Planning (Listed Buildings and Conservation Areas) Act 1990

and

Town and Country Planning Act 1990

Appeals by Ms S Hicks

Site at Garages adjacent to 3A Earl’s Court Square, London SW5 9BY

Hearing Statement by the Royal Borough of Kensington and Chelsea

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1. SITE AND SURROUNDING AREA

1.1. The site is currently occupied by a single storey building consisting of three garage units. To the east of the site is 1 Earl’s Court square which is a three storey building with lower ground floor and has been divided into flats. To the north of the site is the rear garden of 288 Earl’s Court Road. The building at 288 Earl’s Court Road is also a three storey building with lower ground floor and is divided into flats. Northgate House, a five storey block of flats dating from the 1960s, lies to the west of the site.

1.2. The site lies within the Earl’s Court Square Conservation Area. A map showing the extent of this conservation area is attached as Appendix 1. The conservation area was extended to include the site in 1998. There is a Norway Maple street tree to the front of the site and a Sycamore tree covered by a TPO to the rear of the site in the garden of 288 Earl’s Court Square. A copy of this TPO is attached as Appendix 2.

2. RELEVANT PLANNING HISTORY

2.1. A pre-application enquiry in relation to the site was submitted in 2012 (PRE/PP/12/00140). A copy of the pre-application advice is attached as Appendix 3. The pre-application advice raised the following key points:

- Mitigation must be provided for the loss of the existing garages
- The proposed new unit would need to be permit free
- Only a modest increase in height would be acceptable and any new building should be single storey
- A contemporary design may be acceptable but should reflect the surrounding context
- Concerns on impact to light and sense of enclosure at Northgate House and 1 Earl’s Court Square.
- Must demonstrate that trees will not be adversely affected.

2.2. Planning permission was refused in 2012 for the construction of a new single dwelling with three bedrooms, part above and part below ground level (PP/12/02850). The application was refused because of the following reasons:

- Height, design, position, materials would fail to preserve or enhance character or appearance of conservation area
Increased sense of enclosure to neighbours

Windows in rear elevation and roof terrace would result in loss of privacy and disturbance to neighbours

Harm to protected trees of amenity value and conflict between proposal and trees

Absence of legal agreement to prevent increased parking pressure and to create three replacement on-street car parking spaces

Inadequate Construction Method Statement

Absence of legal agreement to secure planning obligations

Insufficient information in relation to impact on light at neighbouring properties.

2.3. Conservation area consent was refused in 2012 for the demolition of the existing garages as there was not a suitable replacement proposal in place (CC/12/02581).

3. THE PROPOSAL

3.1. The appeal proposal seeks conservation area consent for the demolition of the existing brick built single storey garages and planning permission for the construction of a new dwelling with three bedrooms, part above and part below ground level.

3.2. The proposed house would have two full storeys with roof lantern. The building would be constructed from precast reconstituted stone panels which would have a pattern in relief. The proposal would include a single level of basement which would provide two bedrooms and ancillary facilities. There would be a lightwell and balcony to the rear of the building.

3.3. The application was statutorily advertised by notice on site and in the local press. In addition letters of notification were sent to 54 neighbouring properties. 27 letters of objection, 3 letters of support and 1 set of comments were received in relation to the applications. Copies of these letters were previously forwarded to the Planning Inspectorate.

3.4. The proposal was determined in accordance with the ‘saved’ Unitary Development Plan policies adopted 25 May 2002 and the Core Strategy polices adopted December 2010. The proposals were refused under delegated powers. The delegated reports were prepared and the proposals
refused on 25th March 2013. Copies of the reports are included at Appendix 4. The reasons for refusal of the planning permission are set out below:

1. The proposed house, because of its height, design, position and materials, would result in an alien feature within the streetscene and would fail to preserve or enhance the character or appearance of the conservation area. Thus the proposal fails to comply with the Council's policies, in particular Core Strategy Policies CL1, CL2 and CL3 and 'saved' UDP Policy CD63.

2. The proposed house, because of its height and position, would result in an increased sense of enclosure to the occupiers of neighbouring properties. Thus the proposal would fail to comply with the Council's policies, in particular Core Strategy Policy CL5.

3. The proposed house, because of the windows in the rear elevation, would result in a loss of privacy to occupiers of neighbouring properties. Thus the proposal fails to comply with the Council's policies, in particular Core Strategy Policy CL5.

4. The proposal would result in harm to trees of amenity value and would result in conflict between the proposed house and trees. Thus the proposal would be contrary to Core Strategy Policy CR6 and the Trees and Development Supplementary Planning Document.

5. In the absence of a legal agreement to secure the provision of three on-street car parking spaces, the proposal fails to demonstrate that it would not result in additional pressure to on-street car parking and thus fails to comply with Core Strategy Policy CT1 and the Transport Supplementary Planning Document.

6. In the absence of a legal agreement to secure contributions towards education services, healthcare services, community facilities and related fees, the proposal fails to offset its impact on local infrastructure. Thus the proposal fails to comply with Core Strategy Policy C1 and the Planning Obligations Supplementary Planning Document.

7. In the absence of a suitable undertaking to ensure that the residents of the proposed additional residential accommodation, other than those residents with disabilities who are purple badge holders, have no entitlement to parking on site or secure a parking permit, the scheme may result in increased
parking pressure in the locality, contrary to Policy CT1 of the Core Strategy and the Transport Supplementary Planning Document.

3.5. The conservation area consent reason for refusal is as follows:

In the absence of a suitable redevelopment scheme for the site, the demolition of the existing garages does not comply with Core Strategy Policy CL3.

4. LEGISLATIVE AND PLANNING POLICY BACKGROUND

4.1. The Core Strategy of the Local Development Framework for the Royal Borough was adopted on 8 December 2010 and contains planning policies which have succeeded the majority of those in the Unitary Development Plan (UDP). For the purposes of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the ‘Development Plan’ now comprises the Core Strategy, the London Plan (July 2011), plus relevant ‘saved’ policies from the UDP. These documents therefore, represent the starting point for the consideration of planning applications and appeals for planning applications and contain the relevant policies against which conservation area consent applications and associated appeals are assessed. The status of the development plan is confirmed by Section 38 (6) of the Planning and Compulsory Purchase Act, 2004 which states:

“If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”

4.2. The National Planning Policy Framework (NPPF) is also a material consideration in the determination of applications and appeals.

4.3. The Earl’s Court Square Conservation Area Proposals Statement is a material consideration in the determination of these appeals. Additional Supplementary Planning Documents, namely ‘Subterranean Development’ (adopted in May 2009), ‘Trees and Development’ (adopted in April 2009), ‘Planning Obligations’ (adopted August 2010), and ‘Transport’ (adopted December 2008) were also material considerations in the determination of the applications and carry significant weight. Copies of the relevant sections of
these documents for the appeals have been forwarded to the Inspector with the Council's questionnaire.

4.4. Attention is drawn to Section 72 of the Planning (Listed Buildings and Conservation Areas) Act which requires in relation to conservation areas that special attention be paid to the desirability of preserving or enhancing the character or appearance of Conservation Areas.

The London Plan

4.5. The current version of the London Plan was adopted in July 2011. Policy 3.5 of this document is relevant to the proposed development. The Supplementary Planning Guidance to the London Plan on ‘Housing’, adopted November 2012, is also relevant to the proposal.

CENTRAL GOVERNMENT POLICY

4.6. The National Planning Policy Framework

4.7. The NPPF is relevant to the appeal as it sets out national planning policy. The most relevant parts to the issues involved with these current appeals are set out below.

4.8. The document as a whole sets out what is considered to be sustainable development. Paragraph 14 sets out how the presumption in favour of sustainable development should be applied to decision taking.

4.9. Paragraph 17 sets out the Core Planning principles of the document, including that all developments must ensure a good standard of amenity for all existing and future occupants of land and buildings.

4.10. Paragraph 49 sets out how applications for new housing should be looked at.

4.11. Paragraphs 56 - 65 set out the importance of good design and how it should be dealt with in applications.

4.12. Paragraphs 126-141 set out the approach to dealing with applications relating to heritage assets.

4.13. Paragraphs 186-206 set out how Council’s should approach decision taking in light of the guidance set out in the NPPF.


4.14. This document is relevant as it provides guidance on making decisions in relation to heritage assets. In particular it offers guidance on the assessment of significance.

4.16. This document remains valid despite PPS5 having being replaced by the NPPF.

4.17. Paragraph 10-19 set out the approach in relation to significance of heritage assets. Paragraphs 54-60 provide guidance in relation to the assessment of significance. Paragraphs 80 and 81 of this document contain guidance on how to ensure that new development does not have an adverse impact on surrounding heritage assets.


5. **THE COUNCIL’S CASE AND ITS ASSESSMENT AGAINST DEVELOPMENT PLAN POLICIES**

5.1. The issues in relation to the planning application appeal are:

- The design of the proposed building and whether it preserves or enhances the character or appearance of the conservation area
- The impact of the proposal on the sense of enclosure and privacy to neighbouring occupiers
- The impact of the proposal on trees of amenity value
- The impact on parking provision
- The impact on local infrastructure

5.2. The issue in relation to the conservation area consent appeal is the acceptability of the demolition of the existing building in the absence of an approved scheme for redevelopment.

5.3. The proposals were considered contrary to a number of the Core Strategy policies. The relevant policies are:

- CL1 (Context and Character)
- CL2 (New buildings)
- CL3 (Heritage Assets – Conservation Areas and Historic Spaces)
- CL5 (Amenity)
- CR6 (Trees and Landscape)
CT1 (Improving alternatives to car use)

C1 (Infrastructure Delivery and Planning Obligations)

5.4. Policies CL1 and CL2 seek opportunities to improve the quality and character of buildings, contribute positively to context, and require modifications to repeat the character and integrity of the original building. CL3 requires developments within conservation areas to take the opportunity to enhance the character or appearance of a conservation area. CL3 also resists demolition unless there is a scheme for redevelopment to have been approved. CL5 requires developments to ensure reasonable visual privacy to neighbours and that there is no harmful increased in the sense of enclosure to neighbours. CR6 resists the loss of trees and developments which would result in damage to or the loss of trees of amenity value. CT1 requires new developments to demonstrate that there would not be any material increase in traffic congestion or on-street parking pressure and that all new additional residential development is permit-free. C1 requires that there is adequate infrastructure to serve developments and will use planning obligations to achieve this.

5.5. The proposals were also considered contrary to ‘saved’ policies within the Unitary Development Plan:

- CD63 (Conservation Area Views)

5.6. This policy takes into account the impact of new development on views within conservation areas. These are views from both the private and public realm.

5.7. The proposals were also considered contrary to guidance within the following supplementary planning documents:

- Transport
- Planning Obligations
- Trees and Development

5.8. The Council’s case shall address each of the reasons for refusal in turn, concluding with the conservation area consent reason for refusal.

First reason for refusal

5.9. This reason is concerned with the design of the new proposal and its impact on the character and appearance of the conservation area. The external
appearance and scale of the proposed house is not considered acceptable. The proposal would fail to preserve or enhance the character or appearance of the conservation area.

5.10. The heritage significance of the appeal site lies in its location within the context of the Earl’s Court Conservation Area, a designated heritage asset. The Earl’s Court Conservation Area was designated in 1978. The Conservation Area was extended in April 1998 to include the appeal site.

5.11. The Earl’s Court Conservation Area is defined by late Victorian architecture. The square itself was laid out in the 1870’s, except for the south side which was completed in the 1890’s. The three earlier parts of the square comprise grand terraced properties, in the Italianate style, with stuccoed frontages and classical features such as balustraded balconies and pillared porticos. This part of the square was constructed so that whilst there was a strong sense of architectural unity, each property had some individual feature of its own. The latter section of the square contrasts with this architectural style and is of red brick construction built in the Flemish style. The properties in this part of the square have particularly decorative features and are Grade II listed.

5.12. The majority of the front elevations of the properties within Earl’s Court Square have remained relatively unaltered externally since the late Victorian period. The only 20th century addition is Northgate House, which immediately abuts the appeal site.

5.13. Whilst there is certainly a sense of architectural variety within the Square and the surrounding area, the Victorian character is prevalent and many examples of the more lavish late Victorian detailing can be found within the area. Indeed the Earl’s Court Square Conservation Area Statement writes on page 7 “much of the attractiveness of the Square is due to the details of the architecture.”

5.14. Due to the heritage significance of the Conservation Area as a planned late Victorian development, it is important that any new development looks at the wider streetscape and attempts to harmonise with the existing architecture. This does not mean that a complete pastiche is the solution, but more that any new development should seek to blend in with the wider area and not attempt to compete with the prevailing architecture. The use of high quality materials, well-detailed and finished should harmonise with the traditional building stock and any modern elements should be introduced sensitively.
5.15. The existing garage block is set back from the road and is modest in size and scale. The proposed new building is to be positioned directly on the pavement boundary. This will immediately make the building appear much more prominent than the existing garage block, regardless of the proposed size and scale. However, as the new property is proposed to be two stories in height, with a rooftop glazed box, this will exacerbate the feeling of visual dominance within the street. A two-storey property directly fronting the pavement will lead to an unacceptable sense of enclosure in an area that would have historically been a townscape gap and because of the modest scale and positioning of the existing garages does still read as such.

5.16. The pre-application advice from 2012 stated that bringing the building forward to the pavement line could be acceptable if the building were single storey and not significantly higher than the existing garage block. The Council does not consider that this pre-application advice encouraged a building such as the proposal nor undermines their objection on the basis of the positioning of the current proposal. The Council’s pre-application advice sought to find potential solutions for the development of the site but each application must then be determined on its own merits.

5.17. The property immediately adjoining this site on the west side (Northgate House), a post WWII development, although itself out of keeping with the special architectural character of this part of the conservation area, is set well back from the street and largely obscured by the 19th century terrace which it abuts. In contrast, the proposed new building would introduce a jarring presence along the streetscene and would be visually dominant in views along the street and from surrounding streets. In particular views from the west from Earl’s Court Square and from the south on Earl’s Court Road would be harmed by the proposal.

5.18. Notwithstanding the issues of size, scale and positioning there is also concern about the starkly contemporary architectural style of the proposed building. Whilst any replacement of the garage does not need to be a complete pastiche, the design should complement the surrounding buildings with regards to vertical and horizontal proportions, detailing and materials. The proposed design appears more of a statement building, out of keeping with the predominantly residential character of Earls Court Square architecture.
The almost blank front elevation with no window openings would be anomalous in this location.

5.19. The proposed design does not sit comfortably with the neighbouring Northgate House or the original planned 19th development. Whilst there is some variety in architectural styles within the surrounding area, the character of the immediate area and within the Earls Court Conservation Area as a whole is defined by the late 19th century terraced housing that dominates the streetscene. As stated, the neighbouring Northgate House is not in keeping with this established character and this building should not be used as the reason to allow another alien architectural style in this largely Victorian townscape.

5.20. In terms of materials, the use of reconstituted stone is not considered appropriate. Brick should be the principal material in this location as a small scale development within the conservation area. The projecting glazed box on the roof is unacceptable here in principle. It adds additional height to the building as well as introducing a significant glazed element into the streetscene.

5.21. The current proposals do not respect the heritage significance of the Earl's Court Conservation Area through the addition of a bold, statement property at odds with the established late Victorian character. The proposals would have a negative impact on the character and appearance of the Conservation Area and would represent less than substantial harm.

5.22. The NPPF states in paragraph 134 that “where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.”

5.23. In this instance, there are no public benefits to the proposal. Whilst the current garage block does not enhance the character and appearance of the Conservation Area, their modest size and scale allow the area to be read as a townscape gap, as stated, the proposals would eradicate this gap. It has not been demonstrated that the existing buildings could not be put to some sort of viable use.

5.24. The proposal is unacceptable due to its height, forward building line, materials and design. It would fail to preserve or enhance the character or appearance
of the conservation area. It would not contribute to the townscape nor its surrounding context. The proposal would harm views within the conservation area. The proposal does not comply with Core Strategy Policies CL1, CL2 and CL3 nor UDP Policy CD63.

5.25. The proposal would fail to comply with Core Strategy Policies CL1 and CL2 as it does not contribute positively to the context of the townscape because of its scale, height, building line, design and materials and therefore would not be of the highest urban design quality. These issues mean that the proposal would not preserve nor take the opportunity to enhance the character or appearance of the conservation area, contrary to Core Strategy Policy CL3. The proposed incongruous building would be visible from long range public and private views within Earl’s Court Square and from Earl’s Court Road. As such, it would harm views within the Earl’s Court Square Conservation Area, contrary to ‘saved’ UDP Policy CD63.

Second Reason for Refusal

5.26. This reason for refusal is concerned with the increased sense of enclosure caused to neighbours.

5.27. The significant increase in scale between the existing and proposed would create a sense of enclosure to neighbouring properties at 1 Earl’s Court Square, Northgate House and 288 Earl’s Court Road. Although there is a setback of approximately 0.8m from 1 Earl’s Court Square and a chamfered south western corner, the proposal would create a two storey building where a single storey currently exists. The building would be very close to these neighbouring properties and would be significantly higher than the existing building at the site. To the eastern elevation, the increase to the top of the main wall would be 3.2m when viewed from the east and 3.1m when viewed from the west. This is would create a significant difference in the perception of the built form on the site compared with the existing situation.

5.28. The inclusion of planting to the eastern elevation does not mitigate against this sense of enclosure as the additional height would still be perceived, particularly from the garden and windows of the lower ground floor flat at 1 Earl’s Court Square. Additionally, the permanent retention of the planting would be difficult to secure via planning conditions. Similarly the chamfered
southern-western corner does not offset the significant increase in scale, especially where the proposed building will be closest to Northgate House. The sense of openness across the site which is currently enjoyed by these surrounding properties would be lost. The increased sense of enclosure would also be uncharacteristic for this part of the surrounding area.

5.29. The increased sense of enclosure is contrary to Core Strategy Policy CL5 which requires new development to achieve high standards of amenity and that there is no harmful increase in sense of enclosure to existing buildings and spaces. The increased sense of enclosure would harm the living conditions of neighbours. This would be particularly acute at the lower ground floor flat in 1 Earl’s Court Square as well as the ground and first floor flats in Northgate House. It would also impact the enjoyment of the rear garden at 288 Earl’s Court Square. The proposal would be contrary to guidance set out in NPPF paragraph 17.

**Third reason for refusal**

5.30. This reason for refusal is concerned with the impact on the privacy of neighbours.

5.31. The application proposal would have introduced a large area of clear glazing close to the boundary with 288 Earl’s Court Gardens. The windows would be set back by a maximum of 1.5m and would be above the height of the trellis between the sites. The proposed full height rear windows at first floor level would result in a loss of privacy to the garden at 288 Earl’s Court Road, and to a lesser degree other gardens along Earl’s Court Road. The introduction of clear windows at this level would create new views over private rear gardens that are not currently possible. There are high level windows serving Northgate House but these serve a communal staircase and so have a different relationship with the neighbouring gardens than the current proposal. There are also windows in the rear elevations of properties along Earl’s Court Road that have varying views of the rear gardens of their own and neighbouring properties. However, the proposed building would be closer to this part of the garden at 288 Earl’s Court road. New clear glazed windows in the rear elevation would reduce the privacy of users of rear gardens to neighbouring properties on Earl’s Court Road.
5.32. The appellant has proposed a revised rear elevation with their appeal submission. The proposed rear elevation would replace the previously proposed glazing with obscured glazing fixed to a height of 1.8m above floor level. Whilst the Council does not consider that this alteration would prejudice any parties, as set out below the alteration does not fully overcome the Council’s objections and would raise new issues which were not addressed in the original application.

5.33. Whilst obscuring and fixing the glazing would restrict direct views of neighbours, the introduction of such an extent of glazing serving a main habitable room in close proximity to the boundary would still limit the ability of neighbours to enjoy their properties. Users of neighbouring gardens would have a perception of being overlooked from the new building and it would result in an uncharacteristic relationship between the two sites. This would result in occupiers of neighbouring property being compromised in their ability to use and enjoy their homes at the same level as they do currently. It would have an adverse impact on the living conditions of neighbours and the proposal would remain contrary to Core Strategy Policy CL5.

5.34. The Council is also concerned that this amendment raises a new issue in relation to the quality of accommodation being provided and that this was not an issue addressed by the original application submission. An ADF assessment for the proposed house was carried out as part of the application submission. However, the rear windows are the only ones serving the main living room to the proposed house. As stated in the delegated report on the case, the Council considers that it would not be appropriate to obscure them fully as this could have an adverse impact on the living conditions to the new unit. As there are no windows on the other elevations, the obscuring of the glazing to the rear elevation would also remove views out of the property for future occupiers. This would result in the accommodation at this level feeling very enclosed for future occupiers. This could be contrary to Core Strategy Policy CL5 and guidance within the Mayor of London’s Housing Supplementary Planning Guidance. No supporting information has been provided to demonstrate that sufficient quality of accommodation would be maintained for future occupiers of the unit. It would not be appropriate for the appellant to introduce this new evidence at this stage.
5.35. For these reasons, the Council maintains its objection as set out in the third reason for refusal and is concerned at the introduction of the amended plan at this point in the appeal process.

Fourth reason for refusal

5.36. This reason for refusal is concerned with the impact of the proposal on trees of amenity value. The applicant submitted an Arboricultural report from Brain Crane Associates dated January 2013 with the application. However, this document was not considered to demonstrate that the proposal would not result in harm to trees of amenity value, including a sycamore tree covered by a Tree Preservation Order.

5.37. Two significant trees are likely to be impacted by the development
   - T3 – Norway Maple – a street tree owned and managed by RBKC
   - T8 – A TPO’d Sycamore tree in the rear garden of 288 Earl’s Court Road

5.38. *BS 5837 2012: Trees in relation to design, demolition and construction – Recommendations* (a copy is attached as *Appendix 5*) provides guidelines for Root Protection Areas (RPAs) for trees and these are in broad terms based on circles 12 times the trunk diameter. The new structure clearly encroaches into the RPA’s of the two trees identified above and this is shown on the Tree Protection Plan submitted with the application. The RPAs have been plotted as circles but this may not be an accurate reflection of the rooting pattern of the trees. In the case of the street tree there may be more roots under the concrete raft of the garage’s foundations than there would be under the carriageway where the conditions are likely to be less favourable. Similarly the foundations of Northgate House may well have deflected the roots more into the garden of 288 and possibly under the garages. In constructing the new house all the tree roots under the garages would have to be severed and this is likely to harm the trees and will also lead to a loss of exploitable rooting area.

5.39. The sycamore tree is a highly visible and attractive tree with a crown which almost completely covers the garage roof and is approximately 1m above it at its lowest point. Given the increase in height of the proposed building, the tree
would have to be extensively pruned to accommodate it. This pruning would diminish its public visibility, the principal reason for serving TPOs. The trunk would be totally obscured by the new house.

5.40. Section 5.3 of BS 5837 2012: Trees in relation to design, demolition and construction – Recommendations deals with the issue of proximity of structures to trees and describes how inappropriate siting of buildings can lead to conflict and pressure to prune excessively or even fell and that this type of conflict should be avoided at the planning stage. Any building located directly under the canopy of a mature sycamore tree would suffer from loss of natural light. The Norway maple would also block sunlight from the south west. Sycamore trees also drop honeydew as well as leaves and debris such as small branches and seeds which would be a considerable nuisance to occupiers, especially in a house with a flat roof. In windy conditions the movement of the tree can often cause concern to occupiers and this seems highly likely with this degree of proximity. It would be almost inevitable that there would be serious conflict were this house to be built and this is likely to lead to calls for either disfiguring pruning works or even complete removal. For these reasons, the proposal fails to comply with Core Strategy Policy CR6.

Fifth and Seventh Reasons for refusal

5.41. These reasons for refusal are concerned with the loss of the existing parking without adequate mitigation and the absence of an agreement ensuring that the proposed residential unit is permit free.

5.42. The proposal would result in the loss of the existing three garages on the site. The applicant has stated that they are not currently in use as garages. However, it is considered that they could be used as such. Core Strategy Policy CT1 requires developments to demonstrate that they would not result in any increased pressure to on-street parking. On-street parking within the borough is very high with over 90% occupancy. The impacts of this high parking are set out in the Council’s Transport SPD and include drivers being tempted to park in dangerous alternative locations or being forced to park some distance from their homes. The whole borough is covered by one Controlled Parking Zone and so parking demand created by a new
development will not necessarily be focused in the area surrounding the development. It is for these reasons that the Council's planning policies resist developments which would result in increased pressure to on-street parking.

5.43. The loss of the three garages would potentially displace parking onto the surrounding roads. The applicant has proposed a measure to mitigate against this by creating three on-street parking spaces and re-instating the dropped kerb in front of the site. There is no objection to this proposal as a way to offset the loss of the garages. However, as the works would be off-site and would need to be undertaken by the Council, the provision of the new parking spaces would need to linked by a legal agreement to any planning permission. To date no legal agreement has been finalised to ensure the provision of the on-street parking. Therefore, the proposal has not mitigated the loss of the garages and would result in increased pressure to on-street parking. As it stands the proposal fails to comply with Core Strategy Policy CT1 and the guidance set out in the Transport Supplementary Planning Document.

5.44. In addition, Core Strategy Policy CT1 and the Transport SPD require that all new residential units are subject to a legal agreement preventing future occupiers from obtaining residents' parking permits. The applicant proposes that the new residential unit would be subject to a legal agreement to prevent future occupiers from applying for resident parking permits. However, as above, to date there is no legal agreement finalised to secure the permit free element. Therefore the proposal would result in additional pressure to on-street car parking and would be contrary to Core Strategy Policy CT1.

**Sixth Reason for Refusal**

5.45. This reason for refusal is concerned with the impact of the proposals on local infrastructure.

5.46. The proposal would create a new residential unit and would need to contribute towards local infrastructure to offset the impact of the development. Core Strategy Policy C1 sets out that planning obligations will be used to ensure that there is adequate infrastructure to support new developments. New residential development places additional pressure on the local physical and social infrastructure used by residents. The Council's Planning Obligations
SPD sets out the thresholds and formulas for determining the amount of planning obligations required for a development.

5.47. A Planning Obligation Statement was submitted with the application which agreed to the following contributions:

- Education Contributions £1689.60
- Health Contributions £800.00
- Community Facilities Revenue Contributions £80.00
- Monitoring Fee £500.00
- And legal fees associated with the completion of the document.

5.48. However at the date of decision no legal agreement was in place to secure these obligations. Therefore the proposal did not ensure sufficient adequate infrastructure to support the new development and fails to comply with Core Strategy Policy C1 and Planning Obligations SPD.

Conservation Area Consent Reason for Refusal

5.49. The proposed demolition in the absence of an approved scheme for the redevelopment of the site is contrary to Core Strategy Policy CL3. This policy requires redevelopment proposals to be agreed in order for consent to demolish to be approved. This is in order to prevent demolition taking place and resulting in undeveloped gaps within the conservation area. The creation of an underdeveloped gap at this site with no active use would fail to preserve both the character and appearance of the conservation area. For this reason, the Council considers that the appeal for conservation area consent should not be allowed in the absence of an acceptable scheme for redevelopment.

6. COMMENTS ON THE APPELLANT’S GROUNDS OF APPEAL

6.1. The appellant has indicated that they intend to submit a legal agreement as part of the appeal process. To date the Council has not received any agreement and as such all the Council’s fifth, sixth and seventh reasons for refusal still stand. However, the Council will provide further comments should any legal agreement be provided by the appellant during the course of the appeal.
6.2. The Council does not consider that the Appellant's Grounds of Appeal raise any further substantive issues to be addressed at this stage. Further comments will be made following receipt of the appellant's full hearing statement.

7. **CONCLUSION**

7.1. The proposed house would fail to preserve the character or appearance of the conservation area and would harm the streetscene in this area. The proposal would harm the living conditions of neighbours, by creating an increased sense of enclosure and loss of privacy. The proposed house would result in harm to protected trees of townscape importance and would result in ongoing conflict between the development and trees. The proposal fails to comply with Core Strategy Policies CL1, CL2, CL3, CL5, CR6 and UDP Policy CD63. In the absence of relevant legal agreements it has also not been shown that the proposal would comply with Core Strategy Policies C1 and CT1. The demolition of the existing building in the absence of an acceptable scheme for redevelopment would result in the creation of a gap site which would fail to preserve the character or appearance of the conservation area, contrary to Core Strategy Policy CL3.

7.2. Taking all the above considerations into account, the Council considers the appeal proposals to be contrary to Section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires planning decisions to accord with the development plan unless material considerations indicate otherwise. The proposed development is also contrary to Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and policy contained within the NPPF. The Council does not consider that there are any material considerations or other mitigating circumstances in this case which would indicate that Planning Permission or Conservation Area Consent should be granted contrary to policies in the development plan and other relevant local and national policy documents.

7.3. The Council respectfully requests that the appeals are dismissed.
List of Appendices

Appendix 1 Earl’s Court Square Conservation Area Map

Appendix 2 TPO 32 – Sycamore 288 Earl’s Court Road

Appendix 3 Pre-application response

Appendix 4 Delegated Report on cases PP/13/00488 and CC/13/00489

Appendix 5 BS 5837 2012 Trees in relation to design, demolition and construction – Recommendations

Appendix 6 Site photos

Appendix 7 Suggested conditions
Appendix 7

CONDITIONS THE COUNCIL WOULD WISH TO SEE IMPOSED ON THE PLANNING APPLICATION IF THE APPEAL WERE ALLOWED

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
   
   Reason - As required by Section 91 of the Town and Country Planning Act 1990, to avoid the accumulation of unexercised Planning Permissions.

   
   Reason - The details are considered to be material to the acceptability of the proposals, and for safeguarding the amenity of the area.

3. Full particulars of the following shall be submitted to and approved in writing by the Local Planning Authority before the development hereby permitted commences and the development shall not be carried out otherwise than in accordance with the details so approved and shall be so maintained:
   
   (a) Samples of the materials to be used in the external faces, fenestration and doors of the proposed building
   
   (b) The location and design of cycle parking for the proposed unit
   
   Reason - The particulars reserved are considered to be material to the acceptability of the development, and the Local Planning Authority wishes to ensure that the details of the development are satisfactory.

4. The lower and upper roofs of the building hereby permitted shall not be used at any time as a terrace without a further planning permission.
   
   Reason – To protect the privacy and amenity of neighbouring properties.
5. The windows to the rear elevation hereby permitted shall be constructed using only obscured glazing, fixed shut to a height of 1.8m above finished floor level, and shall be so maintained.

Reason – To safeguard the amenity of neighbouring property, and in particular to prevent overlooking.

6. The development hereby permitted shall not be implemented until a Construction Traffic Management Plan has been submitted to and approved in writing by the Local Planning Authority. The statement should include:

(a) routeing of demolition, excavation and construction vehicles;
(b) access arrangements to the site;
(c) the estimated number of vehicles per day/week;
(d) details of any vehicle holding area;
(e) details of the vehicle call up procedure;
(f) estimates for the number and type of parking suspensions that will be required;
(g) details of any diversion, disruption or other abnormal use of the public highway during demolition, excavation and construction works;
(h) a strategy for coordinating the connection of services on site with any programmed work to utilities upon adjacent land;
(i) work programme and/or timescale for each phase of the demolition, excavation and construction works;
(j) and where works cannot be contained wholly within the site a plan should be submitted showing the site layout on the highway including extent of hoarding, pedestrian routes, parking bay suspensions and remaining road width for vehicle movements.

The development shall not be carried out except in accordance with the approved Construction Traffic Management Plan.

Reason - In the interest of highway safety and to safeguard the amenity of the area and to comply with the Subterranean Development SPD and policy CT1 and CL5.

7. The development hereby permitted shall not commence until a Chartered Civil Engineer (MICE) or Chartered Structural Engineer (MI
Struct.E) has been appointed to supervise the construction works throughout their duration and their appointment confirmed in writing to the Local Planning Authority. In the event that the appointed engineer ceases to perform that role for whatever reason before the construction works are completed those works will cease until a replacement chartered engineer of the afore-described qualification has been appointed to supervise their completion and their appointment confirmed in writing to the Local Planning Authority. At no time shall any construction work take place unless an engineer is at that time currently appointed and their appointment has been notified to this Authority in accordance with this Condition.

Reason - The details are considered to be material to the acceptability of the proposal, and for safeguarding the amenity of neighbouring residential properties and to comply with the Subterranean Development SPD and policy CL2.

8. No development shall be carried out until such time as the lead contractor, or the site, is signed to the Considerate Constructors Scheme (CCS) and its published Code of Considerate Practice, and the details of (i) the membership, (ii) contact details, (iii) working hours as stipulated under the Control of Pollution Act 1974, and (iv) Certificate of Compliance, are clearly displayed on the site so that they can be easily read by passing members of the public, and shall thereafter be maintained on display throughout the duration of the works hereby approved.

Reason - To mitigate the impact of construction work upon the levels of amenity that neighbouring occupiers should reasonably expect to enjoy, and to comply with the Subterranean Development SPD and policy CL5.
CONDITIONS THE COUNCIL WOULD WISH TO SEE IMPOSED ON THE CONSERVATION AREA CONSENT APPLICATION IF THE APPEAL WERE ALLOWED

1. The works hereby permitted shall be begun before the expiration of three years from the date of this Consent.
   Reason – As required by Section 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to avoid the accumulation of Consents.

2. The demolition hereby permitted shall not commence until a contract for the development of the site, in accordance with planning permission if required, has been let.
   Reason - In order to safeguard the character and appearance of the conservation area.