

10 March 2021

## VIA ELECTRONIC MAIL

**FAO:** Cllr Kim Taylor Smith and Cllr Elizabeth Campbell  
Royal Borough of Kensington and Chelsea

**FAO:** Cheryl Saverus and Martin Mortimer  
Royal Borough of Kensington and Chelsea

**FAO:** Richard Smith and Adunni Adams  
Catalyst Housing Limited

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Dear Councillors, Cheryl, Martin, Richard and Adunni

## **Wornington Green Estate – Removal of Trees**

### **1. Our clients**

- 1.1 We act for Constantine Gras and Serena Morton. Our clients reside near the Wornington Green Estate ("**Estate**") and have been adversely affected by the removal of trees as a result of the phased redevelopment of the Estate. While we only write on the behalf of our clients, our clients' concerns are reflected by the wider community who reside in and around the Estate. This is evidenced by 2183 people signing the petition found at:  
<https://www.worningtontrees.com/petition.html>.
- 1.2 Our clients are concerned about the serious health implications the removal of trees from the Estate will have on their, and the wider community's, health.

1.3 Accordingly, we write to:

- (a) notify you of these concerns;
- (b) outline why Catalyst Housing Limited (“**Catalyst**”) and the Royal Borough of Kensington and Chelsea (“**RBKC**”) have a duty of care to protect our clients, and the community that resides in and around the Estate, from unreasonable exposure to air pollution;
- (c) demand that Catalyst immediately ceases the removal of the trees located on the Estate and in Athlone Gardens; and
- (d) seek a compromise that allows Catalyst to continue with its redevelopment of the Estate without adversely affecting the health of our clients and the wider community.

## 2. Relevant background facts

- 2.1 Phase 1 of the redevelopment of the Estate started in 2012 and was completed in mid-2017. Phase 2 started in Autumn 2017 and is ongoing. The consultation process for Phase 3 is ongoing with construction due to start in 2024.<sup>1</sup>
- 2.2 The development application for Phase 1 of the Estate was approved by the RBKC on 31 March 2010 (“**Phase 1 Approval**”).<sup>2</sup> Part of this approval required a tree retention strategy to be submitted by Catalyse and approved by council.<sup>3</sup> A tree retention strategy was subsequently approved by the RBKC.
- 2.3 We are instructed that the approved tree retention strategy resulted in the majority of the large established trees on the Estate being identified for removal. It is telling that the conditions linked to the conservation of trees in the Phase 1 Approval are solely based on protecting the amenities of the Estate rather than protecting the health of community. Treating trees as “amenities” for enjoyment rather than essential aids to our health means that trees are given a lower priority and hence become more disposable. As we will explain below, trees mitigate the effects of air pollution and therefore are of greater importance than mere amenities. This is an

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<sup>1</sup> <https://portobellosquare.chg.org.uk/>

<sup>2</sup> <https://www.rbkc.gov.uk/planning/searches/details.aspx?adv=0&simple=Wornington+Green+Estate&simpleBatch=20&simSubmit=Search&pgdec=4&id=PP/09/02786&cn=114740+CB+Richard+Ellis+Ltd+Kingsley+House+Wimpole+Street+0207+182+2000&type=decision&tab=tabs-planning-2>

<sup>3</sup> See conditions 6 to 10 of the original development approval.

obvious flaw in the RBKC's decision making framework and as we will explain below, opens both RBKC and Catalyst to liability.

- 2.4 In terms of assessing the effects the redevelopment of the Estate would have on air quality, conditions 30 and 31 of the Phase 1 Approval required the RBKC to approve an air quality impact assessment ("**AQIA**"). The purported purpose of the AQIA was to show how air quality would change during the redevelopment and operations of the Estate.
- 2.5 Phase 2 of the redevelopment of the Estate was partially approved on 31 January 2014<sup>4</sup> with the subsequent reserved matters approved on 25 July 2014<sup>5</sup> ("**Phase 2 Approval**"). Once again, all the conditions related to the preservation of trees in the Phase 2 Approval are based on protecting the amenities of the area rather than public health.<sup>6</sup> The conditions related to air quality are essentially the same as the Phase 1 Approval, with the requirement of an additional AQIA to be carried out.<sup>7</sup>
- 2.6 We have reviewed the AQIA prepared for Catalyst Housing pursuant to condition 30 of the Phase 2 Approval ("**Catalyst AQIA**").<sup>8</sup> This report is dated December 2015 with the test that inform the report carried out beforehand. Critically, these tests were carried out when the Estate had a significant number of trees on its grounds. Furthermore, the Catalyst AQIA does not mention the words "trees", "plants" etc at all; its focus is air pollution from cars and the Estate's energy centre and makes no findings on whether the removal of trees from the Estate lower air quality.
- 2.7 We are instructed that Catalyst has made numerous amendments to its tree retention strategy, all of which have been approved by the RBKC. Given the urgency of this letter, we have not had time to review all these plans in detail, and reserve our clients' right to contest the validity of these amendments. As provided above, the original tree retention strategy was grossly

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<sup>4</sup><https://www.rbkc.gov.uk/planning/searches/details.aspx?adv=0&simple=Wornington+Green+Estate&simpleBatch=20&simSubmit=Search&pgdec=3&id=PP/13/04516&cn=156476+CB+Richard+Ellis+Ltd+Henrietta+House+Henrietta+Place+0207+182+3682&type=decision&tab=tabs-planning-2>

<sup>5</sup><https://www.rbkc.gov.uk/planning/searches/details.aspx?adv=0&simple=Wornington+Green+Estate&simpleBatch=20&simSubmit=Search&pgdec=3&id=PP/14/01242&cn=163193+CB+Richard+Ellis+Ltd+Henrietta+House+Henrietta+Place+0207+182+3682&type=decision&tab=tabs-planning-2>

<sup>6</sup> See conditions 3 to 10.

<sup>7</sup> See conditions 30 to 32.

<sup>8</sup> SLR Global Environment Solutions, Wornington Green Estate, Phase 2, Discharge of Planning Condition 30 - Air Quality Assessment report - <https://www.rbkc.gov.uk/idoxWAM/doc/Other-1975026.pdf?extension=.pdf&id=1975026&location=Volume2&contentType=application/pdf&pageCount=1>

inadequate in protecting the existing trees of the Estate and the amended versions of the tree retention strategy only made these deficiencies worse.

- 2.8 As a result of the deficient tree retention strategies, phases 1 and 2 of the Estate's redevelopment have resulted in dozens of large, established trees being removed from the Estate. This culminated with the felling of 33 trees from the Estate in late March 2021. There are 7 trees in the Athlone Gardens of the Estate that remain but have been identified for felling as part of phase 2.
- 2.9 The 7 trees in the Athlone Gardens are scheduled to be removed on 10 March 2021.

### **3. Adverse health implications of air pollution**

- 3.1 London suffers from some of the worst air pollution in the world and the RBKC is one of its most polluted boroughs. The above ground train line, Ladbroke Grove and A40 exacerbates this problem for the residents who live in or around the Estate.
- 3.2 Air pollution adversely affects human health. There is now little doubt that air pollution reduces our life expectancy – in the same way smoking cigarettes or being exposed to asbestos reduces life expectancy. However, the full extent of the insidious and catastrophic consequences of air pollution has only started to be fully appreciated in recent years. The strengthening of this consensus can be seen in the various legislation, policy and regulations that have been created in recent years such as: (i) Part IV of the Environment Act 1995; (ii) The Air Quality Strategy for England, Scotland, Wales and Northern Ireland (2007); (iii) The Air Quality Standards Regulations 2010; (iv) The London Plan since at least 2011; and (v) the RBKC Consolidated Local Plan since at least 2015.
- 3.3 These initiatives have culminated with The Clean Air Strategy 2019<sup>9</sup> which was published in January 2019. The purpose of this strategy is explained in its executive summary:<sup>10</sup>

*"This Clean Air Strategy shows how we will tackle all sources of air pollution, making our air healthier to breathe, protecting nature and boosting the economy.*

*This document builds on an extensive consultation process which indicated broad-based support for many of the actions we are proposing. There was also a range of constructive feedback and*

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<sup>9</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/770715/clean-air-strategy-2019.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/770715/clean-air-strategy-2019.pdf)

<sup>10</sup> <https://www.gov.uk/government/publications/clean-air-strategy-2019/clean-air-strategy-2019-executive-summary>

*challenge that has enabled us to improve and extend our ambition even further in certain key areas. A document summarising the responses to the consultation is published alongside the strategy.*

*The final strategy sets out these proposals in detail and also indicates how devolved administrations intend to make their share of emissions reductions. It complements three other UK government strategies: the Industrial Strategy, the Clean Growth Strategy and the 25 Year Environment Plan.”*

3.4 The health consequences of air pollution are outlined at section 21 of the Clean Air Strategy:<sup>11</sup>

*“Air pollution is a major public health risk ranking alongside cancer, heart disease and obesity. It causes more harm than passive smoking. A review by the World Health Organization concluded that long-term exposure to air pollution reduces life expectancy by increasing the incidence of lung, heart and circulatory conditions.*

*The Department of Health and Social Care’s advisory Committee on the Medical Effects of Air Pollutants (COMEAP) have recently estimated that long-term exposure to man-made air pollution in the UK has an annual impact on shortening lifespans, equivalent to 28,000 to 36,000 deaths.*

*That is why we are taking action to accelerate the improvements to air quality that will reduce public exposure to air pollution, save lives and improve quality of life for current and future generations.*

*Conditions caused or exacerbated by air pollution include asthma, chronic bronchitis, chronic heart disease (CHD), and strokes. These conditions significantly reduce quality of life. They also mean that people are less able to work and need more medical care, resulting in higher social costs and burdens to the National Health Service.*

*Poor air quality can affect health at all stages of life. Those most affected are the young and old. In the womb, maternal exposure to air pollution can result in low birth weight, premature birth, stillbirth or organ damage. In children there is evidence of reduced lung capacity, while impacts in adulthood can include diabetes, heart disease and stroke. In old age, a life-time of exposure to air pollution can result in reduced life-expectancy and reduced wellbeing at end of life. There is*

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<sup>11</sup> Section 2.1 (page 24).

*also emerging evidence for a link between air pollution and an acceleration of the decline in cognitive function.*

*Public Health England (PHE), the independent body responsible for protecting the nation from public health hazards, has identified air pollution as a top priority for action. Deprived communities are more likely to experience adverse health effects from poor air quality because they are more exposed to air pollution, for example, by being close to major roads. They are less likely to live close to well-maintained green spaces associated with lower levels of air pollution, increased physical activity, and improved mental wellbeing ...”*

- 3.5 The Government reiterated the link between air pollution and adverse health impacts in its report titled: “Assessing progress towards World Health Organisation (“WHO”) guideline levels of PM2.5 in the UK”<sup>12</sup>. Page 5 from this report provides:

*“There is now a large body of evidence linking air pollution to health impacts at levels still found in the UK. Associations are particularly strong for long term exposure to PM2.5. These particles are known to enter the blood stream and are carried into many organs in the body and are linked to a range of health impacts including respiratory and cardiovascular illness, such as aggravation of asthma and respiratory symptoms. This in turn has been linked to an increase in hospital admissions as well as mortality from cardiovascular and respiratory diseases and lung cancer.”*

#### **4. Trees mitigation the effects of air pollution**

- 4.1 It is trite that trees improve air quality. The recent report prepared by the Air Quality Expert Group on the Impacts of Vegetation on Urban Air Pollution for the Department for Environment, Food and Rural Affairs<sup>13</sup> highlights that it is now well established that trees improve air quality. This report takes this consensus further by quantifying the effects trees have on air pollution in urban areas. Its findings are that:

- (a) Firstly, that the evidence suggests that planting more trees in an urban area will increase deposition rates of particulate matter (i.e. they reduce air pollution);<sup>14</sup> and

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<sup>12</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/930104/air-quality-who-pm25-report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/930104/air-quality-who-pm25-report.pdf) - page 5.

<sup>13</sup> [https://uk-air.defra.gov.uk/assets/documents/reports/cat09/1807251306\\_180509\\_Effects\\_of\\_vegetation\\_on\\_urban\\_air\\_pollution\\_v12\\_final.pdf](https://uk-air.defra.gov.uk/assets/documents/reports/cat09/1807251306_180509_Effects_of_vegetation_on_urban_air_pollution_v12_final.pdf)

<sup>14</sup> See section 4.3.

- (b) Secondly, that even on the basis of modest, practical planting schemes within an urban area, trees can reduce pollution in the air.<sup>15</sup>

4.2 This report therefore shows that even a modest number of trees in an urban area can significantly improve air quality.

## 5. RBKC and Catalyst's duty of care

5.1 Given the conclusions above, it is self-evidently true that every tree removed from the Estate results in the residents of the Estate and the surrounding area facing higher air pollution levels. By allowing the trees to be removed from the Estate, both Catalyst and RBKC are responsible for increasing the likelihood of the residents of the Estate and the surrounding areas contracting diseases such as lung, heart and circulatory conditions.

5.2 Given what we have outlined above, both Catalyst and RBKC are aware, or ought to be aware, of the adverse effects air pollution has on human health. Furthermore, both Catalyst and RBKC have special relationships with the residents that live in or around the Estate as they are the ones with power to maintain and protect the trees within the Estate. This means the residents of the Estate and the surrounding area are reliant on Catalyst and RBKC for maintaining on of the only protections they have against air pollution.

5.3 Accordingly, both Catalyst and RBKC have a duty of care to the residents of the Estate and the surrounding area to ensure that they take steps to protect them from air pollution. By allowing the trees of the Estate to be removed, both Catalyst and RBKC breached their duty of care to the residents of the Estate and the surrounding areas.

5.4 We acknowledge that this is a novel duty of care. But we see little difference between this duty of care and the duty of care that has been established to exist in carcinogenic dust cases, i.e.:

- (a) it is known that air pollution causes sickness to humans;
- (b) Catalyst and RBKC know about the risks of exposure to air pollution (or they ought to know);
- (c) trees are known to reduce air pollution (and hence reduce the health consequences of air pollution to humans);

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<sup>15</sup> See section 6.

- (d) the residents of the Estate and the surrounding area have no control over air pollution. However, Catalyst and RBKC do have a degree of control over air pollution – particularly with the preservation of trees. Therefore, both have a duty of care to the residents of the Estate and the surrounding area to plant and maintain trees to reduce air pollution; and
- (e) by permitting the trees of the Estate to be removed, RBKC is breaching this duty of care to the residents of the Estate and the surrounding area, and by removing trees, Catalyst is doing the same.

## 6. Our clients' demands

- 6.1 There is little that can be done about the trees that have already been removed. By allowing these actions to take place, we believe both Catalyst and RBKC may be liable for the losses our clients, and the wider community, suffer as a result of being exposed to heightened pollution levels.
- 6.2 In the immediate term however, both Catalyst and RBKC must take steps to mitigate the harm that the residents are suffering, and will continue to suffer, as a result of the trees on the Estate being removed. The immediate steps our clients demand Catalyst and RBKC take are as follows:
  - (a) No further trees are removed from the Estate until further consultation has occurred with our clients and the wider community. This specifically includes the 7 trees in the Athlone Gardens;
  - (b) Catalyst provides its full plans to our clients regarding the removal of all trees on the Estate including:
    - (i) the location of the trees identified for removal;
    - (ii) an explanation why any tree is identified for removal;
    - (iii) if a tree is identified for removal, whether the tree can be relocated to a new location;
    - (iv) if the tree identified for removal can be relocated to a new location, the location of the proposed new site for the tree;
    - (v) if the tree identified for removal but cannot be relocated, the report evidencing why the tree cannot be relocated;



- (vi) the remedial steps Catalyst will take to restore the Estate's air quality to the levels that existed before the trees were removed.

## 7. Injunctive relief

- 7.1 We request that Catalyst confirms that no further trees will be removed by **10:00am on 10 March 2021**. If we don't receive this confirmation by then, we will seek our clients' instructions to apply for urgent injunctive relief to stop the removal of the remaining trees on the Estate.

## 8. Relations moving forward

- 8.1 Our clients acknowledge that the increase in social housing that comes with the redevelopment of the Estate is a benefit to the community. Accordingly, our clients want to work with Catalyst and RBKC to ensure the redevelopment of the Estate continues. However, these benefits must not come to the detriment of the health of the existing residents of the Estate and the surrounding area. Catalyst's belligerent and self-serving behaviour has tarnished its standing in the community. Nonetheless, our clients, and the community as a whole, wish to extend an olive branch to both Catalyst and RBKC so that a mutually satisfactory compromise can be reached between the parties.

Yours faithfully,

**Hausfeld & Co LLP**