

Dated

22 October 2024

**20 Busby Place  
London  
NW5 2SR**

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Statement of Case  
Appeal against refusal of  
planning application  
2022/1143/P

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## 1. INTRODUCTION

- 1.1 This Statement of Case has been prepared on behalf of Euston Properties Ltd (the **Appellant**) in support of its appeal against the decision of the London Borough of Camden to refuse its application for planning permission (Application Ref: 2022/1143/P) (the **Appeal**) to change use from a 6-bedroom single family dwelling house (Class C3) to a large 11-bedroom house in multiple occupation (**HMO**) (Sui Generis) with minor external alterations including the erection of a bike store (the **Appeal Proposal**) at 20 Busby Place, London NW5 2SR (the **Appeal Site**).
- 1.2 This Statement of Case is structured as follows:
- 1.2.1 Appeal Background;
  - 1.2.2 Appeal Documents and Plans;
  - 1.2.3 Description of the Appeal Site;
  - 1.2.4 Site Context;
  - 1.2.5 Planning History;
  - 1.2.6 Appeal Proposal;
  - 1.2.7 The Development Plan and Material Considerations; and
  - 1.2.8 Response to Reasons for Refusal.

## 2. APPEAL BACKGROUND

- 2.1 The application to which the Appeal relates was validated on 5 May 2022 and assigned reference number 2022/1143/P.
- 2.2 A copy of the application as submitted to the Council is provided at **Appendix 1**. The application originally proposed to convert the Appeal Site into a 12-bedroom HMO and following officer comments was later revised to reduce the number of bedrooms to 11.
- 2.3 The members' briefing pack (**Briefing Pack**) recommended that permission be granted subject to a Section 106 agreement. A copy of the Briefing Pack and accompanying draft decision notice is provided at **Appendix 2**.
- 2.4 In relation to the proposed layout and standards of light, the Briefing Pack concluded:
- 2.4.1 *"The proposed development would comply with all of the relevant standards for houses in multiple occupation" (paragraph 4.2)*
  - 2.4.2 *"Based on the information provided, the proposed layout would comply with relevant standards for HMOs" (paragraph 4.5)*
  - 2.4.3 *"It is noted that the two bedrooms at sub-basement level would benefit from less light than the ones at the front, but this would be considered sufficient for the adequate habitation of the space" (paragraph 6.3)*
  - 2.4.4 *"the proposed building would provide an acceptable standard of residential accommodation for occupiers" (paragraph 6.7)*

- 2.5 In relation to the proposed erection of a bike store, the Briefing Pack commented:
- 2.5.1 "The cycle storage would be secured by condition and the details provided prior to occupation of the site for the use permitted" (para 8.2)
- 2.6 The Council provided to the Appellant a copy of the draft Section 106 agreement. The draft agreement proposed to impose a capped cost rent on the Appeal Site or alternatively secure a commuted affordable housing contribution in the sum of £231,000, among other obligations.
- 2.7 By way of letter dated 12 June 2024, the Appellant requested that the Council rescind the requirement to secure the entire property as low-cost accommodation on the basis that policy does not entitle the Council to do so in the circumstances. The Appellant obtained Planning Counsel's formal opinion in support of its position and shared the same with the Council. Copies of correspondence with the Council are enclosed at **Appendix 3**.
- 2.8 Due to the parties' failure to reach a resolution on the low-cost accommodation obligations, they were unable to agree on the form of planning obligations. At the Appellant's request, the application was subsequently reported to the Council's planning committee with a recommendation that planning permission be refused (**Refusal Report**). The Refusal Report is provided at **Appendix 4**.
- 2.9 The Council's planning committee refused planning permission by a notice dated 11 September 2024. The decision notice is provided at **Appendix 5**.

### 3. **APPEAL DOCUMENTS AND PLANS**

- 3.1 The documents submitted with the planning application are as follows:

Document Reference	Information provided
Varied HMO Licence Documents – 20 Busby Place	Issued by the Council
Management Plan - 20 Busby Place	Prepared by AMS Housing Group
Fire Risk Assessment – 20 Busby Place	Prepared by Five Safety Pro
Schedule of Accommodation – Rev A	Prepared by C Ian Studio
Design and Access Statement	Prepared by C Ian Studio

#### Relevant plans

Plan Reference & Title	Status
Site Plan (Drawing no: 102-PL-002)	No post application submission update
Location Plan (Drawing no: 102-PL-001)	No post application submission update
Basement and Sub-Basement Floor Plans - Existing (Drawing no: 102-EX-098-099)	No post application submission update

Ground and First Floor - Existing (Drawing no: 102-EX-100-101)	No post application submission update
Second and Third Floor and Roof Plan – Existing (Drawing no: 102-EX-102-104)	No post application submission update
Floor Plans – Proposed (Drawing nos: 102-PL-098-099-D; 102-PL-100-101-B; 102-PL-102-104-A)	No post application submission update
Section B - Existing and Proposed (Drawing no: 102-PL-301-0)	No post application submission update
Section A - Existing and Proposed (Drawing no: 102-PL-300-B)	No post application submission update

#### 4. DESCRIPTION OF THE APPEAL SITE

4.1 The Appeal Site is located in the Borough of Camden, on a roughly rectangular piece of land.



Figure 1

4.2 The Appeal Site contains an existing four storey end of terrace property (20 Busby Place) which was previously used as a six-bedroom single family dwellinghouse but has been used as an 11-bedroom HMO since 2019 and has been the subject of an HMO Licence granted by the Council since 24 May 2021 (the **HMO Licence**).

4.3 At the front of the Appeal Site is a forecourt. The application proposes the erection of external cycle storage in the front forecourt. There is no car parking space at the Appeal Site.

4.4 The Appeal Site is located on the south side of Busby Place, west of the junction with Torriano Avenue and east of the junction with Pandian way. It is not listed or located in a conservation area.

5. **SITE CONTEXT**

5.1 The Appeal Site is located in the borough of Camden in a predominantly residential area. The Appeal Site benefits from good transport links; it is located within 0.2 miles of bus stops located on Camden Road and 0.5 miles from Kentish Town Underground Station. There is also a range of shops and services within walking distance of the Appeal Site.

6. **PLANNING HISTORY**

6.1 The planning history for the Appeal Site is as follows:

<b>Planning Reference</b>	<b>Description of the development</b>	<b>Status</b>
PEX0200214	Demolition of the existing school buildings and redevelopment of the site by the erection of 146 residential units including siting, design, external appearance, means of access, hard and soft landscaping pursuant to the reserved matters and detailed layout, breakdown of housing mix, details of car parking provision, means of enclosure, bulk and massing of the development pursuant to additional conditions of the outline planning permission dated 23/01/01.	Approval of reserved matters: 15/01/2003
2005/1901/P	Erection of a 2-storey side extension.	Granted: 08/07/2005
2005/3708/P	Erection of extension at the basement floor level, alterations to side and rear elevations, installation of a dormers at the front and rear roof slope of the dwellinghouse (Class C3).	Granted: 22/12/2006
2006/4782/P	Installation of front and rear dormers to single family dwelling house (Class C3).	Granted: 22/12/2006
2007/5002/P	Erection of a new 4-storey plus basement single family dwelling house on site adjoining no.20 with dormer windows at front and rear main roof.	Refused: 12/02/2008 Appeal Withdrawn: 14/07/2008
2008/4769/P	Retention of new building to provide a 4 storey plus basement and sub-basement dwellinghouse (Class C3) with front and rear dormers on land adjoining 20 Busby Place.	Refused: 30/01/2009 Appeal Withdrawn: 09/07/2009

2008/4868/P	Retention of a 4 storey plus basement and sub-basement building to provide additional accommodation to an existing dwellinghouse and retention of dormer windows to 20 Busby Place (Class C3).	Refused and Warning of Enforcement Action: 11/06/2009
2010/4094/P	Erection of boundary wall with railings and electric gate to existing residential dwelling (Class C3), in association with retained forecourt parking.	Refused: 11/10/2010  Dismissed: 25/05/2011
2011/4755/P	Erection of a single storey side extension to dwelling house (Class C3).	Refused: 30/11/2011
2012/2488/P	Erection of a single storey side conservatory extension to dwelling house (Class C3).	Refused: 05/07/2012  Appeal Dismissed: 29/10/2012
2018/0500/P	Demolition of boundary treatment to front of dwelling and use of front garden for two onsite car parking spaces.	Refused: 09/07/2018

## 7. APPEAL PROPOSAL

- 7.1 The Appeal Proposal comprises the conversion of the Appeal Site from a Class C3 single family dwellinghouse to a Sui Generis HMO of 11 bedrooms and the erection of an external bike store in the forecourt to the Appeal Site.

### Neighbour consultation and representations

- 7.2 The Refusal Report states that the site notices were displayed from 11 May 2022 to 4 June 2022, in response to which seven objections were received. These are summarised in the Refusal Report in respect of the application.

## 8. THE DEVELOPMENT PLAN AND MATERIAL CONSIDERATIONS

- 8.1 For the purposes of this Appeal, the development plan comprises the Kentish Town Neighbourhood Plan (2016), the Camden Local Plan (2017) and the London Plan (2021). Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission to be determined in accordance with the statutory development plan unless material considerations indicate otherwise. Also relevant is the Camden Planning Guidance (CPG Amenity (Jan 2021), CPG Housing (Jan 2021) and CPG Transport (Jan 2021)) approved by the Council on 15 January 2021, which, although not part of the development plan, can be a material consideration in planning decisions.

### Relevant policies and weight to be afforded

- 8.2 The Refusal Report highlighted the following policies relevant to the determination as follows:

### 8.3 Relevant Camden Local Plan Policies

- 8.3.1 H1 Maximising housing supply
- 8.3.2 H3 Protecting existing homes
- 8.3.3 H6 Housing choice and mix
- 8.3.4 H10 Housing with shared facilities
- 8.3.5 A1 Managing the impact of development
- 8.3.6 D1 Design
- 8.3.7 T1 Prioritising walking, cycling, and public transport
- 8.3.8 T2 Parking and car-free development

## 9. **RESPONSE TO REASONS FOR REFUSAL**

- 9.1 The Refusal Report produced in respect of the application recommended that planning permission be refused for the Appeal Proposal for four reasons, as follows:

*"1. The proposed development, in failing to be secured as a long-term addition to the supply of low cost housing or otherwise providing an appropriate amount of affordable housing, would fail to meet the needs of small households with limited incomes, contrary to Policy H10 of the London Borough of Camden Local Plan in 2017" ("RfR1")*

*"2. The proposed development, by reason of its layout, positioning and scale of window openings, and siting of proposed rooms, would fail to provide an acceptable standard of accommodation for occupying residents, contrary to Policy A1 of the London Borough of Camden Local Plan 2017" ("RfR2")*

*"3. The proposed bike store to the front of the property, by virtue of its location, design and scale, would add visual clutter and fail to respect the residential character of the building and wider street scene, contrary to Policy D1 of the London Borough of Camden Local Plan 2017" ("RfR3")*

*"4. The proposed development, in the absence of a legal agreement to secure the residential dwellings making up the house of multiple occupancy as car-free, would be likely to contribute to parking stress and congestion in the surrounding area, contrary to Policy T2 of the London Borough of Camden Local Plan 2017" ("RfR4")*

- 9.2 RfR2 and RfR3 can be categorised as "make weight" reasons, demonstrating the Council's unreasonable position in categorising matters as reasons for refusal when they had previously been approved as part of the Briefing Pack.

### Response to RfR1

- 9.3 RfR1 relates to the lack of a Section 106 agreement that either (a) secures the property as a long-term addition to the supply of low-cost housing in the Council's area or (b) provides an appropriate amount of affordable housing (see section 2 for further details of the Appeal background). It is alleged that this is contrary to Policy H10.

- 9.4 The Appellant's position is that there is no basis in policy for securing the property either as low-cost housing or as affordable housing and that the Council are mistaken to suggest

otherwise. The Appellant has obtained formal advice from Planning Counsel on this matter. That advice dated 5 August 2024 is appended as **Appendix 6** to this Statement of Case and should be referred to in full.

9.5 In summary the correct position is as follows.

9.5.1 Criterion (f) of Policy H10 indicates that changes of use to HMOs will be supported provided that the development “*provides an appropriate amount of affordable housing having regard to Policy H4...*”

9.5.2 Paragraph 3.276 of the supporting text of the Local Plan reiterates this and states that the Council “*will seek provision of an appropriate amount of affordable housing in accordance with [Policy H4] taking account of the residential floorspace proposed and its capacity for self-contained homes.*”

9.5.3 Paragraph 3.83 of the supporting text of the Local Plan further provides that the Council “*will also apply Policy H4 to other types of housing*” such as proposals for large HMOs and notes that “*the precise mechanics of considering and securing affordable housing may vary having regard to Policy H4 criteria (j) to (p).*”

9.6 It is clear therefore that what an “appropriate amount” of affordable housing for the purposes of Policy H10 will depend upon what amount, if any, is appropriate having regard to and applying Policy H4 criteria (a) to (i) as well as criteria (j) to (p).

9.7 As to that latter basket of criteria (namely criteria (j) to (p)) the Appellant is not aware at the time of writing this Statement of Case of any indication that the Council consider that any of the criteria (j) to (p) considerations are applicable in this case or would lead to any result that is different to the result that arises on a straightforward application of the criteria (a) to (i) of Policy H4.

9.8 Applying Policy H4, it is clear that the appropriate amount of affordable housing for this development is nil. This is because the Appeal Proposal provides no net additional homes and does not “involve a total addition to residential floorspace of 100sqm GIA or more”. On the contrary, the Appeal Proposal involves no net additional homes (at present it comprises one home and the Appeal Proposal would not change that) and involves no net additional residential floorspace such that criteria (b), (c) and (d) are not engaged.

9.9 Accordingly Policy H4 does not require the Appeal Proposal to make any contribution towards affordable housing. The “appropriate amount” for the purposes of Policy H10 is nil. Policy H10 is therefore complied with despite the Appeal Proposal not making an affordable housing contribution. Further discussion of this point may be found in the email from Mr Tom Barton on behalf of the Appellant dated 19 June 2024, enclosed as part of the correspondence with the Council at **Appendix 3**.

#### Response to RfR2

9.10 RfR2 relates to the standard of accommodation for occupying residents on the basis of the layout, positioning and scale of window openings and sitings of proposed rooms.

9.11 The Appellant's position is that this reason for refusal conflicts with the Council's approval of the bedrooms under the Briefing Pack and the existing HMO Licence, and the current authorised lawful use.



- 9.12 First, as outlined at paragraph 2.4 of this statement, the Briefing Pack directly considered the quality of light in Proposed HMO Bedrooms I and II and concluded that *"it is noted that the two bedrooms at sub-basement level would benefit from less light than the ones at the front, but this would be considered sufficient for the adequate habitation of the space"*. Overall, the Briefing Pack judges that the Appeal Site would provide an *"acceptable standard of residential accommodation for occupiers"*.
- 9.13 Second, the acceptable standard of the rooms is evidenced by the grant of the HMO Licence, which is valid until 23 May 2026. The HMO Licence demonstrates that the Appeal Site's habitable rooms have satisfied the Council's own HMO licensing standards.
- 9.14 Third, the acceptable standard of the rooms is evidenced by the fact that the rooms remain the same as approved under the existing authorised use, save for amendments which serve to improve the available daylight and ventilation.
- 9.15 Prior to its conversion to a large HMO, the Appeal Site was recognised by the Council as a '6 bedroom single family dwelling house'. This indicates that the habitable rooms were already deemed to provide 'an acceptable standard of accommodation for occupying residents'.
- 9.16 The proposed HMO rooms are created from the existing habitable rooms and utilise the existing window and door openings for daylight and ventilation. In most cases the HMO rooms are smaller than the original dwelling rooms, meaning that proportionally they have more daylight and are better ventilated than the existing approved habitable rooms. By way of further illustration:

<b>Proposed Bedroom</b>	<b>Existing Use of Room and Implications for Layout, Positioning and Scale of Windows</b>
Proposed HMO Bedroom 1	Formed from the existing Media Room
Proposed HMO Bedroom 2	Converted from the existing Kitchen Breakfast Room but with a reduced floor area, bringing the rear wall closer to the existing window openings for a brighter room and greater ratio of passive ventilation
Proposed HMO Bedroom 3	Unchanged from the existing approved bedroom
Proposed HMO Bedroom 4	Unchanged from the existing reception room
Proposed HMO Bedroom 5	Formed from the large existing entrance hall and has a large bay window to provide adequate daylight and ventilation
Proposed HMO Bedroom 6	Unchanged from the existing approved bedroom
Proposed HMO Bedroom 7	Unchanged from the existing approved bedroom
Proposed HMO Bedroom 8	Unchanged from the existing approved bedroom

Proposed HMO Bedroom 9	Unchanged from the existing approved bedroom
Proposed HMO Bedroom 10	Unchanged from the existing approved bedroom
Proposed HMO Bedroom 11	Formed from the existing Media Room

9.17 It is only in the case of Proposed HMO Bedrooms 1 and 11 that the siting and scale of window openings have been altered from that approved under the previously authorised use. Notwithstanding these changes, these bedrooms passed the Council's HMO inspection, and the HMO Licence was granted in respect of the Appeal Site. This indicates that the standard of accommodation has already been deemed acceptable by the Council.

9.18 In respect of the Proposed HMO Bedroom 1, although the existing 'media room' formed part of the previous extension refused permission (Ref: 2008/4868/P) and was previously the subject of enforcement notices, the Council subsequently accepted the room as habitable; on 1 February 2011, the Council's Compliance and Enforcement Regulatory Services issued confirmation that the Council was satisfied the enforcement notices had been complied with.

Response to RfR3

9.19 RfR3 relates to the impact of the proposed bike store on the character of the building and the wider streetscene.

9.20 Further detail is provided in the Refusal Report, which states at paragraph 5.2 as follows:

*"whilst the principle of a bike storage facility would not materially impact the appearance of the building, the proposed storage detailed in the application would be an uncharacteristic and inappropriate addition to the building, particularly in such a prominent location to the forecourt of the site."*

9.21 The Appellant considers that the issues underlying RfR3 do not warrant refusal; they could be remedied by a planning condition requiring submission of a proposal for a bike store in keeping with the host property and local character and in a more discreet location. This conclusion was originally reached by the Council in the Briefing Pack, in which it is noted at paragraph 5.2 that *"the provision of the bike storage to accommodate 12 cycles and details of its design would be secured by condition, which would ensure that the approved details are acceptable and appropriate"*.

9.22 It should be noted that the increase in proposed occupancy, combined with the requirement for a car-free development, would result in a requirement for additional bike provision under Policy T1 of the Camden Local Plan. The Appellant maintains that such provision could easily be accommodated by the Appeal Site and the details conditioned for in the planning permission, as originally proposed by the Council in the Briefing Pack.

Response to RfR4

9.23 RfR4 relates to the absence of a legal agreement to secure the Appeal Site as car-free. This objection is capable of being mitigated by the execution of a section 106 Unilateral Undertaking. Accordingly, the Appellant has prepared and executed a Unilateral Undertaking imposing car-free obligations on the Appeal Site. A copy of the deed may be found at **Appendix 7**.

9.24 Please note that the mortgagee has not been required to execute the deed as it is anticipated that the mortgagee will have changed by the point that the Appeal is concluded and would therefore need to be updated in any event.

10. **CONCLUSIONS**

10.1 For the reasons set out in this statement, the inspector is respectfully invited to allow the appeal.

10.2 The Appellant anticipates that many matters relating to the acceptability of the Appeal Proposal will be capable of agreement with the Council. The Appellant will work with the Council in order to narrow the issues in dispute and resolve reasons for refusal where possible.