

Delegated Report		Analysis sheet	Expiry Date:	26/10/2018
		N/A / attached	Consultation Expiry Date:	30/09/2018
Officer			Application Number(s)	
Jonathan McClue			2018/3672/P	
Application Address			Drawing Numbers	
55 Fitzroy Park London N6 6JA			Refer to Decision Notice	
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature	
Proposal(s)				
Demolition of all existing buildings on the site and their replacement with five detached dwelling houses (Class C3) (comprising three part 2, part 3 storey houses at front facing Fitzroy Park and two part 1, part 2 storey houses at rear adjoining Millfield Lane) plus associated driveways, access paths, carparking, landscaping and pond enhancements				
Recommendation(s):		Refuse Planning Permission		
Application Type:		Full Planning Permission		

Conditions or Reasons for Refusal:	Refer to Decision Notice			
Informatives:				
Consultations				
Adjoining Occupiers:	No. of responses	32	No. of objections	27 + a petition of 5,832 signatures from Friends of Millfield Lane
Summary of consultation responses:	<ul style="list-style-type: none"> • Two site notices were displayed (1 on Fitzroy Park, 1 on Millfield Lane) from 05/09/2018 • A press advert was published on 06/09/2018 <p>At least <u>27 individual objections</u> (plus a <u>petition of 5,822 signatures</u>) were received from neighbouring occupiers on the following grounds:</p> <p><u>Principle</u></p> <ul style="list-style-type: none"> • The proposal breaches the Development Plan in several important respects including transport, sustainability, housing, biodiversity • construction of 5 houses on the site is over development, especially as the pond has been included in the applicant's densities. • Land is Private Open Space, development on which is restricted by Camden's own policies • Private Open Space designation would be compromised • Over time the plot of former Fitzroy Farm has been subdivided, increasing from one house to 8 houses today and now application proposes 12. When does intensification of land stop? • Scheme is too intense to preserve the character of the local area • Deeply concerned about the scale and execution of development and its impact on local environment • Significant increase in plot ratio and loss of designated and Private Open Space is unacceptable <p><u>Ecology</u></p> <ul style="list-style-type: none"> • Site is highly rated for Nature Conservation interest and proposals would harm • Green nature of the site is appreciated by many more people than just residents of the road • Plots 4 and 5 result in the removal of a significant number of mature trees resulting in loss of amenity and also loss of important private open space in environs of Heath • Represents large scale environmental and ecological vandalism • Object to felling of many trees, number in application is underestimated – closer to 90 including some with Tree Protection Orders. This would be irrevocable destruction of the natural habitat for much wildlife • Loss of tree canopy would threaten the diversity of the sensitive environment including protected species • Ancient trees adjoining the lane would have their root systems compromised by the weight of heavy work vehicles on unmade road • No assessment of the environmental impact on the Bird Sanctuary Pond • Natural vegetation to be replaced with cultivated hedges and chain 			

link fences, destroying wildlife habitats and rural character of Millfield Lane

- Basement construction likely to cut off / divert water flows toward the heath ponds, losing wetlands habitats
- Finished development would increase heat and light pollution and disrupt wildlife corridors

Conservation

- Beautiful and serene setting will be replaced with densely built up housing estate
- Character will change from tranquil rustic country lane feel to a small housing estate which will be alien to this part of Fitzroy Park
- Unique character and ambience of those two roads should be preserved for current and future generations
- Development of site would destroy unique and ancient pathway which is a haven of wildlife and space away from cars and urban landscape
- Addition of vehicles would destroy peaceful atmosphere of the pond, bird sanctuary and Millfield Lane itself.
- Overlooking of Millfield Lane would change peaceful and natural rural character of the lane

Flooding and drainage

- Great concerns about hydrology given proximity to Heath and large pond on site
- Effect on water table could be disastrous
- The building of numerous basements as part of this development would damage the fragile underwater stream system

Amenity

- View from my home towards the Heath will be severely disrupted

Housing

- Dwelling sizes do not meet policy
- A development of this size would usually be expected to provide an element of affordable housing
- In no way does the proposal address housing crisis

Transport

- Contrary to policy, one car parking space provided for each house
- Site has a poor PTAL rating
- Development is not car-free
- Increase in traffic. 4 additional houses will result in lots more deliveries, taxis and not clear where servicing vehicles would park
- Size of parking spaces do not appear to allow for cars to enter forward and exit forward which may result in planting being removed resulting in an impact to streetscape on Fitzroy Park
- Seems illogical for all cars to enter from Fitzroy Park and none from Millfield Lane
- Traffic volumes will increase five fold and lead to blockages
- Deliveries will make the road inaccessible as there is no space for them to park off road
- Parking will become a real problem
- Road will become a dangerous place for pedestrians, cyclists
- Although not stated in plans, three of the properties may use Millfield Road as access

- Limited width of Fitzroy Park and absence of pavement creates risk of accident
- Necessary to review TRICS database 2011 assumptions are valid as the best estimate for car trips generated to the development post-Covid 19

Construction

- Construction equipment will lead to air pollution
- Excavation will cause a huge amount of heavy duty lorry traffic
- Construction is likely to lead to damage and no mention of any repair work
- Submission gives no reassurance that emergency access will be safeguarded during the construction period at all times
- Noise, dust and pollution levels would be entirely unacceptable

Quality of submission

- Query information provided on application form in regards to size of existing property
- Submission has inaccuracies and omissions and should be refused on that basis alone
- Statement of Community Involvement reference to no public objection is misleading and disingenuous

Other

- Development presented as 'self-build' with CIL exemption but applicant appears to be serial developer. Council should satisfy themselves this is correct
- Would set appalling precedent for future developments

5 letters of support were received from neighbouring occupiers on the following grounds:

- Buildings to be replaced are undistinguished and present unattractive frontage to site
- The proposed scale of the three houses are in keeping with the neighbourhood and would allow the attractive lake to be visible from the road
- The ramshackle wooden fence would be replaced by attractive planting
- On Millfield Lane, the removal of the concrete wall and replacement by planting would provide a more attractive boundary with the Heath and provide a wildlife corridor which does not exist at present
- Two houses proposed for Millfield Lane end should be largely hidden from the Heath and by the proposed landscaping
- Scheme seems well thought out
- Applicant is a good neighbour and previous development project in the area was completed on time with minimum inconvenience to neighbours.
- Proposal would support the desperate need in this area and London as a whole to build more houses
- Chronic nimbyism is to blame for what is worst housing crisis affecting our city in modern times
- The way that they have dealt with views from Heath are brilliant and houses can hardly be seen from anywhere

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| | <ul style="list-style-type: none">• Applicant has dealt well with boundary treatment between relevant houses• Admire way application has dealt with ecology• Offer significant visual improvement, particularly removal of concrete wall and replacement with natural hedgerow• Existing property makes no positive contribution to Fitzroy Park – by contrast proposed scheme will add to the visual amenity of the street• The site's designation as Private Open Space is in name only – combination of building, fences and unmanaged vegetation make it impossible to appreciate any openness. Proposals break up building elevations and boundary treatment deliberately allow views into core of the site and makes pond visible• Proposal creates ecological corridors connecting Fitzroy Park with Millfield Lane and Heath |
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CAAC/Local
groups/organisations
comments:

Highgate Neighbourhood Forum objects to the proposal on the following grounds:

This is over-development in a particularly sensitive area directly bordering on the Heath. It directly contravenes various sections of our Highgate Neighbourhood Plan, including:

- DH1 which states that where demolition is permitted development must positively contribute to the conservation area in which it sits.
- DH2 which states that 'development should preserve or enhance the open, semi-rural or village character where this is a feature of the area.
- OS1 which states that development adjacent to Highgate's areas of major open space (which includes the Heath) must not harm protected views and is not detrimental to the integrity, appearance or setting of the open space.
- OS2 with its strict rules on the protection and replacement of trees
- DH10 which states that there will be a presumption against the loss of garden land.
- DH7 which requires much greater information about the effects on water flows in this highly sensitive area, as outlined by the City of London's submission.

In addition we are concerned about the possibility of vehicle access to the proposed development from Millfield Lane. While the plans do not indicate any access, there is an existing but unused gate onto Millfield Lane. The development proposals indicate difficult access via Fitzroy Park to the two large houses planned along Millfield Lane and it is difficult to imagine that there will not be attempts to provide vehicular access from Millfield Lane with danger and disturbance caused to the many pedestrians who use this quiet lane, including patrons of the women's pool, and damage to the rural aspect of the fringes of the Heath.

The Heath and Hampstead Society issued a second objection following revisions to parking and landscaping, on the following grounds:

1) Boundary Treatment of Millfield Lane.

Houses 4 & 5 are very close to the Lane and open railings would make them even more prominent.

The quiet secluded narrow much used pedestrian lane retains its secluded character from the high fencing on the site boundary which should be maintained (without vehicle access).

2) Reduced parking on site -problems of access.

Now car parking has been reduced, where are lorries for deliveries or repairs etc., and the cars of disabled and other visitors to Houses 4 & 5 going to park? Parking on Fitzroy Park, a very narrow lane with no pavements, is only available for no. 55 on the `frontage` of the site which is taken up by Houses 1, 2 & 3 and their parking access.

Emergency vehicles have been obstructed in the past by lorries blocking Fitzroy Park – which explains why parking is predominantly off-road in this area. It is surprising and suspicious that the main entrances to Houses 4 & 5 are at the same level as Millfield Lane, which would provide easier access. A gate already exists on Millfield Lane which will allow access to House 4 (although a vehicle turning point on site would be needed to prevent vehicles

dangerously backing down a predominantly pedestrian path). A very large gate is shown on the proposed site plan wide enough to allow vehicles to enter the site of House 5 from a narrow lane – though such vehicles would have to back out into the lane. It is more realistic to expect access to Houses 4 & 5 to be from Millfield Lane, but this will create danger to the many pedestrians, frequently blocking the narrow lane and totally spoiling its character.

Highgate CAAC made initial objections on the following grounds:

1. Agree with the conclusions of the DRP, *'the Panel does not think that a convincing case has been made for the construction of five houses'; continuing 'on the basis of the information provided the panel is not convinced that the site can accommodate five houses'*. The scheme does not take sufficient account of the nature of the site and its great importance both for the Highgate Conservation Area and the immediately adjoining Hampstead Heath, a heritage asset of unparalleled significance not just for the immediate neighbourhood but for the whole of London.
2. Plot ratios are grossly misleading since the area of the pond is included. This is an area which could not in any circumstance be built on and thus should be excluded.
3. Furthermore the significance of the pond for the CA is not understood. It is a significant unlisted heritage asset, an integral part of the historic landscape as a natural farm pond shown clearly on all the earliest maps of the area. In this application it is considered only as a reflecting device to increase the apparent size and impressiveness of the house on plot 5. Its proposed enclosure in a 'bund' is also destructive of its character. This is in addition to its undoubted importance as a source for the Highgate chain of ponds; in particular in this instance the highly significant Bird Sanctuary pond. Even during the current very dry and hot periods the overflow into the Bird Sanctuary pond has continued to run vigorously, a clear indication of the importance of the spring which feeds it.
4. Planning law is NOT concerned with the applicants' circumstances but with the buildings proposed; they must be of sufficiently good design to have merit and enhance the CA irrespective of the needs of any proposed or future occupants.
5. Regarding plots 1-3 the proposed line of three similar houses is alien to the design and street-scape of this part of Fitzroy Park creating an essentially suburban row. The entrances to be created along the lane are shown on the CGIs included with the application to be barely noticeable; this will not be the situation in actual fact. The exits for any car or large van will also be very awkward and dangerous to pedestrians. Delivery vehicles will cause inconvenience to neighbours.
6. The amount of hardstanding associated with extra buildings and hard landscaping is not conducive to 'ecological enhancement'. The Highgate Neighbourhood Plan requires ecological improvement therefore comparison with 'Do nothing' is not the relevant comparator. There is also no mention made of the fact that the garden itself in its current state is defined by the local plan not only as Private Open Space but as SINC METRO.
7. Terraces appear small and could in future be extended - a condition must withdraw all permitted development rights and require this to

- include any expansion of hard standing on the whole site.
8. The policies of the Highgate Neighbourhood Plan are ignored. These include DH2 which requires the 'open semi-rural' nature of the area to be maintained. Also DH10 which specifically rules against development in back gardens. The development proposed constitutes the creation of a Close on the site of a single property; something which will be reflected in the addresses assigned to any new houses by the Post Office.
 9. Plot 1 has been designed to maintain the access to the back gate in Millfield Lane. This raises all sorts of issues re the use of the lane which are not addressed at all in the application.
 10. Submission does not suggest any understanding of the site and the effect on the internationally important MOL to which it is immediately adjacent, its fragility and its importance as a part of one of the prime features of the Highgate Conservation Area. This is stated in all relevant documents since the CA's creation to be the semi-rural character of the village and the lanes leading to the Heath, the prime national example of 'rus-in-urbe'. As the neighbourhood plan states, this is most at risk from 'creeping development' (HNPP.8) like that proposed.
 11. The application must therefore be rejected as causing significant harm to the Conservation Area and irreparable damage to the fragile ecology of the Heath.

Additional objections from **Highgate CAAC** following provision of additional information:

1. The heritage statement does not fully take into account the significance of the site and its importance for the Conservation Area. It describes the pond as 'a pleasant feature' (p.23 heritage statement) and as 'picturesque' but shows no awareness at all of its historic significance. As is clear from the 1869 Ordnance Survey sheet 111 the pond was already in existence at that date as a farm pond closely associated with Fitzroy Park Farm. The pond itself is a unique survival and an undesignated heritage asset, the character of which must be protected as set out in local and national policies. The whole site is also a SINC Metro. As virtually undisturbed virgin farmland the ecological value of the garden site with its colonies of vertebrates and invertebrates of all species is hard to overestimate
2. The proposed development proposes very extensive excavation covering the whole site. This will destroy the topography of the site and create an artificial environment. The pond will be in grave danger of dewatering since the excavation of plot 4 will be only 4.40 m. from its banks and will extend beneath the ground water level. It is hard to understand how changes of this magnitude with potentially disastrous results for a heritage asset can be described as 'high quality site specific' and an enhancement to the significance of the Conservation Area as is claimed by the applicants.
3. The application also does not comply with the London Plan 7.1.2 which makes plain that historic landscape features are non-designated assets. The Camden Local plan policy A2 is also relevant. Policies for the protection of open spaces include the requirement to protect the openness of Metropolitan Open Land of which the prime example in Camden is of course Hampstead Heath.; map 2 on p199

of the Camden plan shows the buffer zones needed to protect MOL. The site of 55 FRP is immediately adjacent to the Heath and thus in the zone of the 280m buffer. Paragraph 6.37 of the Camden Local Plan also advocates strongly the protection of undeveloped rear gardens; developments will be resisted if they occupy an excessive amount of the garden and contribute to a loss of character in the townscape, as is the case in this instance. Building very close to the boundary with Millfield Lane with possible access to this undisturbed and truly rural lane will cause grave detriment to the CA and the adjoining MOL.

4. Paragraph 6.43 of the Local Plan also describes the Heath as the key open space in Camden and includes (for the proper safeguarding of this space) the requirement for 'numerous large private gardens adjacent to the Heath' to be designated and protected as open space.' The application puts forward no convincing argument to override this policy which ensures the maximum of public benefit. The sensitivity of this site immediately adjacent to the Heath and the Ladies Swimming Pond cannot be overstated; its protection is essential.
5. Given the narrowness of Fitzroy Park itself and the lack of any pavements, construction vehicles will put pedestrians in danger.

Fitzroy Park Resident's Association (the Membership of which comprises 42 households on Fitzroy Park, The Hexagon, Fitzroy Close, Dancers End and Bowling Club Lane plus a further 24 on Highfields Grove) made the following initial objections to the application:

- Initial submission includes various inaccuracies and multiple omissions relating to site information, basement impact, water and drainage, ecology, transport, CMP, statement of community involvement.
- Submitted plans show vehicle access to plots 3, 4 and 5 when previously pedestrian only.
- A single point of vehicle entrance on Fitzroy Park with limited visibility to be replaced by 3 pedestrian/vehicular access points resulting in a significant loss of vegetation with frontage taken over by gaps increasing from 10% to 32%. Particularly adjacent to northern boundary where car parking for plots 4 & 5 is proposed.
- Inaccurate plot ratios provided. FPRA calculate them to be 14.6% not 14.1% which is significantly more than the existing plot ratio of 7.3% not 7.9%; individual plot areas are even higher. Inappropriate for DAS to make comparisons with Fitzroy Close as outside of designated Private Open Space, nor Fitzroy Lodge or Dormers. It is considered that this very significant increase in plot ratio on the site, with the resultant loss of designated and protected Private Open Space is wholly unacceptable.
- Spacing of Fitzroy Park properties is wholly out of keeping with the existing dwellings on west side of Fitzroy Park. Furthermore, Plots 4 & 5 will be visible through the gaps and uninterrupted views of the Heath will be lost.
- The similarity in the design of Plots 1-3 is at odds with the eclectic mix of design of Fitzroy Park as acknowledged by the Conservation Area Character Appraisal.

- The proposals incorporate railings to a height of 1.24m within a hedge which is out of keeping with informal rustic character to which the Conservation Area Appraisal refers. DRP feedback highlights important of retaining existing boundaries.
- The increased plot ratio/loss of open space on the site is contrary to LB Camden Local Plan Policy A2 as the site is designated Private Open Space. It is also contrary to A2(c) as it is detrimental to the setting of adjacent areas of open space i.e. neighbouring sites covered by the same Private Open Space designation and also the Heath with its MOL designation.
- Contrary to Local Plan policy D1 as detailing/ materials of Plots 1-3 do not complement the local character / integrate well with the street; and reduced green frontage with increased openings in boundary.
- Contrary to Highgate Neighbourhood Plan Policy DH10 – presumption against loss of garden land, loss of existing mature trees, increase in proportion of hard surfacing of front garden areas, does not take account of existing front and rear building lines (particularly in relation to Plots 4&5 which ignore rear building line on western side of Fitzroy Park.
- Contrary to the Highgate Conservation Area Appraisal and Management Strategy which refers to resisting the loss of historic boundaries, planting and soft landscaping associated with the introduction of hard standing and inappropriate boundary treatment.
- Fitzroy Open Space is covered by a SINC Metro designation which means loss of open space and impact on nature conservation is of fundamental importance. Site is also of great importance to Bird Sanctuary Pond which is not considered in any meaningful way.
- Submission makes no reference to the fact that this is a site of interest for nature conservation in the metropolitan context (rather than just in the local context) as well as the adjacent Metropolitan Open Land.
- Mitigation measures have been formulated without any thorough understanding of the importance of the site and its surroundings.
- A significant number of trees will have to be felled to enable the development with some not being referred to. No consideration given to offsite trees including those with TPOs or impact of ground lowering, drainage strategy and bund creation on retained trees. No evaluation of orchard trees.
- The landscaping proposals alone fail to comply with NPPF, London Plan, Camden Local Plan, Highgate NP, Highgate CAAMS and CPG Biodiversity.
- Many uncertainties and concerns remain with the BIA.
- The proposed excavations represent excessive engineering of the site (approx. 50% of site) which DRP advised should be avoided. No information provided to enable an assessment of these works in terms of impact on ground water movements and land stability.
- Concerns about sheet piling given the pond is spring fed and not surface water fed.
- The site's accessibility is overstated. The location is not sustainable.
- The proposals for 1 car space per dwelling is insufficient and would inevitably lead to increased pressure for on-street parking. As Fitzroy Park is private, there are no on-street parking controls. Plots 1-3 would not be able to park more than 1 car on the street and Plots 4 & 5 would have no right to park on Fitzroy Park.
- Occupants of the proposed houses plus visitors are likely to park on

FP as they are entitled and also likely there will be overspill parking on to surrounding road network. A car-free agreement will only result in unauthorised parking in front of other properties on FP (as CPZ does not cover private roads).

- A 30m walk from Fitzroy Park to plots 4 & 5 is unfeasible particularly for delivery vehicles. It would take little to change pedestrian path into a vehicular driveway.
- The parking spaces for plots 4 & 5 are not independently accessible and will involve reversing into / out of the site endangering pedestrians, cyclists and other vehicles.
- Traffic numbers on FP have been understated and are approx. 60% higher than stated.

Construction

- Insufficient information provided for this to be assessed. There is no schedule of condition of Fitzroy Park itself; no repair/reinstatement conditions proposed; no consideration of tree roots beneath the road or tree canopies overhanging the road that could be affected by construction traffic; incorrect swept path analysis; no allowance for sheet piling vehicles in HGV numbers; no hydrological impact statement on the effect of sheet piling to support the road; no mention of road closures for the sheet piling; no consideration of the effect of sheet piling on neighbouring properties (indeed it is noted that the intention is to use 25m piles for Plots 4 and 5 along Millfield Lane; no consideration of maintaining access for emergency vehicles; no details of the retaining wall proposed to Fitzroy Park; incorrect calculations of soil bulking (which, it is believed, exclude the piling spoil) which could potentially increase HGV numbers by some 50%; the use of many 17 or 24 tonne vehicles which is specifically contrary to Neighbourhood Plan Policy (if it is possible to avoid the use of such large/heavy vehicles this will result in a significant increase in construction traffic); no proscription on using The Grove entrance to enter Fitzroy Park; reference to some vehicles unloading from Fitzroy Park which would block the road given its narrowness; no mention of tarmac laying vehicles or skip lorries in the vehicle movements; no assessment of noise levels during construction and thus no way of assessing impact on neighbouring occupiers; no way of assessing vibration that would affect neighbours; no asbestos report; and no hydrological assessment to enable consideration to be given to the effects on the slope above Fitzroy Park.
- The proposals fail to comply with the following:
 - Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
 - National Planning Policy Framework – generally Sections 9, 15 and 16 and, more specifically, Paras 103, 110, 170, 175, 178, 179, 180, 184 and 192.
London Plan Policies 6.1, 6.3, 7.8, 7.19 and 7.21.
 - LB Camden Local Plan Policies A1, A2, A3, A5, D1, D2, CC3, T1 and T2.
 - Highgate Neighbourhood Plan Policies DH1, DH2, DH7, DH10, OS2, OS4, TR1, TR2, TR3 and TR4.
 - Highgate Conservation Area Appraisal and Management Strategy.
 - Camden Planning Guidance: Biodiversity.
 - Camden Planning Guidance: Basements.

In addition to the above detailed objection on the full range of issues, it is noted that the FPRA have provided feedback as and when additional information has been received during the application process.

The Highgate Society objects to the proposal, stating it supports the major concerns of the Highgate CAAC and at a later date provided the following observations in support of the objections:

1. Character of Fitzroy Park

Fitzroy Park has a distinct rural character. It is lined with smaller buildings that are closer to the road interspersed with larger ones that are set well back in an irregular fashion. The application has larger buildings that are regularly spaced close to the road side of the site that would be typical of a suburban street and out of character with the area in a way that would be inappropriate for a winding hillside development served by a narrow lane.

2. Character of Millfield Lane

The above comments apply with significantly greater force to Millfield Lane. Although it is bounded on its eastern edge by private properties, and those adjoining owners have possession and shared usage of the eastern half of the Lane (the western half of the lane being Heath land, and therefore Metropolitan Open Land), Millfield Lane is an ancient route which is now established as an integral part of the footway system across Hampstead Heath. It is used by large numbers of the public and is regarded by them as integral to the amenities and character of Hampstead Heath. There is currently no development on any of the privately-owned land on the eastern side of the trackway abutting or close to Millfield Lane, thus preserving its essential rural character. The proposed housing for the western edge of the site, and the increased vehicular usage which will inevitably result, will cause substantial harm to the amenities of one of London's most important open spaces. The western half of the Lane is owned by Hampstead Heath, which is protected under 1871 and subsequent legislation from development which will adversely affect its character.

Hampstead Heath, which the application site abuts, is designated as Metropolitan Open Land (MOL). This is, by definition, land which contributes to the physical structure of London by being clearly distinguishable from the built-up area; includes open air facilities which serve the whole or significant parts of London; contains features or landscapes of historic, recreational, nature conservation or habitat interest, of value at a metropolitan or national level; and/or is land forming part of a Green Chain. Meeting any one of these criteria qualifies land for MOL designation; Hampstead Heath meets all four. In addition, the Mayor of London has formally stated that he will, and Boroughs should, maintain the protection of Metropolitan Open Land (MOL) from inappropriate development.

The construction of three large semi-detached dwellings close to the boundary with this MOL will cause substantial harm to the character and amenities of Hampstead Heath, and will establish a highly damaging precedent for other gardens abutting the Heath.

In the Athlone House appeal decision of 20th June 2015 (APP/X5210/A/14/2220872) refusing that development, and subsequently upheld by the High Court, the Inspector concluded, in summary, that "I have found the proposal to be inappropriate development in the MOL which is, by

definition, harmful and should not be approved except in very special circumstances. I have also found harm to the openness of MOL. As Framework 88 confirms, substantial weight must be given to any harm to MOL.” The proposed development along the Millfield Lane edge of Hampstead Heath is significantly closer to the Heath than was the proposed development at Athlone House, and because of its proximity would be even more difficult to screen. It is therefore clear that the proposed new housing along the Millfield Lane frontage would cause significant harm to Hampstead Heath. There are no “very special circumstances” which could justify granting permission for a development which would cause significant harm and set an irresistible precedent for development elsewhere in the area on garden space abutting Hampstead Heath. If we understand correctly, one of the reasons given to justify the application is that the applicants and their families wish to live close to each other. This is irrelevant in planning terms, and cannot outweigh the harm it would cause to an ecological and heritage amenity of national importance.

4. Private Open Space

The site is on land designated in Camden’s own policies as Private Open Space, protected by Highgate Neighbourhood Plan. As demonstrated by the recently-submitted report by JFA Environmental Planning on behalf of FPRA, the proposals fail to meet policy OS1 and OS2 of the Plan. This report establishes that the ecological aspects of the development have been inadequately addressed by the applicants.

5. Overdevelopment

The calculations submitted appear to include the area of the important natural pond, the impact of the development on which has been covered in detail by other objectors, to reduce the proportion of the land which will be developed, but the reality is that it would constitute significant overdevelopment. The impact will be to transform the site from a heavily planted and treed area into what would effectively be a private housing estate with roads weaving through, it rather than houses sitting in a heavily planted area which constitutes a transition to the Heath.

Such extensive earth moving and basement digging would disrupt the hydrology of the spring-fed pond and its drainage onto the surrounding land. The harm which this would cause to the important Bird Sanctuary Pond and enclosure abutting the western edge of the site is addressed in detail by the City of London.

The application similarly fails to observe the requirements of policies of the Highgate Neighbourhood Plan, including DH2 which requires the ‘open semi-rural’ nature of the area to be maintained, and DH10, which specifically prohibits development in back gardens, the site currently forming the back garden of 55 Fitzroy Park.

6. Access and Vehicles

Unlikely development will only be served by one car per dwelling and not expected cycling will be used for anything but recreational purposes given its distance from public transport facilities

7. Ecology:

The site has an established grouping of trees integral to the local ecology. Further, the pond is an ancient feature present on 19th century maps and, the City of London consider, is fed by underground spring water which in

turn feeds into the Bird Sanctuary Pond. The felling of trees, reforming of the levels on the site, and installation of roads, paths and other new hard standing render it impossible that the ecology of the site, or of Hampstead Heath, would be enhanced by the proposals. The proposal for solar panels and green roofs does not seem compatible.

It therefore seems clear to us that this application fails to conform with local and national policy in a range of fundamental ways and must be refused.

The Kenwood Ladies' Pond Association (KLPA) endorses the position of the FPRA in relation to the omissions and misrepresentations in the submission and highlight the following concerns:

- The impact of construction traffic and potential congestion, disruption and hazard in Fitzroy Park, Merton Lane and Millfield Lane (all of which are used by swimmers and staff travelling on foot, bicycle, car and motorcycle). We believe that this is underestimated to a considerable extent in the application.
- In the long term, the increased traffic and congestion likely to be caused by five houses on the site. We believe the number of vehicles and eventual requirements for parking associated with the five new properties have been significantly understated.
- Although no mention of this is made in the proposals, we believe it is inevitable that, post-construction, the residents of properties on Plots 4 and 5 will seek to use Millfield Lane for vehicular access.
- The impact of groundworks and construction on Millfield Lane and its unique semi-rural character as a vital and historic part of the Heath landscape. The proposal to excavate more than 50% of the site and reduce levels by 2-3 metres (the equivalent of a massive basement that would, I assume, require a full Basement Impact Assessment), to fell the majority of the existing mature trees, to replace existing solid boundaries and planting with hedging, fencing and a 1.5 metre bund will be immensely disruptive. It will fundamentally and irrevocably change the appearance and character of the lane and allow spillage of light and noise from the new properties which will themselves be visible from the lane through their permeable boundaries.
- The proposal fails to acknowledge the proximity, vulnerability and environmental importance of the Bird Sanctuary Pond. Neither does it recognize the ecological significance of the historic pond within the grounds of 55 Fitzroy Park and the spring which feeds it before running across Millfield Lane and into the Bird Sanctuary Pond (and which has continued to flow strongly throughout this year's unprecedented hot and dry summer months).
- The impact on the rich diversity of local wildlife of the clearance, excavation and building on the site and the long term effects of trebling the area covered by buildings plus the increase in associated hard standing and other hard landscaping required.
- The plans for groundwater drainage and sewer discharge from the properties themselves and the increased areas of hard landscaping are not clear. These are of fundamental importance to the Highgate Chain of ponds.
- In our opinion the scale and density of the proposed development seems wholly inappropriate for this highly sensitive location and its significance as a heritage asset within a Conservation Area.

Following the submission of further information, the KLPA issued a follow up objection on the following grounds:

- We continue to believe that the density of the development proposed – demolishing one dwelling to replace it with five detached houses on the same site – is entirely inappropriate on a site so close to Hampstead Heath. We regard the increased built footprint and the erosion of private open space and wildlife habitat as unacceptable in this important and sensitive location.
- Our members can reasonably expect to be affected by the increased run off from the buildings themselves and from the increased area of surrounding hard landscaping. This has the potential to impact on Millfield Lane – the main access route to the Kenwood Ladies’ Pond – and the Bird Sanctuary Pond, with consequences for the entire Highgate chain of ponds and the important and sensitive wildlife habitat contained therein. We note the lack of clear and detailed information about run-off and drainage for the overall scheme.
- We remain concerned that the impact of the proposed scheme involving substantial excavation of what are effectively basements (even though described as ‘lower ground floors’) on the complex and sensitive hydrology of the area has not been adequately assessed.
- We note that the LUC Open Space Assessment of the proposal appears to focus largely on visual amenity. We question the assessment of the site in terms of the value of its biodiversity, heritage and the current trees and vegetation. We also question the assertion that the quantity of private open space has not been adversely affected and has been arguably increased (this argument seems to rely on the provision of green roofs to the new houses), and we dispute that the quality of the private open space will be improved.
- We observe that the proposal is a development on behalf of two families, one of which has owned the land for well over half a century and has presumably allowed the deterioration of the existing landscape and buildings assessed respectively as in a state of ‘largely unmanaged disrepair’ and ‘somewhat dilapidated’, and which they now seek to ‘improve’ by the proposed radical intervention and building programme.
- Although we have not had access to the site, we note that the tree protection plan – based on a site visit conducted more than twenty-four months ago – refers to the removal of thirty-nine trees, including two that are subject to Tree Protection Orders.
- We also note with great concern that the discrepancy of some fifty trees apparently omitted from the applicant’s tree survey dated May 2017 (when compared to the topographical survey conducted in November 2016) has still not been accounted for. We believe the true number must be verified before the application can be properly considered and the impact assessed.
- Given the scale of the excavation and construction proposed on the site, we remain concerned that it will prove difficult or impossible to protect the remaining trees currently designated as ‘No action required at present’. Although it is proposed to plant eighty-two new trees on the site at the end of the construction, it seems likely that it will take a long time for the visual appearance and, most importantly, the ecological and habitat value of the site to be restored in this important conservation area (if, indeed, restoration is possible given the scale of the proposed development).
- The revised views of the boundary treatment of Millfield Lane do not

give a clear sense of how the proposed metal railings will look when viewed from the lane itself. It appears that the proposed treatment will not be like-for-like and, even when planted and allowing for maturity after some years, will enable the spillage of light, noise and heat onto the lane from two substantial new dwellings constructed close to the boundary.

- The current plans – and the report from Royal Haskoning DHV on car parking provision – allow for one car for each of the houses on plots 1, 2 and 3 fronting onto Fitzroy Park, but do not refer specifically to car parking provision for plots 4 and 5 beside Millfield Lane. The Royal Haskoning DHV letter makes no mention of parking spaces shown on plots 4 and 5 and their access to Fitzroy Park.
- We note however that there are gates and points of access from both plots onto Millfield Lane, an unmade road with heritage value and a predominantly rural character running alongside the boundary of both the Kenwood Ladies' Bathing Pond and the Bird Sanctuary Pond, two of the most significant and sensitive sites of environmental interest and conservation on Hampstead Heath.
- The potential of the two properties proposed on plots 4 and 5 to radically increase vehicular traffic on Millfield Lane would present a threat to the integrity of the natural environment and to the character of a path regularly used by thousands of pedestrians (including many children and dogs), runners and cyclists to cross the Heath and access Kenwood House.
- During the proposed works – currently projected to take seventy-five weeks – we believe that the disruption to the area and local roads: the metalled section of Millfield Lane (newly narrowed by recent roadworks to expand the pavements and raise kerb height), Merton Lane and Fitzroy Park, caused by close to 1,500 estimated additional vehicle movements by construction traffic (with up to 40 movements per week during the excavation stage) will present considerable inconvenience and potential risk to our members and other Heath users, many of whom travel regularly on foot or by bicycle, even with the proposed use of traffic marshalls.
- We note from the Construction Management Plan that in assessing the impact of the proposed works and engaging with local stakeholders neither the KLPA nor the City of London have been included.
- Given the period of the house to be demolished, we are surprised that the CMP states that no asbestos is envisaged on the site as its use was widespread at what we understand to be the time of its construction.

City of London objects to the development on the following grounds:

- Potentially adverse impacts on the adjoining Hampstead Heath, particularly the Bird Sanctuary Pond.
- The proposals would also have a detrimental impact on the openness and character of the Millfield Lane area of Hampstead Heath, and would be detrimental to the landscape character, ecology and hydrology of Hampstead Heath and its environs.
- Given that the site is designated Private Open Land, the proposals do not protect, enhance and improve access to Hampstead Heath. Therefore, the City considers the proposals to be contrary to the Hampstead Heath Management Strategy (2018), and Policies A2 and

A3 of the Camden Local Plan 2017.

- The proposed development involves basement level works to a site in a sensitive location adjacent to Hampstead Heath and the Highgate chain of ponds. There is concern that groundwater and surface water flows will be adversely affected by the proposal. There are significant omissions and discrepancies within the submitted documentation that should be addressed by the Applicant before the application is formally determined by the Council.
- The Highgate chain of ponds, and the Bird Sanctuary Pond and Kenwood Ladies' Bathing Pond in particular, provides important wildlife habitats and highly valued recreation facilities that are particularly sensitive to contamination and therefore, unless it is established beyond doubt that the proposal would not result in contamination of the ponds during or following construction, the City considers that the potential adverse impacts of the proposed development considerably outweigh any benefits.

A follow up response was received on 02/01/2022 to say there remains a significant number of unanswered queries relating to the drainage strategy. They re-iterated their early objections.

London and Middlesex Archaeological Society (LAMAS) have objected on the following grounds:

The three houses planned to replace one old one on the Fitzroy Park side of the site are crowded together and are of a type entirely different from those in the rest of Fitzroy Park: they would detract from what is a carefully maintained Conservation Area. The two houses planned to be near Millfield Lane would destroy permanently the whole character and irreplaceable quality of this unique and secluded pedestrian route and wildlife refuge.

'Friends of Millfield Lane' have initiated a petition entitled 'Prevent Urbanisation of Hampstead Heath and Millfield Lane' which, at the time of writing, has 5,832 signatures objecting to the development proposal.

Site Description

The site is a large plot bounded by Fitzroy Park on the east side and Millfield Lane on the west, both private roads. There is vehicular access from both road frontages (currently Millfield Lane is not being used). The host property contains a large two storey house with garage and outbuildings along the eastern edge. The house dates from the 1970s and is not considered to have special architectural merit.

The garden is extensive and well vegetated with an old orchard, lawn and a large pond in the centre, a disused tennis court hardstanding on the western boundary, and numerous trees and hedges along all boundaries. It is thought that the pond and orchard date back from when the site was originally part of the Fitzroy Farm. There are two Tree Preservation Order (TPO) trees (walnut and hawthorn) on the western edge.

The site lies within an area of underground constraints including surface flow, groundwater flow and slope stability. It is located adjacent to Hampstead Heath, which has multiple designations including designated Public Open Space (titled 'Hampstead Heath, ref no 50 on adopted Local Plan map) at a Borough level, Metropolitan Open Land (MOL), a Site of Nature Conservation Importance (Metropolitan Grade level) and Site of Special Scientific Interest (SSSI).

The building is not listed but lies within the Highgate Village Conservation Area, where it is not identified as a positive contributor to its character and appearance. There are no other nationally or locally listed buildings in the vicinity. The site, along with all the others between Fitzroy Park and Millfield Lane (except Dormers and Fitzroy Lodge), are designated Private Open Space (POS) (titled 'Fitzroy Open Space', ref no 169 on adopted Local Plan map).

The site also lies within the boundary of Highgate Neighbourhood Plan adopted in September 2017.

Relevant History

Application site

8601626 - Extension to existing car port - **Granted 12/11/1986**

Neighbouring sites

51 Fitzroy Park

2009/1579/P - Construction of a two storey residential dwelling with lower ground floor and associated landscaping following the demolition of existing two storey residential dwelling (Class C3) - **Granted subject to a Section 106 Legal Agreement 21/12/2009**

2011/4153/P - Amendments to planning permission (ref: 2009/1579/P) granted on the 21/12/2009 for the construction of a two storey residential dwelling with lower ground floor and associated landscaping. Amendments to include extension of ground floor terrace area and new door associated with this, repositioning of rooflight on ground floor terrace, new small rooflight on first floor flat roof and reduction in size of rooflight on main roof, addition of two internal flues discharging at roof level, new window and recessed metal panel on west elevation, use of stone and brick on part of the west elevation, use of stone on south elevation and variations to timber and glass at first floor level, introduction of small ventilation windows, and use of stone on east elevation - **Granted subject to a Section 106 Legal Agreement 12/10/2011**

53 Fitzroy Park

2011/1682/P - Erection of a three storey single dwelling including basement level, green roof, solar panels and landscaping following demolition of existing dwelling (Class C3). **Granted subject to a**

Section 106 Legal Agreement 16/11/2012

2015/0441/P - Erection of a three storey single family dwelling including basement level, green roofs at first floor and roof level, solar panels at roof level and associated landscaping following the demolition of the existing part-two, part-three storey dwelling (Class C3). **Granted subject to a Section 106 Legal Agreement 04/07/2016**

2018/2104/P - Variation of Conditions 2 (plans), 3 (details/samples of materials), 8 (Noise Levels) and 13 (SuDS) to planning permission ref: 2015/0441/P dated 04/07/2016, for; Erection of a three storey single dwelling following demolition of existing dwelling (Class C3), to amend fenestration; lightwell added to north side; entrance relocated to the corner; bike storage relocated to south side boundary; metal spandrel changed to natural stone; external stair removed at rear lower ground floor level; metal balustrade changed to glass; cornices changed to plain natural stone; rear curved bay squared off at lower ground level; recessed blind window omitted and recessed wall revised on south elevation. **Granted subject to a Section 106 Legal Agreement 05/02/2019**

Fitzroy Farm Cottage, Millfield Lane

8903365 - Erection of a two storey detached dwelling house, garage and new access (at Fitzroy Farm Cottage). **Granted 26/07/1990**

9301270 - remodelling of the front and rear elevations plus erection of a one-storey extension at ground floor level to provide a swimming pool (at Fitzroy Farm Cottage) **Granted 21/07/1994**

The Water House, Millfield Lane

2011/4390/P - Erection of a new 2 storey plus basement dwellinghouse (Class C3) with garage, including associated green roofs and landscaping works, following the demolition of the existing dwellinghouse. **Refused 12/04/2016 on the following grounds:**

1. On the basis of submitted CBR data taken from Millfield Lane, the proposed intensive use of the lane for construction traffic would cause physical damage to the Lane's surface and would harm the long-term survival of the adjoining trees along the lane. It is also considered that, in the absence of further information to demonstrate otherwise, necessary mitigation measures to facilitate construction access, such as ground guards and vegetation pruning, would be likely to be harmful to the rural landscaped character and appearance of Millfield Lane and the wider conservation area.
2. It is considered that the proposed access by construction vehicles at the site's entrance, by reason of the associated vehicular movements within Millfield Lane, is likely to cause harm to users of the Lane and Ladies Pond and may cause harm to adjoining trees and thus the landscaped character and appearance of the lane and conservation area.
3. In the absence of sufficient evidence in the arboricultural report to demonstrate adequately to the Council's satisfaction that the veteran oak tree (T5) on the site will not be significantly harmed, it is considered that the development and its construction would harm the long-term survival of the tree which has a high amenity value, which would be detrimental to the character and appearance of Millfield Lane and the wider conservation area.
4. – 6. Reasons relating to absence of Section 106 legal agreement to secure Basement Construction Plan, car-capped housing and highway works.

2017/3692/P - Erection of a single storey side extension, 2 storey front infill extension, and part single part two storey rear extension, including facade and roof alterations to main house and front wing; erection of a side extension to outbuilding in rear garden to be used as ancillary habitable accommodation; erection of pergola carport at end of driveway; and landscaping works including external ramps. **Granted subject to a Section 106 Legal Agreement 13/04/2018**

Relevant policies

National Planning Policy Framework 2021

London Plan 2021

Camden Local Plan 2017

G1 Delivery and location of growth
H1 Maximising housing supply
H4 Maximising the supply of affordable housing
H6 Housing choice and mix
H7 Large and small homes
C6 Access for all
A1 Managing the impact of development
A2 Open space
A3 Biodiversity
A4 Noise and vibration
A5 Basements
D1 Design
D2 Heritage
CC1 Climate change mitigation
CC2 Adapting to climate change
CC3 Water and flooding
CC4 Air quality
CC5 Waste
T1 Prioritising walking, cycling and public transport
T2 Parking and car-free development
T4 Sustainable movement of goods and materials
DM1 Delivery and monitoring

Highgate Neighbourhood Plan 2017

SC1 Highgate's Housing Needs
TR2 Movement of Heavy Goods Vehicles
TR3 Minimising the Impact of Traffic Arising from New Development
TR4 Reducing the Negative Impact of Parking in Highgate
OS1 Highgate's Major Open Spaces
OS2 Protection of Trees and Mature Vegetation
OS4 Biodiversity and Highgate's Green Grid
DH2 Development Proposals in Highgate's Conservation Areas
DH6 Front Boundaries
DH7 Basements
DH8 Refuse Storage
DH10 Garden land and Backland Development

Supplementary Guidance – Camden Planning Guidance (CPG)

CPG Access for all (2019)
CPG Amenity (2021)
CPG Basements (2021)
CPG Biodiversity (2018)
CPG Design (2021)
CPG Developer contributions (2019)
CPG Energy efficiency and adaption (2021)
CPG Housing (2021)
CPG Transport (2021)
CPG Trees (2019)
CPG Water and flooding (2019)

Highgate Conservation Area Appraisal and Management Strategy (2007)

Open Space, Sport and Recreation Study (2014)

Hampstead Heath Management Strategy (2018)

Assessment

1. Proposal

- 1.1. Planning permission is sought for the demolition of no.55 Fitzroy Park and the erection of five detached dwelling houses with green roofs and solar photovoltaic (PV) panels comprising:
- *Plots 1-3* – three storey (incl. basement level) dwellings located on the frontage of Fitzroy Park
 - *Plots 4 and 5* – two-storey (incl. basement level) dwellings of bespoke design to the rear of the site adjacent to Millfield Lane, accessed via a private pedestrian access route from Fitzroy Park with pedestrian access also possible from a gate on Millfield Lane.
- 1.2. The proposed development includes the provision of a new accessway from Fitzroy Park to Plots 4 and 5 which would form the main access route for construction vehicles and then, following that, would be for pedestrian use only. Extensive hard and soft landscaping works are proposed including the provision of a site-wide drainage network; replacement of the concrete wall on Millfield Lane with soft landscaping; and tree removal and planting.
- 1.3. Plots 1-3 would have a single on-site car parking space located in the driveway of each property whilst Plots 4 and 5 would be car-free.

Revisions

- 1.4. During the scope of the application, the following changes have been made:
- Removal of dedicated car parking spaces for Plots 4 and 5.
- 1.5. In addition, a large amount of further supporting information has been provided to facilitate the assessment. This includes revised and further details on drainage and flooding (revised report and SUDS Proforma on November 2021).

2. Background

- 2.1. Pre-application discussions took place from late 2016 until the application was submitted in mid-2018. During this time the proposal has remained broadly similar (the erection of five houses) but there have been changes to the design; namely the decision to utilise one architectural practice to design all five homes to achieve a similar architectural language. Amendments were also made to the landscaping approach. This included replacing a vehicular access road to Plots 4 and 5 with a pedestrian footpath.
- 2.2. During pre-application discussions, the proposal went to Camden's Design Review Panel (an independent design panel run by Frame) twice. The most relevant feedback from this forum is summarised in the design section of this report.
- 2.3. This application was submitted prior to a formal pre-application response letter being provided and it is noted that, at the time of submission, agreement on several key issues had not been reached.

3. Issues for assessment

3.1. The main issues of consideration are:

- Principle of development - impact on open space and Conservation Area
- Design
- Land use and residential standards
- Affordable housing
- Biodiversity
- Basement considerations
- Energy and Sustainability
- Air quality
- Water and flooding
- Transport
- Amenity of neighbours

Statutory provisions

3.2 Beyond section 38(6) of the Planning and Compulsory Purchase Act 2004, section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the Listed Buildings Act”) are relevant. Section 72(1) requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of a conservation area when considering applications relating to land or buildings within that area.

3.3 The effect of these sections of the Act is that there is a statutory presumption in favour of the preservation of the character and appearance of conservation areas. Considerable importance and weight should be attached to their preservation. A proposal which would cause harm should only be permitted where there are strong countervailing planning considerations which are sufficiently powerful to outweigh the presumption. The NPPF provides guidance on the weight that should be accorded to harm to heritage assets and in what circumstances such harm might be justified. The two sections below assess the harm to heritage assets from the proposal. The balance of the harm against the benefits from the proposed scheme is discussed in the conclusions of the section below and end of this report.

1. Principle of development – impact on open space and conservation area

1.1. The primary consideration, before looking into the more detailed elements of the proposals, is whether the principle of five detached houses is acceptable on this area of designated Private Open Space (‘Fitzroy Open Space’, ref no. 169 - see extract below from Local Plan Policies Map), situated between Fitzroy Park and Millfield Lane on the fringes of Hampstead Heath.

1.2. Whilst a degree of the development would replace the built form of the existing house, the majority would be constructed on undeveloped, designated land that is currently used as a private garden for no.55 Fitzroy Park.



Map 1 (above): Highgate Neighbourhood Plan Area- private open spaces are shaded in light green

1.3. The designated Private Open Spaces on the fringes of Hampstead Heath are a long-term element of Camden's planning policy and the designation has endured multiple reviews of the local development plan, most recently through the adoption of the Camden Local Plan 2017.

1.4. Open space in the Borough is protected by policy A2 which seeks to protect, enhance and improve access to Camden's parks, open spaces and other green infrastructure. To achieve this, the Council will (bold added to the most relevant parts of the policy):

- a. **protect all designated public and private open space as shown on the Policies Map and in the accompanying schedule unless equivalent or better provision of open space in terms of quality and quantity is provided within the local catchment area;**
- b. *safeguard open spaces on housing estates while allowing flexibility for the re-configuration of land uses.....*
- c. **resist development which would be detrimental to the setting of designated open spaces;**
- d. **exceptionally and where it meets demonstrable need, support small-scale development which is associated with the use of the land as open space and contributes to its use and enjoyment by the public;**
- e. *protect non-designated spaces with nature conservation, townscape and amenity value, including gardens, where possible;*
- f. **conserve and enhance the heritage value of designated open spaces and other elements of open space which make a significant contribution to the character and appearance of conservation areas or to the setting of heritage assets;**
- g. **give strong protection to maintaining the openness and character of Metropolitan Open Land (MOL);**
- h. *promote and encourage greater community participation in the management of open space and support communities seeking the designation of Local Green Spaces through the neighbourhood planning process;*

- i. *consider development for alternative sports and recreation provision, where the needs outweigh the loss and where this is supported by an up-to-date needs assessment;*
- j. ***preserve and enhance Hampstead Heath through working with partners and by taking into account the impact on the Heath when considering relevant planning applications, including any impacts on views to and from the Heath; and***
- k. *work with partners to preserve and enhance the Regent's Canal, including its setting, and balance the differing demands on the Canal and its towpath”.*

- 1.5. At a neighbourhood level, the Highgate Neighbourhood Plan reinforces the protection of major open spaces, in this case the Heath, through policy OS1 which requires adjacent development to not be detrimental to the integrity, appearance or setting of the open space in terms of height, scale, massing, use of materials or function. The supporting text provides reasoning, *‘Highgate’s open spaces are special in this regard because the urban built form around them intrudes only minimally on the views into and out of them. This is largely because of the dominant nature of the many mature trees in the vicinity and the subservient scale of development around the periphery of the heaths and parks of the Plan area. This balance should be preserved to ensure that the special character of the open spaces of Highgate, and by extension of Highgate itself, is retained’.*
- 1.6. Policy DH10 of the Highgate Neighbourhood Plan relates to garden land and backland development, and has a presumption against the loss of garden land. The supporting text states *‘back gardens play an important role in the much cherished London townscape, contributing both to the ecology of the area and to a community’s sense of place and quality of life’* before going on to recognise the intense pressures that exist, particularly for housing development on backland and back gardens.

Assessment

- 1.7. The Council has sought Counsel’s advice on the application of policy A2 to assist officers in reaching a view as to whether the proposed development would comply. The advice is that, in context of this application, compliance hinges on whether or not the development allows for the protection of the unique value of the open space (sub-paragraph ‘a’ of the policy). Given the proposal does not involve open use for active recreational purposes requiring the re-provision of open space in the local catchment area, an assessment of the value of this particular designated open space is crucial to understanding whether policy A2 would be complied with.
- 1.8. Given the proximity of the open space to Hampstead Heath and its location within the Highgate Conservation Area, assessing the effect of the proposed development on the value of the designated open space and compliance with policy A2 also depends on how other sub-paragraphs are affected, for instance part ‘f’ which concerns the impact on the heritage value of designated open spaces which contribute to the character and appearance of conservation areas as well as parts ‘g’ and ‘j’ which concern the impact on the setting of Metropolitan Open Land and Hampstead Heath respectively.
- 1.9. It is inevitable that considerations of value, heritage and impact on Hampstead Heath are interconnected – for instance the value and role of the designated space is closely intertwined with its proximity to the Heath and its contribution to the rustic and peaceful character of this part of the Conservation Area. However, for the purposes of a comprehensive assessment, the analysis below will take each consideration in turn: whether the development would protect the site’s unique value; impact of the development on the Conservation Area; and impact on the setting of Hampstead Heath.

Protection of the site’s value

1.10. The Council's Open Space, Sport and Recreation Study (2014) assesses the value of open space having regard to its context, recreational function, structural role, amenity value, heritage/historic value, ecological and environmental role and cultural role. Appendix A of the Study groups all the designated open spaces into their primary typology based on their characteristics. Fitzroy Open Space (Open Space 169), which the application site lies within, is identified in the Study as having the primary role of Amenity Green Space. Such spaces are defined in the Study as including '*...informal recreational spaces and housing green spaces*' and includes large landscaped areas and domestic gardens. The criteria used to appraise the amenity value of open space is as follows:

- *Is it visible from parts of the surrounding area?*
- *Is it visually attractive?*
- *Does it have a clearly definable townscape value?*
- *Does it provide relief from the built up area?*
- *Site mitigates visual impact of unsightly land uses (buffer, bunding, screening)*

1.11. If open space was found to satisfy one or more of these criteria, then it is considered to offer "significant amenity value". The site evidently satisfies the first criterion – it is visible from the publicly accessible streets of Fitzroy Park and Millfield Lane – and further detail on how it is considered to meet the third and fourth criterions is provided below. It is noted that visual attractiveness is a subjective matter and opinion will inevitably differ on whether or not this is the case. However, regardless of how the site meets this particular criterion, it can still be concluded that the site has significant amenity value based on it satisfying the other requirements.

1.12. Criterions three and four are closely associated as the townscape value of Fitzroy Open Space lies in the relief it offers from the wider built-up area of Fitzroy Park and beyond. The supporting text of policy A2 (paragraph 5.33) recognises the importance of such designated space: '*Areas within wards with a more suburban character may also have significant concentrations of private open space which, although may not be accessible to the general public, provides relief from the built up area and contributes towards visual amenity.*'

1.13. Importantly here, the Fitzroy Open Space designation (along with the other designations along the Heath's fringes) secure a landscape buffer between the Heath and the more suburban character of nearby streets. The protection of the open space is crucial to ensure there is not overdevelopment up to the edge of the Heath which could result in an excessively suburban character being generated from the cumulative impact of schemes, and to maintain the perception of openness in views both into and from the Heath. Thus, a tranquil, semi-rural character is sustained which provides a robust setting for the Metropolitan Open Lane. It also allows opportunities for biodiversity corridors from the Heath to connect with wider green infrastructure, which is harder to establish, and sustain, where built form is involved. The impact on biodiversity will be assessed in detail in the 'biodiversity' section below.

1.14. In an effort to demonstrate that the amenity value of the site would be preserved, the applicant relies heavily on plot ratio, comparing the ratio of built to unbuilt space of the five plots at the application site to that of 16 plots in the surrounding area. The results demonstrate that, of the 21 surrounding plots, the application site plot ratios range between 10.9% to 18.5% (combined plot ratio of 14.1%) which fall within the lowest 9 of the 21 plots in the study. However, there are a few essential limitations to the analysis. Firstly, many of the plots – including much of Fitzroy Close, a more densely developed private cul-de-sac of late 20th Century properties – lie outside the open space designation. The plots excluded from the open space designation are: D, Q, B, J, C, U, R, M, S and P which equate to over half of the plots that formed part of the study. The conclusions drawn from the study are therefore informed by development that has occurred as part of a different policy context and does not provide a sound basis for assessment of the value of the open space. It is also noted that the existing 'baseline' plot ratio of 55 Fitzroy Park is not provided which, when assessing to what extent a designated open space would be protected, is a

significant consideration.



Image 1 (above): Site context existing (left) and proposed (right)

- 1.15. Whilst providing a helpful analysis in certain limited respects, plot ratio is not the only factor in determining whether development would protect the designated open space. Even if the study did demonstrate that the proposed development would accurately reflect other plot ratios within the open space designation, this does not indicate an absence of harm. Consideration must be given to the site's unique value. Looking more closely at the layouts of the plots in the study, it is possible to see that the area is characterised by plots of a lower density closer to the Heath, and denser plots further away. This is a key reason why the designated open space is situated closest to the fringes of the Heath and does not extend further east to Fitzroy Close for instance. Therefore, a significant element of the site's inherent value derives from the openness of the space which does not reflect plot ratios due to its important role as a buffer to the Heath's fringes.
- 1.16. In relation to the effect of the proposed development, the harm would originate mostly from Plots 4 (H on map) and 5 (A on map), which would clearly disrupt the rear building line established by Plot O, the existing building at no.55 and Plot K. Whilst Plots L and F are further forward than this line, the built form is set well back in the plot away from Millfield Lane.
- 1.17. Therefore, were this open space to be developed it would no longer be able to provide relief from the surrounding built up area and its townscape value would be greatly diminished. As such, the site's amenity value would not be protected by the proposed development.
- 1.18. The applicant argues there is precedent for similarly scaled development on nearby designated open space and refers specifically to previous planning decisions at 51 & 53 Fitzroy Park and The Water House (see planning history). Officers find the comparison to be unsound for two key reasons. Firstly, each of those proposals was for a replacement dwelling or extensions to an existing one rather than more extensive development of a residential curtilage involving a net uplift of homes and therefore is plainly distinguishable. Secondly, the private open space policy wording has changed over time. For example, 51 Fitzroy Park (ref. 2009/1579/P) was assessed against policy N2 of the Unitary Development Plan (UDP) (2000) which stated that the Council would not grant planning permission for the development of private open space unless it was for development ancillary to a use taking place on the land and for which there was a need which could not reasonably be satisfied elsewhere. The proposal was concluded to be a departure from the policy, but because there was no harm to the objectives of the policy, it was permitted. In

relation to the other applications, no conclusion was reached on whether the proposed development did or did not comply with the relevant development plan policies.

- 1.19. Notwithstanding the previous decisions, each application should be assessed on its own merits and the proposal is identified as not complying with policy A2, and this is not affected by decisions on other sites involving different proposals.

Impact on the Conservation Area

- 1.20. There is a close relationship between the open spaces within the area and the character and appearance of the Conservation Area. Part 'h' of policy D2 states that the Council '*will preserve trees and garden spaces which contribute to the character and appearance of a conservation area*'. Similarly, part 'f' of policy A2 refers to conserving the heritage value of open spaces which make a significant contribution to the character and appearance of conservation areas.
- 1.21. Conservation areas are designated heritage assets, and the Council has a statutory duty to protect them against harm unless the public benefits of the proposal convincingly outweigh that harm. To that end, the Council requires that development within conservation areas preserves or where possible, enhances the character of appearance of the area. The requirements of Local Plan policy D2 and the NPPF on heritage assets and the balancing exercise between benefit and harm are discussed further in the conclusion of this section and at the end of this report.
- 1.22. Policy DH2 of the Highgate Neighbourhood Plan (NP) requires development to preserve or enhance the open, semi-rural or village character where this is a feature of the area. This is particularly relevant to the application site.
- 1.23. There are also heritage considerations associated with the impact of the setting of Hampstead Heath, which is listed on English Heritage's Register of Historic Parks and Gardens. Under policy D2, the Council seeks to protect their setting.

Character assessment

- 1.24. To understand how the Conservation Area would be affected by the development, it is first necessary to analyse its character and significance. Owing to its elevated position, providing clean air, spring water and open spaces, the Highgate Conservation Area has been a popular place to live and visit since the 14th century. Highgate Village, the core of the Conservation Area, is centred around the High Street, which is lined with small-scale characterful houses with traditional shopfronts. Larger houses built in the 17th, 18th and 19th centuries cluster around the historic core.
- 1.25. Fitzroy Park forms sub-area 2 of the Highgate Conservation Area and forms a contrast with the village centre. The Conservation Area appraisal identifies the character of the area as '*deriving from the close relationship between the topography, the soft landscape and the groups or individual houses built within it. There is an overriding impression of heavy foliage and mature trees as well as the sense of open space denoted by the Heath at the bottom of the hill*'.
- 1.26. Fitzroy Park and its relationship with Hampstead Heath are inextricably linked, with the character of the western edges of the Conservation Area being highly defined by its proximity to the Heath's fringes. Fitzroy Park and Millfield Lane provide important pedestrian access to the Heath and introduce the Heath's qualities through their own character. The Conservation Area appraisal describes the character to be of an '*informal, unmade style, which give it a rustic appearance rare in the London suburbs*'. The statement continues to assert that '*this quality is important for the setting of both the Highgate Conservation Area and Hampstead Heath, and the impact on it of any proposed development will be a major factor in assessing the appropriateness of any development proposals*'.
- 1.27. Fitzroy Park runs from the northern part of the Conservation Area to the south where it meets

Millfield Lane and Hampstead Heath. It was once the carriageway to Fitzroy House which was a large Palladian Villa built in 1780 for General Charles Fitzroy. The house was demolished in 1828 and the land was sold as 'lots' which have gradually been developed for private housing. The area has altered to some degree; however, the network of roads, lanes and footpaths remain largely unchanged.

- 1.28. The Highgate Conservation Area appraisal notes that the spaciousness and 'rustic' quality of Fitzroy Park and the surrounding land is an important component of the Conservation Area's character. It is a physical reminder of the manor house that once stood on the land and the open spaces that surrounded it, as well as being an unusual and valuable landscape within the context of London and the Borough. These attributes add to the significance of the designated heritage asset.
- 1.29. The current character of Fitzroy Park is of large houses built during the 20th century, within generous landscaped gardens. Houses are some distance from the street itself with dense formal and informal planting forming a barrier. In addition, allotments line a large portion of the north-western part of the road creating a green and semi-rural landscape. The southern end of this private road has a distinctly leafy spacious suburban character, which is intrinsic to the character and appearance of the Conservation Area.
- 1.30. The character of Millfield Lane is maintained as a result of the open space designation of Fitzroy Open Space and the presence of Hampstead Heath on the western side. The lane is characterised by its unmade surface, large trees and informal planting and it has a highly treasured secluded and arguably rural feel. The designation ensures the built form does not encroach on the boundaries of the lane and that this rustic sensibility is maintained.
- 1.31. The character of the lane is derived in part from its proximity to the Heath, a highly treasured area of Metropolitan Open Land owned by City of London. At 800 acres, Hampstead Heath is the largest open space in the Borough, providing nearly half of the total area of open space. The Heath itself is protected from development via the City's own policies and management plan, whilst Camden's policies respect its significance through resisting development of the Heath's fringes.

Impact assessment

- 1.32. Plots 1-3 would be developed along the frontage of Fitzroy Park in the general location of the existing house, albeit broken into three buildings rather than a single massing. From the street they would appear as two storey buildings but would be three storeys to the rear owing to the sloping topography of the site. The buildings are set back from the street edge and generous planting shields much of the built form, although three driveways would be provided within the planted boundary. The arrangement is generally in keeping with the characteristics of Fitzroy Park, where large buildings sit behind dense foliage and often only glimpses of houses are possible. The massing would respect the established rear building line of the existing property and its neighbours, and would not encroach any further onto the protected open space.
- 1.33. It is recognised that the footprint and layout of Plots 1-3 are a departure from the established character of Fitzroy Park which largely consists of fewer larger buildings rather than greater smaller buildings; however, the landscaping would help mitigate how this is experienced from Fitzroy Park and avoid what some consultation responses fear would lead to an excessively suburban character.
- 1.34. The impact of Plots 4 and 5 is more problematic as built form would be introduced on a previously undeveloped part of the site and nearer Millfield Lane, eroding and urbanising the current rustic character. As seen on the plot ratio map provided above, the buildings on these plots would entirely disrupt the rear building line and result in built form closer to Millfield Lane than any other existing plot. Whilst the applicant asserts these buildings would not be well

appreciated from Millfield Lane, the verified views clearly show that built form would be partly visible through and above the soft landscaping proposed to replace the existing concrete wall. Although efforts have been made to moderate the impact through some degree of set back and landscaping, the presence of the buildings and notably their rooflines would nevertheless be felt along the lane at the expense of the unique virtually rural character that contributes so importantly to this part of the Conservation Area.



Image 2 (above): Wire-line image showing impact of proposals

1.35. In addition to the impact on the perception of the site, the proposals would have harmful implications for the historic value of the open space in and of itself. The space with its historic pond and orchard is a physical reminder of the history of the site. Once rural farmland belonging to the General Charles Fitzroy and connected to his Palladian Villas that was built in 1780, the site tells an important story of the evolution of the area and London. If built upon, that story would be lost along with the understanding of the land. This would have a harmful impact on the significance of the Conservation Area.

Impact on the setting of Hampstead Heath

1.36. Such is the significance bestowed on the Heath, it receives specific mention in the policy text of A2 (part 'j') which seeks to preserve and enhance it, including views from and to. Part 'g' also gives special protection to maintaining the character and openness of Metropolitan Open Land.

1.37. The level of protection bestowed on the Heath reflects its unique contribution to London's urban landscape. Covering over 800 acres, the Heath provides respite from the urban environment by being clearly distinguishable from built up areas. It comprises a range of spaces including wild and natural areas, heritage gardens and sporting and play facilities.

1.38. It is recognised that connection to Hampstead Heath is life-enhancing, contributing to mental and physical health, as it provides access to the outdoor space and allows opportunities for sports, recreation, nature and conservation. Through creating a 'green buffer', the designated open spaces around the Heath protect its unique character and function by protecting it against encroaching urbanisation and ensuring the quality and views of the Heath are not compromised.

1.39. Owing to the scale and siting of proposed buildings on Plots 4 and 5, which would be visually appreciated from Millfield Lane, the proposed development would harm the perception of the openness and character of the land. The Heath's ability to provide respite from the urban environment would be diminished and the connection to nature and the outdoors would be compromised, impacting the overall feeling of 'escapism'.

Conclusion

- 1.40. The principle of designating land as open space is to preserve a stock of the most valued open land in the Borough, capable of performing a range of open space benefits including the contribution made to the setting of other key designated spaces, in this case Hampstead Heath. Once developed on/built over, these benefits to the community and biodiversity are lost forever. To fully appreciate the significance of the open space designation, it is worth considering the approach taken to non-designated open space, for example typical gardens. Through part (e) of policy A2, such spaces are afforded policy protection and the Council resists the loss of an excessive part of a garden and the loss of garden space which contributes to the character of the townscape. The reason provided by supporting text para 6.37 is that '*gardens help shape their local area, provide a setting for buildings, provide visual interest and may support natural habitats. Therefore they can be an important element in the character and identity of an area (its 'sense of place')*'.
- 1.41. The above assessment has demonstrated that, owing to the visibility of the development (namely Plots 4 and 5 from Millfield Lane) and its impact on the role of the designated open space, its amenity value would not be protected. In terms of impact on the Conservation Area, the appreciation of the development from Millfield Lane would undermine the unique rural character and sensory experience that is intrinsic to this part of the Highgate Conservation Area. A key role of the open space is to provide a buffer between the Heath and the more urbanised character of Fitzroy Park and beyond. The development of the open space would remove the buffer and visibly encroach onto the fringes of the Heath.
- 1.42. Local Plan policy D2 is consistent with Section 16 (Conserving and enhancing the historic environment) of the NPPF 2021, which seeks to preserve and enhance heritage assets; it states that the Council will not permit development that results in harm that is 'less than substantial' to the significance of a designated heritage asset unless the public benefits of the proposal convincingly outweigh that harm.
- 1.43. Given the assessment outlined above, it is considered that the proposals would result in 'less than substantial' harm to the character and appearance of the Conservation Area and the setting of the adjoining Heath. It is recognised that the proposed scheme would result in additional housing, and as such, some public benefit would be derived from the scheme. However, weighing the harm caused as a result of the development against this public benefit, the proposal is considered to be contrary to Section 16 para 202 of the NPPF which seeks to preserve heritage assets.
- 1.44. It is considered that the benefits of the scheme would not outweigh the harm to the character of the designated open space and conservation area and the open setting of the adjoining Heath and MOL. Therefore, the proposed development is contrary to policies A2 and D2 of the Camden Local Plan and policies OS1, DH2 and DH10 of the Highgate Neighbourhood Plan.

2. Design and conservation

- 2.1. Camden Local Plan policy D1 on Design states that '*The Council will seek to secure high quality design in development. The Council will require that development:*
- a. respects local context and character;*
 - b. preserves or enhances the historic environment and heritage assets in accordance with "Policy D2 Heritage"... etc.'*
- 2.2. Para 7.2 of this policy is particularly relevant here as it says '*The Council will require all developments, including alterations and extensions to existing buildings, to be of the highest*

standard of design and will expect developments to consider:

- *character, setting, context and the form and scale of neighbouring buildings;*
- *the character and proportions of the existing building, where alterations and extensions are proposed;*
- *the prevailing pattern, density and scale of surrounding development;*
- *the impact on existing rhythms, symmetries and uniformities in the townscape;*
- *the composition of elevations;*
- *the suitability of the proposed design to its intended use;*
- *inclusive design and accessibility;*
- *its contribution to public realm and its impact on views and vistas; and*
- *the wider historic environment and buildings, spaces and features of local historic value.'*

2.3. The previous section of this report on the impact on open space and the Conservation Area has already set out why the principle of the development is considered unacceptable; however, the detailed design of the proposed buildings is addressed (on a without prejudice basis) in this section (below).

Plots 1-3

2.4. Plots 1-3 are located in a similar position to the existing house (proposing to be demolished) and face Fitzroy Park. Each house has two visible storeys facing the street and due to the topography, three storeys to the rear. Each building differs slightly in appearance but are similar in scale and volume. The buildings have a five-metre gap between them, allowing views into the rear gardens and the pond.

2.5. The buildings have a relatively simple form. The volumes allow for recessed elements that provide contour and relief. The general composition of each building is acceptable. Building materials are uncomplicated, with brick elevations and metal framed windows. There is some metal cladding to the front and access doors are of timber. The material palette is considered fitting for the context.

2.6. The buildings are set back from the street edge and the applicant's Design and Access Statement shows generous planting that shields much of the built form. This is in keeping with the characteristics of Fitzroy Park, where large buildings sit behind dense foliage and only glimpses of houses are possible. Each building has a hardstanding for car parking, which is regrettable and counts against the merits of the proposal; however, these have been carried over from the existing occupiers (see the 'Transport considerations' section of this report (below)).

2.7. As mentioned in the previous section (above) on open space, the proposed buildings deviate from the plot layouts of the surrounding area which largely consist of single properties in generous gardens. Various consultees expressed this could lead to an excessively suburban feel.

2.8. There are no fundamental objections to the development of Plots 1-3 as the total massing is generally consistent with that of the existing building and the designs are sensitive to the context.

Plots 4 and 5

2.9. Plot 4 is located to the south of the site. It is to the rear of Plots 1-3, and has a boundary facing south, another running parallel to Millfield Lane and another to Plot 5. The building is two storeys and responds to the topography of the site by being slightly sunken into the landscape. The top storey facing Millfield Lane is stepped back.

2.10. The building would be constructed with brick elevations punctuated by slender, vertically orientated windows. Access to the building is from a staircase to the north of the plot that leads from ground to the partially lower ground level of the building. The southern elevation would mostly be glazed, with windows and doors looking out to the garden.

- 2.11. The building is generally of an acceptable detailed design and responds to the topography. However, there would be a materially harmful impact on the Highgate Conservation Area and Hampstead Heath, as has been addressed in the previous section (above).
- 2.12. Plot 5 is located to the rear of the site, roughly in the position of the existing tennis court. The building faces the pond to the east, has a parallel boundary with Millfield Lane to the west, faces Plot 4 to the south and the neighbouring property to the north. The building is two storeys and responds to the changing levels of the land by being partially sunken into the landscape. The elevation to the pond appears as one storey, all other elevations have two visible storeys.
- 2.13. Concerns were raised by the Camden Design Review Panel (reviewing the scheme on behalf of the Council) regarding the proximity of the building to the pond, which is an historic feature within the site. It was generally felt that the pond needed some 'breathing room' in order for its status within the landscape to be fully appreciated. As a result, the elevation facing the building has been pulled back from the pond by creating a curve.
- 2.14. The building would be constructed from a warm coloured brick to complement others on the site. There would be metal, bronze coloured, finned elements that provide architectural interest. Windows are metal framed in a bronze colour to match the fins.
- 2.15. There are no fundamental objections to the detailed design and architecture of Plots 4 and 5. Notwithstanding the detailed design merits however, the principle of development in these locations remains unacceptable and contrary to policy A2 as well as harmful to the character of the Conservation Area and setting of the adjacent Hampstead Heath.

3. Land use and residential standards

- 3.1. The Council seeks to maximise the supply of housing and regards self-contained housing as the priority land use of the Local Plan. Given the residential character of the surrounding area, there is no objection to the principle of new residential dwellings in this part of the Borough. However, the Council does not seek housing at any cost and needs to ensure that development protects the quality of the environment, respects the amenity of neighbours and meets a range of other planning objectives. For reasons explained in the above section (2. Principle of the Development), the application site is not considered suited to development of this scale.
- 3.2. Policy H7 is concerned with the dwelling sizes of proposed residential development. It requires development to (i) have regard to the Dwelling Size Priorities table and (ii) provide a mix of large and small homes. For market homes, the highest priority dwelling sizes are 2 and 3 bed. All five houses would provide large family homes with a minimum of 4 bedrooms. Whilst not complying with the highest priority sizes, there is demand for homes of all sizes. In terms of the second part of the policy, the development would provide 5 large homes with no provision of smaller units. Given the relative scale of the residential development, the mix of home sizes is not considered to warrant a reason for refusal in this instance.
- 3.3. The five houses would provide a good standard of living, meeting and exceeding the minimum national space standards for the relevant occupancy levels. The homes would receive good levels of daylight, outlook and benefit from external amenity space.
- 3.4. Policy H6 requires 90% of all dwellings to meet M4(2) and 10% to meet M4(3) criteria. All plots with the exception of Plot 4 would comply with M4(2). Owing to accessibility limitations, Plot 4 would achieve M4(1). On balance, considering the site circumstances, this is considered acceptable.

3.5. Plots 1-3 would have a bin store to accommodate waste and recycling bins located within the front garden in an accessible but non-prominent location. Plots 4 and 5 would share a larger bin store located in the car parking area to the north of plots 1-3. The provision is considered acceptable.

4. Affordable housing

4.1. Policy H4 expects a contribution to affordable housing from all developments that provide one or more additional homes and involve a total addition to residential floorspace of 100sqm GIA or more.

4.2. In this case, the total floorspace of the five new houses is 1344 sqm GIA and the existing building is 425 sqm resulting in a net uplift of 919sqm. The development is therefore required to make a contribution to affordable housing. For schemes of fewer than 10 additional units, the Council will expect a contribution calculated based on a sliding target as a percentage of floor area starting at 2% for one home (measured as 100sqm GIA of C3 floorspace) and increasing by 2% for each 100sqm of additional GIA added to capacity. The contribution for this site is therefore 18% which results in an affordable housing floorspace target of 165.42 GIA. This is then multiplied by £5,000 (payment-in-lieu rate for affordable housing at the time of writing) in order to obtain an affordable housing contribution of £827,100.

4.3. Were planning permission to be granted, £827,100 would be secured by Section 106 legal agreement; however, in the absence of such agreement, the lack of a contribution to affordable housing supply constitutes a reason for refusal.

5. Biodiversity

5.1. Policy A3 (Biodiversity) seeks to protect nature conservation sites and safeguard protected and priority habitats and species; resist development that would directly or indirectly result in the loss or harm to a designated nature conservation site or adversely affect the status or population of priority habitats and species; and seek the protection of other features with nature conservation value.

5.2. In addition to planning policy, it is noted that consideration of protected species is a requirement of UK and international law enacted under various pieces of legislation. The presence of protected species is a material consideration and the Council has a statutory duty to have regard to the purpose of conserving biodiversity, particularly where there are protected species and habitats.

5.3. The site is located within close proximity to the Hampstead Heath Site of Important Nature Conservation (SINC) which is approximately 15m from the site's boundary at the closest point of Millfield Lane. It is noted that the site itself is identified as a SINC (Metropolitan Level) on the Policies Map, which is referred to in several consultation responses; however, this is an error. Hampstead Heath SINC, in reflection of its significance, is graded at Metropolitan level which is the highest of four SINC categories. Sites of Metropolitan Importance contain the best examples of London's habitats and signifies a site that provides a significant contribution to the ecology of an area. Given the site's proximity to the Heath, there is potential for the proposals to result in various impacts on the SINC.

5.4. Whilst the site is not identified as a SINC itself, it nevertheless has significant biodiversity value owing to its traditional orchard, woodland and ponds which are priority habitats that support a multitude of flora and fauna including protected species including bats, toads, grass snakes and birds.

5.5. An ecological survey was submitted with the application that comprises surveys of various species and habitats along with an explanation of proposed mitigation measures. The Council's

Nature Conservation Officer has reviewed the submission and sought clarifications and further information on a number of issues. There is an overlap with other supporting information including the Construction Management Plan (CMP), which outlines how contamination during the construction phase would be avoided, and the Hydrological and Hydrogeological Impact Assessment which outlines how the drainage strategy would maintain inflows and outflows at current levels.

- 5.6. The site is home to a number of protected species and habitats which could be impacted by the proposals during site clearance and construction stage but also post-completion once the space is used in a different way to how it is currently.

Bats - The site is highly used by various species of bats and a number of locations on the site including around the main building and certain trees were identified as having High Bat Roost Potential. Emergence/re-entry surveys were carried out close to these locations and no bat roosts were confirmed. Since the submission of the application, an updated bat roost assessment has been provided which has been reviewed by the Council's Nature Conservation officer who advises that it confirms the findings of the initial survey.

Birds - The Ecological Assessment states "*The Site was comprised of habitats which provided optimal foraging and nesting opportunities for local common garden and woodland bird species.*" Given this statement, the lack of any further survey/assessment of the impact on birds is considered to be an omission, particularly as species of principal importance may be present. However, further survey work could be secured by a condition (if permission were to be granted) that requires the submission of a Construction Environmental Management Plan (CEMP).

Grass snakes – The survey has identified grass snakes on the site and the proposals are considered to adequately mitigate the impact on these; however, as a protected species, a protection plan that sets out how harm and killing would be avoided during construction is expected. This could be secured by a condition (if permission were to be granted) that requires the submission of a CEMP.

Great Crested Newts - Given that there are no records of Great Crested Newts from the Heath (despite wildlife monitoring), or indeed no records anywhere near Camden, and the negative eDNA test for the on-site pond, no further Great Crested Newt survey work is necessary.

Orchard – The fruit trees form a traditional orchard, which is identified as a habitat of principal importance. The ecological assessment states that '*the orchard provides a dense canopy cover which is likely to be of value to common garden and woodland birds in particular as well as pollinating insects. The fruit trees are in relatively good condition with minimal deadwood, which would otherwise provide enhanced habitats for invertebrates in particular*'. Over 50% of the orchard would be lost in order to facilitate the development, reducing the habitat from 510sqm to 237sqm. This is identified as harm to the habitat of principal importance, contrary to policy A3.

Pond – there is a heavily vegetated pond in the north of the site. Its relationship with the wider water environment is discussed in the 'water and flooding' section of this report (below). Direct impacts would be avoided through the siting of the proposals which allow for the pond and associated bankside habitats to be fully retained. The risk to the pond habitat stems from impacts of the proposals on the local hydrological conditions that could impact inflows and outflows. In addition, there is a risk that the pond could be contaminated during the construction stage or post-completion from the access drive via surface water runoff. Officers have reviewed the information submitted with regards to the hydrological impact assessment (see 'water and flooding' section below) and consider sufficient measures would be put in place to avoid harm.

Proposed enhancement

- 5.7. Opportunities have been taken in the landscaping to increase areas of native planting, including

woodland, and enhancing the pond environment. However, a number of times in the Ecological Assessment it is stated the use and management of the site as a garden, including disturbance by pets, limits the value of the site for biodiversity. The proposal is for the site to serve as a garden to five households which is expected to significantly increase the intensity of this disturbance and subsequently limit the effectiveness of the mitigation proposed.

- 5.8. Considering all information relating to the existing and proposed biodiversity of the site, the proposal is considered to result in harm to protected habitats (orchards) contrary to policy A3 of the Camden Local Plan 2017.

Trees

- 5.9. In total, 39 trees are proposed for removal in order to facilitate the development with 14 of these being orchard trees. This includes 3 category B trees, 31 category C and 5 category U. Two category C trees are protected by a Tree Preservation Order (TPO) although the Arboriculturalist argues they are not of the quality expected by trees with a TPO. The 5 category U trees are recommended for removal regardless of the development due to their poor conditions and short life expectancy. In their place, it is proposed to plant 82 new trees with diversity in terms of age and species.
- 5.10. Whilst the number of removals is substantial, the majority of the trees are in relatively poor condition and situated away from the road and of low visual amenity value. The proposed replacements would be locally native species or, in the orchard area, traditional varieties of fruit tree. In arboricultural terms, the proposed tree planting is considered to outweigh the loss; however, it is noted that the loss of orchard trees are considered unacceptable in ecological terms as the replacement trees would not mitigate against the loss of the protected habitat.
- 5.11. In terms of tree protection of trees to be retained during the works, temporary fencing would be installed until the works have been completed. Trees along Fitzroy Park itself are not included in the tree protection plan and method statement; however, the road is tarmacked and the trees do not seem to have been negatively impacted by the numerous domestic vehicles or those associated with other developments that have taken place on the road over a significant time period.
- 5.12. The Council's Tree Officer considers the tree protection plan and method statement to be adequate to demonstrate that the retained trees on-site would be protected during implementation should the scheme be approved. Were planning permission to be granted, a condition would require the tree protection measures to be installed prior to commencement.
- 5.13. Objections have referred to a discrepancy between the number of trees shown on the topographical survey (121 trees) and the arboricultural survey (75 trees). Based on a site visit, the Council's Tree Officer is not of the opinion that 46 trees are missing from the arboricultural survey or have been removed without consent. Rather it is probable that the topographical survey, which is not a BS:5837 survey, has illustrated multi-stemmed trees as separate clusters of stems.
- 5.14. Further information was received from the FPRA during the application stage which disputed the feasibility of the drainage network in close proximity to the roots of both existing and proposed trees. The Council's Tree Officer has reviewed this information and, whilst he agrees that the roots would be within influencing distance of the drains, does not identify a cause for concern based on the fact that the roots would have a much wider coverage and depth than the report suggests. Assuming the drains are properly maintained, this would not be an issue.

Basement considerations

- 5.15. All five of new dwellings would include a part subterranean lower ground/basement level, a result of the buildings being set into the sloping ground.
- 5.16. Policy A5 of the Local Plan on Basements and associated CPG guidance, as well as policy DH7 of the Highgate Neighbourhood Plan, requires all new basements to be assessed to ensure they maintain the structural stability of the building and any neighbouring properties, avoid adversely affecting drainage and run-off or causing other damage to the water environment, and avoid cumulative impacts on structural stability or the water environment in the local area.
- 5.17. A Basement Impact Assessment (BIA) was submitted and independently reviewed by the Council's auditors Campbell Reith. Following the submission of additional information, the following conclusions were made:
- The BIA addendum has been prepared by well-known firms of engineering consultants using individuals who possess suitable qualifications.
 - The BIA has confirmed that the proposed basements would be founded on London Clay and that the basement of buildings on Plot no. 4 and no.5 would be embedded in the Superficial Deposits.
 - The BIA states a bored or CFA piled foundation is the viable foundation solution with suspended floor slab. It is accepted this would address any issues caused due to heave and shrinkage of soil.
 - It is accepted that the stability of slope and retaining wall next to the man-made pond, particularly under proposed surcharge loadings, is beyond the scope of the BIA. However, as the pond is an important catchment for the locality, it is suggested that a detailed assessment be carried out for any such proposals to eliminate any adverse impact on the pond.
 - Based on the additional information provided, it was confirmed that the stability of Fitzroy Park Road and other neighbouring sites would not be affected as a result of the basement works.
 - Groundwater monitoring data is presented within the BIA addendum and it is accepted that the groundwater present is perched in the Made Ground. Mitigation measures to offset the potential for the basements to impact groundwater flows are presented. It can now be confirmed that the basement proposal would not have any impact on the local hydrology and hydrogeology.
 - A detailed review of the Sustainable Urban Drainage (SUDS) proposal is beyond the scope of the audit. It is strongly suggested that a detailed assessment and review be carried out for the SUDS proposal for incorporation within the detailed design.
 - Whilst significant engineering measures require to be developed in detail, on the basis of the original BIA documents and additional information presented, it is accepted the BIA meets the requirements of CPG Basements.

Water and flooding

5.18. Open green spaces have an important role to play in Camden's drainage network as they slow the passage of rainwater in turn reducing the risk of surface water flooding during intense rainfall events. Policies CC2 and CC3 require development to not increase (and wherever possible reduce) surface water run-off through increasing permeable surfaces and the use of Sustainable Drainage systems (SUDS) in line with the drainage hierarchy to achieve a greenfield run-off rate where feasible. The drainage hierarchy is as follows:

1. store rainwater for later use
2. use infiltration techniques, such as porous surfaces in non-clay areas
3. attenuate rainwater in ponds or open water features for gradual release
4. attenuate rainwater by storing in tanks or sealed water features for gradual release
5. discharge rainwater direct to a watercourse
6. discharge rainwater to a surface water sewer/drain
7. discharge rainwater to the combined sewer

5.19. Where basements are proposed it should be demonstrated that the basement excavation would avoid adversely affecting drainage and run-off or causing damage to the water environment. This is because basements can affect the ability of the ground to absorb rain when soil is replaced by an impervious structure.

5.20. The site is located in a particularly sensitive location as far as drainage is concerned as it is within the catchment of the Bird Sanctuary Pond of Hampstead Heath, an important wildlife reserve. The Bird Sanctuary Pond is one in the chain of Highgate Ponds that feed the River Fleet. Furthermore, there is an historic artificial pond on the site that collects surface water from the Fitzroy catchment. Its level is controlled by a small weir which is discharged over Millfield Lane into the wetland area of the nature reserve and ultimately into the Bird Sanctuary Pond. The on-site pond is therefore an important link in the wider surface water drainage system.

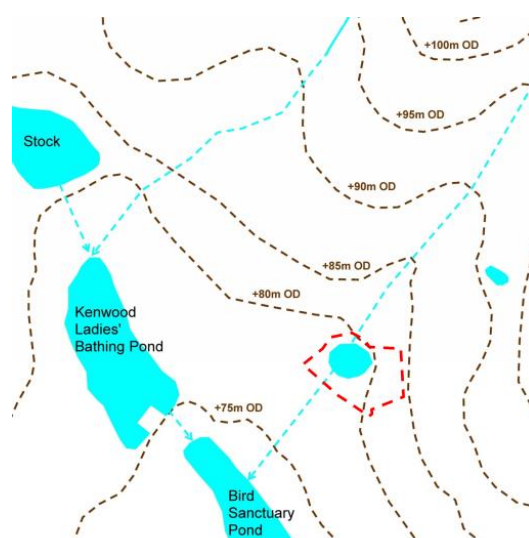


Image 3 (above): Catchment map

5.21. A Flood Risk Assessment (FRA) and SUDS strategy have been submitted with the application. Owing to the level of detailed design involved with a drainage strategy, the submissions anticipate that a full detailed strategy would be completed as part of a pre-commencement strategy. The concerns of this assessment therefore is to ensure that the various issues associated with the delicate water environment are resolvable and sufficient details have been provided at this stage to give officers comfort that harm would be avoided.

5.22. The proposals seek to preserve the pond and develop the five houses around it, each sunken into the slope thereby comprising a subterranean/basement element. Each building would incorporate a green roof and rainwater harvesting. Despite an increase in built form, there would be a minor increase in permeable land as a result of the new development due to the integration of soft landscaping and blue/green roofs.

Surface water flow and disposal

5.23. Evidence demonstrates that the pond on-site is predominantly fed by surface run-off and to a lesser extent perched groundwater. As such, the new development must ensure that the flows into and out of the pond are maintained. Two separate drainage systems would be in operation with the first conveying flows from the hardstanding for vehicles around Plots 1-3 to the public combined sewer on Fitzroy Park. This would help prevent pollution arising from water contact with vehicles. The second system would involve the SUDS directing the run-off from most of the garden and landscaped areas surrounding Plots 1-3 into the pond. A linear swale along Millfield Lane would capture surface run-off from Plots 4 and 5 and be directed towards the main drainage route from the pond. The swale would use percolation and infiltration to discharge water runoff from the site to the Heath over Millfield Lane with the outflow being controlled by the existing pond

weir arrangement. Run-off from the site currently discharges to the Heath over Millfield Lane.

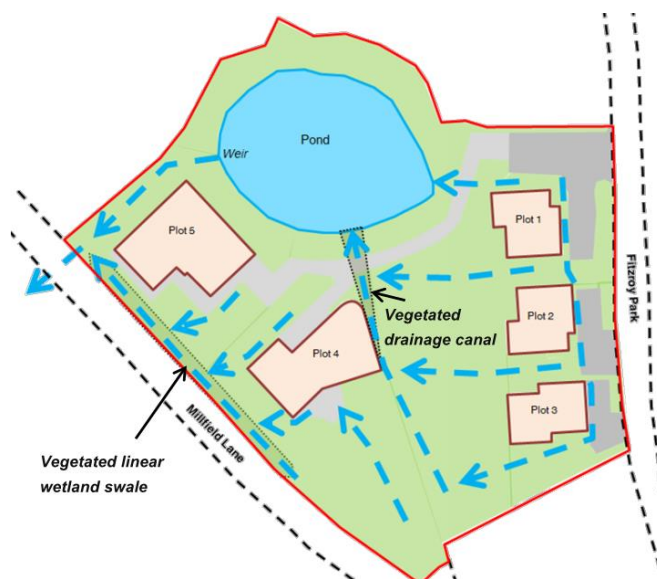


Image 4 (above): Surface water flow map

5.24. At present the area around the existing house and driveway drains into the combined sewer that runs beneath Fitzroy Park, and the remainder of the site drains across Millfield Lane to the Heath. The proposed situation would largely follow the existing principles with runoff from the paved car parking areas being discharged to the combined sewer running beneath Fitzroy Park via attenuation and a hydrocarbon interceptor and runoff from the proposed blue/green roofs and remaining paved areas discharging through the attenuation/infiltration trench via percolation within existing made ground and superficial deposits to the Heath. Attenuation is proposed in several different ways using storm water tanks (adjacent to Fitzroy Park and Millfield Lane) and blue roofs (on the roofs of the houses).

Groundwater flows

5.25. Owing to the impermeable nature of the London Clay that underlies the site, groundwater presence is limited to permeable areas of material within the superficial deposits within the made ground. The groundwater leaving the site is an important catchment source for the sensitive wetland areas of the nearby nature reserve and the chain of Highgate Ponds beyond. The proposed basements would obstruct groundwater flow. It is proposed to mitigate this by providing permeable material surrounding the basements and foundations which would allow groundwater to route around the built form through the superficial deposits following the natural valley into the Heath. Furthermore, the pond within the site boundary is fed via surface water and perched groundwater and the proposed development is unlikely to prevent groundwater flows from reaching the pond.

Attenuation

5.26. To ensure that greenfield run-off rates are not exceeded, attenuation storage would be included as a SUDS element. This would take the form of stormwater tanks adjacent to Fitzroy Park (for surface water run-off from the parking areas) and Millfield Lane. Attenuation would also be provided on the roofs of the houses using blue roofs.

Pollution

5.27. Where water is discharged into a water course rather than a sewer/drain, potential contamination must be considered. In this case, contaminants could end up causing harm to the Bird Sanctuary Pond and beyond. Contamination has potential to occur during the construction phase or once complete.

- 5.28. Temporary sheet piling and a trench drainage system are proposed to control ground water flows within the site. An impermeable water retention bund is also proposed around the excavations for Plots 4 and 5, with any water collected within the excavations to be analysed prior to disposal to the combined sewer, via settlement tanks. The draft CMP includes an initial proposal for how contamination would be avoided during construction and this would be worked up in more detail for the final submission (if planning permission were to be granted).
- 5.29. Once the any potential development is in operation, the parking areas would be a potential source of contamination and the drainage strategy ensures that the water run-off from these areas would be prevented from mixing with groundwater flows and directed via a system of interceptor drains to a combined sewer.

Foul drainage

- 5.30. It is intended that sanitary effluent would be collected on-site via traditional gravity pipe networks. There would be two foul sewer networks. Effluent from Plots 1, 2 and 3 would be collected in a traditional gravity sewer and discharge to the combined sewer that runs beneath Fitzroy Park. Effluent from Plots 4 and 5 would be collected in a pumping chamber and pumped through a rising main to the existing combined sewer that runs beneath Fitzroy Park. It is expected that the infrastructure would be adopted by Thames Water.

Assessment of SUDS

- 5.31. The SUDS proforma has been reviewed by the Local Lead Flooding Authority (LLFA) and following further clarifications and additional information, demonstrates that the proposal would achieve greenfield runoff rates.
- 5.32. There is a total storage volume of approximately 160.7sqm which comprises:
- 35m³ in the attenuation tank
 - 125.7m³ in green and blue roof storage (conservative assumption, subject to final design)
- 5.33. Calculations have been provided to demonstrate that the capacity of the attenuation that would be provided has been calculated on the basis of the required standard (i.e. 1 in 100 year plus 40% climate change). This is supported by indicative infiltration rate data based on actual site conditions, which support the assumptions made in earlier submissions.
- 5.34. The City of London have been involved in discussions as to how best to deal with water that runs over Millfield Lane and have objected to various engineered proposals that have come forward, including a previous proposal for a pipe that runs underneath the Lane. A swale allowing for discharge over the lane (as per the existing situation) is proposed on the grounds that it a more natural solution. City of London remain opposed to the proposal; however, officers consider that given the swale would be located within the site ownership (but outside the plot boundaries for ease of maintenance) and the discharge has been demonstrated to be consistent with natural flows, the approach is acceptable on balance. It is possible that separate permissions may have to be sought from City of London but this sits outside the planning process.

Flood risk

- 5.35. Policy CC3 outlines how the key flood risk to Camden is from surface water flooding following periods of intense rainfall when the volume and intensity of rainfall events exceed the capacity of the drainage system. Groundwater flooding is rare and the application site is not situated in a part of the Borough where this has been recorded. The development site is not located in one of in Borough's 12 Local Flood Risk Zones; however, the site is at risk from surface water flooding and the Environment Agency's Surface Water Flood Map indicates that the site ranges between very

low (<1 in 1000-year rainfall event) and high risk (1 in 30 year rainfall event) with the most at risk areas in the vicinity of the pond.

5.36. The design of the houses integrates flood mitigation measures in the form of local landscaping which would be used to direct any surface water flooding away from Plots 4 and 5 and to a designated overland flood route to the north of Plot 5.

Conclusion

5.37. After multiple reviews and provision of further information and clarifications, Metis (consultants acting on behalf of LLFA) consider the information provided to be sufficient to meet planning requirements and ultimately demonstrate potential for harm to the local water environment to be avoided. It is noted that objections remain on flooding and drainage; whilst they have been taken into account, they are not considered to result in a further reason for refusal. Were planning permission to be granted, the following information, which would be worked up as part of the detailed design stage, would be secured by condition:

- An updated drainage layout plan with details of the capacity of the green/blue roofs. Engineering plans should be updated accordingly along with supporting surface water calculations provided for each of the SUDS and critical drainage elements, including the flow control features.
- Calculations to demonstrate the hydraulic performance of the entire SUDS network, including the proposed pipe network, for the 1 in 1 year, 1 in 30 year, 1 in 100 year and 1 in 100 year plus 40% climate change.
- Demonstration of how cross-contamination between the surface water drainage and the foul network will be prevented.
- Details of how the surface water attenuation would be designed to prevent storage being taken up by groundwater during periods of high groundwater levels on the site.
- Written confirmation from Thames Water that there is sufficient capacity existing in the network, and the proposed point of discharge and discharge rate are acceptable.
- Evidence to demonstrate sufficient consultation with the City of London Corporation on the detailed design of the drainage system.
- Provide correspondence from Thames Water regarding acceptance of the proposed new pump chamber and details of its management and maintenance to demonstrate how it would be secured for the lifetime of the development and who would be responsible for ensuring it is maintained.
- Provide details for management of flood risk during construction, including measures to avoid off-site runoff and contamination (to be reflected in an updated CMP).

Sustainability

5.38. In line with policies CC1 and CC2, the Council require development to incorporate sustainable design and construction measures. In policy terms the proposed development is recognised as a medium residential new build (5-9 units and between 500-1000sqm net additional floorspace). As such, Energy and Sustainability statements are required to demonstrate how the development would meet a range of policy requirements.

5.39. The submitted energy strategy demonstrates that the development would exceed the requirement of a 19% carbon reduction and towards Zero Carbon, as encouraged by the Camden Local Plan. It would also exceed the requirement for at least 20% reduction in CO2 from on-site renewables in the form of high efficiency solar PV panels. Were planning permission to be granted, further information on the PV panels would be secured by condition.

5.40. The sustainability plan sets out the results of an overheating analysis; materials, sourcing and waste, green infrastructure and biodiversity; and water efficiency and SUDS. The Council's Sustainability Officer confirmed that all elements are expected to meet our requirements, subject

to further details on the green roof which would otherwise be secured by condition (if permission were to be granted).

Air Quality

- 5.41. An Air Quality Assessment has been submitted with the application and reviewed by the Council's Air Quality officer.
- 5.42. The scheme is not in a recognised 'poor air quality' area or an area experiencing annual concentrations within 5% of the Air Quality objectives. It is not a major scheme and there are no 'significant' changes proposed (e.g. CHP/biomass, major traffic changes) according to the criteria of policy CC4 of the Local Plan. The requirement for a full assessment of the impact and associated mitigation on future occupants and the local area is not considered necessary.
- 5.43. In terms of the construction impact, the scheme is assessed as 'Medium' risk. Were the application to be approved, a condition would require air quality monitoring to be implemented on site. Mitigation measures relating to air quality impacts would also be dealt with by a CMP (that would be secured as a planning obligation if permission were to be granted).

Amenity of neighbouring occupiers

- 5.44. Given the distance from neighbouring properties, there are not considered to be any materially adverse amenity impacts associated with the development. Some consultation responses refer to the impact on their views, particularly to the Heath; however, impacts on the private views in this case are not sufficient to materially affect the outlook of neighbouring occupiers and the guidance is that there is no private right to a view over another's land.
- 5.45. The construction impacts of the development, including noise, dust and vibration, are covered in the 'Transport considerations' (Construction Management Plan) section of this report below.

Transport considerations

- 5.46. The site is located on the western side of Fitzroy Park, a private road on the north-eastern fringe of Hampstead Heath. This road is managed and maintained by the Fitzroy Park Residents Association (FPRA). As such, parking controls do not apply.
- 5.47. The site has a PTAL of 1b (Public Transport Accessibility Level), which represents an area with 'very poor' access to public transport. The site is located approximately midway between Highgate and Archway stations, which are a considerable distance away. However, the nearest bus stops are located nearby on Highgate West Hill, within a 5 minute walk. Additional bus services are available from Hampstead Lane to the north, and from Highgate Road and Swain's Lane to the south. The nearest train station is Gospel Oak (London Overground), also some distance away.

Cycle parking

- 5.48. Policy T1 of the Camden Local Plan and Policy TR1 of the Highgate Neighbourhood Plan requires new development to promote walking, cycling and public transport use and requires cycle parking facilities to be provided in accordance with the London Plan. For homes of the size proposed, this includes 2 spaces per unit.
- 5.49. All homes have incorporated cycle stores at ground floor level that could policy requirements. Were the application to be granted, full details of the cycle storage areas would be required by condition to ensure that the stores are acceptable.

Car parking

- 5.50. Initially the development proposed one on-site car parking space per dwelling; however, this has been reduced to one car parking space each for Plots 1-3. Plots 4 and 5 would be car-free.
- 5.51. Policy T2 of the Local Plan requires all new residential development to be car-free, regardless of PTAL rating. The Council accepts the retention or re-provision of existing parking where it can be demonstrated that the existing occupiers are to return to the address when the development is completed. In this case, it is understood that Plots 1-3 are going to be occupied by three of the existing occupiers of 55 Fitzroy Park. Officers consider this justifies the re-provision of car parking spaces for Plots 1-3. A Section 106 agreement would normally be secured to ensure the development becomes car-free once the returning occupants move on. As such, the absence of such an agreement constitutes a reason for refusal.

Highways contribution

- 5.52. The summary page of Policy A1 of the Local Plan states that 'Development requiring works to the highway following development will be secured through planning obligation with the Council to repair any construction damage to transport infrastructure or landscaping and reinstate all affected transport network links and road and footway surfaces.' The public highway in the general vicinity of the site is likely to sustain damage as a direct result of construction vehicles accessing and egressing the site via Fitzroy Park. This is of particular concern on Millfield Lane at the junction with Fitzroy Park and Merton Lane where the public highway has sustained significant damage on various occasions as a direct result of developments elsewhere on the Fitzroy Park estate. The Council needs to repair any such damage to the public highway following completion of any development. A highways contribution would need to be secured as a section 106 planning obligation if planning permission were to be granted and therefore the failure to enter into a suitable head of term forms a further reason for refusal. For the avoidance of doubt, the highway remedial works (if required) would be undertaken by the Council's highways contractor.
- 5.53. Fitzroy Park is likely to sustain damage as a direct result of construction vehicles accessing and egressing the site (e.g. the section of Fitzroy Park between Millfield Lane and the site). It is acknowledged that Fitzroy Park is a private road which is managed and maintained by the Fitzroy Park Residents Association (FPRA). An appropriate bond should therefore be agreed to be paid to the Council and drawn by the FPRA in the event that any damage is caused. A requirement for the applicant to enter into this agreement would need to be secured as a section 106 planning obligation (and due to the refusal of the application, this forms a reason for refusal wrapped into the above).

Construction Management Plan

- 5.54. Policy A1 on amenity states in para 6.12 that 'Disturbance from development can occur during the construction phase. Measures required to reduce the impact of demolition, excavation and construction works must be outlined in a Construction Management Plan (CMP). Policy T2 identifies the importance of a CMP where development would generate significant movement of goods or materials by road.
- 5.55. Due to the particular site sensitivities a draft CMP has been provided as part of the planning application in order to give confidence that the development could be constructed in a manner that would avoid unacceptable harm to the amenities of locals.
- 5.56. The draft CMP, which uses the Council's pro-forma, sets out that the construction process is anticipated to last 75 weeks in total over three phases and provides details of the activities involved with each phase together with how site specific challenges would be overcome.

Crucially, construction would take place from Fitzroy Park to avoid any vehicles accessing the site from Millfield Lane which is an unmade road that could be harmed by excessive heavy vehicle movements. The CMP identifies sensitive receptors (i.e. the nearest dwellings and businesses) and sets out consultation arrangements with local stakeholders including the formation of a Construction Working Group (CWG). The draft CMP identifies existing and anticipated construction sites in the local area and explains how it would account for cumulative construction impacts. The appointed principal contractor has provided details on traffic routing, control of site traffic, access and egress, vehicle loading/unloading and highway interventions. The final section of the draft CMP covers impact on the environment and details noisy operations, rodent containment, dust and asbestos together with monitoring and mitigation measures.

5.57. The Council's Transport officer has reviewed the submission, which involved various iterations in response to concerns from local groups and residents, and considers it sufficient for this stage in the process. Were planning permission to be granted, a further CMP would be secured by section 106 which would require consultation including with the CWG comprising local residents and ward councillors to reach a workable solution. The CMP would be submitted to the Council for approval prior to the commencement of works.

5.58. A CMP implementation support contribution (£3,136) would need to be secured as a planning obligation. This contribution must be paid prior to commencement of works. It covers the ongoing review and monitoring elements of the CMP (a living document) and site inspections, meetings with the developer and local stakeholders, to ensure compliance. A CMP bond of £15,000 would be required in case the contractor fails to abide by the CMP and the Council has to take action to remediate issues. The fee would be fully refundable on completion of the works should there be no breach. The amount of this contribution has been calculated to reflect the scale of the development and complexity of the CMP. The absence of such an agreement to secure a CMP and associated financial contributions constitute a reason for refusal.

Section 106 heads of terms forming reasons for refusal

5.59. A section 106 legal agreement would be required to secure certain matters to ensure the scheme does not cause any harmful impact on highways, parking and affordable housing provision. If planning permission were to be granted, a section 106 would need to cover the following Heads of Terms - affordable housing payment-in-lieu, car-free housing, highway repairs contribution, Construction Management Plan (CMP), CMP implementation support contribution and CMP bond. However, since the application is being refused, these matters will form 4 separate reasons for refusal.

Community Infrastructure Levy (CIL)

5.60. If granted, the scheme would be liable to Community Infrastructure Levies for both Mayor of London and London Borough of Camden. The Mayor's CIL2 applies to all development which adds one or more dwellings or more than 100sqm of floorspace at a rate of £50 per sqm. The Council's CIL applies to all new dwellings at a rate of £500 per sqm in the Hampstead/Highgate area.

4. Conclusion and Planning Balance

The proposal significantly and substantially underachieves against a number of national, regional and local policies (and guidance). It represents a scheme that would not represent sustainable development as defined within paragraphs 7 and 8 of the NPPF. The merits of the proposal are recognised, given that additional homes would be provided (it is noted that housing is the priority of the Plan). However, the benefits of the scheme would not outweigh the harm to the character, amenity and ecological value of the site as designated Private Open Space, the harm to the openness and character of the adjacent Hampstead Heath as Public Open Space and MOL, and the harm to the character and appearance of the Highgate Conservation Area. On this basis, planning permission is

refused, fundamentally due to the harm to the open space, Hampstead Heath and the Conservation Area. In addition there are 4 reasons for refusal based on the lack of a necessary S106 legal agreement on other grounds.