



## PLANNING SERVICES

### TOWN & COUNTRY PLANNING ACT 1990

#### STATEMENT OF CASE London Borough of Camden

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#### APPEAL SITE

94 Mill Lane, London, NW6 1NH

#### APPELLANT

Mr Sunil K Radia

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#### SUBJECT OF APPEAL

Appeal Statement in Support of the Council's decision to refuse Full Planning Permission application (ref: 2022/5197/P) on 18<sup>th</sup> July 2023 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”

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**COUNCIL REFERENCE: 2022/5179/P**

**PLANNING INSPECTORATE REFERENCE: APP/X5210/W/24/3336580**

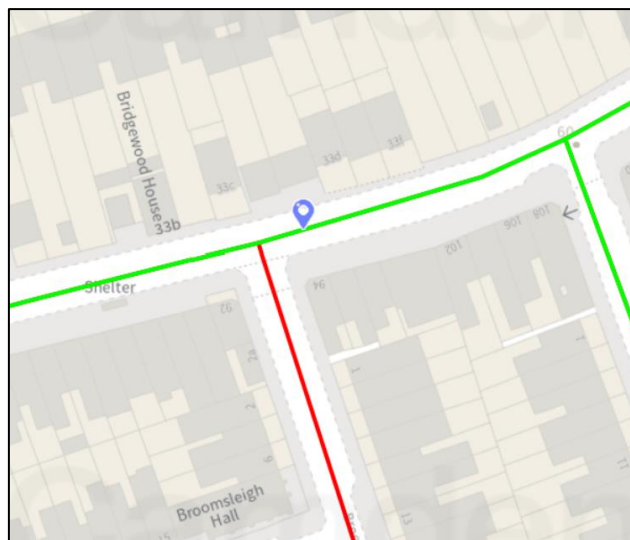
*The Council reserves the right to amend or supplement the Statement of Case.*

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## 1. SITE AND SURROUNDINGS

- 1.1. The application site is a end-terrace property with a flat roof finished with yellow brick. It is located at the junction with Broomsleigh Street. It has been constructed on a slope which means it appears as a three storey property when viewed from Mill Lane and a four storey property when viewed from the south on Broomsleigh Street. The property a two storey rear projection to the rear (south). It also currently features a Class E retail unit (called Glass Art) at ground floor level with residential accommodation in the form of a flat above. The existing retail unit is currently vacant.
- 1.2. The site is not located within any conservation area and is not a listed or locally listed building. It is located within the Mill Lane Neighbourhood Centre and the Fortune Green and West Hampstead Neighbourhood Plan area. There is an Article 4 Direction covering the site which prevents the conversion of commercial Class E premises to residential under permitted development rights (otherwise permitted under Class MA of the General Permitted Development Order 2015 (as amended)). The site is also located within a Critical Drainage Area.
- 1.3. Mill Lane and the adjacent Broomsleigh Street have a recorded history of flooding, with both streets having flooded in 1975 (red overlay below – NB: there is also a red overlay below the green as shown on the map in Fig. 1) and Mill Lane having flooded in 2002 (green overlay below).



*Fig 1: Map of local previously flooded streets.*



## **2. THE APPEAL PROPOSAL**

- 2.1. It is proposed to convert the existing basement and part of the existing ground floor shop (Class E) to a residential flat. The proposed construction of a lightwell and railings at the front of the property, and new windows to the side and rear elevations at basement level, would contribute to the facilitation of this conversion to residential.
- 2.2. The proposed basement level lightwell would be 1.5 metres deep and 2.5 metres wide (3.75sqm in area). It is assumed that the height would be 2.5 metres from basement floor level, which is the same height as the proposed basement floor level. The height of the lightwell is not shown on the submitted plans.
- 2.3. The railings located at ground level would project 1.8 metres in depth and 3.1 metres in width from the front (north) of the existing property. The railings would be 1.1 metres in height and finished in metal.
- 2.4. A new window would be fitted to the external wall on the western side of the property. This would be approximately 1 metre wide and 0.5 metres in height, located a maximum distance of 1.3 metres from ground level. Another window of a similar design (1.2 metres in width, 0.5 metres in height, 1.6 metres from the ground) would be installed to the rear elevation of the existing two storey rear projection.
- 2.5. Other alterations to the window and door layout of the existing property are also proposed to the parts of the property that are not visible from public areas. These include the replacement of an existing ground floor rear window with a window and door and the replacement of two doors in the eastern side of the rear projection with two windows.
- 2.6. Internal alterations are also proposed to the existing shop unit, consisting of the creation of a 2.4sqm storage area (for the proposed flat) at ground floor level within part of both of the existing shop and bathroom, and the provision of partition walls to create a shower-room/WC and hallway at basement level. It appears that the primary access to the basement flat would be from the rear at lower ground/basement level, which is reached via a rear amenity area accessible from Broomsleigh Street.

### 3. RELEVANT PLANNING HISTORY

#### Application Site

- 2022/5198/P. Conversion of basement and ground floor to residential flat; new windows to side and rear elevations. Pending consideration by the Council. Refused 2nd March 2023. Reasons for the refusal of permission are referenced below:
  1. Loss of retail shop unit
  2. Absence of basement impact assessment
  3. Absence of flood risk mitigation measures
  4. Absence of legal agreement for car-free housing
- 2022/2508/P. Erection of a mansard roof extension and first floor rear extension with roof terrace above, in connection with conversion of the upper floors to a studio flat and a 1 bedroom maisonette (Class C3). Granted 25th July 2022.

#### Other Relevant Sites and Applications

3.1. These historic permissions referenced below are relevant as they refer to the installation of lightwells and railings.

60-62 Mill Lane:

- 2011/0296/P. Change of use from non-residential institution (Class D1) to 5 x self-contained flats (Class C3) with retail unit (Class A1) at ground floor level and associated erection of roof extension, two-storey and single storey rear extensions. Granted 13th May 2011.

66 Mill Lane:

- 2012/4886/P. Erection of mansard roof extension and rear extensions at lower ground to first floor levels, creation of rear terraces at second and third floor level and installation of new front cellar lights at front lower ground floor level all in connection with change of use from retail (Class A1) at lower ground and part ground floor to 1 x 2 bedroom flat, 1 x 1 bedroom at first floor level and 1x 2 bedroom maisonette on second and third floor levels (Class C3). Granted 21st February 2013.

## 4. LEGISLATIVE AND PLANNING POLICY FRAMEWORK

### **National Planning Policy Framework (NPPF) 2023**

4.1. The NPPF was first published on 27<sup>th</sup> March 2012. It provides a national planning policy framework against which all planning applications and decisions must be made. The NPPF was most recently revised on 19<sup>th</sup> December 2023 and sets out the government's planning policies for England. The policies contained in the NPPF 2023 are material considerations which should be taken into account in determining planning applications.

### **Development Plan**

4.2. The current development plan in relation to the appeal site comprises the London Plan 2021, the Camden Local Plan 2017 and the Fortune Green and West Hampstead Neighbourhood Plan 2015.

4.3. The council has published a new [Draft Camden Local Plan](#) (incorporating Site Allocations) for consultation (DCLP). The DCLP is a material consideration and can be taken into account in the determination of planning applications, but has limited weight at this stage. The weight that can be given to it will increase as it progresses towards adoption (anticipated 2026).

### **London Plan 2021**

4.4. The London Plan 2021 is a strategic planning document for London. The most relevant policies and objectives are listed below:

#### Planning London's Future - Good Growth

- GG1 Building strong and inclusive communities
- GG3 Creating a healthy city
- GG4 Delivering the homes Londoners need
- GG5 Growing a good economy

#### Design

- Policy D4 Delivering good design
- Policy D5 Inclusive design
- Policy D6 Housing quality and standards
- Policy D7 Accessible housing

- Policy D8 Public realm
- Policy D10 Basement development
- Policy D11 Safety, security and resilience to emergency

#### Housing

- Policy H1 Increasing housing supply
- Policy H2 Small sites

#### Economy

- Policy E1 Offices
- Policy E9 Retail, markets and hot food takeaways

#### Sustainable Infrastructure

- Policy SI 12 Flood risk management
- Policy SI 13 Sustainable drainage

#### Transport

- Policy T1 Strategic approach to transport
- Policy T2 Healthy Streets
- Policy T5 Cycling
- Policy T6 Car parking
- Policy T7 Deliveries, servicing and construction
- Policy T9 Funding transport infrastructure through planning

#### Funding the London Plan

- Policy DF1 Delivery of the Plan and Planning Obligations

#### Monitoring

- Policy M1 Monitoring

### **Camden Local Plan 2017**

4.5. The Local Plan was adopted by the Council in July 2017. The most relevant policies to be considered as part of the appeal process are listed below:

#### Growth and Spatial Strategy



- G1 Delivery and location of growth

#### Economy and Jobs

- E1 Economic development
- E2 Employment premises and sites

#### Protecting Amenity

- A1 Managing the impact of development
- A4 Noise and vibration
- A5 Basements

#### Design and Heritage

- D1 Design

#### Housing

- H1 Maximising housing supply
- H4 Maximising the supply of affordable housing
- H6 Housing choice and mix
- H7 Large and small homes

#### Town Centres and Shops

- TC1 Quantity and location of retail development
- TC2 Camden's centres and other shopping areas
- TC4 Town centre uses

#### Sustainability and Climate Change

- CC3 Water and flooding

#### Transport

- T1 Prioritising walking, cycling and public transport
- T2 Parking and car-free development

#### Delivery and Monitoring

- DM1 Delivery and monitoring

### **Fortune Green and West Hampstead Neighbourhood Plan**

4.6. The Fortune Green and West Hampstead Neighbourhood Plan was adopted in September 2015 and is part of the Development Plan for Camden. The most relevant policies to be considered as part of the appeal process are listed below:

Policies

Policy 2 Design and Character

Policy 7 Sustainable Transport

Policy 9 Pavements & Pedestrians

Policy 12 Business, Commercial and Employment Premises and Sites

Policy 14 Mill Lane Neighbourhood Centre

**Other Material Planning Considerations**

Camden Planning Guidance (CPG)

4.7. The Camden Local Plan 2017 is supported by the Council's CPGs. These documents were created following extensive public consultation. The relevant documents are listed below:

- CPG Access for all 2019
- CPG Developer contributions 2019
- CPG Amenity 2021
- CPG Basements 2021
- CPG Design 2021
- CPG Employment sites and business premises 2021
- CPG Housing 2021
- CPG Transport 2021
- CPG Town Centres and Retail 2021

4.8. London Plan Guidance (LPG) provides further information about how the London Plan should be implemented. Below is a list of the most relevant documents:

- Accessible London SPG
- Small Site Design Codes LPG
- Housing Design Standards LPG
- The Control of Dust and Emissions in Construction SPG

- Sustainable Transport, Walking and Cycling SPG
- Use of Planning Obligations in the Funding of Crossrail, and the Mayoral Community Infrastructure Levy SPG

## 5. REASONS FOR REFUSAL

5.1. The Council determined the planning application under delegated powers on 18<sup>th</sup> July 2023 and refused planning permission for 7 reasons. The decision notice is attached as Appendix 2 which outlines all reasons for refusal (RfR). The reasons for refusal are also listed 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.*

5.2. As per the informative on the decision notice, the Council considers that it would be possible to overcome reasons for refusal 6 and 7 by entering into a suitably worded Section 106 legal agreement. The Appellant has indicated they are willing to enter into a Section 106 agreement with the Council. Discussions are ongoing and not yet completed. The latest version of the draft agreement at the time of writing this Statement has been submitted as Appendix 4. The Council aims to

work with the Appellant to conclude a legal agreement before the Final Comments deadline for this appeal.

## 6. THE COUNCIL'S CASE

- 6.1. As the Appellant has indicated they are willing to work with the Council on a suitably worded Section 106 legal agreement the concerns raised by Reasons for Refusal (RfR) 6 & 7 are expected to fall away. The Council's latest position on these two RfRs is described in the relevant section below.
- 6.2. The appeal proposal as presented therefore raises 5 remaining areas of concern which are discussed in turn below, with appropriate references to the Appellant's Written Statement of Case dated August 2023. The Council's case is also set out within the officer's delegated report (Appendix 1) which details the proposal, site and surroundings, the site history, consultation responses and an assessment of the proposal with reference to the relevant policies.

### **Reason for Refusal 1 – Loss of commercial space**

*“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.”*

### **Comments on the Appellant's Written Statement of Case (WSC)**

*Paragraphs 5.4 to 5.7*

- 6.3. The Appellant's Written Statement of Case (WSC), in paras 5.4 to 5.7 acknowledges the range of policies that exist which aim to balance the need to make 'the best use of land' and achieve growth through balancing the overarching need for additional housing against the requirement to support economic growth and activity.

- 6.4. The Appellant highlights Policy GG2 (Making the best use of land) of the London Plan (2021) in particular, focussing on criterion C which states that development must: *“proactively explore the potential to intensify the use of land to support additional homes and workspaces.”*
- 6.5. However, the same policy continues to state that development must also: *“understand what is valued about existing places and use this as a catalyst for growth, renewal and place-making”*. As such, the policy identifies that intensifying the use of land is only one part of the wider picture that needs to be understood in creating *“successful sustainable mixed-use places”* (also GG2, first line). Furthermore, para 1.2.8 of the London Plan (supporting text to GG2) clarifies that *“making the best use of land... will allow more **high-quality homes and workspaces** to be developed”* (LPA emphasis in bold and underlined).
- 6.6. As such, the wording of the policy and its supporting text indicates that although densification is desirable the quality of the spaces created and their impact on local characteristics, business activity and employment provision are also very important considerations.
- 6.7. It is important to be reminded at this point that the site at 94 Mill Lane is located within the Mill Lane Neighbourhood Centre. The relevant policies of the Local Plan (TC1 and TC2) require promotion of retail and town centre uses, and protection and enhancement of the role and unique character of Camden’s centres, including protection of local shops in Neighbourhood Centres. Furthermore, the adopted Fortune Green and West Hampstead Neighbourhood Plan (FGWHNP) 2015 in Policy 14 emphasises that in order to preserve or enhance the character of Neighbourhood Centres proposals to convert ground floor retail space into residential use will not be supported. The proposal would convert part of the ground floor space and the whole of the basement space into a residential unit, which is contrary to Policy 14 of the FGWHNP and against the aims and objectives of Local Plan Policies TC1 and TC2.
- 6.8. The policies highlighted in paragraph 6.7 above are referenced in the officer report in support of the LPA’s decision to refuse.

*Paragraphs 5.8 to 5.10*



6.9. The Appellant's WSC reference Policy H2 of the London Plan here, stating that *"boroughs should also pro-actively support well-designed new homes on small sites"* and continues by referencing the London Plan's position in the supporting text to this policy in paragraph 4.2.4 regarding support for *"incremental intensification of existing residential areas within PTALs 3-6"* including through differing forms of development including *"residential conversions, redevelopment or extension of existing buildings, including non-residential buildings"* and other methods of creating new housing, where these homes are *"well-designed additional housing"*.

6.10. The Council acknowledges that the PTAL rating for the site is above 3. However, it is notable that the paragraph 4.2.4 specifically references intensification of *"existing residential areas"*. This site is a designated commercial area, being as it is part of a Neighbourhood Centre where retail uses are protected. Furthermore, paragraph 4.2.4 also refers to supporting development in the form of *"residential conversions"* or *"redevelopment or extension of existing buildings"*. This proposal is not a further conversion of an existing residential property, nor is it a comprehensive redevelopment or an extension to an existing building. The proposal would remove only commercial space from a site in a protected retail area, rather than intensifying an existing residential neighbourhood, which is not supported by policies TC1 and TC2 of the Local Plan, nor by Policy 14 of the FGWHNP.

*Paragraphs 5.11 to 5.14*

6.11. In these paragraphs the Appellant's WSC confirms that the bathroom to the rear of the ground floor shop unit is not directly accessible from the shop and instead it currently serves the existing upper floor flat. Considering the proposed ground floor works in that clarified context, the Council acknowledges that the loss of shop floor area on the ground floor only is therefore relatively small.

6.12. However, this interpretation of the floor plans over both basement and ground floor levels has the subsequent impact of making clear that all floorspace at basement level would therefore be removed from the existing shop demise. The application form submitted with the application states that the change of use element of this proposal relates to a floor area of 58.82sqm (GIA) against an existing application commercial GIA of 87.95sqm. As such, the proposal would

lead to a loss of two-thirds (66.9%) of the existing commercial floorspace on site. This is a significant amount of the existing commercial floorspace.

6.13. Therefore, whilst the Appellant's WSC may be correct in asserting that the ground floor space lost through this application is small, the overall loss of usable commercial space can only be described as significant in the context of the overall layout of the two storey commercial unit.

6.14. This is again contrary to Policy 14 of the FGWHNP and against the aims and objectives of Local Plan Policies TC1 and TC2.

*Paragraphs 5.11 to 5.18*

6.15. These paragraphs of the Appellant's WSC focus on the loss of floorspace which the Appellant states is not noticeable at ground floor level. Given that the existing ground floor rear bathroom is now understood to serve a flat and not the commercial unit, the Council acknowledges that the loss of commercial space at ground floor is relatively small. However, the loss of supporting facilities (including bathroom, kitchen, storage and outside amenity spaces) that are currently provided at basement level would be substantial. The amount of commercial floorspace lost to the proposed residential would amount to more than two-thirds of the existing shop unit, significantly reducing its overall functionality and attractiveness to the widest possible range of potential businesses within this designated employment area. Once lost, it is considered highly unlikely that new residential space would return to commercial use in the future.

6.16. It is considered that the significant loss of usable commercial floorspace and ancillary/supporting commercial space would present an unacceptable risk to the ongoing and long-term commercial viability of this shop unit, and thereby also to the viability and vitality of the shopping frontage and local centre of which it forms a part. This is because the significantly reduced floor area would necessarily become desirable by a reduced range of businesses, i.e. only those businesses who do not require storage or amenity areas. All contemporary business premises require associated bathrooms, breakout and storage spaces (for staff or patrons, and in most cases for both) which this reduction in space would not allow without further alteration and installation (which either may not be permissible in planning terms or would ultimately require a further reduction in the available internal commercial space at ground floor).

6.17. The Appellant argues in paragraph 5.15 that the basement area could be put to better use. The Council's position is that the floorspace is not suitable for residential accommodation in its current form, as it would only become usable through the installation of inappropriate design features, would present an unacceptable risk to any future residents of the accommodation in terms of flooding and would prejudice the ongoing vitality and viability of this important local commercial area, as well as harming its character (contrary to Policy TC2 of the Local Plan and Policy 14 of the FGWHNP) and failing to promote a range of shops, businesses and economic activity in the Mill Lane Neighbourhood Centre (contrary to Policy 14 of the FGWHNP) and therefore is unacceptable for these reasons, as well as for other reasons as will be discussed further in the sections below.

6.18. In paragraph 5.17 of the WSC the Appellant references a range of commercial premises that do not require '*full kitchen*' facilities, which in their view includes retail shops, financial/professional services, medical services and offices. It is the Council's assessment that this view is entirely inaccurate and not based on evidence or experience of these businesses. All except the smallest of businesses require such facilities. The commercial credibility and quality of a business without kitchen and other supporting facilities would suffer significantly without them. Any business operation where staff would spend most of the day at the business would be expected to have areas for staff to take a break (tea/coffee making facilities, a fridge and somewhere to sit, for example) as well as bathroom facilities of a reasonable quality (especially if accessible facilities were required, as likely in the case of a medical facility where visitors would likely have medical including accessibility issues to manage). It is unclear if suitable bathroom facilities could be provided under a set of stairs as the Appellant references in the WSC. However, such a facility is considered unlikely to be of a suitable quality for any other than the smallest businesses. Furthermore, most businesses would also need ancillary storage space to keep goods (retail businesses), equipment (offices, professionals) or for private consultation spaces (medical services). These spaces have not been factored into the Appellant's consideration and without them the proposed retain commercial premises would be of an unacceptably reduced quality compared to that which currently exists.

6.19. Should these supporting spaces be provided retrospectively and without permission, in the event that this appeal is allowed, at ground floor this would

further erode the proposed ground floor commercial space to an unacceptable degree due to the negative impact on the vitality and viability of the commercial use and centre of which it forms a part, as well as its character, which is contrary to Policy TC2 of the Local Plan and Policy 14 of the FGWHNP

6.20. In paragraph 5.18 of the WSC the Appellant references the size of the unit discouraging tenants due to it being underutilised, despite the space being included in the rentable value of the property. The Council considers that the owner could offer the unit at below the market rentable value to attract tenants, particularly if part of the unit is suitable only as ancillary commercial space and not 'shop front' floor area. The Council has seen no information which confirms whether marketing for the unit has been at reasonable market rates for the space available (which would include an appropriate consideration of its quality and usability – this matter is discussed further in the paragraphs below). As such, the Council must assume that more can be done to achieve alleviation of this vacancy issue by offering the space at below market rates to community groups, for example, which would enable the vitality and viability of the Neighbourhood Centre, through a range of uses and businesses, and its character to be retained.

*Paragraphs 5.19 to 5.26*

6.21. These paragraphs of the WSC centre upon the Appellant's claim that Policy TC2 of the Council's Local Plan 2017 supports the development of housing in town centres.

6.22. Policy TC2 does support housing above and below shops *in principle*, however this is subject to, as the policy wording states, situations where such development "*does not prejudice the town centre function and particularly the ability of the ground floor to be used for town centre uses*".

6.23. The Appellant repeats that a small amount only of the ground floor area would be lost. The Council agrees that although these plans would directly result in the loss of a small amount of ground floor area, it would result in a much greater loss of functionality and attractiveness of the unit due to the lack of supporting facilities such as WCs, storage and kitchen areas that would be retained by these proposals.

6.24. Paragraph 5.22 onwards refers to their being no policy basis or requirement for marketing information to be provided with the application or the appeal. The

Council's Town Centres and Retail CPG (TCR, 2021) states that where a planning application proposes the loss of a shop in retail use the Council will consider whether there is a realistic prospect of such a use continuing. The TCR CPG references a range of evidence that is required to enable the Council to make this assessment which includes details of:

- where the premises were advertised (shopfront; media, web sources etc.) and when (dates);
- how long the premises were advertised for and whether this was over a consistent period;
- rental prices quoted in the advertisement (premises to be marketed at realistic prices);
- copies of advertisements;
- estate agents details;
- any feedback from interested parties outlining why the premises were not suitable for their purposes; and
- consideration of alternative retail uses and layouts.

6.25. The Appellant has stated in the WSC that some marketing has occurred, but the evidence provided to the Council on this matter is very limited. No comparable evidence has been provided to help the Council assess whether the annual rent (£10,000) is reasonable or realistic in the circumstances, for example, or whether this figure was negotiated at all following the officers that were received from prospective tenants. Marketing would have occurred for only six months at the time of submission of the application. No evidence has been provided that demonstrates marketing has continued during the application and appeal process. The WSC contains a photo of a lettings sign and a reference to 'online' marketing, however multiple agents could be used and the quality of online marketing can vary greatly.

6.26. The Appellant has noted, in paragraph 5.24 of the WSC, that there has been some interest in the unit. Detailed feedback from following up after initial enquiries and/or viewing the property has not been provided in the WSC or any other application documents. The Council's Town Centres and Retail CPG (2021) states that marketing evidence should be provided that shows there is no realistic prospect of demand as a retail use before loss of the shop could be supported. This has not definitively been shown.

6.27. Para 5.26 of the Statement indicates that the *“reduced rental value would hopefully appeal to more prospective tenants”* – however, a reduced floor area does not need to be the driver for a reduced rental value, as the landlord could reduce their asking price instead, or promoting the site in a wider or more targeted way, thus driving more offers. It does not appear that these courses of action have been followed. As such, based on the marketing evidence provided with this appeal, it is considered that the marketing undertaken for the unit has been inadequate.

*Paragraph 5.27*

6.28. Here the Appellant states that the single one-bedroom flat would contribute towards the Council’s delivery of housing. Whilst this is acknowledged, the Council continues to assert, as per the officer report, that the loss of commercial space in this location would outweigh the benefits of a single additional residential unit, due to the significant negative impacts this proposal would have on the commercial role, function and viability of the Mill Lane Neighbourhood Centre.

Conclusion

6.29. Therefore, noting the points raised in the paragraphs above in response to the Appellant’s WSC, it is considered that the proposed loss of part of the commercial floor space (including the basement) 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.

**Reason for Refusal 2 – basement impact**

*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.*

6.30. The Appellant has submitted a Basement Impact Assessment with this appeal.

It is noted that the submitted BIA refers to surface water and site drainage impacts only. Structural stability impacts have not been assessed. As such, the BIA is inadequate and the development presents an unacceptable risk to adjoining buildings contrary to Policy A5 of the Local Plan 2017 and contrary to the Council's Basements CPG 2021.

### **Reason for Refusal 3 – flood risk**

*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.*

6.31. The application was refused due to the lack of supporting information on flood risk including detailed consideration of impact on the local water environment and appropriate flood risk measures if needed. The Appellant submitted a Flood Risk Assessment with this application as an appendix to their WSC. This has been assessed by the Council's Senior Sustainability Officer who is the Lead Local Flood Authority for the Council. The comments are provided at Appendix 3, and are also summarised below.

6.32. The development includes the conversion of a basement into habitable space and installation of a lightwell on a street that previously flooded in both 1975 and 2002. The main entrance to both the existing upper level flat and the proposed basement flat would be off Broomsleigh Street which flooded in 1975. The site is located in Critical Drainage Area and is also close to the Sumatra Road local flood risk zone.

- 6.33. The Council's updated Strategic Flood Risk Assessment (SFRA, 2024 – part of the evidence base for the Council's new draft Local Plan) indicates that there have been between 21 and 40 incidents of sewer flooding in the NW6 1 postcode in the 10 years from 2013 to 2023. Therefore this area is considered at higher risk of sewer flooding.
- 6.34. The proposals involve conversion of the basement and part of the ground floor to residential flat. The bedrooms and bathroom are proposed in the basement level. It appears there is internal egress to the ground floor kitchen but no external access from the ground floor parts of the flat. Policy A5 (Basements) states that *"The Council will not permit basement schemes which include habitable rooms and other sensitive uses in areas prone to flooding."* Bedrooms are considered particularly vulnerable uses in basements in areas at risk of flooding.
- 6.35. The lightwell proposed on Mill Lane would be protected by barrier railing – it is noted that the FRA states on page 60 that *"Flooding depths of up to 0.15 m would be anticipated to impact c. 5% of the Site area in the 1 – 0.1% AEP (Low) risk event, confined to the proposed lightwell area. Flooding depths of up to 0.30 m would be anticipated to impact the access routes to and from the Site in this event."* It should be noted that a freeboard of at least 300mm would be expected over any maximum flood depth for any basement development in an area of flood risk. Pages 61 and 7 of the Appellant's FRA require mitigation measures to reduce potential for surface water to enter the lower ground floor. No mitigation measures have been proposed as part of this appeal scheme. Inclusion of a 300mm freeboard into any proposed railings would further erode the quality of the local built environment from a character and appearance point of view.
- 6.36. The LLFA has identified that the Appellant's FRA does not consider, as part of Policy A5 (Basements) on pages 64 and 65, the wording from page 215 in the Local Plan after section u. which clearly states: *"The Council will not permit basement schemes which include habitable rooms and other sensitive uses in areas prone to flooding."* As the property is in an area at risk of flooding as defined by the Local Plan (para 8.58 confirms: Areas considered at risk from flooding are: Local Flood Risk Zones; and previously flooded streets (shown on "Map 6: Historic flooding and Local Flood Risk Zones")), then the onus is on the applicant to show that the property is not at risk.



6.37. As such, this appeal proposal has not shown adequately that the property is not at risk of flooding and proposes habitable rooms including bedrooms in a basement in an area defined in the Local Plan as at risk of flooding due to being situated on the corner of two streets which have both previously flooded. The proposals would therefore not comply with Policy A5 (Basements).

6.38. As such, the Inspector is respectfully requested to uphold the reason for refusal despite the provision of additional information as the information provided remains inadequate to alleviate the Council's concerns regarding flood risk.

#### **Reason for Refusal 4 – design impacts**

*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.*

6.39. There are no railings or light wells in this part of the Mill Lane frontage (i.e. between Broomsleigh Street and Sumatra Lane). Although there are some examples of both further along Mill Lane (west of Broomsleigh Street) these were permitted historically before the introduction of current planning policy (specifically Camden's Local Plan 2017 and the Fortune Green and West Hampstead Neighbourhood Plan 2015 and as such do not constitute appropriate precedents in the circumstances of this appeal. The proposed railings would be tall and visually prominent, and as such would detract from the character and appearance of the shop front. It would be necessary to adapt the appearance of the railings further (through a 300mm freeboard addition) to adequately mitigate for flood risk to the basement accommodation, which would further degrade the quality of the appearance of these railings and thus the character and appearance of the area.

6.40. The supporting text in paragraph 6.144 of Policy A5 (Basements) of the Local Plan states that where visible lightwells are not part of the prevailing character of a street new lightwells should be discreet and should not harm the character of the street. The policy continues to state that lightwells will be unacceptable where

they are not part of the established character. Neither lightwells nor railings are established parts of the local character and as such they are not acceptable from a design point of view.

6.41. As such, as well as lightwells being contrary to Policy A5 (Basements) the lightwell and railings would be contrary to Policy D1 (Design) of the Camden Local Plan by failing to respect local context and character, failing to integrate well with the surrounding street and would fail to contribute positively to the street frontage. It would also fail to accord with Policy 2 (Design and Character) of the Fortune Green and West Hampstead Neighbourhood Plan 2015.

6.42. For these reasons the Appellant's assertion in paragraph 5.47 of their WSC that a railing-less proposal with grilled or glazed lightwell would be acceptable is also rejected by the Council on design grounds.

6.43. The Council also wishes to point out that the Appellant's WSC paragraph 5.48 reference to the ramp at neighbouring property 96 Mill Lane is not relevant here in terms of setting a precedent for street frontage installations as those works do not have planning permission.

6.44. The Inspector is also respectfully reminded of the desire of local residents to minimise street clutter in the area, as indicated by Policy 9 (Pavements & Pedestrians) of the Fortune Green and West Hampstead Neighbourhood Plan 2015. This policy refers to a desire to minimise 'visual clutter' in paragraph D15, as well as making space for pedestrian movement.

6.45. As such, the Appellant's comments in their WSC do not overcome RfR4 for the reasons described above and therefore the external installations to the front of the site would still 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, as well as failing to accord with Policy A5 (Basements)

#### **Reason for Refusal 5 – pedestrian movement and safety**

*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.*

6.46. The Appellant's WSC rejects this reason for refusal, stating in paragraph 5.56 that *"the position and design of the works would not affect pedestrians, wheelchairs or non-ambulatory users"*.

6.47. The Council's Transport Officers, as stated in the officer report paragraph 7.6, have confirmed that the lightwell and railings would obstruct pedestrians using a public highway. Policy 9 (Pavements and pedestrians) of the Fortune Green and West Hampstead Neighbourhood Plan 2015 also aims to, in point (i) give the *"maximum possible space to pedestrians"*, and in point (iii) *"improve accessibility for disabled people and those with push chairs"*, which this development fails to achieve.

6.48. Paragraph D15 of the Fortune Green and West Hampstead Neighbourhood Plan 2015 aims to minimise street clutter including railings and recommendation H on the same page (p47) recommends in point (i) *"the removal of clutter and obstructions from pavements and paths"*. As such, the FGWHNP is clear in its aims to avoid unnecessarily cluttered streets to maximise the quality and accessibility of the local pedestrian environment for all and the development is unacceptable for this reason as it would fail to comply with this objective.

6.49. As such, the Inspector is respectfully requested to uphold RfR5 as 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.

#### **Reason for Refusals 6 & 7 – s106 requirements relating to car free and basement works on a public highway**

*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.*

*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.*

6.50. The Appellant's WSC confirms in paragraph 5.61 that a draft Section 106 legal agreement has been submitted with the appeal (for latest version, see Appendix 4). Discussions regarding this agreement are ongoing. It is anticipated that an agreement will be finalised prior to 10<sup>th</sup> May 2024. If that is the case then, in accordance with Informative 2 on the decision notice for the application, RfRs 6 & 7 can fall away. Should the agreement not be completed in time these RfRs must remain.

6.51. All other RfRs and the Council's as discussed in the sections above remain unaffected by the submission of such an agreement, if finalised in within the relevant timescales.

## **7. CONCLUSION AND PLANNING BALANCE**

- 7.1. The Council's main arguments are set out in the case officer's report. Further elaboration and a response to the WSC and additional information provided by the Appellant is given in the sections above.
- 7.2. The appeal proposal conflicts with a number of national, regional and local policies (and guidance).
- 7.3. The merits of the appeal proposal are recognised and principally include the provision of a single one-bedroom residential unit provided over the basement and ground floors of the existing building. It is understood that this unit would contribute towards meeting the Council's housing supply requirement.
- 7.4. However, this identified benefit would not outweigh the significant harm that the proposal would cause as described by the reasons for refusal which includes negative impact on the vitality and viability, role, function and character of the Neighbourhood Centre, negative impacts on the character and appearance of the area, negative structural and flood risk impacts from basement development and poor conditions for pedestrian movement and safety.
- 7.5. Regard has been given to the development plan, as required under Section 38(6) of the Planning and Compulsory Purchase Act (PCPA) 2004, and other material considerations. The appeal proposal does not accord with the development plan (for the reasons addressed described above) and there are no other sufficient material planning considerations that would indicate the appeal should be allowed.
- 7.6. The Inspector is therefore respectfully be invited to dismiss the appeal against the refusal of planning permission 2022/5197/P. Should the Inspector be minded to allow the appeal the appendices below include a justification for the S106 matters (Appendix 5) and suggested conditions (Appendix 6).
- 7.7. In the event the Inspector deems it appropriate to allow the appeal a list of conditions is provided at Appendix 5.

## **8. SUMMARY OF APPENDICES**

Appendix 1 – Delegated Report

Appendix 2 – Decision Notice

Appendix 3 – LLFA Comments

Appendix 4 – Draft Section 106 Legal Agreement

Appendix 5 – Justification for Section 106 Legal Agreement

Appendix 6 – List of Conditions (in the event the appeal is allowed)