



**ALBANY HOMES (UK) LIMITED**

**LAND ADJACENT TO JACK  
STRAW'S CASTLE  
NORTH END WAY  
LONDON  
NW3 7ES**

**STATEMENT OF CASE**

**LPA REFERENCES: 2017/2064/P & 2017/2211/L  
MONTAGU EVANS REFERENCE: PD10193**

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## **APPENDICES**

1.0	Email correspondence with London Borough of Camden subsequent to submission of applications 2017/2064/P & 2017/2211/L
2.0	Further information submitted 28 September 2017 to address LPA issues with applications 2017/2064/P & 2017/2211/L
3.0	Further information submitted 10 May 2018 to address LPA issues relating to daylight / sunlight, landscaping and trees.
4.0	Basement Impact Assessment Audit dated June 2018 prepared by Campbell Reith, issued by the LPA 7th June 2018

## 1.0 INTRODUCTION

1.1 This Appeal Statement of Case has been prepared by Montagu Evans LLP (“the Agent”), on behalf of Albany Homes (UK) Limited (“the Appellant”), following the failure of the London Borough of Camden (“LBC” or “the LPA”) to give notice of their decision in respect of the planning application ref. 2017/2064/P and listed building consent application ref. 2017/2211/L (“the Applications”), relating to the land adjacent to Jack Straw’s Castle, North End Way, London, NW3 7ES (“the Site”).

1.2 Planning permission is sought for:

*“Erection of two x 4 bedroom 3 storey plus basement residential dwelling houses on rear part of carpark, including associated landscaping and cycle storage.”*

1.3 Listed building consent is sought for:

*“Underpinning of adjacent basement of existing building in association with erection of two x 4 bedroom 3 storey plus basement residential dwelling houses on rear part of carpark.”*

1.4 This Statement, which should be read in conjunction with the suite of planning application submission documents, provides a factual update of events since that submission and focuses on the key considerations relevant to the Appeal.

1.5 The Appellant is seeking to Appeal the non-determination of the applications using the Hearing procedure. A large amount of written material has been produced for the Applications and the planning matters have been discussed at length, both in writing and verbally, during the determination period, with the LPA and relevant consultees. It is considered that a hearing is necessary to test and explore some of the written evidence presented within the Application and this Statement of Case.

1.6 The Applications were submitted on 10 April 2017 and validated on 25 April 2017. The original target determination dates were 20 June 2017, although extensive discussions took place with the LPA and a new target determination date of 4 June 2018 was agreed.

1.7 The 6 month period for non-determination therefore commenced on 4 June 2018 and concludes on 4 September 2018.

1.8 Because this is a ‘non-determination’ appeal, at the time of making this Appeal we have no reasons for refusal. However, we understand that the matters at issue relate to design only. Specifically, the impact of the proposals to the special interest of the adjacent Grade II listed Jack Straw’s Castle and the character and appearance of the Hampstead Conservation Area.

- 1.9 This Statement of Case is prepared in accordance with the Planning Inspectorate's Procedural Guide: Planning Appeals – England (dated 27 July 2018).
- 1.10 As appraised within the documentation which comprised the planning application submission, it is concluded that the proposals accord with the adopted development plan and all other material planning considerations.
- 1.11 This Statement comprises the following sections:
- Section 2 identifies the relevant planning history of the Appeal Site;
  - Section 3 identifies the proposed development;
  - Section 4 identifies the national and local planning policy documents;
  - Section 5 provides a planning assessment of the Appeal Proposal;
  - Section 6 provides a conclusion to this Statement.
- 1.12 A full description of the Site and its surroundings is provided within the Planning Statement submitted with the planning applications, the non-determination of which is the subject of this appeal.

## 2.0 RELEVANT PLANNING HISTORY OF THE APPEAL SITE

- 2.1 The Site boundary comprises the car park adjacent to Jack Straw's Castle, a Grade II listed building constructed in 1962-4 to designs by the well-respected architect Raymond Erith. Built as a pub, it replaced an earlier pub and hotel on the same site damaged in WWII. Jack Straw's Castle was listed Grade II in 1974. It was converted to residential use in the early 2000s.
- 2.2 The Planning and Heritage Statement submitted with the Applications provides a full explanation of the site history, including planning history. However, we set out below, recent history relating to the car park, which forms the Application Site.
- 2.3 In July 1972 planning permission was granted by the Council (ref: 14121) for the erection of a combined garages, dustbin store and bottle store in the car park of Jack Straw's Castle, were single storey, and located under the westernmost bay of the main part of the north façade.
- 2.4 The garages remained until 2002 when planning permission and listed building consent was granted by the Council (PWX0102190 / LWX0102191) for the conversion of the main building for residential use, including the erection of a two storey rear extension to the main building.
- 2.5 The garages were demolished to facilitate the implementation of the 2002 scheme. However, the approved drawings for the 2002 scheme demonstrates that permission was also granted for the garages' retention or rebuilding.
- 2.6 The planning permission and listed building consent PWX0102190 / LWX0102191 has been lawfully implemented, thus the garages may be reconstructed, reinstating a structure in this location. The approved garages would cut across the divide between the rear section of the building and the main building clad in weatherboard, thus diluting their separation.
- 2.7 The planning permission and listed building consent PWX0102190 / LWX0102191 allowed the conversion of the building to residential use including the 'erection of a 2 storey rear extension to the main building to provide 1 dwelling house with roof terrace above'. This new two storey extension raised the rear bay of the north façade by a storey and added the crenelations. The lower storey was rendered.
- 2.8 In 2003, permission was refused for the "Erection of roofed enclosure over existing car park, and erection of 2 two storey houses with rooftop conservatories and paved roof terrace above this enclosure" (Council Ref: PWX0302151 / LWX0302156 (April 2003) and 2003/1396/P / 2003/1397/L (September 2003)). The design-related Reason for Refusal stated that

*The combined proposal for houses and car park enclosure, by reason of its size, height, bulk, location and detailed design, and the infilling of an open*

*space adjoining a listed building, would be harmful to the setting and appearance of the adjoining building, to local views in the streetscene and from the Heath, and to the character and appearance of this part of the conservation area. The proposal thus fails to comply with policies EN1,13,14,16,31,38,22,52 and HR1,2,3,4,7,8 of the London Borough of Camden Unitary Development Plan 2000, and supporting advice in the Hampstead Conservation Area Statement.*

2.9 An appeal on the scheme was also rejected (Appeal Ref: APP/X5210/A/03/1124778/APP/X5210/E/03/1124779 (April 2003) and APP/X5210/A/03/1124780/APP/X5210/E/03/1124781 (September 2003)).

2.10 The Inspector considered there were two main issues relating to the appeals:

- The effect of the proposed development on the character and appearance of the listed building and its setting within the conservation area.
- Whether the servicing arrangements would be detrimental to highway safety and the free flow of traffic.

2.11 Following the 2003 appeal, a revised scheme was submitted in 2004 for the “erection of a 2 storey dwelling house with associated garden and forecourt car space in the rear part of car park, and new boundary railings/walls and relocated entrance to remaining car park at front of site” (Council Ref: 2004/0705/P / 2004/0707/L).

2.12 This was refused, and the Council's design related reason for refusal stated that:

*The proposal for a house and associated boundary walls, by reason of its size, height, bulk, location and detailed design, and the consequent partial enclosure of an open space adjoining a listed building, would be harmful to the setting and appearance of the adjoining building, to local views in the street scene and from the Heath, and to the character and appearance of this part of the conservation area. The proposal thus fails to comply with policies EN1,13,14,16,31,38,22,52 and HR1,2,3,4,7,8 of the London Borough of Camden Unitary Development Plan 2000, and supporting advice in the Hampstead Conservation Area Statement.*

2.13 This scheme was rejected at appeal (Appeal Ref: APP/X5210/E/04/115128). The Inspector considered there were two main issues relating to the appeals:

- Whether the proposed works would preserve the special architectural and historic interest of the listed building;
- The effect of the proposed development on the character and appearance of the conservation area.

2.14 The Inspector for the 2004 appeal stated:

*“it would be wrong of me to suggest that no further development should take place in the car park as I can never know what ideas an imaginative architect, perhaps one as skilled as Erith, might dream up. However, it is evident to me that to arrive at an acceptable solution for an extension to the north of this remarkable building would require exceptional skills”.*

#### 2017 Applications

- 2.15 As noted above, the Planning and Listed Building Consent Application subject to this appeal was submitted on 10 April 2017 and, to date, has not been determined. This is discussed in further detail in the following section.
- 2.16 On 13 April 2017, the Appellant submitted a planning application (ref. 2017/2171/P) to vary condition 4 of the 25 July 2002 planning permission (ref. PWX0102190) which permitted the conversion of Jack Straw's Castle to Class C3 and Class A3 uses. The variation in condition is sought to reduce the size of the car park and provide only seven car spaces. This Application has also yet to be determined.

#### Determination of the Appeal Scheme

- 2.17 The application was submitted on 10 April 2017 with an initial target determination date of 20 June 2017. However, a number of matters were raised by the LPA and the statutory consultees and discussions have been ongoing throughout the past 16 months in order to address technical matters.
- 2.18 A detailed chronological account of the events that have taken place over this period is provided below for reference. Email correspondence is provided at **Appendix 1**.
- 10 April 2017 - Application submitted.
  - 25 April 2017 – Application validated (with target determination date of 20 June 2017).
  - 8 June 2017 – LPA Case Officer confirms, *“due to various outstanding matters, not least the ongoing [Basement Impact Assessment] BIA review, I will not be making a decision before the statutory determination date of next Wednesday. If is to be recommended for approval, it will need to be reported to a Members Briefing Panel who may well refer it up to full Committee on account of the sensitivity of the site. There will also be a need for a S106. On account of these delays, the case will not be determined until after the new Local Plan is adopted on 26th June so it will be need to be assessed against our new policies as already advised”* (email provided at **Appendix 1**)
  - 20 June 2017 – Original target determination date passes (based on validation date).
  - 26 June 2017 – LPA Case Officer cites ongoing BIA review (by independent consultants) and a meeting with Heath and Hampstead Society as reason decision not yet issued.
  - 14 July 2017 – Case Officer issues email requesting further information (email provided at **Appendix 1**). This covered matters of principle of development, design and impact on heritage, impact on public open space/metropolitan open

land, residential amenity, sustainability, landscaping, ecology, transport, basement impact and contamination.

- 28 September 2017 – further information submitted to address LPA issues by formal letter (details provided at **Appendix 2**).
- 10 October 2017 – BIA re-issued following Case Officer confirms that he was unable to access the file sharing link.
- 17 October 2017 - Case Officer confirms that the independent [Basement Impact Assessment Audit] BIA review (by Campbell Reith) will be received 9<sup>th</sup> November
- 31 October 2017 – Target determination date on Camden website updated.
- 13 November 2017 – Case Officer confirms that the BIA review has not been received.
- 17 November 2017 – Appellant's BIA contractors provide further clarification to Campbell Reith directly.
- 23 November 2017 - Case Officer confirms that Campbell Reith require further clarification
- 21 December 2017 – Appellant's BIA contractors provide further clarification to Campbell Reith
- 21 December 2017 - Case Officer confirms that Campbell Reith received the further information, but will not be reviewing until the New Year 2018. Case Officer states that on the basis the review is satisfactory, "due to another priority project that I must concentrate on in the first fortnight of January [2018], it will not be until later that month"
- 23 February 2018 – following several emails from the Agent during January, the Case Officer responds to state "realistically I will not be able to finalise my thoughts on your case until the week of 5<sup>th</sup> March" (email provided at **Appendix 1**).
- 8 March 2018 – Case Officer responded clarifying that previously submitted information addressed impact to [Metropolitan Open Lane] MOL, access, sustainability, trees and car parking. Further information was requested in regard to daylight / sunlight, landscaping, design and trees.
- 10 May 2018 – further information formally submitted by Agent to address LPA issues relating to daylight / sunlight, landscaping and trees (provided at **Appendix 3**). The Design of the building was not altered.
- 17<sup>th</sup> May 2018 – Case Officer confirms target determination date of 4<sup>th</sup> June 2018 (email provided at **Appendix 1**)
- 7<sup>th</sup> June 2018 – Case Officer issues email including BIA review prepared by Campbell Reith. The report identifies no concerns with the BIA provided at **Appendix 4**).
- 22<sup>nd</sup> July 2018 - Case Officer confirms application still not determined, although states: "*the reason for refusal, and indeed only key one for this case, will be based on our standard wording as follows- the proposal, by virtue of its bulk, scale, height, location and detailed design, is considered unacceptable due to its harm to the character of conservation area and setting of adjoining listed building and thus contrary to policies D1 and D2 of the Local Plan 2017*". (email provided at **Appendix 1**)



- 2.19 Despite extensive correspondence with the case officer and other relevant consultees to resolve matters, the LPA has failed to make a decision on the applications, which has led to this Appeal.

### 3.0 THE PROPOSAL SUBJECT TO THIS APPEAL

- 3.1 The Application which is the subject of this non-determination appeal was submitted to LBC on 10 April 2017. It seeks Planning Permission and Listed Building Consent for the erection of two four bedroom residential dwelling houses extending to three storeys (plus basement) on the rear part of the existing car park, adjacent to Jack Straw's Castle. Landscaping and cycle parking is also proposed.
- 3.2 Jack Straw's Castle is a very interesting Grade II building of the early 1960s, designed by the well-known traditional architect Raymond Erith. Now converted to residential use, it retains its landmark qualities in the local area. The main interest and significance of the building lies primarily in its front, east, façade, which has a distinctive twentieth century quality. Its north façade, where it is proposed to build the two houses, is less successful and has been altered from Raymond Erith's original intentions.
- 3.3 The architect of the Appeal proposals is Mr Quinlan Terry, one of the country's leading classical architects, one who is internationally known. Mr Terry was trained by Erith himself and was in the office at the time Erith had Jack Straw's Castle on the drawing board. The proposals, thus, tell a story about the continuing tradition of new classical architecture. This is an unusual case, we believe, where the architect's identity is a material consideration of weight. Indeed, he is 'an imaginative architect, perhaps one as skilled as Erith', as envisaged by the 2004 Inspector.
- 3.4 The design has been developed in consideration of the 2003 and 2004 schemes that were both refused at appeal and also through pre-application discussions with the LPA and key stakeholders. This is explained in full detail in the submitted Planning and Heritage Statement.

#### *LPA Discussions*

- 3.5 Pre-application meetings were held with the LPA on 22 March and 30 June 2016. Written advice was provided on 17 January 2017 following the submission of further information. Officers confirmed at this stage that the principle of development could be supported, based on the submitted design and progress with stakeholders.
- 3.6 Based on officer feedback, the proposals were changed from three to two houses, private amenity space provided and the appearance of the front elevation altered.

#### *Stakeholder Consultation*

- 3.7 Mindful of the heritage sensitivities and planning history of the Site, heritage stakeholders have been formally engaged during the pre-application process. The Twentieth Century Society, Historic England, Ken Powell, Alan Powers and Lucy Archer (daughter of Raymond Erith) objected to the previous appeal schemes; all have written to express their support for the current proposals and consider they overcome the concerns of the previous schemes.

#### *Response to 2003/2004 Appeal Schemes*

- 3.8 As set out in the Planning and Heritage Statement, there are four key differences between the Appeal Scheme and the 2003/2004 proposals.
1. The houses are not designed to be read as an extension to the building but rather as a structure with its own identity and complimenting the listed building. It forms its own standalone design allowing the listed building to read as its own entity.
  2. The houses are a wholly different architectural style with the use of classical architectural language clearly distinguishing them from the building and providing a contextual response to the wider area. The design responds to the Georgian architecture of the area and proposes different building materials.
  3. The houses step back from the main body of the listed building, sitting over the line of the altered north bay (as opposed to the north end of the main building). This preserves the integrity of the main building and can be read as a distinctly separate mass.
  4. Retains the existing car park levels and open view towards the building as opposed to complete or part covering the car park.
- 3.9 The earlier, rejected proposals of 2003 and 2004 were poorly considered, with little appreciation of context or of the significance of the listed building to which they were attached. In particular, both refused appeal schemes were conceived as extensions to the listed building in an approximation of the same style as Erith's building, thus diluting the integrity of the existing building. They encroached on the principal parts of the building and sought to copy some details in a way that showed no real appreciation for the site or its context. They also did not include any landscape improvements.
- 3.10 The present proposals are distinctly different and seek to address the shortcomings of the earlier schemes through the use of a distinctively different architectural treatment that is still in keeping with the style of the main building. They respect the form of the existing building, and do not encroach on its main elements on the north side and preserve the sense of openness.

#### 4.0 LEGISLATIVE AND PLANNING POLICY CONTEXT

4.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that, if regard is to be had to the Development Plan applicable to the site for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the Plan, unless material considerations indicate otherwise.

4.2 The Planning (Listed Buildings and Conservation Areas) Act 1990 sets out the statutory provisions at sections 16, 66 and 72.

4.3 Section 16(2) states:

*In considering whether to grant listed building consent for any works the local planning authority or the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.*

4.4 Section 66(1) states:

*In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.*

4.5 Section 72(1) states:

*In the exercise, with respect to any buildings or other land in a conservation area, of any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.*

4.6 The Development Plan applicable to the Site is the London Plan (2016) and the LBC Local Plan (July 2017), which was adopted shortly after the submission of the planning application. The Development Plan has therefore altered since the submission of the applications.

4.7 At the national level, the guidance set out in the National Planning Policy Framework 2018 (NPPF) and contained in the National Planning Practice Guidance (NPPG) are also relevant.

4.8 There are a number of supplementary planning guidance documents (SPGs or SPDs) produced by either the Mayor or LBC that support the Development Plan policies. Of particular relevance is the CPG Housing (Interim), CPG2 Housing, CPG Amenity, CPG Basements, CPG Transport and CPG Design.

- 4.9 The LBC Policies Map (June 2017) identifies that the Site is located within the Hampstead Conservation Area. The Site adjoins Hampstead Heath which is a Site of Nature Conservation Importance (SNCI) and is opposite an area of Open Space.

## 5.0 ASSESSMENT OF THE PROPOSALS

- 5.1 Due to the non-determination of the Applications, we do not have a list of reasons for refusal. However, throughout the determination period, Montagu Evans has liaised with the LPA (refer to **Section 2.0**) and provided a number of responses to comments from the Case Officer and consultees in relation to individual matters, most of which we understand have now been satisfied.
- 5.2 Based on the email from the Case Officer dated 22<sup>nd</sup> July 2018 (see **Section 2.0**), we understand that the reason for refusal will comprise: matters relate to the suitability of the design, and possibly the principle of development.

*The proposal, by virtue of its bulk, scale, height, location and detailed design, is considered unacceptable due to its harm to the character of conservation area and setting of adjoining listed building and thus contrary to policies D1 and D2 of the Local Plan 2017.*

- 5.3 We believe that all technical issues are robustly addressed by way of the application's supporting documentation which comprised the application submission, as well as the subsequent formal responses submitted in September 2017 and May 2018. Nonetheless, the Appellant reserves the right to comment further upon any other concerns raised by the LPA in its Appeal Statement and we summarise our assessment of the matters at hand, below.

### **Principle of Development**

- 5.4 The Proposed Development accords with the current thrust of planning policy at national, regional and local level, which places an emphasis on achieving sustainable development. In particular, adopted plan policy is extremely clear that housing is a priority land use in Camden.
- 5.5 Housing delivery is also one of the core NPPF objectives and it advocates policy that seeks to significantly boost the supply of housing (paragraph 59).
- 5.6 Paragraph 73 of the NPPF also requires local planning authorities to maintain a supply of deliverable sites sufficient to provide five years' worth of housing against their housing requirements with an additional buffer of 5% to ensure choice and competition in the market.
- 5.7 London Plan Policy 3.3 (Increasing Housing Supply) states that there is a "*pressing need for more homes in London*". Part D of the policy states that boroughs should seek to achieve and exceed the relevant minimum borough annual average housing targets through the intensification of brownfield housing sites and mixed use redevelopment, including of surplus commercial capacity.

- 5.8 Table 3.1 of the London Plan identifies an annual target of 889 new homes per annum in Camden (8,892 in total from 2016 to 2025). The Draft London Plan (Table 4.1) seeks to increase this figure to 1,086 new homes per annum (10,860 in total from 2019/20 to 2028/29).
- 5.9 Emerging Draft London Plan Policy H2 (Small sites) states that small sites should play a much greater role in housing delivery and boroughs should pro-actively support well-designed new homes on small sites through planning decisions. This will:
- significantly increase the contribution of small sites to meeting London's housing needs;
  - diversify the sources, locations, type and mix of housing supply;
  - support small and medium-sized housebuilders; and
  - support those wishing to bring forward custom, self-build and community-led housing.
- 5.10 Table 4.2 of the Draft London Plan sets out an annual target of 376 new homes within Camden to be provided on small sites. Emerging Policy H2(D) states that boroughs should apply a presumption in favour of the small housing development which provide less than 25 homes, on infill development and underused sites.
- 5.11 At the local level, Policy H1 (Maximising housing supply) aims to secure a sufficient supply of homes and maximise the supply of housing to exceed the target of 16,800 additional homes between 2015/16 and 2030/31 (including 11,130 additional self-contained homes).
- 5.12 Policy H1 states that self-contained housing is the priority land use of the Local Plan. The policy also states that LBC will resist alternative development of sites already identified through a current planning permission, unless it is shown that it is no longer developable for housing. Furthermore, where sites are underused or vacant, the maximum reasonable provision of housing will be expected.
- 5.13 The principle of prioritising the delivery of housing over other uses and maximising that delivery has long been established as acceptable in Camden.
- 5.14 It is noted that LBC Policy T2 (Parking and car-free development) supports the redevelopment of existing car parks for alternative uses.
- 5.15 The Council's formal pre-application advice dated 17 January 2017 sets out that:

*"On balance, bearing in mind the Inspector's comments and the submitted analysis of design differences as well as subsequent stakeholder comments, officers consider that the principle of a residential development on this site can be now supported."*

- 5.16 The provision of two residential units on Site is considered to fully accord with the aims of the development plan and would assist LBC in meeting its targets for housing delivery. The location of residential development in this location, close to other residential uses should be supported.

### **Design**

- 5.17 This is an unusual listed building and conservation area case.
- 5.18 The architect of the Appeal proposals, Mr Quinlan Terry (an eminent architect of acknowledged high reputation), was in the office of Mr Raymond Erith, the architect of the listed building (and himself a highly regarded architect of the neo-Traditional movement). To have the one working next to the other is of historic interest in itself, and should the Appeal be allowed, and the little terrace of houses constructed, then that will add to the historical narrative of the Application Site. Such examples are rare, and we can think of only one other in the Borough, and one of our projects, the British Museum. Here Montagu Evans achieved consent for the Great Court designed by Norman Foster, and more recently Montagu Evans achieved consent for the World Conservation and Exhibition centre, by Richard Rogers.
- 5.19 Mr Terry remembers the scheme from the time when he was training in Mr Erith's office, and so was keen to consider the project, but not before he sought the opinion of Mr Erith's daughter, Lucy Archer. She wrote in support of him accepting the instruction and has subsequently written in support of the application. A copy of the letter is provided within the Appendix of the Planning and Heritage Statement.
- 5.20 This case is unusual in another respect. The proposals have met with a chorus of approval from statutory and expert consultees.
- 5.21 Historic England, in its pre-application consultation response of 21 October 2016, noted that the proposals are "unlikely to significantly impact on the setting" of Jack Straw's Castle. The change in approach to previous schemes was welcomed, noting that "the development would be of a subservient scale and attached to a later extension at the rear of the building. In contrast to the previous schemes for this site, the design and materials would allow the development to be read as a separate building and not interpreted as an extension to the listed building."
- 5.22 Historic England also consider the existing hardstanding car park and parked cars to detract from the character of the Conservation Area and there is a good opportunity to enhance that character with a sensitive landscaping scheme that keeps any visible parking to a minimum.
- 5.23 These comments were replicated in a formal letter, dated 4 May 2017, provided in response to the application's consultation.



- 5.24 The C20 Society, in its consultation response of 12 October 2016, noted that it had no objection to the proposed development, which has not significantly changed since it was consulted.
- 5.25 Mr Ken Powell, an architectural critic who has published several books on Twentieth Century architecture, in his response of 5 October 2016, noted that the two 3-bay houses adjacent to Jack Straw's Castle is entirely acceptable and complements its architecture.
- 5.26 Alan Powers, a leading commentator on Twentieth Century architecture whom appeared as an expert witness for the Twentieth Century Society in the Public Inquiry over the change of use to residential in 2002, provided a letter of support, noting that the proposed houses would make a positive contribution to the existing building and will not compete the existing elevations or scale of it. The late Georgian style is characteristic of Hampstead and the group of buildings to the west.
- 5.27 Neither at any point has any officer of the Council objected in principle to the proposals; indeed, there was a productive (and interesting) debate at the first pre-application meeting, touching on detailed matters of design and heritage.
- 5.28 These proposals have been subject to pre-application consultation, supported by information on the impact of the proposals, and officers have at no point taken issue with the principle of the development. The senior planning officer involved with the case, Mr Thuaire, raised a very important point at our first meeting, and one acknowledged in the very first pre-app submission: there was an earlier Appeal decision on the site, for additional housing in a similar location. In one way or another, he advised, and correctly, the proposals had to be materially different to those seen by Mr Nicholson, a very experienced Inspector with a heritage and design specialism.
- 5.29 The comments of the Inspector are provided at **Section 2.0**, but are repeated here for completeness:
- "it would be wrong of me to suggest that no further development should take place in the car park as I can never know what ideas an imaginative architect, perhaps one as skilled as Erith, might dream up. However, it is evident to me that to arrive at an acceptable solution for an extension to the north of this remarkable building would require exceptional skills".*
- 5.30 The Inspector left the door open, so to speak, for a new proposal on the site, concluding that it was a sensitive site (which is accepted) but *"that on balance, bearing in mind the Inspector's comments and the submitted analysis of design differences as well as subsequent stakeholder comments, officers consider that the principle of a residential development on this site can be now supported."* Mr Thuaire considered that some further work is required and recommended that the front facades are *"alternated subtly"* and that the design and use of materials for the landscaping should be influenced by the significance of the listed building.

- 5.31 We do not think there can be any doubt but that Mr Terry is an architect of such acknowledged skill. For all that, his proposals, before the Inspector, are simple in their conception. We return to the weight which we consider should be given that decision, later, after our discussion of statutory and policy matters.
- 5.32 He assessed the larger group of buildings of which the former Jack Straw's Castle is part (including historic buildings and all also in the Hampstead Conservation Area), and reasoned that the proposals should be treated as part of that sequence. He then resorted to local examples of informal, vernacular Georgian building, as it happens a house with which he was personally acquainted, and used that as the model for the small terrace, which he placed at the rear of the adjoining car park. The new party wall with the listed building is an area that has no distinguishing features and is anyway disturbed, having been subject to extension and alteration (see Planning and Heritage Statement).
- 5.33 We turn to the particular listed building and conservation area considerations shortly. For the moment we draw attention to the detailing of the proposed structure, which is traditional and appropriate in all respects.
- 5.34 A feature of the pre-application discussion with the authority was the character of the new development. A terrace, it was suggested, is an urban form and the location is semi-rural, a wild piece of public open space.
- 5.35 However, as we pointed out in pre-application submissions, there is a long tradition of single terraced developments in edge of urban and rural locations around the cities of London and Westminster (historically comprising greater London until the early C19). The Georgian terrace was not a quintessentially urban form at all. It is found in cities, in villages, in hamlets (sometimes several small terraces) and in suburban locations too. There is no particular form of detailing associated with any one of those locations more than any other.
- 5.36 Indeed the Hampstead Conservation Area itself has notable examples of terraced development. Of note, is the 1930s terrace at Nos. 1-3 Willow Road by Erno Goldfinger. The design caused outrage at the time due to its progressive architectural style as opposed to terraced form, but is now owned by the National Trust, and listed at Grade II\*.
- 5.37 So, in the event, the issue on heritage and design turns on the impact of the proposals on the special interest of Jack Straw's Castle and the Conservation Area of which it is part.
- 5.38 From the beginning the design team recognised that the car park is capable of improvement. It adds nothing of value to either designated asset and in certain respects detracts from it. The rear of the listed building facing the car park is not attractive, as noted, and is altered too. The planning permission and listed building consent PWX0102190 / LWX0102191 has been lawfully implemented, and the garages forming part of that application may be reconstructed, reinstating a structure in this location.

- 5.39 Accordingly, the promoter of the proposals hired leading landscape designer Colvin and Moggeridge to formulate proposals to improve the appearance of the car park, so enhancing, however modestly, the character and appearance of the Conservation Area at this point and with the setting of the listed building too.
- 5.40 The case obviously turns on three provisions of the Planning (LBCA) Act 1990, 16 (2) – on direct impacts to a listed building, subject to a listed building consent; 66 (1) – on development affecting the setting of a listed building; and section 72 (1), which deals with development in conservation areas, affecting their architectural or historic interest.
- 5.41 It is highly likely that a scheme meeting the terms of any one of these provisions will meet the terms of the other because the three topics – listed buildings, setting of listed buildings and conservation area effects – turn in varying degrees on the relationship of the proposal with Erith's listed building.
- 5.42 There is an additional conservation area point, relating to visual impact of public open space. The proposals do not sit on the public open space, which is Metropolitan Open Land, but they do affect views into and across it. On the far side of the former pub car park, which is the Appeal site, is another car park, the visual and landscape qualities of this particular part of the open space are compromised as a result and so less sensitive to change. The LPA have confirmed in email correspondence that *"the building here will have limited impact on views from the boundaries, on account of the substantial screening by trees, intervening hard surfaced carparks and backdrop created by the existing Jack Straws building"*.

#### *Significance*

- 5.43 The various planning considerations that apply in this case all find their way back to a single question. Do the proposals undermine the historic or architectural interest of the designated assets, the listed building and the Hampstead Conservation Area.
- 5.44 **Section 5.0** of the Planning and Heritage Statement submitted with the main application defines the special interest of the listed building. The main submission, drawing on the Council's public appraisal, explains that the area is a conservation area because:

*"a range of factors and attributes come together to create its special character. These are principally; its topography; the Heath; the range, excellence and mix of buildings; the street pattern and Hampsteads historical association with clean water and fresh air."*

- 5.45 The Site falls within sub-area 7: Whitestone Pond, which was one of the first parts of the Conservation Area to be designated, in 1968. The Conservation Area Statement sets out that the sub-area "forms the open summit of the heath" and is *"dominated by traffic but several key landmarks nearby record the history of the area"*.

- 5.46 The car park is part of the listed building's setting but as noted, and on any reasonable analysis, it is not particularly attractive just as the adjoining bit of listed building, at the rear, is not well resolved architecturally.
- 5.47 Accordingly, the car park harms the setting of the listed building and undermines the character and appearance of the Hampstead Conservation Area at this point.
- 5.48 There is clearly scope for enhancement but no obligation to bring that enhancement about. Such enhancement could comprise a better resolution to the rear external wall of the listed building as seen across the car park and visual improvement to the car park as a landscape element
- 5.49 The character of the land is open but the site is not within the MOL designation.
- 5.50 The Inspector saw some virtue in the perception of the side elevation of the listed building seen rising up from the car park, referring to that positively as "playing up to the idea of a castle with battlements and a tower" (para 7, 2003 Appeal). That is certainly one way to consider the visual character of the scene at the moment, but in itself that is no barrier to change and the Inspector himself accepted that as a matter of principle, subject to a clever design.

*The Statutory Provision, the Development Plan and Material Considerations*

- 5.51 The Inspector will be familiar with these provisions, sections 16 (2), 66 (1) and 72 (1). There is a strong presumption against causing harm to the special interest of a listed building or its setting or to the character or appearance of a conservation. It is now well established that unless setting is designated in its own right, it is not an asset and hence impact on it, or even harm to it, does not violate the terms of section 66 (1) and reasoning by parity nor would it likely violate the terms of section 72 (1)
- 5.52 Change in itself is not seen as harmful – this is trite planning but needs restating in cases like this. What matters is the nature of the change, its scale, character and appearance.
- 5.53 It is accepted that a setting element can make a positive, negative or neutral contribution to the ability to appreciate significance
- 5.54 There is a strong presumption against the grant of any consent which causes harm to a designated asset, but one capable of being rebutted through the terms of policy.
- 5.55 The Framework requires decisions to be taken on the basis of proportionate understanding of an asset's significance. See Paragraph 189 of the Framework. The submitted Planning and Heritage Statement provides such information.

- 5.56 Paragraph 193 of the Framework imports the strong presumption in statute into national policy and applies to the concept of conservation. This is defined as being both the avoidance of harm and/or the delivery of enhancement where appropriate.
- 5.57 If there is any harm in this case – and the Appellant concludes firmly there is not – then on any reasonable basis it would be less than substantial, so falling to come to terms with the balance of benefits, including benefits to the affected asset or another heritage asset, which could here be the conservation area itself.
- 5.58 The provision of additional dwellings is a land-use planning benefit to be taken into account and given weight if the Inspector finds any harm to designated assets.
- 5.59 Camden's Local Plan has the following policies which are relevant to heritage and design.
- 5.60 First is Policy D2 (Heritage) which deals with impacts, direct and indirect, on listed buildings and this reflects the Framework's provisions. Policy D2 also treats the section 72 (1) duty, on conservation areas, and reflects broadly the Framework's provisions.
- 5.61 Policy D1 deals with design and urban design.
- 5.62 The 2004 Inspector considered an "acceptable solution for an extension to the north of this remarkable building" may be possible. It is considered that the proposed development – designed by Quinlan Terry – provides such an acceptable design solution.

*Material Considerations*

- 5.63 The Inspector's consideration of heritage matters is clearly a material consideration of weight, albeit of course not binding on this Inspector. Additionally, the proposals are materially different in certain respects and achieve a degree of design refinement lacking in the previous proposals which were a compromise resulting from a larger scheme which was judged, in our view rightly, as wholly inappropriate by the authority.
- 5.64 The submitted information provides an analysis of the weight which we consider the decision maker should afford the past Appeal decision. See the Planning and Heritage Statement.
- 5.65 We do not repeat that analysis here to avoid adding to an already lengthy Appeal statement.

*Design Appraisal*

- 5.66 The proposals are traditionally designed, using traditional materials, albeit adapted to enable the provision of modern family housing. In their nature, the physical appearance of the buildings are thus complementary to the listed building, and the facing materials likewise complementary to the natural environment and landscape around the site.

- 5.67 The proposals are set back off the main frontage and will have a limited effect only on the principal views of the listed building, which are from the north and east on the main road. The proposals also occupy or are attached to a part of the elevation which has been altered variously and is not well resolved architecturally either.
- 5.68 Where the proposals are seen in association with the principal elevation of the listed building, they will be of a subservient character and clearly differentiated from it by the use of distinctive, traditional materials. This contrast is not discordant because it falls within the range of finishes one expects to find in a traditional setting. Furthermore, the recessed terrace reflects a collection of listed buildings adjoining the listed building on the other side, which includes the Grade II listed building known as the Old Court House. The whole thus forms a coherent composition.
- 5.69 Neither do we think the change in building line particularly important in this respect because some variety in building line is to be expected in the sort of loose collection of traditional buildings one finds in locations such as these, on the edge of open land close to more intensive development.
- 5.70 The proposals provide a better setting treatment than exists at present and in our judgment actually increases one's appreciation of the weatherboarding and related detailed, by means of contrast. This is not discordant but complementary, similar to the effect one gets by combining different fabrics of different patterns, textures or hues.
- 5.71 The opportunity is taken, as part of the development, to improve the boundary of the car park through appropriate landscaping, including new boundary planting and gates, and in this way the proposals reduce the car park's intrusiveness in the street scene. This comprises a benefit to the conservation area and to the setting of the listed building. No additional car park spaces are proposed as part of the application proposals which conforms to other policies in the development plan.
- 5.72 At the same time, the application provides the opportunity to achieve a managed parking layout,
- 5.73 The proposals themselves are elegantly proportioned and attractive, and so add a distinctive feature to the streetscene, one in proportion with and subservient to the listed building on this side. This is a distinguished addition to the conservation area, providing a welcome degree of enclosure on this side, covering over an unattractive and poorly resolved elevation, so increasing the attractiveness of the scene.
- 5.74 The presence of a new building has some benefits to the way the area is used, by increasing overlooking at this entrance area to the heath, which is understood to be menacing at times. The building does this in an understated way, and presents a traditional form and materials to the verdant landscape found nearby.

- 5.75 No party has alleged harm to the sense of openness present in the landscape, and we assume this is because the car park is an intrusive feature and urbanising. Likewise there is a car park to the rear. That setting means the impact of the development is confined to a limited area and affects the outlook from areas which are already developed.
- 5.76 Finally, the identity of the architect adds to the historic associations of the listed building, demonstrably we consider because of their association. If the Appeal is allowed, we can imagine a future edition of the Buildings volume for London: North for the site adapted to read (our surmised text in bold):

*Elsewhere around the top of the hill are more isolated buildings. N of the Whitestone Pond at the crossroads, JACK STRAW's CASTLE. The famous pub was destroyed in the Second World War and rebuilt in 1963-4 by Raymond Erith in Georgian Gothick: a timber framed building with white boarding, crenellations, and pretty intersecting Gothic glazing bars, but on a scale that is unmistakably C20. **To the side of Erith's design is an elegant little terrace of houses, cast in the mid C18 manner, faced in brick with pretty porches. These are the work of Quinlan Terry, who completed his professional training in Erith's office when the design for Jack Straw's Castle was on his master's drawing board.***

*Performance against Statutory Provision and Policy*

- 5.77 Accordingly, and for these reasons, the Appeal proposals enhance the character and the appearance of the conservation area and the way the area appears and functions, meeting the terms of section 72 (1). Likewise the setting of the listed building is enhanced, and its significance is not harmed, meeting the terms of sections 66 (1) and 16 (2) of the 1990 Act.
- 5.78 Allowing the Appeal would be consistent with the great weight to be accorded to the conservation of these designated assets, under the terms of paragraph 193 of the Framework 2018.
- 5.79 Camden's local plan policies D1 and D2 are similarly satisfied.

**Other Matters**

- 5.80 As noted above, we consider that all other matters have been satisfied and are covered by the submitted application documentation and/or the subsequent formal responses to statutory consultees.
- 5.81 Nevertheless, we summarise this below:
- **Residential Standards** – The Appeal Scheme proposes two 4B6P houses, both of which meet and exceed the minimum space standards. The houses are of high quality and meet the relevant guidance set out in the GLA Housing SPG

with minimum room sizes, floor to ceiling heights and private amenity space, for example. Both houses are provided with balconies and lower ground floor lightwells and supplemented by the proximity to the public open space of the heath.

- **Amenity** – As noted above, the proposed houses enjoy high quality amenity, both internally and externally. The Scheme's internal layout and lightwells have been altered post-submission to ensure that the houses have adequate outlook and receive the maximum levels of daylight and sunlight, with the corresponding assessment showing that these meet the BRE's guidelines. The Appeal Scheme does not adversely impact the amenity of surrounding residents and therefore accords with Local Plan Policy A1 (Impact of Development).
- **Basement Impact** – On 7 June 2018, the LPA's independent basement consultant released its final *Basement Impact Assessment Audit* confirming that the criteria of the LB Camden Basements CPG have been met. The Appeal Scheme accords with Local Plan Policy A5 (Basements).
- **Transport and Car Parking** – Cycle storage is provided, at policy-complaint levels, within secure and covered double bike lockers in the car park. The Appeal Scheme is intended to be 'car free, which is consistent with the requirements of Local Plan Policy T2 and meets the aims of the London plan in preventing excessive car parking. The LBC Transport Officer has confirmed that the loss of car spaces is acceptable "*given the context and on the basis that the existing and proposed parking rights are controlled by a S106*". The Applicant is willing to enter into a Section 106 Agreement to address any matters relating to transport. The Appeal Scheme accords with Local Plan Policy T2 (Transport), as well as the relevant regional and local guidance.
- **Metropolitan Open Land** – The Site falls outside the Hampstead Heath boundary and is separated from the MOL by a strip of trees. The Proposed Building would be set back from the front and would form a high quality and contextual backdrop to the car park area, formed as part of the previously developed brownfield land and partially screened by the existing vegetation on the MOL boundary. It will not harm the open character and setting of the adjacent Heath, preserving the openness of the MOL.
- **Arboricultural** – The LBC Tree Officer, Nick Bell, confirmed that the proposed tree protection measures are considered sufficient to demonstrate that the retained trees will be adequately protected throughout development, provided appropriate working methods are employed and subject to the imposing of a condition. The Appeal Scheme accords with Local Plan Policy A3 (Biodiversity)
- **Landscaping** – The Appeal Scheme is supported by Landscaping Proposals that provides details of the proposed paving, bin store, cycle store and planting



schedule. Permeable paving and sustainable urban drainage is proposed within the car park. The Proposals have been developed in consideration of the surrounding context and setting of heritage assets.

- **Waste and Recycling** – The provision of external storage for mixed recyclables, organic kitchen waste and non-recycleable waste is provided within dedicated storage in the car park. The storage is in accordance with Camden's waste guidance and the Appeal Scheme accords with Local Plan Policy CC5 (Waste).
- **Affordable Housing** – The Appeal Scheme proposes two houses and less than 1,000 sqm. A payment-in-lieu of affordable housing is therefore sought by Local Plan Policy H4. This may be secured through a Section 106 Agreement.

## 6.0 CONCLUSIONS

6.1 The Appellant has reluctantly lodged this non-determination appeal as a consequence of the LPA's failure to engage proactively at any stage of its consideration of the planning application which is now the subject of this appeal.

6.2 This Statement clearly sets out how the proposal complies with relevant planning policy and guidance. It is the Applicant's case that:

- Deliver sustainable development of brownfield land within London, in line with the overarching approach to development outlined in the NPPF;
- The proposed development provides two additional residential units which are high quality and would assist in meeting the borough's housing requirements.
- Provides an opportunity to maximise the residential potential for the site, developing an area of underutilised land, within the existing site boundary; and
- The proposal would provide market family housing, of which Camden identifies as being high priority in terms of dwelling sizes, in the borough.
- The proposal would have no adverse impacts upon the amenities enjoyed by the occupiers of surrounding residential dwellings and high quality amenity will be afforded to the future residents of the development.
- The proposals enhance the character and the appearance of the conservation area and the way the area appears and functions, meeting the terms of section 72 (1). Likewise the setting of the listed building is enhanced, and its significance is not harmed, meeting the terms of sections 66 (1) and 16 (2) of the 1990 Act. Camden's local plan policies D1 and D2 are similarly satisfied.
- On-site cycle parking has been provided within the Proposal, promoting car-free development, in line with the LPA and GLA objectives.

6.3 Accordingly, the proposals accord with all relevant adopted planning policies and associated guidance, at the local, regional and national level. This demonstrates that there are no planning reasons why it should not be approved.

6.4 For the reasons set out within this Statement, we respectfully request that this appeal is allowed, and permission granted for these proposals. The Appellant would accept the imposition of any appropriate and reasonable conditions which the Inspector deems necessary.