



190 GOLDHURST TERRACE, LONDON NW6 3HN

Planning Appeal: Statement of Case

On behalf of Mr Joshua King

October 2019

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1. Introduction

1.1 This appeal is made under Section 78 of the Town and Country Planning Act 1990 against the refusal of an application for planning permission by The London Borough of Camden Council (hereafter referred to as "the Council"). The appeal is submitted on behalf of Mr Joshua King ("the Appellant"), in whose name the refused application was submitted.

1.2 The application (hereafter the "Refused Application"), was submitted on 5th February 2019 and refused on 8th April 2019. This was assigned the reference: 2019/0158/P. It relates to a property at 190 Goldhurst Terrace, London NW6 3HN ("the Appeal Site").

1.3 The Refused Application sought permission for a development with the following description:

"Excavation of a basement to form an independent two bedroom dwelling."

1.4 The Decision Notice confirming the refusal of planning permission and set out the reasons for this is enclosed at **Appendix 1**, and a copy of the Officer's Report is enclosed at **Appendix 2**.

1.5 The four Reasons for Refusal provided on the Decision Notice are as follows:

- 1. The proposed basement including the front lightwell, railings and access stair, by reason of its scale, detailed design, prominent siting and resultant form, would adversely affect the existing proportions and symmetry of the host property and the wider terrace harming the character and appearance of the conservation area. The proposal is therefore contrary to policies D1 and D2 of the London Borough of Camden Local Plan 2017.*
- 2. The proposal to include a self-contained basement unit in an area prone to flooding is contrary to policies A5 and CC3 of the London Borough of Camden Local Plan (2017).*
- 3. 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.*
- 4. The proposed development, in the absence of a legal agreement to secure securing financial contributions towards highways works, would fail to mitigate the impact of the development created by construction works, contrary to policies T3 (Transport infrastructure), A1 (Managing the impact of development) and DM1 (Delivery and monitoring of London Borough of Camden Local Plan 2017.*

1.6 In light of the Council's decision and the reasons for refusal set out above, we consider the following to be the key issues:

- The impact of the proposal on character and appearance of the South Hampstead Conservation Area;
- Flood risk; and,
- Car parking and highways.

1.7 These issues are addressed in detail in Section 6 of the Statement of Case. The flood risk and drainage issue is also the subject of a separate report, prepared by Water Environment Limited which forms an integral part of the Appeal. This is enclosed at **Appendix 3**.

1.8 The issues relating to car parking and highways are largely procedural matters which arise as a result of the absence of a legal agreement obliging the beneficiary of planning permission to put in place measures that would prevent or mitigate against any potential adverse impacts on highway safety or the availability of parking provision in the area.

Purpose and Structure of Report

1.9 The Report seeks to address all relevant planning considerations prior to drawing conclusions as to the merits of the appeal.

1.10 The remainder of this Report is structured as follows:

- (a) **Section 2:** describes the appeal site and the context in which it sits;
- (b) **Section 3:** discusses the planning history;
- (c) **Section 4:** describes the refused application;
- (d) **Section 5:** positions the proposals in the context of planning policy; and,
- (e) **Section 6:** analyses the planning considerations relevant to the Appellant's case.
- (f) **Section 7:** summarises and concludes the Statement of Case.

2. Site Description and Context

- 2.1. The Appeal Site is a two-three storey terraced property which has a frontage on to the northern side of Goldhurst Terrace. It forms part of a terrace of similarly-proportioned buildings which appear to have been constructed as single houses. Many of these like the Appeal Site have now been converted into flats.
- 2.2. The dwelling has been subdivided into three self-contained flats (Use Class C3) with one flat occupying each floor. Off-street car parking is provided within the site for up to three cars in the private driveway area to the front of the residential building. This is separated from the public realm at Goldhurst Terrace by black metal gates, the design of which is similar to the railings which are in evidence elsewhere in the vicinity of the site and which are a feature of the area.
- 2.3. The area surrounding the site also comprises of similar two-three storey buildings, all of which are in residential use. Many, like the appeal site have accommodation within the roof spaces. Goldhurst Terrace extends for approximately 900 metres and given the length of the street there is a degree of variety in the types of buildings present. The majority however are terraced houses which are in residential use.
- 2.4. The Appeal Site is located at the western end of Goldhurst Terrace close to its junction with Aberdare Gardens. The entirety of Goldhurst Terrace is within the South Hampstead Conservation Area which covers an extensive area.
- 2.5. The area in question is the basement area located below the existing dwelling.

3. Planning History

3.1. The most notable aspect of the planning history at this site is the approval of planning permission (ref: 2016/2689/P), in January 2019 for a development described as 'Excavation of basement to form an independent two-bedroom dwelling.' This has established the principle of an additional dwelling at 190 Goldhurst Terrace, and the provision of accommodation at basement level.

3.2. The following planning application records also relate to the Appeal Site:

Application Ref: P602187

Description: Construction of conservatory at rear, as shown on drawing no. 748.1

Status: Refused 09/08/1996

Application Ref: 8700456

Description: Enlargement of the existing single-storey rear addition as shown on drawings no. 8711.01-04 inclusive

Status: Granted 29/04/1987

Other Sites

3.3. Aside from the planning history of the Appeal Site itself, there are notable examples of other basements and associated exterior features elsewhere within the South Hampstead Conservation Area which have all received approval from the LPA. It is considered that all of these are comparable to a certain degree to the Refused Application.

3.4. The closest example of a similar basement is that at 207 Goldhurst Road, a short distance to the south-east of the Appeal Site. The details of the planning application relating to this are summarised below:

Application Ref: 2015/4370/P

Site Address: 207 Goldhurst Terrace, London, NW6 3ER

Excavation of basement with lightwells to the front and rear of the building (Use Class C3).

Status: Approved 09/05/2016

3.5 The approved basement at 207 Goldhurst Terrace is evident in Photograph 3 and Photograph 4 in **Appendix 4**. This is an example of how a similar lightwell with black railings to the front appears when viewed from the street. This represents a similar form of development which is comparable in terms of visual impact.

- 3.6 The approved basement and front lightwell at 177 Goldhurst Terrace is different to that at the Appeal Site in that it incorporates a dwarf wall rather than iron railings to the front of the lightwell. However, the steps down to the lightwell cover a greater area and are more prominent, both in terms of how these relate to the site frontage and the extent of the front garden that this covers. An image of the completed development is included as Photograph 5 of **Appendix 4**. The details of the planning permission that was approved for this particular basement are summarised below:

Application Ref: 2011/6049/P

Site Address: 177 Goldhurst Terrace, London, NW6 3ES

Description: Alterations to front garden area including replacement of front entrance ramp with steps to lower ground floor, increase in height of dwarf wall to front lightwell, replacement of section of wrought iron railing to entrance steps with brick wall, and replacement of flagstone hardstanding with red brick in connection with residential flats (Class C3)

Status: Approved 16/02/2012

- 3.7 It is also notable that there have been a number of other planning applications for basements where a similar form of external treatment has been provided elsewhere in Goldhurst Terrace. Of particular note are the properties at 61-67 Goldhurst Terrace, all of which have black metal railings around a front lightwell. Examples of where this form of external treatment is in evidence elsewhere in the area are provided in the form of the photographs enclosed at **Appendix 4**. The planning application records which relate to some of the most notable examples of where black painted railings have been installed adjacent to lightwells at the front of the property are listed below:

Application Ref: 2016/4083/P

Site Address: 63 Goldhurst Terrace, London, NW6 3HB

Description: Excavation of basement with front and rear lightwells

Status: Approved 22/03/2017

Application Ref: 2014/2046/P

Site Address: 61 Goldhurst Terrace, London, NW6 3HB

Excavation of basement to residential flat including front and rear lightwells (Class C3).

Status: Approved 28/05/2014

- 3.8 Photographs of the properties at 61-67 Goldhurst Terrace are included in **Appendix 4**.

4 The Refused Application

4.1 The Refused Application was for the excavation of a new basement level to accommodate an additional self-contained two-bedroom dwelling. The refused application is similar to the development approved by planning application Ref. 2016/2689/P in January 2019, in that it seeks planning permission for an alternative form of basement level accommodation. However, there are clearly a number of key differences, namely:

- The removal of the internal access to the basement level flat, and the provision of a separate entrance via a lightwell to the front of the building;
- Provision of a larger light well to the front to facilitate the provision of an external stair access down to the entrance to the basement flat;
- Provision of a traditional external steel staircase which leads to the entrance to the proposed dwelling at basement level;
- Provision of a traditional metal guard above the lightwell, and railings to the front of the lightwell.

4.2 The proposals would result in the provision of a larger lightwell than that previously approved in January 2019 which served only as a means of providing light to the rooms at the front of the basement level accommodation and not as an access to the basement. The proposed lightwell that formed an integral part of the Refused Application would be enclosed by traditional railings safety purposes. Due to the fact that these would be at ground-level or below, the majority of these features will not be visible from the public realm and as such will not have any impact on the character or appearance of the property. The only feature that will be visible will be the black metal railings which would be placed in front of the lightwell opening.

4.3 The existing bay window which forms part of the front elevation of the building, would be extended to serve the front bedroom of the proposed basement flat. The living areas and kitchen are located at the rear of the property, where the presence of a rear lightwell and garden provides access and natural light to these areas of the proposed dwelling. The master bedroom is also located at the rear of the flat, with direct access to the garden/lightwell. The proposed basement flat also has two bathrooms; a master bathroom and a second bathroom provided as an ensuite to a bedroom.

4.4 The majority of the front garden area and driveway would be retained in its current form, with the provision of a lightwell and the features associated with access to it are the only significant physical change to this area of the Appeal Site. The three parking spaces currently present in this

area would be retained in their entirety while sufficient space will also be provided in order to provide for the movement of pedestrians around parked vehicles.

5 Planning and Heritage Policy Considerations

- 5.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the determination of planning applications to be made in accordance with the statutory development plan, unless material considerations indicate otherwise. Where there is a difference in policy, Section 38(5) requires that the most recently adopted policy takes precedence.
- 5.2 The Government revised the National Planning Policy Framework (NPPF) in February 2019, which is the over-arching planning policy document in the country. This document is designed to encourage suitable and sustainable design in planning.
- 5.3 Sitting below the NPPF, at regional level, is the London Plan, which is the overall strategic plan for London, and it sets out a fully integrated economic, environmental, transport and social framework for the development of the capital to 2036. It forms part of the development plan for Greater London.
- 5.4 The local plans of the London boroughs are required to be in general conformity with the London Plan, and its policies guide decisions on planning applications by councils and the Mayor. The most recent version of the London Plan, which has been updated since the 2011 publication to include various alterations and the most up to date document, was published in March 2016.
- 5.5 The documents that form the Development Plan for Camden Borough Council are:
- The Camden Local Plan;
 - Site Allocations Plan (September 2013);
 - Policies Map (March 2019);
 - Area Action Plans (Fitzrovia and Euston); and,
 - North London Waste Plan.

London Plan – Minor Alterations to the London Plan (March 2016)

- 5.6 Policy 3.3 recognises the pressing need to provide new homes in London. It states that:

'The Mayor will seek to ensure the housing need identified in paragraphs 3.16a and 3.16b is met particularly through provision consistent with at least an annual average of 42,000 net additional homes across London which will enhance the environment, improve housing choice and affordability and provide better quality accommodation for Londoners'.

- 5.7 Policy 3.5 seeks to ensure the design of all new housing is of the highest internal and external quality and responds positively to its wider context and environment. Developments should enhance the quality of local places, taking into account physical context; local character; density; tenure and land use mix; and relationships with, and provision of, public, communal and open spaces. The policy highlights accessibility, space and water efficiency standards that developments should seek to achieve.
- 5.8 Policy 6.13 highlights the desire to achieve an appropriate balance between promoting new development and preventing excessive car parking provision that can undermine cycle, walking and public transport use. The policy outlines maximum parking standards that should form the basis for considering planning applications.
- 5.9 Policy 7.4 seeks to ensure development takes into account the local character. The policy indicates that buildings should provide a high-quality design response that:
- a. has regard to the pattern and grain of the existing spaces and streets in orientation, scale, proportion and mass*
 - b. contributes to a positive relationship between the urban structure and natural landscape features, including the underlying landform and topography of an area*
 - c. is human in scale, ensuring buildings create a positive relationship with street level activity and people feel comfortable with their surroundings*
 - d. allows existing buildings and structures that make a positive contribution to the character of a place to influence the future character of the area*
 - e. is informed by the surrounding historic environment*
- 5.10 Policy 7.6 seeks to ensure that development comprises the highest architectural quality. Development should be of an appropriate proportion, composition, scale; comprise materials which complement the local architectural character; does not cause unacceptable harm to neighbouring amenity; incorporate measures which mitigate/adapt to climate change; provide internal and external spaces which integrate well with the street; adapts to variations in ground level; meets the principles of inclusive design; and optimises the potential of the site.
- 5.11 Policy 7.8 seeks to ensure that new development values, conserves, restores and re-uses heritage assets where appropriate. Development affecting heritage assets and their settings should conserve their significance, by being sympathetic to their form, scale, materials and architectural detail.

Camden Local Plan

- 5.12 The Camden Local Plan sets out the vision for shaping the future of the Borough and contains policies for guiding planning decisions.

5.13 Policy H1 of the local plan seeks to maximise the housing supply within the borough to meet the needs of existing and future households. It aims to exceed a target of 16,800 additional homes within the period of 2016/17-2030/2031. This figure includes an additional 11,130 self-contained homes. The policy prioritises self-contained homes as a land-use of the local plan; and expects the maximum reasonable provision of housing on underused or vacant sites.

5.14 Policy H7 seeks to secure, *'a range of homes of different sizes that will contribute to creation of mixed, inclusive and sustainable communities and reduce mismatches between housing needs and existing supply'*. The policy seeks to ensure that all housing:

- a. Contributes to meeting the priorities set out in the Dwelling Size Priorities Table; and*
- b. includes a mix of large and small homes.*

5.15 The dwelling size priorities table referred to in point a above identifies that 2-bedroom market dwellings are of a high priority.

5.16 Policy A1 manages the impact of development and seeks to protect the quality of life of occupiers and neighbours of new developments. Of most importance to this appeal, the Council will:

- a. 'resist development that fails to adequately assess and address transport impact affecting communities, occupiers, neighbours and the existing transport network; and,*
- b. Require mitigation measures where necessary.'*

5.17 Policy A4 specifically refers to developments that include basement proposals. It states that permission for such proposals will only be permitted where the proposal would not cause harm to:

- a. neighbouring properties;*
- b. the structural, ground, or water conditions of the area;*
- c. the character and amenity of the area;*
- d. the architectural character of the building; and*
- e. the significance of heritage assets.*

In determining proposals for basements and other underground development, the Council will require an assessment of the scheme's impact on drainage, flooding, groundwater conditions and structural stability in the form of a Basement Impact Assessment and where appropriate, a Basement Construction Plan.

5.18 The policy continues, stating that basement developments should:

- f. not comprise of more than one storey;*
- g. not be built under an existing basement;*
- h. not exceed 50% of each garden within the property;*
- i. be less than 1.5 times the footprint of the host building in area;*

- j. extend into the garden no further than 50% of the depth of the host building measured from the principal rear elevation;*
- k. not extend into or underneath the garden further than 50% of the depth of the garden;*
- l. be set back from neighbouring property boundaries where it extends beyond the footprint of the host building; and*
- m. avoid the loss of garden space or trees of townscape or amenity value.*

Exceptions to f. to k. above may be made on large comprehensively planned sites.

5.19 Finally, the policy states that applicants will be required to demonstrate that basement proposals, amongst other things, ‘*avoid adversely affecting drainage and run-off or causing other damage to the water environment*’.

5.20 The supporting policy text delves further into the assessment of basement developments. The concept of lightwells are discussed in paragraphs 6.144 to 6.146. In respect of character areas,

‘Where basements and visible lightwells are not part of the prevailing character of a street, new lightwells should be discreet and not harm the architectural character of the building, the character and appearance of the surrounding area, or the relationship between the building and the street. In situations where lightwells are not part of the established street character, the characteristics of the front garden or forecourt will be used to help determine the suitability of lightwells.’

5.21 Policy D2 discusses heritage assets within the borough and seeks to preserve and, where appropriate, enhance Camden’s heritage assets and their settings. The policy states that permission will not be granted where the proposal would result in substantial harm to the significance of a designated heritage asset, unless the development results in public benefits that outweigh the substantial harm. Where a proposal results in harm that is less than substantial to the significance of the heritage asset the Council will not permit development unless the public benefits convincingly outweigh the harm.

5.22 When specifically assessing development within a conservation area. Policy D2 states that the Council will:

- a. require that development within conservation areas preserves or, where possible, enhances the character or appearance of the area;*
- b. resist the total or substantial demolition of an unlisted building that makes a positive contribution to the character or appearance of a conservation area;*
- c. resist development outside of a conservation area that causes harm to the character or appearance of that conservation area; and*
- d. preserve trees and garden spaces which contribute to the character and appearance of a conservation area or which provide a setting for Camden’s architectural heritage.*

5.23 Policy T1 seeks to prioritise walking, cycling and public transport usage across the borough.

5.24 Policy T2 seeks to limit opportunities for parking within the borough by creating car-free developments. It requires all new developments in the borough to be car-free and the Council will:

- a. not issue on-street or on-site parking permits in connection with new developments and use legal agreements to ensure that future occupants are aware that they are not entitled to on-street parking permits;*
- b. limit on-site parking to:*
 - i. spaces designated for disabled people where necessary, and/or*
 - ii. essential operational or servicing needs;*
- c. support the redevelopment of existing car parks for alternative uses; and*
- d. resist the development of boundary treatments and gardens to provide vehicle crossovers and on-site parking.*

5.25 Policy T3 seeks to gain improvements to transport infrastructure in Camden. It states that the Council will:

- a. Not grant planning permission for proposals which are contrary to the safeguarding of strategic infrastructure improvement projects; and*
- b. protect existing and proposed transport infrastructure, particularly routes and facilities for walking, cycling and public transport, from removal or severance*

5.26 Policy DM1 discusses delivery and monitoring of the vision, objectives and policies of the local plan. It states that the Council will do this by (*inter alia*):

- a. using planning contributions where appropriate to;*
 - i. support sustainable development;*
 - ii. secure the infrastructure, facilities and services to meet the needs generated by development;*
 - iii. mitigate the impact of development*

Other Material Considerations

NPPF (2019)

5.27 The revised NPPF was issued in February 2019 and contains national planning policy on a variety of subjects and how these are expected to be applied.

5.28 The NPPF (paragraph 2) requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise (Section 38 (6) of the Planning Compulsory and Purchase Act 2004).

5.29 The NPPF (paragraph 8) confirms that the purpose of the planning is to help achieve sustainable development. There are three objectives to sustainable development, which should all be pursued in a mutually beneficial way. They are:

- **An economic objective** – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;
- **A social objective** – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high-quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being; and
- **An environmental objective** – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.

5.30 Paragraph 11 of the NPPF sets out the presumption in favour of sustainable development. It encourages Local Planning Authorities to positively seek opportunities to meet development needs (paragraph 11a), and to approve development proposals that accord with the development plan without delay (paragraph 11c).

5.31 Part 5 of the NPPF, titled 'Delivering a sufficient supply of homes', sets out the national policies for meeting the Government's objective to significantly boost the supply of homes in England. Paragraph 59, specifically, states:

'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.'

5.32 Part 11 of the NPPF which is entitled 'Making effective use of land' is of particular relevance to this proposal. Paragraph 118 states that planning policies and decisions should:

- 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); and*
- e) support opportunities to use the airspace above existing residential and commercial premises for new homes. In particular, they should allow upward extensions where the development would be consistent with the prevailing height and form of neighbouring properties and the overall street scene, is well designed (including complying with any local design policies and standards), and can maintain safe access and egress for occupiers.*

5.33 Paragraph 122 is considered to be of particular relevance to this proposal. This requires that planning policies and decisions should support development that makes efficient use of land. It states that the following should be taken into account when considering new developments:

- a) the identified need for different types of housing and other forms of development, and the availability of land suitable for accommodating it;*
- b) local market conditions and viability;*
- c) the availability and capacity of infrastructure and services – both existing and proposed – as well as their potential for further improvement and the scope to promote sustainable travel modes that limit future car use;*
- d) the desirability of maintaining an area's prevailing character and setting (including residential gardens), or of promoting regeneration and change; and*
- e) the importance of securing well-designed, attractive and healthy places.*

5.34 Paragraph 123 applies where there is an anticipated shortage of land for meeting housing need. While the London Borough of Camden may not necessarily have an identified shortage of land, in light of the London Plan requirement to provide 1559 dwellings per year (potentially rising to 1589 dwellings per year if the current draft of the London Plan is adopted in its current form), it is important that efficient use is made of land in the most sustainable and accessible locations. A key aspect of the policy is the direction that it is especially important to avoid homes being built at low densities, and to ensure that developments make optimal use of the potential of sites. Part c) of Paragraph 123 directs local planning authorities to refuse applications which fail to make efficient use of land.

5.35 Part 12 of the NPPF is entitled 'achieving well-designed places'. Paragraph 124 states that the creation of high-quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to

communities. Being clear about design expectations, and how these will be tested, is essential for achieving this. So too is effective engagement between applicants, communities, local planning authorities and other interests throughout the process.

5.36 Areas of Paragraph 127 are also of relevance to the consideration of this application. It requires 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.*

5.37 Part 16 of the NPPF, 'Conserving and enhancing the historic environment', details the national policies for development and decision making within the historic environment. It highlights strategies that plans should adopt to ensure the enjoyment of the historic environment and the considerations that should be made when deciding applications that have potential impacts.

5.38 The areas of greatest relevance include Paragraphs 189-202 of the NPPF which relate specifically to heritage assets. These paragraphs state that local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset's conservation and any aspect of the proposal.

5.39 The most relevant paragraphs are set out below. This includes Paragraph 192 which states that:

'In determining applications, local planning authorities should take account of:

- a) *the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;*
- b) *the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and*
- c) *the desirability of new development making a positive contribution to local character and distinctiveness.'*

5.40 Paragraph 200 relates development within Conservation Areas. This reads as follows:

'Local planning authorities should look for opportunities for new development within Conservation Areas and World Heritage Sites, and within the setting of heritage assets, to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably.'

National Planning Policy Guidance

5.41 Guidance in relation to the subject of conserving and enhancing the historic environment is a material consideration when deciding this appeal.

5.42 The NPPG has a section on the subject of the 'Historic Environment', which advises on enhancing and conserving the historic environment. Paragraph 007 (ID:18a-007-20190723) confirms that the consideration of 'significance' in decision taken is important and states:

'Heritage assets may be affected by direct physical change or by change in their setting. Being able to properly assess the nature, extent and importance of the significance of a heritage asset, and the contribution of its setting, is very important to understanding the potential impact and acceptability of development proposals.'

5.43 Paragraph 018 (ID: 18a-017-20190723) continues to highlight the assessment of substantial harm and confirms that whether a proposal causes substantial harm will be a judgement for the individual decision taker having regard to the individual circumstance and the policy set out within the NPPF. It goes on to state that:

'In general terms, substantial harm is a high test, so it may not arise in many cases. For example, in determining whether works to a listed building constitute substantial harm, an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest. It is the degree of harm to the asset's significance rather than the scale of the development that is to be assessed. The harm may arise from works to the asset or from development within its setting.'

While the impact of total destruction is obvious, partial destruction is likely to have a considerable impact but, depending on the circumstances, it may still be less than substantial harm or conceivably not harmful at all, for example, when removing later inappropriate additions to historic buildings which harm their significance. Similarly, works that are moderate or minor in scale are likely to cause

less than substantial harm or no harm at all. However, even minor works have the potential to cause substantial harm.'

5.44 Paragraph 019 (ID: 18a-018-20190723) discusses harm in relation to conservation areas, stating:

'An unlisted building that makes a positive contribution to a conservation area is individually of lesser importance than a listed building. If the building is important or integral to the character or appearance of the conservation area then its proposed demolition is more likely to amount to substantial harm to the conservation area, engaging the tests in paragraph 195 of the National Planning Policy Framework. Loss of a building within a conservation area may alternatively amount to less than substantial harm under paragraph 196. However, the justification for a building's proposed demolition will still need to be proportionate to its relative significance and its contribution to the significance of the conservation area as a whole. The same principles apply in respect of other elements which make a positive contribution to the significance of the conservation area, such as open spaces.'

5.45 With regard to design the NPPG states at paragraph 002 (ID: 26-002-20140306) that:

'Good design should:

- *ensure that development can deliver a wide range of planning objectives*
- *enhance the quality of buildings and spaces, by considering amongst other things form and function; efficiency and effectiveness and their impact on well being*
- *address the need for different uses sympathetically.'*

5.46 Paragraph 007 (ID: 26-007-20140306) discusses design with regard to local character. It states,

'Development should seek to promote character in townscape and landscape by responding to and reinforcing locally distinctive patterns of development, local man-made and natural heritage and culture, while not preventing or discouraging appropriate innovation.

The successful integration of all forms of new development with their surrounding context is an important design objective, irrespective of whether a site lies on the urban fringe or at the heart of a town centre...

Local building forms and details contribute to the distinctive qualities of a place. These can be successfully interpreted in new development without necessarily restricting the scope of the designer. Standard solutions rarely create a distinctive identity or make best use of a particular site. The use of local materials, building methods and details can be an important factor in enhancing local distinctiveness when used in evolutionary local design, and can also be used in more contemporary design. However, innovative design should not be discouraged.'

5.47 Paragraph 23 (ID: 26/023/20140306 revision date 06.03.2014) goes on to explain how to consider buildings and the spaces between them and reads as follows:

'Plans, policies and decisions can effectively manage physical form at a variety of scales. This is how planning can help achieve good design and connected objectives. Where appropriate the following should be considered:

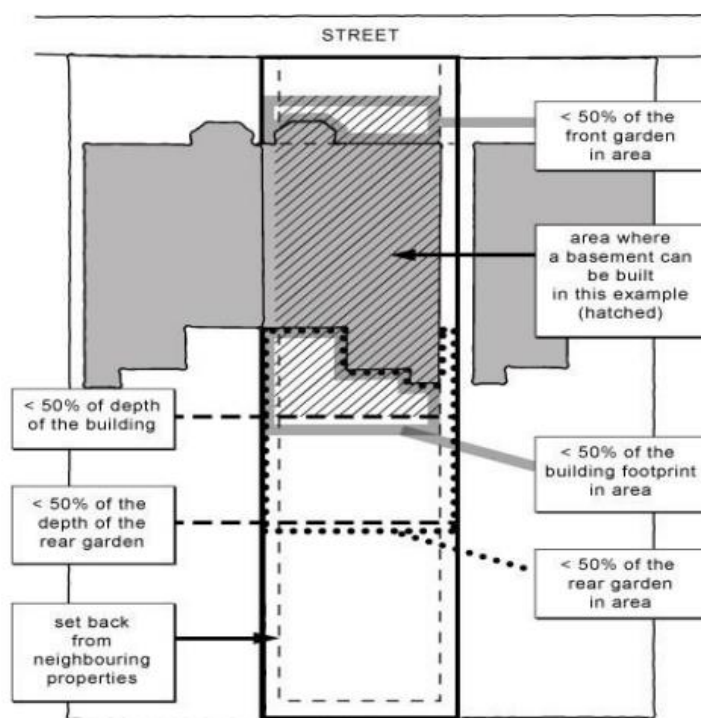
- *layout – the way in which buildings and spaces relate to each other*

- *form – the shape of buildings*
- *scale – the size of buildings*
- *detailing – the important smaller elements of buildings and spaces.*

Camden Planning Guidance – Basements (2018)

5.48 London Borough of Camden has prepared planning guidance in relation to new basement developments. Section 2 of the guidance outlines specific design criteria that new developments should aim to adhere to. The figure below is an extract taken from the document, which summarises the design criteria outlined in Policy A5 of the Local Plan.

FIGURE 9: All criterion of Policy A5 of the Local Plan



5.49 Paragraph 2.19 of the document discusses the acceptable treatment of lightwells with regard to basement developments. It highlights that lightwells should be secured by railings or grilles and in shallow gardens (where front lightwells are proposed) they should be secured by a grille which sits flush with the natural ground level.

5.50 Paragraph 2.20 continues, stating that,

'Railings will be considered acceptable where they form part of the established street scene, or would not cause harm to the appearance of the building or the surrounding area.'

South Hampstead Conservation Area Appraisal and Management Plan (2011)

- 5.51 Finally, the South Hampstead Conservation Area Appraisal and Management Plan is a material consideration when deciding this appeal. The appraisal categorises the conservation area into four character areas, the appeal site falling into Character Area 2, the 'Central Wedge'. It describes the area as,

'The heart of the conservation area these properties are some of the most ornate and attractive in the area, with lively roofscapes, timber and ironwork porches, typically late 19th century multi-paned sashes and gaps between houses contributing to character.'

- 5.52 Paragraphs 7.11 and 7.12 of the area appraisal discusses the excavation of basement areas for additional accommodation. It acknowledges that in recent years, the area has seen a trend of basement developments associated with lightwells in order to accommodate additional housing or extensions. However, it also highlights the sometimes-negative impacts these developments can have on the conservation area, stating:

'Just as overly large extensions above the ground level can dominate a building, contributing to the over-development of a site, an extension below ground can be of an inappropriate scale to the host property and to its neighbours, as well as impacting on immediate and neighbouring garden setting The Council will resist this type of development where it is considered to harm the character or appearance of the conservation area.'

- 5.53 The management plan continues, discussing the definition of overdevelopment when considering basement developments. It states that the permissible size of a basement will:

'be guided by the characteristics of the site, its surroundings and the pattern of developed to undeveloped land in the area (i.e. the ration of built form to public and private open space) and will be resisted where there would be a negative impact on the character and appearance of the conservation area.'

- 5.54 Paragraph 13.32 highlights the potential impacts lightwells can have on the character of the conservation area. Negative impacts include, loss of garden space, light spill and cluttered appearances caused by railings in front gardens. It states that the Council will resist developments where it is considered that there would be a negative impact on the conservation area.

6 The Appellant's Case

6.1 Based on the above and the Reasons for Refusal provided in the Decision Notice, the key planning considerations cited as the basis for the refusal of the planning application are:

- The impact of the proposal on the character and appearance of the South Hampstead Conservation Area (Reason for Refusal 1);
- Flood Risk (Reason for Refusal 2); and
- Car Parking and Highways (Reason for Refusal 3 and 4).

6.2 Each of these are discussed, in turn, below.

Heritage Impacts

6.3 Reason for Refusal 1 is primarily concerned with the impact of the refused development on heritage assets. More specifically, this relates to the impact of the proposed alterations to the front of the residential property on the character and appearance of the building and the wider conservation area.

6.4 Both local and national policies are clear that proposals for development within conservation areas must consider the character setting of a designated heritage asset. Proposals should seek to conserve and, if possible, enhance the setting of the conservation area. In this case, the Council cites a conflict with policies D1 and D2 of the Local as the basis for refusing the application on these grounds. These policies relate specifically to design and heritage.

6.5 Given the planning history at the Appeal Site and the recent approval of planning permission for a dwelling at basement level of this building (application ref. 2016/2689/P), it is common ground that the principle of development has been established.

6.6 The alleged harm to heritage assets arises as a result of the proposed lightwell, staircase and railings which in the view of officers would have a negative impact on the character and appearance of the property. Reason for Refusal 1 identifies these key areas of concern which it alleges result in harm to the *proportions* and *symmetry* of the building. These include the scale, detailed design and prominent siting of the proposed additions and alterations to the building frontage. It is alleged that the scale of the front lightwell, railings and access stair are harmful to the existing proportions and symmetry of the property.

6.7 As far as the size of these features is concerned, the lightwell and staircase which form part of the refused application, occupy an area of 11 square metres which is approximately 18% of the front garden (which has a total area of 60 square metres. The lightwell which forms part of the

approved proposals (which benefit from planning permission: 2016/2689/P), covers an area of 5 square metres. The total coverage increases by 6 metres, which in percentage terms represents an increase from 8% of the front garden to 18% of the front garden. While the refused scheme would provide a lightwell which is around 50% larger, this remains consistent with the relevant policies in the Camden Local Plan and associated Supplementary Planning Guidance (specifically Policy A5 of the Local Plan and the Basement Planning Guidance document).

- 6.8 It is notable that planning permission was approved for a comparable form of development at 63 Goldhurst Terrace (application ref. 2016/4083/P), in March 2017. This application was for the excavation of a basement with front and rear lightwells utilising fenestrations, similar to the refused application. The front lightwell occupies approximately 27% of the front garden. The officer's report relating to the approval of this application states that:

'The introduction of new fenestration to both the front and rear of the building is considered acceptable by virtue of its limited visual impact on account of the lightwells restricting views of this part of the building. Should planning permission be granted, however, a condition would be recommended requiring that matching materials be used.'

'As a result of the enlarged front lightwell, a sufficient amount of garden area would be maintained which is in keeping with the character of the immediately surrounding area.'

- 6.9 The approval of planning permission at this site and findings set out in the Officer's Report which accompanies the decision, are material considerations in the determination of this appeal.
- 6.10 The statements above suggest that where a front garden is of a substantial size and set back from the street, then alterations to the fenestration can represent an acceptable form of design within the South Hampstead Conservation Area.
- 6.11 It is not considered that the lightwell and the external features associated with this are of a scale, either in absolute terms or relative to the frontage of the property, that would cause harm to the proportions or symmetry of the building. With regard to the alleged impact on symmetry, the nature of lightwells is such that these would almost always occupy a position to one side of the building frontage. This is a well-established principle and the resulting built form is a characteristic of many similar properties of this nature. The scale of the proposed lightwell is not considered excessive, neither is it so extensive that its presence or any of the features associated with it would affect the proportions of the property.
- 6.12 It is therefore the view of the Appellant that the scale of the proposed additions to the site is not of such significance to be a reason for refusal that can be substantiated.

- 6.13 In terms of the detailed design of the proposals, it is notable that existing basements developments at 207, 61, 63, 65 and 67 Goldhurst Terrace (images of these are enclosed in Appendix 4), also represent a similar design approach to the Refused Application. Each of these utilises steel railings as a surround to lightwells at the front of the property. The frontages of these buildings, some of which do not benefit from any boundary treatment at the rear of the kerbline, are clearly more prominent than that at the Appeal Site.
- 6.14 The provision of railings to the front of the lightwells at these properties is considered to represent a high-quality and traditional design approach and one that is sympathetic to the properties themselves and the character and appearance of the conservation area. While these are not within such close proximity that they would be visible from the Appeal Site it is nonetheless considered that the presence of these comparable forms of development represent relevant precedents that it is relevant to consider in the assessment of this appeal. It is noted that all of the examples highlighted above relate to buildings which are identified as 'Positive Contributors' to the Conservation Area (these are listed in Appendix 1: Built Heritage Audit, of the South Hampstead Conservation Area Appraisal and Management Strategy – February 2011).
- 6.15 Visual impact can be defined as a change in the appearance, or view, of the built or natural landscape and urban areas resulting from the development which can be positive (improvement) or negative (deterioration).
- 6.16 A key factor in determining the extent of any visual impact of the proposed development and the harm arising from it is how this would affect the character and appearance of the host building and the wider conservation area. The limited extent of the changes to the front elevation of the building that would result from the provision of a lightwell and the features associated with it (including the railings to the front of this), are evident in the application drawings. While the railings are a 'new' feature that are not a feature of the residential properties elsewhere at Goldhurst Terrace, their introduction at the Appeal Site would not result in a feature which is overly-prominent or harmful to the character and appearance of the property.
- 6.17 The proposed railings would be viewed in the context of the gate across the front entrance to the property. The railings would appear similar in terms of their size and visual impact to the gate. The degree of consistency between the two features ensures that any visual impact of the proposed railings would be extremely limited. While the details of the railings appears different, the situation would be similar to that at 207 Goldhurst Terrace where the black railings in the front boundary are similar to and consistent with the railings around the lightwell.

- 6.18 In both instances, the type of installation is considered appropriate in the context of a conservation area where the materials and exterior features to be used in their construction are a common feature. It is therefore considered that the proposed development would be entirely appropriate in this context.
- 6.19 Based on the above, the refused scheme represents a design outcome that complies with the general principles and design standards set out within the Development Plan, the Council's adopted Basement Planning Guidance SPD, and the Conservation Area Character Appraisal and Management Plan.
- 6.20 In addition, by virtue of the limited extent and visibility of the above-ground features of the development, it is evident that the proposal would have a limited impact if any on the character and appearance of the South Hampstead Conservation Area. The use of railings, which would be the most prominent part of the proposed development will not result in an overbearing or 'cluttered' form of development when viewed from Goldhurst Terrace. Indeed, the nature of the external features that would be provided as part of the development would broadly reflect the style of those in evidence elsewhere in Goldhurst Terrace.

Flood Risk

- 6.21 The refusal notice states that the refused scheme would be prone to flooding and is contrary to policies A5 and CC3 of the local plan. Although the site is not located within flood zones 2 or 3 of the Environmental Agencies Flood Mapping, the officer's report states that Goldhurst Terrace is identified in the Council's Flood Risk strategy due to its history of localised surface water flooding. Whilst the previous basement arrangement was approved, the officer's reports states:

'The proposed flat is now proposed to have its own separate entrance at basement level accessed through the front light well rather than accessed via a communal entrance ground floor level and internal staircase as previously granted. This is no longer considered to be akin to the arrangement in a duplex arrangement where, in the event of a flood occurrence, occupants can exit the lower level to the ground floor level and still be within the main building. The proposal also has removed an escape ladder granted in the previous application that was included to access ground level so there is no longer a secondary means of escape. It is considered in this instance that the proposals for a self-contained unit at basement level is unacceptable and contrary to policies CC3 and A5.'

- 6.22 A Surface Water and Flood Risk Assessment has been prepared by Water Environment Ltd in support of this Appeal. This is enclosed at **Appendix 3**. The report concludes that there is no evidence that the site has flooded in the past, nor that it will flood in the future. The evidence cited in the officer's report identifies the entire length of Goldhurst Terrace as a flood-prone area on the basis of two properties experiencing surface water flooding in 1975 and 2002. However,

the precautionary approach that the Council have adopted in response to relatively few incidents of flooding is reflected by the fact that Goldhurst Terrace is approximately 950 metres long. Given the varying topography of the road, the flood risk varies greatly, with the highest flood risk occurring at the junction of Goldhurst Terrace and Fairhazel Gardens, approximately 450 metres to the east of the Appeal Site. As the report produced by Water Environment Ltd highlights, the Council consider that due to these historical incidents of flooding, the entire street is considered to be at an elevated level of flood risk. This is evidently not the case as evidenced in the enclosed report (**Appendix 3**).

- 6.23 As such, it is considered that the refused scheme does not result in an increased flood risk to future occupants or surrounding properties. The appended Surface Water and Flood Risk Assessment recommends that a Sustainable Urban Drainage system is incorporated into the design to reduce surface water issues at neighbouring properties, which the appellant would be willing to accept as a condition of an approval.

Car Parking and Highways

- 6.24 Reasons for refusal 3 and 4 state that in the absence of a legal agreement the refused development would be likely to contribute to unacceptable strains on street parking and congestion and would fail to mitigate the impact of the development created by construction works on the local highways network.
- 6.25 The appellant is willing to enter into a legal agreement with the Council to provide future occupants of the development with access to a Car Club as well as financial contributions towards highway repairs. This was agreed to as part of the previous planning consent granted over the Appeal Site (2016/2689/P) and would be the case if this appeal is granted.
- 6.26 According to the document entitled: Procedural Guide: Planning appeals – England (August 2019)¹, the appropriate stage for providing a planning obligation in an appeal of this nature is after the submission of the appeal. Paragraph N.2.1 confirms this and states that:

Part 2 written representations process: If the appellant intends to send a planning obligation and wants to be certain that it will be taken into account by the Inspector they must make sure that it is executed and a certified copy is received by us no later than 7 weeks from the start date.

- 6.27 In this case, the Appellant will provide a Unilateral Undertaking that they will be bound by the terms of any agreement obliging them to provide measures to minimise and/or mitigate against

¹ Procedural Guidance: Planning Appeals – England (August 2019); The Planning Inspectorate, (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/829380/Procedural_Guide_Planning_appeals_version_6_a_revised.pdf).

the impact of an additional dwelling on the highway network in the event that the Appeal is allowed.

Other Considerations

- 6.28 As outlined above, the approved planning permission (ref: 2016/2689/P), relates to a proposal which originally sought consent for a similar form of development to that in the Refused Application. This was revised to remove the external staircase and associated fenestration. The provision of an internal staircase to provide access to the flat at basement level was regarded as an acceptable solution by the Local Planning Authority. However, the implementation of this planning permission would result in the remodelling of the ground-floor flat which would otherwise have remained unaltered.
- 6.29 The alterations to the existing ground-floor flat evident in the approved scheme would reduce the floor area of this existing dwelling by a total of 10.64 square metres (through the provision of an enlarged communal entrance hallway), and would result in the unnecessary revision of the internal space at ground-floor level. The approved layout would result in the reduction in the size of a bedroom in order to provide a corridor. The approved layout of the ground-floor does not make efficient use of space and results in the removal of space from a two-bedroom flat that would otherwise be used as living and circulation space.
- 6.30 It is considered that there is no harm caused to the character and appearance of the building or the building itself or the conservation area as a result of the proposed external alterations for which planning permission has been refused, and that in the absence of any harm to visual amenity, the provision of an external staircase to the front of the existing building would represent a more appropriate means of providing access to the basement level accommodation.

7 Conclusion

- 7.1 The Refused Application represents a comparable development to the scheme that was previously granted consent over the Appeal Site. The only difference being that access to the new dwelling will be via an external stair from the front garden, with a slightly large front light well. The emergency external exit at the rear of the building has also been removed due to the introduction of a new independent access at the front of the property. While the Flood Risk Report enclosed at Appendix 3 confirms that it is not necessary, if the Inspector was to consider it necessary then a condition could be applied requiring this to be provided (subject to approval of details), and retained in perpetuity.
- 7.2 For the reasons set out above, it is considered that the Council's finding that the refused development at 190 Goldhurst Terrace will not maintain or improve the character and appearance of the South Hampstead Conservation Area; and will result in undue risk to future occupants from flooding, is not considered to be an accurate reflection of the proposals, or the context in which the Appeal Site is located.
- 7.3 Contrary to the Council's assessment of the Refused Application it is considered that this represents a high-quality design approach that this is an entirely appropriate response to the context provided by the Appeal Site and its surroundings. The carefully considered design approach allows for additional accommodation to be provided within the site whilst remaining respectful to and consistent with the character of Goldhurst Terrace.
- 7.4 As demonstrated in the appended Surface Water and Flood Risk Assessment, the Appeal Site is not at an elevated risk of surface water flooding and, despite there having been instances of flooding in Goldhurst Terrace, the physical characteristics of the site itself mean that there is little prospect of the proposed basement being the subject of flooding. The report prepared by Water Environment Ltd relating to this explains the basis for this finding, and ultimately recommends that the provision of Sustainable Drainage Systems (SuDS), within the site to mitigate against the slight increase in hard surfacing and resulting increase in runoff that would be anticipated will be sufficient to mitigate against any impacts on drainage associated with the proposal.
- 7.5 The Appellant will submit a Unilateral Undertaking at the relevant stage of the appeal process in order to ensure that appropriate mechanisms are in place to mitigate against any harm arising to the highway network. This would include contributions towards a Car Club for the use of future residents and highways improvements/ repairs, thus addressing Reasons for Refusal 3 and 4.

- 7.6 Overall, it is considered that the Refused Application makes efficient use of land resulting in additional residential accommodation. This, in turn, assists in meeting national, regional and local policies for the provision of new homes to meet the current and future residents' needs. The development will provide these benefits whilst preserving the street scene of Goldhurst Terrace and maintaining the character of the South Hampstead Conservation Area.
- 7.7 It is therefore respectfully requested that the Appeal is allowed, subject to any conditions that the Inspector considers it appropriate to apply.