceptable elements via a scheme of lesser scale. On this basis, the appeal proposal is contrary to Local Plan policies A1 and D1, which seek to ensure that all residential developments are designed to create high quality homes that remain private and incorporate outdoor amenity space.

Artificial light spill (Reason 8):

- 6.100. Reason for refusal 8 states the following:

“The proposed development, due to its scale, design, and siting, would result in an unacceptable impact from artificial lighting onto the existing site protected because of its local amenity, habitat and biodiversity importance, contrary to policies A1 (Managing the Impact of development), A3 (Biodiversity) and D1 (Design) of the London Borough of Camden Local Plan 2017”

- 6.101. The reason for refusal alleges that the levels of artificial lighting emissions from the appeal scheme would result in harm to the local amenity, habitat and biodiversity value of the site. During the course of the appeal, further submission in relation to the scheme of external lighting indicated that these elements had been designed in accordance with best practices relating to bats. This is no longer disputed and is included within the SoCG. Notwithstanding this, the Council maintains that the development would alter the characteristics of the site to the detriment of its value, primarily as a result of the sheer amount of glazing that would directly oppose retained areas of protected land as well as neighbouring properties.

- 6.102. I have read the proof of Paul Losse, Salix Ecology, who has discussed the implications of artificial light spill upon the habitat potential of the retained areas

of SINC and impacts upon the behaviours of species likely to use the current site. I agree with his findings and consider that, despite the lighting strategies outlined in appeal documents, the level of artificial lighting would still result in net harm to the biodiversity value of the site. In the following section I instead intend explore to resulting impact upon local amenity value as well as quantify the areas from which external light spill is expected.

6.103. As aforementioned the value of the site, in part, is due to the fact that it forms a pocket of darkness which provides welcome respite from the surrounding urban form. Not only does this allow for and encourage a greater range of fauna to utilise the site, it also forms an important local amenity for residents whose properties abut the site.

6.104. Figure 9 outlined in the previous section indicates that, as a result of their height and relative elevation, the outwards facing upper floor windows to the scheme would be in close proximity to the gardens of properties along Gondar Gardens and Hill field Road and would immediately about the retained areas of SINC/Open Space. At upper floor levels the illuminated windows would also be visible from Agamemnon Road, particularly during winter months when canopies of deciduous trees and shrubs along the shared boundary would be shed. The level of glazing to the Eastern elevation, directly opposing the retained areas of SINC is outlined in figure thirteen below.



Figure 13 – Extent of glazing to Eastern elevation

6.105. Within this aspect, the development would include over 240sqm of glazing that would be illuminated in the hours of dark immediately adjacent to areas of retained protected space. Given Paul Loss's conclusions in relation to changing

behaviours as a result of artificial light, I would suggest that this impact upon the habitat potential may be great. On the basis of the sections provided it would also be the case that the top three storeys of illuminated glazing would become prominent in the rear views of properties along Agamemnon Road, undermining the existing perception of openness and of darkness. The above represents a worse case scenario, though given that there would be no privacy issues in this aspect and the development would be designed to meet BREEAM requirements, future occupiers would not need make use of blind or curtains for heat preservation or privacy and so the above is situation remains credible.

6.106. Within the views from properties along Gondar Gardens and Hillfield road, the resulting impact would likewise significantly alter the sense of the site as an area of retained darkness and openness. Within these views, the resulting impacts upon the adjoining areas of retained protects spaces and adjacent properties would be compounded by the reduced setback of between 5.6m and 10.5m between the outwards facing elevation and the shared boundary with adjoining neighbours. The level of glazing visible above the existing level of the reservoir is outlined within figure fourteen below.



Figure 14 - Extent of glazing above grade level to Northern elevation

6.107. Within this aspect (i.e Southern views from properties along Gondar Gardens) the top three storeys of the development would be particularly prominent during the hours of dark as a result of the levels of glazing outlined above. Not only would the mass and bulk of the development lead to an overbearing visual impact as outlined in previous sections, the resulting impact from the artificial light from these windows would severe any remaining perception of the sense of darkness within the site and would add to the sense of overlooking experienced

by neighbouring occupiers. The above would also be true to the rear aspects (Northern views) from properties along Hillfield road.

Reason 8 conclusion

6.108. At present the existing site acts as a pocket of dark amongst an otherwise urban context. This characteristic is one which adds to the value of the site, not only in terms of its ecological value, but also in the amenity that it provided to a large number of surrounding occupiers. Further to the comments raised by Paul Loss in his proof in relation to impact to ecological value, the above section illustrates that by the vast areas of glazing proposed to external elevations, the proposed scheme would eradicate this sense of darkness within the site, to the detriment of local amenity.

7. COMMENTS ON APPELLANT'S GROUNDS OF APPEAL

7.1 Notwithstanding the comments already made in the paragraphs above in relation to the reasons for refusal, a response has been made below to the Appellant's grounds of appeal. The grounds of appeal are made within the 'Statement of Case' dated March 2018. The document addresses each reason for refusal, to which the Council has made a response within the following paragraphs to these grounds of appeal.

General comments

7.2 Within the appellant's statement of case it is confirmed "*Tenants must be 65 years old or older*" to qualify for an apartment (para.1.4). This contradicts para.6.9.13 of the previously submitted Planning Policy Statement which says "*LCR has confirmed that there will be a minimum qualifying age restriction of 70 years which must apply to at least one of the occupiers in each unit*". Given that the statement of case is a more recent document the stated entry age of 65 is assumed, which must apply to at least one of the occupiers in each unit.

7.3 Paragraph 1.7 of the Appellant's 'Statement of Case' claims that the proposal would reflect the scale and grain of the surrounding townscape through the use of a mansion block typology. As discussed by Frances Madder's in her proof, the depth of development into the site and large grain of the blocks proposed would in fact appear totally out of character for the local area, to the point of detriment.

7.4 Map extracts given at paras.2.13 and 2.14 refer to an outdated versions of the Camden Policies Map. This was updated in April 2018 to accord with the Camden Local Plan. This adoption process is discussed earlier in the proof.

Development potential of site

7.5 Paragraph 5.1.2 of the Appellant's Statement of Case suggests that the first reason for refusal would illustrate that the Council maintains an "*in principle*" objection to the redevelopment of the subject site and reflects a longstanding objection on the part of the Council". This is simply not true. Following the determination of the first appeal for the site, the potential for the site to deliver housing has been accepted by the Council. This has been outlined in various pre-

application advice letters issues between 2014-2017 as well as being explicitly stated within the development plan (Policy C2 of the NP). The development potential of the site should however be balanced against the other planning priorities for the site, in particular the protection of designated areas. As outlined earlier in the proof, the Council therefore accepts that the site is an opportunity site for development, though this would not mean that support would be provided carte blanche for schemes that result in harmful externalities that might outweigh its benefits.

Application of LGS policies and greenbelt

7.6 Within their submitted Statement of Case, the appellants reason that Policies 16 and 17 of the NP are not directly engaged by the scheme as they claim that no built development is proposed on the part of the site that is designated as Local Green Space. As a result, they claim that there is no requirement for the scheme to address the Green Belt tests referred to in section 13 of the NPPF

7.7 I would dispute this position. Firstly, policy 17 (Green/Open Space) seeks to protect and improve existing green and open spaces within the plan area. It does not only relate to Local Green Space nor any other specific designation. Either way, as outlined in paras.6.15 to 6.17, the development would lead the effective loss of designated Private Open Space parcel ref.188 and significant reduction to designated green space (SINC). As such, I consider the application of this policy in the assessment to be reasonable.

7.8 Secondly, in relation to policy 16 (Local Green Space), the appellants argue that as the building footprint sits outside the designated area, this policy should not be triggered. Conversely, I consider the scheme to involve operational development across a significant proportion of the Local Green Space formed of the excavation, stabilisation and regrading works proposed. These works were specifically included within the description of the proposed development and fall within the definition of development outlined in Section 55 of the Town and Country Planning Act 1990 (as amended). As outlined earlier at paragraphs 6.22-6.27, I consider these works in themselves harmful to the openness to the Local Green Space and to represent inappropriate development in their own right in accordance with paragraph 146 of the NPPF. The extent to this development

would affect the spatial qualities is illustrated in figure fifteen below (also see figure 5):

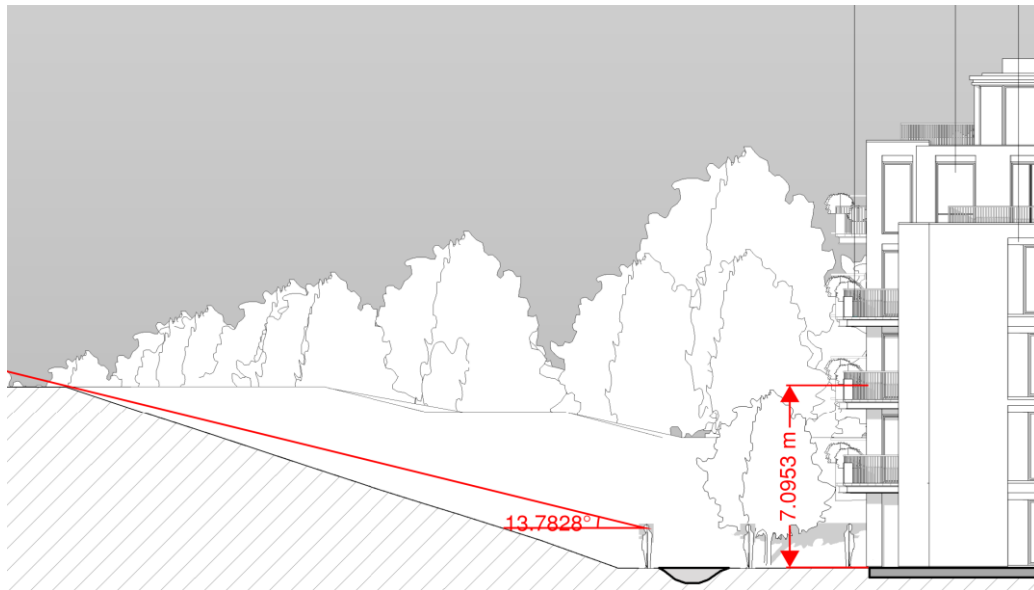


Figure 15 - Impacts to openness from engineering works

7.9 Thirdly, as outlined earlier in my proof, I consider the resulting visual impact formed by the siting, scale, massing and heights of the rear elements of the development directly abutting the boundary of the designated space to be harmful to the openness and setting of the adjacent areas of LGS. When comparing the existing site and its visual qualities of openness against the resulting situation proposed, I consider the harm to openness to be severe.

7.10 In this regard, recent High Court decisions have upheld the position that the concept of openness of the Green Belt is open textured and has a visual dimension. In the *Turner v SoS* judgement¹⁴, Sales L.G. notes that the concept of openness cannot be narrowly limited to a volumetric approach that considers built form only, adding that the a visual dimension is also integral to the concept. This is reiterated at para.15 of this judgement when consideration of visual setting is provided as follows: “*Greenness is a visual quality: part of the idea of the Green*

¹⁴ John Turner v SoS for Communities and Local Government and East DC (2016) - See annex 4.

Belt is that the eye and the spirit should be relieved from the prospect of unrelenting urban sprawl. Openness of aspect is a characteristic quality of the countryside, and "safeguarding the countryside from encroachment" includes preservation of that quality of openness. The preservation of "the setting ... of historic towns" obviously refers in a material way to their visual setting, for instance when seen from a distance across open fields". Consideration of the importance of considering engineering operations and its associated development was also upheld in the recent Euro Garages Ltd. judgment¹⁵.

7.11 Ruling in support of the above decision the 2017 Smith v SoS¹⁶ judgment set out further that: *"I cannot accept that in the light of Sales LJ cogent analysis the concept of openness is confined to the visual impact arising from buildings. Indeed, that is clear from Turner (supra) itself, when the impact on existing openness of the vehicles and so on around the site were taken into account. Even if the visual impacts the inspector identified in this case could not be said to be part of the development, that did not mean that they were to be ignored. The NPPF does not require an inspector to disaggregate the impacts of non-development features from the impacts of proposed development more generally"* (para.30). This judgment would support the case that resulting implications for engineering works upon the openness of the Local Green Space requires careful consideration and works not involving new buildings may still be inappropriate.

7.12 In the more recent Samuel Smith court of appeal judgement¹⁷ further emphasises that it is reasonable to take into consideration a comparable analysis of the spatial qualities of an area of Green Belt (or Local Green Space) when assessing impact to its openness. This is formed not only of physical structures or changes within the site, but can also include its setting and spatial qualities. This is confirmed in no uncertain terms at para.38 where the judge reasons that: *"To exclude visual impact, as a matter of principle, from a consideration of the*

¹⁵ Euro Garages Limited v The Secretary of State for Communities and Local Government, Cheshire West and Chester Council (2018) – see appendix 4

¹⁶ Smith v Secretary of State for Communities and Local Government EWHC 2562 (Admin) – see appendix 4

¹⁷ Samuel Smith Old Brewery (Tadcaster) v North Yorkshire CC [2018] EWCA Civ 489; [2018] 3 WLUK 394 – see appendix 4

likely effects of development on the openness of the Green Belt would be artificial and unrealistic". In this instance, the existing Local Green Space is an elevated, continuous open plain of wild meadow. Its openness is formed not only by the lack of protruding structures or built form, but also as a result of the views afforded across it and the visual respite it provides from the surrounding pattern of development. For these reasons, I see that the assessment set out in section 6 remains reasonable with regard to the application of the aforementioned policies.

Amenity Value of the site

7.13 A further point of dispute of the appellants in relation to the Council's determination is the consideration of the amenity value of the site for local residents, to which they claim the site offers only limited amenity value.

7.14 As previously outlined, the cumulative views into and across the site in both an East-West as well as North-South directions have previously been acknowledged to constitute a significant public asset. This has been the case for a number of years and should not be understated. When reviewing the Private Open Space designation of the appeal site in 2005 within his examination report for the Camden Unitary Development Plan, the inspector wrote: *"There has been, and remains, no public access, [to the site] and there are only limited views into it from public viewpoints along a length of about 70 m on the western boundary abutting Gondar Gardens. Nevertheless there are extensive views into the site from the housing all around, and whilst individually these are private views, collectively they amount to a considerable public asset. This site is undoubtedly a green space, which, as I determine below, has a function as an area for nature conservation and biodiversity, no doubt acts as a 'stepping stone' from one habitat to another, and is a 'green lung' providing local amenity"¹⁸.*

7.15 Multiple inspectors have since upheld this position whilst subsequently reviewing the site's designations. As outlined in para.6.8, whilst examining the Neighbourhood Plan in 2015 the inspector reasoned that the site met the necessary national requirements to constitute Local Green Space. They noted,

¹⁸ Pg.223, Para. 13.12.3 - Replacement UDP Inspector's Report – see core documents list

therefore, that the site was “*demonstrably special to a local community and holds a particular local significance*” (NPPF para.100). Furthermore, when reviewing the designations of the site under the Local Plan examination process, the inspector noted that whilst the boundary needed updating in light of Neighbourhood Plan, the site (all be it a reduced area) still met the necessary tests for designation as Private Open Space. Given that this determination was made in May 2017, it represents a recent example of where the amenity value of the site was once again acknowledged by the Inspectorate. This position is maintained. Further to the above, the site is also included within the Local List as a non-designated heritage asset. This was included in the local not only for its historic and architectural significance (as discussed by Mrs Madders), but also due to its ‘Social Significance’. This listing was made in direct acknowledgement of how its spatial qualities as a natural landscape meant that it formed a “*cherished as a “green lung” by the people of the area*” (see para.2.14). Policy D2 requires the effect of a proposal on the significance of a non-designated heritage asset to be weighed against arising the public benefits of the proposal, balancing the scale of any harm or loss and the significance of the heritage asset. As outlined in full in the planning balance section of the proof, the merits of the development are not, in this instance, considered to outweigh the resulting harm, including to non-designated heritage assets.

Use Class Distinction:

7.16 As set out earlier in the proof, the Council maintains that a contribution towards affordable housing would be required regardless of the inspector’s final consideration of the appropriate use class. Without prejudice to this position, I will outline below the reasons for which the Council consider that in this case, the merits and intended use would mean that the scheme would be most appropriately considered under the C3 use class.

7.17 As set out in paras.7.37 to 7.40, the development would result in the delivery of 82 new homes, each an independent planning unit. These homes would be fully self-contained, would feature their own secure, front door and all facilities required for independent living within their own demise. Prospective owners would purchase long leaseholds for their flats and would occupy the units on a permanent basis as their primary residence. Each flat would be an independent

planning unit and could be sold/purchased independently of the other units within the scheme. The new flats would also be liable for Council Tax payments. Furthermore, the applicants have accepted that accessibility standards set out in Building Regulations Approved Documents Part M (Volume 1) – *Visitable Dwellings* rather than Volume 2 – (Buildings *other than dwellings*) should be the relevant standard secured for the residential element of the scheme. The same is true of sustainability and BREEAM targets, for which residential standards have been applied in submitted reporting. The applicants who, during the pre-inquiry meeting, confirmed that they see the Use Class distinction to have a bearing upon the issue of affordable housing only, do not dispute these factors. Further to the points raised earlier in this proof, I wish to highlight a number of additional areas to the inspector that would suggest that, in this instance, the merits of this case would indicate that the residential element is best defined under a C3 use class.

7.18 Firstly, I note that the occupation controls outlined by the appellants would not preclude families from visiting and/or dwelling in the proposed units and that, as such, one would expect a range of ages for occupants and/or visitors to use the apartments. The majority of apartments across the development would be 2/3bedroom units – larger than required to meet the demands of retired couples looking to downsize only. Instead, the proposed mix would feature 13 family sized apartments (3bed) and 62 two bedroom apartments. As discussed in the appellants submissions, occupation controls would stipulate that one resident per unit is of 65 or older to qualify; however, the remaining bed spaces would be free for other family members or friends to occupy. The entry requirements would mean that of the 322 bed spaces created across the residential units, only 82 (or 25%) would need to be reserved for persons of over 65 in order to meet this requirement. With this in mind, it is likely that children or other family members of the main occupants could visit and/or occupy these additional spaces and that as such, one could expect to see a range of ages making use of the resulting apartments. Such an arrangement would not commonly be associated with a C2 residential intuition, those staying on site would chiefly be patients receiving care.

7.19 Notwithstanding the above, the appellants claim that the level of ancillary services provided and level of care secured for residents would evidence a C2 form of use.

7.20 It is recognised that the scheme would include the provisions for administration of domiciliary care, and that residents “*will be obliged to sign up to a personal care and support package and to purchase a minimum of 2 hours of personal care or support per week*” (para.6.9.20 Planning Policy Statement). It is also recognised that on site care facilities would be available for residents.

7.21 Discussion of the level of ancillary facilities provided for residents has been outlined earlier in this proof (see para.7.49). It is acknowledged that the scheme would offer a large range of ancillary facilities for residents, though this is deemed beyond what would be essential for the intended use. This is not to say that the facilities are not desirable. It is also the case that, though facilities are provided, residents would have absolutely no obligation to make use of them and nor would they depend upon the communal facilities to remain independent. When forming an assessment of two applications for very similar forms of development in 2014/15¹⁹ the Council sought legal opinion in order to determine under what use class the development should most accurately be defined. For both of these cases, the amount and range of facilities provided for residents were comparable, as was the package of ‘care and support’ (also with a 2hr minimum package of personal care with 24/7 access to onsite medical facilities).

7.22 The legal opinion received confirmed that it was not the case that the mere presence of communal facilities prevents residential units from falling within Class C3. The QC instead noted that it is commonplace for residential development within London (particularly at the luxury end of the market) to provide communal facilities including health and wellbeing facilities such as spas and pools whilst still falling within Class C3. They also noted that, given that ‘personal support’ does not necessarily infer medical treatment, the porters and/or concierges often provided within high-end resident schemes often provide what many people would describe as a level of ‘care and support’, particularly for elderly residents including booking taxis, arranging deliveries and making appointments with medical practitioners and the like. The QC resolved that the two Pegasus life

¹⁹ Two PeagusLife schemes – see following section for further details

scheme should be best regarded as a C3 form of development and that an affordable contribution should be sought. I would agree with this QC's opinion in relation to the matter of Use Class in this instance too, where the range of facilities provided, level of care for residents and provision of onsite medical facilities are very similar.

7.23 Furthermore, the provision of domiciliary care within one's own dwelling does not in itself materially alter the use of that dwelling. The position of the Council shared by the GLA, who confirmed as much in their aforementioned responses for the cases⁴ as well as within the emerging London Plan were specific guidance and policy on this matter is introduced to provide to aid the determination of cases such as this. Emerging London Plan policy H15 (Specialist older persons housing) explicitly upholds this position where, under criteria C it is stated that: *"Sheltered accommodation and extra care accommodation is considered as being in Use Class C3. Residential nursing care accommodation (including end of life/ hospice care and dementia care home accommodation) is considered as being in Use Class C2"*. The supporting text, at para.4.15.3, notes that the provision of domiciliary care, 24-hour access to emergency support as well as a range of ancillary facilities under an extra-care use does not preclude a C3 Use Class definition. This was informed in part, by the 2017 GLA topic paper 'specialist older persons housing' which is included within the list of core documents which also highlights the concern with the application of a C2 use class and the resulting lower requirements for accessibility (see section 3). Though this emerging policy is yet to be adopted, I give it substantial weight in this assessment as the examination process has now progressed to later stages and the policy aligns very closely with the Council's recently adopted Local Plan. Either way, it remains the case that the preference of the Mayor and the GLA in respect to this area of dispute has been explicitly laid out within the Draft London Plan and is expected to form the direction of for future policy.

7.24 It should also be noted that the above position in relation to domiciliary care provision and resulting use class in extra-care / assistant living apartments has been shared by multiple inspectors. In a 2014 appeal for a scheme including

assistant living units for instance, the inspector resolved that the provision of domiciliary care and supporting facilities did not infer a C2 use Class²⁰. Similarly, in a 2007 appeal considering a retirement village scheme the inspector noted that the provision of domiciliary care was seen as ‘incidental’ to the residential use²¹. In their decision, they note that the care provided would be comparable to that which many elderly people receive in their own homes from carers or nurses, even on a daily basis and as such concluded that the use was best defined as C3 and that as such an affordable contribution was expected.

7.25 Further to the above, within their various submissions, the appellants have places great weight on the precedent formed under previous planning determinations of a similar form of development outside the Borough, including their own development (Battersea Place) in Wandsworth. The application for this scheme of 128 new ‘retirement apartments’ had been approved under a C2 use class in 2008 subject to a condition (no.12) restricting the use of the property for ‘residential care home’ under use class C2²². Within the LPA’s assessment of the case, affordable contribution was not sought on the basis of the C2 use class secured. Given the weight afforded to the success of this scheme (now built out) and level of comparisons drawn between it and the appeal scheme, it is highly pertinent to note that in 2014, Rapleys LLP on behalf of LifeCare Residents submitted a minor material amendment application (under s73 of the Act) to vary the wording of condition 12 as they claimed it was harmfully restricting the operation of their development. In June 2014, the minor material amendment application (ref.2014/0600) was subsequently approved by Wandsworth subject to a revised class restriction condition. This revised condition, now in force in perpetuity for the development, is provided below:

“The premise shall be used for the provision of residential accommodation where care is provided for people in need of care (Class C3(b)) and as a nursing home (within Class C2) with associated communal facilities and for

²⁰ Paras.37-44: Hallam Land Management and Chichester District Council 2014 – see appendix 5

²¹ Paras. 26–33: Front South Ltd and Herefordshire Council 2007 - see appendix 5

²² See appendix 6: Condition 12 of Battersea Place 2008 DN ref.2007/5826 (dated 22/12/2008)

no other purpose (including any other purpose in Class C2 or Class C3(a) of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or any provision equivalent to that Class in any statutory instrument revoking or re-enacting that Order with or without modification”²³

7.26 Should LifeCare Residents have taken issue with the above wording, they could have chosen to appeal the above condition under s78 of the Planning Act. Given that a search of the Planning Inspectorate’s databases shows that no such appeal was submitted, it is presumed that no such issue was taken with this wording. Either way, given that the condition will now remain in force it has been either directly or implicitly accepted that the Battersea Place development (the model upon which the appeal scheme has been based) included the provision of C3 housing. Given that the officers report made no assessment of retrospectively seeking an affordable housing contribution under this s73 application²⁴, the development successfully by-passed any affordable housing contribution requirement.

7.27 The Council would agree that the above wording represents a more accurate description of the intended use of the Gondar Gardens development and that the assessment should be made on the basis of a development of Class C3(b) housing with associated communal facilities and a Class C2 a nursing home. The Council therefore maintains that it was justified in assessing the residential element of the scheme on the basis that it would be within a C3 Use Class.

Trends in relation to affordable housing

7.28 The Inspector will likely be well aware that the disputed use class and matter of whether or not developments of this kind should be expected to make a contribution towards affordable housing have received mixed treatment in appeals nationwide. Developers nationwide have seized the opportunity to profit from the uncertain legalities arising from such matters and there exists numerous

²³ See appendix 6: Condition 11 of Battersea Place MMA DN ref.2014/0600 (dated 20/06/2014)

²⁴ See appendix 6: Battersea Place MMA officer report ref.2014/0600

examples where the policies of Local Authorities have not adequately provided a sound assessment, particularly in respect to affordable housing contribution.

7.29 In this case, the policy stipulations in relation to a requirement for affordable housing is far more certain, as outlined in prior sections, and so limited weight is afforded to the assertion that trends in national and regional case law should set a harmful precedent for future development in Camden, contrary to the requirements of the development plan.

7.30 Notwithstanding this, in order to evidence the above but also to show that Camden has been consistent in its approach, a selection of summaries of recent determinations is outlined below:

Local examples

7.31 Within Camden, there are two precedents in terms of developments of market housing for older people in recent years. Both, however, were determined within a differing policy context, being assessed against the Camden Core Strategy 2010-2025/Camden Development Policies 2010, the 2011 London Plan (amended 2013) and the 2012 NPPF; all of which have since been superseded. Nevertheless in both instances the approach to use class was as applied here and a maximum reasonable contribution towards affordable housing was negotiated and secured. These schemes are:

1) Hampstead Green Place (Pegasus Life) Former Bartram's Convent, Rowland Hill Street, London NW32AD - Camden ref. 2014/6449/P:

Planning permission was approved subject to s106 legal agreement on the 28 August 2015 for:

'Demolition of the existing student hostel building (Sui Generis) and replacement with a part 4, 6, 7, 10 storey building plus basement to provide extra-care accommodation for older people (Class C3), comprising 60 flats and associated communal facilities including restaurant, lounges, health and well-being facility and staff facilities, plus basement level carparking, cycle and mobility scooter parking, basement and 10th floor plant, ground floor communal gardens, and 3rd & 6th floor roof terraces'.

Though the application had been submitted on the basis of a Sui Generis use class, legal opinion sought by the Council advised that the nature of the proposed development was best defined as described above (i.e. C3) as outlined previously¹⁰. The merits of this application were very similar to the appeal case in that the residential element would provide a minimum level of care per week to occupants would provide a range of communal facilities and would allow for 24hr on site medical treatment facilities. As a result, this scheme of extra care accommodation was assessed on the basis of a C3 use class and a contribution towards affordable housing was sought.

This scheme was developed as part of a Planning Performance Agreement where the scheme was negotiated and refined over an eight month period. During this process, options for on as well as off-site provision of affordable were explored. In accepting that the individual merits of the case and evidence provided meant that such provision was justifiably discounted for reasons of practicality, a payment in lieu was secured. In light of the specialist form of housing proposed, this figure was adjusted to respond to the lower Gross:Net ratio of internal areas and so a bespoke approach was agreed. This same approach has been applied to calculate the what the relevant payment in lieu would be for the appeal scheme, were it shown that this represented the maximum contribution. This figure is included within the Viability SoCG included within the proof of Andrew Jones. This scheme has been completed and has recently come to market.

2) 79 Fitzjohn's Avenue (Pegasus Life) Former Arthur West House, London NW3 6PA - Camden ref. 2014/7851/P:

Planning permission was approved subject to s106 legal agreement on the 28 August 2015 for:

'Demolition of hostel and erection of 3 - 6 storey building plus roof plant enclosure and excavation of 2 storey basement to provide 33 self-contained wheelchair accessible flats for the care & well-being of older people (13 x 2-bed & 20 x 3-bed) including ancillary extra-care and treatment rooms, restaurant, health & well-being facility, gym, communal lounges, guest suite, cycle and mobility scooter storage and staff facilities with basement level car park , communal garden and associated landscaping'.

Given that this scheme was submitted by the same developer and was refined and negotiated under a similar PPA agreement, the assessment process and final recommendations were in line with the above HGP application.

7.32 For both cases, the consideration of the land use remains consistent with the appeal case, in line with the legal opinion received. For both cases, negotiations that led to adequate justification for discounting on or off site provision were at the time accepted and a contribution via payment in lieu was considered to represent the maximum contribution. Also in both cases, the independent viability advisor agreed with the applicant that any initial contribution to affordable housing would not be viable. However, in both cases, the applicant agreed to S106 clauses that would secure a deferred contingent contribution to affordable housing in the event that viability improved sufficiently to deliver the necessary level of return to the developer.

7.33 In the case of Gondar Gardens, no convincing evidence has been presented to the Council that justifies discount the provision of on or off site affordable housing. This has not been forthcoming due to the appellant's assertions contribution should not be required and that onsite provision would not be practical. The Council has refuted both of these points as outlined in prior sections. Furthermore, as outlined by Andrew Jones of BPS, in this case the independent viability advisor has not accepted that no initial contribution to affordable housing would be viable. The nil offer of onsite affordable is therefore not accepted as the maximum viable site contribution towards affordable housing supply and the reason is upheld.

Needs case for extra care housing

7.34 Within submitted reporting, the appellants have placed a great amount of weight upon the needs case for extra care housing for the elderly within the Borough and, as a result, conclude that such delivery should be afforded substantial weight in the planning balance exercise. In the following paragraphs I will outline how, despite offering strong support for the delivery of housing, I place

less weight upon this needs case than that for general needs affordable housing, of which the appeal scheme would offer a nil onsite contribution.

Need – general housing and affordable

7.35 The provision of self-contained housing is regarded as the priority land-use of the Local Plan as outlined in Policy H1. This is a result of the acute pressure for the delivery of general needs housing to address a rapidly growing London population and to adhere to projected housing trajectories. The Strategic Housing Market Assessment (SHMA) (2016) prepared in 2016 shows that Camden's full, objectively assessed housing need for the plan period (2016-2031) is 16,800 additional homes. Once a 5% buffer is applied in accordance with the NPPF (for the first five years of plan), the relevant adopted annual target remains at 1,176 additional homes per year for the period 2016/17 to 2020/21 and 1,092 for the rest of the plan period. This overall demand includes the homes needed to meet the needs of different groups within the community and housing typologies, including families with children, people with disabilities and elderly residents. Of this total figure, the SHMA indicates that 10,200 affordable homes will be needed to be delivered across the plan period to meet demand²⁵. This represents a need 60% of the total housing target to be delivered as affordable to meet future demand, highlighting just how acute this demand remains.

7.36 It should be noted that Camden has had to accept that the need for affordable housing in the Borough is such an acute challenge that it's policies could not viably expect to meet this need in full. Within their examination report of the Local Plan, the inspector noted that *"the strategic affordable housing target is significantly lower than the need for about 10,000 affordable housing homes in the borough over the Plan period, as identified in the Camden SHMA. Nevertheless, as described above, the modified strategic target has been informed by analysis of capacity linked to viability work. As an inner London borough there are capacity constraints. The Local Plan does not make provision to meet the full needs for affordable housing, but it would not be realistic for it to*

²⁵ Camden SHMA 2016 Pg.118, figure 96 (available [here](#))

do so”²⁶. The inability of the Council’s policies to viably address its full affordable housing need highlights just how critical it remains that each and every development site ensures a maximum contribution towards the delivery of affordable homes. Indeed, by adding that although the shortfall between need and delivery of affordable homes was not unique to Camden, due to its inner London setting and limited availability of land, the inspector noted that “*I consider it is vital to maximise opportunities for the delivery of affordable housing on sites that do become available*”²⁷.

7.37 The London Plan minimum monitoring targets for Camden are currently set at 889 per annum until 2025, lower than local targets, meaning that the Camden SHMA remains in accord with the London Plan.

Delivery - general housing and affordable

7.38 To maximise the supply of housing throughout the plan period (2016/17 – 2030/31) and exceed targets, the Council has identified a number of allocated sites for housing delivery, is currently implementing the Council’s Community Investment Programme and recognises the contribution that the windfall sites make towards this aim. Over the plan period, the Council’s housing trajectory indicates that there are sufficient identified sites in place to provide just over 17,100 additional homes and exceed housing targets through the plan period. For the first five years of the plan period (2016/17 to 2020/21) deliverable sites have been identified and are in place to provide approximately 1,420 additional homes per year, comfortably exceeding the target. According to the latest published Authority Monitoring Report 2015/16 the Council expects to meet and exceed its five year housing land supply as a number of major housing schemes are currently under construction such as King’s Cross Central (1,946 units), Camden Goods Yard (573 units) and Hawley Wharf (190 units) to name but a few. This is not the say that the need for additional housing, particularly affordable, is not still an imperative given the requirements of the SHMA.

²⁶ Para.55 Local Plan examiners report 2017 – see core documents

²⁷ Para 61 Local Plan examiners report 2017 – see core documents

Need – housing for older people

7.39 The Council acknowledges that there is an identified, growing need for provision for more housing for the elderly within the Borough. This is clearly stated within the development plan, in particular Local Plan policies H6 (Housing Choice and Mix) and H8 (housing for older people), policy 3.8(e) and Annex A5 of the London Plan (2016) and policy H15 and Table 4.4 of the emerging New London Plan – Consultation draft (2018).

7.40 Forecasts by the GLA predict that the number of older Londoners will increase at more than double the rate of the total capital's population. In response, the London Plan (2016) sets an indicative requirement benchmark for Camden to provide 100 additional homes per year specifically for older people. The Camden Local Plan 2017 incorporates the existing 100 homes per annum benchmark and summarises the two methodologies applied at para 3.215. This benchmark is increased to from 100 to 105 additional homes per annum under Table 4.4 of the emerging New London Plan. The updated benchmark represents 8.9% of the overall annual housing delivery target for Camden.

Delivery - housing for older people

7.41 To address this demand, the Council has adopted policies which support a variety of housing development aimed at meeting the specific needs of older people and that require a proportion of affordable housing for older people is delivered as part of larger schemes (e.g. H4, H6 and H8). The Local Plan goes into detail about new housing for older people and considers that extra-care housing is an effective way to facilitate people maintaining their independence while ensuring their care and support needs are met. It also recognises that there is a growing market for private housing designated for older people.

7.42 Extra-care housing is an effective way to facilitate people maintaining their independence while ensuring their care and support needs are met. The Council has brought forward four extra-care schemes across the borough (over 130 places), one in association with a new care home. We are also developing a further 38 extra-care places on a site near Chalk Farm incorporating a resource centre to support older people in the wider community. New places will be

tailored particularly for high needs groups such as people living with dementia. It is noted that both the London Plan and Camden accepts that there is a need to provide additional Homes for Older people, yet as with any scheme, the merits of a development should be balanced against other material planning considerations

7.43 The SHMA indicates that in 2016 that there were two existing and occupied leasehold schemes for the elderly in the borough which provide 47 private units in total²⁸. Since the publication of this assessment, the two Pegasus Life schemes outline in para.7.22 have come to market, providing an additional 93 private units (2017/2018 period). In addition, a number of public sector schemes providing extra care or assisted living have recently been delivered. This would include:

- Esther Randall Court, Euston – 35 assisted living flats – opened 2011
<https://www.seasonhomes.co.uk/property/esther-randall-court/>
- Maitland Park – 60 bed care home (residential and nursing care) plus 35 extra care flats 2010/4616/P <https://www.shaw.co.uk/index.php/services/1-nursing/92-maitland-park> - completed 2013
- Wellesley Road - 60 bed care home (residential and nursing care) 2010/4890/P <https://www.shaw.co.uk/index.php/services/1-nursing/123-wellesley-road> - completed 2013
- Roseberry Mansions (part of King's Cross permission) – 40 assisted living flats (34 x 1-bed 6 x 2-bed) - opened 2013
<https://www.seasonhomes.co.uk/property/roseberry-mansions/>

7.44 In addition, the following 'pipeline' schemes are soon due for completion:

- Crogsland Road Extra Care – a Council-led scheme for 38 extra care flats LPA ref.2015/0921/P – currently under construction
- Ashton Court, Camden Road – provides sheltered accommodation for over 60 (or over 55 and registered disabled) with 29 studio flats and 6 one bed units. Due for completion Jan 2019.

²⁸ Camden SHMA 2016 Pg. 157, figure 127 (available [here](#))

7.45 In light of the above it is noted that the specialist housing for older people is being delivered within the Borough, both as a result of public sector led developments as well as through market led schemes subject to planning policy requirements.

Need for privacy

7.46 The appellants maintain that due to the nature of the use, occupants would require their privacy to a lesser degree. I remain of the view that residents in their later years, who will remain in their properties for a greater proportion of the day and who more likely to require regular medical assistance, would cherish their right to privacy. Given that the appellant's model would include the administration of domiciliary care, residents are unlikely to feel comfortable receiving such treatment in living rooms or bedroom which are overlooked. Most would feel undignified being overlooked either in a position of fragility within their home or whilst receiving medical treatment and so the lack of such privacy is deemed inadequate for the intended use of the scheme. It should be noted that the Council's policy A1 requirements applies to all form of housing and is not be applied selectively. Officers therefore rejects this position. The inability of these units to provide this basis expectation for privacy for new build apartments is therefore disappointing and is seen as an indicator of the inappropriate design and scale of development given the site's characteristics.

8. SECTION 106 PLANNING OBLIGATION

8.1 Reasons for refusal 12 – 16 relate to the failure of the Appellant to enter into a s106 legal agreement to secure various elements. The Council and the Appellant are working together to agree a section 106 legal agreement to address the relevant reasons for refusal 12-15 to ensure the development is acceptable on these grounds were the Inspector to allow the appeal. It is hoped these matters can be resolved before the public inquiry to allow an agreed position to be presented to the Inspector.

8.2 As discussed by Gabriel Berry-Khan in his proof, the Council maintains that the submitted Energy and Sustainability statements falls too far short of policy requirements in relation to sustainable design and construction and climate change mitigation to allow for such matters to be addressed via later submissions (e.g. secured via legal agreement or conditions). Reason 16 is therefore maintained as discussed by Mr Berry-Khan.

8.3 In the following section, I intend to set out that the requirements for these legal agreement terms 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) and the National Planning Policy Framework (particularly paragraphs 54 - 57).

Construction Management Plan (reason for refusal 12)

8.4 Local Plan policy A1 states that Construction Management Plans (CMPs) should be secured to demonstrate how developments would minimise impacts from the movement of goods and materials during the construction process (including any demolition works). The appeal proposal would involve significant works due to the demolition of all the buildings on site and the construction of large buildings. A CMP would be required in order to address the issues around how the demolition and construction work would be carried out and how this work would be serviced (e.g. delivery of materials, set down and collection of skips), with the objective of minimising traffic disruption and avoiding dangerous situations for pedestrians and other road users. The failure to secure a CMP by S106 would give rise to conflicts with other road users and be detrimental to the amenities of the area

generally as matters occurring outside of the redline boundary of the site could not be secured via any other means (i.e. condition). Following discussions with the appellants, it was noted that this requirement was accepted as highlighted within the SoCG. As such the Council will seek to agree relevant wording for a section 106 agreement to secure this matter.

Highways contribution / pedestrian and environmental improvements (reason for refusal 13)

8.5 The Local Plan states that works affecting Highways are expected to repair any construction damage to transport infrastructure or landscaping and reinstate all affected transport network links and road and footway surfaces following development. The Council will undertake highway works connected to a development proposal at the developer's expense in accordance with paragraph 6.11 of the Local Plan. An estimate for this work has been prepared by the Borough Engineer and is included within the s106 agreement issued to the appellants. The Council maintains that a payment for highways work should be secured through a Section 106 legal agreement, which would also combine as an agreement under Section 278 of the Highways Act 1980. Following discussions with the appellants, it was noted that this requirement was accepted in principle as set out within the SoCG. As such the Council will seek to agree relevant wording for a section 106 agreement to secure this matter.

Car-free Development (reason for refusal 14)

8.6 Policy T2 requires all developments in the Borough to be car-free. This means no car parking spaces should be provided within the site (other than essential spaces or for servicing purposes) and that occupiers are not issued with on-street parking permits. Though objection is raised to the provision of car parking spaces at basement level, it is accepted that a 'notwithstanding' condition could address this concern, as outlined in section 11. The Council requires this obligation to facilitate sustainability and to help promote alternative, more sustainable methods of transport. The appeal site falls within a Controlled Parking Zone and has a PTAL of 1b at the point where all site access ingress and egress would occur. While the PTAL rating is not as high as most sites across the borough, the Council will seek to show that the site does benefit from being well connected to

local public transport with a variety of options within close proximity. In light of the above, the Council will reiterate that the scheme would be expected to be secured as car-free to remain in accordance with adopted policy requirements.

8.7 Whilst it is noted that the Appellant's do not object to the principle of a car-free agreement to limit resident's rights to apply for parking permits within the CPZ, the appeal proposal would still include the provision of onsite parking space. A total of 4 car pool car parking spaces and 1 visitor space are proposed at the basement level which would be accessed via a car lift. One disabled bay and two pick up and drop off bays are proposed at street level of the development. While the single disabled parking on-site and drop off spaces would be acceptable, private pool car parking and visitor parking is not considered as essential or operational requirement and this parking provision is not considered acceptable. As such a condition is outlined in section 11 to require these parking spaces to be designed for essential users to ensure compliance with Local Plan policy T2 and CPG7. Subject to the application of such a condition combined with the car free obligation within the legal agreement, this reasons may be withdrawn.

8.8 In order to address those matters that can be agreed prior to the appeal inquiry, officers have approached the appellants and have issued wording of a draft section 106 agreement in relation to car-free housing to secure the restrictions to parking permits required.

Travel plan (reason for refusal 15)

8.9 In line with CPG7 para 3.3, guidance details that Travel Plans should be submitted for any residential development over 30 units. Given the number of residential units proposed, a Travel Plan was submitted with the appeal proposal.

8.10 The aims of a Travel Plan is to promote the use of sustainable modes of transport through a range of soft measures, as well as highlighting the benefits of travelling by modes other than the private car. Camden would seek a Strategic Level Travel Plan that covers the whole site including residences from the 82 Self-contained care homes, the 15 bed nursing home and all staff and visitors coming and going for the site. Camden's Local Plan Policy A1 Managing the impact of development and Camden Planning Guidance requires planning

permission that will have an impact on the public highway to instigate mitigation measures such as Travel Plans. In this instance there is a concern regarding the impact of the development on the Controlled Parking Zone, and we feel that securing a Travel Plan would allow this site to operate without impacting the CPZ too severely. The travel plan would need to be secured by a Section 106 planning obligation if planning permission is granted as it would seek to manage elements that are outside of the redline boundary of the site. A financial contribution would need to be secured to cover the costs of monitoring and reviewing the travel plan over a 5 year period details of which have been provided to the appellants. This would also need to be secured by a Section 106 planning obligation if planning permission is granted.

8.11 Transport for London encourages developers to use the TRICS database (formerly TRAVL) for trip generation predictions. The suggested obligation would require the applicant to undertake a TRICS after study and provide TfL and Camden with the results on completion of the development. TfL would then be able to update the TRICS database with the trip generation results for the various use categories associated with this development. We will seek to secure the necessary after surveys and results by Section 106 agreement as part of the Travel Plan review and monitoring process.

8.12 If the Inspector was minded to allowed the appeal, this plan would be secured by section 106 alongside a monitoring and review fee. Were this the case, the Council would expected an updated Travel plan containing a TRICS after study. The Council will continue its dialogue with the appellants in relation to the securing of a travel plan via section 106 agreement.

Energy Plan and Sustainability Plan (reason for refusal 16)

8.13 As outlined above, officers maintain that the appellants have failed to demonstrate that the development would be designed and constructed in a manner that would comply with local and regional minimum requirements in relation to tackling climate change. The Council will therefore not be seeking to secure the Energy Plan and Sustainability Plan in this instance and RfR16 is maintained as discussed in full by Mr Berry-Khan. Notwithstanding this, in order

to justify this reason it remains necessary to set out why such an obligation is required in the first instance, further to Mr Berry-Khan's statement.

8.14 Energy and Sustainability Plans seek to ensure that developments to make the fullest contribution to tackling and mitigating against climate change. Energy Efficiency and Sustainability Plans are required in order to make the proposal acceptable in sustainability terms. It is necessary to secure this as legal obligation to ensure that the works are undertaken, installed and maintained in perpetuity as agreed. As the statements would remain in force in perpetuity, areas of change may be needed to be agreed in the future and securing such measures under a legal agreement would allow for this flexibility.

8.15 As outlined by Gabriel Berry-Khan, officers have raised significant concerns with regard to the level of information provided in relation to the proposed energy and sustainability plans for the site and inadequate justification for the various shortfalls of the scheme in relation to carbon reductions. Notwithstanding this, should these matters be successfully addressed prior to the inquiry the Council would seek to secure the Energy Efficiency and Renewable Energy Plan via section 106 agreement.

S106 Conclusion

8.16 Evidence has been provided within the Council's Statement of Case to demonstrate that the Heads of Term secured as part of the S106 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. Within the submitted SoCG, the requirement for each of the planning obligations has been accepted by both parties and is not in dispute. It remains the Council's position that each of the above obligations remains necessary, reasonable and directly related to the proposed works, ensure compliance with the aforementioned tests set out in the regulations.

9. PLANNING BALANCE

9.1 Within our communal proofs, the Council has identified and substantiated that the appeal proposal does not accord with the development plan, including Local Plan policies A1, A2, A3, C1, C5, C6, CC1, CC2, D1, G1 and H4; Neighbourhood Plan policies 1, 2, 16 and 17 and London Plan policies 3.8, 3.12, 5.2, 7.18 and 7.2. The development also fails to meet two out of the three of the strategic objectives of the NPPF (environmental and social) as well as remaining contrary to various specific clauses.

9.2 My proof deals with the harm arising as a result of the loss of and harm to areas of land designated for its biodiversity and local amenity value; the failure to maximise the development's contribution towards the supply of affordable housing; loss of residential and local amenity as a result of the visual impact of the scheme; and the lack of adequate standard of accommodation for future occupiers. To these matters, I have been attributed substantial weight. Within my proof I have also noted arising harm to local amenity as a result of artificial lighting to which I attach some weight.

9.3 The proof of Paul Losse has concluded that despite the scheme of mitigation proposed, the development would still result in net harm to habitat potential and biodiversity value of the site and would still lead to net harm to protected species. Given the site's designations for nature conservation, the relative value of the site in its local context and the relative scarcity of these protected species across Camden, I attribute this identified harm substantial weight.

9.4 The proof of Carolyn Whittaker has shown how the scheme could and should have provided with an element of onsite affordable housing and the willingness for Registered Providers to manage such units. The proof of Andrew Jones has illustrated how the appellants have withheld information critical to the conclusion of an open-book viability review exercise or have over or understated standard inputs. In their conclusions, they both support the case that the scheme has failed to maximise its contribution towards affordable housing. I attribute this harm substantial weight.

9.5 Frances Madders, in her proof, has discussed outlined that the inappropriate design of the scheme has resulted in detrimental impacts to local character and, due to its failure to provide an active frontage, would form an inwards facing

enclave. In the proofs of both Frances Madders and Philippa Jackson, it has also been demonstrated that the design of the scheme would fail to adhere to accessible and equitable design criteria, rendering the development unsuitable for its intended market. Given that the development is a new-build scheme, I attribute this harm significant weight.

9.6 Finally, in the proof of Gabriel Berry-Khan, it has been shown that the scheme would not to comply with minimum local and regional standards in relation to energy efficient and sustainable design and, in doing so, would fail to appropriately mitigate against climate change. Again, given that the development is a new-build scheme, I attribute this harm significant weight.

9.7 Each of the reasons for refusal are considered to be sufficient to justify the refusal of the appeal proposal in their own right. The appeal proposal does not accord with the development plan (for the reasons addressed within the Council's case) and the other benefits, summarised below, when taken together as other material planning considerations do not indicate, on balance, that planning permission should be granted.

9.8 The merits of the appeal proposal as listed within the submitted planning statement includes the following:

- Contribution of 82 new units towards the Council's housing supply;
- Delivery of specialist housing for older residents;
- Delivery of a 15 bedroom nursing home;
- Generation of approximately 80 jobs; and
- Payments in terms of New Homes bonus and increased Council tax revenue.

9.9 Notwithstanding the matter of the disputed Use Class, the development would contribute 82 new residential units designed for older persons. The provision of housing is welcomed in general terms and is a positive factor in support of the application. The fact that it has been designed for older residents is also welcomed in general terms, though its benefits in this regard are limited. This is due to its restricted target market (affluent elderly residents already in homes) and resulting failure to deliver benefits for those most in need as well as its inwards facing design and exclusive provision of facilities that would do little to

address issues of social inequality or promote social cohesion. It has also been discussed that the design would not be fit for purpose for its intended users. While I would normally have given substantial weight to the provision of 82 new residential units, its limited benefits to those parts of the Borough's demographic most in need of extra care accommodation combined with the aforementioned inadequate standard for its intended users, mean that in this instance I afford only limited weight to this contribution. I also attach less weight to the merits of the creation of jobs on site, given that the development plan seek to focus job creation outside of residential areas with lower accessibility levels such as the appeal site. I see the combined public benefits of the scheme to be limited, and certainly lower than the two preceding appeal allowed schemes.

9.10 Conversely to former approvals within the site, the appeal scheme would result in demonstrable harm in a wide range of areas, evidencing that its excessive brief is not proportionate to the existing site when its special value and development constraints are taken into account.

9.11 The scheme, by virtue of its contrived layout and excessive scale, would fail to promote social cohesion or address the Equalities Duty and would cause harm to amenities of adjoining occupiers whilst providing substandard accommodation due to a lack of privacy. It would lead to a loss of designated open space without appropriate re-provision or contribution and would undermine the biodiversity value of the retained area of SINC. It would harm the openness, character and setting of land designated due to its local amenity value, rendering it an inappropriate form of development within and adjacent to land offered the same protections as green belt land by national government. Its design would fail to meet the needs of the intended users and would result in harm to the character and appearance of the local area. Critically, despite delivering luxury apartments with hotel style amenities, the development fails to maximise its contribution towards the delivery of affordable housing which represents the most acutely needed form of development within the Borough. Further to the above, without adequate justification the scheme has failed to meet local and regional minimum requirements in terms of sustainable design and construction. In light of the above the scheme is seen as contrary to various strategic objectives of the Council, Mayor and Neighbourhood Forum and fails against two out of the three (social and environmental) overarching objectives of the National Planning Policy

Framework. The Greater London Authority as well as an Independent Design Review panel shared many of the above concerns.

9.12 Given the level of harm arising from the scheme, its limited benefits (predominately the provision of 82 new homes for a specific market of affluent older persons) would not outweigh the level of harm identified. On balance, the scheme would not represent a sustainable form of development nor accord with the development plan.

9.13 The additional funding captured via New Homes Bonus and Council tax would arise through any residential developments and are not specific to this scheme. If the C2 use class is accepted by the inspector then it may also be the case that these contributions are either removed or certainly significantly reduced. I therefore afford limited weight to these benefits.

9.14 The allocation of the site within the development plan clearly envisages a residential redevelopment of the site which pays respect to the site's important value in terms of ecology and local amenity. The development plan also sets out that the site is not anticipated to support high level of densities/development on the basis of its outlying position and site constraints. In the case of this particular proposal there is no objection to the principle of the development, unless the intended use can only be delivered at such scale. The matters outlined within the Council's proofs and Statement of Case, along with the height, scale, massing and detailed design of the scheme, would however create conflict with other matters of acknowledged planning importance, including the protection of the openness and value of the Local Green Space, Open Space and SINC, combined with its limited contribution towards affordable housing.

9.15 On this basis the harm arising from the scheme is substantial. It would impact on public interest and while the merits of the application are recognised, I do not consider the harm to be outweighed by the benefits of the scheme, including bringing forth new housing designed for older people. As such, I conclude that planning determination should be withheld and I respectfully invite the Inspector to dismiss the appeal.

10. CONCLUSIONS AND SUMMARY

10.1 In conclusion, I have demonstrated that the appeal proposal fails to accord with the development plan policies identified in the reasons for refusal (as updated), national policy, and regional and local policy guidance. Each of the reasons for refusal (that have not otherwise been agreed or overcome through the SoCG or the completion of a section 106 legal agreement) are considered to be sufficient to justify the refusal of the appeal proposal in their own right, and together represent an appeal scheme that would not represent sustainable development as defined within paragraph 8 of the NPPF.

10.2 I aim to conclude and summarise my evidence by addressing each reason for refusal that has not otherwise been agreed through the SoCG or S106.

Open Space and Local Green Space (Reason 1)

10.3 The appeal scheme would include the loss of areas of designated open space without suitable re-provision or measures to compensate this loss. The appeal scheme would also result in significant harm to the openness, character and function of the areas of designated Open Space and Local Green Space retained by virtue of its scale, heights, proximal relationship and the extent of the development. The scheme would constitute inappropriate development both on and adjacent to the Local Green Space and would fundamentally undermine the function of a space that had been designated due to its importance to the local community only two years prior to the application being submitted.

10.4 The scheme is thus contrary to policy A2 (Open Space) of the London Borough of Camden Local Plan 2017; Policies 7.16 and 7.18 of The London Plan 2016; Policies 16 and 17 of the Fortune Green and West Hampstead Neighbourhood Plan 2015 as well as paras.101 and 144 of the NPPF (2018).

SINC and ecological value (Reason 2)

10.5 The development would lead to the excavation and redevelopment of excavation of 67%, with a permeant loss of 45.4%, of the grassland habitat within the designated Borough II grade Site of Importance for Nature Conservation. As

well as a loss of habitat area, my peer, Paul Losse, has discussed that the development would significantly undermine the biodiversity value of the retained areas of SINC. The site is host to the largest population of recorded protected reptiles across the Borough and region and provides essential habitat and foraging space for a plethora of fauna. The scheme would include provisions for mitigation measures during construction as well as a 10yr maintenance plan for the retained areas of SINC. Whilst these measures would help to mitigate the resulting harm, the Council concludes that the aforementioned harm highlighted to the ecological value of the site as well as to protected species would not be outweighed by the scheme of mitigation outlined.

10.6 The scheme is thus contrary to policies A2 (Open Space) and A3 (Biodiversity) of the London Borough of Camden Local Plan 2017, Policy 7.18 of The London Plan 2016 and Policies 16 and 17 of the Fortune Green and West Hampstead Neighbourhood Plan 2015.

Affordable housing provision (Reason 3)

10.7 Regardless of the final position in terms of the relevant use class for the residential elements of the scheme, the Council maintains that the development would trigger a requirement for a contribution towards affordable housing. Given the lack of any onsite provision, despite the discussed feasibility and the desire from RPs as highlighted by my colleague Carolyn Whittaker, this remains wholly unacceptable in the absence of adequate viability information. This position is shared by the GLA. In failing to convincingly discount the provision of affordable housing on site or off site due to genuine reasons of practicality, the failure to maximise the site's contribution towards the delivered of affordable housing is seen to represent substantial harm.

10.8 Were both on and off site affordable provision suitably discounted on justifiable grounds, the expected site's contribution would fall to a payment in lieu of provision. Though both parties agree to the relevant figure for this payment (circa £12.75m), the appellants reason that the scheme could not viably sustain any payment greater than its offer of circa £975,000 (approximately 7.6% of compliant figure). Andrew Jones, Director of BPS Chartered Surveyors, has considered viability information provided and comes to the conclusion that the

appellants have failed to disclose vital information for the full consideration of the economics of the development and, in certain instances, have either over or understated inputs to the assessment. This, he concluded, leads to the failure to undertake a genuine open-book review of viability and undermines any conclusions in relation to viability.

10.9 Due to its failure to maximise the scheme's contribution to acutely needed affordable housing types in the Borough, the appeal proposal is thus contrary to Local Plan policy H4, Policy 1 of the Fortune Green and West Hampstead Neighbourhood Plan 2015, policy 3.12 of the London Plan 2016 and policies H5, H6 and H15 of the draft New London Plan..

Lack of active frontage and resulting inward looking enclave (Reason 4)

10.10 My colleague Frances Madders has addressed this reason for refusal and concluded that the appeal scheme, by way of its design, layout, enclosure and access arrangements, would not take full advantage of the opportunity to redefine and enhance the street frontage to Gondar Gardens. She has shown that the scheme would not provide an active street frontage to Gondar Gardens and, via its gated access, would represent a defensive, inward looking form of development which would be detrimental to the streetscene. In turn, this would fail to increase perceptions of safety and social cohesion, undermining the coherence of the public realm and streetscape by not taking full advantage of the opportunity to redefine and enhance the street frontage to Gondar Gardens. This would create the strong impression of a private gated enclave, severed from the wider area and undermining the promotion of mixed and balanced communities. The scheme would consequently remain contrary to policies D1 (Design) and C5 (Safety and Security) of the London Borough of Camden Local Plan 2017.

Visual impact upon the open space, the outlook of surrounding properties, and the character and appearance of the wider area (Reason 5)

10.11 The appeal proposal by virtue of its heights, mass, scale and detailed design would be harmful to the character of the local area and would lead to a materially harmful impact on neighbouring occupiers by way of an overbearing sense of overlooking. This would be caused through the height, massing and siting of the

appeal proposal, particularly its rear blocks as well as the positioning, proximity and relationship of the proposed windows and balconies/terraces to the Southern and Northern boundaries of the appeal site (shared with properties along Gondar Gardens and Hillfield Road. The scheme would also lead to an unacceptable loss of openness to the areas of protected open space. Therefore, the appeal proposal is contrary to Local Plan Policy A1 and D1 which seeks to ensure development is designed to high standard, avoiding undue visual impacts and that the amenity of communities, occupiers and neighbours are protected. Given the above, the development is also considered to have failed to address the site

10.12 My colleague Frances Madders has also addressed this reason for refusal and concludes that the appeal proposal, by virtue of its height, mass, scale and detailed design would result in detrimental harm to the character and appearance of the streetscene and wider area, as well as the character and setting of the locally listed open space and mansion blocks. Further the above policy D1, the scheme is also therefore considered contrary to policy D2 which seeks to ensure that protect non-designated heritage assets.

Failure to deliver inclusive design (Reason 6)

10.13 The appeal scheme, in its lack of inclusive standards, would disproportionately affect members of protected groups. Frances Madders, in her proof, has discussed that the inappropriate layout and design of the proposal has lead to the requirement for long and convoluted internal routes through the scheme that would not accord with best practises in terms of design. In doing so, it would requiring fail and elderly, or disabled residents (with mobility impairments) to take confusing and convoluted internal routes to apartments and communal terraces, whereas residents without such impairments are afforded more direct routes with higher spatial qualities. As discussed by Mrs Jackson, in failing to adequately demonstrate that the residential units could be built in compliance with the Approved Documents optional accessibility requirements, the development has also failed to take proactive steps to meet the needs of people within affected protected groups (elderly and disabled) where these are different from the needs of other people. The development would consequently fail to address two out of the three of the overarching aims of the general equality duty. As well failing against this statutory test, the development would remain

contrary to policies D1 (Design), C1 (Health and wellbeing) and, C6 (Access for all) of the London Borough of Camden Local Plan 2017, and Policies 3.8 and 7.2 of the London Plan 2016.

Inadequate standard of accommodation by virtue of a lack of privacy (Reason 7)

10.14 A large number of the proposed residential units would result in sub-standard living accommodation for prospective occupiers, by way of a lack of privacy to habitable rooms and amenity spaces. Sub-standard units by virtue of a lack of privacy are numerous and are found throughout scheme and in all blocks. In certain circumstances this would include relationships where both the only bedroom and amenity spaces to units would be overlooked in multiple views from adjoining blocks as highlighted earlier in this proof. In light of the above the appeal proposal is contrary to Local Plan policies A1 and D1, which seek to ensure that all residential developments are designed to create high quality homes where occupants can expect the privacy to enjoy their home.

Resulting impacts from artificial lighting (Reason 8)

10.15 Though it has been accepted within the SoCG that the lighting strategy for external areas has been designed in accordance with best practise in terms of impacts to bats; the Council maintains that the development would still result in harm to the ecological value of the retained/replaced SINC as well as cause a loss of local amenity by virtue of artificial light spill. This is principally in relation to the scale of the development, its elevational treatment to include the vast areas of glazing to outwards facing aspects and the siting of these elevations, immediately abutting the retained areas of SINC and with minimal set away from neighbouring boundaries. This, for instance, would include the provision of approximately 240sqm of glazing area to the East facing aspect, immediately abutting the SINC land.

10.16 Paul Losse, in his proof of evidence has discussed the harmful impact that artificial light spill would cause to the habitat potential of retained/replaced areas of SINC and I share his conclusions that the ecological value of the site would be diminished as a result. Further, in my proof the harm that this would cause upon the local amenity value of the site from occupiers of properties principally along

Gondar Gardens and Hillfield Road has also been outlined. Due to the resulting harm to the ecological and local amenity value of land designated for these purposes, the appeal proposal is considered contrary to Local Plan policies A1, A3 and D1 in this regard.

Carbon reduction and climate change mitigation (10) and failure to secure Energy and Sustainability plans via s106 legal agreement (16)

10.17 My colleague Gabriel Berry-Khan has addressed this reason for refusal and concludes that the appeal proposal would fail to meet minimum sustainable design and construction standards for new development without proper justification. In doing so, the scheme would fail to adequately mitigate against climate change, contrary to local and regional policy requirements. This concerns were shared by the GLA in their Stage One report.

Planning balance and conclusion

10.18 The limited merits of the appeal proposal are recognised and include that the development would create a number of additional homes, which is a priority of the development plan. Those homes would be designed with older persons in mind, going some way to addressing an identified need, though this is limited by its inadequate provision. The scheme would also deliver a new care home, create jobs and generate income for the Council from Council Tax and new Homes Bonus payment. However, the limited benefits of the scheme would not outweigh the significant harm identified to affordable provision, social cohesion, ecology, local amenity, residential amenity, sustainability and the character and appearance of the local area. Combined with the various short fallings of the scheme's design that are indicative of overdevelopment of a constrained site (i.e. poor living standards, lack of inclusive design and active frontage, light pollution etc.), the proposal on balance would not accord with the development plan.

10.19 Paragraph 14 of the NPPF concerns the presumption in favour of sustainable development and the benefits of the scheme have been weighed against the economic, social and environmental dimensions as specified in paragraph 7 of the NPPF. The appeal proposal does not accord with the development plan (for the reasons addressed within the Council's case) and there are no other material

planning considerations (i.e. planning benefits) that indicate that planning permission should be granted, as required under Section 38(6) of the Planning and Compulsory Purchase Act (PCPA) 2004.

10.20 For the reasons set out above and in the Council's evidence taken as a whole, the Inspector is respectfully invited to dismiss this appeal.

11. LIST OF SUGGESTED CONDITIONS

11.1 Further to the list of agreed conditions set out within the SoCG, in the event that the inspector were mindful to allow the appeal, it is requested that the following additional conditions are applied to any subsequent decision:

1) Use Class Restriction

The premise shall be used for the provision of residential accommodation where care is provided for people in need of care (Class C3(b)) and as a nursing home (within Class C2) with associated communal facilities and for no other purpose (including any other purpose in Class C2 or Class C3(a) of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or any provision equivalent to that Class in any statutory instrument revoking or re-enacting that Order with or without modification.

Reason: To ensure that the development contributes towards the delivery of accommodation for older persons in line with the requirements of policies H1 and H8 as well as to avoid unchecked changes to more disruptive uses at the detriment of local and residential amenity in line with policies A1 and G1 of the Camden Local Plan (2017).

2) Car parking restriction

Notwithstanding approved drawing A_PL_P_099 rev P00, the internal parking area at basement level (-01) shall be designed and reserved for designated disabled people only, details of which shall be submitted to and approved by the Local Authority in writing prior to first occupant of the development. The internal parking area shall then be constructed and maintained in accordance with approved details in perpetuity and shall at no point be otherwise used for the private or pool vehicular parking.

Reason: To ensure that the proposed development makes appropriate provision for disabled occupants and avoids harmful contribution to parking stress and congestion in the surrounding area, contrary to policies T1 (Prioritising walking, cycling and public transport), T2 (Parking and Car Parking) and A1 (Managing

the impact of development) and DM1 (Delivery and monitoring) of the London Borough of Camden Local Plan 2017.

3) Solar PV

Prior to commencement of above ground works, drawings and data sheets showing the location, extent and predicted energy generation of photovoltaic cells and associated equipment to be installed on the building shall have been submitted to and approved by the Local Planning Authority in writing. The measures shall include the installation of a meter to monitor the energy output from the approved renewable energy systems. A site-specific lifetime maintenance schedule for each system, including safe roof access arrangements, shall be provided. The cells shall be installed in full accordance with the details approved by the Local Planning Authority and permanently retained and maintained thereafter.

Reason: To ensure the development provides adequate on-site renewable energy facilities in accordance with the requirements of policy CC1 of the London Borough of Camden Local plan Policies

4) Rainwater or greywater harvesting and green or living roofs

Prior to commencement of development other than site clearance and preparation, feasibility assessments for

- a) rainwater or greywater recycling
- b) green or living roofs

should be submitted to the local planning authority and approved in writing. If considered feasible, details should be submitted to the local authority and approved in writing. . Details of the green roof provided shall include: species, planting density, substrate and a section at scale 1:20 showing that adequate depth is available in terms of the construction and long term viability of the green roof, as well as details of the maintenance programme for green roof. The buildings shall not be occupied until the approved details have been implemented and these works shall be permanently retained and maintained thereafter.

Reason: To ensure the development contributes to minimising the need for further water infrastructure in an area of water stress in accordance with policies CC2 and CC3 of the London Borough of Camden Local plan Policies

5) Water efficiency

The development hereby approved shall achieve a maximum internal water use of 105 litres/person/day, allowing 5 litres/person/day for external water use. Prior to commencement of above-ground works, evidence demonstrating that this has been achieved shall be submitted and approved by the Local Planning Authority.

Reason: To ensure the development contributes to minimising the need for further water infrastructure in an area of water stress in accordance with policies CC2 and CC3 of the London Borough of Camden Local Plan Policies

6) SuDS: Further details

Prior to the commencement of development,

- a) A feasibility assessment for a site-wide sustainable drainage system, to include a detailed analysis of potential for options that are higher in the drainage hierarchy (such as soil infiltration, blue or hybrid green-blue roofs, and balancing ponds) and;
- b) full details of the site-wide sustainable drainage system as designed;

shall be submitted to and approved in writing by the local planning authority. Such a system should be designed to accommodate all storms up to and including a 1:100 year storm with a 40% provision for climate change such that flooding does not occur in any part of a building or in any utility plant susceptible to water, and shall demonstrate the run off rates approved by the Local Planning Authority. Details shall include a lifetime maintenance plan, full drainage calculations and shall thereafter be retained and maintained in accordance with the approved details.

Reason: To reduce the rate of surface water run-off from the buildings and limit the impact on the storm-water drainage system in accordance with policies CC2 and CC3 of the London Borough of Camden Local Plan Policies

7) SuDS: Evidence of installation

Prior to occupation, evidence that the system has been implemented in accordance with the approved details as part of the development shall be submitted to the Local Planning Authority and approved in writing. The systems

shall thereafter be retained and maintained in accordance with the approved maintenance plan.

Reason: To reduce the rate of surface water run-off from the buildings and limit the impact on the storm-water drainage system in accordance with policies CC2 and CC3 of the London Borough of Camden Local Plan Policies

12. LIST OF APPENDICES

Appendix 1 – List of figures used through this proof of evidence

Appendix 2 – Former pre-application advice reports issued by LPA

Appendix 3 – Comparison of previous appeal allowed scheme

Appendix 4 – Relevant judgements

Appendix 5 – Relevant appeal decision

Appendix 6 - Relevant planning documents for LifeCare Residences Battersea Place scheme

