

Town & Country Planning Act 1990
Section 78 Appeal by LifeCare Residences

Gondar Gardens Reservoir Site, Gondar Gardens West
Hampstead NW6 1QF

Volume 1: Proof of Evidence
of David Phillips BA(Hons) MSc MRTPI

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LPA ref: 2017/6045/P

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The Core Case

- **The Appeal Proposal**

1. The appellant seeks full planning permission for 82 self-contained extra care apartments and a 15 bedroom nursing home (Class C2).
2. The application was refused on 30 January 2018, under delegated powers. The formal decision notice identifies 16 reasons for refusal. At the time of writing, reasons 9 and 11 had been withdrawn by the Council and need not be discussed further, leaving 14 outstanding reasons for refusal.

- **Reasons for Refusal**

3. Out of the 14 outstanding reasons, 8 of these (reasons 1 to 8) relate to the acceptability of the proposals within the context of the site and surrounding area and/or the design of the proposals, namely whether the proposals would:
 - Adversely impact on designated Open Space and Local Green Space (RR1);
 - Adversely impact on the Site of Importance for Nature Conservation (Borough Grade II Importance) (RR2);
 - Fail to deliver affordable housing (RR3)
 - Fail to contribute to community safety and security and would not promote social cohesion (RR4);
 - Be inappropriate design in terms of height, mass, scale and detailed design (RR5);
 - Fail to provide inclusive design (RR6);
 - Cause harm through overlooking within the proposed development (RR7); and
 - Result in unacceptable light spill from development onto the ecological site (RR8).
4. Reason 10 (failure to provide more details on CHP, drainage and sustainability) relates to matters of detail that would ordinarily be dealt with by appropriately worded conditions.
5. Reasons 12 to 16 (failure to enter into planning obligations to provide the necessary infrastructure to make the development acceptable) are matters that are capable of being addressed through the completion of an appropriate legal undertaking.

My Propositions

6. My evidence, supported by the evidence of others, demonstrates without question that:
 - i. The characteristics of the site mean that there is no “do nothing” option.
 - ii. A form of redevelopment is required.
 - iii. Previous decisions have established the acceptability, in principle, of a frontage development and a form of development in the heart of the site.

- iv. Accordingly, the question in relation to this site is not *whether* it should be developed, but whether the development proposed is acceptable.
 - v. The Appellant has invested considerable resources in identifying the correct form of development for the site and has employed a team of consultants of the highest repute to do so.
 - vi. The appeal scheme is of exceptional merit.
 - vii. The scheme accords with government policy because:
 - a. It would make sustainable use of an urban, brownfield site that needs to be redeveloped.
 - b. It will make a significant contribution to the supply of housing;
 - c. It meets a compelling need for improved accommodation for the elderly;
 - d. It can achieve these benefits without causing any material harm;
 - e. It would lead to a net benefit in ecological terms by putting in place, for the first time, a properly researched and funded ecological management regime;
 - f. The design is of the highest quality as has been recognised by many design experts;
 - g. The proposal would cause no harm to residential amenity and would secure a high level of amenity for residents of the proposal itself; and
 - h. There are no other development management issues which preclude the scheme.
7. If this appeal is unsuccessful, uncertainty about the future of the site will return. The future of this site has been heavily debated in the past without reaching any consensus or plan of action. It remains entirely unclear what form of development LB Camden would prefer to see on the site, having now accepted in its Policies Map that the majority of the site is developable land (in accordance with the relevant neighbourhood plan). LB Camden's position appears to be one of entrenched opposition to any form of development that is proposed on the site, despite this policy position. In contrast, this appeal proposal provides certainty for the sustainable use of the site in future, and ensures a new chapter in its history, bringing with it substantial employment, investment and ongoing management.

1. Qualifications and Experience

- **Qualifications and Experience**

- 1.1. I hold a Master of Science Degree in City and Regional Planning from the University of Wales College Cardiff. I am a Corporate Member of the Royal Town Planning Institute having been elected in 1997. I have almost 25 years' private sector experience in town and county planning involving a number of diverse development projects.
- 1.2. As a Director of Strutt & Parker and formerly of GL Hearn and Andrew Martin Associates, I have led the planning work on a wide range of projects including a number of major schemes for regeneration, town/village expansions and new settlements, advising both public and private clients. These have included the planning of residential, commercial, retail, employment, sports/leisure and community facilities together with master planning of large sites.
- 1.3. Strutt & Parker were appointed by LifeCare Residences to provide town planning advice on the proposed redevelopment of Gondar Gardens Reservoir site in 2017. My colleagues and I have led Strutt & Parker's work on the project since then, encompassing the application stage, the consideration and determination of the application by the Council, and the appeal process to date. The relevant planning policies are very well known to me.
- 1.4. With particular reference to the appeal proposals, I am a former resident of Hillfield Road, some 500 metres from the entrance into the site. I am therefore very familiar with the appeal site and surroundings.

- **Declaration**

- 1.5. The evidence for this appeal referenced APP/X5210/W/18/3198746 in this proof of evidence is true and has been prepared and is given in accordance with the guidance of my professional institution. I confirm that the opinions expressed are my true and professional opinions. I have drawn from supporting information prepared by others to support my evidence, but only where I share the same opinions.

2. Introduction

2.1. The appeal by LifeCare Residences (LCR) is made against the decision of LB Camden on 30 January 2018 to refuse planning permission for 82 self-contained extra care apartments, a 15-bedroom nursing home (Class C2) and associated ancillary development on the site, including the provision of incidental communal and support facilities (LPA ref: 2017/6045/P).

- **The Appellant**

2.2. The Appellant has an international reputation for developing and operating retirement villages of outstanding quality. With over 30 years of experience in New Zealand, it has been operating in the UK since 2004, offering an exceptionally high level of care and hospitality to its residents.

2.3. The Appellant's philosophy is to enable older people, whether individuals or couples, to live in their own accommodation, but within a safe purpose-built environment, built to the highest design standards, with a wide range of communal facilities. An integral part of this concept is the immediate availability of care if required. Tenants must be a minimum age of 65 years old or older (70 years old in the case of the appeal proposal) and a health care assessment is carried out for each new resident including, where necessary, a full clinical assessment. All of the apartment accommodation in the proposed development is to be registered for domiciliary nursing care allowing the Appellant to deliver this to residents within their own apartments. Nursing care is also provided in the 15-bedroom nursing home.

2.4. The Appellant's model has been developed successfully at its other existing facilities, including Battersea Place in London as well as schemes at Somerleigh Court in Dorchester and Grove Place, near Romsey in Hampshire. Battersea Place is the first development of its kind anywhere in London; its success has highlighted the demand for this type of accommodation in the capital. The scheme proposed at Gondar Gardens would be the Appellant's second retirement community in London.

2.5. By way of further background I attach at my **DP1** a document prepared by the Appellant which seeks to provide an understanding of the role which LifeCare Residences (LCR) plays in the provision of extra care and nursing care accommodation for older people. It includes background to the company and its history and explains the ways in which both the operation and the accommodation, particularly through the level of care provision, differs from traditional retirement living providers. Section 4 contains a number of testimonials from existing residents of LCR's UK care villages. These residents speak very positively about their high-quality living environments and the first-class care that they receive.

Summary of Planning Issues

2.6. The reasons for refusal outstanding at the time of writing are:

- Reason 1: Development on designated Open Space and Local Green Space;
- Reason 2: Biodiversity and ecology;
- Reason 3: Affordable housing;
- Reason 4: Active Frontage;
- Reason 5: Character of Area;
- Reason 6: Inclusive Design;
- Reason 7: Overlooking;
- Reason 8: Lighting;
- Reason 10: Sustainability, energy, water and flooding;
- Reason 12: Construction Management;
- Reason 13: Highways / Pedestrian Improvements contribution;
- Reason 14: Car Free development;
- Reason 15: Travel Plan; and
- Reason 16: Energy Efficiency, Renewables Plan and BREEAM

2.7. Since the appeal was issued, the Appellant has been attempting to negotiate with the Council to narrow down the issues between them. Progress has been slower than anticipated culminating in the need to prepare evidence to cover all 14 outstanding reasons above. However it is anticipated that between now and the inquiry reasons 8, 10 and 12 to 16 (inclusive) should fall away, leaving 7 issues (at most) outstanding at the inquiry.

2.8. All 14 outstanding reasons are examined fully in Section 7 of my Evidence.

- **Scope of Evidence**

2.9. In my Proof of Evidence, I address matters of planning policy and relevant development management considerations, concluding with my assessment of the appropriate planning balance in this case.

2.10. Separate proofs of evidence and related reports are also produced with regard to the following matters:

Need	The Local Need for High-Quality Care Accommodation	Nick Ireland (Iceni)
Issue 2	Ecological matters	Tim Goodwin (Ecology Solutions)
Issue 3	Affordable housing and viability	Nick Fell (Rapleys) Peter Barefoot (Allder King)
Issue 4	Design: External appearance	Robin Partington (APT) Amanda Reynolds (AR Urbanism)
Issue 5	Design: Overall	Robin Partington (APT)

		Amanda Reynolds (AR Urbanism)
Issue 6	Accessibility	Robin Partington (APT)
Issue 7	Privacy	Robin Partington (APT)
Issue 8	Lighting	David Gilbey (Cudd Bentley) Tim Goodwin (Ecology Solutions)
Issue 10	Provision of CHP unit on site	Sushil Pathak (Cudd Bentley)
Issue 16	Sustainability	Sushil Pathak (Cudd Bentley)

- **Structure of Evidence**

2.11. My evidence is set out as follows:

- Section 3 describes the appeal site and surroundings;
- Section 4 summarises the planning history of the site and its surroundings;
- Section 5 describes the appeal proposals;
- Section 6 analyses relevant planning policy and guidance;
- Section 7 identifies and discusses the material planning issues, as summarised above;
- Section 8 examines other material considerations;
- Section 9 considers further material considerations including third party objections; and
- Section 10 sets out my summary conclusions.

3. The Appeal Site and Surrounding Area

- **Site Characteristics**

- 3.1. The site is located in West Hampstead and was formally known as Shoot-Up Hill Reservoir. The reservoir was built for the Grand Junction Water Works, linked to the Grand Junction Canal, in 1874 and comprises a vaulted brickwork structure supported on brick piers and perimeter walls, mostly buried in the ground or contained within a grassed embankment. The reservoir was decommissioned in 2002 and subsequently acquired by the developers Linden Wates in 2010. LCR acquired the site in June 2016.
- 3.2. The reservoir is covered by grass and is very well concealed within the local townscape. It measures some 92m in length and 53m in width, with an internal height of approximately 7m. The reservoir occupies approximately 40% of the area of the site and is located in its western portion.
- 3.3. There are two ribbons of land north and south of the reservoir which provide a buffer to the residential development beyond.
- 3.4. To the east of the reservoir is an area of land containing the excavated material removed in the construction of the reservoir. This is now covered by open grassland which slopes down from the reservoir roof by some 8 metres in height in the south-east corner of the site. Along the eastern edge of the site, and around the south-east corner, there is a belt of trees (mainly sycamore). These were made the subject of a Tree Preservation Order in 2003.
- 3.5. Collectively the reservoir and the open land to the sides and east have an area of 1.24 hectares. The land has a maximum length (east to west) of 165 metres and a maximum width (north to south) of 85 metres.
- 3.6. The covered reservoir occupies a relatively elevated position, affording views towards the City of London to the south-west. The reservoir roof currently sits two metres above the levels of the surrounding properties. Views across the site are more restricted by the raised level of the reservoir structure and the perimeter landscaping. No part of the site is currently accessible to the public.

- **Surrounding Area**

- 3.7. The reservoir preceded the construction of the residential development that now surrounds it. The western frontage of the site is situated on Gondar Gardens, from which access is achieved. Across the road from this frontage, on the other side of Gondar Gardens, are garages and outbuildings which are to the rear of the properties in Sarre Road.

North and south of the site along Gondar Gardens are larger mansion blocks (Chase Mansions and 16-62 Gondar Gardens). The other 3 sides of the site are enclosed by mansion blocks and terraced houses, whose long rear gardens (which have a depth of 35 to 45 metres) back onto the reservoir site. This includes the rear gardens of large (mainly family) dwellings in Gondar Gardens (to the north), Agamemnon Road (to the east) and Hillfield Road (to the south). The site is therefore virtually surrounded by housing, although for the most part the dwellings turn their backs to the land. The boundary conditions are explained in more detail in the Design and Access Statement.

- 3.8. The adjoining properties are late Victorian and Edwardian in age and are predominantly three storeys in height, with many of the buildings having further accommodation at roof level and/or at basement level, thereby creating four to five storeys. The buildings have a strong vertical emphasis and are characterized by clearly defined building widths, bay window projections, an undulating roof space and detailing to windows. A full contextual analysis is provided in the evidence of Ms Reynolds and Mr Partington.

- **Accessibility**

- 3.9. The site sits within the residential area of West Hampstead. It is located at the top of a hill and is approached from Mill Lane to the south. Local shops and bus services connecting the site to the wider transport network can be found on Mill Lane, while West Hampstead and Kilburn stations are within a 10-minute walk of the site, linking in with the National Rail and London Underground network. The PTAL of the site ranges from 1b to 3, with a PTAL of 4 within 100 metres to the south of the site.

- **Site Designations**

- 3.10. The site is not within a Conservation Area, although a boundary of the West End Green Conservation Area lies 240 metres to the south-east of the site.
- 3.11. In addition, the site and its immediate surroundings include no statutory listed buildings. However, Gondar Gardens Reservoir is included on the Council's Local List for heritage reasons (reference: 418) and is categorised as a natural feature or landscape of historical and social significance.
- 3.12. The Mansion Blocks on Gondar Gardens to the west and north of the application site are also locally listed.
- 3.13. The site is also designated as a Site of Importance for Nature Conservation ("SINC"). I discuss the latest open space designations relating to the site below.

4. Planning History

- 4.1. This section of my evidence provides a summary of the recent planning history of the site. This includes a planning permission for 16 residential units (dwellings) within the footprint of the existing reservoir structure and subsequent applications for development along the Gondar Gardens frontage comprising 28 residential units (flats and dwellings).
- 4.2. I demonstrate with reference to the pertinent planning history of the site that the principle of developing over the footprint of the front of the site and the reservoir element has been definitively established.
- 4.3. Full details relating to each of the applications and appeals is contained in the "Other Applications and Appeals" document library produced for this appeal as follows:

- **OA1.0:** The "Third" Frontage Scheme (Current Application); and
- **OA 2.0:** Previous Applications and Appeals.

- **The Reservoir Scheme**

- 4.4. In 2011, Linden Wates (West Hampstead) Ltd sought planning permission (ref: 2011/0395/P) to redevelop the existing reservoir structure on the site to provide 16 residential units, associated parking, refuse storage and landscaping, and use of the surrounding land and rear of the site as an open space nature reserve ("the Reservoir Scheme"). Planning permission was granted on appeal, following a public inquiry, on 1st November 2012 (Appeal Ref: APP/X5210/A/11/2167190). The application was accompanied by an Environmental Statement.
- 4.5. This decision established the principle of developing within the reservoir itself and substantially demolishing the roof and internal structure of the reservoir structure. The walls and their buttresses along the sides of the structure were to be retained together with some of the pillars and arches.
- 4.6. The 16 approved dwellings were to be constructed into the reservoir space in the form of 2 terraces, with equal numbers of dwellings on the north and south sides of the structure. The dwellings were to be 3 stories in height, so that about half the top storey would protrude above the existing ground level. Access was to be via Gondar Gardens, with vehicles reaching the ground floor level through car lifts.
- 4.7. The application was subject to a number of planning obligations which included £6.8M towards off-site affordable housing together with other financial contributions towards community facilities, education, highways and public open space. A copy of the appeal decision is attached at **OA2.16**.

4.8. On 1 November 2015, the Reservoir Scheme planning permission expired without being implemented.

- **The Frontage Schemes**

4.9. In May 2012, the Council refused an application (ref: 2012/0521/P) for the redevelopment of the western part of the Site (the Gondar Gardens frontage) to provide 28 residential units (Class C3 use) in two blocks from lower ground to third floors with basement parking, following substantial demolition of the roof and internal structure of the reservoir and its subsequent re-landscaping.

4.10. At appeal (APP/X5210/A/12/2188091) the Inspector concluded that the siting and size of the proposed building was acceptable and also accepted the scheme on heritage grounds. However, the appeal was dismissed for detailed design reasons. A copy of the appeal decision is provided at **OA2.32** which concluded that:

“The varying size of the projections, the large expanses of brickwork (seen particularly on the two large projections), the combination of geometric shapes and the four storey sections with a flat roof, only serve to distinguish all elements of its design from those in the surrounding area. There is no visible connection to the intricate shapes, decorative detailing (including red brick and white mouldings) or the strong vertical emphasis seen in the surrounding houses which combine to determine the character of West Hampstead”.

4.11. In June 2013, a further application was submitted for 28 residential units (with the same description of development as the earlier scheme) which sought to address the detailed design comments previously raised by proposing a revised treatment of the elevations (LPA Ref: 2013/7585/P).

4.12. Whilst officers recommended that planning permission be granted, the scheme was refused at planning committee in March 2014 with 13 reasons for refusal (12 of which related to the lack of a legal agreement). The first reason for refusal on the Council’s decision notice stated that the proposed development, by reason of its detailed design, would be detrimental to the streetscape and the character and appearance of the wider area, contrary to policy CS14.

4.13. The decision was appealed (APP/X5210/A/14/2218052) and the determination of the appeal was recovered by the Secretary of State. In a decision letter dated 16 December 2015, the Secretary of State accepted the recommendation of his Inspector and granted planning permission subject to a legal agreement (including provision for affordable housing and other infrastructure works). A copy of the decision notice is attached at **OA2.47**. At the time of writing, the planning permission granted in this decision remains extant.

4.14. To safeguard the Appellant's position ahead of the expiry of this permission on 16 December 2018, my company was recently instructed as part of a wider advisory team to submit an application for:

“redevelopment of reservoir street frontage to provide 28 residential units in 2 blocks from lower ground to 3rd floors with basement to accommodate associated ancillary development including gym, following substantial demolition of roof and internal structure of reservoir and subsequent re-landscaping.”

4.15. These application proposals were registered on 20 August 2018 (LPA ref. 2018/3692/P) and very closely align with extant planning permission 2013/7585/P which was allowed at appeal (APP/X5210/A/14/2218052) on 16 December 2015 for 28 dwellings. The applicant in that appeal, Linden Wates (West Hampstead) Ltd, sold the site to the current Appellant in June 2016.

4.16. The only material changes proposed to the extant planning permission in the application are as follows:

- Removal of basement car parking with no provision for off-street car parking and redesign of the basement layout to include gym and additional amenity space;
- Cycle parking increased to 72 safe and secure spaces;
- Car park lift replaced by cycle / refuse lift;
- Building footprint reduced on lower floors due to the removal of basement car parking;
- Extension of some of the balconies to the rear to provide additional private amenity space to some of the rear apartments with 26 of the 28 apartments having access to private amenity space at 5 sqm per unit, with only 2 x 1 bed units below 5 sqm (each having 3.5 sqm); and
- Redesign of all dwelling layouts to meet Part M of the Building Regulations.

4.17. These amendments have been made to reflect changes to planning policy since the appeal proposals were approved in December 2015. A number of non-material changes have also been made to the proposals also to reflect changes to policy in respect of energy and sustainability.

4.18. Visually the external appearance of the proposed development has not changed when viewed from the street frontage (Gondar Gardens).

4.19. The proposals were the subject of positive pre-application discussions with the Council's officers on 22 June 2018 which centred on the following key issues:

- The “weight” to be afforded to the extant permission in the context of determining the current proposals;
- Planning policy changes that have arisen since the determination of the extant planning permission that could have a bearing on the determination of the current proposals;
- Planning obligations; and
- Environmental Impact Assessment and validation requirements.

4.20. The officers’ formal pre-application response is contained in a letter dated 2 July 2018 and is attached at my appendix **OA.1.33**.

4.21. I will refer to this planning history when responding to a number of the Council’s grounds for refusal in this case. I note that the Council has not supported any development proposal on the site to date, with planning permission for the approved schemes only being granted on appeal.

5. The Appeal Proposals

5.1. The Appellant seeks full planning permission for:

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

5.2. The application submission was accompanied by a full suite of plans and subject reports that informed the proposals. These form **CD2.0**.

5.3. The plans and documents that formed the application submission are to be set out in the Statement of Common Ground.

- **Community Engagement**

5.4. The appellant and the design team carried out a comprehensive range of community engagement events. The main public events, which are recorded in detail in the Statement of Community Involvement (**CD.2.52**) and Statement of Community Involvement Addendum (**CD.2.53**), produced a range of responses, both for and against the proposal.

5.5. Positively, there were many responses in support of retirement communities both in the local area and on this site, and some in support of this specific scheme. However, most of the feedback, which came from those living close to the site, presented a high level of concern over how these residents perceived the potential impacts of the proposed development.

5.6. The major issues which came up repeatedly in many of the feedback forms and email commentaries were: the scale and form of the proposal; the impact on the ecological character and balance of wildlife on the site; and the impact of traffic and parking, including construction traffic, on the neighbourhood streets. These concerns were expressed at the first discussion with community representatives and continued through the public events.

- 5.7. At the same time as engaging with the public, the appellant's design team were also meeting with the Council's planning and technical teams and their Design Review Panel. These consultees expressed different concerns about the project. The design team endeavoured to balance all these inputs to produce a locally responsive, attractive, and viable scheme within the parameters of the site.
- 5.8. The design evolved significantly between the two sets of community engagement events to reflect the concerns of the community, the Council's design review panel and the Council's planning and other departments.
- 5.9. The design team responded to concerns about scale and form by reducing the footprint of the development overall (by 25%), reducing the numbers of apartments from 108 to 82, halving the number of nursing beds to 15, removing any construction activity from the 'green wings' alongside the reservoir and not excavating further below the level of the reservoir.
- 5.10. In terms of traffic and parking, the street impact was reduced with the removal of one vehicle crossing leading to the potential loss of only one existing street parking bay (which could potentially be replaced elsewhere), while a number of surveys were carried out to explain clearly the predicted low impact of deliveries and servicing.
- 5.11. Proposed ecological enhancements to the site are supported by the London Wildlife Trust and 51% of the existing site will remain as protected Local Green Space, while none of the protected trees around the edge of the site will be impacted by the development process.
- 5.12. The design review panel argued for a more outward-looking design with less concern for height issues and all inputs supported a design that reflected the local mansion block typology more. In summary, feedback from the local residents has been listened to and examined in detail. Where possible, their suggestions and ideas were incorporated into the evolving design for this development.

- **The Decision**

- 5.13. The application was refused by the Council under delegated powers (LPA Ref: 2017/6045/P). The formal decision identifies 16 reasons for refusal. The decision notice is at **CD2.75**. For ease of reference, the outstanding reasons for refusal are reproduced below:

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

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

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

4. The proposed development, by virtue of its failure to provide an active street frontage, disconnection from the local streetscene and the surrounding community, results in an inward-looking enclave which fails to contribute to community safety and security or to promote social cohesion, contrary to policies D1 (Design) and C5 (Safety and Security) of the London Borough of Camden Local Plan 2017.

5. The proposed development, by virtue of its height, mass, scale and detailed design, would be detrimental to the streetscene, the open space, the outlook of surrounding properties, and the character and appearance of the wider area while failing to preserve or enhance the character and appearance of the local area, contrary to policies G1 (Delivery and location of growth), D1 (Design), D2 (Heritage) and A1 (Managing the impact of development) of the London Borough of Camden Local Plan 2017 and Policy 2 of the Fortune Green and West Hampstead Neighbourhood Plan 2015.

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

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

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

9. [withdrawn]

10. The proposed development, in the absence of details regarding the feasibility of providing a CHP unit on the site, opportunities to reduce water consumption, drainage calculations and details relating to SuDs, along with the failure to reach CO2 reduction targets, and due to the absence of a legal agreement to secure any of the above, would fail to be sustainable in its use of resources, contrary to policies CC1 (Climate Change mitigation) and CC3 (Water and Flooding) of London Borough of Camden Local Plan 2017 and Policies 5.2, 5.12 and 5.13 of the London Plan 2016.

11. [withdrawn]

12. The proposed development, in the absence of a legal agreement to secure a construction management plan and a financial contribution of £22,816 for construction management plan monitoring, 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 G1 (Delivery and location of growth), A1 (Managing the impact of development), T3 (Transport Infrastructure), T4 (Sustainable movement of goods and materials), DM1 (Delivery and monitoring), A4 (Noise and Vibration) and DP28 (Noise and vibration) and CC4 (Air quality) of the London Borough of Camden Local Plan 2017.

13. The proposed development, in the absence of a legal agreement to secure financial contributions towards pedestrian and environmental improvements in the area, would fail to mitigate the impact of the development created by increased trips, contrary to policies T1 (Prioritising walking, cycling and public transport), A1 (Managing the impact of development) and DM1 (Delivery and monitoring) of London Borough of Camden Local Plan 2017.

14. The proposed development, in the absence of a legal agreement for car-free housing, would be likely to contribute unacceptably to parking stress and congestion in the surrounding area, contrary to policies T1 (Prioritising walking, cycling and public transport), T2 (Parking and Car Parking) and A1 (Managing the impact of development) and DM1 (Delivery and monitoring) of the London Borough of Camden Local Plan 2017.

15. The proposed development, in the absence of a legal agreement for a Travel Plan and a financial contribution of £6,244 for travel plan monitoring, 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 G1 (Delivery and location of growth), A1 (Managing the impact of development), T3 (Transport Infrastructure), DM1 (Delivery and monitoring), A4 (Noise and Vibration) and DP28 (Noise and vibration) and CC4 (Air quality) of the London Borough of Camden Local Plan 2017.

16. The proposed development, in the absence of a legal agreement to secure an Energy Efficiency and Renewable Energy Plan, including the submission of post-construction reviews demonstrating compliance with BREEAM Multi Residential and including a contribution to off-site allowable solutions, would fail to be sustainable in its use of resources, contrary to policies CC1 (Climate change mitigation), CC2 (Adapting to climate change), CC3 (Water and flooding) CC4 (Air quality), C1 (Health and wellbeing) and DM1 (Delivery and monitoring of the London Borough of Camden Local Plan 2017.

6. Material Planning Policies

6.1. Relevant policies in the development plan and in national policy guidance have guided the preparation of the proposal at all times. The implications of these policies and other material considerations are addressed in Section 6 of this statement, which sets out the planning case.

- **National Planning Policy Framework (2018)**

6.2. The 2012 National Planning Policy Framework “Framework” (**CD3.1**) has been fully revised since the application was refused and the appeal lodged and I set out below the main parts of it that I consider most relevant to the appeal.

6.3. The Framework is a material consideration in planning decisions. It sets out the Government’s planning policies for England and how they will be applied in terms of securing sustainable development. Sections of the Framework that are of particular relevance to the appeal proposals are:

- Section 1: Introduction (paras. 1 to 6);
- Section 2: Achieving sustainable development (paras. 7 to 14);
- Section 5: Delivering a sufficient supply of homes (paras. 59 to 79);
- Section 6: Building a strong competitive economy (paras. 80 to 84);
- Section 8: Promoting healthy and safe communities (paras. 91 to 101);
- Section 11: Making efficient use of land (paras. 117 to 123);
- Section 12: Achieving well-designed places (paras. 124 to 132);
- Section 14: Meeting the challenge of climate change, flooding and coastal change (paras. 148 to 169); and
- Section 15: Conserving and enhancing the natural environment (paras. 170 to 183).

6.4. As set out in section 2 of the NPPF, the Government is committed to the overarching principle of achieving sustainable development, i.e. to meet the needs of the present without compromising the ability of future generations to meet their own needs (paras. 7).

6.5. As stated in para. 8:

“Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):

a) an economic objective – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;

b) a social objective – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and

c) an environmental objective – to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.

6.6. Para. 9 states:

“... Planning policies and decisions should play an active role in guiding development towards sustainable solutions, but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area (para. 9)”

6.7. Para. 10 continues:

“So that sustainable development is pursued in a positive way, at the heart of the Framework is a presumption in favour of sustainable development (paragraph 11)”.

6.8. Para. 11 goes on to state that for **decision-taking**, the presumption in favour of sustainable development means:

“c. approving development proposals that accord with the development plan without delay; or

d. where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

i. the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed⁶; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

6.9. Footnote 6 states that:

“The policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 176) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 63); and areas at risk of flooding or coastal change.

6.10. I provide commentary on para. 176 of the NPPF below when discussing section 15 of the Framework which provides specific guidance on conserving and enhancing the natural environment.

6.11. Section 5 of the Framework sets out the Government’s commitment to delivering a sufficient supply of homes, noting at para. 59 that:

“To support the Government’s objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay”.

6.12. Para. 61 makes clear that:

“... the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies (including, but not limited to, those who require affordable housing, families with children, older people, students, people with disabilities, service families, travellers, people who rent their homes and people wishing to commission or build their own homes”.

- 6.13. Para. 64 indicates that where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the homes to be available for affordable home ownership. It goes on to state that exemptions to this policy include development for specialist accommodation for a group of people with specific needs (such as purpose-built accommodation for the elderly).
- 6.14. Para. 73 of the Framework sets out the requirement for LPAs to boost significantly the supply of housing by identifying and updating annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies.
- 6.15. Section 6 of the Framework states that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development (para. 80).
- 6.16. Section 8 of the Framework sets out the Government's approach to promoting healthy, inclusive and safe places which promote social interaction; are safe and accessible; and enable and support healthy lifestyles, especially where this would address identified local health and well-being needs.
- 6.17. Paras. 99 to 101 deal specifically with land to be designated as Local Green Space as follows:

“99. The designation of land as Local Green Space through local and neighbourhood plans allows communities to identify and protect green areas of particular importance to them. Designating land as Local Green Space should be consistent with the local planning of sustainable development and complement investment in sufficient homes, jobs and other essential services. Local Green Spaces should only be designated when a plan is prepared or updated, and be capable of enduring beyond the end of the plan period.

100. The Local Green Space designation should only be used where the green space is:

a) in reasonably close proximity to the community it serves;

b) demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife; and

c) local in character and is not an extensive tract of land.

101. Policies for managing development within a Local Green Space should be consistent with those for Green Belts”.

6.18. Section 11 of the Framework makes clear that Government expects planning policies and decisions to promote an effective use of land in meeting the need for homes and other uses in a way that makes as much use as possible of previously-developed or ‘brownfield’ land (para. 117), albeit recognising that this should not conflict with other policies of the Framework, including causing harm to designated sites of importance for biodiversity (footnote 44).

6.19. In particular, para. 118 states that planning policies and decisions should, *inter alia*:

“a) encourage multiple benefits from both urban and rural land, including through mixed use schemes and taking opportunities to achieve net environmental gains – such as developments that would enable new habitat creation or improve public access to the countryside;

b) recognise that some undeveloped land can perform many functions, such as for wildlife, recreation, flood risk mitigation, cooling/shading, carbon storage or food production;

c) give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land;

d) promote and support the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing where land supply is constrained and available sites could be used more effectively (for example converting space above shops, and building on or above service yards, car parks, lock-ups and railway infrastructure)”.

6.20. Section 12 of the Framework sets out the Government’s requirement for new developments to achieve well-designed places, including the creation of high quality buildings. Paragraph 127 states that planning policies and decisions should ensure that developments:

“a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;

b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;

c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);

d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;

e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and

f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.”

6.21. As set out in Section 14 of the Framework in determining planning applications, local planning authorities should expect new development to comply with adopted local plan policies on decentralised energy supply subject to feasibility and viability considerations, and take account of landform, layout, building orientation, massing and landscaping to minimise energy consumption (para. 153).

6.22. As noted above Section 15 of the Framework sets out the Government’s approach to conserving and enhancing the natural environment, and as stated in para. 170 planning policies and decisions should contribute to and enhance the natural and local environment by *inter alia*:

“a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);

.... d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;

6.23. Paras. 174 to 177 deal specifically with the Government’s approach to habitats and biodiversity. Para. 175 states, *inter alia*:

“When determining planning applications, local planning authorities should apply the following principles:

a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused ...”

- **Planning Practice Guidance**

6.24. The Planning Practice Guidance (PPG) was first published on 6 March 2014 and was comprehensively updated at the same time as the Framework. There remains significant emphasis on the need for local authorities to meet their housing targets. In the section on ‘Housing and Land Availability Assessment’, the PPG states that ‘Local planning authorities should count housing provided for older people, including residential institutions in Use Class C2, against their housing requirement’ (Reference ID: 3-037-20150320).

- **The Development Plan**

6.25. The Development Plan comprises:

- The London Plan (March 2016) (**CD3.3**);
- Camden Local Plan (July 2017) (“the LP”) and Updated Policies Map (June 2018) (**CD3.6**); and
- Fortune Green and West Hampstead Neighbourhood Plan (2015) (**CD3.7**).

- **The London Plan (2016)**

6.26. A full list of relevant policies from the London Plan are set out in the Statement of Common Ground.

6.27. In December 2017 a draft new London Plan was published by the Mayor for consultation. A post-consultation version of the draft London Plan is to be the subject of an Examination in Public which will commence on 15 January 2019 (**CD3.4**). The examination is currently scheduled to finish on 20 May 2019 with the Panel Report scheduled to be issued by the end of July 2019. The draft London Plan is not likely to be formally adopted until the end of 2019.

6.28. The draft London Plan is a material consideration in planning decisions. The weight given to it is a matter for the decision maker, but it should gain more weight as it moves through the process to adoption, particularly those policies that have not been the subject of material objection.

- Camden Local Plan 2017 and Updated Policies Map (2018)** The updated Policies Map (June 2018) accompanying the adopted Camden Local identifies the undeveloped land to the east of the reservoir and the strips of land to its north and south as Private Open Space (“POS”) and Local Green Space (“LGS”) (sites 188 (Gondar Gardens) and 189 (Gondar Gardens Reservoir)). The western section of the site, comprising a 60-metre stretch running along Gondar Gardens and the reservoir has no designation. The accompanying key indicates that the central core of the site is also designated as a Site of Importance for Nature Conservation of Borough Grade II Importance (“SINC”). An extract from the printable version of the Council’s Policies Map is shown below:



(Extract from Camden Policies Map: Printable Version)

- 6.29 For the avoidance of doubt the area shaded ‘green’ and hatched ‘blue’ is defined as POS and LGS respectively. These designations effectively represent the non-developed parts of the site to the north, south and east of the reservoir structure. The dashed blue line represents the area of SINC.
- 6.30 A full list of relevant policies from the Camden Local Plan, which are referred to as appropriate within Section 7 of my evidence, are set out in the Statement of Common Ground.

Fortune Green and West Hampstead Neighbourhood Plan (2015).

6.31 The Fortune Green and West Hampstead Neighbourhood Plan (Policy 16) identifies the frontage area and the reservoir as developable land ('Other Sites'):



Extract from Neighbourhood Plan (Map 5: Other Sites)

6.32 The Neighbourhood Plan designates the remaining site area "Local Green Space", a designation now reflected in the Council's Policies Map. This includes the undeveloped land to the east of the reservoir and the strips of land to its north and south.



Extract from Neighbourhood Plan (Map 8: Local Green Space)

6.33 A full list of relevant policies from the Neighbourhood Plan, which are referred to as appropriate within Section 7 of my evidence, are set out in the Statement of Common Ground.

- **Supplementary Planning Policies**

6.34 Other supplementary planning guidance produced by the GLA and the Council are material considerations and particular consideration has been given to the following:

- GLA Housing SPG (2016)
- GLA Accessible London SPG (2014)
- GLA Sustainable Design and Construction SPG (2014)
- GLA Affordable Housing and Viability SPG (2017)
- Camden Sites of Nature Conservation Importance SPD (Draft, 2009)
- Camden Planning Guidance 1: Design (updated March 2018)
- Camden Planning Guidance 2: Housing (updated March 2018)
- Camden Planning Guidance 3: Sustainability (updated March 2018)
- Camden Planning Guidance 6: Amenity (updated 2018)
- Camden Planning Guidance 7: Transport (2011)
- Camden Planning Guidance 8: Planning Obligations (updated March 2018)
- Camden Planning Guidance: Biodiversity (2018)
- Camden Planning Guidance: Housing CPG (interim) (2018)
- Camden Planning Guidance: Planning for health and wellbeing CPG (March 2018)
- Camden Planning Guidance: Public Open Space CPG (March 2018)

6.35 I demonstrate in Section 7 that the proposed development is in general compliance with the development plan and is in a suitable and sustainable location for new specialist housing development.

7 The Planning Issues

7.1 This section of my proof outlines the key issues in respect of the determination of this planning appeal having regard to national planning policy, the development plan and other material considerations.

7.2 As set out in my section 6, Section 38(6) of the Planning and Compulsory Purchase Act (2004) refers to the Development Plan as a whole and states that:

“If regard is to be had to the development plan for the purposes of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise”.

7.3 Before examining of each of the reasons for refusal I consider the overall benefits arising from the appeal proposals. These are significant material considerations and must be weighed in the balance against any adverse impacts.

- ***The Local Need for High-Quality Care Accommodation***

7.4 The proposal will deliver high-quality specialist accommodation for older people. As demonstrated in Mr Partington’s evidence the new buildings will meet best practice standards for care accommodation, will result in a long-term enhancement to the provision of care within the local area and will offer housing choice (including the promotion of independent living).

7.5 Policy H8 is directly relevant and states as follows:

“The Council will aim to ensure a sufficient supply of appropriate housing available for older people...to live as independently as possible. We will support development of a variety of housing aimed at meeting the specific needs of older people... provided that the development:

a. is needed to meet a demonstrable need within the borough and will be targeted at borough residents;

b. will be suitable for the intended occupiers in terms of the standard of facilities, the level of independence, and the provision of support and/or care;

c. will be accessible to public transport, shops, services, community facilities and social networks appropriate to the needs of the intended occupiers;

d. contributes to creating a mixed, inclusive and sustainable community; and

e. does not cause harm to nearby residential amenity”.

7.6 This objective is also supported by Policy H6 which states that:

“...where housing is proposed as part of a development with a site area of 0.5 ha or greater, we will expect the development to make provision for particular housing needs”, including “housing for older people.”

7.7 In light of the above, the general principle of developing the former reservoir and frontage components of the site for older persons’ accommodation is supported by the development plan. This is consistent with the Framework objective of making sure that the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policy, including “older people” (paragraph 61). Furthermore, in its pre-application consultation response dated 19 December 2016, the Council stated that it did not anticipate objecting to the principle of the development and that its initial view was that the provision of housing for older people ‘could be acceptable in this location’.

7.8 Criterion (a) of Policy H8, which relates to demonstrable need, was added at a late stage in the process of preparing the Local Plan. The supporting text of the policy, as well as Appendix 5 of the London Plan, do in themselves set out a strong case on need. The supporting text to Policy H8 acknowledges that the numbers of people needing some form of support is expected to increase over time (para. 3.207), due in part to “growing numbers of older people with longer life expectancy”. Within Camden, the number of people aged over 75 is expected to increase from just over 11,000 to just over 16,000 during the Plan period (paragraph 3.210). The Council’s Health and Adult Social Care Scrutiny Committee Report (March 2017) states that there are currently almost 28,000 people over 65 in Camden and this number is expected to increase to approximately 35,000 in the next ten years (25% increase).

7.9 Whilst most needs will be met by providing support at home, the Council accepts that there is likely to be a need for development for supported living (para. 3.208). Para. 3.211 further acknowledges that the quality of life of older people can be improved, and support costs reduced, if more older people live in homes that can foster their independence but accommodate any support needs they may have as they age. It is precisely this group of older residents that the subject scheme will provide for.

7.10 In quantifying demand and supply, para. 3.214 notes that there are over 1,700 homes designated for older people to rent in Camden. These are primarily in sheltered housing schemes, but also include a small proportion of extra-care homes developed in the past five years. The Plan states that ‘all’ [my underlining] are provided by the Council or Housing Associations. As such there is no provision for private extra care or assisted living provision.

7.11 In meeting this demand, Appendix 5 of the London Plan sets an indicative benchmark for Camden to provide 100 additional specialist housing units per year specifically for older people, based on an estimated potential demand from 2.5% of households aged 65-74 and 15% of

households aged 75 and over. The London Plan's indicative benchmarks suggest that only 15% of new provision in Camden should be for affordable rent and the remainder should be for private sale (65%) and intermediate sale (20%).

- 7.12 To understand this need better for the purposes of its planning application, the Appellant commissioned a Care Needs Assessment. This specialist and detailed report adopted a robust methodology to consider the existing demand and supply for care home and extra care accommodation within the context of the local market and relevant policies. The report prepared by Carterwood demonstrated that there is a significant unmet need for care home accommodation equivalent to 671 bedspaces within the local authority area and 1,473 bed spaces within a market catchment area (3 miles). This need is projected to increase to 1,025 and 2,527 bed spaces respectively by 2027. In respect of extra care units, the current need within the local authority area is equivalent to 472 units and within the market catchment area (4 miles in this case) is 2,256 units. The extra care need is projected to increase to 680 and 3,255 units respectively by 2027.
- 7.13 As part of his evidence Mr Ireland has comprehensively reviewed the Carterwood submission and updated it as appropriate to include the latest data available on the demand and supply of extra care housing and nursing care accommodation in LB Camden. I rely on Mr Ireland's evidence to demonstrate the need for, and benefits of, the specific type of extra care housing proposed within the development.
- 7.14 Based on the appellant's demand and supply analysis, there is clearly an acute shortage of the kind of provision required by many local residents. This makes a compelling case for the delivery of new extra care schemes to ensure that the current shortfall does not become even greater in the coming years. Whilst other schemes may come forward within the Plan period, these projects are likely to have a long lead-in time and the demand for extra care facilities will also increase over this period due to changing demographics. Indeed, to meet the current local authority need, a need which is projected to increase significantly in the future, 5 schemes of the size proposed for Gondar Gardens need to be delivered in the short term. It is our understanding that no other comparable sites are currently in the development pipeline.
- 7.15 Mr Ireland has demonstrated that the need for extra care and nursing care accommodation in LB Camden is compelling and exceeds the provision currently identified in the Local Plan.
- 7.16 Having regard to criterion (b) of policy H8, LCR's operating model is underpinned by a philosophy that good well-being and health is essential for old age and ageing should not be perceived as something that is dominated by illness.
- 7.17 The LCR objective is to enable older people, whether individuals or couples, to retain their independence by living in their own homes (which they own on a leasehold basis) but within a safe and caring environment. An integral part of this concept is the immediate availability of

care, if required, but it is intended to be subtle and kept in the background in order to maintain the emphasis on independent living.

- 7.18 At entry each resident will undergo a clinical assessment by a CQC registered care provider, in order to understand their personal and clinical needs and agree a bespoke service package appropriate to their aspirations and abilities. The scheme village will be registered for nursing care throughout. Some residents will be frail and vulnerable and require high levels of care and support, but for others the emphasis will be on independent living with access to a range of shared amenities including pool, gym, café, lounge, library, restaurant, cinema and a communal bus service. Alongside the assisted living apartments, the nursing home will offer support for residents in need of short-term convalescence, post-operative care, and long-term nursing and palliative care.
- 7.19 For the reasons set out above, I consider that the scheme will be an exemplar in terms of the standard of facilities, the levels of independence that are enabled, and the provision of support and care.
- 7.20 In respect of criterion (c), the site is in an accessible location such that local public transport, services and facilities will complement the range of facilities to be provided on site and the communal bus service offered to all residents. The Council's pre-application advice also confirms that Gondar Gardens offers a suitable location for a care home due to its proximity to shops, services, community facilities and social networks appropriate to the needs of the intended occupiers.
- 7.21 The scheme will also fully accord with criterion (d) in helping to create a mixed, inclusive and sustainable community. The site is within an established residential area, there is no existing concentration of assisted living or care schemes (indeed there is a distinct absence of any private care facilities) and as such the scheme will support the housing choice and mix objectives set out in Policy H6 of the Local Plan. This fact has again been confirmed in the Council's pre-application advice.
- 7.22 I address matters relating to criterion (e) in specific response to reason for refusal 7 below. Suffice to say now that the site is set back 35 to 45 metres from the rear elevations of any adjoining properties so as not to give rise to any material harm.
- 7.23 The proposed development would clearly make a very positive contribution to meeting the Council's strategic objectives for care and elderly persons housing.

These benefits are a strong material consideration in the determination of this application. Indeed, given the extent of the need, the benefits of providing care accommodation should be given greater weight in the planning balance than the benefits of private market housing as allowed under the earlier schemes. This is supported by the Council's pre-application advice

dated 9 March 2017 in which it accepted the demand for housing, 'especially care homes for the elderly' (my emphasis added).

7.24 This is further confirmed in the Council's own Statement of Case at para. 7.2:

"7.2 The merits of the appeal proposal are recognised and include that the development would create a number of additional homes, which is a priority of the development plan. It would also lead to the creation of a new 15 bed nursing home facility".

7.25 The need for older persons housing at the site was further endorsed in the GLA's Stage 1 response to the application proposals. Paras. 20 to 22 fully endorse the principle of older persons housing on the site, noting particularly para. 22:

"22. In this regard, as evidenced in Camden Council's Housing Need Study, there is an existing demand for such uses. The applicant has also prepared a headline planning need assessment which further supports the need for this development. Therefore, the principle of older persons housing on this site is accepted".

- ***Housing Supply Benefits***

7.26 In the 'Housing and Land Availability Assessment' section of the PPG there is a significant emphasis on the need for local authorities to meet their housing targets and:

"Local planning authorities should count housing provided for older people, including residential institutions in Use Class C2, against their housing requirement" (Reference ID: 3-037-20150320).

7.27 As such the proposal will provide 97 new units towards the local five-year housing supply. This is a significant contribution towards the annual requirement for 1,120 new homes set out in Policy H1. This is a challenging target in that it exceeds the London Plan minimum target for Camden of 889 dwellings. The scheme for the subject site, which might be considered a windfall, will address nearly half of the annual uplift between the two sets of figures for the relevant year.

7.28 The scheme optimises the site for development in line with Mayoral aspirations for increased densities in inner London, having regard to the local development context and landscape and open space constraints.

7.29 In addition, as demonstrated in Mr Partingdon's evidence, the standard of the proposed accommodation will be extremely high, exceeding the care standards required by the CQC and the minimum national housing standards published in 2015.

7.30 A further significant benefit of the proposal is that it has the potential to free up other sectors of the housing market by releasing much-needed family housing accommodation. Residents moving into extra care accommodation often 'downsize' from larger dwellings and the proposal therefore helps to ensure a knock-on housing benefit. This in turn will help to reduce pressure on other sites in the area.

- **Employment Benefits**

7.31 The proposal will assist in meeting the Council's wider employment objectives. The scheme has the potential to provide approximately 80 full-time equivalent permanent jobs for local people. This includes management, technical, administrative, care, nursing, catering and housekeeping positions, providing both full-time and part-time opportunities. It is anticipated that a maximum of 30 staff would be on site at any time (at shift changeover periods). LCR expect that the majority of staff would be recruited locally. In addition, the proposal will create knock-on employment opportunities, for example, during construction and through associated facilities and services to support the on-going operation of the facility.

- **Community Benefits**

7.32 The Appellant is committed to integrating their care facilities into local communities and to fostering ties with local schools, churches, community groups and medical practitioners. It is also proposed that the nursing home and its associated facilities be made available to the local population.

7.33 Furthermore, the scheme can reduce the burden on local GP practices by providing specialist and dedicated in-house nurses and carers, reducing the need for residents (who might have previously lived alone) to call on local GP services. In addition, the scheme will reduce pressures on the NHS through a likely reduction in ambulance call-outs for falls as these can be addressed by on-site staff.

7.34 The proposal is supported by a sustainable Travel Plan to encourage public transport use (and to minimize the use of the car) and this includes the provision of a minibus service for staff and visitors, the use of pool cars and the promotion of public transport.

- **Townscape Benefits**

7.35 There is no doubt that the proposals, with reference to evidence from others, will deliver substantive townscape benefits.

It will not only enhance and improve the existing poor quality streetscape of this section of Gondar Gardens, but will also contribute a greater degree of visual integration between the public street and the Local Green Space by opening up a new view through the site from the street to the improved and enhanced Local Green Space to the east.

- ***Ecological Benefits***

7.36 LCR are committed to the enhancement of the Borough II SINC, which includes both the reservoir roof and open land principally to its east.

7.37 Evidence provided by experts in their field have demonstrated that the “do nothing” scenario will lead to the further decline of the ecological value of the site. The lack of activity on the site has already adversely affected its ecology and the appearance of the landscape. Against this background, the longer term management of the site through the proposed 20 year management plan will significantly enhance the biodiversity of the SINC as well as its intrinsic value.

- ***Site Availability and Achievability***

7.38 The site is capable of being delivered in the short-term. A high-quality new development will be delivered on what is currently an under-utilised and vacant site.

7.39 The scheme is being put forward by an established operator who has an excellent track record in delivering schemes of this nature and in providing high-quality accommodation and care for older persons.

7.40 Importantly, no previous housing consents have been implemented and no alternative uses have been found for the site. The non-implementation of previous consents is likely to be connected to the costs of redevelopment and the heritage and open space constraints. The lack of activity on the site has adversely affected its ecology and the appearance of the landscape. This could have had a further impact on the viability of previously approved schemes. There is a genuine concern that the site could become sterilized after failing, for several years, to make progress with its improvement.

- ***Summary***

7.41 Having regard to each of the factors outlined above, I consider that the proposal would deliver a number of significant public benefits. The proposed land use is acceptable in principle.

7.42 The real issue, therefore, is whether the particular development proposed in this appeal, with regard to the outstanding reasons for refusal, is an appropriate response to the constraints on the site, having regard to the benefits that it would deliver.

- ***Response to the Reasons for Refusal***

- ***Reason 1: Open Space***

7.43 The Council's first reason for refusal states:

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

7.44 The principle of housing development on the subject site has been established through the site allocation within the adopted Neighbourhood Plan, the Council’s Policies Map (as updated in 2018) and through the planning history outlined in Section 4 above. Furthermore there are no site designations within either the Camden Local Plan or Neighbourhood Plan that preclude either the frontage or the reservoir being developed as both the open space and LGS designations fall on the undeveloped parts of the site. At the time of writing, there is an extant planning permission to develop the land on the frontage of the site and a permitted (but expired) scheme for the reservoir element. Both these permissions are a material consideration, even though the Reservoir Scheme permission has now expired. A previous planning permission is capable of being material even if that consent has expired: see *South Oxfordshire District Council v Secretary of State for the Environment* [1981] 1 WLR 1092 (DP2).

7.45 Moreover, as found by the Inspector who considered the Reservoir Scheme, the reservoir structure and its curtilage constitute previously developed land as defined in the glossary of terms on page 70 of the Framework (see para. 15 of the appeal decision). Section 11 (paras. 117 to 123) of the Framework makes clear that the effective reuse of previously developed land is a fundamental principle of the English planning system. This is reiterated in Policy H1 of the Local Plan which seeks to maximise housing delivery on previously developed sites that are underused or previously vacant. As was also summarised by the Inspector who allowed the Reservoir Scheme:

“..... the planning history of the site...clearly points to a form of redevelopment”
(para. 40).

7.46 A frontage scheme and a reservoir scheme have both been approved on previous appeals when assessed individually.

7.47 In their report on the application that is the subject of this appeal, the Council’s officers advised as follows (para. 1.5):

“The consented reservoir scheme is a material consideration, and whilst the loss of the non-designated heritage assets of the reservoir is regrettable in this instance, it is considered that due to the structure having limited visual impact, being subterranean, there is no objection to the principle of demolition of the structure.”

- 7.48 Neither the frontage nor reservoir decisions rule out a more comprehensive development of the site, subject to its collective impact being properly assessed.
- 7.49 Turning to the Neighbourhood Plan, the principle of developing both the reservoir structure and the frontage onto Gondar Gardens is consistent with Policy C2. Section C of the NP lists a number of 'Other Sites' in the NP area which are proposed for development or may be developed in the future. The appeal site is listed as Site C2.
- 7.50 I do not consider that policies 16 and 17 of the Neighbourhood Plan, and the open space and LGS designations contained within the Camden Local Plan, are directly engaged by the scheme as no built development is proposed on the parts of the site under these designations. Accordingly, there is no need for the scheme to address the Green Belt tests referred to at paragraphs 101 (99 to 101) of the Framework in respect of LGS.
- 7.51 I further refer to the advice of GLA officers who, in assessing the scheme against London Plan policy, concluded:

“19. Considering the proposals as a whole, and given the planning history context, GLA officers consider that the redevelopment of the site of the former reservoir, as defined in allocation site C2 in the Neighbourhood Plan, and street frontage is acceptable in principle”

- 7.52 I note that when read in full para. 19 further reads:

“...This is subject to confirmation that the scheme does not involve the loss or damage of the defined Local Open Space surrounding the reservoir and the site’s SINC designation is protected and enhanced in accordance with Policy 7.19 of the London Plan and Policy G6 of the draft London Plan”.

- 7.53 The appeal scheme would not lead to any loss or damage, or failure of protection, as described here. Nevertheless, the Council claims that the proposal is in conflict with this policy in its decision notice. For the reasons set out below, I disagree.
- 7.54 Paras. 2.1 to 2.11 of the Officers’ Report seek to critique the impact of the proposals on open space from a policy prospective. Officers’ interpretation as to what the open space is, is explained at para. 2.7 with reference to the UDP inquiry which first designated the site as private open space in 2004/5. Paraphrasing the Inspector, para. 2.7 states:

“...‘In this context my colleague referred to the extensive views into the site from the surrounding houses. Although taken individually these are private views, they amount collectively to a considerable public asset and a ‘green lung’ providing local amenity’ (para. 16)...”

7.55 And at para. 2.8:

“Due to the unique nature of the site, and its relatively elevated location in comparison with dwellings which surround the site, the site offers a much appreciated public asset to this area of West Hampstead. This is further documented and appreciated within the Fortune Green and West Hampstead Neighbourhood Plan which states ‘Due to the significant amount of open space the site provides, views across the site should be protected from significant damage or loss; of particular significance is the view to the east to Hampstead (Policy C2)’...”.

7.56 On the matter of open space, officers conclude at para. 2.11 that:

“The proposals are contrary to the Local Plan, the Neighbourhood Plan, the London Plan and the National Planning Policy Framework as they would be detrimental to the setting of the designated open space and do not seek to protect nor enhance the designated open space. The harm to the designated open space is therefore unacceptable and the application should be refused on this basis.”

7.57 The Local Plan protects open spaces, not simply because of their accessibility, but also because of their amenity value. Policy A2 of the Local Plan therefore applies and states that the Council will protect:

“...all designated public and private open space unless equivalent or better provision of open space in terms of quality and quantity is provided within the local catchment area or, exceptionally, where a demonstrable need is met small-scale development associated with the use of the land as open space may be permitted.’

7.58 In this case the open space on the subject site provides no active benefit to local residents. It is private land that is inaccessible to the public and which, in the main, is visible only in private views. As such the land is not characteristic of the majority of designated open spaces, with the supporting text to Policy A2 noting that about two-thirds of all spaces are both used and highly valued by local residents (not applicable in this case due to private ownership). The policy goes on to state that other areas are designated for nature conservation importance and this is, indeed, true of this site given the SINC designation, but the acceptability of the proposal in those terms is a different question. In summary, it is fair to say that the public value derived from the site, in its current form, is more limited than in the case of the majority of other designated open spaces.

- 7.59 I consider that little weight can be placed on the value of the part of the site that remains open space or LGS in its current form given the absence of public views into the site. On the matter of private views from the rear of the upper floors of some of the adjoining houses, I respectfully disagree with the findings of the 2005 UDP Inspector that these views are of public benefit as it is a core principle of planning that there is no right to a view.
- 7.60 The Inspector who granted planning permission for the previous reservoir scheme did so having acknowledged the views into the site from surrounding houses, and the local amenity offered by way of a 'green lung' (paragraph 16). He was satisfied that planning permission should be granted even though, at that point, the majority of the site including the reservoir was designated as open space in the development plan. This position has now changed since the Neighbourhood Plan was made and the Policies Map subsequently adopted. Neither the frontage nor reservoir parts of the site are now designated open space and in my view there can be no in principle objection to the proposals in policy terms.
- 7.61 Previous consents for the site have established the principle that there is a balance to be struck on the degree of acceptable harm in terms of loss of openness and views over the site. In respect of the current scheme I note as follows:
- (i) There will be no loss of open space, i.e. over 60% of the total site area will remain as POS and/or LGS. The scheme will enhance all open space as designated in the eastern part of the site and within the buffer zones to the north and south of the reservoir.
 - (ii) This existing open space will be subject to significant ecological enhancement as described above, including improvements to the SINC and long-term maintenance to enhance wildlife habitats.
 - (iii) In addition, the new scheme will provide high-quality new open spaces within the developable area. The landscape design, as outlined in further detail in the accompanying Landscape Amenity Report, includes courtyard gardens, an open 'wild' space, enhanced boundary planting, roof gardens and the use of biodiverse green and brown roofs. The latter will have an area of some 1,703 sqm.
 - (iv) Local Plan maps do not suggest that there is open space deficiency for the community in this part of the borough. At the same time, there is potentially the scope for the scheme to make proportionate contributions towards enhancing the quality of the open space provision in nearby publicly accessible areas, either through CIL or Section 106 contributions.

- (v) In assessing public views, the Appellant has prepared a series of verified images. These demonstrate that the proposed development would only be visible from a handful of public vantage points, most significantly in the current building gap along Gondar Gardens. The limited views reflect the nature of the built form surrounding the site, the depth of tree screening and the topography.
- (vi) Indeed, in considering the importance of the views through the site we note that the Neighbourhood Plan (Map 2) does not include any views relating to the subject site within its Map of defined local views or viewing corridors. A total of 25 more important local views have been identified within the Neighbourhood Plan.
- (vii) The proposed design within the reservoir structure and on the frontage block also responds directly to the open space designation in that it recognises the importance of private views across and through the site as well as the few public views identified within the verified images. In this regard the proposed scheme seeks to open up two east-to-west views through the site and, in breaking up the form of the development, to maintain north-to-south links across the site. Moreover, the overall volume of the development has been reduced following a Design Review Panel meeting. However, any further reduction in built form or height would not be viable, and therefore would not secure the public benefits outlined above in terms of housing and care provision.
- (viii) Having regard to west-to-east views, I note that the site has been boarded up since 2001, blocking these views for over 15 years. Moreover, the protectionist approach to a fully open view viewpoint fell away with the Inspector's decision to allow a street frontage scheme in 2015. In that appeal, the Inspector found that the public views across the site from Gondar Gardens would be largely lost, but concluded that this harm was outweighed by the "significant benefits" of the scheme.

Within the current proposal the frontage element is similar in height and bulk. The scheme also benefits from a central break in the mansion blocks along the Gondar Gardens frontage which opens onto a pedestrian route providing access through the site. This would improve the visual connection between Gondar Gardens and the open space to the east. In this regard, the proposal would have no additional material adverse impact compared to the consented frontage scheme and, as noted above, the public benefits of the scheme are greater than the earlier proposal because it meets a pressing need for extra care accommodation and would bring additional employment, heritage and ecological benefits.

- (ix) In respect of north-to-south views the previous appeal decision for the reservoir site provides an important benchmark in which the Inspector concluded that there would only be a “limited adverse effect” on the character and appearance of the site and its surrounding area (para. 21). In making this judgment the Inspector took into account the fact that only 1.5 metres of the upper floors of the dwelling would project above the existing level of the reservoir roof, the fact that there would be good distances to the site boundaries and adjoining properties and that the long gardens and tree cover from the houses on Gondar Gardens and Hillfield Road would interrupt visibility. The current scheme projects higher above the existing level of the reservoir roof than the previous appeal scheme, but adheres to many of the earlier principles in terms of visibility and distances to site boundaries.
- (x) To help mitigate any impact, buildings are separated by link blocks which are set at one to two storeys above grade, thereby providing openings between the blocks and allowing for views through this part of the site to be retained. To further maintain the openness between the blocks, the link elements feature glazed loggias which blur the connection between inside and outside for the communal spaces they serve. As a result, glimpses of the properties to the north to the south east will still be possible but the views will be narrowed.
- (xi) It is not considered that the combination of a frontage scheme together with a reservoir scheme would be, in itself, unacceptable in terms of open space policy. The appeal decision on the reservoir scheme did not suggest that the maintenance of east-west views from the Sarre Road properties and public views from Gondar Gardens was a decisive consideration in determining that the scheme had an acceptable impact on the openness of the site. Therefore, the fact that the proposed scheme seeks to combine the two parts of the site with previous consents into a single development proposal is not a reason to object to the proposal in principle.

- **Conclusion: Open Space**

7.62 This scheme will not result in the loss of open space. In my judgment, the impact of the perceived loss of openness from private views across the site, in the context of the significant improvements made to the open space, is not such as to outweigh the substantial benefits of the proposal in terms of delivering substantial housing, care, economic, community and design benefits.

- **Reason 2: Ecological Matters**

7.63 The Council's second reason for refusal states:

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

- 7.64 The vast majority of the land (including the reservoir roof and the open land to the east, but excluding the frontage onto Gondar Gardens) is designated in the Local Plan as a Site of Importance to Nature Conservation (“SINC”). This is a non-statutory designation. In the Camden Sites of Nature Conservation Importance SPD (Draft, 2009), allocation CaBII10 refers to the presence of butterflies and bats on the site but, most significantly, identifies the site as the only known location in Camden for slow-worms.
- 7.65 Local Plan Policy A3 states that the Council will grant permission for development unless it would directly or indirectly result in loss or harm to a designated nature conservation site, subject to an assessment of the scheme to realise benefits for biodiversity and to secure management plans, where appropriate, to ensure that nature conservation objectives are met.
- 7.66 The Inspector who granted the Reservoir Scheme permission concluded that its ecological impact (including the impacts on the slow-worm population) would be acceptable, subject to suitable mitigation.
- 7.67 The appellant’s response to this second reason for refusal is addressed through the evidence of Dr Tim Goodwin. I rely on the evidence of Dr Tim Goodwin to provide a detailed critique of the nature conservation importance of the site, the ecological survey work undertaken and the proposed ecological mitigation measures associated with the proposals, noting that they are similar in nature to that previously agreed.
- 7.68 Currently, the rooftop of the underground reservoir has a shallow soil covering and a species-poor grassland surface.

Very few slow-worms were encountered during all the surveys carried out to date in this location (in 2011, 2013 and 2016), probably because the foraging in this area is poor compared to the remainder of the site (which would be largely untouched by the proposed development).

- 7.69 The only areas of greater biodiversity affected are the grassland areas on the banks of the reservoir and in the eastern part of this site, where most slow worms were found in the various surveys. However, this habitat has been recorded to be shrinking due to the encroachment of ruderal vegetation and scrub from the side banks, especially on the eastern side, where grassland biodiversity has reduced substantially. I understand from the evidence of Dr Tim Goodwin that this is not unusual because grassland sites that are unmanaged, like the appeal

site, are prone to natural succession from grassland to ruderal vegetation (pernicious weeds) and scrub, eventually leading to woodland. This poses a threat to the Grade 2 SINC status, potentially resulting in the loss of Camden's only slow-worm population, if the encroachment is not arrested and then controlled as part of a maintenance regime.

7.70 Dr Tim Goodwin's evidence demonstrates how the proposal would increase the key areas of habitat on the site that are home to the vast majority of the slow-worm population identified from the surveys and where the majority of the spiked sedge has also been found. These areas are the south- and west-facing banks which are warm and sunny. These banks are of prime importance to wildlife, particularly reptiles, for basking and foraging. Although the proposed development would lead to a net loss of grassland overall, albeit lower value grassland, it would result in a net increase in the area of sun-facing banks of 464m². This is major benefit of the scheme.

7.71 Therefore, whilst the proposal would reduce the SINC area, Dr Tim Goodwin demonstrates that there would be an ecological 'net gain' with larger areas of meadow grass banks creating butterfly and bee habitats and slow- worm basking areas. The foraging for the slow worms would in his opinion also be enhanced by the sustainable urban drainage systems ("SUDS") proposed as part of the development. In addition, by creating a new wetland habitat on the site for aquatic species such as frogs and newts, he concludes that this would increase the aquatic and terrestrial diversity of the site overall.

7.72 I draw the Inspector's attention to the proposed management regimes that are to be put in place to maintain the site's enhanced level of biodiversity and to protect the SINC status. This is set out on the landscape plans and within the Landscape Environment Management Plan ("LEMP") for the site. The management and maintenance regimes set out within the LEMP maintain the conditions ideal for the slow-worm population and the spiked sedge. Long-term and sustainable management and monitoring is required. The care home provider would have a financial and community interest in ensuring that this is of the highest quality.

7.73 A detailed Construction Environmental Management Plan ("CEMP") also forms a key part of the proposals. This covers:

- i. Pre-construction protection measures;
- ii. Monitoring of protection fences;
- iii. The re-instatement, mitigation and enhancement works carried out during construction, and any translocation requirements and methodology;
- iv. Environmental controls such as air pollution and noise monitoring, water monitoring, pollution control, storage, re-use and disposal of spoil and waste;
- v. Ongoing species monitoring post-development by professional ecologists with annual ecological reports issued to the Council for a minimum of 5 years.

7.74 Occasional managed access is proposed for educational purposes by local school groups, interest groups and wildlife groups, who may work alongside the London Wildlife Trust (or other suitable body) in ongoing population monitoring. To ensure the slow worms and other wildlife are not preyed upon by pets, the care provider is to impose suitable measures to control the keeping of cats. This would be set out in the LEMP.

- **Conclusion: Ecological Matters**

7.75 I am satisfied that Dr Goodwin's evidence has demonstrated that the mitigation measures proposed, alongside the 20-year plan for the long-term management of the site, will significantly enhance the biodiversity of the SINC as well as its intrinsic value.

7.76 It has therefore been demonstrated that the proposals are fully compliant with the terms of London Plan Policy 7.19 in that there is a proactive approach to the protection, enhancement, creation, promotion and management of biodiversity in support of the Mayor's Biodiversity Strategy.

7.77 Furthermore the proposals are consistent with policies A2 and A3 of the Local Plan in that they will protect and enhance the SINC and therefore provide a positive approach in promoting greater biodiversity including access to biodiversity and nature within the Borough.

- **Reason 3: Affordable Housing**

7.78 The Council's third reason for refusal states:

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

7.79 The main sub-issues here can be summarised as:

- i. Does the scheme provide a C2 or C3 use and what are the implications of this, if any, for the provision of affordable housing?
- ii. Is there a requirement to provide affordable housing irrespective of whether the scheme constitutes a C2 use?
- iii. If affordable housing is to be provided by the scheme, should it be provided on-site, or off-site via a financial contribution?
- iv. If the affordable housing should be provided off-site, what should the financial contribution be?

- v. Has the Appellant used industry-standard practices and methodology when assessing the viability of the proposed development?
- vi. Should the deferred membership monies be included in the viability appraisal?

7.80 I comment on each of these issues in turn.

- **Does the scheme provide a C2 or C3 use and what are the implications of this, if any, for the provision of affordable housing?**

7.81 The proposed development is for an assisted living community for older persons comprising extra care units and nursing home, staff and visitor accommodation and communal facilities including a kitchen, restaurant/bar/café, a well-being suite (comprising a gym, treatment rooms and pool), communal lounge and associated car parking, all within a landscaped setting.

7.82 Whether a development falls within a particular use class under the Town and Country Planning (Use Classes) Order 1987 is a matter of fact and degree and is dependent on a number of factors including the type and nature of the proposed development.

7.83 Both LB Camden and the GLA hold the view that the proposal is a C3 use and is therefore liable to affordable housing obligations. At para. 61 of its Stage 1 response, the GLA stated:

“... Affordable housing: The extra care accommodation constitutes C3 residential under Policy H15 of the draft London Plan and the Mayor’s Housing SPG, as such a nil on-site affordable housing provision is wholly unacceptable. The applicant must provide on-site affordable housing and submit an updated viability assessment. The applicant must fully investigate the provision of grant funding and early and late stage review mechanisms must be secured as necessary in accordance with Policy H6 of the draft London Plan and Mayor’s Housing and Viability SPG”

7.84 In my view, the proposed development provides residential accommodation and care to people in need of care and is therefore a C2 use.

I do not consider that a development plan policy (still emerging in this case) can lawfully prescribe the use class of a type of development; the definitions of the use classes are a matter of law, not policy, and I understand that Policy H15 of the draft London Plan has been met with considerable objections, including on legal grounds.

7.85 In coming to my view that the proposed development is a C2 use, I have taken into account the following key considerations:

- The C2 and C3 definitions under the Town and Country Planning (Use Classes) Order 1987 and guidance.

- The factors which distinguish a C2 use from a C3 use in the context of extra care housing, based on a review of case law and appeal decisions.
- The key features of the appeal scheme which support a C2 classification and the mechanism by which they can be secured as part of the development proposals.

- **Use Classes Order and Guidance**

7.86 Proposals for retirement living may fall into either use class C2 which covers “residential institutions” or use class C3 which is “dwellinghouses” of the TCPA (Use Classes) Order 1987 (as amended).

7.87 It is a matter of fact and degree based on planning judgement how a particular retirement living proposal should be categorised.

7.88 Use Class C2 is defined as:

“Use for the provision of residential accommodation and care to people in need of care (other than a use within a class C3 (dwelling house). Use as a hospital or nursing home. Use as a residential school, college and training centre”.

7.89 Class C3 is use as a dwelling house which is now defined as:

“Use as a dwellinghouse (whether or not as a sole or main residence) by –
(a) a single person or by people to be regarded as forming a single household;
(b) not more than six residents living together as a single household where care is provided for residents; or
(c) not more than six residents living together as a single household where no care is provided to residents (other than a use within class C4).”

7.90 Article 2 of the Use Classes Order defines care as:

“...personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder, and in class C2 also includes the personal care of children and medical care and treatment”.

7.91 To meet the C2 definition, some form of care has to be provided and the recipient of the care has to be in actual need of it. Notwithstanding the Council’s reliance on the ‘front door’ test, a C2 development can reasonably contain self-contained units and therefore it is the provision of care that is most important in determining the appropriate use class.

7.92 The table accompanying paragraph 3.7.4 of the Mayor's Housing SPG provides further clarification stating that in the view of the GLA extra care accommodation (also called close care, assisted living, very sheltered or continuing care housing) is 'generally' held to fall within Use Class C3. At the same time, paragraph 3.7.18 of the SPG clarifies that:

".... the most robust way of distinguishing between the two (C2 or C3) is the 'front door' test – if the unit of accommodation has its own front door then it is usually C3, if not it is C2. However, development management experience suggests in many cases this may require some refinement to take appropriate account of the components of care and support and level of communal facilities such as those associated with some Extra Care schemes where units may have their own front door but functionally are effectively C2. Providing the proposal is justified by identified need and addresses wider policy considerations, the planning system should not be used to restrict development of either – this is an evolving market and provision should not be constrained by what, in need terms, might appear to be an arbitrary and perhaps dated planning distinction."

7.93 In other words, the advice contained within the SPG indicates that each case will need to be assessed on its own merits. My own and colleagues' experience is that most Councils in London have found extra care and assisted living schemes to fall within Use Class C2 where care is provided on site, where occupation is limited to those over 65 (here, 70) and where payment is made for on-site care services.

7.94 The Care Standards Act, 2000 does not include a definition of "personal care" (except that regulations may be made excluding prescribed activities from personal care). However, four main types of care are widely recognised in the context of care services:

- Assistance with bodily functions such as feeding, bathing, and toileting;
- Care which falls just short of assistance with bodily functions, but still involving physical and intimate touching, including activities such as helping a person get out of a bath and helping them to get dressed;
- Non-physical care, such as advice, encouragement and supervision relating to the foregoing, such as prompting a person to take a bath and supervising them during this; and
- Emotional and psychological support, including the promotion of social functioning, behaviour management, and assistance with cognitive functions.

7.95 It is only the two more intensive kinds of personal care (1st and 2nd bullets), which trigger the requirement under the Care Standards Act for registration as a domiciliary care agency, although other kinds of personal care and support may also be provided by such an agency.

- **Case Law, Local Authority and Appeal Decisions**

7.96 In this section I refer to the following cases contained in my appendices which dealt with the distinction between a C2 and C3 use:

- **DP3** - Application: LB Camden Rowland Hill Street (LPA ref: 2014/6449/P)
- **DP4** - Application: LB Camden Crogsland Road (LPA ref. 2015/0921/P)
- **DP5** - Application: LB Camden Maitland Park Villas (LPA ref. 2010/4616/P)
- **DP6** - Application: LB Bromley St Mary's Hospital (LPA ref. 13/00593/FULM)
- **DP7** - Application: LB Harrow Jubilee House (LPA ref. P/1320/16)
- **DP8** - High Court Ruling: Leelamb Homes v SoS and Maldon Council [2009]
- **DP9** - Appeal: Tiddington Fields, Stratford upon Avon (APP/J3720/A/07/2037666)
- **DP10** - Appeal: The Knowle, Station Road, Sidmouth (APP/U1105/W/17/3177340)

7.97 During pre-application discussions for the current proposal, LB Camden indicated that its previous experience of 'extra care accommodation' was that it can be classed as a C3 residential use or, if it contains ancillary elements, that it may be a sui generis use. This was the Council's position when it determined the only other recent private extra care scheme within the Borough at Rowland Hill Street (LPA Ref: 2014/6449/P) (**DP3**). I note that the Council has also classified other recent affordable extra care schemes under its 'Homes for Older People' Project at Crogsland Road (LPA Ref: 2015/0921/P) (**DP4**) and Maitland Park Villas (2010/4616/P) (**DP5**) as Class C3 uses. Against this background, the Council has maintained that the assisted living component of the scheme, but not the nursing home element, is a Class C3 use and should contribute towards the Council's affordable housing requirements. Based on the information provided, the GLA's pre-application advice concurs with this stance.

7.98 I would highlight two recent applications considered by the GLA where extra care or assisted living schemes have been held to fall within Use Class C2. The first case is the St Mary's Hospital Site in Sidcup (London Borough of Bromley, LPA Ref: 13/00593/FULM) (**DP6**).

The GLA's Stage 2 report dated 20 November 2013 considered the 'front door' test in detail, and in concluding that a C2 use applied, determined that no affordable housing contribution was required. This decision was supported by the local planning authority in approving the scheme. The GLA Report at paras. 7 to 10 concluded as follows:

“The applicant has confirmed that the extra care units are self-contained units, each with their own individual address point, and will be liable for Council Tax, which when considered against the ‘front door’ test as detailed in paragraph 3.1.41 of the Mayor’s Housing SPG would indicate that they fall within the residential use class C3. However, the paragraph goes further to recognise that in some cases this assessment may require some refinement to take appropriate account of the

components of care and support such as those associated with some extra care schemes where units may have their own front door but functionally are effectively C2.

In light of this, an increasing body of case law and precedents set by recent appeal decisions would suggest that the form and level of support services associated with the units and the level of care required by the occupants are key determining factors when considering whether a development falls within C2 or C3 use class. In recognition of this, the applicant has provided further clarification on the components of care and support associated with the proposed extra care component of the scheme that indicate towards the units falling within Class C2. In summary, while the extra care units have the appearance of self-contained C3 dwelling units, the primary purpose of the overall development is to meet the individual care needs of the residents. These will be met onsite by the provision of a communal lounge, communal dining room and kitchen, function room, guest suite, hair salon, day staff rest room and serviced laundry. These communal facilities are accessible to all residents and represent 35% of the floor space, when compared to 10% conventional C3 apartment buildings, or 20-25% for category II sheltered apartments.

In addition, the applicant has confirmed that in order to be eligible for an extra care unit any prospective resident must require a basic minimum care package of two hours per week which is determined by Anchor in a care needs assessment and reviewed on a regular basis. This is paid for in addition to the monthly service charge of £230. In addition to requiring the basic minimum care package, occupancy or sale of the extra care units are also restricted to persons aged sixty or older.

In light of the provision of the further detailed information outlined above, it is considered that the higher than average proportion of communal facilities accessible to all residents, the level of service charge and the conditions regarding age and care needs that restrict the occupation of the extra care units, suggest a C2 residential institution function for the extra care element of the scheme. Officers note that the eligibility restrictions regarding age and minimum care have been secured by planning condition which is supported. Therefore, given the specific circumstances of this proposal, it is accepted that London Plan policy regarding affordable housing is not applicable to this application and no contribution is required in this instance.”

- 7.99 I accept that this case pre-dates the publication of the current Housing SPG, but it is important to note that there have been no material changes to the Use Classes Order in the intervening period insofar as the distinction between C2 and C3 is concerned and that the wording of the

'refinement' test is the same in the earlier and more recent versions of the SPG. Moreover, a section 73 application relating to this scheme was considered by the GLA as recently as 30 August 2017. As part of this application, a reduction in the minimum number of hours of care being provided as part of the C2 consent has been considered by the GLA as not giving rise to any new strategic planning issues. This application has been approved.

7.100 A further C2 assisted living scheme recently referred to the GLA is that of Jubilee House in Stanmore (London Borough of Harrow) on which the GLA provided Stage 1 and Stage 2 reports on 28 April 2016 and 20 June 2017 respectively (DP7). Paragraph 27 of the Stage 1 Report is relevant to the use class classification and concludes as follows:

“The applicant states that occupation would be age restricted, provide 24 hour nursing and emergency support, with extensive communal facilities totalling 1,630 sq.m. (GIA), or 11% of the floor area. This suggests a C2 use is appropriate, and these requirements should be appropriately secured in the section 106 agreement, including the terms of occupancy, buyer eligibility restrictions, and re-sale controls, which will ensure that the facility will remain as C2 Use.”

7.101 I refer to the following 2 cases to further highlight the importance of s106 obligations in distinguishing between C2 and C3 uses:

- High Court judgment: ***Leelamb Homes v Secretary of State for Communities and Local Government*** [2009] EWHC 1926 (Admin) (DP8); and
- Appeal decision: Tiddington Fields, Stratford upon Avon (APP/J3720/A/07/2037666) (3 September 2007) (DP9)

In these cases the respective judge and inspector concluded that planning obligations attached to either of the proposals were crucial in determining the lawful use in both cases as C2 rather than C3. In both cases, the uses were tied in perpetuity to providing a level of care over and above that which could be expected for a person or persons living as a single household and receiving care under the more general Class C3 (b) Use.

7.102 In a successful appeal by Pegasus Life at The Knowle, Station Road against the decision of East Devon Council (APP/U1105/W/17/3177340) (2 January 2018) (DP10), the inspector concluded that the extra care apartments were in use class C2 and not C3. In allowing the appeal the Inspector considered the nature of the whole proposal, noting that although the extra care apartments would be self-contained they would be accessed from communal spaces and there were extensive communal facilities:

“Each apartment would include a range of specialised features and adaptations such as wheelchair accessible doors, electric sockets, level threshold showers and a 24 hour emergency alarm system. All of these features are likely to improve the safety

and comfort of the intended occupants and would not necessarily be found in other housing stock”.

7.103 He further acknowledged that these facilities would be aimed at supporting independent living in a social and safe environment and that they would also be open to the general public to encourage interaction with the outside world, stating that:

“Importantly, this is also a level of provision that is likely to exceed that expected in other residential environments, though some flatted development might incorporate some facilities.”

7.104 As with the cases referred to above, the Pegasus Life proposal was also the subject of a S106 agreement.

7.105 The primary clauses in the S106 Agreement pertinent to use are:

- Use of the development as a C2 use with restricted occupation;
- Provision of a health assessment to primary occupiers with regular review;
- Provision of personal care available 24 hours a day as required;
- Services of a care agency;
- Delivery of care package;
- Provision of restaurant facility that shall remain open to the public;
- Provision of well-being facilities that shall remain open to the public; and
- Provision of a management company.

7.106 The S106 restricted occupation to those over 60 years of age (the appellants noting that the average age was likely to be 73 years). A definition of personal care was proposed and was criticised by the Council as being too broad. The Inspector disagreed and stated that:

“Whilst many of the activities listed might be taken for granted by most people, every one of them is likely to become more challenging in advancing years. Many residents might only require relatively limited personal care, perhaps the minimum amount of 2 hours per week, but there are also likely to be many who require substantially more than this. Furthermore, the age restriction associated with the development is such that the need for personal care will inevitably increase for many people with age. I accept that not all people will require the same level of care at the same point in their life, but what is important is that care is available to meet their individual needs as and when the time comes. That is what the scheme seeks to provide.”

7.107 The care element of the proposal in that appeal was proposed to be provided through an off-site CQC registered domiciliary care agency and there would be an on-site care manager. The Inspector concluded that:

“Neither the fact that care would be provided by an agency or that they would not be permanently based on the site weighs against the proposal in my view, nor does it indicate that the scheme is more akin to a dwelling house than a residential institution.”

7.108 The appellants also provided evidence that the service charge associated with the units would be around two and a half times that of a standard retirement development and residents would be paying a premium for this, because of the facilities and care package available. The Inspector stated that:

“This is likely to deter prospective occupants who are not in need of such facilities. The planning obligation would provide certainty in restricting the age of primary occupants and ensuring that a minimum level of care is needed and taken up by future residents.”

7.109 All of the cases I have referred to above are highly relevant in demonstrating that if an appropriate level of care is to be offered to residents, then it matters not that there may be relatively self-contained accommodation within the institutional building or complex within which the care is provided. The proper classification of the use is a C2 use.

- **Key Features of the Appeal Scheme**

7.110 The current appeal scheme aims to provide an integrated approach to lifestyle, healthcare and support services that is responsive to the varied and changing needs of older people. An integral part of this concept is the immediate availability of care if required.

7.111 **Age of Residents:** The Appellant has confirmed that there will be a minimum qualifying age restriction of 70 years which must apply to at least one of the occupiers in each unit. In reality the average age of residents in an LCR scheme is typically in the mid 80's.

7.112 **Communal Facilities:** The scheme will incorporate an extensive range of communal facilities which will be managed and operated as an integral part of the care concept to encourage social interaction. This mix of facilities includes:

- Lobby
- Restaurant
- Bar
- Lounge/café area
- Multi-purpose activity rooms
- Cinema
- Library
- Hair Salon

- Gym/ physical therapy
- Treatment rooms (for on-site GP and physiotherapy appointments)
- Nurse stations
- Swimming pool
- Courtyard gardens
- Sun lounge

7.113 In addition the LCR model includes provision of a 15 bedroom nursing home on the ground floor of the development. This facility will provide 24 hour end of life care if needed, and is available to both existing residents and the wider community. The expertise of the specialist care home staff is also made available to all residents within the development.

7.114 Excluding the nursing home element of the scheme, the communal facilities for the assisted living development comprise 1,617 sqm or 11% of the floor area excluding all winter gardens, parking and circulation spaces.

7.115 **Care Experience:** This is not a speculative proposal, and the scheme is to be constructed and managed by an experienced national assisted living operator. The care model proposed has been developed successfully in the UK at LCR's existing communities in Dorchester and Nursling (Southampton) and more recently at Battersea Place in London.

7.116 **On Site Care Services:** Care will be provided to all residents through on-site domiciliary care services which will be registered with the Care Quality Commission and registered carers will be on site around the clock.

7.117 At entry each resident will undergo a clinical assessment by a CQC registered care provider in order to understand their personal and clinical needs and to agree a bespoke service package appropriate to their aspirations and abilities. LCR's Registered Nursing staff ensure that each resident's specific needs are addressed flexibly and appropriately and these are updated annually by the Nurse Manager at the facility. The community will be registered for nursing care throughout, ensuring that LCR can provide residential nursing care (including palliative care) within both the nursing home and each individual apartment.

7.118 The essence of the care model is that care levels can be increased as the needs of residents may change and there is no limit to the level of care that can be offered. In practice all residents will end up needing greater levels of care as the scheme allows people to age in place, and not have to move again.

7.119 **Mix of Units:** The proposed mix of the accommodation at Gondar Gardens is entirely comparable comprising 7 one beds, 62 two beds and 13 three beds.

7.120 **Structure of Accommodation:** All units will be specifically adapted for use by the elderly in order to create attractive, well-designed properties.

7.121 **Occupancy Controls:** In the event that a C2 use is agreed, it is accepted that some controls are necessary to ensure that the scheme continues to provide care for future residents and that units are not sold on the open market (and to avoid any adverse planning precedent). The proposed S106 Agreement covers these points in respect to:

- Age restriction;
- Requirement to adopt a basic care package (with occupiers of the Extra Care Apartments being required to pay a service charge) for:
- The provision of an emergency call system within each Extra Care Apartment which is monitored 24 hours every day;
- Access to Nursing Care;
- Access to Domiciliary Care;
- The provision and regular review of a Personal Care Plan for each Primary Resident;
- Access for Occupiers of the Extra Care Apartments to Wellness Facilities;
- Appropriate security measures including controlled access to common areas and private areas through the use of appropriate lock systems and/or entry phones or other similar measures, CCTV cameras to the main entrance of communal areas and adequate lighting to internal and external common areas;
- Regular cleaning and management of communal areas;
- Maintenance of all building fabric comprised in the development so as to ensure such fabric remains suitable for those in need of care; and
- Access for Occupiers of the Extra Care Apartments to such transport services (including a wheelchair accessible vehicle) and car share services as are provided by the Management Company from time to time.

- ***Is there a requirement to provide Affordable Housing irrespective of whether the scheme constitutes C2 Use?***

7.122 The draft London Plan contains an expectation that specialist housing schemes will deliver affordable housing, but this only applies to Class C3 extra care schemes.

7.123 New draft London Plan Policy 'H15 Specialist older persons housing' sets out the Mayor's intention for sheltered and extra care accommodation to be classed as C3 housing in order to seek to capture affordable housing contributions:

"Policy H15 Specialist older persons housing

.....

B. Specialist older persons housing (Use Class C3) provision should deliver:
1) affordable housing in accordance with Policy H5 Delivering affordable housing, and Policy H6 Threshold approach to applications
2) accessible housing in accordance with Policy D5 Accessible housing
3) accessible and inclusive design in accordance with Policy D3 Inclusive design
4) suitable levels of safe storage and charging facilities for residents' mobility scooters
5) pick up and drop off facilities close to the principal entrance suitable for taxis (with appropriate kerbs) minibuses, and ambulances.

C. Sheltered accommodation and extra care accommodation is considered as being in Use Class C3. Residential nursing care accommodation (including end of life/ hospice care and dementia care home accommodation) is considered as being in Use Class C2."

7.124 The assertion in the draft Plan that all extra care schemes fall within Use Class C3 has not been subject to examination and is strongly contested by leading operators in the sector, including the Appellant. The Appellant will rely on its representations to the examination of the draft London Plan to make its case as attached at my **DP11**. On this basis I conclude that it would be unsafe to attach material weight to draft Policy H15.

7.125 The Council further contend that, even if this element of the scheme were found to remain within Use Class C2, local and regional policy requirements in relation to affordable provision would be triggered regardless.

7.126 At para. 3.15, the Officers' Report states the position on the need to apply affordable housing requirements for older persons accommodation:

"Where market housing is proposed for older people or vulnerable people, the Council will apply Policy H4 as far as possible to seek an equivalent amount of affordable provision for older people or for general needs. The London Plan indicates that boroughs should apply the principles of their affordable housing policies to the range of housing for older people, including those in Use Class C2. Consequently, when considering market-led proposals for homes for older people to buy or lease, Officers will seek affordable provision in accordance with the principles set out in Policy H4 - Maximising the supply of affordable housing."

7.127 At 3.19 Officers' state:

"In this instance, the applicant has not satisfactorily demonstrated to Officers that affordable housing could not be accommodated on the site as part of the development. Officers do consider that an affordable provision can be secured on the site itself. The site has one street frontage, which in previous schemes has been utilised to provide a certain amount of affordable housing on site, deemed to be a viable proposal by the developers. The proposal includes residential units fronting Gondar Gardens and through minor design

amendments, an element of this frontage, could have its own separate entrance and entity to that of the remaining rear part of the site, and successfully incorporate an element of affordable housing on site. H4 clause (i) indicates where on-site provision is not practical or off-site provision would enable a better contribution, the Council may accept a provision of affordable housing offsite in the same area. In line with Policy H4, the Council will only accept a payment-in-lieu "where on-site and off-site options have been thoroughly explored and it is demonstrated to the Council's satisfaction that no appropriate site is available" (paragraph 3.117)."

- 7.128 The Council's stated position on this issue may be a significant factor in the absence of private assisted living schemes being delivered and this particular local need being addressed. I referred above (under the heading 'The Local Need for High-Quality Care Accommodation') to the evidence of Mr Ireland and the pressing local need for private extra care accommodation. In this context, I note para. 3.218 of the Local Plan which confirms how "further needs for affordable housing for older people" are to be addressed in the Borough:

"We anticipate that further needs for affordable housing for older people will be met primarily through redeveloping or reconfiguring the existing sheltered housing stock.

Much of the existing stock will need modernising to better meet the needs of older age groups, and those requiring higher levels of support to maintain their health. In some cases it may be necessary to decommission some sheltered housing that cannot practically be modernised, and to develop housing for sale on some former sheltered housing sites to provide funding towards modernisation of the remaining stock.

- 7.129 This is in tension with para. 3.220 of the Local Plan which recognises that there is a growing market for leasehold housing for older people and there is a shortage of comparable private schemes.
- 7.130 I acknowledge that Local Plan Policy H4 (Affordable Housing) is to be applied to market housing for older people 'as far as possible' (paragraph.101 applies) and that Policy H8 states that in the case of any market-led development aimed at older people, particularly where the development contains self-contained homes, the Council will expect the development to make a contribution to the supply of affordable housing in accordance with Policy H4. At the same time, it is accepted that where affordable housing cannot practically be provided on site the Council may accept an offsite provision or exceptionally a payment-in-lieu and that regard will be given to the economics and financial viability of the development.

7.131 In this case I consider that the need for private assisted living accommodation is so pressing that, in the interests of housing choice, a private older persons housing scheme offers considerable advantages over a mixed tenure development. As outlined previously, GLA advice supports 65 additional private extra care units per annum (out of a total annual requirement of 100 units), while the Council's pre-application advice acknowledges that Camden has a relatively large stock of social/affordable rent housing for older people and I understand is not currently seeking to expand this stock and that I further understand there are no existing comparable private schemes.

- ***If affordable housing is to be provided by the scheme, should it be provided on-site, or off-site via a financial contribution?***

7.132 Without prejudice to the above, in the event that the Council should continue to seek an affordable housing contribution it is my view that the unusual nature of the site fully supports the provision of an off-site contribution, with any sum to be agreed following a viability appraisal. In this regard London Plan paragraph 3.51 specifically mentions 'contingent obligations' in relation to housing for older people as does the Mayor's Housing SPG at paragraph 3.7.23.

The impracticality of providing on-site affordable housing is supported by the conclusions of the Inspector into the Reservoir Scheme, who found that there was "little prospect that market housing on the land could ever be used to generate on-site affordable housing" and that

"the appellant is justified in seeking to take advantage (by making a payment in-lieu) of the exception included in Policy D3 and paragraph 3.74 of the London Plan" (see para. 45).

7.133 Furthermore, the provision of an off-site contribution, if any affordable housing is required, is allowed by paragraph (i) of Policy H4 of the Local Plan. This approach has been used with other retirement community schemes, as confirmed by the Council's decision to grant planning permission for the Pegasus Life scheme at the former Bartrams Convent Hostel on Rowland Hill Street (Planning Reference: 2014/6449/P). In the planning officers' report to Committee for this scheme, the issue of on-site affordable housing was considered and it was accepted to be inappropriate for schemes of this nature. Officers accepted that the most appropriate way to deal with any affordable housing requirement of such schemes is by way of an off-site affordable housing contribution.

7.134 Turning to the circumstances of the appeal I submit it would be necessary to deal with any affordable housing contribution required via an off-site payment as the scheme has been specifically designed to integrate high-quality housing for older people with an exemplary level of communal facilities and services. In addition to the on-site restaurant, lounges, games rooms, gym and swimming pool, the scheme also provides care bed facilities that are made available to the residents when required. The cost of the services on-site cannot be separated out between private and affordable tenure tenants and it would not be appropriate or feasible to

exclude some residents from some parts of the building. The integrated design and layout of the proposal also rules out any segregation of affordable units into a separate part of the scheme. The evidence of my colleague, Mr Nick Fell, expands on these matters.

7.135 In respect of the current application, the Officers' report at paragraph 3.19 suggested that the Appellant could amend the scheme:

".... through minor design amendments...."

to its frontage so that it would have its own entrance, separate from the remainder of the scheme, thereby enabling affordable housing to be incorporated on-site. I rely on the evidence of Mr Fell in response to this point.

- ***If the affordable housing should be provided off-site, what should the financial contribution be?***

7.136 The Appellant agrees that the appropriate formula to calculate any off-site financial contribution in respect of affordable housing would be:

Offsite Payment = Gross External Area (GEA) x £2,650 per sqm x 50% (Council's Target AH provision)

7.137 I rely again on the evidence of Mr Fell to confirm the maximum off-site affordable housing payment based on viability testing.

- ***Has the Appellant used industry-standard practices and methodology when assessing the viability of the proposed development?***

7.138 I rely on the evidence of Mr Peter Barefoot to demonstrate that the Appellant has used industry-standard practices and methodology in assessing the viability of the proposed development.

- ***Should the deferred membership monies be included in the viability appraisal?***

7.139 I rely on the evidence of Mr Barefoot to demonstrate that the deferred membership monies should not be included in the viability appraisal

- ***Conclusion: Affordable Housing***

7.140 In the context of the foregoing, with reference to the detailed evidence of Mr Fell and Mr Barefoot I conclude that there is no conflict with Policy H4 (Maximising the supply of affordable housing) of the London Borough of Camden Local Plan 2017, Policy 3.12 of the London Plan 2016 and Policy 1 of the Fortune Green and West Hampstead Neighbourhood Plan 2015.

- ***Issue 4: Design: External Appearance***

7.141 The Council's fourth reason for refusal is as follows:

“The proposed development, by virtue of its failure to provide an active street frontage, disconnection from the local streetscene and the surrounding community, results in an inward-looking enclave which fails to contribute to community safety and security or to promote social cohesion, contrary to policies D1 (Design) and C5 (Safety and Security) of the London Borough of Camden Local Plan 2017.”

7.142 I rely on the evidence of Robin Partington and Amanda Reynolds to demonstrate that the fourth reason for refusal is not justified.

7.143 In terms of my own observations I note that the Camden Design Guide (p.84, boxed note headed 'Active Frontage') states that active frontages are:

“... building frontages which add interest and life to public spaces, through the use of doors and windows or shopfronts and lively uses.”

7.144 While a shopfront is clearly inappropriate in this location, the proposed design includes:

14 apartments with 14 terraces overlooking the street frontage (to promote active use); doors onto each of these terraces; plus approximately 48 windows from habitable rooms in these 14 apartments also overlooking the street. Four of 16 the apartments (with terraces) are on the ground floor. The senior residents of the scheme are likely to occupy these rooms and terraces for much of the day, adding considerably to street vitality as well as community safety through positive surveillance over the street.

7.145 The two pedestrian entrances into the community from Gondar Gardens are wide (5-6m), visually open and welcoming, not solid entrance doors. The central pedestrian entry to the development is a carefully thought out approach to optimising security for potentially vulnerable occupants, providing safe and well-overlooked access into all the block entries via the entrance courtyard and reception area.

7.146 In my opinion the proposal would create more street activity with residents, staff and visitors coming and going more frequently than would be the case typically for the other housing on the local streets. The site will be staffed 24 hours a day, 365 days of the year. Creating a perception of security is at the heart of the Appellant's approach.

7.147 Within the scheme is a central pedestrian street which connects a series of courtyards through the site. It also provides clear views from Gondar Gardens towards the protected green space to the east of the site.

7.148 The central street provides access to the front doors of the 6 internal 'mansion blocks', plus, at the front of the site, the reception area and nursing facility. Access is controlled via the reception area which overlooks arrival courtyards at the front of the site. While this central street is visible to the public, it is necessarily a private communal space which has a similar role in the development to the communal gardens associated with many of the local mansion blocks. It is far less of an 'inward-looking enclave' than any of the local mansion block communal spaces which have no public access and limited or no public views into them.

Conclusion on Design: External Appearance

7.149 With reference to the detailed evidence of Mr Partington and Ms Reynolds, I conclude that there is no conflict with policies D1 (Design) and C5 (Safety and Security) of the London Borough of Camden Local Plan 2017.

• **Issue 5: Design: Overall**

7.150 The Council's fifth reason for refusal was as follows:

“The proposed development, by virtue of its height, mass, scale and detailed design, would be detrimental to the streetscene, the open space, the outlook of surrounding properties, and the character and appearance of the wider area while failing to preserve or enhance the character and appearance of the local area, contrary to policies G1 (Delivery and location of growth), D1 (Design), D2 (Heritage) and A1 (Managing the impact of development) of the London Borough of Camden Local Plan 2017 and Policy 2 of the Fortune Green and West Hampstead Neighbourhood Plan 2015.”

7.151 I rely on the evidence of Robin Partington and Amanda Reynolds to demonstrate that the fifth reason for refusal is not justified.

7.152 From my own observations of the appeal proposals the design concept for the proposal clearly derives from existing local mansion blocks, which largely consist of a central point of access and one apartment overlooking the street to each side.

The development proposed in this appeal has a central entrance with two apartments each side, as well as a side entrance providing options for access. Thus, the proposal provides as many entries on the street frontage as would be provided by two traditional mansion blocks, a reasonable alternative in my opinion considering the width of the site.

7.153 The surrounding streets of Gondar Gardens, Agamemnon Road and Hillfield Road are predominantly a mixture of terraced houses and mansion blocks. In my opinion the proposals have been developed with reference to the proportions and rhythms of this context including block widths which generate a vertical emphasis, bay window projections, varied undulating

roofscapes, and identifiable boundaries which are a key element of the design approach adopted by the architect.

- 7.154 As referred to in the evidence of Ms Reynolds the streetscene is best illustrated through the verified views looking east and west along Gondar Gardens. It is clear to me from these images that in terms of scale and form, the proposal is consistent with the heights and rhythms of the existing buildings.
- 7.155 I acknowledge that the development would change the outlook from a limited number of overlooking properties. However I agree with Ms Reynolds that most of the surrounding properties would experience no change or impact to outlook as their view is necessarily restricted by either topography or tree growth or both.
- 7.156 I am satisfied that none of the houses or flats along Agamemnon Rd to the east or Hillfield Rd to the south would experience any visual impact from the proposed development. The limited number of the existing houses or flats directly affected by the proposal are those which currently have views over the roof of the reservoir. These are restricted to those in upper levels of the properties along the centre of the east/west section of Gondar Gardens and some of the flats in the immediately adjacent Chase Mansions and South Mansions.
- 7.157 The design of the proposal has taken into account potential impacts on the neighbours. The detailed design includes: angled windows to avoid overlooking into gardens; changes in roof heights between 'mansion block' elements and 'link block' elements to provide views over roof forms; and green roofs, green walls and additional planting along the side 'wings' backing onto residential gardens. I would endorse the opinion of Ms Reynolds that these landscape and architectural features would provide a pleasant outlook for the adjacent properties.
- 7.158 The houses and flats on the northern section of Gondar Gardens overlooking the area to the east of the reservoir structure would continue to have a view of the open space, where existing tree growth permits. This space would be enhanced by the ecological and landscape approach described in the supporting documents prepared by Andy Sturgeon Design, see my **DP12**, and the evidence of Dr Tim Goodwin.
- 7.159 I concur with Ms Reynolds' opinion that the verified views establish that there is a very low level of visual intrusion into the overall townscape, in particular from any significant public viewpoints.

Conclusion on Design: Overall

- 7.160 For these reasons, as expanded upon in the evidence of Mr Partington and Ms Reynolds evidence, I consider that far from having a negative impact on the character and appearance of the area, the proposal would enhance both and therefore be fully consistent with policies G1 (Delivery and location of growth), D1 (Design), D2 (Heritage) and A1 (Managing the impact of

development) of the London Borough of Camden Local Plan 2017 and Policy 2 of the Fortune Green and West Hampstead Neighbourhood Plan 2015.

- **Issue 6: Accessibility**

7.161 The Council's sixth reason for refusal was as follows:

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

7.162 As well as my own response below to this reason for refusal, I rely on the evidence of Mr Partington to demonstrate that the sixth reason for refusal is not justified.

7.163 The site has been designed, with the benefit of the Appellant's experience, around the requirements of the intended residents, who would be retired individuals or couples aged 70 and over.

7.164 The appeal proposals comply with Part M of the Building Regulations 2010 and are informed by the principles which underpin the Equality Act 2010. The project team is committed to ensuring that the needs of people with limited mobility and disabilities generally will continue to inform the detailed design of the project.

7.165 The scheme would provide exemplar facilities for people with limited mobility and other disabilities, far exceeding what is legally required to ensure accessibility. It would not make practical or commercial sense for the Appellant to design a scheme that would not meet the needs of people in these groups. In particular I note from the evidence of Mr Partington that:

- The site and buildings would not contain gradients steeper than 1:22, which are classified as gentle slopes within BS 8300.
- 15% of the apartments would comply with the requirements of Approved Document M Volume 1 M4 (3) (2) (a) for Wheelchair User Adaptable units (which exceeds the minimum requirement of 10%). (Approved Document M is the building regulation in England which ensures that people are able to access and use buildings and their facilities).
- All six lifts within the development would be evacuation lifts with dual power, facilitating step-free egress and supported by trained staff.
- Lifts would have internal dimensions of 1700mm by 2300mm, with a clear door opening of 1400mm (exceeding the minimum dimensions of 1100mm by 1400mm, with an 800mm clear door opening).

- Lift lobbies would exceed the minimum 1800mm space required (for waiting, and to allow people to pass), in most instances extending to 2020mm.
- The site would be manned 24 hours a day, to provide residents with assistance should this be required.
- To make it as easy as possible for residents to get to and from the development, there would be bookable services such as a pool car service and a mobility scooter collection and delivery service.

- ***External access***

7.166 The communal facilities are distributed around the scheme, opening onto the three courtyard levels and thereby encouraging access to the external amenity gardens. The courtyards are linked by a series of steps, allowing residents to traverse along the length of the development. Lift access between the courtyards has been discreetly located adjacent to the primary spaces, minimising travel distances and providing unrestricted views across the garden for residents to enjoy.

7.167 The residents would be people who chose to move into this development to maintain and enhance their quality of life. The Appellant's experience suggests that residents do not want to feel like they are moving into an 'old people's home' and therefore provisions for assisted access should be discreetly located, also encouraging residents to maintain their levels of fitness with an active lifestyle.

- ***Internal access and legibility***

7.168 There are six vertical circulation cores serving the development: one per mansion block, with a maximum of six residential units per core. The cores are accessible to all residents. All cores are linked internally on level -01. This is the floor with the most frequently used communal and leisure facilities, providing a familiar internal access route to all areas for residents. This encourages movement around the site, promoting exercise and providing opportunities for chance encounters along the way. The access routes are animated with natural lighting, informal seating areas, external views and elements of the retained reservoir structure.

7.169 The design aspiration is to create a village feel with residents passing through reception on arrival, then moving through the communal facilities to reach the vertical cores within each mansion block. Residents can also take a variety of routes including short cuts, moving externally across the courtyards. The strong connection between the internal circulation spaces and the varied external courtyard spaces enhances legibility and the residents' sense of orientation.

- ***Conclusion on Accessibility***

7.170 For these reasons, and relying also on the evidence of Mr Partington, I submit that it is not tenable to suggest that the proposal would fail to deliver an inclusive design and on this basis the proposals accord with contrary to policies D1 (Design), C1 (Health and wellbeing) and, C6 (Access for all) of the London Borough of Camden Local Plan 2017, and Policies 3.8 and 7.2 of the London Plan 2016.

- **Issue 7: Privacy**

7.171 The Council's seventh reason for refusal was as follows:

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

7.172 I rely on the evidence of Mr Partington to demonstrate that the seventh reason for refusal is not justified.

7.173 I understand that this objection relates only to the accommodation within the proposed development. Having regard to the extent of the separation distances between the proposed development and neighbouring accommodation (which is between 35 and 45 metres), together with the extensive proposed and existing mature dense landscaping and trees, it is plain that the proposal would avoid significant impact from overlooking onto and from neighbouring properties.

7.174 As described by Mr Partington the scheme has been designed to minimise the potential for apartments within the scheme to overlook each other. At the same time, animated and active courtyard spaces are proposed that would benefit from positive overlooking and the potential for social interaction that active frontages provide.

7.175 Mr Partington shows that the relationships between the individual apartments within the scheme foster a sense of community cohesion and so need to be treated differently to general market housing schemes.

7.176 Finally on this issue I refer to the GLA Stage 1 Report on the application which at para. 35 supports the standard of residential accommodation that would be offered to prospective residents:

“With respect to residential standards, the self-contained apartments meet the required residential standards as contained within the London Plan, draft London Plan and Housing SPG. In line with the Housing SPG, fewer than 8 units to a floor can be accessed by a single core and private amenity space has been

provided to all self-contained units in accordance with the minimum size standards; 100% of units are dual aspect; adequate daylight and sunlight is also afforded to the proposed units in line with the Housing SPG and draft London Plan Policy D4”.

- **Conclusion on Privacy**

7.177 For these reasons, and relying on the evidence of Mr Partington, I consider that the appeal proposals in this context do accord with policies A1 (Managing the Impact of development) and D1 (Design) of the London Borough of Camden Local Plan 2017 and are acceptable on this basis.

- **Issue 8: Ecological impact of lighting**

7.178 The Council's eighth reason for refusal was as follows:

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

7.179 At the time of writing the Appellant is in discussions with the Council in seeking to overcome this reason for refusal. A further written submission on this matter was lodged with the Council on the 1st November 2018 (**CD2.77**) enclosing a report that supplements the details of the external lighting strategy contained within the Stage 2 External Lighting Assessment (4810-CBC-XX-RP-X-P01) (Cudd Bentley Consulting, July 2017).

7.180 The supplemental report contains 'lighting' calculations and an artificial lighting strategy that is considered appropriate within the context of the nature conservation sensitivities of the site as well as seeking to protect the amenity of neighbouring residents.

7.181 In the event this is not agreed with the Council I will be relying on the evidence of Mr David Gilbey and Dr Tim Goodwin to demonstrate that the eighth reason for refusal is not justified.

- **Conclusion: Ecological impact of lighting**

7.182 For these reasons, and relying on the evidence of Mr Gilbey and Mr Goodwin, I consider that the appeal proposals in this context do accord with policies A1 (Managing the Impact of development), A3 (Biodiversity) and D1 (Design) of the London Borough of Camden Local Plan 2017 and are acceptable on this basis.

- **Issue 10: Provision of CHP unit on site**

7.183 The Council's tenth reason for refusal is as follows:

“The proposed development, in the absence of details regarding the feasibility of providing a CHP unit on the site, opportunities to reduce water consumption, drainage calculations and details relating to SuDs, along with the failure to reach CO2 reduction targets, and due to the absence of a legal agreement to secure any of the above, would fail to be sustainable in its use of resources, contrary to policies CC1 (Climate Change mitigation) and CC3 (Water and Flooding) of London Borough of Camden Local Plan 2017 and Policies 5.2, 5.12 and 5.13 of the London Plan 2016.”

7.184 At the time of writing the Appellant is in discussions with the Council in seeking to overcome this reason for refusal. A further written submission on this matter was lodged with the Council on 1 November 2018 (**CD2.77**) entitled 'Gondar Gardens Briefing Note – Sustainability 29th October 2018' (Cudd Bentley)

7.185 The Briefing Note specifically addresses the matters raised in the 'GLA Energy Memo: Stage 1 Consultation – 05/12/2017' and which the Council have reflected in reasons for refusal 10 and 16. The substantive detail set out in the note demonstrates that through an appropriate legal agreement the proposals will be wholly sustainable within the context of both London Plan and Camden Local Plan policies in respect of climate change mitigation and water and flooding.

7.186 In the event that this is not agreed with the Council I will be relying on the evidence of Mr Pathak to demonstrate that the tenth reason for refusal is not justified.

- **Conclusion: Provision of CHP unit on site**

7.187 For these reasons, and relying on the evidence of Mr Pathak, I consider that the appeal proposals in this context do accord with policies CC1 (Climate Change mitigation) and CC3 (Water and Flooding) of the London Borough of Camden Local Plan 2017 and Policies 5.2, 5.12 and 5.13 of the London Plan 2016.

- **Issue 12: Construction Management**

7.188 The Council's twelfth reason for refusal is as follows:

“The proposed development, in the absence of a legal agreement to secure a construction management plan and a financial contribution of £22,816 for construction management plan monitoring, 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 G1 (Delivery and location of growth), A1

(Managing the impact of development), T3 (Transport Infrastructure), T4 (Sustainable movement of goods and materials), DM1 (Delivery and monitoring), A4 (Noise and Vibration) and DP28 (Noise and vibration) and CC4 (Air quality) of the London Borough of Camden Local Plan 2017.

7.189 This is a holding objection, with Informative 1 to the Decision Notice stating that this reason for refusal could be overcome by entering into a section 106 planning obligation.

7.190 As set out in my response to Issue 2 I also draw the Inspector's attention to the Construction and Environmental Management Plan submitted to the Council on 6 November 2018 (**CD2.78**). The CEMP contains mitigation recommendations from previous surveys undertaken by James Blake Associates Ltd (JBA). These reports have been reviewed and summarised to inform the management of the construction works and propose certain enhancements for the site. The CEMP is proposed to be a 'living' document which will be updated over the course of the development. If the mitigation and enhancement recommendations provided in the Plan are implemented, the proposed development would proceed without impact to any rare, protected or species of principal importance in England, and will likely enhance the site and local area for wildlife post-development.

- **Conclusion: Construction Management**

7.191 The Appellant does not challenge the financial contribution sought by the LPA and the contribution will form part of the package of binding measures within a section 106 legal agreement. The agreement is currently being drafted.

7.192 Accordingly, the proposals will not be contrary to policies G1 (Delivery and location of growth), A1 (Managing the impact of development), T3 (Transport Infrastructure), T4 (Sustainable movement of goods and materials), DM1 (Delivery and monitoring), A4 (Noise and Vibration) and DP28 (Noise and vibration) and CC4 (Air quality) of the London Borough of Camden Local Plan 2017.

- **Issue 13: Pedestrian and Environmental Improvements**

7.193 The Council's thirteenth reason for refusal is as follows:

"The proposed development, in the absence of a legal agreement to secure financial contributions towards pedestrian and environmental improvements in the area, would fail to mitigate the impact of the development created by increased trips, contrary to policies T1 (Prioritising walking, cycling and public transport), A1 (Managing the impact of development) and DM1 (Delivery and monitoring) of London Borough of Camden Local Plan 2017".

7.194 This is a holding objection, with Informative 1 to the Decision Notice stating that this reason for refusal could be overcome by entering into a section 106 planning obligation.

- **Conclusion: Pedestrian and Environmental Improvements**

7.195 The Appellant does not challenge the financial contribution sought by the LPA and the contribution will form part of the package of binding measures within a section 106 legal agreement. The agreement is currently being drafted.

7.196 Accordingly the proposals will not be contrary to policies T1 (Prioritising walking, cycling and public transport), A1 (Managing the impact of development) and DM1 (Delivery and monitoring) of London Borough of Camden Local Plan 2017.

- **Issue 14: Car-Free Housing**

7.197 The Council's fourteenth reason for refusal is as follows:

“The proposed development, in the absence of a legal agreement for car-free housing, would be likely to contribute unacceptably to parking stress and congestion in the surrounding area, contrary to policies T1 (Prioritising walking, cycling and public transport), T2 (Parking and Car Parking) and A1 (Managing the impact of development) and DM1 (Delivery and monitoring) of the London Borough of Camden Local Plan 2017.”

7.198 Again, this is a holding objection, with Informative 1 to the Decision Notice stating that this reason for refusal could be overcome by entering into a section 106 planning obligation.

7.199 The scheme would be car-free with the exception of 4 car pool parking spaces and 1 visitor space (to be provided within the site) and one disabled parking bay and two drop-off bays at street level. None of the spaces to be provided would be for the use of individual residents and it is accepted that residents would also not be entitled to local car parking permits.

7.200 The private car pool arrangement would be an integral part of the care and support offered to residents. It is intended for residents with physical or cognitive needs who cannot use public transport or travel sustainably. If this facility were not provided, residents with these needs could make a case that additional parking provision should be made for them and/or their families and associates within the scheme.

7.201 The one visitor car parking space is intended to meet emergency needs, for example, for those visiting residents who might be receiving end-of-life care.

- **Conclusion: Car Free Housing**

7.202 Subject to the very limited exceptions described above, the Appellant does not challenge the 'car free' development sought by the LPA and the Appellant's commitment to it will form part of the package of binding measures in a section 106 legal agreement. The agreement is currently being drafted.

7.203 Accordingly the proposals will not be contrary to policies T1 (Prioritising walking, cycling and public transport), T2 (Parking and Car Parking) and A1 (Managing the impact of development) and DM1 (Delivery and monitoring) of the London Borough of Camden Local Plan 2017.

- **Issue 15: Travel Plan Monitoring Contribution**

7.204 The Council's fifteenth reason for refusal is as follows:

“The proposed development, in the absence of a legal agreement for a Travel Plan and a financial contribution of £6,244 for travel plan monitoring, 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 G1 (Delivery and location of growth), A1 (Managing the impact of development), T3 (Transport Infrastructure), DM1 (Delivery and monitoring), A4 (Noise and Vibration) and DP28 (Noise and vibration) and CC4 (Air quality) of the London Borough of Camden Local Plan 2017.”

7.205 This is a holding objection, with Informative 1 to the Decision Notice stating that this reason for refusal could be overcome by entering into a section 106 planning obligation.

- **Conclusion: Travel Plan Monitoring Contribution**

7.206 The Appellant does not contest the requirement for a Strategic Level Travel Plan to be prepared and for this to form part of a section 106 legal agreement. The Appellant would also not be seeking to contest the stated figure for travel plan monitoring. The agreement is currently being drafted.

7.207 Accordingly the proposals will not be contrary to policies G1 (Delivery and location of growth), A1 (Managing the impact of development), T3 (Transport Infrastructure), DM1 (Delivery and monitoring), A4 (Noise and Vibration) and DP28 (Noise and vibration) and CC4 (Air quality) of the London Borough of Camden Local Plan 2017.

- **Issue 16: Energy**

7.208 The Council's sixteenth reason for refusal is as follows:

“The proposed development, in the absence of a legal agreement to secure an Energy Efficiency and Renewable Energy Plan, including the submission of post-

construction reviews demonstrating compliance with BREEAM Multi Residential and including a contribution to off-site allowable solutions, would fail to be sustainable in its use of resources, contrary to policies CC1 (Climate change mitigation), CC2 (Adapting to climate change), CC3 (Water and flooding) CC4 (Air quality), C1 (Health and wellbeing) and DM1 (Delivery and monitoring of the London Borough of Camden Local Plan 2017.”

7.209 This is another holding objection, with Informative 1 to the Decision Notice stating that this reason for refusal could be overcome by entering into a section 106 planning obligation.

- **Conclusion: Energy**

7.210 With reference to my response to issue 10 above, the Appellant does not contest the requirement for a legal agreement to secure an Energy Efficiency and Renewable Energy Plan as part of a section 106 legal agreement. The agreement is currently being drafted.

7.211 Accordingly the proposals would not fail to be sustainable in its use of resources and therefore will not be contrary to policies CC1 (Climate change mitigation), CC2 (Adapting to climate change), CC3 (Water and flooding) CC4 (Air quality), C1 (Health and wellbeing) and DM1 (Delivery and monitoring of the London Borough of Camden Local Plan 2017).

8 Further Material Considerations

- **Consultees**

8.1 Certain additional matters are raised by parties other than the Council. I will consider them here.

- **Heritage**

8.2 I note the objection from Historic England GLAAS in response to the proposals. However both the Appellant and the Council agree that there is no basis to refuse the proposals on heritage grounds.

8.3 Officers conclude at para. 1.5 of their report on the proposals that:

“The consented reservoir scheme is a material consideration, and whilst the loss of the non-designated heritage assets of the reservoir is regrettable in this instance, it is considered that due to the structure having limited visual impact, being subterranean, there is no objection to the principle of demolition of the structure.”

8.4 Having regard to heritage policy in the NPPF and Policy D2 of the Camden Local Plan, the Heritage Statement supporting the application (**CDX**) concludes that the scheme will have no impact on designated heritage assets and that any harm to the locally listed reservoir and to Gondar Mansions would be very limited.

8.5 The Heritage Statement concludes that the demolition of the reservoir would cause only very limited harm because of the low heritage value of the structure. The demolition of the majority of the reservoir has already been approved at appeal and this is a material consideration of weight. The proposed scheme retains more of the reservoir structure than the earlier consent as parts of it have been creatively incorporated into the overall design, thereby mitigating some of the harm caused by demolition. Any such harm would be substantially outweighed by the other benefits of the scheme, consistent with the Framework.

8.6 Furthermore, as demonstrated in both Mr Partington’s and Ms Reynolds’ evidence the frontage development responds sensitively to its context and reflects the principles established by the earlier consent, namely to improve the sense of enclosure in the street and to enhance the setting of adjoining locally listed buildings.

- **Air quality**

8.7 Both the Appellant and the Council agree that there is no basis to refuse the proposals on air quality grounds. The Air Quality Assessment which accompanied the application submission satisfactorily demonstrates this.

- **Surface water and drainage**

8.8 Both the Appellant and the Council agree that there is no basis to refuse the proposals on drainage grounds. Both the SUDS Report and Flood Risk Assessment submitted with the application (**CD2.48** and **CD2.62**) were reviewed by Thames Water who have not raised any objection to the proposals.

- **Structural Impact Basement Report**

8.9 Both the Appellant and the Council agree that there is no basis to refuse the proposals due to the impact of basement construction. The Structural Basement Impact Report and Appendices submitted with the application (**CD2.58** and **CD2.59**) demonstrate the acceptability of the proposals on this basis.

- **Third Party Objectors**

- **Gondar and Agamemnon Residents' Association (GARA)**

8.10 In objecting to the proposals the Gondar and Agamemnon Residents' Association (GARA) has raised various planning policy-related matters in its Statement of Case (**CD1.5**). The majority of these mirror points made by the Council in its reasons for refusal and I have already discussed these in my section 7 above.

8.11 At Section 5 of its Statement of Case, GARA sets out its main objections to the proposal. I shall deal with each in turn.

“(1) The site is not required to meet housing demand in the Borough. Allocation of the site for housing was sought and refused during preparation of the Local Plan. Through the Local Plan, the Council has allocated sufficient land for residential development.

8.12 I have addressed this matter in my section 7 above.

(2) Insufficient assurances have been given in relation to habitat management. There is no firm commitment that existing habitat and specific species would be protected in the long term or during construction of the proposed scheme.

8.13 I have addressed this matter in my section 7 above.

(3) Additional policy failings in the proposed scheme discussed in the Officer's report but not explicitly referenced in the Reasons for Refusal. For example, the proposed scheme fails to address the requirements of Policy H6 "to minimise social polarisation and create mixed, inclusive and sustainable communities".

8.14 I have addressed this matter in my section 7 above.

8.15 Paras. 4 to 9 of GARA's objections relate to transport which I address by reference to evidence provided by the Appellant at application stage. The application was supported by both a Travel Plan and Transport Statement which was prepared by Cannon Consulting Engineers (**CD2.70** and **CD2.71**).

8.16 The Transport Statement demonstrates how safe access and egress will be achieved by all users, including emergency and refuse vehicles.

8.17 In respect of car parking, Local Plan Policy T2 requires all new development in the Borough to be car-free. This approach is supported by evidence in the Council's Car-Free Report supporting the new Local Plan which identifies high levels of public transport accessibility in Camden with good access to jobs and services. The approach is in line with Policy 6.13 in the London Plan, which allows Boroughs to determine their own standards based on specific circumstances.

In this case no staff are likely to drive to work and the accompanying Travel Plan outlines a series of measures to encourage non-car modes of transport as well as monitoring targets through which this can be achieved, thereby satisfying the objectives of Policy T1. With regards to residents it is noted that the local area has a PTAL level ranging between 1b – 3 (where 1 is the lowest and 6 is the highest possible level). Given the scale and nature of the development, and the fact that public transport provision is only moderate, it is reasonable to provide an element of essential 'shared' car parking as part of a wider sustainability strategy, but with no dedicated spaces available for individual residents. The scheme therefore proposes 4 pool car spaces and 1 visitor space at basement level with access via a lift. A drop-off / pick-up area and informal ambulance waiting area is also proposed at street level. Up to approximately 10 mobility scooter spaces are also proposed at basement level for residents' use. This level of provision strikes a compromise between policies of car parking constraint, the accessibility of the site and the demands and requirements of prospective occupants.

8.18 I now deal with GARA's specific transport objections.

(4) The site has a poor public transport accessibility level (PTAL) – the Appellant has misrepresented the PTAL rating for the site in order to skew the guidance on acceptable housing density. The correct PTAL value would result in a significant reduction in acceptable density.

8.19 The site's ability to accommodate the quantum of development proposed based on PTAL has not been challenged by the Council in evidence.

8.20 The GLA Stage 1 Report (**CD2.73**) identifies the site's PTAL rating as ranging from 1b-3, increasing to 5 at the southern-most end of Gondar Gardens. West Hampstead and Kilburn stations are within a 10 minute walk of the site, linking in with the National Rail and London Underground network. Para. 41 of the Report states:

“The site benefits from a PTAL of between 1b and 3. GLA officers consider this site to be ‘Urban’ and therefore appropriate for densities between 200-450 habitable rooms per hectare or up to 170 units per hectare. The proposed density is given as 267 habitable rooms per hectare or 155 units per hectare. In accordance with draft Policy D6 the proposals are within the ranges based on the overall PTAL of the site”

8.21 At para. 4.40 of the Officers' Report (**CD2.74**) there is no dispute with the GLA density ranges specified, agreeing that the site falls within an 'urban area', albeit Officers consider that the matrix is not an acceptable measure in this instance for non-transport related reasons.

(5) Due to the poor public transport accessibility, the proposed scheme would result in additional use of private transport. The Appellant's trip generation calculations are erroneous and misleading.

8.22 With reference to para. 8.11 above, there is no simply evidence to counter the Appellant's trip generation calculations. The suggestion that these calculations are "erroneous" is no more than a bare assertion.

(6) The proposed scheme would have an unacceptable impact on local traffic (and being larger, a worse impact than discussed at previous appeals). The northern leg of Gondar Gardens is too narrow for two cars to pass, so even a small increase in traffic would lead to a disproportionate increase in congestion. Servicing has been poorly considered and would contribute to vehicle movements and congestion at the entrance to the proposed development.

Additionally, there would be an adverse impact on safety at the difficult junction with Mill Lane, affecting the safety of the crossing used twice daily by Beckford Primary, Hampstead Secondary and other school pupils.

- 8.23 With reference to para. 8.11 above, there is no evidence to counter the Appellant's trip generation calculations or which otherwise suggests that the scheme would have an unacceptable impact on local traffic. The Council's own highways department does not object to the proposals on this basis (see section 7 of the Officers' Report).

(7) Camden has identified the area as suffering from "parking stress". The probability of parking on street (outside CPZ hours) in lieu of and as well as using the allocated parking, or of the impact of visitor parking, or residents using visitor permits or 'blue badges', is not assessed in the statements made on parking demand. (Again, being larger than the scheme discussed at previous appeals, the impact would be worse).

- 8.24 With reference to the work of Cannon Consulting and section 7 of the Officers' Report, and without evidence to the contrary, there is no justifiable basis for GARA to object to the proposals on this basis.

(8) The cumulative effect of this proposal with recently consented schemes in the local area (completed or under construction) is not considered in the planning application, thereby further affecting the effect on traffic, parking and local amenities.

- 8.25 With reference to the work of Cannon Consulting and section 7 of the Officers' Report, and without evidence to the contrary, there is no justifiable basis for GARA to object to the proposals on this basis.

(9) In a number of areas, Camden officers appear to have accepted the submissions from the Appellant's professional advisers at face value. These should be non-contentious but GARA will demonstrate specific instances where these submissions are flawed, either in their use of data or in the claims they have made.

- 8.26 I am unable to respond to this objection as GARA has not identified any "... ***specific instances where these submissions are flawed, either in their use of data or in the claims they have made***".

(10) The Appellant has failed to demonstrate the constructability of the scheme, indicating a lack of understanding of the challenges presented at the Mill Lane and other junctions.

Whilst it is usual simply to set approval of a Construction Management Plan as a condition, GARA will demonstrate to the inquiry that an acceptable and feasible plan would be severe challenge for a development of this scale.

8.27 I have addressed the matter of construction in my section 7 with reference to the preparation of a CEMP and a commitment to make a financial contributions to construction monitoring to be secured through the section 106 agreement.

(11) GARA will show that the lack of meaningful engagement with local residents, and repeated presentation of inaccurate or misleading information (including but not limited to understating the loss of SNCI), undermines the Appellant's submission; and that this raises concerns about their ability to work collaboratively with local residents if they are permitted to construct and operate a major development in the heart of our community.

8.28 I respectfully disagree. The application was supported by a Statement of Community Involvement prepared by AR Urbanism and addendum prepared by Curtin and Co (**CD2.52 and CD2.53**). As summarised in the Statement the applicant has engaged in detailed dialogue with local communities prior to the submission of this application. This has included: an introductory meeting with local resident groups and ward councillors; two public exhibitions; separate meetings with the ward councillors, the local planning authority and other stakeholders; and ongoing discussions with immediate residents. The layout and design of the proposed development has evolved to take account of advice received throughout this process.

8.29 Any questions relating to this aspect of the proposals can be put to Ms Reynolds.

(12) In the event that this appeal is allowed, stringent conditions should be set in relation to both the construction and ongoing operation of the proposed development. GARA will set out its expectations for such conditions, drawing on agreement reached for the Frontage scheme, including for the protection, funding and management of the remainder of the site as a haven for nature".

8.30 At the time of writing it is the intention to agree planning conditions through a Statement of Common Ground with the Council.

• ***Other Third Party Objectors***

8.31 I also note that other resident groups within the West Hampstead area have objected to the proposals, including:

- Hillfield Road and Aldred Roads Residents' Association;
- Fordwych Road Residents Association;

- Fortune Green and West Hampstead Neighbourhood Development Forum;
- West Hampstead Amenity and Transport (WHAT) Amenity Group; and
- Sarre Road Residents Association (SaRRRA).

8.32 Having reviewed these objections I am satisfied that they do not raise any additional material planning issues that have not been considered in my evidence or the evidence of others.

- **Conclusion on Further Material Considerations**

8.33 I do not consider that any of the additional matters discussed above warrant refusal of planning permission.

9 Summary and Conclusions

9.1 I set out my summary and conclusions under the following headings.

- **Reasons for Refusal**

9.2 Out of the 14 outstanding reasons, 8 of these (reasons 1 to 8) relate to the acceptability of the proposals within the context of the site and surrounding area and/or the design of the proposals, namely whether the proposals would:

- Adversely impact on designated Open Space and Local Green Space (RR1);
- Adversely impact on the Site of Importance for Nature Conservation (Borough Grade II Importance) (RR2);
- Fail to deliver affordable housing (RR3)
- Fail to contribute to community safety and security and would not promote social cohesion (RR4);
- Be inappropriate design in terms of height, mass, scale and detailed design (RR5);
- Fail to provide inclusive design (RR6);
- Cause harm through overlooking within the proposed development (RR7);
- Result in unacceptable light spill from development onto the ecological site (RR8).

9.3 Reason 10 (failure to provide more details on CHP, drainage and sustainability) relates to matters of detail that would ordinarily be dealt with by appropriately worded conditions.

9.4 Reasons 12 to 16 (failure to enter into planning obligations to provide the necessary infrastructure to make the development acceptable) are matters that are capable of being addressed through the completion of an appropriate legal undertaking.

- **The Appeal Site and its Location**

9.5 The appeal site sits in the heart of an urban area surrounded on all sides by residential development: Gondar Gardens (north and west), Hillfield Road (south) and Agamemnon Road (east) with access to the significant range of shops, services, community facilities and public transport expected of a Zone 2 location.

West Hampstead is particularly well served by the underground and rail network including the Jubilee Line, Thameslink and the London overground network. The PTAL rating of the site ranges from 1b to 3, with a PTAL of 4 within 100m of the south of the site.

- 9.6 The only current access to the site is from Gondar Gardens (west) where there is a broken frontage comprising a wooden post and rail fence, sporadic unmanaged trees and shrubs and metal gates. This once formed the main vehicular access to the now redundant covered reservoir.
- 9.7 The total site area comprises some 12,473 sqm (1.24 ha) with the majority of the land forming previously developed or despoiled land associated with the former reservoir use:
- 4,900 sqm (39.30%) former reservoir; and
 - 970 sqm (7.77%) other hardstanding and or despoiled land.
- 9.8 The remainder of the site forms unmanaged grassland bounded by an assorted mix of manmade features, trees and shrubs.
- 9.9 The majority of the site sits in an elevated position due to made up ground associated with the construction of the reservoir. Despite this there are virtually no public views into the site with views restricted to those properties which back onto the site.
- 9.10 The site is surrounded on 3 sides by the rear gardens of residential properties. The rear elevations of properties along Gondar Gardens (north) are between circa 25m and 30m from the nearest site boundary and between 41m and 45m from the rear elevations of properties of Hillfield Road (west) and the southern boundary of the site. The nearest rear elevations of the properties between Agamemnon Road (east) and the eastern boundary of the site are closer, ranging from circa 11m to 20m. Gondar Gardens (west) defines the western boundary of the appeal site with the rear gardens of properties along Sarra Road directly opposite.
- 9.11 I acknowledge that the appeal site can be viewed from the upper storeys of rear properties along Gondar Gardens (north). However, given the significant setback between these and the appeal site the potential for overlooking in planning terms is not, in my view, material given the substantial separation distances.
- The pronounced slope on the site, in the area fronting the rear of the properties on Hillfield Road (south), along with both manmade and natural boundary features in that location, means there is no material view into the site along the entirety of its southern boundary. Whilst the separation distances between the rear of the properties along Agamemnon Road are closer, more typical of a London residential area, the pronounced slope and boundary treatment means that there are no direct views into the upper floors of these properties.
- 9.12 In conclusion, I consider that the appeal site is a prime location for new residential development. It has the capacity to accommodate the proposed development, and will do so without placing unacceptable pressure on local infrastructure.

9.13 Whilst it is acknowledged that the majority of the site is a SINC this should not be a constraint to development when the proposals will result in a net biodiversity benefit overall.

- **Planning History**

9.14 The previous appeal decisions referred to in evidence are clearly material to the determination of this appeal. They have established *inter alia*:

- the principle of development within the reservoir itself and the substantial demolition of its roof and internal structure;
- the principle of frontage development;
- the use of the land at the rear of the site as an open space nature reserve; and
- that the site should continue to be accessed via Gondar Gardens (west) with vehicles reaching the ground floor level through car lifts.

9.15 There is no physical constraint to the development of the site within the footprint of the current appeal scheme.

- **The Development Plan**

9.16 The statutory development plan comprises:

- The London Plan (2016);
- The Camden Local Plan (2017) and Policies Map (June 2018); and
- The Fortune Green and West Hampstead Neighbourhood Plan (2015).

9.17 I have also referred in my evidence to the draft London Plan (2017) and other relevant local and strategic guidance.

- **My Assessment**

9.18 The appeal proposal:

- Will deliver residential development over the exact footprint of land identified for development within Policy C2 of the Neighbourhood Plan (and listed as Site C2);
- Is not in conflict with policies 16 and 17 of the Neighbourhood Plan or policies A2 or A3 of the Local Plan or Policy 7.18 of the London Plan. Significant parts of the site will be set aside and managed in perpetuity, guaranteeing the long-term protection and enhancement of the remaining areas of open space, the Local Green Space and the SINC. Indeed, the 'do nothing scenario' could be in conflict with Policy A3 of the Camden Local Plan insofar as the continued non-management of the site means that the existing habitat is shrinking.

- The proposed use falls within Use Class C2 of the Use Classes Order. Whilst Policy H4 of the Camden Local Plan is to be applied to market housing for older people 'as far as possible', the policy accepts that where affordable housing cannot practically be provided on site the Council may accept an offsite provision or exceptionally a payment-in-lieu and that regard will be given to the economics and financial viability of the development.
- Contrary to the views of the LPA it has been demonstrated that the proposals do provide an active frontage, adding considerably to street vitality as well as community safety through positive surveillance over the street. The proposals are considered to be far less of an 'inward looking enclave' than the nature of surrounding development, none of which has public access and at best only limited public views into them. The site is currently vacant and with only limited security there are far more opportunities for criminal activity and anti-social behaviour than if the development were permitted. Rather than being in conflict with policies D1 and C5 of the Local Plan, the proposals contribute positively to meeting their objectives.
- The proposals comply with Policy 2 of the Neighbourhood Plan and policies G1, D1, D2 and A1 of the Local Plan in that specific care has been taken to evolve a scheme that is sympathetic to the proportions and rhythms of the surrounding terraced houses and mansion blocks. The block widths generate a sympathetic vertical emphasis, and the use of bay window projections, varied undulating roofscapes, and identifiable boundaries is in keeping with local character. Whilst the development would change the outlook from a limited number of overlooking properties, most of the surrounding properties would experience no change or impact to outlook as their view is necessarily restricted by either topography or tree growth or both. In some cases, properties will continue to look directly onto open space.

In the case of the wider surroundings there would be only a very low level of visual intrusion arising from the proposals, in particular from any significant public viewpoints.

- The site has been designed, with the benefit of the Appellant's experience, around the requirements of the intended residents. The Arup Access Statement demonstrates compliance with Part M of the Building Regulations 2010. Accordingly, the proposals not only comply with, but will also exceed the requirements of policies D1, C1 and C6 of the Local Plan and policies 3.8 and 7.2 of the London Plan.
- The scheme has been designed to minimise the potential for apartments within the scheme to overlook each other. Additionally, animated and active courtyard spaces are proposed that would benefit from positive overlooking and the potential for social

interaction that active frontages provide. On this basis the proposals accord with policies A1 and D1 of the Local Plan.

- The scheme has been designed to ensure that external lighting is concentrated in the appropriate areas so as to minimise impact on local amenity, habitat and biodiversity, thereby complying with policies A1, A3 and D1 of the Local Plan.

- **The Planning Balance**

9.19 I have not seen any evidence from the LPA, Rule 6 parties, statutory consultees or other third party objectors that convinces me that the proposals would cause material harm. To the contrary: as the appeal process has progressed, I have become more convinced that the “do nothing” scenario is likely to cause substantial harm.

9.20 On the basis of the evidence presented, I do not consider this to be a finely balanced case. In my judgment, the benefits clearly outweigh any perceived adverse impacts.

9.21 For these reasons, I consider that this appeal should be allowed.