

DEVELOPMENT MANAGEMENT

TOWN AND COUNTRY PLANNING ACT 1990 (as amended)

STATEMENT OF CASE**APPEAL SITE**

44-46 Caversham Road, London, NW5 2DS

LPA CASE OFFICER

Ms Connie Marinetto

APPELLANT

National Car Parks LTD

SUBJECT OF APPEAL

Appeal against the LPA's refusal against the planning application
referenced 2024/2094/P dated 24th May 2024

METHOD OF APPEAL

Written Representations

LPA REFERENCE

2024/2094/P

PINS REFERENCE

APP/X5210/W/24/3348829

DATE

8th October 2024

There are two concurrent appeals regarding this unauthorised development

This appeal, referenced 3348829, is against the refusal of permission for a retrospective planning application (referenced 2024/2094/P) for the 'change of use for storage of vehicles (Class B8) to public car park (sui generis)', dated 19th July 2024.

It is noted that there is another appeal which was submitted on 19th September 2024, referenced 3352007, against a subsequent Enforcement Notice dated 13th August 2024 to cease the use (referenced EN24/0168) on Ground G regarding the unauthorised development. A start letter is awaited.

1. Summary

1.1 The site comprises open hardstanding land and a small 'security-hut' style outbuilding by the entrance. The site is located on the north side of Caversham Road, to the immediate west of the railway line, and lies within the Bartholomew Estate Conservation Area. The lawful use of the site is Class B8 (storage of building materials / vehicles).

1.2 A retrospective planning application (referenced 2024/2094/P) was submitted to Camden Council for the 'Change of use of land used for storage of vehicles (Class B8) to public car park (Sui Generis)' and was refused on the 19th July 2024 – the subject of this appeal – for the following reasons:

1) The use of the land for public car parking is contrary to policies G1 (Delivery and location of growth) and H1 (Maximising housing supply) of the Camden Local Plan 2017 on the basis of ineffective and inefficient land use, and housing as the priority land use of the Local Plan.

2) The use of the land for public car parking would promote the use of private motor vehicles, fail to encourage the use of sustainable modes of transport, exacerbate local traffic conditions and harm local amenity, contrary to policies T1 (Prioritising walking, cycling and public transport), T2 (Parking and car-free development) and A1 (Managing the impact of development) of the Camden Local Plan 2017.

2. Relevant planning history

- **8600880** – Construction of 2.5m wide crossover. **Granted on the 22nd September 1986.**
- **2004/1361/P** – Certificate of Lawfulness (Existing): For use of the yard as open storage yard for building materials. **Granted on the 20th May 2004.**
- **2022/3351/P** – Certificate of Lawfulness (Proposed): Use of the land for open storage of rental vehicles with no public access to the site (Class B8). **Granted on the 18th October 2022.**

2.1 The Officer's Report for the 2022/3351/P permission is attached separately as Appendix 1.

3. Status of policies and guidance framework

3.1 In arriving at its current position, Camden Council has had regard to the relevant legislation, government guidance, statutory development plans and the particular circumstances of the case. The development subject to this appeal was considered in the light of the following policies:-

National planning policy framework (2023)

Section 5 – ‘Delivering a sufficient supply of homes’

Section 9 – ‘Promoting sustainable transport’

Section 11 – ‘Making effective use of land’

The London Plan (2021)

H1 – Increasing housing supply

T1 – Strategic approach to transport

T6 – Car parking

D14 – Noise

GG2 – Making the best use of land

3.2 The full text of each of the below policies and guidance has been sent with the Council’s questionnaire documents.

Camden Local Plan (2017)

G1 – Delivery and location of growth

H1 – Maximising housing supply

A1 – Managing the Impact of Development

T1 – Prioritising Walking, cycling and public transport

T2 – Parking and Car-free development

The Kentish Town Neighbourhood Plan (2016)

D2 - Railway Lands

Camden Planning Guidance (2021)

CPG Transport (2021) – Section 5 (Parking and car-free development)

CPG Amenity (2021) – Section 6 (Noise and vibration)

3.3 It is noted that the Council has begun the process of updating the Local Plan. There are no material differences between the NPPF and the Local Plan in relation to this appeal, to which having looked at the relevant emerging policies, I am of the opinion that there is no material difference that would alter the Council’s decision and within this appeal.

4. LPA’s response to the appellant’s statement of case

4.1 It appears to the Council that the appellant has raised three primary arguments within this appeal against the Council’s refusal of the retrospective planning application. Each are summarised, then addressed below in several paragraphs:

4.2 **Appellant 1: Housing as priority land use** – The appellant states that not all sites can be redeveloped for housing and argues that Camden’s policy requiring housing as the priority land use

should not be applied universally. They state that the small size of the site (0.7ha) would make a minimal contribution to the borough's housing supply.

4.3 Response 1: First and foremost, no evidence has been provided by the appellant to demonstrate why housing is not a viable option for this site. Through the local policy framework (as well as overarching national and London-wide housing targets), the Council reasonably expects that the provision of housing, as the Borough's priority land use, should be explored and justified in any proposal for redevelopment or change of use. This was not demonstrated within the application in question, nor the appellant's appeal case.

4.4 Further, particularly in a time of a housing shortage, the Council considers **all** contributions to the housing stock as positive. Therefore, the appellant's argument on the size of the site should be afforded limited weight.

4.5 In this light, it should also be noted that no evidence has been provided to demonstrate the use of the site as Class B8 use was no longer viable too.

4.6 Policy G1 of the Local Plan states the Council will resist development that makes inefficient use of Camden's limited land and expects the provision of a mix of uses where appropriate, in particular in the most accessible parts of the borough, including an element of self-contained housing where possible – which is supported by Policy H1, stipulating self-contained housing as the priority land-use. Further, Policy D2 of the Kentish Town Neighbourhood Plan, also supports sustainable development on railway land and would support the reinstatement of frontages along Caversham Road.

4.7 The site is particularly located within close proximity to Kentish Town Station where both Underground and National Rail services operate, and is surrounded by a number of bus stops, thereby has an excellent Public Transport Accessibility Level (PTAL) rating of 6a (see Figure 1 below). The site's exceptional public transport accessibility diminishes the need of car parking in the area, particularly against other priority land uses, such as housing. The Local Plan does not stipulate car parking as a priority land use.

4.8 The proposal itself therefore encourages the use of private motor vehicles, which is contrary to Policies T2, and the amenity and sustainability implications (further explored below) outweigh the public benefit of having, what the Council considers in light of the site's PTAL score, a non-essential car park in this area.

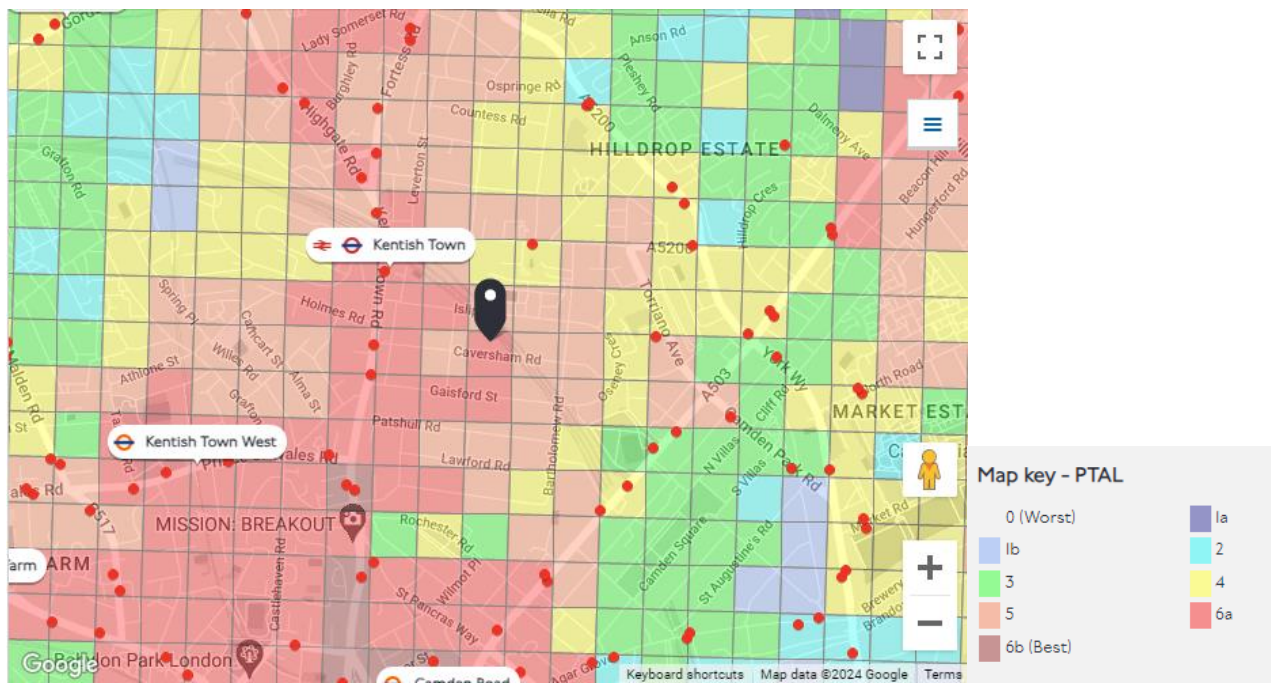


Figure 1 – Appeal site’s PTAL map (6a). Red dots showing public transport stops. Source: [Transport For London](https://www.tfl.gov.uk).

4.8 The Council contends the site’s situation within a predominantly residential area of the Borough and excellent PTAL rating would be indicative of its strategic significance for priority land uses and provision of frontages.

4.9 In the absence of sufficient evidence, there is no justification for changing the site’s established use as well as for prioritising an alternative use, that does not align with Camden’s policy.

4.10 Thereby, in light of all the above, the Council is consistent in considering that the proposal represents an inefficient use of land, contrary to Local Plan policies G1 and H1, and correct to refuse the application under these policies.

4.11 **Appellant 2:** Material differences between Car Storage (B8) and Car Parking (Sui Generis) – The appellant argues that the proposal for a car park is not materially different from the current lawful use of the site (Use Class B8), and that the proposal will have no additional impact on the area. The appellant argues that Policy T2 cannot be applied as the proposal is not materially different.

4.12 **Response 2:** The Council disagrees, maintaining that these two uses are materially different. This is supported by the Court of Appeal decision *Crawley BC v Hickmet Ltd [1998] dated 10th June 1997*, which held that car parking is materially different from commercial car storage:

“...The two concepts of parking and storage are distinct and mutually exclusive. The difference lies in the circumstances in which the car is left. Parking means leaving it while it is in current use, whether that is long or short term. The notion of parking is that it is a temporary cessation from when the vehicle is in motion. A car is still in use when it is parked; it is probably not in use if it is put in store. There is a distinction between temporary parking and long-term storage of new vehicles, which are not yet in use, in a compound. Storage takes place when something is put away for a period of time because it is not needed or its use is not contemplated in the short term. The word "storage" does not include the parking of the car when it is an integral part of its everyday use. When the words "parking" and "storage" were given their ordinary and natural meaning in this case, the use to which

the land was put by the operators was to provide a place conveniently close to the airport where air travellers might leave their cars in circumstances which constituted parking and not storage..."

A copy of this judgement is attached separately as Appendix 2. Attached also are sections of Appeal Decisions where Inspectors have also applied this judgement in their decisions (Appendix 3).

4.14 The principles of the *Crawley BC v Hickmet Ltd [1998]* judgement is material to this appeal case as discussed within the context of the proposal's inconformity with further local policy, below.

4.15 The consented use of the site, is established through planning permission 2022/3351/P granted 18th October 2022 - the open storage of rental vehicles, which is referenced by the appellant.

4.16 Under this consent, Enterprise, a car rental company, anticipate that on average there could be around 30 rental vehicles (cars and vans) going to and from the site spread throughout the working day (i.e. on average around 3 to 4 vehicles per hour). This would involve individual rental car and van movements, rather than transporters (i.e. no large wagons or HGVs are anticipated). The storage site is needed in North London as a 'staging post' or overflow facility for its branches which will accommodate the rental vehicles where possible. It is also noted that the site operates between the typical hours of 8:00am and 6:00pm and does not trade on Sundays – pursuant to the surrounding non-residential uses. Car storage facilities are not open to the general public and access to the site is closed beyond operating hours. It is considered that this operation would have minimal impact on the local area.

4.17 In reference to the *Crawley* Judgement, the circumstance of the cars within the Sui Generis Car Park use is that they are still in use though parked, rather than the above described storage of cars which not contemplated in the short-term ("staging post") though parked. The Sui Generis use therefore allows for a higher turnover of vehicles and increased activity on-site, by way of opening of the site to paying customers and the general public, under a 24/7 regime. The nature and intensity of these operations results in an impact to the local area by way of increased air pollution and traffic congestion and an impact on noise levels, as previously noted in the officer's refusal report.

4.18 The site is also located in the 'East Kentish Town Controlled Parking Zone (CA-M)' which operates between 0830 and 1830 hours on Monday to Friday. Controlled Parking Zones (amongst other targets) combat congestion, by way of optimising the use of space by utilising existing parking spaces as a means of parking for the general public - the proposal would be contrary to this. Again, there would therefore be little public benefit to the car park due to the area's existing parking availability, controls, and exceptional transport connections.

4.19 This harm to amenity will be exacerbated through the 24/7 operations, where the comings and goings of customers to and from the site can bleed into anti-social hours in this predominantly residential area (classified as a sensitive use in our Local Plan). The proposal would also allow for potential for loiterers inside the car park. And it should be noted there are a number of residential windows and balconies of the apartment block at 42 Caversham Road that are in very close proximity to the car park, and could potentially face increased disturbances.

4.20 There is a clear difference in the harm between the Class B8 use and proposed Sui Generis Car Park. The applicant has not demonstrated or provided evidence to support their argument that the proposed car park has the same material impact.

4.21 The Council considers it is for all the above reasons, which show each use is materially different from one another, that the appellant submitted a full planning application and not a certificate of lawfulness (existing), nor appealed Ground B and/or C against the Enforcement Notice. Local Plan Policy T2 is therefore relevant to this appeal.

4.22 The appellant is incorrect in stating a material change of use has not occurred. A harmful material change of use has occurred, and is not an improvement to the lawful/consented use, contrary to Policy A1, which seeks to ensure that the amenity of communities, occupiers and neighbours is protected. And new development is not car-free, contrary to Policy T2 which requires all new developments in the borough to be car free. on the basis that the proposal would promote the use of private motor vehicles, fail to encourage the use of sustainable modes of transport, exacerbate local traffic conditions and harm local amenity,

4.23 **Appellant 3:** Other lawful uses on site – The appellant argues that in respect of land use, the Council have accepted through their decisions that other uses are lawful on this site.

4.24 **Response 3:** Whilst the Council acknowledges that there are other lawful uses on site, namely the use of the site as an open storage yard for building materials (granted 2004) and for storage of rental vehicles (granted 2022), this does not automatically equate to the acceptance of a materially different and potentially harmful use. The lawful use of the site for vehicle storage under class B8 does not justify the introduction of a public car park, which would have greater impacts on the local area. The Council's position is that each application must be considered on its own merits, and the fact that certain uses have been deemed lawful does not imply that any future use would be acceptable.

5. Conclusion

5.1 Again, the appellant appears to rely on the above three arguments as their principal justification, which the Council has shown should be allocated limited weight, for the retention of the use as a car park. Against the Council's assessment outlined below, as previously set out in the officer refusal report, it is apparent that there is no justification for the proposal against the identified harm, and there is no corresponding public benefit to outweigh the harm:

5.2 Given lack of evidence and exploration of housing option, the proposal is contrary to policies G1, H1 and D2 of the Kentish Town Neighbourhood Plan, on the basis of ineffective land use, and the priority land use being housing.

5.3 The proposed use promotes private vehicle use, which is contrary to Policies T2 and T3.

5.4 The amenity of local residents would be harmed by the operation of a public car park, contrary to policy A1.

5.3 There are other occupied plots of land around the railway. In reference to all the above harm, providing consent for this use would open up an unwelcome precedent.

5.4 The Council maintains that the proposed development is contrary to key policies in the Camden Local Plan 2017, as well as the Kentish Town Neighbourhood Plan. The appellant has failed to provide sufficient evidence to justify the departure from housing as the priority land use, and the use would introduce a materially different and harmful use, exacerbating traffic, pollution, and noise

levels in the local area, and allowing for anti-social behaviour associated with 24-hour operation of a public car park. Additionally, given the site's excellent access to public transport and its location within a CPZ there is no compelling justification for allowing a public car park on this site.

5.5 The Council kindly invites the inspector to dismiss this appeal on the basis of the harm identified and the lack of public benefit.

6.0 Suggested conditions should the appeal be allowed:

The development has been implemented and it is not considered that any conditions would mitigate the harm. However, the following is suggested for avoidance of doubt,

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

Site Location Plan – PPL001, Planning Statement (dated May 2024), Additional letter dated 3rd July 2024.

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

If any further information or clarification on any matter associated with this case is required, please do not hesitate to contact Connie Marinetto on the below email or direct dial number.

Yours sincerely,

Connie Marinetto
Planning Officer
Supporting Communities

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