

Delegated Report (Members Briefing)	Analysis sheet		Expiry Date:	05/07/2024
	N/A		Consultation Expiry Date:	12/06/2024
Officer			Application Number(s)	
Josh Lawlor			2024/1836/P	
Application Address			Drawing Numbers	
Former West Hampstead Square Development Site At 187 To 199 West End Lane London NW6 2LJ			See decision notice	
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature	
Proposal(s)				
Retrospective application for the allocation of four residential disabled parking bays to be used for commercial car parking.				
Recommendation:	Refuse planning permission with a warning of enforcement action			
Application Type:	Full Planning Application			
Conditions or Reasons for Refusal:	Refer to Draft Decision Notice			
Informatives:				
Consultations				
Summary of consultation:	A site notice was displayed near the site on 19/05/2024 (expiring 12/06/2024)			
	<p>Objections were received from three separate addresses:</p> <ol style="list-style-type: none"> 1. Accessible parking spaces should not be transformed into commercial parking spaces. This is against Camden's travel policy. Only disabled people need cars in Camden. 2. The parking bays are specifically for disabled people. That was partly why planning permission was given to build the property in the first place. To turn around now and change this for some short-term money, putting ahead the long-term potential for four disabled families and preventing them from living and working in the city, appears hypocritical. Camden is a labour-run council; the mayor of London is Labour, and soon, the government will be Labour. Surely you can work together and find a better solution than this. 3. Disabled spaces should not be given up for commercial purposes within this development. 			

<p>Combined residents association of south Hampstead (CRASH)</p>	<p>CRASH would like to object to this retrospective application to convert four residential disabled parking bays to commercial use by an estate agency. West Hampstead Square is a car-free development, yet there has been reported abuse of the car parking provided for disabled residents since the outset, with the commercial units marketed with parking spaces (despite not being businesses that would seemingly require vehicles) and places being advertised for parking or the possibility of parking being arranged (indicating a work-around of the car-free status). There would seem to be no valid business case for why a local estate agent needs parking for four vehicles - the site is highly accessible, no heavy loads are moved, and no information is given as to the average journey undertaken by the estate agency - likely to be very small for carrying out their work as it is a local branch so why can't alternative non-car transport be used (foot, cycle, scooter?).</p>
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<p>Fortune Green and West Hampstead Neighbourhood Forum</p>	<p>No response received</p>
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Site Description

West Hampstead Square is a mixed-use development which was built out under ref: 2011/6129/P (as amended by ref. 2013/1924/P; 2013/6627/P; 2014/5816/P; 2015/5524/P; 2015/5581/P) to provide 198 residential units and retail and commercial space. The residential-led development is served by 18 car parking spaces comprising:

- 14 disabled bays, distributed between two parking areas below podium levels;
- 3 disabled bays located in front of Charlotte Building; and,
- 1 commercial car parking bay.

The 0.9ha site is bounded by the London Overground railway line to the north, the Underground line to the south, and West End Lane to the east. It is accessible adjacent to West Hampstead Overground station and within walking distance of West Hampstead Underground station and Rail station. An internal road, Heritage Lane, runs along the southern boundary.

The site's eastern end, fronting West End Lane, is within the boundary of the West Hampstead Town Centre. It is also within the Fortune Green and West Hampstead Neighbourhood Plan area. The site's eastern end has PTAL level 6B; the rest is PTAL 5.



Figure 1 Topographical Excerpts showing the location of parking spaces (source WSP Car Parking Management Plan Addendum)

Relevant History

2015/5524/P: Amendments to the roof level block A-E, alteration to Block F layout and elevations, alteration to Block G stairwells, and internal alteration at Block B ground floor to accommodate a residents' fitness suite in place of a plant room to the mixed-use development as approved under planning permission (2011/6129/P) dated 30/03/2012 and as revised by permission (2013/1924/P) dated 15/07/2013 and permission (2013/6627/P) dated 13/06/2014. **Granted 23/10/2015.**

2013/6627/P: Variation of condition 11 (approved plans) and condition 13 (London Underground structures) to planning permission 2011/6129/P granted on 30/03/2012, and as amended on 15/07/2013 by planning permission 2013/1924/P, for the redevelopment of site to create seven new buildings between five and twelve storeys in height to provide 198 residential units, namely alteration to entrances and layouts at ground floor level block A-E, alteration to fenestration and layouts to all level block F and G, and alteration to landscaping. **Granted 13/06/2014.**

2013/1924/P: Variation of condition 11 (approved drawings) of planning permission 2011/6129/P dated 30/03/2012 (Redevelopment of site to create seven new buildings between five and twelve storeys in height to provide 198 residential units (Class C3), retail, financial and professional services and food and drink floorspace (Class A1, A2, A3 and A4), flexible employment/healthcare floorspace (Class B1/D1) along with associated energy centre, storage, parking, landscaping and new public open space (existing buildings to be demolished).(Class B1/D1) along with associated energy centre, storage, parking, landscaping and new public open space (existing buildings to be demolished)) namely alterations to approved elevations including window layout. **Granted 15/07/2013.**

2011/6129/P: Redevelopment of site to create seven new buildings between five and twelve storeys in height to provide 198 residential units (Class C3), retail, financial and professional services and food and drink floorspace (Class A1, A2, A3 and A4), flexible employment/healthcare floorspace

(Class B1/D1) along with associated energy centre, storage, parking, landscaping and new public open space (existing buildings to be demolished). **Granted 30/03/2012**

2006/4851/P: Temporary use of the site for the storage and maintenance of vehicles in connection with the removal services, chauffeur car hire, and self-drive van hire within the boundaries of the site (for a period of three years). **Granted 19/04/2007.**

8400196: Change of use for the purpose of the storage and repair of motor vehicles. **Granted 27/03/1984.**

Relevant policies

National Planning Framework (2023)

The London Plan 2023

- Policy T1 (Strategic approach to transport)
- Policy T2 (Healthy Streets)
- Policy T3 (Transport capacity, connectivity, and safeguarding)
- Policy T4 (Assessing and mitigating transport impacts)
- Policy T5 (Cycling)
- Policy T6 (Car parking)
- Policy T7 (Deliveries, servicing, and construction)
- Policy T9 (Funding transport infrastructure through planning)

Camden Local Plan (2017)

- G1 Delivery and Location of growth
- A1 Managing the impact of development
- T1 Prioritising walking, cycling and public transport
- T2 Car-free development
- T4 Promoting the sustainable movement of goods and materials
- C5 Safety and Security
- CC1 Climate Change Mitigation
- CC2 Adapting to climate change
- DM1 Delivery and monitoring

Fortune Green and West Hampstead Neighbourhood Plan (2015) (NDP)

- Policy 7 Sustainable Transport
- Policy 8 Cycling

Draft Camden Local Plan

The Council has published a new [Draft Camden Local Plan](#) (incorporating Site Allocations) for consultation (DCLP). The DCLP is a material consideration that can be considered in determining 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).

Camden Planning Guidance

- [Access for All CPG - March 2019](#)
- [Air Quality](#) - January 2021
- [Amenity](#) - January 2021
- [Transport](#) - January 2021

Assessment

1. Proposal

1.1. This retrospective planning application seeks to change the use of four disabled parking bays to commercial parking spaces. No changes are proposed to the one commercial parking bay as approved under the original scheme. The application is retrospective as four of the disabled parking bays located underneath the podium level between Lessing Building and Beckford Building are being utilised by the commercial occupiers at West Hampstead Square, namely:

Company	Use	Address	Parking Space
Short Stay Property Ltd/ Even Group	Property Development	Unit 1 Milne Building, Heritage Lane, London	2 spaces
Blue Chip Trading Limited	Hotels for the Homeless	Unit 2 Lessing Building, Heritage Lane, London	1 space
Johns & Co Estate Agent	Residential Estate Agent	Unit 7, Heritage Lane	1 space

2. Assessment

2.1. The key and material considerations are the transport (including disabled parking) implications of the change of use.

3. Transport

3.1. Relevant policy review

3.2. London Plan Policy T6.1 requires a minimum of 3% disabled parking (by residential units) to be provided from the outset and 7% of future provision to be indicated.

3.3. London Plan Policy T1 states that all development should make the most effective use of land, reflecting its connectivity and accessibility by existing and future public transport, walking, and cycling routes, and ensure that any impacts on London's transport networks and supporting infrastructure are mitigated.

3.4. According to London Plan Policy T6.2 Paragraph F: 'Operational parking requirements should be considered on a case-by-case basis. All operational parking must provide infrastructure for electric or other Ultra-Low Emission vehicles, including active charging points for all taxi spaces.'

3.5. Policy T1 of the Local Plan promotes sustainable transport by prioritising walking, cycling and public transport in the borough. Policy T2 seeks to limit the availability of car parking and requires all new developments in the borough to be car-free.

- 3.6. Policy T3 sets out how the Council will seek improvements to transport infrastructure in the borough. Policy T4 addresses how the Council will promote the sustainable movement of goods and materials and seeks to minimise the movement of goods and materials by road.
- 3.7. According to Camden Local Plan 2017 Policy T2 Parking and car-free development, the Council will 'limit on-site parking to spaces designated for disabled people where necessary, and/or essential operational or servicing needs'. Paragraph 10.18 states: 'Staff parking is not considered essential and will not be permitted.'
- 3.8. According to paragraph 5.7 of CPG Transport Policy 5, Parking and car-free development:
- 'All new non-residential developments will also be expected to be car-free in accordance with Local Plan Policy T2, including:
 - The redevelopment and/or conversions of existing sites with new occupiers; and
 - Extensions where the proposed new floor space leads to an increase in occupancy.
- 3.9. Paragraph 5.23 states, ' For non-residential development, the Council will consider some parking provision where it is demonstrated that this is essential to the use, operation and/or servicing of the use, business, or service. Examples of this could include:
- Parking spaces for staff with a recognised disability;
 - Parking for vehicles used by emergency services (e.g. ambulances);
 - Operational parking for B1c light industrial uses;
 - Operational parking for B2 General industrial uses;
 - Operational parking for B8 storage and distribution centres; and
 - Operational parking for other unclassified uses of a similar nature to those above classed as Sui Generis (e.g. depots and building merchants).'
- 3.10. Paragraph 5.24 states that 'General parking for staff and visitors is not considered to be essential to the use, operation and/or servicing of the use, business or service and will not be permitted.'
- 3.11. Assessment
- 3.12. Granted in March 2012, the development has 198 residential units, 4 retail units, and 5 commercial units. It is a car-free scheme, with 17 disabled parking bays and 1 parking space for the commercial units on site. The level of disabled parking provision equates to 8.6% provision by unit. Re-allocating 4 disabled bays to commercial tenants would leave 13 spaces, equivalent to a 6.6% provision. This remains above the 3% minimum, but it would be further below the 10% maximum, accounting for the additional 7% for future demand (Lonon Plan policy T6.1).
- 3.13. Ref. 2011/6129/P has a Car Parking Management Plan that was discharged against the s106 (dated 30 March 2012) Clause 4.5.2. The Car Parking Management Plan (CPMP) sets out the objectives and policies to ensure that car parking associated with a development can operate efficiently, securely, and safely. The CPMP also ensures that bays are allocated in an agreed-upon manner such that mobility-impaired occupants are always given priority to a bay as close to where they need it.
- 3.14. The June 2016 CPMP sets out a re-allocation process based on a demand-led approach in Section 3.3.1 (see Figure 2 extract). Disabled bays can be allocated to non-mobility-impaired occupants, but on the understanding that should a mobility-impaired occupant move into the development, the current user would be asked to vacate immediately, and the bay re-allocated. This follows the London Plan Policy, which allows for 7% future provision if the existing (3% minimum) provision is insufficient.

3.3	CAR PARKING MANAGEMENT
3.3.1	<p>The specific management of the car and motorcycle parking bays will reflect the following allocation:</p> <ul style="list-style-type: none"> → Three disabled parking spaces, located at Block G, are designated to the affordable units and are available only by blue badge holders at a nil cost to the occupants of the Wheelchair Accessible Units in this Block; → One parking space designated to commercial units with no restriction to its use; → The fourteen remaining disabled spaces will be made available on request for use by the tenants who possess a blue badge; and → Four motorcycle spaces will be available for use by the residential tenants only.
3.3.2	<p>In line with the planning permission the following items are of importance for the residential / commercial tenants within the estate:</p> <ul style="list-style-type: none"> → A restriction applies to limit all occupiers applying for Residential Parking Permits in the local area unless they hold a blue badge; and → A restriction applies to limit all occupiers applying for Business Parking Permits in the local area unless they hold a blue badge.

Figure 2 Extract of Section 3.3 from Car Parking Management Plan by WSP dated June 2016

3.15. With respect to the Parking Management Plan, Clause 4.5.3 of the s106 Agreement states:

After the Occupation Date the Owner shall not Occupy or permit Occupation of any part of the Development at any time when the Development is not being managed in strict accordance with the Parking Management Plan as approved by the Council from time to time and shall not Occupy or permit Occupation of the Development otherwise than in strict accordance with the requirements of the Parking Management Plan.

3.16. The applicant has provided a Cover Letter dated 30/07/2024, which says, "If a blue badge holder moves into the development, and there are no other available accessible bays (i.e., the other 13 disabled bays are occupied), the current commercial occupiers of the 4 parking bays will have to vacate the spaces."

3.17. The CPMP's provisions and the number of spaces specified would change. A Deed of Variation (DoV) or simple s106 to attach this permission to the s106 and CPMP of Ref. 2011/6129/P would be required. Without this link, there would be no way to enforce the 2011 permission on the area that has been granted the new permission. The DoV would need to update the CPMP to specify the businesses that have consent for commercial parking and ensure the allocation procedure for blue badge holders binds these commercial spaces.

3.18. Failure to provide an effective allocation procedure for the four commercial spaces to go back to disabled parking spaces could result in only 6.6% provision. Whilst the uptake of disabled spaces remains low at 6 spaces (3% of the number of flats), it is likely that demand for disabled parking will grow over time as the population ages and people with different needs move out/in. The failure to enter into a DoV to the s106 would fail to support the provision of disabled parking in accordance with the London Borough of Camden Local Plan Policy C6, T2 and Lonon Plan policy T6.1. Notwithstanding these points on the mechanism to implement such a proposal, the primary concern is the policy principle of what is being proposed.

3.19. According to Camden Local Plan 2017 Policy T2 Parking and car-free development, the Council will 'limit on-site parking to spaces designated for disabled people where necessary, and/or essential operational or servicing needs'. Paragraph 10.18 further states: 'Staff parking is not considered essential and will not be permitted.'

3.20. Paragraph 5.23 of the Transport CPG states, ' For non-residential development, the Council will consider some parking provision where it is demonstrated that this is essential to the use, operation and/or servicing of the use, business, or service. Examples of this could include:

- Parking spaces for staff with a recognised disability;
- Parking for vehicles used by emergency services (e.g. ambulances);

- Operational parking for B1c light industrial uses;
- Operational parking for B2 General industrial uses;
- Operational parking for B8 storage and distribution centres; and
- Operational parking for other unclassified uses of a similar nature to those above classed as Sui Generis (e.g. depots and building merchants).'

- 3.21. Paragraph 5.24 states that 'General parking for staff and visitors is not considered to be essential to the use, operation and/or servicing of the use, business or service and will not be permitted.'
- 3.22. The examples above include uses revoked from 1 September 2020. However, more importantly, they exclude B1(a) Offices and F1 Financial and professional services. The applicant has sought to justify the commercial parking as essential to the use, operation and/or servicing of the use, business, or service. However, no assessment of the potential for using more sustainable transport modes and/or altering their schedules/number of physical meetings to enable the use of sustainable transport modes has been provided.
- 3.23. Based on the above, how their commercial viability would be affected is not proven. The businesses decided to operate from the West Hampstead Square development, knowing they could not access on-site parking spaces and that the commercial units are business parking permit free as this was secured under the original S106.
- 3.24. Should these three businesses be granted permission for commercial parking based on their specific essential parking needs, it creates an issue of what happens to the commercial parking when these businesses vacate the site. The spaces would need to return to disabled parking, and the use would cease. This is, in effect, creating a personal permission that is meant to be used only in exceptional circumstances. One reason for this is the difficulty in enforceability. The delay in disabled residents being able to access parking which has been occupied by commercial uses, even if their management was effective, would have a detrimental impact on disabled people who share a protected characteristic under the Equality Act. Contrary to the aims of the Public Sector Equality Duty, this would fail to advance equality of opportunity between people who share a protected characteristic (disabled residents) and those who do not (general commercial users) and fail to foster good relations between disabled people and those who are not. This adds further weight to the objections to the proposal.
- 3.25. The 2021 census data for the West Hampstead ward shows 37.7% of households having access to a car or van. The West Hampstead ward benefits from relatively low car ownership and attracting additional parking and motor vehicle trips would promote reliance on private cars. Promoting reliance on private cars would go against this positive trend and contradict development plan policies and objectives.
- 3.26. In line with the policy, the applicant should drive a modal shift to more sustainable transport options and enhance active travel opportunities to improve air quality, lower emissions, reduce road danger, tackle noise and congestion, and increase physical activity.
- 3.27. The application is therefore contrary to the policy direction and initiatives to reduce private car trips and create a modal shift in the London Plan 2021, London Borough of Camden Local Plan 2017 and Camden Planning Guidance Transport.

4. Recommendation

4.1. Refuse planning permission

4.2. Issue a planning enforcement notice to require the removal of the three air conditioning units

That the Director, Culture and Environment instruct the Head of Legal Services to issue an Enforcement Notice under Section 172 of the Town & Country Planning Act 1990 as amended, requiring the removal of the hardstanding from the front forecourt area and the reinstatement of the front garden and soft-landscaping to the property, and to pursue any legal action necessary to secure compliance. Additionally, officers to be authorised that in the event of non-compliance, to prosecute under section 179 or appropriate power and/or take direct action under 178 in order to secure the cessation of the breach of planning control.

The notice shall allege the following breaches of planning control:

Unauthorised use of disabled parking bays as commercial parking bays

What you are required to do:

Cease the use of the disabled parking bays as commercial parking

Period of compliance:

2 Months

Reasons for refusal of planning permissions and why the Council consider it expedient to issue the notice:

- 1. The proposed change of use from disabled residential parking bays to general commercial parking bays would result in the loss of secure car parking bays to meet the needs of future disabled residents whilst also failing to promote more sustainable transport options to improve air quality and congestion, in accordance with policies C6 (Access for all), 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) and policy T6.1 (Residential parking) and T6.2 (Office parking) of the London Plan 2021.*