

# A REPORT ON LANDSCAPE AND ECOLOGICAL CONSTRAINTS – 55 FITZROY PARK, HIGHGATE

Prepared on Behalf of Mr John Kennedy

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BRINGING NATURE TO THE HEART OF DESIGN

<b>Client</b>	Mr John Kennedy
<b>Date</b>	30.07.2019
<b>Status</b>	FINAL DRAFT
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## 1.INTRODUCTION

1.1. I am Jaquelin Clay BSc MSc CMLI FAE. I am a Chartered Landscape Architect and the principal of an environmental planning practice which specialises in landscape design, ecology and arboriculture. I provide expert advice to clients and act as an expert in planning inquiries. I was involved in two planning inquiries into proposals to re-develop Athlone House and was the Principal Landscape Architect providing the approved garden design for that property, which is subsequently being restored. As such, I am very familiar with the Highgate Conservation Area and Fitzroy Park in particular.

1.2. I have also recently acted on behalf of several clients in the London Boroughs of Greenwich and Bromley where open space designations and local plan policy were chief concerns in the consideration of the acceptability of development proposals.

1.3. I was instructed by Mr John Kennedy on 3 July 2019 to evaluate the effect on the open space and other values protected in local and national policy in relation to proposals to redevelop 55 Fitzroy Park. Whilst the broad focus of concern has been whether the proposals accord with Local Plan Policy A2, I will touch upon other policy considerations, which can be relevant to the open space function of the proposal site or should be considered as material to the application on its own. I reviewed the background to the proposals and advised Mr Kennedy that there was sufficient basis for me to make a written representation regarding the proposals. I am therefore acting in accordance with the terms of reference of my relevant professional bodies: The Landscape Institute and the Academy of Experts.

1.4. My report will focus on the following areas of concern which my review highlighted:

- The baseline ecological value of the site, the sufficiency of information provided and the reported improvement in ecological value were the development to be approved;
- The landscape/townscape quality of Fitzroy Park and the extent to which the proposals are in keeping with this.
- The accuracy of the information supplied in the 14 May 2019 report on Open Space Assessment by Land Use Consultants (LUC);
- The relationship of the proposals to adjacent Metropolitan Open land and whether they cause harm to it.

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1.5. My analysis suggests the proposals may not comply with policy in the following areas:

- Green Belt/Metropolitan Open Land
- Biodiversity
- Landscape/Townscape Character; and
- Open Space

1.6. In this context, I believe that Policy A2 sub paragraphs e, f and g are most relevant and will discuss these factors in that context. But I will also discuss the relevance of LBC Policy A3 – Biodiversity and London Plan (2018) Policy 7.19 – Biodiversity and Access to Nature. I will also identify those paragraphs of the NPPFv3 (February 2019) which may be relevant.

1.7. I will further discuss Metropolitan Open Land/Green Belt policy. As the proposal site is directly adjacent to MOL, it may have an effect on it. Sub-paragraph g of Policy A2 states: “... give strong protection to maintaining the openness and character of MOL. This reflects London Plan policy 7.17 and the NPPF v3 (2019) Policy on protection of the Green Belt in paragraphs 143 and 144, the later advising against “inappropriate development which harms the character of the Green Belt...”. The evidence of this analysis suggests the proposals will harm the character of MOL.

1.8. My assessment will be based in part on my original LVIA undertaken in 2013 for the Athlone House planning application and my later assessments of the character area. This was done to ensure that the final landscape design for that proposal, subsequently approved by the local planning authority in the Autumn of 2016 were in accord with the Conservation Area and its character.

## 2. ECOLOGY

2.1. I have instructed one of my Principal Ecologists to review the ecological information supplied with the application. Her synopsis is supplied in Appendix 1 of this report, but key points are set out below. The planning application included an Ecological Appraisal, dated July 2018 provided by Land Use Consultants (LUC). The Design and Access Statement (DAS) alludes to the findings of the report. Our review has found a number of shortcomings and deficiencies in both of these documents. The detailed analysis carried out by Ms Todd may be found in Appendix 1:

- The DAS does not correctly reflect the findings of the Ecological Report
- The Ecological Report has not collected sufficient data on protected species, which is of particular concern;

- Where data and methodologies are provided, some are missing, and certain methodologies have not been undertaken correctly.
- The baseline report mis-characterises the nature of the habitats on site;
- The biodiversity enhancement proposals are not sufficient to compensate for the loss of important extant habitats; and
- As the enhancement proposals are based on insufficient data regarding protected species, these proposals cannot be considered to adequately mitigate harm to protected species, thus not meeting the requirements of the NPPF 18 v3 para 175 a).
- The insufficiency of information in the Ecology Report on its own would be in conflict with National and Local Plan Policy.

### **Design and Access Statement – Sections 4.1.2 and 4.7.1 Ecology**

2.2. The DAS notably downplays both the current ecological value of the site, and over-states the benefits of the development proposals. If a reader limited themselves to this document, they would be mis-informed about ecology. It does not recognise that the current habitats on site, a pond and the orchard, are Habitats of Principal Concern, and states that the habitat quality is declining. Such a statement is not found in the Ecology Report.

2.3. The DAS also states that the water quality within the pond is declining, which is also not found in the Ecology Report. The DAS implies that the development proposals are rescuing an unremarkable habitat from decline, which is far from the truth. The actual situation is that the proposal site contains important habitats, some of which will be lost if the application is approved.

### **Data gaps in Ecological Report**

#### ***Bats***

2.4. All species of bats receive the highest level of protection under the Habitats Regulations and the Wildlife and Countryside Act (1981) rev and the Countryside and Rights of Way Act (2000) As such the presence of such species are a material consideration for the competent authority in the grant of planning permission. When there is a potential for such species, it needs to be sufficiently investigated, to ensure mitigations are suitable and to accord with para 174 & 175 of NPPF 2018 v3 (Feb 2019). The process includes identifying the potential for bats to utilise a site and for the presence of features which can provide key habitat: roosting features in trees and buildings.

2.5. The site was not classified as potential bat habitat as per the Bat Conservation Trust Guidelines (2016). These guidelines function as the Standing Advice for Natural England when considering that

bats might be present on the site. From a review of the data, it would appear that the site has at least a moderate potential for bats.

2.6. Some activity surveys and static surveys were undertaken but given the potential value of the site for bats, these were insufficient. Only trees deemed likely to be affected were surveyed, which means that a number of trees on site with bat potential were left unsurveyed. Given the nature of the proposals, which would entail a lot of disturbance/development on a fairly small site, the odds of disturbance to many trees is likely.

2.7. Additionally, the static bat survey was insufficient: given the quality of the site, static bat detectors should have been left on site from April to October.

### ***Reptile Surveys***

2.8. The surveying techniques are unclear. The documents referenced for methodologies do not relate to survey methodology. The data supplied suggests that on two survey days there was a temperature which exceeds guidelines, suggesting that at least one more survey day in suitable weather should have been undertaken.

### **Lack of Data and Unclear Methodologies**

#### ***Great Crested Newts***

2.9. Data has been supplied separately for the e-DNA sampling of the pond on site. There are also 5 ponds within 250m of the site and more within the 250-500m zone. Great crested newts will use suitable terrestrial habitat within 250-500m of their breeding ponds, of which there is plenty on-site (broadleaved woodland, scrub). There appears to be no Habitat Suitability Index or e-DNA sampling for these ponds which has also not been justified. Impacts on this European Protected Species have therefore not been fully assessed. The protection and concern regarding the presence and population characteristics of great crested newts is similar to bats. The competent authority needs to see sufficient information to enable them to make a judgement as to whether the proposals will sufficiently mitigate for this species.

### **Baseline Assessment of Habitats on Site**

2.10 Due to flaws in the assessment methodology, the Ecological Report and the DAS both undervalue the existing site's biodiversity value. It is still unclear as to whether certain protected species are using the site and to what extent and in what way. The value of both the pond and the orchard are downplayed and not sufficiently valued to ensure mitigation is sufficient to ameliorate loss.

### **Failure to Mitigate Harm to Protected Species and Important Habitats**

2.11. The enhancements propose to mitigate the loss of habitats. However, it is clear that there is a significant loss of mixed woodland and orchard on the site; the habitats put forward to replace these in no way equal the value of those lost. There is a putative increase in green space and landscaping, but much of this is of lower value.

2.12. The post development impacts on these replacement habitats are minimised. It can be very difficult to maintain a wildlife friendly management regime in private residences. There can be strong pressure to replace wildlife friendly features with domestic features – increased paving, lawns in place of wildflower meadows, herbaceous borders in place of native hedge and shrub planting. Additionally, maintaining the pond as a natural feature is often a challenge. Residents often introduce fish species, which eat and eliminate native herpetofauna. This is a common impact from this sort of development and is downplayed by the applicant. To be accurate, any evaluation of biodiversity enhancement post-development needs to recognise this.

2.13. The May 2018 report on Policy A2 at paragraph 6.7 contains a brief table which purports to summarise net biodiversity gain. This table and data cannot be relied on. The habitat lost is of greater value than the habitat provided. The correct way to assess this is through a Biodiversity Impact Assessment Calculation, which the applicant has not provided. However, based on the actual increase in built development and the loss of Habitat of Principal Importance, I think it doubtful that the proposals would provide a net gain in habitat. This is contrary to National and local plan policy.

2.13. Because of the failure to fully characterise the ecological baseline, mitigations are unlikely to be sufficient. Use by bats is underplayed, and great crested newt use is insufficiently characterised. Without more accurate baseline data from thorough surveying, the mitigation measures cannot be determined to be sufficient, contrary to the NPPF.

### **Policy Conflicts**

2.14. Besides the aforementioned conflicts with the NPPF, the proposals conflict with LBC Policy A3 on Biodiversity and the London Plan (2018) Policy No 7.19 Biodiversity and Access to Nature:

#### ***LBC Policy A3***

2.15. *“The Council will protect and enhance sites of nature conservation and biodiversity. We will: ...b. grant permission for development unless it would directly or indirectly result in the loss or harm to a designated nature conservation site or adversely affect the status or population of priority habitats and species...”*

2.16. The proposals are clearly in contravention of this local plan policy, due to the loss of Priority Habitats and potential impacts to insufficiently characterised populations of protected species.

**London Plan Policy 7.19**

2.17. *“When considering proposals that would affect directly, indirectly or cumulatively a site of recognised nature conservation interest, the following hierarchy will apply:*

**1 avoid adverse impact to the biodiversity interest.**

**2 minimize impact and seek mitigation.**

**3 only in exceptional cases where the benefits of the proposal clearly outweigh the biodiversity impacts, seek appropriate compensation.”**

2.18. The proposals clearly conflict with the London Plan policy. There will be an adverse impact to the biodiversity interest, which is insufficiently mitigated by the proposals. This would not appear to be a case where the benefits outweigh the evident harm arising from the proposals.

3. LANDSCAPE

3.1. The development proposals per se and the restoration proposals do not accord with the Landscape/Townscape character of the Highgate Conservation Area. The Conservation Character has been defined in the Highgate Conservation Area Appraisal and Management Strategy. This has described and defined the character and describes sub-areas within the Conservation Area. I have summarised key elements of the Strategy below which are relevant to the proposals:

**Landscape Character Area**

***Highgate Conservation Area Appraisal and Management Strategy*** Extracts from CA Management Plan (2007)

3.2. The document outlines the character of the Conservation Area as ‘of a close-knit village crowning one of the twin hills to the north of London.’ There are important views from within the Conservation Area towards central London and St Paul’s Cathedral, some of which are protected as part of the London View Management Framework SPG16. The document states that the character of the Conservation Area stems from the relationship between the topography, open spaces, urban form and architectural details.



3.3. The area has a long history of development, much relating to its location close to London and its proximity to toll roads that later appeared. As such there are examples of houses from the 16th Century onwards. However, much of the development pattern, according to the Conservation Area Appraisal, relates to the 18th and 19th Centuries.

3.4 The Conservation Area is divided into sub-areas. The proposal site falls within the Fitzroy Park sub-area. Importantly it states:

“ This sub-area forms a contrast with the village centre. Fitzroy Park, in its present form, was developed within the framework of the boundaries of older estates. As the large houses were demolished, the surrounding parkland became available for development, particularly in the 19<sup>th</sup> and 20<sup>th</sup> centuries. The character of the area is derived from the close relationship between the topography, the soft landscape and the groups or individual houses built within it. There is an overriding impression of heavy foliage and mature trees as well as the sense of open space denoted by the Heath at the bottom of the hill. There is also a sense of seclusion as the road is private and is gated at its northern end. There are many views from the sub-area, both glimpses and long views. Fitzroy Park still retains its original atmosphere of houses set in large gardens with many mature trees and boundaries in keeping with the rustic character of the lane. Fitzroy Park itself is an important green pedestrian approach to the Metropolitan Open Land of Hampstead Heath, and this quality is enhanced by its informal, unmade style, which give it a rustic appearance rare in the London suburbs. This quality is important.....”

#### ***Historic Development of the Built Form***

3.5. The Highgate Conservation Area Appraisal and Management Strategy states that there is history of settlement in the area going back to the 14th Century. However, the key periods of expansion appear to be in the 18th and 19th Century. The Ordnance Survey maps from 1870-1975 show that the Conservation Area is primarily characterised by parkland landscapes relating to the estates in the area. The area around Highgate West Hill appears to be an extension of the village of Highgate, with houses, church and a pub overlooking

a central village green. At this point, Highgate is still a relatively isolated village.

3.6. By 1935, new housing estates have been developed to the east and south, bringing the suburban edge of London closer to the village. Despite this, the area around Highgate West Hill and the area to the west of this remain relatively unchanged, still being characterised by large, individual dwellings set back from the road in private grounds. Infill development occurs in the Conservation Area throughout the 20th and continues into the early 21st Century, but the key character areas remain distinct.

### **Townscape Character Assessment of Fitzroy Park**

3.7. Fitzroy Park and the area around the proposal site is characterised by leafy green roads with properties set well back from the road. It is an informal landscape, with large dwellings set back in large grounds and not visible from the road for the most part. This character appears to stem from the area's history as a series of individual estates. Notable dwellings include The Summit and Kenwood House but dwellings range from a variety of periods. While the current house on the proposal site is more recent, the CA Management Plan acknowledges that the CA comprises of a variety of architectural styles and periods. The key factors defining the CA/Fitzroy Park are large houses in spacious grounds. To respect development such a spatial distribution should be maintained, thus according with sub-paragraph f) of A2.

3.8 The presence of an orchard on the site suggests that it was part of the small farms/estates that abutted Hampstead Heath. Peter Stewart's Heritage Report states that the proposal site once formed part of Fitzroy Farm. The orchards identified within the site would be associated with this agrarian history around Hampstead Heath, much of which has been lost.

### **Site factors**

3.9. The site lies west of Fitzroy Park a road unusual in its rural character in London. It is densely vegetated with trees and scrub, with a pond of some age (also likely associated with the farm) in a central position. The densely treed character of the site, particularly on the Hampstead Heath boundary is an important element buffering the more urban character of

the Conservation Area from the undeveloped Heath. This buffering effect is achieved in the Conservation Area by maintaining the large houses in spacious grounds character element of Fitzroy Park.

3.10. The proposals are at odds with that. Development of five houses along Fitzroy Park will inevitably introduce a suburbanising effect. There will be a loss of the consistent character of the Lane along its frontage. Additionally, there will be an intensification of development adjacent to the boundary of Hampstead Heath. The Heath itself is Metropolitan Open Land (MOL), and the development is likely to reduce the sense of openness which is a key feature of MOL. The loss of openness is not dependent upon whether development can be seen, but the effects would be more subtle yet apparent to users of the Heath: some noise, lighting and the perception of built development would be introduced in an area that has heretofore been protected.

#### 4. CONCLUSION

4.1. The proposals do not comply with LBC Policy A2, sub paragraphs f and j, as follows:

##### **A2 f)**

4.2. It is clear from the Landscape/ Townscape analysis that the form of development would not enhance the Conservation Area, and are not consistent with the spatial distribution of development in this part of the Conservation Area. The present form is consistent with the characteristic spatial distribution. Further, the development would lead to a perceptible change in the character of the lane, Fitzroy Park, and this change is not in keeping with the character area. The development would also lead to the loss of important historic elements of the Conservation Area: the orchards that are likely a remnant feature of Fitzroy Farm. For the above reasons the proposals are not compliant with this policy.

##### **A2 j)**

4.3. The proposals will clearly have an impact on Hampstead Heath. They will introduce a sense of development on the boundary with the Heath and will likely introduce an element of human disturbance that is not currently present. Even if screened with vegetation,

development can be perceived even if not directly seen. There will be a loss of the typical spatial arrangement found adjacent to the Heath: large houses within grounds. Such an arrangement provides buffering to the Heath and defines the gradual transition from the more urban Highgate Village centre to the *rus in urbe sensu* of Hampstead Heath. If the development were to be approved and built, there would be introduced an abrupt change from Heath to residential development that is not in keeping with the character of Fitzroy Park.

4.4. The ecological factors are also relevant to A2j as they result in a loss of habitat directly adjacent to the Heath. The introduced habitats are what would be suitable for wildlife enhancements in the context of residential development, but are not enhancements that would be of direct benefit to the Heath. The loss of Principle Habitats is of concern, as these currently augment similar habitats within the Heath and increase the range of species that are supported by woodland. This will be lost in part and may compromise the ecological carrying capacity of the Heath.

#### **Other Policy Considerations**

4.5. Based on my original and updated Townscape Character Assessments, I have concluded that the Fitzroy Park portion of the Highgate Conservation Area is comprised of large individual houses, typically set back from their respective road frontages, with spacious grounds. Maintaining that form of development is consistent with the protection of the Conservation Area and its Management Plan. This spatial arrangement is particularly important in properties adjacent to Hampstead Heath. Such an arrangement protects the landscape integrity of the Heath and helps to form a consistent boundary with it.

4.6. National Policy embodied in paragraph 170 of the NPPFv3, subparagraphs a) and d) are also relevant:

- a) This requires protecting and enhancing valued landscapes; e.g. Hampstead Heath and the Conservation Area generally;
- d) This sets out the principal of minimising impacts on and providing net gains for biodiversity and establishing coherent networks.

The proposals do not accord with NPPF policy in this regard.

4.7 As I have explained above in paragraphs 2.14-2.18, the proposals comply with neither LBC Policy A3 Biodiversity, nor with London Plan Policy 7.19 Biodiversity and Access to Nature.

4.8 Finally, the openness of MOL in this location would be compromised. There would be a change in the quantity of dense vegetation on the boundary with Hampstead Heath and built development would be introduced much closer to the edge of Hampstead Heath. Even if screened, there would be a perception of activity, light and noise in a location where currently there is little sense of adjoining development. This would give rise to harm as defined under policies A2 g, London Plan Policy 7.17 and NPPF paragraphs 143 and 144.

## APPENDIX ONE – ANALYSIS OF ECOLOGICAL CONSTRAINTS

Prepared by Cassie Todd BSc MSc CMLI

**CRITIQUE OF 55 FITZROY PARK**

- These documents have been critiqued:
  - 
  - Design & Access Statement (Piercy & Company, 2018)
  - Ecological Appraisal (LUC, 2018)
  -
- The proposed development has been assessed against the nature conservation policies in these planning documents:
  - Camden Local Plan (2017)
  - London Plan (2016)
- The question, will there be an ecological enhancement post-development has been addressed.

Section of Design & Access Statement	Comments
4.1.2 Ecology	<p><i>'The baseline survey shows the site to comprise of a mix of amenity grass and ornamental planting, woodland and scrub, <b>standing water</b> and marginal vegetation <b>and orchard. None of these habitats are of particular value.</b> In terms of protected species surveys found an absence of great crested newt, bat roosts and other protected species. The site is used by toad, garden and woodland birds and small mammals.'</i></p> <p>This paragraph in the Design &amp; Access Statement grossly plays down the value of the habitats on-site. The orchard and 'standing water', which is actually a pond, are both Habitats of Principle Importance under Section 41 of the NERC Act 2006.</p>
4.7.1 Ecology Outcomes	<p><i>'The ecological benefits of the proposals are significant and are set out in detail in the Ecology Report. The benefits are the result of very careful control of anticipated construction and operational impacts combined with a number of mitigation and enhancement initiatives. This will result in a 10% increase in greenspace, an increased range of habitats and increased quality of habitat, and improved connectivity with the Heath. This compares with a <b>Do Nothing scenario of declining diversity and value particularly of the pond and its water quality.</b>'</i></p> <p>The Ecological Appraisal does not mention that the site is declining in diversity and value, and neither does it mention anything about the pond's water quality. This statement is misleading.</p>
Section of Ecological Appraisal	Comments
General Comment	<p>The ecology report should be presented as an 'Ecological Impact Assessment' (EclA) as stated in the <i>Guidelines for Preliminary Ecological Appraisal</i> (page 8 section 3.3).</p> <p>The experience, qualifications, professional memberships and protected species licences (where appropriate) of the author/s and ecologists involved with the surveys have not been provided to know that the contents of the report can be relied upon.</p>
1.3 Emergence/Re-entry Surveys	<i>'Other trees with High Bat Roost Potential which were not proposed to be directly affected by the works were not surveyed.'</i>

	<p>Could these trees and any bats roosting within them be subject to indirect impacts e.g. from disturbance? How will this be avoided if we do not know the roosting status of the trees?</p> <p>Confirm if a bat-licensed ecologist was present during the surveys, as per the BCT Bat Survey guidance requirements.</p>
2.7 Activity Surveys – Static Monitoring	<p><i>'As well as the above emergence/re-entry surveys and to provide additional data concerning use of the Site by bats, a Static Monitoring Point (SMP) survey was carried out between May and September 2017, in accordance with bat survey guidance'</i></p> <p>The site has not been assigned a level of suitability for foraging and commuting bats i.e. low/ moderate/high as per the BCT Bat Survey Guidance. As there is broadleaved woodland and a pond present on-site, it is considered to hold at least moderate suitability for bats for which activity surveys should have been conducted between <b>April and October</b>, rather than May and September as per the BCT guidance page 58. This survey was therefore not conducted in line with the guidance and does not provide justification.</p>
2.11 Reptile Survey	<p><i>Evaluating Local Mitigation/Translocation Programmes: Maintaining Best Practice and Lawful Standards. HGBI Advisory Notes for Amphibian and Reptile Groups (Herpetofauna Groups of Britain and Ireland, 1998).</i></p> <p><i>The Planning System and Site Defence: how to Protect Reptile and Amphibian Habitats Froglife Advice Sheet 9 (Froglife, 1998)</i></p> <p>The reptile survey was allegedly conducted in line with the above two documents, but these relate to reptile protection and mitigation, rather than survey techniques.</p>
2.13 Reptile Survey & Appendix 5	<p>The report states for the reptile surveys that <i>'Suitable weather conditions are generally considered to be dry sunny spells after rainfall or periods of intermittent sunshine on warmer days, with temperatures between 9°C and 18°C.'</i></p> <p>Two of the seven survey visits were conducted at 19°C which is outside the temperate range for reptile surveys, as given above.</p>
2.14 GCN Surveys	<p>As well as the onsite pond, there are 5 ponds within 250m of the site and more within the 250-500m zone. Great crested newts will use suitable terrestrial habitat within 250-500m of their breeding ponds, of which there is plenty on-site (broadleaved woodland, scrub). There appears to be no Habitat Suitability Index or e-DNA sampling for these ponds which has also not been justified. Impacts on this European Protected Species have therefore not been fully assessed.</p>
3.19 Assessment of Bat Roost Potential	<p><i>'Numerous features with High Bat Roost Potential were identified around the southern half of the main building, on the southern, eastern and western elevations.'</i> And <i>'One feature with Low Bat Roost Potential was identified in the northern half of the main building on a western elevation.'</i></p> <p>The above buildings descriptions are vague are minimal, no further description of the building is provided in the bat survey figure in the Appendix.</p>
3.39 Invertebrates	<p><i>'The habitats present on site have the potential to support a variety of invertebrates, including aquatic species within the pond.'</i></p>



	This is an extremely vague description – what invertebrates could be present on-site? Stag beetle, which are a species of conservation concern, have been recorded close to the site (248m away) – is there any suitable habitat present on-site for this species? The report also needs to consider the potential presence of other invertebrate species identified in the data search; and survey/compensate/mitigate accordingly.
4.45 & 4.46	The artificial lighting measures should be in accordance with <i>Bats and Artificial Lighting in the UK guidance</i> (ILP/BCT, 2018), which has not been referred to.
5.3 Conclusion	<p><i>‘Wherever possible impacts on more sensitive habitats has been avoided, with the retention of the pond and boundary habitats, and the majority of the orchard trees.’</i></p> <p>This statement is misleading. There will be an overall loss of over half the orchard post-development. The calculation for the orchard as provided in Appendix 9 of the Ecological Appraisal is as follows: 510m<sup>2</sup> pre-development, and 237m<sup>2</sup> post-development. The development will therefore lead to a loss of 273m<sup>2</sup> of the orchard.</p>
Appendix 6 – e-DNA results	Blank page – result not provided in the report.
Planning Policy	Comments
<p>Camden Local Plan (2017):</p> <p><i>‘Policy A3 Biodiversity</i></p> <p><i>The Council will protect and enhance sites of nature conservation and biodiversity. We will: ...b. grant permission for development unless it would directly or indirectly result in the loss or harm to a designated nature conservation site or adversely affect the status or population of priority habitats and species...’</i></p>	<p>The development does not meet the requirements of the policy text in <b>bold</b>. The development will lead to the direct loss of over half the existing orchard, which is a Priority Habitat of Principle Importance under the NERC Act, 2006.</p> <p>The calculation as provided in Appendix 9 of the Ecological Appraisal is as follows: 510m<sup>2</sup> pre-development, and 237m<sup>2</sup> post-development. The development will therefore lead to a loss of over half (273m<sup>2</sup>) of the orchard.</p>
<p>The London Plan (2016):</p> <p><i>Policy 7.19 Biodiversity and Access to Nature</i></p> <p><i>When considering proposals that would affect directly, indirectly or cumulatively a site of recognised nature conservation interest, the following hierarchy will apply:</i></p> <p><b>1 avoid adverse impact to the biodiversity interest.</b>  <b>2 minimize impact and seek mitigation.</b></p>	<p>The development does not avoid adverse impacts on the existing orchard, and we do not fully understand the potential impact on great crested newts, bats (both European Protected Species) and invertebrates. Further, the development proposals do not minimise the impact on the orchard as most of it will be lost (see the calculation above). This loss has been inadequately mitigated and this development is not considered an exceptional case to justify using part 3 of this policy.</p>

<p><i>3 only in exceptional cases where the benefits of the proposal clearly outweigh the biodiversity impacts, seek appropriate compensation.</i></p>	
<p><b>Will there be an ecological enhancement post development?</b></p>	<p><b>Comments</b></p>
<p>No</p>	<p>The calculation in Appendix 9 shows an increase in soft landscaping post-development (pre-dev 3,596 m<sup>2</sup>; post-dev 3,961 m<sup>2</sup>); however, this increase can be in part attributed to planting of low-quality habitats which offer little for biodiversity i.e. there will be an increase in amenity grassland and introduced shrubs (pre-dev 1,116 m<sup>2</sup>; post-dev 1,254 m<sup>2</sup>); but an overall loss in high quality habitats such as woodland and tree habitat (a loss of 285m<sup>2</sup>). Additionally, over half the orchard will be lost (see calculation above). <b>A total of 558 m<sup>2</sup> of high-quality habitat will therefore be lost from the site post-development.</b></p> <p>The development has sought to increase the coverage of the marginal planting around the pond (by 144 m<sup>2</sup>) and introduce semi-improved grassland into the site via living roofs (186m<sup>2</sup>). Although these are considered benefits, they do not compensate for the loss of the high- quality broadleaved woodland and orchard, a Priority Habitat of Principle Importance under the NERC Act, 2006. The development is therefore not compliant with the National Planning Policy Framework (2019) – which promotes the conservation, restoration and enhancement of priority habitats.</p> <p>The enhancements are further compromised by the lack of information on protected species – notably great crested newts, bats and invertebrates - as the baseline value for these is not fully defined.</p>

APPENDIX TWO – ANALYSIS OF OPEN SPACE ASSESSEMENT, 14 MAY  
2018

Prepared by Jaquelin Clay BSc MSc CMLI FAE

## A CRITIQUE OF THE OPEN SPACE ASSESSMENT PRODUCED BY LAND USE CONSULTANTS, 14 MAY 2018

### Introduction

Land Use Consultants (LUC) was instructed by the applicant at 55 Fitzroy Park to produce an Open Space Assessment to determine whether the proposals complied with open space policy (A2). The following table summarises my comments on the report:

Paragraph No/Title	Report Statement	Comment
1. Background	No author provided	No author is provided so the writer's competence is not able to be confirmed.
2. Assessment Methodology	"..no known method for assessing value of open space... therefore using the HCA Appraisal as a starting point.."	The author appears to be unaware of the 2014 Camden Open Space, Sport and Recreation Study. This sets out the various methodologies recommended to LPAs for assessing both type, quantity, and quality of open space. Using the Conservation Area appraisal is inappropriate. The failure to use the correct methodology significantly weakens the finding of the report.  Methodologies for assessing open space are well established, and the author should have reviewed these before writing the report.
3. Conservation Area Appraisal	3.1 -3.4 summary of CA.	This is an overly short and non-specific summary which is selective and does not pick up the key factors regarding the landscape quality and spatial distribution which are fundamental to HCA and particularly Fitzroy Park sub-area.
3.5	No comment in CA as to the contribution of the property to HCA.	This is irrelevant. Only a minority of the properties themselves contribute to the HCA. The key element is the spatial distribution of development, not the individual properties, in defining the special character of HCA.
4.2 Openness	Discusses visibility of the site in relation to its surroundings.	The author mis-understands openness. He here is discussing whether the site can be seen or not. If he understood the methodology for open space

		<p>assessment, he would have known that visibility is not a key criterion for this typology.</p> <p>Openness can more properly be understood as the perceived quantum of development on a site, and the assessment should be: do the proposals increase the amount of development on the site? The answer to this is clearly “yes.” The second part should be is it material? The answer is again yes, in particular in relation to MOL which it directly abuts.</p>
4.3 Screening/Treatment	Denigrates value of current Millfield Lane frontage	There is a lot of bias towards suburban tidiness in this and other parts of the report (as well as the DAS) The HCA Appraisal does not pick this up as a visual detractor and focusses on the lane’s relatively rural and undeveloped character.
4.4 Intervisibility	Describes visibility from the Heath and says the site now makes a positive contribution.	I would not argue with his description, but I would point out that this does not assess the effect on the openness of the MOL.
4.5 Landscape Assets	Describes site as unmanaged, in dis-repair, overgrown shrubberies.	He is using the DAS as his baseline for describing the site’s “landscape”. The DAS description does not meet professional standards for landscape characterisation, and I would dis-regard this description as inaccurate and biased towards denigrating the current condition of the site.
4.6 & 4.7 Trees	Description of trees on site based on arboricultural surveys and the DAS	This makes little of the Habitats of Principal Importance that will be lost
4.8 Biodiversity	Summarises from DAS	As Appendix 1 of the JFA report already discusses, the DAS is an inaccurate summary of the value of the site’s biodiversity. Bats are present, though not roosting, and great crested newt use has not been effectively quantified due to failure to assess ponds within 250m of the site. There are two Habitats of Principal

		Importance within the site and effects on both of these are probable and not mitigated.
4.9 Heritage	Quotes DAS, not HCA Appraisal	States without justification that the site makes a neutral contribution to the CA. This is not true. It is the spatial distribution of development that contributes to the CA. What is also missed is the heritage importance of the orchards, which are likely a remnant of the larger extent of Fitzroy Farm, as was, in all probability the pond.
5.1 Overall Open Space Value	Bases this on the assessment of characteristics as found in Section 4. Weak valuation, as these are poorly justified. Has not used accepted methodologies for assessing its value, but relies on HCA Appraisal, which is a flawed approach.	The value of the site is at least moderate for the following reasons: <ul style="list-style-type: none"> <li>• Screening and buffering of MOL from more developed parts of HCA;</li> <li>• Biodiversity with two Habitats of Principal Importance, and linkages to wildlife corridors at a Borough level;</li> <li>• Reinforces important townscape elements within Fitzroy Park sub-area: single house on large plot, off-set from Hampstead Heath.</li> </ul>
5.2	Discusses what he calls the “psychological” value of the site: part of wooded slopes of Highgate and the Heath	The term psychological is mis-used. It is perceptual: how the site is perceived in its spatial context and what he is saying is re-enforced by the JFA townscape assessment.  It should be noted that this is not the same as “openness.”
6.1 – 6.3	Describes landscape treatment and its benefits, listing as follows: <ul style="list-style-type: none"> <li>• Openness</li> </ul>	This justification can largely be discounted, as they have based it upon the flawed analysis above. There is no doubt that it is a high-quality landscape treatment as would be expected to complement architecturally designed houses.  However, the landscape treatment is not based on any townscape analysis at all and dis-regards important

	<ul style="list-style-type: none"> <li>• Local Landscape Character</li> <li>• Biodiversity</li> </ul>	<p>elements of its setting: Hampstead Heath, the intrinsic character of Fitzroy Park (Lane), and the Bird Sanctuary.</p> <p>Of the three listed bullet points, none would be enhanced, and all would be negatively affected.</p>
6.4 Openness	Lists benefits of proposals for “openness”	As noted above, the author confuses visibility with openness. Openness will be lost on the site as there will be at least a doubling of hard surface and subsequent loss of undeveloped land. While the site itself is not MOL, it is adjacent to it, and the increase in development would result in a perception of activity: noise, lighting and formalised hard and soft landscape features, which in my view would give rise to harm to the adjacent MOL, contrary to National and local plan policy.
6.5 Screening	Discusses how formal edge treatments will benefit boundaries	<p>Nowhere in the HCA Appraisal is this identified as a problem needing a solution. The character of Fitzroy Park (Lane) is identified as intrinsic to the nature of HCA, and there are no recommendations for “improving “it as described. There seems to be a bias towards suburbanisation as a landscape benefit, and this is not at all the case in the HCA generally and Fitzroy Park sub-area in particular.</p> <p>The effect of increased numbers of access drives into the site is minimised. Access points give rise to considerable change as they require hard landscape treatment and visibility splays resulting in the loss of vegetation. They are not simply punch throughs as this description implies.</p>
6.6 Views from Heath and Millfield Lane	Discusses screening of new development	Heath visibility will not be greatly affected, but openness will, and this is not pointed out as the author mis-understands openness. The development will be perceived from the Heath. The suggestion that views from Mill Lane will not be affected is simply not credible. These proposals will give rise to a

		suburbanisation of the Lane wholly at odds with its current and beneficial character. This will result in harm to the character of the HCA.
6.7Landscape Assets	Says pond is greatest landscape asset, disregarding the issues of townscape and site context.	The site is not simply the pond but the whole mosaic of trees, scrub, grasses and relict orchard. The nature of the development proposals will make management of the pond challenging: a great deal of earthwork and sheet piling is proposed, and one house is less than 1m from the pond. There will be residential pressure to suburbanise the pond, and fish species could easily be introduced, which would reduce its nature conservation value.
6.7 Table	Summarises, saying the greenspace will increase on site	This table is disingenuous. The correct way to assess green space is through a metric such as the BIAC. The calculations in the table assume all of the green space is of equal value, but it is not equivalent to substitute a green roof for an historic orchard: the values are not the same.
6.9 Biodiversity	Describes how gardens will function as habitats	The difficulty with this is that residents do not always like native vegetation, natural wildflower meadows, etc. It will be impossible and impractical to control this. As soon as this relatively unmanaged site gets re-developed and occupied, its wildlife value will decline, no matter how many native hedgerows, wildlife corridors, etc are planted. The existing habitat, of relatively high value, will be lost.
6.10 Heritage	Describes heritage features to be retained, with a focus on the pond. Does not mention the orchard.	Too much focus on just the pond and disregards the importance of the spatial relationship of the development as it is and how the change in this relationship negatively affects the intrinsic character of the HCA. Again, seems to think if a feature can be seen it has a greater value, but this is not the case. Features can have an intrinsic value, whether seen or not.



6.12	Describes the pattern of development as compatible with the conservation area.	This is simply wrong. Smaller plot sizes are not characteristic of Fitzroy Park sub-area and especially not for landholdings adjacent to the Heath. This description is wrong. The proposed density of the development is not suitable in this part of the Conservation Area.
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Conclusion

The analysis presented in the LUC paper is quite significantly flawed. There is a notable lack of research into correct methodologies for assessing open space and major misunderstandings of key elements that are material for planning consideration.

The baseline characterisation is very flawed, due to the limited understanding of the unnamed author of key ecological, landscape and visual parameters. It is not known if the author has the qualifications necessary to undertake this work, but the many errors suggest not.

The paper is clearly biased and does not present an even-handed evaluation of the strengths and weaknesses of the proposals. It over-states benefits and significantly under-states the losses that will arise if this site is intensively developed as proposed.