

Planning Department
London Borough of Camden
5 Pancras Square
London
N1C 4AG

FAO Mr Josh Lawlor

31 July 2019

Dear Mr Lawlor

**SUBMISSION IN RELATION TO PLANNING APPLICATION FOR DEVELOPMENT
AT 9 THURLOW ROAD, HAMPSTEAD, LONDON NW3 5PJ
PLANNING APPLICATION REFERENCE 2019/3093/P**

This submission has been prepared in relation to the planning application (LPA ref. 2019/3093/P) currently under assessment by the London Borough of Camden ('the Council') for the proposed development of an outbuilding in the rear garden at 9 Thurlow Road, Hampstead, London NW3 5PJ ('the site').

This submission has been prepared on behalf of my elderly mother, who has resided at [REDACTED]. We have instructed specialist planning and legal advisors to assist me in putting together this objection.

We strongly oppose the proposed development. We have formed this view following a detailed review of the application documentation provided on the Council's website. The reasons for our objection can be summarized as follows:

- **Validity of the Application** – the Application should not have been validated as it fails to provide the appropriate level of detailed documentation and information as required by article 7 of the *Town and Country Planning (Development Management Procedure) (England) Order 2015* and the Council's Local Area Requirements for Planning Applications (July 2018). Specifically, the Application is not underpinned by accurate survey information which results in the architectural drawings failure to respond to the sloping topography of the site or identify surrounding properties that would be impacted by the development. The Applicant has also not provided an Arboricultural Report to identify mature trees that would be impacted by the proposed development, which is a key local planning application validation requirement.
- **Principle of development** – the principle of a rear outbuilding in this location should not be considered acceptable. The site is located within the Fitzjohns/Netherhall Conservation Area and the supporting Fitzjohns/Netherhall Conservation Area Guidance (2001) state that the development within rear gardens is likely to be unacceptable in principle, as large, open rear gardens with mature trees are an inherent and characteristic part of the Conservation Area.
- **Failure to preserve or enhance the character and appearance of the Conservation Area** – the proposed development would fail to preserve or enhance the character and appearance of the Fitzjohns/Netherhall Conservation Area as required by Sections 66(1) and 72(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* and Policy D2 of the Council's Local Plan.
- **Impact on 2 x mature trees** – the proposed development would be sited within 1m of 2 x mature trees in the rear garden of 9 Thurlow Road. The applicant has not submitted an Arboricultural Report that identifies these trees and the potential impact the development would have on them. These mature trees add to the amenity and character of the Conservation Area and their loss would be unacceptable.

- **Impact on local biodiversity** – the rear garden of 9 Thurlow Road is located within a designated wildlife and biodiversity corridor, as identified by Hampstead Neighbourhood Plan (2018). The provision of a new building in this location would cause impact to this important local biodiversity corridor and this has not been identified nor addressed in the planning application.
- **Impact on the amenity of [REDACTED]** – the proposed outbuilding and its use for recreational purposes would impact the amenity of [REDACTED] by way of visual impact, noise and lightspill.
- **Design quality** – the design quality of the proposed outbuilding is poor and it fails to respond to the high quality architectural characteristics and context of the surrounding Conservation Area.
- **Precedent for future development** – if this development was approved, it is likely to set an undesirable precedent for similar development along Thurlow Road. This would destroy the character and appearance of the Conservation Area, result in the removal of mature trees and permanently impact local biodiversity.

We address each of these reasons below.

Validity of the Application

As part of the submission of any application, an appropriate level of information and documentation is required to be submitted by the applicant in order for the Application to be adequately assessed against relevant planning law, policy guidance and other material considerations. This is a national requirement prescribed by Article 7 of the *Town and Country Planning (Development Management Procedure) (England) Order 2015*.

The Council have also published their Local Area Requirements for Planning Applications in July 2019 which includes a further list of local validation requirements that each planning application needs to meet in order for the application to be validated.

Upon review of the application documentation, there are a number of issues associated with the information submitted. These include:

- Drawings that have not been based on accurate topographical surveys, failing to account for the slope that exists on site.
- Drawings that do not identify the relationship of the proposed development on surrounding properties, most notably 5 Shepherds Walk.
- There is no Arboricultural Report to identify the existing mature trees on site and the development's potential impact on these two trees.
- There is no Heritage Statement to consider whether the proposed development would cause harm to the character and appearance of the Fitzjohns/Netherhall Conservation Area.
- There is no Ecological Statement or survey to identify how the proposed development would impact upon local wildlife, given that the development would be sited within a Biodiversity Corridor.

As the Council are aware, the failure to follow the correct process in validating applications that do not meet national and local validation requirements is a significant ground for the submission of a successful Judicial Review of an approved application. We have detailed our concerns with the validity of the application below.

Quality of drawings

There are two principal issues associated with the submitted drawings.

The first issue with the drawings is that they have not been based on an accurate topographical survey. The drawings submitted show that the site is completely flat. This is incorrect and misleading. There is a slope that runs from the west to east. As such, the overall height of the proposed outbuilding on its eastern elevation that fronts 5 Shepherds Walk is incorrect and it likely to be higher than the 3m identified. As such, without accurate topographical information, the applicant has submitted misleading drawings that fail to accurately identify the relationship of the proposed outbuilding with surrounding properties.

Additionally, the applicant has failed to identify the 2 x mature trees that are located along the rear boundary of 9 Thurlow Road. Given that the proposed development is sited within 1m of these boundaries, it is likely to have an impact on these trees which may require their removal. Again, this is misleading and, given that all mature trees are protected within Conservation Areas, this is serious shortcoming with the application.

The second issue is associated with the level of detail on the drawings. It is noted that under the Council's local validation requirements, proposed drawings that need to include the necessary elevations, plans and sections to show boundary walls with adjoining properties and, where relevant, the relative levels of any properties. It also notes that where proposed buildings project above the boundary wall, elevations from the perspective of neighbouring properties should be provided.

In this particular instance, the proposed outbuilding would have an overall height of 3m (which would increase to greater than 3m on its eastern elevation) and would project above the height of the boundary walls. With reference to 5 Shepherds Walk, which sits below the level of 9 Thurlow Road, the overall height of the proposed outbuilding would be visible from the rear garden and living room areas. Despite this, accurate drawings to meet the Council's validation requirements were not provided.

The drawings also do not identify the rear building line with 5 Shepherds Walk, which includes the principal living spaces. In order to assess the proposed development's impact on the amenity of 5 Shepherds Walk, this level of detail is necessary.

These are major shortcomings with the application and for this reason, the application should not have been validated as it does not allow the Council to undertake an appropriate assessment of the application.

Arboricultural Impact Assessment

The submitted application notes that the outbuilding has been set back more than 15 metres from the mature tree within the middle of the rear garden. However, as noted above, the drawings do not show the 2 x mature trees located immediately adjacent to the location of the proposed building.

As a validation requirement, the application should have been supported by an Arboricultural Impact Assessment (AIA) to consider the impact on these trees, which is likely to be significant.

The application should not have been validated on this basis.

Notwithstanding, a detailed AIA should be requested in order for officers to carry out a full and thorough assessment of the proposals. The impact on these 2 x trees is discussed further below in this letter.

Heritage Statement

The application does not address the site's location within the Fitzjohns/Netherhall Conservation Area. It does not identify this as a heritage asset and it does not contain an impact assessment to consider how the proposed development would impact upon the Conservation Area.

The Council note that a Heritage Statement is required for developments that may have an impact on heritage assets. This application would cause an impact on the conservation area and a Heritage Statement has not been provided.

Ecology Statement

The proposed development is sited within a Biodiversity Corridor. The Council's Biodiversity CPG (2018) makes it clear that an Ecological Statement is provided with the application. The applicant has failed to provide one of these with the submitted application.

Summary

In summary, there are major shortcomings of the application and, as such, the Council does not have sufficient information with which to undertake their assessment of the Application in accordance with Development Plan policy. It should therefore be refused as they are unable to undertake their decision taking role as prescribed by Section 38(6) of the Planning and Compulsory Purchase Act 2004.

The principle of development

The Fitzjohns/Netherhall Conservation Area Statement (2001) contains specific advice regarding new development within the Conservation Area. This Statement was specifically prepared to assist the Council in their decision-making duties pursuant to Sections 66(1) and 72(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990*.

As part of this document, Guideline F/N32 states the following:

"Rear gardens contribute to the townscape of the Conservation Area and provide a significant amenity to residents and a habitat for wildlife. Development within gardens is likely to be unacceptable."

This Guideline makes it clear that development like that proposed at 9 Thurlow Road is likely to be considered unacceptable by the Council. As the proposed development is for an outbuilding of circa 39 sqm in size, it is not a small outbuilding similar to a storage shed, it is a large new building that would comprise a quantum of floorspace that is large enough to support a studio apartment. This would be a significant new intervention into an area that is devoid of any buildings and defined by mature trees and large, rear open gardens.

Policy D2 (h) of the Local Plan notes that the Council will preserve garden spaces which contribute to the character and appearance of a Conservation Area. This policy notes that the Council should take an unacceptable view for development such as that proposed at 9 Thurlow Road.

It is also noted that the Applicant within their Cover Letter notes that the proposed development is acceptable as it meets the requirements of CPG 1 and CPG 2. As the Council would know, both CPG 1 and CPG 2 have been superseded and replaced by updated CPGs in March 2019. It is acknowledged that the Interim Housing SPG (2019) notes requirements for new homes to meet, however it does not contain any guidance regarding outbuildings such as this. It is also noted that the Council's new CPG on Altering and extending your home (2019) states clearly that the construction of garden buildings can often have a significant impact upon the amenity, biodiversity and character of the area. Therefore, the Council's CPG documents do not provide any support for this type of building.

As such, due to the scale of the new outbuilding and how it would introduce significant change into a largely unaltered open garden area of the Conservation Area, the application should be refused on principle. This is due to the harm it would cause to the Fitzjohn/Netherhall Conservation Area, as defined by the Fitzjohns/Netherhall Conservation Area Statement and Policy D2 (h) of the Local Plan.

Heritage impacts

At the heart of the Council's decision-making in relation to this development is the need to discharge its statutory duties under Sections 66(1) and 72(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990*. It is clear from case law that 'considerable weight and importance' needs to be given in this case, in particular, to the character and appearance of the Fitzjohns/Netherhall Conservation Area, and that the Council need to be absolutely satisfied that the application would allow this character and appearance to be 'preserved or enhanced'.

In this context, the location of the proposed development is sensitive. The Fitzjohns/Netherhall Conservation Area Statement (2001) identifies that trees, large rear gardens and views of mature trees contribute to the significance of the Conservation Area. The Statement also acknowledges that rear gardens on large blocks of open land are key contributors to the character and appearance of the conservation area. Proposing to site a new large rear outbuilding in this context is likely to impact the significance of the Conservation Area. It is for this reason that the Statement clearly states that backland development is unlikely to be an acceptable form of development.

In order for the Council to grant consent, in this case, it needs to be absolutely satisfied that the proposed development would not cause harm to the Conservation Area. Recent case law, from *Forge Field* onwards, suggests a presumption against a grant of planning permission in cases where harm to designated heritage assets (listed buildings and conservation areas) arises, so if the Council are not therefore satisfied that the character and appearance of the Conservation Area is preserved, then it would take a very considerable degree of public benefit to overturn this presumption by granting consent. It is our strong view that the scheme as a whole cannot be said to preserve the character and appearance of the Conservation Area, let alone deliver any considerable degree of public benefit.

As noted above, the Fitzjohns/Netherhall Conservation Area Statement makes it clear that the large, green and open rear gardens in this area of the Conservation Area contribute to its significance. Guideline F/N 1 also notes that new development should be seen as a way to enhance the Conservation Area. This Guideline is also reinforced by Policy D2 of the Council's Local Plan. It is therefore hard to conclude that introducing a development that would change one of the defining characteristics of the area can lead to an enhancement of the Conservation Area. Guideline F/N 32 confirms this conclusion that a development similar to the one proposed by the applicant is likely to be considered unacceptable.

For this reason, it is our strong view that the scheme would result in harm to the character and appearance of the Fitzjohns/Netherhall Conservation Area and that planning permission should be refused.

Additionally, it is also worth noting that the provision of this new outbuilding would not deliver any discernible public benefit. The new outbuilding is not a new residence and it would only serve to provide additional recreation space to the occupants of one flat. This does not constitute a public benefit and it therefore does not override the harm caused to the Conservation Area. This is a key test as established in case law and also supported by Policy D2 of the Council's Local Plan.

Impact on 2 x mature trees

There are two mature trees that are located within the application site adjacent to the rear boundary. These are clearly visible on aerial photography (refer to Figure 1 below) and are also clearly noticeable when on site.

Figure 1: The location of mature trees along the rear boundary of the site (as shown by red X)



The proposed development would see the new outbuilding sited circa 1m from these two trees. It would undoubtedly cause an impact on these two trees and is likely to require their removal.

These two mature trees contribute to the amenity of the Conservation Area which has been identified as one of the inherent features of the area. Policy D2 (h) of the Local Plan notes that the Council will preserve trees which contribute to the character and appearance of a Conservation Area. This is also reiterating in CPG – Altering and extending your home (2019), where it is stated that any new development in rear gardens should not harm trees with high amenity value. The figures below show how these two mature trees provide a significant amount of amenity value to this area.

Figure 2 and 3: Photographs showing the two mature trees and their contribution to amenity and tree cover



As such, the Council should take the view that these two trees must be retained in line with their adopted policy and guidance.

As noted earlier in this letter, the Applicant has failed to identify these two trees in their application. The Applicant has also not submitted an Arboricultural Impact Assessment to consider the impact of the proposed development on the two trees.

For above reasons, the application should be refused in line with Policy D2 (h) of the Local Plan due to the likely significant impact on these two trees which contribute to the amenity and character and appearance of the Fitzjohns/Netherhall Conservation Area.

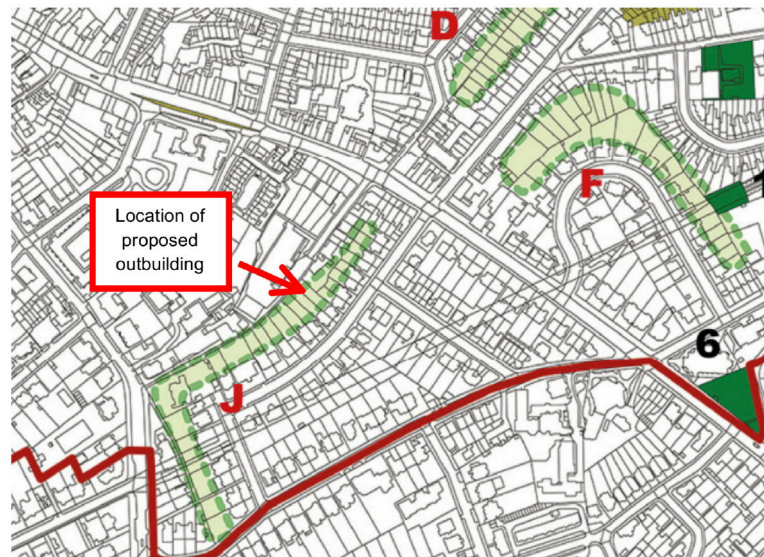
Impact on local biodiversity

The rear garden area of 9 Thurlow Road is identified as a Biodiversity Corridor J by the Hampstead Neighbourhood Plan (refer to Figure 4). The proposed garden outbuilding would be sited directly within this biodiversity corridor. Policy NE3 of the Neighbourhood Plan notes that Biodiversity Corridors are important as they allow free movement of fauna and the growth and protection of flora within these areas. It notes that application should not diminish the ability of biodiversity corridors to provide habitat and the free movement of wildlife.

The proposed development would introduce a large 39 sqm building directly within this biodiversity corridor, preventing the free movement of wildlife. It is noted that a green roof would be provided, however this would not outweigh the disturbance to the area associated with the usage of outbuilding. Noise, light spill and increased human activity would undoubtedly cause an impact on local wildlife.

The proposed development is therefore contrary to Policy NE3 of the Hampstead Neighbourhood Plan.

Figure 4: The Biodiversity Corridor to the rear of 9 Thurlow Road (extract from Map 5 of Hampstead Neighbourhood Plan)



Additionally, the Council's CPG on Biodiversity (2018) makes it clear that planning application should be accompanied by appropriate ecological evidence. This is not included within the planning application, which is a serious shortcoming of the application as noted previously.

The Biodiversity CPG also includes the Council's Five-Point Mitigation Hierarchy to deal with development in biodiversity corridors. This hierarchy makes it clear that biodiversity asset protection should be achieved through avoidance and mitigation wherever possible.

With respect to the proposed application, it does not avoid the biodiversity corridor. It also seeks to compensate for the provision of the new building through a green roof. Compensation in this manner is noted as only being acceptable in exceptional circumstances. The application has not demonstrated how the impact on the biodiversity corridor could have been avoided (i.e. site the outbuilding elsewhere within the garden) and it has also not set out the exceptional circumstances as to why the green roof as a compensation measure is acceptable.

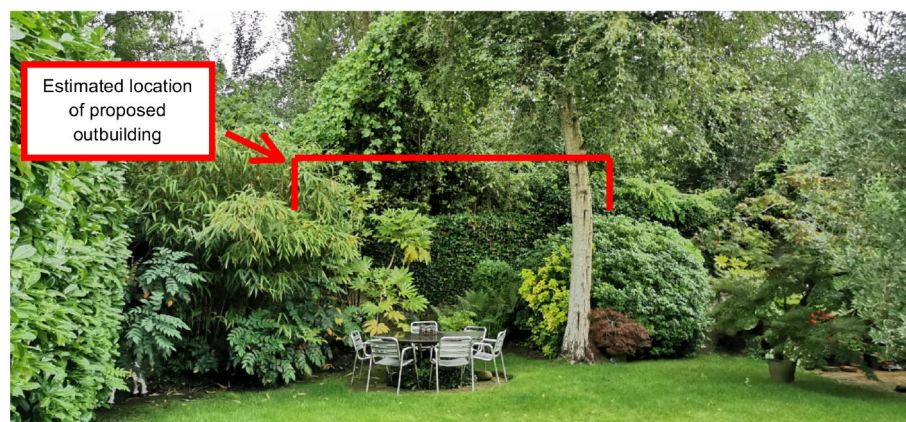
The application therefore does not meet the guidelines contained within the 2018 CPG on Biodiversity.

Impact on the amenity of 5 Shepherds Walk

The proposed development would introduce a new building into an open and leafy garden area that would directly adjoin the rear garden area and principal living space of 5 Shepherds Walk.

As noted above, the application drawings have not been underpinned by a topographical survey that clearly identifies the height of the common boundary wall with 5 Shepherds Walk and the slope that exists at 9 Thurlow Road. As a result, the overall height of the proposed building would be greater than 3m in height on its eastern elevation facing 5 Shepherds Walk. The existing fence between the two sites is less than 3m in height and therefore, the new development would be visible from the rear garden, the ground floor living area and first floor bedroom area of 5 Shepherds Walk. This has not been analysed by the Applicant and, as a minimum, this information should be requested in order for a full and thorough assessment to be carried out. Figure 5 shows a view of the rear garden of 5 Shepherds Walk and the likely wireline of the new rear extension. This demonstrates that it would be highly prominent, result in significant tree removal and cause visual and privacy impacts.

Figure 5: Photograph of the rear garden showing the likely location of the proposed outbuilding



Policy A1 of the Local Plan notes that new development should manage the impact of development on the amenity of existing properties. Key considerations include visual privacy and outlook, artificial lighting levels and noise levels. The proposed development is considered to cause amenity impacts on all three grounds:

- It would introduce a new building that would be directly visible to 5 Shepherds Walk that would detract from the outlook into an open green area.
- It would be used at nighttime, causing light-spill to occur which would be visible to the occupants of 5 Shepherds Walk.
- It would increase the use of the rear of 9 Thurlow Road and given the size and use of the outbuilding as a gym and playroom, noise from music and other sources is likely which would cause nuisance to the occupants of 5 Shepherds Walk.

The Council's CPG on altering and extending your home (2019) contains clear guidance regarding the provision of large garden buildings and how they can cause impact on the amenity of neighbours gardens. Paragraph 5.22 notes that if garden buildings are used for any other purpose than for

storage, this can cause amenity impacts due to overlooking, overshadowing and noise nuisance. Paragraph 5.23 also notes that the building heights of any garden buildings should ensure building heights will retain visibility over garden walls and fences. Protecting the amenity and privacy of neighbouring properties is also a requirement of Policy DH1 of the Hampstead Neighbourhood Plan (2018).

As noted above, the development would have a marked impact on the amenity of [REDACTED] by way of loss of outlook, increased noise nuisance and light-spill. The proposed development does therefore not comply with Policy A1 of the Local Plan or CPG – Altering and extending your home (2019).

Design quality

The proposed development would introduce a square box within the rear garden of 9 Thurlow Road. Its design does not reference any of the characteristic features of the surrounding conservation area, does not respond to the topography of the site and it is unclear what the proposed materials palette or detailed design of the outbuilding would be. Addressing these key design requirements forms part of Policy D1 of the Local Plan.

CPG – Design (2019) notes that the Council wish to see design excellence achieved throughout the borough, particularly in conservation areas. It notes that all development should reference its local context, which has not been achieved by the proposed development. The application documents note that the building would be finished in white render. A white rendered finish would be in contrast to the use of brick in surrounding buildings and it would also be a highly visible finish that would not sit sensitively into the leafy green garden context.

The design quality of the proposed outbuilding also needs to be understood in the context of the Conservation Area, as set out by Policy D2 of the Local Plan. The Fitzjohn/Netherhall Conservation Area Statement notes that a range of detail is included in development, including the use of rubbed brickwork, terracotta and stained glass. The proposed outbuilding does not reflect any of these key features of the area. It would therefore be an incongruous addition to the Conservation Area in design terms, in addition to being the only type of development in a largely open and green area.

For the reasons set out above, the proposed development would not achieve a high quality of design, which is fundamental for its local within a Conservation Area. It should be refused for this reason.

Precedent for future development

Notwithstanding the significant issues and shortcomings that have been identified with the application, it should be noted that if this development was approved, it would set an undesirable precedent for similar development along Thurlow Road.

If the Council were to consider this acceptable, it would be establishing a precedent that could be followed by adjoining properties. This would slowly see the destruction of the character and appearance of the conservation area, the removal of mature trees and cause permanent damage to a local wildlife and biodiversity corridor.

Summary

In summary, this letter has set out a number of reasons for objection to the planning application for the development of a rear outbuilding at 9 Thurlow Road (LPA ref. 2019/3093/P). These issues are varied and include harm to the character and appearance of the Fitzjohns/Netherhall Conservation Area, the likely loss of 2 x mature trees that contribute to the amenity of the area, the direct impact on an identified wildlife and biodiversity corridor, various amenity impacts to the occupants of 5

Shepherds Walk and poor quality design. The development could also be setting an undesirable precedent for similar development along Thurlow Road to the detriment of the character and appearance of the Fitzjohns/Netherhall Conservation Area and to local biodiversity.

For these reasons, we are of the strong view that planning application 2019/3093/P should be refused.

Yours sincerely,

Mr Ben Blacker



cc.
Cllr Maria Higson
Cllr Stephen Stark
Cllr Oliver Cooper