

# ST HELENS RESIDENTS ASSOCIATION

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Kevin Savage  
Planning Department  
RB Kensington & Chelsea  
Town Hall  
Hornton Street W8

June 12th 2015 (by email)

Dear Mr Savage

## **PP/15/02798 Nursery Lane/Land west of Highlever Road**

This Association wishes to object to the above application, on grounds as set out below. The Association was formed in 2008 and has a membership of 360 local residents. In 2012 the Association established the St Quintin and Woodlands Neighbourhood Forum, a body subsequently designated by the Council for the purposes of preparing a neighbourhood plan. The two bodies share a common membership, with different management committees. The StQW Forum is submitting its own representations on this planning application.

### **Planning History**

The applicant's Planning Statement from Rolfe Judd rehearses the planning history of the site only briefly at paragraph 2.2. The Heritage Statement provides a more detailed account, but does not deal adequately with the outcome of the two previous planning appeals on this piece of land. The Association considers the following points to be relevant to an application for a housing development on this piece of land.

The 1972 planning appeal specifically addressed the balance of priority to be given to the option of housing development on this land, as opposed to continued use by Clifton Nurseries as a garden nursery. At the time, the Council argued strongly that there was '*an urgent present housing need*' stemming from its slum clearance programme.

The planning inspector concluded that an outcome allowing sheltered housing on the southern part of the then site was '*the right course in all the circumstances*' noting that '*This would also have the advantage of maintaining for a large number of adjoining residents an amenity which is greatly valued. Although this open space provides little benefit for other people, because it is scarcely seen, it does make the general environment a little less crowded and a little more interesting*'.

In response to the 1981 application by the Legard family to build 23 houses on the site, the Council took a different view from its position in 1972. The application was refused on the

grounds of contravening RBKC Leisure and Recreation policies on open space and because *'The proposal would be detrimental to the character of this designated Conservation Area by virtue of eroding one of the back-land open spaces which are a valuable characteristic of the area, thus detracting from the visual amenity and sense of openness now enjoyed by those who live around'.*

In written evidence to the 1982 planning appeal, the then Borough Planning Officer summarised the Council's position as follows:

*'The proposal to redevelop the appeal site for housing purposes contravenes the approved policies of the Greater London Development Plan, the Council's District Plan and the Conservation Area Policy Statement for the St Quintin's Estate Conservation Area - all of these policies were only adopted after long debate following full public consultation.*

*It is considered that the proposed development results in an unacceptable loss of outlook and open space amenity and its is detrimental to the traditional character of the area. The proposal makes no contribution to the preservation or enhancement of the character of the Conservation Area and is strongly opposed by the local community. Such a proposal, if approved, would preclude the use of the site for alternative open space uses, such as recreation, and would displace a valuable commercial use in the garden nurseries with their associated employment value'.*

The planning inspector at the 1982 appeal upheld the Council's decision to refuse the Legard family's application for a housing development. His decision letter notes *'From the representations made and my inspection of the appeal site and surrounding area, in my opinion the main issue in this case is the effect that the proposed development would have on the character of the conservation area.'*

He went on to say *'I found the backland open spaces a feature of this part of the St Quintins/Oxford Gardens Conservation Area. While some development has taken place in other similar pockets, it has generally been small-scale. I agree with you that the access here is better than elsewhere. Nevertheless I have come to the conclusion that the communal spaces behind Dalgarno Gardens and Highlever Road would not adequately retain the openness of the area and that the appeal site is accordingly incapable of satisfactorily absorbing the 23 houses proposed. Department of Environment Circular 22/80 recognises the general objective of meeting housing need, but also refers to the conservation of the urban environment. In my view the project would not enhance the character of the conservation area.'*

It is clear that the inspectors at these two planning appeals weighed carefully the balance between housing need, and conservation and amenity issues. These issues remain to be balanced in the consideration of this application. The Association's view is that little or nothing has happened in the last 35 years to change the position in relation to Nursery Lane. The need for land for housing was considered acute in 1972, when the Council was engaged in slum clearance in North Kensington. Housing was a priority in 1982 also.

Meanwhile the setting of the land at Nursery Lane, and the number of houses and sheltered flats surrounding the site and enjoying its amenity, remains as it was in 1982. The principles

of conservation, set by the 1967 Civic Amenities Act, remain the same. In 2015, one difference is that the relentless pressure for commercial housing development in K&C has left very few areas of non-municipal open space in an undeveloped state. This makes it all the more important to continue to protect those St Quintin backland spaces that survive.

After the 1982 appeal decision, the land at Nursery lane has remained in the ownership of the Legard family, with Clifton Nurseries as tenants. File notes on RBKC planning files show that the Legard family explored with RBKC officers the prospect of further applications for housing development in 1985 and in 1993, and were advised that such a development would be refused.

In late 2013, the St Quintin and Woodlands Neighbourhood Forum wrote to several members of the Legard family, informing them that a neighbourhood plan was in preparation and asking their future intentions for the land. No response was received, but it seems likely that this notification led to the marketing of the site by Knight Frank in April 2014 as a '*residential development opportunity*'.

### **Appearance and use of the Nursery Lane land**

The Planning Statement from Rolfe Judd places great emphasis on the 'degraded' nature of the site. It is true that management of the site by Clifton Nurseries has become poor in recent years. The presence of a second garden nursery firm on the western part of the site (G.J.Corbett Ltd, based in Streatham, and a sub-tenant of Clifton Nurseries) has left responsibilities unclear for clearing surplus or redundant equipment and materials. A number of additional steel containers have at times been placed on the site, over and above those for which Clifton Nurseries were granted planning permission for a limited period.

Security of the site in recent years has also been weak, with the gates locked only by a combination padlock the number of which has become fairly widely known in the area. Hence there has been evidence of some fly-tipping of e.g. kitchen appliances and building materials.

In early 2015 Clifton Nurseries undertook significant clearance of the eastern part of the site and removed containers and a good deal of redundant and fly-tipped material. This has visibly improved the appearance of the site (see below for April 2015 photo).



In any event, such 'degradation' is not a permanent feature of the site and has no material significance in planning terms. The state of the site is the product of land management practices by the landowner and by Clifton Nurseries as long-term tenant. There is cynicism locally that it has suited the applicants to place emphasis in their application documents on the state of the site, which worsened severely in the latter months of 2014 but which has since improved following the efforts made by Clifton Nurseries.

The Rolfe Judd Planning Statement also seeks to make a case that the site operates as a 'commercial depot' with frequent vehicle visits that lessen the tranquillity and amenity value. The Transport Statement goes further and asserts that *The existing site has been subject to a commercial lease and is currently used as a storage and recycling depot*. This latter statement (also used in the Arboriculture Report commissioned by the applicants) bears no relation to reality. The site is not used as a 'recycling depot' and the only planning permissions ever granted relate to agricultural/horticultural use, including ancillary storage.

### **National policy**

The Rolfe Judd planning statement submitted with the application asserts that the proposed development accords with the NPPF in many respects, most notably the '*presumption of sustainable development*' at NPPF paragraph 14, the 12 '*core principles of planning*' at paragraph 17, and section 6 on *Delivering a wide choice of high quality homes*.

The Association's view is that the application is contrary to four of the 12 'core principles' of the NPPF. *Planning should*

- *be genuinely plan-led, empowering local people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area.*
- *contribute to conserving and enhancing the natural environment and reducing pollution. Allocations of land for development should prefer land of lesser environmental value, where consistent with other policies in this Framework;*
- *encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value;*
- *conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations;*

The Rolfe Judd planning statement states at 4.1.8 that '*The application site has many of the characteristics of previously developed land, has been used for many years for this purpose and is of low environmental value*'. The phrase '*many of the characteristics of previously developed land*' appears to have followed from pre-application planning advice provided by RBKC which states (according to Rolfe Judd at para 5.1.2) "*... though the site does not display all the characteristics of PDL, I consider that it does fulfil criteria for PDL in some respects and these should be taken into account in assessing a development proposal for the site.*"

Having now seen the Council's planning advice (released following a FoI request), the Forum cannot find this RBKC officer quote within the four sets of advice provided. In any event,

the Association contends that no evidence has come forward of previous development (as falling within the NPPF definition) on the application site. **The site is not 'previously developed land' and is 'greenfield' in planning terms.** Hence the NPPF core principles that development should be prioritised on brownfield sites should be followed in the Council's decision-making on this application.

The history, and the present position on all forms of structure or buildings on the site, are set out below:

There is no argument that the whole of the original backland was the home of the Ashfield Tennis Club, from around 1916 until the club ceasing operation during or after the end of the war in 1945. Rolfe Judd Planning state that *'The application site was therefore developed firstly as a tennis club which required a comprehensive remodelling of the land and the addition of buildings'*. There was no such 'comprehensive remodelling'. The site was always flat, and was laid out by the tennis club as grass and hard courts.

A 1932 aerial photograph (see below) shows two small buildings. Local residents familiar with the club in the 1930s say these were wooden buildings, one of which was a basic clubroom/changing room (with no flushing toilet) and the other a store for mowers and equipment. Such buildings and uses would fall outside the NPPF definition of previously developed land which *excludes 'recreation grounds and allotments; and land that was previously-developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time'*. There is no remaining evidence of these 1930s wooden buildings.

The RBKC pre-application advice provided by RBKC officers states (according to Rolfe Judd) *The site has a number of structures on it of industrial and commercial appearance which have been on the site for a considerable time and a substantial portion of the site is hard-surfaced. A glasshouse on the site is a permanent structure and the activities of storage of materials associated with the nursery business have given the site a run-down appearance.* Again, the StQW Forum cannot trace this alleged RBKC quote within the four sets of pre-application advice released following a FoI request.

Rolfe Judd also assert that *'There are a number of structures existing on site and with an environment which is wholly artificial and associated with the commercial use of the site'*.



The land at Nursery Lane in 1932, in the days of the Ashfield Tennis Club

Again, these assertions do not correspond with the facts. The 'structures' on the site consist of:

- two redundant greenhouses, permission for which was approved following the decision of the planning inspector on the 1972 appeal. While RBKC planning office pre-app advice has allegedly been that *'a glasshouse on the site is a permanent structure'* this has *not* been the view of planning inspectors deciding on appeal cases on Green Belt land. Such structures are deemed an agricultural use, excluded from the NPPF definition.
- a wooden shed near the entrance, given a limited period permission in 1981 as a temporary building to house a store, messroom, and WC for the use of Clifton Nurseries and its on-site staff. As approved, the shed *'comprises a timber ship-lap structure with a pitched roof measuring 7.2m x 4.9 x 3.2 m'*. This temporary permission was renewed at intervals by Clifton Nurseries during the 1980s and 1990s and was granted permission *'for a limited period'*. For this reason, and because it was a structure in agricultural/horticultural use, this building does not constitute *'development'* under the NPPF definition.
- In September 1985 permission was granted, *for a limited period, for the location of two closed steel containers on the site for storage purposes, painted green, 'for the storage of garden furniture, plant tubs, pots etc'*. Again this was for a limited period, initially 1 year. These containers remain in situ.
- Currently there is a container and part wooden shed in the south-western corner of the site, used by garden contractors G.J. Corbett Ltd. There appears to be no history of planning applications or permissions for this building, but again it would count as agricultural/horticultural use and is excluded from the NPPF definition of *'previous development'*.
- there is a hard surfaced track which runs around the site. Again, areas of hard surfacing have been deemed not to be *'development'* on cases relating to applications on farm premises on greenfield sites.
- there is no other evidence, in the Rolfe Judd Planning Statement or Heritage Statement submitted by the applicants, of any *'permanent structure'* or *'fixed surface structure'* (the NPPF definition of development) having ever existed on the applicant

site. There have been other steel containers placed there, a number of which were removed when Clifton Nurseries cleared the site in early 2015.

- Agricultural buildings are specifically excluded from the NPPF definition of previous development.

Hence, the assertion that the site has '*many of the characteristics of developed land*' has not been backed up by specifics, either by the applicants or by Council officers when this statement has been questioned in correspondence. Despite a number of such requests from the StQW Neighbourhood Forum, officers have declined to specify what 'structures' or buildings are deemed to constitute 'development' in the terms of the NPPF definition.

The Association's view, that the land is not previously developed, has been endorsed in a letter of 15 April 2015 from planning consultants Smith Jenkin, who have visited and inspected the applicant site. Their letter of April 15th 2015 is attached to this letter of objection.

Undeveloped and hence greenfield land is a rare and valued feature in Central London. Allowing housing development on undeveloped land, where other potential housing sites are available, would conflict with a basic 'core principle' of the NPPF. This point is developed more fully in the letter of objection from the StQW Neighbourhood Forum and in the Draft Neighbourhood Plan itself.

### **Current lawful use of the site**

The Rolfe Judd Planning Statement contends that '*the site is being used principally as a commercial storage and contractor's depot (sui generis)*'. Council officers have also stated that the current use class is sui generis.

It is not clear why the Planning Department has reached this conclusion on the present lawful use of the site. The site has been in continuous occupation since the 1960s by Clifton Nurseries. This firm advertises itself as '*inspiring gardeners since 1851*' and is a leading London garden nursery business operating as a horticultural supplier of plants and garden materials.

Planning permissions granted in the 1950s by the LCC were for agricultural use. Section 336 of the Town and Country Planning Act 1990 defines agriculture as including horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creatures for the production of food, skins, or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds.

Clifton Nurseries wrote to the Council on 7th September 1970, saying '*when we took over the land in 1964 it was agreed that it should be used for agricultural purposes and it is now rated as an agricultural hereditament.*' Enquiries of the Council's team handling business rates have not turned up an account for the land at Nursery Lane (under several address options). This suggests that the site may remain exempt, as being in agricultural use, and that no NNDR account has ever been established.



Garden nurseries are normally accepted as being for the purpose of propagation and nurture of plants.

It is acknowledged that use by Clifton Nurseries for the planting of seedlings, shrubs, trees, and plants has diminished in recent years. But use by G.J. Corbett Garden and Landcape Ltd has continued, and use by Clifton Nurseries has continued to be ancillary to their main garden nursery at Clifton Villas in W9.

The concept of the site as a 'commercial depot' is overstretching the definition of this term. The OED gives two definitions:

- A place for the storage of large quantities of equipment, food, or goods:  
*an arms depot*
- A place where buses, trains, or other vehicles are housed and maintained and from which they are dispatched for service.

There is no evidence that Clifton Nurseries have operated at Nursery Lane as a commercial provider of depot services to others, or in a systematic or organised fashion for 'dispatching' their own vehicles or goods. The firm has used the site for the storage of plants and materials ancillary to running its main site. It is accepted that this firm's use in recent years has not kept the site in good order, but this is not a planning matter.

The distinction between 'storage' of plants and shrubs, and the horticultural activity of 'nurturing' them in the open air would seem to be a fine one. Most garden centres and nursery gardens do both. It is clear from historic files that the land was used actively for growing plants, shrubs and trees for many decades. There is less certainty as to when the greenhouses and growing tunnels on the site were last used.



Western part of Nursery Lane site, in use by G.J. Corbett Garden and Landscaping, April 2015



The Association therefore contends that the site has remained in continuous horticultural use since the 1950s and that planning decisions as to its future should be made on this basis.

Were the landowners, or the applicants, to have applied for a Certificate of Lawful Use for e.g. B8 use (storage or distribution, including open air storage) the Council would have required solid evidence to support such a claim before approving it. Such applications are common on sites in the Green Belt, where owners of nursery gardens are seeking change of use (or a Certificate of Lawful Use) to encompass retail (A1) 'garden centre' activity or mixed agricultural and B class uses. Evidence would take the form of statements from neighbours to the site, or the production of invoices for claimed alternative business uses, extending beyond 10 years. No such exercise has taken place in relation to the land at Nursery Lane.

### **The London Plan 2011**

Issues around London Plan Policy 3.3. *on Increasing Housing Supply*, and the Borough's housing targets are addressed in a separate letter of objection from the St Quintin and Woodland neighbourhood Forum.

In terms of the proposed housing density, the applicants state *'Based on a suburban typology and a site area of 0.48ha the site could accommodate a density of between 35-95 dwellings per hectare. The current proposed density is approximately 42 dwellings per hectare which reflects a low density'*.

It must be remembered that the land at Nursery Lane is a relatively small (0.48 hectare) infill site which already has public highway access. The standard house type proposed by the applicants has 4 bedrooms and 3 further habitable rooms (family room, kitchen/dining room, and a further study/bedroom) i.e. above the maximum range of 3.8-4.6 habitable rooms per unit applied in the London Plan density matrix.

The London Plan 2012 Housing SPG also has this to say: *In considering scope for infill development, particular account should be taken of the need to respect local character and:*

- *the potential for site assembly and comprehensive or coordinated development;*
- *present and potential accessibility;*
- *potential plot depths;*
- *overlooking/day lighting; and*
- *the ability to complement local context.*

*As these are usually very small scale developments, the density of development should take particular account of local character in the context of the principles underlying Policy 3.4 rather than being based only on the density matrix itself (see also para 1.3.39 below).*

Para 1.3.39 states *Small sites have specific opportunities and constraints with regards to density. When establishing the appropriate density for small sites, special attention should be given to factors influencing the setting of a development site, including existing streetscapes, massing and design of the surrounding built environment. Where the density of buildings surrounding small sites is below the appropriate range in the density matrix the*

*site should be developed towards the lower end of the appropriate range, unless detailed urban form analysis suggests otherwise.*

The St Quintin Estate was developed in the early part of the last century at low density. The proposal to place 20 houses, each with 7 habitable rooms, on the land at Nursery Lane fails to reflect the character, terraced streetscape, and design of the surrounding area.

London Plan Policy 7.4 on Local Character states *Development should have regard to the form, function, and structure of an area, place or street and the scale, mass and orientation of surrounding buildings. It should improve an area's visual or physical connection with natural features.*

London Plan Policy 7.6d on Architecture requires that development should *not cause unacceptable harm to the amenity of surrounding land and buildings, particularly residential buildings, in relation to privacy, overshadowing, wind and microclimate.*

London Plan Policy 7.18 B states *The loss of protected open spaces must be resisted unless equivalent or better quality provision is made within the local catchment area. Replacement of one type of open space with another is unacceptable unless an up to date needs assessment shows that this would be appropriate.*

The Association considers this application to pay insufficient heed to each of these London Plan policies. While the northern part of Nursery Lane is private rather than public open space, the Council has since the 1980s given it planning protection from housing development (as the earlier part of this letter demonstrates, and see also under **Oxford Gardens CAPS** below). It has been a 'protected open space' in all previous planning decisions and under the terms of RBKC extant policy statements.

### **Local Plan policies (RBKC 2010 Core Strategy)**

Policy **CR 5 Parks, Gardens, Open Spaces and Waterways** a.iii) states *the Council will resist the loss of private communal open space and private open space where the space gives visual amenity to the public.* It is notable that the Planning Statement submitted by the applicants makes no reference whatsoever to the visual amenity value provided to the households surrounding the land at Nursery Lane. Instead it argues that the site is a '*degraded environment*' and has '*low environmental value*'.

This is not the view of the many local residents who submitted responses to the Consultation Version of the Draft St Quintin and Woodlands Neighbourhood Plan (as can be read at Consultation Annexe at [www.stqw.org](http://www.stqw.org)). Or those who have submitted objections to this planning application.

The visual amenity value of the site in terms of views from neighbouring was recognised in the Council's own submissions to the 1982 planning inquiry, and in the Inspector's decision.

There are 46 houses which back directly onto the applicant site, and further houses in Brewster Gardens, Dalgarno Gardens and Highlever Road which have a less direct view. The

sheltered housing on the southern part of the original backland contains 35 flats, including those facing directly onto the site.

Hence the Association considers the application to be in conflict with Policy CR5. The Council took the same view when considering the 1981 application for a scheme of 23 houses in the context of similar policies in its District Plan, and the planning inspector supported that view at the 1982 inquiry.

**RBKC Policy CL1 on Context and Character** states that *The Council will require all development to respect the existing context, character, and appearance, taking opportunities available to improve the quality and character of buildings and the area and the way it functions, including being inclusive for all.*

The Association considers that the application fails to meet several sub-sections of this policy:

- the proposals do not *contribute positively to the context of the townscape, addressing matters such as scale, height, bulk, mass, proportion, plot width, building lines, street form, rhythm, roofscape, materials, vistas, views, gaps and historic fabric (Policy CL1 a)*. The layout of the proposed housing development bears no relation to the terraced streets of the St Quintin neighbourhood and is similar to that of 'gated communities' of upmarket housing, segregated from the street layout characteristic of the St Quintin area.
- the proposals do not *optimise density relative to context (Policy CL1c)*, and attempt to place too many houses on an infill backland site.
- the proposals *detract from local vistas and views* for immediate neighbours of the site (Policy CL1 e)
- the proposals severely *prejudice future development potential* of the RBKC site occupied by the sheltered housing at No.1 Nursery Lane (Policy CL1f). This building, dating from 1977, is now 38 years old will require redevelopment in the relatively near future to higher standards of accommodation for the frail and elderly. The potential for more intensive redevelopment of its site, combining e.g. extra care housing with some affordable units and providing gardens for its residents (and potentially the wider community) on the northern part of the original backland will be lost forever if this application is approved.

**On RBKC Policy CL 3 Heritage Assets - Conservation Areas and Historic Spaces**, the applicant's proposals do not *preserve and take opportunities to enhance the character or appearance of the (Oxford Gardens/St Quintin) conservation area*. While the applicants claim that the scheme will have this effect, this view is not shared by the vast majority of residents in the area, as evidenced in consultation responses to the StQW Draft Neighbourhood Plan and the objections to this application.

The remaining St Quintin backlands are an important feature of the conservation area, recognised as such in the Council's evidence to the 1982 planning inquiry and in the 1979/1990 Conservation Area Proposals Statement (see below for further comments in relation to the 1990 CAPS document).

The Heritage Statement from RMA Heritage argues that the Ashfield Tennis Club and the sheltered housing scheme on the southern part of the original backland are '*two developments*' which '*were to significantly change the character of the site*'. Firstly the laying out of tennis courts had little impact on what was previously a flat site, and secondly the sheltered housing, while now occupying the southern two fifths of the backland, did not 'change the character' of the applicant site.

As with the Planning Statement, the Heritage Statement goes to great lengths to argue that '*the present unkempt and underutilised condition of the site must be seen as a detractor*' in conservation terms. The Heritage Statement concludes that the development will enhance the conservation area in that it will

- *remove unattractive buildings, detritus and overgrown vegetation that detract from the quality of the conservation area;*
- *add an attractively designed medium density housing scheme with public landscaped space.*

The developers are entitled to take this view, but it is not shared by those living in the the conservation area. Nor does it reflect the views of the site expressed by the Borough Planning Officer at the 1982 planning inquiry.

The proposals are contrary to **RBKC Policy CE4 on Biodiversity** which states that *the Council will protect the biodiversity in, and adjacent to, the Borough's Sites of Nature Conservation Importance and require opportunities to be taken to enhance and attract biodiversity.*

While the applicant site is not a 'site of Borough importance' in terms of bio-diversity the borough-wide map in the 2010 Core Strategy chapter on Respecting Environmental Limits (page 441) shows all three of the surviving St Quintin backlands, including the applicant site, as 'gardens and other green spaces'. In biodiversity terms, the site contributes as much as many of the Boroughs 100 and more garden squares.

Proximity to the Wormwood Scrubs Nature Reserve (designated in 2002) means that the site hosts a wide range of bird life, along with bats. Immediate neighbours of the site have provided relevant information in their individual objections to this application.

The applicants argue that the site is 'not open space' on the basis that it was not included in the RBKC 2004 Open Space Audit, which was one of the supporting documents to the 2010 Core Strategy. This was not a policy document as such, whereas the 2010 Core Strategy forms the heart of the Local Development Plan (and the map showing the site as 'other green space' was re-adopted by the Council in December 2014 as part of the Miscellaneous Matters Partial Review). The site was described as 'private open space' in the Council's submissions to the 1982 planning inquiry and in earlier LCC planning permissions. As undeveloped land with many trees, local residents find it hard to understand the concept that the site is 'not open space'.

**RBKC Policy CR6 on Trees** states *The Council will require the protection of existing trees and the provision of new trees that compliment (sic) existing or create new, high quality green areas which deliver amenity and biodiversity benefits.* As shown above, the land at Nursery

Lane is defined as a green area in the Core Strategy. The amenity value of the trees on the applicant site (and especially the line of 11 weeping willows planted by Clifton Nurseries in the 1970s) is evidenced in the responses to the Consultation Version of the StQW Draft Neighbourhood Plan.

The applicants have submitted a Arboriculture Report from Simon Jones Associates covering the 79 trees on the land at Nursery Lane. This shows that 65 would be removed by the proposed development, including three covered by a tree preservation order. The study concludes that *the weeping willows in particular, have been assessed as having limited future potential and a short remaining useful life expectancy.*

A separate report commissioned by local residents advises that *(section from Fergus Kinmonth arboriculture report to be added when report available).*

The fact that the weeping willows on the eastern boundary of the site are the only group covered by TPOs stems from subsidence problems reported by residents of Highlever Road. This led to 6 out of 9 willows at this location being felled and the remaining 3 given TPO protection in 2006. The line of 10 weeping willows in the centre of the site was not given the same protection at that time, as they were not then (and are not know) causing any subsidence issues. Any risk of them being felled for development was presumably considered unlikely at that time.

The report from Simon Jones Associates summarises its conclusions in these terms: *Although the felling of the trees identified for removal will represent a significant alteration to the present arboriculture features within the site, the proposals, by incorporating significant replacement tree planting as specified within this report and on the appended tree planting plan, will result in only a low magnitude of impact on the character and appearance of the Conservation Area, and its enhancement in the longer term, thereby complying with national planning policy guidance.*

The Association strongly contests this view, on the basis of the report from Fergus Kinmonth, of Kinmonth Tree Surgery (to follow under separate cover).

While we are still awaiting sight of RBKC pre-application advice (a FoI request last December having been refused pending submission of an application) it appears that this advice included the statement: *"However, given the trees on the periphery of the site would be largely retained and suitable replacements for other trees if they had to be removed, it is considered that the contribution that these central trees make to the amenity of the area is such that they would not preclude the development of the site for residential use, subject to the careful distribution of other trees both existing and new."*

Rather than *'carefully considering the distribution of trees both existing and new'* the applicants have proceeded on the basis that 65 out of 79 can be dispensed with including the three covered by TPOs. If RBKC Policy CR6 is to mean anything in terms of commitment by the Council to protect trees, local residents expect it to be treated as a significant material consideration in a decision on this application.

**The Council's new Basement Policy CL7** *requires all basement development to not exceed a maximum of 50% of each garden or open part of the site, while noting that exceptions may be made on large sites.*

Rolfe Judd assert that this policy '*relates principally to basements under houses and the impacts of these on neighbours with the major concerns being that individual contractors may cause structural and hydrological issues*'. This is not the Association's understanding of the policy, which local residents see as a commendable initiative by the Council to restore sensible constraints on the size and extent of basements, reducing their impact on the environment and their impact on neighbours during construction.

The applicants acknowledge that the proposed basement extends across 71% of the site area and seek to argue an 'exception'. The size of the proposed basement results from a decision to use a house type which places the main living area of the house (the 'family room') in the basement and to provide an adjacent basement level parking space and entry to the home.

These proposals involve the provision of parking spaces at a level of 1 per housing unit. The Rolfe Judd Planning Statement asserts that *As set out in Section 6.6 of the accompanying Transport Statement it is considered that local policy would allow provision for up to 29 parking spaces as part of a scheme such as this. The application scheme proposes 20 spaces, some 25% below the maximum permitted level.*

The separate Transport Statement makes a very different statement at paragraph 6.8 and correctly acknowledges that the parking standards set out on the Council's Draft Transport and Streets SPD (not yet adopted) sets out maximum parking standards for new housing developments as 1 space per dwelling for the first three dwellings and 0.5 spaces per dwelling for each subsequent dwelling. This would result in a maximum requirement of 12 spaces for the applicant's scheme.

Provision of 20 basement spaces as proposed would require an exception to Council standards on parking standards, for the main purpose of building houses also requiring a basement of a total covering an area well over 50% of the site area - a second exception to RBKC policy. One exception to policy requires a second. This reinforces the Association's view that that the application is misconceived at many levels and that the applicants show scant regard for RBKC planning policies.

The proposed basement is excessive in size and is the product of seeking to place too many houses on the site, of an unusual layout and design. Its construction will result in two years of severe disruption to the occupants of the sheltered housing at No.1 Nursery Lane. There is no justifiable basis for the Council making an exception in the application of Policy CL7, or to its parking standards.

**RBKC Policy CH2k on Housing Diversity** *requires affordable housing provision of affordable homes on site where more than 1,200sq.m of gross external residential floor space is proposed, unless exceptional circumstances exist.* The applicant's proposals have a total housing GEA of 5070 sq m.



No onsite affordable housing is proposed by the applicants on the grounds that the expense of the development (the basement again) and its quality are such that *The costs associated with managing and maintaining such an estate, including the maintenance of the basement and communal gardens within a high quality development such as the one proposed are prohibitive to Housing Associations and their tenants as these costs are distributed amongst a small number of units.*

Hence the Council is asked to make a further policy exception and to agree to a commuted sum in lieu of onsite provision of alternative housing. The justification provided by the developers appears thin. When the proposed development was exhibited to local residents in December 2014, the developers made clear to local residents that they had no intention of including affordable housing, for marketing reasons.

**Transport and site access** - Nursery Lane is a private road owned by RBKC, created by the demolition of a house in Highlever Road and the widening of what had been a footpath, at the time the sheltered housing was built on the southern end of the original backland.

The gap between houses provides no scope for widening this access road to allow for additional development over and above the sheltered housing scheme. The carriageway is 6m wide, with narrow pavements of 1.4m on the southern side and 0.87m on the northern. The southern pavement (on the side of the sheltered housing) is obstructed by a lamp post, bollards, and a utility cabinet. Hence wheelchair users at the sheltered housing have to use the carriageway. The increase in service traffic and resident traffic resulting from the proposed development would worsen this situation and the risk to pedestrians and wheelchair users.

The Transport Statement (from TTP Consulting) acknowledges that refuse vehicles have to reverse into Nursery Lane to make collections from the sheltered housing, there being insufficient turning space. It is proposed that this practice continues with the waste collection from the proposed development, which will involve refuse vehicles occupying Nursery Lane for much longer periods. While it is claimed that proposed arrangements for delivery vehicles will be satisfactory, there is no evidence that larger vehicles (as now often used by parcel companies) will not also have to reverse into Nursery Lane, to the detriment of residents of the sheltered housing.

TTP Consulting provide a trip generation forecast for the development. They suggest that 20 town houses would generate in the region of 2 two-way vehicle trips in the AM Peak (08:00-09:00) and 2 two-way vehicle trips in the PM Peak (17:00-18:00). The document suggests that throughout the entire day, the proposals are likely to generate in the region of 20 two-way vehicle trips.

The Association finds these figures hard to believe. Twenty families in upmarket townhouses in Kensington with only two children being driven to school in the morning? This is not our experience of daily life in the neighbourhood. While trip generation may not be huge, it should be remembered that Nursery Lane lies to the north of the major daily congestion point where all westward traffic is funnelled into North Pole Road. There are no alternative westward routes for drivers (even driving south to Holland Park Avenue) once

the St Quintin Gardens 'triangle' becomes gridlocked with traffic backed up along Barlby Road and St Quintin Avenue.

As the Transport Statement correctly points out, the site has a PTAL rating of 2 (where 6 is high and 1 is low) and is relatively poorly served by public transport with a 16 minute walk to Ladbroke Grove Underground and about the same to Latimer Road. The idea that there will be little reliance on trips by car seems optimistic. The Planning Statement notes at various points the PTAL score of 2, while at 5.9.2 stating that *'the site benefits from a PTAL rating of 4.'* This is a further inconsistency between the documents supporting the application.

The Transport Statement states at 6.4 in relation to trip generation *It is considered that the development proposals will result in no material difference to the existing situation, where the current operation results in 18 two-way movements per day.* This figure is based on a one day traffic survey, which records that *'Between 07:00-19:00 there were 18 vehicle movements (two-way) into / out of the site'.*

It is possible that this was a day on which Clifton Nurseries was busily engaged in a their clearance of the site. Or that the count included vehicles visiting and servicing the sheltered housing rather than entering and exiting the applicant site. Residents living around the site confirm that the figure of 18 two-way vehicle movements through the gates of the applicant site bears no relation to present or past average daily activity levels by Clifton Nurseries and G.J.Corbett combined.

There is no regular *'current operation'* at the site. Vans used by Clifton and G.J Corbett come and go irregularly, at average frequencies far less than 18 two way movements a day. Residents overlooking the site are very familiar with activity levels and the Association places greater credence on their experience of the site than on a one-day traffic survey carried out by consultants

### **Oxford Gardens Conservation Area Policy Statement**

This document was first drawn up in 1979, following on from the original designation of the Oxford Gardens/St Quintin CA in 1967. The CAPS document was revised and re-adopted by the Council in 1990. This version has a chapter on 'Policy and Controls' which includes a section on *Open Space - public and private* at page 18 of the document. This states:

*'The designers of both estates (referring to that developed by Henry Blake and that by St Quintin family) took care to incorporate open space in the street layout. Road widths, gaps, return frontages, backlands and gardens combine to create a distinctive open character for the area. In the St Quintin Estate the use of space has produced a pleasant 'suburban' enclave within a busy high density part of the city.*

*Backlands formed by the enclosed terraces of the St Quintin Estate exist at Highlever Road, Barlby Road and Kelfield Gardens.*

***Some leisure and recreational activities have made good use of these spaces and proposals to develop them for housing will not be permitted’.***

The introduction to this chapter of the 1990 CAPS document explains that statements made in super bold type (as above) ‘*signify specific policies and proposals which the council will implement using its town planning development control powers’.*

In relation to this policy commitment, the Council meeting on April 15th was advised in an officer report that ‘*The policy predates by many years the 2004 Planning and Compulsory Purchase Act where the planning system including policy development was radically overhauled. The policy was outside the Development Plan for the borough even in 1990 so the weight that could be attached to it was limited even then. It has not gone through any of the procedures which are currently laid down for policy preparation in the Town and Country Planning (Local Planning) (England) Regulations 2012 and stands outside the Development Plan where all policies relating to development need to be included’.*

Advice from independent planning consultants Smith Jenkin to the StQW Neighbourhood Forum sets out what the Association considers to be the approach the Council should take to this ‘policy’ in the 1990 CAPS.

*The Oxford Gardens CAP has not been replaced or updated since publication in 1990. The intentions of protecting the Conservation Area remain the same now as they did upon publication. The CAP has formed two functions: in undertaking an assessment of the character and appearance of the Conservation Area, and that assessment is still valid today; and in preserving and enhancing the character of the Conservation Area. The contribution that the Nursery Lane site makes to the Conservation Area is unchanged, and the CAP must be given weight in light of this.*

*In the Barnwell Manor case, the Court of Appeal made it absolutely clear that the statutory duties to preserve the settings of listed buildings and the character and appearance of conservation areas must be accorded ‘considerable importance and weight’. As noted in the subsequent Forge Field Society judgment from June 2014, if there was any doubt it has now been dispelled and decision-makers treating the duties as mere material considerations will err in law.*

*If a planning authority finds that a proposed development will cause harm to the setting of a listed building or to a conservation area, it must give considerable importance and weight to that harm in any subsequent balance against public benefits. To find harm to the setting of a listed building or to a conservation area gives rise to a strong presumption against planning permission being granted.*

*The fact that the Nursery Lane site was identified as important to the Conservation Area in the CAP and its setting has not changed due to a lack of development or any other material change in circumstance must lead to the same conclusion – that the Nursery Lane site is still important and should be protected in accordance with the assessment of the CAP. There is a presumption in favour of preservation, which is upheld in the CAP. To overcome this*

*presumption there must be a substantial public benefit, which has yet to be demonstrated in any future development plans for the site.*

Planning consultants Rolfe Judd make no mention of the policy statement at page 18 of the CAPS document. They argue that the 'public benefit' of the proposed development is through a Mayoral and Borough CIL payment, and through the contribution of 20 homes to the Borough's housing targets. As noted above, no on-site affordable housing is proposed.

The Association does not consider such benefits to outweigh the harm caused to the conservation area by the loss of a valued conservation and heritage asset, and that the application fails to meet NPPF and Local Plan policies in this respect.

Rolfe Judd refer to the Heritage report commissioned from RMA Heritage and its statement that ... *this part of the conservation area is less sensitive to change than the more cohesive and architecturally special streets to the southeast. So rather than let the site languish in its present poorly managed state, we believe it better to consider the public benefits of this scheme which has the potential to secure its long term use and enhance this part of the conservation area. There is opportunity to do something quite special here and a high quality low-density housing scheme seems the best option for the site.*

This appears to be a highly subjective conclusion from a heritage consultancy, both in the idea that the applicant scheme is '*something special*' and that it is '*the best option for the site*'. The StQW Neighbourhood Forum is commenting separately on the best future use of the site and its suitability for housing development.

### **Design and Access Statement**

The detailed design of the houses shows a change from mock-Georgian in the December 2014 proposals to a version of mock-Victorian. All the houses have front dormer windows, which are not a feature of houses in the area, other than on some of the larger 3 storey houses in St Quintin Avenue and St Quintin Gardens. Two storey houses in most streets in this part of the Oxford Gardens Conservation Area have permitted development rights removed by an Article 4 Direction in relation to front rooflights, with no prospect of planning permission for front dormers.

This conservation policy reduces available space in loft conversions, and makes for very hot loftrooms in summer. Yet a majority of residents accept this policy in the interests of maintaining the homogeneous character and appearance of the St Quintin Estate. The Council (and Historic England) have taken a good deal of persuasion to accept a minor relaxation of RBKC policies to create a consistent and fair policy allowing *rear* dormer windows across the StQW neighbourhood, as part of the StQW Draft Neighbourhood Plan. Residents would be very concerned to see wholly different rules on front dormers applied to a development of market housing at Nursery Lane. Such a concession would not enhance or preserve the character and appearance of the conservation area, and would be contrary to RBKC Policy CL3a.

This document details the design process undertaken by the applicants. This includes information on 4 sets of 'Design Comments' provided by RBKC officers between August 2014 and April 2015, and on the views of the Council's Architectural Appraisal Panel held on April 15th 2015.

The fact that these extensive discussions took place at a time when the StQW Draft Neighbourhood Plan was in advanced preparation, with proposed Local Green Space designations and a policy resisting housing development on the three remaining St Quintin backlands, does not seem to have featured in these discussions.

The lack of involvement by the Council of the St Quintin and Woodland Neighbourhood Forum in representing resident views, at a time while alternative layouts for the site were being discussed, is addressed in the separate letter from the StQW Forum.

## **Conclusions**

The Association objects to this application and asks the Council to refuse it. The grounds are:

- the site is previously undeveloped land, and its development for housing would be contrary to the core principles of the NPPF
- the proposals are contrary to policies 7.4, 7.6d, and 7.18B of the London Plan, as detailed above
- the proposals conflict with RBKC Core Strategy/Local Plan policies CR5, CL1, CL3, CE4, CR6, CL7, CH2k, and the Council's standards for on-site car parking in housing developments, as detailed above
- the proposals will harm the Oxford Gardens Conservation Area, conflict directly with the 1979/90 Oxford Gardens Proposals Statement (page 18), and do not reflect the Council's extant adopted views on the conservation and heritage value of the St Quintin backlands.
- the application is premature, in light of the policies in the St Quintin and Woodlands Neighbourhood Plan (for reasons detailed in the separate letter from the StQW Neighbourhood Forum).

Yours sincerely,

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cc Cllr Pat Healy, Cllr Robert Thompson (Dalgarno ward)  
Amanda Frame, Michael Bach (Kensington Society)