

LOCATION: 765 Finchley Road, London, NW11 8DS
REFERENCE: F/03354/12 **Received:** 03 September 2012
Accepted: 11 September 2012
WARD(S): Childs Hill **Expiry:** 11 December 2012

Final Revisions:

APPLICANT: Finchley Road (Smiths) Limited
PROPOSAL: Section 73 application to vary conditions 2 (Approved Plans) and 13 (Landscape Strategy) pursuant to appeal decision APP/N5090/A/11/2151295 dated 19/09/11 (Planning reference F/00070/11) for the 'Demolition of existing office building and redevelopment of the site to provide a mixed use development comprising the erection of buildings between two and five storeys, to provide 80 residential units and 1402 sqm (GEA) of flexible office (use class B1) and/or community (use class D1) floorspace above a single basement level car park providing 110 car parking spaces. Associated landscaping.' Variation to comprise removal of garden annex land.

RECOMMENDATION:

Resolution to approve subject to:

i) The applicant and any other person having a requisite interest in the land be invited to enter by way of an agreement into a planning obligation under Section 106 of the Town and Country Planning Act 1990 and any other legislation which is considered necessary for the purposes of seeking to secure the following:

a. Obligations Under Existing Unilateral Undertaking

All clauses and obligations as they appear within the unilateral undertaking dated 18 August 2011 attached to appeal decision APP/N5090/A/11/2151295 dated 19/09/11 shall be carried over into the new agreement. The agreement shall include securing the following:

i. Affordable Housing

The development shall include 16 Affordable Rented Units (comprising 3x1 bed, 8x2 bed and 5x3 bed) and 4 Intermediate Housing Units (comprising 2x1 bed and 2x2 bed).

ii. Education

A contribution of £237,553 Index Linked towards education provision in the borough.

iii. Libraries

A contribution of £15,015 Index Linked towards libraries provision within the borough.

iv. Health

A contribution of £66,824 Index Linked towards health provision within the borough.

v. Travel Plan

The applicant shall enter into a Travel Plan that seeks to reduce reliance on the use of the private car and to ensure the sustainability of the development.

vi. Travel Plan Monitoring

A contribution of £5,000 Index Linked towards the monitoring of the Travel Plan for the development.

vii. Amendment of Local Traffic Order

A contribution of £2,000 Index Linked to cover the cost of amending the existing Traffic Management Order to prevent the occupants of the new development from purchasing parking permits for the Controlled Parking Zone (CPZ).

viii. Monitoring of the Section 106 Agreement

A contribution of £13,000 Index Linked towards the monitoring and management of the S106 planning obligations.

b. Legal Professional Costs Recovery

Paying the Council's legal and professional costs of preparing the Agreement and any other enabling arrangements.

ii) That upon completion of the legal agreement specified in i) above, the Assistant Director of Planning and Development Management approve the planning application reference F/03354/12 under delegated powers subject to the following conditions:

1 Time Limit

This development must be begun within three years from the date of this permission.

Reason:

To comply with Section 51 of the Planning and Compulsory Purchase Act, 2004.

2 Approved Plans

The development hereby permitted shall be carried out in accordance with the following approved plans and documents:

Application Drawings

PI 090 Rev. B - Existing Location Plan;

PI 001 Rev. B - Existing Ground Level;

PI 010 Rev. A - Existing Elevations South And East;

PI 2B2 Rev. B - Proposed Basement Car Park Level;

PI 2B1 Rev. C - Proposed Lower Ground Level;

PI 200 Rev. C - Proposed Upper Ground Level;

PI 201 Rev. C - Proposed Level 01;

PI 202 Rev. C - Proposed Level 02;

PI 203 Rev. C - Proposed Level 03;

PI 204 Rev. C - Proposed Level 04;

PI 205 Rev. C - Proposed Roof Plan;

PI 210 Rev. B - Proposed South And East Elevations;

PI 211 Rev. B - Proposed West Elevation;

PI 212 Rev. B - Proposed East And North Elevations;

PI 213 Rev. B - Proposed North And South Sections; and

Application Documents

- Transport Statement Prepared By Mayer Brown;
- Draft Travel Plan Prepared By Mayor Brown;
- Sustainability Statement Prepared By WSP Group;
- Renewable Energy Assessment Prepared By WSP Group; and
- Phase 1 Environmental Audit (Desktop Contaminated Land Study) Prepared By Golders Associates.

Reason:

For the avoidance of doubt and in the interests of proper planning and so as to ensure that the development is carried out fully in accordance with the plans as assessed in accordance with policies DM01 of the Adopted Barnet Development Management Policies DPD (2012) and CS NPPF and CS1 of the Adopted Barnet Core Strategy DPD (2012).

3 Restricted D1 Use

The D1 floorspace hereby approved shall be used for medical or health services within use class D1(a) only and for no other purpose (including any other purpose in class D1) of the Schedule to the Town and Country Planning (Use Classes) Order 1987, as amended, or in any provision equivalent to that class in any statutory instrument revoking and re-enacting that Order, with or without modification.

Reason:

To enable the Local Planning Authority to exercise control of the type of use within the category in order to safeguard the amenities of the area.

4 Maximum Quantum of D1(a) Floorspace

No more than 700 sq.m. of the 1402 sq.m. of non-residential floorspace on the ground and lower ground floors of the building hereby approved (as shown on plans HB1264 PL2B1 Rev A and HB1264 PL200 Rev A) shall be occupied by uses falling within use class D1(a) of the Schedule to the Town and Country Planning (Use Classes) Order 1987, as amended.

Reason:

To ensure that a satisfactory level of employment generating floorspace is provided within the development and in order to safeguard the amenities of the area.

5 Subdivision of Non-Residential Floorspace

Prior to the first occupation of the non-residential floorspace (or any part of it) on the ground and lower ground floors of the building hereby approved, details of the sub-division of the floorspace showing the location of the D1(a) floorspace shall be submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the details approved and maintained thereafter.

Reason:

To ensure a satisfactory layout within the development.

6 Hours of Opening

The non-residential floorspace on the ground and lower ground floors of the building hereby approved shall only operate between 0800 hrs. and 2000 hrs. on Mondays to Fridays, and 0800 hrs. and 1500 hrs. on Saturdays, and shall not

operate on Sundays, unless otherwise agreed in writing by the local planning authority.

Reason:

To safeguard the amenities of occupiers of adjoining residential properties.

7 Contaminated Land

Part 1

Works to remediate contamination of the site are required to be carried out in accordance with the approved the Phase 1 Environmental Audit carried out by Golder Associates, dated September 2009.

Part 2

Where remediation of contamination on the site is required, completion of the remediation detailed in the method statement shall be carried out and a report that provides verification that the required works have been carried out, shall be submitted to, and approved in writing by the Local Planning Authority before the development is occupied.

Reason:

To ensure the development can be implemented and occupied with adequate regard for environmental and public safety.

Reason:

To ensure the development can be implemented and occupied with adequate regard for environmental and public safety in accordance with policies DM04 of the Adopted Barnet Development Management Policies DPD (2012), CS NPPF of the Adopted Barnet Core Strategy DPD (2012) and 5.21 of the London Plan 2011.

8 Levels

Prior to commencement of works above basement car park level within the approved development, details of the levels of the building(s), road(s) and footpath(s) in relation to the adjoining land and highway(s) and any other changes proposed in the levels of the site shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with such details as approved.

Reason:

To ensure that the development is carried out at suitable levels in relation to the highway and adjoining land having regard to drainage, gradient of access, the safety and amenities of users of the site, the amenities of the area and the health of any trees or vegetation in accordance with policies DM01 and DM04 of the Adopted Barnet Development Management Policies DPD (2012), CS NPPF, CS1, CS5 and CS7 of the Adopted Barnet Core Strategy DPD (2012) and 7.4, 7.5, 7.6 and 7.21 of the London Plan 2011.

9 Sub-Station Details

Prior to commencement of works above basement car park level within the approved development, a full design study for the proposed electricity sub-station within the ground floor of the building shall be submitted to the local planning authority for approval in writing. The study shall indicate electro-magnetic screening, and any mitigation required for the transformer, as well as predicted electro-magnetic levels in the adjoining residential units and commercial floorspace, by reference to relevant standards and studies. The development shall be carried out in accordance with the approved details.

Reason:

To protect the amenities of the future occupiers of the residential properties and

non-residential floorspace within the building hereby approved.

10 CHP and/or Biomass Boiler and Community Heating System

Prior to commencement of works above basement car park level within the approved development, details of the proposed Combined Heat and Power (CHP) and/or Biomass boiler and community heating system shall be submitted to the local planning authority for approval in writing. The details shall include an air quality assessment report for the selected boiler system. The facilities shall be installed and become fully operational prior to the occupation of the buildings, and shall thereafter be maintained in accordance with the approved details.

Reason:

To ensure that the development is sustainable and complies with Strategic and Local Policies.

11 Basement Ramp Details

Prior to the commencement of the development hereby approved, details of the access ramp to the basement car park including passing places, signal control system, ramp gradient and headroom clearances shall be submitted to the local planning authority for approval in writing. The access ramp gradient shall be no steeper than 1:10. The development shall be carried out and operated in accordance with the approved details.

Reason:

In the interests of highway safety in accordance with Policies M11 and M13 of the London Borough of Barnet Adopted Unitary Development Plan 2006

12 Drainage Details

None of the dwellings shall be occupied until drainage works to serve the development and works for the disposal of sewage have been provided on the site to serve the development hereby permitted, in accordance with details to be submitted to and approved in writing by the local planning authority.

Reason:

To ensure that the foul and/or surface water discharge from the site shall not be prejudicial to the existing sewerage system and the amenities of the area to comply with Policies 5.13 and 5.14 of the London Plan 2011.

13 Landscaping Details

Prior to commencement of works above basement car park level within the approved development, full details of both hard and soft landscape works shall be submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. The landscaping details shall include:

- i) A Landscape Strategy for the central communal courtyard;
- ii) Location and size of proposed tree planting including details of individual tree species and any tree pits proposed;
- iii) Method statement for planting and on-going maintenance of any proposed tree planting;
- iv) Full planting plans for the Green Roofs and green walls detailing species, specification and location for any planting, including on-going maintenance;
- v) a trellis with associated planting along the boundary by the car park ramp of the rear garden of 18 Llanvanor Road;
- vi) proposed finished levels or contours;
- vii) means of enclosure and boundary treatments;
- viii) hard surfacing materials; and
- ix) minor artefacts and structures (including refuse or other storage units).

All hard and soft landscape works shall be carried out in accordance with the

approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the local planning authority.

Reason:

To ensure a satisfactory appearance to the development in accordance with policies DM01 of the Adopted Barnet Development Management Policies DPD (2012) and 7.21 of the London Plan 2011 and CS5 and CS7 of the Adopted Barnet Core Strategy DPD (2012).

14 Landscaping Implementation

All work comprised in the approved scheme of landscaping shall be carried out before the end of the first planting and seeding season following occupation of any part of the buildings or completion of the development, whichever is sooner, or commencement of the use.

Reason:

To ensure a satisfactory appearance to the development in accordance with policies DM01 of the Adopted Barnet Development Management Policies DPD (2012) and CS5 and CS7 of the Adopted Barnet Core Strategy DPD (2012) and 7.21 of the London Plan 2011.

15 Landscaping Maintenance

Any existing tree shown to be retained or trees or shrubs to be planted as part of the approved landscaping scheme which are removed, die, become severely damaged or diseased within five years of the completion of development shall be replaced with trees or shrubs of appropriate size and species in the next planting season.

Reason:

To ensure a satisfactory appearance to the development in accordance with policies DM01 of the Adopted Barnet Development Management Policies DPD (2012) and CS5 and CS7 of the Adopted Barnet Core Strategy DPD (2012) and 7.21 of the London Plan 2011.

16 Materials

Prior to commencement of works above basement car park level within the approved development, details and/or samples of the materials to be used in the construction of the external surfaces of the buildings, and hard surfaced areas, hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

Reason:

To safeguard the character and visual amenities of the site and wider area and to ensure that the building is constructed in accordance with policies DM01 of the Adopted Barnet Development Management Policies DPD (2012), CS NPPF and CS1 of the Adopted Barnet Core Strategy DPD (2012) and 1.1, 7.4, 7.5 and 7.6 of the London Plan 2011.

17 Architectural Details

Notwithstanding the submitted plans, prior to the commencement of works above basement level within the approved development details of the following at an appropriate scale shall be submitted to and approved in writing by the local planning authority:

- i) window reveals;
- ii) brick reveals and soffits to recessed balconies;
- iii) roof parapets;

- iv) projecting balconies and balustrades;
- v) detail for separation between light and dark brickwork; and
- vi) entrances to flats.

Development shall be carried out in accordance with the approved details.

Reason:

To ensure a satisfactory appearance to the development and safeguard the visual amenities of the building and surrounding area.

18 Code for Sustainable Homes

The residential dwellings within the development hereby approved shall achieve Level 3 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that Code Level 3 has been achieved.

Reason:

To ensure that the development is sustainable and complies with policy DM02 of the Adopted Barnet Development Management Policies DPD (2012), the adopted Sustainable Design and Construction Supplementary Planning Document (June 2007) and policies 5.2 and 5.3 of the London Plan (2011).

19 BREEAM for Non-Residential Floorspace

Prior to commencement of works above basement car park level within the approved development, a feasibility study to assess the ability of the non-residential floorspace to achieve a BREEAM Excellent rating shall be submitted to the local planning authority for approval in writing. Before the building is first occupied the developer shall submit certification to demonstrate that this rating has been achieved.

Reason:

To ensure that the development is sustainable and complies with Strategic and Local Policies in accordance with policy DM02 of the Adopted Barnet Development Management Policies DPD (2012), the adopted Sustainable Design and Construction Supplementary Planning Document (June 2007) and policies 5.2 and 5.3 of the London Plan (2011).

20 Extraction and Ventilation

Prior to commencement of works above basement car park level within the approved development, details of all extraction and ventilation equipment to be used within the development shall be submitted to the local planning authority for approval in writing. This shall include a noise assessment, by an approved acoustic consultant that assesses the likely impacts of noise (including from externally generated industrial and traffic noise) on the development and details of proposed measures for the mitigation of any related noise impacts. The approved mitigation measures shall be implemented in their entirety before any of the units are occupied and be permanently retained as such.

Reason:

To ensure that the proposed development does not prejudice the enjoyment or amenities of occupiers of adjoining residential properties in accordance with policies DM04 of the Adopted Barnet Development Management Policies DPD (2012) and 7.15 of the London Plan 2011.

21 Noise from Site Plant

The level of noise emitted from all extraction and ventilation plant, substation, and CHP and/or biomass boiler plant within the development hereby approved shall be at least 5dB(A) below the background level, as measured from any point

1 metre outside the window of any room of any neighbouring property which existed at the time of this decision notice. If the noise emitted has a distinguishable, discrete continuous note (whine, hiss, screech, hum) and/or distinct impulse (bangs, clicks, clatters, thumps), then it shall be at least 10dB(A) below the background level, as measured from any point 1 metre outside the window of any room of any residential property.

Reason:

To ensure that the proposed development does not prejudice the amenities of occupiers of neighbouring properties in accordance with policies DM04 of the Adopted Barnet Development Management Policies DPD (2012) and 7.15 of the London Plan 2011.

22 Noise Mitigation

Prior to commencement of works above basement car park level within the approved development, a scheme for protecting the residential flats from noise from traffic using Finchley Road shall be submitted to the local planning authority for approval in writing. All works which form part of the scheme shall be completed before any of the approved flats are occupied.

Reason:

To ensure that the amenities of occupiers of the proposed units are not prejudiced by noise.

23 Sound Insulation

The building shall be constructed so as to provide sound insulation against internally generated noise emitted by the non-residential uses, the electricity sub station and the biomass boiler. The insulation shall ensure that the levels of noise as measured within all habitable rooms in the flats shall be no higher than 35dB(A) from 0700 hrs. to 2300 hrs, and 30dB(A) in bedrooms from 2300 hrs. to 0700 hrs.

Reason:

To ensure that the proposed development does not prejudice the amenities of occupiers of the residential properties in accordance with policies DM04 of the Adopted Barnet Development Management Policies DPD (2012) and 7.15 of the London Plan 2011.

24 Construction Method Statement

No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- i) the parking of vehicles of site operatives and visitors
- ii) loading and unloading of plant and materials
- iii) storage of plant and materials used in constructing the development
- iv) the erection and maintenance of security hoarding
- v) wheel washing facilities
- vi) measures to control the emission of dust and dirt during construction
- vii) a scheme for recycling/disposing of waste resulting from demolition and construction works
- viii) noise mitigation measures for all plant and processors;

Reason:

In the interests of highway safety and good air quality in accordance with Policy DM17 and DM04 of the Adopted Barnet Development Management Policies DPD (2012) and policy 5.21 of the London Plan (2011).

25 Car Parking Spaces

The car parking spaces as shown on the approved plans shall be provided prior to the occupation of the development hereby approved and shall be kept available for the parking of motor vehicles associated with the development at all times and shall not be used for any other purpose.

Reason:

To ensure that parking is provided in accordance with the council's standards in the interests of pedestrian and highway safety, the free flow of traffic and in order to protect the amenities of the area in accordance with policies DM17 of the Adopted Barnet Development Management Policies DPD (2012) and 6.1, 6.2 and 6.3 of the London Plan 2011.

26 Parking Management Plan

Prior to the first occupation of the development hereby approved a Parking Management Plan detailing the allocation of car parking spaces, on site parking controls and charges, and enforcement of unauthorised parking has been submitted to and approved by the local planning authority. The plan shall be implemented before the building hereby permitted is occupied and maintained thereafter.

Reason:

To ensure that on site car parking is adequately managed and controlled.

27 Cycle Parking Spaces

The cycle parking spaces as shown on the approved plans shall be provided prior to occupation of the development and shall be kept available for the parking of cycles associated with the development at all times.

Reason:

To ensure that adequate and satisfactory provision is made for the parking of cycles.

28 Restriction of Permitted Development Rights

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), the mews houses within the development shall not be extended without the prior written approval of the local planning authority.

Reason:

To ensure that the development does not prejudice the character of the locality and the enjoyment by existing and/or neighbouring occupiers of their properties.

29 Hours of Construction Working

Demolition or construction works shall not take place outside 0800 hours to 1800 hours Mondays to Fridays and 0800 hours to 1300 hours on Saturdays nor at any time on Sundays or Bank Holidays.

Reason:

To ensure that the proposed development does not prejudice the amenities of occupiers of adjoining residential properties in accordance with policy DM04 of the Adopted Barnet Development Management Policies DPD (2012).

30 Refuse Storage

Prior to the commencement of works above the basement level car park within the approved development, details of adequate enclosures and screened facilities for the storage of recycling containers and wheeled refuse bins and/or other refuse storage containers where applicable, together with a satisfactory point of collection shall be submitted to and approved in writing by the Local Planning Authority and shall be provided at the site in accordance with the

approved details before the development is occupied and be permanently retained as such.

Reason:

To ensure a satisfactory appearance for the development and satisfactory accessibility; and to protect the amenities of the area in accordance with policies DM01 of the Adopted Barnet Development Management Policies DPD (2012) and CS14 of the Adopted Barnet Core Strategy DPD (2012).

INFORMATIVE(S):

The informatives that it is recommended be included on the decision notice in respect of this application are set out in **Appendix 1** of this report. These include (as the first informative) a summary of the reasons for granting planning permission for this development and the relevant development plan policies taken into account in making this decision.

1. MATERIAL CONSIDERATIONS

1.1 Key Relevant Planning Policy

Introduction

Section 38(6) of the Planning and Compulsory Purchase Act (2004) requires that development proposals shall be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan is The London Plan published July 2011 and the Core Strategy and Development Management Policies Development Plan Documents was adopted in September 2012. These statutory development plans are the main policy basis for the consideration of this planning application.

National Planning Policy Framework

National planning policies are set out in the National Planning Policy Framework (NPPF). This 65 page document was published in March 2012 and it replaces 44 documents, including Planning Policy Guidance Notes, Planning Policy Statements and a range of other national planning guidance. The NPPF is a key part of reforms to make the planning system less complex and more accessible.

The NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development. The document includes a 'presumption in favour of sustainable development'. This is taken to mean approving applications, such as this proposal, which are considered to accord with the development plan.

The Mayor's London Plan: July 2011

The replacement London Plan was adopted on 22nd July 2011 and provides the strategic planning guidance and policies for the capital. It promotes sustainable growth and environmentally responsive development. Relevant London Plan Policies include:

Policy 3.5 Quality and Design of Housing Developments

Core Strategy (Adopted) 2012

The Core Strategy was adopted by the Council on the 11 September 2012. Relevant

policies include:

Policy CS NPPF - National Planning Policy Framework - Presumption in Favour of Sustainable Development

Policy CS 4 - Providing quality homes and housing choice in Barnet

Policy CS5 - Protecting and enhancing Barnet's character to create high quality places

Development Management Policies (Adopted) 2012

The Development Management Policies document was adopted on the 11 September 2012 and provides the borough wide planning policies that implement the Core Strategy. These policies are used for day-to-day decision making. Relevant policies include:

DM01 Protecting Barnet's character and amenity

DM02 Development Standards

Key relevant local and strategic supplementary planning documents

Sustainable Design and Construction SPD (June 2007)

Draft Sustainable Design and Construction SPD (November 2012)

1.2 Relevant Planning History for the Application Site:

Application Ref.	Address	Description of Development	Decision and Date
F/04513/09	765 Finchley Road, London, NW11 8DS	Demolition of existing three storey office building and construction of two new buildings of up to five storeys in height to provide 99 dwellings and 1680m ² (Gross External Area) of non residential floor space (Use Class B1/D1), basement car park including 108 car parking spaces with access from Llanvanor Road, and associated hard and soft landscaping.	Withdrawn 12/02/2010
F/00070/11	765 Finchley Road, London, NW11 8DS	Demolition of existing office building and redevelopment of the site to provide a mixed use development comprising the erection of buildings between two and five storeys, to provide 80 residential units and 1402 sqm (GEA) of flexible office (use class B1) and/or community (use class D1)	Refused 22/03/2011 Appeal allowed 19/09/2011 (PINS Ref: APP/N5090/A/11 /2151295)

		floorspace above a single basement level car park providing 110 car parking spaces. Associated landscaping	
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1.3 Public Consultation and Views Expressed

Neighbours Consulted:	300
Replies in objection:	13
Replies in support:	0
Neighbours Wishing To Speak	4

The comments made can be summarised as follows:

- The removal of the garden annex land will mean that the residents of the development will not have sufficient outdoor space and the amount of garden space for the development is out of keeping with the surrounding area.
- The annex garden is a haven for bird life, hedgehogs and small creatures.
- Developers are going to want to build on the annex land.
- The removal of outside space from the plans without explanation for its use is against what the developers had promised at the hearing.
- The lack of communal area for that many living units in close proximity will make the site a far less pleasant and urbanised.
- The Appeal was granted inclusive of the garden annex and it should not be hived off from the application.
- If approved it is likely to lead to a further housing application for the annex land.
- It is unfair to squeeze more and more properties into every extra piece of land,
- Development of the annex garden land would be most obtrusive and detrimental to our personal lives and further consequential and negative effect on the value of our property by plunging our sitting room in darkness with visual intrusion into our day to day living by the potential occupants of the said development.
- The land in question was originally part of the garden of 1 Hodford Road but purchased by Smiths Industries PLC some 30 years ago and was a green amenity area for staff as part of their office complex. It was then to be a garden area for future residents of the approved residential development of 765 Finchley Road. The present application is in effect seeking to change the status and use of this land from a green site/garden to enabling a further residential development to take place.
- Object most strongly to this submission and planning application for change of green site to a housing development, as this would be most obtrusive and

detrimental to our lives and further consequential and negative effect on the value of our property.

- The approved developments in the area are increasing the risk of potential flooding.
- The approved developments amount to an unacceptably high density and a reduction of amenity for the neighbourhood, with unacceptably high traffic volumes.
- This land should remain as natural open garden land for the use of those who will live at 765 Finchley Road.

Officer Response

The development of 765 Finchley Road has been approved by Inspector at appeal. Therefore all issues such as the principle of the development, the scale of the buildings, overlooking from the new flats, flooding, and traffic impact have already been considered to be acceptable by the Inspector.

This application simply considers the removal of the annex land from the red line boundary of the approved development. It does not propose or consider the change of use of the land or any new development on the annex site. These issues are dealt with under a separate application (ref F/03363/12).

The main consideration is whether the approved development at 765 Finchley Road can continue to meet the amenity space requirements if the annex garden land is removed from the permission.

1.4 Statutory Consultees:

Environment Agency:

The Environment Agency has advised that they have assessed this application and have no objections.

Thames Water:

The application does not affect Thames Water and as such we have no comments to make.

2. DESCRIPTION OF SITE AND PROPOSED DEVELOPMENT

Site Description and Surroundings:

The application site comprises 765 Finchley Road, number 18 Llanvanor Road and a small area of green space to the rear of the site (referred to as the 'annex garden land') which is enclosed by the rear gardens of properties in Llanvanor Road and Hodford Road.

The site is located on the corner of Finchley Road and Llanvanor Road. It has a frontage along Finchley Road of approximately 60m and is 91m to the rear boundary at its deepest point reducing to 75m to the side boundary of 18 Llanvanor Road. The site area (not including 18 Llanvanor Road) is 0.596 hectares.

The site was previously occupied by a 1980's office building arranged over four

storeys (three storeys with a mansard fourth storey) which was the former headquarters for Smiths Industries Plc. Vehicular access to the site is provided from Llanvanor Road adjacent to number 18.

Development Approved:

Planning permission was granted on appeal (PINS Ref: APP/N5090/A/11/2151295) for the demolition of the former Smiths Industries office building and the erection of new buildings up to 5 storeys in height to provide 80 residential units (77 flats and 3 mews houses) together with 1,402m² (GEA) of B1 and D1 use floorspace.

The approved scheme comprises:

- A 5 storey block along Finchley Road (the 'Mansion Block').
- A part 2, part 5 storey building to the rear of the Mansion Block along Llanvanor Road enclosing a central communal courtyard (the 'Courtyard Block').
- A shared surface road along the western edge of the Courtyard Block leading to three 2 storey mews houses in the north west corner of the site.
- A communal garden provided on the Annex land for the residents of the proposed development.

Proposal:

The annex garden land was included in the red line boundary for the planning consent for redevelopment of 765 Finchley Road. Under this permission the annex garden land was approved to be used as a communal garden for the residents of the development, much in the same way as it had been used by the office workers of the former Smiths Industries office building.

Following grant of planning permission at appeal, the applicant has reviewed the amenity space provided across the approved development and considers that there is sufficient amenity space within the communal courtyard, private balconies and terraces within the development to comply with the relevant planning policy standards without the need for providing a communal garden on the annex garden land. They are therefore seeking to remove the annex garden land from the scope of the approved planning consent. In essence the application proposes that the annex land is no longer part of the red line boundary for the site.

This application is submitted under Section 73 of the Town & Country Planning Act 1990 which allows local planning authorities to grant planning permission subject to conditions differing from those imposed on a previous permission. The application seeks to amend condition 2 and condition 13 of planning consent granted under appeal reference APP/N5090/A/11/2151295 dated 19 September 2011.

Condition 2 sets out the approved plans and requires the development to be constructed in accordance with the approved plans as listed. One of these drawings (P1 900 Rev A - Proposed Landscape Plan) sets out the landscape strategy for the development and includes proposals for the landscaping of the annex garden land. This application seeks permission to amend this drawing to exclude the annex garden land. A substitute plan has been submitted (336-SP-06 rev.E). A number of the other approved plans within condition 2 have also been updated to remove the

annex garden land from the red line boundary for the site. Updated revisions to the plan numbers are therefore included in the new condition. No changes are proposed to the approved buildings. All other aspects of the approved development remain unchanged (i.e. number of units, affordable housing, design and appearance, car parking etc).

Condition 13 relates to scope of the landscape works to be submitted under condition 12 of the permission. Sub-section (i) of condition 13 currently refers to the annex garden. It is therefore proposed that the words "and annex garden" are deleted.

A number of other minor drafting changes have also been proposed to the original conditions. The conditions are set out in the recommendation to this report.

The outcome of this section 73 application will be a new planning consent with the updated conditions attached.

Separate Application F/03363/12

A separate planning application (reference F/03363/12) has been submitted for the construction of 3 houses including 3 off street parking spaces, on the annex garden land.

It should be noted that the application before the committee does not consider the planning merits of the development proposed under application F/03363/12, nor is it linked in any way. That application will be determined separately.

3. PLANNING APPRAISAL

Main Planning Considerations

The main planning consideration in this case is whether as a result of the removal of the annex garden land from the development the scheme would continue to comply with the relevant planning policies in terms of the level of amenity space provided, or whether it would result in an under provision of amenity space for the future occupiers of the approved residential units. It does not consider the principle of any change of use of the garden annex land or any development on the land.

Amenity Space

Policy DM01 requires development proposals to include hard and soft landscaping.
D02

DM02 sets out the relevant documents and guidance that development is expected to comply with. It refers to Sustainable Design and Construction SPD in terms of amenity space requirements. Table 2.3 in the draft replacement Sustainable Design and Construction SPD (November 2012) requires 5sqm of outdoor amenity space per habitable room for flats, 40sqm for houses with up to 4 habitable rooms and 55sqm for houses with up to 5 habitable rooms. The development contains 239 habitable rooms and 3 houses (2x2bed, 1x3bed). In accordance with these standards a minimum of 1,330sqm of amenity space would be required for the

development.

All of the flats within the approved development are provided with a private balcony, roof terrace or patio area. Some flats are provided with more than one (some duplex flats are provided with two balconies as well as a courtyard patio). The smallest of the balconies measures 3m wide x 1.5m deep (4.5sqm) in accordance with the Mayors Housing Design Guide. Some of the two bed mews flats also have small front gardens, which whilst not usable amenity space, provide opportunities for personalised planting.

The approved development includes a central courtyard measuring 30mx33m. Within this space the ground floor flats would be provided with their own private patio area ranging in size from 4.6mx4.8m to 6.8mx5.8m (between 22sqm – 39sqm). The remaining space would provide a communal courtyard which would include paved pathways around the edge and soft landscaping in the centre. The size of the communal courtyard is therefore 27mx25m and provides circa 675sqm of space.

The amenity space for the development was proposed to be supplemented by the annex garden which would be accessed from the rear of the site. The annex garden would provide approximately 745m² of communal amenity space although it was to be managed by controlled access and closed from 10pm.

The approved development therefore provided a total of 2904sqm of amenity space comprising the following:

- i. private balconies, terraces and patios (1484sqm)
- ii. communal courtyard in the centre of the development (675sqm)
- iii. communal annex garden (745sqm)

With the removal of the annex garden land the scheme would provide a total of 2134sqm of outdoor amenity space which would still exceed the requirements set out in the Sustainable Design and Construction SPD.

The approved development includes three single aspect mews houses (two 2 beds and one 3 bed). These properties do not have rear gardens. Under the original application this was considered acceptable given the proximity of the houses to the communal annex garden. With the removal of the annex land the amenity provision for these units must be considered.

The three mews houses are provided with small front gardens and a small first floor balcony. The applicants have submitted a landscape plan showing an indicative layout for the area in front of the three houses. As a result of the removal of the annex garden the end mews house would have a private garden extending down the side of the house of 48sqm. This would comply with the SPD minimum of 40sqm. In addition to the small front gardens provided for each house, the space in front of the houses can be designed and landscaped a communal garden area of approximately 95sqm. This space is located in an area where there are no car movements and where it would be safe for doorstep play for children of the mews houses. The mews houses will also have access to the communal courtyard within the centre of the development. The proposed layout for the area at the end of the mews is therefore considered to provide sufficient outdoor amenity space for the future occupants of

these units.

Therefore with the removal of the annex land from the planning permission for 765 Finchley Road, the development would continue to provide adequate amenity space for the residential units in accordance with Policy DM01, DM02 and the standards set out in the draft replacement Sustainable Design and Construction SPD (November 2012).

3.1 Planning Obligations

The appeal permission APP/N5090/A/11/2151295 dated 19 September 2011 is subject to a Unilateral Undertaking dated 18 August 2011 which secured the following contributions and obligations:

a. Affordable Housing

The development shall include 16 Affordable Rented Units (comprising 3x1 bed, 8x2 bed and 5x3 bed) and 4 Intermediate Housing Units (comprising 2x1 bed and 2x2 bed).

b. Education

A contribution of £237,553 Index Linked towards education provision in the borough.

c. Libraries

A contribution of £15,015 Index Linked towards libraries provision within the borough.

d. Health

A contribution of £66,824 Index Linked towards health provision within the borough.

e. Travel Plan

The applicant shall enter into a Travel Plan that seeks to reduce reliance on the use of the private car and to ensure the sustainability of the development.

f. Travel Plan Monitoring

A contribution of £5,000 Index Linked towards the monitoring of the Travel Plan for the development.

g. Amendment of Local Traffic Order

A contribution of £2,000 Index Linked to cover the cost of amending the existing Traffic Management Order to prevent the occupants of the new development from purchasing parking permits for the Controlled Parking Zone (CPZ).

h. Monitoring of the Section 106 Agreement

A contribution of £13,000 Index Linked towards the monitoring and management of the S106 planning obligations.

As per the recommendation in this report, the applicant has agreed to enter into a new section 106 agreement to ensure that the planning permission to be granted under this section 73 application will be bound by the same obligations and contributions as secured in the unilateral undertaking dated 18 August 2011. Subject

to the completion of the new section 106 agreement, the Council will need to agree to release the obligations contained in the 18 August unilateral agreement.

3.2 Mayor's Community Infrastructure Levy

The Mayor of London is a charging authority for the purposes of Part 11 of the Planning Act 2008 and may therefore charge a Community Infrastructure Levy in respect of development in Greater London. The Mayor published a schedule for CIL in February 2012 and it came into effect in April 2012.

Regulation 3(2) of the Community Infrastructure Levy (Amendment) Regulations 2012 sets out when applications made under section 73 of the Town and Country Planning Act 1990 will be liable to CIL. These regulations also provide for the situation where such an application is made after a charging schedule comes into effect, in relation to a planning permission granted before the charging schedule came into effect (regulation 9(1), which inserts new regulation 128A into the CIL Regulations).

In this instance, the planning permission for 765 Finchley Road was granted before the Mayor's CIL came into effect. Under the amended CIL regulations, the planning permission that will be granted as a result of this section 73 application will not be liable for Mayoral CIL.

4. EQUALITIES AND DIVERSITY ISSUES

The Section 149 of the Equality Act 2010, which came into force on 5th April 2011 imposes important duties on public authorities in the exercise of their functions, including a duty to have regard to:

- (a) *eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*
- (b) *advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*
- (c) *foster good relations between persons who share a relevant protected characteristic and persons who do not share it.*

For the purposes of this obligation the term "protected characteristic" includes:

- age;
- disability;
- gender reassignment;
- pregnancy and maternity;
- race;
- religion or belief;
- sex;
- sexual orientation.

Officers have in the preparation of this report had regard to the requirements of this section and have concluded that a decision to grant planning permission for this

proposed development will comply with the Council's statutory duty under this important legislation.

5. CONCLUSION

The proposals have been evaluated against the determining policies within The London Plan (2011) and adopted Core Strategy (September 2012) and Development Management Policies DPD (September 2012). It has been demonstrated above that the with the removal of the annex garden land from the planning permission for the redevelopment of 765 Finchley Road, the development would continue to provide adequate amenity space for the residential units in accordance with Policy DM01, DM02 and the standards set out in the draft replacement Sustainable Design and Construction SPD (November 2012). On this basis and in the context of the guidance provided in the NPPF (2011) the application is considered acceptable and is recommended for **approval** subject to the satisfactory completion of a section 106 legal agreement and the conditions recommended in this report.

APPENDIX 1: INFORMATIVES

1. In accordance with Article 31 of the Town and Country Planning (Development Management Procedure) Order 2010, this informative summarises the local planning authority's reasons for granting planning permission for this development and the relevant development plan policies taken into account in this decision.

In summary, the Local Planning Authority considers that the proposed development should be permitted for the following reasons:

The removal of the annex garden land from the extant planning permission for the redevelopment of 765 Finchley Road would not compromise the level of outdoor amenity space available for the future residents of the development. The approved development would continue to provide adequate amenity space for all of the residential units in accordance with Policy DM01, DM02 and the standards set out in the draft replacement Sustainable Design and Construction SPD (November 2012). The application is found to propose a positive development that would comply with the relevant policies in the development plan and Local Plan and provides high quality new residential accommodation. As such it is considered that there are material planning considerations which justify the grant of planning permission.

The proposed development accords with strategic planning guidance and policies as set out in The Mayor's London Plan: July 2011 and the Adopted Core Strategy (September 2012) and Adopted Development Management Policies (September 2013).

A summary of the development plan policies relevant to this decision is set out in Tables 1 and 2 below:

Table 1: Summary of the London Plan (2011) policies relevant to this decision

Policy	Content Summary
3.3 (Increasing housing supply)	Boroughs should seek to achieve and exceed the relevant minimum borough annual average housing target. For Barnet the target is 22,550 over the next 10 years with an annual monitoring target of 2,255.
3.4 (Optimising housing potential)	Development should optimise housing output for different types of location taking into account local context and character, the London Plan design principles and public transport capacity. Proposals which compromise this policy should be resisted.
Policy 3.5 (Quality and design of housing developments)	Housing developments should be of the highest quality internally, externally and in relation to their context and wider environment, taking account of the policies in the London Plan. The design of all new housing should incorporate the London Plan minimum space standards and enhance the quality of local places, taking account of physical context, local character, density, tenure and land use mix and relationships with and provision of spaces.

3.8 (Housing choice)	Londoners should have a genuine choice of homes that they can afford and which meet their requirements, including: <ul style="list-style-type: none"> - New developments should offer a range of housing sizes and types. - All new housing should be built to Lifetime Homes standard. - 10% of new housing is designed to be wheelchair accessible, or easily adaptable for wheelchair users.
Policy 5.3 (Sustainable design and construction)	Development proposals should demonstrate that sustainable design standards are integral to the proposal, considered from the start of the process and meet the requirements of the relevant guidance.

Table 2: Summary of the Barnet Core Strategy and Development Management Policies relevant to this decision

CS NPPF (National Planning Policy Framework – presumption in favour of sustainable development)	Take a positive approach to proposals which reflects the presumption in favour of sustainable development and approve applications that accord with the Local Plan, unless material considerations indicate otherwise. Where there are no policies relevant to the proposal or the relevant policies are out of date permission should be granted, unless material considerations indicate otherwise.
CS4 (Providing quality homes and housing choice in Barnet)	Aim to create successful communities by: <ul style="list-style-type: none"> - Seeking to ensure a mix of housing products that provide choice for all are available. - Ensuring that all new homes are built to the Lifetime Homes Standard and that the wider elements of schemes include the relevant inclusive design principles. - Seeking a variety of housing related support options. - Delivering 5500 new affordable homes by 2025/26 and seeking a borough wide target of 40% affordable homes on sites capable of accommodating 10 or more dwellings. - Seek an appropriate mix of affordable housing comprising 60% social rented housing and 40% intermediate housing.
CS5 (Protecting and enhancing Barnet's character to create high quality places)	The council will ensure that development in Barnet respects local context and distinctive local character, creating places and buildings with high quality design. <p>Developments should:</p> <ul style="list-style-type: none"> - Address the principles, aims and objectives set out in the relevant national guidance. - Be safe attractive and fully accessible. - Provide vibrant, attractive and accessible public spaces. - Respect and enhance the distinctive natural landscapes of Barnet. - Protect and enhance the gardens of residential properties. - Protect important local views. - Protect and enhance the boroughs high quality suburbs and historic areas and heritage. - Maximise the opportunity for community diversity, inclusion and cohesion. - Contribute to people's sense of place, safety and security.
DM01 (Protecting Barnet's character and amenity)	Development should represent high quality design that contributes to climate change mitigation and adaptation. <p>Proposals should be based on an understanding of local characteristics, preserve or enhance local character and respect the appearance, scale, mass, height and pattern of surrounding buildings, spaces and streets.</p> <p>Development should ensure attractive, safe and vibrant streets which provide visual interest. Proposal should create safe and secure</p>

	<p>environments, reduce opportunities for crime and minimise fear of crime.</p> <p>Development should be designed to allow for adequate daylight, sunlight, privacy and outlook for adjoining and potential occupiers and users. Lighting schemes should not have a demonstrably harmful impact on amenity or biodiversity. Proposals should retain outdoor amenity space.</p> <p>Trees should be safeguarded and when protected trees are to be felled the Council will require suitable tree replanting. Proposals will be required to include landscaping that is well laid out; considers the impact of hardstandings on character; achieves a suitable visual setting; provides an appropriate level of new habitat; makes a positive contribution to the to the surrounding area; contributes to biodiversity (including the retention of existing wildlife habitat and trees); and adequately protects existing trees and their root systems.</p>
DM02 (Development standards)	Development will be expected to demonstrate compliance with relevant standards, supported by the guidance provided in the Council's Supplementary Planning Documents.

2 In complying with the contaminated land condition parts 1 and 2:

Reference should be made at all stages to appropriate current guidance and codes of practice. This would include:

- 1) The Environment Agency CLR & SR Guidance documents;
- 2) Planning Policy Statement 23 (PPS 23) - England (2004);
- 3) BS10175:2001 Investigation of potentially contaminated sites - Code of Practice;
- 4) Guidance for the safe development of housing on land affected by contamination, (2008) by NHBC, the EA and CIEH.

Please note that in addition to the above, consultants should refer to the most relevant and up to date guidance and codes of practice if not already listed in the above list.

3 You are advised to engage a qualified acoustic consultant to advise on the scheme, including the specifications of any materials, construction, fittings and equipment necessary to achieve satisfactory internal noise levels in this location.

In addition to the noise control measures and details, the scheme needs to clearly set out the target noise levels for the habitable rooms, including for bedrooms at night, and the levels that the sound insulation scheme would achieve.

The council's supplementary planning document on Sustainable Design and Construction requires that dwellings are designed and built to insulate against external noise so that the internal noise level in rooms does not exceed 30dB(A) expressed as an Leq between the hours of 11.00pm and 7.00am, nor 35dB(A) expressed as an Leq between the hours of 7.00am and 11.00pm (Guidelines for Community Noise, WHO). This needs to be considered in the context of room ventilation requirements

The details of acoustic consultants can be obtained from the following contacts:

- a) Institute of Acoustics and b) Association of Noise Consultants.

The assessment and report on the noise impacts of a development should use methods of measurement, calculation, prediction and assessment of noise levels and impacts that comply with the following standards, where appropriate: 1) BS 7445 (1991) Pts 1, 2 & 3 (ISO 1996 pts 1-3) - Description and measurement of environmental noise; 2) BS 4142:1997 - Method of rating industrial noise affecting mixed residential and industrial areas; 3) BS 8223: 1999 - Sound insulation and noise reduction for buildings: code of practice; 4) Department of transport: Calculation of road traffic noise (1988); 5) Department of transport: Calculation of railway noise (1995); 6) Department of transport : Railway Noise and insulation of dwellings.

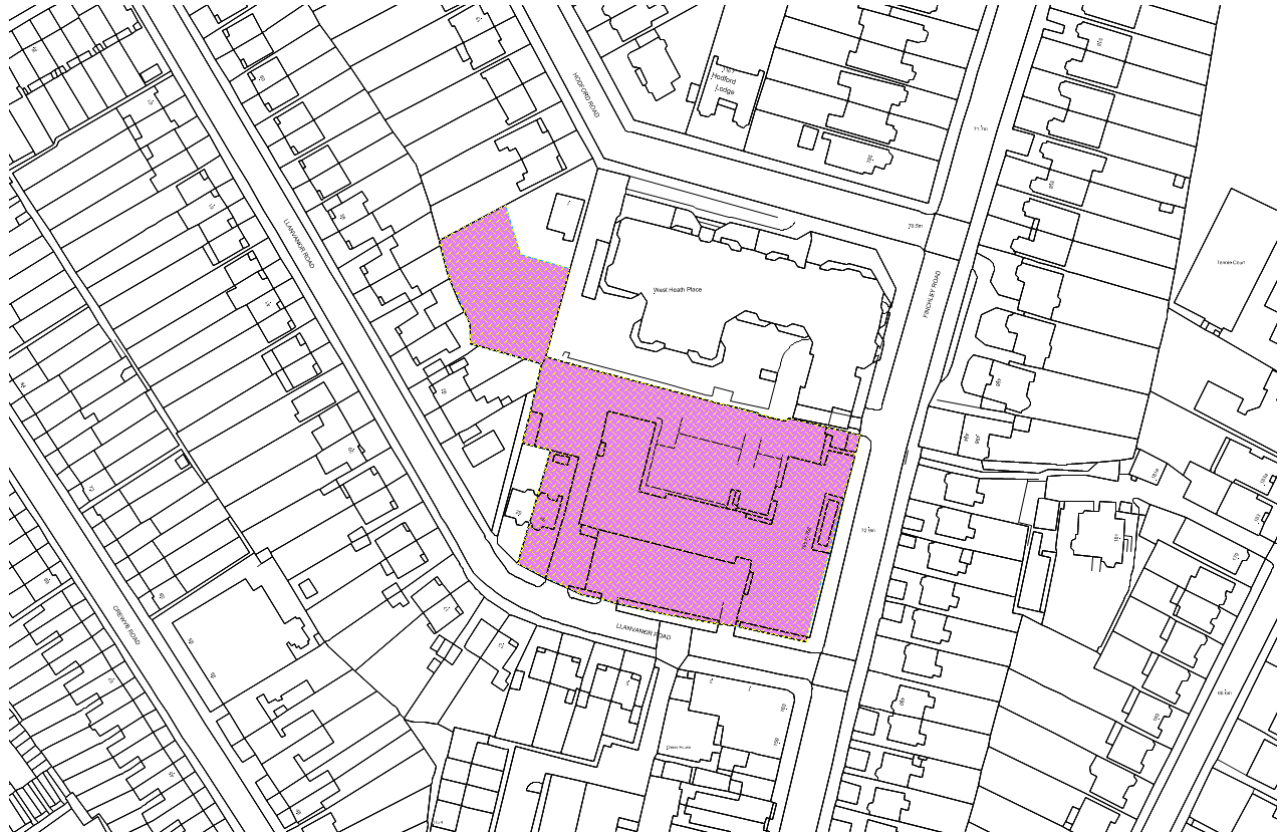
- 4 The gradient for the proposed ramp leading to the underground parking area should have a gradient not steeper than 1:10 or in accordance with the guidelines in IStructE Design recommendations for multi-storey and underground car parks.
- 5 The applicant is advised that an application under Section 184 of the Highways Act (1980) must be submitted for a new heavy duty vehicular access. The access design details, construction and location will be reviewed by the Development Team as part of the application. Any related costs for alterations to the public highway layout that may become necessary, due to the design of the onsite development, will be borne by the applicant.
- 6 To receive a copy of our Guidelines for Developers and an application form please contact: David M Smith, Clerk of Works, Traffic & Development Section – Environment and Operations, London Borough of Barnet, North London Business Park (NLBP) Building 4, Oakleigh Road South, London N11 1NP.
- 7 Any highway approval as part of the planning process for the alteration or removal of the existing crossovers or provision of new crossovers will be subject to detailed survey by the Crossover Team in Environment and Operations as part of the application for crossover under Highways Act 1980 and would be carried out at the applicant's expense. Please note, reinstatement of redundant crossovers, any relocation of street furniture, lighting column or amendments to parking bays affected by the proposed works would be carried out under a rechargeable works agreement by the Council's term contractor for Highway Works. An estimate for this work could be obtained from London Borough of Barnet, Environment and Operations, Crossover Team, NLBP, Building 4, 2nd Floor, Oakleigh Road South, London N11 1NP
- 8 In the case where a highway tree is present in the vicinity of the proposed access road or a crossover for the development the final approval would be subject to the detailed assessment carried out by the Environment and Operations, Crossover Team as part of the crossover application. The outcome of this assessment cannot be prejudged.
- 9 The applicant is advised that construction of a vehicular access/crossover may involve alterations to the existing on-street parking bays. Alterations to on-street parking bays or waiting restrictions will be subject to a statutory consultation period. The Council cannot prejudge the outcome of the consultation process. Any related costs for the alterations will be borne by the applicant.
- 10 The applicant is advised that a width restriction is in place in Llanvanor Road and this should be taken into consideration when a Construction Management Plan is drafted.
- 11 If the development is required to have a Travel Plan, LB Barnet is promoting the

use of Online Travel Plan Builder. A travel plan is a document produced by you which includes a package of measures designed to help and improve transport facilities and promote more sustainable modes. Every plan is specific to the development hence prior to occupation measures need to be tailored to your site.

- 12 Refuse collection points should be located within 10 metres of the Public Highway; otherwise, unobstructed access needs to be provided to the refuse vehicle on the day of the collection. The development access needs to be designed and constructed to allow refuse vehicles to access the site. Alternatively, the dustbins will need to be brought to the edge of public highways on collection days. Any issues regarding refuse collection should be referred to the Cleansing Department.
- 13 The applicant is advised that Finchley Road is a Traffic Sensitive Road. Deliveries during the construction period should not take place between 8.00am - 9.30am and 4.30pm - 6.30pm Monday to Friday. Careful consideration must also be given to the optimum route(s) for construction traffic and LB Barnet Environment and Operations department should be consulted in this respect.
- 14 The applicant is also advised that the development is located on a Strategic Road Network (SRN) and is likely to cause disruption. The Traffic Management Act (2004) requires the Council to notify Transport for London (TfL) for implementation of construction works. The developer is expected to work with the Council to mitigate any adverse impact on public highway and would require TfL's approval before works can commence.
- 15 The costs of any associated works to public highway, including reinstatement works, will be borne by the applicants and may require the Applicant to enter into a rechargeable agreement or a 278 Agreement under the Highways Act 1980.
- 16 Where a developer proposes to discharge water to a public sewer, prior approval from Thames Water Developer Services will be required. They can be contacted on 0845 850 2777.

SITE LOCATION PLAN: 765 Finchley Road, London, NW11 8DS

REFERENCE: F/03354/12



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