The Planning Inspectorate

# Appeal Decision

Inquiry held on 15-18, 22-25, 29-31 January and 1, 5-8, and 22 February 2019
Site visits made on 7 January, 21 and 22 February 2019

**by Brendan Lyons BArch MA MRTPI IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 10th June 2019**

**Appeal Ref: APP/X5210/W/18/3198746**
**Gondar Gardens Reservoir, Gondar Gardens, 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 LifeCare Residences against the decision of the Council of the London Borough of Camden.
- The application Ref 2017/6045/P, dated 26 October 2017, was refused by notice dated 30 January 2018.
- The development proposed is partial demolition of the existing reservoir, including the roof and most of the internal structure, and the erection of six 4-6 storey buildings and four 2-3 storey link buildings with common basement levels within the retaining walls of the existing reservoir and a site-wide biodiversity-led landscaping and planting scheme including external amenity space, drop off area, retention pond and slope stabilization and associated engineering works.

## Decision

1. The appeal is dismissed.

## Preliminary matters

2. The Inquiry opened on 15 January 2019 and continued for 16 further days. The Council's opposition to the appeal proposal was supported by the Gondar and Agamemnon Residents Association ('GARA'), who presented their own case to the Inquiry as a 'Rule 6 party'[1].

3. A week before opening the Inquiry, I was invited to inspect the covered reservoir that occupies much of the appeal site, in company with representatives of the Council and of GARA. Before the Inquiry closed I carried out a further accompanied inspection of the site and surrounding properties, and an accompanied visit to Battersea to see another retirement complex owned and operated by the appellants. I made unaccompanied visits to other locations in the wider area before and during the Inquiry.

4. The planning application was refused for sixteen reasons. The Statement of Common Ground ('SCG') agreed for the appeal by the Council and the appellants ('the main parties') records that two of the reasons, relating to provision of cycle parking and to noise and vibration impacts, were now satisfactorily addressed by the submission of additional information, and

[1] The Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000 (Statutory Instrument 2000/1625) (as amended) Rule 6(6)

subject to any necessary conditions and planning obligations under Section 106 of the Act[2]. These remained matters of concern to GARA, who made submissions on the revised cycle parking[3] and plant room arrangements[4]. In the light of that, I see no disadvantage to any party in accepting the amended plans for the purposes of the appeal. Similarly, I accept the several more recent updates and additions to specialist surveys and reports that had supported the planning application, which all parties were able to refer to in evidence to the Inquiry. I consider the effect of these when dealing below with relevant main issues, but in respect of the reason for refusal on sustainability performance I accept the position agreed by the parties that dispute can be narrowed to focus only on carbon dioxide ('$CO_2$') emissions.

5. The SCG also confirms accord in principle that four of the five reasons for refusal that related to failure to conclude a legal agreement on measures to mitigate potential adverse effects of development could be addressed by planning obligations. However, no agreement could be reached in the run-up to the Inquiry, and the appellants instead submitted a draft Unilateral Undertaking ('UU') that sought to deal with reasons of construction management, highway improvements, car-free development and submission and operation of a Travel Plan. The UU would also address the issues of occupancy restrictions and employment training, and of carbon offsetting and affordable housing, which had formed other reasons for refusal. Amended drafts of the UU were tabled following discussions at the Inquiry. A fully executed UU, whose terms continued to be opposed by the Council and by GARA, was submitted on the final day of the Inquiry. The effects of the obligations are considered under relevant headings below.

6. A separate SCG was also concluded by the main parties on the matter of Viability ('the VSCG'). This sets out agreement by specialists for each side of values and costs, and the appropriate formula for calculating a payment in lieu of direct affordable housing provision. However, the principle of a contribution to affordable housing and the extent of any necessary provision remained in dispute.

7. The National Planning Policy Framework ('NPPF') was updated in July 2018, after the appeal was submitted. All parties referred to the updated NPPF in their written and oral evidence. Further minor revisions to the NPPF were made in February 2019 while the Inquiry stood adjourned, and the appeal decision must have regard to this latest version. The parties were able in their closing submissions to confirm the relevance to their case, if any, of the latest changes.

## Main Issues

8. In the light of the reasons for refusal of the application and the matters potentially resolved, I consider the main issues in the appeal to be:

   1) The effect of the proposed development on land designated as open space and local green space;

   2) The effect on biodiversity and nature conservation;

[2] Town and Country Planning Act 1990 (as amended)
[3] Plan No. A_PL_P_100 Rev P02
[4] Plan No. A_SK181019_001

3) The quality of the proposed design and layout, having regard to the effects on:

   a) the character and appearance of the area;

   b) community safety and cohesion;

   c) providing access for all;

   d) the quality of future living conditions, particularly in respect of outlook for neighbouring residents and privacy for residents of the proposed development;

4) The proposal's sustainability, particularly in respect of $CO_2$ reduction targets and energy efficiency;

5) Whether, having regard to national and local policy, the proposal would make appropriate provision for affordable housing, informed in particular by whether its residential component would comprise development within Use Class C2 or C3;

6) Whether the proposal would secure adequate mitigation of impacts in respect of construction management, highways and public realm and sustainable travel.

9. Other matters relevant to the decision include the effect on the heritage significance of the site and the need for older persons' housing.

**Reasons**

10. The appeal site comprises some 1.24ha of open land within the residential suburb of West Hampstead. The site forms a long rectangle, bounded on three sides by the rear gardens of terraced houses, many now converted to flats, that face onto surrounding streets. These are Gondar Gardens to the north, Agamemnon Road to the east and Hillfield Road to the south, the latter two of which are at a considerably lower level than most of the site. To the west the site has a street frontage of some 70m in length onto Gondar Gardens, unbuilt apart from a small electricity sub-station. This frontage is flanked on each side by three-storey over basement 'mansion blocks' of apartments -Chase Mansions, St Elmo Mansions and Pine Mansions to the north and South Mansions to the south. The opposite side of this leg of Gondar Gardens is fronted by the rear gardens of houses on Sarre Road, some plots having garages and outbuildings opening onto the street and several of which have now been developed with small infill houses.

11. The appeal site has the appearance of rough grassland with some shrubs and trees at the edges, including a group along the eastern and southern boundary covered by a Tree Preservation Order ('TPO'). However, much of the site is actually occupied by the underground reservoir mentioned above, covered by a layer of soil in a raised mound. This substantial brick-vaulted structure, some 92m long by 53m wide and 7m deep, was built in 1874 as urban water storage and continued to serve this purpose until decommissioned in 2002. The site is included in the Council's local list as a space of historical and social significance.

12. Since decommissioning there have been several proposals for the development of the site. Planning permission was granted on appeal in 2012 for the removal

of the reservoir's columns and roof and the construction on its floor of 16 houses in two facing rows ('the Reservoir Scheme')[5]. At three storeys in height, the terraces would have appeared just above surrounding ground levels. In 2013 an appeal was dismissed, on design grounds only, against refusal of permission for the development of two blocks along the street frontage to provide 28 apartments ('the First Frontage Scheme')[6]. The blocks would have had three storeys over a basement and with a set-back fourth floor. The buildings' footprint would have been partly within the reservoir, whose structure would again have been hollowed out, with some parking to be provided at the lower basement level and the remainder to be grassed over. A revised design was later granted permission on appeal by the Secretary of State in 2015 ('the Second Frontage Scheme')[7]. The permission granted has now expired, but an updated version of the proposal ('the Third Frontage Scheme')[8] was submitted in August 2018 and was still under consideration by the Council at the time of the Inquiry.

*Appeal proposal*

13. Permission is now sought to develop the site as 'extra care' housing for older and retired people, together with an integral 15-bed nursing home. The housing would comprise 82 self-contained apartments divided between six blocks, said to reflect the 'mansion block' typology, and lower height link buildings. The blocks would be laid out in two rows to each side of three connected courtyard spaces that would step down into the heart of the site, with the lowest courtyard just below the level of the reservoir floor. The buildings would be consistent in their overall height, being three storeys with a set-back fourth storey next to the street but, owing to the stepping down in levels, five storeys with a set-back top floor at the eastern end. Communal facilities, including a reception area, restaurant, lounge, café, cinema, swimming pool and gym and service spaces would be contained in the link buildings and in the shared upper basement level.

14. The built footprint would occupy the full area of the reservoir and much of the strip of land to the front. The reservoir perimeter walls would be mostly encased by new structural walls, but would be partly exposed together with retained or rebuilt segments of the vaulted structure above the proposed restaurant and pool. The remainder of the site would largely be kept as open land, but with regrading to form a slope down to the lowest courtyard level. Access would be from Gondar Gardens, with a gated pedestrian route to open onto the central spine of courtyards, and a separate access shared by vehicles and pedestrians adjacent to South Mansions. Apart from four pooled and/or chauffeur-driven vehicles to be parked in the basement, the development would be intended to be car-free.

*Policy context*

15. The development plan for the purposes of the appeal comprises the London Plan, 2016 ('LP'), the Camden Local Plan 2017 ('CLP') and the Fortune Green and West Hampstead Neighbourhood Plan 2015 ('NP'). The site is not identified in the Camden Site Allocations Plan 2013, which remains part of the

[5] Appeal Ref APP/X5201/A/11/2167190
[6] Appeal Ref APP/X5201/A/12/2188091
[7] Appeal Ref APP/X5201/W/14/2218052
[8] Application Ref 2018/3692/P

development plan but is now under review. A draft New London Plan ('NLP') was undergoing examination at the time of the Inquiry but, in view of the issues yet to be resolved, I consider that very limited weight can be given to the emerging policies in this appeal. In particular, it is clear that there are substantial objections to emerging Policy H15 on specialist housing for older people.

16. A number of supplementary planning guidance documents issued by the Greater London Authority ('GLA') and by the Council (as Camden Planning Guidance ('CPG')) are also relevant to the appeal.

17. Housing for older people is covered by LP Policy 3.8, which requires their varied needs to be taken into account, and by CLP Policy H8, which supports the development of a variety of housing to meet their specific needs, subject to criteria on occupancy, standard of provision, access to facilities, community integration and impact on amenity. It is common ground between the main parties, although disputed by GARA, that the appeal site offers a suitable location for this type of development.

***Open space and local green space***

18. The first reason for refusal refers to harm arising from development on land designated as Open Space and Local Green Space ('LGS'). At that time the Camden Policies Map, as in the case of the previous appeals, had shown all of the site, with the exception of the strip between the reservoir and the street frontage, as Private Open Space ('POS'). This was made up of two components, with Plot 189 covering the great majority, and Plot 188 as a small area running along the southern boundary of the site from the street frontage.

19. Following representations since the appeal was submitted, the Policies Map has been amended, to clarify that Plot 189 is confined to the part of the site to the east of the reservoir structure and the narrow strips to its north and south flanks. An overlapping designation, but omitting the front part of Plot 188, shows the land as LGS. This designation was first made by NP Policy 16, which predates the CLP, but is now recognised by the Map.

20. By restricting the designations to the land outside the perimeter of the reservoir, the plans acknowledge the amount of removal of the structure allowed by the planning permissions granted on appeal. The realignment is disputed by GARA, arguing that the Reservoir Scheme permission was for a unique design and has now lapsed, while the Second Frontage Scheme would have reinstated open space within most of the reservoir footprint. I acknowledge the concern that the appeal decisions were based on the particular merits of each proposal and that it does not necessarily follow that a proposal combining elements of both can be taken as acceptable in principle. However, the extents of these designations have now been formally fixed[9], and must receive due weight in this appeal.

21. LP Policy 7.18 states that open space will be protected from development unless equivalent or better local provision is made. CLP Policy A2 echoes this, specifying that both public and private open space is to be protected, and that development detrimental to the setting of designated open spaces will be resisted. NP Policy 17 seeks a similar degree of protection and offsetting of

[9] The extent of the Local Green Space designation was the outcome of a specific recommendation by the NP examiner.

loss. Echoing LP Policy 7.4, it also seeks 'development that has a positive impact on the relationship between urban and natural features'.

22. CLP Policy A2 encourages the identification of Local Green Spaces, but does not otherwise offer them any special protection. In designating the appeal site along with others, NP Policy 16 does not state how the spaces are to be retained. However, the supporting text to both policies refers to the NPPF as the source of the concept of LGS and the criteria for their selection. By definition, these are spaces of particular importance to the local community, intended to endure for the long term[10].

23. The NPPF 2019 no longer refers to 'special protection', but confirms that policies for managing development within a Local Green Space should be consistent with those for Green Belts[11]. They should therefore mirror the 'strongest protection' given to the Green Belt by LP Policy 7.16 and the 'strong protection' sought by Policy A2 for the openness and character of Metropolitan Open Land, which is equivalent to Green Belt. Although the CLP and NP policies do not explicitly set this out, it is now accepted by all parties to the appeal that protection equivalent to Green Belt should be applied. Therefore, openness should be maintained, and inappropriate development resisted other than in very special circumstances.

24. The footprint of the proposed buildings would be confined to within the perimeter of the reservoir and part of the strip along the street frontage. The appellants' original case was that there was no built development in the LGS and that NP Policies 16 and 17 were not engaged. However, by the close of the Inquiry, it was accepted that the paved semi-circular end of the lowest courtyard would protrude into the LGS. It was argued that this would not be inappropriate development, as it would facilitate outdoor recreation, and would preserve openness.

25. In my view, this analogy with NPPF Green Belt policy[12] does not apply because it would require the area to be treated in isolation and because the policy relates to the construction of new buildings. The formation of a paved area would not amount to a new building, but would be an engineering operation. As such it would form an integral part of the extensive 'associated engineering works' for which permission is sought, to involve substantial regrading and stabilisation of the land to the east of the proposed buildings, and the formation of the balancing pond.

26. The area of paving could be omitted from the proposal by means of a planning condition, which is the appellants' alternative submission, but even in that scenario there would still be very considerable engineering works within the LGS. The analogous NPPF policy[13] states that such works are not inappropriate if openness would be maintained and there would be no conflict with the purposes of designating the land. I agree with the Council that the radical alteration to the landform over a very significant area of the LGS would not maintain its openness. Rather than a gently domed piece of natural grassland, much of the space would become a quite steeply sloped bank funnelling down to six-storey buildings each side of the courtyard. The space would be

[10] NPPF paragraph 99
[11] NPPF paragraph 101
[12] NPPF paragraph 145
[13] NPPF paragraph 146

dominated by the proposed buildings and the experience of the space would be radically altered.

27. As the character of the space is one of natural grassland, and the designation by the NP is based on the site's environmental and biodiversity value, there would also be some conflict with the purpose of the designation.

28. The narrow strips of the LGS to each side of the reservoir are inherently more constrained as open land than the larger area to the east. It appears that there would be some encroachment into the strip to the south by the car parking spaces in the entrance court and possibly some permanent alteration of ground levels to allow window openings to the proposed swimming pool. These would also be classed as engineering works, which in association with the buildings hard against the LGS boundary would adversely affect its openness.

29. For these reasons, I find that the engineering works would be inappropriate in the LGS, which in conjunction with the new buildings immediately next to it would adversely affect its openness. The proposal would be contrary to national policy and to the objective of the NP Policy 16 designation.

30. Turning to the effect on POS designations, the extent of Plot 189 is virtually identical to the LGS. For the reasons outlined above, there would be direct encroachment by the development into the open space, with an adverse effect on its character and sense of openness. These qualities would also be strongly affected, both in the main block and in the narrow side strips, by the closeness and relative height of the proposed buildings.

31. The appellants acknowledge that the entry court would occupy the full extent of Plot 188, but regard the change in its character to a formal hard-paved space as insignificant. The space has value as a buffer to the side of South Mansions, and allows a continuous green edge along the full depth of the site that would not be matched by the harder treatment of the outline landscape proposals. Its current somewhat overgrown condition could have been addressed as part of a landscaping scheme. It is acknowledged that the proposal does not offer any replacement provision, and it is not clear why the proposal could not have been designed to preserve and/or enhance the existing space, which would be lost. The proposed central courtyards would be essentially hard landscaped spaces associated with the buildings, and would not provide compensation for lost open space.

32. In addition to its nature conservation interest considered further below, the site's value to the local community as a 'green lung' surrounded by development has been endorsed by previous appeal decisions. But as the open space is private land, this value depends greatly on the ability to see the open space and on views across it. In the past there have been clear views from Gondar Gardens across the site, and similar views could be reinstated if the current temporary hoarding were to be replaced. However, the main area now designated as LGS and POS is some way from the street. Even with a clear undeveloped frontage detailed perception of the area would be limited, although the presence of open land would be clear and the distant view of the Hampstead skyline would be visible.

33. The protection of this view is specifically sought by paragraph C2 of the NP, which sets aspirations for the potential development of the site. This is not a formal NP policy, and is not an allocation, as had been suggested in written

evidence. But the aspirations set out are worthy of some weight as a formally endorsed community vision for the location. By confining the C2 notation to the footprint of the reservoir itself, and by formally designating the LGS to surround it, the drafting of the NP acknowledged the previous permission for the Reservoir Scheme and the Second Frontage Scheme then under consideration. The subsequent amendment to the Camden Policies Map confirms this approach. Nevertheless, paragraph C2 seeks the retention of as much open space as possible, which must be taken to include space within the identified footprint, as well as the LGS. By covering the entire footprint of the reservoir, the appeal proposal does not meet this expectation.

34. This is relevant when considering the impact on views over the site from surrounding houses and flats, whose first identification by the 2005 Unitary Development Plan Inspector as a cumulative public asset has been endorsed in subsequent appeal decisions. The appeal proposal would directly block views over and across the site, including oblique views over the LGS/POS, from upper floors of a number of properties on the northern leg of Gondar Gardens and on Sarre Road, and from flats on the south side of Chase Mansions. Direct views across the LGS/POS from houses and flats further east on Gondar Gardens would be retained but their quality would be affected by the bulk of the new buildings to one side. Views from the rear of houses and flats on Agamemnon Road are generally well screened, and the houses are set at a lower level. Their limited views of the LGS/POS itself would not be affected, but there would be some perception of reduced openness due to the development beyond. The Hillfield Road houses do not enjoy the same long distance views as some of the properties to the north and west. The effect on their views over the site would be similar to that for the Gondar Gardens houses, but to a lesser degree owing to the change in levels and tree screening, which is to be augmented. Even allowing for the more restricted area now formally designated as LGS/POS, the site's value as an open green space would be diminished.

35. The reduction in the perception of open space and the associated benefits such as access for some residents to very long distance views of Central London and a perception of night-time darkness would together amount to a reduction in the amenity value of the site, contrary to the aspirations of NP paragraph C2 and to LP Policy 7.18 and CLP Policy A2.

36. The effect on the value of the open site to residents on three sides of the site would be more harmful than that of the Second Frontage Scheme and of the Reservoir Scheme. The unique design of the first scheme, with its minimal impact on openness, does not provide a compelling precedent for full height development covering the entire extent of the reservoir.

37. The current proposal would also represent a very substantial increase in built form over the Second Frontage Scheme. However, the planning permission granted by the Secretary of State does represent a very significant change since the NP was drawn up. It allowed the development of Plot 188 as part of the construction of new buildings all along the Gondar Gardens frontage, which would also have effectively blocked views from the Sarre Road houses. Public views from Gondar Gardens would have been obscured, other than through a central gap between buildings. Diagrams submitted by GARA show how views through the two narrow openings offered by the appeal scheme would be more constrained by the width of the openings and the depth of the proposed

development, but the principle of allowing suitable built development almost filling the frontage can be taken as established.

38. The appeal scheme would involve a significantly greater amount of built form than either of the two previously permitted schemes. I accept that it is not appropriate to assume that site coverage or building heights approved under those permissions can necessarily be mixed and matched in any later proposal. But the previous permissions do offer considered precedents to which weight must be given. The principle applied in the previous appeals of reaching a balanced judgment of the impact on the appreciation of open space compared to the benefits of the proposal continues to be relevant.

39. However, by the decision to cover the entire area of the reservoir with built development and to include accommodation at the eastern end down to reservoir floor level, the appeal proposal would cause significant encroachment into the LGS/POS. This is a major difference from both previously permitted schemes.

40. Therefore, I conclude on this issue that the proposal would involve inappropriate development harmful to the LGS, in conflict with the protection sought by national and NP policy, and would also conflict with national and local policy on the maintenance and enhancement of POS.

***Biodiversity and nature conservation***

41. The great majority of the site is designated by the CLP as a Site of Importance for Nature Conservation ('SINC') of 'Borough 2' status. This means its interest is seen as greater than local, but below Borough 1 and Metropolitan. The designated area covers the entire surface of the reservoir together with the adjoining LGS/POS, therefore coinciding with the former designation of the POS.

42. National policy states that sites of biodiversity value should be protected and enhanced in a manner commensurate with their statutory status or identified quality in the development plan[14]. The NPPF wording is echoed by LP Policy 7.19, in the context of seeking protection and enhancement of biodiversity wherever possible, and also in setting a hierarchy of avoidance, minimisation with mitigation and, only in exceptional cases, appropriate compensation[15]. CLP Policy A3 seeks to protect designated sites, but states that development will be permitted unless it would directly or indirectly result in the loss or harm to a site or adversely affect the status or population of priority habitats or species.

43. The application was informed by a Phase One Habitat Survey, supported by separate surveys for reptiles, bats and breeding birds, a Reptile Mitigation Strategy and a Proposed Ten Year Management Plan prepared by the London Wildlife Trust. Further survey work was carried on since refusal of the application and reports were updated in 2018, supplemented by an Ecological Action Plan and potential monitoring measures for up to 20 years.

44. The SINC citation records the site's value as a habitat for neutral grassland, with a moderate diversity of wild flowers and the presence of grassland butterflies, together with the small areas of woodland along the southern and eastern edges as habitat for common bats. The site is the only known location

[14] NPPF paragraph 170(a)
[15] NPPF paragraph 175(a)

in Camden for slow-worms, which are protected as a species of principal importance[16].

45. The Council's concerns, strongly supported by GARA, relate to the impact both on habitats and on species.

*Habitats*

46. The proposal would result in the entire loss of the area of grassland above the reservoir roof. There is some inconsistency between the written evidence for the appellants and the various supporting documents, which were prepared by a different consultant who did not appear at the Inquiry. But the balance of the survey results and the assessment of the Council's expert is that the part of the site with the greatest value as a semi-improved neutral grassland habitat is that above the reservoir roof, where thinner soils have supported a greater diversity of plants. Thus the proposal would result in the loss of the area of greatest value. There is no evidence of any effort to avoid this loss in the planning of the proposal, and the appellants instead focus on the potential for mitigation.

47. There would also be the potential for harm within the remainder of the site. The precise areas affected are subject to some dispute, but it appears that the area to be permanently lost (comprising the reservoir and the proposed entry court) would amount to some 45% of the total area of the SINC. A further 21% would be subject to significant re-engineering during the construction period. This would mean that only 33% of the designated area, which would include the woodland zones and a very narrow strip along the northern boundary, would be left in their present condition.

48. The appellants are confident that the area to be re-engineered and re-planted would soon re-establish a habitat of equivalent or better value to the existing, but this is not supported by detailed proposals, covering matters such as the translocation or import of soils, for example[17]. Rather anecdotal evidence was given of successes elsewhere, but the circumstances here, particularly the radically different profile of the re-engineered land and the increased shading by landform and buildings at different times, suggest that the re-created land would be rather different from the existing. I give weight to the doubts expressed by the Council's specialist, who has expertise in grassland ecology, on the difficulties of establishing a habitat of equivalent value, at least for many years.

49. The appellants estimate that green roofs, equal to some 14% of the designated SINC area, would provide compensation for the area to be lost. Again, I share the reservations expressed by the Council's expert. The provision of green roofs is to be welcomed in new development, and is supported by policy, but the issue here is whether they can be assumed to be compensation of equivalent value to the established ground-level habitat, even if properly maintained. I accept that, in the light of lack of access by ground-dwelling species, there is insufficient evidence to conclude that they would fully compensate.

50. The appellants acknowledge a permanent loss of 31% of the existing grassland. This proportion would not be 'small', as claimed, and relies on full mitigation

[16] Natural Environment and Rural Communities Act 2006
[17] NPPF paragraph 170(a) includes reference to the value of soils.

from the re-engineered areas and roofs. If difficulties in achieving full value from these areas are taken into account, the potential loss becomes significantly more substantial, even if unlikely to reach the 66% very worst case.

51. The decision to allow the removal of the reservoir roof in the Reservoir Scheme appeal was based on a balanced judgement of the evidence then before the Inspector. The focus on the biodiversity issue appears to have been on protection of species rather than habitat. A key difference from the current proposal is that the scheme would have left the entire site outside the reservoir edge effectively undisturbed. The same is largely true of the First and Second Frontage Schemes, with proposed reinstatement of habitat at reservoir floor level. It appears that the current proposal, even on the appellants' estimates, would be more harmful to the grassland habitat than the earlier schemes, and significantly more harmful if a more cautious assessment is adopted.

52. The current proposal would also offer less in terms of assured future management of the habitat. Although LWT were involved in the drafting of management proposals, their future role is not clear, and they did not appear at the Inquiry. The management recommendations are framed in terms of actions by a private company, possibly employing contractors. This contrasts with the earlier schemes where there was a clear commitment to convey the site to LWT for management in perpetuity as a wildlife site.

53. The risk to the quality of the grassland habitat from fouling by any pets kept by future residents would also rely on active long-term management by the appellants, subject to satisfactory control measures being agreed under a planning condition.

54. There is no dispute that the element of woodland habitat would be largely undisturbed by the proposal, and could be enhanced by positive management. But the habitat value of the proposed pond is not agreed, with Council concerns over shading by day and light spill from adjoining buildings at night. Even if these concerns were seen as overstated, it does appear that the pond is proposed primarily for drainage rather than biodiversity reasons, and will further reduce the area of habitat for which the site is designated. Its value as an enhancement appears limited.

*Species*

*Slow-worms*

55. The site has been rigorously surveyed to establish the strength of the slow-worm population. Despite some differences in interpretation, the results suggest a status of 'good' rather than 'exceptional'. The findings show that the most favoured locations for the species are the sunnier banks at the south-east corner of the site, but they have been found in different parts of the site, as well as in neighbouring gardens.

56. The proposed translocation would involve the site's entire population being moved to one third of the site area during the development period. The potential to later reclaim a wider area of the site would depend on replacement habitat becoming successfully established, and this would still amount to just over half of the current area.

57. The appellants have not attempted to assess the precise effect this might have on the local population, and appear to see the proposed translocation as little more than standard procedure. But the lack of objection to the proposal by Natural England ('NE') could be seen as a lack of engagement rather than as any expression of support. NE guidance quoted by the Council advises that such moves should only be a last resort, while the advice of the special interest group LEHART[18] is that translocation of an entire population to a reduced area of their habitat has not been successful elsewhere and that there would be a risk of eventual loss of the species from the site. Therefore, even if the methods to be used would follow recommended best practice, which is not disputed, the procedure would not be without risk.

58. The proposed future monitoring of the slow-worm population, now to be extended to 20 years secured by a planning condition, would help to mitigate risk. The habitat management measures proposed and some of the ground re-modelling would also help to provide suitable conditions for the species in the reduced area. But it is less clear how effective remedial actions might be in the event of future decline in population.

59. The appellants contrast the benefit of active management against the lack of any enforceable management of the site at present. However, the evidence suggests that the species has coped well under the very limited regime operated in recent years. It appears likely that any sensible owner of the site seeking to secure some development would carry out at least minimum management to avoid any semblance of deliberate neglect. Therefore, even the 'no development' scenario might involve less risk than the measures now proposed.

60. Translocation was previously accepted in the Reservoir Scheme appeal but would have involved a smaller number of animals being moved to a larger area, which would have been virtually undisturbed. The circumstances are not identical to the current proposal.

61. Increased predation by pets would also be a concern unless adequate control measures were in place. The appellants' ecology evidence expected these to be secured by covenants. I agree that this would be more effective than reliance on a scheme to be approved by condition, as now proposed.

62. The appellants argue that slow-worms are not an endangered species and are not in decline nationally or regionally. But regional or national value is not claimed in this instance. A chief attribute of the site is as the location of a sole population within Camden. Protection of this characteristic seems to be precisely the value of designating sites of borough significance. Any risk of harm to the population is a matter of concern.

*Bats*

63. The evidence shows that the site is used for commuting and foraging by several species of bats. No roost has been recorded on the site itself, but the probable presence of roosting nearby, perhaps in a garden, is confirmed by the most recent survey. I share the Council's concern about the lack of detailed investigation of this and of the potential implications of development.

[18] London, Essex and Hertfordshire Amphibian and Reptile Trust

64. The development of the reservoir area would result in loss of a large area of foraging. Whether the intention to increase insect populations in the remaining part of the site would provide sufficient compensation to sustain the same numbers of bats is unclear.

65. The appellants' survey recommends a 10m buffer between the buildings and the site boundaries. By building up to the reservoir edge, almost the full length of the development would be within 6m of the northern boundary. Although evidence to the Inquiry sought to downplay any adverse effect, the significant breach of the original recommendation would be of concern, particualrly if there were a roost or roosts close to this boundary.

66. The maintenance of a reasonable buffer accords with published guidance, which the appellants claim to comply with, on the potential effects on bats of artificial light[19]. The tree line along the northern boundary provides one of the main areas of bat activity. The appellants submit that any bats using the site must be accustomed to artificial light, but the site is some distance from the existing houses, and is otherwise unlit. In addition to the main use by common pipistrelles there is infrequent use by several other species, some of whom are very sensitive to artificial light. But there is evidence to show that even pipistrelles might not readily tolerate much higher levels of light.

67. The appellants' expert evidence on lighting was given without the benefit of an inspection of the conditions on site. While the submission on external lighting showed that common outdoor areas could be lit with low levels of well-contained light, the evidence on likely light spill from windows was less conclusive, being based on a rather ad-hoc set of survey measurements rather than on any published industry standard. The effects of light from balconies had not received detailed consideration.

68. I accept that with careful detailed design and restricted options for lighting by future occupiers, light spill around the perimeter of the building could probably be controlled to limit harmful effects on most bats using the site. But any adverse impact, particularly affecting the rarer light-sensitive species would be regrettable. The change in character of the site along the northern boundary, where many lit windows and balconies would be introduced, combined with the lack of the adequate recommended buffer, suggest that there could be some harmful effects on bats using this part of the site, and potentially on any nearby roost.

69. This along with the acknowledged disturbance of commuting routes, and notwithstanding mitigation measures including the provision of bat boxes, suggests that the impact of development could have a net harmful rather than beneficial effect. There would be considerably more direct impact on bats than allowed in the earlier appeals.

*Birds*

70. The appellants' surveys show that the site is used by a large number of birds, including several species of conservation concern. Again the greatest impact would appear to arise from the considerable loss of grassland foraging opportunities. The proposed enhancement of new grassland and of tree belts around the site perimeter, together with the provision of nest boxes, would

[19] Bat Conservation Trust /Institution of Lighting Professionals : Bats and artificial lighting in the UK - Guidance Note 08/18

provide mitigation for this loss, but whether fully equivalent value is not entirely clear. There would be a risk of some minor harm.

71. The appellants point out that inclusion of four species on endangered lists does not mean that their populations are under any threat, locally or even nationally. But that does not provide a positive argument for encouraging any potential reduction in population here, where the active presence of these species adds to the wildlife interest of the area and of the borough.

*Hedgehogs*

72. There is insufficient survey evidence to suggest significant use of the site by hedgehogs, who may be found in adjacent gardens. I agree with the appellants that the detailed design of boundaries together with the retention of suitable habitat should allow any foraging activity to carry on, albeit over a reduced area.

*Conclusion on biodiversity and nature conservation*

73. I conclude on the balance of the evidence that the proposal would not avoid development on good quality habitat, but would cause a significant loss that would not be fully mitigated or compensated for. The need for translocation of slow-worms arising from the very significant demolition and re-engineering of the site would also pose a risk to the future health of the population, despite the proposed methods to be used and measures for future monitoring. The loss of habitat and the siting of new development would pose a lesser risk to the use of the site by bats and birds.

74. I acknowledge that local and national policies seek a level of protection commensurate with a site's designation, rather than blanket restraint. In this case, the site has been assessed as of value at borough-wide level, albeit at the lower of two grades, rather than merely local. It is therefore worthy of considerable protection, particularly for the attributes that led to its designation. Measures to enhance wildlife generally, however welcome they might be, are not necessarily of equivalent value to the features that the site offers. As outlined above, this is particularly relevant to the sole borough population of slow-worms.

75. The appellants suggest that the site is insignificant both in size and value, in comparison with other areas of neutral grassland in the borough. I accept that the site is small in area compared to major areas of public open space, but that is not unexpected for a site of this type and level of designation, and does not in itself provide an argument for allowing harm to the site.

76. It is also suggested that a principle of proportionality should apply, but I find that the evidence here points to net losses, or the potential for them, even after mitigation and compensation. This would bring the proposal into conflict with LP Policy 7.19 and with CLP Policy A3, as well as with national policy.

### *Design and layout*

77. The NPPF advises that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve, and that good design is a key aspect of sustainable development[20]. This

[20] NPPF para 124

approach is reflected by CLP Policy D1, which directly echoes the NPPF[21] in stating that development will be resisted if it is of poor design that fails to take the opportunities available to improve the character and quality of the area and the way it functions. NP Policy 2 sets out criteria to support the objective of achieving high quality design that complements and enhances the distinct character and identity of the area. Although not cited in the reasons for refusal, LP Policies 7.4 and 7.6 are framed in similar terms, seeking development of high quality design that has regard to the form, function and structure of the area and the scale, mass and orientation of surrounding buildings. LP Policy 3.5 sets out quality and design expectations specifically for housing development.

78. The appeal proposal has been designed by an award-winning architect and the application was supported by a comprehensive Design and Access Statement ('DAS') that sets out the design rationale. Analysis of the local context is provided by a detailed Townscape Study ('TS').

*Character and appearance*

79. The character of this stretch of Gondar Gardens, like the nearby section of Mill Lane, is unusual in lacking frontage development along one side. This, together with the undeveloped frontage of the appeal site, gives a rather unfinished quality to the street scene. However, the remainder of Gondar Gardens, like the other surrounding residential streets, has a very well defined character of closely built terraces set behind shallow front gardens, mainly three-storeys in height with a strong pattern of projecting bay windows. The mansion blocks that adjoin the terraces differ in their wider double-bay fronts, but are otherwise well integrated into the overall scene.

80. The First Frontage Scheme appeal decision established the principle of almost filling the frontage of the site with two blocks with a height above street level of three storeys and an attic floor, as a reinforcement of the sense of enclosure by built form typical of surrounding streets. The Secretary of State endorsed the Inspector's conclusion that the improved treatment of similar blocks in the Second Frontage Scheme would respect local context and character. The current appeal proposal would be very similar in the scale and height of buildings along the street front, with the slightly higher lift housings well set back from the street edge. The placement of buildings would also be very similar other than a slightly wider gap next to South Mansions. The design treatment would be more restrained than the previously approved proposal, but the consistent form of brick-faced blocks would reflect the repetitive pattern of the adjoining mansion blocks. This would be reinforced by the regular rhythm of projecting bays, each topped by a dark-clad dormer. The modelled views show that the form of the frontage buildings would provide a respectful, if perhaps rather bland, visual response to the immediate context and to local distinctiveness. The precise choice of materials could be approved by condition.

81. However, the claimed analogy with the mansion block form would be less successful in other respects. The TS shows that the local mansion block type varies in style and scale, depending on the age of construction and the ambition of the development. But a consistent feature of the type is the organisation of flats around communal entrances, which are usually given design emphasis as a feature of the street frontage. The lack of any such

[21] NPPF para 130

entrances clearly expressed on the frontage would tend to deprive the façade of animation and focus, and to coarsen the scale of the development.

82. Standard 8 of the Mayor's Housing SPG (March 2016), which supports LP Policy 3.5, advises that all communal entrances should be visible, clearly identifiable and directly accessible from the public realm. This is a key aspect of a development's contribution to the legibility of the urban environment. The appeal proposal would rely on access either through the central gap between buildings, secured by a pedestrian gate, or through the reception area reached through the southern shared access courtyard. In neither case would there be clear legibility necessary to identify the development and invite access. Reliance on signage to point to an entrance hidden from the street does not represent the best urban design. The Council's evidence includes an example of a retirement housing development with the entrance set back but visible from the street, which shows how there need not be any conflict between residents' security and a good public presence[22]. A street frontage entrance at the appeal site should not interfere with the residential nature of the street or introduce an institutional character, as feared by the appellants, but would be a matter of good design.

83. The weakness of legibility would be compounded by uncertainty over which was the main entrance, as confirmed by the lack of consensus in oral evidence to the Inquiry. The proposal is planned around the central spine as the principal axis of movement, but the architectural evidence confirms the management need for residents to enter and leave through the reception area. It appears that in practice the southern access, which would be a conventional entrance into a building, would be most used. The central access, which would be more like the way into a mews as envisaged by the appellants, would probably perform a secondary role. The apparent clarity of the design concept would not then be borne out in day-to-day use.

84. The mansion block typology provides some precedent for a series of relatively densely built blocks sharing communal external spaces, but a key difference here would be the depth of the layout away from the street front. From the central spine, the form of the six main blocks and the lower link elements would be identifiable. The analogy with the mansion block typology would be strained, by the variety of size and treatment of the blocks and by the understated treatment of entrances to each. The view from the central spine, which would also be visible from the street, would reveal the increasing height of the buildings as the development would step down the levels, culminating in six-storey blocks separated by a narrow gap. This would involve buildings of a scale not generally found in the local area and would give the appearance of a dense form of development. It would not represent an improvement in the character of the area or a reinforcement of local distinctiveness.

85. The increase in scale gives an indication of the scheme's intensification of development compared with previous approvals. As outlined above in connection with the open space issue, the first Reservoir Scheme appeal decision has not established the principle of total redevelopment of the reservoir footprint, as that proposal was sited well away from the reservoir edges and barely rose above the surrounding ground level. By contrast the

[22] Former Bartram's Convent Planning permission Ref 2014/6449/P

current appeal proposal would involve a much more intensive form of development, with buildings up to the perimeter of the structure all round.

86. The degree of intensification and the failure to maintain an appropriate balance of built form and openness within the reservoir footprint, as sought by NP paragraph C2, would be harmful to the character and appearance of the area. This would be particularly apparent at the eastern end, where, as outlined earlier, the height of the six-storey façade and the excavation necessary to achieve it would have a detrimental effect on the remaining open space, even if external views of this relationship would be limited to upper levels of a relatively small number of houses and flats on Gondar Gardens and Hillfield Road.

87. Along the north side, Block C would have a large footprint and the links between blocks would be short. The bulk of development close to the northern boundary extending into the depth of the site would give an impression of over-intensive development, out of character with the grain of the existing housing and generous gardens. The effect on the south side would be better as Block D would have a smaller footprint and the link blocks would be longer and less obtrusive. The elevation would be well articulated, with the top floor set back and the side boundary would open away from the proposed buildings, to allow a more spacious setting. The scale and treatment of the buildings would not be harmful in the public view from Gondar Gardens.

88. The only other identified public viewpoint would be at Fortune Green where the top of Block F would be clearly seen in winter, and perhaps in summer between trees, looming above the terraced houses. The building would appear bulky and incongruous against the houses' fine vertical grain, but given the distance the effect on local character and distinctiveness would not be significantly harmful.

89. I conclude on this matter that the proposal would derive some support from the local prevalence of the mansion block typology, but that its interpretation of that type would be less than convincing in several respects. In particular, the lack of clearly defined entrances on the street front would result in poor legibility, contrary to LP Policy 3.5 and to CLP Policy D1(f). The scale and bulk of the proposed blocks would in part exceed that found locally and would dominate the site of the reservoir and the adjoining open space, in a way that would not respect or improve the character and appearance of the area, contrary to LP Policy 7.4 and 7.6 and to CLP Policy D1.

*Community safety and cohesion*

90. As well as adding legibility, clearly defined entrances allow for interaction between occupiers of buildings and those using the street, thereby contributing to community safety. The Housing SPG also advises that ground floor flats should have a front door to the public realm. The absence of such entrances can be seen in the rather lifeless ground floor frontages of some of the recent apartment developments in the area. The Second Frontage Scheme had doors to individual units as well as communal access. In this case, the ground floor apartments facing the street would only be accessible from within the development. The modest door openings to the small front gardens from each apartment, which would not be reachable from the street, would not make up for the lack of engagement with the public realm.

91. However, there would be very significant surveillance of the street from the windows and balconies of apartments. The lack of glazed sides to the bays would not be significant in this respect, and there is no reason to think that balconies would not be used. A high proportion of the windows would serve living rooms, which would be likely to be occupied more often during the day than a unit lived in by working-age residents. Given the absence of frontage development on the opposite side of the road, the addition of eyes on the street would be a significant improvement over the existing situation, or even if the current hoarding were replaced by a more permeable boundary treatment. Away from the street, the introduction of residential use deep into the site should also improve surveillance of the rear of the surrounding properties, which currently back onto unsupervised open land.

92. The proposal should also generate its own fair degree of activity, due to residents coming and going, the extent of which would not be affected by the position and design of the entrances. Therefore, even in the absence of direct street access, the proposal should enhance community safety.

93. The site has only one short street frontage. As there are no desire lines across the site, its deep shape does not lend itself to public access. The provision of secure private spaces and communal facilities shared by the occupiers of the buildings is very similar in principle to many of the larger mansion block developments. In this case, the potential vulnerability of some of the residents would increase the case for securing the perimeter of the site. However, the opening of views, albeit restricted, through the centre and to the south of the site would give some appreciation of the development from the public realm.

94. It is clear that the proposal would allow residents to meet many of their day-to-day needs within the development if they so wished. The essence of the extra care model includes the potential availability of in-house facilities. However, it seems likely that at least some active residents would value the opportunity to also make use of local shops and services and to seek to take part in the activities of local groups. I note that some retirement complexes allow use of their facilities by the local community, but have no evidence of the success of such measures in fostering community integration. The Council has pointed out that many conventional apartment developments now also offer shared facilities exclusively for residents' use. A development of conventional apartments on the appeal site would not necessarily lead to markedly greater community cohesion.

95. The planned availability of pool cars would help to allow residents to maintain wider social contacts but would not preclude the choice of more local services. For those on foot or bicycle the gradient of Gondar Gardens might prove a deterrent, but Fortune Green could be reached by a much more level route.

96. For these reasons I do not endorse the concerns raised by the Council and GARA that the appeal development would form a harmfully inward-looking enclave. The proposal would comply in this respect with LP Policy 3.5 and with CLP Policy D1.

*Access for all*

97. Both LP Policy 7.2 and CLP Policy C6 promote fair access for all and expect all buildings and places to meet the highest practicable standards of accessible and inclusive design, so that they can be used safely, easily and with dignity by

everyone. LP Policy 3.8 and CLP Policy H6 seek to secure high quality accessible homes, with 90% of new housing to meet the Building Regulations requirement M4(2) for 'accessible and adaptable dwellings' and 10% to meet requirement M4(3) 'wheelchair user dwellings', which would include dwellings that are easily adaptable to be lived in by a wheelchair user.

98. The Council objects to the design of the appeal proposal both on the accessibility of its overall layout and organisation, but also on the arrangement of individual apartments intended to meet the M4(3) requirement.

*Overall layout and organisation*

99. The application was supported by an Access Statement, prepared by independent consultants. The Statement is very much an assessment of compliance, and while a brief summary was included in the DAS, there is little indication of how the proposal might have been actively informed by inclusive design principles.

100. The Council's view is that inclusive design should aim to allow all users, irrespective of their mobility, to experience and move though the development in as similar a way as possible, by routes that are direct and user-friendly. It goes beyond ensuring that an alternative route or means of access is available when the primary preferred route is suitable only for more able users. The appellants submit that 'fair access' should allow different provision for people with reduced mobility if that difference is reasonable in the context of the site.

101. The appeal proposal seeks to exploit the volume of the reservoir structure, which inevitably means that some accommodation would be located at a lower level than the site access at street level. But by disposing the residential units in six separate blocks organised in facing wings, and by locating the main communal facilities at the two lower levels, movement through the site is made quite complicated for all users. A resident of a street-level flat in proposed Blocks E and F arriving at reception would be required to go down two levels and then back up two levels to reach their front door. For many residents, use of some of the communal facilities would also involve two different changes of level. It is not clear why the complex could not have been planned to allow access at street level to all blocks, whether by external decks or internally.

102. The three central courtyards would form the organisational spine. The stairs linking the spaces would provide a clear direct link between levels for those able to use them. The alternative routes, which would involve entering buildings and travelling by lift and often by very long and circuitous corridors, would form a considerably less attractive and legible alternative, even if the lifts were a familiar reference point to residents. Some of the corridor routes would be quite lengthy for anyone with walking difficulties and not necessarily easy to negotiate for wheelchair users, with limited passing places.

103. A report commissioned by the appellants from a new specialist consultant endorses the use of long corridors at the appellants' Battersea development, but this does not appear to be based on any first principles appraisal. An issue for the appeal proposal is the layout and dimension of corridors as well as their absolute length, which may not be directly comparable with that earlier scheme.

104. The report states that the external stairs are not intended to be the main circulation device, but this seems contrary to the design evidence and the DAS. A feasibility study of alternatives to the stairs was not placed before the Inquiry. The report also gives weight to the physical fitness benefits of walking the corridors. But while some residents might well gain a benefit, others who might find the opposite would not have a choice in the matter. There is some evidence of the chamfered corners and large windows said to ease movement and enhance legibility, but not throughout.

105. Other potential difficulties, such as access to the swimming pool and cinema and holding open of doors, could be resolved by detailed design and sensitive management solutions. But even allowing for distinctive site constraints, on balance I endorse the concerns of the Council and the GLA that the fundamental organisation of the complex would place disabled and less mobile people, who could comprise a notable proportion of the elderly residents, at a significant disadvantage in ease of access. The proposal would not represent the highest practicable standard of inclusive design sought by policy.

*Accessible apartments*

106. The Access Statement confirmed the intention that all apartments[23] would meet the M4(2) requirement and that 12 of the 82 units (15%) would meet the M4(3) standard, with the remainder to satisfy M4(2). However, the Statement's detailed assessment of a sample of units identified a number of areas where further design development was required to show compliance with the M4(3) criteria, including on the ability to adapt kitchen layouts.

107. The Council's concern is primarily directed to the M4(3) requirement. The appellants' evidence to the Inquiry, supported by a detailed assessment by the new specialist consultant, was that 11 apartments (13.4%) would meet the requirement, thereby exceeding the policy level, but that one other apartment could probably meet the standard following amendment. However, the report actually identifies non-compliance issues at 3 of the 11 units, while the twelfth unit would appear to be below standard in several respects, without any ready solution. The Council's more exacting assessment was that only one of the 11 might meet the required standard and that one other had a minimal failing in storage area.

108. The M4(2) and M4(3) requirements are optional, only applicable if specified by the planning permission. The means of securing this is to impose a condition. But this does not mean that all detailed issues can be left to the discharge of the condition, or that scrutiny of compliance would unnecessarily duplicate the later Building Regulations approval process, as the appellants now suggest.

109. The essence of the M4(3) standard is that the dwelling can be easily adapted in the event of a resident becoming more reliant on use of a wheelchair. It is important that adequate space is allowed from the outset to facilitate later adaptation. Therefore, the relatively small proportion of apartments intended to satisfy the policy merit special attention to ensure compliance.

110. The Council rightly focus on the spatial issue, as inadequate space could not readily be made up later. The evidence suggests that this issue may not have

[23] It is common ground that the Part M requirements would apply only if the apartments fall within Use Class C3, an issue considered later in this decision.

been fully addressed in planning the relevant apartments. However, the new specialist report shows that by slightly relocating some internal walls, which could be resolved at the detailed planning stage, most of the 11 units could provide the necessary room sizes and kitchen layouts suitable for later adaptation. Further adjustment might be necessary to achieve the full storage requirement in some instances.

111. Some rooms would remain close to the minimum area, and would be tight when seeking to accommodate the furniture scheduled in Appendix D of the Approved Document. But some discretion on the application of that schedule might be appropriate, given the specialist nature of occupation of the units, and potentially more flexible use of second and third bedrooms.

112. On balance, I find that there is enough evidence to show that the minimum requirement could probably be met by 10% of the apartments (8 units), so that a condition could be imposed with reasonable confidence of fulfilment.

*Conclusion on access for all*

113. The potential suitability of a minimum number of individual units, in accordance with LP Policy 3.8 and CLP Policy H6, would not override the wider concern about the inherent shortcoming in achieving the highest practicable standard of inclusive design. The proposal would not comply in this respect with LP Policy 7.2 and CLP Policy C6.

*Living conditions*

114. CLP policy A1 seeks to protect the quality of life of occupiers of new development and of their neighbours. Among the factors to be considered are privacy, outlook, and levels of sunlight and artificial lighting.

*Future residents*

115. There are two aspects to the Council's concern about potential sub-standard privacy for future residents of the development: separation distances between windows and/or balconies, and relationship of habitable room windows with adjoining communal outdoor spaces.

116. Many of the distances highlighted between directly facing habitable room windows, and between windows and balconies, would be less than the Council's SPG standard of 18m. Some residents might need to rely on net curtains or blinds to achieve their preferred level of privacy. Despite the proposed solid treatment of the balcony fronts, there would be a high degree of intervisibility, including in some instances from more than one level opposite. Oblique distances would be shorter still, but would often be mitigated by partial screening.

117. However, experience elsewhere and changes to nationally permitted development suggest that separation distances below 18m are now becoming more accepted. Furthermore, I agree with the appellants that the specialist nature of the housing, with all residents choosing to move to a retirement complex, means that normal standards need not be strictly applied in this instance. Even if mutual overlooking is not valued as a means of social contact, as now suggested by the appellants, there would still be a sense that neighbours formed part of a group in common. There should be more acceptance of a slightly reduced standard of privacy as a result.

118. The same would be true in respect of windows facing onto shared spaces. Curtains or blinds might be preferred but, because the community would be enclosed and the numbers passing would be relatively modest, the risk of occasional overlooking would not result in an unacceptable standard of privacy.

119. As future occupancy would be controlled by obligation, there would be no risk of adding sub-standard accommodation to the general housing stock.

*Neighbours*

120. The separation distance between windows on the north elevation of Blocks C and E and the rear windows of houses on Gondar Gardens would be considerably greater than 18m, identified by the Council as some 42m. At that distance privacy within the Gondar Gardens houses should not be significantly adversely affected. However, despite some filtering by existing and proposed trees, there would be some loss of privacy in rear gardens due to the location of these blocks so close to the common boundary, with direct overlooking from windows and despite proposed screening, oblique views from balconies and terraces. There would be a minor adverse effect on residents' living conditions.

121. As noted earlier, the introduction of the proposed development into what has always been an open aspect would represent a major change, and the loss of views over the open space would involve some reduction in the residents' longstanding cumulative amenity. But in terms of living conditions within the houses and their gardens, the height and bulk of the two blocks would not harm outlook to an oppressive degree.

122. The effect on outlook during the day would be counterpointed by the effect of artificial light from the proposed apartment windows by night. Again, this would be a significant change from the currently dark conditions, and the elevation's closeness to the common boundary would be apparent. But the lights would be unlikely to be so bright that that they would cause any serious harm to living conditions at the Gondar Gardens houses.

123. Windows at first floor level on the north elevation of Block A would face minor windows on the rear wing of Chase Mansions, several of which would serve habitable rooms. However, a very similar relationship was approved by the Secretary of State in the Second Frontage Scheme. The first floor balcony closest to Chase Mansions would have a green screen, and similar screening of the balcony on the floor above could be secured by condition to ensure there would be no harmful overlooking.

124. As in the earlier approved scheme, the stepping back of the proposed upper floors should mitigate the effect on outlook from those Chase Mansions windows. However, unlike the earlier scheme, the current proposal would intrude on outlook from the east facing principal windows of the upper floor flats at Chase Mansions. Although there would be a significant loss of the expansive views across the appeal site currently enjoyed, the proposed buildings would be sited far enough away to ensure the rooms retained an adequate outlook.

125. The relationship with the Sarre Road houses would be very similar to that approved for the Second Frontage Scheme. The effects would not be significantly harmful.

126. The relationship with South Mansions would also be similar to the approved scheme, but would introduce some facing windows and balconies closer to the boundary. As the existing windows affected do not appear to serve main habitable rooms, the effect on residents' living conditions should not be unduly harmful.

127. The proposed southern and eastern blocks would be far enough away from the rear of houses on Hillfield Road and Agamemnon Road to ensure their outlook and privacy would not be harmfully affected.

128. The Council accepts that there would be no unacceptable loss of daylight or sunlight to the rear of Gondar Gardens or Chase Mansions. Although GARA continue to object on this ground, I find no reason to dispute the position agreed by the main parties.

129. Similarly, while GARA continue to raise concern about potential noise and vibration from mechanical plant, I find inadequate reason to dispute the position agreed between the main parties, which could be secured by proposed conditions.

*Conclusion on living conditions*

130. Despite the departures from normal standards, living conditions for future residents should not be adversely affected by poor privacy. Other than some loss of privacy to the external spaces to the rear of some of the Gondar Gardens Houses, living conditions for residents surrounding the site should not be unacceptably harmed. The proposal would largely comply with CLP Policy A1 in this respect.

*Conclusion on design and layout*

131. For the reasons set out above, I conclude that the proposal would not adequately achieve the required high standard of design and layout sought by national, LP and CLP policy, in respect of its effect on the character and appearance of the area, on fair access for all and, to a minor degree, on living conditions for neighbouring residents. These policy conflicts would not be outweighed by compliance with objectives on community safety and on living conditions for future residents.

## ***Sustainability***

132. Following discussion since the application was refused, the main parties agree that the Council's concern on sustainable use of resources now relates only to the proposal's ability to meet $CO_2$ reduction targets. I have found no reason to take a different view.

133. The application was supported by an Energy Statement dated October 2017, and further information was provided by the appellants' consultants in response to GLA and Council officers' concerns before and after determination of the application, with the position continuing to be refined up to the submission of rebuttal evidence to the Inquiry.

134. Reflecting the overarching environmental objective for the planning system defined by the NPPF[24], both the LP and the CLP give considerable emphasis to addressing the challenge of climate change and moving to a low carbon

[24] NPPF paragraph 8(c)

economy. LP Policy 5.2 requires development proposals to make the 'fullest contribution' to minimising $CO_2$ emissions in accordance with a 'Be lean- Be clean -Be green' energy hierarchy. CLP Policy CC1 requires all developments to reduce emissions through following that hierarchy, but in encouraging the highest feasible standards it acknowledges the need for viability.

135. There is no dispute that the targets currently sought by LP Policy 5.2, and therefore adopted by CLP Policy CC1, require major residential development to achieve zero carbon and non-domestic development to achieve 35% reduction on the standard set by Part L of the Building Regulations. Part E of the Policy 5.2 states that the targets should be met on-site but allows for a payment in lieu towards off-site provision where it can be demonstrated that specific targets cannot be met on-site. The issue in this case is the extent to which it is reasonable to expect relevant targets to be met on-site.

136. The appellants argue that the Council incorrectly seeks to give the full weight of development plan policy to targets that are specified in policies' supporting text or in adopted guidance. But it is an appropriate function of the supporting text to provide clarification of the level of performance that will be likely to meet the policy requirement. Supplementary guidance performs a similar role and, while not having the force of the plan itself, can be a weighty material consideration. The instances complained of in this case do not appear to be directly comparable to those in the leading Court of Appeal decision[25] referred to by both main parties, where the supporting text was found to have introduced an entirely new criterion not mentioned in the policy itself, which was then incorrectly relied upon in the planning decision.

137. In the present case, the target of 35% on-site reduction below Part L for residential development arises from updated GLA Guidance[26], which appears to be technical guidance rather than formally adopted SPG. But as the target sets out the Mayor's expectations in applying LP policy, I consider it reasonable for the Council to give weight to it. Failure to comply with the target would not in itself be contrary to the development plan, but could provide an indication, in combination with other factors, that the 'fullest contribution' was not being made. In any event, following the most recent amendments to the energy assessment, the appellants now show that the 35% target can be met for the residential component of the proposed development. However, the non-residential element would achieve only a 25% reduction. A financial contribution of some £165,420 would still be required through the UU obligation to achieve the headline targets.

138. The presumption that all major development will achieve a 20% reduction in emissions through the use of on-site renewable energy generation is stated in the supporting text to LP Policy 5.7. It is reasonable to give weight to this figure, which is helpful in setting out the minimum level of reduction expected to satisfy the policy. The current proposal of a 3.1% reduction through a relatively limited number of photovoltaic panels would be well short of the expected level. However, the appellants have outlined that there could be scope for more panels to be added, and have also explained why other renewable sources, including ground-source and air-source heat pumps have been discounted up to now in this instance, but could be subject to further

[25] Cherkley Campaign Ltd, R (on the application of) v Mole Valley DC and Anor. [2014] EWCA Civ 567
[26] Mayor of London: Energy Assessment Guidance (October 2018)

examination. In their view the failure to meet this target would not be critical in the overall assessment.

139. The appellants have now also carried out the required overheating assessments and have shown that the passive measures designed in would be effective. But that does not undermine their case for the installation of active cooling, to be subject to controls and perhaps with very limited use, which is justified by the special needs of this group of residents. The Council's suggestion that provision could be limited to certain units with vulnerable residents would not be feasible, given the turnover of occupation over time and the evolving needs of individual residents.

140. The appellants have also explained that the detailed design of the proposed combined heat and power ('CHP') installation could address some of the Council's concerns about efficiency. While it seems clear that the direction of future policy is likely to move away from CHP as a preferred option, it remains consistent with the current plan, in particular LP Policy 5.6. The appellants have provided sufficient justification to show that its use would be reasonable in this instance.

141. The appellants' most recent update has also addressed issues about air-tightness and insulation values of built fabric.

*Conclusion on sustainability*

142. I acknowledge the Council's concerns that a significant new-build scheme, said to be exemplary of its type, should demonstrate the highest standards in energy performance, and that the design of the appeal proposal does not appear to have been fully informed by the importance of the climate change issue, including the potential of passive measures. I also acknowledge that some improvements to the proposal have only come forward at the very latest stage in the appeal. However, there are particular factors at play in this development, in particular the likely needs of the occupiers and the constraints of the site. On balance, I find that the appellants have provided sufficient justification to support the options proposed, and that a condition requiring submission and approval of an Energy Efficiency and Sustainability Strategy could be effective in securing further improvements in performance. The proposal, including the necessary payment in lieu, would be consistent with LP and CLP policy.

***Provision for affordable housing***

143. LP Policy 3.12 seeks the maximum reasonable provision of affordable housing from private residential and mixed use schemes. CLP Policy H4 expects a contribution from all developments that would provide one or more additional homes.

144. The appellants' case is that the proposal should not be required to contribute to the provision of affordable housing, on either policy or viability grounds. However, in the event that this decision concludes that a contribution would be required, the submitted UU includes for the payment of £1,934,000 in lieu of on-site or off-site provision, an amount derived from the appellants' latest viability assessment. The draft UU was amended during the Inquiry to allow for a late-stage review of this figure should the development proceed. Any such review would be capped at a figure of £12,758,094, which is the amount

agreed in the VSCG as the outcome of the Council's formula for calculating payment in lieu, based on floor area and as applied in previous cases. Notwithstanding that agreement, the Council argue that policy requires the proposal to make on-site or, failing that, firm off-site provision and that the scheme would viably support a significantly higher level of funding for this.

*Use Class*

145. The identification of which, if any, Use Class[27] should apply to the proposed apartments is relevant to the consideration of affordable housing. There is no dispute that the proposed nursing home component would clearly fall within Class C2 ('Residential Institutions'). The appellants argue that the entire development, including the apartments and communal facilities, should be treated as a single C2 use, but the Council consider the apartments to be best classed as 'dwellinghouses' within Class C3.

146. It is accepted that the apartments would provide a form of 'extra care' housing. Background papers provided for the appeal show that lack of certainty over the classification of this type of housing has been an issue for a number of years, which providers of retirement housing see as having an impact on provision.

147. The definition of Class C2 includes 'use for the provision of residential accommodation and care to people in need of care (other than a use within Class C3 (dwellinghouses))'. The Class C3 definition encompasses use as a dwellinghouse by '(a) a single person or by people to be regarded as forming a single household' but also by '(b) not more than six residents living together as a single household where care is provided for residents.'

148. The essence of the extra care model is to support older people to live independently so far as possible, but with availability of care and usually of some shared facilities. The combination of institutional-scale facilities combined with self-contained residential units means that the model does not fall neatly into the terms of either Class. This is recognised by the Mayor of London's Housing SPG (2016)[28], which advises that extra care accommodation should generally fall within Class C3, but that a 'front door test' for self-contained units might not always be conclusive.

149. Nevertheless, in this instance the GLA response to the Stage 1 referral of the planning application was that the residential units should be treated as Class C3, referring to draft Policy H15 of the NLP. The appellants were among those objecting to the draft policy, and have provided a copy of their legal advice that the policy could not lawfully place all extra care accommodation within Class C3. During the Inquiry, potential modifications to the emerging policy were published, which set out a different approach. As outlined earlier, the emerging plan is at too early a stage to give other than very limited weight to this draft policy. The legal advice submits that the judgement on Use Class should be a matter of fact and degree in each case.

150. In addition to age restriction of occupiers, a key factor is the extent of provision of care. Both main parties to the appeal have referred to previous planning application and appeal decisions in support of their interpretation, to which I have had regard in reaching my conclusions. A common theme of those

[27] As defined by the Town and Country Planning (Use Classes) Order 1987, as amended
[28] Paras 3.7.4, 3.7.17-3.7.19

cases is the future residents' commitment to a minimum care package, usually of several hours per week. The current proposal was also put forward on this basis, with residents to receive a minimum of two hours' care each week[29] and the Council's evidence for the appeal was prepared on the same basis[30]. But it emerged during the Inquiry that the appellants' operating model does not require any minimum level of care. The executed UU outlines that each qualifying resident would receive a health assessment that would inform a personal care plan, but there would be no commitment to receive care. Thus many of the apartments could be occupied by residents not in immediate need of care.

151. The appellants' existing Battersea development, which is seen as a closely comparable model for the appeal proposal, was found on inspection by the Care Quality Commission ('CQC') to have only 8 residents of 150 occupied apartments receiving care[31]. Even allowing for potentially increased demand for care as original residents get older, this figure suggests that the availability of care might not be a critical requirement for many residents, who continue to live independently.

152. Further support for this conclusion is given by the appellants' successful application to vary the planning permission for the development to bring the completed apartments within Use Class C3(b) rather than C2 as originally permitted. This move is said to have been driven by funding rather than operational reasons, but it shows that both the appellants and the planning authority were satisfied about the suitability of the C3(b) designation, which includes the potential for care provision.

153. In addition to the assessment and updating of the personal care plan, the Basic Care Package secured by the UU would include monitored emergency assistance and access to nursing and domiciliary care. As at Battersea, residents who would need some care would have the ability to source it externally if they wished.

154. The appellants submit that their intention to register each apartment for the provision of nursing care would be highly unusual in the sector, and would alone be enough to establish C2 use for the entire development. However, there is no indication that occupiers could not also source nursing care from outside if preferred. CQC guidance on registration[32] suggests that the key criterion defining 'accommodation for persons who require nursing care or personal care' is that the accommodation and care are provided as a single package, as they would be in a care home. In this case it does not appear that even the eventual need for nursing care, including perhaps palliative care, would alter the fundamentally independent occupation of the residential accommodation.

155. The communal facilities provided by the scheme would be of benefit to residents. Their scope for social interaction might well be a significant attractor to some residents. But others might make very limited use of the facilities. It is difficult to say that any or all of them would be critical to care provision. It appears that similar facilities, including restaurants and swimming pools, are

[29] Planning Policy Statement para 6.9.20
[30] Proof of Evidence of John Diver para 7.20
[31] Care Quality Commission: Battersea Place Retirement Village Limited - Report of Inspection, 1 June 2017
[32] Care Quality Commission: Guidance on regulated activities for providers of supported living and extra care housing October 2015

not uncommon in higher value general needs housing developments in London. The provision of the shared facilities does not add conclusively to the case for a C2 use classification.

156. For all the above reasons, I conclude that in this particular instance, the nature of the accommodation and care provided would place the appeal proposal as a mixed use of Class C2 nursing home and Class C3 dwellinghouses, together with ancillary shared facilities. The availability of care, including potentially some nursing care, would place the C3 use within Sub-Class C3(b).

157. As new residential development, the proposed apartments would clearly fall within the terms of CLP Policy H4, and should in principle make the maximum reasonable contribution to affordable housing provision. The supporting text to this policy[33] makes clear that the Council intend the policy to apply equally, subject to relevant criteria, to proposals for older persons' housing, including those within Class C2. The absence of specific reference to Class C2 in the policy text itself does not undermine the intention, which is reiterated in the supporting text to Policy H8[34].

158. The LP also specifically endorses the application of borough affordable housing policies to the range of developments that cater for older people, including those within Use Class C2[35]. I give little weight to evidence that the GLA response to some older persons' housing proposals in other boroughs[36] has been that C2 classification would not generate any need to contribute, where in at least one of the two instances cited, local rather than LP policy was the critical determinant. The GLA advice in the present case has been unequivocal that the proposal should be regarded as a C3 use.

159. Similarly, I give limited weight to other appeal decisions cited, where local policy has been the key determinant in not seeking affordable housing contributions from proposals judged to be in Use Class C2[37].

160. The appellants also submit that there is no policy imperative to seek a contribution towards affordable housing, when the requirement for older persons' housing is also an identified need that is not given any lower priority by the development plan. The wider case on need is considered later in this decision, but in respect of the policy issue it is clear that the point is addressed by the development plan. By stating a specific expectation for development of older persons' housing to contribute to affordable provision, both LP and CLP policies implicitly recognise a relative priority in favour of meeting affordable housing need. If the delivery of older people's housing were seen as imperative in its own right, there would be no basis for this element of the policies. Both plans also make clear the scale and seriousness of affordable housing need. The delivery of self-contained housing is the priority land use of the CLP[38], which cannot viably achieve the 60% requirement for affordable units identified by the Council's Strategic Housing Market Assessment. There is little indication that the need for older person's housing, primarily intended to facilitate

[33] CLP para 3.83
[34] CLP para 3.222
[35] LP para 3.51
[36] LB Bromley: St Mary's Hospital, Sidcup, Application Ref 13/00593/FULM
LB Harrow: Jubilee House, Stanmore, Application Ref 13/00593/FULM
[37] APP/U1105/W/17/3177340 The Knowle, Station Road, Sidmouth
APP/J3720/A/07/2037666 Tiddington Fields, Stratford upon Avon
[38] CLP Policy H1 (a)

residents who are already permanently housed but who would benefit from a different model of provision, is of the same order of magnitude, either in terms of numbers or of urgency.

161. The two types of housing need are not mutually exclusive, so that any affordable provision for older people would satisfy policy support for housing of both types. The LP[39] and CLP[40] state that, at both London-wide and local scale, the need for private sector units is considerably greater than for affordable. But that does not provide a policy case to support lack of contribution towards affordable provision because the two types were of equal priority.

162. For the above reasons, I find no reason in principle why the proposal should not make appropriate contribution to the provision of affordable housing. The nature and form of provision thus becomes a matter for assessment having regard to the criteria of CLP Policy H4.

*Nature of provision*

163. National[41] and local policy[42] are clear that the default position is for affordable housing to be provided on-site as part of the development. CLP Policy H4(i) confirms that for off-site provision in the same area to be acceptable or, exceptionally, a payment in-lieu, it must be shown that on-site provision would not be practicable or that off-site provision would make a better contribution in terms of quantity and/or quality.

164. The appellants' position that on-site provision would not be practicable relies on a series of assumptions. There is little dispute over the first of these, which is that fully integrated affordable provision of affordable units would not be feasible because their occupiers would not be able to meet the high service charges levied on use of communal spaces and facilities. The Council's Interim Housing CPG (March 2018) confirms that this arrangement is generally seen as unworkable, and I find no reason to disagree.

165. The second assumption is that separate on-site affordable provision, with its own entrance(s) and core(s), would need to be for older residents, and that this would not have the scale to allow operation as extra care accommodation. The scale of provision would largely be governed by financial viability, which is considered in more detail below. It does appear that the operation of shared facilities on which the extra care model relies requires a certain 'critical mass' of units, which might require a substantial contribution in this case. But the variety of provision possible, and the need for shared facilities, have not been explored by the appellants with the Council's specialists or with registered providers. Even if the full extra care model was preferred, the closeness to the private scheme might suggest scope for defined use of facilities such as the pool or gym, which in other schemes have been opened to the wider community. That would alter the feasibility equation. While the Council has a high proportion of affordable accommodation for older people, the evidence shows that it has not withdrawn support for new quality provision. Therefore, I consider that on-site provision of this type cannot be ruled out as a potential option.

[39] LP para 3.50B, Annexe A5
[40] CLP para 3.215
[41] NPPF para 62
[42] LP Policy 3.12C; CLP Policy H4(h)

166. The proposition that general needs family housing could not happily co-exist with the extra care scheme is not supported by evidence of published guidance or of actual problems encountered elsewhere. If it were a real concern that noisy youngsters could adversely affect the lives of elderly residents, it is unlikely that the appeal proposal would place nursing home windows, as well as many apartment windows, within 6m of the rear gardens of adjoining houses, where such boisterous activity could be expected. By contrast, the Council has cited a recent example where extra care units have been located in the same development as market and affordable general needs housing[43].

167. Delivery of the optimum balance of accommodation on the site, with minimisation of any minor conflict between adjoining uses, would be a matter of design. I have little doubt that the appeal architect would be able to resolve any such issues if suitably briefed. The Second Frontage Scheme provides an example of successful integration of affordable and private housing, albeit for general needs, but the difficulty of achieving a similar outcome involving retirement housing is overstated.

168. The Council's evidence suggests how even the existing proposal could be fairly simply adapted to identify 22 affordable apartments served by separate cores, but with the affordable units taking up the entire street frontage and the extra care scheme behind. This solution, while theoretically workable, would almost certainly be improved upon by a properly briefed designer.

169. The appellants criticise the Council's effort to sound out the interest of registered providers in their sketch scheme. I accept that it was a relatively superficial exercise, but it highlights the sort of contact that the appellants could have engaged in, had they not ruled out on-site provision in principle.

170. The appellants' clear preference is for any required contribution to be by way of a payment in lieu of actual provision. There is no evidence that they have considered the option of provision on another site nearby, which the CLP sets as the first alternative to on-site provision.

171. Payment in lieu was accepted by the Council in the case of the extra care scheme at the former Bartrams Convent Hostel[44], which the appellants view as a strong precedent for the present case. In that instance, off-site provision was seen as unfeasible because the only other local site owned by the applicant was also being developed for extra care housing. It was the likelihood of a very low surplus, even after late stage review, that was critical to the Council's decision to accept an off-site financial contribution.

172. In my view, the same line of reasoning should apply in the present case, if the potential surplus available to fund affordable housing is also proved to be quite low, such as the amount covenanted by the UU. The test of viability thus becomes critical. But if, as argued by the Council, the appellants' viability evidence understates the amount of any surplus, the proposal's failure to make affordable provision either on-site or off-site would conflict with LP Policy 3.12 and CLP Policy H4.

[43] Rosebery Mansions, Kings Cross
[44] Planning permission Ref 2014/6449/P

*Viability*

173. The planning application was supported by a Financial Viability Assessment Report dated 27 July 2017, which included a development appraisal of the same date. An update to the appraisal, dated 29 November 2018, has been prepared for the appeal. The evidence for the Council also includes an appraisal. The essence of the Council's case is that the appellants' assessment has not been transparent in taking full account of the variables and that as a result there is a significant underestimate of the value of the proposed development that could allow a contribution to affordable housing.

174. The VSCG records agreement between the two parties of viability inputs including the value of the nursing home element, planning and professional fees, acquisition and marketing costs, build costs and contingencies, Mayoral and Camden CIL and s.106 contributions. The areas of dispute are over the inclusion or not of capital values for future ground rents and for the Deferred Management Fee[45] ('DMF'), and over the sales values of the extra care apartments.

*Ground rents*

175. Future revenues from ground rents were not included in the appellants' original viability assessment, or in the alternative appraisal submitted by the Council's expert, as the appellants' operating model collects only nominal ground rents from leaseholders and retains the freehold.

176. Their inclusion in the appellants' most recent assessment is an acknowledgement of RICS guidance that 'industry benchmarks' should be employed rather than the attributes and preferences of individual operators [46]. Although the need for review of this guidance was raised in a recent High Court judgement[47], it is not suggested that this specific point was questioned.

177. I accept that inclusion of this notional income stream would assist in de-personalising the assessment, and would be consistent with the guidance of the PPG that gross development value of residential development 'may be total sales and/or capitalised net rental income from development'[48].

178. The Council do not challenge the appellants' capitalised figure of £820,000 based on ground rents of £500 per unit. I find no reason to disagree with this adjustment to the assessment, which would tend to increase the value of the scheme. But the relationship between that increased value and any value potentially generated by the DMF, which is strongly disputed by the Council, requires further examination.

*Deferred management fee*

179. The appellants' business model requires those taking a lease to agree that a DMF is paid when their flat is eventually vacated, normally after their death. The charging of such 'event fees' appears to be common in the retirement housing sector. Their past use has attracted some concern, particularly about

[45] Actually 'Deferred Membership Fee' but referred to at the Inquiry as 'Deferred Management Fee', as a more generic term
[46] Financial Viability in Planning, RICS Guidance note 1st edition August 2012, para 2.5.2
[47] Parkhurst Road Limited v SSCLG and Anor [2018] EWHC 991 (Admin)
[48] PPG: Viability para 10-011 ID 10-011-20180724

customers not being fully informed. A Law Commission report[49] has made recommendations about improved practice but has not challenged the principle of charges of this type.

180. Given this widespread practice, the DMF charged by the appellants at their Battersea development and proposed to be charged here cannot be regarded as unique. But the distinctive feature of the appellants' DMF is that in return the leaseholder is guaranteed that service charges and care charge rates will not increase during their occupation. With the absence of ground rent and/or sinking fund payments, residents would therefore have some confidence of future outgoings, subject to their take-up of care, nursing or other chargeable services.

181. The Council submit that the future income from DMF receipts would considerably exceed any additional costs incurred by the operator in holding service and care charges at the entry level set on each occupation, without RPI increases.

182. In support of their position, the Council submitted a report by a firm specialising in finance for healthcare and retirement living[50], to which the appellants also later referred in drawing different conclusions. As an informed independent commentary on the matter at issue, I give considerable weight to the report's findings. The report confirms that event fees are becoming commonplace within the 'retirement community' sector and suggests that their cost can vary from 2.3% to 30% of the purchase price of a unit, with the majority at 10% or less. The two variations on the DMF offered by the appellants would be at the highest end of that spectrum, with the simpler option being a payment of 30% of the final sale price if vacating after 3 or more years' occupation.

183. The appellants argue that DMF cannot be taken into account in the viability assessment as it would represent an item of future revenue, whereas residual valuation relies on a simple calculation of development value on completion less developer costs and profit. In their view, the standard approach to valuation is founded on a clear handover from a 'developer' to an 'operator', even if those two entities might be part of the same group, as was the case at Battersea and would be likely here. But ground rent also comprises a future revenue stream, which the appellants now suggest should be included. Therefore, and noting the PPG guidance on rental income, the distinction between the 'development phase' and the 'operation phase' cannot be as clear-cut as the appellants suggest. Although not actually rental income, the DMF does represent an ultimately guaranteed stream of receipts. If these receipts could be shown to significantly affect the value of the development, even though outside the development phase, I see no objection in principle to taking them into account in a viability assessment - especially so if their omission could harm achievement of adopted policy objectives.

184. The appellants argue that their distinctive application of the DMF would amount to a unique feature that should not be taken into account. Reliance is placed on the RICS guidance that benefits or disbenefits unique to the applicant should be disregarded other than in exceptional circumstances such as a personal permission, The guidance gives an example of access to private

[49] Law Commission: Event Fees in Retirement Properties, March 2017
[50] Conaghan Healthcare and Corporate Finance: Retirement Communities and 'Event Fees', June 2016

finance, which would not be comparable here. Instead the appellants have an operating model which is said to involve offsetting a loss in running services with the receipts generated by DMF. But it appears that any operator taking over the completed development would be able to take a view of the future income stream and value the development accordingly, also taking account of the balance of service charge and other revenue against the costs of provision. The Battersea accounts show that the operators have placed a considerable investment value on the freehold asset, which would have to be reflected in any transfer to a different owner/operator. The same would be true for the appeal development. In that way any influence on value by the DMF would not be personal to the appellants only and should not be ruled out for that reason.

185. The specialist finance report shows in simple terms how the turnover rate of apartments in a retirement community will depend on length of occupation, which is linked to age at entry. The development should soon reach a 'steady state' when the average number of disposals each year will be relatively constant and a relatively reliable income stream forecast. The sample calculation is based on an average stay of 6 years and predicts a steady inflow of event fee income being achieved from the sixth year onwards. The report predicts that as the market develops and there is more evidence of schemes reaching 'steady state' then lending against the anticipated income will grow.

186. The Council's assessment of the value of the DMF also uses a discounted cash flow approach. It seeks to establish the likely return at the Battersea development, based on the appellants' predictions of sales over a 23 year full cycle of occupancy of all units, in order to identify the uplift in overall capital value over original sales value. Applying the same percentage uplift to the appellants' estimated sales values for the appeal scheme of £96.5m would result in an uplift due to DMF of some £18m.

187. While continuing to reject the premise, the appellants have submitted two variations of the same approach, applying different variables for factors including RPI and interest rates. The results show an equivalent return for DMF at the appeal scheme of £7.6m. The lower variant of a return of £3.77m would rely on omission of the actual DMF receipts in the first two years of occupation at Battersea. But this does not seem justified, given that the approach is based on estimates of the life expectancy of actual occupiers, and these payments were actually received.

188. However, I agree with the appellants that the approach is very complicated. By focusing on the age profile of a particular set of residents, it is based on a snapshot of occupation of the Battersea development. It is also predicated on the extrapolation of service charge deficits during the initial years of operation at Battersea, about which insufficient detailed information is available to assume future performance.

189. By contrast, the £49m investment property valuation contained in the 2018 Battersea accounts is noted as having been supplied by external valuers, also using discounted cash flow, but apparently based on a relatively limited set of variables including average length of stay. If a valuation of this type can be accepted for establishing the future health of the business position, it is not clear why a similar exercise could not be used for the purpose of viability assessment of the appeal property, without an elaborate analysis of the individual occupancies at Battersea. This would bring the exercise more in line

with industry standards and would reduce the need for 'crystal ball gazing', as feared by the appellants, and should give confidence to those advising potential purchasers.

190. The immature market for retirement communities outlined by the specialist report, and the lack of an established understanding of the value of a DMF, go some way to answering the appellants' charge that there is no body of policy guidance or previous decisions that would endorse the Council's approach to the matter. There may have been few, if any, refusals of permission up to now where an event fee was seen as significant. Neither main party has been able to cite an appeal decision that would support their interpretation. It is the scale of the likely DMF in this case and its ability to generate repeated revenue over the lifetime of the development that draw attention to it.

191. Because of the immature market, lending might be difficult to secure against future DMF revenues. The resulting financial burden would have to be taken into account in the viability assessment and in the negotiation of the timing of any payments. But as things stand, the appellants' evidence, with full allowance for future service charge balances, shows a potential positive effect of between £3.77m - £7.6m. Even if the Council's £18m estimate were unduly optimistic, there are grounds to conclude that the DMF could allow a greater contribution to affordable housing than currently covenanted by the UU.

*Sales values*

192. The specialist finance report states that 'units in retirement communities …are normally sold on long leaseholds and priced with a premium over comparable local residential property or, where the retirement community operator charges a large event fee, with no premium'[51]. The Council has sought to illustrate this by comparing prices of conventional apartments in Hampstead with those in two nearby retirement developments[52], with a comparable range of facilities to the appeal scheme but with no event fee charged. Notwithstanding the appellants' reservations about drawing firm conclusions from asking prices rather than achieved sales, I find that the evidence provided does support the proposition that a premium should be expected. The appellants' own evidence of potential comparators shows sales values for two-bedroom extra care apartments to be significantly higher than average prices for other flats in the same local area.

193. The Council reason that apartments in the appeal scheme, with a good range and high standard of shared facilities should attract a premium value over a comparably-sized conventional apartment. They conclude that the sales values allowed in the appellants' viability assessment do not show any such premium but are suppressed by the commitment to later payment of the DMF.

194. Both parties have sought to draw on evidence of sales achieved at the Battersea development in support of their argument. I accept that this is the most relevant comparable scheme, being recently completed and sold with the same options for DMF as proposed for the appeal development. The Council's evidence was that sales values at Battersea were no higher than those of nearby second-hand private apartments, and had not attracted a premium. Analysis submitted by the appellants at the Inquiry sought to refute this, but

[51] Conaghan Healthcare and Corporate Finance: Retirement Communities and 'Event Fees', June 2016, p3
[52] 79 Fitzjohns Avenue and Hampstead Green Place, both by developers Pegasus Life

the Council's response shows that when average prices rather than best prices are taken into account, the new scheme's rates are lower than the older units' in the majority of cases. Leaving aside lowest prices for the new development which were significantly lower in every case, the figures tend to confirm that not only was a premium not secured, but that values were suppressed by some consideration, the most likely being the eventual need to pay the DMF.

195. The Council's comparison of the appeal scheme with the two Hampstead developments is more open to question. These schemes were specifically disregarded as comparators in the original 'market revenue report' because their operating model was different from the appellants'[53]. In addition to the uncertainty added by reliance on asking prices, the appellants have also shown, albeit in simple terms disputed by the Council, that there appears to be a market premium for property in Hampstead over West Hampstead, notwithstanding some local variations. On the other hand, cost estimates for the appeal proposal are closely aligned with one of the Hampstead schemes, yet there would be a very significant difference in values. Given these conflicting indications, it is difficult to draw conclusions about the relative effects of any premium.

196. However, the current sales report that has informed the appellants' viability assessment relies on comparator evidence that is also inconclusive. In addition to the Battersea scheme, the six developments examined are all in Outer London locations, and are built and operated by the same leading retirement living company, which normally charges a low event fee. Although classed as extra care, the quality of the developments, in terms of range of facilities offered, does not appear to be as high as now proposed. The locations are all considerably lower value areas than West Hampstead, and it is not clear that market conditions would be similar to the inner location of the appeal site. In the light of these factors, the extrapolation of the relationship between sales prices for extra care units and for all flats to arrive at sales figures for the appeal proposal is open to question.

197. The original sales report had arrived at a value of £1122 /sqft for the appeal scheme apartments. It is notable that a more recent valuation report for the Second Frontage Scheme, which has been used to establish the benchmark site value, adopts a sales rate of £1099/sqft[54] for those market apartments. This provides a further indication of an absence of any real premium for the appeal units above a well finished market development, without significant shared facilities.

*Conclusion on viability*

198. The commitment to pay the DMF forms part of the sale contract. If it has a significant effect on development value, it should in principle be reflected in the viability assessment.

199. It seems that some purchasers, even if fully aware of the implications of the DMF, are willing to commit to returning a considerable share of the value of their asset. The fact that the cost would most likely not be incurred during their own lifetime might well be a significant factor. The degree of comfort offered by fixed tariffs for service charge and care costs might outweigh a more hard-

[53] Savills Report dated 25 July 2017
[54] Carter Jonas Valuation report as at 21 August 2018

headed calculation of the likely effect of future RPI increases. But the viability assessment must be based on a rational view of the financial evidence, in so far as it is known, of the likely effect of deferring a significant part of the capital cost.

200. The evidence is incomplete because the full implications of future operating costs are not fully exposed. But there is sufficient evidence to conclude that the scale of the DMF in this instance would be likely to result in a pattern of financial gains over the medium to longer term. The profit allowed for at the development phase would be likely to be supplemented by further net receipts during the operating phase. The evidence suggests that the appellants have been able, with independent advice, to put a capital value on this at their Battersea development. There seems no reason why a similar exercise, sufficiently robust for the purposes of viability assessment, should not be possible for the appeal proposal.

201. The evidence on sales values is not fully conclusive, but tends to confirm that the premium that should be expected has not been allowed in the viability assessment. The most logical reason for the suppressed sales values, following from the experience of the Battersea development, would be the size of the DMF.

202. The evidence does not support omission from the viability assessment of future DMF income, suitably capitalised and making any allowance for the inclusion of notional ground rents.

*Conclusion on affordable housing*

203. For the reasons set out above, I conclude that it has not been shown that the sum covenanted in the submitted UU would represent the maximum reasonable contribution to the provision of affordable housing without compromising the proposal's viability. The options of providing affordable housing on the appeal site or, failing that, on another site in the local area would be influenced by the viability position, but they have not been adequately explored. The proposal would therefore not accord with national policy and would be contrary to LP Policy 3.12 and to CLP Policy H4. In the light of this conclusion, it has not been necessary to reach a view on the adequacy of the late stage review and dispute resolution provisions of the UU.

***Mitigation of impacts***

204. Following the failure to conclude a S.106 agreement as envisaged by the SCG and to find common ground on the provisions of a UU, the finally executed UU has been drafted so that the detail of several matters previously discussed as potential obligations would need to be addressed by conditions in the event of planning permission being granted. These are considered below. The UU's other covenant in respect of employment and training is not contested and would comply with local policy.

*Construction management*

205. Among those matters would be the submission and approval of a Construction Management Plan and Demolition Management Plan. A comprehensive list of issues that could be covered by these plans is set out in the draft condition discussed at the Inquiry. Although there would undoubtedly be some disruption to residents during construction, which would be likely to

be more protracted than for the previous permission, the proposed plans would be capable of addressing the particular concerns raised by GARA, such as vehicle routing, hours of work, dust suppression, operatives' parking and community liaison.

206. The UU provides for the payment of a fixed financial contribution to cover the Council's costs in the review, approval and monitoring of the two plans. The amount is not contested but the Council remain of the view that the submission and approval of the plans should form part of the UU.

207. However, the NPPF advises that obligations should only be used where it is not possible to address unacceptable impacts through a condition[55]. Control of construction management by condition is commonplace in planning decisions throughout the country. The difficulties perceived by the Council and by GARA in enforcing any breaches appear to be overstated. I am satisfied that the mechanism proposed could lawfully secure adequate mitigation of adverse impacts of construction and demolition activity, in compliance with CLP Policy A1.

*Highways and public realm*

208. The UU allows for the payment of a financial contribution to cover the Council's costs in reinstating the footway in front of the site, and any other necessary works. A further sum would be payable in the event of actual costs exceeding the original estimate.

209. The obligation recognises the Council's right to carry out works in the highway. The potential harm to pedestrian movement caused by construction of the development could be adequately mitigated and an improved pedestrian environment created, in accordance with CLP Policy T1.

*Sustainable transport*

210. The reasons for refusal on the issue of sustainable transport focused specifically on the lack of a legal agreement on 'car-free' housing and on submission of a Travel Plan. Both matters are addressed in part by the submitted UU.

211. On car-free housing, the UU covenants that all potential occupiers of the apartments and care home would be informed that they would not be entitled to a resident's parking permit from the Council and that no apartment or long-stay care bed could be occupied by a resident with a permit. This obligation should be effective in limiting private car ownership and dealing with the most likely source of increased pressure on restricted parking. The exception that would be made for holders of a disabled person's badge, even allowing for the age profile of the future residents, should not result in a significant demand for on-street spaces. The UU's covenant preventing access to a business parking permit would add a further degree of support.

212. The UU does not offer any other restriction on use of private cars by staff, which the submitted Transport Statement cites as appellants' company policy. There would be a theoretical risk of some car use by staff, and of on-street parking outside the restricted morning hours. However, the Council accepts that, despite its low PTAL rating, the site is within relatively easy reach of a

[55] NPPF paragraph 54

good range of public transport options. Given the very limited use of cars for employment access in Camden, the actual risk of significant unsustainable car use and parking pressure would appear to be quite low.

213. I acknowledge GARA's concern that the private car might be seen by visitors to the development as a more attractive option. But the numbers involved would be unlikely to amount to significantly unsustainable usage or to add serious pressure to local parking.

214. Usage by staff and visitors would important factors in the drafting and monitoring of a Travel Plan, which would play an important role in promoting more sustainable modes. The UU now commits to the payment of a fixed monitoring contribution and to prevent occupation of the development unless the Travel Plan is being adhered to. However, the provisions for submission, review and compliance with the Travel Plan are now proposed to be covered by a condition. As in the case of construction management, there are ample precedents for Travel Plans to be dealt with by condition. The overlap with the UU in future monitoring and enforcement now proposed would be unwieldy but would not be unworkable.

215. The Council accepts that the disabled persons' and drop-off spaces in the access courtyard would be justified for operational reasons but continues to object to the provision of the five basement parking spaces, As these would not be reserved for disabled drivers they would be contrary in principle to CLP Policy T2. However, the four shared-use vehicles, whether driven by staff or residents as at Battersea, would effectively amount to a small private car club. There is some force to the appellants' argument that provision of these vehicles could be an important part of care provision, helpful in allowing residents to carry on with external contacts. For those with specific physical or cognitive needs, use of a familiar vehicle or driver could be very significant. The net transport impact would appear little different from the use of taxis or a large car club, which are supported by the Council as a sustainable option. The appellants have explained that the fifth space would be for emergency use only by a visitor.

216. The Council has accepted the amount of cycle parking provision in the appellants' amended proposal. Given the nature of the accommodation, I agree that it is not necessary to require the full level of provision normally sought by the development plan for C3 uses, as advocated by GARA, and that the proposed level of provision would be reasonable.

217. For the above reasons, I find that there are material considerations that would support some flexibility in the application of standards and override any conflict with CLP Policy T2 and LP Policy 6.9, but that the provisions proposed to address sustainable travel would otherwise comply with CLP Policies T1 and T2.

***Other matters***

*Heritage significance*

218. The site is included in the Council's local list and therefore has the status of a 'non-designated heritage asset'. The adjoining mansion blocks are also included on the list, and their setting would be affected by the proposed development.

219. The NPPF advises that the effect on the significance of non-designated heritage assets should be taken into account in the decision, with a balanced judgement required. This approach is reflected by CLP Policy D2. The two previous appeal decisions have made judgements of this type in allowing the removal of most of the reservoir structure. The planning application was not refused on heritage grounds.

220. The local list entry has little to say on the heritage significance of the reservoir itself, but it is discussed in the Heritage Statement that supported the application. I accept that its significance is relatively modest, being one of many reservoirs constructed in London at around the same time. Its chief interest lies in its ambitious scale and the robust strength of its structure.

221. The appeal proposal would improve over the previous schemes in seeking to preserve sections of the original structure in two of the main communal spaces and exposing sections of the perimeter wall. Despite the Council's scepticism, I find that this would allow users of the development to gain a real appreciation of the character of the original structure, with the spread of elements through the scheme helping to give an understanding of the reservoir's extent. The retained components would preserve some of the site's local distinctiveness. The harm to heritage significance through the loss of most of the original structure would be adequately mitigated by the proposed retention and by full recording secured by a condition.

222. The heritage significance of the mansion blocks lies in their survival as an example of this typology, forming an attractively scaled and detailed group. The open character of the appeal site gives a very opaque clue to the original development of the area, but the site does not otherwise make a particularly meaningful contribution to the buildings' significance. As outlined earlier, the design of the proposed frontage blocks would form a respectful response to the context. There would be no harm to the group's heritage significance.

*Housing need*

223. The SCG acknowledges the need across the Borough for housing suitable for older people, including a need for market-led developments. The appellants contend that the actual need is considerably greater than identified by the development plan, so that the proposal's contribution to meeting need should add to the case in its favour.

224. The LP[56] defines a strategic benchmark target for Camden of 100 units per year of specialist for older people up to 2025, which could increase to 105 units per year should the New London Plan be adopted as drafted. This translates into a total of 1400 units for the CLP period to 2031, potentially rising to 1470 units. The target envisages 65 units per year for private sale and 20 units for intermediate sale

225. The Council's evidence suggests that delivery is largely on track to meet the target, with the 93 units approved at the two Hampstead schemes mentioned above comprising the main contribution to date to the private sale component.

226. The appellants estimate a net current need in the borough for 452 leasehold (private sale) extra care units, and a net need to 2031 of 730 units. However, these figures include need for 'enhanced sheltered' accommodation, which is a

[56] LP Table A5.1

separate category in the Council's SHMA[57]. The predicted increase in need over the plan period of 278 units would not be greatly inconsistent with the SHMA figure for these categories of 239 units. Either estimate would form an element of the LP-derived growth figure of 910 private sale units over the plan period. The appellants' total need is heavily influenced by perceived unmet current need, but this figure is derived from a national benchmark rather than from direct evidence of unmet demand in the borough.

227. The appellants also provide need figures based on their own calculation of a four-mile catchment area. This dimension appears to be rather arbitrary, being derived from the previous addresses of residents moving to the appellants' Battersea scheme. I agree with the Council that an area taking in parts of eight other London boroughs, including a high proportion of some, does not allow reasoned interface with strategic planning, which should rightly be based either at the scale of London as a whole or an individual borough.

228. A similar exercise is put forward on the need for care home beds, also looking at need within the borough and within the four-mile catchment. Again the figures' suggestion of a high total level of need is heavily influenced by claimed unmet current need. The figures do not appear to make any distinction between a general needs care home and the specialist nursing home proposed in the current case. As it is not disputed that the relatively small number of nursing home beds proposed would help to address need, the analysis adds little to the debate.

229. The context set out by the appellants for increased demand for private extra care housing relates to comparisons with other countries, such as the USA and New Zealand, and the 'market penetration' found in those places. But their different public health systems and market conditions make comparison with the UK very difficult to sustain. Both the LP and the CLP state a clear intention to support older people's preference to stay in their existing homes wherever possible, which is line with national policy. Future adaptation of the existing stock, combined with improved standards and ease of adaptation of new-build stock, appear likely to have a major bearing on the demand for specialist forms of housing.

230. For these reasons, I find that the development plan targets provide the most consistent and reasoned estimates of future need, and that the appellants' exercise would add little to the case for approval of the appeal proposal.

***Balance of considerations***

*Benefits*

231. It is not disputed that the proposal would make a worthwhile contribution to the borough's housing supply, and specifically to the supply of specialist housing for older people. The standard of accommodation and operation would clearly be of very high quality. These are important social benefits, even though the Council can show that it is meeting its general housing target and is making good inroads in addressing the target for older people's housing, including private extra care provision.

232. The actual impact that the extra care housing might have on reducing pressure on the health service is less easy to quantify. I agree with the Council

[57] Strategic Housing Market Assessment 2016

that well-resourced future residents of the appeal scheme would be among those least likely to contribute to 'bed blocking'. Similarly, there appears to be no clear measure of the extra care model's success in releasing family homes to the supply. However, both of these aspects can be taken as secondary social benefits in this instance.

233. There are good indications that the proposal would be a successful business, generating up to 80 full-time equivalent jobs and creating demand for goods and services, many of which could be locally sourced. Future residents would also make use to some extent of local shops and services. There would be a significant economic benefit.

234. The productive exploitation of under-used previously developed land, replacing a significant structure with no other identified use, would be an economic and environmental benefit, particularly as heritage harm would be mitigated.

235. The proposal would offer some gains in environmental performance, even if not fully achieving development plan targets.

*Harms*

236. Set against these are a significant number of areas where harm would be caused and would not be capable of mitigation by the proposed conditions or by the obligations of the UU.

237. The proposal would be intensive form of development of the reservoir footprint that would only be possible by harmful incursion into the LGS, whose designation was only recently confirmed by the NP. There would also be a loss of POS and a reduction in the amenity value of that remaining.

238. Further environmental harm would arise from the loss of good quality habitat that would not be adequately mitigated or compensated for and a potential threat to the future use of the site by protected species. The offered future management proposal would not circumvent the risk to the value of the designated site.

239. The intensive form of development would also result in some harm to the character and appearance of the area and a minor reduction in privacy for some neighbouring residents. Even though the general treatment of the site frontage would form a reasonably contextual addition to the street scene, the lack of active entrances would offer poor legibility and interaction with the street.

240. Although the minimum number of wheelchair adaptable apartments could probably be provided, the failure to ensure a fully inclusive layout would be a source of social harm.

241. It has not been shown that the proposal would make the maximum reasonable contribution to the provision of affordable housing. Inadequate provision would cause significant social harm.

*Balance and conclusion*

242. The development plan is up-to-date. The appellants stress the necessity to reach a judgement on compliance with the plan as a whole. But rather than the two minor breaches that they acknowledge, I have found as summarised above

and specified earlier in this decision that there would be a number of significant breaches. As a result, I find on balance that the proposal would be contrary to the plan when taken as a whole. I find no other material considerations that would override the policy conflicts.

243. I therefore conclude that the appeal must be dismissed.

*Brendan Lyons*

INSPECTOR

## APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

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| Sasha Blackmore of Counsel | Instructed by the Borough Solicitor, London Borough of Camden ('LBC') |

She called:

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| Andrew Jones<br>BSc MRICS | Director, BPS Chartered Surveyors |
| Philippa Jackson<br>PGDip (Accessibility and Inclusive Design) BA(Hons) PTTLS | Building Control Service Manager, LBC |
| Frances Madders<br>BSc(Hons) BArch MSc | Senior Planning (Urban Design) Officer, LBC |
| Carolyn Whittaker<br>BSc | Affordable Housing Development Co-Ordinator, LBC |
| Paul Losse<br>BSc(Hons) MSc MCIEEM | Ecological Consultant |
| Gabriel Berry-Khan<br>BSc MSc IEMA | Senior Sustainability Officer (Planning), LBC |
| John Diver<br>BA(Hons) MPlan | Senior Planner, LBC |

With contributions on potential conditions and planning obligations by:

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| Pritej Mistry | Planning Lawyer, LBC |
| James Hammond | Principal Transport Planner, LBC |

FOR THE RULE 6 PARTY Gondar and Agamemnon Residents Association ('GARA'):

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| David Yass<br>BA(Hons) Cantab - Engineering CEng MIET MIPM RPP | Chair, GARA |
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With contributions on potential conditions and planning obligations by:

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| Michael Poulard | Member, GARA |

FOR THE APPELLANTS:

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They called:

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| Nick Ireland<br>BA(Hons) MTPI MRTPI | Director, Iceni Projects |
| Robin Partington<br>BA(Hons) BArch(Hons) RIBA ARB RIAS FRSA | Principal, Apt |

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| Nicholas Fell<br>LLB(Hons) PGDip MRICS | Partner, Rapleys |
| David Gilbey<br>BA(Hons) (Stage Lighting) | Lighting Design Director, Cudd Bentley |
| Sushil Pathak<br>MEng(Hons) | Director of Sustainability, Cudd Bentley |
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| With contributions on potential conditions and planning obligations by: | |
| Claire Fallows | Partner, Charles Russell Speechlys LLP |
| Daniel Perfect | Director, LifeCare Residences |

INTERESTED PERSONS:

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|---|---|
| Lorna Russell | Borough Councillor, Fortune Green Ward |
| Flick Rea | Borough Councillor, Fortune Green Ward |
| Nick Jackson | Co-Chair, Fortune Green and West Hampstead Neighbourhood Development Forum |
| Miles Seaman | Co-ordinator, Sarre Road Residents Association |
| Hugh McCormick | Member and former Chair, GARA |
| Nancy Jirira | Local resident |

**DOCUMENTS**

Submitted by the appellants:

A1 Opening submissions
A2 Appendix 2 to Financial Viability Assessment Report, July 2017
A3 Peter Barefoot Rebuttal evidence, Appendices 2, 3 and 4
A4 SHMA extract
A5 PPG: Housing need assessment
A6 LGA: Housing Our Ageing Population, September 2017
A7 House of Commons Communities and Local Government Committee: Housing for Older People, February 2018
A8 English Nature: Status of the adder and slow-worm in England, 2004
A9 Buglife web page: Living Roofs for Camden's Wildlife
A10 Nick Ireland: Note on additional Core Documents
A11 Plan of open space allocations
A12 Revised UU and covering note
A13 Plan of dwelling widths and local back-to-back distances
A14 Views of wild flower meadows
A15 Peter Barefoot: Notes on Battersea Place apartment sales
A16 Exterior courtyard lighting layout
A17 Revised UU and covering note
A18 Certified copy of executed UU
A19 Closing submissions

Submitted by the Council:

C1 Letters of notification of the Inquiry
C2 Outline Opening Statement
C3 Rapley's letter dated 18 December 2017
C4 Conaghan Healthcare Corporate Finance: Retirement Communities and 'Event Fees', June 2016
C5 Rapley's Financial Viability Assessment Report, July 2017
C6 Philippa Jackson: Qualifications of witness
C7 Building Regulations Approved Document M (extract)
C8 Habinteg: Wheelchair Housing Design Guide (extract)
C9 British Standards Institution: Design of an accessible and inclusive built environment BS 8300-1 2018 (extract)
C10 County Court Judgment: Plummer v Royal Herbert Freehold Limited [2018] WL03256622
C11 Bartram's Convent: Entrance visualisation
C12 Gabriel Berry-Khan Proof of Evidence Appendix D
C13 Camden Biodiversity Action Plan 2013-2018
C14 Section 106 agreement: Reservoir Scheme
C15 Section 106 agreement: Second Frontage Scheme
C16 Mayor of London: New London Plan evidence- M31 specialist older persons' housing
C17 Care Quality Commission: Housing with care – Guidance on regulated activities for providers of supported living and extra care housing, October 2015
C18 Care Quality Commission: Albert Suites at Battersea Place -Inspection Report Summary , June 2018
C19 Care Quality Commission: Battersea Place Retirement village Limited-Inspection Report Summary, June 2017
C20 LB Camden: Camden Character Study, June 2015 (extract)
C21 John Diver Proof of Evidence: Appendix One
C22 Overlooking: Issues summary and marked-up plans
C23 Table of Battersea Place sales values
C24 Location plan of comparator schemes
C25 Draft schedule of conditions
C26 Note on Draft UU
C27 Plans of example schemes
C28 CIL Compliance Note
C29 Revised Draft schedule of conditions
C30 Mayor's SPG: The control of dust and emissions during construction and demolition, July 2014
C31 Plans of example schemes
C32 Transport for London: Travels Plans (webpages)
C33 JPEL (2010) Case Comment: R (on the application of the Friends of Hethel Ltd) v South Norfolk DC [2009] EWHC 2856 (Admin)
C34 Outline Closing Statement
C35 High Court Judgement: Cherkley Campaign Ltd, R (on the application of) v Mole Valley DC and Anor. [2014] EWCA Civ 567
C36 High Court Judgement: Office of Government Commerce v Information Commissioner (Attorney General Intervening) [2008] EWHC 774 (Admin)
C37 E-mail dated 21 February 2019: Appellants to Council

Submitted by GARA:
G1 Opening Statement
G2 Blue Badge statistics
G3 Plattenberg & Griffiths: Translocation of slow-worms as mitigation strategy: A case study from south-east England, 1999 (abstract)
G4 Open space plans
G5 Presentation slides
G6 Plans showing comparison with Second Frontage Scheme
G7 Images of Reservoir Scheme
G8 Second Frontage Scheme: plans showing car lift
G9 Michael Poulard: E-mail dated 8 February 2019
G10 Closing Statement
G11 Closing Statement presentation slides

Submitted by Interested Parties:
IP1 Nick Jackson: Statement
IP2 Hugh McCormick: Statement
IP3 Nancy Jirira: Statement