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This is a consolidated version of a call-in letter originally sent on 12 November, and modified by email on 19 December 2013, after the Council recommended approval of the applications, and after the High Court granted a permission order for Judicial Review (JR) of the previous, identical application.

Tuesday 12 November 2013

Dear NPCU

Town and Country Planning Act 1990, s. 77(1)
Town and Country Planning (General Development Procedure) Order 1995, art. 14

Request to call in (or direct to refuse) London Borough of Hackney applications
[2013/3186](#) (Full) & [2013/3187](#) (CA Consent) - Land at Wilmer Place and 198–201 Stoke
Newington High Street London N16

I write on behalf of the [Stokey Local](#) campaign group based in London, N16 to ask the Secretary of State for Communities and Local Government, in respect of the above schemes, to either:

1. Direct the LPA to refuse the schemes (GDPO art. 14); or
2. Call in the schemes by directing the LPA to refer the matters to him (TCPA s. 77(1)).

The schemes are due for consideration by the LPA's Planning Sub-Committee on 11 December 2013.

Background to Stokey Local

I am the technical (legal and planning) coordinator of Stokey Local, an umbrella campaign group seeking to resist a mixed use, 5-storey residential scheme atop a 33,000 sq ft Sainsbury's store, at Wilmer Place, N16, hard by Abney Park Cemetery.

Although not a planning professional by trade, I am Chair of the Clapton Conservation Areas Advisory Committee (CAAC), a member of the Stoke Newington CAAC, Trustee of [The Hackney Society](#) and a member of its Planning Group.

Stokey Local formally represents those three groups above, along with a number of others including: [Abney Park Trust](#), [Abney Park Users' Group](#), [Hackney Biodiversity Partnership](#), [Sustainable Hackney](#), [London Parks & Gardens Trust](#), Joint Committee of the [Garden History Society](#) & the [Association of Gardens Trusts](#), [Hackney Planning Watch](#), [Hackney Unites](#), [Growing Communities](#), and [Cazenove Area Action Group](#).

On this matter Stokey Local has neo-statutory objector status in the LPA's eyes as representing the wider community. Stokey Local is represented in the Officer's Reports and at Planning Sub-committee.

I was granted Rule 6(6) status in respect of a (now withdrawn) appeal on an earlier iteration of the scheme (APP/U5360/A/13/2200885).

I am presently the claimant in a High Court matter seeking Judicial Review of the LPA's granting of permission (8 Aug 2013) to the identical predecessor to this scheme ([2013/1583](#) & [2013/1584](#)). That case was issued on 18 September 2013 (CO/13423/2013) and at the time of writing has not yet been granted permission to proceed. Our [claim bundle](#) and its [policy reference](#) are available, or more concisely the [Statement of Facts & Grounds](#) and my [Witness Statement](#).

Background to the Scheme Under Consideration

The scheme under consideration (the "**third application**"), and on which we ask the Secretary of State to make a direction, comprises:

Full Planning Permission: [2013/3186](#)
Conservation Area Consent: [2013/3187](#)
and relatedly EIA Screening Opinion: [2013/3204](#)

The scheme is identical to a previous (granted) application (the "**second application**") which is the subject of claim in the High Court for judicial review:

Full Planning Permission: [2013/1583](#) [Granted 08-08-2013]
Conservation Area Consent: [2013/1584](#) [Granted 08-08-2013]

These application are themselves a modest amendment to an earlier (refused) application (the "**first application**")

Full Planning Permission: [2012/2228](#) [Refused 16-04-2013]
Conservation Area Consent: [2012/2229](#) [Refused 16-04-2013]
EIA Screening Opinion: [2012/2627](#) [No ES required 06-03-2013]
EIA Screening Opinion: [2011/1247](#) [No ES required 31-05-2011]

The first application was, until recently, the subject of an appeal by the applicant:

Appeal: [APP/U5360/A/13/2200885](#) [Withdrawn 01-10-2013]

Grounds for Call-In

The scope for call-in under section 77 of the Town and Country Planning Act 1990 is broad. We are mindful of the "Caborn principles" and subsequent criteria issued in Parliament, and we address them below. However we stress that the Secretary of State must not fetter his discretion by having exclusive regard to them.

We seek consideration of this application before an Inspector appointed by the Secretary of State, at a public inquiry, for the reasons below:

Conflict with national policy:

- In its recommendation to grant the application under your consideration, the LPA sought to rectify a defect in the identical second application where it relied almost solely on the NPPF. In his recent JR permission, Collins J remarked of the defect

"137 [of the NPPF] does require positive enhancement or preservation. It is far from clear that this was fully considered."

We maintain the application under your consideration paid only lip service to para 137 of the NPPF and to local policy which expresses the same enhancement or preservation. It failed to properly consider the relative weight of the NPPF with respect to the Local Plan, Conservation Area Appraisal, emerging Site Allocations LP, and other hyper-local policy. Unpicking this conflict with national policy is a matter of national significance.

- In the context of the NPPF "substantial harm" in is poorly understood and the subject of some conflict. In taking a position on what constitutes "(less than) substantial harm", the LPA did not justify it because the term is not clearly defined. Nor did the LPA appreciate or correctly interpret concerns made by English Heritage which informed its position.

Development of more than local significance:

- The development affects the setting and and ecology of Abney Park Cemetery which is a site of **more than local importance**. Abney Park Cemetery is a Registered Park, Local Nature Reserve, Statutory Grade II Listed Garden, top-tier Metropolitan Site of Importance for Nature Conservation (SINC), and is a part of the Capital Ring and one of London's "Magnificent Seven" Cemeteries.
- The development comes right up to the boundary of Abney Park and fills an undeveloped 'buffer zone' explicitly defined in local policy to protect the Park.

Significant architectural and urban design issues:

- This is a highly significant development and the first of its kind in two, sensitive respects, which require the highest standard of assessment, and rigour in it's approach. This is (understandably) beyond the usual expertise of the LPA.

It is the first development of this scale in vicinity of Hackney's most important ecological asset - Abney Park.

It is the largest insertion of a retail development into a Conservation Areas, ever, in the borough.

- The LPA has repeatedly demonstrated little understanding of the ecological and wider environmental sensitivity and has avoided deeming this an EIA development despite the Planning Sub-committee having refused an earlier iteration of the scheme on two environmental grounds.
- Collins J agrees there may be merit in our claim that this should be an EIA development in light of the the LPA's Planning Sub-Committee's prior refusal:

"The previous refusal was based on substantial harm and so indicated that it should then have been regarded as EIA development. ... it seems to me that Ground 1 [that this is an EIA development] is for the reasons fully set out in the claim form arguable."

Significant long-term impact on economic growth and meeting housing need:

- The LPA failed to put either the developer's financial viability assessment or assessments it commissioned into the public domain, erroneously relying on exemptions in ss. 41 & 43 of the Freedom of Information Act 2000, instead of correctly treating the request as being made under the Environmental Information Regulations 2004.
- This is a common and erroneous defence across LPAs that has been previously successfully challenged by others in the Courts. In any case the developer already owns the land and the price paid is registered; and the use is not novel.
- Whilst maintaining the exemptions, the LPA released a redacted summary from the applicant's Financial Viability Assessment with the applicant's consent in the last few days (30 October 2013). The appraisal's redacted figures would appear to be 'open book', though without seeing them it is hard to tell.
- As a result of the non disclosure the LPA has, as is common practice, relied on tenuous, unchallenged, financial modelling and old, received wisdom to permit a development that achieves only **17% (9/54 units) affordable homes with just 4% (2 units) for social rent** against and LP policy (CS20) target of 50% affordable units of which 60% should be social rent.

- Collins J acknowledges the reasons for the "very low" level of 17% affordable housing "are less than informative" and the identical application you are asked to consider has not rectified this. The applicant has provided only a redacted commentary to the viability statement. Collins J notes that "the councillors making the decision should have seen the report". Nor was this rectified - they did not see the report.
- Between the first, refused application in April and the second applications the housing mix was changed to add two family sized units. In the revised affordability statement, the applicant states:

"2.20. We have assumed that the 3 bed and 4 bed units [i.e. the family sized units] would be let at Target Rent levels."

This introduction of two units at social rent has passed the officers by (and by all accounts, us) on both the subsequent applications. As lay objectors, we did not recognize the terminology, and maintained there were zero units for social rent. At no point in either of the subsequent applications was this challenged. A Chartered Surveyor we instructed, subsequently pointed out our error. The failure of the LPA to mention any units at social rent in either of the last two identical applications is clearly indicative of our view that officers and Sub-committee members do not understand the viability issue, and fail to properly engage and examine it.

- Notwithstanding the above point, service charges are likely to be quite high in this development, so the difference between social and affordable rent on these larger units is likely to be quite small, and their contribution to social housing targets is minimal.
- By way of a defence to this point made in the JR, the applicant contends that we could, as objectors, obtain our own viability assessment, at our own expense, which gives credence to the notion that the valuations are not confidential and an open book assessment is possible. That is plainly not a reasonable argument.
- Additionally the level of current employment on the site ('high quality' B1) as well as the actual rents of current residential and commercial tenants has not been assessed. **We have conducted a voluntary survey of current and recently vacated residents of the development site and assessed site plans. There are currently 30+ residential units and 40+ commercial units with rents that are consistently around 65% of market rents amongst those who have responded.** We contend that there will be a net reduction in 'affordable' homes as well as only a marginal employment gain (and then to lower quality A1 jobs), and a total removal of affordable, small scale enterprise workspaces.
- By permitting this development, the LPA will set, quite literally in cement, the sub-policy level of affordable housing and obliterate all B1 employment space on this site for the lifetime of the scheme. This affects the long term provision of affordable homes, social rents and economic growth opportunities on the site, and in practice, in the wider area, for the lifetime of the build — 25, 40 maybe 60 years or more.

- The evidence to support this has been seen only by the applicant, officers with limited expertise, and external surveyors working to a limited brief. Neither members of the public nor Sub-committee Members are able to examine or challenge these. The application departs significantly from the local development plan, and requires thorough public examination.


Substantial national controversy:

- By proceeding to determine this application, the LPA brings the planning system into disrepute.
- LPA has agreed to determining an application it has already determined despite s. 70B of TCPA 1990 permitting it to decline to do so. The allure of a £39,000 planning fee, and the promise by the applicant they would conditionally withdraw an ongoing appeal, suggests the LPA is motivated by cost of defending JR and appeal, not of correcting its substantive mistakes.
- LPA's Sub-committee said its reasons for granting the identical second application were based on the threat of an appeal on the first application, rather than the planning grounds of the second application. Indeed members expressed a view that they did not "want" to approve it. It demonstrated a lack of understanding of its duty and its authority which needs resolving.
- In progressing an identical scheme the LPA implicitly gives credence to our JR claims yet proceeds in carrying out a purely technical exercise of determining an application that is bound to come to the same conclusion. Indeed if it were not to do so it would be somewhat perverse. The Planning Sub-committee cannot reasonably be expected to have an open mind on the matter.
- The application is overwhelmingly unpopular and objection is easily demonstrated - indeed it is not contested. Only the developer and 14 letter-writers are in favour where there have been over 1000 letters and 4000 petition signatures in opposition. The failure of the LPA to pay regard to such significant objection is oft-repeated and in itself is nationally controversial.
- At the time of writing, we have gathered 5100 signatures, nationally, to the issues raised [via a petition](#) to call in this application.
- Within the last few days (6 Nov), Diane Abbott MP and Jeremy Corbyn MP have signed an [Early Day Motion](#) which "notes public opposition to a planning proposal for housing and retail in Wilmer Place, N16; further notes national opposition to clone high streets, where the same chains destroy the individuality of communities and threaten small businesses; ... and calls on the Government to bring forward proposals for reform of planning law to enable councils to fully reflect the will of local people."

More concisely, the arguments might be distilled into two summary points:

1. The highly unusual process of determining an application identical to one already granted raises issues of propriety in planning and administrative process, which brings the planning system into disrepute;
2. A highly contentious scheme that is opposed by the community, departs significantly from local policy, and is granted only under claims of overriding national policy, undermines the localism agenda and the purpose of local decision making.

It might seem perverse to address the second point by calling-in an application - but in fact, far from ceding authority to central government, exposing the scheme to a public inquiry which would take place in the borough, by a Chartered Town Planner, all parties will have an opportunity to resolve the relative strengths of local and national policy, and the LPA will be able to establish its authority to make decisions that are sensitive to the local area and local people.

A handwritten signature in black ink, appearing to read 'Nick Perry', with a long horizontal flourish extending to the right.

Nick Perry
for Stokey Local