



WRITTEN REPRESENTATIONS: APPEAL STATEMENT

BY:

Mr Sunil K Radia

FOLLOWING THE REFUSAL OF PLANNING PERMISSION BY:

London Borough of Camden Council

REF:

2022/5197/P

FOR:

***Conversion of basement and part of ground retail unit (Class E)
to residential flat; construction of lightwell and railings at front;
new windows to side and rear elevations.***

AT:

94 Mill Lane, London, NW6 1NH

August 2023

1.0 INTRODUCTION

1.1 This appeal relates to the refusal of planning permission for the '**Conversion of basement and part of ground retail unit (Class E) to residential flat; construction of lightwell and railings at front; new windows to side and rear elevations.**' at no. 94 Mill Lane in London.

1.2 The planning application was submitted on 25th November 2022 and was subsequently refused on 18th July 2023 by the London Borough of Camden Council, with the decision notice stating the following reasons for refusal, as noted below:

1. *The proposed loss of part of the commercial floor space in this location would lead to a significant reduction in the flexibility and viability of the ground floor commercial premises and thereby fail to protect, preserve and enhance the commercial role and function of this part of the Mill Lane Neighbourhood Centre, and would have a detrimental impact on the vitality and viability of the Centre as a whole. As such, the proposed development would be contrary to Policies TC1 (Quantity and location of retail development) and TC2 (Camden's centres and other shopping areas) of the Camden Local Plan 2017 and Policy 14 (Mill Lane Neighbourhood Centre) of the Fortune Green and West Hampstead Neighbourhood Plan 2015.*
2. *In the absence of basement impact assessment, the applicant has failed to demonstrate that the proposed basement excavations would not have significant adverse impacts on local drainage, flooding, groundwater conditions and structural stability and is therefore considered likely to present an unacceptable risk to the amenity of future occupiers. As such, the scheme is contrary to policies A5 (Basements) and CC3 (Water and flooding) of the Camden Local Plan 2017.*
3. *In the absence of supporting information including evidence of flood risk mitigation measures, the applicant has failed to demonstrate that the proposed basement excavations would not have significant adverse impacts on the drainage and the local water environment and is considered likely to present an unacceptable risk of flooding to the detriment of the amenity of future occupiers. As such, the scheme is contrary to policies A1 (Managing the impact of development), A5 (Basements) and CC3 (Water and flooding) of the Camden Local Plan 2017.*
4. *The proposed front lightwell and associated railings, due to their design and location would create a discordant feature in the terrace*

of properties and would result in additional harmful street clutter which would be detrimental to the character of this part of the Mill Lane Neighbourhood Centre street frontage which is relatively unaltered by railings and front lightwells and would be contrary to Policy D1 (Design) of the Camden Local Plan and Policy 2 (Design and Character) of the Fortune Green and West Hampstead Neighbourhood Plan 2015.

5. *The proposed railings and lightwell would present an obstruction to pedestrians and other users of the public highway and would add unnecessarily to street clutter on this part of the street. As such, the proposed development would fail to provide pedestrian friendly public realm, would fail to maximise space for pedestrians and would fail to improve conditions for wheelchair and other non-ambulatory users of the public highway. As such, the proposed development is contrary to Policies T1 (Prioritising walking, cycling and public transport) and C5 (Safety and security) of the Camden Local Plan 2017 and Policy 9 (Pavements and pedestrians) of the Fortune Green and West Hampstead Neighbourhood Plan 2015.*
6. *The proposed development, in the absence of a legal agreement for car-free housing, would be likely to contribute unacceptably to parking stress and congestion in the surrounding area contrary to policy T2 (Parking and car free development of the Camden Local Plan 2017 and Policy 7 (Sustainable Transport) of the Fortune Green and West Hampstead Neighbourhood Plan 2015.*
7. *The proposed development, in the absence of a legal agreement securing approval in principle for basement works adjacent to the public highway, would be likely to contribute to an unsafe public highway environment and a loss of public amenity contrary to policy A1 (Managing the impact of development) of the Camden Local Plan 2017.*

1.3 The decision notice states that the proposal related to the following drawing nos: 3515/PA-01/SP, 3515/PA-02/SP, 3515/PA-03/SP, 3515/PA-04/SP, 3515/PA-05/SP, 3515/PP-06/SP. **However, this list contains inaccuracies as the correct drawing nos. are 3515/PP-01/SP, 3515/PP-02/SP, 3515/PA-03/SP, 3515/PP-04/SP, 3515/PP-05/SP, 3515/PP-06/SP.**

1.4 The following statement will, therefore, seek to demonstrate why the council's decision is considered unsound on this occasion and why the scheme conforms to the aims of national, regional and local planning policy.

2.0 APPEAL PROPERTY AND SITE LOCATION



No. 94 Mill Lane (corner building)

- 2.1 This appeal relates to the basement and ground floor (Class E) of no. 94 Mill Lane which are currently vacant.

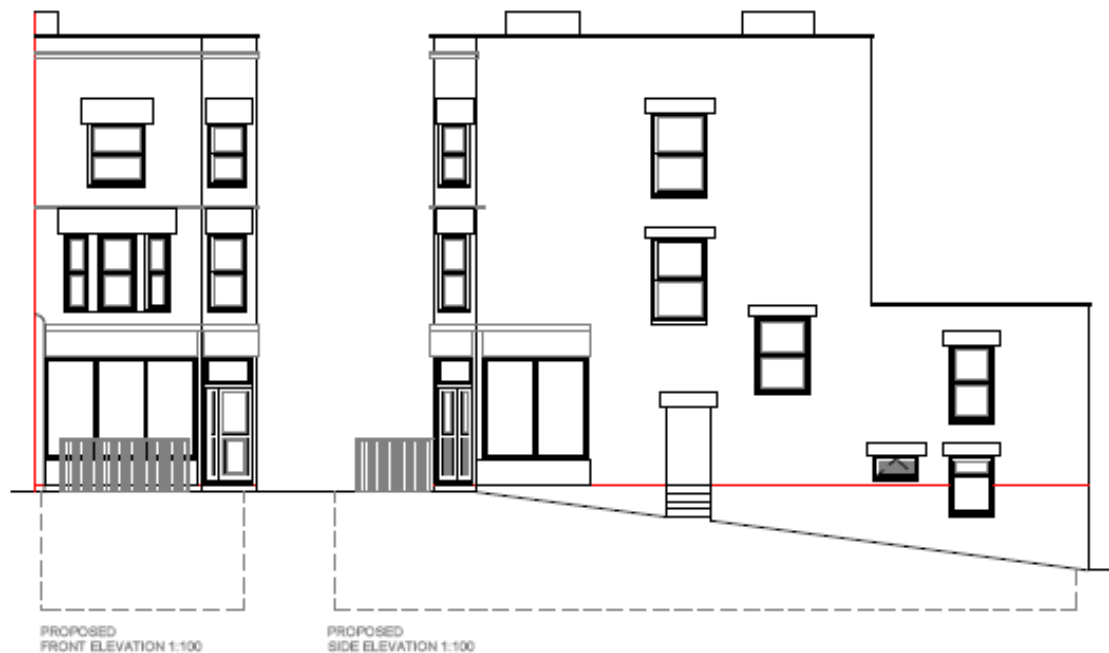


Aerial view of appeal site and surrounding location

- 2.2 The appeal site is positioned to the south eastern side of Mill Lane adjacent to the junction with Broomsleigh Street. The site forms part of a neighbourhood centre although the surrounding area is predominantly residential in character. The property is not within a conservation area or within the curtilage of a listed building.

3.0 PROPOSAL

- 3.1 The proposed scheme sought planning permission for the ***'Conversion of basement and part of ground retail unit (Class E) to residential flat; construction of lightwell and railings at front; new windows to side and rear elevations.'*** at no. 94 Mill Lane.
- 3.2 The external alterations proposed include the construction of a lightwell to serve the basement level which would be protected by a 1.1m high barrier, and the installation of a new window within the side elevation and a new window within the rear elevation.



Proposed protective barrier around lightwell and new side window

- 3.3 The existing basement comprises storage space, a kitchen and W.C. which is accessed via a rear courtyard. The ground floor comprises a shop and bathroom, the bathroom serves the flat to the upper floors.
- 3.4 The existing shopfront and a retail area of 29.13m² would be retained.
- 3.5 The conversion would provide a 1-bedroom flat with a GIA of 58.82m² comprising lounge/dining room, shower room, bedroom within the basement and a kitchen and separate storeroom to the ground floor.
- 3.6 Access to the flat would be gained at the rear of the property from Broomsleigh Street whilst access to the shop would remain unaltered.
- 3.7 All works would be completed to a high standard in order to respect the quality of the street scene and to provide good quality accommodation for future occupants.

4.0 RELEVANT PLANNING POLICY

4.1 The reasons for refusal refer to Policies A1 (Managing the impact of development), A5 (Basements), C5 (Safety and security), CC3 (Water and flooding), D1 (Design), T1 (Prioritising walking, cycling and public transport), T2 (Parking), TC1 (Quantity and location of retail development) and TC2 (Camden's centres and other shopping areas) of the Camden Local Plan 2017 and Policies 2 (Design and Character), 7 (Sustainable Transport), 9 (Pavements and pedestrians) and 14 (Mill Lane Neighbourhood Centre) of the Fortune Green and West Hampstead Neighbourhood Plan 2015.

4.2 Although not referred to within the given reasons for refusal the National Planning Policy Framework and London Plan are considered relevant.

National Planning Policy Framework (NPPF)

4.3 The National Planning Policy Framework set out the Government's planning policies for England and how these are expected to be applied. The following sections and paragraphs make reference to the parts of the NPPF which are directly relevant to this application.

Presumption in Favour of Sustainable Development

4.4 Paragraph 11 of the NPPF sets out that plans and decisions should apply a presumption in favour of sustainable development.

For plan-making this means that:

- a) plans should positively seek opportunities to meet the development needs of their area, and be sufficiently flexible to adapt to rapid change;
- b) strategic policies should, as a minimum, provide for objectively assessed needs for housing and other uses, as well as any needs that cannot be met within neighbouring areas, unless:
 - i. the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for restricting the overall scale, type or distribution of development in the plan area; 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.

For decision-taking 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; 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.

Decision-making

- 4.5 Paragraph 38 states that local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.

Delivering a sufficient supply of homes

- 4.6 Section 5 states *“To support the Government’s objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.”*

Achieving well-designed places

- 4.7 Section 12 of the NPPF refers to design, with paragraph 126 describing how the Government attaches great importance to the design of the built environment, stating that *“Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.”*
- 4.8 Paragraph 130 states that planning policies and decisions should ensure that developments:
- a) *will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;*
 - b) *are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;*
 - c) *are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);*

- d) *establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;*
- e) *optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and*
- f) *create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.*

The London Plan 2021

- 4.9 The council embraces the sentiments of the London Plan which sets a clear context for considering development needs at local level taking full account of the borough's character. Policies D1, D4 and H2 are considered relevant.

Policy D1: London's form, character and capacity for growth

- 4.10 Understanding the existing character and context of individual areas is essential in determining how different places may best develop in the future.

Policy D4: Delivering good design

- 4.11 For residential development it is particularly important to scrutinise the qualitative aspects of the development design described in Policy D6 Housing quality and standards. The higher the density of a development the greater this scrutiny should be of the proposed built form, massing, site layout, external spaces, internal design and ongoing management.

Policy H2: Small sites

- 4.12 Boroughs should pro-actively support well-designed new homes on small sites and for London to deliver more of the housing it needs, small sites below 0.25 hectares in size must make a substantially greater contribution to new supply across the city.

Camden Local Plan (2017)

- 4.13 The Camden Local Plan sets out the Council's planning policies and replaces the Core Strategy and Development Policies planning documents (adopted in 2010). Policies A1 (Managing the impact of development), A5 (Basements), C5 (Safety and security), CC3 (Water and flooding), D1 (Design), T1 (Prioritising walking, cycling and public transport), T2 (Parking), TC1 (Quantity and location of retail development) and TC2 (Camden's centres and other shopping areas) of the Camden Local Plan 2017 were referred to within the given reasons for refusal.

Policy A1: Managing the impact of development

- 4.14 The Council will seek to protect the quality of life of occupiers and neighbours. We will grant permission for development unless this causes unacceptable harm to amenity.

Policy A5: Basements

- 4.15 The Council will only permit basement development where it is demonstrated to its satisfaction that the proposal would not cause harm to: a. neighbouring properties; b. the structural, ground, or water conditions of the area; c. the character and amenity of the area; d. the architectural character of the building; and e. the significance of heritage assets.

Policy C5: Safety and security

- 4.16 The Council will aim to make Camden a safer place.

Policy CC3: Water and flooding

- 4.17 The Council will seek to ensure that development does not increase flood risk and reduces the risk of flooding where possible.

Policy D1: Design

- 4.18 The council will seek to secure high quality design in development which amongst other criteria respects local context and character and for housing, provides a high standard of accommodation.

Policy T1: Prioritising walking, cycling and public transport

- 4.19 The Council will promote sustainable transport by prioritising walking, cycling and public transport in the borough.

Policy T2: Parking and car-free development

- 4.20 The Council will limit the availability of parking and require all new developments in the borough to be car-free.

Policy TC1: Quantity and location of retail development

- 4.21 The Council will focus new shopping and related uses in Camden's designated growth areas and existing centres, having regard to the level of capacity available in these locations.

Policy TC2: Camden's centres and other shopping areas

- 4.22 The Council supports the development of housing within centres and Central London including above and below shops where this does not prejudice the town centre function and particularly the ability of the ground floor to be used for town centre uses.

Fortune Green & West Hampstead Neighbourhood Plan

- 4.23 The Plan provides planning policies and guidance at neighbourhood level. Policies 2 (Design and Character), 7 (Sustainable Transport), 9 (Pavements and pedestrians) and 14 (Mill Lane Neighbourhood Centre) were referred to within the given reasons for refusal.

Policy 2: Design & Character

- 4.24 All development shall be of a high quality of design, which complements and enhances the distinct local character and identity of Fortune Green and West Hampstead.

Policy 7: Sustainable Transport

- 4.25 In order to encourage the safe movement of traffic on roads in the Area, and to promote a reduction in car use, development will be supported which includes the appropriate provision of: i. Car-free or car-capped developments. ii. Car club spaces. iii. Charging points and dedicated parking spaces for electric cars. iv. Contributions to safer road layouts, traffic calming, and the removal of rat-runs. v. Proposals which will result in a reduction in air pollution caused by vehicle emissions. vi. The appropriate provision of loading bays for commercial use that requires regular deliveries.

Policy 9: Pavements and pedestrians

- 4.26 Pedestrian access in the Area - particularly in and around the West Hampstead Growth Area - shall be improved by development that takes into account the following: i. Provides safe and wide pavements, giving the maximum possible space to pedestrians. ii. Is set well back from the pavement, where appropriate, with the aim of giving additional pavement space. iii. Improves accessibility for disabled people and those with push chairs. iv. Contributes to improved and safer pedestrian crossings - particularly on the roads listed in D14. v. Increases the amount of space for pedestrians around public transport facilities. vi. Improves the existing network of paths in the Area. vii. Contributes to the provision of new paths and, where viable, new crossings over the railway lines.

Policy 14: Mill Lane Neighbourhood Centre

- 4.27 Development (including changes of use) shall preserve or enhance the character of the Neighbourhood Centre and promote a diverse range of shops, businesses and economic activity. This shall be achieved, where appropriate by: i. Support for proposals to improve and restore the original character of shop-fronts, including windows, signs and external fittings. ii. Proposals to convert ground floor retail/business space into residential use will not be supported. iii. Contributions to public realm improvements to improve the character of the Neighbourhood Centre, where applicable.

5.0 GROUNDS OF APPEAL

5.1 The appellant's case will address the concerns raised within the reasons for refusal, notably:

- a. Whether the proposed loss of part of the commercial floor space in this location would lead to a significant reduction in the flexibility and viability of the ground floor commercial premises and thereby fail to protect, preserve and enhance the commercial role and function of this part of the Mill Lane Neighbourhood Centre, and would have a detrimental impact on the vitality and viability of the Centre as a whole; and,
- b. Whether in the absence of basement impact assessment, the proposed basement excavations would have significant adverse impacts on local drainage, flooding, groundwater conditions and structural stability and is therefore considered likely to present an unacceptable risk to the amenity of future occupiers; and
- c. Whether in the absence of supporting information including evidence of flood risk mitigation measures, the proposed basement excavations would have significant adverse impacts on the drainage and the local water environment and is considered likely to present an unacceptable risk of flooding to the detriment of the amenity of future occupiers; and,
- d. Whether the proposed front lightwell and associated railings, due to their design and location would create a discordant feature in the terrace of properties and result in additional harmful street clutter which would be detrimental to the character of this part of the Mill Lane Neighbourhood Centre street frontage; and,
- e. Whether the proposed railings and lightwell would present an obstruction to pedestrians and other users of the public highway and would add unnecessarily to street clutter on this part of the street; and,
- f. Whether the proposed development, in the absence of a legal agreement for car-free housing, would be likely to contribute unacceptably to parking stress and congestion in the surrounding area; and,
- g. Whether the proposed development, in the absence of a legal agreement securing approval in principle for basement works adjacent to the public highway, would be likely to contribute to an unsafe public highway environment and a loss of public amenity.

5.2 The following planning considerations are deemed relevant in the determination of this appeal:

- Principle of development
- Basement impacts

- Design, character and impact on the street scene
- Impact on residential amenities
- Pedestrian safety
- Other matters

Principle of development

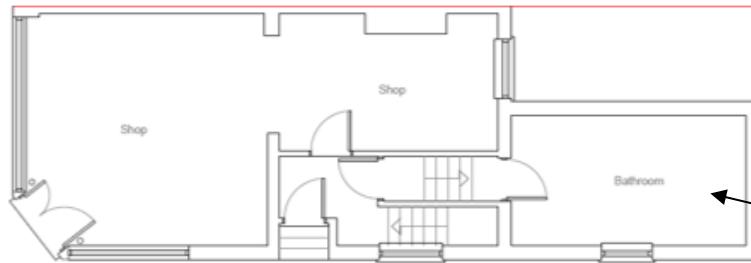
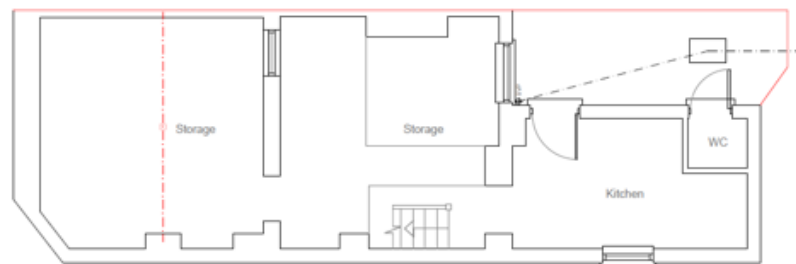
- 5.3 The National Planning Policy Framework (NPPF) states that planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.
- 5.4 The NPPF also identifies the overarching need for additional housing and set out ways in which this can be achieved. The London Plan 2021 further supports the essential need for more homes and currently has a target set for the delivery of 1,038 new dwellings per year in Camden.
- 5.5 According to the Housing Delivery Test: 2022 Measurement, Camden has demonstrated a shortfall in housing delivery and as a consequence there is a presumption in favour of sustainable development. Therefore, as the Framework states that planning policies and 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, the scheme proposed here should be supported.
- 5.6 The precursor to London Plan policy GG2 (making the best use of land) states in the following relevant paragraphs:
- 1.2.1 London's population is set to grow from 8.9 million today to around 10.8 million by 2041. As it does so, employment is expected to increase on average by 49,000 jobs each year, reaching 6.9 million over the same period. This rapid growth will bring many opportunities, but it will also lead to increasing and competing pressures on the use of space. To accommodate growth while protecting the Green Belt, and for this growth to happen in a way that improves the lives of existing and new Londoners, this Plan proposes more efficient uses of the city's land.*
- 1.2.2 The key to achieving this will be taking a rounded approach to the way neighbourhoods operate, making them work not only more space-efficiently but also better for the people who use them. This will mean creating places of higher density in appropriate locations to get more out*

of limited land, encouraging a mix of land uses, and co-locating different uses to provide communities with a wider range of services and amenities.

- 1.2.5 *All options for using the city's land more effectively will need to be explored as London's growth continues, including the redevelopment of brownfield sites and the intensification of existing places, including in outer London. New and enhanced transport links will play an important role in allowing this to happen, unlocking homes and jobs growth in new areas and ensuring that new developments are not planned around car use.*
- 1.2.8 *Making the best use of land will allow the city to grow in a way that works for everyone. It will allow more high-quality homes and workspaces to be developed as London grows, while supporting local communities and creating new ones that can flourish in the future.*
- 5.7 Criterion C of policy GG2 states that LPAs should proactively explore the potential to intensify the use of land to support additional homes and workspaces.
- 5.8 London Plan 2021 policy H2 (Small sites) states that boroughs should also pro-actively support well-designed new homes on small sites and for London to deliver more of the housing it needs, small sites below 0.25 hectares in size must make a substantially greater contribution to new supply across the city. Therefore, increasing the rate of housing delivery from small sites is a strategic priority.
- 5.9 Paragraph 4.2.4 of the London Plan further states (Our Emphasis):
- "Incremental intensification of existing residential areas within PTALs 3-6 or within 800m distance of a station or town centre boundary is expected to play an important role in contributing towards the housing targets for small sites set out in Table 4.2. This can take a number of forms, such as: new build, infill development, residential conversions, redevelopment or extension of existing buildings, including non-residential buildings and residential garages, where this results in net additional housing provision. These developments should generally be supported where they provide well-designed additional housing to meet London's needs."***
- 5.10 According to current PTAL records the proposed dwelling would have a **TfL PTAL rating of 4, however the PTAL dataset is currently being updated and therefore, the site could have a PTAL rating of 5 as shown in the 2021 (Forecast). In addition the site is just 650m from West Hampstead Thameslink Train Station** and thus, the property is in an ideal sustainable location for redevelopment in accordance with the criteria of London Plan policy H2.

5.11 However, the council refused the development citing that the loss of part of the commercial floor space would lead to a significant reduction in flexibility and viability of the ground floor commercial premises and thereby fails to protect, preserve and enhance the commercial role and function of this part of the neighbourhood centre, and would have a detrimental impact on the vitality and viability of the centre as a whole.

5.12 In response the appellant states that the development would not result in any noticeable loss of shopfloor area to the ground floor of the premises. This is by virtue of the existing layout, the proposed layout and the removal of the chimney breast. The following plan excerpts illustrate the layout of the existing building across all four floors. These demonstrate that the ground floor bathroom actually serves the flat to the upper floors whilst the WC accessed from the courtyard serves the retail unit.

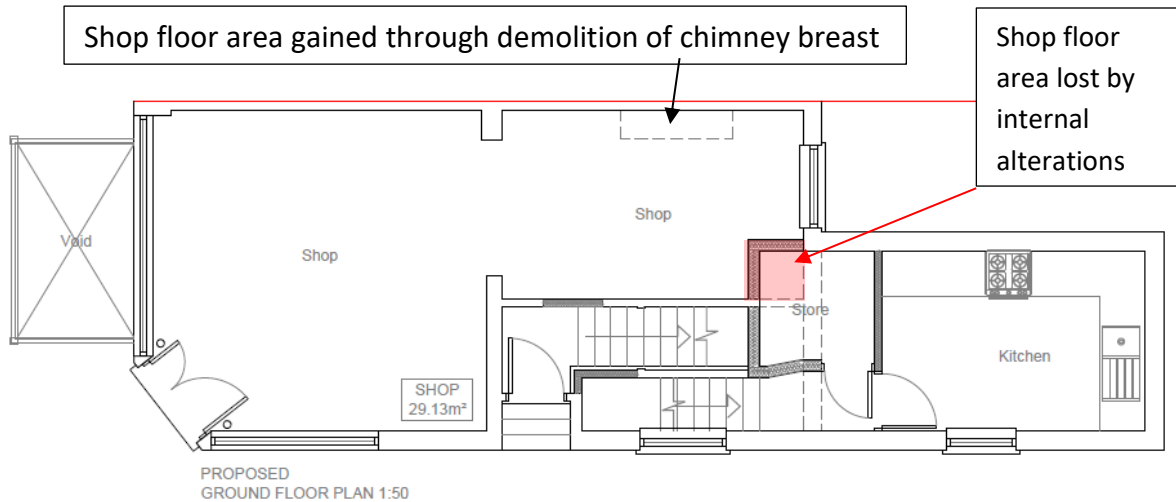


Ground floor bathroom serves existing upper floor flat



Existing four floor layout of no. 94 Mill Lane

- 5.13 Thus, the actual loss of ground floor shop area amounts to approximately 0.1m² as shown in the following plan excerpt, as the area lost by the internal alterations is gained back by the removal of the chimney breast.



Proposed changes to shop area

- 5.14 Consequently, the delegated report comments at paragraph 2.3 that the proposal would replace a significant part of the existing ground floor shop area is inaccurate.
- 5.15 Whilst the development would remove the basement storage, kitchen and WC these were underutilised areas of the building which could be put to significantly better use.
- 5.16 The delegated report argues that the loss of these features could prevent the unit being occupied by certain types of Class E uses and that it would also reduce the space available for staff welfare facilities.
- 5.17 In response, the appellant states that there are many uses under Class E which do not require full kitchen facilities such as the majority of retail shops, financial and professional services, medical services and office use. Staff welfare facilities such as a WC could be placed under the staircase access to the upper floors, whilst drink making facilities could be positioned to the rear of the shop. The amount of facilities required for a shop of this size would not affect the viability or use of the premises and would certainly not affect staff welfare.
- 5.18 In terms of storage there are equally as many uses under Class E that do not require large areas of storage and, as such, storage could be contained within the shop floor area. The appellant considers that the large basement area has in fact discouraged tenants as it would be included within the rentable value but would potentially underutilised.
- 5.19 Policy TC2 (Camden's centres and other shopping areas) states that the council supports the development of housing within centres including above and below shops

where this does not prejudice the town centre function and particularly the ability of the ground floor to be used for town centre uses.

- 5.20 Policy 14 (Mill Lane Neighbourhood Centre) of the Fortune Green and West Hampstead Neighbourhood Plan states that proposals to convert ground floor retail/business space into residential use will not be supported.
- 5.21 Taking the above policy aims into account it is evident that the appeal proposal should be supported as it would not convert a notable area of the existing ground floor retail space into residential use. As a consequence, the proposed conversion would not affect the town centre function or the ability of the ground floor to be used for town centre uses.
- 5.22 In terms of marketing, there are no policy requirements which state that this type of property must be effectively marketed for a defined period of time in order to demonstrate the ongoing use is no longer required.
- 5.23 Nevertheless, the appellant has actively marketed the property through The Building Guidance Partnership since May 2022. As shown in the following image, as well as online marketing a large 'To let' sign is displayed in the shopfront.



Marketing evidence. Image dated September 2022

- 5.24 Since marketing the premises for a rental of £10,000 per annum there have been 7 enquiries and 2 viewings which have not resulted in any tenancies.
- 5.25 Moreover, there are several properties already vacant upon Mill Lane including nos. 33/7, 45, 49, 51, 53, 55, 58 and 69. There are several other units which do not appear

to be open to the public or are open by appointment only which includes nos. 34, 38, 47, 66 and 108 Mill Lane. There is certainly a sufficient quantity of commercial units available that the changes to the appeal site would not undermine the provision available.

- 5.26 In summary, taking the above evidence into account the proposed development would not lead to a loss of flexibility or viability of the ground floor commercial premises. The size of the premises and the reduced rental value would hopefully appeal to more prospective tenants which would have a positive impact on the vitality and viability of the centre as a whole.
- 5.27 Furthermore, the development would constitute the creation of a separate self-contained flat which would contribute towards the council's housing delivery targets.
- 5.28 Therefore, the development would comply with the aims of the NPPF, the London Plan, policies TC1 (Quantity and location of retail development) and TC2 (Camden's centres and other shopping areas) of the Camden Local Plan 2017 and policy 14 (Mill Lane Neighbourhood Centre) of the Fortune Green and West Hampstead Neighbourhood Plan 2015.

Basement Impacts

- 5.29 Local Plan policy A5 (Basements) states that the council will only permit development where it is demonstrated to its satisfaction that the proposal would not cause harm to:
- a. neighbouring properties;
 - b. the structural, ground, or water conditions of the area;
 - c. the character and amenity of the area;
 - d. the architectural character of the building; and
 - e. the significance of heritage assets.
- 5.30 Policy CC3 (Water and flooding) states that the council will seek to ensure that development does not increase flood risk and reduces the risk of flooding where possible.
- 5.31 The application was refused on the basis that the development could result in adverse impacts on local drainage, flooding, groundwater conditions and structural stability as well as an absence of supporting information relating to flood risk mitigation measures.
- 5.32 As a result of the decision the appellant has commissioned a Basement Impact Assessment and Flood Risk Assessment (copies attached in **Appendix A**). This

demonstrates that the proposal would not conflict with Local Plan policies A5 and CC3, and as a result has overcome reasons 2 and 3 of the decision notice.

Design, character and impact on the street scene

- 5.33 Paragraph 130 of the NPPF states that *“Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.”*
- 5.34 Local Plan policy D1 (Design) states that the council will seek to secure high quality design in development. In relation to the appeal proposal it should:
- a. respects local context and character;
 - b. is of high quality design and construction, incorporating best practice in resource management and climate change mitigation and adaptation;
 - c. is sustainable in design and construction, incorporating best practice in resource management and climate change mitigation and adaptation;
 - d. is of sustainable and durable construction and adaptable to different activities and land uses;
 - e. comprises details and materials that are of high quality and complement the local character;
 - f. integrates well with the surrounding streets and open spaces, improving movement through the site and wider area with direct, accessible and easily recognisable routes and contributes positively to the street frontage;
- 5.35 Neighbourhood Plan policy 2 (Design and Character) states that all development shall be of a high quality of design, which complements and enhances the distinct local character and identity of Fortune Green and West Hampstead. This shall be achieved by (amongst other criteria) positive interfaces with the street and streetscape in which it is located and making a positive contribution to character of existing buildings and structures.
- 5.36 The council refused the development citing that the proposed front lightwell and associated railings would create a discordant feature in the terrace of properties that would result in additional harmful street clutter which the council state would be detrimental to the character of this part of the Mill Lane Neighbourhood Centre.
- 5.37 In response, the appellant states that the front lightwell and railings have been sensitively designed to complement local character and thus rejects the council’s claims that they would appear as a discordant feature.

- 5.38 The proposed lightwell would be added to the front of the property projecting forward 1.8m x 3.2m wide. 1.1m high railings would be placed around the lightwell. The alterations at the site would complement other lightwells upon Mill Lane as shown in the following Google street view image.



Existing lightwells to the front of nos. 66 and 62 Mill Lane

- 5.39 There are also covered lightwells and railings at nos. 90 and 92 Mill Lane as shown in the following image.



Lightwells and railings at nos. 92 and 90 Mill Lane

- 5.40 The lightwell at no. 92 was approved under application ref 2009/1452/P for 'Change of use of the first and second floors from ancillary retail Class A1 to residential (Class C3) to provide a one bedroom flat at first floor level and a two bedroom maisonette at second and third floor levels; erection of a mansard roof extension and excavation of a lightwell on the Mill Lane elevation' on 1st October 2009 (Details attached in **Appendix B**).

- 5.41 When assessing the development at no. 92 the delegated officer's report sets out that ***"Lightwells have been approved for other Mill Lane properties (e.g 96 Mill Lane) and it is not considered that the proposed lightwell would harm the street scene, which is not in a conservation area"***.
- 5.42 The lightwell at no. 92 projects 1.35m x 2.5m wide and was approved with a galvanised grill with 25mm x 25mm perforations, however, the galvanised grill appears to have been replaced with rooflights and railings have been installed along both side boundaries.
- 5.43 Regarding no. 96 Mill Lane as referred to above, this property has two lightwells which are positioned to each side of the ramped access with handrail as shown in the following image. Application ref 2006/5025/P was approved on 15th January 2007 for *'Change of use and works of conversion to the lower ground floor ancillary shop space (Class A1) to provide a self-contained residential unit (Class C3)'* (Details attached in **Appendix C**).
- 5.44 When assessing the development at no. 96 the officer's report sets out that ***"The scheme will have very little impact on the street scene, both at the front (light wells covered with metal grilles) and at the rear (not visible from the public domain due to high timber fence) and it is therefore considered to be acceptable in visual terms"***.



Lightwells, ramped access and railings at no. 96 Mill Lane

- 5.45 Whilst the appellant acknowledges that the abovementioned approvals were assessed against now superseded planning policy, he states that the overall aims of the current Local Plan are not that different from previous policy to warrant a refusal of planning at no. 94 solely on the proposed lightwells and railings.

- 5.46 Moreover, the appellant considers that these examples demonstrate that lightwells and railings do form part of the character of the Mill Lane and therefore, the lightwell and railings proposed in this instance would not be harmful.
- 5.47 However, should the inspector consider that the protective railings are out of character the appellant would willing to omit these from the scheme and install a metal grill cover or a glass fitting which would not be prominent within the street scene but would still allow good light levels into the basement and protect users of the footpath. The following images show two examples of fittings, and the appellant suggests that details relating to this could be secured by a condition of approval.



Examples of lightwell covers

- 5.48 The removal of railings and the installation of a lightwell grill or cover, as suggested above, would mitigate concerns regarding street clutter although the amount of 'street clutter' the proposed railings and lightwell would actually create would be negligible

given that the adjoining terrace no. 96 has a ramped access with handrails, as shown in the image after paragraph 5.44.

- 5.49 In summary, the proposed development would use high quality materials that would be in keeping with local character. Therefore, the introduction of a front lightwell and railings would have a positive impact on the appearance of the building and street scene and thus would comply with the aims of the NPPF, policy D1 (Design) of the Camden Local Plan and policy 2 (Design and Character) of the Fortune Green and West Hampstead Neighbourhood Plan 2015.

Pedestrian safety

- 5.50 Paragraph 115 of the NPPF states *“Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe”*.
- 5.51 Paragraph 116 goes on to state *“Within this context, applications for development should:*
- c) create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles, avoid unnecessary street clutter, and respond to local character and design standards;”*
- 5.52 Local Plan policies T1 (Prioritising walking, cycling and public transport) and C5 (Safety and security) require development to improve the pedestrian environment.
- 5.53 Neighbourhood Plan policy 9 (Pavements and pedestrians) requires development to provide safe and wide pavements, giving the maximum possible space to pedestrians.
- 5.54 The council refused the development citing that the railings and lightwell would present an obstruction to pedestrians and other users of the public highway and would fail to provide a pedestrian friendly public realm, would fail to maximise space for pedestrians and would fail to improve conditions for wheelchair and other non-ambulatory users of the public highway.
- 5.55 The proposed lightwell would project just 1.8m x 3.2m wide. 1.1m high railings would be placed around the lightwell. The works would be positioned directly adjacent to the host building and as the pavement is approximately 5.25m wide at this point there would still be sufficient pavement space remaining around the front of the unit to allow access into the commercial part of the building and along Mill Lane.
- 5.56 The position and design of the works would not affect pedestrians, wheelchairs or non-ambulatory users and therefore, the appellant rejects the council’s reason for refusal in this regard.

- 5.57 However, to recap the appellant has indicated that he would be willing to omit the railings from the scheme and instead install a metal grille or glazed top to the lightwell. This would not affect movement on the pavement above the basement or effect the living conditions of future occupants of the basement flat.
- 5.58 In summary, the proposed creation of a lightwell with railings would comply with the aims of the NPPF, Policies T1 (Prioritising walking, cycling and public transport) and C5 (Safety and security) of the Camden Local Plan 2017 and Policy 9 (Pavements and pedestrians) of the Fortune Green and West Hampstead Neighbourhood Plan 2015.

Other matters

- 5.59 The council also refused the development due to the absence of a legal agreement securing car-free housing and approval in principle for basement works adjacent to the public highway.
- 5.60 Informative 2. attached to the decision states *“Without prejudice to any future application or appeal, the applicant is advised that reasons for refusal 6 to 7 could be overcome by entering into a Section 106 Legal Agreement for a scheme that was in all other respects acceptable.”*
- 5.61 As a consequence, this appeal is submitted with a Section 106 Legal Agreement and therefore overcomes reasons 6 and 7 of the decision thus, effectively ensuring the development complies with policies A1 (Managing the impact of development) and T2 (Parking and car free development) of the Camden Local Plan 2017 and policy 7 (Sustainable Transport) of the Fortune Green and West Hampstead Neighbourhood Plan 2015.

6.0 CONCLUSIONS

- 6.1 The proposed development would not result in an unacceptable loss of commercial ground floor space that could be considered to affect the viability of the premises. The shop unit would be retained and would therefore, protect, preserve and enhance the commercial role and function of this part of the Mill Lane Neighbourhood Centre.
- 6.2 Any perceived harm would certainly be outweighed by the provision of one new residential flat which should add significant weight in favour of the proposal given that the council cannot currently demonstrate a sufficient housing supply.
- 6.3 The proposed front lightwell and railings would respect the prevailing pattern of development upon Mill Lane and thus would appear as acceptable additions to the street scene. Nevertheless, the appellant has demonstrated his willingness to omit the railings from the scheme and instead install a metal grille or glass roof to the lightwell.

- 6.4 In addition, the front lightwell and railings by virtue of their position directly adjacent to the building and the remaining pavement width would not result in an unacceptable obstruction and therefore, the scheme would preserve the pedestrian friendly environment with sufficient space for pedestrians, wheelchairs and other non-ambulatory users to manoeuvre around the site.
- 6.5 The appeal is supported by a Basement Impact Assessment which has addressed concerns raised regarding flood risk mitigations, impacts on local drainage, flooding, groundwater conditions and structural stability.
- 6.6 In addition, Section 106 legal agreements have been completed securing car-free housing and approval in principle for basement works adjacent to the public highway.
- 6.7 Consequently, the appellant asserts that the appeal proposal conforms with the overall aims of the NPPF, the London Plan 2021, policies A1 (Managing the impact of development), A5 (Basements), C5 (Safety and security), CC3 (Water and flooding), D1 (Design), T1 (Prioritising walking, cycling and public transport), T2 (Parking), TC1 (Quantity and location of retail development) and TC2 (Camden's centres and other shopping areas) of the Camden Local Plan 2017 and Policies 2 (Design and Character), 7 (Sustainable Transport), 9 (Pavements and pedestrians) and 14 (Mill Lane Neighbourhood Centre) of the Fortune Green and West Hampstead Neighbourhood Plan 2015.
- 6.8 Therefore, we respectfully request that this appeal proposal be allowed with any reasonable and appropriate planning conditions deemed necessary in the circumstances of this case.

9th January 2024