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Your Ref: APP/X5210/C/23/3315503
Our Ref: EN22/0480

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The Planning Inspectorate
Temple Quay House
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Dear Sir/Madam,

Town and Country Planning Acts 1990 (as amended)
Appeal by Mr Amir Shirafkan
Site at 122A Finchley Road, LONDON, NW3 5HT

I write in connection to the above appeal against enforcement notice (Ref: **EN22/0480**) for ***Without planning permission: the change of use of the mezzanine floor from beauty clinic (Use Class E) to 3 x residential units (Use Class C3) and removal of part of the front façade to create recessed balconies***

The Council's case for this appeal is largely set out in the Enforcement Notice and Officer's delegated (Ref: 2021/0195/P) report dated 15th December 2022 which was sent with the Questionnaire. The enforcement notice was issued for the following reasons:

- a) The change of use has occurred within the last 4 years;
- b) The unauthorised residential units by reason of their size, outlook and access to daylight results in substandard quality of accommodation, contrary to policies H7 of the Camden Local Plan 2017 and Camden Planning Guidance Housing 2021;
- c) The removal of part of the front façade and a section of shopfront to create a recessed double balcony, by reason of its siting, design, size, form and scale of the external change its considered to create an incongruous feature which negatively impacts on the host property and the wider streetscene and would therefore be unacceptable and contrary to Policy D1 of the Camden Local Plan 2017;
- d) The development, in absence of a S106 legal agreement to secure the development as car free, the development contributes unacceptably to parking stress and congestion in the surrounding area, contrary to policies T1 (Prioritising walking,

cycling and public transport), T2 (Parking and Car Parking), A1 (Managing the impact of development) and DM1 (Delivery and monitoring) of the Camden Local Plan 2017; and

- e) The development, in the absence of a legal agreement to secure a financial contribution towards affordable housing, would fail to maximise the contribution of the site to the supply of affordable housing in the borough, contrary to policy H4 (Maximising the supply of affordable housing) of the London Borough of Camden Local Plan 2017, policies H6 and H7 of the London Plan 2021, and of the National Planning Policy Framework 2021.

1.0 Summary

- 1.1 The site comprises a four storey semi-detached building on the eastern side of Finchley Road. The host building has undergone a number of significant alterations and additions over time. A commercial unit occupies the ground floor premises (beauty salon). The upper floors from first floor level are occupied as residential units. The mezzanine level which once formed part of the commercial premises on the ground floor is now occupied by 3 unauthorised residential units the subject of this notice and appeal.
- 1.2 The area is characterised by commercial uses at ground floor level with residential above. The site is not located in a conservation area or a listed building however it lies in close proximity to the Fitzjohns/Netherall Conservation to the north of the site.
- 1.3 The enforcement notice served on the 15th December 2022, requires the following:
 - 1) Cease the use of the mezzanine floor as 3 residential units (Use Class C3);
 - 2) Remove all kitchens, bathrooms and return the mezzanine floor to its former layout; and
 - 3) Completely remove the recessed balconies by reinstating the front elevation to match the position, materials, design and proportions of the pre-existing façade



Figure 1: Streetview image showing 122 Finchley Road highlighted in red



Figure 2: Streetview image showing recessed balconies above fascia sign.

- 1.4 In addition to the information sent with the questionnaire, I would be pleased if the Inspector could also take into account the following information and comments before deciding the appeal.

2.0 Status of Policies and Guidance

- 2.1 In determining the above mentioned application, the London Borough of Camden has had regard to the relevant legislation, government guidance, statutory development plans and the particular circumstances of the case. The full text of the relevant policies was sent with the questionnaire documents.

- 2.2 The London Borough of Camden Local Plan 2017 (the Local Plan) was formally adopted on the 3rd July 2017 and has replaced the Local Development Framework Core Strategy and Camden Development Policies documents as the basis for planning decisions and future development in the borough. The relevant Local Plan policies as they relate to the reasons for issuing the enforcement notice:

A1 – Managing the impact of development

A4 – Noise and vibration

D1 – Design

DM1 – Delivery and monitoring

G1 – Delivery and location of growth

H1 – Maximising housing supply

H6 – Housing choice and mix

H7 – Large and small homes

T1 – Prioritising walking, cycling and public transport

T2 – Car-free development and limiting the availability of parking.

The Council also refers to the following supporting guidance documents:

Amenity CPG (2021)

Design CPG (2021)

Housing CPG (2021)

Planning Obligations/Developer Contribution CPG (2019)

Transport CPG (2021)

- 2.3 The Council also refers to the following legislation, policies and guidance within the body of the Officer's Report:

National Planning Policy Framework (2021)

London Plan (2021)

3.0 Planning history summary

3.1 2021/0195/P - Retrospective conversion of first floor from retail storage unit to three self-contained flats and associated works – Refused with warning of enforcement action to be taken, 09/11/2022

Reasons for refusal:

- The unauthorised residential units by reason of their size, outlook and access to natural light, results in substandard quality of accommodation, contrary to policies H7 of the Camden Local Plan 2017 and Camden Planning Guidance Housing 2021.
- The removal of a section of shopfront to create a recessed double balcony, by reason of its siting, design, size, form and scale of the external change its considered to create an incongruous feature which negatively impacts on the host property and the wider streetscene and would therefore be unacceptable and contrary to Policy D1 of the Camden Local Plan 2017.
- The proposal development, in the absence of a legal agreement securing car-free housing, would be likely to contribute unacceptably to parking stress and congestion in the surrounding area, contrary to Policies T1, T2 and T3 of the Camden Local Plan, 2017.
- The proposed development, without the provision of an affordable housing contribution, would fail to maximise the contribution to the supply of affordable housing in the borough, contrary to policy H4 (Maximising the supply of affordable housing) of the London Borough of Camden Local Plan 2017.

The Enforcement Notice the subject of this appeal was issued following the refusal of the above planning application.

2018/3274/P - New side door to access the first floor, new side windows and alterations to shopfront - Pending withdrawal

2016/4959/P - Erection of a single storey extension to the rear at ground floor for ancillary retail floorspace (Class A1) (retrospective), Granted on 03/04/2018.

2014/3012/P - Erection of two storey ground floor rear extension to provide additional space for restaurant (Use Class A3), Granted on 29/10/2014

2013/5420/P - Erection of a 2 storey rear extension, including an alteration to the existing extraction flue to restaurant (Class A3), Refused on 19/12/2013

2010/5329/P - Change of use from restaurant (use class A3) to dual use takeaway (use class A5) and restaurant, with associated alterations to single storey rear extension and installation of plant equipment in rear garden structure, Refused on 08/04/2011

3.0 Comments on the Appellant’s Grounds of Appeal

3.1 The appeal is made under Grounds A, E and F. The following section will address each ground;

Ground A – That planning permission should be granted for what is alleged in the notice

3.2 *Appellant - The 1st reason for refusal claims that the residential units are substandard in quality, size and access to natural light. We refer the Inspector to the photos submitted with this appeal and note that all the flats meet the London size requirements and conform with Building Regs. It is argued the development is demonstrably not contrary to Policy H7 of the Camden Local Plan (2017) or the Camden Planning Guidance Housing 2021*

3.3 The appellant’s statement has failed to acknowledge that Flats 1 and 2 shown below are likely to be 2 bedroom flats which means they are undersized at 52.sqm (Flat 1) and 51.5sqm (Flat 2).

Dwelling	Bedroom/Persons	Floor space	London Plan Standard
1 (Studio)	1-bed/2person	45.6sqm	39/37sqm
2 (Flat 1)	2-bed/3person/ 2-bed/4person	52.5sqm	61/70sqm
3 (Flat 2)	2-bed/3person/ 2-bed/4person	51.5sqm	61/70sqm

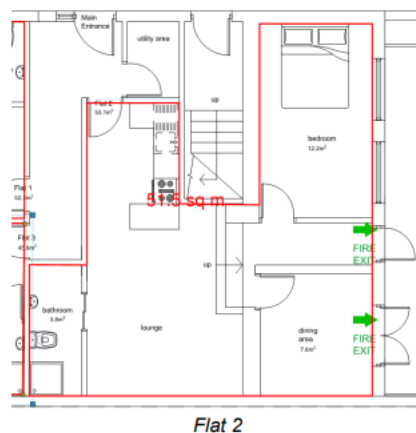
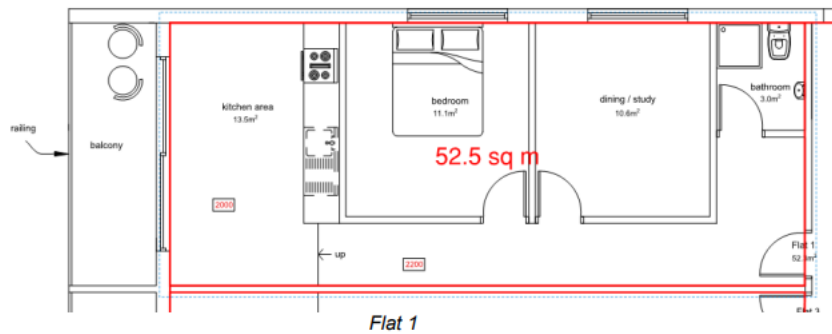


Figure 3. Floor plans of Flat 1 and 2

3.4 The recessed balconies provide a degree of natural daylight and ventilation to Flat 1 and the studio flat (Flat 3) to the front of the building. It is the only means of light and ventilation for the studio flat. Flat 1 has two windows that serve the bedrooms on the flank elevation. The recessed balcony is not acceptable in design terms and is discussed further below. Should the recessed balcony element be removed, the studio flat would be uninhabitable and Flat 1 would have no natural daylight to the main living space. The bedroom windows overlook a flank elevation approximately 2.2m away.



Figure 3. Site photograph of recessed balcony serving Flat 1



Figure 4. Site photograph showing the gap between the appeal site and 124 Finchley Road.



Figure 5. Site photograph showing the windows to Flat 1 on the flank elevation.

- 3.5 *Appellant - The 2nd reason for refusal claims that the external changes to the shop front results in an “incongruous feature which negatively impacts on the host property and the wider streetscene”. It is argued that the changes to the shopfront as a result of the development have enhanced the property and street scene, improving the look and impact of the front elevation on the area. To appreciate the change we have included some pre-existing photos below.*
- 3.6 *It is important to note the previous signage (blue sign) was covering the mezzanine opening which has existed since 1970. Planning permission was obtained in the*

1970's for the sign and opening as the space was previously occupied by a pub/restaurant. Planning permission application reference number: CA/165/A was granted for

- 3.7 “ at 122a Finchley Road, Camden. 1) An internally illuminated fascia sign, length 28'4" (8.3m), height 3'0" (0.91m), with white lettering 12" and 10" (0.30m and 0.25m) high, to read "the kings", surmounted by a yellow crown 12" (0.30m) high, all on a black background, overall height above ground being approximately 14'0" (4.30m). 2) an internally illuminated double sided projecting box sign 3'6" (1.07m) long and 2'0" (0.61m) high, with white lettering 6" and 5" (0.15m and 0.13m) high, to read " the kings", surmounted by a yellow crown 5" (0.13m) high and white letters 3" (0.08m) high to read "RESTAURANT", all on a black ground. Overall projection 3'6" (1.07m), overall height 10'6" (3.20m)."
- 3.8 *The previous blue-colour sign (shown in figure 6 above) was oversize and erected without permission, illuminated from the top and overall poor design and construction. The present sign (turquoise colour) has been reverted back to the original size and specification with the main difference being the business name and colours. The size has remained the same together with its position on the shop front and being internally illuminated with white lettering. The balcony was previously used by the restaurant as a smoking room with pendant lights hanging at the front. It is important to note that this building was not built at the same time as building occupied by Natwest bank next door. It was a later addition. The current sign is now period correct and in line with the planning permission dated 03/02/1970 Documents relating to the planning approval CA/165/A have been submitted with this appeal for the Inspector's convenience*
- 3.9 The Council disagrees that the current shopfront is an improvement to the host property or wider streetscene. While it accepts that over time there have been a number of insensitive alterations to the shopfront this does not negate another poor alternative being put in place. The appellants Figure 7 shows damaging and peeling around the fascia. It is the Councils view this could have been repaired and a more sensitive and appropriate shopfront installed. The recess above the fascia is unacceptable. The recessed balcony elements and their screens jar with the established front building line, plus the fenestration pattern and more vertical emphasis of the bank section of the building.
- 3.10 As such the shopfront is not in keeping with the prevailing character and built form of the other shopfronts along the street, and the recessed element presents an incongruous feature within the existing streetscape and is considered to set an unacceptable precedent. The Appellant states that the shopfront was recessed in the 1970's (Reference CA/165/A) but have provided insufficient information to substantiate this. The approval description and drawings do not appear to show a recess as the appellant claims. However, the appealed shopfront needs to be looked at in its immediate context, and is considered unacceptable in terms of its design and its relationship with the existing shopfronts along the street
- 3.11 Google streetview image below from 2008 contradicts the appellant's case. The evidence shows that a recess did not exist within the shopfront. The shopfront is clearly solid with a rendered finish. This evidence cannot be disputed.



Figure 6. Google streetview image of the shopfront at 122a Finchley Road in July 2008



Figure 7. Google streetview image of the shopfront at 122a Finchley Road in July 2008

- 3.12 *Appellant - The 3rd reason for refusal states concerns over “parking stress and congestion in the surrounding area” and notes the lack of a legal agreement securing car-free housing. As mentioned in the summary above, according to TfL’s own PTAL rating the appeal property could not be better connected to the public transport network. The flats are located in one of the least necessary areas for cars in London. However if the Inspector agrees with the LPA on the importance of a legal agreement around this point, the Applicant would be willing to enter into a S106 legal agreement or Unilateral Undertaking to confirm that no parking spaces will be associated with these flats.*
- 3.13 Should the appeal be allowed, the Council would require a S106 Agreement to secure the development as car free. See section 4.0 for further details.
- 3.14 *Appellant - The 4th reason for refusal notes the lack of an affordable housing component in the appeal development. There are three points to make regarding this issue: a. The property sits in a prime location with no residential units being lost to make space for it. The Applicant is providing three additional high quality residential units to the housing supply, units of a type which are in strong demand due to the convenience of the area and, e.g. the nearby business school b. The Applicant, who is Freeholder of the building, has to take into account the residents of the upper floor flats and their quality of life. There is concern that they would be opposed to the*

provision of affordable housing within the building c. The development should be considered by its own net benefits. It is a conversion of unused retail storage to useful, high quality, residential accommodation in an area where providing residential units is unlikely to result in intensification of use of the highways. This is a net gain as the Applicant is providing something in demand while the local area does not lose anything material. Furthermore, It should be noted the units are marketed at the lower end of the rental market price of the expensive London rental market. LB Camden holds copies of the tenancy agreements which confirm this position The Applicant is willing to enter into a legal agreement to make a financial contribution towards affordable housing as a condition of approval.

- 3.15 As stated in the Council delegated report - Policy H4 expects a contribution to affordable housing from all developments that provide one or more additional homes and involve a total addition to the residential floor space of 100sqm or more. This is based on the assessment where 100sqm of floor space is considered to be capacity for one home.
- 3.16 In developments that provide less than 10 units, affordable housing contributions can take the form of a payment in lieu (PIL). Given that the proposed new units would create more than 100sqm (175sqm) of residential floor space a contribution towards affordable housing would be required. See section 4.0 for further details.
- 3.17 Should the appeal be allowed, the Council would accept a payment in lieu.

Ground E - The notice was not properly served on everyone with an interest in the land.

- 3.18 *Appellant - The Enforcement Notice was issued on 15/12/22 and served on a number of addresses listed in the Notice. On 13/01/23 the addresses of the flats were registered as Flat A, B and C 122F Finchley Road. The Enforcement Notice was served prior to this date. However, the correct address of the property according to information provided by the Applicant was First Floor 122A Finchley Road prior to the address change Since this address is not listed with the addresses served in the Notice, it is argued that the Notice was not properly served. Therefore the Notice should be dismissed and served to the correct address.*
- 3.19 The Council disagrees that the Enforcement Notice was incorrectly served. At the time that the Enforcement Notice was served, it was served on all those having an interest in the land. Since the appellant has had the ability to appeal, the Council does not feel that they have been prejudiced by the change in their address. Moreover, the Council could only take into account, the information that was available at the time that the Enforcement Notice was issued.

Ground F – The steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections.

- 3.20 *Appellant - It is considered that these steps are excessive and would impose an unfair and disproportionate financial burden on the Appellant. Considering some of the aspects specific to this case:*
- *The high quality build of the residential units and that they satisfy Council guidelines*
 - *The improvement of the shopfront compared to the pre-existing shopfront*

- The HMO licence awarded by LB Camden showing that the units comply with Camden’s residential accommodation standards
- The development does not harm neighbouring properties, damage neighbouring amenity or negatively impact the street scene
- & others mentioned in the appeal under Ground (a)

3.21 If the Inspector does not agree the Notice should be dismissed, the Inspector is respectfully requested to consider lesser steps than those outlined in the Enforcement Notice, such as conversion to a HMO given that a HMO License has already been awarded by the Council

3.22 The Council does not consider that the steps to remedy the breach excessive. HMO Licensing and planning are subject to different legalisation, as such having a HMO license does not necessarily mean the accommodation is acceptable in planning terms. As discussed in points 3.3 and 3.4, the Council considers the flats to provide a substandard quality of accommodation for current and future occupiers which would be further compounded if the recessed balconies are removed to the flats at the front of the building.

3.23 It is worth noting that appellants HMO license considers Flats 1 and 2 (described as Flat A and B on the HMO license) to be two bedroom flats as shown below.

Minimum room sizes for self-contained flats (flats comprised of two or more habitable rooms plus kitchen and bathroom facilities behind its own entrance door) Note – The room size standards below <u>do not apply</u> if the entire flat is only occupied by a single household. In that case the applicable standard is the statutory national minimum standard referred to in items 2-3 of the attached schedule of licence conditions.				
Where kitchen facilities are located in a separate room and there is:			Where kitchen facilities are located within the room	
a shared lounge of at least 10m² available and the property is let to cohesive group of sharers	no shared lounge of at least 10m² available or the property is let on a room by room basis			
Single room 7.1m²	Single room 9m²		Single room 12m²	
Letting	Location	Room size m²	Maximum persons	Maximum household
Flat B	Ground floor front right bedroom	9.0	1	1
	Ground floor front left bedroom	9.2	1	1
Flat A	Ground floor front bedroom	12.3	2	1
	Ground floor rear bedroom	7.2	1	1

Figure 8. Extract from HMO licence for the appeal site.

4.0 Should the Inspector be minded to allow the appeal, the following S106 matters and conditions are recommended.

4.1 **S106**

4.2 The Council's legal officer is liaising with the appellants regarding a draft legal agreement and the Inspector will be updated at final comments stage. The two S106 matters are as follows.

4.3 **Affordable Housing**

4.4 Policy H4 aims to maximise the supply of affordable housing in line with aiming to exceed the Borough wide strategic target of 5,300 affordable homes from 2016/17 to 2030/2031. We will expect a contribution to affordable housing from all developments that provide one or more additional homes and involve a total addition to residential floorspace of 100sqm GIA or more. A sliding scale target applies to developments that provide one or more additional homes and have capacity for fewer than 25 additional homes, starting at 2% for one home and increasing by 2% for each home added to capacity.

4.5 On the basis of 175 sqm GIA of additional housing floorspace proposed (based on the submitted CIL form), this would result in a requirement for 4% affordable housing. This would equate to 7 sqm GIA of affordable floorspace. Where developments have capacity for fewer than 10 additional dwellings, the Council will accept a payment-in-lieu of affordable housing.

4.6 The affordable housing payment in lieu rate is £5000 per sqm GIA. Therefore, the affordable housing payment in lieu would be £35,000 (7 sqm x £5,000). This should be secured by legal agreement.

4.7 **Car Free Development**

4.8 Policy T2 requires all developments in the borough to be car-free. This means no car parking spaces should be provided within the site (other than essential spaces) and that occupiers are not issued with on-street parking permits. The Council requires this obligation to facilitate sustainability and to help promote alternative, more sustainable methods of transport. Therefore, the development should be secured as car-free through via a covenant under s.16 of the Greater London Council (General Powers) Act 1974 and other local authority powers if the appeal were allowed.

4.9 A planning obligation is considered the most appropriate mechanism for securing the development as car-free as it relates to controls that are outside of the development site and the ongoing requirement of the development to remain car-free. The level of control is considered to go beyond the remit of a planning condition. Furthermore, a legal agreement is the mechanism used by the Council to signal that a property is to be designated as "Car-Free". The Council's control over parking does not allow it to unilaterally withhold on-street parking permits from residents simply because they occupy a particular property. The Council's control is derived from Traffic Management Orders ("TMO"), which have been made pursuant to the Road Traffic Regulation Act 1984. There is a formal legal process of advertisement and consultation involved in amending a TMO. The Council could not practically pursue an amendment to the TMO in connection with every application where an additional dwelling/use needed to be designated as car-free. Even if it could, such a mechanism

would lead to a series of disputes between the Council and incoming residents who had agreed to occupy the property with no knowledge of its car-free status. Instead, the TMO is worded so that the power to refuse to issue parking permits is linked to whether a property has entered into a "Car Free" legal obligation. The TMO sets out that it is the Council's policy not to give parking permits to people who live in premises designated as "Car-Free and the Section 106 legal agreement is the mechanism used by the Council to signal that a property is to be designated as "Car-Free".

- 4.10 Use of a legal agreement, which is registered as a land charge, is a much clearer mechanism than the use of a condition to signal to potential future purchasers of the property that it is designated as car free and that they will not be able to obtain a parking permit. This part of the legal agreement stays on the local search in perpetuity so that any future purchaser of the property is informed that residents are not eligible for parking permits. CIL Compliance: The Car-free requirement complies with the CIL Regulations as it ensures that the development is acceptable in planning terms to necessarily mitigate against the transport impacts of the development as identified under the Development Plan for developments of the nature proposed. It is also directly related to the development and fairly and reasonably related in scale and kind as it relates to the parking provision for the site and impact on the surrounding highway network.

4.11 Conditions

- 4.12 The council does not consider that any conditions would mitigate the harm caused.

5.0 Conclusion

- 3.1 Having regard to the entirety of the Council's submissions, including the content of this letter, the Inspector is respectfully requested to dismiss the appeal.
- 3.2 If any further clarification of the appeal submissions are required, please do not hesitate to contact Katrina Lamont on the above direct dial number or email address.

Yours sincerely,



Katrina Lamont
Senior Planning Officer – Enforcement Team
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London Borough of Camden