



## Appeal Decision

Hearing held on 12 September 2023

Site visit made on 12 September 2023

**by A Parkin BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 27<sup>th</sup> September 2023**

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**Appeal Ref: APP/X5210/W/23/3324552**

**264 Belsize Road, Camden, London NW6 4BT**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Roxburg Overseas Ltd against the Council of the London Borough of Camden.
  - The application, Ref 2022/4450/P, is dated 10 October 2022.
  - The development proposed is alterations and extensions to existing redundant non-residential building to C3 permanent residential use, to form 5 no. two-bedroom duplexes.
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### Decision

1. The appeal is dismissed and planning permission is refused.

### Preliminary Matters

2. With reference to the Procedural Guide and the views of the participants at the Hearing, I accepted a number of items of late evidence before the Hearing opened, during the Hearing, and following the close of the Hearing. These included various referenced development plan policies and planning guidance; drawings showing the proposal; and evidence as to the Council's housing land supply (HLS).
3. A signed version of a S106 planning agreement, which had previously been provided in draft form, was submitted at the opening of the Hearing. Following a brief review of this document, dated 12 September 2023, the parties agreed to revise it to correct an error and to provide evidence of title for the owner of the appeal site. I have considered the revised version, dated 20 September 2023, and the associated documents, in determining this appeal.
4. On 5 September 2023, the Government published the latest version of the National Planning Policy Framework (the Framework). I am satisfied that the changes made to the revised version would not affect this appeal.

### Background and Main Issues

5. As part of its Statement of Case, the Council submitted an indicative decision notice and officer report which show that it would have refused planning permission for the proposal, had it made a decision.
6. From the evidence the main issues in this case are the effect of the proposal on:
  - The living conditions of future occupiers with particular regard to accessibility; natural light; outlook; privacy; and amenity space;

- The living conditions of nearby occupiers with particular regard to natural light; outlook; privacy; artificial lighting and noise and disturbance;
- Waste and Recycling provision; and,
- Affordable Housing provision and Parking provision in the area.

## Reasons

7. The proposed development would entail the conversion of a ground floor retail-type unit, 264 Belsize Road, and a larger, 2-storey warehouse-type building accessed from Kilburn Place to its rear. Both properties are currently vacant and have been largely stripped of furnishings; access between them is possible at ground and first floor level.
8. This is a constrained development site, largely surrounded by existing buildings, many of which are in residential use. The proposal would provide five 2-bedroom dwellings over three floors in the former warehouse building, together with a communal entrance area, and internal bicycle storage on the ground floor of No 264.

### *Living conditions of future occupiers*

9. The proposed development would be accessed from Belsize Road, through the communal entrance area and up a flight of stairs to the side and rear, with the sole access to the proposed dwellings at first floor level. A platform stairlift, such as could be used by a person in a wheelchair, would be provided as part of the proposal. The ground floor access to the former warehouse from Kilburn Place to the rear and from the former retail unit, would be blocked.
10. An internal corridor would be created at first floor level in the former warehouse building from which access to the dwellings would be provided. Each of the proposed dwellings would have a broadly similar layout; bedrooms at ground floor level, the main living accommodation at first floor level and supplementary living accommodation at the mezzanine level above and to the rear.
11. Policy H6 (housing choice and mix) of the Camden Local Plan 2017 (CLP) encourages the provision of adaptable and accessible dwellings. The dwellings themselves are not fully accessible, given the accommodation is contained over three levels. Once in the building, visitors to the dwellings with mobility impairments would be able to access the main living accommodation at first floor level, via the communal stairlift. However, details for how the existing stepped access to the former retail unit on Belsize Road would be made accessible to such visitors have not been provided.
12. I do not find the appellant's comment that the five dwellings would be adaptable to improve accessibility in the future to be particularly compelling. There is a lack of evidence to demonstrate how this would be achieved and it is likely that significant alterations would be necessary. However, for developments of this scale there is no requirement in Policy H6 to meet M4(2) or M4(3) of the building regulations in terms of adaptability and accessibility.
13. The width of the communal stairs is below the minimum width contained in the London Plan Guidance Housing Design Standards June 2023 (LPGHDS). I note that the width of the communal corridor would be similarly below this width. The provision of a stairlift would significantly reduce the width of the stairs

- when in use, and the benefit it affords needs to be balanced against this disbenefit.
14. More significant is the issue of fire safety and in particular how residents and their guests would be evacuated, and how the Fire Brigade would access the development, in the event of a fire.
  15. In addition to the main entrance, a secondary access, described by the appellant as 'a means of escape' is shown at first floor level, leading, via a stepped and partly external passageway containing a number of sharp turns and doors, to Kilburn High Road. Whilst access was available during the site visit, most of this narrow passageway is outside the site edged red and not in the control of the appellant.
  16. The Council did not directly raise fire safety in its pre-application advice, did not consult the London Fire Brigade on the proposal and has not listed fire safety as one of its indicative reasons for refusal. I also note that fire safety is a matter to be addressed in large part through the building regulations.
  17. However, Policy D5 (inclusive design) part B5 of the London Plan 2021<sup>1</sup> (LP), requires that, amongst other things, developments should be designed to incorporate safe and dignified emergency evacuation for all building users. The appellant has not provided a Fire Statement or other documentation to address these matters or to show that the Fire Brigade could safely access the site.
  18. The Council and the appellant have now submitted an agreed pre-commencement condition, to be attached to any grant of planning permission were the appeal to be allowed, to address any fire safety issues. However, given the design of the proposal, including the somewhat convoluted means of access and the measures proposed to make it accessible to visitors with mobility impairments, this approach is far from ideal.
  19. I do not find the proposed access arrangements to be clearly shown or obviously well-considered. Nevertheless, recognising that engagement between the main parties has been infrequent and delayed, from the evidence before me, the accessibility arrangements, including in terms of fire safety, could be controlled by suitably worded conditions attached to the grant of planning permission were the appeal to be allowed.
  20. Most of the boundary walls and much of the existing ground and first floor levels of the former warehouse building would be retained as part of the proposed development. A new mezzanine level, extending above the existing roof level at the rear and including skylights and southeast-facing windows, would also be provided.
  21. Much of the existing warehouse roof would be removed to allow external lightwell/amenity areas to be provided at ground and first floor level in each of the proposed dwellings, and for the mezzanine level to be constructed. The easternmost dwelling, Unit 1, would be dual aspect above ground floor level.
  22. In its pre-application advice to the appellant, the Council raised concerns with regard to daylight and sunlight at the proposed dwellings. The Council advised that a future application should provide a study to show that the ground floor

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<sup>1</sup> Spatial Development Strategy for Greater London 2021

and first floor areas would receive sufficient daylight and sunlight throughout the year.

23. However, no such study was provided. Figure 2 in the submitted Sustainability Statement indicates that the proposed dwellings would achieve an average daylight factor of 0.90, although the implications of this are not explained. Furthermore, not all of the proposed floor areas are visible and from what can be seen, large areas of habitable rooms would have an average daylight factor of 0.0.
24. I also note that this is an average score for the whole year and so whilst at times the level of daylight will be greater than shown, at other times it will be less. No assessment of sunlight has been provided by the appellant.
25. I do not find the appellant's limited evidence regarding a proposal at Lidlington Place to be compelling and I note the Council does not consider that scheme to be comparable to the appeal scheme. In any event, each proposal should be determined on its individual merits, which is what I have done in this case.
26. From the limited evidence before me, I am not satisfied there would be adequate daylight or sunlight for future occupiers at any of the proposed dwellings.
27. The proposed development would be located on an in-fill site, largely surrounded by taller buildings. The construction of a mezzanine level towards the rear of the site would include windows facing in a south-easterly direction, towards the rear upper elevations of 264 – 272 Belsize Road, providing only a limited outlook for future occupiers. However, the proposed dual-aspect Unit 1 would also include an outlook to the north-west at first and second floor level along Kilburn Place.
28. Beyond these, none of the dwellings would have a meaningful outlook beyond the boundary of the site. At ground floor level the small size and enclosed nature of the lightwell/amenity spaces would not provide an adequate outlook for future occupiers from the bedrooms, which are habitable rooms. At first floor level, the small size of the lightwells/amenity spaces, which would be generally enclosed by the obscure glazing of the access corridor, would again provide an inadequate outlook; this would be a particular issue for the single-aspect Units 2-5.
29. The obscure glazing would, if it extended to a height of some 1.8 metres above ground level as discussed at the Hearing, protect the privacy of future occupiers from the communal corridor, including harmful overlooking of the ground floor level. However, the inevitable consequence of this that outlook at first floor level would be significantly constrained.
30. Concerns have been raised by nearby residents on the upper floors of the buildings fronting Belsize Road regarding the effects of the proposal on their privacy; I will deal with this issue later.
31. However, in terms of the privacy of future occupiers, the separation distances between the upper floor rear elevations of Nos 264 – 272 Belsize Road and the internal, mezzanine level balconies would be some 15m – 17m, less than the 18m minimum distance specified in the 2021 Camden Planning Guidance on Amenity (CPGA).

32. Furthermore, the CPGA, which relates to the application of Policy A1 (managing the impact of development) of the CLP, indicates that the separation distance should be measured from the windows, rather than an internal balcony<sup>2</sup>. This would reduce the separation distances by some 1.2m and in the case of Unit 1, by some 1.65m.
33. The proposed separation distances would be well below those specified in the CPGA and I do not consider matters such as the age or position of the building stock in the area to be sufficient to justify a reduced distance, given the harm that would be caused.
34. I also note that in addition to the mezzanine level, there would be scope to see into the first floor areas of the proposed dwellings from the second floor of the buildings on Belsize Road, via the first floor lightwell/amenity spaces. Whilst I note the comments regarding further use of obscure glazing to protect the privacy of future occupiers, this would further reduce the inadequate outlook for the single-aspect Units 2-5.
35. With reference to the five-storey serviced apartment building at 258 Belsize Road, some of the windows in its south-western elevation would be very close to the proposed mezzanine level and would overlook some of the lightwells/amenity spaces and allow oblique views into Units 1 and 2 in particular, significantly reducing privacy for future occupiers.
36. This is a built-up area and a constrained infill site. Nevertheless, the occupiers of the proposed single aspect Units 2-5 would not have an acceptable outlook. Furthermore, I am satisfied there would be harmful overlooking of future occupiers of any of the dwellings from the second floor rear windows of Nos 264-272 Belsize Road, or from windows in the side elevation of 258 Belsize Road.
37. The proposed development would provide two areas of outdoor amenity space for each of Units 2-5, at ground floor and first floor level; Unit 1 would also include a partly enclosed balcony space at first floor level. In terms of the spatial metrics, the proposed outdoor amenity spaces for Units 2-4 would be slightly below the requirements of Section C10 of the LPGHDS. However, the cumulative amount of outdoor amenity space for each dwelling means that I do not consider the small shortfall for Units 2-4 would cause significant harm.
38. Nevertheless, as previously mentioned, neither the ground floor spaces nor the first floor patio spaces in the proposed dwellings would provide a meaningful outlook. For the ground floor spaces in particular, I am not satisfied from the limited evidence that adequate natural light would be provided, whilst the first floor garden spaces at Units 1, 2 and 4 would be overlooked from the upper floor windows of nearby buildings. Consequently, I do not consider these would be attractive spaces in which to sit out.
39. Notwithstanding the internal space standards for the five dwellings would exceed those contained in the nationally described space standards 2015, I consider the quality of the proposed outdoor amenity space would be significantly detrimental to the living conditions of future occupiers.
40. For these reasons, the proposed development would cause unacceptable harm to the living conditions of future occupiers, with particular regard to natural light, outlook and privacy, including in the amenity spaces. It would, therefore,

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<sup>2</sup> Figure A of the CPGA

conflict with Policies A1<sup>3</sup>, D1 (design) and H6 of the CLP, and with the Framework, in this regard.

*Living conditions of nearby occupiers*

41. Concerns have been raised by nearby residents regarding the effects of the proposal on their living conditions. Whilst a Daylight and Sunlight Assessment has not been provided by the appellant, the scale, massing and position of the proposed development means it would be very unlikely to block sunlight or significantly reduce daylight at nearby properties.
42. The proposed mezzanine level would increase the scale of the former warehouse building somewhat. However, the relatively small increase in height, which would be on the north-western side of the building, away from the properties facing onto Belsize Road, would be unlikely to significantly reduce the outlook of nearby occupiers there. Indeed, the proposed sedum roofs may improve the outlook to some extent.
43. I consider there would be reciprocal harmful overlooking of the upper floors on the rear elevations of buildings facing onto Belsize Road, as well as the side elevation of No 258, given the scale and position of the proposed development and separation distances that would be below the minimum contained in the CPGA. This is appreciable from Views 1, 2 and 3 on pages 20-22 of the Design and Access Statement. The development context for the proposal does not cause me to change my view as to the harm that would be caused to the living conditions of nearby occupiers in terms of reduced privacy.
44. I do not consider that the proposal would cause unacceptable harm to nearby occupiers in terms of disturbance from artificial lighting, which would be from the internal illumination of rooms. Whilst there would be an increase in the scale and quantity of fenestration, I do not consider this would result in a significantly greater disturbance than would be caused were the former warehouse to be operational.
45. Similarly, I do not consider the level of noise from the occupiers of five dwellings would be likely to cause unacceptable harm to the living conditions of nearby occupiers, even with outdoor amenity spaces. In any event, noise disturbance of this type could be addressed by other means, including the Council's Environmental Health Department, were it to occur.
46. A Noise Impact Assessment has also been provided which concludes that through the use of appropriate mitigation measures, significant adverse noise impacts as a result of the proposal are unlikely to occur. No compelling evidence has been provided that would cause me to disagree with this conclusion.
47. In terms of construction noise and disturbance, I note the appellant intends to provide a Construction Management Plan (CMP), to be submitted to and approved by the Council prior to implementation.
48. I am satisfied that in this case, this matter should be controlled by a planning obligation rather than by way of a condition attached to any grant of planning permission, were the appeal to be allowed. This is a constrained infill

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<sup>3</sup> Whilst not referenced by the Council on its indicative decision notice with regard to future occupiers, from the evidence I am satisfied there would be a conflict with this policy.



development site near to existing dwellings and commercial uses, and next to a bus stop. This approach, including the provision of a bond, would enable the Council to swiftly address any breaches of the CMP and so minimise disruption and disturbance.

49. An appropriate CMP would be sufficient to address the adverse effects caused during the construction of the proposed development were the appeal to be allowed. I am also satisfied that the reference to a CMP within the submitted planning obligation would be a) necessary to make the development acceptable in planning terms; b) directly related to the development; and c) fairly and reasonably related in scale and kind to the development<sup>4</sup>.
50. However, with reference to Planning obligations: good practice advice April 2023<sup>5</sup>, I am not satisfied that the S106 Agreement dated 20 September has been correctly executed as a deed by Emirates NBD Bank (P.J.S.C) in contrast to the superseded S106 Agreement dated 12 September 2023.
51. Two names of people with 'the power to sign on behalf of Emirates NBD in order to constitute a valid contract' are listed at paragraph 1.6 of the separate legal opinion dated 20 September 2023. However, the S106 Agreement dated 20 September includes only one authorised signature on behalf of Emirates NBD Bank (P.J.S.C) and it is not clear what the name of this person is.
52. Consequently, I am not satisfied that this planning obligation would be legally sound and thereby effective. It therefore carries no weight in my determination.
53. For these reasons, the proposed development would cause unacceptable harm to the living conditions of nearby occupiers, with particular regard to privacy and construction noise and disturbance. It would, therefore, conflict with Policies A1, G1 (delivery and location of growth), T3 (transport infrastructure), T4 (sustainable movement of goods and materials), DM1 (delivery and monitoring), A4 (noise and vibration) and CC4 (air quality) of the CLP, and with the Framework, in this regard.

#### *Waste and recycling*

54. The issue of facilities for the recycling and storage of waste was raised in pre-application comments by the Council, including reference to Policy CC5 (waste) of the CLP and to the Council's Design planning guidance.
55. The appellant maintains that such facilities would be provided in each dwelling and that waste and recycling would be placed on the pavement on Belsize Road for collection at the required times/days. The appellant states that such an approach is used by other residents of Belsize Road, although no compelling evidence has been provided to substantiate this.
56. The footway outside 264 Belsize Road is of a generally adequate width for pedestrians to use, although I would not describe it as wide. However, some A-board signs were positioned in front of retail units towards Kilburn High Road and furthermore, a very short distance to the east of the appeal building on Belsize Road is a bus shelter with seats, which reduces the usable width of the footpath considerably.

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<sup>4</sup> Paragraph 57 of the National Planning Policy Framework 2021 (the Framework) and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.

<sup>5</sup> Appendix - Paragraphs 10.2 and 10.3

57. This is a mixed residential and commercial area and I do not consider that leaving waste and recycling bags on the pavement to be an acceptable means of storage. Bags left on the pavement would be unsightly and during hot weather in particular, foul smells from the waste may be a problem.
58. People would need to leave their waste and recycling on the pavement for collection before journeying to work. As such, the waste could be left there for much of the day. The waste and recycling from five 2-bedroom dwellings could be considerable and so would also reduce the width of the footpath and make it more difficult for pedestrians to use.
59. No specific area of pavement, which would be outside the site edged red, has been identified for bags to be left, although it is likely the space to the front of No 264, near to the bus shelter, would be used for convenience. No structures are proposed for the waste to be stored in whilst awaiting collection.
60. Whilst this is another issue where more extensive engagement between the Council and the appellant may have led to a more acceptable solution, I do not consider that the proposed on-street arrangements would be at all satisfactory for what would be a new housing development in this location. Furthermore, given the issues, I do not consider this could be satisfactorily resolved through a planning condition, notwithstanding the Council's suggested wording.
61. For these reasons, the proposal would result in unacceptable waste and recycling provision. Consequently, it would conflict with Policy CC5 of the CLP and with the Framework, in this regard.

*Affordable housing provision and Parking provision in the area*

62. The S106 agreement dated 20 September 2023 includes a financial contribution of £333,600 towards affordable housing provision within the London Borough of Camden, as well as measures that would ensure that the proposed development would be 'car-free'.
63. I am satisfied from the evidence that these measures would be a) necessary to make the development acceptable in planning terms; b) directly related to the development; and c) fairly and reasonably related in scale and kind to the development<sup>6</sup>.
64. I am also satisfied with the evidence of title provided by the appellant. However, and for the reasons previously stated, with reference to *Planning obligations: good practice advice April 2023*<sup>7</sup>, I am not satisfied that the S106 Agreement dated 20 September has been correctly executed as a deed by Emirates NBD Bank (P.J.S.C). Consequently, I am not satisfied that this planning obligation would be legally sound and thereby effective. It therefore carries no weight in my determination.
65. For these reasons, the proposed development would adversely affect affordable housing provision and would, therefore, conflict with Policy H4 (maximising the supply of affordable housing) of the CLP and with the Framework in this regard. Furthermore, the proposed development would adversely affect parking provision in the area and would, therefore, conflict with Policies DM1 and T2

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<sup>6</sup> Paragraph 57 of the National Planning Policy Framework 2021 (the Framework) and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.

<sup>7</sup> Appendix - Paragraphs 10.2 and 10.3



(parking and car-free development) of the CLP and with the Framework, in this regard.

### **Planning Balance and Conclusion**

66. It is common ground between the parties that the London Borough of Camden does not currently have a deliverable five year HLS and so the tilted balance is engaged. Paragraph 4.32 of the Council's latest Authority Monitoring Report (AMR) states that with the 20% buffer, required because of past under-delivery set out in the Housing Delivery Test 2022<sup>8</sup>, and accounting for past shortfalls in delivery, the Council has a 4.0 year HLS. This is significantly less than required.
67. The proposed development would be in a sustainable and accessible location and would entail the redevelopment of currently vacant properties to provide five dwellings.
68. It would achieve a Grade A embodied carbon score and I note the considerable measures employed to improve the environmental performance and habitability of the proposed development listed in the evidence, including the Sustainability Statement. These include measures in relation to the design, materials, energy supply and water use for the proposal, and the provision of a sedum roof to improve biodiversity, amongst other things.
69. Employment during the construction of the proposal would also provide short-term social and economic benefits for workers and through their expenditure, the wider economy. These are all benefits of the scheme to which I give weight.
70. The development plan for the London Borough of Camden comprises the CLP and the LP. There is no compelling evidence that the referenced development plan policies are inconsistent with the Framework.
71. As set out above, I have found the proposal would conflict with Policies A1, A4, CC4, CC5, D1, DM1, G1, H4, H6, T2, T3 and T4 of the CLP and I give these conflicts substantial weight.
72. Whilst I note the appellant's references to LP policies<sup>9</sup>, these are not in the evidence before me. However, I also note that the CLP should be in general conformity with the LP. Consequently, I find that the proposed development would conflict with the development plan as a whole.
73. The appeal site is not subject to policies in the Framework that protect areas or assets of particular importance<sup>10</sup>.
74. The proposed development would be supported by parts of the Framework. In particular, policies to increase the supply of housing, support the effective use of land and economic growth, and meeting the challenge of climate change.
75. However, the substantial harm I have identified to the living conditions of future and nearby occupiers, to waste and recycling provision and to affordable housing and parking provision, means that there would also be conflict with Framework policies that seek to promote the delivery of affordable housing and well-designed places, healthy communities and sustainable transport.

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<sup>8</sup> Paragraph 4.29 of the 2023 AMR.

<sup>9</sup> Including at Paragraphs 4.22 – 4.30 of their Statement of Case.

<sup>10</sup> Footnote 7 of Paragraph 11 d i) of the Framework provides a complete and exhaustive list of such policies.

76. In my view, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. Consequently, the proposal would not constitute sustainable development with regard to paragraph 11 d ii) of the Framework.
77. The proposal would conflict with the development plan as a whole, and with reference to S38(6) of the Planning and Compulsory Purchase Act 2004 (as amended), there are no material considerations that would cause me to determine this appeal otherwise than in accordance with the development plan.
78. For the reasons given above, I conclude the appeal is dismissed and planning permission is refused.

*Andrew Parkin*

INSPECTOR

## **APPEARANCES - 12 September 2023**

### FOR THE APPELLANT

- Richard Harwood KC
- Jim Bailey – RPS Group
- Alan Power – Alan Power Architects
- Parvis Khaneghah

### FOR THE LOCAL PLANNING AUTHORITY

- Daren Zuk
- Victoria Hinton

### INTERESTED PARTIES

- Anke Lueddecke
- Melanie McGovern