The Appeal Decision by the Planning Inspectorate for 28 Redington road, NW3 7RB, on 16th November 2017 is significant in at least two respects: for one the Inspector, the Inspector refuses an appeal because damage in excess of of Burland scale 1 were predicted by the applicant but also because the Planning Inspector rejects the appeal on the basis that all technical issues had not been resolved to the largest extent prior to determination rather than through section 106.

This Decision by the Planning Inspectorate fully validates the proposed policies of the Hampstead Neighbourhood Plan: BA1, 5.12, BA2 including the one in paragraphs 5.13, BA2 # 1, 2 and especially policy BA2 # 3 that states that: “ Due to the potential damage from basement development, all issues related to the BIA or raised by the Independent Assessor appointed by Camden must be resolved to the fullest extent possible prior to determination of the planning application rather than being deferred as a requirement of the Section 106 agreement.” Paragraphs 8,9,10, 11 and 12 from the Appeal Decision, reproduced below, are very clear in that respect:

“Neighbouring properties

8. The proposed development moves the ground floor of the property to more or less the position of the existing partly sunken lower ground floor and below this a basement is to be created. As set out in Policy A5 of the LP basement development that involves excavation changes the ground and water conditions of the area which can potentially lead to ground instability and as such can cause harm to adjoining neighbours’ properties. Consequently Policy A5 will only permit basement development where it is demonstrated that works of this nature will not cause such harm.

9. To this end Policy A5 sets out that a Basement Impact Assessment (BIA) is required which shows that the scheme poses a risk of damage to neighbouring properties no higher than Burland Scale 1 ‘very slight’. The supporting text to Appeal Decision APP/X5210/W/16/3164577 <https://www.gov.uk/planning-inspectorate> 3 this policy also provides further information on BIAs stating that they must be prepared according to the specifications set out in Camden Planning Guidance 4 Basements and lightwells (CPG 4) which at paragraph 3.25 states that calculations of predicted ground movements should be provided.

10. The appellant has submitted a BIA which was independently assessed by the Council’s auditor Campbell Reith. Their report highlights that the appellant’s BIA anticipates that any damage to neighbouring properties will be limited to Category 2 of the Burland Scale contrary to Policy A5. Furthermore, a ground movement assessment has not been provided.

11. The appellant explained at the hearing that they were advised by their engineers that ground movement calculations did not need to be included in the BIA. However, I am conscious that CPG 4 has been adopted for some time and was most recently updated in 2015. Notwithstanding this, the appellant stated at the hearing that they were confident that these outstanding matters could be resolved with a suitably worded condition and/or legal agreement.

12. Policy A5 is clear, however, that basement development will only be permitted once it has been demonstrated that the proposal would not cause harm to neighbouring properties. The appellant’s approach is therefore contrary to this. Policy A5 is part of a recently adopted and up-to-date Local Plan and therefore carries full weight. On the evidence before me I cannot, therefore, conclude that it has been demonstrated that the proposal would not be harmful to neighbouring properties.”