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Regeneration and Planning  
Culture and Environment Directorate  
London Borough of Camden  
5 Pancras Square  
London  
N1C 4AG



Date: 25 June 2019

Dear Ms Henry

**Erection of detached, single storey, 3-bed dwelling to the rear of No. 17 Frognal  
(Application Ref: 2019/2263/P) at land to the rear of 17 Frognal, London, NW3 6AR**

1. I write on behalf of the residents of 17 Frognal (who, collectively, are Seventeen Frognal Ltd), the property which immediately adjoins and overlooks the application site, to object to the above planning application. We have a number of very significant concerns with the application, as set out below.

**Planning history**

2. There is a long history of planning applications on this site and on adjoining sites which have been refused. These raise concerns which remain relevant to the current application.

The subject site (land at the rear of 17 Frognal)

3. A planning application on land to the rear of 17 Frognal for erection of a 4 room bungalow was refused in February 1969 (F6/7/4/6632). A later application for the erection of two single storey dwellings was refused in March 1971 (F6/7/4/10821). There were refused before the Redington/Frognal Conservation Area was designated which now adds a further level of protection to this area.
4. More recently an application for the erection of a building comprising ground, first, second and roof level to provide 9 self-contained flats was withdrawn in early 2008 (2007/1770/INVALID). A subsequent application in June 2008 to remove seven trees on the site was refused (2008/2776/T)<sup>1</sup>. The reason for refusal states that:

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<sup>1</sup> As the site is within a conservation area permission is required to undertake works to trees. Permissions were granted for works to trees in the back garden, mainly on the boundary in July 2006 (2006/3236/T), January 2008 (2008/0010/T) and April 2008 (2008/1827/T).

“The trees are considered to provide a significant level of visual amenity and to make a positive contribution to the character of this part of the conservation area. It is considered evidence is insufficient to link any of the trees to vegetation related building damage. Any proposed tree works should be dealt with as part of any future planning application for the site.” (emphasis added).

5. Following this refusal a Tree Preservation Order was imposed on seven trees on the site in July 2008 (C784 2008) which remains in place. Since this time permission has been granted to remove one of the trees, subject to a condition to replace it with an English oak prior to the end of March 2019 (2018/4091/T) but this does not appear to have happened. As the Application Site falls within a Conservation Area the trees were already protected so the extra layer of protection granted by the TPOs indicates the importance the trees are considered to have.

Adjacent land at the rear of 13-15 Frogna1

6. An application on adjoining land at the rear of 13-15 Frogna1 for a 3/4 bedroom bungalow (245m<sup>2</sup> gross floorspace) was refused in January 2003 (PWX0202458). It was appealed and the appeal was dismissed in November 2003 (App/x5210/A/03/1120738). Although this is a different site it faces similar issues to those that affect land at the rear of 17 Frogna1. Although the policy context has changed since the time of the appeal the site specific issues have not. It is therefore instructive to quote extensively from the appeal decision.
7. The Appeal decision’s description of the area emphasises its attractive and green character:

“This part of the Conservation Area is characterised by substantial, attractive properties in a suburban area, providing a mixture of detached houses, flats and hotels. It is enhanced and softened by mature woodland trees in private and communal gardens which help create a sylvan street scene and an attractive outlook for residents.” (paragraph 6).
8. The appeal decision explains that the site itself has an important landscape quality which is largely derived from the mature trees:

“The area of the proposed development site... is overgrown. Although it would benefit from enhanced maintenance, I do not agree with the Appellant that it has no prevailing landscape quality. There is a variety of mostly mature healthy woodland trees within the site and overhanging it... I have not been informed of any Tree Protection Orders protecting them but they make a positive contribution to the character of the area. As a substantial part of a wider grouping of mature trees, they mask or soften the impact of buildings particularly enclosing the area. Some of which are 4 to 5 storeys tall. Although not generally seen by the wider public, they contribute to the character and amenity of the area which is faced by residents in blocks of flat,

and occupants of an hotel and business units, and create a soft skyline seen further afield" (paragraph 10).

9. Even though only two trees would be lost, the Inspector was concerned about the future health of the retained trees:

"...several other important trees would also be at significant risk, including those which would otherwise help to screen the building. Lower branches to the crowns of trees alongside the northern boundary and between the proposed car park and the bungalow would have to be removed to accommodate the proposed building. With a margin of approximately 1m or less between the bungalow and those trees, the foundations would cut through part of their root systems. Further substantial changes to the ground conditions would also take place alongside, particularly adjacent to the attractive stand of trees shown fronting the development. Others affected would include those alongside the southern boundary and near the edge of the car park. In my view there would be a serious risk to the future of many of these trees." (paragraph 10).

10. The Inspector also was also concerned that the retained trees would have to be heavily pollarded which would undermine any role they could play as screening the proposed development:

"Those trees that survive would need to be kept strongly pollarded to reduce the extent of overshadowing to some habitable rooms in the proposed bungalow. This would make the development evident from the gardens to the north as well as to residents in 13-15 Frognal and the residents to the south of the site. It would dominate views from windows at the rear of some properties in Hampstead Gate and put at risk the view of many trees seen against the skyline. As a consequence it would materially alter the balance between built development and soft landscaping in the area" (paragraph 11).

11. The Inspector also felt that the scheme would have a negative impact on neighbours' visual amenity:

"The development would result in a material loss of visual amenity for the occupants of 13-15 Frognal and harm the ecology of the communal garden due to the loss of at least two trees – possibly more – together with greater concentrated use of a smaller, more open, communal garden area" (paragraph 15). It would therefore "...materially harm neighbours' amenity due to the impact on their visual amenity and quality of external amenity space..." (paragraph 16).

12. A subsequent application land at the rear of 13-15 Frognal for a 2 bed bungalow was refused in May 2004 despite being more design led and significantly smaller (87.7m<sup>2</sup> gross floorspace) (ref 2004/0982/P). It was refused for the following reasons, which reflect those reasons given on the previous application:

- 1) "...inappropriate 'backland' development which would upset the existing balance between built and unbuilt space, reduce the open landscaped quality of the site and area, and thereby harm the character and appearance of this part of the Redington/Frognal Conservation Area, in addition to reducing the ecological and amenity value of the communal garden for occupants of 13-15 Frognal..."
  - 2) The proposed house, by virtue of its bulk, height and design, and the car park, by virtue of the excessive extent of hardsurfacing, would be harmful to the open landscaped quality of the rear garden and the character of the conservation area..."
  - 3) In the absence of sufficient supporting information to sully assess the potential damage to trees, it is considered that the proposal would result in damage to at least eight trees, which would reduce the ecological value of the garden and its contribution to the visual amenity and character of the conservation area..."
13. The concerns that led the appeal and the subsequent planning application to be refused are also concerns with the current application to the rear of 17 Frognal, as explained below.

**Red line is incorrect**

14. NPPG 'Making an application' makes clear that:
- "The application site should be edged clearly with a red line on the location plan. It should include all land necessary to carry out the proposed development (e.g. land required for access to the site from a public highway, visibility splays, landscaping, car parking and open areas around buildings). A blue line should be drawn around any other land owned by the applicant, close to or adjoining the application site." (Paragraph: 024 Reference ID: 14-024-20140306).
15. The applicant has failed to do this as not only is the pedestrian access over 17 Frognal not outlined in red (it is incorrectly outlined in blue), the vehicular access over 13 Frognal is not shown at all. Both should have been outlined in red on the site location plan and, consequently, other parties who have an interest in that land (namely the owners/occupants of 17 Frognal and of 13 Frognal) should have had Notice of the application served upon them. This failure renders the application invalid.

**It has not demonstrated that the Applicant has rights of way to the site**

16. There is no evidence supplied that the application site has rights for the pedestrian access over 17 Frognal not outlined in red (it is incorrectly outlined in blue), the vehicular access over 13 Frognal nor for the running of services to the proposed dwelling. Without these rights the development cannot be built.

**Poor quality design**

17. The NPPF makes clear that:

“The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.” (paragraph 124)

18. Local Plan Policy D1: Design makes clear that “The Council will seek to secure high quality design in development.” The policy contains a number of criteria relevant to considering design, including:

“a. respects local context and character;

e. comprises details and materials that are of high quality and complement the local character;

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

19. The supporting text provides further clarification:

“The Council will require all developments, including alterations and extensions to existing buildings, to be of the highest standard of design...” (paragraph 7.2)

“Good design takes account of its surroundings and preserves what is distinctive and valued about the local area. Careful consideration of the characteristics of a site, features of local distinctiveness and the wider context is needed in order to achieve high quality development which integrates into its surroundings.” (paragraph 7.4)

“Design should respond creatively to its site and its context including the pattern of built form and urban grain, open spaces, gardens and streets in the surrounding area.” (paragraph 7.5).

20. The Conservation Area Statement also explains the role that new development should play:

“New Development:... New development should be seen as an opportunity to enhance the Conservation Area. It should respect the existing built form and historic context of the area, local views, building lines, roof lines, elevational design, and where appropriate, architectural characteristics, detailing, profile, and materials of adjoining buildings.” (p30).

21. The application proposal includes a description of site and its surroundings, but no meaningful analysis nor indication about how the design of the proposal responds to its context.
22. The design of the proposal is very bland and uninspired and does not reach the high threshold for good design set by the NPPF, Local Plan and the Conservation Area Statement.

**In appropriate backland development**

23. Local Plan Policy D1: Design specifically protects gardens and resists backland development:

“[the Council must ensure that design] j. responds to natural features and preserves gardens and other open space;

24. The supporting text to the Policy explains that:

“Development within rear gardens and other undeveloped areas can often have a significant impact upon the amenity and character of an area. The Council will resist development that occupies and excessive part of a garden and where there is a loss of garden space which contributes to the character of the townscape.” (paragraph 7.20).

25. The Conservation Area Statement also specifically highlights the positive contribution that rear gardens make to the Conservation Area and the negative impacts that can arise from backland development:

“Backland/rear gardens: rear gardens contribute to the townscape of the Conservation Area and provide a significant amenity to residents and a habitat for wildlife. Development within gardens is likely to be unacceptable.” (p28).

26. As explained above, the application to the rear of 13-15 Frognal was dismissed because of concerns about backland development (see paragraphs 7-11).
27. The application proposal should be refused because of inappropriate backland development.

**Significant negative impact upon important trees**

28. The Tree Report (18 December 2018) indicates that the four Lime trees along the southern boundary are Category (A) trees, namely:

“...trees whose retention is most desirable and is of high quality and value. These trees are considered to be in such a condition as to be able to make a lasting contribution (a minimum of 40 years)...” (Section 2.4.3).

29. It indicates that the two Sycamores are Category (B) trees, namely:

“...trees whose retention is considered desirable and are of moderate quality and value. These trees are considered to be in such a condition as to make a significant contribution (a minimum of 20 years)...” (Section 2.4.3).

30. There is no suggestion in the Tree Report that any of the trees are in poor health or have any negative impacts on any surrounding buildings. The Council have previously made clear the importance of retaining these trees as a previous application to remove the trees was refused (2008/2776/T)<sup>2</sup>. The reason for refusal states that:

“The trees are considered to provide a significant level of visual amenity and to make a positive contribution to the character of this part of the conservation area.”

31. Following this TPOs were imposed on each of the trees, confirming their importance. As the Application Site falls within a Conservation Area the trees were already protected so the extra layer of protection granted by the TPOs indicates the importance the trees are considered to have.
32. However, the Tree Report makes no mention of the site containing any TPOs. The Planning Statemen mentions that there are TPOs on the site, but does not provide any detail about which trees as protected. This is a clear demonstration of the lack of consideration that has gone into the application.
33. The Application Proposal intends to remove the two Sycamore Trees and six other trees across the site. As noted above, permission has been granted to remove one of the trees on the site, subject to a condition to replace it with an English oak prior to the end of March 2019 (2018/4091/T) but this does not appear to have happened. This demonstrates the applicant’s disregard for the planning process.
34. Although it proposes to retain the four Lime trees along the southern boundary (and two others) the proposed building and parking area will intrude significantly into the root protection areas of those trees, which is likely to significantly damage their future health (as explained above, this was a concern raised by the Inspector considering the appeal at the rear of 13-15 Frognal). Moreover, as they are on the

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<sup>2</sup> As the site is within a conservation area permission is required to undertake works to trees. Permissions were granted for works to trees in the back garden, mainly on the boundary in July 2006 (2006/3236/T), January 2008 (2008/0010/T) and April 2008 (2008/1827/T).

southern boundary they will severely overshadow the proposed dwelling and its garden, as well as leaking sap onto the proposed dwelling and any parked vehicles (this is a concern for existing residents, as witnessed by the fact that no cars are parked underneath it), which will not only create an unsatisfactory environment for future occupiers but also lead to pressure to significantly pollard and even remove the trees (as explained above, this was a concern raised by the Inspector considering the appeal at the rear of 13-15 Froggnal).

35. The Tree Report suggests a number of mitigation measures that are necessary<sup>3</sup>. Section 8 goes on to recommend that "If planning permission is granted, further works would be required to detail mitigation and protection measures." However, given the importance of the trees these details should be provided as part of the planning application. Without prejudice to this, and to our overall objection to the planning application, if planning permission is granted conditions should be imposed on the planning permission requiring the above mitigation and protection measures to be provided.

#### **Fails to preserve or enhance the Conservation Area**

36. The application site falls within a Conservation Area. However, the application does not include any assessment of the impact upon the Conservation Area. This is contrary to the NPPF which states that:

"In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation." (paragraph 189).

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<sup>3</sup> "The use of mini pile and floating beam footings should be considered to offer least impact to the retained trees.

Access for vehicles should consider the use of 3D geogrid to span the RPA's without the requirement for excavation.

Mitigation planting should be applied for all removed trees at a rate of at least 1:1 and new native species introduced.

Protection measures should be put in place during construction and excavation stages of the development and any new soft landscaping should take into consideration to not changing existing ground/soil levels within any RPA."



37. When considering impacts upon heritage assets such as Conservation Areas, the NPPF explains that great weight should be given to preserving it:

“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 193).

38. The NPPF goes on to explain the test that must be applied to proposals that cause harm to heritage assets:

“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 196).

39. This approach is reflected in Local Plan Policy D2 which states that the Council will:

“e. require that development within the conservation areas preserves or, where possible, enhances the character or appearance of the area;

h. preserve trees and garden spaces which contribute to the character of a conservation area or which provide a setting for Camden’s architectural heritage.

40. The supporting text provides further guidance about how to assess a proposal’s impact on Conservation Areas:

“The character of conservation areas derive from the combination of a number of factors, including scale, density, pattern of development, landscape, topography, open space, materials, architectural detailing and uses. These elements should be identified and responded to in the design of new development. Design and Access Statements should include an assessment of local context and character and set out how the development has been informed by it and responds to it.” (paragraph 7.47).

41. The supporting text also highlights the importance of protecting trees:

“Development will not be permitted which causes the loss of trees or garden space where this is important to the character and appearance of a conservation area.” (paragraph 7.55)

42. The Conservation Area Statement specifically highlights the important contribution that trees make to the Conservation Area:

“All trees which contribute to the character or appearance of the Conservation Area should be retained and protected. Developers will be expected to incorporate any new trees sensitively into the design of any new development and demonstrate that no trees will be lost or damaged before, during or after development...” (p32).

43. The Redington Frognal Neighbourhood Development Plan 2019 - 2044 (October 2018) has reached an advanced stage<sup>4</sup>. Policy LGS 8: Copse to rear of 17 Frognal NW3 6AR 86 explains the important role of the application site as a wooded area of open space:

“This site is approximately 3,900sq.ft. and the last remaining area of woodland behind Finchley Road within the Plan area... The site has no direct access from the street (albeit there is a pedestrian right of way across neighbouring land to Frognal) and seven main trees are subject to Tree Protection Orders. The trees and other growth provide a green outlook to residents in apartments on Frognal and to office users in Hampstead Gate and Meridien House. It is also valued for its peaceful backdrop to nearby gardens and for shielding views of buildings on Finchley Road. The trees additionally help to filter noise and air pollution from Finchley Road, thus increasing the sense of tranquillity in Frognal gardens. The copse is used by bats for foraging and commuting, as documented by Fursefen and is home to nesting birds, black squirrels and other wildlife.” (paragraphs 86-88)

44. The Planning Statement submitted with the application has not provided any analysis of the Conservation Area and has not considered the relevant test at all.
45. As explained above, the application proposal will remove six trees on the site and there is a significant doubt about the future health of the retained trees. The Conservation Area Statement; the emerging Neighbourhood Plan; the refused application to remove the trees on the site (see paragraph 4 above); and the appeal decision on the adjoining site at 13-15 Frognal (see paragraphs 7-11 above) emphasise the importance of trees to the character of the Conservation Area. It will therefore fail to preserve, and will certainly not enhance, the Conservation Area.
46. As explained below, the application proposal is of poor quality design that does not respond to its context. It will therefore fail to preserve, and will certainly not enhance, the Conservation Area.

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<sup>4</sup> The Neighbourhood Plan has been through Regulation 14 consultation (October 2018). Regulation 15 consultation and independent examination are due to take place shortly and the Plan is due to be adopted in autumn 2019.

47. The application proposal will therefore lead to less than substantial harm to the Conservation Area by removing a number of important trees, building on an important area of open space and delivering a building of no architectural/design merit. It will not deliver any public benefits (although it will lead to the creation of one additional dwelling, this makes no material contribution towards the achievement of the Council's housing target and the Council are in any event exceeding their housing target).

#### **Overlooking and privacy**

48. The Council's Amenity SPD (March 2018) emphasises the importance of limiting overlooking and protecting existing and future resident's privacy:

"Interior and exterior spaces that are overlooked lack privacy, which can affect the quality of life of occupants. The Council will therefore expects *[sic]* development to be designed to protect the privacy of the occupants of both new and existing dwellings to a reasonable degree. Therefore, new buildings, extensions, roof terraces, balconies and the location of new windows should be carefully designed to avoid overlooking. The extent of overlooking will be assessed on a case-by-case basis.

The places most sensitive to overlooking are typically habitable rooms and gardens at the rear of residential buildings. For the purposes of this guidance, habitable rooms are considered to be residential living rooms; bedrooms and kitchens. The area of garden nearest to the window of a habitable room is most sensitive to overlooking." (paragraphs 2.2 and 2.3).

49. The application site is directly overlooked by the offices in Hampstead Gate and along Frognal.
50. The application proposal has its main living area and garden facing Hampstead Gate (west), with the distance to its habitable room windows being only 7m away. This is a long way short of the 18m separation distance given in the Council's Amenity SPD (paragraph 2.4).
51. The application proposal has two windows serving bedrooms facing Frognal (east). Although the distance between habitable rooms in this direction is greater than 18m, the properties in Frognal are tall which increases the potential for overlooking. This is specifically highlighted by the Council's Amenity SPD (paragraph 2.4)<sup>5</sup>.
52. The application proposal also has windows in its side elevations (north and south) looking directly over the gardens of adjoining properties. This will negatively impact upon the privacy of those properties. Although there might be tall boundary fences to limit overlooking, this would simply result in windows to habitable rooms looking

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<sup>5</sup> "In instances where building heights, design or topography mean that opportunity for overlooking would be increased, it is advisable to increase this [18m] separation distance." (paragraph 2.4).

directly at that tall boundary fence with a resultant negative impact on the outlook, and thus amenity, of occupiers.

**Will exacerbate the existing substandard vehicular access through 13 Frognal**

53. The vehicular access to the application site is through of the parking area to the rear of 13 Frognal. However, where this access emerges onto Frognal the necessary visibility splays across the pavement cannot be achieved due to the changes in levels and the tall boundary planting. The Application Proposal will increase the number of vehicles using this substandard access and will thus increase the danger to pedestrians.
54. The Application Proposal cannot include any measures to improve the access as the within the visibility splay is not within their control.

**Fails to meet the nationally described space standard**

55. The Application Proposal is for a single storey three double bedroom (6 person) dwelling<sup>6</sup>. The Planning Statement states that the total proposed gross internal floor area is 90.5m<sup>2</sup> (paragraph 2.3) (although it is not clear that this is correct).
56. This is significantly below the space standard required by the Technical housing standards – nationally described space standard (March 2015) of 95m<sup>2</sup>.

**Ecological impacts have not been considered**

57. No assessment of the ecological potential of the site has been submitted with the application. This is an important issue and a validation requirement.

**Summary**

58. This objection letter has made clear that the red line shown on the site location plan is incorrect and Notices upon landowners have not been served and so the planning application is invalid. It has also raised concerns that it has not demonstrated that the Applicant has rights of way to the site; the scheme is of poor quality design; it is inappropriate backland development; it will have a significant negative impact upon important trees; it fails to preserve or enhance the Conservation Area; there will be negative impacts in terms of overlooking and privacy; it will exacerbate the existing substandard vehicular access through 13 Frognal; it fails to meet the nationally described space standard; and ecological impacts have not been considered.

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<sup>6</sup> Note that although the smallest bedroom is shown on the proposed plan drawing F12/2018/PP/02 rev C and listed in Planning Statement (paragraph 2.4) as 11.3m<sup>2</sup>, it is in fact 11.7m<sup>2</sup> (3.1m x 3.791m) as rooms should be measured from internal walls and include built in wardrobes (Technical Housing Standards, paragraph 10h). This is above the threshold of 11.5m<sup>2</sup> for being a double bedroom for 2 people (Technical Housing Standards, paragraph 10d).

59. In light of all of the above issues we respectfully request that planning permission is refused.

Yours sincerely

A black rectangular box redacting the signature of Robert Shrimplin.

**Robert Shrimplin**  
Director

A black rectangular box redacting the contact information of Robert Shrimplin.