

**PLANNING SERVICES**

**TOWN & COUNTRY PLANNING ACT 1990 (as amended)**

**HEARING  
STATEMENT OF CASE**

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**APPEAL SITE**

15 Lyndhurst Terrace  
London  
NW3 5QA

**APPEAL BY**

Mr & Mrs Emmanuel Mond

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**SUBJECT OF APPEAL**

Appeal against the Council's refusal to grant planning permission on 11<sup>th</sup> October 2017 for:

*“Replacement two storey residential dwelling with basement, following demolition of existing dwelling; associated works”*

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**COUNCIL REFERENCE:** 2017/2471/P

**PLANNING INSPECTORATE REFERENCE:** APP/X5210/W/18/3198010

## 1. SUMMARY

- 1.1 No. 15 Lyndhurst Terrace is a residential dwelling within the Fitzjohns / Netherhall Conservation Area and it is specifically identified within the Fitzjohns / Netherhall Conservation Area Statement as making a positive contribution to the character and appearance of the conservation area.
- 1.2 The planning application which is the subject of this appeal sought planning permission for the following proposal: *“Replacement two storey residential dwelling with basement, following demolition of existing dwelling; associated works”*.
- 1.3 The application was refused by the Council on 11<sup>th</sup> October 2017 for the following reasons:
  1. *The proposed demolition, by reason of the loss of the existing building which makes a positive contribution to the Fitzjohns / Netherhall Conservation Area, would cause harm to the character and appearance of the conservation area, contrary to Policy D2 of the Camden Local Plan 2017.*
  2. *The proposed replacement dwelling, by virtue of its scale, massing, form and detailed design, would cause harm to the character and appearance of the street scene and the wider area and would fail to preserve or enhance the character and appearance of the Fitzjohns / Netherhall Conservation Area, contrary to Policies D1 and D2 of the Camden Local Plan 2017.*
  3. *The proposed basement, by virtue of its excessive size and external manifestation in relation to the size of the site and host dwelling, would represent poor design and be harmful to the character and appearance of the wider Fitzjohns / Netherhall Conservation Area, contrary to Policies D1, D2 and A5 of the Camden Local Plan 2017.*
  4. *The proposed basement, by virtue of its size and external manifestation would deprive the proposed dwelling of sufficient open amenity space and be detrimental to the visual attractiveness and environmental wellbeing of the area generally contrary to the open space and biodiversity objectives of policies A2, A3 and A5 of the Camden Local Plan 2017.*
  5. *The proposed development, in the absence of a legal agreement to prevent the prospective owners from applying for a resident’s on-street parking permit would be likely to contribute unacceptably to parking stress and congestion in the surrounding area, contrary to Policy T2 of the Camden Local Plan 2017.*

6. *The proposed development, in the absence of a legal agreement securing a Construction Management Plan, would be likely to give rise to conflicts with other road users and be detrimental to the amenities of the area generally, contrary to Policy T4 of the Camden Local Plan 2017.*
  
7. *The proposed development, in the absence of a legal agreement to secure highway contributions to undertake repair works outside the application site, would fail to restore the pedestrian environment to an acceptable condition, contrary to Policies T1 and T3 of the Camden Local Plan 2017.*

## 2 SITE AND SURROUNDINGS

- 2.1 The appeal site comprises No. 15 Lyndhurst Terrace. Lyndhurst Terrace is a predominantly residential street which runs broadly north to south, roughly parallel to Fitzjohn's Avenue (one of the main roads leading north to Hampstead), approximately 400 metres to the south of Hampstead town centre. No. 15 is located towards the northern end of the street, on the western side of the road.
- 2.2 The appeal site is within the Fitzjohns / Netherhall Conservation Area and No. 15 is specifically identified within the Fitzjohns / Netherhall Conservation Area Statement (FNCAS) as making a positive contribution to the character and appearance of the conservation area.
- 2.3 The appeal site is within Sub Area Two "Rosslyn" of the Fitzjohns / Netherhall Conservation Area. The FNCAS notes that the street layout in this sub-area has a smaller and more intimate character, with gentler gradients, and the architecture ranges from the earlier period of the 1860s to the 1880s.
- 2.4 The appeal site accommodates a low-rise, part single and part two-storey, brick residential dwelling characterised by curved walls and timber-framed glazing, dating from the 1960s. The house is of a modest and discreet character, having been built on the footprint of a former coach house. The property is set back from the established building line between two larger C19<sup>th</sup> detached properties, and benefits from a driveway to the front and a private garden to the rear, which is consistent with the urban grain of Sub Area Two of the Fitzjohn's / Netherhall Conservation Area. The L-shaped rear garden associated with No. 13 Lyndhurst Terrace (to the south) wraps around the rear (west) of the appeal site.
- 2.5 Lyndhurst Terrace and Thurlow Road (the street which runs perpendicular to Lyndhurst Terrace) comprise a mixture of styles of buildings, ranging in scale, design and age. The FNCAS notes: "*No. 11 (Lyndhurst Terrace) is a 1960s block of flats which is unsympathetic in terms of design, scale and detail, as is the two storey No. 9. Fitting better in the streetscape is the two storey No. 15, (built in the late 1960s) a narrow brick and glass building. No 13 is a substantial three storey building in gault brick that terminates the view of Thurlow Road. It has a stucco portico with columns and a slate roof. At the end of the street there is an imposing pair of gates to Elm Bank (Nos. 17 & 19) a detached two storey house with gable, the rear visible from Fitzjohns Avenue.*"
- 2.6 No. 13 Lyndhurst Terrace, the adjacent building to the south, has been converted to a language school. All other nearby properties remain in residential use.

2.7 The following underground development constraints apply at the application site: Bagshot Beds (hydrological); slope stability; subterranean (groundwater) flow.

### 3 RELEVANT PLANNING HISTORY

#### Application site

#### 3.1 **2015/6278/P** - Demolition of existing house to provide a new dwelling – **Refused 11/02/2016**

Reasons for refusal:

*1. The proposed demolition by reason of the loss of the existing building which makes a positive contribution to the Fitzjohn and Netherhall Conservation Area would cause harm to the character and appearance of the conservation area contrary to policies CS14 (Promoting high quality places and conserving our heritage) of the London Borough of Camden Local Development Framework Core Strategy and policy DP25 (Conserving Camden's heritage) of the London Borough of Camden Local Development Framework Development Policies.*

*2. The proposed development, by reason of its massing, footprint and detailed design would fail to preserve or enhance the character and appearance of the Fitzjohn and Netherhall Conservation Area contrary to policies CS14 (Promoting high quality places and conserving our heritage) of the London Borough of Camden Local Development Framework Core Strategy and policies DP24 (Securing high quality design) and DP25 (Conserving Camden's heritage) of the London Borough of Camden Local Development Framework Development Policies.*

*3. The applicant has failed to demonstrate that the proposed basement would avoid adversely affecting drainage and run-off or causing other damage to the water environment and avoid cumulative impacts upon the structural stability and/or the water environment in the local area contrary to policy CS5 (Managing the impact of growth and development) of the London Borough of Camden Local Development Framework Core Strategy and policies DP23 (Water) and DP27 (Basements and lightwells) of the London Borough of Camden Local Development Framework Development Policies.*

*4. The proposed development, in the absence of a legal agreement securing a construction management plan, would be likely to give rise to conflicts with other road users, and be detrimental to the amenities of the area generally, contrary to policies CS5 (Managing the impact of growth and development), CS11 (Promoting sustainable and efficient travel) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policies DP20 (Movement of goods and materials), DP21 (Development connecting to highway network) and DP26 (Managing the impact of development on occupiers and neighbours) of the London*

*Borough of Camden Local Development Framework Development Policies.*

*5. The proposed development, in the absence of a legal agreement to secure contributions towards public highway works and public realm and environmental improvements would be likely to harm the Borough's transport infrastructure, contrary to policies CS11 (Promoting sustainable and efficient travel) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Core Strategy DP16 (The transport implications of development), DP17 (Walking, cycling and public transport) and DP21 (Development connecting to the highway network) of the London Borough of Camden LDF Development Policies.*

*6. The proposed development by virtue of the basement excavation would result in harm to the root protection area of a mature chestnut tree in the front garden of 17 Lyndhurst Terrace which would impact upon the visual amenity and character of the conservation area contrary to policies CS14 (Promoting high quality places and conserving our heritage), CS15 (Protecting and improving our parks and open spaces and encouraging biodiversity) of the London Borough of Camden Local Development Framework Core Strategy and policies DP24 (Securing high quality design) and DP25 (Conserving Camden's heritage) of the London Borough of Camden Local Development Framework Development Policies.*

13 Lyndhurst Terrace

- 3.2 **2018/3526/P** – (Certificate of Lawfulness – Proposed) Erection of 99sqm single-storey school outbuilding (Class D1) – **Granted 26/09/2018.**

22 Frogna Way, London, NW3 6XE

- 3.3 **2015/3530/P** – Demolition of existing dwellinghouse at 22 Frogna Way redevelopment to provide a single detached family dwellinghouse and all other necessary works – **Refused 18/03/2016. Appeal allowed 09/03/2017.**

## **4 PLANNING POLICY FRAMEWORK**

- 4.1 In determining the planning application, the London Borough of Camden has had regard to the relevant legislation, government guidance, statutory development plans and the particular circumstances of the case.

### **National Policy Documents**

- 4.2 The National Planning Policy Framework (NPPF), which was first published in 2012, was updated in July 2018, after the determination of the planning application on 11<sup>th</sup> October 2017. The overall aims of the revised NPPF are broadly similar to those of the original version and the policies contained in the NPPF are material considerations which should be taken into account in determining planning applications.
- 4.3 Chapters 1, 2, 4, 9, 11, 12, 14, 15 and 16 are most relevant to the determination of this appeal.

### **Regional Policy Documents**

- 4.4 The London Plan is the statutory Spatial Development Strategy for Greater London prepared by the Mayor of London. The current London Plan was adopted in 2016. The chapters in the London Plan most applicable to the determination of the appeal include: 3, 5, 6 and 7.
- 4.5 A draft new London Plan was published by the Mayor for consultation in December 2017. The draft London Plan is also a material consideration in planning decisions.

### **Local Policy Documents**

- 4.6 The Camden Local Plan was adopted during the course of the determination of the application on 3<sup>rd</sup> July 2017. The Camden Local Plan sets out the Council's planning policies and replaces the Core Strategy and Development Policies planning documents (adopted in 2010). The following policies in the Local Plan are most relevant to the determination of the appeal:

- G1 Delivery and location of growth
- H1 Maximising housing supply
- H6 Housing choice and mix
- A1 Managing the impact of development
- A2 Open space
- A3 Biodiversity
- A4 Noise and vibration
- A5 Basements and Lightwells
- D1 Design
- D2 Heritage
- CC1 Climate change mitigation



- CC2 Adapting to climate change
- CC3 Water and flooding
- CC5 Waste
- T1 Prioritising walking, cycling and public transport
- T2 Parking and car-free development
- T3 Transport infrastructure
- T4 Sustainable movement of goods and materials
- DM1 Delivery and monitoring

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

### **Supplementary Guidance**

- 4.8 Camden Planning Guidance (CPG) provides advice and information on how the Council will apply its planning policies.

- 4.9 The Council is reviewing and updating the Camden Planning Guidance documents to support the delivery of the Camden Local Plan following its adoption in summer 2017. The update is being carried out in two phases. The following CPG documents were adopted in March 2018:

- CPG Housing (interim)
- CPG Amenity
- CPG Basements
- CPG Biodiversity

- 4.10 The following CPG documents continue to apply until they are updated in Phase 2 of the review:

- CPG1 Design (2015)
- CPG3 Sustainability (2015)
- CPG7 Transport (2011)
- CPG8 Planning Obligations (2015)

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

- 4.12 The Fitzjohns and Netherhall Conservation Area Statement was adopted in March 2001. The statement defines and analyses what makes the conservation area 'special' and provides important information to local residents, community groups, businesses, property owners, architects and developers about the types of alterations and development that are likely to be acceptable or unacceptable in the conservation area. This document is used in the assessment of planning applications for proposed developments in the Fitzjohns and Netherhall Conservation Area.

- 4.13 Pages 3-10 and 22-31 of the statement are most relevant to the determination of the appeal (the appeal building is specifically mentioned on pages 25 and 31).
- 4.14 A copy of the Fitzjohns and Netherhall Conservation Area Statement was sent with the questionnaire.

## 5 THE COUNCIL'S STATEMENT OF CASE

### Loss of a building which makes a positive contribution to the character and appearance of the Fitzjohns / Netherhall Conservation Area

5.1 The Council's first reason for refusal was as follows:

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

5.2 The appeal site is located within the Fitzjohns / Netherhall Conservation Area, wherein the Council has a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.

5.3 The appeal building is specifically identified within the FNCAS as making a positive contribution to the character and appearance of the conservation area (page 31).

5.4 The appeal site is within Sub Area Two "Rossllyn" of the Fitzjohns / Netherhall Conservation Area. The FNCAS notes that the street layout in this sub-area has a smaller and more intimate character, with gentler gradients, and the architecture ranges from the earlier period of the 1860s to the 1880s (page 22).

5.5 Policy D2 of the Camden Local Plan notes that the Council will resist the total or substantial demolition of an unlisted building that makes a positive contribution to the character or appearance of a conservation area; and Policy F/N12 of the FNCAS notes that the Council will seek the retention of those buildings which are considered to make a positive contribution to the character or appearance of the Fitzjohns / Netherhall Conservation Area, and will only grant consent for demolition where it can be shown that the building detracts from the character of the area.

5.6 The existing house has been recognised for some time as being of historic and architectural value, as it was identified as making a positive contribution to the conservation area in the FNCAS, adopted in March 2001. Notwithstanding, the following qualities of architectural, historic, townscape and social interest in the building are identified in the current policy context, which make up the building's positive contribution to the character and appearance of the conservation area.

5.7 Evidence suggests the building was designed by a well-known Hampstead architect, Ted Levy (1931-1986) of Ted Levy Benjamin & Partners, who was an innovator in domestic buildings of the later C20th and gained an international reputation for his work. He had strong links

with the Borough, arising from his modest but unique residential projects in Hampstead and Highgate, which included one-off houses such as No. 15 Lyndhurst Terrace, but also small groups of dwellings. Houses by the practice dating from the 1970s and 1980s are increasingly sought after for their light and airy and flexible living spaces, as well as their low-key external appearance set in landscaped gardens. No 15 Lyndhurst Terrace offers just such accommodation albeit on a small, modest scale, which with sensitive design is capable of adaption and sympathetic extension to meet modern living standards whilst preserving its historic and architectural value and positive contribution to the conservation area.

- 5.8 The existing house has social value. The early occupiers of the property, spanning nearly three decades, bring interest through their own reputations and as important local residents in many ways typical of the Hampstead society which reshaped the built fabric of the conservation area and wider Hampstead neighbourhood during the C20th. Known as 'The Coach House', it was until 2003 the home of civil engineer Stanley Serota and his wife Dame Beatrice Baroness Serota of Hampstead, an early female Minister in Harold Wilson's Labour government of the 1960s, and Deputy Speaker of the House of Lords. They are also of note for being parents to Sir Nicholas Serota (ex-Director of Tate Gallery and Head of the Arts Council) and Judith Serota (founder of the Spitalfields Music Festival). This social and historical connection to the Fitzjohn's Netherhall Conservation Area and the wider Hampstead neighbourhood will be lost forever if the demolition of the house is allowed.
- 5.9 The building is identified in the FNCAS as an example of C20th infill development and as such it is characteristic of a swathe of post-war building in the conservation area which contributes to its character. Yet it provides a notably more imaginative and successful response to its site and context than nearby near-contemporary examples. As such the building is an increasingly rare surviving example of its architectural period and building type. Its merit is derived from being an architect-designed modernist house using brick, timber and glazing and an esoteric combination of forms and proportions to create an interesting, contextual and modest detached dwelling within a garden landscape in keeping with the area.
- 5.10 The architectural composition of the existing house, arising from its overall form, scale, siting, footprint, height, bulk, massing, detailing and use of materials, is a distinct response to the character and appearance of the surrounding area. For instance, the use of pale brick complements the variety of brickwork and colour found in the street, while the verticality created by its fenestration responds to the larger scale and vertical emphasis of its imposing C19th neighbours. The house is of notable interest when compared to nearby later C20th examples at Nos. 9 and 11 Lyndhurst Terrace, which are standard built forms failing to respond to the established C19th townscape. In this

way, No. 15 is exemplary of a post-war phase of domestic building in the conservation area.

- 5.11 The building also contributes to the rhythm and urban grain of the streetscape (marked by larger buildings interspersed with smaller buildings) and it helps to preserve the important gap between the larger C19th buildings, giving a sense of openness.
- 5.12 The existing building at No. 15 does not dominate its infill site, but rather is of a discreet and modest scale, footprint, height and bulk which sits respectfully in the setting of its immediate neighbours, unlike for instance its larger contemporaneous neighbour at No. 11. Like its predecessor, a coach house serving its taller neighbour, the low-key nature of the existing house lets its plot continue to serve as a verdant gap in the predominantly C19th streetscape. The quality of its design, especially as it sits on the site and addresses the street, contributes to the character and appearance of the conservation area. As such, the smaller size and modest scale of No. 15 allows the neighbouring No. 17-19 Lyndhurst Terrace and its setting (a notable Victorian house with prominent gables and chimneys) to be viewed and fully appreciated from the turn in the road to the east and in longer views along Lyndhurst Terrace and Thurlow Road.
- 5.13 It should be noted that in recent years the owners have destroyed the front garden and felled mature trees in order to accommodate an additional car space, to the detriment of the setting of the house and how it is perceived from the public realm. Furthermore, the house itself has been neglected, giving the impression that it is run down and somewhat derelict. That the setting of the house has been changed and the building condition has deteriorated are not reasons to support its demolition as both the house and its gardens could be repaired and reinstated and there is no evidence that the property is structurally unsound or incapable of repair.
- 5.14 The loss of a building which makes a positive contribution to the character and appearance of the conservation area is considered to cause less than substantial harm to the designated heritage asset (the Fitzjohns / Netherhall Conservation Area). Paragraph 196 of the National Planning Policy Framework (NPPF) guides that less than substantial harm to the significance of a designated heritage asset must be weighed against the public benefits of the proposal, and in this case, the Council does not consider there to be any public benefits associated with the proposal that would outweigh the harm caused and therefore there is no justification for the loss of the positive contributor. The appeal should be dismissed on this basis.

## Impact on the character and appearance of the Conservation Area

5.15 The Council's second reason for refusal was as follows:

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

5.16 Notwithstanding the fact that the proposed demolition of No. 15 Lyndhurst Terrace is considered to cause less than substantial harm to the character and appearance of the Fitzjohns / Netherhall Conservation Area (and therefore the principle of development is not supported), the merits of the proposed replacement dwelling must be considered.

5.17 The proposed replacement dwelling is considered to cause harm to the character and appearance of the street scene, the wider area and the Fitzjohns / Netherhall Conservation Area.

5.18 The proposed replacement dwelling would be larger than the existing and would be set closer to the front boundary of the site and would therefore have greater prominence in the street scene. The proposed replacement dwelling would also have a much bolder, 'confident' form and would have greater bulk and massing than the existing.

5.19 The FNCAS singles out No. 15 (the appeal building) as an example of C20th infill and it is considered that it contributes successfully to the rhythm of the street scene, allowing visual gaps to remain between the larger C19th buildings. The fact the replacement dwelling would appear significantly larger than the existing and would sit further forward in the plot is not considered to be acceptable as the proposal would disrupt the established relationship between Nos. 13, 15 and 17-19 Lyndhurst Terrace, to the detriment of the character and appearance of the street scene and the conservation area.

5.20 Furthermore, the replacement dwelling would fail to appear subservient, as would usually be expected on an infill plot such as this. Whereas the existing building at the site has been purposefully designed to be discreet and not to stand out, so as to provide a welcome contrast to the grander buildings in the road, in contrast the proposed replacement dwelling would visually compete with its neighbours, which is not considered to be appropriate for an 'infill building'.

5.21 The fact the proposed replacement dwelling would be so much larger (two storey across the whole plot) also means that views of the side of No. 17-19 would be lost or significantly reduced, also to the detriment

of the character and appearance of the street scene and the conservation area.

- 5.22 The fact the replacement building would occupy so much of the plot is also considered to be unacceptable. The proposed footprint of the new building is considered to be overly large such that the proposal represents overdevelopment of the plot, again to the detriment of the character and appearance of the street scene and the conservation area.
- 5.23 The design of the proposed building also fails to respond to or take cues from the surrounding area in terms of the detailing, layout and form of the building. For example, some of the proposed building materials (i.e. polished terrazo) are not commonly found in the conservation area. Furthermore, whilst it is recognised that the existing building at the application site has an irregular form, the form of the proposed replacement building, with the quadrangular elements jutting out from the centre of the building at different angles, is considered to jar with the neighbouring buildings and it is considered that the building would have undue prominence in the street scene, to the detriment of the character and appearance of the street scene and the conservation area.
- 5.24 The solid to void ratio on the proposed replacement dwelling is also considered to be inappropriate. Whereas the existing building presents large glazed windows to the street, thereby providing an active frontage and natural surveillance to the street (similar to the neighbouring buildings), the replacement building would have a high proportion of solid brickwork and only a few openings facing towards the street. It is considered that this would give the building a closed and defensive appearance, which is not considered to contribute positively to the street scene or the conservation area.
- 5.25 The Council considers that the proposed replacement dwelling, by virtue of its scale, massing, form and detailed design, would cause harm to the character and appearance of the street scene and the wider area and would fail to preserve or enhance the character and appearance of the Fitzjohns / Netherhall Conservation Area, contrary to Policies D1 and D2 of the Camden Local Plan 2017. The appeal should be dismissed on this basis.

#### Basement considerations

- 5.26 The Council's third reason for refusal was as follows:

*3. The proposed basement, by virtue of its excessive size and external manifestation in relation to the size of the site and host dwelling, would represent poor design and be harmful to the character and appearance of the wider Fitzjohns / Netherhall*

*Conservation Area, contrary to Policies D1, D2 and A5 of the Camden Local Plan 2017.*

5.27 Policy A5 of the Local Plan, which relates to basement development, sets out a number of criteria against which to assess proposals. The proposed basement fails to comply with all the requirements of Policy A5 of the Local Plan, as follows.

5.28 Policy A5 guides that the Council will only permit basement development where it is demonstrated to its satisfaction that the proposal would not cause harm to:

- c) the character and amenity of the area*
- d) the architectural character of the building; and*
- e) the significance of heritage assets.*

5.29 The proposed basement would manifest itself externally by way of two lightwells, one at the front/side and one at the rear of the host building. Although neither of the lightwells would be visible from the street scene they would nevertheless express the existence of the large basement below the new building and they would serve to highlight the overly large scale of the new building within the site, its lack of subservience to neighbouring buildings, and the sense of overdevelopment of the plot. For these reason it is considered that the manifestation of the basement above ground level would be harmful to the architectural character of the new building and the character and appearance of the conservation area. The proposal is therefore contrary to Policy A5 parts c), d) and e).

5.30 Policy A5 (k) guides that basement development should:

- k) not extend into or underneath the garden further than 50% of the depth of the garden*

5.31 The proposed replacement building and its basement would have irregular footprints and the rear elevation of the building is not a straight line. Furthermore, the resultant rear garden would be very small in size. The rear lightwell would extend out from the rear elevation of the host building by over 4 metres, which is more than 50% of the depth of the garden (wherever the measurement is taken). As such, the proposal fails to comply with Policy A5, part k).

5.32 Policy A5 (l) guides that basement development should:

- l) be set back from neighbouring property boundaries where it extends beyond the footprint of the host building*

5.33 The proposed basement would not be set back from neighbouring properties where it extends beyond the footprint of the host building. As such, the proposal fails to comply with Policy A5, part l).



5.34 Policy A5 (m) guides that basement development should:

*m) avoid the loss of garden space or trees of townscape or amenity value*

5.35 The proposal would significantly reduce the size of the rear garden at the application site from nearly 60sqm to approximately 20sqm (plus a sunken lightwell measuring approximately 5sqm). On the basis that the proposal involves the loss of garden space, the proposal fails to comply with Policy A5, part m).

5.36 The Council considers that the proposed basement, by virtue of its excessive size and external manifestation in relation to the size of the site and host dwelling, would represent poor design and be harmful to the character and appearance of the wider Fitzjohns / Netherhall Conservation Area, contrary to Policies D1, D2 and A5 of the Camden Local Plan 2017. The appeal should be dismissed on this basis.

Loss of garden space

5.37 The Council's fourth reason for refusal was as follows:

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

5.38 Policies A2 and A3 of the Local Plan both seek to protect gardens wherever possible. Paragraph 6.49 of the Local Plan notes that gardens, balconies and roof terraces are greatly valued and can be especially important for families.

5.39 The reduction in size of the private rear garden from nearly 60 metres to approximately 20sqm (plus a sunken lightwell measuring approximately 5sqm) represents poor design as the garden would be very small to serve a dwelling of this size. It is recognised that there would also be a garden to the front of the replacement dwelling, but it would not benefit from the same levels of privacy as the rear garden.

5.40 The Council considers that the proposed basement, by virtue of its size and external manifestation (the rear lightwell) would deprive the proposed dwelling of sufficient open amenity space and be detrimental to the visual attractiveness and environmental wellbeing of the area generally, contrary to the open space and biodiversity objectives of Policies A2, A3 and A5 of the Camden Local Plan 2017. The appeal should be dismissed on this basis.

### Section 106 reasons for refusal

- 5.41 The Council's reasons for refusal numbers 5, 6 and 7 relate to the absence of a legal agreement to secure: (5) car-capped development; (6) a Construction Management Plan; and (7) a highways contribution.
- 5.42 The appellant's appeal statement notes (paragraph 10.1) that reasons for refusal numbers 5, 6 and 7 are addressed by a draft legal agreement, which will be discussed further with the Council following the submission of the appeal.
- 5.43 The draft legal agreement included within the appellant's appeal statement (Appendix 10) includes two of the three suggested heads of terms (car-free and Construction Management Plan) but does not include a highways contribution. This will be discussed with the appellant prior to the Hearing.
- 5.44 Notwithstanding the fact that the appellant has agreed to two of the three suggested heads of terms, the Council has provided evidence in Appendix B to demonstrate that all three of the requirements are justified against relevant planning policy and meet the tests laid out in the Community Infrastructure Levy (CIL) Regulations 2010, in particular Regulation 122(2) which requires that for a planning obligation to constitute a reason for granting planning permission it must be (a) necessary to make the development acceptable in planning terms, (b) directly related to the development, and (c) fairly and reasonably related in scale and kind to the development, and the National Planning Policy Framework (particularly paragraphs 203-206).

## 6 RESPONSE TO THE APPELLANT'S GROUNDS OF APPEAL

- 6.1 The issues raised in the appellant's appeal statement are largely covered in section 5 of this statement. This section responds directly to the points raised that have not been addressed above.
- 6.2 The appellant's grounds of appeal are summarised below and addressed beneath, as follows:
- Whether the existing building makes a positive contribution to the character and appearance of the Fitzjohns / Netherhall Conservation Area
  - Whether the appeal building constitutes a non-designated heritage asset
  - Whether the proposed development would enhance the character and appearance of the Fitzjohns / Netherhall Conservation Area
  - Whether any harm to the Fitzjohns / Netherhall Conservation Area is outweighed by public benefits
  - Basement considerations
  - Other matters

### **Whether the existing building makes a positive contribution to the character and appearance of the Fitzjohns / Netherhall Conservation Area**

- 6.3 The appellants have challenged the categorisation of the building as making a positive contribution to the conservation area in their Heritage Statement submitted with the original application, and within their appeal statement. The Council strongly disagrees with their assessment and remains firmly of the opinion that the appeal building makes a positive contribution to the character and appearance of the Fitzjohn's / Netherhall Conservation Area.
- 6.4 As a key starting point, the building is specifically identified within the FNCAS as being a building which makes a positive contribution to the conservation area (page 31), along with numbers 2, 5, 7, 13, 17 and 19 Lyndhurst Terrace. The introductory text to the list (page 30) notes: "*A number of buildings are notable because of their value as local landmarks, or as particularly good examples of the local building tradition. Such buildings, whilst not statutorily listed are nevertheless important local buildings in their own right and make a positive contribution to the character and appearance of the Conservation Area.*"
- 6.5 The next paragraph notes: "*The distinct quality of Fitzjohns / Netherhall is that it largely retains its homogenous mid-late 19<sup>th</sup> century architectural character. For this reason, most of the 19<sup>th</sup> century buildings make a positive contribution to the character and appearance of the Conservation Area. The general presumption should therefore*

*be in favour retaining such buildings. There is also some 20<sup>th</sup> century re-development and infill which contributes to the character of the area as it is today. Although not listed, the Government requires that proposals to demolish these buildings should be assessed against the same broad criteria as proposals to demolish listed buildings (PPG15<sup>1</sup>)” (emphasis added).*

- 6.6 The FNCAS also makes reference to the appeal building in the main text of the document. The statement notes that there is a mixture of architectural styles within the conservation area and there are a high number of properties built for individual owners (page 10). In describing Sub-Area Two of the area, “*Rosslyn*”, the FNCAS notes that Lyndhurst Terrace is a short street with a dramatic junction at Lyndhurst Road with distinctive buildings on either side (page 24). On page 25, the statement notes that No. 11 Lyndhurst Terrace, a 1960s block of flats, is unsympathetic in terms of design, scale and detail, as is the two storey No. 9 (a residential dwelling above a sloping driveway and sunken garages). The statement then goes on to specifically note: “*Fitting better in the streetscape is the two storey No. 15, (built in the late 1960s) a narrow brick and glass building*”.
- 6.7 The appellants note in paragraph 2.10 of their appeal statement that the FNCAS makes “*brief commentary*” on Lyndhurst Terrace and that No. 15 is “*mentioned briefly*”; however, it is not the role of a conservation area statement to provide detailed commentary on every street and building within the area as it would not be feasible for them to do so. The Council considers that the fact the building is referred to within the main text of the document, as well as within the list of positive contributors, serves to highlight the important contribution the building makes to the character and appearance of the conservation area.
- 6.8 Notwithstanding the fact that the building is identified within the FNCAS as making a positive contribution to the character and appearance of the conservation area, the Council has also identified, through the planning process, the following qualities of architectural, historic, townscape and social interest in the building (as already detailed in the Officer’s Report, paragraph 4.10):
- The building is identified in the FNCAS as an example of C20th infill development and as such it is characteristic of the post-war development in the Conservation Area, yet provides a notably more imaginative and successful response to its site and context than nearby near-contemporaries;
  - Evidence suggests the building may have been designed by a well-known architect, Ted Levy, who had some associations with the conservation area and more with the wider borough, and though not his best work, the building provides an increasingly

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<sup>1</sup> PPG15 has been superseded by the NPPF 2018.

rare survival, and the commissioning original occupiers of the house bring some interest through their own reputations and as residents in many ways typical of the Hampstead society which reshaped the built fabric of the conservation area and wider Hampstead during the C20th;

- Externally, notwithstanding any perceived limitations of its internal layout and functionality, the architecture of the building has merit as an architect-designed modernist house using brick, timber and glazing and an esoteric combination of forms and proportions to create an interesting, contextual and modest detached dwelling;
- The building contributes to the rhythm of the street scene (e.g. large buildings interspersed with small buildings) and it helps to preserve the important sense of a gap between the larger C19th buildings;
- The smaller size of No. 15 allows No. 17 Lyndhurst Terrace and its setting (an attractive, Victorian house in the end plot with prominent gables and chimneys) to be viewed and fully appreciated from the street corner and as part of the street scenes along Lyndhurst Terrace and Thurlow Road.

6.9 The appellants note, in their Heritage Statement (paragraph 3.12), that the house lacks a cohesive appearance and form and that different architectural elements are aggregated without any resolution of form or detail; many external details are unresolved and crudely executed, for example the junctions between the walls and the flat roof; the design is muddled in places and there is no sophistication to the interior arrangement, and no crafting of interior spaces. In paragraph 3.13 of the Heritage Statement it is noted that: *“The house has the appearance of an unsophisticated self-build project, or a building that has been extended in successive phases over time. The mediocre quality of the architecture of the house clearly does not bear any comparison with the high quality of the notable examples of domestic architecture in Hampstead of the same period...”*

6.10 The Heritage Statement assesses the building’s contribution to the significance of the Fitzjohns / Netherhall Conservation Area against criteria set out in Historic England’s ‘Conservation Area Designation, Appraisal and Management’ (2016) and notes the following (summarised):

- The building is not the work of a particular architect or designer of regional or local note (there is no evidence to suggest it was designed by Ted Levy and the quality of the build falls far below the usual quality of residential buildings and schemes by this architect and his practice).
- The building does not have a landmark quality.
- The building does not reflect a substantial number of other elements in the conservation area in age, style materials, form or other characteristics.

- There are no designated heritage assets adjacent to the site and therefore the building does not contribute to their significance.
- The building does not contribute to the quality of recognisable spaces.
- The building is not associated with a designed landscape e.g. a significant wall, terracing or garden building.
- Whilst the building does illustrate the development of the settlement in which it stands, it only does this to the extent that any form of development would, and not in a significant way. It is an unremarkable example of a post-war private house infill.
- The building does not have significant historic association with features such as the historic road layout, burgage plots, a town park, or landscape feature – it is an infill house on the site of a former coach house and glasshouse in the garden of No. 13 Lyndhurst Terrace.
- The building does not have historic associations with local people or past events sufficient to warrant historic importance - Baroness Serota lived in the house but this is not an association of a degree warranting the attribution of any historic importance.
- The building does not reflect the traditional functional character or former uses in the area - it is in residential use, but it is not of the grand scale of the large houses typical of the area, nor does it have the appearance of a subsidiary service building such as a former coach house or garage.
- The building's use only contributes to the character and appearance of the area as much as any residential dwelling would.

6.11 The appellant's Heritage Statement concludes that the building meets two of the Historic England criteria (namely, the appeal site use conforms to the prevailing residential character of the area, and illustrates the development of the area) but only to a limited degree. Nevertheless, the statement also acknowledges the fact that Historic England guides that any one of the characteristics could provide the basis for considering that a building makes a positive contribution to the special interest of a conservation area.

6.12 The Council considers that the building meets more of the Historic England criteria than that which the appellant's Heritage Statement has identified. For example, whilst no specific proof has been found, the Council (and many commenters on the application) considers that the building may be the work of Ted Levy, a well-known architect who had some associations with the conservation area and with the wider borough. Furthermore, the building does reflect other elements in the conservation area (e.g. the use of brick as a building material) and the building has a relationship with the historic road layout insofar as it is specifically designed to be an infill building which allows the larger, C19th buildings to be prominent.

- 6.13 The building also undeniably has historic associations with local people of note, namely the Serotas (see paragraph 5.8). Sir Nicholas Serota objected to the planning application, noting that: *“My parents lived in the present house from 1976 until 2004 and enjoyed the scale and elegance of Ted Levy’s design which had replaced a small original Coach House with a building that was modest and allowed for small gardens at back and front, both of which my mother planted with great care...”*.
- 6.14 The Heath & Hampstead Society have highlighted that the house is of the same period in which Baroness Serota was perhaps most well-known (i.e. when she was an MP and fulfilling other important public roles), which adds to its significance. Furthermore, the fact that a long-term former resident of the building also believes the house to have been designed by Ted Levy is of note.
- 6.15 It is clear that there are a vast number of reasons why the building could be said to make a positive contribution to the character and appearance of the conservation area, not least the fact it is specifically identified as doing so in the FNCAS.
- 6.16 To conclude this section, the Council firmly considers that the appeal building makes a positive contribution to the character and appearance of the Fitzjohn’s / Netherhall Conservation Area. As such, the loss of the building would cause harm (less than substantial) to the character and appearance of the conservation area, contrary to Policy D2 of the Camden Local Plan 2017 and Policy F/N12 of the FNCAS.

#### **Whether the building constitutes a non-designated heritage asset**

- 6.17 The appellants claim in their appeal statement (paragraph 5.3) that the appeal building is not a non-designated heritage asset for the purposes of assessing the application as the findings in their Heritage Statement point towards the building having *“little or no heritage significance”* (paragraph 5.17); however, the Council disagrees.
- 6.18 Paragraph 039 of Planning Practise Guidance states: *“Local planning authorities may identify non-designated heritage assets. These are buildings, monuments, sites, places, areas or landscapes identified as having a degree of significance meriting consideration in planning decisions but which are not formally designated heritage assets. In some areas, local authorities identify some non-designated heritage assets as ‘locally listed’.*
- 6.19 The appellant’s Heritage Statement notes that the building is not locally listed and states that this is not surprising given that it doesn’t share any positive qualities with other buildings in the area that are locally listed (paragraph 4.19).

- 6.20 Camden's Local List identifies historic buildings and features that are valued by the local community and that help give Camden its distinctive identity. Items on the Local list are identified as non-designated heritage assets and as such, their significance is a material consideration in planning decisions. However, it is important to point out that just because a particular building doesn't feature on the Local List, this does not mean it is not a non-designated heritage asset for the purposes of determining a planning application. Paragraph 3.31 of CPG1 'Design' is clear in stating that non-designated heritage assets may either be identified as part of the planning process (e.g. pre-application process) or on Camden's Local List. In this case, the building was identified as part of the planning process.
- 6.21 Generally speaking, within Camden, if a building is listed within a conservation area statement as being a positive contributor, then it won't feature on the Local List; however, there are a few exceptions to this rule.
- 6.22 In this case, the Council considers that the fact the building is listed in the FNCAS as being a building which makes a positive contribution to the character and appearance of the conservation area means it constitutes a non-designated heritage asset for the purpose of determining the planning application.

**Whether the proposed development would enhance the character and appearance of the Fitzjohns / Netherhall Conservation Area**

- 6.23 The appellants refer to pre-application advice from the Council which noted that the proposed contemporary design had architectural merit. In paragraph 3.11 of their appeal statement they note: *"It is important to note that the advice from LBC officers included the overarching logic (in the final two bullet points under the heading Other considerations) that, whilst the proposed contemporary design had architectural merit, the principle of replacing the existing building is not supported, as its loss would have a harmful impact on the CA."*
- 6.24 For clarification, even at the pre-application stage the Council highlighted its concerns with the proposed design of the replacement dwelling (e.g. the fact the replacement dwelling is larger than the existing and the fact it would be set further forward in its plot etc.) The fact the replacement building may have some architectural merit does not mean it is suitable for the appeal site. Instead, the Council considers that the proposed replacement dwelling would cause harm to the character and appearance of the Fitzjohns Netherhall Conservation Area, as detailed in the Officer's report and explained in more detail below.
- 6.25 The Officer's Report notes that the replacement dwelling would be larger than the existing, with greater bulk and massing, and it would therefore have greater prominence in the street scene. The



replacement dwelling would also sit closer to the front boundary of the application site, which would also give the building greater visual prominence. The existing building at the site was specifically designed as an infill building and it was designed to be subservient to the larger buildings in the street scene. It is not considered to be appropriate for a dwelling at the appeal site to compete for attention in the street scene along Lyndhurst Terrace, which is what the proposed replacement dwelling would do.

- 6.26 As already noted, No. 15 is singled out in the FNCAS as an example of C20th infill development and it is considered that the building contributes very successfully to the rhythm of the street scene, allowing visual gaps to remain between the larger C19th buildings (as would have originally been the case when the streets were first developed). The Council considers that the deferential building line of the existing building is part of its careful contextual design, and it sets up a relationship between the buildings of different ages which is part of their positive contribution to the character and appearance of the conservation area. The fact the replacement dwelling would appear significantly larger than the existing and would sit further forward in the plot is not considered to be acceptable as the proposal would disrupt the established relationship between Nos. 13, 15 and 17-19 Lyndhurst Terrace, to the detriment of the character and appearance of the conservation area.
- 6.27 The Officer's Report also notes that the replacement dwelling would have a much bolder and more angular form than the existing. Whereas the existing building is relatively simple and modest in its outward appearance, the replacement dwelling would comprise of quadrangular elements jutting out from the centre of the building at different angles and it is considered that the building would not appear modest but instead would appear overly confident in the plot. Again, this is not considered to be appropriate to this infill location where it is expected that development should be of a more subservient nature. The existing building was evidently built in the grounds of a larger building and it is considered to be important that any building on the plot retains a sense of clear subservience. The fact the replacement dwelling would be so much larger and prominent means the sense of subservience would be significantly reduced, and this is considered to be harmful to the character and appearance of the streetscene and the conservation area.
- 6.28 The fact the replacement building would be two storey in height across the whole plot also means that views of the side of No. 17-19 would be lost or significantly reduced. No. 17-19 is another large, attractive C19th residential dwelling which occupies the end plot in the street and features prominent gables and chimneys. It is considered that views of the side of the building (available from the junction of Lyndhurst Terrace with Thurlow Road and also longer-range) contribute positively to the character and appearance of the conservation area, yet views of

this building would be significantly altered and harmed by the introduction of a much larger building on the appeal site. The replacement building has been designed to have an angled frontage, to allow the retention of some views towards No. 17-19; however, the angled front corners of the building are harsher and more severe than the simple curved frontage on the existing building and it is considered that the new building would detract from the setting of No. 17-19 and harm its special relationship with the streetscene, to the detriment of the character and appearance of the conservation area.

- 6.29 The appellant's Design & Access Statement notes (page 15) that the application site, *"with its location almost opposite the junction of Thurlow Road and being the last plot before the termination of Lyndhurst Terrace, demands that the house should engage more positively with the street than in other mid-street 'gap' conditions"*; however, the Council firmly disagrees. No. 13 Lyndhurst Terrace terminates views along Thurlow Road and the existing building at the appeal site has been specifically and carefully designed to not stand out or be overly prominent in views looking West along Thurlow Road (towards Lyndhurst Terrace). As already highlighted, the existing building at the application site is small and tucked away as part of its designed and intended character, and this is considered to be a critical part of its contribution to the conservation area, as its discreetness provides a welcome contrast with the larger and grander C19th buildings in the area. The fact the appeal site is partially visible in views along Thurlow Road makes it all the more important that any building on the infill site be subservient in character, so as to allow the grander buildings, such as Nos. 13 and 17-19, to stand out. The appellant suggests that any building on the plot should *"engage more positively with the street"*; however, the Council considers that the existing building already engages positively with the street, through its subservience and modesty.
- 6.30 The fact the replacement building would occupy so much of the plot is also considered to be unacceptable. At the rear, the rear building line of the replacement building would align with the rear building line of No. 13, but then the rear wall angles itself towards the rear building line of No. 17-19, leaving very little rear garden space (especially given that part of the rear garden is taken up by a sunken lightwell to serve the basement). The proposed footprint of the new building is considered to be too large and it is considered that the proposal represents overdevelopment of the plot, to the detriment of the character and appearance of the conservation area.
- 6.31 The proposed design of the building also fails to respond to or take cues from the surrounding area in terms of the detailing, layout and form of the building. The appellant's Design & Access Statement notes (page 12) that the design, *"reacts to the immediate scale, street scene, outlook and sightlines of its immediate environment"* and that the building, *"seeks to find an appropriate architectural language of a*

*modern home which is innovative and yet heavily informed by the local architectural culture*"; however, this is not considered to have been achieved in the final design. The appellants make the point that the existing building at the application site makes no concessions to the local area in terms of design; however, the key difference is that the existing building is modest in its outward appearance, which is appropriate to its infill position in the street scene. Furthermore, as noted above (paragraph 5.10), the Council considers that the architectural composition of the existing houses is a distinct response to the character and appearance of the surrounding area. For example, the use of pale brick complements the variety of brickwork and colour found in the street, while the verticality created by its fenestration responds to the larger scale and vertical emphasis of the C19th century neighbouring buildings.

- 6.32 The appellant's Design & Access Statement notes (page 14) that: "*The (proposed) house fills the given site in width with a clear and unfussy form*", and it goes on to note that: "*The house has a singular 'extruded' form that reflects the simplicity and often utilitarian character of historical gap site buildings which were usually autonomous and non-residential in character; coach-houses, garages or garden buildings for example...*". The Council does not consider the proposed design to be clear and unfussy, or simple and utilitarian; instead the angled elements jutting out from the centre of the building give the building a complex and over-elaborate appearance that is at odds with its infill position.
- 6.33 Furthermore, the Council does not consider that the new building would reflect the normal development of 'historical gap sites' as, traditionally, infill buildings would be simple and utilitarian in design and subservient in nature, which the replacement building is not considered to be.
- 6.34 The Council considers that the existing building at the site, despite its irregular form and footprint, appears modest and does not draw undue attention to itself in the streetscene; whereas the form of the proposed replacement building, with the quadrangular elements jutting out from the centre of the building at different angles, is considered to jar with the neighbouring buildings and it is considered that the proposed building would have undue prominence in the streetscene, to the detriment of the streetscene and the character and appearance of the conservation area.
- 6.35 The appellant's Design & Access Statement refers to the angled elements at the front of the new building as "*bay-like forms*" and likens them to bay windows; however, the Council disagrees that these elements would appear like bay windows. Instead, these elements contribute to the boldness and severity of the form of the proposed new building.
- 6.36 As noted in the Officer's Report, the solid to void ratio on the proposed new building is also considered to be inappropriate and harmful to the

character and appearance of the wider area. Whereas the existing building presents large glazed windows to the street, thereby providing an active frontage and natural surveillance to the street (similar to the neighbouring buildings), the proposed replacement dwelling would have small window openings, none of which would directly face the street (due to the angled form of the building). Thus it is considered that the replacement building would appear closed and defensive when viewed from the street, which represents poor planning and design, and the proposed building would thereby fail to contribute positively to the streetscene along Lyndhurst Terrace.

- 6.37 The use of brickwork is considered to be acceptable (subject to the use of high quality bricks); however, polished terrazzo is not common to the local area. Notwithstanding this comment, as noted in the Officer's Report, if the proposal was otherwise considered to be acceptable, a suitable planning condition could require the submission and approval of facing materials prior to the commencement of development.
- 6.38 The Council considers that the proposed development, by virtue of the scale, massing, form and detailed design of the proposed replacement dwelling, would cause harm to the character and appearance of the streetscene along Lyndhurst Terrace and the wider Fitzjohns / Netherhall Conservation Area. This is contrary to Policies D1 and D2 of the Camden Local Plan. The appeal should be dismissed on this basis.

**Whether any harm to the Fitzjohns / Netherhall Conservation Area is outweighed by public benefits**

- 6.39 The appellants disagree with the way in which the Council has assessed the application; it is their opinion that the Council has failed to properly apply the tests in the NPPF. It is also their opinion that the Council's assessment is flawed as "*(the building's) relative significance within the conservation area has been overstated*" (paragraph 3.14).
- 6.40 Paragraph 193 of the updated NPPF<sup>2</sup> notes that: "*When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance*". Paragraph 196 then guides that, "*Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use*". Paragraph 197 notes: "*The effect of an application on the significance of a non-designated heritage asset*

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<sup>2</sup> The National Planning Policy Framework was updated in July 2018 and the paragraph references in the appellant's Statement of Case relate to the original 2012 version. However, the text regarding assessing the impact on heritage assets remains the same albeit with different paragraph numbers.

*should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset”.*

- 6.41 The appellants assert that the Council has considered the demolition of the existing building in isolation, without considering the merits (including potential heritage benefits) of the proposed replacement dwelling in determining whether harm will be caused to the conservation area, as required by the NPPF.
- 6.42 Paragraph 4.7 of the Officer’s Report notes that: *“The loss of a building which makes a positive contribution to the character and appearance of the conservation area is considered to cause less than substantial harm to the designated heritage asset (the Fitzjohns / Netherhall Conservation Area). Both paragraphs 133 and 134<sup>3</sup> of the NPPF note that harm to the significance of a designated heritage asset (i.e. the conservation area), whether it be substantial harm or less than substantial harm, must be weighed against the public benefits of the proposal. In this case, the Council does not consider there to be any public benefits associated with the proposal; for example, there would be no net gain in residential units, the development would only benefit the applicant. As such, there is no justification for the loss of the positive contributor.”*
- 6.43 Paragraph 4.8 of the Officer’s Report then goes on to note that: *“Planning policies at the local level reflect guidance in the NPPF. Policy D2 of the Local Plan, which relates to heritage, notes that: (f) the Council will resist the total or substantial demolition of an unlisted building that makes a positive contribution to the character or appearance of a conservation area. Similarly, Policy F/N12 of the FNCAS notes that the Council will seek the retention of those buildings which are considered to make a positive contribution to the character or appearance of the Conservation Area, and will only grant consent for demolition where it can be shown that the building detracts from the character of the area.”*
- 6.44 Paragraph 4.11 of the Officer’s Report concludes: *“the loss of a building which is considered to make a positive contribution to the character and appearance of the Fitzjohns Netherhall Conservation Area is contrary to policy. Therefore the principle of development is not acceptable and the application is recommended for refusal on this basis.”*
- 6.45 The Council considers that it has properly assessed the application in line with relevant planning policy.

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<sup>3</sup> The relevant text can now be found in paragraphs 195 and 196 of the updated NPPF, published in 2018.

- 6.46 The appellants refer, in paragraph 5.29 of their appeal statement, to an appeal decision at 22 Frognal Way, also in the London Borough of Camden. The application was for the demolition of the existing dwellinghouse and redevelopment of the site to re-provide a single detached family dwellinghouse. The Inspector, in allowing the appeal, concluded that the significance of the existing building did not weigh significantly in favour of retention. He noted (paragraph 16): *“The existing building would be lost entirely. Whilst it is a large dwelling in the Hampstead Conservation Area in its own right I have identified in consideration of it as a non-designated heritage asset that its positive contribution is limited. In this regard the net effect of the provision of the new dwelling and thereby its removal would at worst be neutral as what is special about the Hampstead Conservation Area would not be harmed. In this regard should it be constructed the appeal scheme would reflect the character of the Hampstead Conservation Area and preserve the part of the Hampstead Conservation Area it would be located in”* (emphasis added).
- 6.47 The case at 22 Frognal Way differs to this appeal case (15 Lyndhurst Terrace) in a number of key ways, as follows. Firstly, the existing building at 22 Frognal Way was not considered to make a positive contribution to the conservation area (No. 22 is identified within the Conservation Area Statement as being a “neutral building” and the Inspector did not afford it much significance, whereas 15 Lyndhurst Terrace is specifically identified in the FNCAS as making a positive contribution to the conservation area and the Council has provided detailed reasons why it considers the building to make a positive contribution to the conservation area). Secondly, the Inspector found the replacement dwelling to have an acceptable design, whereas in this case, the Council does not consider the proposed replacement dwelling to be of a suitable design (see above). Thirdly, the appeal decision notes that 22 Frognal Way had been significantly altered over time and had extant permission to be further altered, whereas 15 Lyndhurst Terrace remains largely unaltered from its original design.
- 6.48 The Officer’s Report notes at paragraph 4.7 that: *“the Council does not consider there to be any public benefits associated with the proposal; for example, there would be no net gain in residential units, the development would only benefit the applicant. As such, there is no justification for the loss of the positive contributor”*. The appellants refer in their appeal statement (paragraph 5.37) to Planning Practise Guidance regarding public benefits.
- 6.49 Paragraph 020 of Planning Practise Guidance states: *“Public benefits may follow from many developments and could be anything that delivers economic, social or environmental progress as described in the National Planning Policy Framework (paragraph 7<sup>4</sup>). Public benefits*

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<sup>4</sup> The relevant text can now be found at paragraph 8 of the updated NPPF, published in 2018.

*should flow from the proposed development. They should be of a nature or scale to be of benefit to the public at large and should not just be a private benefit. However, benefits do not always have to be visible or accessible to the public in order to be genuine public benefits. Public benefits may include heritage benefits, such as:*

- sustaining or enhancing the significance of a heritage asset and the contribution of its setting*
- reducing or removing risks to a heritage asset*
- securing the optimum viable use of a heritage asset in support of its long term conservation”*

6.50 Whilst public benefits can include sustaining or enhancing the significance of a heritage asset and the contribution of its setting, the Council does not consider that the proposed development would sustain or enhance the significance of the Fitzjohns / Netherhall Conservation Area; instead they consider that the proposal would cause harm to the conservation area, as outlined above.

6.51 The appellants also suggest in their appeal statement (paragraph 5.39) that other sustainable development objectives (public benefits) would be achieved by the proposal, namely the fact that the proposal would make more efficient use of land and deliver a larger dwelling; the proposal would replace a low efficiency building with a highly energy efficient building, thus reducing future carbon emissions; the proposal would increase rainwater retention on site to reduce flood risk elsewhere; and the proposal would increase planted areas to enhance biodiversity.

6.52 In response to the above the Council would like to note the following. The fact the replacement building would be larger (i.e. make more efficient use of land) fails to meet the NPPF’s environmental sustainable development objective insofar as the proposal represents overdevelopment of the plot, to the detriment of the character and appearance of the streetscene and the conservation area (as outlined above), and it fails to meet the NPPF’s social sustainable development objective insofar the proposal provides a large family dwelling with an inadequately sized garden, thereby failing to adequately meet the needs of future generations (also outlined above).

6.53 Whilst the proposal may provide a building that is more energy-efficient than the existing, in line with the NPPF’s environmental sustainable development objective, consideration must also be given to the demolition of the existing building. Demolition of the existing building is considered to be wasteful (particularly given its relatively young age) and the construction process and new materials employed in developing buildings are major consumers of resources and can produce large quantities of waste and carbon emissions too. The Council considers that the possibility of sensitively altering or retrofitting

buildings should always be strongly considered before demolition is proposed (as highlighted at paragraph 8.16 of the Local Plan).

- 6.54 Whilst the proposal seeks to increase rainwater retention on site, this is a necessity of the basement construction. In a similar vein, although the proposal would increase planted areas to enhance biodiversity, the basement would involve the loss of garden space overall, which is contrary to biodiversity aims.
- 6.55 The Council remains of the opinion that there are no public benefits associated with the proposal that would outweigh the harm caused to the character and appearance of the conservation area. The appeal should be dismissed on this basis.

### **Basement considerations**

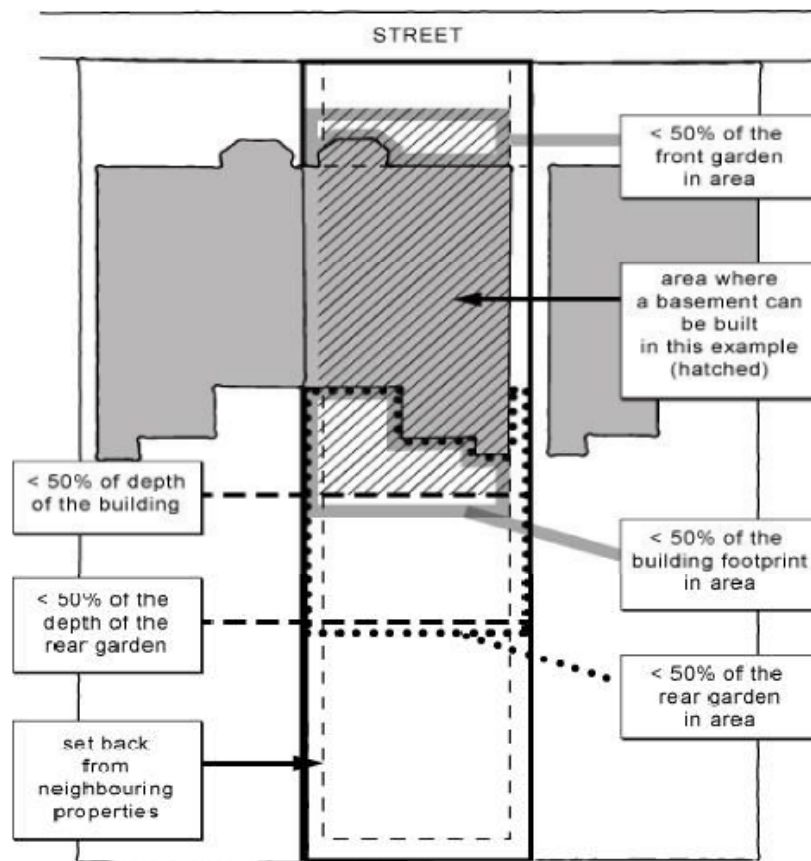
- 6.56 The Officer's Report assesses the proposal against the criteria laid out in Policy A5 of the Local Plan and concludes that the proposal would fail to comply with criteria c) to e), k), l) and m). That is to say, the proposal would cause harm to the character and amenity of the area; the architectural character of the building; and the significance of heritage assets; and the proposed basement development would extend into or underneath the garden further than 50% of the depth of the garden; would not be set back from neighbouring property boundaries where it extends beyond the footprint of the host building; and would cause the loss of garden space or trees of townscape or amenity value (see above).
- 6.57 The appellants claim in their appeal statement (paragraph 7.3) that criteria f) to m) of Policy A5 are for general application and that other approaches could also be acceptable, due to the use of the word "*should*" instead of the terms "*must*" or "*will only*"; however, the Council disagrees with this approach. Paragraph 2.6 of Camden Planning Guidance (CPG) Basements<sup>5</sup> notes that: "*The criteria of policy A5 must be considered together*" and a diagram (Figure 9) is then provided which illustrates all the criteria of Policy A5 being applied (see below):

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<sup>5</sup> Camden Planning Guidance Basements was adopted on 26/03/2018.



Figure 9. All criterion of Policy A5 of the Local Plan



- 6.58 The appellant's appeal statement notes (paragraph 8.9) that the appeal site is unusual compared to the neighbouring plots in that it does not extend back as far; however, this relates to the historical development of the plot, whereby it once formed part of the grounds of a larger building. The smaller size of the appeal site is not reason to allow a large basement that contravenes the Council's planning policies. As noted in the Officer's Report, the manifestation of the basement above ground (by way of the lightwells) highlights the overly large scale of the replacement building within the site and increases the sense of overdevelopment of the plot, to the detriment of the character and appearance of the wider area.
- 6.59 The appellant's appeal statement goes on to note that: "*The size of the proposed basement is a logical out-turn of the siting, layout and form of the host dwelling proposed, together with consideration of other site specific factors noted below*". The appeal statement then makes its own assessment against the criteria in Policy A5.
- 6.60 Policy A5 (h) guides that basement development should:

*h) not exceed 50% of each garden within the property*

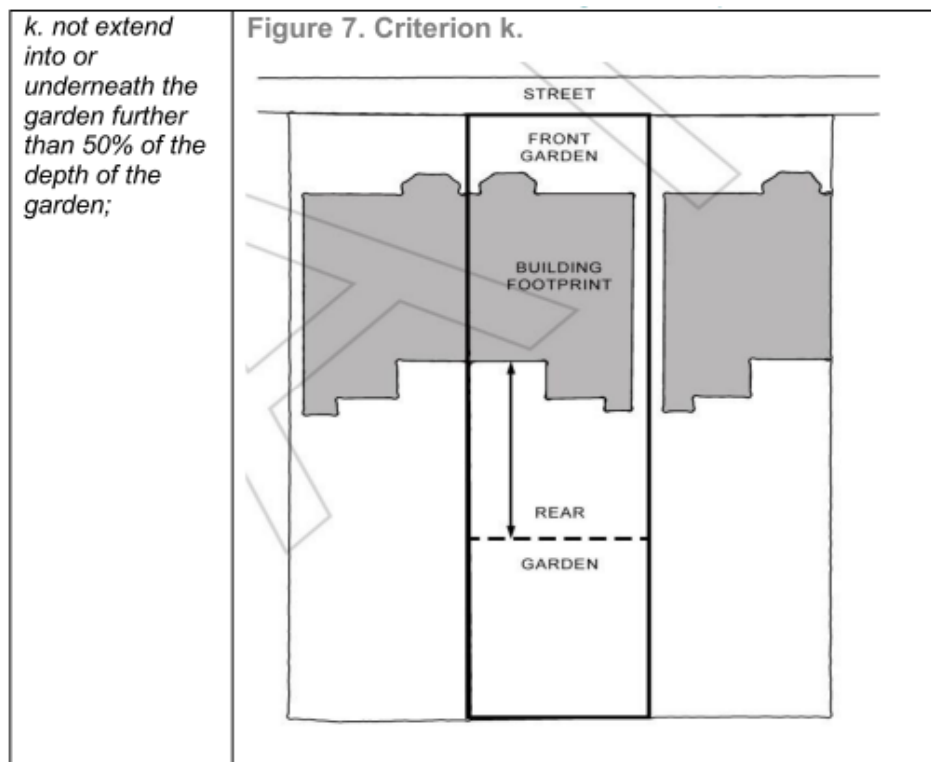
- 6.61 The Officer's Report has noted that the proposal complies in this regard; however, the appellant's appeal statement notes (paragraph 8.10) that, taking into account the supporting text to the Local Plan, the calculation of the percentage of garden affected by basement development should be based upon the existing garden, in which case, the proposed basement, including the rear lightwell, extends to some 58% of the area of the existing rear garden, thereby failing to comply with this part of the policy. The statement then goes on to justify this (paragraph 8.10, bullet point 1), noting that the existing building has an unusual plan form leading to an L-shaped garden that is larger than it might have been had the existing building had a square or rectangular plan form; that the land to the west (part of the garden belonging to No. 13) could reasonably be expected to form part of the plot for No. 15; and that, due to Camden's basement guidelines, the land to the west is unlikely to be the subject of basement development and is therefore likely to remain free of basement development in the future. The Council wholeheartedly disagrees with this approach. No. 15 occupies a smaller plot because it is infill development and the Council's policies cannot be applied based on what might have been (i.e. the fact the garden might have been a different size). Furthermore, the expected absence of basement development in one garden isn't reason to allow it in an adjacent garden.
- 6.62 The Council acknowledges that it has failed to assess the proposal properly against criterion (h) insofar as they have not based their assessment on the existing garden. However, the fact the proposal also fails to comply with this criterion adds to the reasons why the appeal should be dismissed.
- 6.63 The appellant notes that the rear lightwell is responsible for taking the proposed basement over the 50% of existing rear garden threshold. The appeal statement (paragraph 8.10, bullet point 2) notes that the rear lightwell is located discreetly in one corner of the garden, hidden from all public and almost all private views. The statement notes that it is in a location where proximity to buildings (on the site and adjacent property) and boundary wall would prevent any significant size of tree planting for basic structural reasons, and the lightwell itself will form a useable and enjoyable amenity area for occupants that will enjoy a greater degree of privacy than the rear garden at ground level. The appellants state that it is therefore a case of re-provision of usable amenity space at a lower level as opposed to 'loss' of garden space. The Council also disagrees with this assessment as it does not agree that amenity space within a sunken lightwell would provide the same amenity value as ground level amenity space. The space within the lightwell is likely to lack direct sunlight, be overshadowed and feel overly enclosed.
- 6.64 The appellant also notes that the policy wording takes no account of existing gardens that could be developed making use of permitted development rights and they note that a rear extension totalling some

15sqm could be added to the existing building under those provisions. Again, the Council would like to point out that an assessment cannot be made based upon what might have been.

6.65 Policy A5 (k) guides that basement development should:

*k) not extend into or underneath the garden further than 50% of the depth of the garden*

6.66 The appellants disagree with the Council's assessment in relation to criterion (k). The Officer's Report notes that the rear building line of the proposed new building is not straight which makes it difficult to measure the length of the rear garden. Nevertheless, at most, the rear garden would measure 4.7 metres deep and at its shortest, the rear garden would measure 1.9 metres deep. The rear lightwell would extend out from the rear elevation of the host building by over 4 metres, which is more than 50% of the depth of the garden, whichever measurement is used (it is almost the entire length of the garden at this point). In contrast, the appellants state that the rear garden at its narrowest point is 1.9 metres deep and at that point the lightwell extends to some 0.8m which is 42% of the depth of the garden. The Council disagrees that the policy can be applied by solely assessing against the shortest measurement. CPG 'Basements' provides the following diagram on page 13, which makes it clear that the longest measurement must be used in the assessment when looking at a building with a staggered rear building line:



6.67 It is clear looking at the plans that, along the northern boundary of the appeal site, the proposed lightwell would extend into the garden further than 50% of the depth of the garden, contrary to the requirements of the policy.

6.68 Policy A5 (l) guides that basement development should:

*l) be set back from neighbouring property boundaries where it extends beyond the footprint of the host building*

6.69 The appellants disagree with the Council's assessment in relation to criterion (l). They note that the proposed basement only extends marginally beyond the footprint of the host building to form the rear and side lightwells, and to provide a logical square form to the front part of the basement, where the ground floor above has a more complex form. They then go on to quote the Council's Draft Camden Planning Guidance 4: Basements<sup>6</sup>, which notes that: "*The policy objective is to provide significant space free from basement development to enable water drainage and area for planting ... Providing a setback to neighbouring properties will generally not be required where built form or a basement on the neighbouring property extends up to the property boundary*".

6.70 The Council acknowledges that the front/side lightwell would be built up against the neighbouring property's garage, and therefore a set-back is not required; however, the rear lightwell would not be built against a basement or built form on the other side (No. 17-19). The appellants note that: "*The adjacent property at 17-19 to the north is so close to the boundary we consider it 'extends up to the property boundary' for the purposes of assessment*"; however, the Council wholly disagrees with this reasoning. Whilst there may not be sufficient space within the gap on the neighbour's side to provide planting, the gap, which measures approximately 0.8 metres, nevertheless provides opportunities for water drainage and other natural processes to occur.

6.71 Policy A5 (m) guides that basement development should:

*m) avoid the loss of garden space or trees of townscape or amenity value*

6.72 The appellants disagree with the Council's assessment in relation to criterion (m). The Officer's Report notes that the proposal would significantly reduce the size of the rear garden at the application site from nearly 60sqm to approximately 20sqm (plus a sunken lightwell measuring approximately 5sqm). The appellants note that no trees will be lost as a result of the development as there are none on site and they note that the existing rear garden comprises paved terraces and gravel areas with only limited scrub growth around the boundaries.

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<sup>6</sup> This document was formally adopted on 26/03/2018.

They also note that it is not the proposed basement that results in the majority of the reduction of rear garden space but rather the footprint of the proposed building, the size and form of which is justified in other parts of their statement and supporting material. The Council acknowledges that no trees would be lost as a result of the proposal; however, the proposal would undoubtedly involve the loss of garden space and the Council disagrees that the sunken lightwell would provide amenity space of equal value to ground-level garden space (see above).

- 6.73 To conclude their assessment of the basement against Policy A5, the appellants note that: *“The size of the proposed basement is considered to be appropriate to the Site within its immediate context, and meets the objectives of policy A5 of the Local Plan. The size of the basement accommodation, including lightwells, is considered to be modest and will not cause harm to the character and appearance of the Conservation Area”*. The Council disagrees with this statement for the reasons outlined above.
- 6.74 The appellants go on to discuss the external manifestation of the basement (paragraph 8.12 onwards) as this forms part of the Council’s fourth reason for refusal. It is their opinion that, because the lightwells are largely hidden from view, they cannot express the existence of the large basement. They also state that the basement itself cannot reasonably be termed large as it is restricted in accommodation terms to the maximum extents of the footprint of the host building. The Council would like to reassert the point that they consider the replacement building to be too large for the plot, and the fact the basement would extend beyond the footprint of the building and would be visible (albeit in limited views) only serves to exacerbate the sense that the proposed building is too large for the plot. Furthermore, the Council would like to make the point that elements of a proposal do not need to be readily visible in the street scene to cause harm to the character and appearance of the conservation area.
- 6.75 The appellants’ appeal statement (paragraph 8.15) quotes paragraphs 6.144 to 6.146 of the Local Plan which relate to lightwells. The Local Plan notes that: *“Where basements and visible lightwells are not part of the prevailing character of a street, new lightwells should be discreet and not harm the architectural character of the building, the character and appearance of the surrounding area, or the relationship between the building and the street”*, and *“Lightwells to the side or rear of a property should be set away from the boundary of a neighbouring property. Excessively large lightwells will not be permitted in any garden space.”* The appellants also quote CPG4: Basements<sup>7</sup> which notes that: *“a lightwell to the side or rear of a property is often the most appropriate way to provide a means of providing light to a new or*

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<sup>7</sup> This document has been superseded by Camden Planning Guidance: Basements, adopted on 26/03/2018. The later document repeats this same guidance.

*extended basement development, and can often provide a link to the rear garden.”*

- 6.76 The appellants note that the proposed lightwells are located to the side and rear, as recommended by the guidance; they are both small in size; and they are set in from the northern boundary by 0.3 metres and 0.5 metres (although in both cases the appellants believe the set-back is not required as the neighbouring built form extends up to or very close to the boundary, which the Council disagrees with, as discussed above); and they are located in discreet positions, being largely obscured from view. It is the Council’s opinion that, whilst the proposed lightwells may be discreet in terms of their public visibility, they nevertheless illustrate the existence of a large basement below the host building, and this manifestation of the basement contributes to the overall sense of overdevelopment of the plot, to the detriment of the character and appearance of the conservation area. The sense of overdevelopment of the plot would be most keenly felt in the rear garden, where the proposed sunken lightwell in the northern part of the garden is likely to be a key feature of the garden, contrary to the CPG guidance.
- 6.77 The Officer’s report notes that the proposed replacement dwelling would provide a good standard of accommodation for future occupiers in terms of its size and layout etc.; however, Policies A2 and A3 of the Local Plan seek to protect gardens wherever possible, especially for families. The report goes on to note that: *“The reduction in size of the private rear garden from nearly 60 metres to approximately 20sqm (plus a sunken lightwell measuring approximately 5sqm) represents poor design as the garden would be very small to serve a dwelling of this size. It is recognised that there would also be a garden to the front of the replacement dwelling, but it would not benefit from the same levels of privacy as the rear garden.”*
- 6.78 The appellants note in their appeal statement (paragraph 9.5) that there is no minimum level of private amenity space set out CPG and they refer to the Mayor of London’s Housing SPG, which requires a minimum of 5sqm of private outdoor space for 1-2 person dwellings and an extra 1sqm for each additional occupant. They note that the proposed new dwelling could accommodate up to 6 people, which equates to a requirement for 9sqm of garden space.
- 6.79 Notwithstanding the requirements outlined above, the Interim Housing CPG, adopted in March 2018, does note on page 63 that existing gardens and green space should be retained.
- 6.80 Furthermore, whilst the Council does not dispute the fact that the proposed new dwelling’s garden would exceed the minimum requirements set out in the Mayor of London’s Housing SPG, these are minimum requirements and the Council does not wish to see a larger house on the plot with a smaller garden, as this equates to loss of

garden space, contrary to policy. It is also worth highlighting that the Government's 'Technical housing standards – nationally described space standard' assumes that a 3-bed-6-person-3-storey dwelling would measure a minimum of 108sqm, whereas the proposed replacement dwelling would measure 189sqm, which is quite a bit larger than the minimum requirement, and the existing dwelling provides 96sqm of gross internal floorspace. It is the Council's view that a larger house on the plot should not benefit from a significantly smaller garden than that which exists currently.

- 6.81 The Council also considers, as discussed above, that the proposed sunken lightwell would not provide amenity space of equal value to ground level garden space as it would lack direct sunlight and is likely to feel overshadowed and enclosed.
- 6.82 The appellants make the point that the existing garden is of limited amenity value as it comprises a hard terrace, large areas of gravel and limited scrub growth around the perimeter (paragraph 9.10). They state that it is not considered to hold any nature conservation or townscape value, and accordingly, Policy A2 does not apply. The objection letters from the Heath & Hampstead Society and the Thurlow Road Neighbourhood Association both refer to the destruction of the award winning garden of Lady Serota (former resident) and the removal of trees from the site. The Heath & Hampstead Society make the point that there is no reason why the garden couldn't be restored to fine condition and the Council is in agreement. The fact the gardens at the property have been neglected over time should not mean that Policy A2 does not apply.
- 6.83 The appellants make the point, in paragraph 9.12 of their appeal statement, that the proposed development remains well within the established parameters that characterise the urban block of which the site forms a part, i.e. the proposed new building would not extend further forward or to the rear of neighbouring buildings, and the large open area of gardens forming the west side of the block (the garden of No. 13) would remain wholly intact and undisturbed. However, the appellants are referring to land outside of their ownership (and outside the appeal site) to justify overdevelopment of the appeal site and the Council considers that overdevelopment of this infill plot would have a detrimental impact on the character and appearance of the wider area, including the conservation area.
- 6.84 It is also worth noting that No. 13 is a language school and benefits from permitted development rights under Part 7, Class M of the Town & Country Planning (General Permitted Development) Order 2015 (as amended) and a Certificate of Lawfulness was issued by the Council on 26<sup>th</sup> September 2018 for the erection of a 99sqm single storey outbuilding in the rear garden. If constructed, the proposed outbuilding is going to significantly alter the sense of openness to the rear of Nos. 13 and 15 Lyndhurst Terrace.

- 6.85 The appellants make the point, in paragraph 9.16 of their appeal statement, that the Officer's Report notes that: "*the proposal would not result in a reduction of biodiversity at the application site given the existing hardstanding at the front and rear of the site*" (paragraph 7.6). Whilst this is indeed the case, the loss of garden space is nevertheless contrary to Policies A2 and A3 in principle, as both policies seek to protect residential gardens from development.
- 6.86 The Council considers that the proposed basement, by virtue of its size and external manifestation (the lightwells), would deprive the proposed dwelling of sufficient open amenity space and be detrimental to the visual attractiveness and environmental wellbeing of the area generally, contrary to Policies A2, A3 and A5. The appeal should be dismissed on this basis.

### **Conclusion**

- 6.87 Based on the information set out above, and having taken account of all the additional evidence and arguments made, the proposal is considered to be contrary to Policies D1, D2, A1, A2, A3, A5, T1, T2, T3 and T4 of the Camden Local Plan 2017.
- 6.88 The information submitted by the appellant in support of the appeal does not fully overcome or address the Council's concerns. The proposal presents no benefits that would outweigh the harm identified.
- 6.89 On the basis of information available and having regard to the entirety of the Council's submissions, including the contents of this Hearing Statement of Case, the Inspector is respectfully requested to dismiss the appeal.
- 6.90 Should the Inspector be minded to approve the appeal, suggested conditions are included in Appendix A, suggested section 106 heads of terms are suggested and justified in Appendix B and a copy of the highways works estimate is provided in Appendix C.
- 6.91 A draft legal agreement will be forwarded in due course.



## **APPENDIX A – Suggested planning conditions**

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

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

- 2 The development hereby permitted shall be carried out in accordance with the following approved plans: 305/4000; 305/4001; 305/4002; 305/4101; 305/4102; 305/4103; 305/4150; 305/4151; 305/4170; 305/4171; 305/4172; 305/4173; 305/4200b; 305/4201a; 305/4202a; 305/4203a; 305/4250a; 305/4251a; 305/4252; 305/4270; 305/4271; 305/4272; 305/4273; Planning Statement (dated 02/05/2017); Design & Access Statement (dated 26/04/2017); Heritage Assessment (dated April 2017); Arboricultural Impact Assessment (dated February 2017); Energy Statement (dated March 2017); Basement Impact Assessment (as amended); Structural Engineering Report in Support of Basement Impact Assessment (dated 14/04/2017)

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

- 3 The demolition hereby permitted shall not be undertaken before a contract for the carrying out of the works of redevelopment of the site has been made and full planning permission has been granted for the redevelopment for which the contract provides.

Reason: To protect the visual amenity of the area in accordance with the requirements of Policy D2 of the Camden Local Plan 2017.

- 4 Development works (other than demolition) shall not take place until detailed drawings, or samples of materials as appropriate, in respect of the following, shall be submitted to and approved in writing by the local planning authority:

a) Manufacturer's specification details of all facing materials (to be submitted to the Local Planning Authority) and samples of those materials (to be provided on site).

The relevant part of the works shall be carried out in accordance with the details thus approved and all approved samples shall be retained on site during the course of the works.

Reason: To safeguard the appearance of the building and the character of the immediate area in accordance with the requirements of Policies D1 and D2 of the London Borough of Camden Local Plan 2017.

- 5 Full details in respect of the green roof in the areas indicated on the approved roof plan shall be submitted to and approved by the local planning authority before the relevant part of the development commences. The dwelling shall not be occupied until the approved details have been implemented and these works shall be permanently retained and maintained thereafter.

Reason: In order to ensure the development undertakes reasonable measures to take account of biodiversity and the water environment in accordance with policies A3 and CC3 of the Camden Local Plan 2017.

- 6 Prior to the commencement of works (other than demolition), details of secure and covered cycle storage for the following shall be submitted to and approved by the local planning authority:

- 2 long-stay spaces

The approved facilities shall thereafter be provided in their entirety prior to the first occupation of any of the new units, and permanently retained thereafter.

Reason: To ensure the development provides adequate cycle parking facilities in accordance with the requirements of Policy T1 of the Camden Local Plan 2017.

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

Reason: To safeguard the visual amenities of the area and to prevent overdevelopment of the site by controlling proposed extensions and alterations in order to ensure compliance with the requirements of Policies D1 and D2 of the Camden Local Plan 2017.

- 8 The development hereby approved shall achieve a maximum internal water use of 110litres/person/day. The dwelling/s shall not be occupied until the Building Regulation optional requirement has been complied with.

Reason: To ensure the development contributes to minimising the need for further water infrastructure in an area of water stress in accordance with Policy CC3 of the Camden Local Plan 2017.

- 9 No development shall take place until full details of hard and soft landscaping, including replacement tree planting, and means of enclosure of all un-built, open areas have been submitted to and approved by the local planning authority in writing. [Such details shall include details of any proposed earthworks including grading, mounding and other changes in ground levels.] The relevant part of the works shall not be carried out otherwise than in accordance with the details thus approved.

Reason: To ensure that the development achieves a high quality of landscaping which contributes to the visual amenity and character of the area in accordance with the requirements of D1 and A1 of the Camden Local Plan 2017.

- 10 All hard and soft landscaping works shall be carried out in accordance with the approved landscaping details by not later than the end of the planting season following completion of the development or prior to the occupation of the new dwelling, whichever is the sooner. Any trees or areas of planting which, within a period of 5 years from the completion of the development, die, are removed or become seriously damaged or diseased, shall be replaced as soon as is reasonably possible and, in any case, by not later than the end of the following planting season, with others of similar size and species.

Reason: To ensure that the landscaping is carried out within a reasonable period and to maintain a high quality of amenity in the scheme in accordance with the requirements of Policies D1 and A1 of the Camden Local Plan 2017.

- 11 The works hereby approved shall be carried out in accordance with the methods outlined in the submitted Arboricultural Impact Assessment (dated 26/04/2017).

Reason: To ensure that the development will not have an adverse effect on existing trees and in order to maintain the character and amenity of the area in accordance with the requirements of Policy A3 of the Camden Local Plan 2017.

- 12 The development hereby approved shall not commence until such time as a suitably qualified chartered engineer with membership of the appropriate professional body has been appointed to inspect, approve and monitor the critical elements of both permanent and temporary basement construction works throughout their duration to ensure compliance with the design which has been checked and approved by a building control body. Details of the appointment and the appointee's responsibilities shall be submitted to and approved in writing by the local planning authority prior to the commencement of development. Any subsequent change or reappointment shall be confirmed forthwith for the duration of the construction works.

Reason: To safeguard the appearance and structural stability of neighbouring buildings and the character of the immediate area in accordance with the requirements of Policy A5 of the Camden Local Plan 2017.

- 13 The works hereby approved shall be carried out in accordance with the methods outlined in the Basement Impact Assessment (as amended), including the recommendation for additional groundwater monitoring as set out in section 4.6 of the BIA.

Reason: To safeguard the appearance and structural stability of neighbouring buildings and the character of the immediate area in accordance with the requirements of Policy A5 of the Camden Local Plan 2017.

## **APPENDIX B – Suggested S106 heads of terms and justification**

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### Car-capped development

If the appeal is allowed, the Council would like to secure the new dwelling as 'car-capped' (i.e. the development would provide on-site car parking, but future occupiers would not be able to apply to the Council for a parking permit), in order to facilitate sustainability and to help to promote alternative, more sustainable methods of transport.

Policy T2 of the Camden Local Plan seeks to limit the availability of parking and requires all new developments in the borough to be car-free. As noted in the Officer's Report, the Council's records show that the existing dwelling does not currently have any on-street residents parking permits and has not done so for a number of years and so it is considered that allowing occupiers of the replacement dwelling to access residents parking permits would add pressure to an area which already suffers from high parking stress.

The sub-text to Policy T2 notes that: "...*the Council will consider retaining or re-providing existing parking provision where it can be demonstrated that the existing occupiers are to return to the address when the development is completed.... If a development is to have new occupiers, this should be car-free*". In this case, the re-provision of off-street parking is considered to be acceptable, particularly because there would be a reduction in the number of parking spaces from 3 to 1.

A planning obligation is considered the most appropriate mechanism for securing the development as car-capped as the level of control required is considered to go beyond the remit of a planning condition. Instead, it relates to controls that are outside of the development site and there is an ongoing requirement for the development to remain car-capped.

Section 106 legal agreements are the mechanism used by the Council to signal that a property is to be designated as car-free (or car-capped). The Council's control over parking does not allow it to unilaterally withhold on-street parking permits from residents simply because they occupy a particular property. The Council's control is derived from Traffic Management Orders ("TMO"), which have been made pursuant to the Road Traffic Regulation Act 1984. There is a formal legal process of advertisement and consultation involved in amending a TMO. The Council could not practically pursue an amendment to the TMO in connection with every application where the additional dwelling (or dwellings) ought properly to be designated as car-free (or car-capped). Even if it could, such a mechanism would lead to a series of disputes between the Council and incoming residents who had agreed to purchase the property with no knowledge of its car-free status. Instead, the TMO is worded so that the power to refuse to issue parking permits is linked to whether a property has entered into a car-free Section 106 Obligation. The TMO sets out that it is the Council's policy not to give parking permits to people who live in premises designated as car-free (or car-capped) and the

Section 106 legal agreement is the mechanism used by the Council to signal that a property is to be designated as car-free (or car-capped).

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

The car-free requirement complies with the CIL Regulations insofar as it is necessary to make the development acceptable in planning terms (i.e. it would mitigate the impact on parking stress and congestion in the surrounding area); it is directly related to the development (i.e. the replacement of the dwelling); and it is fairly and reasonably related in scale and kind to the development (i.e. it relates to parking provision for the site and the impact on the local highway network).

#### Construction Management Plan

If the appeal is allowed, the Council would like to secure a Construction Management Plan (CMP). Policy T4 of the Local Plan promotes the sustainable movement of goods and materials and seeks to minimise the movement of goods and materials by road, and Policy A4 seeks to minimise the impact on local amenity from the demolition and construction phases of development. Given the nature and scale of development, the method and type of construction that would be involved and the appeal site's location, a legal agreement could secure a full CMP to ensure that the development could be implemented without being detrimental to amenity or the safe and efficient operation of the highway network in the local area.

A planning obligation is considered to be the most appropriate mechanism for securing compliance with a CMP simply because a considerable extent of the activity during construction could cause conflict with other road users or be detrimental to the amenity of the area and will necessarily take place outside of the appeal site. Potential impacts for the proposed demolition/construction works which should be controlled by a CMP include traffic generation from removal and delivery of materials to the site. This could result in traffic disruption and dangerous situations for pedestrians and road users.

Under the Planning Act conditions are used to control matters on land within the developers' control. However, a CMP is designed to be an enforceable and precise document setting out how measures will be undertaken not just on site but also around the site in order to minimise as far as reasonable the detrimental effects of construction on local residential amenity and/or highway safety on the nearby roads hence, using a condition to secure the type of off-site requirements usually included in a CMP would in this case be unenforceable.

Conditions can only lawfully be used to control matters on land within the developer's control. Many of the CMP provisions will relate to off-site requirements, particularly public highway (which is not land within the developers' control). As such, a Section 106 Agreement (rather than a condition) is the most appropriate mechanism. This is in accordance with Planning Practice Guidance which states that conditions requiring works on land that is not controlled by the applicant often fails the tests of reasonability and enforceability. (PPG, Use of Conditions paragraph 009).

The CMP requirement complies with the CIL Regulations as it ensures that the development is acceptable in planning terms to necessarily mitigate against the transport impacts of the development as identified under the Development Plan for developments of the nature proposed. It is also directly related to the development and fairly and reasonably related in scale and kind as it relates to managing impacts to neighbours and on the surrounding highways from construction at the site.

### Highways contribution

If the appeal is allowed, the Council would like to secure a highways contribution towards making good any damage to the public highway adjacent to the site.

Policy A1 of the Camden Local Plan seeks to protect the quality of life of occupiers and neighbours and the policy notes that the Council will resist development that fails to adequately assess and address transport impacts affecting communities, occupiers, neighbours and the existing transport network; and will require mitigation measures where necessary. The sub-text to the policy notes (paragraph 6.11): "Highway works connected to development proposals will be undertaken by the Council at the developer's expense. This ensures that highway works, maintenance and materials adopted by the Council are constructed to an appropriate standard. This includes highway works that form part of a planning approval appropriate for adoption, including design and implementation of new routes to be adopted, owned and managed by the relevant Highway Authority. Development requiring works to the highway following development will be secured through planning obligation with the Council to repair any construction damage to transport infrastructure or landscaping and reinstate all affected transport network links and road and footway surfaces".

The estimate for the work, prepared by the Borough Engineer, is £3139.83. It is considered that this amount is justified given the size and scale of the development. (See appendix C for the highways works estimate).

The Council maintains that a payment for highways work should be secured through a Section 106 legal agreement, which will also combine as an agreement under Section 278 of the Highways Act 1980. CPG8 – Planning Obligations states that public highways works on Borough Roads are to be undertaken through a Section 106 or 278 obligation. The guidance also states that the Council will secure payment for required works by preparing an

estimate (including fees) for the scheme that the developer will be required to pay before commencing development (paragraph 5.14). The most effective way of both securing sufficient payment and ensuring the works are carried out to the Council's procedures and standards is for a financial contribution to be paid by the developer on commencement of the development and secured by an obligation under Section 106 legal agreement. It is not possible to secure a financial contribution for highway works by condition as it relates to land outside the application site and is not under the control of the applicant. The Planning Practice Guidance advises that financial contributions cannot be secured by condition (PPG, Using Planning Conditions, paragraph 5).

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



## APPENDIX C – Highways estimate

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### ESTIMATE

SCHEME NAME: 15 Lyndhurst Terrace

DATE: November 2018

Area/Length

300x200 New granite flat kerbs	6
New ASP flags	2.9
New asphalt footway	2.4
Granite sett Xover	7.2

**Total      £3,139.83**