

# THE FITZROY PARK RESIDENTS' ASSOCIATION

27<sup>th</sup> June 2019

Charles Thuairé  
Senior Planning Officer  
Development Management  
LB Camden

Dear Charles

**RE: 53 FITZROY PARK, LONDON N6 6HT**  
**Application No: 2019/3201/P**  
**Non-Material amendments to planning permission Ref: 2018/2104/P**

It is for the Council to determine the relevant matters of law that the firm Keystone Law, acting for Mr Saadati, cite as reasonable cause to make such non-material amendments to planning permission 2018/2104/P.

However, we would raise two very important issues that we believe must be considered by the Council in this regard: i) impact on wildlife of these piling works and ii) failure to have a legally executed CMP in place (as per the relevant clause in the S106 legal agreement) when the two piles were inserted on June 7<sup>th</sup> 2019.

## **1. Ecological impacts of the commencement works**

FPRA disagrees with Keystone Law's statement that the insertion of the two piles complied with the Habitats Regulations and the Wildlife & Countryside Act 1981 (as amended). The facts refute this statement. FPRA would therefore suggest this Applicant is already in breach of Condition 14, whether it is amended or not.

The reason why Mr Peter Timms of Clarkson & Woods did not find any nesting ducks on site when he visited on 25<sup>th</sup> June was because they had already been forcibly evicted from the site by Oakbridge Bespoke Homes contractors on the morning of Friday 7<sup>th</sup> June 2019. His report is like closing the door after the horse has bolted because it would be highly unlikely they would return after such an event. The photographic evidence of these contractors bullying these wild birds off site and directly along the road carriageway has been made available to a Wildlife Crime Officer in the Metropolitan Police.

Whilst Mr Timms states “the low-lying scrub was not thought to be suitable for nesting birds due to its proximity to the ground” he did not rule out that possibility. He also did not address the likelihood of a variety of wildfowl species, that nest very close to the ground, having used this site, given its very close proximity to the historic pond in No55 Fitzroy Park next door, and from the Bird Sanctuary Nature Reserve which is also a short distance away. Despite the particular location of the site, Mr Timms omits to make any reference to wildfowl or either of these bodies of water in his pro-forma Ecological Inspection.

Contrary to Mr Timms, the RSPB website states:

*“Female [ducks] generally make their nest in a place well covered in vegetation or in a natural hole in a tree. Nests have been found in boathouses, wood piles [which by definition are on the ground and there are many wood piles on this development site], old crow's nests, hay stacks, roof gardens, enclosed courtyards and even in large flowerpots on balconies several floors up!”*

The RSPB goes on to confirm in town situations many ducks can nest away from a pond to avoid competition and harassment from others. Given these facts, is it no wonder this female duck chose to use **this site covered in dense vegetation to rear her young safely** before then being forcibly removed. All to facilitate works on the site that, given their nature, could not wait until an ecologist was called.

Whilst Mr Timms report is welcome and potentially sets out further obligations for his client, which given his current record, he may or may not adhere to, it does not erase the fact that a breach of the Habitats Regulations and the Wildlife & Countryside Act 1981 (as amended) was committed on Friday 7<sup>th</sup> June at the site. As such, this Applicant is in breach of Condition 14, contrary to Keystone Law's assertion that no harm was done in the completion of these works.

**ii) Construction Management Plan as a pre-commencement Clause as detailed in the S106 legal agreement covering this planning permission.**

When conditional planning permission was first granted, FPRA sought reassurance from the Council that works could not start without a legally enforceable CTMP **in place**. We were assured again and again the reason why the CMP was not conditioned, but appeared as a clause in the S106 legal agreement, was because the Council took these matters very seriously and it **would not allow under any circumstances an Applicant to start works without one**.

At this point, FPRA would like to clarify it does not hold a perception that the Council has taken inappropriate decisions in determining the remaining discharge of condition applications. Rather, when scrutinising these conditions over the past few months, FPRA and other local stakeholders have found that the factual reliability of expert reports in support of the discharge of these various conditions by this Applicant's development team has been very poor indeed. It is these cumulative factual failings that themselves have created a perception that the Council could easily be misled by the poor standard of the inadequate submissions to date.

Whilst FPRA makes no comment on the non-material amendments that constitute the insertion of *"excluding the piling works illustrated on Drawing No.322-100 Piling Setting Out Plan"* into the wording of Conditions 5, 7, 13, 14 and 15, we note Keystone Law makes no reference to similarly varying the S106 legal agreement that includes the CMP Clause.

Keystone Law also note, as a perceived shot across the bows of the Council, the assertion that the Applicant did not agree to the imposition of pre-development conditions and the Council did not issue a prior notice stating it intended to impose such conditions as required by Town and Country Planning (Pre-Commencement Conditions) regulations 2018 (statutory instrument 2018, No 566) which has been in force since 1 October 2018.

But no such requirements are needed to enforce a pre-commencement Clause in a S106 legal agreement. Because, by definition, there is already a contract in place and this Applicant is clearly in breach of that contract.

The irrefutable facts are that Oakbridge's contractors came to site to insert two piles on 7<sup>th</sup> June 2019. This was 14 days before a draft CMP was sent to the Council, and 17 days before the same draft CMP was sent to the Fitzroy Park Residents' Association.

So, not only was there no legally enforceable CMP in place, the draft document had not yet been submitted to the Council, let alone to the stakeholders. To date, absolutely no neighbourhood consultation has ever taken place.

Our perception is that this contractor came to site in the most arrogant way possible to undertake works that were known to be in breach of the existing planning permission.

Their vehicles blocked the Fitzroy Park carriageway and the entrance/exit to Sunbury for most of the morning. When they were asked to move on, their response was to intimidate residents and swear at them. I personally took timed photographs of the incident and was abused and sworn at by one particularly offensive contractor.

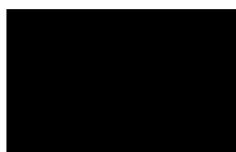
Not only did they block the road, they left the carriageway in the most terrible state, covered in mud which was never cleaned up. A pre-commencement of the Fitzroy Park carriageway survey had not been carried out and agreed, so it is nigh impossible for FPRA to prove any damage already caused.

None of the contractors were seen with high visibility jackets on or hard hats. No Health & Safety notices had been posted on the site, and that part of the boundary fence that had been removed to facilitate access to the back garden directly from the carriageway, was left open. Any curious child or dog passing by could have fallen down the very steep slope that exists directly adjacent to the road. This is because there is no pavement here, so pedestrians have to walk along the carriageway.

These aggressive and intimidating actions constitute a material breach of contract and are totally unacceptable. A wildlife offense relating to nesting birds has already been committed. Appropriate action must therefore be taken by the Council to ensure this sort of bad behaviour is not rewarded.

FPRA and local stakeholders consider the only reasonable course of action, under these deeply regrettable circumstances, is for the Council to enforce the S106 agreement and hold this Applicant to account.

Respectfully



Karen Beare  
Chair  
Fitzroy Park Residents Association

Copies to:

Camden Council

Alex Bushell - East Area Manager, Development Management  
Steve Cardno – Head of Transport

Stakeholders

Harley Atkinson – FPRA Officer  
Kathy Lambie – FPRA Officer  
Peter Kenny – FPRA – Carriageway Management  
Steve & Sue Barber - Sunbury  
John & Caroline Kennedy - Ashridge