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Our ref: 2022/3233/P  
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Dear Dot Kujawa

Planning Appeal by **Mr Mohammed Riaz**  
Site: **Warehouse to the rear of 49 Brecknock Road, Camden, N7 0BT**

**Appeal against the refusal of planning permission dated 14<sup>th</sup> February 2023 for  
'Conversion of a warehouse to 2 x 2-bedroom 3 person flats, erection of side dormers  
and alterations to fenestration'**

The Council's case for this appeal is largely set out in the officer's delegated report. This details the site and surroundings, the site history and a consideration of the main issues: design and amenity. A copy of the report was sent with the questionnaire. The delegated report should be read first.

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

**Summary of issues**

The application site comprises a warehouse which is vacant. The site is not listed or located within a conservation area but is located within the Kentish Town Neighbourhood Plan area.

The application site is located on the west side of Brecknock Road, to the south of the junction with Leighton Road. The application site actually appears to be located to the rear of 47 Brecknock Road (not 49) and is accessed via alleyways leading from 47/49 Brecknock Road to the north and south.

The planning application was refused on the grounds that:

1. The proposed development, in the absence of sufficient justification demonstrating that the premises is no longer suitable for continued business use would fail to support economic activity in Camden and result in the loss of employment opportunities within the Borough contrary to policies E1 (Economic development) and E2 (Employment premises and sites) of the Camden Local Plan (2017) and Policy SW1 (Supporting small business) of the Kentish Town Neighbourhood Plan (2016).

2. The proposed residential flats, by reason of their location and their internal layout and orientation, would experience poor levels of daylight/sunlight, outlook and privacy and would therefore fail to provide an adequate level of residential amenity to the detriment of the enjoyment of future occupiers, contrary to Policies A1 (Managing the impact 2 of development) and C5 (Safety and Security) of the Camden Local Plan 2017.
3. The proposed residential flats by reason of their location and layout, would cause unacceptable harm to the amenity of the neighbouring residential occupiers by way of loss of privacy, contrary to Policy A1 of the London Borough of Camden Local Plan 2017.
4. The proposed dormers by virtue of their size, design and siting would be unsympathetic and incongruous additions harming the character and appearance of the host building, contrary to Policies D1 (Design) of the Camden Local Plan (2017) and Policy D3 of the Kentish Town Neighbourhood Plan (2016).
5. The proposed development, in the absence of a legal agreement to secure car-free housing, would be likely to contribute unacceptably to parking stress and congestion in the surrounding area, contrary to Policies T2 (Parking and car-free development) of the Camden Local Plan 2017.
6. The proposed development, in the absence of a legal agreement to secure a contribution to affordable housing, would fail to maximise the contribution of the site to the supply of affordable housing in the borough, contrary to Policies H4 (Maximising the supply of affordable housing) and DM1 (Delivery and monitoring) of the London Borough of Camden Local Plan 2017.

## Relevant History

Application Site- Rear of 49 Brecknock Road

**31427-** *The erection of a corrugated asbestos roof over the yard at the rear for storage use in connection with the use of the ground floor of No. 49 and 41A Brecknock Road for workshops.*  
**Granted 06/01/1981**

49 Brecknock Road

**9401366-** *Change of use of rear lower ground and ground floors from office to residential (2 x 3 bed maisonette) and associated external alterations and single storey extension to workshop.* **Granted 24/11/1994**

**9500350-** *Change of use of basement and ground floor from B1 use to provide one retail shop unit and one 2-bedroom maisonette at the rear plus external alterations to the rear elevation.*  
**Granted 08/06/1995**

## Status of Policies and Guidance

National planning Policy Framework 2023

The London Plan (2021)

The London Borough of Camden Local Plan was formally adopted on the 3<sup>rd</sup> July

2017. The policies cited below are of relevance to the applications.

### **Camden Local Plan 2017**

A1 Managing the impact of development  
C5 Safety and Security  
D1 Design  
E1 Economic development  
E2 Employment premises and sites  
H1 Maximising housing supply  
H4 Maximising the supply of affordable housing  
H6 Housing choice and mix  
T1 Prioritising walking, cycling and public transport  
T2 Parking and car-free development

### **The Kentish Town Neighbourhood Plan 2016**

D3 Design principles  
SW1 Supporting small business

### **Camden Planning Guidance 2021**

In refusing the application, the Council also refers to supporting documentation in Camden Planning Guidance. The specific clauses most relevant to the proposal are as follows:

CPG Design  
CPG Altering and extending your home  
CPG Energy efficiency and adaptation  
CPG Amenity  
CPG Transport  
CPG Employment sites and business premises

### **Comment on the Appellant's Ground of Appeal**

The appellants grounds of appeal can be summarised as follows:

1. The appellant states that the application site is adjoined and surrounded by residential uses, therefore retaining the commercial use would not be compatible with the surrounding residential uses. Additionally, the continued B8 warehouse use is not viable due to the restrictive vehicular access to the unit which is imperative to a warehouse use.
2. The appellant outlined that the proposed residential units would comply with internal space standards with 70sqm for a 3-person 2-bedroom 2 storey unit. Each of the flats would benefit from fully glazed doors, side glazed panels to the northern and southern elevations and further windows to the rear western elevation facing the park. All of these windows would serve an open plan kitchen/living area and therefore would receive a satisfactory degree of light and outlook due to its dual aspect. The first-floor bedrooms would be served by glazed dormers to the eastern and western flank roof slopes. Each flat would benefit from outdoor amenity space.

3. Appellant states the rear elevation of No. 49 Brecknock Road accommodates two habitable room windows. The entrance area to flat 1 and the gardens to both flats would be gained via a fenced off area. As such, there will be no material loss of privacy due to the spatial relationship of the properties.
4. Appellant claims the proposed dormers are near identical in size and design as that erected to the neighbouring building to the east and provides the below photo;



### **The Council's comments on the grounds of appeal**

The Council does not accept the appellant's assertions for the following reasons. The Council will address each of the appellant's grounds for appeal in the order they are set out above.

1. Regardless of the surrounding immediate building being in use for residential purposes, the lawful use of the application site is for storage/distribution (Class B8) and in line with policies the applicant must demonstrate that the space can no longer be retained for continued business use. As stated in the report even though the site is vacant no proof or evidence has been provided that the site is no longer viable for B8 use in accordance with policy E2. Additionally, the Kentish Town Neighbourhood Plan Policy SW1 puts a firm emphasis on the protection of employment space suitable for small start-up businesses. As a result, the plan seeks to support, retain and increase small business and office floorspace. No alternative employment space has been proposed and no marketing evidence has been submitted to suggest the building is not suitable as an employment space. As a result, the proposal is contrary to policies E1, E2 of the Camden Local Plan (2017) and Policy SW1 (of the Kentish Town Neighbourhood Plan (2016))
2. The appellant is correct, the proposed units would comply with internal space standards for a 3-person 2bedroom 2 storey unit. The council disagrees with the appellant however that the residential units would provide good quality accommodation. The windows serving the kitchen/Livingroom are west facing and

would be single aspect which would have a significant detrimental impact on amenity by receiving poor natural light and poor ventilation. Additionally, no daylight and sunlight report has been submitted to demonstrate that the light levels within the flats would meet BRE minimum standards. The outlook would be restricted due to the density and height of the surrounding built form and would have limited views. Although the units may have private amenities space, the amenity space is for flat 2 is considered not practical. Flat 2 can only access the amenity space via an alleyway which additionally provides concerns other safety and security.

3. The council disagrees with the appellant, the living/kitchen areas would have two windows looking directly onto a basketball court/public park. There is no private space separating this elevation from the basketball court/public park so occupants of this room are likely to experience a sense of being overlooked and low levels of privacy. Noise from the basketball court /park is likely to cause disturbance to the occupant of these flats. This is not considered to provide an acceptable level of residential amenity.
4. Although the dormers may be similar in appearance to the neighbouring property, this property is residential in use. The appeal site is a warehouse and not domestic in character, therefore the dormers do not relate to the existing character of the application site and are uncharacteristic.
5. The council notes that the appellant wishes to enter into a section 106 agreement for car free development and affordable housing if the application was considered acceptable. See Appendix for justification of the requirements

## **Conclusion**

On the basis of information available and having regard to the entirety of the Council's submissions, including the content of this letter, the Inspector is respectfully requested to dismiss the appeal. In the event of the appeal being allowed the conditions and S106 justification is provided below.

If any further clarification of the appeal submissions is required please do not hesitate to contact Enya Fogarty on the above direct dial number or email address.

Yours sincerely

Enya Fogarty  
Planning officer  
Regeneration and Planning

## **Proposed Conditions**

1. The development hereby permitted must be begun not later than the end of three years from the date of this permission.

Reason: In order to comply with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).

2. The development hereby permitted shall be carried out in accordance with the following approved plans:

49BR/OS; 49BR/O1; 49BR/O2; 49BR/O3; 49BR/O4; 49BR/O5; 49BR/O6; 49BR/BP

Reason: For the avoidance of doubt and in the interest of proper planning.

3. All new external work shall be carried out in materials that resemble, as closely as possible, in colour and texture those of the existing building, unless otherwise specified in the approved application.

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policies D1 and D2 of the London Borough of Camden Local Plan 2017.

4. Prior to the commencement of the use hereby permitted, details of waste and recycling storage for the development shall be submitted to and approved in writing by the local planning authority. The waste and recycling storage shall be provided in accordance with the approved details prior to the commencement of the use hereby permitted and shall thereafter be retained solely for its designated use.

Reason: To ensure suitable provision for the occupiers of the development, to encourage the sustainable management and collection of waste, and to safeguard the visual amenity of the area in accordance with policies A1, A4, D1 and CC5 of the Camden Local Plan 2017.

5. Prior to the commencement of the development hereby permitted, details of the provision to be made for cycle parking shall be submitted to and approved in writing by the Local Planning Authority. The cycle parking shall thereafter be implemented in full in accordance with the approved details before the use hereby permitted commences and shall thereafter be retained solely for its designated use.

Reason: To ensure adequate cycle parking is available on site, to promote sustainable modes of transport, and so safeguard the visual amenity of the area in accordance with policies A1 and T1 of the Camden Local Plan 2017.

### **Section 106 reasons for refusal**

It is noted that the Appellant is willing to enter into a legal agreement to overcome reasons for refusal 5 and 6. These relates to the lack of a section 106 to secure car-free housing and an affordable housing payment. As such, the Council is providing the appellant with a draft section 106 planning obligation and will update the Inspector at final comments stage as to whether an agreement has been reached.

- 1.1. Regulation 122 of the Community Infrastructure Levy Regulations 2010 (the "CIL Regulations") creates statutory tests to determine whether a planning obligation is capable of being a reason for granting planning permission. Obligations must be:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and

- fairly and reasonably related in scale and kind to the development.
- 1.2. Current government guidance on the application of Section 106 is contained within the Planning Practice Guidance (NPPG) on Planning Obligations and the Use of Planning Conditions.
  - 1.3. In this case, it is necessary to secure car-free housing to ensure the development promotes healthy and sustainable transport choices, an affordable housing payment to maximise the contribution of the site to the supply of affordable housing in the borough and a Construction Management Plan to ensure that the development can be implemented without causing detrimental impact to residential amenity or the safe and efficient operation of the highway network in the local area in accordance with policies A1, T1, T2 and H4 of the Camden Local Plan 2017.

#### **Reason for refusal no.5 (car-free)**

- 1.4. The Council's adopted policies T1 and T2 seek to limit the opportunities for parking within the borough as well as prioritise the needs of pedestrians and cyclists to ensure that sustainable transport will be the primary means of travel, reduce air pollution and local congestion. Therefore, the development should be secured as car-free through via a covenant under s.16 of the Greater London Council (General Powers) Act 1974 and other local authority powers if the appeal were allowed.
- 1.5. A planning obligation is considered the most appropriate mechanism for securing the development as car-free as it relates to controls that are outside of the development site and the ongoing requirement of the development to remain car-free. The level of control is considered to go beyond the remit of a planning condition. Furthermore, a legal agreement is the mechanism used by the Council to signal that a property is to be designated as "Car-Free". The Council's control over parking does not allow it to unilaterally withhold on-street parking permits from residents simply because they occupy a particular property. The Council's control is derived from Traffic Management Orders ("TMO"), which have been made pursuant to the Road Traffic Regulation Act 1984. There is a formal legal process of advertisement and consultation involved in amending a TMO. The Council could not practically pursue an amendment to the TMO in connection with every application where an additional dwelling/use needed to be designated as car-free. Even if it could, such a mechanism would lead to a series of disputes between the Council and incoming residents who had agreed to occupy the property with no knowledge of its car-free status. Instead, the TMO is worded so that the power to refuse to issue parking permits is linked to whether a property has entered into a "Car-Free" legal obligation. The TMO sets out that it is the Council's policy not to give parking permits to people who live in premises designated as "Car-Free", and the Section 106 legal agreement is the mechanism used by the Council to signal that a property is to be designated as "Car-Free".
- 1.6. Use of a legal agreement, which is registered as a land charge, is a much clearer mechanism than the use of a condition to signal to potential future purchasers of the property that it is designated as car free and that they will not be able to obtain a parking permit. This part of the legal agreement stays on the local search in perpetuity so that any future purchaser of the property is informed that residents are not eligible for parking permits.

#### ***CIL Compliance:***

- 1.7. The car-free requirement complies with the CIL Regulations as it ensures that the development is acceptable in planning terms to necessarily mitigate against the transport impacts of the development as identified under the Development Plan for developments

of the nature proposed. This supports key principle 4 of the National Planning Policy Framework: Promoting sustainable transport. It is also directly related to the development and fairly and reasonably related in scale and kind as it relates to the parking provision for the site and impact on the surrounding highway network.

**Reason for refusal no.6 (affordable housing)**

- 1.8. The appeal scheme proposes the creation of 140 sqm (GIA) of residential floorspace. Policy H4 expects a contribution to affordable housing from all developments that provide one or more additional homes and involve a total addition to the residential floorspace of 100sqm GIA or more. Under policy H4, for developments with a capacity of less than 25 units, the affordable housing contribution is based on a sliding scale with the target starting at 2% for an additional home (at 100sqm) and is increased by 2% for each home added to the capacity. Based on the floorspace uplift (rounded to the nearest 100sqm), the affordable housing contribution would be 2% (based on a GIA of 140 sqm). A rate of £5000 per sqm GIA is applied. On this basis the contribution would be as follows:  $140 \text{ sqm} \times 2\% = 2.8] \times £5000 = £14,000$ .
- 1.9. The most appropriate way of obtaining the financial contribution is via a s106 legal agreement and it is understood from the appellant's statement of case that they are willing to provide the full contribution should the appeal be allowed.  
*CIL Compliance:*
- 1.10. The contribution is considered to be CIL compliant. It is necessary in planning terms as identified in the development plan to mitigate against the increased impact that will be generated by the development. The contribution has been calculated taking into account the particular characteristics of the development, it is directly related to the development and is fairly and reasonably related in scale and kind to the development.