

6 Grange Road
Highgate
London N6 4AP

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By email

18 February, 2025

Dear Mark,

HGY/2024/1676 – 6A Grange Road, N6 4AP – Above Ground Issues

We hope you are well and that you have had a good start to the New Year.

We write following the appearance of further documents on the case file over the last few weeks, which we have now considered.

We have read, agree with and fully endorse the comments made by Mr and Mrs Purves in their letters of 15 December 2024 and 12 February 2025.

We hope to persuade you in this letter that the application remains flawed from top to bottom with nothing having been done to remedy any of its defects, bring it into compliance with policy requirements or respond positively to neighbours' concerns, despite there having been ample opportunity to do so.

We again request that it be rejected without further delay.

A. Documentation added to file since August 2024

Whilst no explanation has been given for the small changes to the plans, we assume they result from the revision of the BIA and perhaps observations from yourselves. Similarly we assume the other documents and reports constitute responses to some of the issues raised in the first round of comments last summer. However, what is

obvious is that no concession of any kind to the substance of the many objections to this application has been made.

Quite the contrary. As ever with this site, the applicant instead just doubles down on the reasoning previously advanced for these proposals, or seeks to add further “justification” in support of the unsupportable.

One example is the response to our continuing concern about the loss of natural light receivable by our home at No 6. Rather than make contact and offer some compromise – as would be appropriate given the weakness of the case presented in the BRE report and the strength of the arguments against it – another light consultant is appointed to conduct a review. It states that because the “technical analysis was based on a site visit whereby rooms were surveyed internally” the results of the technical assessments in the BRE report “*are likely to be sufficiently accurate*”, which doesn’t sound like a ringing endorsement. OSM’s conclusion, however, as you will have seen, is that if the VSC test failures are ignored, and a blind eye is turned to the near miss on the daylight distribution test, you “may consider the proposed scheme’s effect on No 6 Grange Road to be acceptable”. In other words, although the development fails the standard tests, clearly resulting in a measurable loss of amenity, you are invited to pretend otherwise.

Double down and plough on.

We return to this issue in Section [5] below.

B. Issues that remain unanswered/uncontested

It would seem that the application remains essentially unchanged above ground.

The numerous comments made on this proposal in the initial round of comments last summer were of two kinds:

(i) Compliance with Planning Policy

such as relating to overdevelopment, size, height and massing, effect on amenity of neighbouring dwellings, loss of soft landscaping, damage to trees and biodiversity, inappropriateness to the site and failing to contribute to the character and appearance of this part of the conservation area

(ii) Comments on legal, technical and factual matters

as to which the absence now of any specific response from the applicant should be taken to suggest that they are not disputed.

In view of the absence of changes to the above-ground design, please accept this as confirmation that the comments of type (i) that we made in our 9 August 2024 letter still stand. Sadly, on re-reading it, everything we said there (even in relation to the BIA, whose revision has solved very little and made several things worse) still remains at issue.

As you will see from some of our new observations in this letter (and as pointed out in the comments made by others), some of the matters on which we would expect to place reliance (plans, the BIA, expert reports) have proved not to be as reliable as we would have expected. Given the potential legal effect of incorrect information on a subsequent planning approval (which we return to below), that there are and remain errors, inaccuracies and omissions is, to say the least, unfortunate, not to say a waste of time for everyone involved.

C. Legal Issues concerning the validity of the 2018 Consent

In connection with comments of type (ii) above, in our letter of 9 August 2024 we made clear our reasons for not regarding the 2018 permission to be a material consideration for use as a baseline for, or for any other purpose in connection with, this application.

It follows that this application (having been based very substantially on a false premise as to the validity of the 2018 consent) is fatally flawed and must be rejected. Given the seriousness of this binary outcome, we believe that if the planning authority were to take a different view, we should be given the opportunity to seek the determination of the legal issue, whether in court or by other means, *before* a decision is made on the application.

To that end, if the applicant has provided a legal opinion on the legal validity point to the council, or if the council has received legal advice – whether internal or from external lawyers – we request that a copy be provided to us (and other objectors) so that it can be reviewed and, if necessary, a further opinion obtained. In our view, having raised the validity of the 2018 consent in our comments last summer, it would not be appropriate or reasonable for the council to proceed on the basis of legal advice that it had not shared with objectors, with adequate time to respond to it.

Further, we have now become aware that there are additional reasons why the 2018 consent may be invalid in law, as we explain later in this letter.

D. Time for this application to be rejected outright

1. The Council's Pre-App advice re this site

Perhaps we can start by citing from Pre-App advice given by the council to the applicant (as appearing on the case file for this application) in relation to the size of the proposed house.

In PRE/2021/0286

- There is extensive history for the site, but the [2010] appeal and previous discussions do not appear to have informed the pre-app proposal sufficiently. The recent approval (HGY/2016/3135) [the 2018 "Consented Scheme"] was a negotiated scale with a subordinate lightweight roof, whilst the reversion to a proposed three storey building is considered to be a regression*

This related to an iteration of the 2022 application which we did not see, but makes clear the basis on which the 2018 Consent was granted. The cherry-picking of elements of that design in the present application, whilst going against the broader prescription above is clearly, therefore, all the more inappropriate.

In PRE/2023/0029 (6 July 2023)

- *While accepting it is within your right to explore achieving a larger house than that previously consented, the different design iterations to date unfortunately show there are difficulties/constraints to achieving this*

And yet here we are again. The current application, which followed receipt of that advice, goes on to ignore it. Despite the applicant suggesting that the above-ground floors of this design are within the 2018 envelope and therefore that it is smaller, that is demonstrably false.

2. Heritage Impact Assessment

It is not stated anywhere, but the Heritage Impact Assessment (**HIA**) may be a disguised attempt to justify this proposal in a way that does not overtly rely on the 2018 consent (unlike the drawings where comparisons with the 2018 consent still appear throughout). We give some examples below of how instead it uses features of other houses in the road to attempt to achieve a similar end.

Section 5.4 however does refer to the 2018 consent and the 2012 consent as together establishing “*a building envelope that the Council consider acceptable for the site*” (which the Pre-app advice referred to above directly contradicts, although that is not of course mentioned in the HIA). For reasons we set out in this letter, we too disagree that the 2012 and 2018 consents establish a “building envelope ... for the site”, or indeed that they are capable of establishing anything at all.

At this point we simply point out that two different planning consents for the same site – for wildly differing designs underlain by different family circumstances and even granted under different local planning policy regimes – do not and cannot establish a “building envelope” (whatever that is) for the site. The suggestion that they do so is merely to justify the cherry-picking of different features and attributes (particularly dimensions) – not just from these two consents but also from various other houses in the road – to achieve the largest possible house, which is, after all, the client’s brief.

Far from establishing “building envelopes” the recurring theme in the planning history of the site and more widely throughout the road is compromise – the very opposite of having one’s cake and eating it.

Like the D&A in the applicant’s previous 6A application (HGY/2022/1888), a considerable part of sections 2 and 4 of the HIA chips away at accepted descriptions of Grange Road, or underplays, denies or devalues various of its features. Examples include:

- i) [being] “relatively closely spaced” the houses in the road allow “only glimpse views through to the landscaping in rear gardens” (Section 2.6), and
- ii) the use of the term “semi-rural” (in the Highgate CAAC Appraisal) “is somewhat misleading, given the road’s continuous built frontages and the immediately surrounding context of fully developed, suburban streets” (Section 2.9).

Muddying the waters in this way by substituting “landscaping in rear gardens” for “large trees in ... rear gardens” helps sow the seeds of the idea that the houses are in fact “relatively closely spaced” whilst avoiding enquiry as to what “relatively” means here. Deeming the frontages to be “continuously built” escapes the scrutiny it merits by the reader’s attention being drawn away to the “immediately surrounding context of fully developed, suburban streets”.

This is a deliberate undermining of the Highgate CAAC Appraisal assessment of Grange Road that “Most of the houses are ... set sufficiently far apart from each other that there are good views between them of the large trees in many of the rear gardens” although this is quoted in full in Section 2.9. where paragraphs 10.4.48 to 10.4.51 of the Highgate CAAC Appraisal (describing Grange Road) are set out (with one or two sentences omitted).

The essential characteristic that there is an openness around the houses in Grange Road is repeatedly attacked, undermined and denied from different angles throughout the HIA, some more subtle than others - this despite the numerous Officers’ Reports on proposed developments in the road referring to the same concept. The only substantive reference (in section 5.6) to the 2010 appeal decision relating to the site (which was based substantially on the importance of preserving the sense of openness around the proposed house) focuses instead on the secondary ground concerning the rear of the design. This misinterpretation of the appeal decision has frequently occurred so **we deal with it in more detail below**.

The reasons for this are clear – to attempt to justify the development now proposed that would substantially close the gap that previously existed between No 6 and No 6A. Like many of the gaps between houses in the road, this gap was above the flat roofs of the single storey side extensions of the two houses. In this particular case, the gap of some 4 to 5m (depending on which drawings one is looking at) not only gave views from the road to two mature oak trees and a poplar near the rear boundaries of the two houses, but also meant that the two windows lighting the second bedroom of No 6 received sufficient light.

The related idea that the houses in this part of Grange Road form a “continuous group of buildings” and are practically terraced is also promoted throughout the HIA, even though it has no basis in fact. The Grange (12-16 Grange Road) and No 10 Grange Road (an attached erstwhile stables) are a single entity which being divided vertically into separate houses didn’t suddenly convert into a terrace. No 8 (Grange Cottage) was also part of the original estate, built as accommodation for married servants. As 6A no longer exists, the moniker “continuous group of buildings” is not an appropriate

way of describing The Grange and Grange Cottage. And when 6A did exist it was only attached to No 8 at ground floor level.

Further along, whilst aerial views might make it seem that, for example, Nos 4, 6 and 6A were attached, a closer look would show that the estate agents who sold 4 and 6 at least are safe from being sued for misdescribing the houses as detached. What is more, the houses sit centrally in their plots with only single storey side extensions or garages up to their boundaries.

As with Nos 8 and 6A, there are/were various actual indicators of separation between Nos 4, 6 and the pre-existing 6A, not least style, scale and materials.

Single storey side extensions (or side elements in the case of newly built houses) or garages (attached or in some cases not) are a feature of Nos 1, 3, 7, 9, 4, 6 and 24 Grange Road, so not at all just a feature of its northwest corner.

The references to other houses in the road in section 5.6 (and following) of the HIA involve a great deal of cherry-picking of features from various of those houses. Whilst there is no dispute as to the variety of their styles and sizes, it is clear from looking at the developments that have taken place in the last 25 years that each one has involved significant compromises – something uniquely lacking from the 6A story.

Several of the Officers' Reports make express reference to such compromises, including:

- two where the planning authority had required the plot size to be increased (Nos 5 and 9 Grange Road),
- several where the space around the house had to be maintained (as with No 3's boundary with No 5, No 24 (being confined to the footprint of the previous dwelling) and No 9 (main body of the house moved away from No 7 to the opposite boundary rather than remain in the footprint of the prior bungalow),
- dimensions being reduced, for example at No 7 and at No 24 where a 6.6 sqm corner was required to be cut from the basement to protect the RPA of an ash tree 8m away in a neighbouring garden.

Section 5.6 refers to half a dozen houses in the road (including the Grange, Fairacre, 1, 5 and 9) in support of 3 storeys, and section 5.7 (seeking to justify the 3-storey gable) references the following:

No 9 – the planning history of the development shows this to be 2 storeys above original ground level; the “first floor” is at what was ground level of the pre-existing bungalow, and the ground floor is semi-submerged due to the steeply rising ground level in that location

No 24 – is also 2 storeys; the roof ridge is only 7.45m above ground floor level – so ensuring the house is much less intrusive in the streetscape than the bulging proposed No 6A

No 5 – gable apex is 10.35m but the front building line is set back much further than the proposed 6A (11.4m compared to some 7.7m) so the angle subtended from the road is much greater for 6A, making it appear higher.

In the case of No 5 the planning officer firmly dismissed complaints about the development being 3 storeys on the basis that it was plainly two, but with rooms in the roof. So we would say that all these examples can be distinguished from 6A and are not relevant.

In fact, the real issue here is that, having earlier in the HIA devalued the western side of Grange Road north of the Grange as of a more enclosed and tightly grained character, it is surely inappropriate to refer to houses elsewhere in the road in relation to matters of scale. Another case of having one's cake and eating it.

Further, referencing The Grange for characteristics such as number of storeys, gables and gable height goes against policies which discourage emulating or competing with heritage assets.

Similarly, referencing No 1 and No 7 (Fleur de Lys), and even No 18-22 (Fairacre) is inappropriate since all three date from an earlier time in the development of the road, closer in time to the Grange than to 6A.

We consider that the approach of relating various features of the proposal to differing existing buildings in the road is inappropriate in any event, and reveals the true intent which is the attempt to justify the greatest height and number of storeys, the widest and deepest house possible, the biggest gable, the least soft landscaping, the least off street parking and largest and least believable roof imaginable, all with the simple aim of maximising the size of the resulting house.

Section 5.9 states that the footprint has been pulled in from the site boundary with No 6, maintaining a demonstrable gap between the houses. This shows that a key point has again been missed. What the planning inspector in 2010 and previous officers' reports have made clear is that the gap with the pre-existing house be maintained – see section 4 (as concerns the 2012 consent) and section 8 (on the correct interpretation of the 2010 appeal decision) below.

In view of issues like the above, we consider the proposal fails in numerous ways to comply with most relevant planning and heritage policies. Sections 5.19 – 5.29 contain many assertions that policy requirements are met, but that doesn't make it so. Sections 5.19, 5.20, 5.22, 5.26 and 5.28 are particularly unconvincing and we disagree fundamentally with section 5.29.

The Management Plan and Design Guide attached to the Highgate CAAC Appraisal deserves more attention than it is given in section 5.26. In particular:

12.3.4 – The generous plots in which many houses are sited ... particularly around the Bishops sub-area is considered to be one of the attractive characteristics of the

conservation area. All aspects of this spacious layout will be protected in these areas. Where replacement houses are considered, these should not be bulky and visually intrusive in their scale and appearance

12.3.7 (in relation to extensions and alterations but still we would say highly relevant)
– In the case of an extension more than one storey high, a minimum gap of 1.5m should be maintained (from first floor level upwards) from the side boundary.

Our view is that the proposals completely fail to comply with these specific and highly relevant provisions.

Because of issues like these, and due to the contradictions and other matters we have referred to, we do not accept that the HIA has succeeded in what it set out to achieve. Nor do we accept the numerous efforts to present the proposal as a modest and positive contributor to the road which is compliant with policy, when it is quite the opposite. However, in the rest of this letter we will concentrate on other matters.

3. The 2012 and 2018 planning consents referred to in the HIA

Section 5.4 of the HIA refers to:

- 1) the Officer's Report for Consideration at Planning Committee for HGY/2011/2236 (referred to as the 2012 consent in the HIA), and
- 2) the Officer's Report for Consideration under Delegated Powers in relation to the 2018 Scheme (HGY/2016/3135),

to justify a contemporary design approach and the "building envelope".

Para 7.4 of (1) states:

"The proposal is effectively to rebuild with a traditional two-storey pitched roof design to the front elevation and a more modern contemporary rear elevation
The proposed dwelling respects the established building lines along this part of the road and has been designed to align with these and will be the same width as the existing dwelling, whilst preserving the existing gaps between the site and the adjacent properties."

Amongst other things, drawing 206 rev1 specified in the report (front elevation and parts of the houses on either side) shows:

- the "line of the existing house preserved" (that is, the north flank (facing No 6) above ground floor level, is followed)
- the gap between that proposed side wall and the south wall of No 6 at first floor level is 5.05m (measured) – which suggests that this was the gap between the pre-existing house and No 6
- at ground floor level on that north side there is a flat roofed element whose roof is barely higher than the roof of the No 6 side extension that it adjoins

There is a basement but no BIA.

The problems include:

- a) if that gap could not have been replicated in reality, the existing gap would not have been preserved as the report said it would
- b) that paragraph of the report also says that the new proposal respects and has been designed to align with the established building lines
- c) the basement extended under almost the entire site including the front garden and wasn't supported by any site investigation
- d) the effects of the development on daylight and sunlight and amenity generally were not even mentioned in the officer's report.

If (a) applied, that would be a *Choiceplace* - type problem and the approval would in current circumstances be invalid. However, in this case it seems that this is the correct drawing despite showing a greater gap than most others, because it is accompanied by a letter on the file from the building contractor dated 19 April 2012 insisting that the scheme "fully preserves the gap between 6A and 6".

As to (b), the plans show the front elevation of No 8 as being 900mm too far forward by including the tiled canopy that runs along the front of No 8 as though it were the front building line, rather than the front wall 900mm behind it. The entire front elevation of the proposed 6A house would therefore have been 900mm in front of the actual building line, and:

- the design included a 3 storey front gable with a bay which would have been even further forward
- a 13m front-to-back depth "envelope" was apparently created
- being to the south-east of No 6, light to No 6's front windows would have been affected.

As to (c), the proposed basement would have had dire consequences for the poor sycamore tree. Although this predated the requirement for a BIA, it is perhaps surprising that the basement's conflict with the tree wasn't noticed at this stage.

The *Choiceplace* consequence also applies to (b), but there is also ample legal authority (including from the Court of Appeal in *Mansell v Tonbridge and Malling Borough Council*) that material errors in an officer's report can also lead to the subsequent planning permission being overturned by a court. Because the principle in these cases requires a test of materiality and, where it is a report to committee, whether the committee has been misled, it may be less straightforward in its application than *Choiceplace*, but we feel that on the above facts a court would have

had little difficulty finding the committee's decision to grant permission in this case invalid.

On looking again at the 2018 plans and documents, some new points have come to light.

- the 2018 planning permission, being valid for 3 years, had expired before the applicant acquired the site. The wording used was:

"The development ... must be begun not later than ... 3 years from the date of this permission, *failing which the permission shall be of no effect.*"

- Condition 9 of the permission stated:

"Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 ... no alterations or extensions shall be built and no new window or door openings inserted into any elevation of the building other than that development expressly authorised by this planning permission."

Reason: *To safeguard the visual amenities of the area and to prevent overdevelopment of the site* by controlling proposed extensions and alterations consistent with Policy 7.4 of the London Plan 2016 and Policy DM1 of The Development Management DPD 2017

We think these points contradict the applicant's position in the HIA and show quite clearly that the council considered that the 2018 consent had gone as far as it was willing to go.

4. Appearance and height

On seeing the drawings and the small number of images again, we were struck by how the house seems to bulge out towards the street. With those long vertical windows and intersecting perpendicular gables it takes on the semblance of a church, with the double gable to the north flank being visible from the road according to section 5.5 of the HIA, although we wonder if that is a good idea.

With the front gable reflecting that of No 8 and being the same height, and the long perpendicular pitched roof parallel to the road reflecting that of No 8 in reverse, the effect is of a Frankenstein semi - which might appeal to some but is out of keeping in too many ways to list.

The hideously complex roof whose multiple facets follow you around the neighbourhood like Mona Lisa's eyes, appears even more terrifyingly enormous than previously, and further from the elegance and intricate detailing of an arts and crafts house than we thought it possible to imagine. It demands an answer to the question, "Why am I here?" And the bells in the church towers toll back, "Because of the enormous second floor you're trying to pretend isn't there!"

From the rear, whilst the impression of the rear of a Victorian terrace HMO still lingers, the overriding effect is of stacks of huge windows dwarfing the fenestration of the houses on either side, particularly the delicate panes of Grange Cottage.

The rendering of the flank wall (Aerial View 01 in the 12 June 2024 Design Statement) shows how the massive and high side wall with its double pitched roofline and tiny step-back resembles nothing more than a development of terraced houses built sideways on in the plot and running never-endingly into the distance.

It seems the height of the front-back ridge line is the same as that of No 8, which is a red flag, particularly as that of No 8 is a great deal shorter.

The Heritage, Design & Access statement to the original 2016 application (which, following negotiation, became the 2018 consented scheme), places considerable weight on the height proportionality of the proposal relative to the houses on either side. One of several statements to that effect is

“In visual terms the proposed design bridges the ridge heights of the roof volumes between its two immediate neighbours in a balanced and proportionate manner – a mediating form within the domestic streetscape. The scale and massing of the application proposal is not in competition with its closest neighbours, but looks to assume a calm urban presence within the eclectic townscape.”

Surely that can't be the same building envelope that is referred to in the HIA?

5. Daylight/Sunlight – effect on amenity

Whilst we are at something of a disadvantage in this technical area, exacerbated by the all-important BRE Guide not being publicly available without making a disproportionate payment, we believe the following points concerning the effect of the proposed development on the amenity of No 6 ought not to be controversial:

- 1) if the proposed 6A development went ahead, the two first floor south-east facing bedroom windows of No 6 would fail the VSC test by a substantial margin
- 2) that would be the case both compared to the situation today (empty site - which has been the case for over five years), or with the pre-existing house as the benchmark
- 3) calculations of two other tests have been made - daylight distribution and annual probable sunlight hours - and pass, but are less relevant to bedrooms than VSC
- 4) OSM refer to parts of the BRE guide where the tests may be applied differently, but those would be deviations from standard procedure and need to be justified
- 5) whilst the pre-existing house might seem like a suitable benchmark, (i) it no longer exists, and (ii) has not existed since we moved here; no specific rule

allowing it as a benchmark has been quoted, and surely as time passes its relevance diminishes

- 6) the circumstances in which the 2018 plans could be used as a benchmark under the BRE guide are less than clear and doing so seems less appropriate in relation to a different development by a different developer
- 7) the 2018 consent had lapsed before the current applicant acquired the site, and had been granted without a daylight and sunlight report and apparently without the applicant informing the planning officer of the existence of the No 6 windows
- 8) the VSC test would also be failed by the two windows by a substantial margin with the pre-existing house as the benchmark
- 9) the planning inspector in the Stanhope Road case was clear as to how he thought these tests should be applied, which raises the bar as to what justification might be needed to depart from their straightforward application.

We are also at a disadvantage in being unable to interrogate the results of the BRE report. That said, the following questions now arise:

- a. it is puzzling that the results of the daylight distribution test for the “previous existing” house (Table 9) are identical for all windows to the results for the current empty site (Table 4)
- b. it is telling that although the test is passed, the proposed development would cause an 8% reduction in VSC to window G, a side facing first floor window to a different bedroom, and to a 4% reduction to window H, a small window in that room facing the garden, when compared to the pre-existing house (Table 8);
- c. equally telling is that rooflight C would suffer a 14% drop in its horizontal sky component when compared to the pre-existing house (Table 8);
- d. the VSC for windows A and B (ground floor windows facing the front) is the same for the current situation and for the pre-existing house (30.3% and 35.9% - Tables 3 and 8) but 1% less after the development, suggesting a degree of protrusion of No 6A beyond the front building line despite the HIA (in section 5.9) denying this.

They all somewhat undermine aspects of the applicant’s case. For example as No 6 is oriented very slightly more to the north than No 8, its extended front building line goes in front of No 8’s front wall, almost missing the tiled entrance canopy at the front of No 8 as well. How then can it be that the proposed No 6A will be visible and so affect the VSC of Windows A and B as d. shows? This cannot be due to the bay on the south side of the proposed 6A elevation.

The only explanations are that the depiction of No 6 in the drawings is wrong (again), that the BRE model is wrong, or that the proposed house does indeed protrude materially beyond the front building line.

The planning inspector in the 50, 52, 54 Stanhope Road, Highgate planning appeal last year relating to HGY/2023/0949 gave more weight to the objective of the BRE guidance than it seems OSM do. The inspector quoted this as being:

“in designing a new building, it is important to safeguard the daylight to nearby buildings. A badly planned development may make adjoining properties gloomy and unattractive.”

The inspector continued:

“The study advances the argument that window W3/10 [one of the windows that failed the VSC test] is a small slot window that contributes little to the room’s overall illumination and therefore the room would not be adversely affected by the development. Nonetheless, the loss of light entering that window would be below the threshold and would therefore be noticeable. With regard to window W4/10 [another window that failed the VSC test] it is argued that as this serves a small kitchen and already has low light levels, the impact on the flat’s living area as whole would be negligible. Nonetheless, as above, light levels would be below the threshold. Moreover, as the kitchen is already receiving low light levels this would be likely to have more of an adverse effect on living conditions for that occupier. Existing low light levels do not necessarily justify further reduction.

Moreover, it seems reasonable to suppose that there is a continuum of light loss between 0.8 reduction and no reduction. Where results are close to 0.8, there may be some reduction apparent to some occupiers. I conclude that there would be noticeable light loss for occupiers of rooms served by the aforementioned windows on the basis of the BRE guidance. There would also be light loss approaching and just above the noticeability threshold for a significant proportion of other existing occupiers.”

In other words the inspector applied the VSC and daylight distribution tests robustly in accordance with the thresholds suggested in the BRE guidance and took the view that *any* reduction in light levels below the BRE thresholds would be noticeable and cause loss of amenity. He also applied the tests separately, that is treating any window that failed either of the tests as a fail – even where the windows failing the daylight distribution test were bedroom windows – all quite at variance with the line suggested by OSM.

The inspector went further and determined that where results were close to (but still above) 0.8 there would be a light loss that some occupiers may notice, in other words loss of amenity even in those cases. In finding harm in relation to the main issues, which included the above daylighting matters, the inspector dismissed the appeal.

The conclusion is clear that the serious breaches of the VSC test at windows E and F, and even the 0.83 daylight distribution results for the same windows, should be regarded as harming the amenity of No 6 in breach of the above policies, and that therefore the 6A scheme's effect on No 6 Grange Road would not be acceptable.

6. Additional problems with the 2018 consent

Two additional grounds on which the 2018 consent should be taken out of the picture in the context of the daylight effects on No 6 follow from section 6 above and matters that it leads to.

First, we now have the data to establish what the daylighting effect of the 2018 application would have been – that is, if there had been a daylight report.

Window		Vertical sky component "previous existing" %	Vertical sky component scheme approved in 2018 %	Ratio 2018 scheme/ "previous existing"
A		30.3	30.3	1.00
B		35.9	35.9	1.00
D		20.8	14.8	0.71
E		32.6	22.8	0.70
F		31.7	19.8	0.62
G		31.2	28.0	0.89
H		35.6	33.6	0.94

All of the information in this table is taken from Table 7 (para 4.2.2) of the BRE report

According to para 3.4.2 of the BRE Report, a window should retain a VSC of at least 27%, or where it is lower, a ratio of after/before of 0.8 or more. The blue highlighted figures fail the 27% test and the yellow highlighted ratios now calculated for the first time (so far as we know) **fail the BRE Guidelines after/before test**.

In addition, Table 9 (para 4.2.5) of the BRE report shows that windows E and F (Bedroom 1) **would have failed the 0.8 times test for daylight distribution on comparing the 2018 scheme with the "previous existing" 6A house (the resulting ratio being 0.77)**.

This demonstrates clearly for the first time that had the planning officer in 2018 been provided with the correct information, the loss of amenity to neighbouring No 6 was such that it is hard to see how the 2018 6A planning consent could have been granted at all. To do so would have been a clear breach of The London Plan 2016 Policy 7.6 (unacceptable harm to the amenity of surrounding land and buildings) and Development Management DPD Policy DM1 (adopted 2017) (requiring developments to ensure a high standard of privacy and amenity for their users and neighbours).

Second, whilst the detailed and carefully considered Officer's Report for Consideration under Delegated Powers in relation to the 2018 Scheme (HGY/2016/3135) (the **2018 Officer's Report**) refers to objections regarding the application's impact on amenity of neighbouring properties/adjoining occupiers, and recognises that this is a material planning consideration, it is unfortunately incorrect on the facts.

The 2018 Officer's Report considers the daylight/sunlight/outlook/loss of amenity issues in paragraphs 6.23 - 6.31. The conclusion in 6.23 is that the living conditions of "adjoining residents" would not be unduly affected, and in 6.31 that overall the impact of the development in terms of daylight/sunlight/outlook to Nos 6 and 8 is minimal.

Paras 6.24 - 6.28 then consider the position of the relevant windows at No 8 and the relevant planning guidance, said in para 6.26 to be contained in the BRE guide which was then in force (2011). 6.26 concludes with the statement that the proposal would not breach any of the tests in the document.

6.27 explains the VSC test and 6.28 states that given the position of the proposal building in relation to the No 8 windows discussed, the VSC would not be "affected". This could mean either that the test would not be failed by any of the windows or, as seems more likely, none of the windows faces the development.

6.27 goes on to refer to the sunlight test which, as now, is only to be assessed in relation to windows facing within 90° of south.

The 2018 Officer's Report then states in 6.28 that "given these points, there is no policy basis to ask the applicant to carry out sunlight calculations in relation to No 8".

Only para 6.29 considers No 6. This says that the new 6A building would not breach the 45° rule from the rear ground and first floor windows, except for what we imagine would have been window D in the BRE report. Given the other windows to the front (A and B) which serve the same room, the total daylight to the room would not be adversely effected.

The problem is that the planning officer's attention was not drawn to the existence of windows E and F (to bedroom 1 at No 6). Not knowing they were there, the rigour applied to No 8 wasn't applied to No 6 and the point was completely missed.

There is little doubt from the other paragraphs referred to that had the tests been applied to windows E and F, and presumably failed, the loss of amenity would have prevented the planning consent being granted for the development in the form that it then took.

In other words, it is clear that if the VSC had been breached for any window to a habitable room, the officer's decision would have gone the other way.

We therefore now conclude that, in addition to our belief that the 2018 consent is invalid on the basis of *Choiceplace*, it now appears that it is also susceptible to the *Mansell v Tonbridge* problem.

The errors in the 2018 Officer's Report referred to above are clearly material as they led directly to an incorrect conclusion as to loss of amenity at No 6.

That stands alone from the drawing errors and therefore constitutes a new and entirely separate basis on which the 2018 consent could be invalidated, and therefore should for present purposes be regarded as invalid.

It is now genuinely hard to see how the 2018 consent can be a material consideration to any extent whatsoever.

7. Correct interpretation of 2010 Appeal decision

As the point comes up repeatedly, we wish to give our view as to the correct interpretation of the 2010 Appeal decision as it relates to the "closure of the gap" and the "loss of openness". The material paragraphs are set out in Appendix 1 with the relevant parts highlighted.

- a. Paragraphs 9 - 13 are under the heading "Conservation area" and 15 – 16 are headed "Character and appearance" to reflect the policy issues being considered in the appeal.
- b. Paragraph 9 places more importance on reducing the gap at first floor level between the side elevation of No 6A and the boundary with No 6 than on a different permission that would have preserved that gap but increased height.
- c. In para 11, the "strongly cubic form" *emphasises* the additional height of the building, its massing and the closure of the gap with No 6. The cubic form is *not* the *cause* of those things.
- d. The last sentence of para 11 referring to massing, the closure of the gap to No 6 and the "specific circumstances of No 6A" (in-fill site) separate 6A from other contemporary developments.
- e. The key decision wording is the sentence beginning "I find..." in para 13, where, although a little garbled, the intent is clear – "by the closure of the gap" (rather than creation). . . and the subsequent massing of the replacement house across width of the plot, the scheme would fail to preserve the openness that is a characteristic of this part of the conservation area".
- f. That failure to preserve openness would be a failure to preserve or enhance the qualities of the conservation area in breach of [relevant policy]
- g. Para 16 looks at the house from the rear and concludes that "within the confines of the plot it would be a dominant element" and the resulting loss of openness generally would also conflict with what is now SP11.

As to the comparison with the current application:

- i. The blue highlighted wording in paragraph 9 is also true of the current application
- ii. Para 10. Prefers lightweight subsidiary second floors to more substantial designs that don't step in
- iii. There is clearly a closure of the gap with No 6 as compared to the pre-existing house, of which massing across the width of the plot is a consequence.
- iv. However the gables and roof forms reduce (or not) apparent massing, the gap with No 6 would be hugely reduced which would be a failure to preserve the openness that is a characteristic of this part of the conservation area, and so a failure to preserve or enhance the qualities of the conservation area.

Therefore, contrary again to the HIA's assertions, the proposed house would fail to preserve the openness that is a characteristic of this part of the conservation area". The failure to preserve openness would be a failure to preserve or enhance the qualities of the conservation area in breach of Policy D1 of the London Plan and design policies DM1, DM6 and DM7 of the Haringey Development Management DPD.

The statement in section 5.6 of the HIA that the "cubic form"/rectilinear nature of the of the appeal proposal/the fully expressed three storeys to the rear" (in para 16 of the decision) were the things to which the inspector raised most objection, therefore misses the point entirely.

For completeness, we would say that the interpretation of the appeal wording in the 2018 Officer's Report (paras 6.13 - 6.16) is also incorrect and that a mere set back form the boundary of 1.5 m in this case is inadequate to preserve the necessary openness.

8. A Note about trees

The previous owner of the site showed blatant disregard for the trees on and around the site, which the arboricultural reports lay bare. The development declares war on the trees and the remediations currently proposed are pie in the sky.

But the recent reports do not mention the concern about future pressures on the front garden sycamore after the development has been completed. These were set out in section 4 of the letter from Sylvanarb to you (in relation to HGY/2022/1888) dated 26 August 2022.

We agree with other objectors that the council's tree officer needs to see the situation at first hand as a matter of urgency, but we have a different point of which you may not be aware.

The prominence of mature trees in the road and in front gardens of houses in the road is a characteristic of this part of the conservation area. Sadly, at least 6 such mature trees have been lost in the last 3 years - 3 pines at the front of the Grange, 2 fine copper birches in a garden at the southern end of the road and a silver birch also near that end of the road. Two trees, a sycamore and another silver birch were lost from the road in the three years before that. Further losses may have occurred in rear gardens.

Every tree makes a significant contribution. In relation to 6A, the planning officer's report on HGY/2016/3135 included this in para 6.16:

"It is also important to point out that the street frontage would be softened by the large mature tree located to the front of the site next to the boundary with No 6."

The sycamore tree the officer refers to is clearly in jeopardy from this insensitive, inappropriate application. It would be a tragedy if the proposed development were to win out over the tree.

An up-to-date arboricultural report having now finally been provided, instead of seeking to answer the various outstanding issues of serious concern raised by Sylvanarb and others (including the absence of remediation and inspection following the damaging groundworks and concrete structures done on the site without appropriate permissions in 2019, it instead plays down the importance of some of the trees (reducing the poplar at the rear from B2 to C1, although agreeing that the sycamore should be B1), randomly slashes the calculated RPAs of the two important trees at the front and proposes protections during construction that are at odds with the construction methods proposed in the BIA and the requirements of the flood risk assessment

None of the reports provided by the applicant address the post-development pressures highlighted by Sylvanarb, particularly with respect to the sycamore at the front of the site.

9. *Comments on the latest drawings*

We attach a copy of the latest drawings annotated with various observations. Some are more significant than others, and some of the more significant ones are very serious indeed.

Whilst some of the issues we raise may be remediable by altering the design (and usually reducing the size), others would seem to be fatal in their own right or in their cumulative effect.

As we pointed out last August, the errors in the drawings approved by the 2018 consent have far-reaching consequences, irrespective of whether it is accepted that they render the consent invalid. This is apparent in looking at the above-ground plans again now. The errors in levels, what appear to be inconsistencies between different drawings (for example as to the shape and size of No 6), inconsistencies in the depiction of the all-important gap between the buildings – their "spatial relationship" –

undermine the accuracy or usefulness of the blue lines on the latest drawings which were supposed to show how the current proposal compares to the 2018 “consented” building.

This is exacerbated by the methodology used to translate the drawings onto the current plans not having been shared.

Policies including SP12 of the Haringey Local Plan (2013) (requiring the conservation of the historic significance of heritage assets) and Policy DM 1 (requiring development proposals to respect their surroundings) require that the way in which a building relates to its neighbours - its situation in relation to them - is as much a part of the planning approval process as the features of the building itself, and it is clear from *Choiceplace* that if what is drawn on the approved plans cannot be replicated when built, the planning consent cannot be implemented.

In view of the foregoing, we believe this application would cause substantial harm to the character of Grange Road and this part of the Highgate Conservation Area, as well as substantial harm to the amenity and living conditions of the occupiers of the neighbouring properties.

Yours sincerely,

Peter Schulz

Edwin Cossio Murillo

APPENDIX 1

Extract from 2010 Appeal Decision

Conservation area

9. Reference has been made to a renewed planning permission that would enable the vertical extension of the existing building. Nevertheless, in addition to altering the relationship between the built forms at Nos.6a and 8, the proposed dwelling would significantly reduce the existing gap at first floor level between the side elevation of No.6a and the boundary with No.6. This would occur even though part of the proposed top floor at the front would step in from the property boundary. The rear portion of the additional top floor would be the full width of that below it. It would contribute to the overall scale of the appeals scheme and noticeably diminish the space around the replacement house.

10. Application drawings for both No.6 and 8 View Road indicate replacement dwellings of contemporary design that include a stepping in of the upper floors from the side boundaries. This reduction in dwelling width at second floor level maintains the openness that is a feature of this location.

11. In contrast, the appeals scheme would result in a strongly cubic form that would emphasise the additional height of the proposed building, its massing and the closure of the gap to No.6. This would occur even though the use and balance of materials in the front elevation would change above the brick and other materials at ground and first floor levels. It has not been established that the proposed use of materials at ground and first floor levels would be inappropriate within the context of the proposed design and those around it. However, the massing of the appeals scheme, its closure of the gap to No.6 and the specific circumstances of No.6a separate the appeal proposal from the other contemporary designs that have been approved for the neighbouring site at No.6 and nearby at 8 View Road and indeed, from other examples provided.

13. National guidance within Planning Policy Guidance 15 - *Planning and the Historic Environment* is clear that new buildings in conservation areas should not seek to directly imitate earlier styles, but that they should be designed with respect for their context as part of a larger whole. I find that by the gap that would be created and the subsequent massing of the replacement house across the width of the plot, the appeals scheme would fail to preserve the openness that is a characteristic of this part of the conservation area. I conclude on the first main issue that the schemes conflict with policy CSV1 of the Haringey Unitary Development Plan (UDP) [Now SP12], which requires proposals in conservation areas to preserve or enhance the qualities of the conservation area.

Character and appearance

15. The variety in materials and setback elements of the ground and first floors of the front elevation would also go some way to reduce the perceived bulk of the building.

16. However, the front and rear elevations of the proposed house would differ considerably in their articulation of the built form. The strongly linear balcony features on the rear elevation and the scale of the upper floor structures would highlight the actual and perceived massing of the house within the plot. I consider that in views from the rear the proposed building, it would appear of sufficient scale within the confines of the site to be a dominant element in the townscape. In addition, the resulting loss of openness that would fail to preserve the character of the conservation area, would also fail to complement the character of the streetscene. In these respects I find the proposed replacement house would be unacceptably harmful to the character and appearance of the townscape and conflicts with UDP policies UD3 and UD4 [Now SP11]