

**MEETING**

**PLANNING AND ENVIRONMENT COMMITTEE**

**DATE AND TIME**

**THURSDAY 20TH MARCH, 2014**

**AT 7.00 PM**

**VENUE**

**HENDON TOWN HALL, THE BURROUGHS, NW4 4BG**

**TO: MEMBERS OF PLANNING AND ENVIRONMENT COMMITTEE (Quorum 3)**

Chairman: Councillor Wendy Prentice  
Vice Chairman: Councillor Maureen Braun

**Councillors**

|                |                 |                     |
|----------------|-----------------|---------------------|
| Jack Cohen     | Mark Shooter    | Andreas Tambourides |
| John Marshall  | Agnes Slocombe  | Jim Tierney         |
| Barry Rawlings | Stephen Sowerby |                     |

**Substitute Members**

|                   |              |                   |
|-------------------|--------------|-------------------|
| Alison Cornelius  | Kath McGuirk | Andrew Strongolou |
| Claire Farrier    | Graham Old   | Darrel Yawitch    |
| Andreas Ioannidis | Lord Palmer  |                   |
| Sury Khatri       | Brian Schama |                   |

**You are requested to attend the above meeting for which an agenda is attached.**

**Andrew Nathan – Head of Governance**

Governance Services contact: Maria Lugangira 020 8359 2761

Media Relations contact: Sue Cocker 020 8359 7039

**ASSURANCE GROUP**

## ORDER OF BUSINESS

| Item No | Title of Report   | Pages    |
|---------|---|----------|
| 1.      | Minutes   |          |
| 2.      | Absence of Members  |          |
| 3.      | Disclosable Pecuniary interests and Non Pecuniary interests   |          |
| 4.      | Public Question Time (if any)   |          |
| 5.      | Members Item (if any)   |          |
| 6.      | Report of the Acting Assistant Director of Planning and Development Management;   |          |
| 7.      | Barnet Curriculum Centre, Byng Road, Barnet, Herts, EN5 4NS - B/048191/13   | 1 - 16   |
| 8.      | Phase 3 A, Millbrook Park, Frith Lane, London, NW7 1HA - H/00065/14   | 17 - 58  |
| 9.      | Application to add a Public Right of Way from West Heath Road NW3 to Finchley Road NW11 to the Definitive Map and Statement | 59 - 118 |
| 10.     | Any item(s) that the Chairman decides are urgent  |          |

### FACILITIES FOR PEOPLE WITH DISABILITIES

Hendon Town Hall has access for wheelchair users including lifts and toilets. If you wish to let us know in advance that you will be attending the meeting, please telephone Maria Lugangira 020 8359 2761 maria.lugangira@barnet.gov.uk. People with hearing difficulties who have a text phone, may telephone our minicom number on 020 8203 8942. All of our Committee Rooms also have induction loops.

### FIRE/EMERGENCY EVACUATION PROCEDURE

If the fire alarm sounds continuously, or if you are instructed to do so, you must leave the building by the nearest available exit. You will be directed to the nearest exit by Committee staff or by uniformed custodians. It is vital you follow their instructions.

You should proceed calmly; do not run and do not use the lifts.

Do not stop to collect personal belongings

Once you are outside, please do not wait immediately next to the building, but move some distance away and await further instructions.

Do not re-enter the building until told to do so.

**LOCATION:** Barnet Curriculum Centre, Byng Road, Barnet, Herts, EN5 4NS

**REFERENCE:** B/04816/13

**Received:** 18 October 2013

**Accepted:** 18 October 2013

**WARD:** High Barnet

**Expiry:** 17 January 2014

**AGENDA ITEM 7**

**Final Revisions:**

**APPLICANT:** Noah's Ark Children's Hospice

**PROPOSAL:** Variation to wording of conditions relating to car parking, materials, enclosures, refuse storage, ventilation and extraction equipment, noise, landscaping, tree protection, tree method statement, travel plan, landscape management plan and disabilities access statement attached to planning permission B/04065/11 (for demolition of existing buildings and erection of single storey building plus lower ground floor for use as a children's hospice (Class C2) and a new single storey countryside centre with roof terrace. Development to include the provision of 26 car parking spaces (including 4no. disabled spaces and 2no. mini bus spaces), a cycle, bin and re-cycling storage area, 3no. equipped play areas, new drainage pond, new footpath adjacent to Byng Road, new fencing and hard and soft landscaping including timber walkways). Variations to enable the phased implementation of the planning permission with construction of the countryside centre first, and to allow the addition of a new external door, the replacement of a roof light with a ventilation stack, and the installation of an external sink.

**APPROVE SUBJECT TO S106 AGREEMENT**

**RECOMMENDATION I:**

That the applicant and any other person having a requisite interest 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 seeking to secure the following:

- 1 Paying the council's legal and professional costs of preparing the Agreement and any other enabling agreements;
- 2 All obligations listed below to become enforceable in accordance with a timetable to be agreed in writing with the Local Planning Authority;
- 3 **Requirement to submit Travel Plan** **£5,000.00**  
Requirement to submit a Travel Plan for approval by the Council prior to first occupation of the development and the obligation to provide a contribution towards the Council's costs of monitoring the implementation of a Travel Plan.
- 4 **Monitoring of the Agreement** **£250.00**  
Contribution towards the Council's costs in monitoring the obligations of the agreement.

## RECOMMENDATION II:

That upon completion of the agreement the Assistant Director of Development Management & Building Control approve the planning application reference: B/04816/13 under delegated powers subject to the following conditions: -

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

NAH-PA-S101, NAH-PA-P101, NAH-PA-S102, NAH-PA-S103, NAH-PA-P105, NAH-PA-P106, NAH-PA-P107, NAH-PA-P121, NAH-PA-P122, NAH-PA-P123, NAH-PA-P131, NAH-PA-P132, Planning, Design and Access Statement, Appendix 1 - Policy Statement, Appendix 2 - Statement by Noah's Ark Hospice, Appendix 3 - Third Party Responses to Open Evening, Appendix 4 - Statement by FOBBC, Stage C Report by Hilson Moran Rev.01, Drainage Strategy by Morrish and Partners T149/DSC/DS1 dated September 2011, Transport Statement by Rowland Bilisland Traffic Planning dated 23rd September 2011, Tree Report by ACD dated 13th February 2009, Arboricultural Method Statement by ACD dated 23/09/2011, Arboricultural Implications Assessment by ACD dated 23/08/2011, BARK16932-01A, BARK16932-03D, Amended Protected Species Assessment & Survey dated June 2011, Landscape Design Report 128-P-Report Revision A by AREA, 128-P-01 revision B, 128-P-20 revision B, 128-P-21 revision B, 128-P-22 revision A (date received 29-Sep-2011).

Email from agent dated 03/01/2012 enclosing additional comments from ELMAW Consulting re additional bat survey of trees identified for removal.

Response in respect of inclusive design from Project 5 Architecture LLP dated 20.12.2011

Drawing 128-P-01 Rev B (received 18 October 2013).

Drawing No. NAH-PA-200 and 201 Rev A, and tek intonat stacks specification (received 19 February 2014).

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).

2. This development must be begun within three years from the date of the original grant of planning permission (2 February 2013).

Reason:

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

3. Before the environment centre hereby permitted is occupied the northern car park at phase 1 (as indicated on Drawing 128-P-01 Rev B (received 18 October 2013) shall be provided and shall not be used for any purpose

other than the parking of vehicles in connection with the approved development.

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.

4. Before the children's hospice hereby permitted is occupied the southern car park at phase 2 (as indicated on Drawing 128-P-01 Rev B (received 18 October 2013) shall be provided and shall not be used for any purpose other than the parking of vehicles in connection with the approved development.

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.

5. Before this development is commenced, details of the levels of the building(s), road(s) and footpath(s) in relation to 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.

6. Before any work on the environment centre hereby permitted commences, details of the materials to be used for the external surfaces of the environment centre building(s), hard surfaced areas, including the northern car park and footpaths and the gabion wall including any crushed material from 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 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.

7. Before any work on the children's hospice hereby permitted commences, details of the materials to be used for the external surfaces of the hospice building(s), the tree top walkways, hard surfaced areas, including the southern car park and footpaths and the gabion wall including any crushed material from 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 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.

8. The premises at phase 2 shall be used for a Children's Hospice only and no other purpose (including any other purpose in Class C2 of the Schedule to the Town and Country Planning (Use Classes) Order, 1987, 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 and the use as a children's hospice constitutes a very special circumstance which means the proposal is acceptable in principle in green belt terms.

9. The Environmental Centre building hereby permitted shall only be used/and occupied in connection with the nature reserve on which it is located and for no other purpose unless first agreed in writing by the Local Planning Authority.

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 and for no other purpose unless first agreed in writing by the Local Planning Authority, in accordance with Policy DM01 of the Development Management Policies DPD.

10. Before the environment centre hereby permitted is brought into use or occupied, phase 1 (as indicated on Drawing 128-P-01 Rev B (received 18 October 2013) shall be enclosed except at the permitted points of access in accordance with details previously submitted to and approved in writing by the Local Planning Authority.

Reason:

To ensure that the proposed development does not prejudice the appearance of the locality and/or the amenities of occupiers of adjoining residential properties and to confine access to the permitted points in the interest of the flow of traffic and conditions of general safety on the adjoining highway in accordance with policies DM01, DM03, DM17 of the Adopted Barnet Development Management Policies DPD (2012), CS NPPF and CS1 of the Adopted Barnet Core Strategy DPD (2012).

11. Before the children's hospice hereby permitted is brought into use or occupied, phase 2 (as indicated on Drawing 128-P-01 Rev B (received 18 October 2013) shall be enclosed except at the permitted points of access in accordance with details previously submitted to and approved in writing by the Local Planning Authority.

Reason:

To ensure that the proposed development does not prejudice the appearance of the locality and/or the amenities of occupiers of adjoining residential properties and to confine access to the permitted points in the interest of the flow of traffic and conditions of general safety on the adjoining highway in accordance with policies DM01, DM03, DM17 of the Adopted Barnet Development Management Policies DPD (2012), CS NPPF and CS1 of the Adopted Barnet Core Strategy DPD (2012).

12. Before development on the environment centre hereby permitted commences, details of enclosures and screened facilities for the storage of recycling containers and wheeled refuse bins 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.

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).

13. Before development on the children's hospice hereby permitted commences, details of enclosures and screened facilities for the storage of recycling containers and wheeled refuse bins 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.

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).

14. No construction work resulting from the planning permission shall be carried out on the premises at any time on Sundays, Bank or Public Holidays, before 8.00 am or after 1.00 pm on Saturdays, or before 8.00 am or after 6.00pm on other days.

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).

15. Details of all extraction and ventilation equipment shall be submitted to and approved by the Local Planning Authority and implemented in accordance with agreed details before the use of the Children's Hospice hereby permitted at phase 2 is commenced.

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.

16. The level of noise emitted from the plant 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 a neighbouring residential property.

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 a neighbouring 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.

17. Before development of the children's hospice hereby permitted commences, a report should be carried out by a competent acoustic consultant and submitted to the Local Planning Authority for approval, that assesses the likely noise impacts from the development of the ventilation/extraction plant. The report shall also clearly outline mitigation measures for the development to reduce these noise impacts to acceptable levels.

It should include all calculations and baseline data, and be set out so that the Local Planning Authority can fully audit the report and critically analyse the contents and recommendations. The approved measures shall be implemented in their entirety before (any of the units are occupied / the use commences).

Reason:

To ensure that the amenities of neighbouring premises are protected from noise from the development in accordance with policies DM04 of the Adopted Barnet Development Management Policies DPD (2012) and 7.15 of the London Plan 2011.

18. A scheme of hard and soft landscaping, including details of existing trees to be retained, relating to both Phases 1 and 2 (as indicated on Drawing 128-P-01 Rev B (received 18 October 2013) of the development hereby approved shall be submitted to and agreed in writing by the Local Planning Authority before the development, hereby permitted, is commenced.

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).

19. All work comprised in the approved scheme of landscaping for phase 1 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.

20. All work comprised in the approved scheme of landscaping for phase 2 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.

21. 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.

22. Before this development is commenced details of the location, extent and depth of all excavations for drainage and other services in relation to trees on the site shall be submitted and approved in writing by the Local Planning Authority and the development carried out in accordance with such approval.

Reason:

To safeguard the health of existing tree(s) which represent an important amenity feature 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.

23. No site works or works on the environment centre at phase 1 (as indicated on Drawing 128-P-01 Rev B (received 18 October 2013) shall be commenced before temporary tree protection has been erected around

existing tree(s) in the site of phase 1 in accordance with details to be submitted and approved in writing by the Local Planning Authority. This protection shall remain in position until after the development works are completed and no material or soil shall be stored within these fenced areas.

Reason:

To safeguard the health of existing tree(s) which represent an important amenity feature 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.

24. No site works or works on the children's hospice at phase 2 (as indicated on Drawing 128-P-01 Rev B (received 18 October 2013)) shall be commenced before temporary tree protection has been erected around existing tree(s) in the site of phase 2 in accordance with details to be submitted and approved in writing by the Local Planning Authority. This protection shall remain in position until after the development works are completed and no material or soil shall be stored within these fenced areas.

Reason:

To safeguard the health of existing tree(s) which represent an important amenity feature 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.

25. No siteworks or works on the environment centre shall be commenced before a method statement detailing precautions to minimise damage to trees within phase 1 of the site (as indicated on Drawing 128-P-01 Rev B (received 18 October 2013)) including full details of the raised timber boardwalk construction and installation of boundary fencing within protected areas and in accordance with Section 7 of British Standard BS5837: 2005 *Trees in relation to construction - Recommendations* is submitted to and approved in writing by the LPA and the development shall be carried out in accordance with such approval.

Reason:

To safeguard the health of existing trees which represent an important amenity feature in accordance with policies DM01 of the Adopted Barnet Development Management Policies DPD (2012), CS5 and CS7 of the Adopted Barnet Core Strategy DPD (2012) and 7.21 of the London Plan 2011.

26. No siteworks or works on the children's hospice shall be commenced before a method statement detailing precautions to minimise damage to trees within phase 2 of the site (as indicated on Drawing 128-P-01 Rev B (received 18 October 2013)) including full details of the raised timber boardwalk construction and installation of boundary fencing within protected areas and in accordance with Section 7 of British Standard BS5837: 2005 *Trees in relation to construction - Recommendations* is submitted to and approved in writing by the LPA and the development shall be carried out in accordance with such approval.

Reason:

To safeguard the health of existing trees which represent an important amenity feature in accordance with policies DM01 of the Adopted Barnet Development Management Policies DPD (2012), CS5 and CS7 of the Adopted Barnet Core Strategy DPD (2012) and 7.21 of the London Plan 2011.

27. No development or other operations shall commence on site in connection with the [demolition and] development hereby approved until a detailed tree felling / pruning specification has been submitted to and approved in writing by the local planning authority and all tree felling and pruning works shall be carried out in full accordance with the approved specification and the British Standard 3998: 2010 *Recommendation for Tree Works* (or as amended).

Reason:

To safeguard the health of existing trees which represent an important amenity feature in accordance with policies DM01 of the Adopted Barnet Development Management Policies DPD (2012), CS5 and CS7 of the Adopted Barnet Core Strategy DPD (2012) and 7.21 of the London Plan 2011.

28. Provisions shall be made within the site to ensure that all vehicles associated with the construction of the development hereby approved are properly washed and cleaned to prevent the passage of mud and dirt onto the adjoining highway.

Reason:

To ensure that the development does not cause danger and inconvenience to users of the adjoining pavement and highway.

29. The days and hours of operation of the Environmental Centre hereby permitted shall be agreed in writing by the Local Planning Authority before the building is first occupied. The premises shall not operate outside of the days and hours as approved unless first agreed in writing by the Local Planning Authority.

Reason:

To ensure the amenities of neighbouring residents are not prejudiced in accordance with Policy DM01 of the Development Management Policies DPD.

30. Before the development is occupied a full Travel Plan shall be submitted and to and approved by the Local Planning Authority. This should include the appointment of a Travel Plan co-ordinator. No development shall take place until details of the arrangements to meet the obligation for monitoring the development to ensure the objectives of the Travel Plan are met.

Reason:

To encourage the use of sustainable forms of transport to the site in accordance with Policy DM17 of the Development Management Policies DPD and Policy CS9 of the Local Plan Core Strategy (adopted September 2012).

31. No siteworks or works on this development including demolition or construction work shall commence until a Demolition and Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved demolition and construction management plan.

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).

32. No siteworks or works on this development including demolition or construction work shall commence until details of proposed mitigation measures following on from the findings outlined in the Amended Protected Species Assessment & Survey by ELMAW Consulting and additional information submitted 03/01/2012 are submitted to and approved in writing by the Local Planning Authority. Any mitigation measures shall be carried out in accordance with details and timescales as agreed by the Local Planning Authority.

Reason:

In the interests of ecology and nature conservation and to ensure that protected species are not adversely affected by the proposed development, in accordance with Policy DM16 of the Development Management Policies DPD.

33. No works in connection with the development hereby permitted, including any site preparation works, shall commence until a Landscape Management Plan for the site for a period of 20 years including long term design objectives, management responsibilities and maintenance schedules and provisions to safeguard ecological interests in line with the recommendations outlined with the Amended Protected Species Assessment & Survey by ELMAW Consulting dated June 2011 and additional information submitted 03/01/2012 have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented, managed and maintained in accordance with the provisions of the Landscape Management Plan.

Reason:

To safeguard local biodiversity, ensure a satisfactory appearance and setting for the proposed development and to ensure that it enhances the visual amenity of the area, in accordance with Policies DM01 and DM15 of the Development Management Policies DPD.

34. Development shall not begin until drainage works including provision of Sustainable Drainage Systems (SUDS) to provide attenuation of surface water on-site, including living roofs, permeable paving and swales have been carried out 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 and surface water run off is dealt with in a sustainable manner.

35. The hospice is required to meet the 'Excellent' standard in the BRE (Building Research Establishment) EcoHomes assessment (or equivalent standard Code for Sustainable Homes assessor) to demonstrate that the development satisfactorily achieves the 'Excellent' (or equivalent Code for Sustainable Homes) rating.

The application is required to submit, and have approved in writing by the Local Planning Authority, a certificate by a licensed EcoHomes assessor (or equivalent Code for Sustainable Homes assessor) to demonstrate that the development satisfactorily achieves the 'Excellent' (or equivalent Code for Sustainable Homes) rating.

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 (April 2013) and policies 5.2 and 5.3 of the London Plan (2011).

36. The environment centre hereby approved is required to meet the following generic environmental standard (BREEAM) and at a level specified at Section 2.19 of the adopted Sustainable Design and Construction Supplementary Planning Document (April 2013). Before the development is first occupied the developer shall submit certification of the selected generic environmental standard.

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 (April 2013) and policies 5.2 and 5.3 of the London Plan (2011).

37. Before development works on the environment centre hereby approved are commenced a Disabilities Access Statement for phase 1 (as indicated on Drawing 128-P-01 Rev B (received 18 October 2013) including details of external seating and steps shall be submitted to and approved in writing by the Local Planning Authority. The details as approved shall be provided before the use of the building first commences and shall be permanently maintained thereafter in accordance with the approved details.

Reason: To ensure the development is accessible to all, in accordance with Policy DM03 of the Development Management Policies DPD.

38. Before development works on the children's hospice hereby approved are commenced a Disabilities Access Statement for phase 2 (as indicated on Drawing 128-P-01 Rev B (received 18 October 2013) including details of external seating and steps shall be submitted to and approved in writing by the Local Planning Authority. The details as approved shall be provided before the use of the building first commences and shall be permanently maintained thereafter in accordance with the approved details.

Reason:

To ensure the development is accessible to all, in accordance with Policy DM03 of the Development Management Policies DPD.

## INFORMATIVE(S):

1. In accordance with paragraphs 186 and 187 of the NPPF, the Council takes a positive and proactive approach to development proposals, focused on solutions. The Local Planning Authority has produced planning policies and written guidance to guide applicants when submitting applications. These are all available on the Council's website. A pre-application advice service is also offered. The Local Planning Authority has negotiated with the applicant / agent where necessary during the application process to ensure that the proposed development is in accordance with the Council's relevant policies and guidance.
2. Any details submitted in respect of the Demolition and Construction Management Plan above shall control the hours, routes taken, means of access and security procedures for construction traffic to and from the site and the methods statement shall provide for the provision of on-site wheel cleaning facilities during demolition, excavation, site preparation and construction stages of the development, recycling of materials, the provision of on-site car parking facilities for contractors during all stages of development (Excavation, site preparation and construction) and the provision on site of a storage/delivery area for all plant, site huts, site facilities and materials and a community liaison contact and precautions to minimise damage to trees on or adjacent to the site.
3. Any new crossovers will be subject to detailed survey by the as part of the application for crossover under Highways Act 1980 and would be carried out at the applicant's expense. Any street furniture, road markings or parking bays affected by the proposed works would be relocated at the applicant's expense. An estimate for this work could be obtained from London Borough of Barnet, NLBP, Building 4, 2nd Floor, Oakleigh Road South, London N11 1NP.
4. The applicant advised that if the development is carried out, where possible, the applicant should seek to provide appropriate pedestrian visibility splays at either side of the vehicular crossover.
5. This grant of consent confirms no rights for any work to be undertaken to trees adjacent to and on the site included in the Tree Preservation Order. If any treatment is proposed, an application would be required in accordance with the Tree Preservation Legislation, and should be accompanied by a BS5837 tree survey.

You are reminded that damaging, or causing or permitting damage to, a protected tree is a criminal offence that may result in liability for a heavy penalty and appropriate precautions should be taken to ensure that no damage is caused during development works.

6. Any and all works carried out in pursuance of this consent / notice will be subject to the duties, obligations and criminal offences contained in the Wildlife and Countryside Act 1981 (as amended). Failure to comply with the provisions of the Wildlife and Countryside Act 1981 (as amended) may result in a criminal prosecution.

7. The applicant is advised that if bats are found to be present on the site, a European Protected Species (EPS) mitigation licence issued by Natural England may be required prior to any works taking place.

### **RECOMMENDATION III**

That if the above agreement has not been completed or a unilateral undertaking has not been submitted by 30 April 2014, unless otherwise agreed in writing, the Assistant Director of Development Management and Building Control REFUSE the application ref: B/04816/13 under delegated powers for the following reasons:

The proposed development does not include a formal undertaking to secure the relevant contribution toward the assessment and monitoring of the Travel Plan. The proposal therefore would not address the impacts of the development, contrary to Policies CS9 and CS15 of the Local Plan Core Strategy (adopted September 2012), Policy DM17 of the Development Management Policies DPD, and the Planning Obligations SPD (April 2013).

#### **1. MATERIAL CONSIDERATIONS**

##### National Planning Policy Framework

The determination of planning applications is made mindful of Central Government advice and the Local Plan for the area. It is recognised that Local Planning Authorities must determine applications in accordance with the statutory Development Plan, unless material considerations indicate otherwise, and that the planning system does not exist to protect the private interests of one person against another.

The 'National Planning Policy Framework' (NPPF) was published on 27 March 2012. This is a key part of the Governments reforms to make the planning system less complex and more accessible, and to promote sustainable growth.

The NPPF states that "good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people". The NPPF retains a presumption in favour of sustainable development. This applies unless any adverse impacts of a development would "significantly and demonstrably" outweigh the benefits.

##### The Mayor's London Plan July 2011:

The London Development Plan is the overall strategic plan for London, and it sets out a fully integrated economic, environmental, transport and social framework for the development of the capital to 2031. It forms part of the development plan for Greater London and is recognised in the NPPF as part of the development plan.

The London Plan provides a unified framework for strategies that are designed to ensure that all Londoners benefit from sustainable improvements to their quality of life.

##### Relevant Local Plan (2012) Policies:

Barnet's Local Plan is made up of a suite of documents including the Core Strategy and Development Management Policies Development Plan Documents (DPD). Both DPDs were adopted on 11 September 2012.

Relevant Core Strategy DPD (2012): Policies CS NPPF, CS1, CS5, CS7, CS9, CS10 and CS15.

Relevant Development Management DPD (2012): Policies DM01, DM03, DM04, DM13, DM15, DM16 and DM17.

### Supplementary Planning Documents and Guidance

The Council adopted a Sustainable Design and Construction SPD in April 2013, following public consultation. This SPD provides detailed guidance that supplements policies in the adopted Local Plan, and sets out how sustainable development will be delivered in Barnet.

### Relevant Planning History:

**Site Address:** Barnet Curriculum Centre, Byng Road, Barnet, Herts, EN5 4NS  
**Application Number:** B/00942/09  
**Application Type:** Full Application  
**Decision:** Approve with conditions  
**Decision Date:** 12/06/2009  
**Proposal:** **Demolition of existing buildings and erection of single storey building plus lower ground floor for use as a children's hospice (Class C2), erection of a single storey building for use as a countryside centre. (OUTLINE APPLICATION)**

**Site Address:** Barnet Curriculum Centre, Byng Road, Barnet, Herts, EN5 4NS  
**Application Number:** B/04065/11  
**Application Type:** Full Application  
**Decision:** Approve with conditions  
**Decision Date:** 03/02/2012  
**Proposal:** **Demolition of existing buildings and erection of single storey building plus lower ground floor for use as a children's hospice (Class C2) and a new single storey countryside centre with roof terrace. Development to include the provision of 26 car parking spaces (including 4no. disabled spaces and 2no. mini bus spaces), a cycle, bin and re-cycling storage area, 3no. equipped play areas, new drainage pond, new footpath adjacent to Byng Road, new fencing and hard and soft landscaping including timber walkways.**

### Consultations and Views Expressed:

Neighbours Consulted: 41                      Replies: 1 letter of support received.  
Neighbours Wishing To Speak: 0

### Internal /Other Consultations:

LBB Traffic and Development: No objections.

Greater London Authority: The variations do not result in significant changes to the approved scheme and therefore do not raise any strategic planning issues.

Date of Site Notice: 31 October 2013

## **2. PLANNING APPRAISAL**

### Site Description and Surroundings:

The application site is located at the end of the row of houses projecting north along Byng Road toward the open Green Belt. There are playing fields to the north and south of the site, a school to the east, and open fields to the west. The site comprises of a series of single storey buildings arranged in a rectangle, with open space to the north and west. The existing buildings are located along the boundary with Byng Road, giving the site a developed appearance when viewed from the road.



### Proposal:

The original planning permission approved the demolition of all existing buildings on the site and the erection of a single storey building with lower ground floor for use as a Children's Hospice (Use Class C2) and a new single storey environment centre with roof terrace. The proposal includes the provision of car, cycle and mini-bus parking spaces, refuse storage facilities, play areas, a pond, a new footpath, new fencing, and hard and soft landscaping.

This application seeks a variation to the wording of a number of planning conditions attached to the previous grant of planning permission. These conditions are currently worded to require details to be submitted and approved by the Local Planning Authority prior to the commencement of any works on the site. The implication of this is that details would need to be submitted and approved relating to both approved buildings at the same time, prior to any work on either building taking place.

The applicant's agent has advised that the Environment Centre is proposed to be constructed first. Therefore, a variation is required to the wording of the conditions to ensure that the relevant conditions require details relating to either the approved Environment Centre, or the approved Hospice to be submitted and approved prior to the commencement of that part of the development. This ensures that the applicant is able to seek approval only for those elements they are seeking to construct at that time.

In addition to the variation to the wording of the condition, a number of alterations are proposed to the external appearance of the building as follows:

- The insertion of an additional external door.
- The replacement of a roof light with a ventilation stack.
- The installation of an external sink.

### Planning Considerations:

The variation of the wording of the conditions would enable the development to be constructed in phases, with the Environment Centre constructed first. The LPA would retain the same control over the details as in the approved scheme, with the resultant scheme being identical to that previously approved. As such, no objections are raised to the variation of the wording of the conditions.

The alterations to the external appearance of the building would not be substantial, and would not increase the size of the building. The resultant building would appear similar to that approved, and no objections are raised to these alterations.

### **3. COMMENTS ON GROUNDS OF OBJECTIONS**

No objections have been received.

### **4. EQUALITIES AND DIVERSITY ISSUES**

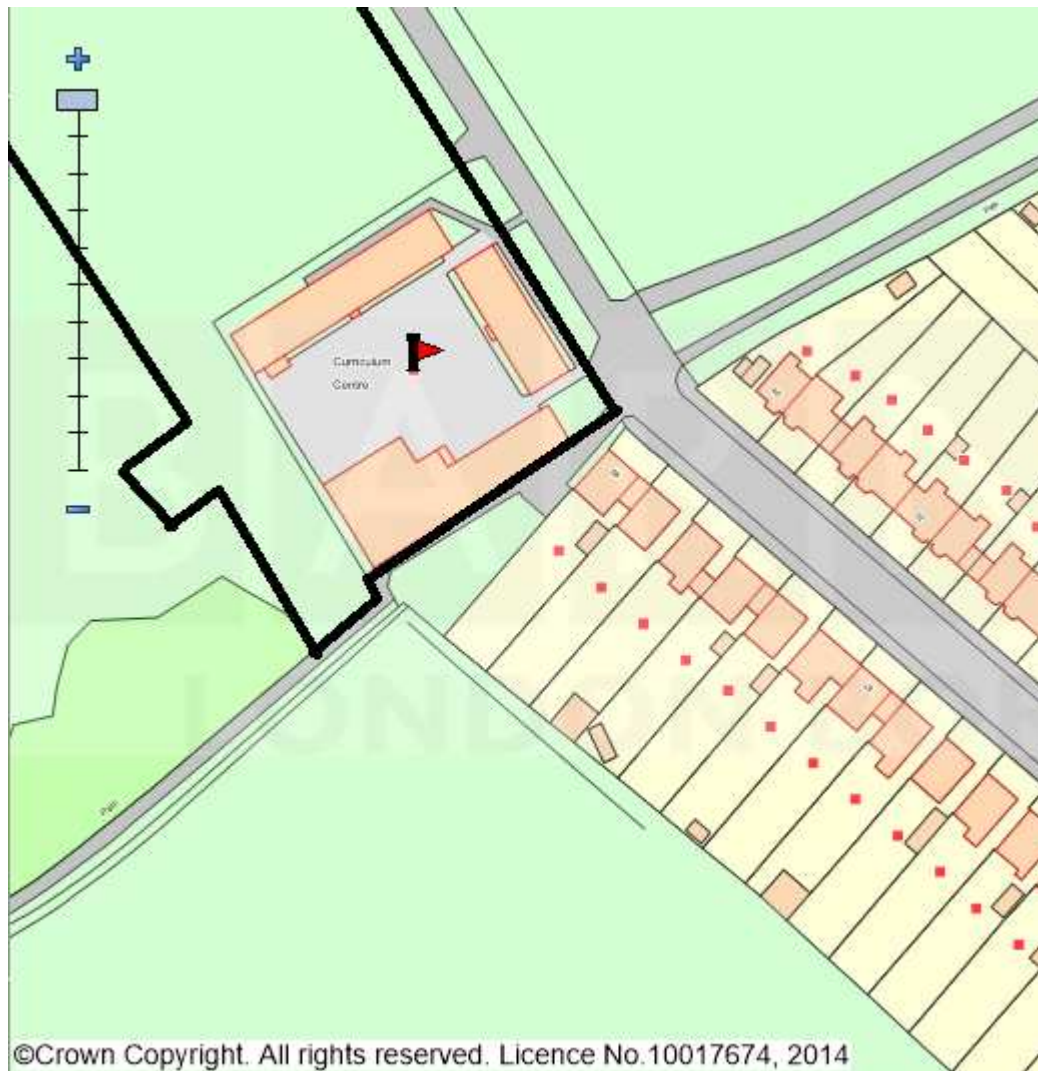
The proposals do not conflict with either Barnet Council's Equalities Policy or the commitments set in our Equality Scheme and supports the council in meeting its statutory equality responsibilities.

### **5. CONCLUSION**

The application is considered to comply with the requirements of the Development Plan and is therefore recommended for approval.

**SITE LOCATION PLAN:**            **Barnet Curriculum Centre, Byng Road, Barnet, Herts, EN5 4NS**

**REFERENCE:**                        **B/04816/13**



Reproduced by permission of Ordnance Survey on behalf of HMSO. © Crown copyright and database right 2013. All rights reserved. Ordnance Survey Licence number LA100017674.

**LOCATION:** Phase 3 A, Millbrook Park, Frith Lane, London, NW7 1HA **AGENDA ITEM 8**

**REFERENCE:** H/00065/14 **Received:** 20 December 2013

**Accepted:** 23 January 2014

**WARD(S):** Mill Hill **Expiry:** 24 April 2014

**Final Revisions:** 10 March 2014

**APPLICANT:** Cala Homes (South) Ltd

**PROPOSAL:** Reserved matters application seeking approval of appearance, landscaping, layout and scale for Phase 3a of Mill Hill East development involving the erection of 92 dwellings comprising 27 x 1 bed flats, 42 x 2 bed flats, 13 x 3 bed houses and 10 x 4 bed houses to meet the requirements of Condition 5 of outline planning application H/04017/09 dated 22 September 2011.

**RECOMMENDATION: APPROVE SUBJECT TO CONDITIONS**

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

S101  
S102  
P101 Rev A  
P102 Rev A  
P103 Rev A  
P109 Rev A  
P110 Rev A  
P111 Rev A  
P112 Rev E  
P113 Rev A  
P114 Rev A  
P115 Rev A  
P116 Rev A  
P117 Rev A  
P121  
P122 Rev A

P123  
P130 Rev A  
P131 Rev A  
P133 Rev A  
P134 Rev A  
P135 Rev A  
P136 Rev A  
P137 Rev A  
P138 Rev A  
P139 Rev A  
P140 Rev A  
P141 Rev A  
P142 Rev A  
P143 Rev A  
P144 Rev A  
P145 Rev A  
P146 Rev A  
P147 Rev A  
P148  
P149 Rev A  
P150 Rev A  
P151 Rev A  
P152  
P153 Rev A  
P154

Design and Access Statement by OSP Architecture December 2013

Planning Statement by PPML Consulting Ltd December 2013

Energy Statement by Abbey Consultants December 2013

D2130.L.101 Rev B.

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. The development hereby approved shall not commence until a car parking management strategy is submitted to and approved in writing by the Local Planning Authority, with details on:
  - I. swept path analysis for parking spaces that are near the structural columns within the basement car park;
  - II. showing details of parking spaces that have electric vehicle charging points with overall provision of 20 % active and 20% passive;

III. details about the enforcement of unauthorised parking;

The Car Parking Management strategy shall be implemented in accordance with the approved plan before the buildings hereby permitted are occupied. The car parking spaces shall not thereafter be used for any purpose other than parking and turning of vehicles associated with the development

Reason:

To ensure the free flow of traffic is maintained and in the interest of highway safety in accordance with London Borough of Barnet's Local Plan Policy CS9 of Core Strategy (Adopted) September 2012 and Policy DM17 of Development Management Policies (Adopted) September 2012

- 4 Notwithstanding the details shown on plans otherwise hereby approved and prior to development commencing details, including samples of the materials to be used for the external surfaces of the buildings and hard surfaced areas 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 safeguard the visual amenities of the locality in accordance with Policies CS5 of the Core Strategy (2012) and DM01 of the Development Management Policies (2012).

- 5 All hard and soft landscaping shall be carried out in accordance with the landscaping scheme as hereby approved and shall be completed within the first planting and seeding seasons following the completion of each phase of the development or the occupation of the buildings, whichever is the earlier period.

The new planting and landscape operations should comply with the requirements specified in BS 3936 (1992) 'Nursery Stock, Part 1, Specification for Trees and Shrubs' and in BS 4428 (1989) 'Code of Practice for General Landscape Operations (Excluding Hard Surfaces)'. Thereafter, the areas of hard and soft landscaping shall be permanently retained.

Any tree, shrub or area of turfing or seeding shown on the approved landscaping scheme which, within a period of 5 years from the completion of the development, dies, is removed or in the opinion of the Local Planning Authority becomes seriously damaged or diseased, shall be replaced in the same place in the next planting season with another such tree, shrub or area of turfing or seeding of similar size and species unless the Local Planning Authority first gives written consent to, any variation.

Reason:

To ensure that the landscaped areas are laid out and retained in

accordance with the approved plans in order to preserve and enhance the visual amenities of the locality in compliance with Policies CS7 of the Core Strategy (2012) and DM16 of the Development Management Policies (2012).

6. Prior to the commencement of the proposed development a Construction Management Plan shall be submitted to and approved in writing by the local planning authority. The Plan shall include, but not be limited to, the following information:
- details of the routing of construction vehicles to the site and access and egress arrangements within the site;
  - site preparation and construction stages of the development;
  - details of provisions for recycling of materials, the provision on site of a storage/delivery area for all plant, site huts, site facilities and materials;
  - details showing how all vehicles associated with the construction works are properly washed and cleaned to prevent the passage to mud and dirt onto the adjoining highway;
  - the methods to be used and the measures to be undertaken to control the emission of dust, noise and vibration arising from construction works;
  - a suitable and efficient means of suppressing dust, including the adequate containment of stored or accumulated material so as to prevent it becoming airborne at any time and giving rise to nuisance;
  - noise mitigation measures for all plant and processors;
  - details of contractors compound and car parking arrangements;
  - details of interim car parking management arrangements during the implementation;
  - details of precautions to minimise damage to protected species and habitats in particular from site clearance works including soil moving and material storage, vehicle and machinery movements, removal and disposal of excess soil, debris and materials from the site;

Reason:

To safeguard residential amenity in accordance with policy DM17 of the Adopted Barnet Development Management Policies DPD (2012).

7. Privacy panels shall be provided to all rear facing balconies and roof terraces of the houses hereby approved in accordance with details to be submitted to and approved in writing by the Local Planning Authority and shall thereafter be maintained for the Life of the Development.

Reason:

In the interest of residential amenity in accordance with Policies CS5 of the Core Strategy (2012) and DM01 of the Development Management Policies (2012).

8. The development shall be carried out in accordance with the approved Landscape Management and Maintenance Plan and the management and maintenance regimes shall be reviewed on an annual basis for a minimum period of 5 years as set out in the approved document.

Reason:

To secure opportunities for the enhancement of nature conservation value of the site in accordance with policy CS7 of the Core Strategy (2012) and DM16 of the Development Management Policies (2012).

9. A crime prevention strategy shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the development. The strategy shall demonstrate how the development meets 'Secured by Design' standards. The development shall thereafter be carried out in accordance with the approved details.

Reason:

To ensure that satisfactory attention is given to security and community safety in accordance with policy DM02 of the Development Management Policies (2012).

10. A detailed drainage strategy shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. The strategy shall demonstrate that the proposal would accord with sustainable drainage principles and provide full details of anticipated discharge levels and proposed attenuation measures.

Reason:

In order to ensure that sufficient capacity is made available to cope with the new development and in order to avoid adverse environmental impacts upon the community in accordance with the provisions of the NPPF.

#### **INFORMATIVE(S):**

1. The applicant is reminded that the conditions and planning controls in the outline permission H/04017/09 for the Mill Hill East Development dated 22/09/2011 are still relevant and must be complied with. There are also conditions that require to be discharged prior to the occupation of the development.

## **1. BACKGROUND TO THE CURRENT APPLICATION**

### **1.1 The Mill Hill East Area Action Plan**

Mill Hill East is designated as an Area of Intensification in the London Plan (2011) and as a key growth area in the Barnet Core Strategy (2012). The area covered by this designation includes the former Inglis Barracks; Mill Hill East station; International Bible Students Association (IBSA House); the Council Depot and recycling centre; Bittacy Court; the Scout Camp and former Mill Hill Gas Works (the area now centred around Libbury Square).

The area was first highlighted as an area which could be redeveloped in the London Plan in 2004. This is primarily as a result of Project MoDEL (Ministry of Defence Estates London) which involves the consolidation and sale of surplus MoD properties around London. The activities from Inglis Barracks were transferred to RAF Northolt and the base vacated in 2008 thereby providing an opportunity for redevelopment. The Council recognised that Mill Hill East was an area where more detailed policies were required to guide future development and in 2009 adopted an Area Action Plan (AAP) which covered an area of 48 hectares focused primarily on the former Inglis Barracks site. The aim of the AAP is to seek to ensure that development takes place in a balanced and coordinated manner by setting out a comprehensive framework to guide the delivery of housing, employment, leisure and associated community facilities, infrastructure, transport initiatives and environmental protection and enhancement.

A partnership comprising of a number of the key landowners and developers (the Inglis Consortium) prepared and submitted the outline application in 2009 for the comprehensive redevelopment of most of the area covered by the AAP.

### **1.2 The outline planning permission**

In September 2011 outline planning permission was granted for the redevelopment of Mill Hill East regeneration site (now also known as Millbrook Park). This site covers an area of approximately 33.6 hectares (83 acres) and is located within the Mill Hill ward. The site is bounded to the east by Frith Lane, to the north by Partingdale Lane and to the west by Bittacy Hill (B552). Bittacy Business Park is immediately to the south of the site and Mill Hill East Underground station (Northern Line) lies to the south west.

The site is divided into a number of Development Land Parcels (DLP) or otherwise known as phases. Following approval of the site wide pre-commencement requirements, reserved matters applications will be brought forward for all detailed elements of the development, which would deal with all matters not fully addressed within the outline consent – the ‘reserved matters’ (layout, design, appearance and landscaping). This is controlled by Condition 5 of the outline permission (ref H/04017/09, dated 22<sup>nd</sup> September 2011).



The current application concerns the development by Cala Homes of plot 3a of the outline consent, located in the centre of the wider Millbrook Park Site within the southern hub character area adjacent to the central community park to the west, the east west primary link road to the north and the proposed Millbrook Primary School to the south east.

In addition to the plan drawings submitted, the following information was also submitted in support of the application and forms the supporting information:

S101  
S102  
P101 Rev A  
P102 Rev A  
P103 Rev A  
P109 Rev A  
P110 Rev A  
P111 Rev A  
P112 Rev E  
P113 Rev A  
P114 Rev A  
P115 Rev A  
P116 Rev A  
P117 Rev A  
P121  
P122 Rev A  
P123  
P130 Rev A  
P131 Rev A  
P133 Rev A  
P134 Rev A  
P135 Rev A  
P136 Rev A  
P137 Rev A  
P138 Rev A  
P139 Rev A  
P140 Rev A  
P141 Rev A  
P142 Rev A  
P143 Rev A  
P144 Rev A  
P145 Rev A  
P146 Rev A  
P147 Rev A  
P148  
P149 Rev A

P150 Rev A  
P151 Rev A  
P152  
P153 Rev A  
P154  
Design and Access Statement by OSP Architecture December 2013  
Planning Statement by PPML Consulting Ltd December 2013  
Energy Statement by Abbey Consultants December 2013  
D2130.L.101 Rev B.

## **2. MATERIAL CONSIDERATIONS**

### **2.1 Key Relevant Planning Policy**

National Planning Policy Guidance / Statements: The National Planning Policy Framework (NPPF)

On March 27<sup>th</sup> 2012 the Government published the National Planning Policy Framework (NPPF). The NPPF sets out the Government's planning policies for England and how these are expected to be applied. The NPPF replaces 44 planning documents, primarily Planning Policy Statements (PPS's) and Planning Policy Guidance (PPG's), which previously formed Government policy towards planning.

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 2.13 (Opportunity Areas and Intensification Areas), 3.3 (Increasing Housing Supply), 3.4 (Optimising housing potential), 3.5 (Quality and design of housing developments), 3.6 (Children and Young People's Play and Informal Recreation Facilities), 3.7 (Large Residential Development), 3.8 (Housing Choice), 3.9 (Mixed and balanced communities), 3.12 (Negotiating affordable housing on individual private residential and mixed use schemes), 5.2 (Minimising carbon dioxide emissions), 5.3 (Sustainable design and construction), 5.7 (Renewable energy), 5.11 (Green roofs and development site environs), 5.12 (Flood risk management), 5.13 (Sustainable drainage), 5.14 (Water quality and wastewater infrastructure), 5.21 (Contaminated land), 6.3 (Assessing effects of development on transport capacity), 6.9 (Cycling), 6.10 (Walking), 6.13 (Parking), 7.1 (Building London's neighbourhoods and communities), 7.2 (An inclusive environment), 7.3 (Designing out crime), 7.4 (Local character), 7.5 (Public Realm), 7.6 (Architecture), 7.8 (Heritage Assets and Archaeology), 7.15 (Reducing noise and enhancing soundscapes), 7.19 (Biodiversity and Access to Nature), 7.21 (Trees and Woodlands).

Core Strategy (Adoption version) 2012

## Development Management Policies (Adoption version) 2012

Barnet's Local Plan is made up of a suite of documents including the Core Strategy and Development Management Policies Development Plan Documents (DPD).

Relevant Core Strategy Policies: CS NPPF (National Planning Policy Framework – Presumption in Favour of Sustainable Development), CS4 (Providing Quality Homes and Housing Choice in Barnet), CS5 (Protecting and Enhancing Barnet's Character to Create High Quality Places), CS7 (Enhancing and Protecting Barnet's Open Spaces), CS9 (Providing safe, effective and efficient travel), CS12 (Making Barnet a Safer Place), CS13 (Ensuring the Efficient Use of Natural Resources), CS14 (Dealing with Waste).

The Development Management Policies document provides the borough wide planning policies that implement the Core Strategy. These policies will be used for day-to-day decision making.

Relevant Development Management DPD Policies: DM01 (Protecting Barnet's Character and Amenity), DM02 (Development Standards), DM03 (Accessibility and Inclusive Design), DM04 (Environmental Considerations), DM06 (Barnet's Heritage and Conservation), DM08 (Ensuring a variety of sizes of new homes to meet housing Need), DM16 (Biodiversity), DM17 (Travel Impact and Parking Standards).

### Mill Hill East Area Action Plan (AAP) 2009

The Mill Hill East Area Action Plan (AAP) was adopted by the Council in 2009 and forms part of Barnet's Local Plan containing policies relevant to the determination of planning applications in the area. The AAP forms a material consideration in the determination of Planning Applications in this area.

The relevant policies for the consideration of this application are: MHE2 (Housing), MHE6, MHE10 (Making the Right Connections), MHE12 (Sustainable Transport), MHE13 (Parking), MHE14 (Creating a Sustainable Development), MHE15 (Design), MHE16 (Delivering Design Quality), MHE17 (Conserving Built Heritage), MHE18 (Delivering the AAP).

### Approved Design Code

The approved Design Code pursuant to Condition 4 of the outline consent (ref H/04565/11, 21<sup>st</sup> Dec 2011) also sets out the guidelines for how the site, its neighbourhoods, open spaces and key amenities could be designed and built. It informs the formulation of individual reserved matter applications related to specific phases of development. Site-wide or phase related reserved matters must be in compliance with the agreed Design Code unless satisfactorily justified and this will be assessed in detail below.

## 2.2 Relevant Planning History

|                        |  |
|------------------------|--|
| Application Reference: | H/04017/09   |
| Case Officer:          | Jo Dowling   |
| Proposal:              | Outline application for the comprehensive redevelopment of the site for residential led mixed use development involving the demolition of all existing buildings (excluding the former officers mess) and ground re-profiling works, to provide 2,174 dwellings, a primary school, GP Surgery, 1,100sqm of 'High Street' (A1/2/3/4/5) uses, 3,470sqm of employment (B1) uses, a district energy centre (Sui Generis) and associated open space, means of access, car parking and infrastructure (with all matters reserved other than access). Full application for the change of use of former officers' mess to residential (C3) and health (D1) uses. |
| Stat Start Date        | 30/10/2009   |
| Application Type       | Outline Application  |
| Decision               | Granted  |
| Decision Date          | 22/09/2011   |

|                        |   |
|------------------------|---|
| Application Reference: | H/04655/11  |
| Case Officer:          | Colin Leadbeatter   |
| Proposal:              | Demolition of existing buildings within the curtilage of the Millbrook Park development (formerly Inglis Barracks) as approved under outline application reference H/04017/09 (Approved September 2011) |
| Stat Start Date        | 12/11/2011  |
| Application Type       | Prior Notification (Demolition)   |
| Decision               | Granted   |
| Decision Date          | 20/12/2011  |

|                        |   |
|------------------------|---|
| Application Reference: | H/00480/12  |
| Case Officer:          | Colin Leadbeatter   |
| Proposal:              | Reserved matters application seeking approval for advance infrastructure works in relation to Phase 1A of Millbrook Park (Mill Hill East) pursuant to outline planning permission reference H/04017/09 dated: 22/9/2011 |

|                  |                  |
|------------------|------------------|
| Stat Start Date  | 07/02/2012       |
| Application Type | Reserved Matters |
| Decision         | Granted          |
| Decision Date    | 19/04/2012       |

|                        |   |
|------------------------|---|
| Application Reference: | H/00642/12  |
| Case Officer:          | Colin Leadbeatter   |
| Proposal:              | Reserved matters application seeking approval for advance infrastructure works in relation to Phase 2 of Millbrook Park (Mill Hill East), pursuant to outline planning permission H/04017/09 dated 22/09/2011 |
| Stat Start Date        | 20/02/2012  |
| Application Type       | Reserved Matters  |
| Decision               | Granted   |
| Decision Date          | 20/04/2012  |

|                        |  |
|------------------------|--|
| Application Reference: | H/03057/12   |
| Case Officer:          | Wing Lau   |
| Proposal:              | Reserved matters application seeking approval for landscaping works to Officers' Mess Gardens (including associated infrastructure works) for Phase 2 (public open space OSI) of Mill Hill East development, pursuant to Condition 5 of Outline planning permission reference H/04017/09 dated: 22/9/2011, together with details to discharge the requirements of conditions 26 (Pedestrian and Vehicular Access Points), 48 (Design of Open Space) and 52 (Children's Play Space) |
| Stat Start Date        | 13/08/2012   |
| Application Type       | Reserved Matters   |
| Decision               | APC  |
| Decision Date          | 23/10/2012   |

|                        |   |
|------------------------|---|
| Application Reference: | H/03548/12  |
| Case Officer:          | Thomas Wyld   |
| Proposal:              | Reserved matters application seeking approval of Appearance, Landscaping, Layout and Scale in relation to Phase 1a for the erection of 58 houses comprising 39 x 3 bed houses and 19 x 4 bed houses at 'Millbrook Park' (Inglis Barracks) submitted to meet the requirements of Condition 5 of outline planning application H/04017/09 dated 22 September 2011. |

|                  |                  |
|------------------|------------------|
| Stat Start Date  | 17/09/2012       |
| Application Type | Reserved Matters |
| Decision         | Granted          |
| Decision Date    | 31/01/2013       |

|                        |   |
|------------------------|---|
| Application Reference: | H/03904/12  |
| Case Officer:          | Wing Lau  |
| Proposal:              | Reserved matters application seeking approval of appearance, landscaping, layout and scale for Phase 2 of Mill Hill East development pursuant to Condition 5 of Outline planning permission reference H/04017/09 dated: 22/9/2011 involving the erection of 103 dwellings comprising 3 x one bed flats, 20 x two bed flats, 45 x 3 bed houses, 25 x four bed houses and 10 x five bed houses. Approval of layout and landscaping works to Phase 2 public open space (OS2), together with details to discharge the requirements of:<br><br>Conditions 12 (relating to Plot L only);<br><br>57 (relating to plots within Phase 2 only); and<br><br>8,26, 27, 29, 48, 52, 70, 80, 83, 85 and 91 all in relation to Phase 2 only. |
| Stat Start Date        | 08/10/2012  |
| Application Type       | Reserved Matters  |
| Decision               | Granted   |
| Decision Date          | 28/03/2013  |

|                        |  |
|------------------------|--|
| Application Reference: | H/04080/12   |
| Case Officer:          | Wing Lau   |
| Proposal:              | Reserved matters application seeking approval of appearance, landscaping, layout and scale for Phase 1 of Mill Hill East development (Millbrook Park) pursuant to Condition 5 of Outline planning permission reference H/04017/09 dated: 22/9/2011 involving the erection of 133 residential dwellings comprising 31 x one bed flats, 61 x two bed flats, 14 x three bed houses and 27 x four bed houses, including associated infrastructure, access roads, car parking, landscaping and approval of layout and landscaping works to Phase 1 public open space OS5, together with details to discharge the requirements of conditions 8, 13, 26, 27, 29, 32, 48, 52, 70, 80 and 85. |

|                  |                  |
|------------------|------------------|
| Stat Start Date  | 29/10/2012       |
| Application Type | Reserved Matters |
| Decision         | Granted          |
| Decision Date    | 29/04/2013       |

|                        |   |
|------------------------|---|
| Application Reference: | H/04386/12  |
| Case Officer:          | Kevin Waters  |
| Proposal:              | Construction of a three storey primary school (3 forms of entry) with nursery, community facilities and associated works and landscaping, including staff parking, hard play and sports games area, retaining walls, drainage attenuation measures and provision of a temporary drop off car park |
| Stat Start Date        | 10/12/2012  |
| Application Type       | Full Planning Application   |
| Decision               | Granted   |
| Decision Date          | 22/04/2013  |

|                        |  |
|------------------------|--|
| Application Reference: | H/00668/13   |
| Case Officer:          | Wing Lau   |
| Proposal:              | Reserved matters application seeking approval for construction of associated advanced infrastructure works and landscaping associated with Phase 3 (public open space OS4) of Mill Hill East development to create 'Panoramic Park' and advance infrastructure works in relation to Phases 3, 4a, 4b and 5, pursuant to Conditions 5 and 5b of Outline planning permission reference H/04017/09 dated: 22/9/2011, together with details to discharge the requirements of conditions 26 (Pedestrian and Vehicular Access Points), 48 (Design of Open Space) and 52 (Children's Play Space). Ground re-profiling works to Phases 10, 11 and part of Phase 7. |
| Stat Start Date        | 12/02/2013   |
| Application Type       | Reserved Matters   |
| Decision               | Granted  |
| Decision Date          | 22/04/2013   |

|                        |  |
|------------------------|--|
| Application Reference: | H/03441/13   |
| Case Officer:          | Andrew Dillon  |
| Proposal:              | Reserved matters application seeking approval for Phase 3a (Central Community Park) and advanced |

|                  |  |
|------------------|--|
|                  | infrastructure works in relation to phases 3a, 8, 9, 10 and 11 of Millbrook Park (Mill Hill East) pursuant to Outline planning permission reference H/04017/09 dated: 22/9/2011, together with details to discharge the requirement of condition 5 (Reserved matter details), 25 (East-West and North-South links), 26 (Pedestrian and vehicular access points), 48 (Design of open spaces) and 52 (Children's play spaces). |
| Stat Start Date  | 06/08/2013   |
| Application Type | Reserved Matters   |
| Decision         | Granted  |
| Decision Date    | 13/02/2014   |

|                        |   |
|------------------------|---|
| Application Reference: | H/03860/13  |
| Case Officer:          | Andrew Dillon   |
| Proposal:              | Reserved matters application seeking approval of appearance, landscaping, layout and scale for Phase 3 of Mill Hill East development pursuant to Outline planning permission reference H/04017/09 dated: 22/9/2011 involving the erection of 138 units 7 x 5 bedroom houses, 41 x 4 bedroom houses, 47 x 3 bedroom houses, 26 x 2 bedroom apartments and 17 x 1 bedroom apartments together with details to discharge the requirements of:<br><br>Conditions 5 (Reserved matter details), 8 (Affordable housing), 12 (Noise Survey along Boundary with IBSA House), 26(Access points), 27 (Details of Estate Roads), 29(Internal access roads), 35 (Petrol/oil interceptors), 48(Open space), 52 (Children's playing space), 57 (Boundary treatment/buffer), 70 (Home standards), 80 (Sustainable homes), 83 (Grey water/rainwater recycling),85 (Green/brown roofs). |
| Stat Start Date        | 28/08/2013  |
| Application Type       | Reserved Matters  |
| Decision               | Granted   |
| Decision Date          | 12/11/2013  |



## **2.3 Consultations and Views Expressed**

### Public Consultation

Neighbours Consulted: 109

Replies: 0

Neighbours Wishing  
To Speak 0

### Elected Representatives.

No Comments Received.

### Residents Associations and Amenity Groups.

1 Letter received from the Mill Hill Preservation Society making the following comments:

*'We have studied all the related documents on line and we have no significant objections to raise concerning the various proposals. In fact we would go as far as saying we feel this phase looks good and we hope it builds out to expectation.'*

### Internal /external and Other Consultations:

#### Urban Design and Heritage

No objections raised.

#### Highways

The Council's Highway Officer has confirmed no objection to the amended proposal subject to the attachment of the following conditions:

- (1) Parking Management
- (2) Demolition and Construction Management

#### Environmental Health

The Council's Environmental Health Team have confirmed no objection to the proposal.

#### Transport for London

*'TfL has No principal objection to the proposed development; however it offers the following comments:*

1. *It is noted that at least one parking spaces will be provided to all apartments. However, there are 27 one bed flats included in the proposal; parking for these units should be at a ratio of less than 1 to be in line with the current London Plan 2010 Parking standards. Therefore there is scope to reduce parking provision on site.*
2. *It is recommended that the proposed cycle parking storage may be spilt into two, and be located on both ends of the site to improve cycle accessibility. In addition, the three beds flats should be also be provided with 2 cycle parking spaces as a minimum in line with the current standards.'*

### Officer Comments

Comments noted. Further drawings have been submitted splitting the cycle parking storage and providing 2 cycle parking spaces for the 3 bed flats.

### Environment Agency

*'Thank you for consulting us on this application. We object to this application as the applicant has not submitted enough information. At this stage we need to ensure that the drainage features for this site have been considered as part of the layout. This is important because the most sustainable types of attenuation features (such as ponds) will take up space on site.*

*The locations of drainage features need to be considered at the same time as the site layout as it is not acceptable to try and fit these in where possible once these matters have been approved.*

*There does not seem to have been any consideration of drainage with this application. The applicant needs to demonstrate that they have considered this as part of their design for the site.'*

### Officer Comment

The application forms part of the wider Millbrook Park Site. The outline consent (Ref: H/04017/09) fixed the general position and scale of residential development throughout the site and was also subject to conditions requiring the development of a site wide drainage strategy.

A site wide drainage strategy was produced by Halcrow and subsequent application (ref: H/04340/11) for the discharge of discharge Condition 43 (Drainage Strategy) was granted on the 26/04/2012. The site wide drainage strategy was subject to further minor modifications. A S73 application (Ref: H/03813/13) was granted for these modifications on 27/11/2013.

The approved advanced infrastructure application for the development of this phase (Ref: H/00480/12) included the provision of swales along the northern frontage of the development. A provision which is not affected by the current reserved matters application.

The scheme does not involve the provision of roads or large areas of landscaping with the proposed buildings covering the majority of the phase, and as such have limited opportunity to provide large scale water storage features such as ponds

Given the above factors and given that the broad position and quantity of development has already been established at outline stage it is considered that this matter can be satisfactorily resolved by condition requiring the applicant to submit full details of their proposed drainage strategy prior to the commencement of development.

#### National Grid

*'National Grid has identified that it has no record of apparatus in the immediate vicinity of your enquiry.'*

*National Grid therefore has no objection to these proposed activities.'*

#### Thames Water

##### *Waste Comments*

*The reserved matters application does not affect Thames Water and as such we have no observations to make.*

##### *Water Comments*

*With regard to water supply, this comes within the area covered by the Affinity Water Company. For your information the address to write to is - Veolia Water Company The Hub, Tamblin Way, Hatfield, Herts, AL10 9EZ - Tel - 0845 782 3333.'*

#### London Fire Brigade

No Objections to proposal.

#### English Heritage (Archaeology)

*'Having considered the proposals with reference to information held in the Greater London Historic Environment Record and/or made available in connection with this application, I conclude that the proposal is unlikely to have a significant effect on heritage assets of archaeological interest.'*

#### Natural England

No Objections raised.

### **3. DESCRIPTION OF THE SITE, SURROUNDINGS AND PROPOSAL**

#### **3.1 Site Description and Surroundings**

Site in relation to the outline consent:

This application site submitted for assessment falls within Phase 3a of the outline consent, which covers an area of 0.75 hectares in the centre of the wider Millbrook Park site. The application site area itself is currently cleared of all buildings and trees. The application site fronts the primary east/west link road to the north and the Central Park to the west. Directly to the north of the primary link road is located the consented scheme for the development of Phase 1 by Countryside (Ref: H/04080/12). The consented scheme for the development of Phase 1A by Taylor Wimpey (Ref: H/03548/12) is located to the north east and the consented scheme for the development of a new 3 form primary school (Ref: H/04386/12) is located directly to the south east of the application site. There is also a change in levels of approximately 8m from the north west to the south east corner of the site.

The site falls within the Southern Hub character zone. The Design Code advises that with the Southern Hub Zone housing should be of a higher density housing with heights ranging from 3 to 6 storeys.

#### **3.2 Description of Proposal**

The proposal is to seek approval of matters reserved under outline planning consent ref H/04017/09 (layout, scale, appearance and landscaping) to redevelop the site for residential purposes.

##### Housing:

The proposals would be for a mix of 1, 2, 3 and 4 bedroom units) providing a total of 92 dwellings as follows:

27 x one bed flats  
42 x two bed flats  
6 x three bed flats  
7 x three bed houses  
10 x four bed houses

The proposed houses consist of a perimeter block of terraced houses and apartment blocks measuring predominately 3- 4 storeys in height increasing to six storeys on the western part of the development facing the Central Park. Parking is provided underground, with a podium decked amenity space on top.

### Landscaping:

The application proposal also includes the landscaping of the perimeter of the block included both hard landscaping as well provision of low level shrub planting along the northern and southern frontages and the planting of trees along the western boundary facing the central park.

### Discharging of conditions:

This application also involves the partial discharging of Condition 5 (Reserved Matters Details) attached to the Outline Consent which sets out the submission requirements for submission accompanying each reserved matters application.

## **4. PLANNING CONSIDERATIONS**

### **4.1 The Principle of Development**

The principle of constructing 92 residential dwellings and provision of public open space is established by the outline planning consent. Condition 5 (Reserved Matters Details) seeks details (layout, scale, landscaping and appearance) to be submitted to and approved by the Local Planning Authority (LPA) prior to the commencement of development.

The reserved matters currently under consideration are:

**Scale** – the height, width and length of each building proposed in relation to its surroundings.

**Layout** – the way in which buildings, routes and open spaces are provided within the development and their relationship to buildings and spaces outside the development.

**Appearance** – the aspects of a building or place which determine the visual impression it makes, excluding the external built form of the development.

**Landscaping** – this is the treatment of private and public space to enhance or protect the site's amenity through hard and soft measures, for example, through planting of trees or hedges or screening by fences or walls.

**Access** – The internal road layout was established at outline stage. This current application shows roads in the same location in compliance with the outline parameters for access.

The outline planning permission consists of a series of parameter plans which establish a series of parameters and principles to create a clear framework of planning control and fix the quantum of development, land uses, levels and access arrangements.

The key parameter plans of relevance to the consideration of this application are:

- Parameter Plan 1: Access and Movement  
Establishes the main vehicular and pedestrian access points and vehicular movement hierarchy.
- Parameter Plan 2: Landscape  
Establishes the location and extent of areas of public open space.
- Parameter Plan 3: Land use  
Establishes the location and distribution of land uses and open spaces.
- Parameter Plan 4: Scale  
Establishes the maximum height permissible across the whole Millbrook Park site.
- Parameter Plan 5: Character Areas  
Establishes the extent and disposition of the strategic character areas.
- Parameter Plan 6: Levels Strategy  
Establishes the proposed spot levels at street junctions and maximum permissible gradients along each of the streets.

In order to support the detail contained within the parameter plans the outline consent has a number of additional documents that form a 'strategic development framework' in accordance with the requirements of Policy MHE18 of the AAP. The 'framework' establishes a series of development principles that will be used to guide detailed elements and the preparation of reserved matter applications. Of relevance to the consideration of this application are the following documents:

- Design Principles Document;
- Phasing and Delivery Strategy
- Technical/Infrastructure Strategy
- Revised Public Realm and Open Space Strategy (MHE/OPA/5.1)
- Technical and Infrastructure Strategy (MHE/OPA/6)
- Revised Phasing and Delivery Strategy (MHE/OPA/10.2) which includes phasing plan ref Figure 4.1

### Design Code

In addition to the above a site wide design code has been approved in the clearance of condition 4 of the outline application and forms the guide to the assessment of reserved matters applications. This reserved matters application for Phase 3 is therefore considered within the framework of established broad development principles, Parameter Plans, and a detailed design code.

The applicant has submitted a statement of compliance with this application to describe the proposed development and demonstrates general compliance with the outline planning permission. There are some small areas where the application does not strictly conform and the applicant has provided justification for any deviations. These are explained in the sections below.

## **4.2 Amount of Development**

### **Housing**

The amount and mix of development for 92 dwellings in Phase 3a is in line with the outline consent, the latest approved phasing plan and the s.106 schedule of accommodation. 14 units are to be affordable dwellings consisting of 10 properties for affordable rent (6 x 3 bed flats and 4 x 4 bed houses) and 4 intermediate properties (2 x 1 bed and 2 x 2 bed flats) with the rest of the development to be private sale properties. This broadly accords with the baseline tenure mix required under the S106 and accords with the latest agreed site wide phasing plan. Condition 8 (Housing Mix and Location of Affordable Housing Units) of the outline consent requires the submission of details of affordable housing, and the proposed submission is considered to accord with this requirement.

## **4.3 Scale**

Parameter Plan 4 (Scale) sets out the maximum permissible dimensional height and maximum level of storeys throughout the wider Millbrook Park Development. In relation to Phase 3a the eastern and south eastern corner of development is limited to 3 storeys increasing to 4 storeys along the remainder of the northern and southern frontages and 6 storeys on the west facing the Central Park.

Figure 1: Parameter Plan 1 (Scale)



The development is mostly in accordance with the approved parameters with the exception of a proposed four storey conical tower on the eastern corner of the development. This feature was added in order to provide a landmark feature on the main approach to the development from Frith Lane. The remainder of the block on which the turret is located remains at 3 storeys in accordance with the Parameter Plans and the development remains within the approved maximum dimensions. The conical tower feature helps visually to provide focus to the development and does not result in any significant increase in the massing of the development and as such is considered an appropriate minor departure from the approved Parameter Plans in this instance.

As highlighted above, Millbrook Park outline planning consent is split into 4 character areas (as shown on Parameter Plan 5) as follows:

*Green Belt Edge* – low density houses, green character

*Central Slopes* - medium density, mix of houses and apartments up to 4 storeys in height

*Southern Hub* – highest density, predominantly apartments up to 6 storeys in height.

*Mixed Use/retail/community* – mixed uses around public square and new primary school.

The approved Design Code for the scheme further splits the Central Slopes Character Zone into East (CZE) and West (CZW) character zones.



The site is located within the Southern Hub character zone (as defined in the Design Code for Millbrook Park).

The Design Code advises that with the Southern Hub housing should be high density housing consisting of terraced housing and apartments measuring between 3-6 storeys of a 'urban court layout' with active ground floor frontages around a block perimeter and a landscaped deck over parking areas.

The design and layout of the scheme predominately follows the above parameters with the provision of short terraces of terraced housing of 2 – 3 storeys along the northern and southern boundaries, apartments on the eastern boundary measuring 3- 4 storeys in height with two larger apartment blocks rising to 6 storeys in height along the western edge of the site.

#### Density

The amount of development and minimum/maximum building dimensions have already been approved at the outline stage and therefore the target residential density is also established, with the development providing 92 dwellings at 144 dwellings per hectare (dph).

Phase 3a has a Public Transport Accessibility Level (PTAL) of 2 and is considered urban in character. The London Plan recommends a density range of 200-450 Habitable rooms per hectare for urban sites with a PTAL between 2-3. At 410 habitable rooms per hectare the proposal would accord with the upper end of acceptable density levels established by London Plan Policy.

#### **4.4 Layout**

Policies CS5 and DM01 require development to be of a high quality design and should ensure attractive, safe and vibrant streets which provide visual interest. Proposal should also create safe and secure environments, reduce opportunities for crime and minimise fear of crime.

No roads are proposed under this application although the application proposal fronts the primary east west distributor road to the north and a proposed primary residential street along the eastern and southern boundary. The development fronts the proposed Central Community Park to the west providing through pedestrian access forming part of the main north-south pedestrian spine route from Mill Hill East Underground Station.

The proposals demonstrate a building layout in broad accordance with the Illustrative Masterplan and the Access and Movement Parameter Plan 1.

#### Parking

The application proposes the provision of 123 car parking spaces including 12 visitor spaces within this phase. Spaces will be allocated at the ratio of 1 space per apartment, 1.5 spaces per 3 bed house and 2 spaces for four bed houses. 10% of parking will be for disabled persons.

The majority of the spaces (109) are provided in the form of a secure basement car park in the centre of the development. Plots 1-6 along the southern boundary of the site are provided with basement garage car parking accessed from the underground car park. The remainder of the spaces are provided on the surface facing the Central Community Park.

Cycle Parking is also proposed within garages or secure garden sheds for all houses and within communal cycle stores for the apartments at the rate of 1 space for 1 and 2 bed apartments and 2 spaces for 3 bed apartments and houses providing a total of 127 cycle spaces including 12 visitor spaces.

The level of parking is discussed in the highways section of this report.

### Access

The Design Code has been approved to enable the delivery of a permeable and legible new neighbourhood. In relation to the development the proposed East-West Link Road will run along the northern boundary of the site with the proposed 'primary residential street' passing along the eastern and southern boundaries. Both of these roads form part of the bus route proposed through the site and the East West Link road is also a designated cycling route. The main 'North-South' pedestrian route passes alongside the western boundary of the site.

### Open space

The approved 'Revised Public Realm and Open Space Strategy' and the Design Code establishes the design principles for the landscape works.

Due to the nature of this plot, no open space is included within this phase. The proposed adjoins the proposed Central Community Park to the west.

### Crime

The proposed layout follows a perimeter block approach, which ensures that all street and public open spaces benefit from being overlooked by active frontages. Secure access will also be provided to the proposed underground car park. It is considered however that a condition should be attached requiring the development to achieve Secured by Design accreditation.

### Levels

Parameter Plan 6 (Levels Strategy) approved under the outline consent sets out the existing contours of the site and proposed spot levels at street junctions as well as the maximum permissible gradients.

In relation to Phase 3a the site slopes downwards up to 8m from the north western corner to the southern boundary. The proposal accommodates this change in level through the use of the basement car park which is located level with the ground floor of the southern units with access onto the landscaped deck being at ground level for the northern units and at first floor for the southern units. The proposal is also designed to be in accordance with the Equality Act 2010 with all dwellings achieving lifetime house standards. The proposal is also in accordance with the approved levels parameter plan and the Design Code and is therefore considered acceptable.

#### **4.5 Appearance**

The National Planning Policy Framework 2012 makes it clear that good design is indivisible from good planning and a key element in achieving sustainable development. This document states that permission should be refused for development which is of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

As discussed, Phase 3a is within located within the southern hub character zone and as such it is of a higher level of density than previous phases recently approved on the northern part of the Millbrook Park Site.

The development on Phase 3A faces onto four main frontages, the east-west primary link road, the southern primary street, the central community park to the west and the new primary school to the south east.

The development can broadly be split into 4 distinctive portions consisting of the eastern apartments, the northern and southern terraced housing and the larger western apartment block facing the Central Community Park.

##### Eastern Apartments.

The apartments project from a point where the primary east west link road joins the southern primary street adjoining the new Millbrook Park School to the South East and the consented Taylor Wimpey scheme to the north east. A four storey conical tower is proposed on the junction with tiled roof rising to a lead clad cupola on the apex. The development either side of this consists of a row of projecting gables with decorative chimney breasts with pitched clay roof behind with projecting glass clad balconies along the front elevation.

##### Southern Terraced Housing

Along the southern frontage a single terrace of six properties. The terrace predominately follows the design approach of the eastern apartments incorporating a high tiled roof and projecting gables with decorative chimney breasts along with projecting glass balconies.

### Northern Terraced Housing

Along the northern frontage of the development beyond the apartment blocks a line of short terraces are proposed containing 10 houses. The properties are three storeys in height with projecting flat roof gables and high pitched slate roofs.

### Western Apartment Block

The design of the western apartment block utilises a similar basic physical form at the lower storeys to the rest of the development incorporating matching buff covered bricks fenestration and glazed balconies while projecting a more substantial built form rising upwards from 4 storeys on the southern frontage to between 5 and 6 storeys facing the Central Community Park. In contrast to the rest of the development the western apartment block incorporates a metal clad roofing system with dormer windows. Corner features are incorporated on both the North West and South West corners in order to provide a focus to the development and providing a more contemporary appearance to the other elevations.

### Conclusion for External Appearance

Overall, the proposal successfully incorporates various architectural styles within a coherent design and is considered acceptable in principle resulting in a high quality development in accordance with the requirements detailed within the Design Code and Policies CS5 and DM01.

### Materials

The Design Code advises that within the Southern Hub bricks should be either warm red or buff, utilise green, brown or composite roofs, aluminium windows, hardwood or aluminium doors and metal or recessed porches.

The scheme proposes three broad material patterns for the development.

The terraces houses along the northern frontage are proposed to be constructed out of Ibstock Thames Multi Stock bricks and Redland Grey Cambrian Man Made Slates. Windows will be constructed out of grey painted windows with metal rainwater goods.

The apartment blocks along the eastern boundary and the southern terraced houses differ slightly from the northern houses being built out of Ibstock Sevenoaks yellow stock bricks with brown clay tiled roofs.

The apartment block along the western boundary differs in regard to the roofing material incorporating a metal clad roof and top storey coloured RAL 7004.

The proposed materials are considered broadly acceptable according with the principles of the design code and have been discussed and agreed with the Heritage and Design Team. Conditions are attached requiring physical samples to be provided prior to the commencement of the development.

#### **4.6 Landscaping**

The 'Revised Public Realm and Open Space Strategy' approved at outline stage sets out the principles for a landscape and open space strategy for Millbrook Park and provides detailed design guidance for reserved matters applications. The approved Design Code adds another layer of detail and requires a number of landscaping features in Phase 3a.

Due to the high density layout of the scheme, landscaping opportunities are more limited than on the lower density forms of development proposed on other parts of the Millbrook Park Site to date. The submitted landscaping scheme provides for the planting of a line of trees along the western boundary to reflect the tree line in the adjacent central community park. Along the northern and eastern boundaries raised planters with shrub planting are proposed along the front of the proposed building. Along the southern boundary specimen shrub planting is proposed along with the provision and retention of trees approved under the earlier advanced infrastructure works application. Internally to the block it is proposed to turf the podium deck gardens and to provide raised planters with integral seating. Sedum roofs are also proposed over the proposed refuse and cycling stores.

#### **Maintenance**

The submitted design and access statement advises that a Landscape Maintenance Contractor will be employed with responsibility for future maintenance of all communal areas.

#### **Hard areas**

Proposed hard surfacing materials include tarmac, block paving, decking and raised planters to communal courtyards stainless steel bollards, black railings and gates which accords with the requirements of the Design Code materials matrix.

#### **Street Lighting**

Street lighting locations on the east west link road and primary residential street and the western tertiary street which abuts the development on the northern, southern, western and eastern boundaries have already been agreed pursuant to the approval of the Advanced Infrastructure Reserved Matters Application for this Phase (H/00480/12).

#### Conclusion for Landscaping

The landscaping approach is considered to be in accordance with design principles set in the Design Code and parameter plans. It will help to introduce a human scale to the frontages of the proposed buildings and will frame and complement the architectural approach whilst increasing the overall biodiversity of the site's environment. It complies with Policies CS5 and DM16.

### **4.7 Amenities of Future Occupants**

#### Dwelling outlook and daylighting

Development plan policy requires that new dwellings are provided with adequate outlook. The layout proposed for Phase 3a maximizes the outlook of occupiers of the new dwellings, with all houses being located on a north south or east west axis. The majority of the apartment buildings are provided with southern, eastern or western outlooks and it is considered that all units will receive adequate levels of daylight and sunlight.

#### Privacy

Across the site internal privacy distances are considered to be in keeping with policy requirements with rear to rear distances measuring approximately 28 including over 15m to rear amenity areas. While a degree of oblique overlooking between units will occur this is inevitable in any tight knit urban setting and is considered acceptable.

Several of the units contain rear facing balconies. Some of these are set in between projections and as such would not allow any direct overlooking, while others such as those proposed at plots 60-66 are level with the rear of the properties and could allow a degree of direct overlooking of the rear amenity areas of adjoining properties. While to a degree this is a matter of buyer aware and would be mutual between properties, it is considered appropriate to attach a condition requiring screening details to be submitted in order to ensure a satisfactory form of development and to safeguard the amenities of future residential occupiers.

#### Dwelling size

Table 3.3 in the London Plan provides a minimum gross internal floor area for different types of dwelling. The Mayor's Housing SPG November 2012 includes a wider ranging Minimum Floorspace Table based upon the same standards.

All of the units proposed would have a gross internal floor area which exceeded the requirements of the London Plan for a dwelling of that type. The proposal is therefore considered to be acceptable in this regard.

#### Amenity space

The Council's adopted Supplementary Planning Document entitled Residential Design Guidance as well as the Millbrook Park Design Code requires the provision of 5 sq.m of amenity space each habitable room for flats, and between 40 and 85 sq.m for houses depending on the number of habitable rooms.

Every dwelling has access to some form of private amenity space. The houses all have individual rear podium deck gardens and the majority of the houses also have front or rear facing balconies. In relation to the apartments these are all provided with either individual balconies or have access to shared external amenity areas. All of the proposed units meet or exceed the minimum standards outlined in the as stated and the proposal is acceptable on grounds of private amenity space provision.

#### **4.8 Impacts on amenities of neighbouring and surrounding occupiers and users**

The periphery of the site is delineated by the east west primary link to the north and the southern primary street to the south. The sites immediately to the north have been consented and in the case of the Taylor Wimpey site to the north east substantially completed. The development would face the public face of these developments over the east west road at a distance of 22m. Due to this distance separation it is not considered that the proposal would substantially affect levels of daylight or sunlight or result in any demonstrable impact upon privacy.

In relation to future phases located to the south of the development, no detailed reserved matters application have been submitted, however the distance separation between the development and these future plots will be similar to the relationship of plots to the north with any overlooking being limited to the public faces of development over internal roads and it is not considered that the proposal would significantly affect the amenities of dwellings contained within future phases or be unduly impacted upon by future development.

#### **4.9 Transport, parking and highways matters:**

##### Access

The access points have already been established and the surrounding roads including the east west link road including primary cycle route to the north and the primary residential street to the east and south and a tertiary street to the side of the Central Community Park to the west. Access to the basement car park is via two

accesses formed on the southern primary road. The western tertiary street to the west of the development provides access to the 15 surface car parking spaces proposed on the western side of the development adjoining the Park.

### Pedestrian Facilities

Access and movements for pedestrians were established as part of the outline application. The main north-south pedestrian spine route is located along the western boundary of the development and pedestrian footpaths are provided along the periphery of the building and it is considered that the proposal would provide a satisfactory pedestrian environment in accordance with the aims of the design code.

### Parking

Parking Standards set out in the Local Plan Policy DM17 is as follows:  
Maximum Standards will be:

- (i) 2 to 1.5 spaces per unit for detached and semi detached houses and flats (4 or more bedrooms)
- (ii) 1.5 to 1 spaces per unit for terraced houses and flats (2 to 3 bedrooms) and
- (iii) 1 to less than 1 space per unit for development consisting mainly of flats (1 bedroom)

Condition 23 of the outline consent limits the number of residential parking spaces to 2,522 (plus limited visitor parking) across the whole site.

The application proposes the provision of 123 car parking spaces including 12 visitor spaces within this phase. Spaces will be allocated at the ratio of 1 space per apartment, 1.5 spaces per 3 bed house and 2 spaces for four bed houses. 10% of parking will be for disabled persons.

The majority of the spaces (109) are provided in the form of a secure basement car park in the centre of the development. Plots 1-6 along the southern boundary of the site are provided with basement garage car parking accessed from the underground car park. The remainder of the spaces are provided on the surface facing the Central Community Park.

The scheme therefore provides adequate car parking and would not result in significant overspill to neighbouring roads.

A Parking Management Strategy has yet to be submitted and must be conditioned in order for the proposal to be considered acceptable. This will demonstrate how vehicles will be prevented from parking on the non designated areas. A condition to this effect is included.



### Accessibility and Inclusivity

Nine houses within Phase 3a are wheelchair accessible, which equals to 10% and in compliance with Condition 70 (Design to Lifetime Homes Standards and Wheelchair Standards) of the outline consent. The allocated car parking spaces to these properties are in close proximity to their entrance points.

All of the proposed dwellings are designed to comply with the internal design criteria necessary to meet Lifetime Homes standards however due to the topography of the site not all homes comply with the external standards. Condition 70 states that where the scheme cannot achieve the standards due to site specific conditions evidence shall be submitted. In this instance, given the topography of the site and given that the proposal complies with the standards internally, this is considered satisfactory to meet Condition 70. The scheme has followed principles of inclusivity and accessibility.

### Sustainable travel

Secure cycle storage is provided either within plots within sheds and garages or within designated covered and secured cycle stores for the proposed apartment blocks are provided within the communal areas. The provision of 1 cycle space per one and two bedroom dwellings and 2 spaces per three, four and five bedroom dwellings providing a total of 127 spaces is in accordance with the Design Code and is considered acceptable. The Design Code also recommends 10% cycle spaces to be provided for visitors within the street. The application proposes the provision of 12 spaces along the western frontage of the development. 5 spaces for Motorcycle Parking are also provided within the basement car park..

The supporting documents advise that electric charging points will be provided either in garages or within the basement underground car park at the rate of 10% active and 10% passive. Current GLA Policy requires provision of 20% active and 20% passive. The applicant has agreed to this and a condition is attached to this effect.

### Waste Management

The refuse strategy for the development provides for refuse stores and collection points direct outside the front of all but one of the proposed dwellings which has a store located in the rear garden and collection point on the western frontage. For the proposed apartments communal refuse stores are located either within the building or in detached stores. The proposed roads to the north, east and south are through routes which are also proposed to be adopted roads. In relation to the tertiary street to the west adjoining the Central Community Park turning circles and vehicular tracking diagrams have been included in the application proposal demonstrating that refuse lorries (and emergency vehicles) can adequately access the development.

While the tertiary road to the west is not scheduled to be adopted all roads and other shared surfaces on this development must be constructed to withstand the largest type loads of vehicles proposed to enter/exit these areas. An indemnity condition (No. 34) has been included on the outline application for all phases.

#### Conclusion for Transport, Parking and Highways

In summary, the application provides for adequate parking without harming the local highway network and promotes sustainable modes of travel and complies with Policies CS9 and DM17.

#### **4.10 Environmental issues**

##### Construction management

A Construction Management Plan for the whole of Millbrook Park was approved pursuant to Condition 17 of the outline consent (ref H/04183/11). The document incorporates the view that succinct method statements will be required for each reserved matters application. A condition is attached to this approval requiring the submission and approval of a Construction Management Plan prior to the commencement of development to ensure the environmental issues are managed and minimum impact on the surrounding environment by this development including noise disturbances, vibration, dust, smoke, plant emissions and traffic.

##### Contamination

A contamination strategy for the whole site has been dealt with under Condition 63 of the outline consent (ref H/00643/12, approved April 2012). This condition is split into 4 parts and parts i) and ii) which includes desk top studies and site investigation have been approved. Parts iii) of the condition requires the approval of a remediation strategy and part iv) requires a verification to be submitted for each phase.

This reserved matters application has not submitted any information to discharge the remainder of Condition 63, but an informative shall be imposed to remind the applicant of this requirement prior to the commencement of development. A similar informative was attached to the earlier Phase 2 and Phase 3 approvals.

#### **4.11 Energy, climate change, biodiversity and sustainable construction matters:**

##### Sustainable design and construction

An overarching energy strategy for the whole of Millbrook Park was submitted to and approved pursuant to Condition 79 of the outline consent (ref H/00560/12). The approved strategy outlines how a centralised energy supply to the south of the site

will be delivered, and a decentralised supply to the north. The south of the site will be served by a District Heating Network provided by a single Energy Centre while the north of the site is expected to adhere to the Mayor's Energy Hierarchy by utilising an energy efficient building fabric and where applicable photovoltaic panels (PV).

The Mayor's Energy Hierarchy sets out three methods for achieving a minimum 25% reduction in carbon emissions:

- 1 Be lean: use less energy (fabric efficiency standards)
- 2 Be clean: supply energy efficiently
- 3 Be green: use renewable energy

The application is accompanied by a Energy Strategy and Code for Sustainable Homes Pre-Assessment. The applicant is committed to achieving Code for Sustainable Homes Level 4 as well as achieving a 40% reduction in CO2 emissions as is required by London Plan policies and Condition 80 (Code for Sustainable Homes) of the outline consent. This is achieved partly through implementing high building fabric specifications and energy efficient measures and partly by the proposed connection to the proposed District Heat Network to the South of the site. As the main district energy centre is not proposed to be built until 2019 a temporary energy centre is proposed to the east of the site which will be delivered by the Inglis Consortium.

#### Water resources and Drainage

The drainage strategy for Phase 3a is developed from the principles identified in the approved site wide drainage strategy produced by Halcrow pursuant to Condition 43 (Drainage Strategy, H/04340/11, 26/042012) of the outline consent. The site wide drainage strategy was subject to further minor modifications. A S73 application (Ref: H/03813/13) was granted for these modifications on 27/11/2013.

In relation to site specific measures the application proposes a series of attenuating features are proposed to be incorporated underneath the proposed basement car park. In addition to this the approved advanced infrastructure application for this phase (H/00480/12) provided for Swales along the side of the east west link road directly in front of the development. All attenuation features are designed for a 1 in 100 year plus climate change rainfall event. Water will discharge to the south of the phase at Thames Water agreed rates ultimately discharging into the main Thames Water Network in Bittacy Hill.

In relation to foul water drainage Phase 3a will discharge to outfall points via gravity to the main public sewer network on Bittacy Hill. All adopted foul water infrastructure will be design to accord with the requirements of 'sewers for adoption' and all private drainage will be designed in accordance with current best practice. A management company will also be employed to maintain private drainage located within the development.

Thames Water were consulted on the application and did not raise any objections to the proposed attenuation measures and the scheme is considered acceptable in this regard.

In relation to the comments received from the Environment Agency. It is noted that the parameters of the development have already been established at outline stage, the development will operate within parameters of the approved site wide drainage strategy and sustainable urban drainage (SUDS) have been incorporated in the Advanced Infrastructure Reserved Matters Approval for this phase.. Given these factors it is considered appropriate to attach a condition requiring the applicant to produce a detailed drainage strategy prior to the commencement of the development.

### Biodiversity and Ecology

The AAP encourages the planting of native species to encourage biodiversity. The Environmental Statement at outline stage concluded that there are no overriding concerns with respect to ecology and nature conservation preventing redevelopment taking place.

A site wide Ecological Mitigation and Management Plan (EMMP) was submitted and approved (H/04184/11, November 2011) pursuant to Condition 60 of the outline consent. It was considered that the document as approved demonstrated a comprehensive overall management plan for ecological assets on the application site.

Natural England have been consulted regarding this reserved matters application and have raised no objections to the scheme as submitted. There are therefore considered no significant ecological issues raised as a result of this application.

### Green/ Brown Roofs

Condition 84 (Green/Brown Roofs Target) of the outline consent requires a minimum of 10% of green or brown roofs across the whole of Millbrook Park site. Condition 85 (Green/Brown Roofs Provision) requires details to be submitted and approved demonstrating this provision across the whole site including a reconciliation plan or table showing how it meets the 10% target fixed by Condition 84.

The scheme meets this requirement through the use of podium deck gardens, the inclusion of podium decks has been previously included in brown/ green roof calculations and the development would in itself comply with the requirements of Condition 84 and contribute to the overall provision within the Millbrook Park Development.

## **5. EQUALITIES AND DIVERSITY ISSUES**

Section 149 of the Equality Act 2010, which came into force on 5<sup>th</sup> April 2011, imposes important duties on public authorities in the exercise of their functions, including a duty to have regard to the need 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 considering this application and preparing 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 the above legislation.

The Phase 3A development will offer inclusive design for safe and easy use for all. All of the proposed dwellings are designed to meet the internal Lifetime Homes Criteria and 9 units (10% of proposed) are designed to be wheelchair accessible. In terms of external environment due to the topography of the site not all homes will be able to meet the external criteria. While regrettable, this is considered inevitable given the nature of the Mill Hill Park site and has been accepted in other phases and is similarly considered acceptable in this instance.

The use as residential has been established at outline stage and it would not prejudice existing or future users/residents in the surrounding area. The areas of open spaces are publicly accessible and have level access.

It is considered by officers that the submission adequately demonstrates that the design of the development and the approach of the applicant are acceptable with regard to equalities and diversity matters. The proposals do not conflict with either Barnet Council’s Equalities Policy or the commitments set in our Equality Scheme and support the council in meeting its statutory equality responsibilities.

## 6. CONCLUSION

As conditioned the proposal would not compromise the outline planning permission (H/04017/09) for the redevelopment of the wider site. It accords with the relevant development plan policies, conforms to the design principles and the parameters established in both the approved outline application for the former Inglis Barracks site and the Design Code.

The proposal is acceptable on visual amenity, access, highways, biodiversity, and drainage grounds. The proposal would not significantly affect the amenities of neighbouring residential properties. It would provide for much needed quality family housing that would have a good standard of accommodation including outlook, privacy and access to daylight.

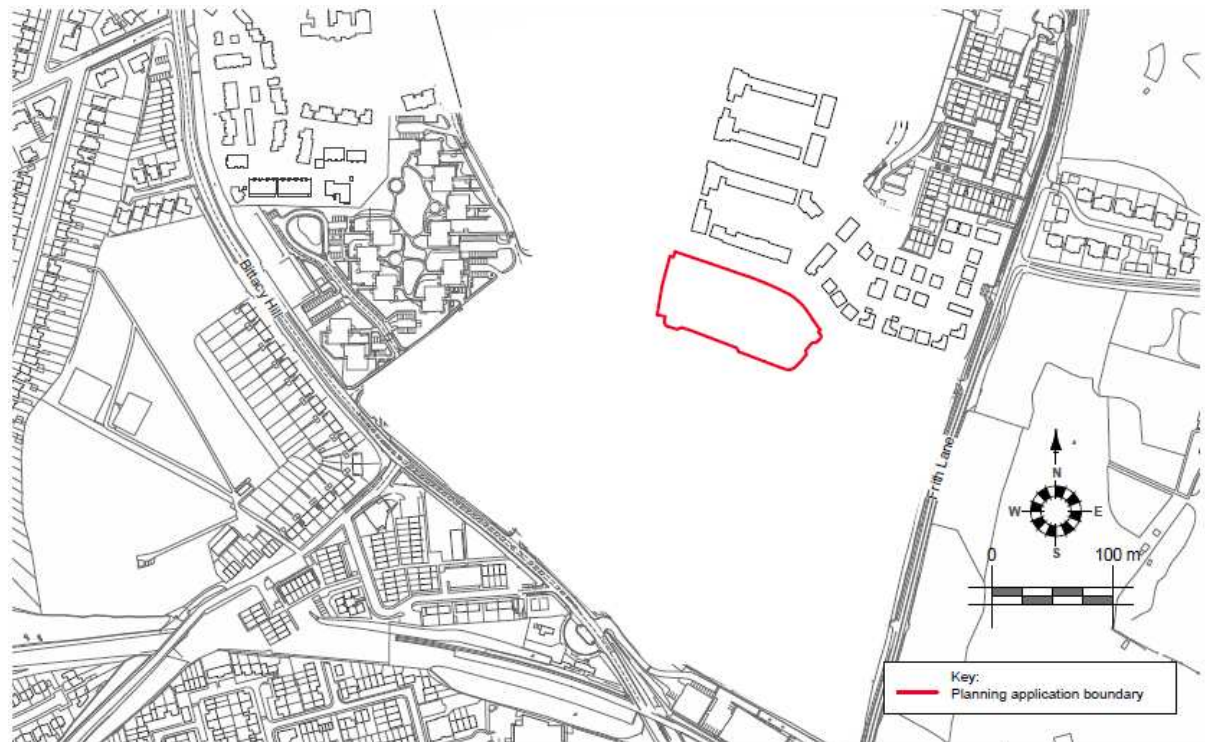
The design of the development is appropriate for the Southern Hub Character area, which also provides for variety and legibility. The materials and form relates well to the surrounding development. The layout of the development provides permeability around the site as well as to the wider Millbrook Park site.

The application also satisfies the requirements of Conditions 5 of the outline consent.

It is recommended that the application be **approved** subject to the attached conditions.

**SITE LOCATION PLAN: Phase 3a, Millbrook Park (former Inglis Barracks), Mill Hill East, London, NW7 1PZ**

**REFERENCE: H/00065/14**



Reproduced by permission of Ordnance Survey on behalf of HMSO. © Crown copyright and database right 2013. All rights reserved. Ordnance Survey Licence number LA100017674.

## Appendix 1 – Selected Images

### Site Location within context of Outline Approval





Site Layout



**Elevations**



② Street Elevation - Facing North

1:200



② Street Elevation Facing South

1:200



⑥ View from park



③ View of Eastern Corner

This page is intentionally left blank

---

|                   |   |
|-------------------|---|
| Meeting           | Planning and Environment Committee  |
| Date              | 20 March 2014   |
| <b>Subject</b>    | <b>Application to add a Public Right of Way from West Heath Road NW3 to Finchley Road NW11 to the Definitive Map and Statement</b>  |
| Report of         | Strategic Director Growth and Environment   |
| Summary of Report | This report presents the evidence related to the application and the legal issues to be considered in deciding whether or not to make an order to add a footpath to the Definitive Map and Statement. |

---

|   |  |
|---|--|
| Officer Contributors                        | Jane Shipman, Senior Engineer, Traffic & Development. RE<br>Poonam Rajput, Solicitor. HB Public Law          |
| Status (public or exempt)                   | Public   |
| Wards Affected                              | Childs Hill Ward   |
| Key Decision                                | Not applicable   |
| Reason for urgency / exemption from call-in | Not applicable   |
| Function of                                 | Council  |
| Enclosures                                  | Appendix 1 - Plan of claimed route<br>Appendix 2 - Evidence report   |
| Contact for Further Information:            | Jane Shipman, Senior Engineer.<br><a href="mailto:jane.shipman@barnet.gov.uk">jane.shipman@barnet.gov.uk</a> |

## **1. RECOMMENDATION**

- 1.1 That the Committee instructs officers to make an Order under Section 53 of the Wildlife and Countryside Act 1981 to add to the definitive map and statement a footpath from West Heath Road NW3, between numbers 179 and 183, to Finchley Road NW11, between numbers 492 and 494.**

## **2. RELEVANT PREVIOUS DECISIONS**

- 2.1 None

## **3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS**

- 3.1 The Wildlife and Countryside Act 1981 places a duty on Local Authorities to update the definitive footpath map and statement for the areas under their jurisdiction, bringing urban areas under the same consideration as footpaths in rural areas which had been maintained under the previous National Parks and Access to the Countryside Act.

## **4. RISK MANAGEMENT ISSUES**

- 4.1 Such matters should not form part of the Committee's considerations in determining the application

## **5. EQUALITIES AND DIVERSITY ISSUES**

- 5.1 The council in the exercise of its functions, recognises its statutory duty to have regard to the need to eliminate all types of discrimination, advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and to foster good relations between persons who share a relevant protected characteristic and persons who do not share it as required under section 149 of the Equality Act 2010.
- 5.2 Section 149 of the Equality Act 2010 requires a decision-maker to have 'due regard' to achieving a number of equality goals: (i) to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by the Act; (ii) to advance equality of opportunity between those with protected characteristics and those without; and (iii) to foster good relations between persons with a relevant protected characteristic and those without. The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 5.3 Inclusion of the path on the Definitive Map would not, of itself, result in any physical change to the site. The path is stepped in places and issues regarding anti-social behaviour have also been raised in relation to the path. Although either of these issues could impact more on some groups with protected characteristics than on the general population, it is considered that inclusion of the path on the Definitive Map would not directly affect any of the protected groups or affect good relations between persons sharing a relevant protected characteristic and others not sharing that characteristic.

## **6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)**

- 6.1 Such matters should not form part of the Committee's considerations in determining the application.
- 6.2 Costs of making the Order and any subsequent legal representations would be met from existing budgets

## **7. LEGAL ISSUES**

7.1 Under Section 53 of the Wildlife and Countryside Act 1981 ("WCA") the London Borough of Barnet ("the Council") as the surveying authority, is obliged to keep the Definitive Map and Statement (of public rights of way) under continuous review. The Council may make modifications to the Map and Statement where certain events occur including where the Council discovers evidence which shows that a right of way which is not shown on the Map and Statement subsists or is reasonably alleged to subsist (s.53 (3)(c)(i) WCA). The applicant must present evidence that there is deemed dedication or a right of way either by operation of Section 31 of the Highways Act 1980 or at common law. Section 53(5) of the Wildlife & Countryside Act 1981 provides that any person may apply to the authority for an order which makes such modifications as appear to the authority to be requisite in consequence of the occurrence of certain events.

7.2 The present application falls to be considered by the Council under Section 53 (3)(c)(i) WCA. The Courts have reviewed the extent of the Council's duties when considering an application for a Modification Order. The Courts have stated that before making an Order the Council must have had all evidence clearly presented before it and must have had clear guidance on how the law relating to a presumed and implied dedication of land is to be applied.

7.3 A brief summary of the law relating to presumed and implied dedication of land is set out below.

### 7.3.1 Presumed Dedication

Under section 31 of the Highways Act 1980 ("HWA") a presumption of deemed dedication may occur if it can be shown that the public have had: -

- a) Use for a period not less than 20 years (calculated retrospectively from the date that the use was first brought into question)
- b) Use as of right
- c) Use without interruption

### 7.3.2 Implied Dedication

If the applicant cannot satisfy the criteria as set out in the Section 31 HWA, it may claim an implied dedication of the right of way at common law. The applicant must show that the way has been used by the public as of right and without interruption for such a long period of time that it is appropriate to draw an inference that dedication has been made.

7.4 The present application falls to be considered under Section 31 HWA as the evidence is that the right of way has existed for over 20 years.

- 7.5 The Council must be satisfied on the evidence that "the right of way subsists or is reasonably alleged to subsist". This means that after considering the evidence on the balance of probabilities it can be said that a right of way exists and that a reasonable person having considered all evidence would reasonably conclude the existence of a right of way . Even if the Council itself is not convinced that there is a right of way, but it is reasonably arguable that there is a right of way, the Council is obliged to make a Modification Order.
- 7.6 If the landowner can show incontrovertible documentary evidence that there is no intention to dedicate or that a presumption could not arise, then the Council could conclude that it would not be reasonable to allege that a right of way subsists and the application should be rejected.
- 7.7 In summary, where there is conflicting evidence, the Council should consider whether it is reasonable to accept one side of that evidence and reject the other.
- 7.8 If the Council decides to make an Order for Modification then after making the order the authority must give notice to the statutory consultees and invite representations on the order.
- 7.9 If no representations are made, the Council can proceed with the Order and amend the Map and Definitive Statement.
- 7.10 If representations opposing the Order or seeking modification of the Order are received, the Council must refer the Order to the Secretary of State for confirmation.

## **8. CONSTITUTIONAL POWERS (Relevant section from the Constitution, Key/Non-Key Decision)**

- 8.1 Councils Constitution, Responsibility for Functions, the Planning and Environment Committee Terms of Reference include Council highways functions (including highways use and regulation, access to the countryside, arrangements and extinguishment of public rights of way) which are limited to:
- *creating, stopping up and diverting footpaths and bridleways*
  - *asserting and protecting public rights to use highways*
  - *removing things deposited on highways which cause nuisance*

## **9. BACKGROUND INFORMATION**

- 9.1 On 6 July 2012 Judith Prais ("the applicant") applied to have a footpath from West Heath Road (between numbers 179 and 183) and Finchley Road (between numbers 492 and 494) added to the Definitive Map of Public Rights of Way.
- 9.2 The claimed footpath is within the land of private ownership of Mayfair Charities Limited. According to the Land Registry title documents the current owners have had the title absolute of the land since 1991.
- 9.3 Evidence was supplied by the applicant at the time of the application and over the following two months approximately regarding use of the path by the public. The Council has also investigated its own records and additional evidence has been provided by other interested local residents. Solicitors for



the landowner, owners and occupiers of adjacent premises and local ward Councillors have also provided evidence that is summarised in the appended Evidence Report.

- 9.4 People who have provided evidence or information about their use of the path have been contacted to verify they provided the information, were aware that it would be used as evidence in this matter and resolve some queries. Where a response has not been received then the contact has not been made then details have been excluded from the evidence report.
- 9.5 The claimed route runs from West Heath Road, via a driveway between numbers 179 and 183 West Heath Road to Finchley Road, between numbers 492 and 494. 181 and 181a West Heath Road are accessed from the route.
- 9.6 The application was prompted by the erection in 2012 of concrete fences across the path near the Finchley Road and near 181a West Heath Road at the point where the path narrows. The landowner advises that these fences were erected on 30 March 2012. This is considered to be the date at which the right of the public to use a way was brought into question.
- 9.7 For the public to be considered to have “actually enjoyed” use of the path there must be sufficient evidence of use. This will vary depending on the circumstances of each case. What might constitute sufficient use in a remote area would perhaps not be considered sufficient in a more urban area.
- 9.8 Clyde and Co, the solicitors for the landowners highlight that the evidence of some users refers to infrequent use. As such it may be insufficient to demonstrate ‘actual use’ however it nevertheless contributes to the overall evidence of use.
- 9.9 They also note that some evidence is provided by members of the same household, and at least in relation to the initially verified evidence, this was a small number of households, which might suggest limited use by the public. Subsequent additional evidence indicates that use has been by more than a few households.
- 9.10 Table 1 of the evidence report sets out the level and periods of use of those members of the public who have provided evidence. A number of these describe use of the path multiple times per week, some more than once per day. Taken in aggregate the path would appear to have been in daily use throughout the twenty years preceding its closure
- 9.11 Evidence from people who have used the path only in recent years clearly does not include the entire 20 year period, but may provide supporting evidence regarding recent use.
- 9.12 Some evidence refers to use of the path “to date” or to 2013, by which dates the path would have been blocked. Such dates are clearly inaccurate.
- 9.13 A number of the 12 evidence forms provided with the application were pre-completed with the end date 2012 and average use over the period was generally quoted. Consequently there may be some doubt as to whether the intensity of use stated continued throughout the periods specified and until path closure.

- 9.14 Most people who have provided evidence have indicated that they would be prepared to give their evidence at a public enquiry should this become necessary. Where this is not the case (indicated in the table in table 1 of the evidence report) then the landowner would be denied an opportunity to test the evidence and such evidence should be afforded only limited weight.
- 9.15 Use 'As of right' means that use has been not by force, not secretly and not by permission. A House of Lords decision in R. v. Oxfordshire County Council, ex parte Sunningwell Parish Council determined that it would be wrong to import a subjective element of belief to that definition. Before this case it had been thought that the phrase 'as of right' included an element of belief by the public using a way that they were entitled to use it. Clyde and Co highlight Mr & Mrs Cohen's evidence that they were advised the way was private when they asked about street lighting and suggest this is relevant to their use 'as of right'. However it is not necessary that they believe the way to be public for the use to be 'as of right'. The actual use must be 'as of right' i.e. without permission of the Landowner.
- 9.16 Use 'Without interruption'  
It is sometimes very difficult to determine what constitutes interruption, but in general terms this is usually taken to mean an actual and physical act which stops the public or some members of the public from using the way. The interruption must be carried out by the owner of the land or on the authority of the owner. An interruption may consist of closing of a right of way against all users for a single day or isolated acts of turning back. It can be hard for landowners to provide evidence that they have carried out either type of interruption. In this instance the landowner has not suggested that any form of interruption of use had taken place until erection of fences in March 2012.
- 9.17 'Sufficient evidence that there was no intention during that period to dedicate' might take the form of depositions made and lodged with the highway authority about a landowners intention to not dedicate rights of way across their land and/or signs that are inconsistent with the dedication of the way as a highway. There is no suggestion that such depositions have been made and the landowner has not suggested that any such signs were in place before those provided on the fences erected across the path in 2012 and most users of the path indicate they have not seen signs except those installed on the fences across the path. A sign on the fence of number 494 regarding dogs does not seem to be intended or have been interpreted as applying to the path.
- 9.18 The legal criteria in Section 7 of this report and evidential and legal material contained in Appendix 2 (the Evidence report) should be taken into account in making the resolution whether or not to make an Order.

## 10. LIST OF BACKGROUND PAPERS

- 10.1 Written evidence  
Witness statements.  
Maps  
Photographs

|  |           |
|--|-----------|
| <b>Cleared by Finance (Officer's initials)</b> | <b>JH</b> |
| <b>Cleared by Legal (Officer's initials)</b>   | <b>PR</b> |

Line of claimed path



I certify that the way shown on this plan is that referred to in the application overleaf.

Signed:

*Handwritten signature*

Date: 5 July 2013

**BARNET**  
LONDON BOROUGH  
DESIGN TEAM

**DRAWING No.**

**60695-01**

Acad Ref.



**Pam Wharfe**  
Director for Place

North London Business Park  
Oakleigh Road South  
New Southgate N11 1NP  
Tel. 020 8359 2000

**SCHEME:** West Heath Road Footpath Claim

Line of claimed path

Initiated by JS

Drawn by JS

Checked by

Date

Scales

1:1250 @ A4

8 Jul 2013

This product includes mapping data licensed from Ordnance Survey with the permission of the Controller of Her Majesty's Stationery Office. © Crown copyright and database right 2013. All rights reserved. London Borough of Barnet Licence No. 100017674

**Application for Modification Order  
WILDLIFE AND COUNTRYSIDE ACT 1981**

**Borough of Finchley Definitive Map**

To: The London Borough of Barnet  
North London Business Park (NLBP), Oakleigh Road South, London N11 1NP

I ..... JUDITH PRAIS.....  
of ..... 83 WEST HEATH ROAD, LONDON NW3 7TN.....  
hereby apply for an order under Section 53 (2) of the Wildlife and Countryside Act  
1981 modifying the Definitive Map and Statement for the area by:-

**Adding, as a public right of way, the footpath which runs  
from: West Heath Road, NW3 (grid reference 525230,186670)  
to: Finchley Road NW 11 (grid reference 525130,186700)**

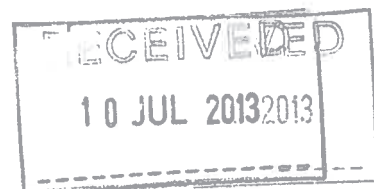
and shown on the map accompanying this application.

**I attach a two page form as evidence in support of this application.**

List of documents

- User Evidence Form

Signed: ..... *J Prais* .....  
Date: ..... *6 July 2012* .....



## **APPENDIX 2 - EVIDENCE REPORT**

### **1.0 Background**

On 6 July 2012 Judith Prais (“the applicant”) applied to have a footpath from West Heath Road (between numbers 179 and 183) and Finchley Road (between numbers 492 and 494) added to the Definitive Map of Public Rights of Way.

Evidence was supplied by the applicant at the time of the application and over the following two months approximately regarding use of the path by the public. The Council has also investigated its own records and additional evidence has been provided by other interested local residents through correspondence and a meeting with Mr Dunbar, Ms Elek and Mr Andrew Kasriel. The landowner of the land across which the path runs and the owners of adjacent properties were also consulted, as were local councillors and the Auto Cycle Union, British Driving Society, Byways & Bridleways Trust, Open Spaces Society, Ramblers Association, Cyclists Touring Club and British Horse Society. A draft of this report was also provided to the applicant, landowner, adjacent owners and occupiers, local councillors and the residents named above.

### **2.0 User Evidence**

The evidence submitted by the applicant consisted of 12 questionnaire-style user evidence forms from members of the public (including the applicant) that describe their use of the path and a further 50 short forms (most apparently from staff or visitors to St Margaret’s Care Home in West Heath Road), indicating the signatory was or had been a regular user of the path and would like to see it reopened. These short forms also gave information about the length of time, frequency and purpose of the use of the path.

Some evidence on some of the 12 user evidence forms submitted by the applicant appears to have been pre-completed, including the end date of use of the path of 2012. The applicant’s form is entirely typed / word-processed apart from the signature and date. Those completed by David Dunbar MBE, Gillian Dunbar, Roger Webb and Christina Webb are also typed / word-processed apart from the signature. These five forms use similar wording to answer many questions, but some longer answers are worded differently, if only slightly, such that three distinct forms of wording are used across the five forms.

The forms completed by Norman Primost, Judith Kasriel, Andrew Kasriel, Sheila Philip, Debbie Primost, Simon Cohen and Yael Cohen appear to be based on that completed by the applicant. Some information appears to have been pre-completed on the form by word-processor. This information is in bold type (in contrast to the text of the form) and in some cases is also highlighted. The rest of these forms have been completed by hand. The start year of path use, purpose and frequency of use and preparedness to attend a public enquiry, signature and date are all completed by hand on these seven forms. Other information included in this section and summarised below appears to have been pre-completed on these forms.

Nine of the people who had completed a short form about the path have subsequently completed a user evidence form. Three other people who completed a short form have confirmed by telephone that their form can be used as evidence and they would be prepared to attend a public enquiry should this be necessary. 23 additional user evidence forms have been provided by other members of the public that have been verified.

Evidence forms and short forms that have not been verified by contact with the individual concerned are not considered further in this report.

### **2.1 Location and route of the footpath claimed:**

The 12 user evidence forms provided by the applicant all included the pre-completed information that the path ran from West Heath Road NW3 to Finchley Road NW11 and gave grid references for the ends of the path. The forms asked if the route of the way had always run over the same route or whether it had changed. All indicated that the route was always the same.

A map was provided to the applicant and to the 11 other residents who had provided forms with grid references to confirm they were clear about the location of the path. 10 (including the applicant) returned the plan confirming this was the route referred to in the application or their evidence form as appropriate. Mr Webb responded without explicitly confirming and has since confirmed by telephone his understanding as being as the map provided, and Mrs Webb has also confirmed by telephone her understanding of the path as being as the map provided.

The shorter forms were all pre-completed with the path description as “Footpath between 179 and 183 West Heath Road NW3, leading to the Llanvanor Road bus stop on Finchley Road”. The 32 additional user evidence forms were all pre-completed with the path described as “from West Heath Road, NW3 – between Nos 179 & 183 to Finchley Road, NW11 – between Nos 492 & 494”. Seventeen additional forms also included a copy of the plan described above confirming the route (these are indicated with a \* beside the name in table 1). The additional user evidence forms all indicate that the route has remained the same except one that does not answer this question and one that says: Around March 2012 a fence was build up stopping people going through the path.

Despite the various descriptions of the footpath, it is evident that the path described is the same path discussed by all users of the path.

### **2.2 Use of the path**

The period, frequency and purpose of use referred to by the people who have provided a verified user evidence form or agreed their short form can be used are set out in table 1. The table also identifies those people who would be prepared to attend a Public Enquiry should this be necessary.

**Table 1.**

| <b>Name</b>    | <b>Address</b>     | <b>Period of use path</b> | <b>Where going to and from / for what purpose</b>  | <b>Frequency of use</b>   | <b>Prepared to give evidence at public enquiry (evidence form or subsequent info)</b> |
|----------------|--------------------|---------------------------|--|---|---|
| Norman Primost | 98 West Heath Road | 1949-2012                 | From West Heath Road to the Finchley Road and vice versa. Best Route to the Bus Stop on Finchley Road                                  | Approx 100/year   | Yes   |
| Christina Webb | 90 Crewys Road     | 1955-2012                 | To and From West Heath Road and Finchley Road. Access to and from Golders Hill Park, Hampstead Village and Hampstead Heath             | Average 20/year   | Yes   |
| Roger Webb     | 90 Crewys Road     | 1955-2012                 | To and From West Heath Road and Finchley Road. Access to and from Golders Hill Park, Hampstead Village and Hampstead Heath             | Average 20/year. Mr Webb has indicated use was greater when he was younger and less in recent years | Yes   |
| Debbie Primost | 98 West Heath Road | 1965-2012                 | From West Heath Road to Finchley Road and vice versa. Best Route to the Bus Stop   | Approx 100/year   | Yes   |
| Sheila Philip  | 40 Nant Road       | 1970-2012                 | From West Heath Road to Finchley Road and vice versa. Shortcut to Heath and Park. Visiting friends.                                    | 40/year   | No  |
| David Dunbar   | 31 Llanvanor Road  | 1975-2012                 | From West Heath Road to the Finchley Road and vice versa. Access to and from Golders Hill Park, Hampstead Village and Hampstead Heath. | Approx 20-30/year on average  | Yes   |
| Gillian Dunbar | 31 Llanvanor Road  | 1979-2012                 | From West Heath Road to the Finchley Road and vice versa.  | Approx 10-20/year average   | Yes   |

| Name           | Address             | Period of use path | Where going to and from / for what purpose   | Frequency of use   | Prepared to give evidence at public enquiry (evidence form or subsequent info) |
|----------------|---------------------|--------------------|--|--|--|
|                |                     |                    | Access to and from Golders Hill Park, Hampstead Village and Hampstead Heath  |  |  |
| Simon Cohen    | 175 West Heath Road | 1977-2012          | From West Heath Road to the Finchley Road and vice versa. To go to Finchley Road to travel, to the synagogue, visit friend.  | 250/year   | Yes  |
| Yael Cohen     | 175 West Heath Road | 1977-2012          | From West Heath Road to the Finchley Road and vice versa. Access to Finchley to travel, shop visit etc   | 500/year   | Yes  |
| Andrew Kasriel | 90 West Heath Road  | 1978-2012          | From West Heath Road to the Finchley Road and vice versa. To and from work in central London + shopping + leisure journeys   | Over 200/year  | Yes  |
| Judith Kasriel | 90 West Heath Road  | 1978-2012          | From West Heath Road to the Finchley Road and vice versa. To and from work, shopping, leisure  | Approx 300   | Yes  |
| Judith Prais   | 83 West Heath Road  | 1985-2012          | From West Heath Road to the Finchley Road and vice versa. Often in order to catch the bus from outside the footpath or to descend the bus and reach home. Sometimes in order to cross the Finchley Road and reach other roads. | Most weekdays (in order to return from school and then in order to travel to and return from work). And at weekends for leisure purposes | Yes (Statutory declaration also provided)                                      |



| <b>Name</b>              | <b>Address</b>             | <b>Period of use path</b>   | <b>Where going to and from / for what purpose</b>  | <b>Frequency of use</b>   | <b>Prepared to give evidence at public enquiry (evidence form or subsequent info)</b> |
|--------------------------|----------------------------|---|--|---|---|
| R Acker Holt             | 50 Platts Lane             | 1970's onwards till path blocked  | Finchley Road to West Heath Road or the reverse (Golders Hill Park)  | 2-3 / week  | Yes   |
| Dorothy Holt             | 474a Finchley Road         | 1970 (evidence form 2013) Short form provided 2012 stated: 1979 till path blocked, 2 or three times/week. Confirmation of period of use awaited.        | Finchley Road to Hampstead Heath (evidence form)<br>Short form stated: To visit friends in West Heath Road and go to Hampstead and Park. | Several times a week  | Not confirmed whether prepared to give evidence at public enquiry                     |
| Vivienne Flower          | 75 West Heath Road         | Last 25 years (2013 evidence form - & not stopped or turned back till last year when barrier erected). Short form states 1988 to now [dated July 2012]. | West Heath Road to Finchley Road. (Short form: Reaching Finchley Road)   | intermittently  | Not confirmed whether prepared to give evidence at public enquiry                     |
| Andrew Thomas (& family) | 77 West Heath Road         | 1998-2012   | House to Bus stop  | 340/ year x twice/day   | Yes   |
| Martyn Woolf             | Flat 4, 75 West Heath Road | About 1938 onwards (Short form (2012) states:   | Finchley Road to West Heath Road (Short form: to go to and from bus. Leisure & business).  | How many times per year? "Innumerable" Short form (2012) states: 1994-present | Yes   |

| Name   | Address   | Period of use path  | Where going to and from / for what purpose                  | Frequency of use  | Prepared to give evidence at public enquiry (evidence form or subsequent info) |
|--|---|---|---|---|--|
|  |   | 1994-present (July 2012). 4-5 times per week. 2013 evidence form notes: about 1 year ago barrier was erected) |   | (July 2012). 4-5 times per week. 2013 evidence form notes: about 1 year ago barrier was erected |  |
| Paloma Hidalgo   | 84 West Heath Road  | 2006-2012   | 84 West Heath Road to Finchley Road                         | About 15 times / week   | Not confirmed whether prepared to give evidence at public enquiry              |
| Maurice Mulvihill  | 2 Thorverton Rd NW2 (evidence form 2013).<br>10 Mazenod Ave NW6 (short form 2012)   | 1999-2013. Short form states: 2011-2012.  | Walking   | 4/year (Short form states: 2011-2012, once/week)  | Yes  |
| Mr Mulvihill   | Mr Mulvihill has confirmed by telephone that he has two addresses. Over the last 3-4 years used the path mainly to visit mother at St Margaret's home. Otherwise has used the path for walking the dog on the heath. Use has been greater in recent years when visiting mother. |   |   |   |  |
| Peter Tighe  | 43 Linfield, Sidmouth Street. WC1   | 2010-2012   | To the care home. (short form to visit mother & the heath). | A lot of times (per year). 5 days / week. (Short form states: 4/week)                           | No   |
| Jill Elek  | 47 Lanvanor Road  | 1984-2012   | Home to Park – Golders Hill Heath and Hampstead             | Variable (evidence form).   |  |
| Ms Elek has confirmed she has used the path intermittently between 1984-2012. From 1989-90 she lived out of London during the week and |   |   |   |   |  |

| Name   | Address  | Period of use path                            | Where going to and from / for what purpose   | Frequency of use              | Prepared to give evidence at public enquiry (evidence form or subsequent info) |
|--|--|---|--|-------------------------------|--|
| some weekends. Since about 2009 till path closure used it about twice per week for walks to Golders Hill Park and Hampstead Heath but used the path less often before that – perhaps twice a month in summer and less in winter.   |  |   |  |                               |  |
| Zea Katzeff  | 6 Hodford Road, NW11   | many many years - been at my address 29 years | Home to Golders Hill Park  | Twice a week                  | Yes  |
| Ms Katzeff has confirmed “My three children attended King Alfred School in North End Road NW11 from September 1988 until June 2009. (My eldest son is now 33, my youngest 22). During this period we regularly used the footpath (during the week, twice a day) as the quickest way to reach Golders Hill Park (from our home) which we then crossed to access the school. |  |   |  |                               |  |
| We have been at our address for 29 years, from April 1984. The access path was always the most convenient route for the family to Hampstead Heath and also for me when walking to Hampstead Village which I still regularly do.”   |  |   |  |                               |  |
| Brian Berelowitz   | 6 Hodford Road NW11  | 1976-2011                                     | To Heath, visit friends, walks with kids   | +-15/year                     | Yes  |
| Mila Villastiqui (short form only)   | 37 Gonville Crescent, Northolt. UB5                          | 1996-present before closure                   | To work at St Margarets to do errands for the home.  | 5 days/week. 10-13 times/week | Yes  |
| Phyllis Tafiranyika (short form only)  | 59 Arrow Close, Luton  | 1996 - 2012                                   | Workplace on West Heath Road. Take clients out shopping and on outings. Alley was quickest route to main road. | 15 times/week                 | Yes  |
| Lurline Morgan (short form only)   | St Margarets Housing & Adult Social Care, 84 West Heath Road | July 1999 - 2012                              | To care for the elderly  | 14 days (sic) / week          | Yes  |

| Name               | Address   | Period of use path                   | Where going to and from / for what purpose  | Frequency of use  | Prepared to give evidence at public enquiry (evidence form or subsequent info) |
|--------------------|---|--------------------------------------|---|---|--|
| *Belinda Mindell   | 36 Holly Park, N3   | 1983-2012                            | Bus stop on Finchley Road to 98 West Heath Road & vice versa. Part of the time living at 98 West Heath Road and part of the time visiting parents/grandparents. | 100/year when living at WHR then 30 times when visiting.                  | Yes  |
| *Max Kasriel       | 107b Sumatra Road. NW6 (2011-present) (previously 90 West Heath Road) | 1987-2011 (since 1997 unaccompanied) | Bus stop on Finchley Road to access Swiss Cottage, St John's Wood, Central London, etc  | 1997-2011 estimates between 30-40 & 300-400 times/yr depending on period. | Yes  |
| Anne Davies        | 42 Llanvanor Road   | 2011 until closure of path.          | The Royal Free Hospital, place of work.   | More than 200 times/year  | Yes  |
| *Stephanie Blendis | 18 Fortismere Avenue, N10   | 1975-2000 (from 1984 unaccompanied)  | From my home on West Heath Road to use bus stop to travel to school/into town.  | 400/year  | Yes  |
| *Chris Potter      | 28 Llanvanor Road   | 1982-2013                            | From 1988 until closed, to work (King Alfred's School)  | 5 days/week   | Yes  |
| *Emily Potter      | 24A Conway Road N15   | 1985-1998                            | School (Finchley Road ->North End Road)   | Schooldays  | Yes  |
| *Jeremy Kasriel    | 107a Sumatra Road. NW6 (2011-present previously 90 West Heath Road)   | 1979-2003 (since 1987 unaccompanied) | From my House on West Heath Road to use bus stop on Finchley Road fro journeys to Central London etc  | 300/year  | Yes  |

| <b>Name</b>           | <b>Address</b>  | <b>Period of use path</b>                          | <b>Where going to and from / for what purpose</b>   | <b>Frequency of use</b>  | <b>Prepared to give evidence at public enquiry (evidence form or subsequent info)</b> |
|-----------------------|---|--|---|--|---|
| Rafael Kidel          | 51 Llanvanor Road                                       | 2006-2012  | School (with children), Church, Park/Heath  | 104/yr (2006-2009) approx 156/yr (2010 onwards)                          | Yes   |
| Sara Kidel            | 40 Park Drive   | 1995-closure                                       | Visiting friends, shops, bus stop   | 24/yr  | Yes   |
| *M.R. Mossetti        | 17 Llanvanor Road                                       | 1978-1993  | Home to Golders Hill Park – in particular walking dog from 1978-1993 3-4 times/week up path to park.                        | from 1960s spasmodically but in particular from 1978-1993 3-4 times/week | Yes   |
| *Rosina Alzano        | 32 Llanvanor Road                                       | Mid 1990s- early 2000                              | St Margaret's Old People's Care Home  | weekly   | Yes   |
| *Kate Fugallo         | 39 Llanvanor Road                                       | When my children were young play & 1990s [unclear] | young visiting friends & children to access to the Heath  | 30/40 per yr   | Yes   |
| *Derek Ross           | 46 Llanvanor Road                                       | 2000-2013  | To Golders Hill and Hampstead Heath from our home and back to our home  | Around 30-50/yr  | Yes   |
| *Susan C Ross         | 46 Llanvanor Road                                       | 2000-2013  | To Golders Hill and Hampstead Heath from our home and back to our home  | Around 30-50/yr  | Yes   |
| *James Edward Barnett | Flat 2, 31 Templars Avenue, NW11                        | 2007-2012  | To/from Golders Hill Park; Hampstead also   | ~25/yr   | Yes   |
| *LR Dixie             | 55 Crewys Road  | 1982-2009  | From home to the Heath – Golders Hill Park dog walking  | 1/wk 1982-1995<br>1/month 1996-2009                                      | Yes   |
| *D.H.J Cohen          | 37 Ferncroft Avenue, NW3 (formerly 163 West Heath Road) | 1984-2004  | From home W[est] H[eath] R[oad] to Finchley Rd. bus stop direction Golders Green & to get to Hodford Rd direction Synagogue | 120/yr   | Yes   |

| Name              | Address   | Period of use path | Where going to and from / for what purpose  | Frequency of use | Prepared to give evidence at public enquiry (evidence form or subsequent info) |
|-------------------|---|--------------------|---|------------------|--|
| *B.R. Cohen       | 37 Ferncroft Avenue, NW3 (formerly 163 West Heath Road) | 1984-2004          | Home on W[est] H[earth] R[oad] for bus direction Golders Green and to get to Hodford Road. Direction Synagogue. | approx 70/yr     | Yes  |
| *Elizabeth Tucker | 15 Llanvanor Road                                       | From 2000 onwards  | Home, to Golders Hill Park, The Hill at Hampstead Heath   | 80/yr            | Yes  |
| *Andrew Tucker    | 15 Llanvanor Road                                       | From 2000 onwards  | From home to Golders Hill Park or Hampstead   | 50/yr            | Yes  |
| Clova Reid        | 96 Leslie Road, Leyton, E11 4HG                         | 1999-2012          | Work / to and from the bus stop   | 4 days/week      | Yes  |

### 2.3 Stiles or gates

The user evidence forms ask whether there have ever been any stiles or gates on the way.

Of the twelve forms provided by the applicant users responded to the questions using similar or identical wording. Eight users responded: "About three months ago cement blocks were erected to prevent entry to the footpath. I do not recall that prior to that any stiles or gates or other blockage to our route"

Two users responded: "None. About three months ago concrete posts and horizontal slid-in panels to a height of about 2 metres were erected at the top and lower ends of the footpath preventing access. Prior to this there have never been any obstructions to the footpath during the period I have used it." And two others used the same wording without the word None at the beginning.

Of the other verified user evidence forms 26 responded "No". The other 6 responded:

|  |                |
|--|----------------|
| No (except now it is blocked)  | R Acker Holt   |
| 2 gates were put in place. One near Finchley Road one near West Heath Road                         | Paloma Hidalgo |
| No stiles or gates within the time I have used the path / Not within the time I have used the path | Anne Davies    |
| No obstacles   | Chris Potter   |
| Not during our time of use   | DJH Cohen      |
| Not during our time of use   | BR Cohen       |

### 2.4 Working for or tenant of landowner

The twelve forms provided by the applicant all stated not applicable in response to this question (the question asked, if this were not the case, to write No). . Eleven of these have subsequently confirmed they had not been working for or a tenant of the landowner. Mrs Webb has not responded directly to a follow up question about this. 30 of the others who completed verified user evidence forms responded no to this question. Rosina Alzano and Kate Fugallo responded not applicable.

### 2.5 Stopped, turned back or told by owner or tenant that way was not public?

The twelve forms provided by the applicant all stated "never" in response to a question about being stopped or turned back and "no" to a question about whether they had been told by an owner or tenant that the way was not public.

Of the others who completed user evidence forms 28 responded "no" (or "never") to the question about being stopped or turned back. The other four responded:

|  |                 |
|--|-----------------|
| Not until last year when the barrier was erected   | Vivienne Flower |
| There's no way over the fence  | Paloma Hidalgo  |
| Stopped due to erection of barriers in April 2012  | Anne Davies     |
| No. even with recent security cars on West Heath Road, was never stopped or turned back. | James Barnett   |

28 also responded "no" to the question about being told the way was not public, with the other four responding:

|  |                |
|--|----------------|
| Never told, fence stopped anyone going through                                   | Paloma Hidalgo |
| N/A  | Rosina Alzano  |
| Only when we requested lighting at night & council informed us it was not public | D.H.J Cohen    |
| Only when we requested lighting at night & council informed us it was not public | B.R. Cohen     |

## 2.6 Locked gates or obstructions

The 12 forms provided by the applicant all stated “no” in response to this question. Eighteen of the additional user evidence forms also say “no”. The other fourteen responded:

| Locked gates/obstruction?                             |                   |
|---|-------------------|
| No (except now)                                       | R Acker Holt      |
| Yes – about 1 year ago a concrete barrier was erected | Martyn Woolf      |
| The gate is locked stopping everyone to go up or down | Paloma Hidalgo    |
| blocked at entrance at Finchley Road                  | Peter Tighe       |
| not until recently as far as I know                   | Jill Elek         |
| No – only by the new wall there now                   | Brian Berrelowitz |
| [No response]   | Belinda Mindell   |
| barriers at upper and lower ends from April 2012      | Anne Davies       |
| No, not until recent blockage                         | Chris Potter      |
| [No response]   | Rafael Kidel      |
| 2 walls were built earlier in 2013                    | Derek Ross        |
| 2 walls were built earlier in 2013                    | Susan C Ross      |
| not until recent closure                              | Elizabeth Tucker  |
| not until recent closure                              | Andrew Tucker     |

## 2.7 Notices on the path

Of the twelve forms provided by the applicant users responded to the questions using similar or identical wording. Eight users responded “Only three months ago [forms dated July 2012] when cement blocks were erected with a statement that there was no entry” and four users responded “Only three months ago [forms dated July 2012] when the concrete walls were erected each had a sign saying “No Thoroughfare”

23 additional user evidence forms respond “no” (or “never”). The other nine say:

| Notices on path   |                  |
|---|------------------|
| No - on the contrary there was a sign saying "public footpath" until it was removed when obstruction placed | Dorothy Holt     |
| It just says private  | Paloma Hidalgo   |
| Private   | Peter Tighe      |
| Yes see above [response above reads - not until recently as far as I know]                                  | Jill Elek        |
| Yes - cannot recall exact wording   | Anne Davies      |
| Only in 2013  | Derek Ross       |
| Only in 2013  | Susan C Ross     |
| not until recent closure  | Elizabeth Tucker |
| not until recent closure  | Andrew Tucker    |

## 2.8 Permission to use the way

All who completed verified user evidence forms responded “no” when asked if they had ever asked permission to use the way. Mr Barnett added “it has always been open”.

## 2.9 Other information

The 12 forms provided with the application all include the same or similar wording to highlight use of the path by employees of the St Margarets Home at 84 West Heath Road.

R. Acker Holt and Dorothy Holt both refer to a sign that said public footpath. R. Acker Holt says “for as long as I can remember (about 40 years) there was always a sign at the corner of the Finchley Road end of the footpath which said “Public Footpath”,. This sign disappeared when the obstruction was built.”



Mr Mossetti states he has lived in his house for 60 years and always used path for easy access to Golders Hill Park  
Kate Fugallo states “this is a public footpath”

### **3.0 Maps**

The way is not shown as a public right of way on the definitive map for the area, however this location was an “excluded area” when the definitive map was produced, so not included in the survey. An extract from the definitive map is included in the appendix.

Available issues of the Ordnance Survey map have been examined.

There is no indication of the path on the Ordnance Survey 1:2500 second edition County Series (1894-1896), at which point there was a property, “Mountfield” where 181 West Heath Road stands but no surrounding houses on Finchley Road or West Heath Road. A path or drive runs from the south side of the building curving to the southwest to join the Finchley Road.

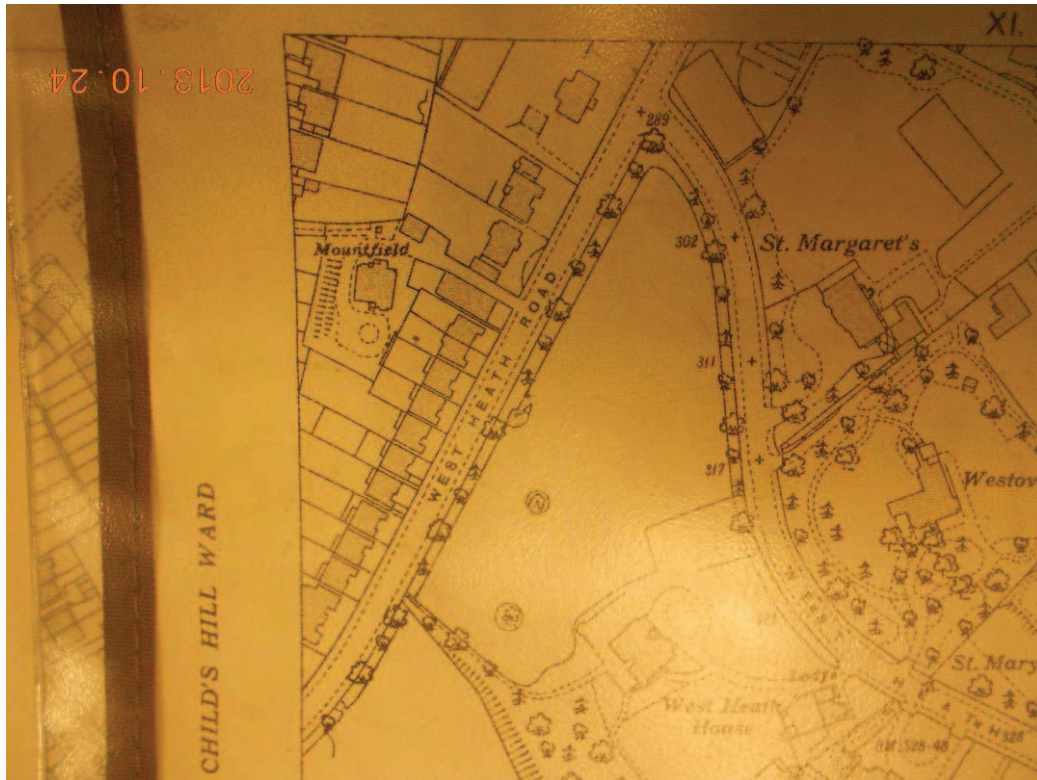
In the 1930s surrounding properties had been built and “Mountfield” had a driveway from West Heath Road along the current line (i.e between 179 and 183 West Heath Road) and a pathway towards Finchley Road along the current line (i.e alongside the boundary of 494 Finchley Road). There is a solid line boundary shown across the path roughly level with the rear boundary of 492 Finchley Road. (Conventionally a dotted line would indicate a boundary that would not present a barrier to pedestrians, so a change of surface or a change of level of less than a foot, whereas a solid line might represent a wall, fence or change in level).

The 1953 map shows steps at the boundary of Finchley Road but continues to show a solid line across the path near the rear boundary of 492 Finchley Road.

By 1967 “Mountfield” has become “Pardes House School”, with boundaries shown essentially as on the modern map.

Detailed survey plans submitted with a recent planning application for the site of 181 West Heath Road show the path is stepped near the rear boundary of 492 Finchley Road.

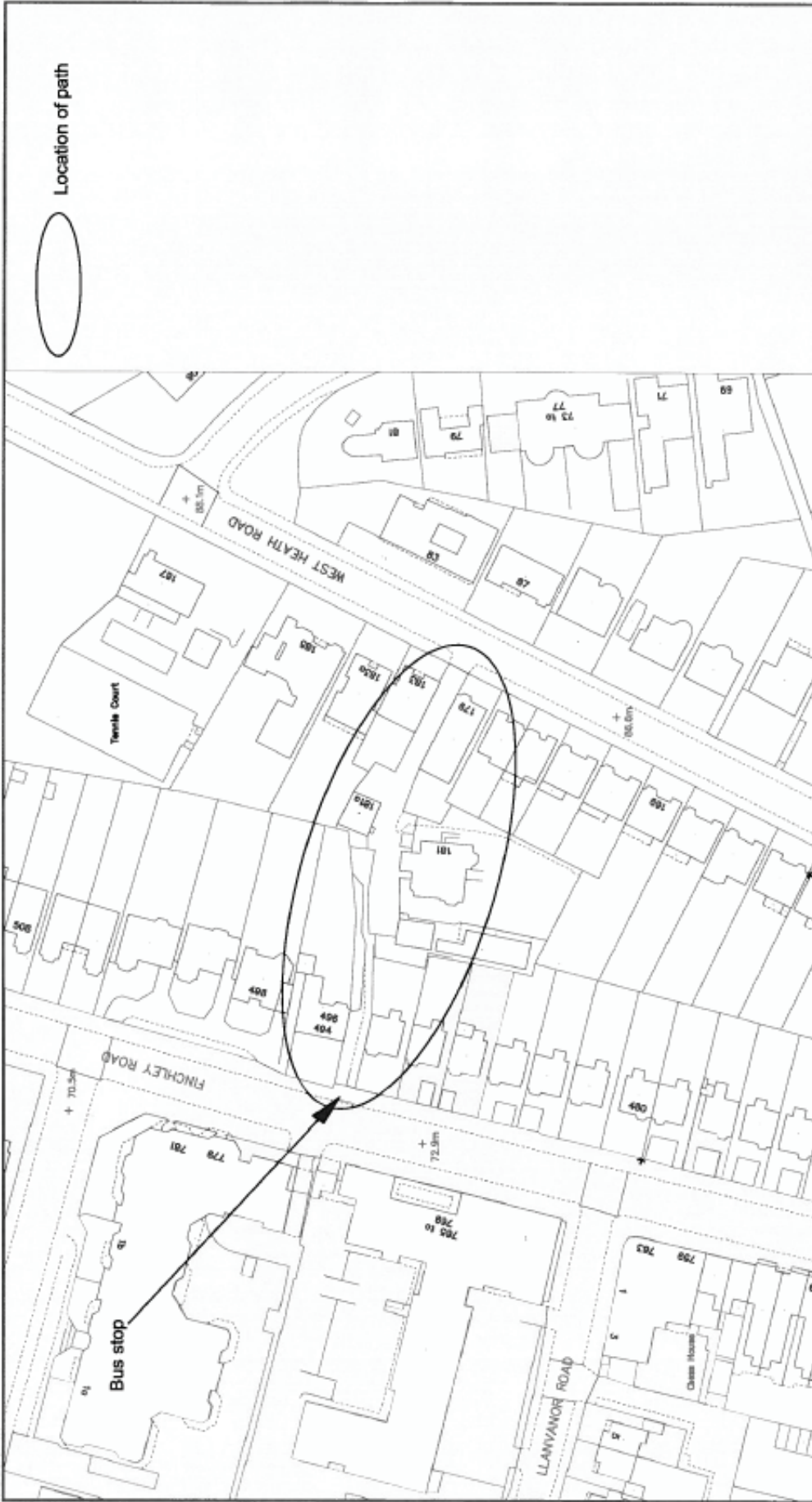
A selection of map images follows.



Photograph of Middlesex Sheet XI revision of 1934 (Hendon Library Archives)



Photograph of 1953 Ordnance Survey plan held at Hendon Library archives.



|                       |  |  |  |
|-----------------------|--|--|--|
| Initiated by<br>JS    | <b>SCHEME:</b><br>West Heath Road Footpath Claim   |  | <b>BARNET</b><br>LONDON BOROUGH<br>DESIGN TEAM |
| Drawn by<br>JS        | Pam Wharfe<br>Director for Place   |  | <b>DRAWING No.</b><br>60695-03                 |
| Checked by            | North London Business Park<br>Oakleigh Road South<br>New Southgate N11 1NP<br>Tel. 020 8359 2000 |  | <b>Acad Ref.</b>                               |
| Date<br>November 2013 | <b>TITLE:</b><br>Claimed path  |  |  |
|                       | <b>Scales</b><br>1:1250 @ A4   |  |  |

This product includes mapping data licensed from Ordnance Survey with the permission of the Controller of Her Majesty's Stationery Office. © Crown copyright and database right 2013. All rights reserved. London Borough of Barnet Licence No. 100012674

Drawing showing current OS mapping in area of path

#### 4.0 Land Registry

Land registry searches for 181 West Heath Road and surrounding properties indicate that the path is part of the land registered as 181 West Heath Road. The property 179/181a has the benefit of rights of way drainage and entry reserved in a Transfer of land dated 22 July 1948 across the land.

There is no reference to rights of way in the register for 492 Finchley Road, 494 Finchley Road, and 183 West Heath Road.

A copy of the land registry documents for 181 West Heath Road and 179/181a West Heath Road are included in the appendix.

#### 5.0 Site visit / Photographs

The site was visited and photographs taken in November 2012 and November 2013. There are steps behind the bus stop on Finchley Road leading to a tarmac path between 492 and 494 Finchley Road which proceeds to a concrete fence erected across the path (at which point the path is 2.26m wide between fence and building). On the far side of the wall the path continues. There are inspection covers on the path before the wall and a gate in the fence to 494 Finchley Road. There is a sign "No Trespassing" on the concrete fence across the path and a sign on the fence to 494 Finchley Road saying "Beware dangerous dogs. Enter at your own risk."

At the West Heath Road end of the path there is a driveway access between 179 and 183 West Heath Road leading 181a West Heath Road and to a gated access to 181 West Heath Road. Between the gate into the area around 181 West Heath Road and 181a West Heath Road is a concrete fence across a path with a sign "no trespassing."

A selection of photographs of the path follows.



Bus stop Finchley Road with start of steps just visible.



Steps Finchley Road end of path and view to concrete fence.



View over concrete fence at Finchley Road end of path.



View from West Heath Road between 179 and 183 West Heath Road.



View from between 179 & 183 West Heath Road showing gate into area around 181 West Heath Road, and concrete fence across footpath (behind vehicle).



Fence across path at West Heath Road end, beside black painted gate to area around 181 West Heath Road.



Photograph provided by local resident (believed May 2012) showing view over fence at West Heath Road end of path and showing lighting unit on fence to left.

## 6.0 Other Records

A file of enquiries and information related to highway status/maintenance responsibility includes an internal council memo dated 13/3/95 from an officer based

at Mill Hill Depot to the survey section at Barnet House asking for a land registry search to determine ownership of footpath between 492-494 Finchley Road “which runs from the Finchley Road to West Heath Road”. The same file includes a copy of an Ordnance Survey map extract with a handwritten annotation pointing to the path saying “Note footpath not adopted”. The annotation is dated but the last digit is unclear so the year might read either 90 or 99 (or possibly 98). Copies of these documents are included in the appendix.

A 2007 tree preservation order report refers to a tree “beside the access roadway to 181/181a West Heath Road and pathway to Finchley Road. ... It is clearly visible from pathway and between buildings from West Heath Road. ... visible from various public vantage points”

Photographs taken as part of a 2007 Transport for London bus stop survey show the west end of the path at the bus stop. These do not show any “public footpath” signage at the Finchley Road end of the path (such as that referred to in evidence from R. Acker Holt) but the view is not sufficient to entirely rule out the presence of such a sign.

Transport for London advise that their records show the Llanvanor Road bus stop on Finchley Road (southbound) as being in existence in 1966 which is the default date for any asset they had from before electronic records began, and that there has been no move of this stop for at least 20 years, if at all.

Correspondence was received by the Council from residents from April 2012 asking about the closure of the path.

### **7.0 Landowners evidence**

The landowners solicitor (Clyde & Co) has written in response to an initial consultation. They advise:

We note that the adjoining plot to the north east of the Land [i.e. land at 181 West Heath Road, NW3 7TT] known as 179/181A West Heath Road has the benefit of a right of way over the Path pursuant to a Transfer dated 22 July 1948. No other parties have the benefit of any express or implied right of way over the Path. In addition, access to the Path was fenced on 30 March 2012.

The solicitor also makes observations regarding the perceived weaknesses of the ten un-redacted user evidence forms (including that of the applicant) that had been provided to them at that stage. The letter (dated 1 November 2013) is included in the appendix as is a subsequent letter (dated 10 January 2014) in response to a draft of this report that reiterates and summarises these concerns in relation to these original evidence forms and provides comments. The summarised comments were:

- (a) only limited weight should be attached to the [original] user evidence forms (“UEF”) on the basis that such forms were pre-completed prior to distribution;
- (b) none of the signatories adequately speak to different occasions of user;
- (c) the evidence of Mr Webb and Mrs Dunbar as to the frequency of their use of the Path was insufficient to establish use as a matter of fact;
- (d) the purported use of the path by less than six households: (i) falls short of establishing use of the Path ‘by the public’ (as required by section 31(1) of the Highways Act 1980) (“the 1980 Act”); and (ii) is so trivial so as not to give rise to the outward appearance to a reasonable landowner of user as of right. As such, any failure by our client to take action to prevent the claimed use cannot reasonably be ascribed to be knowledgeable acquiescence on its part; and



- (e) as such, there is insufficient evidence to establish actual use of the Path by the public as of right for the relevant period (being 30 March 1992 – 30 March 2012, when the Path was fenced “the Relevant Period”).

The January letter also provides comments in relation to additional user evidence forms and short forms referred to in the draft version of the report which were subsequently provided (referred to in the letter of 10 Jan 2014 as “Additional Evidence”). These relate to evidence from 30 people (29 referenced separately in the draft report – in one instance two people had jointly completed a single form). In relation to this additional evidence the solicitors state that their points included in the original letter and summarised above apply equally to the additional evidence. They also suggest (in summary):

- (a) the evidence of Ms Philip and Mrs Webb should be afforded little weight on the basis that such forms were completed prior to distribution;
- (b) there are obvious discrepancies in the evidence provided by those individuals who have submitted a UEF in addition to previously completing a short form, giving examples, and that these discrepancies cast serious doubt upon the credibility of the evidence;
- (c) That none of the short forms submitted by members of the public purport to evidence use of the path for the whole of the Relevant Period;
- (d) The evidence of Ms Flower, Mr Dixie, Ms Kidel, Mr Mossetti and Mr Berelowitz as to the frequency of their use of the path is insufficient to establish use of the Path as a matter of fact;
- (e) The individuals who purportedly claim use of the Path often (when paired together) comprise one household. This is not evidence of use of the Path ‘by the public’ and does not satisfy the statutory test;
- (f) In reply to a question on the user evidence form “Were you ever told by any owner or tenant of the land crossed by the way, or by anyone in their employment, that the way was not public? If so, state when and give particulars and dates”, DJH Cohen and BR Cohen state ‘Only when we requested lighting at night and the council informed us it was not public.’ And consequently the Cohens had actual knowledge that their purported enjoyment of the Path was not ‘as of right’ during the Relevant Period.
- (g) Should Ms Philip, Ms Holt and Ms Flower decline to attend any public enquiry, our client would be denied an opportunity to test this evidence; as such we invite the Council to attach very limited weight to their representations.

They note that R. Acker Holt and Dorothy Holt refer to a public footpath sign and that they are instructed that no such sign was removed from the path when it was fenced in March 2012, and advise that their client has confirmed that a ‘No Thoroughfare’ sign was erected at each end of the path when it was fenced in March 2012.

The January letter also refers to two Further Evidence forms that they state do not add materially to the Applicant’s case and to other as yet unverified forms that they state must not be taken into consideration by the Council unless their client has been provided with a full copy and has reasonable opportunity to make submissions in respect of these.

### **8.0 Other consultation responses**

A response from a neighbour at **183 West Heath Road** and from a representative of the same neighbour highlights that the path was used by individuals using a moped or motorcycle to gain access to 183 West Heath Road during an aggravated burglary. The burglary is described in one instance as taking place in April 2012 and in the other as shortly before the path was closed.

The representative notes that a security company has been minding 183 West Heath Road since 12/06/11. In addition to this, they send a monthly report of all the suspicious activity taking place around the house. Many relate to activity involving people looking at the house and access areas to the side of the house.

The information also highlights that walking around the block rather than using a footpath is a short distance (4 minutes according to google maps), and that people have been seen loitering in the alleyway and syringes found. The responses express a desire that the path not be reopened for these reasons.

An email from an occupier of **181a West Heath Road** states:

“I'm very nervous of this footpath being opened as it's right on my front doorstep. The footpath is full of drug paraphernalia and discarded handbags and women's clothes that I can only assume have been from bag thefts. The footpath also gives the squatters living in 181 west Heath road access to the old school and is always full of unsavoury characters. I feel that the opening of this foot path will bring them all right on top of my doorstep, this is worrying my girlfriend greatly and I'm the only front door that the footpath will be crossing.

“I am really against this footpath being opened, because of this footpath the residents of 183 have had to hire 24 hour security and opening it will only cause further discomfort.

“As you can see in this picture; my front door is right next to the opening of the footpath and as it's so dark down my drive at night my girlfriend and I wouldn't feel safe returning home with it opened. Especially when my girlfriend returns home without me.

“I've also heard many bad stories of this footpath being misused by drug addicts and rapists in the past hence it's closure to begin with.

“I would like my email to be strongly considered before anything further happens with the reopening.”



An email from Brickman Yale Chartered Surveyors on behalf of their client who owns **179 West Heath Road and 181a West Heath Road** states that the draft evidence report was the first correspondence they had seen from the Council about this matter and agrees with the comments of Clyde & Co in their letter of 1 November 2013.

Initial responses from **local councillors** were in favour of an order but provided no evidence regarding the path. However in response to the draft evidence report they have provided additional information by email.

Cllr Jack Cohen has advised that he was elected as Councillor for the Ward in 1986 and in the two or three years prior to that and since elected he used the footpath whilst out delivering leaflets and would be prepared to give evidence.

Cllr Susette Palmer advises:

"I have not used this footpath myself recently because the people I used to visit have moved away but I have lived in the area since I was a child and can certainly say that to the best of my recollection there has always been access used as a right of way between West Heath Rd and the Finchley Road as defined in the Council report."

Cllr Lord Palmer advises:

"I have used the path on rare occasions in the past, but then I have little need to use it personally.

However, I have been a Councillor for the ward since 1986 and have lived in the ward for 51 years.

Residents have at many times spoken to me about the path and I had always understood there was a right of way. When it was blocked off, I as a ward Councillor received complaints from users". ...

"[The people who have provided user statements] are 'Members of the Public,' and are but a few examples of public use. It goes without saying that some of the users over 20 years will have died or moved away. I fully support the Application."

No other responses have been received from adjacent properties or the statutory bodies consulted.

## **Appendix**

Extract from Definitive Map

Land registry details for 181 West Heath Road and 179/181a West Heath Road

Highway status/maintenance responsibility enquiries

Correspondence from landowner's solicitor

Extract from Definitive Map

# SURVEY OF PUBLIC RIGHTS OF WAY

COUNTY OF MIDDLESEX

## KEY TO NOTATION

Areas included in the Survey



Rights of Way :



Reference Number in Statement

Footpath



Bridleway



Roads used as a public path



County Boundary



County District Boundaries



### Abbreviations

FB-----Footbridge

CB-----Cartbridge

FG-----Fieldgate

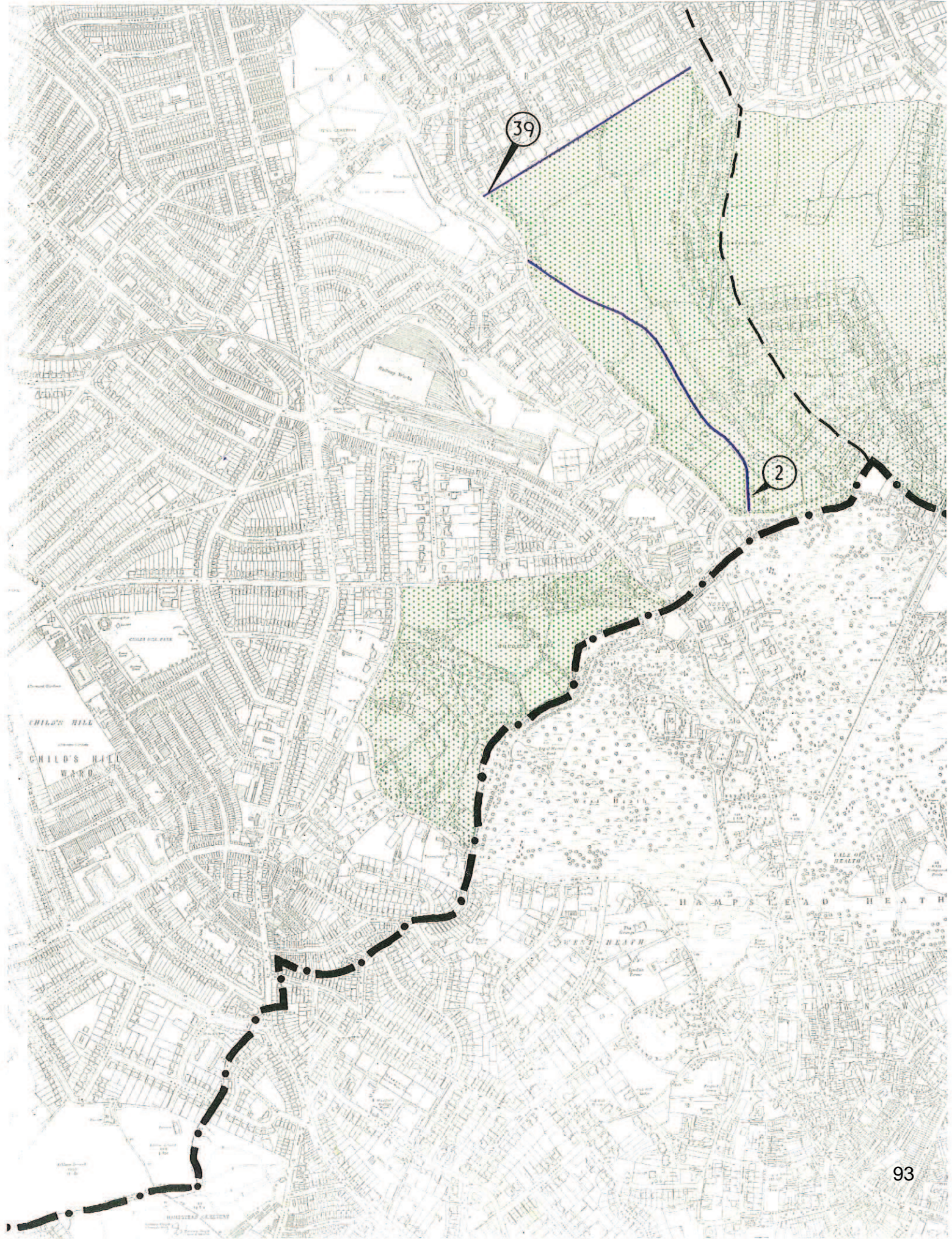
WG-----Wicket Gate

KG-----Kissing Gate

S-----Stile

F.R.I.C.S., M.T.P.I., COUNTY PLANNING OFFICER.

REVISION OF 1957 with additions to 1959



Land registry details for 181 West Heath Road and 179/181a West Heath Road



The electronic official copy of the register follows this message.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.



## Official copy of register of title

Title number NGL355130

Edition date 24.05.2005

- This official copy shows the entries on the register of title on 18 NOV 2013 at 13:24:54.
- This date must be quoted as the "search from date" in any official search application based on this copy.
- The date at the beginning of an entry is the date on which the entry was made in the register.
- Issued on 18 Nov 2013.
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- For information about the register of title see Land Registry website [www.landregistry.gov.uk](http://www.landregistry.gov.uk) or Land Registry Public Guide 1-A *guide to the information we keep and how you can obtain it*.
- This title is dealt with by Land Registry, Wales Office.

### A: Property Register

This register describes the land and estate comprised in the title.

BARNET

- 1 (24.06.1927) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being 181 West Heath Road, Hendon, London (NW3 7TT).

### B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

#### Title absolute

- 1 (11.04.1991) Proprietor: MAYFAIR CHARITIES LIMITED of 13/17 New Burlington Place, Regent Street, London W1Y 2JP.
- 2 (11.04.1991) RESTRICTION:-No disposition or other dealing is to be registered without the consent of the Charity Commissioners or an order of the Registrar.

### C: Charges Register

This register contains any charges and other matters that affect the land.

- 1 A Transfer dated 22 July 1948 made between (1) William John Purser and (2) Isabel Melville contains restrictive covenants.

*NOTE:-Original filed under MX201062.*

- 2 The land is subject to the rights reserved by the Transfer dated 22 July 1948 referred to above.

Title number NGL355130

End of register

**These are the notes referred to on the following official copy**

The electronic official copy of the title plan follows this message.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.

This official copy was delivered electronically and when printed will not be to scale. You can obtain a paper official copy by ordering one from Land Registry.

This official copy is issued on 18 November 2013 shows the state of this title plan on 18 November 2013 at 13:24:55. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002). This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide *19 - Title Plans and Boundaries*.

This title is dealt with by the Land Registry, Wales Office .

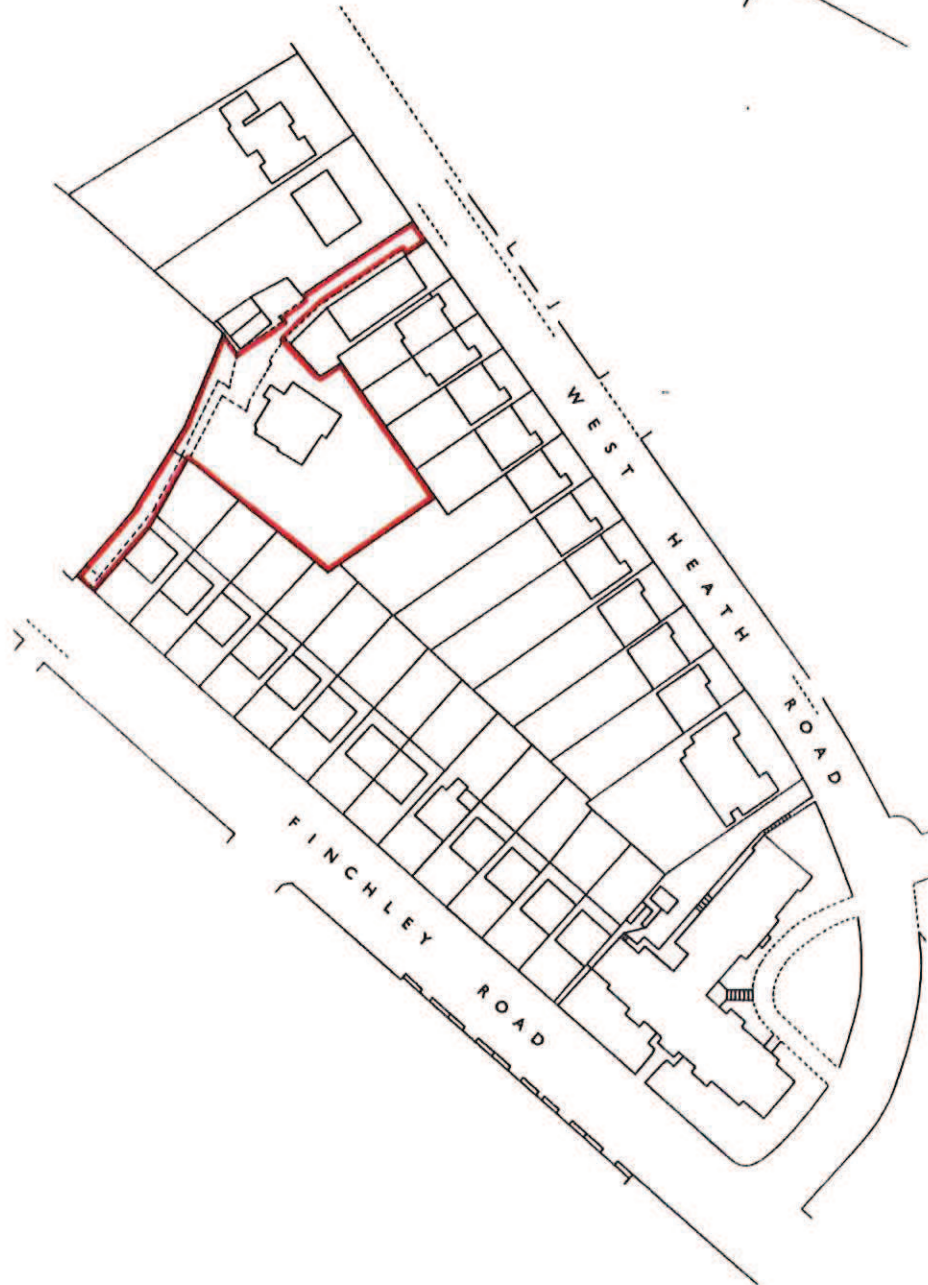
© Crown copyright. Produced by Land Registry. Reproduction in whole or in part is prohibited without the prior written permission of Ordnance Survey. Licence Number 100026316.

# H. M. LAND REGISTRY GENERAL MAP

GREATER LONDON SHEET TQ 2586 SECTION O  
NATIONAL GRID

Scale 1/1250

BOROUGH OF BARNET



Old Reference MIDDLESEX XI 16 G

© Crown Copyright 1973



## TITLE No. NGL355130

The electronic official copy of the register follows this message.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.



## Official copy of register of title

Title number P26421

Edition date 02.07.2008

- This official copy shows the entries on the register of title on 18 NOV 2013 at 15:12:36.
- This date must be quoted as the "search from date" in any official search application based on this copy.
- The date at the beginning of an entry is the date on which the entry was made in the register.
- Issued on 18 Nov 2013.
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- For information about the register of title see Land Registry website [www.landregistry.gov.uk](http://www.landregistry.gov.uk) or Land Registry Public Guide 1-A *guide to the information we keep and how you can obtain it*.
- This title is dealt with by Land Registry, Wales Office.

### A: Property Register

This register describes the land and estate comprised in the title.

BARNET

- 1 The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being 179 and 181A West Heath Road, London (NW3 7TT).
- 2 The land in this title has the benefit of rights of way drainage and entry reserved in a Transfer of the land edged and numbered MX201062 in green on the filed plan dated 22 July 1948 made between (1) William John Purser and (2) Isabel Melville.

*NOTE: Filed under MX201062.*

- 3 The land edged and numbered in green on the title plan has been removed from this title and registered under the title number or numbers shown in green on the said plan. The property description has been altered to reflect the land remaining in the title.

### B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

#### Title absolute

- 1 (18.04.1957) PROPRIETOR: JUNE OLIVE PAULINE MORRISON of Verona Court, 11 Westcliff Gardens, Margate, Kent CT9 5DS and GORDON CARTWRIGHT of 9 Park Street, Chatteris, Cambridgeshire PE16 6AB.
- 2 (02.07.2008) RESTRICTION: No disposition by a sole proprietor of the registered estate (except a trust corporation) under which capital money arises is to be registered unless authorised by an order of the court.

## C: Charges Register

This register contains any charges and other matters that affect the land.

- 1 A A Conveyance affecting the land tinted blue on the filed plan and other land dated 3 April 1873 made between (1) the Ecclesiastical Commissioners for England and (2) John Henry Dallmeyer contains restrictive covenants.

*NOTE: Particulars of covenants filed.*

- 2 A A Conveyance of adjoining land affecting the land tinted pink on the filed plan dated 27 October 1926 made between (1) William John Purser (Vendor) and (2) Florence Mary Simmonds (Purchaser) contains the following covenants:-

"The Vendor for himself and his successors in title owners or owner for the time being of the land coloured green on the said plan hereby covenants with the Purchaser that he will not at any time hereafter erect or permit to be erected on such land more than one building such building to be used for private residential purposes only and to be of a prime cost in labour of materials of not less than £1500."

NOTE: The land tinted green on the plan to the said Conveyance is tinted pink on the filed plan.

End of register



**These are the notes referred to on the following official copy**

The electronic official copy of the title plan follows this message.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.

This official copy was delivered electronically and when printed will not be to scale. You can obtain a paper official copy by ordering one from Land Registry.

This official copy is issued on 18 November 2013 shows the state of this title plan on 18 November 2013 at 15:12:36. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002). This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide *19 - Title Plans and Boundaries*.

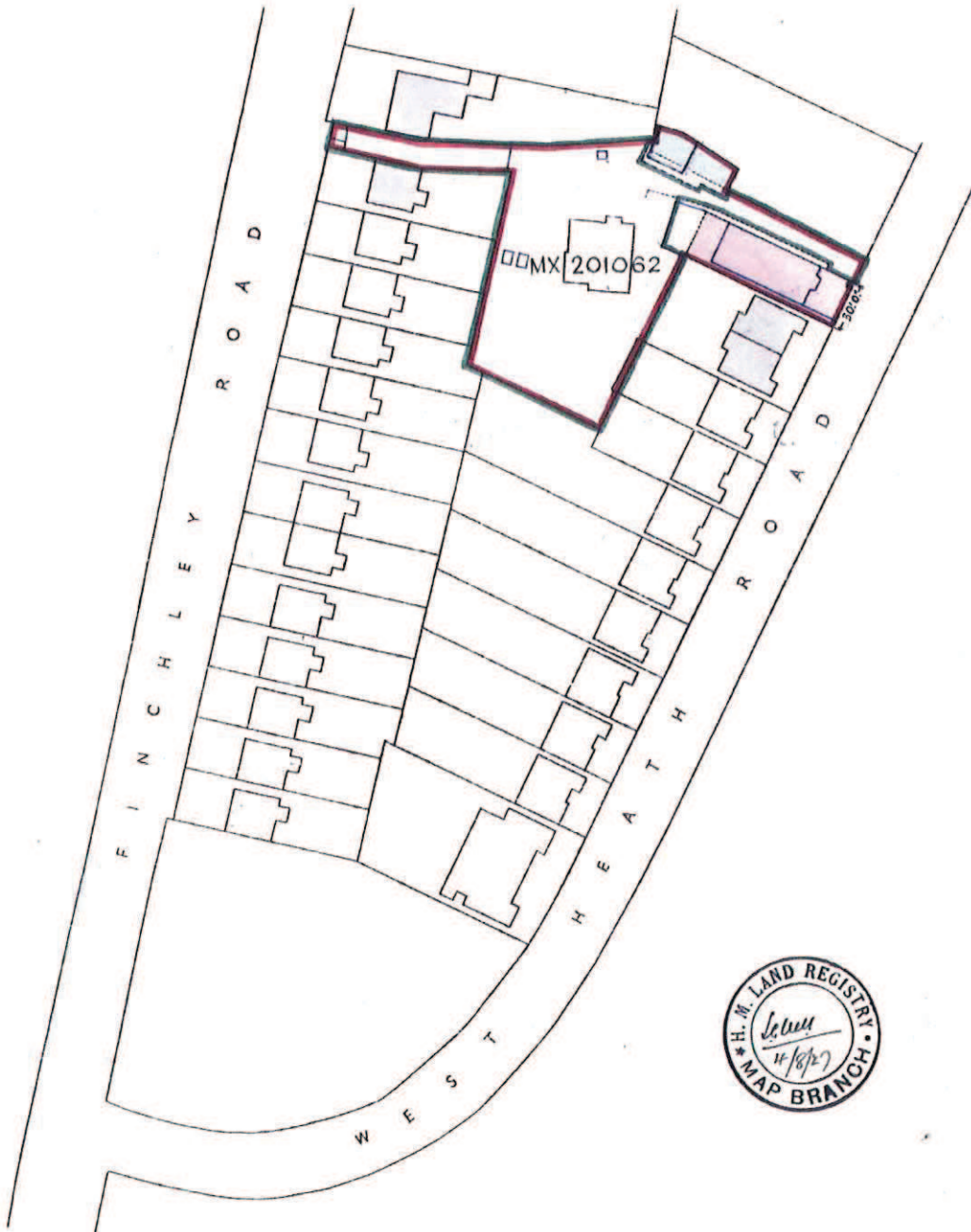
This title is dealt with by the Land Registry, Wales Office .

© Crown copyright. Produced by Land Registry. Reproduction in whole or in part is prohibited without the prior written permission of Ordnance Survey. Licence Number 100026316.

H.M. Land Registry.

# Filed Plan of Title No P.26421

Scale 88 Feet to One Inch



O. S. LONDON 5FT II. 78.

HENDON

G.1230 KCW 827

Crown Copyright Reserved.

(R161) Wt 23073A/1258P 5,000 3/27 H & Sp Gp119

Highway status/maintenance responsibility enquiries

FILE 796 JM

FROM

John Morely  
Survey Section  
Barnet House

TO

Neil Hannan  
D.O.S  
M.II Hill Depot

REFERENCE

f/w between 492-494 Finchley Rd NW11

MESSAGE

Can you please carry out a land registry search to determine the ownership of the above footpath which runs from the Finchley Rd to West Heath Road.

The search can be charged to Expenditure Code C.11 112 520

SIGNED

Hannan

DATE

13/3 95

REPLY

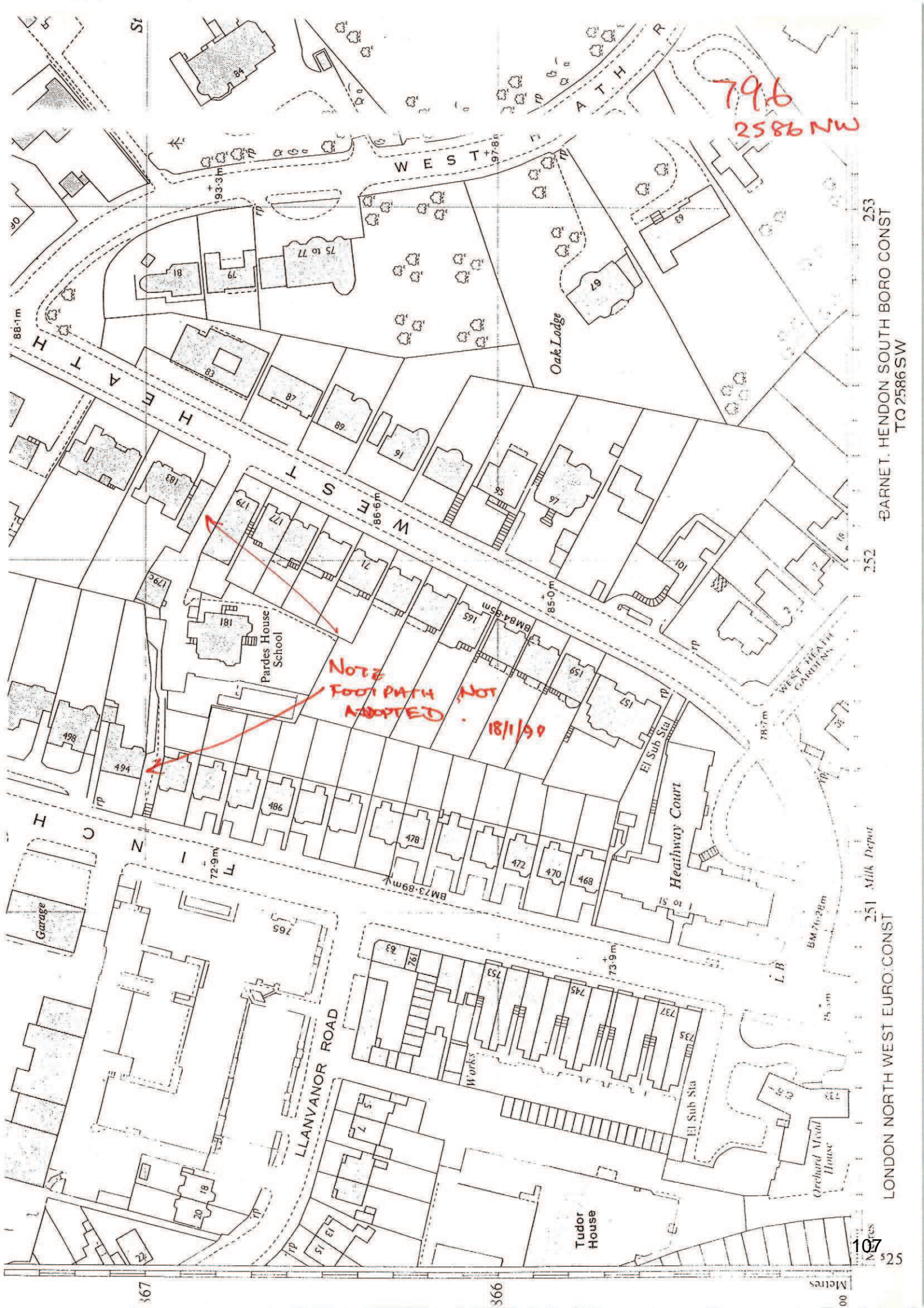
I attach H.M. Land Registry details of ownership <sup>geop. P.</sup> for the subject land  
BARNET HOUSE  
1255 HIGH ROW  
WATSTONE N20 0ET

SIGNED

D. Morely

DATE

20.3.95



79.6  
2586 NW

NOTE  
FOOT PATH NOT  
ADOPTED  
18/1/90

253  
BARNET, HENDON SOUTH BORO CONST  
TO 2586 SW

252

251 Milk Depot

LONDON NORTH WEST EURO CONST

107  
252

Metres

367

366

00

Correspondence from landowner's solicitor

The St Botolph Building  
138 Houndsditch  
London EC3A 7AR  
United Kingdom

Telephone: +44 (0) 20 7876 5000  
Facsimile: +44 (0) 20 7876 5111  
DX: 160030 Lime Street 5  
www.clydeco.com

## BY COURIER AND EMAIL

Ms Loide Miguel  
Interim Director  
Development Regulatory Services (DRS)  
London Borough of Barnet  
North London Business Park  
Building 4  
Oakleigh Road South  
London  
N11 1NP

[Loide.miguel@barnet.gov.uk](mailto:Loide.miguel@barnet.gov.uk)

Our ref  
DH/LN/1213007

Your ref

Date  
1 November 2013

**Application for a Modification Order under section 53(2) of the Wildlife and Countryside Act 1981 dated 6 July 2012 ("the Application")**  
**Judith Prais of 83 West Heath Road, London NW3 7TN ("the Applicant")**  
**Adding, as a Public Right of Way, the footpath which runs from West Heath Road, NW3 to Finchley Road NW11 ("the Path")**

We act for Mayfair Charities Limited, the registered proprietors of land at 181 West Heath Road, Hendon, London, NW3 7TT ("the Land").

We refer to the above Application, a copy of which was provided to our client under the cover of the Council's letter dated 30 August 2013 (as to which see further below). Notably, our client was not provided with a valid form of the evidence submitted in putative support of the Application until 25 October 2013 (following repeated requests) (as to which see further below).

As owners of the Land, our client is directly affected by the Application and has a statutory entitlement to respond to it.

We note that the adjoining plot to the north east of the Land known as 179/181A West Heath Road has the benefit of a right of way over the Path pursuant to a Transfer dated 22 July 1948. No other parties have the benefit of any express or implied rights of way over the Path. In addition, access to the Path was fenced on 30 March 2012.

For the reasons set out in this letter our client **strongly objects** to the Application.

## 1 Preliminary Observations

- 1.1 It has been difficult for our client to ascertain exactly on which evidence the Applicant purports to rely. We note the following timeline of events, over the course of which various documents have been provided to our client:

1213007 35225894.2

- (a) On 9 July 2012, our client received a notice pursuant to Paragraph 2 of Schedule 14 of the Wildlife and Countryside (Definitive Maps and Statements) Regulations 2013 ("the Regulations") informing it that the Application was made on 6 July 2012.
- (b) On 26 September 2012, on behalf of our client, we requested the details of (amongst other things) the material submitted in support of the Application. This request was made further to the Council's duty pursuant to The Public Rights of Way (Register of Applications under section 53(5) of the Wildlife and Countryside Act 1981) (England) Regulations 2005 but (for reasons that remain unclear) was progressed pursuant to the Freedom of Information Act 2000.
- (c) On 25 October 2012, the Council provided: (i) thirteen 'User Evidence Forms' ("UEF"); and (ii) thirty eight one-sided short-forms ("Short Forms") completed by third parties and submitted by the Applicant, which purported to attest to use of the Path. The details of the individuals who submitted these documents were redacted.
- (d) A further copy of the Application (again, redacted) followed on 6 November 2012.
- (e) On 30 August 2013, our client received a full copy of the Application including: (i) a plan; (ii) notice; (iii) certificate pursuant to paragraph 2 of schedule 14 of the Regulations; and (iv) a two page UEF completed by the Applicant.
- (f) Finally, further to numerous requests, on 25 October 2013, we received an email from your Jane Shipman, which attached:
  - (i) a letter from the Applicant to the Council dated 18 July 2012, (which stated to enclose: (a) twelve signed UEFs; (b) eight Short Forms from members of the public who have purportedly used the Path to visit residents at St Margaret's Home at 84 West Heath Road; and (c) thirty six Short Forms from employees of St Margaret's Home); and
  - (ii) a letter from the Applicant to the Council dated 9 September 2012, which stated to enclose three Short Forms from users of the Path (together "the Letters")

However, the email only attached nine UEFs, which comprised fuller versions of some of those provided by the Council on 25 October 2012.

In addition, the email stated:

*'We are in the process of verifying the supporting evidence provided by users of the path and are conscious that not all of the people who provided information will necessarily have known that the information they provided would be used as part of this application.'*

- 1.2 Therefore, subject to paragraph 3.7 below, as we have only received valid copies of the: (i) Application; (ii) the Applicant's UEF; and (iii) nine UEFs completed by third parties ((ii) and (iii) together being "the Unredacted UEFs"), our comments will be confined to these documents. We note that this material purports to cover the period of use from 1949 to 2012.



- 1.3 We note that the Short Forms and remaining UEFs have not been validated by the Council. Given that, when considering the Application, it is incumbent upon the Council to establish that the Path has '*actually been enjoyed by the public*' (as to which see further below), it is imperative that it is clear from whom this evidence is submitted. As such, this evidence should not be taken into consideration by the Council unless our client has been afforded the opportunity to make submissions in respect of it in its full (unredacted and valid) form. We fully reserve our client's position in this regard.
- 1.4 In addition, it appears from the Council's email that those individuals who have submitted the Short Forms may not be prepared to have their evidence tested, should the Application be heard at an inquiry. In the circumstances (and for those reasons more fully set out at paragraph 3.7 below), the Council should attach no weight to this evidence in its determination of the Application.

## 2 The Application

- 2.1 The Application is made pursuant to section 53(2) of the Wildlife and Countryside Act 1981 ("the Act") for a modification of the Definitive Map and Statement by adding, as a Public Right of Way ("PROW"), the Path.

- 2.2 In so far as is relevant, section 53(2) of the Act provides:

*(2) As regards every definitive map and statement, the surveying authority shall –*

*(a) as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3).....*

*(3) The events referred to in subsection (2) are as follows –*

*[.....]*

*(b) the expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the right of way during that period raises a presumption that the way has been dedicated as a public path [or restricted byway]*

*[.....]*

*(5) Any person may apply to the authority for an order under subsection (2) which makes such modifications as appear to the authority to be requisite in consequence of the occurrence of one of more events falling within paragraph (b) or (c) of subsection (3); and the provisions of Schedule 14 shall have effect as to the making and determination of applications under this subsection.'*

- 2.3 The Applicant has not expressly stated on what basis the PROW to use the Path is said to have arisen. However, by reference to the Letters we assume that the Application has been made pursuant to section 53(3)(b) of Act. There are two ways in which a sufficient '*period of enjoyment*' can be demonstrated in order to raise a presumption or inference that the Path has been dedicated for the purposes of Section 53(3)(b) of the Act. Firstly, this can be achieved by meeting the requirements set out in Section 31 of the Highways Act 1980 ("the 1980 Act"). Additionally, or in the alternative, the requisite period can be demonstrated by satisfying the requirements of common law.

- 2.4 Again, by reference to the Letters, we assume that the Applicant is seeking to rely on the statutory presumption to dedicate the Path, which provides:

*'Where any way over any land, other than a way of such character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as a right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.'*

- 2.5 Where there is no identifiable event which has brought into question the use of a path or way, sub-section 7B of the 1980 Act provides that the period of 20 years referred to in section 31(1) of the 1980 Act is to be calculated retrospectively from the date on which the Application was made. However, in this case, it is common ground that the Path was closed on 30 March 2012, such that the relevant period for the purposes of the Application is between 30 March 1992 and 30 March 2012 ("the Relevant Period").

- 2.6 In order to satisfy the qualifying requirements under section 31(1) of the 1980 Act, the burden of proof is therefore on the Applicant to show that the Path has been actually enjoyed: (i) by the public; (ii) as a right (i.e. not by force, stealth, nor by licence of our client); and (iii) without interruption, for the Relevant Period.

### 3 User evidence

#### *'Actual Use'*

- 3.1 Whether the Applicant has demonstrated on the balance of probabilities that the Path has actually been enjoyed by the public for the Relevant Period is a question of fact. Upon examination of the evidence submitted by the Applicant (i.e. the Unredacted UEFs), it is immediately apparent that:

- (a) All relevant persons claim use on foot;
- (b) Much of the content has been pre-completed (presumably by the Applicant) prior to distribution<sup>1</sup>. In particular, the date on which the purported use of the Path ceased, has been pre-filled (as 2012) on all of the UEFs. This approach is fundamentally flawed and raises questions as to whether the use of the Path is honestly and accurately recalled by all signatories. As a consequence, we invite the Council to attach little weight to the content of the UEFs.
- (c) In any event, the content of the evidence is hopelessly superficial. By way of illustration: none of the signatories describe their purported use of the Path as changing over the periods they have claimed to have enjoyed the right. For example, Mr Primost asserts that he used the Path from 1949 until 2012, yet this has always been one hundred times a year for the purposes of catching the bus. None of the signatories really speak to different occasions of user.
- (d) We note that the Applicant and Ms Cohen state that they would not be prepared to attend a hearing, public inquiry or Court to give evidence of their actual use of the Path. The reason for this reticence is unclear and is surprising. Nevertheless, given that our client would be deprived of an opportunity to test

<sup>1</sup> See, for example, question 11.

their respective evidence should an inquiry be convened in due course, we again invite the Council to attach limited weight to the representations made.

- (e) Mr Webb claims to use the Path less than once a week and Mrs Dunbar's use of the Path is even more infrequent. We submit that this is again insufficient to establish use as a matter of fact.

*'By the Public'*

3.2 As to whether there has been actual use of the Path 'by the public,' we note that the Applicant has only submitted valid material on behalf of ten individuals (including herself) in support of the Application. In addition, it is apparent from the Unredacted UEFs that these individuals often (when paired together) comprise one household (i.e. Mr and Mrs Dunbar, Mr and Mrs Cohen, Mr and Mrs Kasriel and Mr and Mrs Primost make up eight out of the ten signatories).

3.3 Therefore, the material submitted falls well short of establishing use 'by the public'<sup>2</sup>. Any use that can be inferred from the UEFs is use of the Path by friends and neighbours. Even if the veracity of what is contained in the Unredacted UEPs is ultimately accepted, the use proved by these statements is insufficient to satisfy the statutory test.

*'As of Right'*

3.4 Further or alternatively, if the public is to acquire a right, it must be brought home to the landowner that a right is being asserted against it. In *R (Lewis) v Redcar and Cleveland Borough Council*<sup>3</sup> Dyson LJ (for the Supreme Court) cites the following passage from Lindley LJ in *Hollins v Verney*<sup>4</sup>:

*'...no actual user can be sufficient to satisfy the statute, unless during the whole of the statutory term... the user is enough at any rate to carry to the mind of a reasonable person...the fact that a continuous right of enjoyment is being asserted, and ought to be resisted if such a right is not recognised, and if resistance is intended...'*

3.5 In this case, the purported use of the Path by a handful of households is so trivial (particularly, in the case of Mrs Dunbar) so as not to give rise to the outward appearance to a reasonable landowner of user as of right (as per Lord Hoffman in *R v Oxfordshire CC Ex p. Sunningwell Parish Council*<sup>5</sup>). Any failure by our client to take action to prevent the claim to use cannot be ascribed to be knowledgeable acquiescence on its part.

*'Without Interruption for a full period of 20 years'*

3.6 As above, the evidence of purported use is insufficient to establish that the Path was in actual use by the public as of right for the totality of the Relevant Period. On this basis, the presumption of dedication in relation to the Path pursuant to section 31(1) of the 1980 Act does not arise.

3.7 For completeness, we refer to the Short Forms submitted by the Applicant. As above, these submissions have not been validated by the Council and are of questionable

<sup>2</sup> *Poole v Huskinson* (1843) 152 ER 1039

<sup>3</sup> 2010 UKSC 11

<sup>4</sup> 1884 13 QBD 304, 315

<sup>5</sup> [2000] 1 AC 335, 357

credibility in any event. Nevertheless, we note that the Applicant's Letters refer to these Short Forms as evidence on behalf of those who are employed by/visit St Margaret's Home at 84 West Heath Road, whilst acknowledging that none of the Short Forms purport to evidence use for whole of the Relevant Period. On the Applicant's own admission, therefore, the evidence contained within the Short Forms does not evidence public rights were established over the Path when such rights were brought into question by our client (i.e. on the date of the closure of the Path). The Short Forms therefore add nothing to the Applicant's case and should be disregarded by the Council.

The Applicant has failed to evidence use of the Path by the public as a right during the Relevant Period. Accordingly, the requirements of section 53(3)(b) of the Act are not satisfied. We should be grateful for your confirmation of the same.

Notwithstanding this, should the Council see fit to alter the definitive map, our client requests that the matter be considered at a local public inquiry.

Yours faithfully



Clyde & Co LLP

The St. Botolph Building  
138 Houndsditch  
London  
EC3A 7AR  
United Kingdom

Telephone: +44 (0) 20 7876 5000  
Facsimile: +44 (0) 20 7876 5111  
DX 160030 Lime Street 5  
<http://www.clydeco.com>

**BY POST AND EMAIL**

Jane Shipman  
London Borough of Barnet  
Development and Regulatory Services  
North London Business Park  
Oakleigh Road South  
London  
N11 1NP

[jane.shipman@barnet.gov.uk](mailto:jane.shipman@barnet.gov.uk)

Our Ref  
IDG/LVN/1213007

Your Ref

Date  
10 January 2014

Dear Sirs

**Application for a Modification Order under section 53(2) of the Wildlife and Countryside Act 1981 dated 6 July 2012 ("the Application")  
Judith Prais of 83 West Heath Road, London NW3 7TN ("the Applicant")  
Adding, as a Public Right of Way, the footpath which runs from West Heath Road, NW3 to Finchley Road, NW11 ("the Path")**

We write further to your letter dated 9 December 2013, enclosing a draft evidence report in relation to the Application ("the Report").

This letter is to be read together with our letter dated 1 November 2013 ("the Letter").

- 1.1 We note that the Council has purported (at section 7 of the Report) to summarise the contents of the Letter. In particular, the Report records that: (i) 179/181A West Heath Road has the benefit of a right of way over the Path pursuant to a transfer dated 22 July 1948; (ii) no other parties have the benefit of an express or implied right of way over the Path; and (iii) the Path was fenced on 30 March 2012.
- 1.2 In addition, the Report states the following:

*'the solicitors also make observations regarding the perceived weaknesses of the user evidence that had been provided to them at that stage.'*

Whilst the Report appends the Letter, we are concerned that it significantly underplays our client's fundamental concerns as to the cogency of the evidence relied upon by the Applicant in support of the Application. In particular, we reiterate the following key points set out at length within the Letter, which need to be more fully addressed within the Report:

- (a) only limited weight should be attached to the user evidence forms ("UEF") on the basis that such forms were pre-completed prior to distribution;

1213007 37407838.2.

- (b) none of the signatories adequately speak to different occasions of user;
- (c) the evidence of Mr Webb and Mrs Dunbar as to the frequency of their use of the Path was insufficient to establish use as a matter of fact;
- (d) the purported use of the Path by less than six households: (i) falls short of establishing use of the Path 'by the public' (as required by section 31(1) of the Highways Act 1980 ("the 1980 Act")); and (ii) is so trivial so as not to give rise to the outward appearance to a reasonable landowner of user as of right. As such, any failure by our client to take action to prevent the claimed use cannot reasonably be ascribed to be knowledgeable acquiescence on its part; and
- (e) as such, there is insufficient evidence to establish actual use of the Path by the public as of right for the relevant period (being 30 March 1992 – 30 March 2012, when the Path was fenced ("the Relevant Period")).

1.3 In light of the above, the presumption of dedication in relation to the Path pursuant to section 31(1) of the 1980 Act does not arise.

*Original Evidence*

1.4 As at the date of the Letter, our client had only been provided with full unredacted copies of: (i) the Applicant's UEF; and (ii) nine UEFs completed by third parties (being Mr and Mrs Primost, Mrs and Mrs Dunbar, Mr and Mrs Cohen, Mr and Mrs Kasriel and Mr Webb) ("the Original Evidence"). Our Letter was, therefore, confined to commenting on such.

*Additional Evidence*

1.5 However, the Report advises that the Application consisted of: (i) twelve UEFs from members of the public (including the Applicant); and (ii) a further fifty short forms 'most apparently from staff or visitors to St Margaret's Care Home in West Heath Road.' As to (i), the forms completed by Christina Webb and Sheila Philip were not provided to us as part of the Original Evidence. As to (ii), we refer to paragraph 1.8(c) below.

1.6 The Report informs that the following further evidence submitted in support of the Application has also been validated by the Council:

- (a) eight UEFs completed by purported users of the Path who have previously completed a short form;
- (b) three short forms completed by individuals who have confirmed their evidence can be used should an inquiry be convened; and
- (c) a further three UEFs.

Eighteen UEFs were stated to be unverified.

1.7 Further to our request, the evidence referred to at paragraphs 1.5 and 1.6 above, together with thirteen out of the eighteen previously unverified UEFs ("the Additional Evidence") were provided to us pursuant to the Council's emails of 20 and 23 December 2013.

1.8 The points made in the Letter (particularly points (b), (c) and (e) repeated in summary form above) apply equally to the Additional Evidence. In addition, we note the following:

- (a) The evidence of Ms Philip and Mrs Webb should be afforded little weight on the basis that such forms were completed prior to distribution (see also paragraph 1.2(a) above);
- (b) There are obvious discrepancies in the evidence provided by those individuals who have submitted a UEF in addition to previously completing a short form. By way of example:
  - (i) Mr Holt records that he used the Path '2 x 3 x each week' on his UEF, yet his short form states his usage to be significantly more at five days a week;
  - (ii) Ms Flower records her usage of the Path to be '*intermittently*' on her short form, which rises to two times a week on her UEF;
  - (iii) Ms Holt states that she used the Path in 1970 (per her UEF) (i.e. outside of the Relevant Period for the purposes of the Application) but claimed her usage to span from '*1979 – until it was blocked off*' on her short form;
  - (iv) Mr Woolf claimed to use the Path '*from about 1938 onwards*' in his UEF on an '*innumerable*' number of occasions. Yet his short form records his purported use from 1994 to present as four to five times a week;

Such obvious inaccuracies in the Additional Evidence cast serious doubt upon its credibility and, with respect, cannot reasonably or fairly establish the use of the Path as of right for the Relevant Period;

- (c) The Applicant's letters of 18 July 2012 and 9 September 2012 conceded that none of the short forms submitted by members of the public who have purportedly used the Path to visit residents of, or travel to work at, St Margaret's Home at 84 West Heath Road purport to evidence use of the Path for the whole of the Relevant Period. On the Applicant's own admission, therefore, the evidence contained within the short forms of Ms Morgan, Ms Tarifanyika, Ms Villastiqui, Mr Tighe, Mr Mulvihill, Ms Hidalgo and Ms Alzano do not evidence that public rights were established over the Path when such rights were brought into question by our client (i.e. on the date of closure of the Path);
- (d) The evidence of Ms Flower, Mr Dixie, Ms Kidel, Mr Mossetti and Mr Berelowitz as to the frequency of their use of the Path is insufficient to establish use of the Path as a matter of fact;
- (e) The individuals who purportedly claim use of the Path often (when paired together) comprise one household (i.e. Mr and Mrs Webb, Mr and Mrs Holt, Zea Katzeff and Brian Berelowitz, DHJ Cohen and BR Cohen and Mr and Mrs Ross). This is not evidence of use of the Path 'by the public' and does not satisfy the statutory test;
- (f) In reply to question 7<sup>1</sup> of the UEF, DHJ Cohen and BR Cohen state:

*'Only when we requested lighting at night and council informed us it was not public.'*

Inexplicably, the Cohens' evidence is not referred to in the Report. This is a stark omission. On their own admission, the Cohens had actual knowledge that their purported enjoyment of the Path was not 'as of right' during the Relevant

<sup>1</sup> Were you ever told by any owner or tenant of the land crossed by the way, or by anyone in their employment, that the way was not public? If so, state when and give particulars and dates.

Period. This is plainly relevant to the determination of the Application and ought to have been recorded in the Report; and

- (g) Ms Philip has stated that she is unsure as to whether she would be willing to attend a hearing, public inquiry or Court to give evidence in support of the Application. It is also unclear whether Ms Holt and Ms Flower are prepared to participate further in the determination of the Application. Should Ms Philip, Ms Holt and Ms Flower decline to attend any public inquiry, our client would be denied an opportunity to test this evidence; as such we invite the Council to attach very limited weight to their representations.
- 1.9 Finally, it is alleged by Mr and Mrs Holt (and summarised in the Report) that a 'public footpath' sign was erected on or near the Path, which was removed when the Path was closed. No photographic evidence of the alleged sign has been produced. We are instructed that no such sign was removed from the Path when it was fenced in March 2012.
- 1.10 Our client has confirmed that a 'No Thoroughfare' sign was erected at each end of the Path when it was fenced in March 2012.
- 1.11 In summary, the Additional Evidence adds nothing to the Applicant's case. This being so, there is insufficient evidence to establish actual use of the Path by the public as of right for the Relevant Period. Consequently, the presumption of dedication in relation to the Path pursuant to section 31(1) of the 1980 does not arise and our client again invites the Council so to conclude.

#### *Further Evidence*

- 1.12 On 8 January 2014, the Council provided two additional UEFs submitted by Mr Barnett and Ms Reid, respectively. Whilst Mr Barnett's evidence was included in outline in table 2 of the Report, there is no reference in the Report to Ms Reid submitting any evidence in support of the Application. In any event, these UEFs, when taken together with the Original Evidence and Additional Evidence are insufficient to satisfy the statutory test and do not materially add to the Applicant's case.
- 1.13 The Council has confirmed that it is still to verify four outstanding items referred to in table 2 of the Report. This evidence must not be taken into consideration by the Council unless our client has been provided with a full copy of it and afforded a reasonable opportunity to make submissions in respect of it. We fully reserve our client's position in this regard.

We look forward to hearing from you with a further draft of the Report, which incorporates the above comments, together with a fuller summary of those contained within our Letter.

Yours faithfully

  
Clyde & Co LLP