



Department for Communities and Local Government

Mrs J Donovan
Claylands Road
Rolfe Judd Planning Ltd
Old Church Court
Oval
London
SW8 1NZ

Our Ref: APP/X5210/A/14/2218052

Your Ref: JD/P5477

16 December 2015

Dear Madam,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78 APPEAL
LINDEN WATES (WEST HAMPSTEAD) LIMITED
GONDAR GARDENS RESERVOIR, GONDAR GARDENS, WEST HAMPSTEAD,
LONDON, NW6 1QF**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Thomas Shields MA DipURP MRTPI, who carried out a hearing held on 23 June 2015 into your client's appeal against a decision of the London Borough of Camden ('the Council') to refuse planning permission for redevelopment of reservoir street frontage to provide 28 residential units (Class C3 use) in two blocks from lower ground level to third floors with basement parking, following substantial demolition of roof and internal structure of the reservoir and its subsequent re-landscaping, in accordance with application reference 2013/7585/P, dated 15 November 2013.
2. The appeal was recovered for the Secretary of State's determination on 8 September 2015, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the proposal involves residential development of over 10 dwellings in an area where a qualifying body has submitted a neighbourhood plan proposal to the local planning authority: or where a neighbourhood plan has been made.

Inspector's recommendation and summary of the decision

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

Policy and Statutory considerations

4. In deciding the appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the London Borough of Camden Local Development Framework Core Strategy (2010)(CS), the London

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Borough of Camden Local Development Framework Development Policies (2010)(DP), and The Fortune Green and West Hampstead Neighbourhood Plan (NP), which was an emerging document at the time of the hearing. However, it passed referendum in July 2015 and was formally adopted by the Council on 16 September 2015. The Secretary of State considers that the development plan policies most relevant to the appeal are those set out by the Inspector at IR9-12.

5. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and the planning guidance published in March 2014.

Main issues

6. The Secretary of State agrees with the Inspector at IR79 that the main consideration in this case relates to the effect of the proposal on the character and appearance of the streetscape and the surrounding area.
7. The Secretary of State notes that the appeal site lays within a part of West Hampstead where the distinct local identity is in part derived from the rhythm, style and size of terraced rows of substantial, ornate and highly decorative Victorian and Edwardian houses and mansion blocks of a similar style. He has carefully considered the Inspector's assessment of the character and appearance of the area, the site and its context and the detailed design of the proposal at IR83-92 and agrees with his conclusion that overall the proposed development would be of a high standard of design appropriately respecting local setting, context and character. Furthermore, the Secretary of State finds that the proposal accords with site specific policy C2 of the NP by retaining as much open space as possible.
8. Having regard to the Inspector's comments on other matters at IR94-96, the Secretary of State agrees that any harm to the setting and the significance of the non designated heritage asset of the reservoir would be small in scale and limited, given the relatively minor reduction in open space. The appeal scheme makes provision for extensive improvement to the Site of Nature Conservation Importance and to wildlife habitats (IR94). He also agrees that there would be no significant reduction in the current level of privacy to Sarre Road residents (IR95).
9. The Secretary of State further concludes, in agreement with the Inspector, that the adequacy of local infrastructure, the development's effect on biodiversity, disruption during construction, and impacts on traffic, parking, and highway safety could be satisfactorily addressed by way of conditions.

Conditions

10. Having considered the Inspector's reasoning and conclusions on conditions, as set out at IR70-75, and the conditions which he proposes in Annex A to the IR, the Secretary of State is satisfied that, in the form recommended by the Inspector, they are reasonable and necessary and would meet the tests of paragraph 206 of the Framework and the guidance.

Section 106

11. The Secretary of State agrees with the Inspector that the contributions outlined at IR76 are all necessary to make the development acceptable in planning terms (IR77) and that the S106 would meet the tests set out in regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010 (IR78).

Planning balance and conclusion

12. Having had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, the Secretary of State agrees with the Inspector and finds that the proposed development is in accordance with the development plan overall. It would also be consistent with provisions of the Framework which aim to ensure development responds to local character and which promote the high quality of design.
13. In accordance with paragraph 135 of the Framework, the Secretary of State has taken into account the limited harm that would be caused to the significance of the reservoir as a non designated heritage asset, albeit that the harm would be small in scale. Further, he considers that local residents would not experience any significant reduction in current levels of privacy.
14. The Secretary of State considers that the public benefits of the proposal significantly outweigh the disbenefits and it represents a sustainable form of development which will provide much needed housing, including affordable housing, which accords with the policies of the development plan and Framework taken as a whole.

Formal Decision

15. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission for the redevelopment of reservoir street frontage to provide 28 residential units (Class C3 use) in two blocks from lower ground level to third floors with basement parking, following substantial demolition of roof and internal structure of reservoir and its subsequent re-landscaping, in accordance with application reference 2013/7585/P, dated 15 November 2013, subject to conditions set out at Annex A of this letter.
16. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
17. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

18. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. From 26 October 2015, this must be done by making an application to the High Court within six weeks from the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
19. A copy of this letter has been sent to the London Borough of Camden. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Phil Barber

Authorised by Secretary of State to sign in that behalf

Annex A: Conditions

- 1) The development hereby permitted must be begun not later than the end of three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Prefix T(20) E100, E01 D, E103, E02 F, E03 F, E04 E, S01 E, P00 E, P01 E, P02 F, P03 E, P04 E, P0-1 D, P0-2 D; Prefix T(90) P00 P2, P00D; 4870/B20S01 P2; JBA 10/35-01 rev M;

Supporting documents:

Letter from RSK dated 8/11/13 in reference to RSK FRA report 880113-R4(1);

Indicative PV Layout on A4 page; Planning statement by Rolfe Judd Planning P5228; Design and Access statement 13/11/2013 by Rolfe Judd; Environmental Report Main Report by Peter Radmall Associates Nov 2013; Environmental Report Non-Technical summary by Peter Radmall Associates Nov 2013; Gondar Gardens Lifetime Homes Review by Rolfe Judd 4870:120416; Geo-Environmental Site Assessment Report ref 23283-1 (00) by RSK Group Plc dated Dec 2009; Envirocheck Report dated 16 Feb 2011;

Basement Impact Assessment Interpretative Report by Peter Radmall Associates Nov 2013; Basement Impact Assessment Land Stability Report by URS Jan 2012; Statement on Sequence of works, by URS. Undated; Basement Hydrology Assessment by RSK dated Jan 2012; Letter from Colin Whittingham, Senior Hydrologist at RSK dated 28th March 2012 Re Drainage Assessment with accompanying drawing 880113-40-01 rev P1 (Indicative Surface Water Outfall Arrangement) and results of MicroDrainage 'WinDes' outputs; Flood Risk and Drainage Assessment 880113R4 (1) by RSK dated Jan 2012;

Built Heritage Assessment by CgMs ref JO/13281 dated Nov 2013; Archaeological Desk Based Assessment by CgMs ref MS/KB/13281 dated Nov 2013; Statement of Community Involvement by remarkable dated Nov. 2013;

Appendix A: Energy Strategy Addendum by Carbonplan dated Jan 2014; Climate Change letter from Peter Radmall Associates dated 10/01/14; Updated Climate Change Chapter 6 'Climate Change' dated Feb 2014; Sustainability Strategy by Carbonplan dated Nov 2013; Code for Sustainable Homes Pre-Assessment Carbonplan dated Nov 2013; Air Quality Impact Assessment ref 441570-01 dated Nov 2013 by RSK;

Daylight and sunlight report by CHP Surveyors Ltd dated 8th Nov 2013; BS5228 Noise Impact Assessment ref 9384D-2 BS5228 by Noise.co.uk dated 22/12/2011; BS5228 Vibration Impact Assessment ref 9384-2 by Noise.co.uk dated 22/12/2011; Environmental Noise Survey ref 9587-2 R1 by Noise.co.uk; Car Lift Noise Assessment report 9384A-2 by noise.co.uk dated 19/1/12; Road Noise Impact Assessment report 9384C-2 by noise.co.uk 22/12/2011;

Ecological Action Plan by James Blake Associates Rev B January 2012; Reptile

Mitigation Method statement by James Blake Associates Rev C December 2011;

Phase 1 Habitat Survey by James Blake Associates rev A Nov 2013; Breeding Bird Survey by James Blake Associates Rev A Dec 2011;

Reptile Survey by James Blake Associates Rev A Nov 2013; Bat Survey by James Blake Associates Rev B Dec 2011; Transport Statement Addendum by i-Transport

dated 20 Nov 2013; Construction Management Strategy dated Nov 2013; Letter from Chris Miele of Montagu Evans dated 07/012/14.

- 3) A sample panel at least 1m x 1m in size of all facing brickwork demonstrating the proposed colour, texture, face-bond and pointing shall be provided on site and approved in writing by the Council before the relevant parts of the works are commenced and the development shall be carried out in accordance with the approval given. The sample panel shall be retained on site until the work has been completed.
- 4) Detailed drawings and samples of all materials in respect of the following, shall be submitted to and approved in writing by the Council before the relevant part of the work is begun:
 - a) Plan, elevation and section drawings, including jambs, head and cill, of typical windows (including bay winter-garden windows) and door openings.
 - b) Plan, elevation and section drawings of typical windows at a scale of 1:10.
 - c) Plan, elevation and section drawings of a typical projecting bay at a scale of 1:10 including framing and junction details at 1:1.

The development shall not be carried out other than in accordance with the approved drawings and samples.

- 5) No lights, meter boxes, flues, vents or pipes, and no telecommunications equipment, alarm boxes, television aerials or satellite dishes, shall be fixed or installed on the external face of the buildings, without the prior written approval of the Council.
- 6) Prior to first occupation of the unit identified as H1 on the approved ground floor plan, details of measures required to protect the privacy of neighbours from the second floor side terrace shall have been submitted to and approved in writing by the Council. All approved measures shall be carried out prior to first use of the terrace and shall be permanently retained and maintained thereafter.
- 7) The wildlife area/nature reserve shown on plan JBA 10/35-01 Rev M shall not be accessed by the public other than in accordance with an Ecology and Enhancement Plan which shall have first been submitted to and approved in writing by the local planning authority.
- 8) Prior to commencement of any development, (including any works of demolition, site setup, enabling works or relocation of services) the measures set out in the Reptile Mitigation Strategy shall be implemented in full and reports on the measures undertaken by a suitably qualified and experienced expert shall be submitted to the Council's Nature Conservation Officer at least every four months for the duration of the works and for a period of 12 months subsequent to their completion.
- 9) No development shall take place until full details of hard and soft landscaping and means of enclosure of all un-built, open areas have been submitted to and approved in writing by the Council. Such details shall include final details of all proposed tree planting, earthworks including grading, mounding and other changes in ground levels, fencing and perimeter treatment to all boundaries of the site, including any necessary security and crime prevention measures required to prevent unwanted trespass to the areas of residential development and the designated open space behind. The relevant part of the works shall not be carried out otherwise than in accordance with the approved details.

- 10) All hard and soft landscaping works shall be carried out in accordance with the approved landscape details by not later than the end of the planting season following completion of the development or any phase of the development. Any trees or areas of planting which, within a period of 5 years from the completion of the development, die, are removed or become seriously damaged or diseased, shall be replaced as soon as is reasonably possible and, in any case, by not later than the end of the following planting season, with others of similar size and species, unless the Council gives written consent to any variation.
- 11) All trees on the site, or parts of trees growing from adjoining sites, unless shown on the permitted drawings as being removed, shall be retained and protected from damage in accordance with the guidelines and standards set out in BS5837:2005 "Trees in Relation to Construction".
- 12) No development shall take place until a scheme for monitoring and management of noise during the demolition and construction phases of the development based on the Noise Impact Assessment (Ref 9384D-2) has been submitted to and approved in writing by the local planning authority. The development shall not be carried out other than in accordance with the approved scheme.
- 13) Before the use commences, the car lift plant shall be provided with acoustic isolation and sound attenuation in accordance with the manufacturers specifications. The acoustic isolation shall thereafter be maintained in accordance with the manufacturer's specifications.
- 14) No development shall take place where land affected by contamination is found which poses risks identified as unacceptable in risk assessment (Ref 23283-1 (00)), until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out before the development or relevant phase of development is occupied.
- 15) Prior to commencement of development a detailed parking plan for the basement shall be submitted to and approved in writing by the Council. The car parking provision shall be retained and used for no purpose other than for the parking of vehicles of the occupiers and users of the development, and at no time shall the number of parking spaces for vehicles within the site exceed nineteen.
- 16) Prior to first occupation of the affordable housing units hereby approved the proposed cycle storage area at ground floor level as shown on the drawings hereby approved shall be provided in their entirety and permanently maintained and retained thereafter.
- 17) Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any Order revoking and re-enacting that Order, no development within Part 1 (Classes A-G) and Part 2 (Classes A-E) of Schedule 2 of that Order shall be carried out without the grant of planning permission having first been obtained from the Council.
- 18) Prior to first occupation of the development a plan showing details of bird and bat box locations and types and indication of species to be accommodated shall be submitted to

and approved in writing by the Council. The boxes shall be installed in accordance with the approved plans prior to the occupation of the development and thereafter retained and maintained.

- 19) Development shall not begin until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, including details of calculations and manufacturers specifications, has been submitted to and approved in writing by the Council. The scheme shall identify how the drainage scheme would ensure that surface water discharge rate of 10 l/s would not be exceeded by the proposals. The scheme shall also include details of how the scheme shall be maintained and managed after completion, and the inclusion of back up / standby pumps and details of the split level surface water storage designed to reduce the volume of water that needs to be disposed of by pumping. The scheme shall be implemented in accordance with the approved details before the development is completed.
- 20) Prior to commencement of the relevant part of the development a plan showing details of the green roof including species, planting density, substrate and a section at scale 1:20 showing that adequate depth is available in terms of the construction and long term viability of the green roof, and a programme for an initial scheme of maintenance shall be submitted to and approved in writing by the Council. The green roof shall be fully provided in accordance with the approved details prior to first occupation and thereafter retained and maintained in accordance with the approved scheme of maintenance.
- 21) Prior to commencement of development details of proposed slab levels in relation to the existing and proposed levels of the site and the surrounding land shall be submitted to and approved in writing by the Council. The development shall not be carried out other than in accordance with the approved details.
- 22) Prior to commencement on the relevant part of the development hereby approved details of all external lighting to include location, design, specification, fittings and fixtures (including means of reducing light spillage) shall be submitted to and approved in writing by the Council. The buildings shall not be occupied until the relevant approved details have been implemented. Following occupation at no point shall high level external lighting fixtures be installed within the perimeter of the residential site (including the rear gardens).
- 23) Prior to occupation of units A3, A5, and H2 the windows on the north and south elevations shall be fitted with obscure glazing and fixed shut to a height of 1.8 metres in accordance with plans T(20) P00 Rev E, T(20) P01 Rev E, T(20) P02 Rev F, and T(20) P03 Rev E. Such measures shall be permanently retained thereafter.
- 24) Prior to the commencement of any works which may affect bats or their habitat a detailed mitigation strategy shall be submitted to and approved in writing by the Council. All works shall then proceed in accordance with the approved strategy.
- 25) Before occupation the dwellings shall comply with Building Regulations Optional Requirement M4. Evidence of compliance shall be notified to the building control body appointed for the development in the appropriate Full Plans Application, or Building Notice, or Initial Notice to enable the building control body to check compliance.
- 26) Prior to first occupation of the affordable housing units the refuse and recycling storage facilities intended for occupiers as shown on the drawings hereby approved shall be

provided. All refuse and recycling storage facilities shall be permanently maintained and retained thereafter.

- 27) Prior to first occupation of the market or intermediate housing units the basement refuse and recycling storage facilities intended for occupiers as shown on the drawings hereby approved shall be provided. All refuse and recycling storage facilities shall be permanently maintained and retained thereafter.
- 28) Prior to first occupation of the market or intermediate housing units the proposed cycle storage area at basement level as shown on the drawings hereby approved shall be provided in their entirety and permanently maintained and retained thereafter.
- 29) The development hereby approved shall not commence until such time as a suitably qualified chartered engineer with membership of the appropriate professional body has been appointed to inspect, approve and monitor the critical elements of both permanent and temporary basement construction works throughout their duration to ensure compliance with the design which has been checked and approved by a building control body. Details of the appointment and the appointee's responsibilities shall be submitted to and approved in writing by the Council prior to the commencement of development. Any subsequent change or re-appointment shall be confirmed forthwith for the duration of the construction works.

Report to the Secretary of State for Communities and Local Government

by Thomas Shields MA DipURP MRTPI

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

Date: 14 October 2015

TOWN AND COUNTRY PLANNING ACT 1990
THE COUNCIL OF THE LONDON BOROUGH OF CAMDEN
APPEAL BY
LINDEN WATES (WEST HAMPSTEAD LIMITED)

Hearing held on 23 June 2015

Gondar Gardens Reservoir, Gondar Gardens, West Hampstead, London, NW6 1QF

File Ref: APP/X5210/A/14/2218052

File Ref: APP/X5210/A/14/2218052

Gondar Gardens Reservoir, Gondar Gardens, West Hampstead, London, NW6 1QF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Linden Wates (West Hampstead Limited) against the decision of the Council of the London Borough of Camden.
- The application Ref 2013/7585/P, dated 15 November 2013, was refused by notice dated 7 March 2014.
- The development proposed is redevelopment of the reservoir street frontage to provide 28 residential units (Class C3 use) in two blocks from lower ground level to third floors with basement parking, following substantial demolition of roof and internal structure of reservoir and its subsequent re-landscaping.

Summary of Recommendation: The appeal be allowed and planning permission granted subject to conditions.

Procedural Matters

1. By letter dated 8 September 2015 the Secretary of State directed that he would determine the appeal. The reason for the direction is that the proposal involves residential development of over 10 dwellings in an area where a qualifying body has submitted a neighbourhood plan proposal to the local planning authority: or where a neighbourhood plan has been made.
2. The Fortune Green and West Hampstead Neighbourhood Plan (NP) was an emerging document at the time of the Hearing. However, it passed referendum stage in July 2015 and was formally made on 16 September 2015.
3. The application was accompanied by an Environmental Statement (ES). I consider that the ES provides adequate information on the likely main impacts of the proposed development and the mitigation measures that may be required, such that it is adequate and meets the requirements of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (SI 2011 No. 1824).
4. A draft Section 106 Agreement (S106) was agreed between the main parties at the Hearing and executed later the same day. The Council confirmed that it no longer wished to defend refusal reasons Nos. 2, 3, and 7 to 13 because the S106 overcame their concerns. In addition, the Council confirmed that reasons 4, 5 and 6 were no longer contentious as these related to infrastructure requirements covered by its Community Infrastructure Levy charging regime. Consequently, only the Council's first reason for refusal in respect of the effect on the character and appearance of the area remained in dispute.

The Site and Surroundings

5. The appeal site is rectangular in shape, comprising approximately 1.24 hectares of land in an area of West Hampstead where the network of streets are primarily characterised by traditionally constructed Edwardian or Victorian residential properties. It contains a redundant brick-built reservoir structure which is approximately two thirds underground with a third above. This upper part is covered in topsoil and grassed over, providing an appearance of elevated open grassland.

6. Other than a strip of land fronting Gondar Gardens the site is enclosed by the rear elevations of mansion blocks and terraced houses. The site frontage is bounded immediately to the north and south by 3 storey mansion blocks with significantly deep rear extensions. Along the opposite side of the road to the site frontage the street is characterised by boundary fencing, garages and outbuildings abutting the pavement. These are located at the rear of the gardens of residential properties on Sarre Road.
7. To the north, where Gondar Gardens turns east, the street is largely comprised of traditional 3 storey red brick terraced houses and mansion blocks with decorative 2 storey bays and short front gardens. Dwellings on Agamemnon Road also back onto the site. They are also of traditional brick construction and comprise either 2 storeys or 2 storey with attic accommodation. To the south, on Hillfield Road, the dwellings are also 2 storey brick of traditional construction and appearance.
8. Although it is previously developed land, the majority of the appeal site is designated in the Local Plan as Private Open Space (POS) and a Site of Nature Conservation Importance (SNCI) and is of high environmental value. It is included as a non-designated heritage asset in the Council's Local List as an asset type of "Natural Feature or Landscape".

Planning Policy

Development Plan

9. Policy CS14 of the London Borough of Camden Local Development Framework Core Strategy (2010) seeks to ensure that Camden's places and buildings are attractive, safe and easy to use by requiring, amongst other matters, that development is of the highest standard of design that respects local context and character, and preserves and enhances heritage assets and their settings.
10. Policy DP24 of the London Borough of Camden Local Development Framework Development Policies (2010) requires, amongst other matters, that all developments should be of the highest standard of design giving consideration to: (a) the character, setting, context and the form and scale of neighbouring buildings; (c) the quality of materials to be used; (d) the provision of visually interesting frontages at street level; (e) the appropriate location for building services equipment; (f) existing natural features, such as topography and trees; (g) the provision of appropriate hard and soft landscaping including boundary treatments; (h) the provision of appropriate amenity space; and (i) accessibility.
11. The Fortune Green and West Hampstead Neighbourhood Plan (NP) was still an emerging document at the time of the Hearing. However, it passed referendum stage in July 2015 and was formally adopted by the Council on 16 September 2015. The text at NP paragraphs C1-12 sets out the community's priorities and aspirations for significant sites and areas for when schemes are brought forward. For the appeal site paragraph C2 is relevant. It states:

"Gondar Gardens Reservoir: in recent years, three developments have been proposed for this site. All three have been rejected by Camden Council, although one has been granted on appeal. At the time of writing, an appeal on the third scheme is pending. In light of its designation as a Site of Importance to Nature Conservation in existing planning documents, any development should retain as much open space as possible and offer limited, managed

public access consistent with maintaining suitable conditions for bio-diversity and wildlife. Due to the significant amount of open space the site provides, views across the site should be protected from significant damage or loss; of particular significance is the view to the east to Hampstead. Any development of the frontage on Gondar Gardens shall match the character of existing development and shall be no higher or deeper than adjacent buildings (see Policy 2)".

12. NP Policy 2: Design and Character, is a criteria-based policy which closely correlates with Policies CS14 and DP24 above. It requires all development to be of a high quality of design, which complements and enhances the distinct local character and identity of Fortune Green and West Hampstead. It requires, amongst other matters, that development should positively interface with the street and streetscape in which it is located; maintain positive contributions to the character of existing buildings and structures; and have regard to the form, function, structure and heritage of its context – including the scale, mass, orientation, pattern and grain of surrounding buildings, streets and spaces.

National Planning Policy

13. Government guidance set out in the National Planning Policy Framework (2012) (the Framework) states that development proposals should be approved without delay where they accord with the development plan.
14. Core planning principles include that planning should be genuinely plan-led, empowering local people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area. Also, that planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupiers of land and buildings, and encourage the use of land by reusing land that has been previously developed.
15. Paragraphs 56 to 66 of the Framework sets out the Government's advice on design. In particular, it attaches great importance to the design of the built environment; indicates that good design is a key aspect of sustainable development; and that it is important to plan positively for the achievement of high quality and inclusive design for all development, including individual buildings, public and private spaces and wider area development schemes.
16. Paragraph 58 of the Framework aims to ensure that developments: function well and add to the overall quality of the area; establish a strong sense of place, using streetscapes and buildings to create attractive and comfortable places to live, work and visit; respond to local character and history, and reflect the identity of local surroundings and materials, while not preventing or discouraging appropriate innovation; and are visually attractive as a result of good architecture and appropriate landscaping.
17. Paragraph 60 of the Framework states that decisions should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles. It is of course proper to seek to promote or reinforce local distinctiveness.

18. Paragraph 64 states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.
19. Paragraph 135 states that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

Material Considerations

20. Camden Planning Guidance 1: Design (2013) is a Supplementary Planning Document. It does not set out a prescriptive approach to design but instead identifies principles for responding to context (para 2.9) and building design (para 2.10). This approach reflects paragraph 60 of the Framework.

Planning History

21. A 2011 planning application (ref 2011/0395/P) for a scheme of residential re-development was allowed on appeal¹ in November 2012. The period for commencement of that planning permission, referred to at the Hearing as the "Reservoir Scheme", expires on 1 November 2015.
22. A second planning application (ref 2012/0521/P), referred to at the Hearing as the "Frontage Scheme" was dismissed at appeal² in June 2013 in respect of detailed design matters.
23. The planning application subject of this appeal is effectively a revision of the "Frontage Scheme", referred to at the Hearing as the "Revised Frontage Scheme", and which sought to take account of the Inspector's objections in respect of design matters set out in her 2013 appeal decision letter.

The Proposal

24. The proposed development comprises the redevelopment of the gap along the reservoir street frontage to provide 28 residential units, 10 of them as affordable housing units, in two blocks from lower ground level to third floors with basement parking, following substantial demolition of the roof and internal structure of the reservoir and its subsequent re-landscaping.
25. Approximately 95% of the open part of the site would be retained as open space and its long term maintenance and enhancement would be secured through the S106.

Agreed Matters³

26. Although no Statement of Common Ground was submitted, the only area of dispute relates to the detailed design of the proposed development. It was agreed that a modern contemporary design to interpret and reflect local character and appearance was acceptable in principle. All other matters including the S106 and the schedule of suggested conditions were agreed.

¹ APP/X5210/A/11/2167190

² APP/X5210/A/12/2188091

³ Source: Statements of Case, verbal agreement at the Hearing.

The Case for the Appellant⁴

27. The proposal fully addresses the requirements of national, regional and local policies which make up the development plan for the area and satisfies all the relevant criteria.
28. The proposal accords with the aspirations and aims of planning policy and seeks to address site specific matters positively in the spirit of the development plan.
29. It delivers a sustainable development in a sustainable location that will:
 - provide private and affordable housing on the site (including fully fitted wheelchair accessible homes) and a financial contribution
 - meet the Council's housing design standards with regards to size of units, residential amenity space, acoustic performance, outlook and car parking provision
 - retain the vast amount of open space on site and support its transfer to a wildlife body, and fund the long term future of the site for wildlife
 - secure the incorporation of environmental sustainability measures, car-capped housing, an ecology and habitat plan, a demolition and construction management plan, local labour and procurement of local employment and business opportunities
 - secure contributions to educational infrastructure, public open space, community facilities, and towards pedestrian and environmental improvements in the area.

The proposal

30. The key requirement of the application was to respond positively to the detailed design criticisms of the previous frontage scheme, whilst ensuring the integrity of the development is retained and all matters considered acceptable previously are also retained within the scheme evolution.
31. In developing the revised scheme the appellant has consulted with the local planning authority and the local community to deliver the scheme that will be an asset to the local area. The proposal integrates greater definition into the facade details and treatments, both with regards to detail and materials to create a symmetry and architectural language that reflects a contemporary development drawing on the Edwardian influences within the locality.
32. The roof and internal load bearing brick arched structure of the reservoir would be demolished leaving the side retaining walls which would be covered with banks of earth sloping gently downward into the central area left by the removed reservoir roof. The majority of the reservoir area would be retained within the designated Open Space and SNCI. The land would be re-graded to form a landscaped 'dish', with slopes into the central area of the removed reservoir structure which will be then be landscaped. The remaining site would be a dedicated nature reserve, gifted to a responsible body likely to be the London

⁴ Appellant's Statement of Case and Appendices, Additional Statement, Final Comments, Design and Access Statement, and oral evidence of Sarah Hodge, Ian Greves, Jason Rudolph, Jan Donovan, and Chris Miele.

Wildlife Trust in perpetuity, with a financial contribution for future maintenance provision. There would be opportunity for controlled public access to the nature reserve.

33. The development will incorporate measures targeted at improving energy efficiency and the use of energy from renewable sources in order to reduce carbon emissions. All residential units will be constructed to the Code for Sustainable Homes Level 4.
34. The design, mass and scale of the residential buildings facing Gondar Gardens have been designed to complement and complete the street scene, respecting the heights of the adjoining properties whilst ensuring the existing relationship of neighbouring properties and outlook are unaffected. The development achieves a suitable density for the site having regard to the local context around the site, achieving a quality design solution. The site is also located in a sustainable position with good links to public transport and sustainable transport measures.
35. Officers supported the application and agreed the revised proposal addressed the concerns of the previous Inspector.

Detailed design

36. The previous Inspector acknowledged that:
 - this part of Gondar Gardens is not typical of the surrounding contextual pattern
 - the height, depth, scale, layout, general size and siting is considered acceptable
 - the proposals provide a strong sense of enclosure, re-instating the strong pattern of development which is an important part of the character of the area
37. The architect undertook a thorough re-examination of the character, setting, and context of the surrounding area, and the form, scale and architectural qualities of neighbouring buildings, in order to establish key characteristics. Analytical drawings of the existing facade on Gondar Gardens were prepared which examined the scale, rhythm, horizontal and vertical emphasis, material qualities and decorative detailing. This assessment is explained in pages 8-16 of the Design and Access Statement (DAS).
38. The results of this appraisal identified key local themes that create the local distinctiveness of Gondar Gardens and the surrounding area, including:
 - bay windows and plot widths, banding and proportions, roofs
 - defining development boundaries, turning the corner on buildings
 - windows, entrances and facade details
39. The DAS demonstrates how the design has responded to the Inspector's concerns. The summary drawing on page 49 is particularly helpful in this respect. This sheet also presents the previous and current proposals and so enables a direct comparison as follows:
 - consistency in the scale/size of projecting bays

- the dimensions of the two sets of projecting bays have been regularised
- the three larger projecting bays to the longer element of the scheme are each 10 metres in extent. The fourth, on the single block to the side of the gap, is 9 metres, but practically this will appear the same size in normal viewing conditions. Thus the four important organising elements of the façade are consistent and well defined
- an additional set of smaller bays have been added to the elevation to reflect the prominent bay windows which contribute to local character. These secondary bays are themselves regular, as one would expect in an older form of terraced development. Their introduction is a very important 'move'; together with the larger bays behind they will set the character of the elevation as it will be appreciated in oblique views. Thus the front of the scheme will move in and out in depth, with the eye catching the corners of projections in different, contrasting materials. This is the effect of many of the late Victorian and Edwardian buildings in the area.

Areas of Unrelieved Brickwork

- The new elevation has a more solid appearance. The proportion of window opening to brick facing has been materially reduced.
- Furthermore, the openings have a reconstituted stone lining that reflects, in contemporary form, more traditional window/door surrounds, providing a finer grain of detail.

Consistency of Geometry Tying the Buildings Together

- The introduction of projecting bays and the increase in the area of brick facing produce a solid, well defined form, which can be appreciated in elevation but will be particularly apparent in real viewing conditions.
- Overall the new elevation is more orderly than the previous appeal scheme. The openings in the revised scheme are grouped on a more obvious vertical alignment. The bays achieve this and other design details, but so does the sloping roof treatment with dormers. These will be appreciated as vertical accents terminating the vertical grouping below, and in that way the elevation will appear more regular. The sloping roof also obviously relates to traditional roof forms, answering one of the Inspector's concerns.

Readily Apparent Detailing Tying the Proposals to Buildings in the Area

- The previous appeal scheme had been based on a contextual analysis which generated a specific design response. That is clearly set out in the previous DAS. The Inspector's comments are very clear here. She recognised, in effect, that the design was based on local sources. She concluded, however, that the prototypes for the design were too remote, such that a casual viewer, say, would not appreciate the link. In other words, she wanted some more obvious reference to defining features in the area, without however, for a moment suggesting pastiche or facsimile.
- Two features of the design answer this directly; the smaller projecting bay windows (bays are common in the domestic architecture in this part of London) and the use of white aperture linings contrasting with the brickwork.

Such constructional polychromy is a feature of late Victorian and Edwardian speculative housing (terraces, semis and mansion flats) in the area.

- The final detailing of the projecting bays and window spandrels present another opportunity for finer detailing. There is no reason why some form of pressed ornament couldn't be worked into some of the bay cladding or window detailing, and that could easily be delivered through a condition. In other words, the lack of finer grain relief should not be a reason for refusal because it can be dealt with by a condition.
 - The sloping roof, mentioned earlier, achieves the same objective. It provides an apparent link to the traditional architecture which contributes to the character of the area.
40. Officers also supported the proposal and the response to overcome the Inspector's criticisms. The OR provides a comprehensive analysis⁵ of the architectural response to the Inspector's concerns.
41. The appellant's architect responded positively to the detailed design criticisms of the previous proposal. The resulting design proposal was also fully supported by a further separate expert analysis by the appellant's consultant architect Dr Chris Miele IHBC MRTPI. His overall conclusion was that the Inspector's concerns have been addressed satisfactorily and in full⁶. He notes that:
- *The elevation appears more solid. It has variety and picturesque qualities (contrasting materials, projecting elements, a lively pitched roof-scape) which do obviously relate to the sort of late Victorian and Edwardian housing design one finds in this part of North London.*
 - *In that process the character of expression has changed to one that I would call 'contemporary contextualism', modern but respectful. It is also, I think, an elegant and balanced design, and so one of high quality.*
42. The realisation and completion of this scheme will enable the long term future of the site to be secured, providing new housing (both private and affordable on the site) and ensuring the long-term protection and improvement for the vast majority of the site for ecology and bio-diversity.
43. The Appellant has therefore responded positively to the concerns of the previous Inspector, the Council, and local stakeholders. The proposal delivers a sustainable high quality housing development respecting the townscape and the local distinctiveness of the area.

The Case for the Council⁷

44. The appellant has undertaken a successful re-assessment of the key features of local distinctiveness. However, the appellant has failed to interpret and translate this assessment into a design which goes beyond a superficial and cosmetic level of design detail or depth. The design revisions have arisen from a methodical, tick-box approach to addressing the shortcomings identified by the Inspector and

⁵ Paragraphs 6.22-6.46

⁶ Appendix SC14 to appellant's Statement of Case

⁷ Council's Statement of Case and Appendices, and oral evidence of Charles Rose, Jennifer Walsh, Zenab Haji-Ismael, James Hammond, and Pritej Mistry

which result in proposals that are monolithic, harsh and orthogonal in form. Overall, the development has been revised without consideration of a holistic approach to addressing the crux of the Inspector's decision: which is that the design fails to respond to or promote local distinctiveness.

Local characteristics

45. Local buildings are characterised by repetitive plot widths, interesting roofscapes and a notable level of architectural detailing. There is a visual richness to the local townscape character which is well maintained and acknowledged by local residents.

Streetscape rhythm

46. Existing buildings are characterised by their slim plot widths, vertical proportions and repetitive rhythm. Projecting bays, which are generally canted, break up the perceived bulk of a terrace or group of buildings to give them more of a human scale. The design approach to bays differs between groups of buildings but they are a consistent element of the townscape on the surrounding streets and contribute to the distinct local character.

Roofscape

47. The local roofscape uses a combination of sculpted forms: bays rise through the eave lines and terminate in hipped form; prominent chimneys and parapet lines articulate the roof forms and break down the upper floor massing on the terraces. These features add character, variety, rhythm and flow to the local roofscape.

Rich architectural detailing

48. Local buildings are also characterised by a rich level of architectural detailing around window openings, door openings and at eaves level such as stuccowork and features derived from classical architecture. This is shown in photographs 1-9 in appendix D⁸. These work by breaking up the perceived bulk of a building and terrace by avoiding large areas of unrelieved brickwork and also reinforce the vertical proportions and rhythm found in the area. The richness of the existing detailing which is found particularly on the buildings in Gondar Gardens creates the sense of an area of high quality domestic architecture on what would be otherwise quite modest houses.

Building materials

49. Building facades are clad in brickwork although stucco has been used as a decorative feature around openings. A weathered yellow London stock predominates although red bricks have been used as decoration around window openings and on corners.
50. Overall there is a strong sense of local distinctiveness, as identified by the previous Inspector. The area is characterised by high quality buildings, with massing which is broken down by a variety of means to ensure variety and visual interest, on a domestic scale.

⁸ Appendix D to Council's Statement of Case

Revised Frontage scheme: local character assessment

51. The re-appraisal outlined in section 1 ('background') of the appellant's DAS for the analysis of site context and character is thorough and laudable. It identifies that salient local townscape characteristics chime with those set out above. In setting out the context the DAS identifies those items which accord with the Council's view of the essential local townscape characteristics, including faceted roof capping, curved profiles to bays, variety of bay design within the same street, eaves lines which are broken by the upper storey which results in animation of the roof line, faceted bays and articulated gable features, and articulation and faceted bays animating the roofline (DAS pp 9-13).

Revised Frontage scheme: design response

52. The previous Inspector identified the following characteristics of the Frontage Scheme as contributing to its harm:

- varying size of projections
- the large expanses of brickwork
- combination of geometric shapes and four storey sections with flat roof
- no visible connection to the intricate shapes and decorative detailing found in the surrounding townscape
- no visible connection to the strong vertical emphasis of the local townscape

53. The appellant used the following methodology to revise the frontage design following the appeal:

- re-appraise the local character and distinctiveness
- identify the individual design criticisms identified by the previous inspector
- replace the façade with an amended elevation which seeks to respond to these criticisms on a point by point basis

54. The first step was carried out successfully. The second step is manifested in the Townscape and Visual Assessment November 2013 (TVIA)⁹. Paragraph 8.3 states "*We note that the inspector endorsed the suitability of a contemporary approach subject to its detailing and in particular found harm arising from the detailed design...which was for a simpler and plainer 'style' of modern architecture.*" However these are terms that were not used by the Inspector. These are terms that the author of the report has applied to the Inspector's decision, which mentions neither 'plain' nor 'style' nor 'modern' in the context of assessing the proposed design.

55. The TVIA continues (paragraph 8.3) by setting out the framework for the appellant's response to the Inspectors decision with: "*the architects have analysed the Inspectors report and devised a range of features which specifically accommodate these considerations*".

⁹ Appendix SC5 of Appellant's Statement of Case

Revised frontage scheme: plots and bays

56. The appellant has made minor modifications to the plan form of the southern (larger) building in order to address the Inspector's concerns about geometries, brickwork and verticality. This creates some additional symmetry or rhythm when viewed in pure elevation, but a sense of verticality is still lacking in the oblique views from the street itself where the buildings retain a squat appearance, as demonstrated in views 1b and 3 on pages 4 and 13 respectively of the TVIA. An equally unsuccessful new intervention is the appellant's interpretation of the locally characteristic bay form through the introduction of winter gardens to the front elevation. These prominent features add a predominance of glazing which is not characteristic of the area and have none of the softness, domesticity or detailing of the local canted bay form.
57. The appellant's statement of case (paragraph 10.1.11) suggests the potential replacement of the winter gardens with glazed balcony balustrading and illustrates the change in the accompanying alternate visuals. However this would only partially mitigate the visually harmful impact of the extensive and projecting glazing and appears as an afterthought rather than part of a cohesive architectural response to the site. The balconies are unsuccessful in making a visual connection to the rhythmic local use of the bay form.

Revised frontage scheme: roofscape

58. The response at roof level has been to reduce the apparent ratio of flat roof to mansard from 75% to 25%. The DAS (section 4.05, page 43) proposes that the greater prominence of the standing seam metal roof relates to the contemporary buildings recently completed at 152-158 Mill Lane (Emmanuel School) and 1 Gondar Gardens (several dwellings approved by the Council since 2009). However both of these completed schemes incorporate the roof form as a primary feature of the building's appearance. They use steep, prominent pitched roofs which complement neighbouring properties, are contained between simple brick flanks and maintain a consistency to the immediate roofscape. The roof detailing in the comparison schemes uses high quality and well considered chimney/and gutter/eaves detailing which interface well with the contemporary brick colours.
59. Conversely the revised frontage scheme terminates the 'mansard' approach with vertical elements (ref. view 4 on page 15 and view 6 on page 17 of the TVIA). The opportunity to introduce relief, depth and variation at roof level in the elevation has not been taken (ref. detailed view 5, page 16 of the TVIA) because the monolithic roof form remains almost unchanged from the frontage scheme, terminating in vertical form at the ends of the buildings. The roofline continues the elevation's orthogonal approach to give a discordant and non-uniform form to features of the roofscape.

Revised frontage scheme: detailing

60. The proposals have added white rendered reveals and suggestions of recessed brick detailing in an attempt to add visual depth to the brick bays. The precast white surround reinforces the angular and orthogonal form of the bay interpretation and does not respond to the softer form of the canted bays, the pitched roofs and the variety of form which is locally evident. This is especially apparent in oblique views as evident in view 1a (pages 2 and 3 of the TVIA).

Revised frontage scheme: overall approach

61. The revised frontage scheme demonstrates that the appellant has sought to address the Inspector's criticisms through adding a veneer of revisions to the elevation only. This echoes Members' observation recorded in the minutes¹⁰ of the DCC¹¹: *"Some lengths had clearly been gone to in order to address the concerns of the Planning Inspector but there was still little visible connection to the detailing found in the surrounding buildings"*.
62. There is no demonstration of greater consideration or understanding of the contribution of the architecture of the buildings to their appearance and contribution to the local townscape. Again this is echoed in the minutes of the DCC assessment by Members: *"It was disappointing that the changes seemed to be quite minimal" and "Some of the changes made were an improvement but others, such as the balconies that attempted to replicate the original terrace in a modern way, were unattractive"*.
63. The response of the revised frontage scheme has been to add a layer of façade which has a corporate or commercial appearance rather than a softer more locally characteristic domestic character. Abrupt and prominent right angles still predominate in the geometric form on the elevations, at roof level and in the detailing. This is in contrast to the faceting, animation and curved profiles of the local character which give variety, rhythm and enjoyment to the local character.
64. It is the Council's view that the approach of systematic analysis and methodical response to the Inspector's comments is at the root of a fundamental failure to respond creatively and meaningfully to the local character, in a 'modern' form or otherwise. Overall the design represents a tick-box response to the Inspector's design criticisms from the dismissed Frontage Scheme Inquiry. The architect has failed to revisit their design with sufficient depth to enable them to respond with insight, imagination or understanding of the binding and coherent characteristics which give the area its essential distinctiveness. As Members concluded in their assessment: *"this proposal appeared to be largely the same as the previous scheme and the overall impression was still of four squat cubes amongst the surrounding tall, narrow houses"*.
65. Overall the design has not responded in any holistic sense to the crux of the Inspector's decision: which is that the design fails to respond to or promote local distinctiveness. Therefore the development remains unacceptable in appearance and fails to meet the high design standards and expectation of LDF policy DP24 and of the Framework, particularly paragraphs 60-66.

The case for interested parties who attended the Hearing

66. **Fortune Green and West Hampstead Neighbourhood Development Forum (NDF)** recognise that the proposal is both supported and opposed by local residents, but contend that the scheme does not respond to local character and history nor reflect the identity of local surroundings and materials, particularly the glass blocks on the front of the building. The immediate local area does not have any balconies on the frontage. The scheme, which only presents some detail design modifications to a previously refused scheme, does not appear to be

¹⁰ Appendix A of Council's Statement of Case

¹¹ Development Control Committee

taking the opportunities available for improving the character and quality of the area.

67. **Gondar and Agamemnon Road Residents' Association (GARA)** has over 100 members. GARA does not object to the scheme but offers constructive criticism with regard to specific design features. It is also concerned that the long term management and maintenance of the open space and wildlife should be properly secured through the S106.
68. **Sarre Road Residents' Association (SaRRA)** objects to the proposal in respect of detailed design, and with regard to privacy of occupiers of dwellings on the opposite side of the road to the appeal site.

Summary of written representations

69. A substantial number of written representations were submitted, both to the Council at the planning application stage and also in response to this appeal. These matters have generally been covered by the interested parties' cases above. The following summarises the points raised:

Objections-

- In some instances the appearance and character of the scheme is less compatible with the surroundings. It lacks respect for the high quality mansion blocks which form the basis of much of the area's architectural heritage.
- The glass boxes (bay windows) are a particular feature that are at odds with the surroundings. The bays would likely be used as storage space thus degrading the appearance of the frontage. The balconies are not a requirement to satisfy amenity space requirements.
- The scheme should be positioned a little further away from the street frontage and somewhat lower. The alternative low level build of the Reservoir scheme should be pursued instead, which is less intrusive to the Sarre Road resident's outlook and views. The glass bays will produce a mirror-like effect and reflect sunlight directly into the gardens in Sarre Road properties.
- The land should stay as a landscaped open space to be enjoyed.
- There would be too many vehicles on the roads – congestion.
- There are too many basements being excavated.
- The wildlife would be harmed.
- Adequacy of local infrastructure.
- Disruption during construction.
- The top floor of the new building has windows and balconies that would constitute a very serious breach of privacy for the residents on the opposite side of the road.
- The glass bays will be cold in winter and become heat traps in the summer.

- The glass bays do little to enhance the interior space to which they are attached. In 6 out of the 7 examples they have been added to bedrooms that will compromise privacy.

Support -

- The Frontage scheme should be pursued, not the Reservoir scheme.
- The Frontage scheme would retain 93% of the open space and SNCI area behind.
- The habitat would become managed by an appropriate organisation in the London Wildlife Trust.
- The affordable housing in the area is welcomed.

Conditions

70. The Council put forward a list of suggested conditions in advance of the Hearing and these were discussed at the event. I have considered the suggested conditions against the tests set out at paragraph 206 of the Framework, the advice in the national Planning Policy Guidance, and retained Annex A (model conditions) of former Circular 11/95: Use of Conditions in Planning Permission. In line with the guidance I have amended them where necessary in the interests of clarity and precision. I recommend that the schedule of conditions at Annex A to this report be imposed if planning permission were to be granted in line with my overall recommendation.
71. In addition to the statutory 3 year limitation for implementation it is necessary, for the avoidance of doubt and in the interests of proper planning, to define the plans with which the scheme should accord. Given the prominent location of the development conditions are required to protect the character and appearance of the area. These include securing approval of an appropriate palette of materials, landscaping, existing and proposed slab levels, an appropriate level of external lighting, protection of retained trees, monitoring of basement construction works, and removal of permitted development rights for alterations and extensions (**conditions 1, 2, 3, 4, 5, 9, 10, 11, 21, 22, 29**)
72. In the interest of protecting residential amenity conditions are necessary to secure privacy measures and to safeguard against excessive noise from plant equipment (**conditions 6, 12, 13, 17, 23**).
73. In the interests of ensuring the delivery of a high quality design and a sustainable and accessible development, it is necessary to impose conditions to secure details and provision of an appropriate surface water drainage scheme, the green roof, parking provision, refuse and recycling facilities, secure cycle storage, and to control public access to the open space. Conditions to safeguard ecology and to minimise the risk from ground contamination are also necessary (**conditions 7, 8, 14, 15, 16, 18, 19, 20, 24, 26, 27, 28**)
74. The new Building Regulations Optional Requirements came into effect on 1 October 2015. From this date requirements for housing standards, such as Lifetime Homes features and facilities and wheelchair units, can only be sought by reference to the nearest new national technical standards where there is a relevant current Local Plan policy. In this case Policies CS6 and DP6 are relevant

policies justifying such requirements. Accordingly, I have varied the wording of the proposed condition (**condition 25**).

75. The provision of separate balconies as an alternative to the proposed bay windows/winter gardens was discussed as a potential condition at the Hearing. However, I consider this would significantly weaken the vertical emphasis and uniformity of the proposed stacked bays, which contribute to the rhythm of the design, and the visual connection to the traditional form of stacked bays in the local area would be lost. I do not therefore recommend such a condition should be imposed. Glass fritting, or more solidifying treatment to the lower part of the bays was also discussed. However, the detail of finished materials can be adequately controlled by imposed planning conditions (3 and 4).

Section 106 Agreement

76. The Agreement provides for the following obligations: 10 of the units to be provided as affordable housing and an in-lieu contribution of £53,000; a Construction Management Plan; prevention of future residents (other than disabled) from acquiring a local parking permit; a Car Club Feasibility Plan and a contribution of £5,000; an Ecology Action Plan; an Ecology Enhancement and Management Plan; a Sustainability Plan; an Energy Efficiency and Renewable Energy Plan; provision of Local Employment and Training and a contribution of £21,000 in lieu of provision of 3 apprenticeship placements; a provision to secure Local Procurement; a 10 year Habitat Management Scheme and habitat and maintenance contribution of £155,000; transfer of the SNCI land to the London Wildlife Trust (or any similar organisation); an Accessibility Plan incorporating wheelchair accessible units; a Highways works plan and contribution of £36,922; and a Public Realm Improvement Contribution of £20,000.
77. The Council has provided a written and detailed justification¹² in respect of the need for the various S106 obligations relative to its Development Plan policies and guidance. This is not disputed by the appellant. From the evidence before me I consider that the obligations and levels of contributions are directly related to the development, fairly and reasonably related in scale and kind, and necessary to make the development acceptable in planning terms.
78. The Council also confirmed that from 6 April 2010 no more than 4 other obligations have or will be used to pool contributions to the specific projects identified in respect of the contributions. The S106 would meet the statutory tests set out in Regulations 122 and 123 of the Community Infrastructure Regulations (2010). Accordingly, I therefore recommend that it is fully taken into account in reaching a decision.

Inspector's Conclusions

The following conclusions are based on the oral and written evidence given to the Hearing as well as my visit to the site and the surroundings. The numbers in square brackets [] refer back to earlier paragraph numbers. The numbers in round brackets () refer to documents submitted at the Hearing.

79. Whilst this appeal should be considered on its own merit, the previous appeal decisions [21-23] are relevant material considerations. I have attached due

¹² Justification document submitted with Council's Statement of Case

- weight to them in making my recommendation. The main consideration in this appeal relates to the effect of the proposal on the character and appearance of the streetscape and the surrounding area.
80. The proposed development would be located along the frontage of Gondar Gardens so as to infill the gap between the three storey mansion blocks immediately to the north and south.
81. The large redundant brick built reservoir structure is mostly hidden beneath the surface of the appeal site which has an appearance of elevated open grassland. As such, it is previously developed land with most of the appeal site designated as Open Space (OS) and a Site of Nature Conservation Importance (SNCI).
82. Compared to the extant "Reservoir Scheme", a much smaller proportion of the OS would be lost, while most of the SNCI would be retained and managed, as a requirement of the accompanying S106, by the London Wildlife Trust or similar body in order to preserve and improve its ecological quality. After detailed analysis on this matter in the previous "Frontage Scheme" appeal, the Inspector concluded that the loss of views over the site for both the public and residents of Sarre Road, and any loss to the setting or connection to the POS/SNCI, would be outweighed by the significant benefits of the scheme. Those findings are equally applicable in respect of the current appeal.
83. The character and appearance of the area, and the scale and general layout of the proposal, were described at paragraphs 15 to 17 of the previous "Frontage Scheme" appeal decision¹³. It identified that the appeal site lies within a part of West Hampstead where the distinct local identity is in part derived from the rhythm, style and size of terraced rows of substantial, ornate and highly decorative Victorian and Edwardian houses and mansion blocks of a similar style. However, it was also noted that the immediate streetscape along Gondar Gardens where the appeal site is located does not follow this pattern. One side is lined by back garden fences or outbuildings of properties along Sarre Road, and the other with the open frontage of the appeal site, two mansion blocks, and a short terraced row of housing. As such, this part of Gondar Gardens does not exhibit the typical co-ordinated pattern of development in the wider area.
84. Also noted was that the proposed development would be of a similar height and depth to the adjacent mansion blocks, and that the almost continuous frontage development would appropriately match the scale and layout of buildings seen in the area. It would thus provide a strong sense of enclosure, re-instating the strong pattern of development typical of the character of the area. As such the size and siting of the development would be acceptable.
85. Having regard to my own observations of the site and its context I agree with the previous Inspector's appraisal of the prevailing character and appearance of the area, and the size, scale and layout of the proposal as outlined above. In terms of its height, depth and scale I consider that this proposal would deliver continuity with existing residential properties along this side of the street. It would complete the line of buildings, providing greater definition and coherence to the streetscape and the wider area.

¹³ APP/X5210/A/12/2188091

86. While this scheme would not follow historic plot widths in the area, the four main projecting elements would provide a strong rhythm in the street scene and would be generally consistent and regular in street views. As such, rather than appearing squat in oblique views, I consider that the detailed design would relate well to the character and appearance of the streetscape and to the wider area
87. This evident rhythm would be reinforced by a vertical emphasis from the use of different brick colour to the recessed elements, and the inclusion of vertically stacked projecting bays incorporating fully glazed 'winter gardens' at first floor with balconies above. The glazing would not appear excessive. These features, in combination, would contribute to uniformity and rhythm with an explicit vertical emphasis; that being reflective of the uniformity and rhythm of the buildings and their projections in surrounding streets and the wider area.
88. The proposed bays would be rectilinear rather than canted as most commonly found. However, I noted during my visit to the appeal site and the surrounding area that there are some historical examples of rectilinear bays. Their addition into the street scene would not therefore be discordant with the overall character and appearance of the area.
89. With regard to the roof design the proposal consists mostly of a pitched roof with dormer windows. I consider that the pitch would be reflective of the traditional pitched roof forms in surrounding streets. In street views the ridge and eaves line would sit comfortably with those of the mansion blocks either side of the proposal. Also, the smaller proportion of flat roof brick facades proposed over entrances would be consistent with some of the traditional building entrances I saw in the surrounding area.
90. Whilst the set back of the roof behind the eaves line might arguably reduce verticality, this would not unduly diminish the strong vertical emphasis of the scheme as a whole. Even though the design of the roof would not directly copy others in the immediate vicinity, its pitch, depth and variation would nonetheless be reflective of the interesting and lively form of roofscapes in the surrounding area.
91. The proposed design also incorporates thin white rendered reveals to windows and deep white moulding surrounds around the proposed bay windows. These features would successfully reference the traditional architecture in the area in terms of sash windows and bay windows and their decorative white moulding surrounds. The areas of recessed brick detailing features would provide variation and relief in the elevations, and would give both contrast and accentuation to windows and bays in a similar way to the variations in brickwork on traditional buildings.
92. Taking the various elements together, the proposed detailing would clearly reflect the detailing and hierarchy of decorative embellishment found on houses and mansion blocks in the area, and the proposed scheme as a whole would relate particularly well to the immediately adjacent mansion blocks on either side.
93. Overall, the proposed development would be of a high standard of design, appropriately respecting local setting, context and character by reflecting through a modern interpretation the traditional form and detail of the Victorian and Edwardian buildings in the surrounding local area. It would also ameliorate the lack of co-ordinated townscape along this particular part of Gondar Gardens.

Other Matters

94. The site is a non designated heritage asset whose significance relates to its natural features. Given the relatively minor reduction in open space, any harm to its significance would be small in scale and limited. Moreover, the appeal scheme makes provision for extensive improvement to the SNCI and to wildlife habitats, as outlined in section 4.08-4.09 of the DAS. On balance therefore, the benefits of the proposal would be significantly greater than the associated harm so that there would be no conflict with NPPF paragraph 135.
95. Some Sarre Road residents raise concerns in respect of loss of privacy. However, many of the rear gardens to those properties sit at a materially lower level than the proposed development. In addition, there is a continuous line of solid enclosure in the form of rear boundary fencing and/or outbuildings which provide some screening to gardens. Taking account of these factors together with intervening window to window distances, there would be no significant reduction in current levels of privacy.
96. A range of other matters were raised by local residents [69] including the adequacy of local infrastructure, effect on biodiversity, disruption during construction, traffic, parking, and highway safety. However, these could be adequately controlled by planning conditions and the provisions of the completed S106.

Overall Conclusion

97. The proposal would be of a high quality of design which would successfully take account of the character, setting, context, form and scale of neighbouring buildings, the quality of materials to be used, the provision of interesting frontages at street level, and existing natural features in accordance with Local Plan Policies CS14, and DP24 [9-10]. Furthermore, it would positively interface with the street and streetscape in which it would be located, maintaining a positive contribution to the character of existing buildings and structures, and would have regard to the form, function, structure and heritage of its context, including the scale, mass, orientation, pattern and grain of surrounding buildings, streets and spaces. Thus it would complement and enhance the distinct local character and identity of Fortune Green and West Hampstead in compliance with NP Policy 2 [12]. It would therefore accord with the provisions of the development plan as a whole. It would also be consistent with the provisions of the Framework [13-19] which aim to ensure that development responds to local character including the promotion or reinforcement of local distinctiveness.

Recommendation

98. I recommend that the appeal be allowed subject to the conditions in Annex A.

Thomas Shields

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Sarah Hodge	Solicitor, Cripps LLP
Ian Greves	Director, Rolfe Judd
Jason Rudolph	Director, Rolfe Judd
Jan Donovan MA (HONS) MRTPI	Director, Rolfe Judd
Chris Miele IHBC MRTPI FRHS	Senior Partner, Monagu Evans LLP
DipUD MRTPI	

FOR THE LOCAL PLANNING AUTHORITY:

Charles Rose	Urban Design and Conservation Officer
Jennifer Walsh	Principal Planning officer
Zenab Haji-Ismail	CIL/Section 106 Officer
James Hammond	Principal Transport Planner
Pritej Mistry	Lawyer

INTERESTED PERSONS:

David Yass	Chairman Gondar and Agamemnon Road Residents' Association and local resident
Mr M Seaman	Sarre Road Residents Association and local resident
Mr N Jackson	West Hampstead Neighbourhood Development Forum and local resident

DOCUMENTS SUBMITTED AT THE HEARING

1. Fortune Green and West Hampstead Neighbourhood Plan (March 2015)
2. Camden's Local List (January 2015)
3. Draft Section 106 Agreement

DOCUMENTS SUBMITTED FOLLOWING THE HEARING

1. Executed Section 106 Agreement

ANNEX A

Recommended conditions in the event that planning permission is granted

- 1) The development hereby permitted must be begun not later than the end of three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Prefix T(20) E100, E01 D, E103, E02 F, E03 F, E04 E, S01 E, P00 E, P01 E, P02 F, P03 E, P04 E, P0-1 D, P0-2 D; Prefix T(90) P00 P2, P00D; 4870/B20S01 P2; JBA 10/35-01 rev M;

Supporting documents:

Letter from RSK dated 8/11/13 in reference to RSK FRA report 880113-R4(1); Indicative PV Layout on A4 page; Planning statement by Rolfe Judd Planning P5228; Design and Access statement 13/11/2013 by Rolfe Judd; Environmental Report Main Report by Peter Radmall Associates Nov 2013; Environmental Report Non-Technical summary by Peter Radmall Associates Nov 2013; Gondar Gardens Lifetime Homes Review by Rolfe Judd 4870:120416; Geo-Environmental Site Assessment Report ref 23283-1 (00) by RSK Group Plc dated Dec 2009; Envirocheck Report dated 16 Feb 2011;

Basement Impact Assessment Interpretative Report by Peter Radmall Associates Nov 2013; Basement Impact Assessment Land Stability Report by URS Jan 2012; Statement on Sequence of works, by URS. Undated; Basement Hydrology Assessment by RSK dated Jan 2012; Letter from Colin Whittingham, Senior Hydrologist at RSK dated 28th March 2012 Re Drainage Assessment with accompanying drawing 880113-40-01 rev P1 (Indicative Surface Water Outfall Arrangement) and results of MicroDrainage 'WinDes' outputs; Flood Risk and Drainage Assessment 880113R4 (1) by RSK dated Jan 2012;

Built Heritage Assessment by CgMs ref JO/13281 dated Nov 2013; Archaeological Desk Based Assessment by CgMs ref MS/KB/13281 dated Nov 2013; Statement of Community Involvement by remarkable dated Nov. 2013;

Appendix A: Energy Strategy Addendum by Carbonplan dated Jan 2014; Climate Change letter from Peter Radmall Associates dated 10/01/14; Updated Climate Change Chapter 6 'Climate Change' dated Feb 2014; Sustainability Strategy by Carbonplan dated Nov 2013; Code for Sustainable Homes Pre-Assessment Carbonplan dated Nov 2013; Air Quality Impact Assessment ref 441570-01 dated Nov 2013 by RSK;

Daylight and sunlight report by CHP Surveyors Ltd dated 8th Nov 2013; BS5228 Noise Impact Assessment ref 9384D-2 BS5228 by Noise.co.uk dated 22/12/2011; BS5228 Vibration Impact Assessment ref 9384-2 by Noise.co.uk dated 22/12/2011; Environmental Noise Survey ref 9587-2 R1 by Noise.co.uk; Car Lift Noise Assessment report 9384A-2 by noise.co.uk dated 19/1/12; Road Noise Impact Assessment report 9384C-2 by noise.co.uk 22/12/2011;

Ecological Action Plan by James Blake Associates Rev B January 2012; Reptile Mitigation Method statement by James Blake Associates Rev C December 2011; Phase 1 Habitat Survey by James Blake Associates rev A Nov 2013; Breeding Bird Survey by James Blake Associates Rev A Dec 2011;

Reptile Survey by James Blake Associates Rev A Nov 2013; Bat Survey by James Blake Associates Rev B Dec 2011; Transport Statement Addendum by i-Transport dated 20 Nov 2013; Construction Management Strategy dated Nov 2013; Letter from Chris Miele of Montagu Evans dated 07/012/14.

- 3) A sample panel at least 1m x 1m in size of all facing brickwork demonstrating the proposed colour, texture, face-bond and pointing shall be provided on site and approved in writing by the Council before the relevant parts of the works are commenced and the development shall be carried out in accordance with the approval given. The sample panel shall be retained on site until the work has been completed.
- 4) Detailed drawings and samples of all materials in respect of the following, shall be submitted to and approved in writing by the Council before the relevant part of the work is begun:
 - a) Plan, elevation and section drawings, including jambs, head and cill, of typical windows (including bay winter-garden windows) and door openings.
 - b) Plan, elevation and section drawings of typical windows at a scale of 1:10.
 - c) Plan, elevation and section drawings of a typical projecting bay at a scale of 1:10 including framing and junction details at 1:1.The development shall not be carried out other than in accordance with the approved drawings and samples.
- 5) No lights, meter boxes, flues, vents or pipes, and no telecommunications equipment, alarm boxes, television aerials or satellite dishes, shall be fixed or installed on the external face of the buildings, without the prior written approval of the Council.
- 6) Prior to first occupation of the unit identified as H1 on the approved ground floor plan, details of measures required to protect the privacy of neighbours from the second floor side terrace shall have been submitted to and approved in writing by the Council. All approved measures shall be carried out prior to first use of the terrace and shall be permanently retained and maintained thereafter.
- 7) The wildlife area/nature reserve shown on plan JBA 10/35-01 Rev M shall not be accessed by the public other than in accordance with an Ecology and Enhancement Plan which shall have first been submitted to and approved in writing by the local planning authority.
- 8) Prior to commencement of any development, (including any works of demolition, site setup, enabling works or relocation of services) the measures set out in the Reptile Mitigation Strategy shall be implemented in full and reports on the measures undertaken by a suitably qualified and experienced expert shall be submitted to the Council's Nature Conservation Officer at least every four months for the duration of the works and for a period of 12 months subsequent to their completion.
- 9) No development shall take place until full details of hard and soft landscaping and means of enclosure of all un-built, open areas have been submitted to and approved in writing by the Council. Such details shall include final details of all proposed tree planting, earthworks including grading, mounding and other changes in ground levels, fencing and perimeter treatment to all boundaries of the site, including any necessary security and crime prevention measures required to prevent unwanted trespass to the areas of residential development

- and the designated open space behind. The relevant part of the works shall not be carried out otherwise than in accordance with the approved details.
- 10) All hard and soft landscaping works shall be carried out in accordance with the approved landscape details by not later than the end of the planting season following completion of the development or any phase of the development. Any trees or areas of planting which, within a period of 5 years from the completion of the development, die, are removed or become seriously damaged or diseased, shall be replaced as soon as is reasonably possible and, in any case, by not later than the end of the following planting season, with others of similar size and species, unless the Council gives written consent to any variation.
 - 11) All trees on the site, or parts of trees growing from adjoining sites, unless shown on the permitted drawings as being removed, shall be retained and protected from damage in accordance with the guidelines and standards set out in BS5837:2005 "Trees in Relation to Construction".
 - 12) No development shall take place until a scheme for monitoring and management of noise during the demolition and construction phases of the development based on the Noise Impact Assessment (Ref 9384D-2) has been submitted to and approved in writing by the local planning authority. The development shall not be carried out other than in accordance with the approved scheme.
 - 13) Before the use commences, the car lift plant shall be provided with acoustic isolation and sound attenuation in accordance with the manufacturers specifications. The acoustic isolation shall thereafter be maintained in accordance with the manufacturer's specifications.
 - 14) No development shall take place where land affected by contamination is found which poses risks identified as unacceptable in risk assessment (Ref 23283-1 (00)), until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out before the development or relevant phase of development is occupied.
 - 15) Prior to commencement of development a detailed parking plan for the basement shall be submitted to and approved in writing by the Council. The car parking provision shall be retained and used for no purpose other than for the parking of vehicles of the occupiers and users of the development, and at no time shall the number of parking spaces for vehicles within the site exceed nineteen.
 - 16) Prior to first occupation of the affordable housing units hereby approved the proposed cycle storage area at ground floor level as shown on the drawings hereby approved shall be provided in their entirety and permanently maintained and retained thereafter.
 - 17) Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any Order revoking and re-enacting that Order, no development within Part 1 (Classes A-G) and Part

- 2 (Classes A-E) of Schedule 2 of that Order shall be carried out without the grant of planning permission having first been obtained from the Council.
- 18) Prior to first occupation of the development a plan showing details of bird and bat box locations and types and indication of species to be accommodated shall be submitted to and approved in writing by the Council. The boxes shall be installed in accordance with the approved plans prior to the occupation of the development and thereafter retained and maintained.
- 19) Development shall not begin until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, including details of calculations and manufacturers specifications, has been submitted to and approved in writing by the Council. The scheme shall identify how the drainage scheme would ensure that surface water discharge rate of 10 l/s would not be exceeded by the proposals. The scheme shall also include details of how the scheme shall be maintained and managed after completion, and the inclusion of back up / standby pumps and details of the split level surface water storage designed to reduce the volume of water that needs to be disposed of by pumping. The scheme shall be implemented in accordance with the approved details before the development is completed.
- 20) Prior to commencement of the relevant part of the development a plan showing details of the green roof including species, planting density, substrate and a section at scale 1:20 showing that adequate depth is available in terms of the construction and long term viability of the green roof, and a programme for an initial scheme of maintenance shall be submitted to and approved in writing by the Council. The green roof shall be fully provided in accordance with the approved details prior to first occupation and thereafter retained and maintained in accordance with the approved scheme of maintenance.
- 21) Prior to commencement of development details of proposed slab levels in relation to the existing and proposed levels of the site and the surrounding land shall be submitted to and approved in writing by the Council. The development shall not be carried out other than in accordance with the approved details.
- 22) Prior to commencement on the relevant part of the development hereby approved details of all external lighting to include location, design, specification, fittings and fixtures (including means of reducing light spillage) shall be submitted to and approved in writing by the Council. The buildings shall not be occupied until the relevant approved details have been implemented. Following occupation at no point shall high level external lighting fixtures be installed within the perimeter of the residential site (including the rear gardens).
- 23) Prior to occupation of units A3, A5, and H2 the windows on the north and south elevations shall be fitted with obscure glazing and fixed shut to a height of 1.8 metres in accordance with plans T(20) P00 Rev E, T(20) P01 Rev E, T(20) P02 Rev F, and T(20) P03 Rev E. Such measures shall be permanently retained thereafter.
- 24) Prior to the commencement of any works which may affect bats or their habitat a detailed mitigation strategy shall be submitted to and approved in writing by the Council. All works shall then proceed in accordance with the approved strategy.
- 25) Before occupation the dwellings shall comply with Building Regulations Optional Requirement M4. Evidence of compliance shall be notified to the building control

- body appointed for the development in the appropriate Full Plans Application, or Building Notice, or Initial Notice to enable the building control body to check compliance.
- 26) Prior to first occupation of the affordable housing units the refuse and recycling storage facilities intended for occupiers as shown on the drawings hereby approved shall be provided. All refuse and recycling storage facilities shall be permanently maintained and retained thereafter.
- 27) Prior to first occupation of the market or intermediate housing units the basement refuse and recycling storage facilities intended for occupiers as shown on the drawings hereby approved shall be provided. All refuse and recycling storage facilities shall be permanently maintained and retained thereafter.
- 28) Prior to first occupation of the market or intermediate housing units the proposed cycle storage area at basement level as shown on the drawings hereby approved shall be provided in their entirety and permanently maintained and retained thereafter.
- 29) The development hereby approved shall not commence until such time as a suitably qualified chartered engineer with membership of the appropriate professional body has been appointed to inspect, approve and monitor the critical elements of both permanent and temporary basement construction works throughout their duration to ensure compliance with the design which has been checked and approved by a building control body. Details of the appointment and the appointee's responsibilities shall be submitted to and approved in writing by the Council prior to the commencement of development. Any subsequent change or re-appointment shall be confirmed forthwith for the duration of the construction works.

END



RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

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

Challenges under Section 288 of the TCP Act

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

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

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

SECTION 3: AWARDS OF COSTS

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

SECTION 4: INSPECTION OF DOCUMENTS

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