

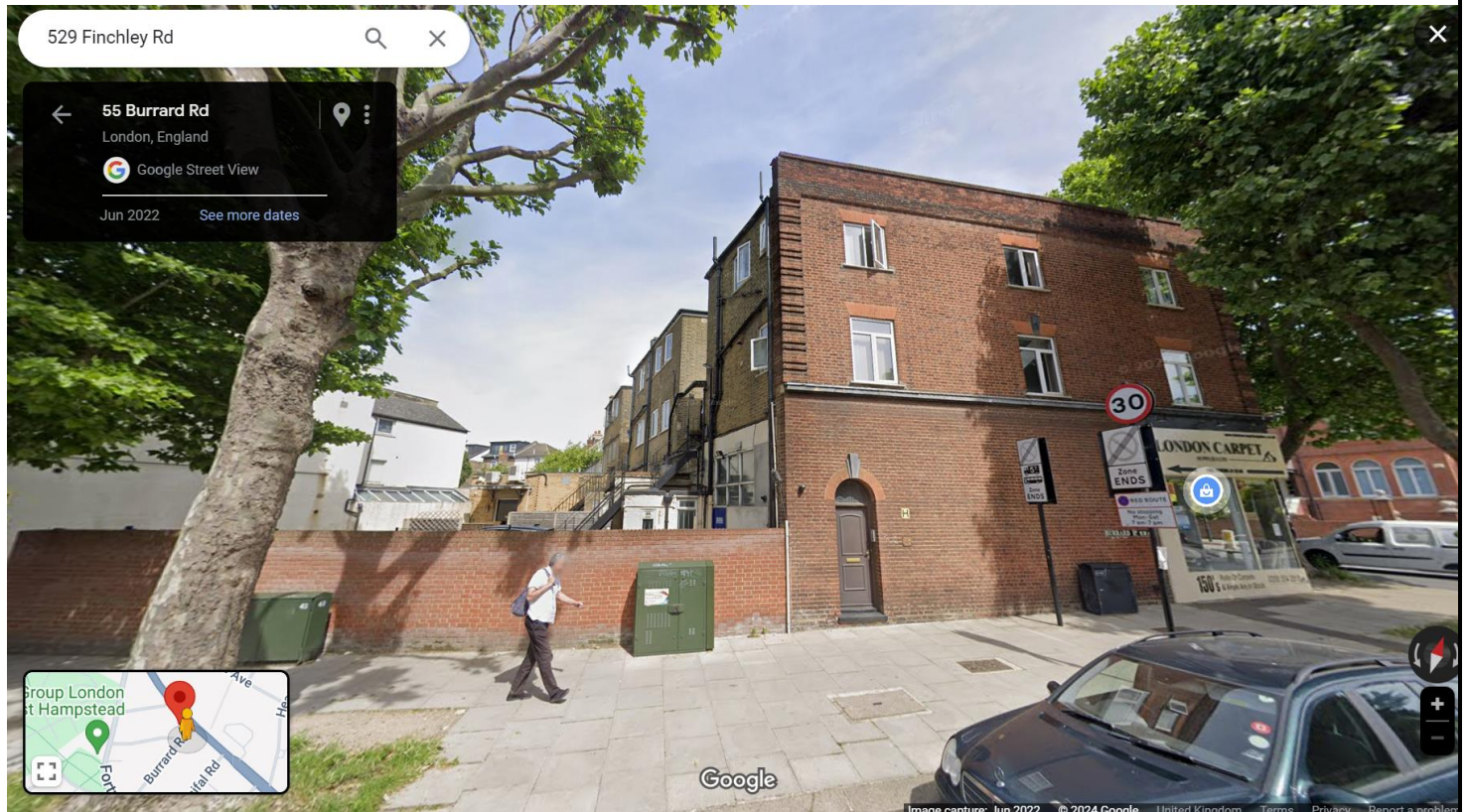
<b>Delegated Report</b>	<b>Analysis sheet</b>		<b>Expiry Date:</b>		02/02/2024
	N/A		<b>Consultation Expiry Date:</b>		25/03/2024
<b>Officer</b>			<b>Application Number(s)</b>		
Adam Greenhalgh			2023/5180/P		
<b>Application Address</b>			<b>Drawing Numbers</b>		
529 Finchley Road London NW3 7BG			See draft decision notice		
<b>PO 3/4</b>	<b>Area Team Signature</b>	<b>C&amp;UD</b>	<b>Authorised Officer Signature</b>		
<b>Proposal(s)</b>					
Erection of part single/part three-storey rear extension and rooftop alterations (including 1st floor, 2nd floor and rooftop rear terraces) to provide 4 flats (3x one-bed and 1x three-bed) together with refuse and cycle provisions. Reduced area of retail floorspace on ground floor.					
<b>Recommendation(s)</b>		<b>Refuse planning permission</b>			
:					
<b>Application Type:</b>		<b>Full Planning Permission</b>			
<b>Conditions or Reasons for Refusal:</b>		<b>See Draft Decision Notice</b>			
<b>Informatives:</b>					
<b>Consultations</b>					
<b>Adjoining Occupiers:</b>		No. of responses	<b>0</b>	No. of objections	<b>0</b>
<b>Summary of consultation responses:</b>		<p>Site notice: 01/03/24 – 25/03/2024</p> <p>No neighbour objections received at the time of writing</p> <p><u>Transport for London:</u></p> <p><i>Having assessed the proposals, I can confirm that TfL Spatial Planning has no specific comments to make on this planning application other than to emphasise the development should comply with the transport policies set out in The London Plan 2021. In particular the car and cycle parking standards in tables 10.2 – 10.6 (inclusive). Cycle parking should comply with the London Cycling Design Standards (<a href="https://tfl.gov.uk/corporate/publications-and-reports/streets-toolkit">https://tfl.gov.uk/corporate/publications-and-reports/streets-toolkit</a>).</i></p> <p><i>If the development is permitted I recommend the developer is reminded of the following:</i></p> <p><i>Finchley Road forms part of the Transport for London Road Network (TLRN). The footway and carriageway must not be blocked during the development. All vehicles associated with the development must only park / stop at permitted locations and within the time periods permitted by existing on-street restrictions. In the event any Red Route dispensations are sought, these must be agreed with TfL in writing before the work.</i></p> <p><i>Should the applicant wish to carry out any work that would require a highway licence, for example for scaffolding or a hoarding on the footway whilst undertaking this work, separate licences may be required with TfL, please see, <a href="https://tfl.gov.uk/info-for/urban-planning-and-construction/our-land-and-infrastructure/highway-licences?intcmp=3496">https://tfl.gov.uk/info-for/urban-planning-and-construction/our-land-and-infrastructure/highway-licences?intcmp=3496</a>.</i></p>			

*TfL has no objection to this planning application, providing that the development itself including any works does not impact on the operation of bus services. Please contact me if you consider that there are any strategic as opposed to local transport issues raised by this case. If the development is permitted I recommend the developer is reminded of the following:*

*Finchley Road supports bus route 13, 113, Y13, Y13N and N113. In the event that implementation of the development requires the temporary re-routeing of bus services or temporary or permanent closure or alteration of a bus stop or shelter or other such arrangements, these must be agreed with TfL before the work*

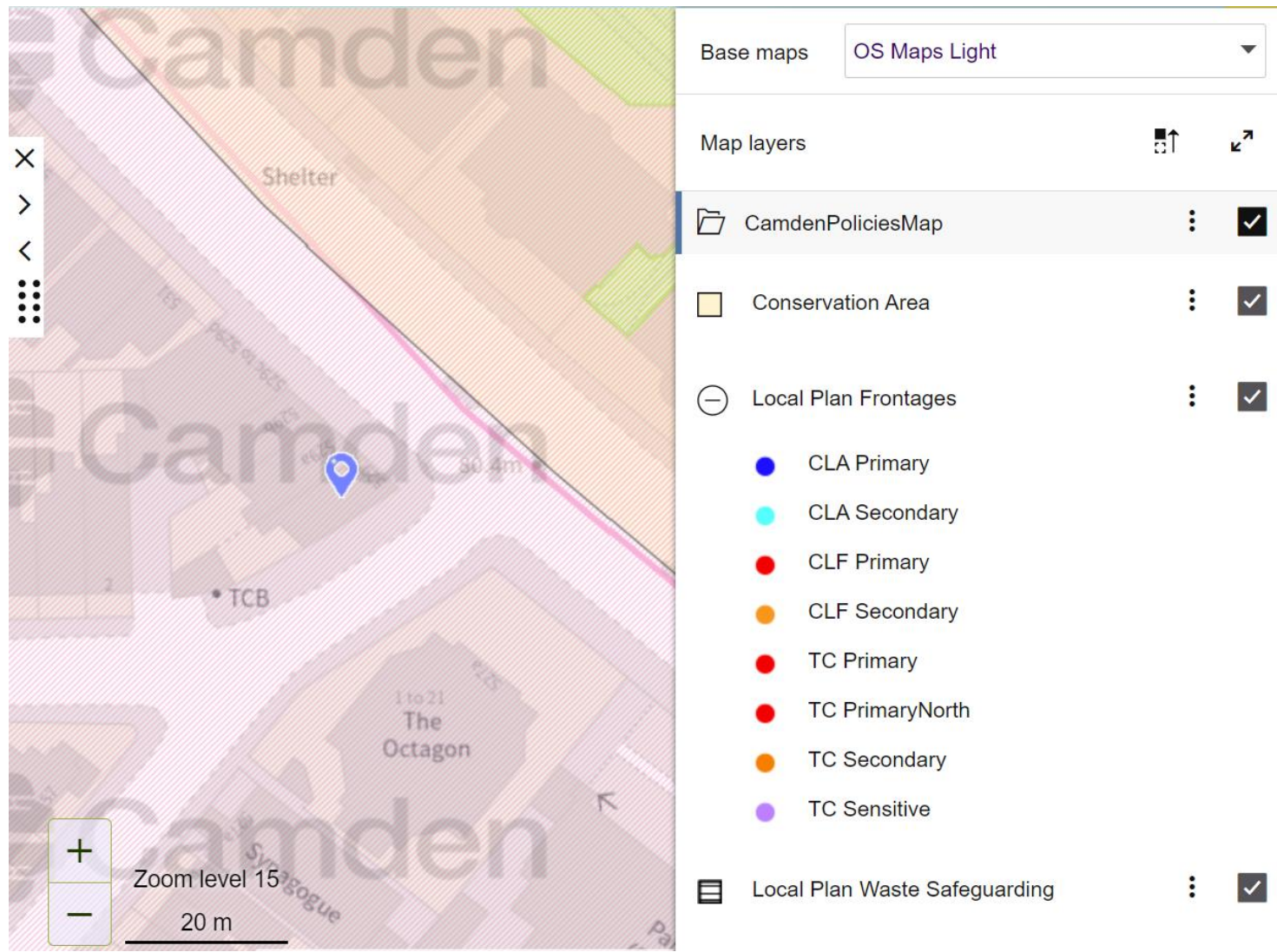
## Site Description

The application site contains a three storey end-of-terrace building.



The building comprises a Class E commercial unit at ground floor level, and a 3-bedroom residential flat (maisonette) above, on the 1<sup>st</sup> and 2<sup>nd</sup> floor levels. The ground floor commercial unit benefits from a rear service yard which has vehicular access suitable for deliveries and servicing. This is also the case for the two neighbouring commercial units at Nos. 529A and 529B Finchley Road. It is not in a Town Centre.

The application site is located on the south-western side of Finchley Road. It is not a listed building and is not located within a conservation area. It does however adjoin the Redington Frognal Conservation Area (within its setting) and neighbours the locally listed 'Octagon' building (527A Finchley Road) and Parsifal College building (527 Finchley Road) to the south.



## Relevant History

### Site

2021/2539/P : Extension of existing building to provide 5 No. x 1 bedroom flats and alteration of existing A1 retail space – appeal against non-determination – dismissed 11/05/2023 (See 'Background' below for reasons for refusal/grounds for dismissal of appeal)

2016/3869/P: Change of use from retail (Class A1) to associated cafe/restaurant (Class A3), installation of extract ventilation. Prior approval given 07.09.2016.

9401859: Change of use of the ground floor from retail (Class A1) to either a professional office (Class A2) or a general office (Class B1). Approved 27.01.1995.

9300856: Continued use of the ground floor of the premises as an office for vehicle hire purposes. Refused 17.02.1994.

9005349: Continued of use of ground floor as an office for vehicle hire purposes. Approved 18.06.1992.

8700560: Change of use from retail shop to offices for vehicle hire purposes including provision of 5 "on site" car parking spaces as shown on drawing nos. RLW/40. Approved 01.07.1987.

## Relevant policies

**NPPF 2021 (updated 2023)**

**The London Plan 2021**

**Camden Local Plan 2017**

G1 Delivery and location of growth  
H1 Maximising housing supply  
H4 Maximising the supply of affordable housing  
H6 Housing choice and mix  
H7 Large and small homes  
C5 Safety and security  
C6 Access for all  
A1 Managing the impact of development  
A3 Biodiversity  
D1 Design  
D2 Heritage  
CC1 Climate change mitigation  
CC2 Adapting to climate change  
CC3 Water and flooding  
CC4 Air quality  
CC5 Waste  
T1 Prioritising walking, cycling, and public transport  
T2 Parking and car-free development  
DM1 Delivery and monitoring

### **Camden Planning Guidance 2018-2021**

CPG Design  
CPG Amenity  
CPG Housing  
CPG Energy efficiency and adaptation  
CPG Transport  
CPG Biodiversity  
CPG Developer contributions  
CPG Air quality

## **Assessment**

### **1.0 Proposal**

- 1.1 Erection of part single/part three storey rear extension and rooftop alterations (including 1st floor, 2nd floor and rooftop rear terraces) to provide 4 flats (3x one-bed and 1x three-bed) together with refuse and cycle provisions. Reduced area of retail floorspace on ground floor.
- 1.2 Approx. 13m deep single storey rear extension, approx. 4.5m in height, occupying full width of site and with a 10 sq m garden at rear.
- 1.3 Approx 4 – 5.25m deep first and second floor rear extension with 10 sq m terrace beyond on first floor and 7.5 sq m balcony beyond on second floor.
- 1.4 Installation of velux window on side roof slope and 5 sq m terrace on rear roof slope
- 1.5 Provision of residential bin store and cycle stores (2 short stay spaces; 8 long stay spaces) on ground floor. Reduced commercial (retail) area on ground floor
- 1.6 Provision of 1 x 1 bedroom flat on ground floor (rear). Provision of 1 x 3 bedroom flat on first floor. Provision of 1 x 1 bedroom flat on second floor (rear). Provision of 1 x 1 bedroom flat on second floor (flat) and in roof.

## 2.0 Background

2.1 The application follows the dismissal at appeal of application 2021/2539/P – ‘Extension of existing building to provide 5 No. x 1 bedroom flats and alteration of existing A1 retail space’. The appeal against non-determination was dismissed on 11/05/2023.

2.2 The main difference between the current application and this previous application is that the first floor rear extension has been significantly reduced. Under application 2021/2539/P a 13m deep ground floor rear extension was proposed, a 10 – 11.5m deep first floor rear extension was proposed and a 4 – 5.25m deep second floor rear extension was proposed. The current proposal is for an approx. 13m deep ground floor rear extension and a 4 – 5.25m deep first and second floor rear extension. The proposals at roof level also differ. Under 2021/2539/P two rear velux rooflights were proposed. A side velux window and rear roof terrace are now proposed.

2.3 For the appeal of 2021/2539/P, the Inspector indicated that the relevant planning issues were:

- The character and appearance of the area, including the impact on trees;
- The living conditions of neighbouring occupiers at 529a and 529b Finchley Road with particular regard to light and outlook;
- Whether the proposal would provide suitable living conditions for the future occupiers of the proposed dwellings with regard to internal space for Units 3 and 5, and adequate light and outlook in respect of unit 5;
- Whether the proposal would result in an unacceptable loss of a family sized dwelling and provision of an appropriate housing mix to meet the needs of the Borough;
- Whether the loss of commercial floorspace and service yard would be harmful to the functionality of an existing employment use;
- Whether the proposal would make adequate provision towards affordable housing; and
- Whether the proposal would secure a car-free housing scheme.

2.4 In brief, the Inspector drew the following conclusions on the above issues:

The character and appearance of the area, including impact on trees:

*‘For the above reasons, the proposed design of the proposed development would be acceptable. However, I am not satisfied that the impact on the adjacent trees has been properly considered. The proposed development could therefore, harm the character and appearance of the area over time’.*

The living conditions of neighbouring occupiers at 529a and 529b Finchley Road with particular regard to light and outlook

*‘The proposal would have an adverse effect on the living conditions of the occupants of the first and second floor flats belonging to No 529a with regard to daylight, sunlight and outlook. It would also be harmful to the daylight and sunlight afforded to the occupants of the flats within 529b’*

Whether the proposal would provide suitable living conditions for the future occupiers of the proposed dwellings with regard to internal space for Units 3 and 5, and adequate light and outlook in respect of unit 5

*‘Whilst sufficient daylight and sunlight would be provided to the bedroom of Unit 5, there is insufficient information to demonstrate that adequate outlook would be achieved. Furthermore, the proposed development would not create suitable living conditions for the future occupants of Units 3 and 5 with regard to internal space.*

Whether the proposal would result in an unacceptable loss of a family sized dwelling and provision of an appropriate housing mix to meet the needs of the Borough

*'The proposal would result in the loss of a family-sized dwelling and would not provide an appropriate mix of dwellings to meet the housing priorities of the Borough'.*

Whether the loss of commercial floorspace and service yard would be harmful to the functionality of an existing employment use

*'The proposed development would reduce the functionality of the existing employment use that would be harmful to the vitality and viability of the shopping parade. The proposal would therefore be contrary to Policy TC2 of the CLP which seeks to maintain a range of shops and other suitable uses to provide variety, vibrancy and choice'*

Whether the proposal would make adequate provision towards affordable housing

*'An appropriate mechanism to secure a financial contribution towards the provision of off-site affordable housing has been provided. The proposal would therefore accord with Policies DM1 and H4 of the CLP which seek to use planning contributions to support sustainable development'.*

Whether the proposal would secure a car-free housing scheme

*'The submitted UU would secure the development as car-free. The UU is directly related to the proposed development, fairly and reasonably related in scale and kind and necessary to ensure that the future occupiers are not entitled to apply for a residents parking permit, or to buy a contract to park in a Council controlled car park. Whilst I have concerns over the reasonableness of the enforceability of the relevant clause, given it would require someone to vacate their home if they held a parking permit, the Council has not raised any concerns. The layout of the proposed development, and the provision of an appropriate mechanism to secure the development as car-free would therefore be in accordance with Policies T2 and T2 of the CLP'*

- 2.5 For the sake of completeness it has been decided to rehearse all the planning considerations which were presented by the Council in the Council's appeal statement in respect of the previous application, 2021/2539/P. Where it is considered that there are no additional impacts arising from the current proposal this is clearly stated. Where there are different impacts arising from the current proposal these are discussed in the context of the relevant policies and guidance and in the context of the Inspector's comments within the appeal decision letter.

## **Land Use**

- 2.6 The proposal for the retention of the ground floor commercial unit and the provision of 4 flats is, in principle, in accordance with the Local Plan strategic policy for the delivery and location growth (G1) and the policy for maximising housing supply (H1). Consideration of the quality of the proposed residential and commercial accommodation is undertaken in 'Quality of accommodation' below.
- 2.7 Note: The previous scheme (2021/2539/) included the loss of a 3 bedroom family unit and the provision of 5 x 1 bedroom units. It was considered by the Council to be contrary to LB Camden Local Plan policy H7 (Large and small homes) because it did not include a family unit. The appeal Inspector agreed: *'The proposal would result in the loss of a family-sized dwelling and would not provide an appropriate mix of dwellings to meet the housing priorities of the Borough. Consequently, it would fail to comply with Policy H7 of the CLP as set out above'.*
- 2.8 In the current proposal a three bedroom flat (with two terraces) is proposed. As such, the proposal does not result in a loss of a family unit, and the proposed dwelling mix (3 x 1 bed units and 1 x 3 bed unit) is considered to provide an appropriate range of unit sizes in accordance with policy H7 and policy 1: Housing of the Fortune Green and West Hampstead Neighbourhood Plan 2015.



## Affordable Housing

- 2.9 As with the previous application, there is a requirement for the provision of affordable housing. Under policy H4 (Maximising the supply of affordable housing) all developments that provide one or more additional homes and involve a total addition to residential floorspace of 100sqm GIA or more should provide affordable housing. A sliding scale target applies to developments that provide one or more additional homes and have capacity for fewer than 25 additional homes, starting at 2% for one home and increasing by 2% for each home added to capacity.
- 2.10 On the basis of 143 sqm (GIA) of additional housing floorspace (based on the submitted application form), this would result in a requirement for 2% affordable housing. This would equate to 2.86 sqm GIA of affordable floorspace. Where developments have capacity for fewer than 10 additional dwellings, the Council will accept a payment-in-lieu of affordable housing.
- 2.11 The affordable housing payment in lieu rate is £5000 per sqm GIA. Therefore, the affordable housing payment in lieu would be £14,300 (2.86 sqm x £5,000). This should be secured within a legal agreement. At the time of writing, the applicant has not completed such a legal agreement and the proposal is therefore contrary to policy H4 of the Camden Local Plan and policy 1: Housing of the Fortune Green and West Hampstead Neighbourhood Plan 2015. This can be overcome by entering into a legal agreement (or UU).

## Design

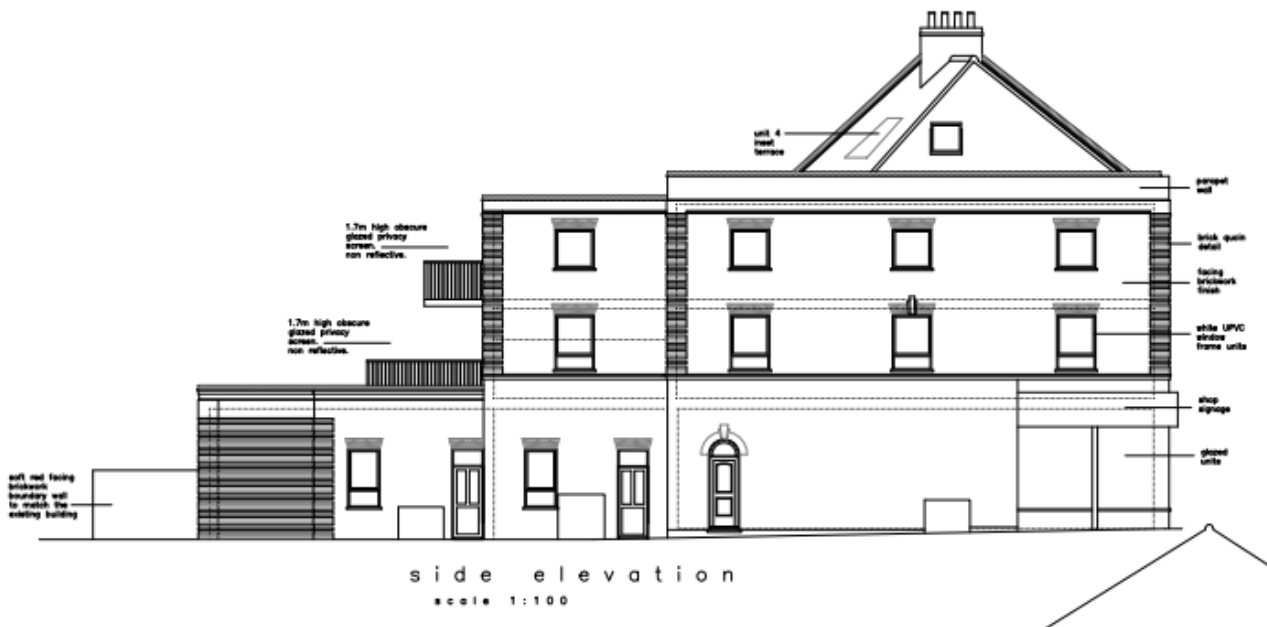
- 2.12 The Inspector, in his appeal decision letter, raised no objections, per se, to the scale, form and appearance of the proposed rear extensions in the previous scheme, 2021/2539/P:

*'However, given the clear expression of such matters within the submitted plans, there is nothing before me to suggest that the proposal would not amount to a high-quality development that reflects the character of the host building. The height and proximity of the side elevation facing Burrard Road would not be any more dominant than the existing flank elevation of the host building and adjoining boundary wall. It would be typical of development in a dense urban location such as this. I therefore find that the proposed development would be of an appropriate design and scale'*

- 2.13 The current proposal represents a reduction of the scheme proposed under 2021/2539/P with the first floor rear element reduced from 10 – 11.5m in depth to 4 – 5.25m in depth.



*Proposed side elevation – 2021/2539/P scheme, dismissed at appeal*



*Proposed side elevation – current application*

- 2.14 While the scale and form may be acceptable, the Council would require a condition to secure the submission, approval and use of appropriate matching materials for the proposed extension, in the interests of the appearance of the area in accordance with policy D1.
- 2.15 As can be seen from the above image (and the application drawings) a balustraded rear terrace and balcony would be formed at first and second floor levels. Previously (2021/2539/P) glazed balustrades had been proposed and these were assessed by the Council to be ‘incongruous features at an elevated in an environment predominantly made up of traditional materials’.
- 2.16 The Inspector indicated that the finished appearance of the balustrades could be controlled by a planning condition.
- 2.17 Following comments given by the Council’s Urban Design Team (this time around), the design of the balconies is considered to benefit from a consistent and appropriate approach and as such, no objections are raised to the proposed balustrades on urban design grounds.
- 2.18 Harm to existing street trees on Burrard Road was cited by the Inspector as a reason for the dismissal of the appeal. Full consideration on the effects on these trees is undertaken in Trees and Landscaping below.

## **Residential Amenity**

### Daylight/sunlight and outlook

- 2.19 The previous application was assessed to be likely to result in a loss of daylight, sunlight and outlook for the occupiers of flats on the upper floors of neighbouring properties in the terrace – namely 529A and 529B Finchley Road (and potentially 529C-D Finchley Road). Sited to the south of and projecting beyond the windows at 529A and 529B Finchley Road (and in the absence of a daylight/sunlight report to demonstrate otherwise) the proposal was assessed by the Council to result in a loss of daylight and sunlight (and outlook). The appeal Inspector agreed noting, for example, ‘The loss of direct sunlight is likely to make the internal rooms more gloomy, negatively affecting the living conditions of the existing occupiers of the flats within No 529a and 529b’.
- 2.20 A Daylight and Sunlight Assessment has been undertaken for the current proposal. All the glazed windows and doors at the relevant neighbouring properties have been identified. The Assessment demonstrates that i. either the windows do not serve domestic rooms, ii. either that they will retain good absolute levels of daylight (i.e. 27% + VSC), or iii. where existing daylight levels are currently below acceptable levels any additional losses of daylight will not be substantial (i.e. no

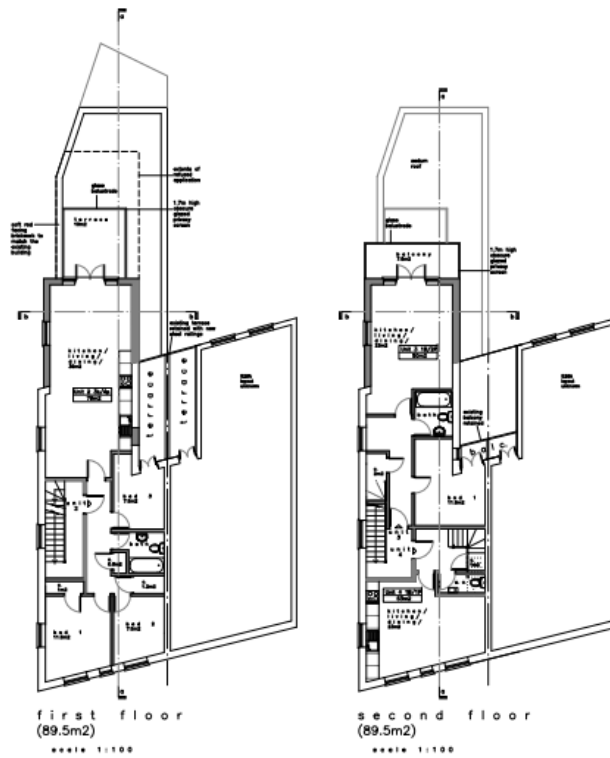
more than 20%). Furthermore, the Daylight and Sunlight Assessment demonstrates that all windows that face within 90 degrees of due south with a requirement for sunlight pass both the total annual sunlight hours test and the winter sunlight hours test (25% of annual probable sunlight hours and 5% of annual probable sunlight hours between 21 September and 21 March and). All open spaces meet the BRE recommendations (The guide recommends that at least 50% of the area of each amenity space listed above should receive at least two hours of sunlight on 21 March. If as a result of new development an existing garden or amenity area does not meet the above, and the area which can receive two hours of sunlight on 21 March is less than 0.8 times its former value, then the loss of light is likely to be noticeable).

2.21 As the Daylight and Sunlight Assessment appears to demonstrate that all the relevant neighbouring windows and amenity spaces pass BRE recommended daylight and sunlight levels the proposals are considered to be acceptable in this regard.

2.22 The findings of the Inspector in relation to outlook remain applicable, to a lesser degree, for the current proposal. The Inspector noted *'The proposed north-western elevation of the extension would not be set back from the existing outrigger, nor articulated with any windows or doors. The tall, blank elevation would present a foreboding structure in severe proximity to the boundary with No 529a, such that it would be oppressive to the occupants of the adjoining flats at first and second floor level. As the flank elevation of No 2 is directly to the rear, the proposal would effectively box-in and severely curtail the outlook from the rear habitable rooms belonging to the flats at No 529a, as well as those within the host building itself. It would also loom over the terrace to the first floor flat of No 529a which contained an outdoor table and chairs and washing, indicating its importance to the occupiers as a small area of outside space. Whilst occupants of dwellings do not have a right to a view, outlook contributes towards the standard of living conditions experienced by the occupants of a particular property. It is therefore an important and somewhat standard planning consideration in respect of new development adjoining existing dwellings'*.

2.23 While the obscure glazed windows in the side elevation of the outrigger at the rear of 529a are discounted from any assessment of impacts on outlook (by virtue of being obscure glazed), the proposed first and second floor rear extension would project some 7.5m alongside the immediately adjoining terrace within the alcove between the application proposal and the outrigger at 529a Finchley Road. The Inspector noted the importance of the outlook from this terrace in his appeal decision *'It would also loom over the terrace to the first floor flat of No 529a which contained an outdoor table and chairs and washing, indicating its importance to the occupiers as a small area of outside space'*.

2.24 The proposal (albeit reduced in depth at first floor level) would project beyond the first floor terrace at the rear of 529a Finchley Road to such an extent that it would be an overbearing feature which would result in an unacceptable sense of enclosure and loss of outlook for the occupiers of this property.



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2.25 Finally, projecting 2.5 – 3.25m beyond the upper floor windows in the rear elevation of 529a Finchley Road the proposed first and second floor extension would still have some overbearing effects which would result in a degree of loss of aspect for the occupiers at this site. Overall, the depth, siting, and scale of the proposed extensions would harm the amenity of neighbouring occupiers (as well as the bedrooms in the proposed flats) severely restricting outlook and looming over terraces and outdoor spaces, contrary to policies A1 and D1 of the Local Plan and policy 2 (Design & Character) of the Fortune Green and West Hampstead Neighbourhood Plan 2015

### Overlooking and privacy

2.26 The proposed windows and balcony are not considered to afford any harmful views into neighbouring habitable windows, as such, it is not considered that there would be an undue loss of privacy.

### Noise and disturbance

2.27 No external plant equipment is proposed and the balconies are too small to host large gatherings, as such, it is not considered that there would be a significant level of noise and disturbance

### **Quality of accommodation**

2.28 The quality of both the residential accommodation and the commercial accommodation were both issues which contributed to the dismissal of the appeal. On the living conditions for future residential occupiers, the Inspector concluded *'Whilst sufficient daylight and sunlight would be provided to the bedroom of Unit 5, there is insufficient information to demonstrate that adequate outlook would be achieved. Furthermore, the proposed development would not create suitable living conditions for the future occupants of Units 3 and 5 with regard to internal space. The proposal would conflict with Policies H6 and A1 of the CLP and Policy D6 of the LP which aim to ensure the provision of high-quality homes in respect of the provision of space and amenity of occupiers. It would also fail to comply with the NDSS which aims to improve the standard of residential development through prescribing space standards'*.

2.29 It should be noted that certain alterations have been undertaken to Unit 1 (the ground floor flat) in the current proposal. The bedroom has been set back slightly from the pavement and the

layout of the living room/kitchen/dining room has been indicated. While there were no objections to the layout of Unit 1 either from the Council or the Inspector for the previous application/appeal, the now proposed layout of Unit 1 is favoured in terms of the quality of the accommodation.

2.30 On the living conditions for future residential occupiers the Inspector noted, in particular, that Units 3 and 5 fell below the recommended size requirements in the Nationally Described Space Standards. Concerns were raised with regard to the outlook and internal height of Unit 5. All of the above issues are considered to have been addressed in the current proposal. All four of the proposed flats would comply with the recommended size requirements in the Nationally Described Space Standards and satisfactory levels of outlook would be provided by windows to many habitable rooms (The bedroom within the roof of the 2<sup>nd</sup> floor/roof-top unit would have a dormer window within the rear roof slope). However, the bedrooms at the back of the main building would remain with restricted outlook, along with the extensions looming over the terraces, notably at first floor level. A proposed sectional drawing has been submitted to demonstrate that all the habitable rooms would have a minimum internal head height of 2.5m. There are therefore no longer any objections on grounds of inadequate living conditions for future occupiers, other than the impact on outlook and amenity space set out above.

2.31 The Council gave non-compliance with M4(2) (accessible and adaptable dwellings) and M4(3) (wheelchair user dwellings) as a reason for refusal of 2021/2539/P. The Appeal Inspector did not discuss these matters or cite them as a reason for dismissing the appeal. Notwithstanding this discrepancy, the Council is of the view that the accessibility requirements set out in policy D7 (Accessible Housing) of the London Plan relate to ANY new residential dwellings and that it is still reasonable to refuse the application owing to the lack of information which has been provided to show how the units would be accessible and adaptable (i.e. M4 (2)) compliant) with 10% wheelchair user dwellings (i.e. M4(3) compliant). The appropriate provision of housing for the disabled, with accessibility, is also a requirement of policy 1: Housing of the Fortune Green and West Hampstead Neighbourhood Plan 2015.

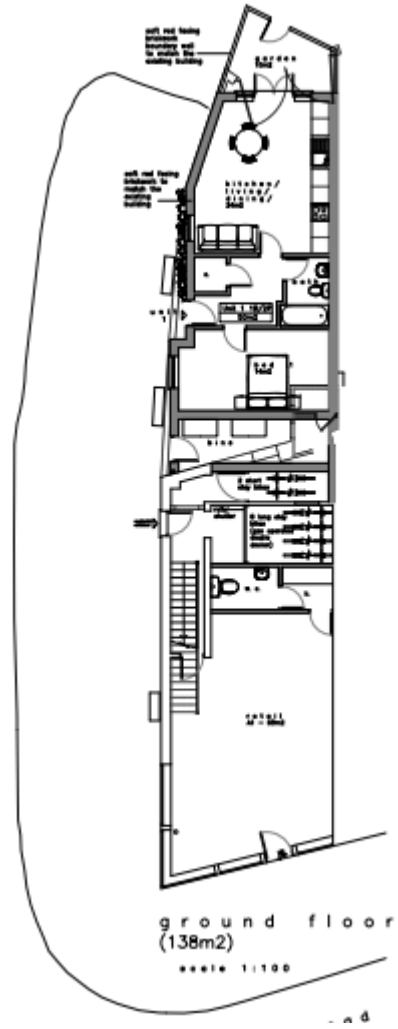
### **Impact on the ground floor commercial unit**

2.32 On the functionality of the employment use, the Inspector advised *'It is likely that the loss of the service yard and reduction in floor area would limit the potential commercial uses that the premises could be put to under class E, for example a restaurant or leisure use. It may reduce the flexibility of the premises and thus stay empty, rather than attracting a new use. If this were to occur, it would be harmful to the vitality of the shopping parade to which it belongs and the service function it provides to local residents. Whilst it is suggested that the ground floor unit could be serviced from Finchley Road to the front, there is no evidence to demonstrate that this would be workable in practice or that this is the case for the remainder of the units within the terrace. Finchley Road is a red route where vehicles are not permitted to stop between 07:00 and 19:00 hours Monday to Saturday, in recognition of the highly trafficked nature of the road and importance as a main bus route. The restrictions on stopping are likely to be a hindrance to the servicing of the commercial premises, although I recognise that some time limited car parking could take place further up the street beyond the appeal site. Nevertheless, the unloading of a vehicle would require the operative to navigate around the mature street tree and street furniture within the pavement to the front of the unit. Given these constraints, the servicing of the premises from Finchley Road is likely to be difficult, as well as potentially hazardous to the free flow of pedestrians and vehicular traffic. The proposed development would reduce the functionality of the existing employment use that would be harmful to the vitality and viability of the shopping parade. The proposal would therefore be contrary to Policy TC2 of the CLP which seeks to maintain a range of shops and other suitable uses to provide variety, vitality and choice'*

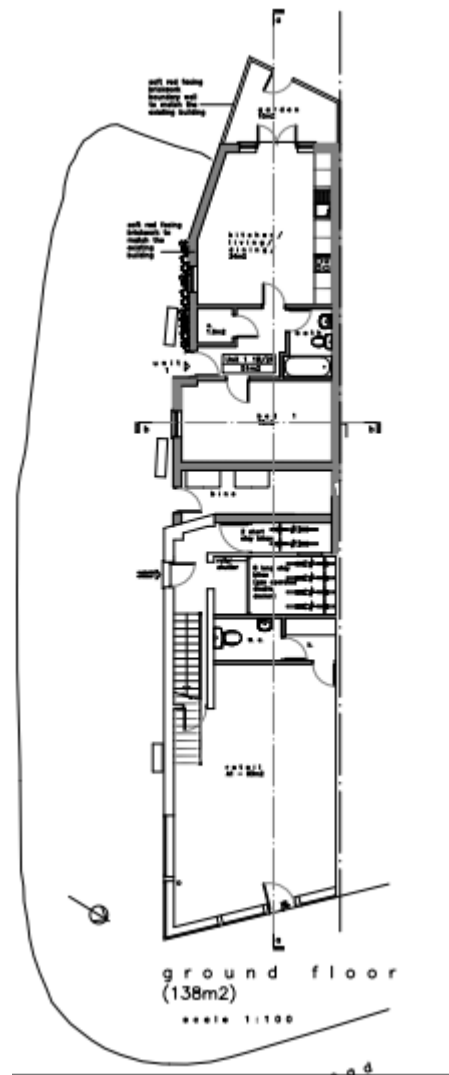
2.33 The findings and conclusions of the Inspector on the functionality of the employment use remain the same.

2.34 The proposed layout of the commercial unit remains the same in the current application as in the scheme dismissed at appeal:

2021/2539/P – Proposed Ground Floor Layout



2023/5180/P – Proposed Ground Floor Layout



2.35 The same issues identified by the Inspector would remain. Essentially the loss of the rear yard from the commercial unit was seen as being likely to result in a need for servicing from Finchley Road which the Inspector viewed as being likely to be problematic. These issues would remain for the current proposal. The proposal would continue to be contrary to policy TC2 of the Local Plan and policy 12 of the Fortune Green and West Hampstead Neighbourhood Plan 2015.

## Transport

2.36 The transport implications for the current application are similar to those associated with the scheme dismissed at appeal. The cycle facilities would be the same (8 long-stay and 2 short-stay cycle spaces in stores at ground floor level accessed via Burrard Road). Subject to a condition regarding the submission and approval of details the arrangements (were and) are considered to be acceptable by the Council.

2.37 A Construction Management Plan was deemed not to be necessary for the previous application (by the Council or the Inspector). Given that the current proposal is a reduction of the previous scheme, a Construction Management Plan is still not required. TfL may require the applicant to enter into a Section 278 agreement with them with respect to highway repaving works adjacent to the site, if they deem this necessary. No comments have been received from TfL at the time of writing this report.

2.38 There remains the issue of the car-free requirement. To prevent the future occupiers from obtaining on-street parking permits from the Council, in accordance with policy T2 of the Local Plan, the development must be subject to a car free agreement and this should be secured by means of a Section 106 Agreement if permission were to be granted.

2.39 In the absence of such an undertaking, this remains a reason for refusal, on ground of

being contrary to policies T1 and T2 of the Local Plan and policy 7 of the Fortune Green and West Hampstead Neighbourhood Plan 2015.

- 2.40 A scaffolding bond will be secured which will cover the cost of any damage that may occur to the adjacent footways during construction works.

### **Trees and Landscaping**

- 2.41 Harm to existing street trees on Burrard Road was cited by the Inspector as a reason for the dismissal of the appeal. It was noted that *'In the absence of an arboricultural impact assessment, I cannot be certain that the proposed development would not harm the existing trees. There is no evidence to support the assertion that the trees are hardy because of their location within the pavement. Mature trees can be less tolerant of root damage and therefore, the lack of a consultation response from an arboricultural specialist does not change my view on this. Moreover, this is not a matter that could be adequately controlled by condition given that mitigation measures may be required to address any impact, for example raft foundations. Tree pruning would not address the impact of excavations on the root protection areas'*



- 2.42 An Arboricultural Impact Assessment (AIA) has been submitted for the current proposal. The AIA identifies two London Plane trees close to the proposed development (see above photo). These two trees are already subject to a cyclical pruning regime which pulls their canopies well away from the site of the proposed development. Consequently, the proposal would not result in any increased pressure for the removal or significant reduction of these trees. Both trees will be subject to temporary protection measures during the course of construction. These measures are specified in the Arboricultural Method Statement. The Council's Tree Officer has reviewed the AIA and it is considered that the proposal would not result in undue damage or pressure to the trees such that their health, well-being and contribution to amenity and biodiversity would be unduly harmed.

### **Air Quality**

- 2.43 The same Air Quality Assessment which was submitted for the previous scheme (2021/2539/P) has been submitted. Given that the proposal has now been reduced, and also given that there have been no major changes in Air Quality guidance since 2021, the Air Quality Assessment continues to meet the minimum criteria required by Policy CC4.



## **Sustainability and Climate Change**

- 2.44 The previous application (2021/2539/P) proposed 5 new additional residential units and, in accordance with Policy CC1 of the Local Plan and the Energy Efficiency CPG, an Energy Statement was deemed as being necessary.
- 2.45 The current application proposes 4 new dwellings and an Energy Statement is not required for developments of less than 5 dwellings under Policy CC1 of the Local Plan and the Energy and Efficiency CPG.
- 2.46 The Energy Efficiency CPG indicates a need for carbon emission reductions 19% below Part L of 2013 Building Regulations for developments of less than 5 dwellings.
- 2.47 However, given that the appeal Inspector ignored the recommended reason for refusal relating to lack of an Energy Efficiency Plan, Renewable Energy Plan and a Sustainability Plan for 2021/2539/P it is recommended that the requirement for carbon emission reductions 19% below Part L of 2013 Building Regulations is dealt with by a condition for the current application (if it should be granted).
- 2.48 The Council also attaches a condition relating to water use on all applications for new residential dwellings, in accordance with the Local Plan sustainable development policies. The condition should be imposed if the current proposal is granted planning permission.

## **Conclusion**

- 2.49 The application is made pursuant to application 2023/5180/P which was for a similar proposal, albeit with a substantially deeper first floor rear extension, a different layout of the proposed ground floor (rear) flat and different balustrade treatments. An appeal against the non-determination of 2021/2539/P was dismissed on grounds of harm to existing street trees (and consequently the character and appearance of the area), harm to the amenity of occupiers of neighbouring properties (529a and 529b Finchley Road), inadequate living conditions (units 3 and 5), loss of a family sized unit (and inadequate range of unit sizes), adverse effects on the functionality of the ground floor commercial unit (and the vitality and viability of the shopping parade) and lack of a legal agreement in respect of car-free development and an appropriate affordable housing contribution. The application did not include details of how the residential units would comply with Building Regulations requirements on accessible and adaptable dwellings M4 (2) and wheelchair user dwellings M4 (3) – although the Inspector did not consider these matters in dismissing the appeal.
- 2.50 The current proposal would have the same adverse effects on the functionality of the ground floor commercial unit (and the vitality and viability of the shopping parade). It would harm the amenity of the occupiers of 529a Finchley Road and the host property, and in the absence of an appropriately completed legal agreement it would fail to include an appropriate contribution to affordable housing or reduced car use. The quality of the residential accommodation is considered to be acceptable and the range of unit sizes would be acceptable, other than the impact on outlook and amenity spaces. An Arboricultural Implications Assessment has been submitted to demonstrate that the development would not result in undue harm or damage to the existing street trees to the detriment of the amenity, appearance and biodiversity of the area. The application lacks details of how the residential units would comply with Building Regulations requirements on accessible and adaptable dwellings M4 (2) and wheelchair user dwellings M4 (3). It should therefore also be refused on grounds of being contrary to policy H6 and the London Plan 2012.

## **RECOMMENDATION : REFUSE PLANNING PERMISSION**

## Reasons for Refusal

1. The proposed first and second floor rear extension, due to its height, depth and architectural design would be an overbearing feature which would result in a significant loss of outlook and an unacceptable sense of enclosure from the first floor private terrace and upper floor rear windows of 529A Finchley Road, contrary to policies A1 (Managing the impact of development) and D1 (Design) of the London Borough of Camden Local Plan 2017, policy 2 (Design & Character) of the Fortune Green and West Hampstead Neighbourhood Plan 2015, the London Plan 2021 and the NPPF 2023.
2. The proposed development would reduce the functionality of the existing employment use thereby resulting in harm to the vitality and viability of the shopping parade. The proposal would adversely affect the range of shops and other suitable uses to provide variety, vitality and choice and it would therefore be contrary to policy TC2 (Camden's centres and other shopping areas) of the Camden Local Plan 2017, policy 12 (Business, Commercial and Employment Premises and Sites) of the Fortune Green and West Hampstead Neighbourhood Plan 2015, the London Plan 2021 and the NPPF 2023.
3. Due to a lack of information to show how the units would be accessible and adaptable (i.e. M4 (2) compliant) with 10% wheelchair user dwellings (i.e. M4(3) compliant), the proposal would be contrary to policy H6 (Housing choice and mix) of the Camden Local Plan 2017, policy 1 (Housing) of the Fortune Green and West Hampstead Neighbourhood Plan 2015, the London Plan 2021 and the NPPF 2023.
4. The proposed development, in the absence of a legal agreement to secure an affordable housing contribution of (£14,800), would fail to maximise the supply of affordable housing in the borough and help meet the needs of households unable to access market housing, contrary to policy H4 (Maximising the supply of affordable housing) of the London Borough of Camden Local Plan 2017, policy 1 (Housing) of the Fortune Green and West Hampstead Neighbourhood Plan 2015, the London Plan 2021 and the NPPF 2023.
5. The proposed development, in the absence of a legal agreement to secure a car-free development, would be likely to contribute to an unacceptable increase in parking stress and congestion in the surrounding area, contrary to policies T1 (Prioritising walking, cycling, and public transport) and T2 (Parking and car-free development) of the London Borough of Camden Local Plan 2017, policy 7 (Sustainable Transport) of the Fortune Green and West Hampstead Neighbourhood Plan 2015, the London Plan 2021 and the NPPF 2023