

# STATEMENT OF CASE

264 Belsize Road, London, NW6

NP12592

Final

21 June 2023

## REPORT

### Document status

Version	Purpose of document	Authored by	Reviewed by	Approved by	Review date
Draft	Statement of Case	JB	AS	AS	31/05/2023
Final	Statement of Case	JB	AS	AS	21/06/2023

### Approval for issue

Jim Bailey

21 June 2023

The report has been prepared for the exclusive use and benefit of our client and solely for the purpose for which it is provided. Unless otherwise agreed in writing by RPS Group Plc, any of its subsidiaries, or a related entity (collectively 'RPS') no part of this report should be reproduced, distributed or communicated to any third party. RPS does not accept any liability if this report is used for an alternative purpose from which it is intended, nor to any third party in respect of this report. The report does not account for any changes relating to the subject matter of the report, or any legislative or regulatory changes that have occurred since the report was produced and that may affect the report.

The report has been prepared using the information provided to RPS by its client, or others on behalf of its client. To the fullest extent permitted by law, RPS shall not be liable for any loss or damage suffered by the client arising from fraud, misrepresentation, withholding of information material relevant to the report or required by RPS, or other default relating to such information, whether on the client's part or that of the other information sources, unless such fraud, misrepresentation, withholding or such other default is evident to RPS without further enquiry. It is expressly stated that no independent verification of any documents or information supplied by the client or others on behalf of the client has been made. The report shall be used for general information only.

#### Prepared by:

#### RPS

Jim Bailey  
Director - Planning

20 Western Avenue  
Milton Park  
Abingdon, Oxfordshire OX14 4SH

T +44 1235 821 888  
E [jim.bailey@rpsgroup.com](mailto:jim.bailey@rpsgroup.com)

#### Prepared for:

Roxburg Overseas Ltd

## Contents

1	INTRODUCTION .....	1
2	THE SITE AND ITS SURROUNDINGS .....	3
3	THE PROPOSED DEVELOPMENT .....	4
4	PLANNING POLICY REVIEW .....	5
5	STATEMENT IN SUPPORT OF APPEAL AGAINST NON-DETERMINATION .....	15
6	CONCLUSIONS.....	27

## Appendices

Appendix 1 – Pre-application advice letter from London Borough of Camden 2022/2088/PRE, dated 17<sup>th</sup> March 2023.

Appendix 2a and 2b – Design and Access Statement and Decision Notice for London Borough of Camden 2020/0571/P, approved 21<sup>st</sup> August 2020.

# 1 INTRODUCTION

- 1.1 RPS Consulting Ltd (RPS) has been instructed by Roxburg Overseas Ltd (the Applicant and Appellant), to submit a Section 78 appeal against the non-determination of planning application reference
- 1.2 The application for 5 residential duplexes at 264 Belsize Road (2022/4450/P) was submitted on 13<sup>th</sup> October 2022 and registered by the London Borough of Camden ('the LPA') on 8<sup>th</sup> December 2022 and the deadline for determination was set at 22<sup>nd</sup> December 2022. To date, almost 6 months after the deadline, the LPA has still not determined the application.
- 1.3 The application included the following:
- Planning Statement and appendices
  - Completed application forms
  - Design and Access Statement (Alan Power Architects Ltd)
  - Drawings:
    - Drawing Schedule
    - Location plan 564-01 1:250
    - Ground Floor as existing 564-02 Rev A 1:100
    - First Floor as existing 564-03 Rev A 1:100
    - Roof plan as existing 564-04 Rev A 1:100
    - Section AA as existing 564-06 Rev A 1:100
    - Section BB as existing 564-07 Rev A 1:100
    - Section CC as existing 564-08 Rev A 1:100
    - Existing site context with Ground Floor Plan 564-09 Rev A 1:100
    - Sectional Elevation DD as existing 564-10 1:100
    - Sectional Elevation EE as existing 564-11 1:100
    - Sectional Elevation FF as existing 564-12 1:100
    - Ground Floor as proposed 564-100 Rev D 1:100
    - First Floor as proposed 564-101 Rev B Rev 1:100
    - Second floor as proposed 564-102 Rev B 1:100
    - Roof plan as proposed 564-103 Rev B 1:100
    - Ground Floor as proposed 564-104 Rev B 1:50
    - First Floor as proposed 564-105 Rev B 1:50
    - Second floor as proposed 564-106 Rev B 1:50
    - Roof plan as proposed 564-107 Rev A 1:50

- Section AA as proposed 564-108 Rev C 1:100
- Section BB as proposed 564-109 Rev B 1:100
- Sectional Elevation CC as proposed 564-110 Rev A 1:100
- Sectional Elevation DD as proposed 564-111 Rev A 1:100
- Sectional Elevation EE as proposed 564-112 Rev A 1:100
- Sectional Elevation FF as proposed 564-113 Rev A 1:100
- Sustainability Statement
- Overheating Analysis Report
- Energy Statement
- Utility Report
- Whole Life Carbon Assessment
- CIL additional information form
- Noise Impact Assessment (submitted separately)

Copies of the above documents and plans are submitted with this appeal.

- 1.4 Section 2 sets out a description of the application site and surrounding context, section 3 sets out the proposed development, a review of key national and local planning policies is provided at section 4, and section 5 contains a statement of case in support of this appeal. Section 6 provides conclusions and recommendations.

## 2 THE SITE AND ITS SURROUNDINGS

- 2.1 The application site is located in Kilburn on the northern side of Belsize Road. The site is shown outlined in red on the Site Location Plan.
- 2.2 The site area is approximately 470 sq. m. The site includes the ground floor front part of no. 264, which is accessed from Belsize Road, leading to a steel frame two-storey building at the rear which has access onto Kilburn Place. The upper floors of the front section of No. 264 (that face onto Belsize Road) are excluded from the application.
- 2.3 Kilburn High Road lies approximately 40 metres to the west which is part of the A5 major road and from here there are main bus routes. There is a bus stop directly outside the front of no.264 Belsize Road and Kilburn High Road Overground Station lies around 91 metres to the south-west of the site. There are also many key services and facilities within short walking distance of the site.
- 2.4 The site does not fall within a Conservation Area. There are no Listed Buildings within close proximity of the site. The site lies in an Archaeological Priority Area.
- 2.5 The site is surrounded by other residential uses on the upper floors of adjacent buildings.

### Relevant Planning History

- 2.6 No 264, Belsize Road was granted retrospective planning permission in October 2009, for change of use from office use (Class B1) to non-residential institution (Class D1) in October 2009 under permission reference 2009/2500/P. This included the ground floor frontage area and 2-storey building to the rear, the same site the subject of this application.
- 2.7 Under the revised Use Classes Order, which revokes Class D uses, the current use is therefore F1(f) - Public worship or religious instruction (or in connection with such use). A key consideration here was impact on the amenity of neighbouring residents.
- 2.8 A pre-application enquiry was submitted to the LPA in May 2022 (2022/2088/PRE) and a meeting took place at the site in July 2022. Subsequently, it took the LPA until March 2023 to produce written advice. A copy of the written advice from the planning officer is attached to this statement of case as **Appendix 1**.

### 3 THE PROPOSED DEVELOPMENT

3.1 The proposed development includes alterations and extensions to an existing redundant non-residential institution building and change of use to C3 permanent residential use, to form 5 no. two-bedroom duplexes. In summary, the proposed development would include:

- The creation of five two-bedroom duplexes on three levels
- The southern side of the building opened up at first floor, to create a sequence of individual landscaped courtyards on the southern side, between the new accommodation and the access corridor running along the southern boundary of the site
- New lightwells at ground floor level within this area, to provide natural light and ventilation to the existing ground floor, to be laid out for the bedrooms. The existing ground floor will be used for bedrooms, the first floor on the north side as living areas, and a new mezzanine level is added over the rear (north) part of each duplex, open to the living spaces below
- The removal of external cladding, to be replaced by an enclosure with a significantly improved thermal performance, including new windows
- The removal of existing high-level glazing along the southern boundary to provide natural light into the new corridor. New glazing is proposed between the corridor and new residential patios
- The replacement of the existing grey metal roofing with a sequence of green roofs at all levels to promote bio-diversity within the site
- The provision of 10 bicycle spaces/storage racks on the ground floor of the front unit
- Significant sustainability improvements, including the refurbishment of the fabric of the building to meet current regulations for carbon reduction targets and the installation of solar pv at the main roof level

## 4 PLANNING POLICY REVIEW

- 4.1 Any proposed development must be judged against the relevant development plan and other government planning policy and guidance, including the National Planning Policy Framework (NPPF). Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications should be determined in accordance with the statutory development plan unless material considerations indicate otherwise. For the purposes of this proposal, the relevant development plan comprises the Camden Local Plan (adopted in July 2017) and the London Plan (adopted in 2021). Key, relevant policies from these documents are set out below.

### Camden Local Plan (adopted 2017)

- 4.2 Policy G1: 'Delivery and location of growth' states that the Council will create the conditions for growth to deliver the homes to meet Camden's identified needs and harness the benefits for those who live and work in the borough.
- 4.3 The Council will deliver growth by securing high quality development and promoting the most efficient use of land and buildings in Camden by:
- a) supporting development that makes best use of its site, taking into account quality of design, its surroundings, sustainability, amenity, heritage, transport accessibility and any other considerations relevant to the site;
  - b) resisting development that makes inefficient use of Camden's limited land;
  - c) expecting the provision of a mix of uses where appropriate, in particular in the most accessible parts of the borough, including an element of self-contained housing where possible; and
  - d) supporting a mix of uses either on site or across multiple sites as part of an agreed coordinated development approach, where it can be demonstrated that this contributes towards achieving the strategic objectives and delivers the greatest benefit to the key priorities of the Plan.
- 4.4 The policy goes on to state that growth in Camden will be expected to help contribute towards achieving the strategic objectives of the Local Plan and help deliver the Council's priorities. This includes securing self-contained housing, including sufficient affordable housing to meet the needs of residents and to ensure that Camden remains a place accessible for all people to live in. This includes the provision of 16,800 additional homes by 2031.
- 4.5 The policy then goes on to refer to the location of growth. This states that the most significant growth is expected to be delivered through a concentration of development in the growth areas and development at other highly accessible locations. Development in these areas must be consistent with the priorities and principles of the Council. Kilburn High Road and appropriate edge of centre locations, such as this site, are listed as a highly accessible areas where appropriate development will be promoted. Development in these locations must be of a size and character that is compatible with its surroundings.
- 4.6 Policy H1 'Maximising housing supply' also states that the Council will aim to secure a sufficient supply of homes to meet the needs of existing and future households by maximising the supply of housing and exceeding a target of 16,800 additional homes from 2016/17 - 2030/31, including 11,130 additional self-contained homes. The Council will also seek to exceed the target for



additional homes where sites are underused or vacant by expecting the maximum reasonable provision of housing that is compatible with any other uses needed on the site.

4.7 Policy H4 'Maximising the supply of affordable housing' states that the Council 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. The Council will seek to negotiate the maximum reasonable amount of affordable housing on the following basis:*

- a. the guideline mix of affordable housing types is 60% social-affordable rented housing and 40% intermediate housing;*
- b. targets are based on an assessment of development capacity whereby 100sqm (GIA) of housing floorspace is generally considered to create capacity for one home;*
- c. targets are applied to additional housing floorspace proposed, not to existing housing floorspace or replacement floorspace;*
- d. 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% of for each home added to capacity;*
- e. an affordable housing target of 50% applies to developments with capacity for 25 or more additional dwellings;*
- f. for developments with capacity for 25 or more additional homes, the Council may seek affordable housing for older people or vulnerable people as part or all of the affordable housing contribution;*
- g. where developments have capacity for fewer than 10 additional dwellings, the Council will accept a payment-in-lieu of affordable housing;*
- h. for developments with capacity for 10 or more additional dwellings, the affordable housing should be provided on site; and*
- i. where affordable housing cannot practically be provided on site, or offsite provision would create a better contribution (in terms quantity and/ or quality), the Council may accept provision of affordable housing offsite in the same area, or exceptionally a payment-in-lieu.'*

4.8 The policy goes on to state:

*'In considering whether affordable housing provision should be sought, whether provision should be made on site, and the scale and nature of the provision that would be appropriate, the Council will also take into account:*

- j. the character of the development, the site and the area;*

- k. site size and any constraints on developing the site for a mix of housing including market and affordable housing, and the particular types of affordable provision sought;*
- l. access to public transport, workplaces, shops, services and community facilities;*
- m. the impact on creation of mixed, inclusive and sustainable communities;*
- n. the impact of the mix of housing types sought on the efficiency and overall quantum of development;*
- o. the economics and financial viability of the development including any particular costs associated with it, having regard to any distinctive viability characteristics of particular sectors such as build-to-let housing; and*
- p. whether an alternative approach could better meet the objectives of this policy and the Local Plan.*

*Where the development's contribution to affordable housing falls significantly short of the Council's targets due to financial viability, and there is a prospect of viability improving prior to completion, the Council will seek a deferred contingent contribution, based on the initial shortfall and an updated assessment of viability when costs and receipts are known as far as possible.'*

- 4.9 Policy H6: 'Housing choice and mix' states that the Council will aim to create mixed, inclusive and sustainable communities by seeking high quality accessible homes and by seeking a variety of housing suitable for Camden's existing and future households, having regard to household type, size, income and any particular housing needs. The policy states:

*'We will:*

- a. encourage design of all housing to provide functional, adaptable and accessible spaces;*
- b. expect all self-contained homes to meet the nationally described space standard;*
- c. require 90% of new-build self-contained homes in each development to be accessible and adaptable in accordance with Building Regulation M4(2); and*
- d. require 10% of new-build self-contained homes in each development to be suitable for occupation by a wheelchair user or easily adapted for occupation by a wheelchair user in accordance with Building Regulation M4(3).'*

*'When considering future site allocations and negotiating the types of housing included in each development, we will:*

- e. seek a diverse range of housing products in the market and affordable sectors to meet the needs across the spectrum of household incomes;*
- f. promote Starter Homes in accordance with government requirements;*
- g. support the development of private rented homes where this will assist the creation of mixed, inclusive and sustainable communities;*

- h. seek provision suitable for families with children, older people, people with disabilities, service families, people wishing to build their own homes and Camden's traveller community; and*
- i. require a range of dwelling sizes in accordance with Policy H7 Large and small homes.'*

4.10 Policy H7 'Large and small homes' seeks to ensure that all housing development contributes to meeting the priorities set out in the Dwelling Size Priorities Table and includes a mix of large and small homes. The Council will:

*'... take a flexible approach to assessing the mix of dwelling sizes proposed in each development having regard to:*

- c. the different dwelling size priorities for social-affordable rented, intermediate and market homes;*
- d. any evidence of local needs that differ from borough wide priorities;*
- e. the character of the development, the site and the area, including the impact of the mix on child density;*
- f. site size, and any constraints on developing the site for a mix of homes of different sizes;*
- g. the economics and financial viability of the development including any particular costs associated with it, having regard to any distinctive viability characteristics of particular sectors such as build-to-let housing; and*
- h. the extent to which flexibility around the mix of market homes could secure the delivery of additional affordable housing.'*

4.11 'Large' homes are defined in paragraph 3.185 as homes with 3 bedrooms or more and 'small' homes are defined as studio flats, 1-bedroom and 2-bedroom homes.

4.12 Policy C2: 'Community facilities' seeks to ensure that community facilities and services are developed to meet the changing needs of the community. It states that the Council will... *'ensure existing community facilities are retained recognising their benefit to the community, including protected groups, unless one of the following tests is met:*

- i. a replacement facility of a similar nature is provided that meets the needs of the local population or its current, or intended, users;*
- ii. the existing premises are no longer required or viable in their existing use and there is no alternative community use capable of meeting the needs of the local area. Where it has been demonstrated to the Council's satisfaction there is no reasonable prospect of a community use, then our preferred alternative will be the maximum viable amount of affordable housing...'*

4.13 Paragraph 4.45 of the Local Plan then states:

*'Where an alternative community use cannot be found for the existing facility, the Council will seek the provision of affordable housing as its preferred alternative use. Community facilities generally have a relatively low capital value compared with housing sites. We will seek the maximum reasonable amount of affordable housing in accordance with Policy H4 Maximising the supply of affordable housing, having regard to financial viability. We will expect the*

*proportion of affordable housing to reflect the value of the development site in its former community use.'*

- 4.14 Policy A1: 'Managing the impact of development' states that the Council will grant permission unless this causes unacceptable harm to amenity. The Council will:
- a. seek to ensure that the amenity of communities, occupiers and neighbours is protected;*
  - b. seek to ensure development contributes towards strong and successful communities by balancing the needs of development with the needs and characteristics of local areas and communities;*
  - c. resist development that fails to adequately assess and address transport impacts affecting communities, occupiers, neighbours and the existing transport network; and*
  - d. require mitigation measures where necessary. The factors we will consider include:*
    - e. visual privacy, outlook;*
    - f. sunlight, daylight and overshadowing;*
    - g. artificial lighting levels;*
    - h. transport impacts, including the use of Transport Assessments, Travel Plans and Delivery and Servicing Management Plans;*
    - i. impacts of the construction phase, including the use of Construction Management Plans;*
    - j. noise and vibration levels;*
    - k. odour, fumes and dust;*
    - l. microclimate;*
    - m. contaminated land; and*
    - n. impact upon water and wastewater infrastructure.'*
- 4.15 Policy A4 'Noise and Vibration' seeks to ensure that noise and vibration is controlled and managed.
- 4.16 Policy D1: 'Design' seeks to secure high quality development. Amongst other things, the Council will require development that respects local context and character, is sustainable in design and construction, incorporating best practice in resource management and climate change mitigation and adaptation, comprises details and materials that are of high quality and that is accessible for all.
- 4.17 Regarding transport, Policy T1: 'Prioritising walking, cycling and public transport' states that the Council will promote sustainable transport. To promote cycling, accessible, secure cycle parking facilities exceeding minimum standards outlined within the London Plan and design requirements within the Camden Planning Guidance SPD on transport, will be provided.
- 4.18 Policy T2: 'Parking and car-free development' states that the Council will limit the availability of parking and require all new developments in the borough to be car-free.
- 4.19 Policy CC1: 'Climate change mitigation' states that the Council will require all developments to minimise the effects of climate change and encourage all developments to meet the highest feasible environmental standards that are financially viable during construction and occupation.

- 4.20 Policy CC2: 'Adapting to climate change' states that: *'The Council will require development to be resilient to climate change. All development should adopt appropriate climate change adaptation measures such as:*
- a. The protection of existing green spaces and promoting new appropriate green infrastructure;*
  - b. not increasing, and wherever possible reducing, surface water runoff through increasing permeable surfaces and use of Sustainable Drainage Systems;*
  - c. incorporating bio-diverse roofs, combination green and blue roofs and green walls where appropriate; and*
  - d. measures to reduce the impact of urban and dwelling overheating, including the application of the cooling hierarchy.'*

## The London Plan (adopted 2021)

- 4.21 The London Plan is part of each of London's Local Planning Authorities' Development Plan and must be taken into account when planning decisions are taken. Key policies that are of particular relevance to this proposal are listed below.
- 4.22 Policy GG2: 'making the best use of land' states that those involved in planning must:
- A. *'enable the development of brownfield land, particularly in Opportunity Areas, on surplus public sector land, and sites within and on the edge of town centres, as well as utilising small sites.'*
  - B. *'prioritise sites which are well-connected by existing or planned public transport.'*
- 4.23 Policy GG4: 'Delivering the homes Londoners need' states that:
- 'To create a housing market that works better for all Londoners, those involved in planning and development must:*
- A. *ensure that more homes are delivered*
  - B. *support the delivery of the strategic target of 50 per cent of all new homes being genuinely affordable*
  - C. *create mixed and inclusive communities, with good quality homes that meet high standards of design and provide for identified needs, including for specialist housing*
  - D. *identify and allocate a range of sites to deliver housing locally, supporting skilled precision-manufacturing that can increase the rate of building, and planning for all necessary supporting infrastructure from the outset*
  - E. *establish ambitious and achievable build-out rates at the planning stage, incentivising build-out milestones to help ensure that homes are built quickly and to reduce the likelihood of permissions being sought to sell land on at a higher value.'*
- 4.24 The Plan sets a housing delivery target for Camden of 10,380 homes by 2028/29. Policy H1: 'Increasing housing supply' also states that to ensure these targets are met, boroughs should:

*'optimise the potential for housing delivery on all suitable and available brownfield sites through their Development Plans and planning decisions, especially the following sources of capacity:*

*a) sites with existing or planned public transport access levels (PTALs) 3-6 or which are located within 800m distance of a station or town centre boundary*

*e) small sites...'*

4.25 Policy GG6 'increasing efficiency and resilience' states that development must support the move towards a low carbon circular economy, ensuring buildings are designed to adapt to a changing climate.

4.26 Policy H2: 'Small sites' encourages well-designed new homes on small sites (below 0.25 hectares in size) to increase the contribution of small sites in meeting London's housing needs and to achieve the minimum targets for small sites set out in the plan. This is 3,280 homes for Camden on small sites by 2028/29, as a component of the overall housing delivery target of 10,380 homes by 2028/29.

4.27 Policy D6 'Housing quality and standards' states the following:

*'A. Housing development should be of high-quality design and provide adequately-sized rooms (see Table 3.1) with comfortable and functional layouts which are fit for purpose and meet the needs of Londoners without differentiating between tenures.*

*B. Qualitative aspects of a development are key to ensuring successful sustainable housing. Table 3.2 sets out key qualitative aspects which should be addressed in the design of housing developments.*

*C. Housing development should maximise the provision of dual aspect dwellings and normally avoid the provision of single aspect dwellings. A single aspect dwelling should only be provided where it is considered a more appropriate design solution to meet the requirements of Part B in Policy D3 Optimising site capacity through the design-led approach than a dual aspect dwelling, and it can be demonstrated that it will have adequate passive ventilation, daylight and privacy, and avoid overheating.*

*D. The design of development should provide sufficient daylight and sunlight to new and surrounding housing that is appropriate for its context, whilst avoiding overheating, minimising overshadowing and maximising the usability of outside amenity space.*

*E. Housing should be designed with adequate and easily accessible storage space that supports the separate collection of dry recyclables (for at least card, paper, mixed plastics, metals, glass) and food waste as well as residual waste.*

*F. Housing developments are required to meet the minimum standards below which apply to all tenures and all residential accommodation that is self-contained.'*

4.28 Policy D7 'Accessible Housing' states that residential development must ensure that:

*'1) at least 10 per cent of dwellings (which are created via works to which Part M volume 1 of the Building Regulations applies) meet Building Regulation requirement M4(3) 'wheelchair user dwellings'*



*2) all other dwellings (which are created via works to which Part M volume 1 of the Building Regulations applies) meet Building Regulation requirement M4(2) 'accessible and adaptable dwellings'.*

- 4.29 Policy D12 'Fire Safety' seeks to ensure that the highest standards of fire safety are achieved in proposed development. Suitable and convenient means of escape should be provided as well as fire safety measures.
- 4.30 Policy SI 4 'Managing heat risk' states that proposals should minimise adverse impacts on the urban heat island through design, layout, orientation, materials, and the incorporation of green infrastructure.

## Material Considerations

### NPPF

- 4.31 Chapter 11 of the NPPF refers to 'Making effective use of land.' Paragraph 119 states that planning decisions should promote an effective use of land in meeting the need for homes. Paragraph 120(c) also states that planning decisions should give substantial weight to the value of using suitable brownfield land within settlements for homes and support appropriate opportunities to remediate derelict land.
- 4.32 Paragraph 120(d) also states that planning decisions should promote and support the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing where land supply is constrained and available sites could be used more effectively.
- 4.33 Paragraph 120(e) also supports opportunities to use the airspace above existing residential and commercial premises for new homes. Upward extensions should be allowed where the development would be consistent with the prevailing height and form of neighbouring properties and the overall street scene, is well-designed, and can maintain safe access and egress for occupiers.
- 4.34 Paragraph 11 of the NPPF states that decisions should apply a presumption in favour of sustainable development. For decision making this means:
  - 'c) approving development proposals that accord with an up-to-date development plan without delay; or*
  - d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:*
    - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed<sup>7</sup>; or*
    - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.'*
- 4.35 For applications involving the provision of housing, out-of-date policies include those where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 74).
- 4.36 Paragraph 74(c) states that a 20% buffer (moved forward from later in the plan period) should be applied to the supply of deliverable sites where there has been a significant under delivery of housing over the previous three years, to improve the prospect of achieving planned supply.

Footnote 41 specifies that the delivery of under 85% of the housing requirement would require this 20% buffer.

- 4.37 Paragraph 153 of the NPPF states the importance of mitigating and adapting to climate change, taking into account the long-term implications for water supply, biodiversity, and the risk of overheating from rising temperatures.

### **Camden Planning Guidance**

#### **Amenity (2021)**

- 4.38 This guidance contains key messages regarding overlooking, privacy and outlook; daylight and sunlight; artificial light; construction management plans and noise and vibration.

#### **Design (2021)**

- 4.39 This guidance contains key messages regarding design excellence; heritage; landscape and public realm; designing safer environments and storage and collection of recycling and waste.

#### **Housing (2021)**

- 4.40 This document contains guidance on the provision of affordable housing; payments in lieu of housing and affordable housing; viability assessments relating to housing and affordable housing requirements; planning obligations and residential development standards.

#### **Transport (2021)**

- 4.41 This document contains guidance on assessing transport impact; travel plans; delivery and service plans; parking and car-free development; car parking management and reduction; cycling facilities and pedestrian and cycling movement.

#### **Energy Efficiency and adaptation (2021)**

- 4.42 This guidance states that development should achieve a minimum of 20% carbon emission reduction (Table 2a Energy reduction targets) through Be Lean, Be Clean, and Be Green measures.

#### **Developer contributions (2019)**

- 4.43 This guidance sets out what developer contributions should be secured through section 106 agreements and CIL contributions may be expected for each type of development.

#### **Delivery Test – Action Plan (2021)**

- 4.44 This states that the Council delivered 79% of homes compared to their target between 2017/18 and 2019/20 (2568 delivered against a target of 3265 homes). The Council has not published an up-to-date Annual Monitoring Report, but the Council did confirm at a hearing held in April 2021 (appeal reference: APP/X5210/W/20/3261840 – Land adjacent Jack Straws Castle – see Planning Statement Appendix 1 that is submitted with this appeal) that they could not demonstrate a five-year housing land supply. At paragraph 52 of the appeal decision the Planning Inspector stated: ‘The Council confirmed at the hearing that they could not demonstrate a 5-year supply of housing land. Paragraph 11d) of the Framework is therefore engaged...’ Since then, the Council have been required to add a 20% buffer to their 5-year housing land supply as their housing delivery fell below 85%. Whilst the Council have not yet published a revised housing land supply figure with



the buffer, given that they could not demonstrate a 5-year housing land supply in April 2021 without the buffer, it is very likely that this is still the case.

## 5 STATEMENT IN SUPPORT OF APPEAL AGAINST NON-DETERMINATION

### Principle of development

- 5.1 The pre-application advice from the LPA states the following:

*The proposals involve the creation of new residential flats within an existing institutional building. It would involve the adaptive reuse of the majority of the existing structure, supplemented with a reconfiguration of the roof. A main feature would be the creation of internal lightwells to provide natural light to internal rooms of the two-storey maisonettes.*

*Policy G1 supports development that makes best use of its site, taking into account quality of design, its surroundings, sustainability, and amenity. The existing building is considered an appropriate location for more housing given it is the predominant existing land use. The addition of new housing is supported by Policy H1, which seeks to increase the housing supply within the borough. However, the site is highly sensitive given the existing surrounding densities and any development would introduce built form in close proximity to existing residents. An intelligent and creative response to the site context is therefore crucial to obtain officer support.*

*Whilst new housing is encouraged within the borough, Policy C2 of the Local Plan seeks to ensure that community facilities and services are retained, unless the existing premises is no longer required or viable in its existing use and there is no alternative community use capable of meeting the needs of the local area. Where it has been demonstrated to the Council's satisfaction there is no reasonable prospect of a community use, then the preferred alternative will be the maximum viable amount of affordable housing.*

*The existing building was used by the International Gospel Community Church who applied for planning permission to use the building as a non-residential institution in 2009. They vacated the site in 2016, moving to a location in Burnt Oak, Edgware, which better serves their needs. Since vacating the site in 2016, no alternative community use has been found to serve the local area nor has a commercial tenant been found, despite marketing the property for over 24 months. Given that the building has been sitting vacant for over seven years, the tests outlined in Policy C2 have been satisfactorily met.*

- 5.2 Consequently, the LPA agrees with the appellant that the principle of the proposed development is acceptable, and the proposal complies with adopted local plan policies G1, H1 and C2.

#### (i) Dwelling Mix

- 5.3 The pre-application advice states that:

*The Council requires development to contribute to the creation of mixed and inclusive*

communities by containing a mix of large and small homes. Policy H7 of the Local Plan includes a Dwelling Size Priorities Table as set out below:

	1-bedroom (or studio)	2-bedroom	3-bedroom	4-bedroom (or more)
Social-affordable rented	lower	high	high	medium
Intermediate affordable	high	medium	lower	lower
Market	lower	high	high	lower

Policy H7 seeks to ensure that all housing development:

- a. contributes to meeting the priorities set out in the Dwelling Size Priorities Table; and
- b. includes a mix of large and small homes.

The proposal includes the creation of five self-contained flats: 4x two-bedroom units and 1x three-bedroom unit. The mix would provide a mix of large (3-bed) and small (2-bed) homes and both unit sizes are regarded as high priority. Thus, the proposed unit mix is welcomed.

- 5.4 Consequently, the LPA agrees with the appellant that the proposed mix of dwelling sizes and types is acceptable, the proposal complies with local plan policy H7.

## (ii) Affordable Housing

- 5.5 The pre-application advice states that:

*Policy H4 (maximising affordable housing) requires 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. The policy states that where developments have a capacity for fewer than 10 additional dwellings, the Council will accept a payment in lieu of affordable housing. In order to minimise this contribution, an affordable housing viability assessment could be submitted with the formal planning application.*

*Targets are based on an assessment of development capacity whereby 100 sqm GIA of housing floorspace is generally considered to create capacity for one home and 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.*

*Where development has the capacity for fewer than 10 additional dwellings, the Council will accept a payment-in-lieu of affordable housing. A rate of £5000 per sqm GIA is applied. On*

*this basis the contribution for each option would be as follows:*

*[Additional residential floorspace (GIA) x target%] x £5000*

*Without a total residential floorspace figure, the affordable housing contribution cannot be provided. However, the above noted equation can be used to calculate the future payment in-lieu amount.*

- 5.6 The appeal proposal is for 695 square metres of additional residential floorspace. This figure needs to be rounded up to 700 sqm and divided by 100 to make the equivalent of 7 new dwellings. Therefore, the amount required by policy H4 in lieu of on-site affordable housing provision will be  $7 \times 2\% = 14\% \times 995 \text{ sqm} = 97.3 \times £5,000 = \underline{£486,500}$ . How this contribution will be paid to the LPA will be discussed below.

### (iii) Standard of Accommodation

- 5.7 The pre-application advice states that:

*Policy H6 outlines how the Council will seek to secure high quality accessible homes in all developments that include housing. We will:*

- a. encourage design of all housing to provide functional, adaptable and accessible spaces;*
- b. expect all self-contained homes to meet the nationally described space standard;*
- c. require 90% of new-build self-contained homes in each development to be accessible and adaptable in accordance with Building Regulation M4(2); and*
- d. require 10% of new-build self-contained homes in each development to be suitable for occupation by a wheelchair user or easily adapted for occupation by a wheelchair user in accordance with Building Regulation M4(3).*

*The proposal consists of five maisonettes: 4no. two-bedroom units (Units 2 through 5) and 1no. three-bedroom unit (Unit 1). The units feature three levels, with two bedrooms at ground floor level (three bedrooms in Unit 1), kitchen and living areas on the first floor, and a loft space on the second level. The creation of the loft level is facilitated by the raising of the existing roof form. To access the units, occupiers would be required to enter through 264 Belsize Road which would provide an entrance lobby with cycle parking, and then up a set of stairs, through a door to a covered corridor from which the front doors to the units are located. This is quite a convoluted and illegible route although the constraints are recognised. Access via Kilburn Place is not provided.*

*In terms of space standards, units 2 through 5 meet the minimum national space standards for two-bedroom units at 108-114 sqm, with the required being 70-70sqm. Unit 1 also meets the minimum national space standards for a three-bedroom unit at 134sqm, with the required being 108sqm.*

*Although each of the units exceeds minimum space standards, there are significant concerns with the availability of daylight and sunlight as well as the poor level of outlook afforded by the*

*proposed units. Units 2 through 5 are single aspect at ground floor level, with small internal lightwells being the only available source of natural light to the kitchen / dining spaces at ground floor level and each of the bedrooms at lower ground floor level. This is contrary to CPG Housing which outlines that new dwellings should be dual aspect and provide sufficient outlook. The existing rooflights along the north and south ridge of the roof will be refurbished and will provide a limited level of natural light which will illuminate the communal corridor and spill through the glass privacy barrier into the lightwells. The raised roof will allow for additional windows facing south, which will provide natural daylight and sunlight to the loft level, with some spill into the first-floor rooms.*

*Unit 1 features the same three level floorplan but has the advantage of being dual aspect as it has an elevation along Kilburn Place to the north. Along that elevation there are windows at ground and loft levels, as well as a balcony terrace from the living and kitchen areas. Concerns are still raised that two of the ground-floor bedrooms will have a poor level of daylight/sunlight and outlook into a small lightwell. The first and second levels are considered to have a suitable level of outlook.*

*A future application should provide an internal daylight study to demonstrate the ground and first floor levels will provide sufficient daylight and sunlight throughout the year. Design options should also be explored which will provide the residential units with a better outlook as the current proposal is determined to be very poor in this regard. The proposal is extremely inward looking and the lightwells are so tight and constrained they would provide extremely restricted levels of outlook and daylight.*

*Majority of the rooms have no outlook into the public realm, aside from the loft levels with face south directly into the rear elevations of residential dwellings along Belsize Road and the north elevation into Kilburn Place from Unit 1. Whilst an improvement on Units 2-5, it is noted that Kilburn Place, which is mainly a service road for commercial properties along Kilburn High Road, does not provide the best outlook for a residential property.*

5.8 The appellant does not agree with the LPA's assessment of the proposal. At ground floor level, not lower ground level as described in the pre-app advice, each of the bedrooms will have access via sliding glass doors to a patio, not just a lightwell, which will provide natural light and access to an open amenity area for each dwelling. At first floor level, not ground floor level as described in the pre-app advice, the lounge / kitchen / dining room of each dwelling will have large, south-facing sliding glass doors providing considerable amounts of natural light and access to another patio and garden area. At second floor level, each dwelling will have further large, south-facing windows looking out over the green roof areas. In addition, although units 2 to 5 will only have a single aspect, this will be to the south, with plentiful opportunities to bring light into the dwellings, which will ensure a considerable provision of daylight and sunlight, as well as an attractive outlook onto patios, gardens and green roof areas. Whilst it is desirable that all new dwellings should be dual aspect and have suitable outlook (Housing CPG, page 123). This is simply not possible in all cases. Indeed, the majority of flats, in particular, usually only have a single aspect. Basement flats usually only have lightwells serving not only bedrooms, but also kitchens, living rooms and dining areas.

5.9 With regard to outlook, the Amenity CPG states that the separation distance between dwellings should be at least 18 metres. This is to preserve amenity, as well as provide satisfactory outlook.

In this case, we are able to provide a 15m separation distance, at second floor level, which is below the suggested separation distance in the CPG, but it is considered to be reasonable in this case. At first floor level, the distance will be less than 15m, but the use of high-level windows will ensure that sufficient daylight and sunlight is enjoyed by residents. The Amenity SPG (paragraph 2.6) states that where the historic character of an area makes it difficult to meet this standard, it should be appropriate to reflect this in the design of development schemes. In this case, although the appeal site does not lie in a conservation area and it is not listed, it is located in an area characterised by older properties, which were constructed prior to any planning controls. The distances between habitable windows do not comply with current minimum requirements, such that the appeal proposal, in terms of outlook, will not be out of keeping with surrounding properties.

- 5.10 Consequently, it is considered that the proposal complies with the relevant aspects of policy H6 in terms of the standard of residential accommodation being provided.

#### (iv) Design

- 5.11 The pre-application advice states that:

*The Council's design policies are aimed at achieving the highest standard of design in all developments, including where alterations and extensions are proposed. Policy D1 of the Local Plan requires development to be of the highest architectural and urban design quality which improves the function, appearance and character of the area.*

*Camden's Design CPG emphasises Camden's commitment to design excellence, and expects development schemes to consider:*

- *The context of a development and its surrounding area;*
- *The design of the building itself;*
- *The use and function of buildings;*
- *Using good quality sustainable materials;*
- *Creating well connected public spaces and good quality public realm*
- *Opportunities for promoting health and well-being*
- *Opportunities for improving the character and quality of an area*

*The majority of the shell of the building will be retained, with the roof structure reconfigured and raised on the north portion of the site in order to create a loft level and additional south facing windows. As the existing building lacks any elevations or fenestration, aside from the Kilburn Place portion, much of the design alterations are at roof level.*

*The proposed roof form, which at present is a low-pitched roof with large rooflights, will be removed along the south portion to facilitate the creation of the five lightwells. The existing rooflights along the southern roof edge will be retained and refurbished, as are the rooflights along the north roof edge. The north portion of the roof will be raised by 2.3 metres and will feature south facing windows. In principle, the increased height and bulk of the roof form is considered to be acceptable given the building is surrounded by built form and would not be perceptible from the public realm and only limited private views. However, the design does not*

*seem compatible with residential use and it feels like it has been driven by the desire to fit in as many units as possible. For residential units to be supported in this location, the design should feel more domestic and allow for generous lightwells that bring in a level of daylight that will allow occupiers to enjoy their homes. Amenity space is also extremely limited and of poor quality given it will be largely in shade. This is contrary to Policy D6 of the London Plan which outlines that 5sqm of private outdoor space should be provided for 1-2 person dwellings, with an additional 1sqm for each additional occupant.*

*Along the Kilburn Place elevation, the existing service door and plant fixtures will be replaced with a three-storey elevation with windows and a balcony terrace to Unit 1. It is considered that the proposed increase in height along this elevation is appropriate, however further design details should be explored.*

- 5.12 The appellant does not agree with the LPA's assessment of the proposal in this regard. The LPA states that it considers the proposal to be overdevelopment because the dwellings will not be provided with sufficient usable amenity space and the proposed lightwells will be inadequate. Policy H6 of the London Plan is quoted, which states that small dwellings, as proposed, should be provided with at least 5sqm of amenity space. As mentioned above, it is considered that the patio areas shown on the plans are not simply lightwells. Each one is served by full-height glass doors, providing access for residents at ground floor level from the bedrooms. Each of these patios at ground floor level will be approx. 5 sqm in area, while the patios and amenity spaces at first floor level, also accessible via full height glass doors from the main living spaces, will each be approx. 5 sqm in area. See the Schedule of Amenity Space below, which sets out the amount of amenity space for each residential unit.

#### Schedule of Amenity Space

	Unit 1	Unit 2	Unit 3	Unit 4	Unit 5
Gnd (patio)	5.9	4.7	4.7	4.7	5
1 <sup>st</sup> (patio)	4.6	4.6	4.6	4.6	5.7
1 <sup>st</sup> (balcony)	4				
Total	14.5	9.3	9.3	9.3	10.7

Quite clearly, the design standards of policies H1 and H6 will be met by the proposal.

- 5.13 With regard to the issues of design and amenity, the appellant would like to draw attention to a development at Lidlington Place, which has been approved by the LPA. The proposal was for a single 3-bedroom dwelling with ground and basement levels. The site was constrained by high brick walls and lay within a conservation area. Three bedrooms were provided at basement level with their only natural light coming from skylights. Even with such small skylights, a Daylight and Sunlight report with the application concluded that the light levels in the bedrooms would be adequate and the LPA did not dispute these findings. The scheme included no amenity space,



even though it is for a 3-bedroom family dwelling. The planning officer's decision made no mention of amenity space standards. However, the planning officer concluded that:

*Overall, the proposed single-family dwelling would be of a high quality design, preserve the character and appearance of the conservation area, and provide a good standard of accommodation.*

- 5.14 In our opinion, it is disingenuous of the LPA to criticise the appeal proposal for lacking amenity and design quality, whilst approving proposals such as that referred to above, which have bedrooms only lit by modest lightwells and no amenity space provided. Copies of the DAS and decision notice pertaining to the Lidlington Place development are attached as **Appendix 2**.

## **(v) Neighbouring Amenity**

- 5.15 The pre-application advice states the following:

*Policy A1 of the Local Plan seeks to protect the quality of life of occupiers and neighbours. The factors to consider include: visual privacy, outlook; sunlight, daylight and overshadowing; artificial lighting levels; noise and vibration; odour, fumes and dust; and impacts of the construction phase, including the use of Construction Management Plans. Careful consideration of amenity impacts is particularly crucial on this site given the close proximity of residential units at relatively high densities.*

*Concerns are raised that the only outlook from Units 2 through 5 through the south facing loft level windows is directly into neighbouring residential dwellings located on Belsize Road. The loft levels of the five units will therefore have new direct and unobstructed views into habitable rooms of neighbouring residences, which is considered unacceptable and not in compliance with Policy A1 of the Local Plan. In addition, the minimum distance between residential units, as outlined in CPG Amenity, shall ideally be no less than 18m. The proposed distances are between 13.5m and 15m, which is considered contrary to established guidance. The outlook from Unit 1 into Kilburn Place is not anticipated to have any impact on neighbouring residential amenity as there are no residential units within the immediate vicinity.*

*The existing first floor residential units along Belsize Road currently enjoy a north facing outlook onto the roof of the subject building. This includes views of the sky through the opening at the northeast corner. It should be demonstrated that the increased height from the roof alterations will not negatively affect the existing levels of light and outlook from the residential units along Belsize Road. A daylight and sunlight assessment should therefore be submitted with any future planning application.*

*Within the development, it is considered that the privacy of the first-floor kitchen / living areas and garden at ground floor level will be severely compromised by the glazed communal corridor. Even with a balance of obscure and non-obscure glazing, in order to provide natural light, it is anticipated that the amenity of future occupiers would be negatively affected.*



*It is likely that there would be some disruption during the construction period. Measures to reduce the impact of demolition / construction works should be outlined in a draft Construction Management Plan (CMP), which is likely to be secured by section 106 legal agreement if an application is approved. CPG Transport includes a link to the Council's CMP Pro Forma.*

- 5.16 The appellant does not agree with the LPA's assessment of the proposal in this regard. It is accepted that the Amenity CPG (paragraph 2.4) states that "it is good practice to provide a minimum of 18m between the windows of habitable rooms in existing properties facing the proposed". However, this is suggested "good practice", it is not policy and it is not set in stone. Every proposed development needs to be considered on its merits and it will not always be possible to provide an 18m separation distance and yet the development may be perfectly acceptable in amenity terms. In this case, the existing habitable rooms to the south of the site are between 13.5m and 15m away from the proposed windows of the appeal scheme. However, any risk of overlooking between the properties is reduced by the intercedence of the high wall along the southern boundary of development, which will have a partial screening effect and the considerable set-back of the first-floor accommodation, with partial screening in-between and use of high-level windows, which will reduce any risk of overlooking even further. This point is adequately illustrated on page 18 of the DAS and it is common for similar distances between habitable room windows to be found in the local area.
- 5.17 The LPA suggests that the glazed communal corridor along the southern edge of the development will compromise privacy for the future residents of the dwellings. It is considered that this is no different to facing out onto a standard street, which the council find acceptable. Residents will be protected by the location of the patios and gardens, which will ensure that pedestrians have to walk some distance away from windows into loving areas. Residents will also be able to plant their gardens with screening trees and shrubs if they wish to reduce any risk of people looking into their living space. Overall, the relationship between the dwellings and the corridor is likely to be no different to that with a normal street pavement.
- 5.18 It is agreed that there will be some disturbance of neighbour's amenities during the construction phase of the development. A CMP will be implemented, which can be secured by a condition on the planning consent notice. Overall, it is considered that residential amenity will not be unduly harmed by the development and the proposal complies with policy A1 of the local plan.

## **(vi) Transport Consideration**

- 5.19 The pre-app letter states the following:
- The site has a PTAL score of 6a which indicates that it has an excellent level of accessibility by public transport. The nearest London Overground station is Kilburn High Road, located just south of the site, whilst the nearest bus stop is located immediately outside the property.*
- In line with Policy T1 of the Local Plan, it is expected that cycle parking be provided in accordance with the standards set out in the London Plan. Based on the proposed unit mix (4x two-bedroom units and 1x three-bedroom unit), the number of required cycle parking spaces would be 10. Cycle parking is proposed to be provided in accordance with the standards in the entry area of the building on ground floor level. To be considered acceptable, this should be designed in accordance with the guidance in CPG Transport.*
- In accordance with Policy T2 of the Local Plan, which seeks to secure car-free development cross the Borough, it will be necessary to secure any proposed residential units as car free by means of a s.106 legal agreement. This will prevent any future residents from adding to*

*existing on-street parking pressure, traffic congestion, and air pollution whilst encouraging the use of more sustainable modes of transport such as walking, cycling, and public transport. No car parking is currently provided on site, and none is proposed.*

- 5.20 The appellants agree with the LPA that the appeal site is in a highly accessible location, close to public transport links and local amenities. A total of 10 bicycle parking spaces will be provided with the development in compliance with policy T1 of the local plan. A Unilateral Undertaking will be submitted to accompany the appeal, which will include provision of a car-free development, in compliance with policy T2 of the local plan. Overall, therefore, it is agreed by the parties that the proposal is acceptable in transport terms.

### **(vii) Sustainability**

- 5.21 The pre-app letter states that:

*Policies CC1 (Climate change mitigation) and CC2 (Adapting to climate change) require all developments to minimise the effects of climate change and encourage all developments to meet the highest feasible environmental standards. The current proposal would result in the retention and refurbishment of the existing building which is welcomed.*

*All developments involving five or more dwellings and/or more than 500 sqm of (gross internal) floorspace will be required to submit an energy statement demonstrating how the energy hierarchy has been applied to make the fullest contribution to CO2 reduction. All new residential development will also be required to demonstrate a 19% CO2 reduction below Part L 2013 Building Regulations (in addition to any requirements for renewable energy). This can be demonstrated through an energy statement or sustainability statement.*

*As part of the assessment of resource efficiency, all developments involving five or more dwellings and/or more than 500 sqm gross internal floor space are encouraged to assess the embodied carbon emissions associated with the development within the energy and sustainability statement. Where such an assessment has been completed we would encourage that the results are logged on the WRAP embodied carbon database in order to contribute to the embodied carbon knowledge base.*

*The sustainability of residential development arising from conversions, extensions and changes of use can be assessed through the use of BREEAM domestic refurbishment. We will encourage developments of five or more dwellings or 500 sqm of residential floorspace or above resulting from conversions, extensions and changes of use to achieve an 'excellent' rating in BREEAM domestic refurbishment.*

*Developments must be designed to be water efficient. This can be achieved through the installation of water efficient fittings and appliances (which can help reduce energy consumption as well as water consumption) and by capturing and re-using rainwater and grey water on-site.*

*Policies D1 and CC2 of the Local Plan encourage sustainable urban drainage systems, green roofs and walls and high quality hard and soft landscaping. The inclusion of a green roof is therefore welcomed, as are the installation of solar panels.*

- 5.22 A sustainability statement and an energy statement were submitted with the planning application, which have addressed all of these issues in detail. Consequently, it is considered that the proposal will be highly sustainable and energy efficient, in compliance with policies D1 and CC2 of the local plan.

### **(viii) Refuse and Recycling**

- 5.23 The pre-app advice states the following:

*You are advised to design in adequate facilities for recycling and the storage and disposal of waste. Further information can be found in CPG Sustainability.*

*Camden Local Plan Policy CC5 (Waste) and CPG (Design) are relevant with regards to waste and recycling storage and seek to ensure that appropriate storage for waste and recyclables is provided in all developments. Any proposal should demonstrate that the development would include facilities for the storage and collection of waste and recycling.*

- 5.24 The proposal will include facilities for storage and collection of waste and recycling for each dwelling, in compliance with policy CC5 and the Design CPG. These facilities can be secured by means of suitable conditions on the planning consent notice.

### **(ix) Conclusion**

- 5.25 The pre-app advice letter states the following:

*Although the Council would support the principle of additional housing in this location, the proposed development is considered overdevelopment. The result of trying to squeeze too many units is a substandard level of accommodation for all units, particularly with regards to daylight/sunlight and levels of outlook. Owing to the increase in massing, the proposed development is also anticipated to harm the amenities of existing occupiers on Belsize Road, especially with regards to overlooking and potentially impacts on daylight and outlook. Further design development is needed to ensure the proposed development would be of a high standard of design which would provide high standard dwellings with appropriate levels of daylight/sunlight, as well as sufficient levels of outlook. It is recommended that further pre-application advice is sought prior to submission of a full application.*

- 5.26 As explained above, the appellant does not agree with the LPA's assessment that the proposal is overdevelopment. The appellant considers that the proposal is acceptable in terms of its provision of amenity for future occupiers, its impact on the amenity of neighbouring properties and in all other respects. The LPA has had the planning application since October 2022, and it should have been approved by now. The lack of action from the LPA has forced the appellant down the appeal route.

### **(x) Planning Obligations and conditions**

- 5.27 A Unilateral Undertaking will be submitted with this appeal. It will cover several matters, including the following:

- Payment of LPA legal fees
- Payment of LPA monitoring fees

- Payment of contribution in lieu of affordable housing provision
- Car free development and non-eligibility of residents for parking permits
- Payment of fee for Construction Management Plan
- Contractor to register with Considerate Constructors Scheme
- Payments to LPA to be Index-Linked

5.28 Matters that could be covered by condition should include:

- Cycle parking provision details
- Refuse and recycling provision details
- Construction Management Plan

### **(xi) Consultee comments**

5.29 Several comments have been submitted in response to the application. These comments raise a number of objections, which we would like to respond to below:

1. Waste storage – rubbish bags would have to be deposited on Kilburn High Road, which would cause a nuisance. Response - Waste and recycling bags would be placed by residents in appropriate locations, which can be agreed with the LPA by condition on the planning consent. This will enable the LPA to control the situation and prevent any nuisance.
2. Cycle access – residents will access the property with their bikes close to a bus stop, which will result in conflict with pedestrians. Response – This is a modest development of just 5 dwellings and the level of bike movements will be small. The opportunities for conflict will be minimal.
3. Disabled access – single access via 264A Belsize Road will create a fire trap. Response – the development will comply with building regulations and will be acceptable in terms of fire risk mitigation.
4. Overdevelopment – could be up to 30 people living in short-term lets. Significant impact on utilities. Response – Connections to utilities will be adequate to serve the 5 dwellings.
5. Marketing – the property has not been marketed and could be returned to commercial use. Response – evidence of marketing has been submitted and there is clear evidence that there is no market demand for the commercial unit in this location.
6. Loss of privacy – direct overlooking of neighbours first and second floor habitable rooms. Response – while the LPA would prefer there to be 18m between windows of back-to-back properties, the scheme will only be 3m short of this, while the use of high-level windows and intervening walls, will reduce the scope for overlooking.
7. Loss of light – neighbours will lose a significant amount of daylight at the rear of their properties. The existing building is 42m high and the new building will be 44m high, leading to a significant loss of light for neighbours. Response – the scheme will block very little light to neighbours, because of the graduated design and the fact that the new dwellings will be located to the north of neighbouring properties, rather than to the south where there is the most daylight. We do not recognise the 42m and 44m heights, which would suggest a 10-storey building, rather than a 3-storey one.
8. Noise – the site is surrounded by high buildings creating an amphitheatre, which will amplify noise during construction and occupation of the dwellings. Response – we have submitted a noise report with the appeal, and this concludes that noise from the development will not be an issue for neighbours.

9. Light spillage – potential 24-hour lighting will have a harmful effect on neighbours. Response – there is no guarantee that lighting will be on 24 hours a day. Timers and motion sensors could be used to minimise electricity use. Lighting details could be controlled by the LPA by means of a suitable condition on the consent notice.
10. Cumulative effect – loss of enjoyment of our existing properties. Response – if the dwellings are not built, the building could revert to a commercial use, which may not need planning permission and could have a far greater impact on neighbours. The proposal has been designed in such a way that the potential to disturb the amenities of neighbours can be mitigated. The impact of the development on neighbouring properties will not be sufficiently harmful to justify refusal of planning permission.

## 6 CONCLUSIONS

- 6.1 This Statement of Case is submitted to accompany an appeal against the non-determination of a planning application for 'alterations and extensions to existing redundant non-residential institution building to C3 permanent residential use, to form 5 no. two-bedroom duplexes,' at 264 Belsize Road, Camden.
- 6.2 Based on recent appeal decisions the Council cannot currently demonstrate a five-year housing land supply. As such, the policies that are most important for determining the application are out-of-date and so Paragraph 11(d) of the NPPF applies. There are no policies in the NPPF that protect areas or assets of particular importance that provide a clear reason for refusing the proposed development.
- 6.3 The planning application was submitted in October 2022, after a pre-application enquiry had been submitted, for the same scheme, in May 2022. The applicant agreed to put the application on hold while the pre-app was being considered. However, it took until March 2023 to receive the pre-application advice (a period of 10 months from start to finish). The advice letter suggested that a further pre-application submission was required. By this time, the planning application had been under consideration by the LPA for 6 months. Having been extremely patient with the LPA, at this point the applicant has decided to appeal against non-determination.
- 6.4 We have addressed a number of issues contained in the pre-application advice letter, which states that, whilst the principal of the proposal, which is extremely sustainable in many ways, is accepted, the scheme is considered to be overdevelopment, with issues concerning amenity for both new residents and existing ones. In addition, a number of local residents have written to the LPA to express their concerns about amenity issues. In the above statement of case, we have explained why we consider the LPAs and residents objections to be unfounded and, in fact, the proposal complies with all relevant development plan policies.
- 6.5 The development proposes much-needed housing on a brownfield site in a highly sustainable location, whilst providing significant environmental benefits and sustainability improvements to the existing building. Therefore, in accordance with the requirements of Paragraph 11(d) of the NPPF, we consider that the appeal should be allowed, and planning permission granted, as expeditiously as possible.



# APPENDICES





Appendix 2