

S106A Refusal Report

Officer	Application Number
Jonathan McClue	2021/0025/P
Application Address	Main Information Submitted
100 Avenue Road London NW3 3HF	<ul style="list-style-type: none"> • A copy of Appeal Decision Notice ref: 2014/1617/P, dated 18 February 2016; • Copies of NMA decision notices, ref: 2019/1405/P, granted 7 May 2019 and ref: 2018/4239/P, granted 4 August 2020; • A detailed planning analysis, prepared by Savills dated December 2020; • A Viability Assessment Report, prepared by Savills dated December 2020; and • Other supporting information relating to viability.

Description of Development

Application in accordance with Section 106A, sub-sections (3) and (4), to amend clause 3.2 (and associated definitions) of S106 Agreement relating to 2014/1617/P dated 24/08/2015 (as amended by 2018/4239/P dated 04/08/2020 and 2019/1405/P dated 07/05/19) (for: redevelopment of site including a 24 storey and 7 storey building with a total of 184 residential units, 1,041sqm of retail/financial or professional services/café/restaurant and 1,350sqm of community use (summary)). The AMENDMENTS include REMOVING the requirement to provide 28 Affordable Rent units, 8 Intermediate Housing units and 18 Discounted Market Rent units (for a minimum of 15 years post completion), to be REPLACED with 18 Discounted Market Rent units in perpetuity. Modification of various relevant definitions - Disposal Viability Assessment, Original Viability Assessment and Surplus - to refer to Gross Development Value figure identified in the Financial Viability Assessment report dated 09/12/2020.

Recommendation: Refuse Proposed Obligation Modification of Clause 3.2 within s106 related to 2014/1617/P dated 25/08/2015

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Main Assessment/Reason for Refusal

1) Scope of Application – Whether s106 obligation serves a useful purpose and if the proposed modification would serve the same purpose equally well

Summary

1.2 The remit of what needs to be considered under s106A is limited to considering whether the modified s106 obligation would serve 'the same purpose equally well'. The central question is 'did the obligation serve a useful purpose'. It is considered that the original obligation did serve a useful purpose (i.e. the delivery of a specified number of affordable units of a variety of types) and the modified obligation would reduce the overall number of affordable units and provide solely Discounted Market Rent, whilst this is considered to be a form of affordable accommodation, it is not one encouraged/required/recognised as 'affordable housing' under the Council's adopted planning policy as it is less affordable than traditional forms of affordable housing and does not address the significant housing need identified in the borough for low cost housing (i.e. the proposal would be less useful as there would be less affordable housing and less tenures).

1.3 On this basis the proposed modification is unacceptable as it would fail to serve the same purpose as the original obligation, which serves a useful purpose. The s106A application is therefore refused on this ground.

Scope of s106A application

1.4 As summarised above, the statutory test to be applied when determining the acceptability of an application to amend a s106A obligation is set out in s106A(6)(c) of the Town and Country Planning Act (TCPA) 1990, namely where the (original) obligation continues to serve a useful purpose, whether the obligation sought by the application would serve the purpose (of the

original obligation) equally well if it were to be modified as specified.

1.5 The scope of consideration under s106A TCPA 1990 has been considered in several High Court cases and, to some extent, the Court of Appeal. In R v (Garden and Leisure Group Limited v North Somerset Council v (Garden and Leisure Group Limited v North Somerset Council [2003] EWHC 1605 (Admin), Richards J said, at para 28:

‘There are four essential questions to be considered: what is the current obligation? What purpose does it fulfil? Is it a useful purpose? And if so, would the obligation serve that purpose equally well if it had effect subject to the proposed modifications? Mr Elvin lays stress on the words ‘equally well’ and describes them as ordinary English words importing a principle of equivalence. Section 106A involves a precise and specific statutory test and does not bring in the full range of planning considerations involved for example in an ordinary decision on the grant or refusal of planning permission’.

1.6 This decision was considered by Garnham J in R (oao Mansfield DC) v SoSHLG [2018] EWHC 1794 (Admin) who identified ‘*the central question*’ as ‘*did the obligation serve a useful purpose*’. The Judge then went on to consider the question of whether or not the ‘*useful purpose*’ has to be a planning purpose, preferring the broader approach of Ousley J in R (Renaissance Habitat Ltd) v West Berkshire DC [2011] EWHC 242 (Admin) who considered that it did not. This approach is consistent with the decision and reasoning in R (oao Millgate Developments Ltd) v Wokingham BC [2012] JPL 258. There the Local Planning Authority (LPA) had refused to discharge an obligation in a case where the inspector on an s.78 appeal had decided that the contributions secured were not necessary. The Court of Appeal upheld the refusal, holding that there was no need to reopen the planning merits and pointing out that s.38(6) Planning and Compulsory Purchase Act 2004 does not apply to s.106A TCPA 1990.

1.7 The Council considers that the statutory question of whether or not the obligation serves a useful purpose ‘equally well’ should include consideration of types of affordable housing as well as quantum; however, that wider questions of viability and planning balance go beyond what is required by the case law and stray into areas which are not material. Therefore, the approach to considering this s106A application is:

(a) Whether the obligation serves a useful purpose – yes it does. The delivery of a specified number of affordable units of a variety of types serves a useful purpose;

(b) Whether the modified obligation would serve that purpose equally well – quite simply no it does not. The overall number and tenure of genuinely affordable units would be reduced. The proposed modification would be a significantly lower number, all of one type/tenure and of lesser affordability. On this basis the modified obligation would be less useful because it would be catering for fewer people overall and it would no longer meet a range of different housing and affordability needs.

Commentary

1.8 Affordable housing was secured as part of the approved scheme as there was a requirement under the Development Plan. The relevant local policies at the time of the original approval were CS6 and DP3 within the Local Development Framework Core Strategy and Development Plan documents. These policies have been superseded by the Camden Local Plan 2017. Affordable Housing policy is primarily applied through policy H4 (Maximising the supply of affordable housing). It states that ‘*the Council will aim to maximise the supply of affordable housing and exceed a borough wide strategic target of 5,300 additional affordable*

homes from 2016/17 - 2030/31, and aim for an appropriate mix of affordable housing types to meet the needs of households unable to access market housing'. The need for affordable housing has not diminished. The 50% target for affordable housing still applies and it is therefore concluded that the subject clause of the s106 (3.2) still serves a useful purpose in providing affordable housing. The proposed modification effectively results in the loss of affordable housing which is required by policy, and leaves a form of affordable housing that is not supported. On this basis, it cannot be concluded that the modification would serve the purpose equally well.

1.9 The proposed modification includes the removal of the current requirement to provide 36 units of affordable housing (8 Intermediate Housing and 28 Affordable Rent Housing Units (permanent)) and 18 units as Discounted Market Rent for a minimum period of 15 years post practical completion. This original obligation secured approximately 25% (as suggested by the applicant, based on GEA) of the total residential floorspace as affordable (in terms of units - 36 units (28 Affordable Rent and 8 Intermediate Housing) out of the total of 184 residential units on-site (19.6%) are considered to constitute genuinely affordable housing). It is noted that this is not a policy compliant position in terms of quantum (at the time nor under today's policy framework), which is 50% of the floorspace. Under current policy the London Plan requires 50% of housing to be affordable by habitable room and that subject to providing a policy compliant mixture of tenures (in Camden Council's case – 60% social-affordable rent and 40% intermediate rent), applications made to the Greater London Authority can potentially fast-track viability at 35% (by habitable room).

1.10 The proposed modification is to replace the above with 18 units (less than 10% by unit) as Discounted Market Rent in perpetuity. The Local Plan requires all affordable housing to be genuinely affordable. This includes social-affordable rented units and intermediate rented units. Discounted Market Rent is not a model that Camden supports in new schemes coming forward, as it is not recognised as a genuinely affordable tenure of affordable housing.

Conclusion

1.11 The purpose of Clause 3.2 of the s106 legal agreement is to deliver the consented quantum of affordable housing. This obligation and the affordable housing it secures serves a useful purpose. As per the requirements of s106A(6), the modification proposed would mean that Clause 3.2 would not continue to serve its original purpose equally well. The purpose was to deliver 36 units of affordable housing (8 Intermediate Housing and 28 Affordable Rent Housing Units (permanent)) and 18 units as Discounted Market Rent for a minimum period of 15 years post practical completion. This would be significantly reduced to a much lower quantum and result in the loss of a range of tenures that are considered genuinely affordable (i.e. intermediate rent and affordable rent). The proposed modification would therefore not serve the purpose equally well.

Notwithstanding Assessment (Without Prejudice to Above)

Overview

As stated above in paragraph 1.7 (above) and Appendix 4 (below), the remit of an s106A application is to consider whether or not the proposed obligation serves a useful purpose 'equally well'. This report (above) concludes that it would not as the quantum and types of affordable housing are being significantly reduced such that the obligation would fail to deliver

on planning policy requirements for affordable housing. It is considered that wider questions of viability and planning balance go beyond what is required by the case law and stray into areas which are not material. Notwithstanding this position, a brief analysis is put forward on viability and planning balance considerations. This is on a without prejudice basis.

2) Viability Considerations

Summary

2.1 The applicant has submitted a Financial Viability Assessment Report, which attempts to update the viability position since the original Viability Report in 2014. The Council does not consider viability matters are relevant to the determination of a s106A application. Notwithstanding this, an Independent Viability Review has been carried out by BPS on behalf of the Council. This report (dated March 2021) is attached as Appendix 7 (below).

2.2 The National Planning Policy Guidance (NPPG), Paragraph: 009 Reference ID: 10-009-20190509, states that:

*‘Where contributions are reduced below the requirements set out in policies to provide flexibility in the early stages of a development, there should be a clear agreement of how policy compliance can be achieved over time. As the potential risk to developers is already accounted for in the assumptions for developer return in viability assessment, realisation of risk does not in itself necessitate further viability assessment or trigger a review mechanism. **Review mechanisms are not a tool to protect a return to the developer, but to strengthen local authorities’ ability to seek compliance with relevant policies over the lifetime of the project.**’ (Emphasis added)*

2.3 What the above makes clear is that where a developer chooses to progress a development project they do so knowing that there is risk which might result in diminished profits or even financial loss and that risk should not be passed back to the Local Planning Authority (LPA) by removing public benefits which formed part of a scheme at the grant of a permission in order to make a development more viable. In this instance the applicant willingly took on the risk associated with the development – they proposed more affordable housing than was considered viable at the time in anticipation of improvements in the market – and relied on the weight of the public benefits associated with the proposed affordable housing to get planning permission. This was part of the planning balance and was something that the Planning Inspectorate and Secretary of State took into account in the original decision. The applicant is essentially relieving themselves of this risk and placing it on the LPA (and general public), by significantly reducing the quantum and tenures of affordable housing that they relied on to gain consent in the first place.

2.4 In summary the applicant took a site with an office building that had an associated Existing Use Value (EUV). They have now demolished that building so no longer have its value to fall back on. The applicant has implemented the development and partly completed it, including creating a basement and laying a ground floor slab. The site is only suitable for residential development. It is allocated to optimise the potential of the site to provide new housing (including affordable housing) in the Council’s existing Site Allocations Document dated September 2013 and has further protection through planning policy as there is an extant permission that is partly built out (Policy H1 of the Local Plan 2017). The Council considers that it is unlikely that making the scheme smaller would make it more financially viable and the approved envelope is considered to be the maximum quantum of development that could be delivered on this site. The applicant must therefore work within the envelope of the existing

consent, and it is considered unlikely that the parameters will change. The scheme is not considered to be viable with or without the proposed modification to the planning obligation. Therefore, the modification would still result in an unviable scheme. If the affordable housing were to be removed, then all the associated harm with the proposal as originally consented would heavily outweigh the remaining benefits. As has been stated above the Council's position is that viability is not relevant to the consideration of this application because it falls outside of the scope of the legislation, but were the Council required to take it into account the applicant's position – it would not be accepted. The proposed modification to the obligation would require the Council to forfeit the benefits secured by the scheme to satisfy planning policy in order to reduce the financial risk to the developer, the NPPG is very clear on this point that this is not the purpose of reviewing viability following the grant of planning permission.

2.5 Further detailed analysis on the viability position is outlined within BPS's report. This includes a thorough analysis of the benchmark land value, residential unit (private unit and affordable housing) values, commercial values and development costs.

3) Planning Balance

3.1 The original planning application was found to have harm by the LPA, Planning Inspectorate and the Secretary of State. It was refused by the LPA on 03/10/2014 for the following substantive reasons (see Appendix 9 for Decision Notice):

- The proposed development by reason of its height, bulk, mass, design and density represents overdevelopment of the site which would have an adverse impact on the character and appearance of surrounding conservation areas and the local area; and
- The proposed development by reason of its height, bulk and mass would result in loss of amenity, especially overshadowing to the adjacent Swiss Cottage Open Space and surrounding areas.

3.2 In the letter from the Department for Communities and Local Government (DCLG) dated 18/02/2018 (in Appendix 8 of this report), paragraph 24 states:

*'Overall, the Secretary of State agrees with the Inspector for the reasons given that the proposal generally accords with the aims and objectives of CS Policies CS5 & CS14, DP Policy DP25 and LP Policy 7.8. However, he also agrees with the Inspector for the reasons given that **there is some harm** in terms of CS Policies CS5, CS14 and DP25 to be carried through into the planning balance, **due to the 'less than substantial' harm the development would cause to the Belsize Conservation Area in respect of the view from Belsize Park.**' (Emphasis added).*

3.3 Paragraph 51 of the letter from DCLG elaborates on other areas of the proposal that cause harm:

*'Other factors that the Secretary of State finds weigh against the scheme are: **the impact on trees, to which he attaches moderate weight; disruption during construction, to which he attaches little weight** for the reasons in IR392; the **impacts on views from around the area and the increase in shading in respect of the Swiss Cottage Open Space, both of which he gives moderate weight.**' (Emphasis added).*

3.4 The harm to the Swiss Cottage Open Space included 'some loss of sunlight, small changes to the microclimate and additional building surrounding it and..... the increase in shading is a

harm that needs to be weighed against the proposal' (paragraph 393 of the Report to the Secretary of State for Communities and Local Government dated 23/09/2015).

3.5 Paragraph 52 of the DCLG letter then weighs up the harm against the benefits of the scheme:

*'Weighing in favour of the appeal the Secretary of State finds, for the reasons given above: considerable social benefit in the provision of the proposed housing **and affordable housing**, Secretary of State considers that the public benefits of the proposal outweigh the less than substantial harm, in Framework terms, to the Belsize Conservation Area'. (**Emphasis added**)*

3.6 The scheme as consented, and with the proposed modification, would lead to 'less than substantial' harm to a designated heritage asset (the Belsize Conservation Area). Other harm would be caused via impacts on trees, disruption during construction, loss of sunlight and microclimate impacts on the Swiss Cottage Open Space.

3.7 The law requires that less than substantial harm to a designated heritage asset must be afforded significant weight in the planning balance and may only be outweighed where there are sufficiently substantial public benefits delivered by the development. The original obligation that is proposed to be modified secured 36 units of genuinely affordable units of housing (8 Intermediate Housing and 28 Affordable Rent Housing Units (permanent)) and 18 units as Discounted Market Rent for a minimum period of 15 years post practical completion. The public benefit associated with the 36 genuinely affordable units of affordable housing is considered to result in substantial public benefits. The proposed modification significantly alters this obligation to only 18 units as Discounted Market Rent for perpetuity. Such a modification would significantly alter the planning balance and result in a scheme with a reduced package of benefits that would not serve the planning purpose of delivering much needed affordable housing equally well – and it therefore requires the full range of planning considerations to be reviewed in the way that the Court of Appeal (in the North Somerset case) held to be inappropriate for consideration of S106A applications.

Conclusion

4) Conclusion and Reasons for Refusal

4.1 The original obligation (Clause 3.2 of the s106 legal agreement attached to planning permission 2014/1617/P dated 18/02/2016) serves a useful purpose which is delivering the consented quantum and tenures of affordable housing. The proposed modification would significantly reduce the consented affordable housing to a much lower quantum and result in the loss of a range of tenures that are considered genuinely affordable. The proposed modification would therefore not serve the purpose equally well and the application is rejected on this basis. This primary reason for refusal is set out below:

- 1) *In accordance with Section 106A of the Town and Country Planning Act the planning obligation shall continue to have effect without modification. The application to modify the affordable housing obligation is refused as the original obligation is considered to serve a useful purpose, which is delivering the consented amount and tenures of affordable housing. Furthermore, the proposed modification would not serve it equally well because there would be a significant reduction in the amount of affordable housing and a loss of a range of tenures that are considered genuinely affordable.*

Therefore, the proposed modification to the original planning obligation would fail to meet the requirements of s106A(6)(c) of the Town and Country Planning Act 1990.

4.2 The applicant's reappraisal of the viability information is not considered to be within the remit of a s106A application. Government guidance (NPPG) makes it very clear that '*review mechanisms are not a tool to protect a return to the developer, but to strengthen local authorities' ability to seek compliance with relevant policies over the lifetime of the project*'. A certain quantum and tenure of affordable housing was offered as a public benefit by the applicant notwithstanding the original scheme not being considered financially viable. It is not up to the planning process to allow the developer to renege on these benefits after willingly taking on this risk as part of the development.

4.3 Furthermore, the proposed modification of the affordable housing quantum and tenures would significantly alter the public benefit associated with the consented scheme. The original scheme was found harmful by the LPA, the Planning Inspectorate and the Secretary of State and great weight was attributed to the delivery of affordable housing in the planning balance. Harm caused by the consented proposal included 'less than substantial harm' to the conservation area.

4.4 The law requires significant weight to be afforded in the planning balance when harm to a designated heritage asset occurs and any public benefits need to be substantial and compelling. The reduction of public benefit that the proposals would bring would result in a materially different package of benefits than that which was deemed acceptable by the Secretary of State (following a recommendation from the Planning Inspectorate). Such a modification would significantly alter the planning balance and result in a scheme with a reduced package of benefits that would not serve the planning purpose of delivering much needed affordable housing equally well – and it therefore requires the full range of planning consideration to be reviewed in the way that the Court of Appeal (in the North Somerset case) held to be inappropriate for consideration of S106A applications.

Appendices

5 Site Analysis, History and Policy Context

6 Consultation Summary

7 BPS Review of the Viability Analysis

8 Secretary of State and Planning Inspectorate Reports for 2014/1617/P dated 25/08/2015

9 Original Decision Notice for 2014/1617/P dated 03/10/2014

Appendix: 5 - Site Analysis, History and Policy Context

Site Analysis

The application site is bounded on its western side by Avenue Road and the busy Swiss Cottage/Finchley Road junction and gyratory. Ye Olde Swiss Cottage Pub is located directly opposite on the western side of Avenue Road, facing onto the junction. The site has an area of 6,162m².

The site is bounded on its northern side by the western end of Eton Avenue, which is pedestrianised and occupied by an occasional market. On the northern side of Eton Avenue is the School of Speech and Drama, which is 8 storeys high.

Northeast of the site is the Hampstead Theatre, which fronts onto Eton Avenue. A pedestrian route between Eton Avenue and Swiss Cottage Open Space separates the site from the Hampstead Theatre.

To the east of the site is Swiss Cottage Open Space, which is designated open space (Swiss Cottage Open Space - 113). To the east of this open space is the rear of properties fronting Winchester Road, which are generally commercial at ground floor level and residential above and also a community centre, the Winch at number 21, which works with children, young people, families and members of the local community. The Visage residential development is located south-east of the open space and is 5 storeys, beside the open space, rising up to 16 storeys as it moves south. The Belsize Park Conservation Area is the closest conservation area and is located to the east, on the other side of the open space.

To the south of the site is a small area of open space, a grade II listed sculpture and the Swiss Cottage Library (designed by Sir Basil Spence), which is grade II listed. To the south-east of the site (on the southern side of the open space) is Swiss Cottage Leisure Centre.

In February 2016 planning permission (ref. 2014/1617/P) was granted by the Secretary of State (following a public inquiry) on 18/02/2016 for the demolition of the previous building on the site to be replaced by a 24 storey building and a part 7 part 5 storey building comprising a total of 184 residential units (Class C3) as well as circa 1,041sqm flexible retail/financial/restaurant and 1,350sqm for community use. Planning permission has been implemented and is extant, with the previous building being demolished and the basement and ground floor slab laid. A copy of the Inspector's report and the Secretary of State's decision can be seen at the following link (also attached to this Officer Report as Appendix 8: <https://www.gov.uk/government/publications/recovered-appeal-100-avenue-road-london-nw3-3hf-ref-3001616-18-february-2016>

History

2014/1617/P - Demolition of existing building and redevelopment for a 24 storey building and a part 7 part 5 storey building comprising a total of 184 residential units (Class C3) and up to 1,041sqm of flexible retail/financial or professional or café/restaurant floorspace (Classes A1/A2/A3) inclusive of part sui generis floorspace for potential new London Underground station access fronting Avenue Road and up to 1,350sqm for community use (class D1) with associated works including enlargement of existing basement level to contain disabled car parking spaces and cycle parking, landscaping and access improvements - Granted conditional planning permission subject to a Section 106 legal agreement on appeal on 18/02/2016.

2016/1321/P – Amendment to Conditions 27 and 31 (to allow discharge of the conditions prior to the commencement of belowground works) of planning permission 2014/1617/P dated 18/02/16 for demolition of existing building and redevelopment for a 24 storey building and a part 7 part 5 storey building comprising a total of 184 residential units (Class C3) and up to 1,041sqm of flexible retail/financial or professional or café/restaurant floorspace (Classes A1/A2/A3) inclusive of part sui generis floorspace for potential new London Underground station access fronting Avenue Road and

up to 1,350sqm for community use (class D1) with associated works including enlargement of existing basement level to contain disabled car parking spaces and cycle parking, landscaping and access improvements – Withdrawn on 22/03/2016.

2016/1893/P - Detail of air quality monitoring required by condition 24 of 2014/1617/P dated 18/02/2016 – Granted on 27/06/2016

2016/2128/P – Non-material amendment for amendment to Condition 31 (to allow discharge of the conditions prior to the commencement of below-ground works) of planning permission 2014/1617/P dated 18/02/16 for demolition of existing building and redevelopment for a 24 storey building and a part 7 part 5 storey building comprising a total of 184 residential units, commercial space and associated works – Refused on 05/05/2016

Reason for refusal: officers were not satisfied that the proposal was non material, officers considered that the demolition of the existing buildings without details on the feasibility of the erection of the replacement building could result in a delay in the proposed building being erected, officers therefore considered this to be a material amendment.

2016/2048/P - Non-material amendment to Condition 27 (u-values and thermal bridging) of planning permission 2014/1617/P dated 18/02/16 to require details before the relevant part of the work commences - Granted on 10/05/2016.

2016/2352/P - Details of tree protection required by condition 21 of planning permission 2014/1617/P dated 18/02/2016 – Granted on 27/06/2016

2016/2803/P - Variation of condition 31 of planning permission 2014/1617/P dated 18/02/16 for demolition of existing building and redevelopment for a 24 storey building comprising a total of 184 residential units and flexible commercial and community use with associated works namely to change the point at which full details are submitted – Withdrawn on 28/07/2016.

2016/6699/P - Details pursuant to Condition 31 (outline method statement) of planning permission 2014/1617/P dated 18/02/16 – Granted on 20/06/2017

2017/3139/P - Details of u-values and approach to thermal bridging as required by condition 27 of planning permission 2014/1617/P dated 18/02/2016 - Granted on 17/07/2017

2017/3838/P - Details of the west-facing balustrade to partially discharge condition 15 (microclimate mitigation measures) of planning permission 2014/1617/P dated 18/02/2016 - Granted on 01/08/2017

2017/4196/P - Details of the levels at the interface of the development with the boundary of the property and the public highway to discharge condition 4 (boundary levels) of planning permission 2014/1617/P dated 18/02/2016 – Granted on 30/08/2017

2017/4036/P - Non-material amendment of planning permission 2014/1617/P dated 18/02/16 was submitted for a series of internal and external changes to the buildings. The application has been referred to Planning Committee and is waiting to be decided.

2017/5859/P - Details of Geoenvironmental Interpretative Report and Laboratory results calculations to discharge condition 14 (1) (land contamination survey and lab results) of planning permission 2014/1617/P dated 18/02/2016 – Granted on 12/12/2017

2017/6884/P – A Certificate of lawfulness existing use or development (CLEUD) to establish that demolition works constituted a material operation for commencement of planning permission 2014/1617/P (allowed under appeal ref: APP/X5210/W/14/3001616 dated 18/02/2016) in accordance with condition 1 – Granted on 08/02/2018

2018/1098/P – Details of detailed design and construction method statements relative to the HS2

structures and tunnels to discharge condition 17 of planning permission 2014/1617/P dated 18/02/2016 – Granted on 09/04/2018

2017/6638/CMP - Construction Management Plan (CMP) for a mixed used development (24 storey and 7 storey buildings with residential units, flexible retail/café/restaurant space and community use) approved under 2014/1617/P dated 18/02/2016. Following a resolution to discharge Clause 3.5 of the Section 106 Legal Agreement related to 2014/1617/P by approving a pre-commencement version of the CMP, it was initially discharged on 22/11/2018. An amended version of the CMP was discharged on 22/01/2019 to clarify lorry numbers using Winchester Road and the secondary A41 entrance. This is referred to as the Approved CMP.

2018/2340/P and 2018/2347/L - Removal and temporary re-siting of the Hampstead Figure Sculpture for the duration of the construction associated with 100 Avenue Road under 2014/1617/P dated 18/02/2016 – Granted on 27/06/2018

2018/4239/P - Non-material amendment of planning permission 2014/1617/P dated 18/02/16 was submitted for a series of internal and external changes to the buildings. The application was granted subject to a Deed of Variation on 04/08/2020

2019/1772/P - Details of landscaping to the eastern boundary of the site to partially discharge condition 15 of planning permission 2014/1617/P dated 18/02/2016 – Granted on 16/10/2019

2019/1773/P - Details of landscaping, replacement trees and planting and maintenance plan to discharge condition 3 (landscaping details) of planning permission 2014/1617/P dated 18/02/2016 – Granted on 16/10/2019

2019/1405/P - Non-material amendment of planning permission 2014/1617/P dated 18/02/16 to amend condition 18 (materials) to require details prior to above ground works (other than demolition) and for a 1:1 mock-up of a typical elevation bay and other technical drawings - Granted on 07/05/2019

2019/2275/P - Details of detailed design, proposed piling and construction method statements relative to the HS2 structures and tunnels to partially discharge condition 17 (revised piling details) of planning permission 2014/1617/P dated 18/02/2016 – Granted on 29/05/2019

2021/0022/P - Details of the facing materials to discharge condition 18 of planning permission 2014/1617/P dated 18/02/2016 – Currently under consideration

Policy Context

Any modification is assessed against current policy standards rather than the considerations at the time when the original application was determined. As such, the relevant policies to the assessment of this application are as follows:

Section 106 of the Town and Country Planning Act 1990

Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992

National Planning Policy Framework 2019

NPPG

London Plan 2021

Camden Local Plan 2017 and Camden Planning Guidance

Local Plan:

Policy G1 Delivery and location of growth

Policy A1 Managing the impact of development
Policy A2 Open space
Policy A4 Noise and vibration
Policy CC4 Air quality
Policy CC5 Waste
Policy D1 Design
Policy D2 Heritage
Policy H4 Maximising the supply of affordable housing
Policy H5 Protecting and improving affordable housing
Policy T1 Prioritising walking, cycling and public transport
Policy T3 Transport infrastructure
Policy T4 Sustainable movement of goods and materials
Policy DM1 Delivery and monitoring

Camden Planning Guidance (CPG):

Air Quality CPG
Amenity CPG
Design CPG
Developer Contribution CPG
Housing CPG
Public open space CPG
Transport CPG
Trees CPG

Provisions relating to Section 106A(3) applications

Section 106A(3) provides the ability to apply for the obligation: “(a) to have effect subject to such modifications as may be specified in the application; or (b) to be discharged.”

The procedure to be followed is set out in the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992. An application may be determined in one of three ways: “(a) that the planning obligation shall continue to have effect without modification; (b) if the obligation no longer serves a useful purpose, that it shall be discharged; or (c) if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.”

The modifications specified in the application must be considered in their entirety. It is not possible to approve an application by accepting some modifications but rejecting others. Section 106A of the 1990 Act does not require that regard be had to the development plan for the purposes of determining an application or appeal in respect of the proposed modification or discharge of a planning obligation. There is however a body of case law which clarifies these matters and it primarily comes down to what is the useful planning purpose.

The key consideration of section 106A is whether or not the obligation serves a useful planning purpose and if it does whether or not that purpose can be served equally well by the proposed amendments. There are no further planning regulations or guidance about how this is assessed.

Appendix: 6 - CONSULTATION SUMMARY

Case reference number

2021/0025/P

Case Officer:

Jonathan McClue

Application Address:

100 Avenue Road, London NW3 3HF

Proposal(s)

Application in accordance with Section 106A, sub-sections (3) and (4), to amend clause 3.2 (and associated definitions) of S106 Agreement relating to 2014/1617/P dated 24/08/2015 (as amended by 2018/4239/P dated 04/08/2020 and 2019/1405/P dated 07/05/19) (for: redevelopment of site including a 24 storey and 7 storey building with a total of 184 residential units, 1,041sqm of retail/financial or professional services/café/restaurant and 1,350sqm of community use (summary)). The AMENDMENTS include REMOVING the requirement to provide 28 Affordable Rent units, 8 Intermediate Housing units and 18 Discounted Market Rent units (for a minimum of 15 years post completion), to be REPLACED with 18 Discounted Market Rent units in perpetuity. Modification of various relevant definitions - Disposal Viability Assessment, Original Viability Assessment and Surplus - to refer to Gross Development Value figure identified in the Financial Viability Assessment report dated 09/12/2020.

Representations

Consultation:

6 site notices were displayed from 20/01/2021 in the following locations:

- 1 x in front of site on Avenue Road
- 1 x between site and Swiss Cottage Library on Avenue Road
- 1 x Adelaide Road near Swiss Cottage Leisure Centre entrance
- 1 x Winchester Mews
- 1 x rear of the site near construction hoarding
- 1 x between site and Hampstead Theatre

A local press release was published on 21/01/2021.

Summary of representations	<p>At least 75 written objections were made. The objections were from a range of local residents and groups, including:</p> <ul style="list-style-type: none"> • Occupiers on Hampstead Hill Gardens, Eton Avenue, Alexandra Road, Eton Court, Goldhurst Terrace, Belsize Lane, Compayne Gardens, Gladstone Court, Belsize Square, Harman Drive, Fairhazel Gardens, Lancaster Grove, Crossfield Street, Makepeace Avenue, The American School in London, Strathray Gardens, Leighton Grove, Adamson Road, Belsize Park, Lisburne Road, Lawn Road, Daleham Gardens, Buckland Crescent, Canfield Gardens, Banister Mews, Acol Road, Canfield Gardens, Arkwright Road, Aberdale Gardens, Fairfax Place • Combined Residents Association for South Hampstead (CRASH), Belsize Society, Cresta House Residents Association (CHRA), Save Swiss Cottage Action Group, Belsize Society and Save Swiss Cottage. • Cllrs Simon Pearson and Nayra Bello O'Shanahan (Swiss Cottage), and Cllrs Tom Simon and Luisa Porritt (Belsize) <p>The objections raised a number of issues and included comprehensive detailed responses. Some of the objections included joint comments on an application currently being considered to discharge the materials (ref. 2021/0022/P). The below is not an exhaustive list of the many objections raised but attempts to capture the primary material themes:</p> <ul style="list-style-type: none"> • The Planning Inspector clearly considered provision of social housing to be one of the major benefits from the local community. Any departure from this would be detrimental to the social benefits aspect of this scheme and would not comply with paragraphs 61-64 of the NPPF • A change of financial contributions is not a valid planning reason for varying previously imposed planning conditions. The applicant ventured into the original scheme under the conditions prevailing at the time, and if they no longer pursue the scheme along those lines, they must withdraw and apply for a new costed scheme • There is a very high level of pressure on affordable housing within the borough, so for a large-scale development of this type it is essential that it plays a role in addressing that problem. This attempt by Essential Living to remove the affordable housing requirement is not acceptable. It is also an act of bad faith towards the local community, which has engaged closely with EL over the demolition and

construction plans, despite being opposed to the scheme as a whole.

- The Inspector only gave permission for this scheme on an 'on balance' basis. Given the damage the scheme would cause to the local environment, the local conservation areas, local jobs, local diversity and sustainability, permission was granted because, on balance, the affordable housing offer, in the view of the inspector, outweighed the other harms caused. There can be no doubt that with the reduced affordable housing offer, the scheme would not have been granted permission on appeal. The developers have showed remarkable bad faith through this whole process. They have shown no regard for the local community. This attempt to reduce the affordable housing is an appalling slight of hand.
- The proposal is an entirely new application and should be dealt with as one
- The situation is similar to the Sittingbourne Kent fiasco, when Essential Land (then governed by the same founders as Essential Living (and still sharing the same website banner), reneged on their affordable housing agreement, leaving the site fallow for six years until it was eventually sold
- There are other options for the developers, such as radically reducing the size of the project
- The application is an affront to all the local who live, work and place in Swiss Cottage
- The approved application is already inadequate in terms of provision of social housing/affordable housing, therefore it is not acceptable to reduce the social housing/affordable housing provision still further
- To remove the 36 affordable units with private rented units fundamentally alters the nature of the development and cannot be accepted as a time when the need for affordable housing has increased dramatically as a result of the financial hardship inflicted by the pandemic. A development of this scale has to have some wider social value to the community and cannot be simply a way for property developers to maximise their profits
- The threat by the developers that the development cannot go ahead without these changes is an empty threat, because ultimately there are other more valuable uses for the site to the borough. Furthermore, the full impact of the pandemic on the housing market in Camden and London in general is not yet known and the Council

should not feel the need to be rushed into a decision

- The residents and Council Tax payers of Camden are not responsible for underwriting the finances of this development, and all developers undertake a financial risk in return for their potential rewards. If Essential Living have failed to plan and execute this project with an appropriate margin of financial security, it is not for the residents and Council Tax payers of Camden to "bail them out", or to help educate them in the business of property development, and therefore this is not a cause for reducing their legal obligations under the planning approval. The project is already poorly conceived and an offence to the neighbourhood and the community, and yet it was explicitly approved in return for these negotiated agreements which Essential Living willingly undertook
- It is sadly often the case that developers sign-up to over-ambitious Section 106 commitments in regard to affordable housing provision simply to obtain planning consent, and then subsequently and cynically plead changed, and adverse, financial circumstances to the local authority as a reason for being allowed to wriggle out of them and to ditch the affordable housing element
- The effect of the modification being sought would remove the obligation to provide the affordable housing, a key purpose of the original obligation. In order to satisfy the requirements of the statutory test the applicant must show that the obligation to provide affordable housing, which clearly serves a useful purpose, would serve that purpose equally well when modified by the application. Here it could not possibly do so if the affordable housing element is removed. It is absolutely clear that the purpose of the original application was to secure consent for a development of 184 flats, including 36 affordable flats, and other development, to support the case for this very controversial application. Given that the developer's commitment to include affordable flats was seen as a key element in the original decision to grant the consent, neither of the two scenarios set out by Savills mean that the test set out in S.106A(6)(c) can be met by the proposal to omit the affordable housing.
- Challenge the suggestion that a developer can agree obligations to secure a consent and then seek to renege from those obligations once it has the consent. If that were permitted then the system of entering into obligations under a S106 agreement would be worthless. Here the developer took extensive professional advice and made a commercial decision to agree to provide affordable housing in order to secure consent for a development that presumably would not

otherwise have been granted.

- Savills seek to justify the attempt to resile from the obligations by reference to the delay. The Belsize Society cannot accept that this is a valid reason. Any professional developer will understand that delays are likely to occur with a large scale and complex project. Here the developer appears to have failed to manage the process properly in particular by failing to meet the requirements in relation to the Construction Management Plan. After obtaining consent in February 2016 it belatedly started work with the terms of the S106 agreement in place. It then made a decision to stop work in June 2020, although work on construction projects was not prohibited by Covid-19 regulations. It cannot now claim that it is justified in changing the fundamental nature of the development because of its own delays.
- Where a developer has employed experienced professionals to advise it and has taken commercial decisions that meant it took on obligations to provide affordable housing in order to gain the consent, then it should not be possible for the developer to seek to walk away from the obligations later. If it was badly advised it can seek redress from its advisers. If it took a commercial decision to accept the obligations in order to get the consent then it needs to live with the consequences of that decision.
- Essential Living took a commercial decision to enter into the S106 Agreement on these terms, without any provision for reviewing the number of affordable units in the event of an adverse change in viability. That was clearly a commercial decision made to secure the consent. It should not now be able to pick and choose which elements of the commitments it made at the time that it will continue to honour.
- The original purpose of Clause 3.2 of the S106 Agreement would be wholly undermined if the obligation in relation to affordable housing provision is removed. The proposal also conflicts with Policy H4.
- The applicant is purely a nominee company. There is no disclosure as to how this project has been and will be financed
- It appears that part of the increase in budgeted costs is accrued interest on a third party loan. Development loans are expensive and assume part of the risk and are a form of quasi-equity. As such the cost of those loans should not be treated as a third party cost as it is part of the return of the stakeholders. So the costs that should be taken into account are smaller and presumably more in line with the

originally budgeted costs. The cost write off in favour of accrued returns to quasi equity could be purely a bookkeeping exercise

- What is also of interest is the amount invested by the shareholders in this project. While a profit of £15.5m looks small in the context of the reported cost it may be significant in terms of invested capital
- It is probably fair to take the view there is a squeeze on returns here. If the scheme has been financed by aggressive levels of debt and that is the way it will continue to be financed this may no longer be available. Lenders will be looking at non-performing assets with a view to mothballing early stage and completing rapidly late stage. This looks to be in the former category. The decision maker should require evidence that committed funding is genuinely available to complete this
- If the applicant is stating that it is backed into a corner and has to be helped out by a more favourable 106 as a sharing of the pain cannot the Council insist on a new and viable scheme from which it can obtain a sensibly structured affordable housing levy? The mechanism would be by holding its position. This is a valuable and large asset and someone will develop it
- This was a highly contentious project to start with which will create real disturbance for many people in the area through the greater density of housing, more traffic (from deliveries, uber etc), more shadowing across the Open Space etc. Despite massive local objections the council approved the scheme. The only solace for the local community was the contribution that would be made through the affordable housing and relocation of the Winchester project.
- The site at 100 Avenue Road is a magnificent plot. There are plenty of ways that it can be put to great use to benefit the local community while providing a return for a developer. If Essential Living cannot make it work financially given the changed circumstances then so be it. They may have to take a loss on the site and sell up. Many businesses are suffering massive losses at the moment so I don't see why Essential Living, who can certainly afford it, should be protected at local expense from the misfortune we are all facing in these pandemic times.
- If we are to get the economy and local communities going again, then everyone must contribute. That means Essential Living may have to take some pain like the rest of us. But they most certainly should not be given a huge transfer of value from the tax payer and local

community by being relieved of their obligations.

- While Essential Living say the changes are needed because building costs have risen they ignore the fact that SO HAVE FLAT RENTAL INCOMES, even faster. They will still make millions!

Appendix: 7 - BPS Review of the Viability Analysis

100 Avenue Road, NW3 3HF

Independent Viability Review

Prepared on behalf of the London Borough of Camden

March 2021



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1.0 INTRODUCTION

- 1.1 BPS Chartered Surveyors have been instructed by the London Borough of Camden to undertake a review of a Financial Viability Assessment (FVA) prepared by Savills on behalf of Essential Living (Swiss Cottage) Limited ('the Applicant') in connection with a S106A application seeking a modification of the existing consent for redevelopment of the above site.
- 1.2 We understand that the site has an extensive planning history and have been provided with the following documents of particular note in order to inform this report:
- Savills' December 2020 Financial Viability Assessment Report
 - The February 2016 Appeal Decision
 - The Non-Material Amendment Decision May 2019
 - The Non-Material Amendment Decision August 2020
- 1.3 BPS were previously involved with the initial viability assessment of the site, last reporting in August 2014. At this point, we noted that Build to Rent schemes were in their relative infancy, with little or no relevant market evidence. Therefore, scheme value was decided using a proxy valuation assuming the scheme was brought forward on a for-sale basis. On this basis the scheme had a private residential GDV of £122,575,750 and the applicant accepted a Section 106 contribution of £1,810,079. This meant that the scheme appraisal generated a deficit of -£3,722,922.
- 1.4 At this previous review we were told the following about Essential Living's rent model:
- Units are let on shorthold tenancies
 - Rents will be in the upper third of current market rents
 - Large amenity areas will be provided which would otherwise be used for penthouses in market sale schemes
 - Anticipated 97% occupancy-
 - Rents for existing tenants capped to CPI increases to encourage tenants to take 3-5 year leases
 - No significant rent gradient with storey height as would be expected in private sale (as the rented market at the time was driven by budget, whereas arguably now it is driven by flexibility)
 - High levels of management and an expectation of ongoing costs associated with lettings and renewals. 25% OPEX was adopted at the time of our previous assessment
 - A yield of 5%
- 1.5 Our review anticipated that in order for the value of the scheme as Build to Rent to exceed its value as a for-sale scheme, rents of £6,124,800 per annum would need to be achieved.
- 1.6 Other items of note in our August 2014 note are a 30% landowner's incentive premium, which generated a benchmark land value of £31m when applied to an Existing Use Value of the offices on site at the time of £23.87m. Although we differed on the exact nature of the valuation inputs and premiums, we accepted that overall the benchmark land value adopted appeared reasonable. In addition, we noted it was difficult to assess the level of profit that was reasonable for the subject, noting that an allowance of 18.33% profit on GDV was made by the applicant. This was also accepted.

- 1.7 We understand that the scheme was refused at committee but successfully appealed in 2016. In the appeal, viability was not a ground for refusal as such it was not contested. It was accepted that the scheme would provide 36 affordable housing units and 18 discount market housing units secured for a minimum 15 years. However, a late stage review of viability was required to allow for viability to be reassessed within one year of practical completion and a deferred payment mechanism triggered if this demonstrated a scheme surplus. In addition, it was agreed that the community space could be converted to provide additional affordable housing dependent on the outcome of the review.
- 1.8 Prior to achieving consent, the site had accommodated an office building which formed the basis of the land value benchmark assessment. We understand that the consent has since been implemented, with works undertaken to demolish the existing structures, dig out the basement and construct the new building up to ground floor level. We understand construction commenced during 4Q2019. However, further development has been delayed by numerous judicial review challenges which have increased overall holding costs and construction costs over time. The applicant now seeks to argue that the site can in view of these cost increases, no longer viably support the affordable housing provision previously agreed. At appeal the provision of affordable housing was seen as a key benefit of the development in weighing the overall balance of harm versus benefit generated by the scheme, leading to the appeal being accepted and permission granted
- 1.9 Savills have provided two appraisals; the first shows the planning permission at contemporary costs and values excluding costs incurred to date, including the agreed affordable housing contribution. The latter models a 10% Discount Market Rent scenario (18 affordable housing units) excluding historic costs. Savills have adopted the agreed Land Value per the 2014 viability reviews and Section 106 agreement of £31m, based on an Existing Use Value of the site as offices. However, the scheme as consented generates a negative residual value according to Savills of -£18,965,767. Reducing the affordable housing to 18 DMR units improves this residual value to -£6,347,456, which remains negative even before the issue of benchmark land value is considered which would serve to increase the apparent deficit further.
- 1.10 Savills seek to argue on behalf of the applicant that without the Section 106A application, which is the subject of this review, the scheme will not be delivered. Their appraisals demonstrate that the scheme is unviable by “*normal commercial measures*” and that even the proposed, amended scheme with a lower provision of affordable housing remains in some level of deficit. A further scenario has been tested in which the Applicant excludes historic costs and adopts a site value of £1 and at this point the appraisal generates the equivalent of a 10.56% profit on GDV, which they deem deliverable.
- 1.11 On the 18th January 2021 we were informed that a Section 106A application had been made under reference 2021/0025/P to vary the affordable housing approved in the original scheme, which will be the principle concern of this report. There is also an application under reference 2021/0022/P to discharge the facing materials of the development.
- 1.12 The site is also known as Swiss Cottage and sits opposite Swiss Cottage underground station, in close proximity to Hamstead Theatre, retail offerings along Finchley Road, and the Swiss Cottage Leisure Centre. The Swiss Cottage Open Space abuts the site to the East.

- 1.13 The site received planning consent through appeal in February 2016 to develop 184 residential units (Class C3) intent on being Build to Rent accross 5-24 storey blocks, 1,041 sq m of Class A1-3 space, 1,350 sq m Class D1 community space and sui generis floorspace or potential new London Underground station access.
- 1.14 The proposals within the 2020 submissions are to revise the affordable housing provided at the site but we are not aware of any other material amendments made to the scheme beyond changes to fit out associated with the loss of affordable units and the cladding subject to a separate application.
- 1.15 The advice set out in this report is provided in the context of negotiating planning obligations and therefore in accordance with PS1 of the RICS Valuation - Global Standards 2020, the provisions of VPS1-5 are not of mandatory application. Accordingly, this report should not be relied upon as a Red Book Valuation. The Valuation Date for this Viability Review is the date of this report, as stated on the title page. This Viability Review has been undertaken in accordance with the Terms & Conditions provided to the Council and with any associated Letters of Engagement and should only be viewed by those parties that have been authorised to do so by the Council.
- 1.16 This Viability Review adheres to the RICS Professional Statement on Financial Viability in Planning (published May 2019). In accordance with this Statement, Section 9 below incorporates details of our Quality Standards Control & Statement on Limitation of Liability/ Publication.

2.0 CONCLUSIONS AND RECOMMENDATIONS

- 2.1 Despite proposals to reduce affordable housing in the scheme, Savills' appraisals show that this will not cause the scheme to be in surplus when their suggested benchmark land value of £31m land value is subtracted from their improved residual value of -£6.35m. Even assuming a nil profit deduction of this benchmark figure would show a net overall loss of at least £15.9m before land holding costs are included. Reflecting on Savills assessment indicates the proposed changes will be insufficient to ensure the deliverability of the scheme. For this to be credible would assume an effective site value of £nil.
- 2.2 Additionally, our Cost Consultant Neil Powling notes that the cost plan provided is annotated regularly with the statement "VE opportunity" suggesting that some cost value engineering has not yet been considered in the cost plan we have received as part of Savills' submission. If such potential opportunities exist to reduce costs we would have assumed these would have been fully explored prior to the application being made to reduce the affordable housing provision. Our review is tasked with ascertaining the maximum reasonable level of affordable housing this scheme could provide. If opportunities to further reduce costs exist it is clear we cannot reach a definitive conclusion until this exercise has been completed.
- 2.3 For the proposed scheme's appraisal we have assumed purchase on construction completion for the BtR elements. Savills have for some reason assumed the property would not be acquired by the PRS operator until after income stabilisation. This is an increasing trend we are seeing amongst viability assessments and serves to increase overall interests costs substantially and to reduce overall viability in consequence. It is however a totally erroneous basis of assessment for following reasons:
- a) Planning viability is not personal to the applicant but should reflect market norms. The very considerable majority of BtR schemes are forward sold at the point planning consent is granted to a fund/operator. This approach ensures that the price paid by fund/operator is based on the land price not value of the completed development. This serves to considerably mitigate the overall stamp duty paid. In this instance taking Savills figures stamp duty on the proposed benchmark land value of £31m would equate to £1,550,000. Stamp on Savills proposed GDV of £143,105,287 is shown as £9,731,159. By forward selling the fund/operator makes a saving of £8,181,159 in stamp duty from the amount shown in Savills appraisal.

On this basis the appraisal should reflect market norms not a notional sale date based on Savills suggestions.

- b) It is a matter of law that any business occupying premises with the acceptance of the land owner but without a legal agreement in place is entitled to apply to court for determination of a business tenancy with the court entitled to determine the terms of that tenancy. Consequently, no rational land owner would permit a business to occupy a property without either a lease or sale having been completed. Consequently, if we follow Savills assumptions on the timing of sale it must hold true that the BtR fund/operator would not be in possession of the premises until post stabilisation.

c) In consequence of b) above for the property to be let to the point of stabilisation assumes either the developer or some mystery third party would have to take on the following obligations:

- i) Marketing and promoting the property
- ii) Fitting out
- iii) Putting in place staff and operating systems for common areas and shared facilities
- iv) Putting in place all relevant FM and operating contracts for servicing, cleaning, securing and protecting the premises
- v) Installing the management of the property
- vi) Contracting the letting agents for securing tenants for the property
- vii) Determining the rents and lease terms of incoming residential tenants

Clearly these activities fall within the province of the BtR fund/operator as not only are they core business activities of the BtR operator but have a very significant impact on the actual value of the property as a BtR investment and its market placing.

In our view a BtR fund/operator is likely to be less attracted to purchase a property where the initial market placement is in the hands of a third party and much less willing to fix a future price given the lasting impact of the actions outlined above on the investment if they are not able to exercise relevant control over these aspects. Equally it is hard to see why a land owner would cede such controls to a BtR fund/operator if they had not acquired the property.

d) Finally, and most compellingly, a rational developer would seek to maximise the value of their developed asset. It is clear that alongside the bulk of the BtR development market, a decision to forward sell the development would ensure this route through savings in Stamp Duty and effectively bringing forward the sale date to the earliest possible point to de-risk the development.

Even assuming there was no forward sale, then it would not benefit the developer to delay the sale of the asset and take on a range of costly activities which would be outside of their locus as a developer, when this would only serve to reduce the value of their development.

2.4 At this stage we have not factored in the potential savings in Stamp Duty available from forward selling the development but reserve our position on this point, noting the scale of the potential saving involved. Our approach incorporates a stabilisation period into the BtR purchase price.

2.5 We have assumed that DMR units would remain within the ownership and management of the BtR/fund operator and would not be sold separately to a Registered Provider and this is standard practice for BtR schemes. In relation to the currently consented scheme we have not received a copy of the offer of purchase for £8.17m from Origin Housing dating from 2019.

2.6 The current site value should in our view reflect the value of the scheme as consented with a part implemented development constituting the existing site value as the former office use has now been extinguished and consequently has not relevance to a current day assessment of viability. Based on Savills assertion that the current consent is non viable then it would be reasonable to assume the site with the benefit the current consent has a negative or negligible value. A possible

alternative use for the site may generate a positive value but would be dependent on securing planning consent. No AUV scenario has been proposed but it would seem inappropriate to base this on an assumption of former office use. Policy H1 of the Camden Local Plan resists the loss of allocated housing land to other uses, more specifically the policy extracts below underpin this point:

a. regarding self-contained housing as the priority land-use of the Local Plan;

c. resisting alternative development of sites identified for housing or self-contained housing through a current planning permission or a development plan document unless it is shown that the site is no longer developable for housing; and

d. where sites are underused or vacant, expecting the maximum reasonable provision of housing that is compatible with any other uses needed on the site.

- 2.7 Until the applicant is able to propose a suitable AUV based assessment which clearly demonstrates a policy compliant development which generates a clear residual value we have assumed a notional site value. We remain willing to amend this view but consider it is not our role to promote alternative use scenarios for this site, noting the tests that are devised for such scenarios by the Camden Local Plan and DM Guidance.
- 2.8 Sensitivity-testing the consented scheme appraisal, we estimate that around 16% growth in private rental values would mean that the scheme is able to break-even. Alternatively, construction costs would need to reduce by 30%. This is before an allowance for developer profit.
- 2.9 We have inputted a fixed land value of £1 (effectively nil) into our appraisal, which means the appraisal now produces a profit output. This ensures land costs are calculated accurately in Argus Developer, as opposed to having a negative interest on land which Argus wrongly treats as income to the scheme. After our changes, the appraisals now produce the following:

	Residual profit	Profit benchmark	Deficit
Consented scheme	-£2,788,040 -2.30% of GDV	£12,773,534 10.56% of GDV (Savills target)	-£15,561,574
Proposed scheme	£15,031,922 10.64% of GDV	£14,919,989 10.56%	£111,933

- 2.10 To further explain the table above the scheme residual with a nil benchmark value delivers a 10.64% profit on GDV. This generates a small surplus of £111,933 when set against Savills target profit, however as stated this is predicated on a nil benchmark figure.
- 2.11 We note the proposed amendments to the affordable housing provision generates an increase in residual value of £17,819,962, or £12,618,302 in Savills' appraisals. This adjustment would in effect be working to maintain a developer profit at the expense of affordable housing. NPPG is clear on this point:

Where contributions are reduced below the requirements set out in policies to provide flexibility in the early stages of a development, there should be a clear agreement of how policy compliance can be achieved over time. As the potential risk to developers is already accounted for in the assumptions for developer return

in viability assessment, realisation of risk does not in itself necessitate further viability assessment or trigger a review mechanism. Review mechanisms are not a tool to protect a return to the developer, but to strengthen local authorities' ability to seek compliance with relevant policies over the lifetime of the project.

- 2.12 As a cross check we note that if we were to include the previously adopted EUV of £26m, the amended scheme shows an immediate deficit that would more than remove any residual profit and would show a scheme deficit of -£22,588,100.
- 2.13 Once a significant land value is factored in as tested above it is apparent that the proposed amendments simply serve to reduce the scale of loss but allow no margin for a conventional profit return. It is therefore difficult to see how the proposed amendments would make this development any more commercially deliverable than the extant scheme as both would be loss making and neither would deliver any margin of profit. The only difference being the scale of the apparent loss.
- 2.14 It is not clear why the proposed loss making scheme is therefore any more deliverable than the loss making extant scheme.

3.0 PRINCIPLES OF VIABILITY ASSESSMENT

- 3.1 Development appraisals work to derive a residual value. This approach can be represented by the formula below:

Gross Development Value - Development Costs (including Developer's Profit) = Residual Value

- 3.2 The residual value is then compared to a benchmark land value. Existing Use Value (EUV) and Alternative Use Value (AUV) are standard recognised approaches for establishing a land value as they help highlight the apparent differences between the values of the site without the benefit of the consent sought.
- 3.3 The rationale for comparing the scheme residual value with an appropriate benchmark is to identify whether it can generate sufficient money to pay a realistic price for the land whilst providing a normal level of profit for the developer. In the event that the scheme shows a deficit when compared to the benchmark figure the scheme is said to be in deficit and as such would be unlikely to proceed.
- 3.4 Development appraisals can also be constructed to include a fixed land value and fixed profit targets. If an appropriate Benchmark Land Value is included as a fixed land value within a development appraisal, this allows for interest to be more accurately calculated on the Benchmark Land Value, rather than on the output residual value. By including fixed profit targets as a cost within the appraisal, programmed to the end of development so as not to attract interest payments, the output represents a 'super' profit. This is the profit above target levels generated by the scheme which represents the surplus available towards planning obligations.
- 3.5 This Viability Review report adheres to the RICS Professional Statement on Financial Viability in Planning: Conduct and Reporting (published May 2019). In accordance with this Statement, Section 9 below incorporates details of our Quality Standards Control & Statement on Limitation of Liability/ Publication. This report has been prepared according to the Professional Statement's requirement for objectivity and impartiality, without interference and with reference to all appropriate available sources of information. Where information has not been obtainable, we have stated this expressly in the body of the report.

4.0 BENCHMARK LAND VALUE

Applicant's Benchmark Land Value

Guidance surrounding Benchmark Land Values

- 4.3 Development appraisals work to derive a residual value. This approach can be represented by the formula below:

Gross Development Value - Development Costs (including Developer's Profit) = Residual Value

- 4.4 The residual value is then compared to a benchmark land value. Existing Use Value (EUV) and Alternative Use Value (AUV) are standard recognised approaches for establishing a land value as they help highlight the apparent differences between the values of the site without the benefit of the consent sought.
- 4.5 The rationale for comparing the scheme residual value with an appropriate benchmark is to identify whether it can generate sufficient money to pay a realistic price for the land whilst providing a normal level of profit for the developer. In the event that the scheme shows a deficit when compared to the benchmark figure the scheme is said to be in deficit and as such would be unlikely to proceed.
- 4.6 Development appraisals can also be constructed to include a fixed land value and fixed profit targets. If an appropriate benchmark is included as a fixed land value within a development appraisal this allows for interest to be more accurately calculated on the Benchmark Land Value, rather than on the output residual value. By including fixed profit targets as a cost within the appraisal, programmed to the end of development so as not to attract interest payments, the output represents a 'super' profit. This is the profit above target levels generated by the scheme which represents the surplus available towards planning obligations.
- 4.7 We note the Planning Policy Guidance, published May 2019, states:

Benchmark land value should:

- *be based on existing use value*
- *allow for a premium to landowners (including equity resulting from those building their own homes)*
- *reflect the implications of abnormal costs; site-specific infrastructure costs; and professional site fees and*

Viability assessments should be undertaken using benchmark land values derived in accordance with this guidance. Existing use value should be informed by market evidence of current uses, costs and values. Market evidence can also be used as a cross-check of benchmark land value but should not be used in place of benchmark land value. There may be a divergence between benchmark land values and market evidence; and plan makers should be aware that this could be due to different assumptions and methodologies used by individual developers, site promoters and landowners.

The evidence should be based on developments which are fully compliant with emerging or up to date plan policies, including affordable housing requirements at the relevant levels set out in the plan. Where this evidence is not available plan makers and applicants should identify and evidence any adjustments to reflect the

cost of policy compliance. This is so that historic benchmark land values of non-policy compliant developments are not used to inflate values over time.

[...] Where viability assessment is used to inform decision making under no circumstances will the price paid for land be a relevant justification for failing to accord with relevant policies in the plan. Local authorities can request data on the price paid for land (or the price expected to be paid through an option agreement).

- 4.8 We find the Market Value approach as defined by RICS Guidance Viability in Planning 2012 if misapplied is potentially open to an essentially circular reasoning. The RICS Guidance promotes use of a modified standard definition of “Market Value” by reference to an assumption that the market values should reflect planning policy and should disregard that which is not within planning policy. In practice we find that consideration of compliance with policy is generally relegated to compliance somewhere on a scale of 0% to the policy target placing land owner requirements ahead of the need to meet planning policy.
- 4.9 There is also a high risk that the RICS Guidance in placing a very high level of reliance on market transactions is potentially exposed to reliance on bids which might
- a) Represent expectations which do not mirror current costs and values as required by PPG.
 - b) May themselves be overbids and most importantly
 - c) Need to be analysed to reflect a policy compliant position.

To explain this point further, it is inevitable that if site sales are analysed on a headline rate per acre or per unit without adjustment for the level of affordable housing delivered then if these rates are applied to the subject site they will effectively cap delivery at the rates of delivery achieved of the comparable sites. This is an essentially circular approach which would effectively mitigate against delivery of affordable housing if applied.

- 4.10 The NPPF recognises the need to provide both land owners and developers with a competitive return. In relation to land owners this is to encourage land owners to release land for development. This is set out in PPG as follows:

To define land value for any viability assessment, a benchmark land value should be established on the basis of the existing use value (EUV) of the land, plus a premium for the landowner. The premium for the landowner should reflect the minimum return at which it is considered a reasonable landowner would be willing to sell their land. The premium should provide a reasonable incentive, in comparison with other options available, for the landowner to sell land for development while allowing a sufficient contribution to comply with policy requirements. Landowners and site purchasers should consider policy requirements when agreeing land transactions. This approach is often called ‘existing use value plus’ (EUV+)

- 4.11 Guidance indicates that the sale of any premium should reflect the circumstances of the land owner. We are of the view that where sites represent an ongoing liability to a land owner and the only means of either ending this liability or maximising site value is through securing a planning consent this should be a relevant factor when considering whether a premium is applicable.

BPS Approach to Benchmark Land Value

- 4.12 The current consent on the site secured under appeal (ref APP/X5210/W/14/3001616 dated 18.02.2016) and as varied by Non-Material Amendments (ref 2019/1405/P, granted 7 May 2019 and Ref: 2018/4239/P, granted 4 August 2020) have been implemented and construction of the basement has been completed.
- 4.13 At the time of original application a benchmark land value of £31m was accepted by the Council reflecting the site presence of a functioning office investment. The Section 106 agreement in relation to the original scheme refers to that which was undertaken by GVA on behalf of the Owner and submitted in March 2014. The site was purchased for £33.5m in 2012.
- 4.14 The £31m benchmark land value was on the basis of an Existing Use Value for the site as offices of £23.87m plus 30% landowner's incentive premium. The February 2016 appeal decision makes clear that viability matters were agreed between parties, of which benchmark land value can be considered part. On this basis the applicant has adopted £31m for the S106A application.
- 4.15 Although tempting to refer back to the original application for determining this value we question the relevance of this figure in the context of the current application for the following reasons:
- a) An assessment of viability for planning purposes assumes a valuation date as at the date of the application. In this context values based on historic uses of the land are no longer appropriate.
 - b) The adoption of a current day benchmark land value is appropriate in that the Savills FVA is fundamentally centred around the principle of introducing current day costs and values into an assessment of viability of the extant consent. Therefore without adopting a "pick and mix" approach to the original consent, values should all be current day.
 - c) The former office building no longer exists and cannot therefore in reason be seen as an existing use
 - d) The site now has planning consent for the extant residential led scheme which fundamentally changes the nature of the site's existing use
 - e) The actions of the applicant have led to the demolition of the former office and change in planning status of the site and must be assumed to be commercially led decisions.
- 4.16 The current site status is shown in paragraph 3.3.1 of Savills' report. The photographs demonstrate that the site has now been partially developed including site clearance, excavation and construction of a basement. In consequence it is reasonable to draw the conclusion that the existing site value relates to a partially implemented scheme which if we accept Savills contention that continued development of this scheme as consented would result in a scheme generating a nil profit and a net overall loss of £1,889,704 before and land value was taken into consideration. On this basis we consider it reasonable to suggest the existing use value of the site is effectively negative or at best negligible.
- 4.17 We accept that a valuation of would provide little incentive for a developer to bring the site forward. Equally it is clear that a considerable sum of money has been sunk into the acquisition of the site, its clearance and construction of the basement to

ground floor slab to-date, continued development of the scheme may represent a least cost option for recouping capital already invested.

- 4.18 We also consider the possible reversion to commercial is likely to be resisted under Local Plan policy H1 Maximising Housing Land Supply the relevant extracts of which are set out below:

We will seek to exceed the target for additional homes, particularly self contained homes by:

- a. regarding self-contained housing as the priority land-use of the Local Plan;*
- b. working to return vacant homes to use and ensure that new homes are occupied;*
- c. resisting alternative development of sites identified for housing or self- contained housing through a current planning permission or a development plan document unless it is shown that the site is no longer developable for housing; and*
- d. where sites are underused or vacant, expecting the maximum reasonable provision of housing that is compatible with any other uses needed on the site.*

- 4.19 Office use would also constitute an alternative use approach to establishing site value. Camden Planning Guidance Housing January 2021 provides the following guidance in respect of site values which are based on alternative use assessments:

7.47 Having regard to NPPG, we consider that an alternative use value should only be used as an indicator of benchmark land value where it is:

- a demonstrably realistic option for the site given market demand for the use in that location; and*
- fully supported by evidence of the cost of establishing the alternative use and the revenues anticipated from it; and*
- accompanied by a fully justified explanation of why the alternative has not been pursued.*

7.48 In addition, the Council will only consider an alternative use value that relates to one of the following:

- a lawful use or development of the site that does not require an issue of planning consent (having regard to the most recent lawful use and any applicable development orders)*
- a use of the site that benefits from a current planning consent with potential to be implemented*
- a use or development agreed in principle as a site allocation in an adopted local plan that gives sufficient detail for the proposal to be costed and valued.*

7.49 The Council will not accept alternative use value as an indicator of benchmark land value where it rests on assumptions about what would be granted planning consent, and requires costs and sales values or rents to be established for a hypothetical scheme that has not been worked-up in sufficient detail to be implemented.

7.50 An alternative use value (AUV) cannot provide a meaningful indicator of the benchmark land value unless it represents a financially viable development that would be an option for a landowner to consider. To be financially viable, the scheme

would by definition provide an appropriate return to the developer (profit) and a sufficient return to the landowner for the property to be released for development. Consequently, as indicated by NPPG, it should not be necessary for a further landowner premium to be applied to an alternative use value.

- 4.20 In the absence of an AUV supported suite value which complies with this guidance we have as a working assumption modelled our assessment of viability adopting a nil site value. We are quite willing to revisit this assumption should the applicant bring forward a site value assessment which is compliant.

5.0 RESIDENTIAL UNIT VALUES

5.1 The current planning permission comprises a mixed-use development including 184 residential apartments as Build to Rent, secured in a Section 106 agreement dated 24th August 2015.

5.2 The mix of units is as follows:

Tenure	Number of Apartments
Private - Open Market Rent	130
Affordable Housing - Affordable Rent	28
Affordable Housing - Intermediate	8
Affordable Housing - Discounted Market Rent (DMR)	18
Total	184

5.3 28 London Affordable Rented homes, 5 DMR rented homes and 3 Shared Ownership homes have received an offer from Origin Housing for purchase at £8.17m, which Savills have adopted in their appraisal (Blocks D & F). This leaves 148 units to be valued, of which 130 are open market rent, 5 are intermediate and 13 are DMR. Savills have valued all remaining affordable housing as DMR which we discuss further in Section 6.

5.4 In summary, Savills has derived residential income values at £117,496,646 in Appraisal 1 (Consented) and £138,630,001 in Appraisal 2 (As proposed 166 open market rent and 18 DMR).

Appraisal 1- Consented.

Tenure	No. of Units	Size Sqft	Average Sale Price	Capitalised Value
Private - Open Market Rent	130	98,966	£789,107	£102,583,846
Affordable Rent	28	28,611	£237,850	£6,659,787
Intermediate	8	6,488	£188,777	£1,510,213
DMR	18	13,518	£374,600	£6,742,800
Total	184	147,583	£638,569	£117,496,646

Appraisal 2 - Proposed.

Tenure	No. of Units	Size Sqft	Average Sale Price	Capitalised Value
Private - Open Market Rent	130	98,966	£789,107	£102,583,846
Private - Open Market Rent	28	28,611	£825,082	£23,102,308
Private - Open Market Rent	8	7,288	£745,673	£5,965,385
DMR	18	13,578	£387,692	£6,978,462
Total	184	148,443	£753,424	£138,630,001

Private residential values

5.5 A schedule of accommodation and rents applied to the individual residential units can be found on pages 486 to 506 in Appendix 5 in the applicants FVA. The applicant's advisors have made adjustments to the rent on the individual apartments based on

unit outlook, storey height and position within the building in arriving at the stated rent assumptions applied. Rents range between £20,400 and £60,600 p.a. which represents the minimum and maximum rent value parameters outlined in the residential comparables report and pricing table in the FVA.

- 5.6 The assumptions are claimed to be supported by verifiable evidence obtained from a small number of new-build and second-hand comparable properties within a reasonable distance from the subject and are considered to be adequate and reliable. Although it is accepted that the scale and nature of the comparable evidence relied on is not ideal, the inherent nature and heterogeneity of the acknowledged comparable valuation method applied is of sufficient quality as to be deemed appropriate in the circumstances.

- Abbey Road Cross, Camden, NW6 4DP (Phase 1) - New Build
- The Courtyard, 44 Gloucester Avenue, NW1 8JD - New Build
- Centre Heights, Finchley Road, Swiss Cottage - Second Hand.
- Wider Second-Hand Comparables.

5.7 Abbey Road Cross

The site is approximately 1.1 km (0.7 miles) from the subject and comprises a phased development of 241 residential dwellings with properties becoming available for occupation from March 2019.

It is claimed that evidence obtained demonstrates rents being achieved between £18,600 and £20,856 for 1-bedroom properties and £24,480 and £35,400 for 2-bedroom properties with rental rates between £34 and £51 per Sqft.

Average rents are cited at £19,728 for 1-bedroom properties and £29,940 for 2-bedroom properties and the rental rate per Sqft as at March 2020 (pre-CoVid-19).

We cross referenced the evidence submitted and consider the property is set in an inferior location with less convenient access to the scale of amenities available to the subject.

5.8 The Courtyard

The Courtyard is a development of approximately 40 units which was completed in Q4 2019 and approximately 1.8 km (1.1 miles) away from the subject. The location is considered superior to 100 Avenue Road, due to its proximity to Primrose Hill and Regent's Park.

Rents average £31,233 p.a. (£58 per Sqft) for 1-bedroom properties and £42,302 (£51 per Sqft) for 2-bedroom properties and residents enjoy the on-site communal benefits including concierge and gymnasium facilities but exclude garden space.

Individual unit sizes are typically larger than the subject which impacts on the rate per Sqft as derived and subsequently compared on a like-for-like basis. We acknowledge the merits of the location and the average unit sizes in the evidence presented.

5.9 Centre Heights

Centre Heights is located diagonally opposite the subject and although the development is not purpose built as an apartment building (secured by way of a permitted development; office to residential conversion), the proximity of the location warrants inclusion in the schedule of comparable properties.

Rents are cited at between £14,304 p.a (£40 per Sqft) for the lowest quoted studio apartment and £78,000 (£52.60 per Sqft) for the highest priced 3-bedroom penthouse.

Average unit sizes are smaller than the subject which is consistent with expectations due to floorplan and fixed structural supports and openings common with office to residential conversions. We also acknowledge the inclusion of a concierge service and the height of the building at 11 floors.

Wider Second-Hand Comparables

5.10 Further to the comparable evidence provided on the 3 sites above, Savills has included a wider range of second-hand rental corroboration within a justifiable proximity of the subject that provides wider market context.

5.11 A summarised table included in the FVA is predicated on a wide range of apartments including small residential house conversions, purpose-built mansion blocks, low-rise developments dating back several decades. We therefore place limited weight on such evidence as making direct comparables to the subject is difficult given its scale, new build status and the attraction of a professional landlord operation.

5.12 Nevertheless, as previously stated, we consider the evidence as submitted to be a useful backdrop to the market generally. The rents cited range from £16,500 p.a. (£36 per Sqft) for a studio apartment to £65,004 p.a. (£48 per Sqft) for a 3-bedroom apartment in St John's Wood.

5.13 The comparable evidence submitted is condensed into the following table.

Site	Studio		1 Bedroom		2 Bedroom		3 Bedroom	
	Average Rent p.a	Average Rate per Sqft	Average Rent p.a	Average Rate per Sqft	Average Rent p.a	Average Rate per Sqft	Average Rent p.a	Average Rate per Sqft
Abbey Road Cross			£19,728	£36	£29,940	£43		
The Courtyard			£31,233	£58	£42,302	£51		
Centre Heights	£14,304/ £16,800	£40/61	£19,500/ £20,544	£36/37	£23,400	£33	£67,596/ £78,000	£45/56.20
2 Hand Comparables	£11,700/ £16,380	£40/73	£16,500/ £28,596	£32/64	£22,104/ £36,144	£31/46	£34,320/ £65,004	£32/48

5.14 We cross-checked the evidence presented by examining data provided through Moilor London and Rightmove UK online resources.

- 5.15 We subsequently analysed the adjusted weight applied to the individual units as set out in Savills' accompanying Comparables Report and Pricing spreadsheet and find the values ascribed adopt height premiums of circa 0.75% on the lower floors and between 1% and 1.15% on the upper floors. Adjustments are also made for outlook and scale of the private outside space attributed to each apartment.
- 5.16 As such, we consider the Gross Annualised Rent Income to be within acceptable valuation margins.

Operational Expenditure

- 5.17 Savills has adopted an assumed operating cost allowance of 25% of gross rents. This accords with the statement made in paragraph 5.4 of the FVA where it is claimed that the Landlord's day-to-day and cyclical operating costs are accounted for.
- 5.18 These costs have been identified in paragraph 5.4.1 of the FVA as '*repairs, on-going allowance sinking fund, running voids, bad debts, general revenue expenditure, staff overheads, PM fees etc*'.
- 5.19 Furthermore, Savills has provided a comparable evidence table of Net Operating Costs as a % which has been taken from the '*IPD UK Residential Property Digest (2018)*' which outlines a range between 21.9% and 29.3% for a varied series of property investment assets. Savills also cites evidence contained in the CBRE Q4 2019 research paper '*United Kingdom Multifamily Investment Q4 2019*' which notes a discount of 25% for management, maintenance and letting fees.
- 5.20 Following the submission of the FVA and our subsequent instruction by LB Camden, we made a further enquiry of Savills to seek a breakdown of this allowance. The response is set out below:

'Breakdown of the 25% OPEX cost. As per our report, the Operating Cost assumption is a standard assumption based on wider industry data rather than applicant-specific assumptions and we note that this does not include sinking fund or long-term capital expenditure.

The Applicants have provided a breakdown of their assumptions below which are 24.96% excluding structural voids, sinking fund and contingency. The total at that point equates to 29.5% as shown below:

Item	% of GRI
Council Tax	0.4%
Lettings/Marketing Costs	2.4%
Staff Costs	10.9%
Turnover Costs	0.5%
Utilities Costs	1.8%
Insurance Costs	2.4%
Maintenance Costs	5.9%
Legal Costs	0.1%
Other (inc. Bad Debts)	0.6%
Total OpEx	24.96%

Total Leakage @ Start		
Building OpEx	[% of GRI]	24.96%
Structural Void	[% of GRI]	2.60%
Sinking Fund	[% of GRI]	1.50%
Contingency	[% of GRI]	0.50%
TOTAL Leakage		29.55%

- 5.21 We also acknowledge that previous reports have adopted the same operating cost percentage for the valuation analysis at 25%, although evidence of OPEX costs are always preferable. As such, we consider the position has remained unchanged since our last report and we have accepted the rate as cited at 25%. We note this pan London this figure is generally accepted as a normal OPEX margin.

Capitalisation Rate

- 5.22 It is standard valuation practice to capitalise the net annual rent by an appropriate investment rate which is predicated on risk and informed by comparable evidence of rates applied in the same asset class as well as consideration on competing investment returns.
- 5.23 Savills have applied a rate at 3.25% and justify the assumption by providing a table of comparable yields applied to a varied series of property investment asset classes. This is a rate that is applied to an income generating investment that provides a regular level of income after the initial letting period to income stabilisation. This is an accepted valuation approach noting that it is reasonable to allow for a build up of income at the initial outset.
- 5.24 In doing so, Savills has applied a separate figure in the Argus Appraisal titled 'stabilisation rent' and referred to the input assumption in chapter 10 of the FVA.
- 5.25 In verifying the amount applied, cross-checked the input against calculated allowance by deducting half-a-year's rent for the private residential open market and DMR net annual rent assumption. In summary, we consider the stabilisation assumptions to be broadly reasonable and reflective of the competitive location of the subject for those seeking central rented accommodation.

Private rented value conclusions

- 5.26 For verification purposes we have inputted the applicant's BtR valuation assumptions into a cash flow and investment-style valuation:

Term		Reversion		
Occupation level	75%	Occupation	100%	
Gross rent	£2,500,481	Gross rent	£4,445,300	
Net rent	£1,389,156	Net rent	£3,333,975	
YP term	0.9685	PV	0.9685	
		YP perp	30.7692	Total
Term capital value	£1,345,430	Reversionary value	£99,354,815	£100,700,244

- 5.27 In summary, we view the private rent and capitalisation assumptions as falling within acceptable valuation parameters and have adopted the capitalised value as cited by Savills in our Argus Appraisals.
- 5.28 We do however fundamentally disagree with Savills view that the capital value would not be paid at the point of completion. Our reasoning is set out in full in our conclusions.

Ground rents

- 5.29 Savills have not applied a capitalised ground rent provision by relying on the contents of '*The House of Commons Library Briefing Paper No 8047 dated 31st December 2019*'. We would not expect ground rents to be included in Build to Rent schemes.

Parking

- 5.30 We note the inclusion of 12 basement level car parking spaces in drawing PL_099, Rev P3, dated 25th February 2014, which relates to the consented scheme. The spaces are accessed via a sloping entry ramp at the rear of the site and connect with the cycle storage, PRS bin stores, plant rooms and communal access areas. We assume the spaces remain consistent with the provisions of the subsequent variation applications including the current proposal.
- 5.31 Paragraph 360 on page 59 of the Planning Inspector's Appeal decision, reference APP/X5210/W/14/3001616, dated 18th February 2016, asserts that the only parking spaces are for persons with disabilities. It is also stated that the S106 undertaking removes the ability of occupiers to apply for residents parking in the area in the same paragraph. The Inspector also mentions the high PTAL score (6b) attributable and finds the site an ideal location for a car-free development.
- 5.32 No value has been attributed with these spaces in the FVA and based on the reasoning outlined in the appeal scheme, we adopt the same approach.

6.0 AFFORDABLE HOUSING VALUES

- 6.1 The Affordable Housing tenure valuation limitations are outlined in the Section 106 and according to the FVA dated December 2020, there is an offer from Origin Housing at £8.17m for 28 London Affordable Rent Homes, 3 Shared Ownership (Intermediate) and 5 Discounted Market Rented Homes. Savills claim the offer is in keeping with their own assessment as at the date of the FVA and has adopted this figure in their appraisal.
- 6.2 According to the statement made in the FVA, the applicant is unable to deliver the development as consented due to the claimed increase in costs and as such Savills has carried out an analysis of the costs and income by examining two Financial Viability Appraisal Scenarios providing 54 and 18 affordable housing units respectively.
- Appraisal 1: Consented Scheme, with 28 x affordable rent, 18 x Discount Market Rent or 'DMR, and 8 x intermediate units
 - Appraisal 2: Proposed Scheme including 10% Affordable Housing (18 DMR units)
- 6.3 In testing the affordable values we have adopted the tenure provision and mix as outlined in the Section 106 dated 24th August 2015.
- 6.4 Savills have applied a capital value for each Affordable Housing tenure in accordance with the mix provision outlined in the Section 106 as follows.

Tenure	Number of Units	Capital Value	Average Sales Value per Unit
Affordable Rent	28	£6,659,787	£237,850
Intermediate	8	£1,510,213	£188,777
Discounted Market Rent (DMR)	18	£6,742,800	£374,600
Total	54	£14,912,800	£276,163

- 6.5 The FVA states that the applicant has had an offer from Origin Housing at £8.17m for 28 London Affordable Rent Homes, 3 Shared Ownership (Intermediate) and 5 Discounted Market Rented Homes. We have not seen a copy of the offer but acknowledge the claim and accept that the proposed offer sum is within a range we would expect for these units. We have not been provided with a copy of the offer and have not in consequence been able to break it down in respect of the different elements.
- 6.6 Savills has adopted the offer in their Argus Appraisal and expressed the tenure provision as 28 Affordable Rent and 8 Intermediate units. This is a minor departure

from the tenure split outlined in the offer made by Origin Housing but we consider the difference to have no material impact on overall viability.

- 6.7 The remaining affordable housing units within the scheme as consented should be 15 x DMR units and 3 x intermediate units, however Savills have modelled all the remaining affordable housing in the consented scheme as DMR. We have maintained the assumption in light of the valuations broken down at paragraph 6.4 of this report which show DMR as the most valuable affordable housing tenure, thus maximising the viability position for the purposes of this assessment.
- 6.8 The DMR Units derive a value through the capitalisation of a capped rent provision which is defined in the 'Discounted Market Rent Housing' on page 9 in the definitions section of the Section 106 dated 24th August 2014. In summary, the owner is obliged to offer bespoke Assured Shorthold Tenancy agreements for a period of up to 5 years to persons whose gross household income does not exceed £63,000 p.a. (or by such amount as specified by the GLA in paragraph 3.62 of the London plan March 2015 and amendments contained in the London Plan Annual Monitoring Report from time to time as an update to this amount set in November 2013).
- 6.9 According to the statement made in the FVA, income thresholds are noted as to be updated in line with London Plan Annual Monitoring Report, with current policy setting a cap of a household income of £60,000 and no more than 40% of the net income can be charged as rent.
- 6.10 Furthermore, in the case of 1-bedroom units, rents should not exceed 65% of open market rent level for an equivalent unit in the development and 70% for 2-bedroom units on the same basis. Such rent may be increased annually by the increase in the Retail Price Index.
- 6.11 To check the capped rent assumption, we carried out an internet search to establish the net monthly take home pay of a single person earning £60,000 and according to www.netsalarycalculator.uk the annual take home pay is listed at £43,336. 40% of the net take home pay is £17,334 which is £1,101 more than the average net rent assumption adopted by Savills at £16,233. We have adopted the applicant's threshold for the purposes of this assessment on the understanding that this will improve the affordability of these units but dependent on the affordability criteria of the Council for this area we reserve the right to amend this input in the future.
- 6.12 Savills have not distinguished net rent in consideration of unit types and mix, but we acknowledge the approach has been consistently applied across the DMR units without deviation and in the interests of pragmatism, we find the methodology and subsequent numerical input to be within acceptable margins.
- 6.13 In deriving the capital value for the DMR units, Savills have subsequently applied a yield (Year's Purchase or YP) factor at 3.25% to the net annual rent (after deducting 25% OPEX). This assumptions mirrors the capitalisation rate adopted in respect of the private open market rent units.
- 6.14 We maintain that the exit yield should reflect an appropriate risk for the asset class and act in concert with the accepted lower margins applied to developer's profit for Affordable Housing adopted in paragraph 7.7.4.1 in Savills. Nevertheless, we acknowledge the investment yield is at the customary rate expected and within satisfactory valuation parameters, we apply to analysing Affordable Housing income streams more widely and consider a suitable balance at 3.25% is acceptable in the circumstances.

Affordable Housing: Appraisal 2 - Proposed Scheme.

- 6.15 In summary, Savills has substituted the Affordable Rent and Intermediate units for private open market rent units. The remaining units rental value is consistent with the schedule of rents in the rest of the proposed development.

Tenure	Number of Units	Capital Value	Average Sales Value per Unit
Discounted Market Rent (DMR)	18	£6,978,462	£387,692

- 6.16 The capped annual rent at £16,800 used in the appraisal is an increase of £567 over the annual rent applied to the consented scheme and reflects the changes in the updated London Plan Annual Monitoring Report. Savills have applied the capped rate indiscriminately across all 18 units which is consistent with the approach adopted in the analysis of the approved scheme.
- 6.17 The gross annual rent for the proposed scheme is calculated at £302,400 and after deducting 25% OPEX (£75,600), the net annual rent delivers £226,800 p.a. The net annual rent is subsequently capitalised at 3.25% to arrive at a valuation input of £6,978,462. This is consistent with the valuation approach adopted in the Argus Appraisal for the consented scheme and we consider the input is within acceptable valuation parameters. However, we have seen models of BtR schemes in which the OPEX cost for DMR housing equals that of private housing as opposed to being a proportion of the discounted rent, following the logic that the units will require the same amount to run as their private equivalents. The applicant's assumptions serve to maximise viability and adopted the same approach in our assessment.

7.0 COMMERCIAL VALUES

- 7.1 We understand that the site has consent for 1,041 sq m (11,205 sq ft) of Use Class A1, A2 or A3 space and 1,350 sq m (14,531 sq ft) of Use Class D1 community space. We have proceeded on the assumption that the Section 106A application will be decided on the terms of the previous Use Classes Order 1987 as opposed to the 2020 amendments.
- 7.2 The retail and ‘ancillary retail’ in Savills’ appraisal measures 11,211 sq ft and 1,387 sq ft respectively. This provides a combined total retail floor space of 12,598 sq ft. We request clarity on these floor areas as they differ from the areas at paragraph 1.1.2 of Savills’ 2020 report. We also request clarity as to what constitutes ‘ancillary retail’.
- 7.3 Savills have applied a rental value of £30 per sq ft per annum to the main retail areas and £7.50 per sq ft per annum to the ancillary retail (25% of full rental value). Both income streams have been capitalised at a yield of 7%.
- 7.4 Savills do not appear to have applied a value to the community space as this is being provided at nil cost to the operators. We have requested but not yet received evidence of the arrangement with the Winchester Project.
- 7.5 In undertaking this assessment, we have assumed that none of the commercial space has been pre-let. Our conclusions on viability will be subject to amendment if the units were pre-let.
- 7.6 We have used our own research in conjunction with Savills’ evidence to determine the reasonableness of the value attributed to the retail element of this appraisal.
- 7.7 We consider that given the dramatic impact of the Covid 19 pandemic on commercial uses in particular, evidence prior to 2020 will be of less relevant, and evidence prior to 2019 would only be relevant for assets for which there is no better evidence available. We have therefore not considered evidence provided by Savills that has transacted prior to 24 months from the date of this report.

Rental value

- 7.8 We are not certain of what constitutes ancillary retail or why this would only be valued at 25% of full market rent. If this is storage space and the 25% seeks to represent an In Terms of Zone A measurement, then we would expect evidence to analyse the subject ITZA and be forwarded the ITZA measurement for the proposed property. We note the Strutt & Parker appraisal prepared March 2014 applied the same rental value to the retail and the so-called ‘flexible retail’. Ultimately, we see no reason why this should be restricted to storage space and have therefore valued this along with the £psf valuation undertaken on the rest of the retail, which should in itself take into account the blended rate of shop floor and storage areas as opposed to an ITZA value.
- 7.9 We comment on Savills’ evidence as follows:

Address	Lettings information	Additional details/ comments
115 Finchley Road	Let Feb 2019 10-year term £30,000pa £17.65 per sq ft pa 1,700 sq ft Grocery store 2 months rent-free period included	Let to Shake Shack UK, a strong covenant and a good location for the fast-food chain being near Swiss Cottage station.
Lyons Place	Let April 2020 £325,000pa £27 per sq ft pa 12,000 sq ft	Let to Aldi market, a strong covenant and an area of the retail market that has not been restricted over the pandemic.
Finchley Road	Let Jan 2020 15-year term £182,250pa £24.50 per sq ft pa 7,440 sq ft	Let to Anytime Fitness, an international gym operator and therefore good covenant, who were forced to close in the Spring 2020 lockdown and later Winter 2020 lockdown, but were able to remain open and trading in lower Covid 19 Tiers.

7.10 We are also aware of the following additional evidence:

Address	Lettings information	Additional details/ comments
9 Frognal Parade, Finchley Road, NW3 5HH	Let March 2020 £18,000pa £3.89 per sq ft pa	FRI lease 4,628 sq ft Like the subject, this property comes with storage space but is not in new-build condition. Long, narrow unit.
487 Finchley Road, NW3 6HS	Let Oct 2019 £13,000pa £11.72 per sq ft pa	1,109 sq ft Second-hand retail in an inferior location to the subject, less local to a station or commuter area.
79-91 Heath Street, NW3 6UG	Let Oct 2019 £85,000pa £37.78 per sq ft	FRI lease 15-year term Second-hand retail space with CCTV and in close proximity of Hampstead station 2,250 sq ft

7.11 The evidence above and the flexibility of the retail use particularly given the changes to the Use Classes Order (which may impact future uses for this development) we are satisfied that Savills' £30 per sq ft per annum rental valuation is reasonable.

- 7.12 Given that it is not clear why ancillary retail space could not be rented at market rent, and that no value ITZA exercise has been provided, we have assumed that 100% of the retail floorspace will be valued at £30 per sq ft per annum. When we questioned this, Savills responded by stating that this space is “largely storage and corridor space” and a plan was provided. However, if this layout is certain, this is presumably because there is a pre-let tenant, otherwise the space would be delivered to enable flexible corridor and storage areas. We have continued to assume this space would be part of the full, blended value of the retail per the valuation exercise undertaken by Savills (which does not distinguish separate rental values within the comparable evidence for their relative storage or circulation spaces).

Yield

- 7.13 Savills have provided the following evidence of retail yields:

Address	Transaction details	Additional information
39-47 Barrow Hill Road	Sold Oct 2019 £1.72m £1,476 per sq ft	1,165 sq ft retail property in St John's Wood. Rental income at the time of sale was £99,500pa (£85 per sq ft pa). EPC of the property at the time of sale was D.
61 Fairfax Road	Sold Feb 2019 £1.6m £163 per sq ft 7.93% gross yield	9,811 sq ft retail property spread across ground and lower-ground floors and currently achieving £120,000pa (£12.23 per sq ft pa). Lease signed in 2013 for 20 years.
Unit 75 63-81 Fairfax Road	Sold March 2019 £480,000 £390 per sq ft 7.5% yield Auction sale	Retail parade beneath 3 storeys of residential apartment. No large covenants as tenants. Built approximately 1960 with surface parking available. Located in close proximity of South Hampstead station.

- 7.14 We are also aware of the following transactions:

Address	Transaction details	Additional information
183 Camden High Street, NW1 7JY	Sold Nov 2020 £3.3m £1,100 per sq ft 5.12% NIY	3,000 sq ft Rental income £180,000pa (£60 per sq ft pa) Central Camden Town
106b Kilburn High Road, NW6 4HY	Sold Sept 2020 £1.535m £1,225 per sq ft 6.00% NIY	1,253 sq ft Achieved £65,000 below the asking price.
89 Boundary Road, NW8 0RG	Sold June 2020 £540,258 £433 per sq ft	1,249 sq ft Along a retail parade but no large brands present around

		the unit and the nearby surroundings appear to be predominantly residential.
56 Chapel Market, N1 9EW	Sold June 2020 £1.1m £986 per sq ft	1,116 sq ft Surrounded by complimentary retail and leisure uses.
99 St John's Wood Terrace, NW8 6PL	Sold May 2020 £1.05m 5.85% NIY	486 sq ft £65,000pa rental income (£134 per sq ft pa).
34 Chapel Market, N1 9EN	Sold March 2020 £1.137m £427 per sq ft	2,663 sq ft Surrounded by complimentary retail units and covenants such as Sainsbury's and Boots nearby

- 7.15 There are no recent investment transactions on the EGi database for retail property in the NW3 postcode within 12 months of the date of this report and therefore we necessarily must point out the uncertainty associated with this valuation.
- 7.16 The Knight Frank Investment Yield Summary January 2021 and CBRE investment yield guides show negative sentiment across retail property with the exception of supermarkets, as the Covid-19 lockdown restricts the ability for general retail to open and trade. However, convenience stores like that which could be located at the subject have remained open and this lessens the negative impact attributable to the proposed yield. In January 2021 both of these yield summaries determined a 6.5% yield on prime High Street property, increasing to 8.25-8.5% on secondary sites.
- 7.17 In light of the evidence and taking into consideration the uncertainty of the current market, albeit certainty is improving as the government deploys plans to take us out of lockdown, a 7% yield is the highest reasonable yield. In our view a yield of 6.75% would better reflect the improved certainty coming out of lockdown in comparison to the 2020 comparable evidence whilst also appreciating the location is not superior to units in prime High Street areas.

Tenant incentives

- 7.18 Savills have adopted 1 year and 6 months as a rent-free period on the retail space. This is despite the fact that the rental information provided of transactions let within 24 months of reporting only had one example of a rent-free period at a much-reduced period of 2 months. Sufficient explanation of this rent-free period has therefore not been provided.
- 7.19 Appreciating the difficulties of the current market we have adjusted this to a 6-month rent-free period pending further evidence.

Conclusions

- 7.20 After our changes to yield the retail increases in value to £5,419,200 or £552 per sq ft, which is in line with our evidence.

- 7.21 We have not attributed value to the community space as we understand this is to be gifted to the Winchester Project per the Section 106 agreement. No formal contract has been drawn up to confirm these terms and it is arguable that this floorspace could still be let on the open market. However on the basis that it is a Section 106 obligation we have not modelled value on this floorspace.

8.0 DEVELOPMENT COSTS

- 8.1 We have instructed our independent Cost Consultant Neil Powling to review both the expended and the advised future construction costs identified within a Gardiner and Theobald Cost Plan. Mr Powling's report is available in Appendix 1, but in summary, the notional benchmarking exercise undertaken implies that the costs may be reasonable, but we note Mr Powling has been unable to reach conclusions given areas in need of further explanation, see paragraphs 1.1-1.7 of his report. Additional information regarding specification has been provided by the applicant as requested in this report and Mr Powling has commented that:

"I am now satisfied with the explanation of the differences between the 2014 and the current schemes and can confirm I consider their costs reasonable."

- 8.2 We are satisfied that 15% lettings agent and legal costs are reasonable on the commercial floorspace, in line with industry standard assumptions.
- 8.3 1.5% has been included (the equivalent of £2m) for agent and legal fees on the sale of the Build to Rent scheme and retail. This is also an acceptable rate albeit the cost has not been broken down in further detail.
- 8.4 We have not interrogated the Section 106 costs at £30,000, Section 278 costs at £411,015 and £40,000 Parkland License Extension on the basis that these costs are to be discussed and agreed with relevant persons at the Council.
- 8.5 The 12% professional fees are at the upper end of what we consider to be reasonable, and whilst we appreciate there have been unforeseen delays to the development since its consent at appeal, further justification was requested. We were informed that 12% was adopted in line with the 2014 application and that actual costs are closer to 16.45%. On this basis we accept 12% but note that whilst we have had a breakdown of the 16.45% this has not been in monetary terms of with any signed, verifiable evidence.

Finance

- 8.6 We note that the negative residual land value in Savills' appraisals causes finance rates to be incorrectly calculated. The interest on land value is negative by association with the residual land value, which Argus Developer incorrectly then includes as a negative cost, effectively adding revenue back into the scheme. To resolve this issue, we convert appraisals to a profit output to allow for a positive, fixed land value.
- 8.7 Savills have adopted a debit rate of 6.75% and 0.5% credit rate. This is reasonable by typical viability considerations, however given that finance arrangements have already been made for the commencement of the scheme, we request confirmation as to the actual funding arrangements for the scheme. In our view, costs expended to this date and projected finance costs on this basis would more accurately reflect actual scheme viability and would therefore be preferable inputs to these assumptions, albeit the assumptions themselves are reasonable.

- 8.8 Savills have responded to our queries regarding actual finance cost by stating that were actual finance cost to be considered, then the actualised costs and programming would also need to be taken into account in order to be reasonable. We have therefore continued to use the industry standard rate.
- 8.9 When we last assessed the scheme in 2014, we understood that the scheme would benefit from the Mayor's funding guarantee, which would likely improve the lending rates available to the applicant. Some reflection of this should be provided.
- 8.10 The 2-month preconstruction and 22 months construction period do not appear unreasonable but we have not instructed an expert to review this.
- 8.11 Savills have structured the sale of the rented accommodation to be 6 months post construction completion. In our view, BtR developments can be expected to be purchased up-front or forward funded through the construction period. At the latest, therefore, we would expect to see the receipt for the BtR immediately post completion with the valuation reflecting the stabilisation period. We have amended the timing of sale for the BtR and retail to be on construction completion.

Profit

- 8.12 At paragraph 1.1.18 Savills have highlighted that the applicant deems a profit of 10.56% on GDV (£15.11m) as deliverable. We therefore assume this is the benchmark above which the scheme is considered viable and have adopted this as benchmark profit for the consented scheme scenario.
- 8.13 Savills go on to say that 10.56% is "*substantially lower than a normal commercial term*". However, since the granting of consent there have been considerably more examples of Build to Rent development coming forwards, resulting in the profit applicable to these schemes being considered separately in the London Plan's 2017 Viability Study. In this study, profits of 10-13% are considered in relation to Build to Rent schemes, depending on size. Given that the sector has grown since even the 2017 viability study for the London Plan, we do not consider 10.56% to be an unreasonable level of profit.
- 8.14 In addition, consideration should be given to the risk associated with the scheme. Whilst we appreciate that construction risk allowances have been fully realised given the delays and subsequent cost increases outlined in Savills report, the realisation of these risks means that the profit allowance (this being a return on developer risk) has been realised and used for its correct purpose.
- 8.15 Finally, taking Savills' appraisals before any changes we may recommend in this report, they acknowledge that the consented scheme would produce a negative residual value of -£18,965,767, and the revised scheme with reduced affordable housing would produce a negative residual value of -£6,347,465. This acknowledges that the reduction in affordable housing would benefit the residual land value and by extension scheme viability by £12,618,302.
- 8.16 This improvement in scheme viability is achieved entirely through a reduction in on site affordable housing. NPPG provides the following guidance which is of relevance in this context;

*Where contributions are reduced below the requirements set out in policies to provide flexibility in the early stages of a development, there should be a clear agreement of how policy compliance can be achieved over time. As the potential risk to developers is already accounted for in the assumptions for developer return in viability assessment, realisation of risk does not in itself necessitate further viability assessment or trigger a review mechanism. **Review mechanisms are not a tool to protect a return to the developer, but to strengthen local authorities' ability to seek compliance with relevant policies over the lifetime of the project.***

(Emphasis added)

9.0 SIGNATORIES

The following persons have been involved in the production of this report.



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For and on behalf of BPS Chartered Surveyors

&



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This report is provided for the stated purpose and for the sole use of the named clients. This report may not, without written consent, be used or relied upon by any third party.

The author(s) of this report confirm that there are no conflicts of interest and measures have been put in place to prevent the risk of the potential for a conflict of interest. In accordance with the RICS Professional Statement *Financial Viability in Planning: Conduct and Reporting* September 2019, this report has been prepared objectively, impartially, and with reference to all appropriate sources of information, and our instruction is not on a success-related or contingent fee basis.

Appendix 1

Cost Consultant report

Project: 100 Avenue Road (Theatre Square), Camden,
NW3 3HF

Independent Review of Assessment of Economic Viability

Interim Draft Report
Appendix A Cost Report

1 SUMMARY

- 1.1 The Stage 4 cost of £108,703,610 has been reconciled by the Applicant to the procured tender from Mace of £107,870,000. Considerable detail has been provided supporting both of these costs and based on the information provided we are satisfied that this order of cost is reasonable for the scheme as currently proposed.
- 1.2 We note that items in the cost plan are regularly annotated as “VE opportunity”. There is clearly remaining scope to undertake a Value Engineering exercise that would result in some cost saving, but further work will be required to determine the amount of any such saving.
- 1.3 Col A of our elemental analysis shows the elemental amounts of the 2Q2014 scheme adjusted to a current cost 1Q2021 resulting in an equivalent current total construction cost of £78,550,347 (3,313/m²).
- 1.4 The total of the current proposed scheme £108,645,158 is shown in Col F. (There is a discrepancy in the total costs that is briefly explained in 3.14 below). Col E shows the difference between the updated current cost of the 2014 scheme in Col A and the cost of the current proposed scheme in Col F. The Group element differences of the £/m² costs are shown in the table at 3.16. The largest difference occurs in the services costs, followed by the superstructure costs. Of the increase in superstructure costs of £397/m² the façade costs (external walls and windows) accounts for 324/m².
- 1.5 We have undertaken a notional benchmarking exercise to illustrate the enhanced costs that a normal benchmarking exercise would consider. A detailed explanation of the reasons for the specification changes and/or increased costs that have resulted is required to explain the differences in the table above.
- 1.6 The notional benchmarking exercise results in a benchmark rate of £4,598/m² that compares to the Applicant’s £4,600/m² but we are unable to conclude that these costs are reasonable without the explanation for the increased costs and any enhanced revenues that might arise as a result of enhanced specifications.
- 1.7 The construction cost in the appraisal has been reduced to £96,316,732 to reflect the work of demolitions and basement that has already been completed. No information has been provided in the form of a valuation for these works. If the whole of the basement and demolitions were omitted the remaining cost of the proposed scheme would be £93,133,521. This is a difference of £3,183,211 to the Applicants figures; this difference might well relate to other works of finishes, joinery and services that remain to be completed, but without further information we are unable to comment further.

2 METHODOLOGY

- 2.1 The objective of the review of the construction cost element of the assessment of economic viability is to benchmark the Applicant's costs against RICS Building Cost Information Service (BCIS) average costs. We use BCIS costs for benchmarking because it is a national and independent database. Many companies prefer to benchmark against their own data which they often treat as confidential. Whilst this is understandable as an internal exercise, in our view it is insufficiently robust as a tool for assessing viability compared to benchmarking against BCIS. A key characteristic of benchmarking is to measure performance against external data. Whilst a company may prefer to use their own internal database, the danger is that it measures the company's own projects against others of its projects with no external test. Any inherent discrepancies will not be identified without some independent scrutiny.
- 2.2 BCIS average costs are provided at mean, median and upper quartile rates (as well as lowest, lower quartile and highest rates). We generally use mean or occasionally upper quartile for benchmarking. The outcome of the benchmarking is little affected, as BCIS levels are used as a starting point to assess the level of cost and specification enhancement in the scheme on an element by element basis. BCIS also provide a location factor compared to a UK mean of 100; our benchmarking exercise adjusts for the location of the scheme. BCIS Average cost information is available on a default basis which includes all historic data with a weighting for the most recent, or for a selected maximum period ranging from 5 to 40 years. We generally consider both default and maximum 5 year average prices; the latter are more likely to reflect current regulations, specification, technology and market requirements.
- 2.3 BCIS average prices are available on an overall £ per sqm and for new build work on an elemental £ per sqm basis. Rehabilitation/conversion data is available on an overall £ per sqm and on a group element basis ie. substructure, superstructure, finishings, fittings and services - but is not available on an elemental basis. A comparison of the applicants elemental costing compared to BCIS elemental benchmark costs provides a useful insight into any differences in cost. For example: planning and site location requirements may result in a higher than normal cost of external wall and window elements.
- 2.4 If the application scheme is for the conversion, rehabilitation or refurbishment of an existing building, greater difficulty results in checking that the costs are reasonable, and the benchmarking exercise must be undertaken with caution. The elemental split is not available from the BCIS database for rehabilitation work; the new build split may be used instead as a check for some, but certainly not all, elements. Works to existing buildings vary greatly from one building project to the next. Verification of costs is helped greatly if the cost plan is itemised in reasonable detail thus describing the content and extent of works proposed.
- 2.5 BCIS costs are available on a quarterly basis - the most recent quarters use forecast figures, the older quarters are firm. If any estimates require adjustment on a time basis we use the BCIS all-in Tender Price Index (TPI).
- 2.6 BCIS average costs are available for different categories of buildings such as flats, houses, offices, shops, hotels, schools etc. The Applicant's cost plan should ideally keep the estimates for different categories separate to assist more accurate benchmarking. However if the Applicant's cost plan does not distinguish different

categories we may calculate a blended BCIS average rate for benchmarking based on the different constituent areas of the overall GIA.

- 2.7 To undertake the benchmarking we require a cost plan prepared by the applicant; for preference in reasonable detail. Ideally the cost plan should be prepared in BCIS elements. We usually have to undertake some degree of analysis and rearrangement before the applicant's elemental costs can be compared to BCIS elemental benchmark figures. If a further level of detail is available showing the build-up to the elemental totals it facilitates the review of specification and cost allowances in determining adjustments to benchmark levels. An example might be fittings that show an allowance for kitchen fittings, bedroom wardrobes etc that is in excess of a normal BCIS benchmark allowance.
- 2.8 To assist in reviewing the estimate we require drawings and (if available) specifications. Also any other reports that may have a bearing on the costs. These are often listed as having being used in the preparation of the estimate. If not provided we frequently download additional material from the documents made available from the planning website.
- 2.9 BCIS average prices per sqm include overheads and profit (OHP) and preliminaries costs. BCIS elemental costs include OHP but not preliminaries. Nor do average prices per sqm or elemental costs include for external services and external works costs. Demolitions and site preparation are excluded from all BCIS costs. We consider the Applicants detailed cost plan to determine what, if any, abnormal and other costs can properly be considered as reasonable. We prepare an adjusted benchmark figure allowing for any costs which we consider can reasonably be taken into account before reaching a conclusion on the applicant's cost estimate.
- 2.10 We undertake this adjusted benchmarking by determining the appropriate location adjusted BCIS average rate as a starting point for the adjustment of abnormal and enhanced costs. We review the elemental analysis of the cost plan on an element by element basis and compare the Applicants total to the BCIS element total. If there is a difference, and the information is available, we review the more detailed build-up of information considering the specification and rates to determine if the additional cost appears justified. If it is, then the calculation may be the difference between the cost plan elemental £/m² and the equivalent BCIS rate. We may also make a partial adjustment if in our opinion this is appropriate. The BCIS elemental rates are inclusive of OHP but exclude preliminaries. If the Applicant's costings add preliminaries and OHP at the end of the estimate (as most typically do) we add these to the adjustment amounts to provide a comparable figure to the Applicant's cost estimate. The results of the elemental analysis and BCIS benchmarking are generally issued as a PDF but upon request can be provided as an Excel spreadsheet.

3 GENERAL REVIEW

- 3.1 We have been provided with and relied upon the Financial Viability Assessment issued December 2020 by Savills for Essential Living (Swiss Cottage) Ltd including at Appendix 4 the Stage 4 Cost Plan issued by Gardiner & Theobald 21 Oct 2020 - Base 1Q2020 that includes the Construction Cost Reconciliation of Stage 3/ Mace/ Stage 4 (current day).
- 3.2 We have also reviewed and incorporated information accompanying our report issued 11th April 2014.

- 3.3 The cost plan is on a current day base date 1Q2020. Our benchmarking uses current BCIS data which is on a current tender firm price basis. The BCIS all-in Tender Price Index (TPI) for 1Q2020 is 334 (provisional) and for 1Q2021 327 (forecast). The base date at the time of our April 2014 report was 242 although the TPI subsequently increased as data accrued.
- 3.4 The cost plan is at Stage 4 and we assume prepared using reasonably detailed construction information, although the design information has not been scheduled.
- 3.5 The cost plan includes an allowance of 11.6% for preliminaries. The allowance for overheads and profit (OHP) is 5%. We consider both of these allowances reasonable.
- 3.6 The allowance for contingencies is 5% which we consider reasonable. All the % figures are based on a calculation of a conventional arrangement of the sums in the analysis.
- 3.7 We have extracted the cost information provided by the Applicant into a standard BCIS/NRM format to facilitate our comparison to the 2014 information provided for the scheme and also to BCIS data.
- 3.8 We have downloaded current BCIS data for benchmarking purposes including a Location Factor for Camden of 132 that has been applied for our benchmarking comparisons.
- 3.9 We have adopted the same GIA used in the Applicant's cost plan; we assume this to be the GIAs calculated in accordance with the RICS Code of Measurement 6th Edition 2007. The GIA of the current proposed scheme is 23,618m². The GIA of the 2014 scheme was 23,711m².
- 3.10 The development comprises a Tower Block A, a Lower Building B, and The Winch with flats to rent; BCIS average cost data is given in steps: 1-2 storey, 3-5 storey, 6 storey or above. We have compared the costs to BCIS data for 6 storey or above.
- 3.11 The Stage 4 cost of £108,703,610 has been reconciled by the Applicant to the procured tender from Mace £107,870,000. Considerable detail has been provided supporting both of these costs and based on the information provided we are satisfied that this order of cost is reasonable for the scheme as currently proposed.
- 3.12 We note that items in the cost plan are regularly annotated as "VE opportunity". There is clearly remaining scope to undertake a Value Engineering exercise that would result in some cost saving, but further work will be required to determine the amount of any such saving.
- 3.13 The total construction cost at the time of our 2014 report was £58,132,061 (£2,452/m²). The TPI at the time 2Q2014 was 242 although the index was eventually increased to 259 as the sample size increased. We have adjusted the elemental amounts for the change in TPI from 242 to 327 shown in Col A of our analysis resulting in an equivalent current total construction cost of £78,550,347 (3,313/m²).
- 3.14 The total of the current proposed scheme £108,645,158 is shown in Col F. This figure is the correct total of the detailed costs aggregated for the five sections.

There is a discrepancy of £58,452 to the figure on the cost plan summary of £108,703,610; this difference occurs because slightly different figures have been included in the summary for external works and the two items of risk.

- 3.15 Cole E shows the difference between the updated current cost of the 2014 scheme in Col A and the cost of the current proposed scheme in Col F. The Group element differences of the £/m² costs are shown in the table below. The largest difference occurs in the services costs, followed by the superstructure costs. Of the increase in superstructure costs of £397/m² the façade costs (external walls and windows) accounts for 324/m².

3.16

Summary	2014 application adjusted to current TPI £/m ²	Current Application £/m ²	Difference £/m ²
Demolitions	120	110	-10
Substructure	184	329	145
Superstructure	1,278	1,674	397
Finishes	177	298	120
Fittings	164	284	120
Services	576	1,058	482
External works	114	105	-9
Preliminaries	392	445	53
OHP	150	215	65
Contingency	158	82	-76
	3,313	4,600	1,287

- 3.17 We have undertaken a notional benchmarking exercise to illustrate the enhanced costs that a normal benchmarking exercise would consider. A detailed explanation of the reasons for the specification changes and/or increased costs that have resulted is required to explain the differences in the table above.

- 3.18 The notional benchmarking exercise results in a benchmark rate of £4,598/m² that compares to the Applicant's £4,600/m² but we are unable to conclude that these costs are reasonable without the explanation for the increased costs and any enhanced revenues that might arise as a result.

- 3.19 The construction cost in the appraisal has been reduced to £96,316,732 to reflect the work of demolitions and basement that has already been completed. No information has been provided in the form of a valuation for these works. If the whole of the basement and demolitions were omitted the remaining cost of the proposed scheme would be £93,133,521. This is a difference of £3,183,211 to the Applicants figures; this difference might well relate to other works of finishes, joinery and services that remain to be completed, but without further information we are unable to comment further.

Appendix 2

BPS Appraisals

100 Avenue Road, Swiss Cottage
Build to Rent As Consented
2020 Costs / Values

Development Appraisal
BPS Surveyors
15 March 2021

APPRAISAL SUMMARY**BPS SURVEYORS**

100 Avenue Road, Swiss Cottage
Build to Rent As Consented
2020 Costs / Values

Appraisal Summary for Phase 1

Currency in £

REVENUE

Sales Valuation	Units	ft²	Sales Rate ft²	Unit Price	Gross Sales
Affordable Rent Block D	28	28,611	232.77	237,850	6,659,787
Intermediate Block F	8	6,488	232.77	188,777	1,510,213
Totals	36	35,099			8,170,000

Rental Area Summary

	Units	ft²	Rent Rate ft²	Initial MRV/Unit	Net Rent at Sale	Initial MRV	Net MRV at Sale
Block A Market Rent	130	98,966	44.92	34,195	3,333,975	4,445,300	3,333,975
Block B DMR	18	13,518	21.61	16,233	219,141	292,188	219,141
Retail	1	11,211	30.00	336,330	336,330	336,330	336,330
Ancillary Retail	1	1,387	30.00	41,610	41,610	41,610	41,610
Totals	150	125,082			3,931,056	5,115,428	3,931,056

Investment Valuation**Block A Market Rent**

Manual Value 100,700,244

Block B DMR

Manual Value 6,672,052

Retail

Market Rent 336,330 YP @ 6.7500% 14.8148
 (6mths Rent Free) PV 6mths @ 6.7500% 0.9679 4,822,563

Ancillary Retail

Market Rent 41,610 YP @ 6.7500% 14.8148
 (6mths Rent Free) PV 6mths @ 6.7500% 0.9679 596,637

Total Investment Valuation**112,791,496****GROSS DEVELOPMENT VALUE****120,961,496**

Purchaser's Costs (7,669,822)

Effective Purchaser's Costs Rate 6.80%
 (7,669,822)

NET DEVELOPMENT VALUE**113,291,674****NET REALISATION****113,291,674****OUTLAY****ACQUISITION COSTS**

Fixed Price 1
 Fixed Price 1 1

Other Acquisition

Other Acquisition 1.8000% 0 0

CONSTRUCTION COSTS

Construction	Units	Unit Amount	Cost
Construction Costs	1 un	96,316,732	96,316,732
Retention on Demolition			38,985
Parkland License Extension			40,000
S278			411,015
S106			30,000
			96,836,732

PROFESSIONAL FEES

All Professional Fees 12.00% 11,558,008
 11,558,008

APPRAISAL SUMMARY**BPS SURVEYORS****100 Avenue Road, Swiss Cottage****Build to Rent As Consented****2020 Costs / Values****MARKETING & LETTING**

Letting Agent Fee	10.00%	37,794	
Letting Legal Fee	5.00%	18,897	
			56,691

DISPOSAL FEES

Sales Agent Fee	1.00%	1,132,917	
Sales Legal Fee	0.50%	566,458	
			1,699,375

FINANCE

Timescale	Duration	Commences
Pre-Construction	2	Oct 2020
Construction	22	Dec 2020
Sale	1	Oct 2022
Total Duration	25	

Debit Rate 6.750%, Credit Rate 0.500% (Nominal)

Land		0	
Construction		5,928,906	
Total Finance Cost			5,928,906

TOTAL COSTS**116,079,713****PROFIT****(2,788,040)****Performance Measures**

Profit on Cost%	-2.40%
Profit on GDV%	-2.30%
Profit on NDV%	-2.46%
Development Yield% (on Rent)	3.39%
Equivalent Yield% (Nominal)	3.42%
Equivalent Yield% (True)	3.49%
IRR% (without Interest)	3.33%
Rent Cover	-9 mths
Profit Erosion (finance rate 6.750)	N/A

100 Avenue Road, Swiss Cottage
Proposed Scheme

Development Appraisal
BPS Surveyors
15 March 2021

APPRAISAL SUMMARY**BPS SURVEYORS****100 Avenue Road, Swiss Cottage
Proposed Scheme****Appraisal Summary for Phase 1**

Currency in £

REVENUE**Rental Area Summary**

	Units	ft ²	Rent Rate ft ²	Initial MRV/Unit	Net Rent at Sale	Initial MRV	Net MRV at Sale
Block A Market Rent	130	98,966	44.92	34,195	3,333,975	4,445,300	3,333,975
Block B DMR	18	13,518	22.37	16,800	226,800	302,400	226,800
Block D - Market Rent	28	28,611	34.99	35,754	750,825	1,001,100	750,825
Block F Market Rent	8	7,288	35.47	32,312	193,875	258,500	193,875
Retail	1	11,211	30.00	336,330	336,330	336,330	336,330
Ancillary Retail	<u>1</u>	<u>1,387</u>	30.00	41,610	<u>41,610</u>	<u>41,610</u>	<u>41,610</u>
Totals	186	160,981			4,883,415	6,385,240	4,883,415

Investment Valuation**Block A Market Rent**

Manual Value 100,700,244

Block B DMR

Manual Value 6,672,052

Block D - Market Rent

Manual Value 22,920,510

Block F Market Rent

Manual Value 5,918,442

Retail

Market Rent	336,330	YP @	6.7500%	14.8148	
(1yr 6mths Rent Free)		PV 1yr 6mths @	6.7500%	0.9067	4,517,623

Ancillary Retail

Market Rent	41,610	YP @	6.7500%	14.8148	
(1yr 6mths Rent Free)		PV 1yr 6mths @	6.7500%	0.9067	558,910

Total Investment Valuation**141,287,782****GROSS DEVELOPMENT VALUE****141,287,782**

Purchaser's Costs (9,607,569)

Effective Purchaser's Costs Rate	6.80%	
		(9,607,569)

NET DEVELOPMENT VALUE**131,680,212****NET REALISATION****131,680,212****OUTLAY****ACQUISITION COSTS**

Fixed Price	1		
Fixed Price		1	1

Other Acquisition

Other Acquisition	1.8000%	0	0
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CONSTRUCTION COSTS

Construction	Units	Unit Amount	Cost
Construction Costs	1 un	96,316,732	96,316,732
Retention on Demolition			38,985
S106			30,000
S278			411,015
Parkland License Extension			40,000
			96,836,732

APPRAISAL SUMMARY**BPS SURVEYORS****100 Avenue Road, Swiss Cottage****Proposed Scheme****PROFESSIONAL FEES**

All Professional Fees	12.00%	11,558,008	
			11,558,008

MARKETING & LETTING

Letting Agent Fee	10.00%	37,794	
Letting Legal Fee	5.00%	18,897	
			56,691

DISPOSAL FEES

Sales Agent Fee	1.00%	1,316,802	
Sales Legal Fee	0.50%	658,401	
			1,975,203

FINANCE

Timescale	Duration	Commences
Pre-Construction	2	Oct 2020
Construction	22	Dec 2020
Sale	1	Oct 2022
Total Duration	25	

Debit Rate 6.750%, Credit Rate 0.500% (Nominal)

Land		0	
Construction		6,221,655	
Total Finance Cost			6,221,655

TOTAL COSTS**116,648,290****PROFIT****15,031,922****Performance Measures**

Profit on Cost%	12.89%
Profit on GDV%	10.64%
Profit on NDV%	11.42%
Development Yield% (on Rent)	4.19%
Equivalent Yield% (Nominal)	3.39%
Equivalent Yield% (True)	3.46%
IRR% (without Interest)	21.26%
Rent Cover	3 yrs 1 mth
Profit Erosion (finance rate 6.750)	1 yr 10 mths

**Appendix: 8 - Secretary of State and Planning Inspectorate Reports for
2014/1617/P dated 25/08/2015**



Department for Communities and Local Government

Ms Lorna Henderson
Turley
17 Gresse Street
London
W1T 1QL

Our Ref: APP/X5210/W/14/3001616

18 February 2016

Dear Madam,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL ESSENTIAL LIVING (SWISS COTTAGE) LTD
100 AVENUE ROAD, LONDON, NW3 3HF**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS, who carried out an Inquiry which was held on 14 – 17 July, 20 – 24 July and 10 August 2015 into your client's appeal against a decision of the London Borough of Camden ('the Council') to refuse planning permission for the demolition of the existing building and redevelopment with a 24 storey building and a part 7 part 5 storey building comprising a total of 184 residential units (class C3) and up to 1,041sqm of flexible retail/financial or professional or café/restaurant floorspace (classes A1/A2/A3) inclusive of part sui generis floorspace or potential new London Underground station access fronting Avenue Road and up to 1,350sqm for community use (Class D1) with associated works including enlargement of the existing basement level to contain disabled car parking spaces and cycle parking, landscaping and access improvements in accordance with application reference 2014/1617/P, dated 28 February 2014.
2. The appeal was recovered for the Secretary of State's determination on 11 March 2015, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeal involves a proposals for residential development of over 150 units or on sites of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed subject to conditions. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with his recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

4. On 3 November 2015 the Secretary of State wrote to the Council to clarify that the proposed planning obligations conform with the Community Infrastructure Levy (CIL) Regulations 2010, Regulation 123(3) as amended, concerning limitations on the use of planning obligations in the determination of planning applications and appeals. The Council responded on 16 November 2015.
5. The Secretary of State has had regard to correspondence submitted too late to be considered by the Inspector, as set out in Annex A to this letter. He has carefully considered and taken into account these representations but he does not consider that they raise new issues that would affect his decision or require him to refer back to parties. Copies of the representations received can be made available on written request to the address at the foot of the first page of this letter.

Policy and Statutory considerations

6. In deciding the appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the adopted development plan for the area comprises The London Plan (adopted July 2011), the Revised Early Minor Alterations to the London Plan (2013), Further Alterations to the London Plan (2015), Camden Core Strategy (CS) and Development Policies (DP) (both adopted November 2010) and the Camden Site Allocations Development Plan Document. Relevant Supplementary Planning Guidance includes the Mayor's Housing Standards SPG and Camden's Planning Guidance document.
7. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving listed structures or their settings or any features of special architectural or historic interest which they may possess. In accordance with Section 72 of the LBCA Act the Secretary of State has paid special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.
8. The Secretary of State considers that the development plan policies most relevant to the appeal are those set out by the Inspector at IR11-43.
9. Other material considerations which the Secretary of State has taken into account include: the National Planning Policy Framework ('the Framework'), and the planning guidance published in March 2014. The Secretary of State has also had careful regard to the Tall Buildings: Historic England Advice Note 4 published 10 December 2015 which replaces and cancels the 2007 joint English Heritage/CABE guidance and considers, in the light of the facts of this case, that changes to the guidance do not alter his conclusions or decision.

Main issues

10. The Secretary of State agrees that the main disputed issues in this case are those outlined by the Inspector at IR232-233.

Heritage Assets

11. The Secretary of State has carefully considered the Inspector's analysis at IR234-241 and agrees for the reasons given that while there is no specific duty under Section 72(1) of the LBCA Act to consider the setting of conservation areas, it is established practice that views into and out of a conservation area and any effect on character and/or appearance are

relevant (IR234) and the correct assessment of harm to Conservation Areas, as designated heritage assets in the Framework, is the effect on the character and/or appearance of the conservation area as a whole while acknowledging that this does not mean that any harm identified has to be over the whole area, and harm in one part of the conservation area (or outside) could have an effect on the conservation area as a whole. He further finds, in agreement with the Inspector that great weight should be given to the assets' conservation (IR235).

12. The Secretary of State agrees with the Inspector that no listed building is physically affected by the proposal apart from the Hampstead Figure Sculpture and generally it is the setting of various listed buildings that needs to be considered (IR236).
13. The Secretary of State agrees with the Inspector's interpretation of policies CS5, CS14 and DP25 for the reasons given (IR237-238). He agrees with the Inspector that the aim of policies CS5, CS14 and DP25 is to seek development which both preserves and enhances heritage assets, but that development that only preserves the assets or would not cause harm to them would also effectively satisfy the Framework policy tests (IR238). The Secretary of State considers that the heritage aims of policies CS5, CS14 and DP25 are closely aligned with paragraph 126 of the Framework, which, amongst other things, refers to the desirability of sustaining and enhancing the significance of heritage assets and the desirability of new development making a positive contribution to local character and distinctiveness. As such, and applying paragraph 215 of the Framework he gives full weight to policies CS5, CS14 and DP25.
14. The Secretary of State notes that the effects on heritage assets were considered by Historic England who indicated that they did not consider that there would be effects on the historic environment of such significance that they needed to continue to be involved. He agrees with the Inspector that if Historic England had considered that there was a notable unacceptable impact that he would have expected them to have commented (IR241). However, he also agrees with the Inspector that just because Historic England did not comment does not mean that there was no harm to be identified as they considered that was to be left to the Council (IR241).
15. The Secretary of State has carefully considered the Inspector's analysis of the effects on the significance, character and appearance of the various nearby conservation areas at IR242-275. Likewise, he has carefully considered the Inspector's analysis of the effects on the significance and special architectural and historic interest of listed buildings, as well as evidence put to the Inquiry by the parties in these respects, and national policy in Section 12 of the Framework.

Conservation Areas

16. The Secretary of State agrees with the Inspector that the development would cause 'less than substantial' harm, in Framework terms, to the Belsize Conservation Area associated with the view from Belsize Park (IR245-260). He also agrees with the Inspector, for the reasons given, that the character and appearance and significance of the Fitzjohn's and Netherhall Conservation Area would be preserved (IR261-265), as would the significance and special architectural and historic interest of the Alexandra Road Conservation Area (IR272-275). Further, the Secretary of State agrees with the Inspector for the reasons given that with regard to the Elsworthy Road, St John's Wood and South Hampstead Conservation Areas their character and appearance and significance would be preserved and the Conservation Areas unaffected (IR266-271).

17. Overall, the Secretary of State attaches considerable weight to the 'less than substantial' harm he finds to the Belsize Conservation Area. Applying paragraph 134 of the Framework, the Secretary of State weighs this harm against the public benefits of the proposal, including securing its optimum use.

Listed Buildings

18. In deciding this appeal, the Secretary of State has had special regard to the desirability of preserving any listed building or its setting or any features of special architectural or historic interest which it possesses, as required by section 66 of the LBCA Act.
19. The Secretary of State has carefully considered the assessment of the impact of the scheme on the listed buildings identified at IR276-295 and IR296-303 of the Inspector's Report.
20. As to the Hampstead Figure Sculpture, the Secretary of State notes it would be necessary to remove the listed sculpture and reposition it after the works are complete (IR283). He agrees with the Inspector that there is likely to be a significant enhancement to the setting of the sculpture and therefore the special architectural and historic interest would be likely to be enhanced (IR286). As to the Swiss Cottage Library, the Secretary of State agrees with the Inspector that the proposal would enhance the town centre setting and therefore also the significance of the listed building and its special architectural and historic interest would be enhanced (IR279).
21. Considering the Regency Lodge and the Fire Station at Lancaster Grove and Eton Grove (IR287-292), the Secretary of State agrees with the Inspector for the reasons given that the impact of their significance would be neutral and their significance, special architectural and historic interest would be preserved (IR288 & 292). Turning to the Alexandra Road Estate and Primrose Hill Tunnels (Entrance), the Secretary of State concludes for the reasons given that the proposal would not cause any impact on the setting or affect the significance or special architectural and historic interest of the listed buildings (IR295).
22. With regard to the effect on the significance and special architectural and historic interest of the other listed buildings in the surrounding area identified by other parties, the Secretary of State agrees with the Inspector's analysis for the reasons given at IR296-303 that the introduction of the appeal proposal would not have any impact on the special architectural and historic interest or significance of these listed buildings.

Undesignated heritage assets

23. The Secretary of State has carefully considered the Inspector's analysis of the effects on the setting and therefore significance of certain locally-listed buildings, namely the Swiss Cottage Open Space (IR304), the Hampstead Theatre (IR305), the Swiss Cottage Leisure Centre (IR306), the Royal Central School of Speech and Drama (IR307-308) and the Swiss Cottage Inn (IR309). He has also had regard to the evidence put to the inquiry by the parties in this respect, and national policy in paragraph 135 of the Framework. For the reasons given at IR304-309 the Secretary of State agrees with the Inspector that the significance of the non-designated heritage assets would not be harmed by the proposal.

Conclusion on Heritage Assets

24. Overall, the Secretary of State agrees with the Inspector for the reasons given that the proposal generally accords with the aims and objectives of CS Policies CS5 & CS14, DP Policy DP25 and LP Policy 7.8. However, he also agrees with the Inspector for the reasons given that there is some harm in terms of CS Policies CS5, CS14 and DP25 to be carried

through into the planning balance, due to the 'less than substantial' harm the development would cause to the Belsize Conservation Area in respect of the view from Belsize Park.

Character and Appearance

25. The Secretary of State has carefully considered the Inspector's analysis of the effect on the character and appearance of the surrounding area at IR311-320 and the evidence put to the inquiry by the parties in this respect. He agrees that the existing building is attractively designed and generally well thought out in relation to its surroundings, while acknowledging that the ground floor poorly relates to the surrounding area and the provision of active frontages around the building would considerably improve the urban environment (IR311). Comparing the existing building with the proposed building, the Secretary of State agrees with the Inspector that there is no doubt there would be a considerable change in the size of the buildings, which will have a greater presence and that the extent of the change for the area is not the main consideration, but whether what is proposed would be acceptable in the context of its surroundings (IR312).
26. The Secretary of State agrees with the Inspector for the reasons given that the proposed development would not have any direct impact on the setting, amenity value or significance of the park at Primrose Hill (IR314) and that the principle of development for residential and commercial uses is appropriate, the site being in the town centre and not far from many other residential developments (IR316).
27. As to whether the buildings are appropriately scaled, in terms of height and massing, in their surrounds and the other design consequences of the scheme, the Secretary of State notes that there are a number of tall buildings near to the appeal site and that the Camden Site Allocations Local Development Document identifies the appeal site as being appropriate for the type of development proposed, noting the potential for taller buildings (IR316).
28. Overall, and for the reasons given in IR311-320, the Secretary of State agrees with the Inspector that the proposal meets the criteria of the Camden Site Allocations Policy and concludes, in agreement with the GLA and the Design Council, that it would be a well designed, attractive building that sits well within its town centre context. However, he agrees with the Inspector that this must be an expectation of new development and therefore adds minimal weight to the planning balance (IR391). He further agrees with the Inspector that the proposal accords with policies CS3, CS5, CS7 & CS15, DP24 & DP31 and LP policies 2.15, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 4.7, 4.8 and 7.7.

Sunlight and Daylight

29. The Secretary of State has carefully considered the Inspector's assessment of sunlight and daylight issues at IR321-332 and the BRE Site Layout Planning for Daylight and Sunlight Guide 2011 ('BRE guidance'). He has also had regard to the views of the Design Council who considered the impact on sunlight/daylight in considerable detail and concluded, following changes after their initial comments, that it was acceptable (IR332).
30. The Secretary of State agrees with the Inspector that the additional shading would not have an unacceptable impact on the amenity provided by the Swiss Cottage Open Space and generally would comply with the BRE guidance (IR327). As to the additional shading of the pedestrianised end of Eton Avenue, where markets are held, he agrees with the Inspector for the reasons given that the markets would not be unacceptably affected and their amenity, social and economic value would remain (IR328). Furthermore, he agrees with the Inspector for the reasons given that the impact on the residences at Cresta House in terms

of daylight and sunlight would be minimal and would accord with BRE recommendations (IR329-330).

31. Overall, the Secretary of State agrees with the Inspector for the reasons given that the increase in shading is a harm that weighs against the proposal, and he affords moderate weight to this.

Other Amenity Issues

32. The Secretary of State has carefully considered the Inspector's analysis of other amenity issues at IR333-342. Like the Inspector he does not consider the additional overlooking would have any significant impact on the use of the Swiss Cottage Open Space or harm its amenity for users (IR334). He agrees that the significant increase in residential use at the appeal site would result in a greater use of the Swiss Cottage Open Space and considers, in agreement with the Inspector, that this would be an enhancement in terms of increased vitality of the area (IR335). He also agrees with the Inspector for the reasons given that in view of the distance from the properties and control of opening hours, that there is unlikely to be unacceptable noise and disturbance generated by the properties (IR336-337).
33. The Secretary of State agrees with the Inspector for the reasons given that while the appearance of the setting would change, the civic/town centre character would not (IR339). Overall, he agrees with the Inspector and does not consider there would be an unacceptable impact on the Swiss Cottage Open Space (IR338-339). He agrees with the Inspector's assessment as to the impact of the proposed development as experienced from the swimming pool (IR340) and from the various residential properties around the proposed development for the reasons given at IR340-341.
34. Overall, the Secretary of State agrees with the Inspector for the reasons given that the proposal accords with CS Policy CS5, DP Policy DP26 and LP Policy 7.7 (IR342).

Other Matters

35. The Secretary of State has carefully considered the Inspector's analysis at IR343-350 in regard to air quality, along with evidence put to the inquiry by the parties in this respect and overall agrees that, with the recommended mitigation measures in place, air quality is not considered to be a significant consideration for the proposed development (IR350).
36. Turning to the impact from any increase in wind speed, the Secretary of State considers that suitable micro climate mitigation measures are incorporated within the design to mitigate potential adverse wind environments arising from the development which are secured by condition 15. He considers that condition 15 is appropriate and necessary and would meet the tests of paragraph 206 of the Framework. For the reasons given by the Inspector at IR351-357 the Secretary of State concludes that, with these suitable mitigation methods, no harm to the users of the area would be caused and the proposal would accord with CS Policies CS5 & CS15, DP Policies 26 and DP31 and LP Policies 5.1 and 5.2 (IR357).
37. The Secretary of State has considered the Inspector's comments at IR358 and like him does not consider that the new entrance to the Avenue would result in any significant impact on the safety of the users of the Swiss Cottage Open Space. He further agrees with the Inspector for the reasons given that while the gas reduction valve adjacent to the appeal site is reasonably close to the building, he does not consider that this is a safety issue (IR359).
38. As to road access issues, the Secretary of State has carefully considered the Inspector's analysis (IR360-364) and the evidence put to the inquiry by the parties in this respect. He

notes that the appeal site is in a town centre location directly adjacent to the Swiss Cottage underground station with the highest achievable PTAL Level on routes ideally located for a car free development as proposed (IR360). The Secretary of State agrees with the Inspector for the reasons given that there is no reason why with good management service access to the property cannot be controlled (IR362). Overall, the Secretary of State agrees with the Inspector that the traffic impacts of the development would not be substantial and certainly not severe as indicated at paragraph 32 of the Framework (IR363) and that the proposal would accord with CS Policies CS5 & CS15, DP Policy 26 and LP Policy 3.6.

39. As to tree issues, the Secretary of State has carefully considered the Inspector's analysis (IR365-368) and the evidence put to the inquiry by the parties in this respect. Overall, the Secretary of State agrees with the Inspector for the reasons given that the loss of trees to the south of the appeal site would cause some harm to amenity which weighs against the scheme, to which he attaches moderate weight.
40. As to the community facility, the Secretary of State agrees with the Inspector for the reasons given (IR369-370) that the allocation of the community space, whether taken up by the Winchester Project or others, is a significant benefit to go into the planning balance.

5 Year Housing Land Supply

41. The Secretary of State agrees with the Inspector for the reasons given that the Council has a 5 year housing land supply (IR371).

Housing Issues

42. The Secretary of State has carefully considered the Inspector's analysis of housing issues at IR371-373 and agrees (IR372) that great weight should be attached to the housing provision proposed.
43. The Secretary of State has carefully considered the concerns raised by interested parties about the number of affordable units proposed. He has also had regard to the viability appraisal and the Inspector's analysis of the issue (IR373). He notes the Council and the Appellant agree (IQ30): that the provision of 36 affordable units and 18 discounted market housing units for 15 years comprises a policy compliant affordable housing provision having regard to the viability of the proposed scheme with the provision secured by way of a section 106 obligation; that the s106 agreement includes a review mechanism requiring the viability of providing affordable housing to be re-assessed at the end of the project (within one year after the date of practical completion of the development) and if it is found that there should have been more affordable units a mechanism is set out for adjustment by a deferred payment; that a provision permitting the use of the community space for additional affordable units is necessary if the community space within the scheme is no longer required; and that as such the proposals would satisfy the provisions of Policies CS6 and CS19 and Policies DP3 and DP4. Overall, the Secretary of State agrees with the Inspector for the reasons given that the viability study and method of ensuring that adequate affordable housing is provided is fairly and reasonably related in scale and kind to the proposed development and necessary having regard to the policy framework and the housing needs of the Borough (IR373).

Environmental Impact Assessment

44. The Secretary of State notes the Save Swiss Cottage Group queried why the proposals were negatively screened for EIA purposes (IR374) although it is noted that they do not state that the proposal is EIA development or formally request that the screening decision be reviewed. Like the Inspector, in reaching his decision on the appeal, the Secretary of

State has taken into consideration the extensive environmental information submitted and evidence from consultation bodies and other organisations (IR374).

Planning Obligations and Conditions

45. The Secretary of State has carefully considered the s106 agreement, the Inspector's analysis at IR375-383, national policy set out at paragraphs 203-205 of the Framework, the relevant planning guidance, and the CIL Regulations 2010 as amended.
46. The Secretary of State agrees with the Inspector for the reasons given that the requirements for affordable housing (IR376); parking (IR377); public realm (IR378) the Construction Management Plan, Service Management Plan and the Travel Plan (IR379); local procurement/local employment, Energy Efficiency, Community Facility and potential New Station Access (IR380) and waste disposal and recycling (IR381) are all necessary, fair and reasonably related to the development. However, he also agrees with the Inspector, for the reasons given at IR382, that the clause in the obligation relating to the project architects is not compliant with the CIL Regulations or paragraph 204 of the Framework, as it is not necessary to make the development acceptable in planning terms. Overall, the Secretary of State agrees with the Inspector for the reasons given that the s106 requirements, save for the project architects clause, complies with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework.
47. Having carefully considered the s106 agreement and the Council's response letter referred to in DL4, above, the Secretary of State concludes: That the contributions relating to affordable housing are excluded from Regulation 123; that the external public open space maintenance contribution is an obligation specific to this particular area of open space being provided and does not form part of any wider project or infrastructure provision; that the landscape and public realm contributions relate solely towards the proposal and do not form part of any wider project or infrastructure provision; that the travel plan monitoring contribution is a contribution towards the cost to the Council of monitoring the travel plan that will be agreed in respect of the development and is site specific and not part of any wider project; and that with respect to the carbon reduction contribution, the Council confirmed that 5 or more separate obligations have not already been entered into since April 2010 within the relevant area which provide for the funding of that infrastructure project or type. The Secretary of State agrees with the Council that aside from these financial contributions that the s106 agreement contains site specific obligations relating to the carrying out, management and operation of this particular development and that none of the obligations provide for the funding or provision of an infrastructure project which has been part funded or provided by any other obligation.
48. The Secretary of State has considered the Inspector's comments at IR384 on planning conditions and the schedule of agreed conditions he recommends at Annex A of his report together with the reasons for them and is satisfied that the proposed conditions are reasonable and necessary and would meet the tests of paragraph 206 of the Framework and the planning guidance.

Planning balance and conclusion

49. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In accordance with section 66(1) of the LBCA Act, the Secretary of State has paid special regard to the desirability of preserving listed structures or their settings or any features of special architectural or historic interest which they may possess. In accordance with

Section 72 of the LBCA Act the Secretary of State has paid special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.

50. For the reasons given above, the Secretary of State considers that the proposal is in accordance with the development plan as a whole. He has gone on to consider whether there are material considerations in this case that indicate the appeal should be determined other than in accordance with the development plan.
51. Weighing against the proposal, for the reasons given above is the 'less than substantial harm' in Framework terms to the Belsize Conservation Area, to which the Secretary of State attaches considerable weight. Other factors that the Secretary of State finds weigh against the scheme are: the impact on trees, to which he attaches moderate weight; disruption during construction, to which he attaches little weight for the reasons in IR392; the impacts on views from around the area and the increase in shading in respect of the Swiss Cottage Open Space, both of which he gives moderate weight.
52. Weighing in favour of the appeal the Secretary of State finds, for the reasons given above: considerable social benefit in the provision of the proposed housing and affordable housing, and by the provision of space for community use; the potential for the underground station to be improved would also be a significant benefit; there would be an enhancement to the frontages of the buildings at ground level compared with the existing arrangement that could improve the vitality of the area (IR390); and that the proposed development is an attractive design and will fit in with the area, although he agrees with the Inspector for the reasons given that this adds minimal weight to the planning balance (IR391).
53. Applying paragraph 134 of the Framework, the Secretary of State considers that the public benefits of the proposal outweigh the less than substantial harm, in Framework terms, to the Belsize Conservation Area.
54. The Secretary of State considers, for the reasons above, and in agreement with the Inspector (IR395) that the social, economic and environmental benefits of the proposal make it sustainable development in terms of the Framework and that the substantial benefits considerably outweigh the harms that have been identified. He therefore concludes that there are no material considerations that indicate that the proposal should be determined other than in accordance with the development plan.

Formal Decision

55. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission for the demolition of the existing building and redevelopment with a 24 storey building and a part 7 part 5 storey building comprising a total of 184 residential units (class C3) and up to 1,041sqm of flexible retail/financial or professional or café/restaurant floorspace (classes A1/A2/A3) inclusive of part sui generis floorspace or potential new London Underground station access fronting Avenue Road and up to 1,350sqm for community use (Class D1) with associated works including enlargement of the existing basement level to contain disabled car parking spaces and cycle parking, landscaping and access improvements in accordance with application reference 2014/1617/P, dated 28 February 2014 subject to the conditions listed in Annex B to this letter.
56. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

57. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

58. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within six weeks from the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

59. A copy of this letter has been sent to the London Borough of Camden as well as representatives of the Rule 6 parties: Mr Reed, Belsize Residents' Association, Winchester Road Residents' Association, Cresta House Residents' Association, Eton Avenue Housing Association and Save Swiss Cottage Action Group. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Philip Barber

Authorised by Secretary of State to sign in that behalf

Annex A: correspondence submitted too late to be considered by the Inspector

From	Date
B Alter	17/03/2015
N Piercy	30/06/2015
A H Kay	06/07/2015, 10/07/2015
C Athanasius	08/07/2015
C Athanassious	08/07/2015
D Mackersey	08/07/2015
N Coleman	08/07/2015
P Rankin	09/07/2015
V & C Renton	09/07/2015
K Lawlor	10/07/2015
D Heinen	11/07/2015
J Marinkovic	11/07/2015, 10/07/2015
Rumenka	11/07/2015
I Smithers & D Angelova	13/07/2015
J Higgins	16/07/2015
M Barron	16/07/2015, 17/07/2015, 16/12/2015
R Grimm	15,16&17/07/2015 11/08/2015, 12/08/2015, 03/09/2015
G Chen	20/07/2015
No Name	20/07/2015
G Turner	23/07/2015
M Kirk	24/07/2015
T Ewing	24/07/2015
M Slade	04/08/2015
J Hovington	06/08/2015, 29/10/2015
D Reed	25/08/2015, 25/09/2015, 20/10/2015, 15/11/2015, 15/11/2015, 18/11/2015, 05/01/2016, 07/01/2015
T Siddiq MP	04/09/2015

From	Date
E Chambers	05/09/2015, 08/10/2015, 16/11/2015
J Sachs	29/09/2015, 09/11/2015, 10/11/2015, 16/11/2016, 15/01/2016, 08/02/2016
A Christiansen	04/10/2015
A Foden	04/10/2015
A Kramer	04/10/2015
A Laden	04/10/2015
C Green	04/10/2015
C Tobelem	04/10/2015
D Bethlehem	04/10/2015
D Greene	04/10/2015
DT Hsiung	04/10/2015
E Strange	04/10/2015
G Lee	04/10/2015, 19/10/2015
H Nowell-Smith	04/10/2015
HP Bogard	04/10/2015
J Manthorpe	04/10/2015
J Nasatyr	04/10/2015
J Snyder	04/10/2015
J Tims	04/10/2015
J Walker	04/10/2015
K Barron	04/10/2015
K Fernald	04/10/2015
K Levina	04/10/2015
K Morris	04/10/2015
M Jameson	04/10/2015
O Pavlova	04/10/2015
P Royston	04/10/2015
Q Lloyd-Harris	04/10/2015
R Brandon	04/10/2015
R Rosen	04/10/2015
RL Bunker	04/10/2015
S & D Montague	04/10/2015
S Gaudenzi	04/10/2015
S Perth	04/10/2015

From	Date
Y Klemperer	04/10/2015
A Charvet	05/10/2015
A&G Raingold	06/10/2015
B Alter	06/10/2015
B Bullock & K Dahlstrom	06/10/2015
B Tankel	06/10/2015
C Askar	06/10/2015
C Jackman	06/10/2015
D Schumacher	06/10/2015
Dr K von Abrams	06/10/2015
Dr S Collins	06/10/2015
E Broomberg	06/10/2015
E Raff	06/10/2015 16/11/2015
E Solnick	06/10/2015
FT Unkan	06/10/2015
G Denniss	06/10/2015
G Maclean	06/10/2015
G Young	06/10/2015
GP Adams	06/10/2015
H Djurkovik	06/10/2015
J Ezekiel	06/10/2015
J Israelsohn	06/10/2015
J Johnson	06/10/2015
J Mishon	06/10/2015
J Stephenson	06/10/2015
J Veale	06/10/2015, 04/12/2015
K & G Balint-Kurti	06/10/2015
L Veale	06/10/2015
M Dreyfus-Terrett	06/10/2015
M Monjardino	06/10/2015
R & R Vanderkar	06/10/2015
S Abraham	06/10/2015
S Khanna	06/10/2015
S Malin	06/10/2015
T Haiman	06/10/2015
T Salmon	06/10/2015
T Tugnut	06/10/2015

From	Date
O Kooij	07/10/2015
S Cheifetz	07/10/2015
V Solti	07/10/2015
A Eastman	08/10/2015
C Cowdray	08/10/2015
C Eschenbach	08/10/2015
J Ooi	09/10/2015
A Richards	12/10/2015
J & H Heitz Jackson	12/10/2015
M Crossick	12/10/2015
R Sutton	12/10/2015
T Tugnut	12/10/2015
B Barnett	13/10/2015
G Deane	13/10/2015
J Huntington	13/10/2015
L van der Pump	13/10/2015
E Brooks	14/10/2015
H Hallam	14/10/2015
R Fletcher	14/10/2015
R Mallard	14/10/2015
A Plattner	15/10/2015
D Cheifetz	15/10/2015
P Symonds	15/10/2015
C & C Rozes	16/10/2015
E Beinart	16/10/2015
V Stern	16/10/2015
A Brownjohn	17/10/2015
J Clarke	17/10/2015
A Stevens	18/10/2015, 01/12/2015
A Stocker	18/10/2015
A Thompson	18/10/2015
B Alden	18/10/2015
M Gretton	18/10/2015
M Herbst	18/10/2015
R Fletcher	18/10/2015
TL Wingrove	18/10/2015
A Nottage	19/10/2015
G Fitzgerald	19/10/2015
G Riley	19/10/2015
H Gregory	19/10/2015
J Lasik	19/10/2015
N Pearce	19/10/2015
P Cocks	19/10/2015
R Hopkirk	19/10/2015
G Avshalom	19/10/2015

From	Date
S Parry-Wingfield	19/10/2015
V Renton	19/10/2015
C Castelino	20/10/2015
L Stern	20/10/2015
M Bottcher	20/10/2015
R Morris	20/10/2015
S Bagherzade	20/10/2015
S Courtin & C Despina	20/10/2015
Yee	20/10/2015
D Court	21/10/2015
M Hall	21/10/2015
M McKinnon	21/10/2015
P Magnus	21/10/2015
C Michaelides	22/10/2015
L Darlington	22/10/2015
O Buhus	22/10/2015
H Stevens	23/10/2015
J eEarl	23/10/2015
M Shakeshaft	23/10/2015
P Peacock	23/10/2015
M Mackie	25/10/2015
R & E Kernick	25/10/2015
D Bernasconi	26/10/2015
D Gluckman	27/10/2015
B Smith	28/10/2015
J Webster	28/10/2015
L Klein	28/10/2015
S Stahl	28/10/2015
S Tylerman	28/10/2015
C Conaré	29/10/2015
E Evans	29/10/2015
M Lange	29/10/2015
E Evans	30/10/2015
L Corbin	30/10/2015
E Peel	02/11/2015, 03/11/2015, 04/11/2015, 04/11/2015
F de Freitas	02/11/2015
S Hadida	02/11/2015
L Tyndall	03/11/2015
C Heinsen	04/11/2015
K Parish	04/11/2015
M Vaswani	04/11/2015
J Richardson	05/11/2015
R Mistry	05/11/2015
D Strelitz	06/11/2015

From	Date
F Radford	06/11/2015, 02/12/2015
M Pharey	06/11/2015
D Preston	07/11/2015
K Bligh	08/11/2015, 15/12/2015
A Brightrell	09/11/2015
B Feder	09/11/2015
H Patel	09/11/2015
M Tornero	09/11/2015
R Oliner	10/11/2015
A Ziv	11/11/2015
M Högel	11/11/2015
R Olins	11/11/2015
V Phillips	11/11/2015
L McNeir	12/11/2015
L Michael	12/11/2015
H Braunsberg	14/11/2015
E Bonzanigo	16/11/2015
F Papageorgiou	17/11/2015
E Battaglia Trovato	19/11/2015
L Duggan	20/11/2015, 05/12/2015
S Miles	21/11/2015
D Ury	24/11/2015
S Hunter	24/11/2015
D Farrell	25/11/2015
C Esmond	30/11/2015
S Schlemmer	01/12/2015
M Woper	04/12/2015
M Hillman	19/12/2015
M Chordia	20/12/2015
C Woodcock	22/12/2015
E Moylan	17/01/2016
S Step	18/01/2016
Cllr CL Leyland	21/01/2016
W Bartlett, LB Camden	16/11/2015
S Morand	undated

Annex B: Conditions

1. The works hereby permitted shall be begun not later than the end of three years from the date of this consent.
2. The development hereby permitted shall be carried out in accordance with the approved plans listed below.

PL_099 P3, PL_100 P2, PL_101 P1, PL_102 P1, PL_105 P3, PL_106 P1, PL_107 P2, PL_108 P1, PL_113 P2, PL_119 P1, PL_121 P1, PL_123 P1, PL_124 P1, PL_161 P1, PL_162 P1, PL_163 P1, PL_164 P1, PL_170 P1, PL_171 P1, PL_172 P1, PL_173 P1, PL_200 P1, PL_201 P2, PL_202 P1, PL_203 P1, PL_204 P1, PL_205 P1, PL_206 P1, PL_207 P1, PL_210 P1, PL_211 P1, PL_401 P1, PL_402 P1, PL_403 P1, PL_404 P1, PL_405 P1, PL_406 P1, LL443-100-001 P1, LL443-100-002 P2, LL443-100-003 P1, LL443-100-004 P1, LL443-100-005 P2, LL443-100-006 P1, LL443-100-007 P1, LL443-100-100, LL443-200-101.
3. No part of the development hereby permitted shall be occupied until the following have been submitted to and approved in writing by the Local Planning Authority
 - a) full details of hard and soft landscaping and means of enclosure of all un-built, open areas [such details/shall include details of any proposed earthworks including grading, mounding and other changes in ground levels as well as the delivery of a feature of public art.]
 - b) a scheme for replacement trees, including details of tree pit locations, viability and a planting programme.
 - c) a planting programme and landscape aftercare plan.The development shall be undertaken in accordance with the approved details including the planting program.
4. Development works (other than demolition) shall not take place until plans showing the levels at the interface of the relevant phase of development with the boundary of the property and the public highway have been submitted to and approved in writing by the council. Thereafter the development shall be carried out in accordance with the details approved.
5. No plant or machinery shall be installed on the external parts of the building other than in the areas indicated as plant areas on the plans hereby approved.
6. Prior to the installation of any mechanical plant, an acoustic report demonstrating how any mechanical plant to be installed will accord with the noise and vibration standards as set out in the Local Development Framework and Camden Planning Guidance shall be submitted to and approved in writing by the Local Planning Authority. The report shall include such manufacturer's specifications and details of noise and vibration mitigation measures as necessary. The plant shall not be operated other than in complete accordance with such measures approved.
7. At 1 metre outside the windows of any neighbouring habitable room the level of noise from all plant and machinery shall be at all times at least 5 decibels below the existing background noise levels, expressed in dB(A) at such locations. Where the noise from the plant and machinery is tonal in character the differences in these levels shall be at least 10 dB(A).
8. No more than 1100sqm gross external area of floorspace shall be provided within use classes A1-A3.

9. Before any ducting and ventilation is installed associated with the proposed Class A uses details of extract ventilating systems shall be submitted to and approved in writing by the Local Planning Authority. Such details to include routing of ducts and discharge points and associated acoustic isolation and sound and vibration attenuation measures and an Acoustic Impact report prepared by a suitably qualified and experienced acoustic engineer which sets out how the equipment would meet the council's published noise and vibration standards.
10. The acoustic isolation shall thereafter be maintained in effective order. In the event of no satisfactory ventilation being provided, no primary cooking shall take place on the premises.
11. Any Class A use hereby permitted shall not be carried out outside the following times:
08:00hrs to 23:00hrs Sunday to Thursday and Bank Holidays and 08:00hrs to 00:00hrs on Friday and Saturday.
12. Outdoor seating areas associated with the Class A uses shall be cleared of customers between 22:00 and 08:00 hours, 7 days a week.
13. The shop front windows to the retail and food drink units shall be used for display purposes and the window glass must not be painted or obscured.
14. Development shall not commence below ground level until a scheme for the following has been submitted to and approved in writing by the council:
 - a) an intrusive land contamination survey and the written results. Laboratory results must be provided as numeric values in a formatted electronic spread sheet.
 - b) a remediation scheme, if necessary, shall be agreed in writing with the Local Planning Authority.The scheme as approved shall be implemented before any part of the development hereby permitted is occupied.
15. Development works (other than Demolition) shall not take place until details of the following micro climate mitigation measures have been submitted to and approved in writing by the council.
 - the raising of the proposed balustrade on the west-facing penthouse to 1.8m in height and mitigation in the area of the eastern site boundary adjacent to the Hampstead TheatreDevelopment shall not be carried out other than in accordance with the approved measures.
16. Prior to the occupation of the first residential unit three of the proposed basement car parking spaces shall include access to an electrical charging point.
17. (i) Works below ground level shall not start until detailed design and construction method statements for all of the ground floor structures, foundations and basements and for any structures below ground level, including piling (temporary and permanent) have been submitted to and approved in writing by the Local Planning Authority. These shall:
 - Accommodate the proposed location of the HS2 structures and tunnels.
 - Accommodate ground movement and associated effects arising from the construction thereof, and;
 - Mitigate the effects of noise and vibration arising from the operation of the HS2 railway within the tunnels, ventilation shaft and associated below and above ground structures.

(ii) The design and construction method statements to be submitted under part (i) shall include arrangements to secure that, during any period when concurrent construction is taking place of both the development hereby permitted and of the HS2 structures and tunnels in or adjacent to the site of that development, the construction of the HS2 structures and tunnels is not impeded. The development shall be carried out in all respects in accordance with the approved design and method statement and all structures and works comprised within the development hereby permitted which are required by the approved design statements in order to procure the matters mentioned in part (i) shall be completed, in their entirety, before any part of the building(s) hereby permitted is/are occupied.

(iii) No works below ground level comprised within the development hereby permitted shall be carried out at any time when a tunnel boring machine used for the purposes of boring tunnels for the HS2 Ltd railway is within 100 metres of the land on which the development hereby permitted is situated.

18. Development works (other than demolition) shall not take place until details of the following have been submitted to, and approved in writing by, the Local Planning Authority:

- a) Facing materials of all buildings
- b) Details including typical sections at 1:10 of external windows and door frames.
- c) Details including materials typical of balconies and roof terraces.

The relevant part of the works shall not be carried out otherwise than in accordance with the details approved.

19. Prior to first occupation details of the following shall be submitted to, and approved in writing by, the Local Planning Authority:

- Shopfronts; including sections, elevations and materials

The relevant part of the works shall not be carried out otherwise than in accordance with the details thus approved.

20. Replacement trees that do not survive for five years after they are planted shall be replaced within the first available planting season.

21. Before any development commences details demonstrating how trees to be retained shall be protected during demolition and construction work shall be submitted to and approved in writing by the council. Such details shall be implemented as approved before any development commences and retained during the demolition and construction works, unless otherwise agreed in writing by the Local Planning Authority. The approved works shall follow guidelines and standards set out in BS5837:2012 "Trees in Relation to Construction". All trees on the site, or parts of trees growing from adjoining sites, unless shown on the permitted drawings as being removed, shall be retained and protected from damage in accordance with the approved protection details.

22. None of the residential units shall be occupied until details of external lighting have been submitted to and approved by the Local Planning Authority. The external lighting details shall be implemented and retained in accordance with the approved details before any residential unit is occupied.

23. Before the occupation of any part of the development full details of cycle parking shall be submitted to and approved in writing by the Local Planning Authority and thereafter provided in accordance with the approved details. The approved cycle parking facilities shall be permanently retained thereafter.

24. Before any works or construction commences details of at least two real time particulate air quality monitors shall be submitted to and agreed in writing by the Local Planning Authority. Such details shall include the location, number and specification of the monitors, including evidence of the fact that they have been installed in line with guidance outlined in the GLA's Control of Dust and Emissions during Construction and Demolition Supplementary Planning Guidance. The monitors shall be installed 1 month prior to the development taking place and must be retained and maintained on site for the duration of the development in accordance with the details thus approved. Real time data from the monitors should be available online, and council officers provided access to this data. In addition, quarterly reports should be sent to the Air Quality officer for the duration of the works. These should detail any exceedences of the trigger action level (which is 250 ug/m3), and the action that was taken to remedy this.
25. Before any plant is installed details of the proposed CHP (combined heat and power) engine and any required mitigation measures to demonstrate that the Mayor's 'Band B' NOx emissions standards will be adhered to must be submitted to the Local Authority and approved in writing. The measures shall be installed in accordance with the approved details.
26. Prior to occupation, details (installation contracts, photographs) of the approved CHP engine and required mitigation measures to demonstrate that the Mayors 'Band B' NOx emissions standards will be adhered to must be submitted to and approved in writing by the Local Planning Authority. Thereafter, these measures shall be retained in accordance with the approved details.
27. Before any development commences details of proposed u-values and the approach to thermal bridging shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
28. The development shall achieve 60% BREEAM score for the retail (A Class), retail/LUL and community floorspace within the buildings.
29. Before first occupation details of the brown roof in the area indicated on the approved roof plan of the tower element shall be submitted to and approved in writing by the local planning authority. No part of the buildings shall be occupied until the approved details have been implemented and these works shall be permanently retained and maintained thereafter.
30. Before the first residential unit is occupied details of mechanical ventilation shall be submitted to and approved in writing by the council. Prior to occupation of any residential unit the mechanical ventilation shall be installed and be in full working in the residential units, as the approved details. All such measures shall thereafter be retained and maintained.
31. Before development commences detailed design and assessment reports and outline method statements (in consultation with London Underground) for all of the foundations, basement and ground floor structures, or for any other structures below ground level, including piling (temporary and permanent), shall be submitted to and approved in writing by the Local Planning authority, such reports shall:
 - provide details on all structures over and adjacent to LU assets
 - accommodate the location of the existing London Underground structures and tunnels
 - accommodate ground movement arising from the construction thereof
 - mitigate the effects of noise and vibration arising from the adjoining

operations within the structures and tunnels and mitigate against any EMC (Electromagnetic Compatibility) issues arising from the construction of the new plant.

The development shall thereafter be carried out in all respects in accordance with the approved design and assessment report, method statements and subject to an agreed monitoring strategy, and all structures and works comprised within the development which are required by the approved design statements in order to procure the matters mentioned in paragraphs of this condition shall be completed, in their entirety, before any part of the building hereby permitted is occupied.

32. The proposed Class A uses will operate within use classes A1, A2, and A3 only.
33. Before any residential unit is occupied a scheme to demonstrate that each dwelling hereby approved achieves a maximum internal water use of 105 litres/person/day, allowing 5 litres/person/day for external water use, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved scheme and retained thereafter.

Report to the Secretary of State for Communities and Local Government

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS

an Inspector appointed by the Secretary of State for Communities and Local Government

Date 23 September 2015

Town and Country Planning Act 1990

Essential Living (Swiss Cottage) Ltd

The London Borough of Camden

Inquiry commenced on 14 July 2015

100 Avenue Road, London NW3 3HF

File Ref: APP/X5210/W/14/3001616

File Ref: APP/X5210/W/14/3001616
100 Avenue Road, London NW3 3HF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Essential Living (Swiss Cottage) Ltd against the decision of the Council of the London Borough of Camden.
- The application Ref 2014/1617/P, dated 28 February 2014, was refused by notice dated 3 October 2014.
- The development proposed is the demolition of the existing building and redevelopment with a 24 storey building and a part 7 part 5 storey building comprising a total of 184 residential units (class C3) and up to 1,041sqm of flexible retail/financial or professional or café/restaurant floorspace (classes A1/A2/A3) inclusive of part sui generis floorspace or potential new London Underground station access fronting Avenue Road and up to 1,350sqm for community use (Class D1) with associated works including enlargement of the existing basement level to contain disabled car parking spaces and cycle parking, landscaping and access improvements.

Summary of Recommendation: The appeal be allowed subject to conditions

Procedural Matters

1. The inquiry was held on 14 – 17 July, 20 – 24 July and 10 August 2015. The site visit was made on Wednesday 22 July 2015.
2. This report includes a description of the application site and surrounding area, the gist of the cases made at the inquiry and my conclusions and recommendation. I have attached all documents, including proofs of evidence/statements and plans submitted to the inquiry. These are as originally submitted and do not take account of how the evidence may have been affected during the inquiry.

The Site and Surroundings¹

3. The statement of common ground² agreed between the London Borough of Camden and Essential Living (Swiss Cottage) Ltd and the design and access statement provide detailed information on the site and context. Also useful in terms of looking at the wider area is the plan submitted by Save Swiss Cottage Action Group³ although locally listed buildings should be identified in the Camden Local List⁴.
4. The appeal site is in the designated Town Centre that was extended to include the appeal site in the recent past⁵. It is a linear centre following the Finchley Road, with the appeal site at the southern end and with the library/leisure centre beyond⁶. There was some question as to whether the appeal site was in Central

¹ It is useful to look at CD 1.6 the Design and Access Statement. Aerial photographs of the area are shown on pages 4, 5 and 6. A location plan showing the context and location of nearby buildings is at page 9. Nearby conservation areas/listed buildings are shown on page 10 and these are further identified in the Heritage statement at CD1.9. Existing building heights can be seen on pages 16 and 17 in CD 1.6

² Document CD 1.66, CD1.9, CD2.0 and CD2.1

³ Document IQ41

⁴ Document CD 5.4

⁵ Document 1.66 page 8 paragraph 3.24

⁶ Document CD 1.6 page 9 – blue outline

London. The London Plan⁷ shows Camden as being within the Central London Sub Region.

5. There are some representations suggesting loss of open space⁸. However, the open space is shown in document C2 page 14 fig 2. It can be seen that the open space does not extend up to the existing building and does not include the nearby north south walkway. Although the proposed development would be wider than the existing building, it would not encroach on to the public open space.
6. The appeal site is not in a conservation area, but there are several conservation areas nearby, the closest being the Belsize Park Conservation Area and the Fitzjohn and Netherhall Conservation Area. South Hampstead Conservation Area is to the west, Elsworthy Road Conservation Area to the south east, St John's Wood Conservation Areas to the south and Alexandra Road Conservation Area to the south west⁹.
7. The site fronts Avenue Road near to College Crescent and the Swiss Cottage/Finchley Road Gyratory and is adjacent to the Swiss Cottage London Underground Station. To the north of the site is Eton Avenue, which is pedestrianised near to the appeal site and is used on a regular basis for street markets. To the east is the designated Swiss Cottage Open Space. Also to the east side fronting Eton Avenue is the Hampstead Theatre and beyond the open space are properties fronting Winchester Road, some of which are within the Belsize Conservation Area. These are mainly residential, but with some commercial uses at street level and the Winchester Project towards the southern end and the Mora Burnet House elderly persons home on the corner with Eton Avenue. Across Eton Avenue from the appeal site is the Central School of Speech and Drama.
8. To the south of the appeal site is the grade II listed Swiss Cottage Library and between it and the existing building at the appeal site, and directly adjacent to it, is the grade II listed Hampstead Figure Sculpture. To the east of this is the Swiss Cottage Leisure Centre and beyond to the east the Visage building.
9. On the opposite side of Avenue Road is the grade II listed Regency Lodge, a large block of mid 20th century flats. Also across the main road from the appeal site are Ye Olde Swiss Cottage public house, Overland House and Cresta House flats¹⁰.
10. Currently the office building at the appeal site is unused. The height of this building reduces from 6 to 3 storeys as it approaches the Swiss Cottage library and it had some restaurant uses at ground level. The building dates from the 1980s and the project architect for that scheme, who opposes the current proposal, provides information about its design¹¹.

⁷ Document CD 4.0 page 61 Map 2.1 Sub-regions

⁸ See paragraph [144]

⁹ Document IQ41

¹⁰ Document IQ8

¹¹ Document R7

Planning Policy

11. The planning policies relevant to the development as a whole are set out in the Statement of Common Ground¹². The policies that are relevant to the main two reasons for refusal as set out in the Reasons for Refusal are Camden Local Development Framework Core Strategy [CS] Policies CS5, CS14 and CS15 and Camden Local Development Framework Development Policies [DP] DP24, DP25, DP26 and DP31. The relevant London Plan (2015) Policies [LP] are 2.15, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 3.11, 3.12, 4.1, 4.7, 4.8, 5.1 and 5.2.
12. CS Policy CS3¹³ indicates that the council will promote appropriate development in highly accessible areas and the town centre of Finchley Road/Swiss Cottage is identified. They are considered to be suitable for homes, shops, food and drink, offices, community facilities and uses that are likely to increase demand for travel. Development is to take account of amenity and community safety.
13. CS Policy CS5¹⁴ reiterates that the overall approach of the CS is to manage Camden's growth to make sure that its opportunities and benefits are delivered and sustainable development achieved, while continuing to preserve and enhance the features that make Camden an attractive place to live, work and visit. Particular consideration is to be given to providing sustainable buildings and spaces of the highest quality, protecting and enhancing the environment and heritage and the amenity and quality of life of local communities. It seeks to protect the amenities of Camden residents and those working and visiting the area, making sure that the impact of development on occupiers and neighbours is fully considered. It also seeks to ensure development contributes towards strong and successful communities by balancing the needs of development with the needs and characteristics of local areas and communities.
14. CS Policy CS6 relates to providing new homes seeking to maximise the supply of additional housing to meet or exceed Camden's targets. This includes affordable housing where the target is for 50% of homes to be affordable.
15. CS Policy CS7¹⁵ promotes Camden's centres and shops.
16. CS Policy CS14¹⁶ promotes high quality places and the conservation of the heritage assets. It requires development of the highest standard of design that respects local context and character, preservation and enhancement of Camden's rich and diverse heritage assets and their settings, including conservation areas, listed buildings and historic parks and gardens, promoting high quality landscaping and works to streets and public spaces. While the need to preserve and enhance is written into the policy, supporting text indicates the responsibility to preserve and, where possible, to enhance heritage of important buildings. Reference is made to DP Policy DP25.
17. CS Policy CS15¹⁷ seeks to protect and improve parks and open spaces, encouraging biodiversity. It indicates that the council will protect and improve

¹² Document CD 1.66 page 10 Section 5

¹³ Document CE 4.5 page 26

¹⁴ Document CD 4.5 page 31

¹⁵ Document CD4.5 page 46

¹⁶ Document CD 4.5 page 89

¹⁷ Document CD 4.5 page 96

Camden's parks and open spaces. Open spaces will be protected. The policy recognises the shortage of open space in Camden. Text to the policy notes development on sites adjacent to open space will only be allowed if it respects the size, form and use of that open space and does not cause harm to its wholeness, appearance or setting, or harm public enjoyment of the space¹⁸.

18. DP Policy DP24¹⁹ aims to secure buildings of the highest standard of design and will expect developments to consider character, setting, context and the form and scale of neighbouring buildings.
19. DP Policy DP25²⁰ seeks to conserve Camden's heritage. The council will take account of conservation area statements, appraisals and management plans when assessing applications within conservation areas. Only development within conservation areas that preserves and enhances the character and appearance of the conservation area should be permitted. Development outside of a conservation area that causes harm to the character and appearance of that conservation area will not be permitted. In relation to listed buildings development will not be permitted if it would cause harm to the setting of a listed building. Accompanying text to the policy indicates the character and appearance of conservation areas can also be affected by development which is outside of conservation areas, but visible from within them. This includes high, bulky buildings, which can have an impact on areas some distance away, as well as adjacent premises. The council will therefore not permit development in locations outside conservation areas that it considers would cause harm to the character, appearance or setting of the area.
20. DP Policy DP26²¹ seeks to protect the quality of life of occupiers and neighbours by only granting permission for development that does not cause harm to amenity and factors to be considered are visual privacy and overlooking, overshadowing and outlook, sunlight, daylight and artificial light levels, microclimate, fumes and dust and the inclusion of appropriate attenuation measures. Explanatory text to the policy notes that it is expected that the potential negative impacts of the development on neighbours will be considered at the design stage to prevent negative impacts. It notes that to assess whether acceptable levels of daylight and sunlight are available the British Research Establishment's Site Layout Planning for Daylight and Sunlight – A Guide to Good Practice²² will be used.
21. DP Policy DP31²³ relates to the provision of, and improvements to, open space and outdoor sports and recreation facilities. The policy strongly promotes provision of open space on the development site, but recognises that this is not always going to be the case. Where this is the case developments should provide an appropriate financial contribution towards improving existing open space.

¹⁸ Document CD4.5 page 98 paragraph 15.6

¹⁹ Document CD4.6 page 93

²⁰ Document CD4.6 page 97

²¹ Document CD4.6 page 101

²² Document CD4.6 page 102

²³ Document CD4.6 page 113

22. LP Policy 2.15²⁴ relates to town centres. It notes that the Mayor, boroughs and other stake holders should co-ordinate the development of London's network of town centres in the context of Map 2.6 and Annex 2 so they provide the main focus beyond the Central Activities Zone for commercial development and intensification, including residential development.
23. LP Policy 3.3 relates to increasing Housing Supply. The Mayor recognises the pressing need for more homes in London in order to promote opportunity and provide a real choice for all Londoners in ways that meet their needs at a price they can afford. It notes that boroughs should identify and seek to enable additional development capacity to be brought forward to supplement these targets having regard to other policies in the plan.
24. LP Policy 3.4 indicates that planning decisions should take account of local context and character, the design principles in chapter 7 and public transport capacity. Density guidance is given in Table 3.2, but it is noted that this should not be applied mechanistically.
25. LP Policy 3.5 relates to the quality of housing, requiring the highest quality internally and externally in relation to their wider context and environment. Development should enhance the quality of local spaces, taking account of physical context, local character, density, tenure and land use mix, and relationships with and provision of public, communal and open spaces, taking particular account of the needs of children and older people.
26. LP Policy 3.6 relates to the provision of children's and young people's play and informal recreation facilities.
27. LP Policy 3.7 encourages large residential developments including complementary non-residential uses in areas of high public transport accessibility. It is common ground that in terms of accessibility and the Public Transport Accessibility Level (PTAL) the site is at the highest level, being located near to bus routes and the underground.
28. LP Policy 3.8 aims to provide housing choice, including affordable housing, accessible housing and units of varying sizes and types.
29. LP Policy 3.9 aims to achieve mixed and balanced communities by tenure and household income through small and large scale developments, which foster social diversity, redress social exclusion and strengthen communities' sense of responsibility for and identity with their neighbourhoods.
30. LP Policy 3.10 defines affordable housing and LP Policy 3.11 defines affordable housing targets. LP Policy 3.12 notes the maximum amount of affordable housing should be sought and that this can be the subject of negotiation, taking account of individual circumstances, and allows for reappraising of viability studies.
31. LP Policy 4.1 is a strategic policy promoting developing London's economy.
32. LP Policy 4.7 relates to retail and town centre development. In principle retail, commercial, cultural and leisure development should be focused on sites within

²⁴ Document CD4.0 page 82

- town centres and those at the edge of town should be the subject of an assessment of impact.
33. LP Policy 4.8 supports a successful and diverse retail sector and related facilities and services.
 34. LP Policy 5.1 seeks to mitigate the effects of development on climate change and LP Policy 5.2 to minimising carbon dioxide emissions.
 35. LP Policy 7.7 relates to the location and design of tall and large buildings. Text to the policy²⁵ indicates that tall and large buildings are those that are substantially taller than their surroundings, cause a significant change to the skyline or are larger than the threshold sizes set for the referral of planning applications to the Mayor. There is no dispute between the parties that this proposal includes a tall building.
 36. Strategically these are to be part of a plan led approach to changing or developing an area by identification of appropriate, sensitive and inappropriate locations. Tall and large buildings should not have an unacceptable impact on their surroundings.
 37. Tall buildings should meet various criteria, including only being considered in areas whose character would not be affected adversely by the scale, mass or bulk of a tall or large building. They should relate well to the form, proportion, composition, scale and character of surrounding buildings, urban grain and public realm (including landscape features), particularly at street level. Individually or as a group, they should improve the legibility of an area, by emphasising a point of civic or visual significance where appropriate, and enhance the skyline and image of London. The highest standards of architecture and materials, including sustainable design and construction practices should be incorporated. Ground floor activities should provide a positive relationship to the surrounding streets and permeability of the site and wider area should be improved.
 38. Tall buildings should not affect their surroundings adversely in terms of microclimate, wind turbulence and overshadowing and should not impact on local or strategic views adversely.
 39. The impact of tall buildings in sensitive locations should be given particular consideration. Such areas might include conservation areas, listed buildings and their settings or other areas designated as being sensitive locations.
 40. LP Policy 7.8 relates to heritage assets and in relation to settings notes that development affecting heritage assets and their settings should conserve their significance, by being sympathetic to their form, scale, materials and architectural detail.
 41. Camden's Site Allocations Local Development Document identifies 100 Avenue Road, Swiss Cottage²⁶. Allocation guidance indicates a mixed use redevelopment including permanent residential, and other appropriate town centre uses, such as retail and employment. Development is expected to optimise the site to provide housing, including affordable housing, include retail use or food and drink

²⁵ Document CD4.0 page 285 paragraph 7.25

²⁶ Document CD 4.7 page 130 – Site 30

particularly to create active frontages at ground level. It is to respect the Swiss Cottage Open Space and contribute to the public realm with respect to public safety and improvements and contribute to local town centre improvements.

42. Accompanying text to the guidance indicates that in terms of acceptable scale and massing, there may be potential for an increase in height, especially at the northern end of the site, which does not abut directly on to the open space. While there is some potential for taller buildings, the acceptability will ultimately depend on the quality of the design and the relationship with the existing buildings in the area and the open space. It is noted that the development should not detrimentally impact on Swiss Cottage open space. It is also noted that the context to the nearby Belsize Conservation Area, and townscape issues with assessment of impact on sunlight, daylight and microclimate would need to be addressed.
43. Draft Interim Housing SPG²⁷ indicates that Town Centres are noted as being some of the most accessible locations in London and consequently higher density housing provision in these locations will play a key role in addressing London's requirement for additional housing. While the weight to this should be limited it does support the aims and objectives of LP Policy 3.7. The Mayor of London's Housing supplementary Planning Guidance of 2012 has similar aims identifying 1200 town centres of different sizes in London, and in line with the National Planning Policy Framework (the Framework) the London Plan anticipates that they will be the primary geographical focus for most new Londoners.
44. Conservation Area Statements are provided for all the conservation areas²⁸.

Planning History

45. There have been no recent relevant planning applications at the appeal site²⁹.

The Proposals

46. The proposal is for a total of 184 new homes, which will include private rented units as well as affordable housing units. It would include a mix of uses comprising flexible retail space at ground level and a smaller flexible commercial unit in the southern building with potential to provide a new access to Swiss Cottage underground station and floorspace for community use. It would be in two buildings. The taller would be 24 storeys and about 81m high, located at the northern end of the site. This would hold the majority of the residential units, but with a 'A' class unit at ground level. The second block is part 5 and part 7 storeys, with the 5 storey part on the Swiss Cottage open space side. This varies between about 19m and 27m. There would be a pedestrian link formed between the buildings from Avenue Road to the theatre/open space. There would be a basement area providing 12 parking spaces for use by those with disabilities, secure parking for 240 cycles and space for other ancillary service use.
47. The current anticipation is that the community space will be taken by the Winchester Project, currently located across the open space in Winchester Road.

²⁷ Document CD 4.4 Section 7.4

²⁸ Document G5

²⁹ Document R11 appendix 5 at page 44 provides some historic evidence to past history around the site

Evidence related to this use is provided by the Winchester Project³⁰. Space will also be set aside for Transport for London to improve the access to the Swiss Cottage Underground Station, if taken up by them.

Other Agreed Facts

48. For other agreed facts see the statement of common ground and addendum³¹. Generally the other parties opposing the appeal do not agree with the statement of common ground, particularly that all the reasons for refusal can be overcome through conditions/obligation.

The Case for Essential Living (Swiss Cottage) Ltd

49. The case for the appellant is set out in Docs A1 to A10, with closing submissions at IQ38. The material points are as follows.

*Daylight and Sunlight*³²

50. Reference is made to DP Policy 26 and that the council will take into account standards recommended in BRE Site Layout Planning for Daylight and Sunlight – A Guide to Good Practice (1991) [now updated to 2011]. In section 3.3 it deals with gardens and open spaces, noting that good site layout planning for daylight and sunlight should not limit itself to providing good natural lighting inside buildings. Sunlight in the spaces between buildings has an important impact on the overall appearance and ambience of a development³³. The guide gives advice on site layout planning to achieve good sunlight and daylight both within buildings and in the open spaces between them.
51. The BRE guidance indicates that at least half of the amenity areas listed (including parks) should receive at least two hours of sunlight on 21 March³⁴. The BRE research established that if the area of a space receives greater than 2 hours of sun on March 21st to greater than 50% of that area of that space, then the space would overall be a well sunlit one. This is on the basis that during the months when the sun is higher in the sky a greater percentage of the space would see sun at some point of the day.
52. The detailed analysis undertaken indicates that the BRE 'test' was met at March 21st. Planning Officers agreed that the proposal was in compliance with the BRE and recommended the scheme for approval. It is acknowledged that during the design process a different proposal was put to CABE (Design Council) that also complied with the guidance, but was not found acceptable by CABE. The scheme was subsequently redesigned and found acceptable by CABE.
53. Sunlight on the ground plots indicates that there is negligible alteration to the area that would experience less than 2 hours of sunlight. There would be no area that would receive less than 2 hours of sunlight to the main amenity space. The drawing of 2 hour sunlight shows very small patches that receive less than 2 hours sunlight. These are in the circulation spaces and are only less than 5% of

³⁰ Document IQ16

³¹ Documents CD1.66 and IQ30

³² Document A1 and appendices, CD1.10 and CD1.57

³³ Document CD1.57 page 18 paragraph 3.3.1

³⁴ Document CD1.57 page 18 paragraph 3.3.7

the area of circulation, with no impact on the main amenity space. This would comply with the BRE guidance. There is a suggestion that shadows on the Swiss Cottage Open Space have been underestimated because changes in levels are not accounted for, but that is not correct; the software used is in a standard form and takes account of levels.

54. The BRE guidance suggests that where a large building is proposed that may affect a number of gardens or open spaces it is often illustrative to plot a shadow plan showing the location of shadows at different times of the day and year³⁵, advising that where there are existing buildings looking at the before and after is useful. It also notes that it must be borne in mind that nearly all structures will create areas of new shadow, and some degree of transient overshadowing of a space is to be expected. It recommends the 21st March for the assessment, but that other dates such as 21st June may also be looked at, representing the best case of minimum shadow.
55. Shadow diagrams for 21st March, 21st June, 25th August and 21st December have been produced³⁶. These demonstrate that for the great majority of daylight hours throughout the year, the appeal scheme has no impact whatsoever in terms of sunlight and overshadowing. It is only in the summer months at later times of the day from mid afternoon onwards, the exact time varying slightly with each month, that there would be any additional impact on sunlit areas of the space.
56. There is no policy in relation to having views of the sun. In assessing the impact from local streets there would be an effect of the amount of time that the sun would be directly visible at different times of the year. The duration would be very limited and the hours of sunlight remaining visible would be significant in terms of amenity and comparable with other streets in London where there are tall buildings.
57. The technical study was extended to consider overshadowing of nearby gardens/amenity spaces located to the north east and east of the site³⁷. These show that the gardens receive at least 2 hours of sunlight on the ground on 21st March and no greater than 20% loss of sunlight between the existing and proposed situation. Tree canopies were excluded from the study. In terms of transient overshadowing, the diagrams show that many of the gardens do not get any overshadowing and where it does the additional overshadowing is fleeting, with no additional area of shadow lasting for greater than one hour in any one particular area. The drawings also indicate that either existing neighbouring properties or associated garden boundaries would have a far greater overshadowing effect, such that by the time the resultant overshadowing from the development falls upon the garden, any additional overshadowing from the development would be negligible. The additional overshadowing as a result of the proposal would also be negligible.
58. In respect of the Hampstead Theatre terrace, it is reasonable to assume that the main use would be in the summer months. The transient overshadowing plots demonstrate that the proposal will have no effect on the theatre terrace from sunrise to 4pm so would receive at least 10 hours of sunlight, well within the BRE

³⁵ Document CD1.57 page 19 paragraph 3.3.13

³⁶ Document A1 Appendices and CD 1.10.

³⁷ Document A1 appendices drawing 204, 205, 208 and 219

guidelines³⁸. The transient overshadowing would occur about 16:00 and be limited to no longer than 1hr as the Hampstead Theatre overshadows its own terrace from about 17:00. The additional overshadowing is minor.

59. Daylight to Cresta House has been considered, although it is acknowledged there was a mistake in identification of the building, referring to Overground House. Applying the BRE methodology it has been shown that the balconies restrict daylight availability to these properties and therefore burden neighbouring development. In the absence of balconies, all windows will satisfy the BRE guidance and in terms of daylight distribution will retain excellent daylight levels and it was noted at the inquiry that the difference in the length of the room compared with that identified would not alter the overall conclusion. Similarly daylight and sunlight have been assessed for Mora Burnet House and found to be acceptable.
60. There would also be some transient overshadowing of the street market during the course of the day, but this is for a relatively short period and there is already some shading by the large trees and the canopies provided for the stalls.
61. The reports have been assessed and verified by an independent daylight and sunlight expert on behalf of the council³⁹.

*Architecture*⁴⁰

62. The brief was for a high quality mixed-use, mixed tenure building. While the council probed whether there was a specific requirement, particularly in terms of space and height, the architect explained that the process was iterative and that there was significant consultation, not least with the council officers, with the design evolving with comments received.
63. The key principles were for a sustainable and efficient building meeting operational needs. It should be accessible, permeable with good connectivity, adaptable and resilient. There should be successful public spaces and active frontages with high quality architecture that integrates into the surroundings, specifically by reference to its form, proportions, composition, scale, mass and height, to reinforce a sense of place. The tall building was to reinforce the town centre, without detrimentally affecting the character of the surrounding area and to protect the residential amenity of surrounding occupiers.
64. The site's immediate setting is the busy town centre, which is unfortunately dominated by the multi-lane main roads and busy traffic, with Swiss Cottage an important focus for the local area, but the site and its context lack a sense of place. There are significant civic facilities at the site, including the library, leisure centre and the adjacent Swiss Cottage underground station, which is one of the least legible in London. The scale of the large post-war buildings on the other side of Finchley Road is more appropriate to the area than the existing building on the appeal site.
65. There are substantial buildings on the north and south sides of Finchley Road in the town centre. To the south east of the appeal site is the post war Chalcots

³⁸ Document A1 appendices drawings 216 and 217

³⁹ Document CD1.42 and 1.43

⁴⁰ Document A9 also see Design and Access Statement CD1.6

- Estate high rise and low rise housing, which has four towers. To the north, south and west of the town centre are areas of nineteenth century housing of good quality, much of it in conservation areas. There are views from these areas of nearby residential towers. There is an opportunity to provide a building to act as a marker for the town centre, offer enhanced legibility, improve the sense of place and provide active edges to the street.
66. The existing building at the site, which steps down from 6 to 3 storeys was a product of its time of construction in the 1980s, and has poor access and frontages, being designed before the creation of the Swiss Cottage Open Space. Its effect on the public realm and open space is negative.
67. The buildings to the west of Finchley Road are substantial: some between 10 and 12 storeys. The Swiss Cottage Open Space, Library and Leisure Centre have a different character and appearance. The grade II listed library is three storeys and was designed by Sir Basil Spence.
68. A stepped scheme was considered for the appeal site, but in consultation with the council officers it was agreed to proceed with the two block solution, with the taller element to the north, providing access from Avenue Road to the Swiss Cottage Open Space.
69. The height of the tower was not seen by the designers or council officers and consultees as a target or a limit, but there had been previous iteration to that height and other tall buildings nearby. The tower was seen by the council, Design Council and GLA to offer opportunities for enhancement and to act as a marker building and focal point. The impact of the designs produced was tested against the context and in particular agreed views, sunlight and daylight and microclimate.
70. The conclusion was reached that it would have little additional impact in terms of daylight and sunlight over and above the existing building or in terms of a building half its height. The design was endorsed by key stakeholders, including the Design Council, CABE, the GLA and council officers⁴¹.
71. The two blocks are treated architecturally in a similar way, albeit in different forms and are effectively tenure blind. The tower has a massing and form with the silhouette slender and well proportioned and acknowledgement of the surroundings. The tower has a clear appearance of bottom, middle and top, with implied vertical break to the centre bays so that the façade has two main elements joined together.
72. The framed façade has a clear rhythm and proportion. The frames are removed from the lower and top levels and horizontal strings collect one, two and three floors together. There are retail uses on the low levels and amenity space on the top level. Between the frames are either glass openings or faience/terracotta panels of a contrasting colour.
73. On the top floors there is a change of expressions. These contain large family units with quick access to the amenity space above. Colours are yet to be decided, but the context suggests red panels in a white frame. At the ground floor the pilaster or frame above turns unmistakeably to columns. The bottom of

⁴¹ Documents CD 1.37, CD1.39 – CD1.41 and CD1.45-1.48

the northern block, covering two storeys, is glazed to the double height area of the concierge.

74. The southern block's south façade, facing the library, mediates in scale between the new building and the library, and acknowledges some of the library's simple fin expression. The east façade to the Swiss Cottage Open Space has a rhythm which reflects the greater number of balcony openings. The park side is based on a repetitive column and beam arrangement with recessed infill windows and panels.
75. The architecture of the proposed scheme is of high quality. The height, scale and massing of the appeal scheme have been carefully considered and respond to the site context. The tower would provide a well designed marker for the local area, including in views along main routes and from the wider residential neighbourhoods, as well as providing a strong frontage to Avenue Road and the Swiss Cottage Open Space.
76. The height of the tower is appropriate, with its greatest visual presence within the town centre and when seen along main roads. It is not generally visible from the residential hinterland. Residential towers are already an aspect of the residential hinterland, and of the setting of conservation areas, as is typical of the mixed character of London's townscape.
77. There will be townscape enhancements around the building and the connectivity between the building and its surroundings by the proposed ground floor uses will be a considerable benefit to the streets and Swiss Cottage Open Space. It will humanise and enliven the streetscape.
78. Concern was expressed about the view of the development from Primrose Hill⁴². But as can be seen in the photographs there are already views of tall buildings, and with the distance this development would have no unacceptable impact on the users of this park.

Heritage Assets

79. The decision maker is required to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area. Considerable importance and weight is to be accorded to this duty and is to be focused on the conservation area as a whole. The appeal is outside of any conservation area and the statutory duty does not extend to the setting⁴³.
80. Setting is defined as the surroundings in which a heritage asset is experienced and may be positive, negative or neutral in their contribution to significance of the asset. In this case it is assessed that the existing building and site do not make a positive contribution to the character and appearance of the adjacent and nearby conservation areas.
81. Development outside can have an effect on character and/or appearance, but such impact needs to have a nature and magnitude to be adverse to the character and appearance of the conservation area as a whole. In relation to this appeal the character and appearance of the conservation areas and the qualities

⁴² Document CD1.4 pages 50 – 52 also see Document R11 appendix 2 View 26

⁴³ Document A6 at Section 4 analyses the various conservation areas.

which give them their significance are a product of the buildings and spaces in the areas themselves, which largely sets them apart from their surroundings.

82. Because of the tall and large scale buildings close to the Belsize Conservation Area it is inevitable that where there are views out, such buildings are a common and well established part of the setting and its character and appearance⁴⁴. The appeal proposal, where visible, is predominantly seen in the existing context of 20th century residential and town centre development and it is concluded that there would be no adverse impact on the character and appearance of the conservation areas.
83. Where there are views in the conservation area where modern buildings play a lesser role in the existing character and appearance, the visual impact has the potential to be adverse, but nevertheless would be so limited in nature that it would not detrimentally affect the conservation area as a whole.
84. Account is also taken of the opportunity to provide improvement to the street scene on the western edge of the Belsize Conservation Area. Overall, the proposal would not have an adverse impact on the conservation area as a whole and would not result in harm to its significance. With regard to other conservation areas, given those dominated by larger-scaled buildings (Elsworthy Conservation Area), the distance from the appeal site and the nature of interposed development (Fitzjohn's & Netherhall and West Hampstead Conservation Areas) the appeal proposals will have no adverse impact on their character or appearance.
85. Even if it were found that there was some harm to character and appearance, while this would need to be accorded considerable importance and weight (or great weight) it would be less than substantial in terms of the Framework.

Listed Buildings

86. With respect to the Swiss Cottage Library, the appeal proposal would enhance its setting and thereby significance, through complementary architectural design and improved, shared public realm and related activity.
87. The Hampstead Figure Sculpture has been repositioned in the past nearer to the existing building on the appeal site and is not easily viewed from all around because it is close to the building. The proposal would enable the statue to be relocated more in keeping with the original location and allow all around viewing and so the proposed enhancements would be an improvement to the listed building, enhancing its special architectural and historic interest.
88. Regency Lodge is a large scale modern building in the town centre. While the setting would be affected it would not impact on the significance of the listed building.
89. The Belsize Fire Station is a notable building at the Junction of Eton Avenue and Lancaster Grove⁴⁵ and is grade II* listed. This was built around 1912/15 and designed by Charles Windmill to fit in with the other houses in the area.

⁴⁴ Document A6 page 7 Fig RM2 and page 11 RM4 show taller buildings near the appeal site

⁴⁵ Documents A6 page 28 photo RM10

Conservation Areas

Belsize Conservation Area

90. The Belsize Conservation Area is large and occupies land rising to the north, towards Hampstead village and is characterised by streets of mostly large detached and semi-detached villas dating from the late 19th century to the early 20th century of varied architectural styles, but with consistencies in detailing and materials⁴⁶. The conservation area statement notes that the character of the areas is largely derived from the mid 19th century Italianate villas, whilst noting 6 distinct character areas, reflecting different densities, scales and styles of building, within the overall whole. These are Belsize Park, Belsize Village, Eton Avenue, Glenloch, Primrose Gardens/Antrim Road and England's Lane. Belsize Park and Eton Avenue are the closest parts to the appeal site. The buildings in the Belsize Park have strong consistency in height, with mostly 3 storey buildings with lower ground and sometimes an attic level, with front gardens to the street. The consistency between buildings and their rhythm to the streets provides a strong sense of identity and unity.
91. Later buildings, including Manor Mansions, have contrasting brickwork with stucco banding. The grade II listed St Peter's church is a landmark feature and is visible more widely within the area.
92. To the south west of the area is College Crescent which is near to the town centre of Swiss Cottage. The buildings here are stucco with slate roofs, but with some variation of detailing. These are seen in the context of the modern Royal Central School of Speech and Drama and town centre buildings on the west side of the road.
93. Belsize Avenue's character is derived mainly from the large scale houses set back from the road with an avenue of trees along its length. It is wide, with grass verges, and the buildings comprise two main types: 3 storey paired villas and 2/3 storey terraced properties. There is some variation to the detailing and arrangement of the villas. There are some later buildings, including a terrace of late 1960s houses and Hillfield Court and Tudor Close from the 1930s.
94. Crossfield and Adamson Roads form part of the Eton College Estate and were developed speculatively by different developers in the 1870/1880s. The houses tend to be a bit plainer and of greater variety in both type and architectural style, but with general consistency to the building line and short front gardens defined by boundary walls. Adamson Road has cherry trees in the pavement and paired London Stock villas at the western end and red brick houses with brick detailing at the northern end with full height bays giving strong vertical emphasis.
95. Adamson Road meets Eton Avenue on the west edge of the conservation area, with a small triangular open space and mature trees providing the entrance into the area from Swiss Cottage Town Centre. The boundary includes part of the Royal School of Speech and Drama and goes up to the town centre⁴⁷. Eton Avenue is a consistent area of predominantly late Victorian housing with some

⁴⁶ Document CD2.6 The conservation area statement describes character and significance

⁴⁷ Document A6 page 24 photograph

pockets of Edwardian housing mainly, in the ownership of Eton College. The area includes Eton Avenue, Strathway Gardens, Fellow Road, and Winchester Road.

96. Eton Avenue and Strathway Gardens have mainly large detached red-brick houses built from about 1885-1900 with a considerable number listed grade II. There are extensive mature trees in the pavement. The buildings' style has domestic revival architectural influences and, although detailing and treatment of elevations varies, they provide a consistent character and appearance. From this area there are many views of the towers of the Chalcots Estate from within the conservation area⁴⁸. The west end of Eton Avenue, where it joins Adamson Road, is strongly influenced by the buildings in the adjacent town centre.
97. A section of Winchester Road and part of Fellows Road are within the conservation area and were laid out earlier than Eton Avenue and have a variety of building types, mainly of 3 storeys. Fellows Road is adjacent to the Chalcots Estate and has mainly 3 storey villas with brick walls and detailing, and further along there is a modern building, Godolphin House, and a mix of Victorian house with Arts and Crafts and Italianate detailing and many brick boundary walls to front gardens.
98. This part of the conservation area is readily seen in the context of modern development including to the Chalcots Estate, Visage building, Leisure Centre and Theatre⁴⁹.
99. Other parts of the conservation area are further away but again with character and appearance dominated by the styles of residential architecture. England's Lane sub area was an old lane that became a shopping street in the later 19th century. This is mainly formed of 3/4 storey terraces with shops at ground level.
100. The conservation area is large with some variety to identified sub-areas but with its overall character and appearance defined by 19th century residential development laid out in street form with much mature planting. The larger and taller modern buildings surrounding the area, including in the town centre and at the Chalcots Estate are commonly seen from within the conservation area.

Fitzjohn's and Netherhall Conservation Area

101. This is also a large conservation area with the street layout dominated by Fitzjohn's Avenue that runs through the centre with other streets running parallel, with the overall character set by the large houses and gardens. Because of the slope of the land there are some long views. While the houses are very similar in overall character there is a variety of architectural styles including neo-Gothic, classical Italianate, Queen Anne, Domestic Revival and Arts and Crafts with some properties individually designed by architects. The verdant planting adds considerably to its character, which is mainly that of a relatively quiet suburb. In summary the character and appearance of the area is derived from later 19th century residential development in a variety of architectural styles, combined with verdant planting. The general sloping nature of the land allows some distant views over the conservation area, in some instances to the Swiss Cottage town centre beyond.

⁴⁸ Document A6 page 27 photographs RM8 and RM9

⁴⁹ Document A6 page 30 photograph RM12

Elsworthy Conservation Area

102. This conservation area is located to the south east of the appeal site, beyond the library and leisure centre, road, large UCL Academy buildings and London Marriot Hotel. It extends from Primrose Hill Road to Avenue Road. The northern edge runs along King Henry's Road south of the Chalcots Estate and the southern edge abuts Primrose Hill. The Willett Development in sub area 3 is the most distinct part of the conservation area at Harley Road, Wadham Gardens and Elsworthy Road. It was developed in the late 1890s by William Willett. The houses are detached, but closely spaced, and are a mix of Arts and Crafts movement styling, with very mixed use of materials that include stucco and tile hanging and interesting detailing. The character of the area is derived from the style and layout of houses and views out that influence that character are towards Primrose Hill and to the north towards the Chalcots Estate.

South Hampstead Conservation Area

103. This area was originally named the Swiss Cottage Conservation Area, but was renamed to reflect the historical development of the area and its spatial and historic relationship with Hampstead as opposed to Swiss Cottage, which is on the east side of Finchley Road. It is a well preserved, leafy Victorian suburb, almost exclusively residential and largely homogenous in scale and character. There are mainly semi-detached and terraced late Victorian properties, usually constructed in red or gault brick with varied roofscapes and gables and interesting details and features in terracotta, brick and ironwork. Front gardens contribute to the character and appearance of the area, with ornate walls and vegetation.
104. There are some views out of the conservation area towards the Swiss Cottage Town Centre and its buildings. There are also views of the 20 storey tower blocks of Casterbridge and Snowman House.

Alexandra Road Conservation Area

105. This is to the south west of the appeal site and was built in the late 1960s. The development was a dramatically modern solution to housing and forms a long concrete terrace⁵⁰, with the principle buildings grade II* listed. The main buildings area constructed of shuttered concrete with flat roofs arranged in parallel blocks with a distinctive stepped form. The character and appearance of the conservation area is directly linked to the character and appearance of the buildings and their layout. These buildings are seen in views that include nearby towers⁵¹

St John's Wood Conservation Area

106. This has two separate conservation areas. The west area is just to the south of the Alexandra Road Conservation Area and the east part located to the west of Avenue Road comprising large detached villas dating from the mid 19th century. Because of the topography and intervening built form, inter-visibility with Swiss Cottage town centre is limited.

⁵⁰ Document A6 page 47 Figure RM10 and Photo RM27 and RM28

⁵¹ Document A6 page 48 Photo RM28

Other Matters

107. The appellant questions the council's five year supply arrangements⁵². It is argued that the council has masked the availability of general housing supply by including the provision of student accommodation in figures. It says there is a serious risk that the main needs of general housing will not be met. In any case, whether it is met or not, the 5 year supply figure is a minimum and there is agreement with the council that significant weight should be attached to the provision of the housing proposed.
108. The appellant acknowledges that the wind environment would be greater when compared with the baseline figure⁵³, which is to be expected if a tall building is constructed. The increase would be considered significant if conditions became unsuitable for the intended activities. Therefore, while some areas might become unsuitable for sitting during the windiest season it would not mean the area as a whole would not be usable; overall other areas would be suitable for use in the majority of locations.
109. The transport assessment shows that the development accords with relevant transport related policy guidance, is highly accessible being adjacent to Swiss Cottage underground station and on bus routes and while this is the anticipated use by residents etc. the numbers would not have a significant effect in relation to the overall numbers using the services. It would have a basement for servicing and disabled parking and provide an opportunity to improve the access to the underground. The impact would be mitigated by the travel plan, service plan, construction logistics plan and car park management plan. Paragraph 32 of the Framework indicates that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.
110. The appellant identifies the public benefits of the proposal. Socially it would provide about 54 genuinely affordable homes and 130 private rented homes, meeting residential space standards. The mixed use and tenures provide a socially inclusive community.
111. In environmental terms, there would be innovative, attractive and distinctive architecture of high quality, replacing a poor and unattractive building. It would make a positive contribution to local distinctiveness, enhancing the townscape and legibility of the area, with the tower providing a focal point for the town centre and civic buildings. It would have a positive contribution to the library and nearby conservation areas. There would be improved permeability and connectivity and improved landscaping. It would be a very sustainable development in terms of transport and the building itself would have a high energy performance.
112. In economic terms the scheme would optimise the potential of the site with an appropriate mix of uses, putting the town centre at the heart of the community and providing vitality from the shops, restaurants, homes and social project and retaining the existing Eton Avenue Street Markets. It would generate jobs in

⁵² Document A3 page 21 paragraphs 2.95 onwards

⁵³ Document CD 1.11 page 9 (Also see Document IQ31)

construction and use, employing local people. It would directly and indirectly generate economic activity.

113. It meets the aspirations of the Framework and would be sustainable development.

The Case for the London Borough of Camden

114. The case for the London Borough of Camden is set out in Docs C1 to C5 with closing submissions at IQ37. The material points are:-
115. A key issue in the English Heritage-CABE Design Council : Guidance on Tall Buildings is the architectural quality of a tall building. Not only is the tower too tall, it is also too bulky and has an incongruous form which makes no reference to local distinctiveness derived from the character of the local environment. The brutalist and monolithic appearance is overbearing on all sides. There are no notable setbacks on the higher floors and no attempt has been made to soften the tower's impact on the skyline. The design does not mitigate the visual impact of the incongruous form by the articulation of modelling of the façades. The elevations are over complicated, with a profusion of horizontal and vertical elements creating a jagged effect of a threatening nature on the surrounding area. This is also the case for the lower block. The building is out of scale and fails to integrate with the surroundings. The increased size and bulk of the building will impact on the Swiss Cottage Open Space, adjacent listed buildings and conservation areas. The suggestion that there is a need to improve legibility is not a benefit as the site is not illegible at the moment.
116. The Swiss Cottage Library (grade II) is a small distance from the end of the development, with an open space between, where the Hampstead Figure Sculpture is located. The existing building steps down to the library, respecting its curved façade. The new building would be between 5 and 7 storeys and would be dominant and overbearing. The spacing of the vertical elements of the design does not reflect those of the library, which are much finer and closely spaced.
117. The change in height of the western elevation would also unacceptably jar with the simple form of the library. The tower would be an unwelcome feature and not harmonise with the library that has a strong horizontal emphasis. It would be an unwelcome intrusion because of its threatening, overbearing and heavy appearance. It would be an unacceptable backdrop on the skyline. The materials would also not complement the high quality materials used on the library. The stone or reconstituted stone of the new development would unacceptably contrast with the Portland stone of the library, as would the proposed red panels. The contrast in scale, textures and colour would be unwelcome.
118. The sculpture is a nationally important post war example, portraying a reclining abstract bronze figure. It is an integral part of the civic centre, that includes the library. The sculpture is only a few metres from the end elevation of the proposed building, which would compete with the sculpture. However, because the sculpture is a robust, abstract design it will hold its own in the changed setting and would still be appreciated for its three dimensional qualities and textural qualities from other angles. There would be less than substantial harm.

119. Regency Lodge is on the west side of Avenue Road and to the south of the appeal site. It is of 6 storeys and was designed between the wars by Robert Atkinson. It is a flat roofed building, again with horizontal emphasis, so will suffer limited harm as a result of the proposed development. The excessive height, bulk, mass, form and scale of the proposal, as portrayed in terms of impact on the setting of the library, will be similar on Regency Lodge. However, because of its solid character, the larger scale of its façades and its location on an island site the impact would be less, but would still be less than substantial harm.
120. The proposal would also cause some harm to non-designated heritage assets, including the Royal Central School of Speech and Drama, Hampstead Theatre, Swiss Cottage Leisure Centre and Swiss Cottage Open Space. It would also affect the setting of Ye Olde Swiss Cottage public house, a well known local landmark.
121. The 24 storey tower would loom over the adjacent Royal Central School of Speech and Drama and have an overbearing and oppressive effect. It would also unbalance the gateway that this building forms with the existing building at the appeal site. It would also impact on the external space in front of the building. The Hampstead Theatre will also be totally dominated by the tower and adjacent blocks, because of their height, scale, bulk and mass, as will be the adjacent Swiss Cottage Open Space that is used as an area of congregation. The Swiss Cottage Leisure Centre is a 'light weight' design and relatively low building with a low key appearance, complementing the setting of the adjacent listed library. The proposed development, because of its size and height, would dominate and encroach on the leisure centre.
122. The development, particularly the tower, would loom over Ye Olde Swiss Cottage public house.
123. Low rise 19th and 20th century domestic buildings prevail in the streets adjacent to the appeal site. The large majority of these buildings are in conservation areas because of their high architectural value and the contribution they make to the townscape, and this includes listed buildings. The setting of these properties will be affected by the construction of the proposed 24 storey tower and adjacent 5/7 storey block. It will cause harm to the visual aspect of many of the tree-lined streets, severely compromising numerous views out of the six surrounding conservation areas. The conservation areas affected would be Belsize Conservation Area, Elsworthy Conservation Area, Fitzjohn's and Netherhall Conservation Area, South Hampstead Conservation Area, Alexandra Road Estate Conservation Area and St John's Wood Conservation Area⁵⁴. It was confirmed at the inquiry and in the rebuttal evidence that when considering harm to conservation areas, it is in consideration of the whole of the conservation area. At the inquiry the council confirmed that the harm to Belsize Conservation Area, Fitzjohn's and Netherhall Conservation area and South Hampstead Conservation Area would, in terms of the Framework be 'substantial harm' and for the others, 'less than substantial' harm.
124. The Swiss Cottage Open Space is identified in the Local Development Document Proposals Map⁵⁵. The space includes the rectangular area between the

⁵⁴ Document C1 page 54 to 84 considers the views of the appeal site from the various conservation areas

⁵⁵ Document C2 page 13 Fig 1 shows extract

appeal site and Winchester Road and between the Hampstead Theatre and Leisure Centre. It includes the Multi Use Games Area and playground that abuts the leisure centre and the land between the Swiss Cottage Library and appeal site. It is an important open space with the next nearest being Primrose Hill.

125. The space is adjacent to many civic buildings, theatre, library and leisure centre and underground entrance, so attracting people from a wider area than just locals. The existing buildings around it exert a low level of influence on the space and their heights and juxtaposition complement it. Although the proposed building would not intrude into the Swiss Cottage Open Space⁵⁶ it is wider than the existing building, so is closer to the Open Space. The height of the building is considerably greater⁵⁷. The increased height by the library will make the building appear significantly larger than existing and would be far more dominant than the existing building. The impact of the building on the amenity of existing users of the space, because of the increased size, bulk and scale, would be much greater. It would loom over and dominate the open space.
126. The space has been visited on a number of occasions, particularly in the afternoon when the effect of shading would be at its most, and it was generally seen to be well used, including the playground and this is at a time when the appeal site is currently empty. However, it was also noted that the playground and games area use does not appear to be weather dependent. In clement weather the open space is generally used for recreational purposes, with generally greater use at the weekends. The general impression is that the shadow areas when present are little used.
127. It is estimated that about 18% more shadow would occur at 14.00 on 21 March. 6 out of the 27 people would be affected. People using the walkway by Eton Avenue would also be affected. It would place a greater proportion of the main part of the Swiss Cottage Open Space in shadow from 13.00 - 16.00. The combination of the increased shading and the visual impact of the buildings would adversely affect all users of the open space.
128. It is estimated that about 30% more shadow would occur at 17.00 on 21 June than existing. On the 3 June at 16.30 there were about 95 people using the space of which about 50 would be in area that would be shaded by the proposed development. The area around the theatre and its patio area would be shaded, making it less desirable to sit out.
129. It is estimated that about 40% more shadow would occur at 18.00 on 21 June than existing. About 55 of the 92 people seen using the space on 3 June at 17.30 would be affected by the increased shading.
130. It is estimated that about 29% more shadow would occur at 17.00 on 25 August than existing. About 60 of the 95 people using the space would be affected by the increased shading on the 3 June at 16.30. From about June to August about 3 hours of each day would have increased shading. Overall, between March and September it is concluded that the impact of the buildings proposed would be to cast materially greater areas of shadow over the Swiss Cottage Open Space at times when the space is used extensively by the public. It

⁵⁶ Document C2 page 15 fig 3

⁵⁷ Document C2 pages 16 – 18 figs 4 and 5

- will make it a less desirable place and have an impact on the amenity of users in terms of shading and visual impact. The landscaping proposed, while a benefit, would not be sufficient to mitigate that harm.
131. Much of the area used for the Eton Avenue market⁵⁸ would be in shadow cast by the new tower. This would add to the current shading by the theatre and result in a glum and unappealing environment around the street market, reducing its appeal. The shadow diagrams show considerably more shading of the market area in June and August between 12.00 and 14.00. The tower would also loom over the market place. It would detract considerably from the amenity of the area.
132. At 17.00 on 25 August the shadow diagrams show that 67, 69 and 71 Eton Avenue would have gardens in shade, which would not be the case currently. It would appear to shorten the day when not in shadow by about 1 hour changing from 18.00 to 17.00. There would also be an effect on dwellings in Fellows Road. While it is only a relatively short period, it is during the summer months and at times when users might be expected to try to make use of the gardens.
133. There will be some limited but adverse impact on these neighbouring occupiers which would conflict with the CS Policies CS5 and DP Policy DP26.
134. Properties fronting Winchester Road have rear amenity areas. While this does have a wall at the rear, there would still be increased shading of about 1hr around 16:00 onwards on 21 March. This will have an adverse effect on the amenity of the occupiers of those properties.
135. The council acknowledges that the BRE guidance⁵⁹ is important in the assessment of daylight and sunlight and is referred to in its own guidance. However, the council says that it is still necessary to consider the impact that any additional buildings have on the particular use of a space. In this case it says that the effect in the afternoon and evening is such that it would cause unacceptable harm to users at this important time of the day.
136. In relation to affordable housing there is a target in CS Policy CS6 for 50% self contained affordable housing, with similar aims in DP Policy DP3. However the appellant provided viability information that indicates that what has been offered is the maximum viable and therefore acceptable.
137. The site is allocated for development in the Site Allocations DPD⁶⁰ but this, amongst other things, indicates that it should respect the setting of Swiss Cottage Open Space. It is not considered that the proposal does.
138. It is accepted that there will be positive benefits from the proposal in terms of housing, affordable housing and space for the Winchester project. This is tempered a little by the fact the council does have an up to date 5 year housing supply, but this is still a matter of significant weight. The appellant questioned how the council dealt with student housing. This is done in accordance with the current government advice, but even if these were not considered out as suggested by the appellant, the council would still have a 5 year housing supply.

⁵⁸ Document C2 page 28/29

⁵⁹ Document CD 1.57

⁶⁰ Document CD 4.7 page 130

While the benefit of providing further housing is acknowledged, overall the harm is not outweighed by the benefits of the development.

The Case for Belsize Residents' Association⁶¹

139. The case for Belsize Residents' Association is set out in Docs R3 to R9 with closing submissions at IQ36. The material points are:-

Landscape

140. The residential population surrounding the Swiss Cottage Open Space is diverse and includes some vulnerable people, including elderly residents at Mora Burnet House and special needs residents at Winchester Mews. It is a well used and popular resource used actively and passively⁶². A local resident explains the importance of the open space⁶³. The developer talks of town centre location, but the Swiss Cottage Open Space is not in the town centre, it is a residential area. The functions of the Swiss Cottage Open Space should not be associated with the town centre. The developer says that its aim is to generate more activity and vitality, which is a considerable concern of residents.
141. The history of development of the area around the Swiss Cottage Open Space demonstrates sensitivity to the local heritage and scale of existing buildings. The existing building at 100 Avenue Road respected the Library, as did the redevelopment at the theatre. In the original design for the buildings on the site the presence of the busy road was important, with the design screening the open space from it, providing protection from noise, pollution and traffic and making the open space a tranquil, safe and intimate space for users of the park. Closure to traffic of the Eton Avenue junction with Finchley Road reinforces the protection⁶⁴.
142. The development with two buildings would mean that this 'barrier' and protection would be breached and compromise the qualities of the space, particularly in terms of tranquillity and amenity. The use by parents with children is considerable and this is possible because of the inherent safety of the area. There would be no baffling of noise or wind through the new gap, which would result in further deterioration in the qualities of the space. The noise breach would also cause disturbance to residents surrounding the outside space, including at the sheltered housing complex.
143. The wider building means that a lot of the planting on the east side of the building would be lost and further hard areas for seating would further reduce the soft landscaping⁶⁵. Losses would include a mown grass verge and shrub beds with a small number of mature trees. At the southern end of the proposed development soft landscape areas would also be lost and some grass areas would be converted to a self binding gravel surface. While there would be some planting, mainly in the form of planters, there would be a net loss of about 9% of the area's soft landscaping.

⁶¹ Documents R3 to R9 and IQ36

⁶² Document R3 pg 2 para 1.7

⁶³ Document R5

⁶⁴ Document R3 pg 4/5 para 2.6

⁶⁵ Document R3 page 5 para 2.10

144. The shrub beds are an important buffer and green edge between the park and existing buildings and contribute to the bio-diversity of the area⁶⁶. The trees and shrubs are also important in terms of improving air quality and help with cooling and reducing pollutants. Swiss Cottage is short of open space, with no opportunity to replace it locally. The proposal would contravene Camden's Open Space Policy N4 which requires open space deficiency not to be made worse by development. It should only be permitted where the application is supported by an appropriate contribution to the supply of public open space.
145. The study done of daylight and sunlight demonstrates that there would be an increase in shading and visual enclosure of the Swiss Cottage Open Space. This would reduce the amenity value of the area, heavily used by the public. Summer evenings would be particularly affected by the proposal, which is a time late sunshine would be enjoyed. The effect would extend into the surrounding private gardens. The consistency of the skyline would also be affected, with even the lower blocks being considerably higher than the other buildings surrounding the Swiss Cottage Open Space. The consistency of horizon is important. It would change the proportions and character of the open space.
146. The presence of the hard seating areas for the café / restaurants, even with planter structures, would introduce commercial activity into the open space. In the past such a use was allowed and resulted in repeated night time disturbance for residents with the potential for cooking odours, music, noise and disturbance⁶⁷.
147. The tranquillity of the park is a very important feature of the Swiss Cottage Open Space and should be preserved.
148. Local people take pride in their properties and care in maintenance and alterations, so it seems strange that a proposal that is out of character and scale with the area should be proposed⁶⁸. Eton Avenue is a lively, suburban residential road lined by trees and special properties and views up and down are part of the heritage. The area is geared up to residential living and providing a good quality of life. It would be dwarfed by a disproportionately high tower block out of keeping with the surrounding area and would cause harm.
149. Currently development around the Swiss Cottage Open Space defers to the height of the Swiss Cottage Library, with flats of Adelaide Road the only exception, built in a different era. The various developments are harmonious and a product of many years' successive developments balancing public and private spaces as well as civic buildings. With the proposal the balance that currently works in favour of the community would be lost.
150. The tower would overshadow Flat 4 at 73 Eton Avenue, the balcony of which provides a haven and its enjoyment would be affected. Many of the residents in the area do not have gardens, so the Swiss Cottage Open Space provides a way of getting outside and enjoying greenery.

⁶⁶ Document R5 page 3 para 14

⁶⁷ Document 5 page 3 para 12

⁶⁸ Document R4

151. The height of the tower would mean that construction will take proportionately longer, with associated increased noise and disturbance to local residents. Currently the house moves when lorries go past and this is likely to increase with the proposed development. There has been some anti-social behaviour in the past requiring a dispersal order⁶⁹. It is no longer a problem and residents do not want it to return.
152. The increase in residents at the appeal site would also put a strain on local services, particularly the Swiss Cottage Tube Station, which is already very busy.
153. A representative of the group was the project architect of the current building on the site. He is not 'broken hearted' at the thought of it being demolished. However, the current building respected various design principles. The listed building needed to be connected to, without being overpowered, so it stepped down towards it, with surrounding activities on a human scale.
154. A second principle was sharing space between the commercial occupiers and others, especially the residents around the open space, particularly not to overshadow the space. It was also necessary to separate the open space from the busy road. Other considerations related to fire access and underground access.
155. Thirdly, there was some funding for improvements, with nursery, squash court, and six a side football pitch. Allowance was also made for the popular market space, including allowing cars and vans to access it.
156. There is also concern over vehicular access, particularly during construction. There could be no access from the gyratory, so vehicles would be using the residential roads. When the building is in use, there would be no parking proposed, so again residential roads would be used for parking.
157. The flats are proposed to be let on 3/5 year tenancies, so residents would be transient, likely to be single people and couples, not likely to well integrate into the community or contribute to its activities. A main need is for affordable social housing, but little is proposed. There would be overshadowing of the open space, greatly increased by comparison with the existing building, reducing the times that the space can be enjoyed. There would be high winds generated around the base of the building and around-the-clock noise from traffic through the gap created to the main road. Flat owners would be likely to need to keep their windows closed.
158. There is also concern over air quality and the sense of siting 184 flats adjacent to the heavily polluted Finchley Road, a focus area for pollution monitoring. This could contribute to the likelihood of an increase in the incidence of asthma.
159. Aesthetically the proposal would break the skyline for a considerable distance around in a highly prominent way and especially be damaging to the adjacent conservation areas as its upper floors would create an unfortunate and visually upsetting backcloth to the mainly 19th century housing.

⁶⁹ Document R5 page 4 para 16

Historic Environment

160. The Belsize Residents Association relies on the evidence of Mr Davies⁷⁰ (formerly of English Heritage), who was unable to attend the inquiry. The Association disagrees with the council's approach to assessing the effect on heritage assets⁷¹.
161. The two closest listed buildings are the Swiss Cottage Library (Grade II) by Sir Basil Spence and the Hampstead Figure Sculpture (Grade II) by F E McWilliam. A little further away is Regency Lodge (Grade II) residential block by Robert Atkinson.
162. The library is only 50m from the appeal site and separated by soft landscaping. The 3 storey block now adjacent was designed to respond to the scale of the library and surrounding environment. The part 5 and part 7 storey height of the proposed building in this location would be dominant and overbearing and have a negative impact on the curved wall of the library. It is not accepted that the vertical structure of the proposal would pick up on the finely spaced concrete fins of the library, as the vertical elements of the proposed design are much more widely spaced and do not read with the library. The double height at ground level also contrasts with the single height entrance of the library.
163. The flank walls of the proposal would dominate views of the flat roofed long, low library and the different heights of the building would jar with the simple form of the library. It would 'hang' over the distinct form of the curved north elevation of the library, interrupting views of this important post-war listed building.
164. The Hampstead Figure is a nationally important post war sculpture, portraying a reclining abstract bronze figure and is an integral part of the 1960 civic centre scheme, which includes the library. The sculpture was placed centrally to the entrance of the library and remains a focal point in the recent re-landscaping of this area. It is only a few metres from the appeal site and would be overwhelmed by the end elevation of the new building.
165. Regency Lodge is 6 storeys high and is a robust and streamlined building of interwar period. It has a strong horizontal emphasis. This would suffer limited harm as the result of the proposed development, but views to it will be affected by the building.
166. There are a number of grade II listed buildings in Eton Avenue and one grade II* building whose setting would be affected. No 73 is within 200m of the tower.
167. The proposal would also have a significant adverse effect on the townscape character of Swiss Cottage town centre⁷² and cause harm to its visual amenity. The development because it is mainly residential development, would not bring anything to the centre, beyond the offer of some limited ground floor uses.

⁷⁰ Document CD1.34

⁷¹ Document R9

⁷² Document R9 page 35/36

Belsize Conservation Area

168. The Belsize Conservation Area is the closest and most significant in respect of the appeal proposal. It includes part of the Winchester Road terrace near the civic centre. It has 6 discrete sub-areas, described in the conservation area statement⁷³. The earlier parts are formed of semi-detached Victorian villas faced in stucco with elevated ground floors above basements. The later buildings, such as at Eton Avenue developed by W Willet for Eton College estate, have imposing detached houses faced in red brick and terracotta many in variation of the Queen Anne revival style. There are broad, straight tree-lined streets with open ended vistas that add to the spacious feel of the area and little development outside the area intrudes on this. There are occasional views of the Chalcots Estate tower between Fellows Road and Adelaide Road that do detract from its character and are indicative of the impact that outside development can have. It is well preserved but vulnerable to inappropriate development. A measure of its importance is the number of paintings within it by the Camden Town Group in collections in the Tate and Museum of London.
169. The conservation area statement notes that where development does not preserve or enhance the setting of the conservation area it is generally because of inappropriate scale, bulk, height, and massing. Policy BE20 also notes modern development has not always taken account of existing context, but notes that modern development will not be resisted if it respects the layout, height and scale of existing development. The tower would not accord with this aim and is contrary to Policy BE20⁷⁴.
170. Particular views of concern are Eton Avenue from outside the fire station, Adamson Road from Crossfield Road, Belsize Park looking south west on to Buckland Crescent, Daleham Gardens looking down to Belsize Lane, Swiss Cottage open space and Belsize Square from south of St Peter's Church, all with high value and high sensitivity⁷⁵.

Design

171. It is the Association's view that the Environmental Impact Assessment was not adequate⁷⁶. This does not address the design considerations in the English Heritage-CABE Guidance on Tall Buildings⁷⁷.
172. The main issue is the height and mass, particularly the increase of this development over that existing. The existing building was carefully designed to suit the site. It is acknowledged that the Camden Site Allocations Plan (2013) notes the potential for development of the appeal site and that it might be suitable for a taller building, especially at the northern end of the site. However, this is not justification for the increase in height now proposed or mean that it is suitable for high rise development.
173. The appeal site is not in a highly urbanised setting as noted in the heritage statement, but is an edge of town centre location. While there are a number of

⁷³ Document G5

⁷⁴ Document R9 considers townscape characteristics and views between pages 37-43

⁷⁵ Document R9 Views 4, 5, 6/24, 7/22 and 27 pages 42 - 29

⁷⁶ Document R9 page 23 para 6.40

⁷⁷ Document R9 Conclusion page 1 CABE ref paras B.1.1, 4.1.4, 4.1.5, 4.1.9 and 4.4

civic buildings, these are in a residential setting, where much of that is in conservation areas. The quality of the building is not sufficient for its prominence, as it would be the tallest residential building in Camden, visible from Westminster and Brent. The tower is too tall and, because of the floor area, too bulky. It does not attempt to relate to local distinctiveness or the character and context of the local area and historic environment. The tower takes the form of a flat roofed vertical slab, with its broader sides facing north and south.

174. It would have a domineering appearance, with an unchanging floor area on each floor. Seen from the corners, as would be the case from some conservation areas, its bulk would appear even greater. It does not reduce in size as it rises, nor does it have a pleasing skyline. There is no relief articulation or modelling of the elevations. Similar comments apply to the lower block, which would have a far greater impact on the surrounding area than the existing building, because of its increased width and height, and consequently mass and bulk. The current building is only 3 storeys near the library, whereas the proposal is 5/7 storeys. It would be imposing and out of scale with the adjacent buildings and spaces, including the grade II library and sculpture and buildings in the conservation area.

Residential Amenities

175. The development contravenes LP Policy 7.7C as its scale, mass and bulk would adversely affect the character of the surrounding area and would fail to relate well to the form, proportion, composition, scale and character of surrounding buildings, urban grain and public realm, particularly at street level. It is contrary to LP Policy 7.7D as it would adversely affect local views and be contrary to LP Policy 7.7E relating to tall buildings and impact on sensitive locations, including conservation areas, listed buildings and their settings. It would have an unacceptable impact.
176. It would fail to comply with CS5 and CS14 of the London Borough of Camden Local Development Framework Core Strategy and the London Borough of Camden Local Development Framework Development Policies DP24 and DP25.
177. There would be some benefit in the form of step free access to the underground, but Transport for London have not yet committed to this. The building would have an impact in terms of shading and the environment adjacent to the theatre. Over 900 people have objected to the proposal.

The Case for Cresta House Residents' Association⁷⁸

178. The case for Cresta House Residents' Association is set out in Doc R13 with closing submissions at IQ36. The material points are:-
179. Camden's Development Policy 26 notes the council will protect the quality of life of occupiers and neighbours by only granting permission for development that does not cause harm to amenity.
180. The officer's report indicated that there are no residential properties directly adjacent to the appeal site, but did go on to refer to some nearby properties. It noted that only properties at Overground House would experience a loss of

⁷⁸ Document R13

vertical sky component greater than the guideline 20%. Cresta House is 38 fully occupied residential properties above Overground House, 75m away from the site⁷⁹. Therefore, if Overground House would have a loss of greater than the 20% guideline, so would Cresta House residents. There has therefore been an error in considering daylight and sunlight issues with regard to the omission of Cresta House.

181. There is no mention by the council in its consideration of the proposal about the effect on daylight and sunlight at Cresta House, although it is noted by Mr Hughes of the Council that the vertical skylight component and average daylight factors for Cresta House will incur losses but such a degree of loss would not be noticeable⁸⁰. The suggestion by the appellant is that residents of Cresta House already suffer as a result of neighbouring buildings restricting daylight availability to their own windows and rooms, so that further harm does not matter. That is not reasonable and in any case there are 7 apartments where this does not occur. The depth of the rooms is also incorrect in the report.
182. The impact of the tower in terms of its impact on outlook would be at its greatest as seen from the terraces of Cresta House. There would also be a severe impact on privacy. The residents of Cresta House will suffer a substantial loss of amenity.

The Case for Eton Avenue Housing Association⁸¹

183. The case for Eton Avenue Housing Association is set out in Docs R12 and IQ29 with closing submissions at IQ36. The material points are:-
184. The case made by Belsize Residents' Association is supported.
185. The representative has lived in the area for a considerable time, with connections with it for some 45 years. The last development in the area was about 2006 and it is considered that what has been provided to date works very well. There is a tranquil open space where people can relax and children play. There is a thriving cultural centre and market place. It is an oasis in the heart of Swiss Cottage with a special community spirit that would be destroyed if the scheme goes ahead.
186. Nearby residents would be affected by noise and disturbance, initially from construction and then from the many shops and cafés that would span the perimeter. Noise and air pollution from the gyratory would permeate the open space through the new gap between buildings. There would be a significant increase in wind and overshadowing, particularly in the evening, a time when the open space is most frequented.
187. There would also be a considerable increased risk to pedestrians with increased traffic at the Eton Avenue end of the area, from commercial vehicles servicing the many flats.

⁷⁹ Document 13 page 3 para 5

⁸⁰ Document R13 page 4 para 10

⁸¹ Document R12 and IQ29

188. The tower would loom over some housing and gardens in the area, harming the outlook for residents⁸². The fact that there is Chalcots Estates Towers in Fellows Road does not justify another view of a tall building that is higher.
189. The appellant's report on micro climate makes significant errors and remains uncorrected, despite being identified to the appellants. It uses pre-development baseline figures and this is evident in figures 3 and 5 of RWDIs Assessment⁸³. A reduction of about 51 'sitting' is substantial. The area already suffers high winds. The entrance of the tube station is often windy. The report is correct in noting Eton Avenue and pathway adjacent to the theatre as being one of the windiest areas, to the extent of impeding walking on the windiest days of the year. We are concerned the errors will have affected the predictions of the impact of the development.
190. J Sachs submitted a note to the inquiry relating to the microclimate around the building. Concern is expressed about the wind environment, particularly that associated with the tall building⁸⁴. They note that the report indicates conditions around and within the site would be windier when the development is complete compared to baseline conditions, which is largely because of the height of the development compared with the surrounding buildings creating down-draughts and channelling. Using the Lawson Comfort Criteria, the wind blight would increase from pre-development baseline figures, particularly from 67 sitting to 16.
191. It is not acceptable that there is no social rented sector housing as they are most needed. Only 19.9% of the units are affordable houses⁸⁵. The development does not satisfy the affordable housing need in the area. It falls well below the Camden Strategy Policy CS6 (f) which seeks to secure 50% of the borough wide target for new homes as affordable housing.

The Case for Mr Reed⁸⁶

192. The case for Mr Reed is set out in Docs R1 and R2 with closing submissions at IQ35. The material points are:-
193. The objections in terms of character and appearance and impacts on living conditions as put by other interested parties are supported and this is because of the over-development of the site. However, the main focus relates to the lack of direct vehicular access to the building and the lack of attempt to identify the extent of the occupation that would occur, particularly as this is located on a busy Red Route with no stopping allowed.
194. This means that access will have to be through the pedestrianised street market area, with much of it coming along Winchester Road from the main A41, via the B509 Adelaide Road.
195. The use of taxis appears to be promoted, but these cannot stop on the Red Route, so will also contribute to additional traffic in the pedestrianised area, as

⁸² Document R12 page 3

⁸³ Document R12 page 3

⁸⁴ CD11.1 Microclimate Assessment

⁸⁵ Document R12 page 4

⁸⁶ Document R1 and IQ35

would home delivered shopping etc. Mr Reed questions whether the residents of a high quality block would walk or cycle, particularly as the main road adjacent is a Red Route. The transport report notes that deliveries would also be via the pedestrianised area.

196. He considers residents would not contribute to the local economy, would be a burden on leisure facilities and, with more active use of the adjacent open space, would spoil the tranquillity of the area.
197. The open space is the only traffic free open space in the area and backs onto a hundred flats who do not want people pouring out of restaurants and bars at all hours, or the noise, pollution and winds through gaps between buildings that would occurred. It is a widely used space by thousands of local people, with many passing through to the library, leisure centre, theatre and community centre as well as users of the Central School for Speech and Drama. If pedestrian flows are considered there is a peak flow area directly adjacent to the tower, which would be the same place that vehicles would have to pass through. In addition, because traffic access is limited to the north east corner, it means, because of the way the main roads are, that this traffic would have to use local roads, that are residential and already intensively used.
198. A survey⁸⁷ was undertaken that shows the area to be already very busy with vehicles and pedestrians and the proposed use could generate a further 200 deliveries a day. This could be a rate of about 30 movements an hour, crossing the busy pedestrian route (counted 1376 pedestrians and 34 bikes in 1 hour at lunch time).
199. It is suggested that bollards can control traffic flows. This was done before, but the bollards were not successful and have been removed.
200. Finally there is a gas pressure reduction station beneath the tower block, so is it sensible to locate a tower block in close proximity to it?

The Case for Save Swiss Cottage Action Group⁸⁸

201. The case for Save Swiss Cottage Action Group is set out in Docs R10 and R11 with closing submissions at IQ34. The material points are:-
202. A key concern is the scale, massing and lack of relationship with the other buildings round the site. To the east is the Victorian Winchester Terrace, simple and unpretentious, but with a sense of scale and rhythm. To the north is the small-scale Hampstead Theatre, again unpretentious but relating well to the open space that falls away to the south. The library building is a strong statement, but the elevation treatment is simple and precise and relates well to the adjacent leisure centre, which itself relates well to the Visage building at the corner.
203. While there are large buildings at Adelaide Road, it is quite wrong to use those as a precedent for here as times have moved on and to match the size and crudity of those would be totally inappropriate. It is hard to see how the slab like elevation adjacent to the listed library can be considered acceptable. The Belsize Park Conservation Area is important, which is well explained in the conservation

⁸⁷ See Document R10 and appendices at R11

⁸⁸ Document R7 and IQ34

area statement⁸⁹. An unusual contribution to the area is the grade II listed fire station with an impressive design. The great thing about the area is the completeness and lack of incongruous or unsympathetic elements in such an extensive area.

204. Fitzjohn's and Netherhall Conservation Area is directly adjacent to Belsize Park Conservation Area. This has a parade of impressive detached and semi-detached houses, mostly in red brick and dating from the latter part of the nineteenth century in a style that combines Queen Anne with Arts and Crafts influences based on the work of Norman Shaw. Parallel roads are all in a similar style, with a mix of detached and semi-detached buildings with large gardens.
205. South Hampstead Conservation Area is to the west of Finchley Road and was developed from the 1870s in a consistent red brick style, mainly closely placed semi-detached housing but with a small number of villa style buildings along gently curving roads. To the east there are some taller buildings and flat blocks. All have large rear gardens, some of which are communal. There is a considerable consistency of style, which is important.
206. Alexandra Road Conservation Area is unusual as it consists mainly of two extensive grade II* listed residential buildings built along the railway tracks. These were built in the 1970s and epitomise the style of that period and are a better example of architecture of this period⁹⁰.
207. Elsworthy Road Conservation Area to the south of Swiss Cottage comprises a mix of individual and semi-detached private houses in what could be described as the Arts and Crafts style or in a small number of cases, Art Nouveau style, and are good examples of this. It is a more urban version of the Hampstead Garden Suburbs. To the north are Victorian buildings, mainly in gault bricks.
208. St John's Hampstead has substantial semi-detached stuccoed houses interspersed with more rustic cottages in a style that might have been associated with Nash.
209. The Swiss Cottage inn is a significant local feature, as well as giving its name to the area. Although it is not listed it merits some consideration in development proposals⁹¹.
210. A listed building that needs to be taken into consideration is the below ground pair of listed railway portals at the western end of the Primrose Hill tunnels below Hilgrove and Alexandra Road. These are seen in a view from the west which would incorporate the tower.
211. While the proposal was put before the Design Council⁹² [CABE] they did not consider the impact on heritage assets; it left that to Historic England who left the decision to the council⁹³. The historic environment is a crucial aspect of the overall environment and the fact this aspect was not considered by the Design Council undermines the credibility of its comments.

⁸⁹ Document G5

⁹⁰ Documents R11 appendix 2 view 22 shows Alexandra Road flat with tower behind

⁹¹ Document R10 and R11. Analysis of views in apx 2 and pages 9 -

⁹² Documents CD1.45 – 1.48

⁹³ Document CD1.37 paragraph 4.4

Amenity.

212. The park generally has an open aspect, with generally two to five storey buildings around it. The Visage building is higher to the south, but you are not aware of this in the park. The existing building steps down from 6 to 3 storeys and is not overbearing. The combination of planting, including some small and large trees, combined with the gentle slope and water feature makes a very attractive space. There is currently little overshadowing. It also provides space for local markets. The theatres are an added attraction.
213. The design resulting from the design process⁹⁴ is unacceptable. The tower is too high, thus causing public and technical objection, particularly in such a relatively sensitive neighbourhood and secondly the lower block is also too high because of the impact that it would have on the Swiss Cottage Open Space. The lower block is completely disrespectful of the listed library and the lower block would also appear to be out of all proportion in relation to the Winchester Terrace on the other side of the open space.
214. In relation to trees⁹⁵ it is considered that 7 of the Cherry Trees should be grade B and not C and that 3 other trees (Beech and Tulip) should be Grade A and not Grade C. 33 of the 54 trees would be directly affected by the development. 4 high grade plane trees along Eton Avenue have been omitted. 11 other mature Tulip trees should also have been assessed, because of their size. It is therefore considered that more trees will be lost than identified. There is no real assessment of how the construction phase would be undertaken and the way that protection would be undertaken. The conclusion is that there is insufficient detail to guarantee the safe and healthy retention of the trees which it is stated can be retained. Of particular concern are the large plane trees at the construction entrances.
215. In terms of overshadowing and light⁹⁶, the appellant's assessment appears to interpret the BRE guidance in an unusual way. There is particular concern that the extent of overshadowing would be far greater than it demonstrates, particularly in relation to Cresta House residents on the top of Overground House. It is criticised that some trees have not been taken into consideration when working out the daylight factors and that using adjacent building calculations is not reasonable. The impact of the obstruction of the proposed development on daylight as well as sunlight needs to be considered. The appellant has not taken account of changing ground levels which would affect the shadows produced⁹⁷. However, the expert that produced the report did not attend the inquiry and the evidence was not cross-examined. The report also does not conclude that the proposal would not comply with the BRE guidance but complains about the 'flexible' interpretation⁹⁸.
216. Similar concerns are raised in relation to access as Belsize Residents' Association and particularly that large lorries parked to supply materials within the site could mean Eton Avenue is unusable for much of the construction period.

⁹⁴ Document R10 page 22

⁹⁵ Document R11 appendix 6

⁹⁶ Document R11 appendix 7

⁹⁷ Document R11 appendix 7 page 9

⁹⁸ Document R11 appendix 7 page10

217. The articulation of the façades lacks delicacy and widening the blocks would not help the open space or public realm generally. Isolating the tower will also result in a windy gap and loses protection for the park in terms of privacy and noise from the main road. Provision of restaurants is to be applauded, but it is questioned whether it makes sense in this location.

The case for Winchester Road Residents' Association

218. The case for Winchester Road Residents' Association is set out in the case for Belsize Residents' Association with closing submissions at IQ36. The material points are:-

219. At one end of Winchester Road is Mora Burnet House containing 35 flats for frail older tenants who have 24 hour care and support⁹⁹. There is then a small row of shops and restaurants entered from Winchester Road with flats above. The restaurants do not use garden space at the rear and cause no disturbance. The Winchester Project is a charity for children and beyond the walkway is a community centre with residential accommodation for people with mental and physical disabilities.

220. On the second side of the open space is the Swiss Cottage Leisure Centre, providing a wide range of community facilities and a café carefully run at hours following consultation with residents. There are flats above the leisure centre again for people with mental and physical disabilities. The Swiss Cottage Library is adjacent.

221. The appeal site runs along the third side of the Swiss Cottage Open Space. The fourth side has the Hampstead Theatre, with an artistic and cultural function and ancillary restaurant and bars. This does not create unacceptable noise. The theatre withdrew proposals to extend outside terraces after consulting residents.

222. The new walkway between the two buildings would create a new access into the open space and people using the walkway may create noise and simply use the walkway and open space as a cut through increasing noise and disturbance.

223. The proposals will turn the open space into a noisy area by day and night. The commercial space, where occupiers will seek licences to serve alcohol, is too close to the residential areas. Those using it will be likely to linger on the open space after closing time, creating noise close to residences, especially in summer months, causing sleep problems for those using the many bedrooms facing the open space.

224. The current space is very harmonious through progressive developments and will be spoilt by the proposed development. There is a balance of public and private space, architecture and greenery. The space provides a location for those without gardens to go and see the wildlife which has now returned following previous developments. The balance would be broken.

225. There have been past problems with anti-social behaviour caused by people lingering in the open space. The police and council had to take action, issuing dispersal notices¹⁰⁰, and the sports pitch had to have night security and then

⁹⁹ Document R5 See attachments for description of Mora Burnett House

¹⁰⁰ Document R5 See attachments for copy of notice

fencing. It is no longer a significant problem and it is essential it should not return.

226. The space is not town centre but a residential area, with many properties with bedrooms overlooking the open space. It cannot be compared to a town centre or square which might have non residential buildings surrounding it and Winchester Road is not part of the town centre. There is real concern that the developer's aim to create activity on all sides to engage the public realm will occur, causing change and disturbance to residents. The town centre does not surround the development as the open space is not part of the town centre. There is also concern about the noise and disturbance from construction traffic.

227. **Mr Grimm** is concerned about the impact of the development on the swimming pool in terms of privacy and outlook¹⁰¹.

228. **Mr T Ewing** appeared on behalf of the Camden Association of Street Properties¹⁰². Mr Ewing looks in detail at the law behind planning decisions, with particular emphasis on that surrounding listed buildings and conservation areas.

Written Representations¹⁰³

Letters related to the application are contained in Document 3. Where appropriate it includes letters written before and during the inquiry.

229. I do not need to set out the cases expressed in the written representations as essentially these follow that of the council and rule 6 parties. In summary, there is massive local opposition to the proposal, with many letters and a petition.

230. Mr T Tugnut¹⁰⁴ submitted photographs taken on the day of the site visit with the 'blimp' in position. The height of the rope tethering it was agreed between the parties, although the securing position was a little to the east of the tower position. In addition, I would note that it was a windy day and the 'blimp' rarely flew vertically above its position, so its location would be to one side and vertical height not as measured. Therefore, it is my view that the photographs should be considered for general illustration only and not as a totally accurate representation of height or position.

Conditions and Obligations

The conditions agreed between the parties are contained in IQ30 and my recommended conditions are attached as annex A to this report. The signed planning obligation is at IQ40. This was replaced after the inquiry as a page had been omitted. My comments are in the conclusions.

¹⁰¹ Document IQ20

¹⁰² Original comments are in Red Folder 1 and closing submissions in Document IQ33

¹⁰³ Red Folders 1 and 2 and Blue folder

¹⁰⁴ Document IQ32

CONCLUSIONS

In this section the numbers in parentheses [n] refer to the preceding paragraphs.

231. I have covered the main considerations identified as well as a number of other matters raised by interested parties.

232. Main issues are:

1. Heritage Assets

- i. The effect on the significance, character and appearance of various nearby conservation areas, in particular Belsize Park, Fitzjohns and Netheral, Elsworthy, South Hampstead, Alexandra Road Estate and St John's Wood Conservation Areas.
- ii. The effect on the significance and special architectural and historic interest of heritage assets, including listed buildings. (There are a number of heritage assets/listed buildings, including the Swiss Cottage Library and the Hampstead Figure Sculpture. The Save Swiss Cottage Action Group will identify a further 37 listed buildings.)

2. The effect on the character and appearance of the surrounding area.

3. The effect on the amenity of the surrounding area, particularly in relation to daylight and sunlight on the Swiss Cottage open space and the effect on outlook of people using the space, including during construction and taking account of new walkways and routes.

4. The effect in relation to outlook and privacy on adjoining premises, including residents at Cresta House and users of the Central School for Speech and Drama.

233. There was some concern raised by interested parties about the town centre designation, [4] in particular the extension to include the appeal site, and whether there had been consultation. However, the statement of common ground makes it clear that the extension of the town centre to include the appeal site, library and leisure centre was part of the core strategy consultation changes to the proposals map.

Heritage Assets

234. Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area. There is no specific duty under the Act to consider the setting of conservation areas, but it is established practice that views into and out of a conservation area and any effect on character and/or appearance are relevant. There was also some confusion in the council's case relating to the assessment of harm in a conservation area. However, at the inquiry changes were made to confirm that the correct assessment is the effect on the character and/or appearance of the conservation area as a whole, which is well established case law. However, I acknowledge that this does not mean that any harm identified has to be over the whole area, and that harm in one part of a conservation area (or outside) could have an effect on the conservation area as a whole.

235. In addition, the Framework identifies conservation areas as designated heritage assets, where when considering the impact of proposed development on the significance of the asset, great weight should be given to the asset's conservation. It notes that significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. It notes that proposals that preserve those elements of the setting that make a positive contribution to or better reveal the significance of the asset should be treated favourably. The effect of the proposal on the setting of the conservation area is relevant and there is no disagreement that the proposal would be in the setting of the assets identified.
236. No listed building is physically affected by the proposal, apart from the Hampstead Figure Sculpture. It would be necessary to remove the listed sculpture and reposition it after the works are complete. It has been relocated in the past from its original position nearer the library. Generally it is the setting of various listed buildings that needs to be considered. When considering applications that may affect a listed building or its setting, section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special regard to be paid to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
237. The council argues that their policies require development to protect and enhance heritage. Policy CS5 [13] does not require that, but for **consideration** to be given to protecting and enhancing the heritage environment. CS Policy CS14 [16] is a bit stronger, noting the council will ensure that Camden's places and buildings are attractive, safe and easy to use by, amongst other things, preserving and enhancing Camden's rich and diverse heritage assets and their settings. Text to the policy notes *'we have a responsibility to preserve, and **where possible**, enhance our heritage of important areas and buildings'*, which seems to indicate to me that the two components are not essential.' Reference is made to DP Policy DP25 [19] which also notes more strongly that the council *'will only permit development **within** a conservation area that preserves and enhances the character and appearance of the area'*. However, for development **outside** of the area it also notes that it *will not permit development outside of a conservation area that causes harm to the character and appearance of the conservation area'*. And for listed buildings it notes *'To preserve or enhance the borough's listed buildings the council will not permit development that it considers would cause harm to the setting of a listed building'. [my emphasis]*
238. My interpretation of these policies is that the aim is to seek development that both preserves and enhances heritage assets, but that development that preserves the assets or would not cause harm to them would also effectively satisfy the policy tests.
239. The Framework describes the setting of a heritage asset as the surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.
240. In enacting section 66(1), Parliament intended that the desirability of preserving the setting of listed buildings should not simply be given careful consideration by the decision-maker for the purpose of deciding whether there

would be some harm, but that it should be given 'considerable importance and weight' when the decision-maker carries out the balancing exercise. Even where 'less than substantial' harm is identified, Section 66(1) requires considerable importance and weight to be given to the desirability of preserving the setting of a listed building and for Section 72(1) the desirability of preserving or enhancing the character or appearance of a conservation area, when carrying out the balancing exercise.

241. The proposal was considered by Historic England and the Design Council, but it is suggested that the weight to this should be limited because the Design Council did not consider heritage matters, but left that to Historic England [211]. The committee report¹⁰⁵ notes the response of Historic England (English Heritage) indicating it considered the impact of the proposal on the historic environment is not so significant as to warrant English Heritage's involvement. English Heritage is therefore content for the council to determine the appeal. If Historic England had considered there was a notable unacceptable impact I would have expected them to have commented, but I also accept that just because it did not comment, does not mean that there is no harm to be identified; that was left to the council. The fact that the Design Council left the heritage assessment to Historic England does not undermine its support for the scheme.

Conservation Areas

242. There is no real dispute between the main parties or Rule 6 parties related to the character, appearance or significance of the conservation areas. All acknowledge the high quality and importance of these. There is also little dispute about what is within the setting/visible from the conservation area and that from parts of the conservation area there will be views of, in particular, the new tower.
243. In this respect, various views have been provided by the parties with montages of the building shown for comparison purposes. Those provided by the appellant were representative views agreed with the council and some further views provided in relation to arguments raised. Save Swiss Cottage Action Group has also provided its own evidence on views. A good place to see some of the evidence for the assessment of impact on views is CD1.4, CD1.5 and Document R11 Appendix 2. The main dispute is the impact that the development has on the significance/special interest and character and appearance of the surrounding heritage assets.
244. When considering the views illustrated, I have taken into consideration that these are representative views, and that, as seen at the site visit, there will be views of the proposed development from other parts of the conservation areas. There is a very comprehensive set of photographs illustrating many of the buildings in the various conservation areas at Document R11 appendix 4 parts 1, 2 and 3. I have taken into consideration views into, out of and within the conservation areas and effect on other heritage assets.

Belsize Conservation Area

245. This is a large conservation area and, while there is variation in the designs of the buildings in the different parts, the significance, architectural and historic

¹⁰⁵ Document CD1.37 paragraph 4.4

interest relates, to a greater part, to the overall residential character of the area, the layout of the streets, their verdant character, and the era of the housing expressed by their designs and relative small scale of the buildings. These provide a distinctive character and appearance [90, 203].

246. The setting of the conservation area is the surrounding urban areas, including the Swiss Cottage town centre (and appeal site), Swiss Cottage Open Space, the Fitzjohn's and Netherhall Conservation Area and the Chalcots Estate. Tall buildings, such as at the Chalcots Estate and the relatively large scale buildings in the town centre are all part of that setting. The urban setting of the conservation area is important as a general setting, but I find there is nothing specific in the setting that adds to the significance or architectural and historic interest of the conservation area.
247. Views in and out are important, but they are of the surrounding urban area that has changed considerably since this housing was constructed and conservation area designated. The fact that there is a change in the surrounding urban area does not in principle diminish the significance of the conservation area and continues to provide an urban setting for the conservation area. I do not consider that the appeal site itself makes any particular contribution to the significance of the Belsize Conservation Area. Currently the site is more open, but I do not consider that it being more open in itself adds to the significance of the conservation area.
248. There are views into and out of the conservation area to the surrounding urban area that will be affected by the proposal. Views 5, 24 and 26 are closest. View 5 from Crossfield Road¹⁰⁶ is along Adamson Road towards the appeal site. Currently there is a clear indication of the change in character at the end of the road, where the town centre is. Here there are buildings of a substantially different size and scale to those in the conservation area, including at the appeal site and across the road from the appeal site. These large scale existing buildings do not add to, or take away from, the significance of the conservation area, but indicate the position where the conservation area ends, helping define its limits.
249. The tower would become a prominent, modern feature in this view. However, because of its modern design and size it is clearly seen as part of the town centre beyond and in the conservation areas urban setting. The view clearly is changed, but character of the setting is not and nor is there an effect on significance of the heritage asset, in this part or as a whole. The character of the conservation area and buildings within it is also unchanged. So while the view would be changed, I consider the effect on the character and/or appearance would be neutral.
250. The view along Buckland Crescent¹⁰⁷ (view 24) is of a row of detached stucco villas with, in the distance, the large scale buildings of the town centre partly rising up behind the further away buildings. This is an attractive view, where the proposed tower would be visible behind the properties when walking along the street. While it would be a new feature in the view, it would be seen as a modern feature, not part of the conservation area, and seen in the distance. I do not consider that it would harm the views out, or within the conservation area and the impact on its significance would be neutral.

¹⁰⁶ Document CD1.4 view 5 page 14.

¹⁰⁷ Document CD1.4 page 71 view 24 and Document R11 Appendix 2 View 13

251. The view from Belsize Park (view 6) towards the junction of Buckland Avenue is an attractive view within the conservation area¹⁰⁸ and is referred to in the conservation area statement¹⁰⁹. This view is also shown in a painting. At present the view is an 'internal' view, with buildings from the setting outside the conservation area not intruding into the view. The building at the junction of the roads is attractive and forms a visual stop to the view at the junction. The tower of the proposed development would be prominent in this view and affect the character of the area as seen in this general location. However, the tower would be seen as being in the distance behind the house. While there would be some negative impact here, I do not consider that would have an effect on the conservation area when considered as a whole and I conclude that the effect would be neutral and the conservation area as a whole preserved. Nevertheless, there would be some harm, which in terms of the Framework would be 'less than substantial' and this should be carried through into the balance.
252. Save Swiss Cottage Action Group shows the new development from the front of 5 Adamson Road¹¹⁰ (appellant's view 26). This is close to the appeal site, being a little up from the Theatre and Royal Central School of Speech and Drama. This is close to the town centre and existing large scale modern buildings are part of the setting of the conservation area and part of the views in and out of it. In this location the tower would be very prominent, but would also be seen as part of the 'civic' complex of buildings around the Swiss Cottage Open Space, and particularly in this general location the theatre and Royal Central School of Speech and Drama.
253. I do not consider that it would cause harm to this part of the conservation area or affect the significance of the conservation area as a whole as there are already large modern buildings at this edge. This is a well designed building that enhances the town centre and would not be unacceptable in this position.
254. There are further away views from other parts of the conservation area, some illustrated at CD1.4 views 4, 6, 11, 21 and 25. Also see views 6 and 25 in Document R11 appendix 2.
255. As shown by view 11, this part of the conservation area is clearly seen as being at the edge of the conservation area, with modern development forming a distinct part of the setting. The buildings within the conservation area are seen with large buildings in the background, including the tower at the Chalcots Estate. While the new tower is seen in a different position, behind the houses on the opposite side of the street, because of its design and location it is clearly seen as not being part of the conservation area. The views of it would not affect the significance of the conservation area or its character and appearance.
256. Views 4 and 25 from Eton Avenue are from similar positions, with that in the middle of the road giving the clearest view of the appeal proposal¹¹¹. Again, the modern, large scale buildings can be seen in the distance, identifying the town centre and existing setting of the building. The tower would be prominent in the distance, but is clearly in the distance and seen as part of the town centre. I do

¹⁰⁸ Document CD1.4 page view 6 and View 12 in Document R11 Appendix 2

¹⁰⁹ Document G5 page 16 of the conservation area statement

¹¹⁰ Document R11 Appendix 2 Views 8/9, this is also the appellant's view 26 Document 1.4

¹¹¹ Document 1.4 View 4 page 11 and View 25 page 74 and Document R11 View 5

not consider the view of the tower affects the character or appearance of the conservation area or its significance. Similar comments relate to other views in the conservation area.

257. I have also taken into consideration other views, such as Views 9 and 23, where the building would be visible with the conservation area in sight, and views 31 to 34 of Save Swiss Cottage Action Group.
258. The towers in the Chalcots Estate were considered by the council and other parties to be a negative feature in the area and that these should not effectively form a precedent for further towers in the area. In my view, while prominent features, they are neutral, modern features forming part of the surrounding to the conservation area. I accept that these do not create a precedent for further development, but the towers clearly are an important part of the setting and cannot be ignored as there was no evidence to suggest they might be removed in the foreseeable future. It is therefore reasonable to consider them as part of the urban context of the conservation areas setting.
259. The council considered that the harm to the Belsize Conservation Area would, in terms of the Framework, be 'substantial harm'. To my mind, that clearly is not the case; the overall significance of the conservation area that derives from the buildings and their layout would be fully retained. The impact on views within the conservation area as a whole are limited, so even when considered individually or together any potential any harm would still be limited to 'less than substantial harm'.
260. In conclusion, taking account of all the views that would occur of the new development and the effect on other heritage assets, I consider that the impact on the conservation area as a whole would generally be neutral and the character and appearance would be preserved, but with some limited 'less than substantial' harm associated with the view from Belsize Park (View 6).

*Fitzjohn's and Netherhall Conservation Area*¹¹²

261. This is also a large conservation area and while there is some variation in the designs of the buildings in the different parts, the significance, architectural and historic interest relates, to a greater part, to the overall residential character of the area, the layout of the streets, their generally verdant character, and the era of the housing, expressed by their designs and relative small scale of the buildings. These provide a distinctive character and appearance.
262. The setting of the conservation area is the urban area surrounding it, including the Belsize Conservation Area and Swiss Cottage town centre. The appeal proposal would be visible from some parts of the conservation area and is therefore within its setting. However, I do not consider that any part of the setting of the conservation area is important to its significance, character or appearance, apart from being a 'surrounding' urban environment. This is important, as the conservation area is an enclave within the urban environment, with its own particular character and appearance. I therefore do not consider that the appeal site makes any contribution to the significance of the conservation

¹¹² Document G5 – conservation area statement Document 1.4 Views 7, 8, 9, 20 and 22 and Document R11 Appendix 2 Views 10, 11, 28 and 29

area apart from being part of the urban surroundings. The lack of seeing the appeal site currently from views is also not important in terms of the significance of the conservation area.

263. The appellant's view 9 and Save Swiss Cottage Action Group views 10 and 11 are in similar locations looking down College Crescent towards the appeal site. This position is clearly at the edge of the conservation area. The distant view of the Royal Central School of Speech and Drama is of a large scale, modern, relatively bulky building contrasting with the houses and character of the conservation area as a whole and the large blocks of flats on the left also provide a strong contrast between the setting of the conservation area and the area itself. This is also a position very close to the town centre, the character of which is very different from the conservation area itself.
264. The appeal building would be another distinctly modern building that would be prominent in views. However, it would be seen as part of the modern urban environment of the town centre, adjacent to the conservation area and not seen to be an intrusion into the conservation area and would not unacceptably affect the setting, its significance or its character and appearance either here or as a whole.
265. There are also views from further into the conservation area, with examples shown from Fitzjohn's Avenue, Daleham Gardens and Belsize Lane¹¹³. In the appellant's view 22 the town centre can be seen in the distance and the appeal building would be clearly seen as part of the town centre. While it would be visible as a new feature it would not impact on the significance, character or appearance of the conservation area. Lower down Daleham Gardens, as seen in Save Swiss Cottage Action Group views 29 and 34, the views without the new building are contained within the conservation area, so the introduction of the tower into these views would be a new feature, identifying the location of the town centre beyond. While it would change the view, the character and appearance of the conservation area would be unchanged and the fact that part of the wider setting of the town centre would now be seen would have little effect on the significance of the asset. I conclude taking into consideration all the views of the proposed building that would occur that the character and appearance and significance of the Fitzjohn's and Netherhall Conservation Area would be preserved.

Elsworthy Road Conservation Area, St John's Wood Conservation Areas and South Hampstead Conservation Area

266. These are large conservation areas and I have dealt with them together. While there is some variation in the designs of the buildings in the different parts, the significance, architectural and historic interest relates, to a greater part, to the overall residential character of these areas, the layout of the streets, their generally verdant character and the era of the housing, expressed by their designs and relative small scale of the buildings. These provide a distinctive character and appearance.
267. There is no direct connection of these conservation areas with the appeal site. The appeal site is simply an area of land within the surrounding area, which is

¹¹³ Document CD1.4 view 22, and R11 Appendix 2 views 29 and 34

currently not generally visible from these areas. The lack of visibility, in my view, does not add to the significance of the conservation areas. The contribution the surroundings make is providing an urban setting for the conservation areas which have a distinctly different and historically interesting character that contrasts with the town centre character and buildings.

268. These conservation areas are further away from the appeal building, with Elsworthy Road Conservation Area being closest.
269. Views of the proposal¹¹⁴ from these areas are provided by the appellant and Save Swiss Cottage Action Group. In the appellant's views 1 and 2 (same as views 3 and 4 of Save Swiss Cottage Action Group), the existing modern buildings near to the appeal site can clearly be seen, including a tall tower from the Chalcots Estate and the large, modern Visage building (seen particularly in the appellant's View 2). While the appeal building would be an additional modern building in this view, it would not change the town centre setting and would have little impact on appearance and no impact on the character and or significance of the conservation area.
270. There are illustrative views from the South Hampstead Conservation Area¹¹⁵. These are a reasonable distance from the appeal site and downhill from it. Appellant's view 19 is the closest. This is at the edge of the South Hampstead Conservation Area and there are a number of modern buildings close by, particularly in views towards the appeal site. The proposed tower would be visible above some of those modern buildings and would be seen to be a considerable distance from the conservation area. The character or appearance of the conservation area when considered in relation to views from here would be preserved and the significance of the conservation area unaffected.
271. View 10 of the appellant and views 2 and 23 of Save Swiss Cottage Action Group are from similar locations in Goldhurst Terrace. From Views 10 and 2 the town centre buildings are a feature on the horizon. A little around the corner in view 23 the views are more contained within the conservation area. From this location the new building would be an additional feature of the town centre visible within the views¹¹⁶. However, the new building would be at a considerable distance and clearly be seen as part of the distant town centre and the views of it would not affect the character and appearance of the conservation area or its significance, the new building being clearly not part of it, but of the distant urban setting.

Alexandra Road Conservation Area¹¹⁷

272. The Alexandra Road conservation area's special interest and significance also relates to the age and design of the dwellings within it and the layout. This is a dramatic and bold form of innovative modern development representative of its age. It is different from the other conservation areas in that the development is very 'modern' in its form and I consider it to be very compatible with the modern design approach used in the appeal proposal.

¹¹⁴ Document CD1.4 Views 1 and 2 and Document R11 Appendix 2 views 3 and 4

¹¹⁵ Document CD 1.4 views 10 and 19 and Document R11 Appendix 2 views 2, 23 and 38

¹¹⁶ Document IQ34 page 3

¹¹⁷ Document G5 for conservation area statement and CD 2.5 list description

273. The appeal building will be visible from some parts of the conservation area and listed building and is therefore within the setting of these assets. The character of the area generally is that of suburban London, with mainly residential development nearby, but with other urban centres, such as Swiss Cottage town centre at a distance. I do not consider that the design of the Alexandra Road properties has responded directly to the designs within the surrounding development, much of which would have been present when constructed, other than through restrictions of the land area itself and the proximity and alignment of the railway. There will have been some influence on the scale of the proposal with it responding to some extent to the height of the nearby buildings. The appeal site being at considerable distance has no direct influence on the significance of the conservation area.
274. I also do not consider that the lack of anything visible on the appeal site from these assets makes a specific contribution to the heritage assets, but can better be thought of as being a neutral factor.
275. I consider that the urban setting is in principle important to the conservation area and listed building, but the actual form of that setting has little impact on significance. The appeal site, being a considerable way from these assets does not have any direct impact or make any contribution to the significance of the asset, apart from forming the urban area around it. Specifically in respect of towers, the site is already seen in the context of towers [105] and the addition of a further tower [206], some distance away, would not affect the significance, character or appearance, or architectural and historic significance of these assets either in part or as a whole. The significance and special architectural and historic interest would be preserved.

Listed Buildings

*Swiss Cottage Library*¹¹⁸

276. The list description identifies that the library was built around 1963/4, designed by Sir Basil Spence, Bonnington and Collins with a reinforced concrete frame, clad in pre-cast black basalt concrete spandrel panels between projecting and finely-finished concrete fins with Portland stone aggregate set over a smooth centred basement and ground floor. The plan form is described as a cigar shape. The library was intended to be part of a designed complex but this was not completed because of local government reorganisation. The list description describes it as one of Spence's most accomplished civic buildings, and amongst the most ambitious architectural designs for a library.
277. I consider that the special interest and significance relates to the design and designer of the building, its materials and location. The design results in a very attractive civic building. The arrangement of fins on the upper elevations shield the windows from view when seen at an angle. This means that the windows that give some scale to the building cannot be seen in some views and it gives the impression of a large scale building and this is very apparent when looking along Avenue Road.

¹¹⁸ Document CD 2.2

278. The scale of the building is appropriate to the town centre location and is a robust modern piece of architecture appropriate to having large buildings around it. These currently include the civic centre, Visage Building and Regency Lodge opposite. The swimming pool/leisure centre is also a large building and this has been built very close to the library, and is acceptable because this is a civic and town centre area.
279. The proposed building would be the same distance away from the library as the existing building. The illustration in View 13¹¹⁹ shows the juxtaposition of the library with the new building. I consider that this demonstrates a very complementary relationship between the two buildings, particularly the horizontal emphasis of the library with the tall tower structure and appropriate spacing between. The panel and frame arrangement of the new building, while not copying the library, is reflective of it and would work well together. The fact that the low element of the proposal is taller than the old building and steps from front to back works well and is not out of scale with the library. It can be seen in the photograph that there is Regency Lodge, a large scale building, on the opposite side of the road. I consider the proposal would enhance the town centre setting and therefore also the significance of the listed building. The special architectural and historic interest would be enhanced.
280. The architect for the existing building at the appeal site explained the way the existing building was designed to step down towards the library. The stepping down is clearly visible in the design of the current building on the site and I consider that is a valid approach to the design of a building at the appeal site. However, because the existing building steps down towards the listed building, does not mean that other designs for the site should also step down, but the designs should be considered on their merits. So, while the proposed building does not step down in the same way, it also is a valid design solution and I consider that it works well with the listed building.

The Hampstead Figure Sculpture

281. This is grade II listed, with the list description noting it as a bronze reclining abstracted female figure on a plinth produced in 1964 by F E McWilliam. It is inscribed 'The Hampstead Figure, 1964' and signed. It was commissioned as part of the group of civic buildings for the borough of Hampstead by Sir Basil Spence, and forms a close and complimentary grouping. F E McWilliam (1909-92) was a noted and prolific British sculpture, whose public works have not survived well.
282. I consider that the special architectural and historic interest and significance of the figure sculpture relates to its form and example of the sculptor's work and that it is an attractive form in itself. This interest and significance is reinforced by the fact that the designer of the civic buildings arranged it to be complementary to the Swiss Cottage library. When the sculpture was first positioned it was closer to the library than currently as it has been repositioned in the past¹²⁰.
283. The sculpture would be directly affected by the proposal as it would need to be removed to allow construction work to proceed. It would also be directly affected by the changed setting, through repositioning.

¹¹⁹ Document CD1.4 page 40

¹²⁰ Document IQ20

284. In terms of the setting's contribution to significance this is clearly strong in terms of its relationship with the library and historic intention. However, currently the sculpture is very cut off from the library. This is not only because of the distance away, but a quantity of very prominent and utilitarian sports equipment¹²¹ has been placed between. In my view these spoil the relationship of the library and sculpture, so repositioning with careful thought is likely to substantially enhance the setting of the sculpture and its relationship with the library. In addition, in its current position the sculpture can only be seen on three sides. The height of the existing building to which the statue is adjacent neither adds to nor takes away from the significance of the sculpture.
285. As to the remainder of the setting in terms of the current building at the appeal site, Swiss Cottage Open Space and Avenue Road, these form a civic/town centre environment appropriate to the sculpture. The proposed building is within the setting of the sculpture and would form a backdrop to the sculpture. However, the current building also forms a strong backdrop, and when close to the sculpture the height of the building makes little impression. I do not consider the increased height of the proposed building would have any additional impact on the sculpture. The area of the open space itself would not be physically changed by the proposal.
286. The opportunity to reposition the sculpture to provide all around viewing would be a major benefit, as would re-establishing a more positive relationship with the library. Even if the sculpture is repositioned in the same location, the impact on its significance would be neutral. Overall I consider there is likely to be a significant enhancement to the setting of the statue and consequently the special architectural and historic interest of the listed building would be likely to be enhanced.

Regency Lodge

287. According to the list description, Regency Lodge consists of flats and a parade of shops with underground garaging built around 1937/8 by Robert Atkinson and A F B Anderson. It is built in brickwork with artificial stone bands and dressings on a steel frame with flat roofs and metal windows and is described as a modern style development. The setting is the surrounding urban area and includes the library, the appeal site building and other large scale buildings in the town centre. The list history sets its context as the inter-war transport developments and residential preferences for quality, stylish, flat accommodation close to the centre of the metropolis. I consider the urban setting is important to the flats in principle, but no particular form or development is an important aspect of the setting, contributing to significance.
288. The change of built form on the appeal site will maintain the urban setting in a manner appropriate to the town centre and complements the setting and therefore the significance of the listed building. While the proposal would be much taller than what is currently at the appeal site, Regency Lodge is a large building formed around a central courtyard and its scale and mass would not be dominated by the proposal, but they would balance well with each other. I conclude that the significance, special architectural and historic interest of the listed building would be preserved.

¹²¹ Document R11 appendix 5 photograph 27

Fire Station at Lancaster Grove and Eton Avenue

289. The grade II* fire station was built in 1912-15, by Charles Canning Windmill of the Fire Brigade Branch of the London County Council Architects Department. It is an impressive Arts and Crafts building with steep hipped and pitched roofs and intricate brick detailing. The fire station has other arts and crafts houses nearby and forms an attractive group in the conservation area.
290. The list description indicates that the architects brought an avant-garde approach to fire station design, which had evolved for new social housing to the Fire Brigade Division. While some stations were built to standardised plans, others were highly experimental, sensitive to local context, and designed to a bespoke plan, as was this one. It is distinctive architecture, with attention to detail and sensitivity to its setting. The station occupies a prominent site, on the apex of two roads lined with high-quality Edwardian houses and the sensitivity of the design to this context is marked. The generous plot size accommodates the fireman's flats in a separate two storey range and the view from the junction is strikingly picturesque.
291. I consider the significance and special architectural and historic interest relates to its history, past use, design and integration within the conservation area. It is difficult to see the appeal proposal from the listed building, but from the road outside the fire station it would be visible in the distance. I do not consider there is any direct relationship with the area around the appeal site or with the appeal site itself.
292. The appellant's view 4¹²² shows the view with the brick fire station to the right. While the proposed tower would be seen in the distance, it does not directly affect the listed building or impact on its significance. While it would change the distant view, the near setting of the other arts and crafts buildings remains unchanged. The general location is not isolated from the modern surroundings outside of the conservation area, with the towers at Chalcots Estate visible a little further down Eton Avenue, so further modern development in the surrounding area in the distance would not be unacceptable in terms of its setting. The impact on its significance would be neutral and the significance, special architectural and historic interest would be preserved.

Alexandra Road Estate and Primrose Hill Tunnels (Entrance)

293. This is grade II* listed and includes the Alexandra Road Estate, walls, ramps, steps, community centre and boiler house. This was built around 1968 by Neave Brown of the Camden Architects' Department. It is strikingly modern in its form, emphasised by the bold and imaginative use of shuttered reinforced concrete. There are three parallel blocks, with that nearest the railway forming an acoustic shield. The northern pair of blocks face the 'internal' Rowley Way and are organised with stepped elevations facing Rowley Way, with each level providing outdoor areas for everyone. I consider that the significance and special architectural and historic interest of these buildings relates to their striking modern design, use of materials and they are historically important in relation to architecture of that period.

¹²² Document CD1.4 page 11 View 4

294. Also nearby is the pair of railway portals at the western end of the Primrose Hill Tunnels, listed grade II and built in stock brick and stone with stone dressings. The tunnel was considered to be a triumph of engineering, being London's first railway tunnel. Their significance and special architectural and historic interest relates to their form and materials and they are historically important as the first railway tunnels in London.
295. The setting of these listed buildings is that of the surrounding urban environment and this has been described above in relation to the conservation area. There is nothing specific about the surroundings that adds to the significance or special architectural and historic interest of these buildings. While the proposal is technically within the setting of these listed buildings and could be seen in the context of them, the appeal site makes no particular contribution to their significance. In my view, while the new building would be seen in the context of the listed buildings, the view of it would be at a considerable distance and would be seen as a modern part of the surrounding urban environment. It would not cause any material impact on the setting or affect the significance or special architectural and historic interest of the listed buildings.

Other listed buildings.

296. The council has not identified other listed building settings as being affected by the proposal. Other parties have identified some other listed buildings in the surrounding area, including many in the conservation areas. The evidence submitted does not form any direct/designed link between them and the appeal site in terms of their setting that makes a contribution to their significance. The harm identified is the relationship of those buildings with the appeal site, particularly where they can be seen in the context of the new building and its tower.
297. The next nearest listed houses are in Eton Avenue. The list description of 73 includes the front boundary wall and piers. It is a detached house built around 1890 by Harry Measures. It is in red brick with tile-hung and relief plasterwork and tile gabled roofs with tall brick chimney stacks and dormers. The next house is 69 Eton Avenue, was also built around 1890 by Fredrick Waller for the painter the Hon John Collier. It is constructed with red brick and terracotta dressings and slated hipped roofs and has a studio. The special architectural and historic interest and significance of these relates to their age, architects and, for 69, the past owner. The setting of the conservation area is important to the significance of these listed buildings as for others in the street. However, I see no direct link between the appeal site and the setting of the listed buildings or their significance.
298. I acknowledge that there will be some views of the listed buildings, where the appeal building would also be seen. However, the setting of these buildings not only includes the surrounding conservation area, but also the town beyond. While the setting is changed it remains an urban environment and with the proposed building at a considerable distance the setting and significance of the listed buildings would be preserved.
299. The Church of St Peter's is grade II listed and constructed about 1858-9 by W Mumford with tower and chancel by JP St Aubyn. It is built using Kentish ragstone, squared rubble with fine stone dressing with a tiled roof. It has angled buttresses, pointed belfry openings, clock faces and a crenellated parapet and

tracery windows with at the east and west windows stained glass by O'Connor. It was restored 1927.

300. I consider that its special architectural and historic interest and significance relate to the design of the church, its materials and its relationship with the surrounding conservation area and its people.
301. The setting of the church is principally the surrounding conservation area, but the appeal site is within its setting as the proposed tower would be visible from near to the church¹²³ as are other buildings outside of the conservation area. The conservation area setting adds to the significance of the parish church and it will be the location for a significant part of its congregation. The appeal site and surrounding town have a neutral impact in relation to the appeal site. The fact that the new tower would become visible in the distance from the church would not affect its significance or special architectural and historic interest. The tower would be seen as a distant feature of the urban landscape surrounding the conservation area. The significance, special architectural and historic interest would be preserved.
302. There are also listed buildings at 40 College Crescent (also identified as the nurses' home), the Palmer Memorial Drinking Fountain in College Crescent and South Hampstead High School in Maresfield Gardens. All listed grade II. The special architectural and historic interest of No 40 relates to the building's design and materials. It was constructed about 1880 and is an asymmetrical building in Queen Anne style in red brick with terra cotta detailing. The house was built for S Palmer of Huntley and Palmer biscuits of Reading, in a style that was popular in Reading at the time. Palmer's family presented the Palmer Memorial drinking fountain in his memory in 1904. The special architectural and historic interest of this relates to its design and materials and historical links with No 40 and the Palmer family.
303. While the fountain and 40 College Crescent are related there is no direct link between these listed buildings and the surrounding setting other than the setting providing an urban environment, so the setting makes little contribution to the special architectural and historic interest or significance of the listed buildings. The tower in particular would be visible from the streets with the listed building in view. However, the view would still be of the town centre where other modern and large buildings are located. The introduction of the appeal proposal would not have any impact on the special architectural and historic interest or significance of these listed buildings.

Local Lists¹²⁴

Swiss Cottage Open Space

304. This is described as a very innovative example of contemporary park design, with Gustafson Porter's water feature providing play opportunities and a visual drama with 7 streams of arching water and a performance space when dry. There is sculptured landscaping around, creating seating in a natural amphitheatre, which is extremely well used and appreciated by the community and unites the

¹²³ Document R11 appendix 2 page 33

¹²⁴ Document CD 5.4

surrounding area, which is mixed in character and appearance. The setting is the surrounding buildings that include the large scale Visage building, Leisure Centre, Library, Theatre and existing building at the appeal site. This is not a 'parkland' setting, but a small park next to a town centre with large scale civic buildings. I do not consider that the size of the buildings is a particular factor in the setting or significance of the park and the fact that the design of the proposal would be changed in relation to what is currently on site, particularly that there is a much taller building proposed would not alter the civic/town centre character of the setting, so the significance of the asset would not be harmed by the proposed change.

Hampstead Theatre

305. This is the first free-standing theatre in London for over 25 years designed by Architects Bennett Associates and it won an RIBA Award in 2003. It was designed for contemporary plays. The auditorium is a dramatic tilting zinc drum accessed across bridges over a void. The glazed foyer provides views of the park and makes a significant contribution to the setting of both the market and the park as well as the cultural life of the area.

Swiss Cottage Leisure Centre

306. This is described as a metal and glass leisure centre dating to 2006 by Architect Sir Terry Farrell. It is light and spacious, with views of the open space from almost every part of the centre. The glazed north face brings the activity of the building into the park. To the south, the colourful illuminated climbing wall offers "a striking night display" to Adelaide Road with dramatic glass atrium on the western face and upper-level links to library. It has a similar roof line to the listed Basil Spence library and is a complementary design, creating a distinctive landmark.

Royal Central School of Speech and Drama

307. This is described as a late 19th century stucco fronted building by Roland Plumbe. It was originally Eton Avenue Hall, which was reconstructed 1888 for the Hampstead Conservatoire of Music and School of Art, and converted to the Embassy Theatre in 1928. It became the Central School in 1956. Its façade of vertical windows set in brickwork gives a residential scale and character, linking it to the Victorian terraces to the east. This is reinforced by stone facing at ground floor level reflecting the usual stuccoed ground storey. The simplicity of the extension avoids conflict with the stucco fronted theatre or the adjacent houses. The school has produced many distinguished alumni and staff including Laurence Olivier, Vanessa Redgrave, Judi Dench, Harold Pinter and Cameron Mackintosh. There is no other single faculty worldwide that offers such a diverse range of specialist masters programmes in theatre and performance practices.
308. With all three buildings located around the Swiss Cottage Open Space, the setting is the open space itself and the other buildings, which include those in the Belsize Conservation Area and the civic buildings and town centre. In my view, the town centre is an important aspect because of the civic function of the buildings and to my mind there is an expectation of town centre type and scale buildings. I therefore consider that it is the character of the town centre that is particularly important in terms of the contribution the setting makes to the significance of these buildings and I consider that this character would not be

altered by the change proposed. There would be a neutral impact on the setting and significance of these buildings.

309. Another building identified as being important by local people is the Swiss Cottage Inn¹²⁵. This is directly across Avenue Road from the appeal site and close to the appeal proposal. It has a distinct character of its own and it is identified as providing the name for the area and is important in that respect. It is also an important community building. The context of this building is the town centre with many existing large buildings nearby. The proposed development would not alter the town centre context of the inn, but reinforce it and provide additional activity in the vicinity of the building providing a focus for the area. I consider if anything the town centre setting of the inn would be improved with the new development through improved pavement frontage and increased activity/vitality on the ground floor of the development.
310. I conclude that the proposal generally accords with the aims and objectives CS Policies CS5 & CS14, DP Policy DP25 and LP Policy 7.8. However, there is some harm in terms of CS Policies CS5, CS14 and DP25 related to the impact on the two views identified above to be carried through into the planning balance.

Character and Appearance

311. The existing building at the appeal site is not well thought of by the appellant or council officers, but interested parties consider it to be well designed, particularly in terms of its bulk and scale adjacent to the Swiss Cottage Open Space and the way that it steps down towards the listed library. I consider it to be an attractively designed building and generally well thought out in relation to its surroundings, including the listed library. However, I do acknowledge that the ground floor poorly relates to the surrounding area, with a lack of interaction with the streets or Swiss Cottage Open Space. The provision of active frontages around the buildings would considerably improve the urban environment. However, the question here is not how the existing building relates to its surroundings, but how the proposed building would relate.
312. In this respect many of the witnesses have compared the existing building with the proposed building and significant change in size. There is no doubt that there would be a considerable change in the size of the buildings, which will have a greater presence. The extent of the change for the area is not the main consideration, but whether what is proposed would be acceptable in the context of its surroundings.
313. The council at the inquiry was suggesting that the design principles were formed after the scheme had formed. From my own experience, while you may start with a brief, the design will always evolve as issues emerge through the expert studies undertaken and consultations. I therefore consider that the process would be that explained by the appellant's architect, and if it had not evolved and responded to emerging evidence and consultation, there would be something wrong. That does not make the design principles 'artificial', but an explanation of what emerged from the design process.

¹²⁵ Document R11 appendix 5 page 39 shows views of this.

314. Concern has also been raised about the impact of the development as seen from Primrose Hill, from which it would be seen in distant views¹²⁶. The park is a good distance from the appeal site and there are already views of other tall buildings from the park. The addition of this building would not have any direct impact on the setting, amenity value or significance of the park at Primrose Hill.
315. The building can best be appreciated in the illustrations in Document CD1.5 and the Finchley Road area can be seen in Documents R11 photos 60 onwards, with the context analysis in Document CD1.6. Assessment of the impact on the character and appearance of the area necessarily includes that on nearby heritage assets and they have been considered above.
316. The principle of development for residential and commercial uses is appropriate, the site being in the town centre and not far from many other residential developments. In terms of the scale of the building there are a number of tall buildings near to the site, including the Cresta House opposite, and the Visage Building next to the Leisure Centre. One of the Chalcots Estate towers is nearby and is of 24 storeys¹²⁷. The Camden's Site Allocations Local Development Document identifies the site as being appropriate for the type of development proposed [41]. It noted the potential for taller buildings, although there is no particular height indicated. However, while I accept that adjacent to the site there are no buildings that are nearly as high as the tower, and buildings such as the library, theatre and leisure centre have a more horizontal emphasis, the illustrations provided show that the tall tower is complementary to the nearby buildings.
317. There are objections to the elevations of the building and plan form. It is suggested that these have not been articulated enough and the plan form has remained the same for the height of the tower, leading to a 'boring' shape, which is not considered to result in a slender form. The materials are also not liked and surprise is expressed that materials are matters for conditions.
318. The appellant describes how the design has been carefully considered [62-77]. While I acknowledge the consistent plan form of the tower through its height, the elevations have been carefully articulated through different manipulation of the framework, materials and arrangement of the panels between the frames. The result is an attractively designed building that responds to its context. The top of the tower would be articulated by opening the upper storey frames and providing glazing. The tower through its height would, on two elevations, be divided into thirds with different elevation treatment at the sides. So even if the tower were not to be considered to be slender, which tends to be relative and subjective, the design provides a distinct, elegant, vertical emphasis. The other two elevations are also split, with a glazed central section with the two sides being principally identified by slim panels and glazing. The lower building has been similarly carefully considered and articulated.
319. The proposal has suggested materials and colours which would provide an attractive building. However, I accept that there should be an opportunity for materials to be considered prior to construction, which is appropriate to be

¹²⁶ Document IQ7 and R11 appendix 2 photograph 26

¹²⁷ Documents CD1.6 pages 16 and 17 show context in terms of tall buildings

controlled through condition and in my experience occurs on the majority of planning applications.

320. I consider that the proposed building meets the criteria of the Camden Site Allocations Policy. It is a well designed, attractive building that sits well within its town centre context and is supported by the Design Council and the GLA. The proposal would accord with CS Policies CS3, CS5, CS7 & CS15, DP Policies DP24 & DP31 and LP Policies 2.15, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 4.7, 4.8 and 7.7.

Sunlight and Daylight

321. There is no dispute that the impact of the development on shadowing of the open space is relevant [50] and included in the BRE guidance. The BRE guidance indicates that the sunlit nature of a site can be enhanced by various techniques including placing low rise, low density housing to the south with taller, higher density buildings to the north, which has occurred here with the taller element. While there was some question about whether the guide was intended to consider the quality of the use of open space, the guide makes it clear that it gives advice on site layout planning to achieve good sunlight and daylight both within buildings and in the open spaces between them [50].
322. However, I accept that the BRE is only guidance and that while the detailed assessment carried out by the appellant identifies the impact of the proposal on the open space, it is also necessary to consider the impact on the way that the particular open space is used. The appellant also accepts that this is the case, as a previous scheme that also complied with the BRE guidance was redesigned to allow for the comments relating to shadows by the Design Council. However, as noted by the BRE guidance, it must be borne in mind that nearly all structures will create areas of new shadow, and some degree of transient overshadowing of a space is to be expected [54].
323. The diagrams show that the proposed development will result in increased shading of the open space, generally causing the various areas to be in shade for about 60 - 90 minutes or so earlier than would be the case without the development. The shading from the building of the open space would generally occur from about 13:00 in March, 14:00 in August and about 16:00 in June.
324. However, the council has undertaken a survey of the area, identifying use of the Swiss Cottage Open Space. The space was found to be well used, including the playground and water feature and this is with the current building empty. It was noted that that the playground and games area use did not appear to be weather dependent [126]. In clement weather the open space was found to be used for recreational purposes, with generally greater use at the weekends. The general impression is that the shadow areas when present are little used.
325. My two site visits were on a cloudy day and on a day with mainly sunshine in the morning. On the shady day, at around 17:00 the site was seen to be well used with people sitting on the benches by the theatre and around the park area. The lack of sunshine did not appear to inhibit use of the space, although it might well have had greater use had there been sun and there is a difference between the shade produced by clouds and that of a nearby building. On the sunny day the park was again seen to be well used, with most people in the sunny areas,

- but still reasonable numbers sitting in shaded areas. The fact that there is shade does not prevent use of the open space.
326. It is suggested that the Swiss Cottage Open Space is used more in the afternoon. There is no detailed survey evidence for that, but I expect that is likely to be the case with people perhaps passing through from school and work and lingering on the way. However, the evidence does not indicate that the space could not be used if, on the sunny days, the sunny parts were shaded earlier in the day. Evidence from interested parties also indicates substantial use of the park year round.
327. I do not consider that there are particular uses of the park that are highly sensitive to shading. The only area where I would consider sun to be more suited to the use is the water feature in the centre of the park, which was well used by children. However, I also noted the use did continue even in shade and it seems probable that it is to some extent dependent on ambient temperature. The use of this area may be affected to some extent by the new building, but as noted above the impact is mainly for about 60-90 minutes a day. In my opinion, the additional shading will not have an unacceptable impact on the amenity provided by the park and generally would comply with the guidance provided by the BRE.
328. The building will also cause shading of the pedestrianised end of Eton Avenue, where markets are held. This is a naturally shady area, because of the large avenue of trees, particularly in the summer. However, I appreciate that the usual dappled shade provided by trees is different from, and more pleasant, than that produced by a building, but the market use is not a use that relies on sunshine. The stalls themselves provide canopies to shield the users from rain and sunshine. As an example, the shading in August can be seen in Document A1 appendices drawings 99 to 105. While I acknowledge that sunshine can enhance any use, the additional length of shading, while having an impact for 2/3 hours of the day, would, overall not unacceptably impact on the amenity of the space and would accord with guidance in the BRE Site Layout Planning for Daylight and Sunlight Guide 2011. I do not consider that the markets would be unacceptably affected and their amenity, social and economic value would remain.
329. While some concerns are raised by interested parties in relation to the study undertaken, I consider that it has been very comprehensive and considers the site and particularly the Swiss Cottage Open Space in great detail. The report has been considered by other experts¹²⁸. Cresta House Residents' Association identify the lack of mention of Cresta House in the report [181]. However, I acknowledge that it was included, as can be seen in the report, and there was simply an error in labelling that part of the building being considered as being Cresta House. Clearly, particularly through the winter months there could be some more distant shading from the tower than shown on the diagrams, beyond the Swiss Cottage Open Space and surrounding the appeal site are many other buildings that themselves would cause shading with low angle sun. In my view the study undertaken provides sufficient information for a robust assessment to be made.
330. The report clearly considers the impact of the development on the surrounding residences and concludes any impact would be acceptable [59]. While it is acknowledged that some of the flats at Cresta House do not have balconies and

¹²⁸ Documents CD1.42 and CD1.43

that the rooms are longer than identified, I am satisfied that the impact on these flats in terms of daylight and sunlight would be minimal and accept and that it would accord with BRE recommendations. The distance across the roads from these flats to the development is substantial and the residences would not be affected by the lower block because of its height, and the tall element is relatively slender and would not have an unacceptable impact on much of the sky component providing daylight to these residences.

331. The question was also raised as to whether the level of the Swiss Cottage Open Space had been accounted for [215], but the appellant indicates that the software used for the assessment is a standard form used in the industry and does account for levels [53]. It is also argued that the BRE guidance has been used flexibly and not in a way that an expert would do. However, the introduction to the BRE guidance indicates, amongst other things, that the guide is intended for building designers and their clients, consultants and planning officials. The advice given is not mandatory and the guide should not be seen as an instrument of planning policy; its aim is to help rather than constrain designers. Although it gives numerical guidelines, these should be interpreted flexibly since natural lighting is only one of many factors in site layout.
332. It is also argued that trees should be included in the assessment. However, the BRE leaves that as a judgment for the assessor¹²⁹. It seems to me that had trees, even evergreens, been included these would have indicated a greater extent of shading of the existing areas, and the further impact from the proposed building would not have been so great. Either way I consider the assessment is a reasonable interpretation of the BRE guidance. The Design Council considered the impact on sunlight /daylight in considerable detail and concluded, following changes after its initial comments that it was acceptable.

Other Amenity Issues

Swiss Cottage Open Space

333. Save Swiss Cottage provide a good photographic description of the use of the park and market area¹³⁰. It is a popular and well used area, with children particularly liking the large water feature¹³¹. The proposed development does not encroach on the park, but is separated from it by the main north/south path. I have considered the effect of daylight and sunlight above. The use of the park would not be physically impeded by the completed proposed development. I consider that the significance of this relates to its design, layout, surroundings and extensive use.
334. The proposal would considerably increase the extent of overlooking of the park from residential properties. However, the park is not a private space, with many residential windows directly overlooking it from the rear of the Winchester Road properties¹³² and existing office in the building at the appeal site. There would be no expectation by users of privacy while using the park, so I do not consider that

¹²⁹ Document CD1.57 page 19 paragraph 3.3.9 also see closings – Appellant IQ38 page 44 and Council IQ37 page 16 paragraph 83 onwards

¹³⁰ Document R11 appendix 5

¹³¹ Document R11 appendix 5 photo 18

¹³² Document R11 appendix 5 photograph 18

the additional overlooking would have any significant impact on the use of the space or harm its amenity for users.

335. The significant increase in residential use at the appeal site would result in greater use of the Swiss Cottage Open Space by the residents [196], but it is a large space, very capable of increased use, and I consider that this would be an enhancement in terms of increased vitality of the area.
336. The proposal would provide ground floor uses that would be accessed from the path adjacent to the park. Uses such as cafés and restaurants would, to my mind, be a positive benefit to the open space increasing the vitality of the area and improving the junction between the park and existing building, which is not well connected at the moment. The neighbours to the Swiss Cottage Open Space particularly along Winchester Road, are concerned that people exiting the proposed A3 uses at night would cause noise and disturbance in the area as they leave, spoiling the tranquillity of the Swiss Cottage Open Space and causing excessive noise and disturbance to the occupiers of the houses backing on to the park as they sleep, including the occupiers in Mora Burnett House.
337. However, some also note that there are other restaurant type uses in Winchester Road, but that these are well managed and do not cause difficulties. The restaurant uses that face the Swiss Cottage Open Space are a considerable distance from the rear of the properties on Winchester Road. The opening times would be regulated by condition, with the opening times proposed being the usual required in the area. These include a requirement to vacate any outside spaces by 22:00 hrs. While it cannot be said that there would never be a noise / disturbance incidents, there is no reason to expect that these new premises would be likely prone to problems and could be equally well managed. Any problems that did arise can be dealt with by appropriate means. Given the distance from the properties and control of opening hours, I do not consider that there would be likely to be unacceptable noise and disturbance generated by the properties.
338. The buildings at the appeal site would be taller and the tower would have a significantly greater presence. However, when considering a 360 degree view from the park the tower would be a small element in the outlook of the park and I do not consider that it would cause unacceptable harm to the outlook of users of the park.
339. Overall, while the appearance of the setting would change, the civic/town centre character would not. I do not consider that there would be an unacceptable impact on the Swiss Cottage Open Space.
340. Mr Grimm, an interested party, is concerned about the impact of the development as experienced from the swimming pool. In terms of privacy, there are viewing positions around the pool, including from the café area adjacent, so users of the pool are not expecting this to be a private space. In any case, the proposed development would be a considerable distance away, such that any views from its windows would not cause harm to the amenity of those using the pool. In addition, because of the distance away, the building would not have an overbearing impact on pool users. There are also already windows in a similar position close to the pool in the existing building.

341. I have also considered the various residential properties around the proposed development, including Cresta House, Winchester and Eton Avenue properties and residences above the leisure centre. While the proposed building would be clearly visible from these properties, in each case the tower would be a considerable distance away and its height and bulk would not cause an unacceptable impact on the outlook from these premises. Similarly because of the considerable distance between the proposed buildings and any existing buildings, there would be no unacceptable impacts in terms of overlooking or loss of privacy for neighbouring occupiers. There could be some overlooking of the space outside of the Central School for Speech and Drama, but this space is open to public view already, including from the existing building at the appeal site and there would be no further significant impact from the proposal that would cause unacceptable harm.
342. The proposal would accord with CS Policy CS5, DP Policy DP26 and LP Policy 7.7.

Other Matters

Air Quality

343. Evidence is submitted by Katharine Bligh located in the appendices at Document IQ28 (red folder). Some readings of pollution monitoring are provided and shown in the appendices to IQ28. The appellant has provided reports at CD1.13 and CD1.14.
344. The appellant's report indicates that transport related emissions are one of the main sources of air pollution and the principle pollutants relevant to the assessment are considered to be NO₂ and PM₁₀ particulates and the spread of survey results indicates that is the case here, with much higher readings near to the main road. The interested party also provides details of PM_{2.5} particulates. Local authorities are required by law to review and assess air quality for pollutants specified in the Government National Air Quality Strategy. If quality objectives are likely to be exceeded, then a detailed assessment is required and where this is an on-going situation the authority must declare an Air Quality Management Area. The whole of Camden is an Air Quality Management Area for nitrogen dioxide, including the appeal site. It is not designated in relation to particulates. The interested parties note that there are no safe limits, but only objective targets.
345. I accept that in relation to particulates, interested party evidence indicates that the recommended air quality objective levels are exceeded at times, but the estimated annual average pollutant concentrations at the development site, apart from nitrogen dioxide, are below the air quality objective. Clearly there needs to be action to reduce the pollution levels in the whole of Camden, as indicated by the Air Quality Management Area.
346. However, London needs more housing and that is likely to bring more associated pollution. The councillor indicated at the inquiry that the housing would be better located in northern towns, but that is not a realistic prospect, at least in the short term. The main source of pollution is generated by traffic, so the impact in relation to this proposal would, in terms of traffic generation, be reduced to minimum levels. It would be a car free development and is located in a town centre close to transport links.

347. The combined heat and power plant will result in some emissions that could increase particulates in the air and could affect some of the nearer residents of the development. This has been considered in the report and mitigation measures are proposed to resolve this matter, so that emissions are acceptable.
348. There will be a risk of increased pollution during construction. This has been taken into consideration in terms of conditions and the obligation, requiring a construction management plan for air quality and carbon reduction. There is a risk of increased pollution from the Combined Heat and Power plant, particularly nitrogen dioxide, and controls of the extent of the output are also proposed.
349. The high levels of pollution generated by the existing traffic could be an issue at low level to residents within the tower. However, sealed units with mechanical ventilation are proposed at the lower levels. In terms of the Swiss Cottage Open Space, this is generally well protected from the main road by buildings and that would generally continue to be the case, with an even taller building between it and the road. The proposal, with the appropriate mitigation, particularly during construction, should not add significantly to pollution within the park. There would be the new opening provided between the two new buildings where pollution from the road could migrate across. However, readings at the other end of the building show that there is considerable drop off of readings further away from the road. The gap is at the top corner of the park and I do not foresee this as being a significant issue.
350. The overall conclusion of the report on this issue is that, with the recommended mitigation measures in place, air quality is not considered to be a significant consideration for the proposed development.

Wind Environment

351. It is acknowledged that there would be some increase in wind speeds, but this is to be expected when a tall building is constructed [108]. The question is whether there would be an unacceptable impact. The proposals have been fully wind tested and assessed in line with the best standards for the industry, including use of the Lawson Criteria to assess suitability for the intended use of surrounding spaces. It is the expert's opinion that the wind conditions seen in the assessment are not particularly severe or unusual in London.
352. Receptor 2 is on the edge of the market area, but receptors 44 and 45 towards the centre of Eton Avenue would, to my mind, be more representative of where the market area is mainly located, although some market stalls are located towards receptor 2¹³³. The location of receptor 1 was for the tube entrance, where higher winds can be tolerated and receptor 2 was on the pedestrian thoroughfare. There is no specific criterion for market stalls; the experts have taken standing/entrance use as the target as it is appropriate for this type of activity year around¹³⁴. This, to my mind, is a reasonable approach and there would be acceptable conditions for the market use. In addition, in the summer months it is expected that the trees when in leaf would provide some additional protection.

¹³³ Document R11 appendix 5 photographs 29 and 34 shows a stall in relation to the existing building

¹³⁴ Document IQ31

353. Looking at the report, receptor 1 is near the tube entrance. Receptor 2 is located on the pedestrian route adjacent to the façade. The wind speed in this location is satisfactory for a thoroughfare use being used for access to the building and to the tube station.
354. The report indicates that receptor 7, which is the windiest location, is identified as being on a route used infrequently by pedestrians. This is not correct at the moment. The path is a main thoroughfare north/south and south/north through the park. However, it is likely the extent of use would change with the development, with at least some diversion of current users to the new route between buildings to get to Avenue Road and the tube station. However, I accept that the route by the theatre would continue to be an important pedestrian route.
355. The potential impact was identified in the report and mitigation measures are proposed that would ensure the wind environment is acceptable. Condition 14¹³⁵ has been included to ensure that suitable measures are incorporated within the design to mitigate potential adverse wind environments arising from the development. In relation to receptor 7, specific proposals are put forward in the report. Taking into consideration the use of this area as a main walking route and the times of year and the high winds are expected, I consider that this matter can be satisfactorily resolved.
356. There is also some likelihood of high winds in the new route at receptor 12, with occasional winds of Beaufort force 6. This is not expected to cause a nuisance on a thoroughfare such as this and would not be a harmful impact. The study has also considered the Swiss Cottage Open Space for any impact on the amenity of users. This remains suitable for sitting during the summer and suitable for its amenity use.
357. Overall, I conclude that a thorough study of the wind environment has been made and that, with suitable mitigation methods no harm to the users of the area would be caused. The proposal would accord with CS Policies CS5 & CS15, DP Policies 26 and DP31 and LP Policies 5.1 and 5.2

Safety

358. Concern is expressed over the safety of users of the Swiss Cottage Open Space, particularly the formation of a new access route into the area between the new buildings. This would lead directly out of the park to the main road. The provision of another access into the Swiss Cottage Open Space does potentially provide an additional safety risk. However, the Swiss Cottage Open Space already has many entrances, two from Eton Avenue, one from Winchester Road, one from Adelaide Road and one from The Avenue, between the library and existing building. The current access to the Avenue is large and directly towards the park area¹³⁶. The new route would be at the top end of the park and not so directly related to it. In addition, there are internal hedges/boundaries that provide some internal enclosure with the park. The park is currently not an enclosed space where parents could simply leave children to play; children would need to be supervised and I do not consider, given the current situation and

¹³⁵ Document IQ30

¹³⁶ Document R11 appendix 5 photograph 27

arrangement that the new entrance to the Avenue would result in any significant impact on the safety of users.

359. The presence of a gas reduction valve adjacent to the appeal site is identified by Mr Reed [200]. While this is reasonably close to the building, I do not consider that this is a safety issue. It is located in a pedestrian area, adjacent to the existing offices and near to the Royal Central School of Speech and Drama.

Road Access

360. The site is in a town centre location directly adjacent to Swiss Cottage underground station and on good bus routes. It is at the top of the PTAL rating (6b) and very sustainable in these terms and an ideal location for a car free development as proposed. There would be very little opportunity for occupiers to keep cars in the area. The only parking at basement level is for persons with disabilities. The Section 106 undertaking removes the ability of occupiers to apply for resident parking spaces in the area. However, I accept that there will still be service traffic attending the site.
361. The existing building, while not as large as the proposal, is a big office building with some restaurants and is serviced from Eton Avenue. Servicing and access to the existing basement, which is to continue in the new proposal, is via the basement ramp that passes beneath the theatre. This is expected to continue, but the head room is limited meaning that servicing using this would be restricted to Transit type vans. Access can be achieved without interfering with the existing pedestrian infrastructure or tree line adjacent to the site on Eton Avenue at the rear of the proposed building.
362. It would be necessary to control the times of delivery very strictly to avoid clashes with the market trading that takes place in Eton Avenue, but that is a matter that can be controlled. Mr Reed notes that moving bollards were tried previously but were found not to work and were removed. While I accept that was the case, there is no reason why with good management access to the property cannot be controlled. A taxi drop-off point is proposed in Avenue Road, but Transport for London cannot confirm that this would be acceptable until their plans for the gyratory have been formed and I consider that little weight can be attached to this at the moment.
363. There would be increased use of the underground station adjacent, but it is estimated that if all the additional trips were to and from the south and they were grouped together into one 15 minute segment in the morning, it would add just 12 additional trips on each train during each peak hour, which is a minimal increase. An interim travel plan is provided¹³⁷ and would be the subject of the planning obligation¹³⁸ and obligations relating to provision of a service and construction management plans are included. The impact of the development would not be substantial and certainly not severe as indicated by the Framework [109].
364. Mr Reed questions whether the occupants of the units would walk or cycle, particularly as there is a Red Route adjacent. I believe the suggestion is that

¹³⁷ Document CD 1.12 appendix F

¹³⁸ Document IQ40 page 27/28 – construction, service and travel management plans

occupants of expensive flats would not wish to. There is no reason why these occupants should not walk and cycle; after all, the Prime Minister and London Mayor cycle and there is no reason why others should not. In addition, many of the units will be affordable housing and those occupiers may also wish to walk and cycle. The proposal would accord with CS Policies CS5 & CS15, DP Policy 26 and LP Policy 3.6.

Trees

365. Save Swiss Cottage Action Group identify that it is indicated that tree 10 is removed. This is located towards the end of Eton Avenue near its junction with Avenue Road and near to the Royal Central School of Speech and Drama. I accept that this is what is noted in the report. However, there is no need for this tree to be removed and it would appear that instead of noting trees 9 and 11 for removal it was mistakenly noted as trees 9-11. In any case, I agree that this is an attractive tree and not appropriate for removal and this is a matter that can be controlled through the conditions proposed to be attached. The council's tree officer does not object, subject to appropriate conditions being in place¹³⁹.
366. Mr Harverson noted that his tree grading was based on an interpretation of the British Standard it had been confirmed to him by the institution was not an approved method. He also confirmed that he did not suggest that planning permission should be refused on the basis of his points and that there would be likely to be technical solutions to issues concerning the weight of construction traffic crossing the root protection zones of retained trees. Mr Tabor also confirmed that if all his points were taken up he was not inviting dismissal of the appeal.
367. I accept that there will be considerable additional traffic along Eton Avenue, including in the pedestrian part of the area. However, this was originally a road now pedestrianised and there are very large articulated lorries visiting the theatre. While there is clearly a risk, particularly to the mature trees in Eton Avenue and those near the appeal proposal on Avenue Road, these can be protected and conditions are proposed to ensure that this is the case.
368. I also accept that it was originally proposed that the trees near to the southern end of the new buildings would be retained. The proposal is that these should now be removed and replaced at the end of the construction. While these are attractive trees, they are not large and so well established that their removal and replacement would cause significant harm, but I accept that the tree removal proposed would cause some harm to amenity, which is to be carried forward into the planning balance.

Community Facility

369. The developer has set aside space to allow a community facility to be located in the building and that mixed use would be part of the planning permission. The current intention is that the Winchester Project should be relocated from its current building in Winchester Road. Details of the project can be found at IQ 16, particularly the key benefits are identified in appendix 4. The current building is on many floors and has had to be fitted into the old building. I am satisfied that

¹³⁹ Document IQ31 proposed conditions 19 and 20

there would be substantial benefits in providing space for this use in a modern building, which can be arranged to suit the needs of the project and is closely related to the civic centre and library.

370. At the inquiry interested parties were concerned that clauses appeared to allow reversion of the use of the space to housing, if it was not taken up for community facility within a certain time frame. This, they suggested could be manipulated, perhaps through pricing. However, the clause does not allow automatic reversion to housing, but just allows the developer to apply for planning permission for a change of use back to residential use. Clearly if the Winchester Project, or some other community use, indicated to the council in the course of that planning application that it wanted to take up the space, then that would be a major consideration for the planning authority and would be likely to affect the outcome of the planning application. The developer also indicated at the inquiry that discussions with the Winchester Project were at an advanced stage and that the intention was for it to use the space. Overall, I consider that the allocation of the community space, whether taken up by the Winchester Project or others, is a significant benefit to go into the planning balance.

5 year Housing Supply

371. There was some comment about the 5 year housing supply position by the appellant [138], particularly related to the inclusion of housing for students, as this was said to distort the availability of 'general' housing. The council has dealt with it in terms of defining the 5 year supply figure in accordance with government guidance, but even if the non-conventional housing contribution was at 25% and no local authority-owned sites were developed, the council would still have an up-to-date 5 year supply. I conclude that the council does have an up to date 5 year housing supply for the purposes of considering policies in the Framework.
372. In these circumstances the second part of paragraph 49 would not come into play, but it is still necessary that housing applications should be considered in the context of the presumption in favour of sustainable development. I consider that great weight should be attached to the housing provision proposed.
373. There was considerable concern raised by interested parties about the number of affordable houses proposed. The appellant has undertaken a viability appraisal¹⁴⁰ that demonstrates what is proposed is reasonable and this has been accepted by the authority. In addition, as a check, the 106 agreement requires that the viability of providing affordable housing is re-assessed at the end of the project and if it is found that there should have been more affordable housing a mechanism is set out for adjustment by a deferred payment. I consider that this viability study and method of ensuring that adequate affordable housing is provided is reasonable and necessary and related to the proposal.

Environmental Impact Assessment

374. Objectors consider that the Environmental Impact Assessment screening should have identified the need for an Environmental Statement¹⁴¹. However, a

¹⁴⁰ Document CD1.31 Viability report

¹⁴¹ Document IQ34 page 7

screening assessment was made and this demonstrated that an Environmental Statement was not required for the proposal. Some of the main concerns referred to were in relation to amenity and heritage assets. Having considered these matters in great detail in the course of this inquiry, I conclude that the scoping was reasonable and that there was nothing to indicate that an Environmental Statement should have been prepared. In forming my recommendation on this appeal, I have taken into consideration the extensive environmental information submitted and evidence from consultation bodies and other organisations.

Planning Obligation and Conditions

375. The Agreement is made between the London Borough of Camden and Essential Living (Swiss Cottage) Ltd and others with an interest in the land.
376. I consider that the requirements for affordable housing and other associated controlling clauses are reasonable, necessary and related to the development and when viability is taken into consideration as set out above, I consider that it accords with the aims and objectives of policy. The viability study indicates that the extent of supply is reasonable, but I consider that it is reasonable that should the project viability be improved during construction that the affordable housing situation should be reviewed.
377. The streets around the appeal site are currently heavily used for parking cars and it would not be acceptable to increase the load with cars from the new development. It is therefore necessary to prevent residents from parking in the streets, which will require the undertaking for residents not to be able to apply for resident parking permits (unless the applicant is chronically sick or disabled). It is necessary, fair and reasonably related to the development.
378. The residents of the proposal will make considerable use of the surrounding public realm and the proposal will have an impact on its surroundings, so it is reasonable and necessary that contributions should be made to improving the public realm nearby, including providing appropriate landscaping. In addition, it is reasonable that the proposal should 'contribute' additional space to the open space and to allow for its future maintenance. These contributions are necessary, fair and reasonably related to the development.
379. This is a tight site, with busy roads adjacent, an active park, civic buildings and residential properties nearby. It is therefore essential that the construction at the site is actively managed and that subsequent traffic movements are also actively managed. Therefore, the Construction Management Plan, Service Management Plan and the Travel Plan are necessary, fair and reasonably related to the development. It is also reasonable that the project should provide units suitable for wheelchair users and this is a benefit to be carried into the planning balance.
380. A key factor in sustainable development is the public benefits provided by a development. In this case I attach weight to the public benefits provided by local procurement/local employment, Energy Efficiency, Community Facility and potential New Station Access. I consider these are necessary, fair and reasonably related to the development.

381. With a large development it is necessary to actively manage waste disposal and recycling which is generated by the development and control of this is necessary, fair and reasonably related to the development.
382. The only clause in the obligation that I have some issue with is that relating to the project architect. The council is concerned that if another architect is brought into the project to take over from the design architect the quality of the scheme and design intentions could be harmfully affected. I understand the concern of the council and accept that a 'new designer' might not fully appreciate the concept. However, to bind the developer to one architect does not seem reasonable or acceptable, particularly if there were some 'falling out' between them. The general form of the design is set by the application drawings, which conditions require to be followed. The council would, through the conditions, have an opportunity to refuse/approve the details submitted and if the building is not in accordance with the drawings/conditions, can take appropriate action. Overall, I do not consider that this clause is compliant with the CIL Regulations as it is not necessary or fair.
383. I conclude overall, apart from as identified above, that the section 106 requirements are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related, in scale and kind, to the development.

Conditions

384. The conditions agreed between the council and appellant are set out in Annex A together with the reasons for them, which I agree with.

Planning Balance

385. When considering applications that may affect a listed building or its setting, section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special regard to be paid to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.
386. The Framework notes that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The Framework describes the setting of a heritage asset as the surroundings in which it is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.
387. In enacting section 66(1), Parliament intended that the desirability of preserving the setting of listed buildings should not simply be given careful consideration by the decision-maker for the purpose of deciding whether there would be some harm, but that it should be given 'considerable importance and weight' when the decision-maker carries out the balancing exercise. Even where 'less than substantial' harm is identified, Section 66(1) requires considerable importance and weight to be given to the desirability of preserving the setting of

a listed building when carrying out the balancing exercise. The same applies to conservation areas.

388. In giving considerable importance and weight to the heritage assets, I find, taking the effects individually and cumulatively, that the special architectural and historic interest of these would be preserved and any effect on significance would be neutral. In relation to the Hampstead figure sculpture I consider that there is significant potential for the setting of this to be enhanced and the effect on the library is likely to be more positive than neutral.
389. However, I also found that in relation to conservation areas there would be some harm to appearance through views of the proposal and this should be added into the planning balance.
390. Overall there is considerable social benefit in the provision of the proposed housing and affordable housing, and by the provision of space for community use. The potential for the underground station to be improved would also be a significant benefit. There would also be an enhancement to the frontages of the buildings at ground level compared with the existing arrangement that could improve the vitality of the area.
391. I accept that it is an attractive design and will fit in with the area, but to my mind this must be an expectation of new development and therefore adds minimal weight to the planning balance.
392. I have found that there would be some impact on trees, although much of that would be in the short term of the development, but that weighs against the development. While every effort is made in terms of conditions and obligations to mitigate the impact of the construction of the development, there will inevitably be some disruption because of vehicle movements, and some small local increase in particulate production and this also weighs against the development. However, that is tempered by the fact that more housing is needed and development will need to occur somewhere.
393. While I have found that the heritage assets would not be harmed, there will be an impact on views from around the area which many people have indicated that they would find intrusive. There is also considerable local opposition to the proposal¹⁴², particularly in relation to the impact on the Swiss Cottage Open Space, so I consider that some weight against the proposal should be put into the planning balance for that harm. In respect of the Swiss Cottage Open Space, there will be some loss of sunlight, small changes to the microclimate and additional building surrounding it and again, while I have not found that unacceptable, but the increase in shading is a harm that needs to be weighed against the proposal.
394. In terms of the impact on views identified and if the Secretary of State disagrees with me in relation to the interpretation of policies in relation to the need for development to not only preserve, but also to enhance assets, I would conclude that the public benefits of the development far outweighs the harm.

¹⁴² Document IQ36 page 2 – Over 1,000 with some on behalf of groups of residents

395. Overall, I conclude that the social, economic and environmental benefits of the proposal make it sustainable development in terms of the Framework and that the substantial benefits considerably outweigh the harm that has been identified.

Recommendation

396. I recommend that the appeal be allowed for the demolition of the existing building and redevelopment with a 24 storey building and a part 7 part 5 storey building comprising a total of 184 residential units (class C3) and up to 1,041sqm of flexible retail/financial or professional or café/restaurant floorspace (classes A1/A2/A3) inclusive of part sui generis floorspace or potential new London Underground station access fronting Avenue Road and up to 1,350sqm for community use (Class D1) with associated works including enlargement of the existing basement level to contain disabled car parking spaces and cycle parking, landscaping and access improvements, within the terms of the application, Ref 2014/1617/P, dated 28 February 2014, subject to the conditions set out in Annex A, which I recommend be imposed and which I consider are necessary to achieve a satisfactory standard of development and supported by the planning obligations.

Graham Dudley

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr R Warren QC	Instructed by Brecher, 64 North Row, London W1K 7DA
He called	
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Ian Absolon BSc MRICS	Director GVA Schatunowski Brooks
Peter Stewart MA	Peter Stewart Consultancy
(Cantab) Dip Arch RIBA	
Roger Mascall	Turley Heritage
BSc(Hons) Dip Bld Cons (RICS) IHBC MRTPI	
Michael Lowndes	Planning Director at Turley
BA(Hons) DipTP MSc Dip Cons (AA) MRTPI	

FOR THE LOCAL PLANNING AUTHORITY:

Mr N Cameron QC	Instructed by W Bartlett, Planning Solicitor, London Borough of Camden
He called	
Catherine Bond	Principal Planner (Conservation and Design), London Borough of Camden
BA(Hons) BArch(Hons)	
MTP Grad Dip Cons AA	
IHBC	
Phillip Hughes BA(Hons)	Principal, PHD Chartered Town Planners
MRTPI Dip Man MCMI	

FOR RULE 6 PARTIES

Ms K Olley	Of Counsel
She called	
Mr Tabor	
Julia Court	
Elaine Chambers	
Peter Rich Architect	
James Weeks	
Edie Raff	

FOR SAVE SWISS COTTAGE ACTION GROUP

Mr Tarpey	
He called	
Dr P Smith Architect	
Mr B Harverson	

Mr Reed

Mr Reed

INTERESTED PARTIES:

Cllr R Freeman
Cllr C Leyland
Cllr J Bucknell
Katharine Bligh
Madelaine Slade
Mr G Turner
Ms Carro
Mr Bagherzade
Mr Balint Kurti
Mr Barrie Tankel
Mr P Symonds
Mr Alan Spence
Mr Grimm
Mr T Ewing

Camden Association of Street Properties

DOCUMENTS

General and Application Documents

Document	G1	Appeal File
	G2	Blue folder of letters sent in by interested parties related to the application
	G3	Blue folder of letters sent in by interested parties related to the application
	G4	Black folder of letters sent in by interested parties related to the appeal
	G5	Black folder with relevant conservation area documents
	G6	Planning Statement
	G7	Sustainability Statement
	G8	Statement of Community Involvement
	G9	Transport Assessment
	G10	Townscape and Visual Impact Assessment
	G11	Heritage Statement
	G12	Energy Statement
	G13	Archaeological and Desk-based Assessment
	G14	Drainage Strategy
	G15	Stage 1 and 2 Arboricultural Report
	G16	Structural Design interface with London Underground
	G17	Flood Risk and Drainage Assessment
	G18	Pedestrian and Terrace Level Wind Microclimate Assessment
	G19	Preliminary Construction Information
	G20	Basement Impact Assessment
	G21	Air Quality Assessment
	G22	Noise and Vibration Assessment
	G23	Justification for the Loss of Office Space

- G24 BRE Sunlight and Overshadowing Report
- G25 Phase 1 Environmental Report
- G26 A Blimp over London from J Sachs

Appellant's Documents

- | | | |
|----------|-----|--|
| Document | A1 | Proof of Evidence of Mr Absolon |
| | A2 | Appendices 1 – 5 to Mr Absolon's Proof |
| | A3 | Summary proof of Evidence of Mr Lowndes |
| | A4 | Proof of Evidence and Appendices 1 - 4 of Mr Lowndes |
| | A5 | Summary Proof of Evidence of Mr Mascall |
| | A6 | Proof of Evidence of Mr Mascall |
| | A7 | Summary Proof of Evidence of Mr Stewart |
| | A8 | Proof of Evidence of Mr Stewart |
| | A9 | Proof of Evidence of Mr Casci |
| | A10 | Appendix 1 to Mr Casci's Proof |

Council's Documents

- | | | |
|----------|----|---|
| Document | C1 | Proof of Evidence of Ms Bond |
| | C2 | Proof of Evidence of Mr Hughes |
| | C3 | Appendices 1 – 14 to the Proof of Evidence of Mr Hughes |
| | C4 | Rebuttal proof of Ms Bond |
| | C5 | Rebuttal proof of Mr Hughes |

Rule 6 Documents

- | | | |
|-----|-----|---|
| Doc | | <i>Mr Reed</i> |
| | R1 | Proof of Evidence of Mr Reed |
| | R2 | Appendices to the Proof of Evidence of Mr Reed |
| | | <i>Belsize Residents Association</i> |
| | R3 | Proof of Evidence of Mr Tabor |
| | R4 | Proof of Evidence of Julia Court |
| | R5 | Summary Proof of Elaine Chambers |
| | R6 | Proof of Evidence of Elaine Chambers |
| | R7 | Proof of Evidence of Peter Rich |
| | R8 | Summary Proof of Evidence of James Weeks |
| | R9 | Proof of Evidence of James Weeks |
| | | <i>Save Swiss Cottage Action Group</i> |
| | R10 | Proof of Evidence of Dr Peter Smith |
| | R11 | Appendices 1 – 9 to the Proof of Evidence of Dr Smith |
| | | <i>Eton Avenue Housing Association</i> |
| | R12 | Proof of evidence of J Sachs |
| | | <i>Cresta House Residents' Association</i> |
| | R13 | Proof of evidence of E Raff |

Core Documents

Doc	CD1.0	Application Covering Letter
	CD1.1	Application form
	CD1.2	Site location plan
	CD1.3	Application Plans
	CD1.4	Visualisations Booklet by GRID
	CD1.5	CGI's Booklet by Grid
	CD1.6	Design and Access Statement
	CD1.7	Planning Statement
	CD1.8	Townscape and Visual Impact Assessment
	CD1.9	Heritage Statement
	CD1.10	Daylight and Sunlight Report
	CD1.11	Microclimate Assessment
	CD1.12	Transport Assessment
	CD1.13	Air Quality Assessment February 2014
	CD1.14	Air Quality Assessment August 2014
	CD1.15	Noise and Vibration Assessment
	CD1.16	Energy Strategy
	CD1.17	Sustainability Statement
	CD1.18	Statement of Community Involvement
	CD1.19	Preliminary Construction Information
	CD1.20	Construction Management Plan
	CD1.21	Avenue Road Air Quality Assessment
	CD1.22	Stage 1 and 2 Arboricultural Report
	CD1.23	Archaeological Desk-based Assessment
	CD1.24	Basement Impact Assessment
	CD1.25	Flood Risk Assessment
	CD1.26	Drainage Strategy
	CD1.27	Draft Delivery and Service Plan (Additional Submission)
	CD1.28	Demise Interface Report
	CD1.29	Phase 1 Environmental Report
	CD1.30	Justification for Loss of Office Use Report
	CD1.31	BPS Redacted Report on viability
	CD1.32	Response to Philip Davies Statement of Objections
	CD1.33	Peter Stewart Detailed Response to Philip Davies Objection
	CD1.34	Philip Davies Objection on behalf of Resident Groups
	CD1.35	Decision Notice
	CD1.36	Development Control Committee Minutes Sep 2014
	CD1.37	Officers' Committee Report
	CD1.38	Supplementary Agenda 11 Sep 2014 Development Control Cttee
	CD1.39	GLA Per Application Response
	CD1.40	GLA Stage 1 Report
	CD1.41	GLA Stage 2 Report
	CD1.42	Hoare Lee Daylight Review
	CD1.43	Hoare Lee Shadow Paths
	CD1.44	GVA Rebuttal to Hoare Lee Assessment
	CD1.45	Design Council Formal Response to Application May 2014
	CD1.46	Design Council Overshadowing Workshop Response Dec 2013
	CD1.47	Design Council Pre-Application 2 Response Nov 2013
	CD1.48	Design Council Pre-Application Response Aug 2013

- CD1.49 Draft S106 Agreement Aug 2014
- CD1.50 Urban Design Compendium
- CD1.51 Historic Environment Good Practice Advice in Planning Note 3 The Setting of Heritage Assets – Historic England 2015
- CD1.52 Understanding Place-Conservation Area Designation, Appraisal and Management – English Heritage 2011
- CD1.53 Principles of Selection for Listing Buildings – DCMS 2010
- CD1.54 Culture and Entertainment Designation Listing and Selection Guide – English Heritage 2011
- CD1.55 Commemorative Structures Designation Listing Selection Guide – English Heritage 2011
- CD1.56 Domestic 4 Modern House and Housing Designation Listing Selection Guide – English Heritage 2011
- CD1.57 BRE Site Layout Planning for Daylight and Sunlight Guide 2011
- CD1.58 Camden Core Strategy Proposed Submission Proposals Map Changes 2009
- CD1.59 Camden Housing Strategy 2011-2016
- CD1.60 Camden Annual Monitoring Bulletin 2013/14
- CD1.61 London Office Policy Review 2012
- CD1.62 London SHMA 2013
- CD1.63 London SHLAA 2013
- CD1.64 Camden Employment Land Review 2008
- CD1.65 Camden Annual Monitoring Report 2013/14
- CD1.66 Statement of Common Ground
- CD1.67 Tall Buildings Guidance
- CD1.68 Laying the Foundations: A Housing Strategy for England

- CD2.0 Map showing Location of the Site and Conservation Areas
- CD2.1 Map showing Location of the Site and Listed Buildings
- CD2.2 List Description for Grade II Listed Swiss Cottage Library
- CD2.3 List Description for Grade II Listed adjacent Statue
- CD2.4 List Description for Grade II Listed St John's Lodge
- CD2.5 List Description for Grade II* Alexandra Road Estate
- CD2.6 Conservation Area Statement for Belsize Conservation Area
- CD2.7 Conservation Area Statement for Fitzjohn's/Netherhall Conservation Area
- CD2.8 Conservation Area Statement for Alexandra Road Estate Conservation Area
- CD2.9 Conservation Area Appraisal and Management Strategy for St John's Wood Conservation Area
- CD2.10 Conservation Area Appraisal and Management Strategy for Elsworthy Conservation Area
- CD2.11 Conservation Area Appraisal and Management Strategy for South Hampstead Conservation Area

- CD3.0 National Planning Policy Framework

CD4.0	The London Plan 2011
CD4.1	The Mayor of London Housing SPG 2011
CD4.2	The Mayor of London Town Centres SPG 2014
CD4.3	The Mayor of London Housing Strategy 2014
CD4.4	The Mayor of London Interim Housing SPG 2015
CD4.5	Camden Core Strategy 2010
CD4.6	Camden Development Plan Policies 2010
CD4.7	Camden Site Allocations Local Development Documents 2013
CD4.8	Camden Planning Guidance 8 Planning Obligations 2015
CD5.0	Draft Camden Local Plan 2015
CD5.1	Historic England – Managing Significance in Decision Taking in the Historic Environment
CD5.2	Historic England Conservation Principles, Policies and Guidance
CD5.3	English Heritage Seeing the History in the View
CD5.4	Camden’s Local List
CD5.5	Camden Planning Guidance - Amenity

Documents handed in to Inquiry

Document	IQ1	Notification documents
	IQ2	Council’s Appearances
	IQ3	Appellant’s opening statement
	IQ4	Council’s opening statement
	IQ5	Evidence from Alan Spence
	IQ6	Evidence of B Tankel
	IQ7	Evidence of Cllr J Bucknell
	IQ8	Plan submitted by Save Swiss Cottage showing properties opposite
	IQ9	Cutting from local paper (Ham and High) dated July 2 2015
	IQ10	Correspondence related to having a blimp at site visit
	IQ11	Objection to scheme from Mr Steadman
	IQ12	Objection to scheme from K Fernald
	IQ13	Objection to scheme from J Sheridan
	IQ14	Letter from Z Goldsmith MP
	IQ15	Email with photograph from J Sachs
	IQ16	Evidence from P Perkins – Winchester Project
	IQ17	Objection from M Caro
	IQ18	Background information A Spence
	IQ19	Emails relating to flying of blimp at site visit
	IQ20	Photograph of library with sculpture in original position and view from swimming pool
	IQ21	Extract of Planning Practice Guidance
	IQ22	Camden’s Local List
	IQ23	Note relating to appendix one of Dr Smith’s proof
	IQ24	Tree plans enlarged by Save Swiss Cottage Action Group
	IQ25	Press article relating to scrapping of a previous proposal for 16 storey building at the appeal site
	IQ26	Housing provision statistics

IQ27	Information provided for the site visit
IQ28	Evidence of K Bligh
IQ29	Additional evidence from Janine Sachs
IQ30	Draft Addendum to Statement of Common Ground
IQ31	Response by RWDI relating to additional evidence from J Sachs
IQ32	Photograph of blimps from various locations – T Tugnutt DipArch RIBA
IQ33	Closing on behalf of Camden Association of Street Properties
IQ34	Closing statement/submissions of Save Swiss Cottage Action Group
IQ35	Closing statement of David Reed
IQ36	Closing submissions of Belsize Residents' Association
IQ37	Closing submissions of the London Borough of Camden
IQ38	Essential Living (Swiss Cottage) Ltd closing submissions
IQ39	Report of S106 Agreement
IQ40	Signed 106 Agreement
IQ41	Plan submitted by Save Swiss Cottage showing heritage assets

PLANS

Plan	Application Drawings
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1	Location Plan
2	PL 099 P3
3	PL 100 P2
4	PL 101 P1
5	PL 102 P1
6	PL 105 P3
7	PL 106 P1
8	PL 107 P2
9	PL 108 P1
10	PL 113 P1
11	PL 119 P1
12	PL 121 P1
13	PL 123 P1
14	PL 124 P1
15	PL 161 P1
16	PL 162 P1
17	PL 163 P1
18	PL 164 P1
19	PL 170 P1
20	PL 171 P1
21	PL 172 P1
22	PL 173 P1
23	PL 200 P1
24	PL 201 P2
25	PL 202 P1
26	PL 203 P1
27	PL 204 P1
28	PL 205 P1
29	PL 206 P1
30	PL 207 P1

31 PL 210 P1
32 PL 211 P1
33 PL 401 P1
34 PL 402 P1
35 PL 403 P1
36 PL 404 P1
37 PL 405 P1
38 PL 406 P1
39 LL443 100 001 P1
40 LL443 100 002 P2
41 LL443 100 003 P1
42 LL443 100 004 P1
43 LL443 100 005 P2
44 LL443 100 006 P1
45 LL443 100 007 P1
46 LL443 100 100
47 LL443 100 101

Annex A – List of Proposed Conditions

1. The works hereby permitted shall be begun not later than the end of three years from the date of this consent.
2. The development hereby permitted shall be carried out in accordance with the approved plans listed below.

PL_099 P3, PL_100 P2, PL_101 P1, PL_102 P1, PL_105 P3, PL_106 P1, PL_107 P2, PL_108 P1, PL_113 P2, PL_119 P1, PL_121 P1, PL_123 P1, PL_124 P1, PL_161 P1, PL_162 P1, PL_163 P1, PL_164 P1, PL_170 P1, PL_171 P1, PL_172 P1, PL_173 P1, PL_200 P1, PL_201 P2, PL_202 P1, PL_203 P1, PL_204 P1, PL_205 P1, PL_206 P1, PL_207 P1, PL_210 P1, PL_211 P1, PL_401 P1, PL_402 P1, PL_403 P1, PL_404 P1, PL_405 Pt, PL_406 P1, LL443-100-001 P1, LL443-100-002 P2, LL443-100-003 P1, LL443-100-001 P1, LL443-100-004 P1, LL443-100-005 P2, LL443-100-006 P1, LL443-100-007 P1, LL443-100-100, LL443-200-101.

Reason: For the avoidance of doubt and in the interest of proper planning.

3. No part of the development hereby permitted shall be occupied until the following have been submitted to and approved in writing by the Local Planning Authority
 - 1) full details of hard and soft landscaping and means of enclosure of all un-built, open areas [such details/shall include details of any proposed earthworks including grading, mounding and other changes in ground levels as well as the delivery of a feature of public art.]
 - 2) a scheme for replacement trees, including details of tree pit locations, viability and a planting programme.
 - 3) a planting programme and landscape aftercare plan.

The development shall be undertaken in accordance with the approved details including the planting program.

Reason: To ensure that the development achieves a high quality of landscaping which contributes to the visual amenity and character of the area, in accordance with the requirements of policies CS14, CS15 of the London Borough of Camden Local Development Framework Core Strategy and policy DP24 of the London Borough of Camden Local Development Framework Development Policies.

4. Development works (other than demolition) shall not take place until plans showing the levels at the interface of the relevant phase of development with the boundary of the property and the public highway have been submitted to and approved in writing by the council. Thereafter the development shall be carried out in accordance with the details approved.

Reason: To ensure that the scheme promotes the use of sustainable transport means in accordance with policy CS11 of the London Borough of Camden Local Development Framework Core Strategy.

5. No plant or machinery shall be installed on the external parts of the building other than in the areas indicated as plant areas on the plans hereby approved.

Reason: To ensure that the appearance of any external plant is compatible with the appearance of the building and the area and to ensure that residential amenities are protected, in accordance with the requirements of policies CS5 and CS14 of the London Borough of Camden Local Development Framework Core Strategy and policies. DP24, DP25 and DP28 of the London Borough of Camden Local Development Framework Development Policies.

6. Prior to the installation of any mechanical plant, an acoustic report demonstrating how any mechanical plant to be installed will accord with the noise and vibration standards as set out in the Local Development Framework and Camden Planning Guidance shall be submitted to and approved in writing by the Local Planning Authority. The report shall include such manufacturer's specifications and details of noise and vibration mitigation measures as necessary. The plant shall not be operated other than in complete accordance with such measures approved.

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policy CS5 of the London Borough of Camden Local Development Framework Core Strategy and policies DP26 and DP28 of the London Borough of Camden Local Development Framework Development Policies.

7. At 1 metre outside the windows of any neighbouring habitable room the level of noise from all plant and machinery shall be at all times at least 5 decibels below the existing background noise levels, expressed in dB(A) at such locations. Where the noise from the plant and machinery is tonal in character the differences in these levels shall be at least 10 dB(A).

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policy CS5 of the London Borough of Camden Local Development Framework Core Strategy and policies DP26 and DP28 of the London Borough of Camden Local Development Framework Development Policies.

8. No more than 1100sqm gross external area of floorspace shall be provided within use classes A1-A3.

Reason: To ensure that the future occupation of the premises does not undermine the vitality and viability of the Finchley Road/Swiss Cottage Town Centre, in accordance with policy CS7 of the London Borough of Camden Local Development Framework Core Strategy and policy DP10 and DP12 of the London Borough of Camden Local Development Framework Development Policies.

9. Before any ducting and ventilation is installed associated with the proposed Class A uses details of extract ventilating systems shall be submitted to and approved in writing by the Local Planning Authority. Such details to include routing of ducts and discharge points and associated acoustic isolation and sound and vibration attenuation measures and an Acoustic Impact report prepared by a suitably qualified and experienced acoustic engineer which sets out how the equipment would meet the council's published noise and vibration standards.
10. The acoustic isolation shall thereafter be maintained in effective order. In the event of no satisfactory ventilation being provided, no primary cooking shall take place on the premises.

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies CS5 and CS7 of the

London Borough of Camden Local Development Framework Core Strategy and policies DP12 and DP26 of the London Borough of Camden Local Development Framework Development Policies.

11. Any Class A use hereby permitted shall not be carried out outside the following times:
08:00hrs to 23:00hrs Sunday to Thursday and Bank Holidays and 08:00hrs to 00:00hrs on Friday and Saturday.
12. Outdoor seating areas associated with the Class A uses shall be cleared of customers between 22:00 and 08:00 hours, 7 days a week.
Reason: To safeguard the residential amenities of the adjoining premises and the area generally in accordance with the requirements of policies CS5 and CS7 of the London Borough of Camden Local Development Framework Core Strategy and policy DP26 and DP12 of the London Borough of Camden Local Development Framework Development Policies.
13. The shop front windows to the retail and food drink units shall be used for display purposes and the window glass must not be painted or obscured.

Reason: To safeguard the appearance of the premises and the character of the immediate area and to prevent the introduction of dead frontages within the development in accordance with the requirements of policy CS14 of the London Borough of Camden Local Development Framework Core Strategy and policies DP24 and DP25 of the London Borough of Camden Local Development Framework Development Policies.
14. Development shall not commence below ground level until a scheme for the following has been submitted to and approved in writing by the council:
 1. an intrusive land contamination survey and the written results. Laboratory results must be provided as numeric values in a formatted electronic spread sheet.
 2. a remediation scheme, if necessary, shall be agreed in writing with the Local Planning Authority.

The scheme as approved shall be implemented before any part of the development hereby permitted is occupied.

Reason: To protect future occupiers of the development from the possible presence of ground contamination arising in connection with the previous industrial/storage use of the site in accordance with policy CS5 of the London Borough of Camden Local Development Framework Core Strategy and policy DP26 of the London Borough of Camden Local Development Framework Development Policies.

15. Development works (other than Demolition) shall not take place until details of the following micro climate mitigation measures have been submitted to and approved in writing by the council.
 - the raising of the proposed balustrade on the west-facing penthouse to 1.8m in height and mitigation in the area of the eastern site boundary adjacent to the Hampstead Theatre

Development shall not be carried out other than in accordance with the approved measures.

Reason: To ensure that suitable measures are incorporated within the design to mitigate potential adverse wind environments arising from the development and to safeguard the amenities of the area generally in accordance with the requirements of policy CS5 of the London Borough of Camden Local Development Framework Core Strategy and policy DP26 of the London Borough of Camden Local Development Framework Development Policies.

16. Prior to the occupation of the first residential unit three of the proposed basement car parking spaces shall include access to an electrical charging point.

Reason: In the interests of sustainable transport in accordance with policy CS11 of the London Borough of Camden Local Development Framework Core Strategy and policy DP16 of the London Borough of Camden Local Development Framework Development Policies

17. (i) Works below ground level shall not start until detailed design and construction method statements for all of the ground floor structures, foundations and basements and for any structures below ground level, including piling (temporary and permanent) have been submitted to and approved in writing by the Local Planning Authority. These shall:
- Accommodate the proposed location of the HS2 structures and tunnels.
 - Accommodate ground movement and associated effects arising from the construction thereof, and;
 - Mitigate the effects of noise and vibration arising from the operation of the HS2 railway within the tunnels, ventilation shaft and associated below and above ground structures.

(ii) The design and construction method statements to be submitted under part (i) shall include arrangements to secure that, during any period when concurrent construction is taking place of both the development hereby permitted and of the HS2 structures and tunnels in or adjacent to the site of that development, the construction of the HS2 structures and tunnels is not impeded. The development shall be carried out in all respects in accordance with the approved design and method statement and all structures and works comprised within the development hereby permitted which are required by the approved design statements in order to procure the matters mentioned in part (i) shall be completed, in their entirety, before any part of the building(s) hereby permitted is/are occupied.

(iii) No works below ground level comprised within the development hereby permitted shall be carried out at any time when a tunnel boring machine used for the purposes of boring tunnels for the HS2 Ltd railway is within 100 metres of the land on which the development hereby permitted is situated.

Reason: To manage the structural impact of the development upon the HS2 proposals, in accordance with policies CS5 and CS14 of the London Borough of Camden Local Development Framework Core Strategy and policies DP24, DP26 and DP27 of the London Borough of Camden Local Development Framework Development Policies.

18. Development works (other than demolition) shall not take place until details of the following have been submitted to, and approved in writing by, the Local Planning Authority:

- a) Facing materials of all buildings
- b) Details including typical sections at 1:10 of external windows and door frames.
- c) Details including materials typical of balconies and roof terraces.

The relevant part of the works shall not be carried out otherwise than in accordance with the details approved.

Reason: To safeguard the appearance of the site and the character of the immediate area in accordance with the requirements of Policy CS14 of the London Borough of Camden Local Development Framework Core Strategy and policy DP24 and DP25 of the London Borough of Camden Local Development Framework Development Policies.

19. Prior to first occupation details of the following shall be submitted to, and approved in writing by, the Local Planning Authority:

- Shopfronts; including sections, elevations and materials

The relevant part of the works shall not be carried out otherwise than in accordance with the details thus approved.

Reason: To safeguard the appearance of the site and the character of the immediate area in accordance with the requirements of policy CS14 of the London Borough of Camden Local Development Framework Core Strategy and policy DP24 and DP25 of the London Borough of Camden Local Development Framework Development Policies.

20. Replacement trees that do not survive for five years after they are planted shall be replaced within the first available planting season.

Reason: To ensure that the development achieves a high quality of landscaping which contributes to the visual amenity and character of the area, in accordance with the requirements of policies CS14, CS15 of the London Borough of Camden Local Development Framework Core Strategy and policy DP24 of the London Borough of Camden Local Development Framework Development Policies.

21. Before any development commences details demonstrating how trees to be retained shall be protected during demolition and construction work shall be submitted to and approved in writing by the council. Such details shall be implemented as approved before any development commences and retained during the demolition and construction works, unless otherwise agreed in writing by the Local Planning Authority. The approved works shall follow guidelines and standards set out in BS5837:2012 "Trees in Relation to Construction". All trees on the site, or parts of trees growing from adjoining sites, unless shown on the permitted drawings as being removed, shall be retained and protected from damage in accordance with the approved protection details.

Reason: To ensure that the development will not have an adverse effect on existing trees and in order to maintain the character and amenity of the area in accordance with the requirements of policy CS15 of the London Borough of Camden Local Development Framework Core Strategy.

22. None of the residential units shall be occupied until details of external lighting have been submitted to and approved by the Local Planning Authority. The external lighting details shall be implemented and retained in accordance with the approved details before any residential unit is occupied.

Reason: In the interests of amenity and security in accordance with policies CS17 and CPG1 (Design).

23. Before the occupation of any part of the development full details of cycle parking shall be submitted to and approved in writing by the Local Planning Authority and thereafter provided in accordance with the approved details. The approved cycle parking facilities shall be permanently retained thereafter.

Reason: To ensure the development provides adequate cycle parking facilities in accordance with the requirements of policy CS11 of the London Borough of Camden Local Development Framework Core Strategy and policy DP17 of the London Borough of Camden Local Development Framework Development Policies.

24. Before any works or construction commences details of at least two real time particulate air quality monitors shall be submitted to and agreed in writing by the Local Planning Authority. Such details shall include the location, number and specification of the monitors, including evidence of the fact that they have been installed in line with guidance outlined in the GLA's Control of Dust and Emissions during Construction and Demolition Supplementary Planning Guidance. The monitors shall be installed 1 month prior to the development taking place and must be retained and maintained on site for the duration of the development in accordance with the details thus approved. Real time data from the monitors should be available online, and council officers provided access to this data. In addition, quarterly reports should be sent to the Air Quality officer for the duration of the works. These should detail any exceedences of the trigger action level (which is 250 ug/m3), and the action that was taken to remedy this.

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies CS5 and CS7 of the London Borough of Camden Local Development Framework Core Strategy and policies DP12, DP26 and DP28 of the London Borough of Camden Local Development Framework Development Policies.

25. Before any plant is installed details of the proposed CHP (combined heat and power) engine and any required mitigation measures to demonstrate that the Mayor's 'Band B' NOx emissions standards will be adhered to must be submitted to the Local Authority and approved in writing. The measures shall be installed in accordance with the approved details.
26. Prior to occupation, details (installation contracts, photographs) of the approved CHP engine and required mitigation measures to demonstrate that the Mayors 'Band B' NOx emissions standards will be adhered to must be submitted to and approved in writing by the Local Planning Authority. Thereafter, these measures shall be retained in accordance with the approved details.

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies CS5 and CS7 of the London Borough of Camden Local Development Framework Core Strategy and policies DP12, DP26 and DP28 of the London Borough of Camden Local Development Framework Development Policies.

27. Before any development commences details of proposed u-values and the approach to thermal bridging shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: To ensure a sustainable and resource efficient development in accordance with the requirements of policies CS13 and CS16 of the London Borough of Camden Local Development Framework Core Strategy and policies DP22, DP23 and DP32 of the London Borough of Camden Local Development Framework Development Policies

28. The development shall achieve 60% BREEAM score for the retail (A Class), retail/LUL and community floorspace within the buildings.

Reason: To ensure a sustainable and resource efficient development in accordance with the requirements of policies CS13 and CS16 of the London Borough of Camden Local Development Framework Core Strategy and policies DP22, DP23 and DP32 of the London Borough of Camden Local Development Framework Development Policies.

29. Before first occupation details of the brown roof in the area indicated on the approved roof plan of the tower element shall be submitted to and approved in writing by the local planning authority. No part of the buildings shall be occupied until the approved details have been implemented and these works shall be permanently retained and maintained thereafter.

Reason: In order to ensure the development undertakes reasonable measures to take account of biodiversity and the water environment in accordance with policies CS13, CS15 and CS16 of the London Borough of Camden Local Development Framework Core Strategy and policies DP22, DP23 and DP32 of the London Borough of Camden Local Development Framework Development Policies.

30. Before the first residential unit is occupied details of mechanical ventilation shall be submitted to and approved in writing by the council. Prior to occupation of any residential unit the mechanical ventilation shall be installed and be in full working in the residential units, as the approved details. All such measures shall thereafter be retained and maintained.

Reason: To safeguard the amenities of the premises and the area generally in accordance with the requirements of policies CS5 and CS7 of the London Borough of Camden Local Development Framework Core Strategy and policies DP26, DP28 and DP12 of the London Borough of Camden Local Development Framework Development Policies.

31. Before development commences detailed design and assessment reports and outline method statements (in consultation with London Underground) for all of the foundations, basement and ground floor structures, or for any other structures below ground level, including piling (temporary and permanent), shall be submitted to and approved in writing by the Local Planning authority, such reports shall:
- provide details on all structures over and adjacent to LU assets
 - accommodate the location of the existing London Underground structures and tunnels
 - accommodate ground movement arising from the construction thereof
 - mitigate the effects of noise and vibration arising from the adjoining operations within the structures and tunnels and mitigate against any EMC (Electromagnetic Compatibility) issues arising from the construction of the new plant.

The development shall thereafter be carried out in all respects in accordance with the approved design and assessment report, method statements and subject to an agreed monitoring strategy, and all structures and works comprised within the development which are required by the approved

design statements in order to procure the matters mentioned in paragraphs of this condition shall be completed, in their entirety, before any part of the building hereby permitted is occupied.

Reason: To ensure that the development does not impact on existing London Underground transport infrastructure, in accordance with London Plan 2011 Table 6.1 and 'Land for Industry and Transport' Supplementary Planning Guidance 2012.

32. The proposed Class A uses will operate within use classes A1, A2, and A3 only.

Reason: To ensure that the future occupation of the building does not adversely affect the adjoining premises/immediate area by reason of noise and disturbance in accordance with policy CS5 of the London Borough of Camden Local Development Framework Core Strategy and policies DP26 and DP28 of the London Borough of Camden Local Development Framework Development Policies and to protect the viability of Swiss Cottage Town Centre in accordance with policies CS7, DP12 and Camden Planning Guidance No.5.

33. Before any residential unit is occupied a scheme to demonstrate that each dwelling hereby approved achieves a maximum internal water use of 105 litres/person/day, allowing 5 litres/person/day for external water use, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved scheme and retained thereafter.

Reason: To ensure the development contributes to minimising the need for further water infrastructure in an area of water stress in accordance with policies CS13 (Tackling climate change through promoting higher environmental standards), DP22 (Promoting sustainable design and construction) and DP23 (Water).



RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act). This new requirement for permission to bring a challenge applies to decisions made on or after 26 October 2015.

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

Appendix: 9 - Original Decision Notice for 2014/1617/P dated 03/10/2014

Ms Lorna Henderson
Turley Associates
17 Gresse Street
London
W1T 1QL

Application Ref: **2014/1617/P**
Please ask for: **David Fowler**
Telephone: 020 7974 **2123**

3 October 2014

Dear Sir/Madam

DECISION

Town and Country Planning Act 1990 (as amended)

Full Planning Permission Refused

Address:
100 Avenue Road
London
NW3 3HF

Proposal:

Demolition of existing building and redevelopment for a 24 storey building and a part 7 part 5 storey building comprising a total of 184 residential units (Class C3) and up to 1,041sqm of flexible retail/financial or professional or café/restaurant floorspace (Classes A1/A2/A3) inclusive of part sui generis floorspace for potential new London Underground station access fronting Avenue Road and up to 1,350sqm for community use (class D1) with associated works including enlargement of existing basement level to contain disabled car parking spaces and cycle parking, landscaping and access improvements.

Drawing Nos:

The Council has considered your application and decided to **refuse** planning permission for the following reason(s):

Reason(s) for Refusal

- 1 The proposed development by reason of its height, bulk, mass, design and density represents overdevelopment of the site which would have an adverse impact on the



character and appearance of surrounding conservation areas and the local area generally contrary to policies CS5 and CS14 of the London Borough of Camden Local Development Framework Core Strategy and DP24 and DP25 of the London Borough of Camden Local Development Framework Development Policies.

- 2 The proposed development by reason of its height, bulk and mass would result in loss of amenity, especially overshadowing to the adjacent Swiss Cottage Open Space and surrounding areas contrary to policies CS5, CS14 and CS15 of the London Borough of Camden Local Development Framework Core Strategy and DP26 and DP31 of the London Borough of Camden Local Development Framework Development Policies.
- 3 The proposed development, in the absence of a legal agreement to secure:
 - a review of the private rented sector (PRS) units viability to provide affordable housing 1 year after completion;
 - a review of the PRS units at substantial break-up;
 - a review should the top floor of the tower (proposed amenity space) be converted to residential;would fail to make a contribution towards the supply of additional affordable housing within the Borough, contrary to policies CS6 of the London Borough of Camden Core Strategy (2010), DP3 and DP4 of the London Borough of Camden LDF Development Policies (2010).
- 4 The proposed development, in the absence of a legal agreement securing affordable housing, including for the 18 discounted market rent private rented sector units and rent levels for the affordable housing, would fail to ensure the provision of the required amount of affordable housing for the scheme, contrary to policies CS6 (Providing quality homes) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policy DP3 (Contributions to the supply of affordable housing) of the London Borough of Camden Local Development Framework Development Policies.
- 5 The proposed development, in the absence of a legal agreement securing the provision of the community centre and affordable housing should a change of use of the community centre be proposed, would fail to ensure the provision of the required amount of affordable housing for the scheme, contrary to policies CS6 (Providing quality homes) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policy DP3 (Contributions to the supply of affordable housing) of the London Borough of Camden Local Development Framework Development Policies.
- 6 The proposed development, in the absence of a legal agreement for securing contributions to employment provision, would fail to mitigate against the loss of employment floorspace, contrary to policies CS8 (Promoting a successful and inclusive Camden economy) of the London Borough of Camden Local Development Framework Core Strategy and policy DP13 (Employment sites and premises) of the London Borough of Camden Local Development Framework Development Policies.
- 7 The proposed development, in the absence of a legal agreement for securing contributions to educational provision, would be likely to contribute unacceptably to

pressure and demand on the Borough's existing educational facilities, contrary to policies CS10 (Supporting community facilities) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policy DP15 (Community and leisure uses) of the London Borough of Camden Local Development Framework Development Policies.

- 8 The proposed development, in the absence of a legal agreement for securing contributions to public art, would fail to sufficiently enhance the public realm contrary to policies CS14 (Promoting high quality places and conserving our heritage) of the London Borough of Camden Local Development Framework Core Strategy and policy DP24 (Securing high quality design) of the London Borough of Camden Local Development Framework Development Policies.
- 9 The proposed development, in the absence of a legal agreement for securing contributions towards public realm and highways, a cycle link and Travel Plan monitoring, would fail to sufficiently enhance the public realm and mitigate highways concerns contrary to policies CS14 (Promoting high quality places and conserving our heritage), CS11 (Promoting sustainable and efficient travel) and CS17 (Making Camden a safer place) of the London Borough of Camden Local Development Framework Core Strategy and policies DP24 (Securing high quality design), DP16 (The transport implications of development) and DP17 (Walking, cycling and public transport) of the London Borough of Camden Local Development Framework Development Policies.
- 10 The proposed development, in the absence of a local employment and apprenticeships agreement will be likely to lead to the exacerbation of local skill shortages and lack of training opportunities and would fail to contribute to the regeneration of the area, contrary to policies CS5 (Managing the impact of growth and development), CS8 (Promoting a successful and inclusive Camden economy) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policy DP13 (Employment sites and premises) of the London Borough of Camden Local Development Framework Development Policies.
- 11 The proposed development, in the absence of a legal agreement securing car-free housing, would be likely to contribute unacceptably to parking stress and congestion in the surrounding area, contrary to policies CS11 (Promoting sustainable and efficient travel) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policies DP18 (Parking standards and the availability of car parking) and DP19 (Managing the impact of parking) of the London Borough of Camden Local Development Framework Development Policies.
- 12 The proposed development, in the absence of a legal agreement securing a construction management plan, would be likely to give rise to conflicts with other road users, and be detrimental to the amenities of the area generally, contrary to policies CS5 (Managing the impact of growth and development), CS11 (Promoting sustainable and efficient travel) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core

Strategy and policies DP20 (Movement of goods and materials), DP21 (Development connecting to highway network) and DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Policies.

- 13 The proposed development, in the absence of a legal agreement securing a delivery and servicing plan, would be likely to give rise to conflicts with other road users and pedestrians especially at peak times, contrary to CS11 (Promoting sustainable and efficient travel) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policies DP20 (Movement of goods and materials) and DP21 (Development connecting to highway network) of the London Borough of Camden Local Development Framework Development Policies.
- 14 The proposed development, in the absence of a travel plan, would be likely to give rise to significantly increased car-borne trips, contrary to policies CS11 (Promoting sustainable and efficient travel) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policies DP16 (Transport implications of development) and DP17 (Walking, cycling and public transport) of the London Borough of Camden Local Development Framework Development Policies.
- 15 The proposed development, in the absence of a legal agreement safeguarding the proposed new station entrance for a period of 2 years from occupation, would fail to provide the opportunity to make sufficient provision in a sustainable manner for the increased trips generated by the development thus causing a cumulative detrimental impact on the borough's transport network, contrary to policies CS11 (Promoting sustainable and efficient travel) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policies DP16 (Transport implications of development), DP17 (Walking, cycling and public transport) and DP21 (Development connecting to highway network) of the London Borough of Camden Local Development Framework Development Policies.
- 16 The proposed development, in the absence of a legal agreement securing a Basement Construction Plan, would fail to demonstrate that there would be no impact on surrounding properties, contrary to policy DP27 (Basements and lightwells) of the London Borough of Camden Local Development Framework Development Policies.
- 17 The proposed development, in the absence of a legal agreement requiring the internal design of the new units to appropriate Lifetime Homes standards, would fail to provide housing adaptable and suitable for future residents, contrary to policies CS6 (Providing quality homes) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policy DP29 (Improving access) of the London Borough of Camden Local Development Framework Development Policies.
- 18 The proposed development, in the absence of a legal agreement for securing contributions for public open space provision, would be likely to contribute

unacceptably to pressure and demand on the Borough's existing open space facilities, contrary to policies CS15 (Protecting and improving open spaces & encouraging biodiversity) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policy DP31 (Provision of and improvements to public open space) of the London Borough of Camden Local Development Framework Development Policies.

Informative(s):

- 1 Without prejudice to any future application or appeal, the applicant is advised that reasons for refusal numbered 3-18 could be overcome by entering into a Section 106 Legal Agreement for a scheme that was in all other respects acceptable.

In dealing with the application, the Council has sought to work with the applicant in a positive and proactive way in accordance with paragraphs 186 and 187 of the National Planning Policy Framework.

You can find advice about your rights of appeal at:

<http://www.planningportal.gov.uk/planning/appeals/guidance/guidancecontent>

Yours faithfully

A handwritten signature in black ink, appearing to read 'Ed Watson', with a stylized flourish at the end.

Ed Watson
Director of Culture & Environment