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Dear Sir/Madam,

Appeal site: 20 Busby Place, London, NW5 2SR

Appeal by: Euston Properties Ltd

Proposal: Change of use of a 6-bedroom single family dwelling house (Class C3) to a large 11-bedroom HMO (Sui Generis) with minor external alterations including erection of bike store. (Retrospective).

I refer to the above appeal against the Council's refusal to grant planning permission. The Council's case is largely set out in the Officer's delegated report. The report details the application site and surroundings, the site history and an assessment of the proposal. A copy of the report was sent with the questionnaire.

In addition to the information sent with the questionnaire, I would be pleased if the Inspector takes the following information and comments into account before deciding the appeal.

1. Summary

1.1. The planning application for the retrospective 'change of use of a 6-bedroom single family dwelling house (Class C3) to a large 11-bedroom HMO (Sui Generis) with minor external alterations including erection of a bike store' was refused for the following reasons:

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 2017.

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.

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 streetscene, contrary to Policy D1 of the London Borough of Camden Local Plan 2017.

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.

- 1.2. The appeal site relates to an existing dwelling house located at the end of the terrace row of houses on the south side of Busby Place: see Appendix 2 for photographs. The building's lawful use is as a single dwelling; however, it was first reported to be being used contrary to this and as multiple dwellings in 2019. The application to change its use from Class C3 to Sui Generis by converting it into a large HMO was received in 2022. The area itself is predominantly residential in character.
- 1.3. The proposed development involves the conversion of the property into a large 11-bedroom House of Multiple Occupancy (HMO). This conversion has already taken place, with the use as a large 11-bedroom HMO commencing unlawfully in 2019, as confirmed by the Appellant's Statement of Case (para 4.2). Except for the erection of external cycle storage to the building forecourt, no external works were proposed.
- 1.4. Given that the application involves the creation of housing with shared facilities (a house in multiple occupation), Policy H10 of the Local Plan is relevant. Amongst the requirements of this policy, developments creating HMOs must be secured as a long-term addition to the supply of low cost housing, or otherwise provide an appropriate amount of affordable housing, having regard to Policy H4. As such, the failure of the applicant to agree to such a contribution would fail to comply with policy. Additionally, the quality of the rooms proposed would not provide an acceptable standard of amenity, specifically at the sub-basement level, where it has not been demonstrated that the two bedrooms would provide adequate levels of daylight and sunlight or acceptable outlook. The proposed cycle store would also constitute an uncharacteristic addition adding visual clutter, and the lack of a car-free legal agreement would contribute to parking stress and congestion in the surrounding area. These issues all constitute reasons for refusal.

Site appraisal

- 1.5. The application site is located on the south side of Busby Place, at the eastern end of a row of houses. As noted above and in the Officer's refusal report for the subject application (please see Appendix 3 for both the decision notice and refusal report), the site has extensive enforcement history, including breaches that required enforcement action to be taken. To avoid repetition, the full enforcement and planning history will not be detailed here, however please see this section of the Officer refusal report for further detail.
- 1.6. The important point to note regarding the enforcement history at the site is the creation of the sub-basement, which was unlawfully constructed and subsequently refused. Although it was considered that it would not be expedient to take enforcement action against the sub-basement, it was never granted approval. The use of the property as a large HMO also began in 2019, but the application was not received until 2022, following the matter being brought to the attention of the Council's enforcement team. The appellant's statement confirms the commencement of use in 2019 as a large HMO, but fails to mention that this use was, and remains, unlawful.

2. Comments on appellant's grounds of appeal:

- 2.1. The appellant's grounds of appeal focus on the interpretation of Policy H10 (and specifically the requirement to provide a contribution towards affordable housing), the quality of proposed accommodation, the proposed external cycle store, and the car-free obligation imposed on the site. These are summarised below following appraisal of the site.
- 2.2. The appellant statement asserts in paragraphs 2.8 and 2.9 that the application was reported to the Council's planning committee with a recommendation to refuse, and the planning committee refused planning permission on 11 September 2024. For clarity and to avoid complication, it should be noted that it is incorrect that the permission was refused by committee; it was refused under delegated powers. The date of the refusal is correct.

Summary of grounds of appeal

- 2.3. The appellant has presented their case in four parts, focusing on the specific reasons for refusal and setting out their response to each. The content of each part of the case is summarised and addressed below under the relevant headings.

Reason for Refusal 1 – Low cost housing

- 2.4. The appeal statement attests that the Council's interpretation of Policy H10 (Housing with shared facilities) with regards to this decision is incorrect, and that there is no basis for which to seek either low-cost housing or as affordable housing. Their position rests on the fact that Policy H10 of the Local Plan makes reference to a different policy, Policy H4 (Maximising the supply of affordable housing). Under the latter, there would be no requirement for the development to make a contribution towards affordable housing, so the appellant claims that "the 'appropriate amount' for the purposes of Policy H10 is nil".
- 2.5. The appellant is incorrect in their understanding of Policy H10, which appears to result from their interpretation of the relationship between the two relevant policies. Policy H10 specifically states that housing with shared facilities will be supported provided that, amongst other things, it:

"is secured as a long-term addition to the supply of low cost housing, or otherwise provides an appropriate amount of affordable housing, having regard to Policy H4 Maximising the supply of affordable housing."

- 2.6. The extract from the policy as set out above makes clear that development triggering Policy H10 must provide either: (a) a long-term addition to the supply of low cost housing, or (b) an appropriate amount of affordable housing. The appellant's statement appears not to give any mention to (a), only disputing the requirement of (b), in particular the specific reference to Policy H4. As set out in the Officer refusal report, the long-term addition to the supply of low cost housing would be sought by securing the units in the property as 20% less than the median rental cost of a studio flat in the borough. This requirement would be sought wherever housing with shared facilities are proposed, and the supporting text to the policy makes clear that this would be through the means of a legal agreement, confirming *"we will negotiate planning obligations to ensure that housing is available to low income occupiers in the long-term"* (paragraph 3.276). The appellant statement does not appear to address this requirement.

2.7. Under Policy H10, if a long-term addition to the supply of low cost housing is not secured, development is required to provide an appropriate amount of affordable housing. The argument set out by the appellant appears to rest on the understanding that this requirement entails referring directly to Policy H4, as they have contested that there is no net additional homes and no addition to residential floorspace. However, the wording of Policy H10 is clear that development should have regard to Policy H4, not apply it directly. The appellant statement frequently references the requirements of Policy H4 and the application of Policy H4, however at no point does Policy H10 state that Policy H4 should be applied. The reference to Policy H4 in part (f) of Policy H10 is only to order to calculate the correct amount to be contributed to affordable housing. That is, by using the formula set out in Policy H4 to determine affordable housing contributions. The trigger for Policy H4 may not be met, but it is met for Policy H10; Policy H10 makes clear that regard should be given to Policy H4, not that it should be directly applied – as these are two separate mechanisms.

2.8. The appellant's statement does appear to misquote the relevant policy, which may be the source of misinterpretation. Paragraph 9.5.1 of the appellant statement quotes as below:

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..."

2.9. As noted in previous paragraphs, this does neglect to include the words prior to the quotation start that set out the requirement to provide a long-term addition to the supply of low cost housing. However, the appellant's quotation also crucially misses a comma between the words 'housing' and 'having'. Although this is a seemingly minor and unimportant point, it does slightly change the interpretation of the wording. When the correct wording is used and the comma included, the policy reads as establishing that an appropriate amount of affordable housing is required, and in order to establish what this is, regard should be given to Policy H4. However, if the comma is excluded (as in the appellant statement), it implies that regard should be given to Policy H4 to establish whether an appropriate amount of affordable housing is required, rather than what contribution is required. The latter interpretation is clearly not correct, as the policy intention is to ensure that a contribution towards affordable housing is secured in the absence of a long-term addition to the supply of low cost housing. This intention is made clear in paragraph 3.276 of the Local Plan, where the supporting text reads: "*where proposals come forward that cannot be secured for low income occupiers, we will seek provision of an appropriate amount of affordable housing*".

2.10. Although not specifically noted in the Officer refusal report, it is important to acknowledge the rationale behind the requirement of criterion (f) of Policy H10. The supporting text states that, because self-contained housing is the priority land-use of the borough, "*Policy H10 therefore includes measures to ensure that financial viability is not tilted towards development of housing with shared facilities*" (paragraph 3.276). To this end, the intention of this policy is therefore to ensure that low-cost housing is secured, or otherwise an affordable housing payment is provided. For the appellant to claim that there is no such requirement because the proposal does not meet the trigger of Policy H4 misses the point that these requirements are set out by Policy H10 and

have not been met. Policy H4 is referred to so that the mechanism for calculating affordable housing contribution can be used, not so that it can be determined whether the triggers for this policy apply. The approach that has been used is consistent with recent decisions the Council has made at other similar sites, such as 13 Ebbsfleet Road, when an affordable housing contribution was secured based on the floorspace of the converted property (planning reference 2024/1167/P – see Appendix 4). The supporting text to Policy H4 is unambiguous in this respect, where it states “*where larger houses in multiple occupation are proposed, we will seek affordable housing unless the development is secured as a long-term addition to the supply of low cost housing*”. There is no exemption on the basis that the creation of the HMO does not also involve external works and residential uplift.

- 2.11. In summary, the focus of the appellant statement on the requirements and triggers of Policy H4 is irrelevant, as the trigger for this development is Policy H10, not Policy H4. The relevant policy makes clear that regard should be given to Policy H4, which in this instance means having regard to the formula for determining affordable housing contributions, not simply applying the policy; if this were the case, then criterion (f) of Policy H10 would essentially serve no purpose when it is clearly intended to provide affordable housing contributions in the absence of securing long-term low cost housing.

Reason for Refusal 2 – Standard of accommodation

- 2.12. The appeal statement argues that the second reason for refusal relating to the proposed rooms conflicts with the Council’s previous position as established by the Members’ Briefing pack. Additionally, the appellant argues that the existing HMO licence and the current authorised lawful use conflict with the reason for refusal. There is seemingly no specific response to concerns regarding the light availability and outlook of the rooms, other than to say that “*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*”. The appellant statement mostly focuses on procedural concerns such as the rooms already having been considered adequate rather than detailing how the amenity of the rooms is acceptable.
- 2.13. The Officer refusal report makes clear that the main concern regarding the acceptability of amenity relates to the two rooms that are located at sub-basement level. Contrary to the appellant statement’s claims, these rooms were not and have never been directly approved by way of a planning application; the sub-basement was refused as part of application 2008/4868/P and has not featured in the submitted plans for any application since (though all of these applications were also refused anyway). As noted in the Officer refusal report, the Council considered that it was not expedient to require the filling in of the sub-basement due to the scale of remedial action that would be required. At no stage has any habitable room ever been approved at the sub-basement level, and it is misleading to suggest that the lack of enforcement action taken against the sub-basement equates to granting the addition of bedrooms at this level. Please see the Officer refusal report (specifically the enforcement history section and paragraph 6.14) for further explanation of this aspect of the site history.
- 2.14. The reference to the HMO licence that has been granted at the site would not justify the granting of planning permission, as HMO Licensing is a separate regime to planning, which is subject to different considerations in assessing acceptability; indeed, an HMO

application does not include an assessment of natural light, whereas planning policy does. The fact that an HMO licence has been granted does not automatically mean that it is acceptable in terms of the planning assessment.

- 2.15. The point raised by the appellant statement regarding the Members' Briefing report that was previously written does not change the determination of the refusal. The Council is entitled to review its recommendation on a proposal prior to a decision being finalised, and in this instance, the assessment of the proposal was reconsidered due to contextual changes (such as the failure to agree to providing a long-term addition to the supply of low cost housing or appropriate amount of affordable housing). The Members' Briefing process only serves to advise Officers on whether applications should be determined under delegated powers or by Committee. It does not confirm the position or hold the Council to the established position, so the assessment as made under the previous Members' Briefing report is not relevant to the later refusal of the application.
- 2.16. The smaller size of the HMO rooms would not reasonably be considered adequate evidence to demonstrate acceptable levels of daylight and sunlight, and the appeal statement does not give any response to concerns regarding outlook. The Officer refusal report clearly demonstrates the poor outlook, as seen in Figure 3 of the report, where the view from one of the bedrooms is directly out into the rear patio steps.
- 2.17. In summary, the Council has at no point indicated that the sub-basement rooms are of an acceptable standard, the HMO Licence is not relevant to the planning assessment, and no evidence has been provided to dispute concerns regarding the amenity of the proposed rooms.

Reason for Refusal 3 – Bike Store

- 2.18. The appellant statement argues that the issues regarding the appearance of the bike storage facility could be remedied by way of a condition.
- 2.19. This is accepted, and a condition is suggested as part of a list of suggested conditions included in Appendix 1, were the Inspector minded to approve the appeal.

Reason for Refusal 4 – Car-free development

- 2.20. The appellant statement sets out that the car-free obligation is capable of being mitigated by the execution of a Section 106 Unilateral Undertaking.
- 2.21. A Unilateral Undertaking has been provided, however the appellant has not agreed to pay the Local Authority's legal fees. As such, the Council has not review the Unilateral Undertaking and cannot confirm whether this reason for refusal has been overcome. Therefore, the lack of the car-free agreement would still be considered to constitute a reason for refusal.

3. Conclusion

- 3.1. Based on the information set out above, and having taken account of all the additional evidence and arguments made, the proposal is considered to be contrary to Policies H10, A1, and D1 of the London Borough of Camden Local Plan 2017.

- 3.2. The information submitted by the appellant in support of the appeal does not overcome or address the Council's concerns. The proposal presents no benefits that would outweigh the harm identified.
- 3.3. It is also noted that the appellants have submitted a Unilateral Undertaking including a head of term to overcome the fourth reason for refusal by including the car-free obligation. There is no provision within the Unilateral Undertaking to pay the Council's legal fees and while it is acknowledged the appellant has not asked the Council to review it, it is standard practise that appellants pay the Local Authority's legal fees for reviewing Unilateral Undertakings as they may not overcome the reasons for refusal that have been identified as being potentially able to be overcome via an appropriate Unilateral Undertaking or bilateral agreement. Reviewing of this costs local authorities and will ultimately and unfairly fall on the tax-payer if appellants do not pay legal fees on appeal.
- 3.4. For these reasons the Inspector is respectfully requested to dismiss the appeal. However, should the Inspector be minded to approve the appeal, suggested conditions are included in Appendix 1.
- 3.5. If any further clarification of the appeal submission is required, please do not hesitate to contact Sam FitzPatrick on the above direct dial number or email address.

Kind regards

Sam FitzPatrick
Senior Planning Officer
Regeneration and Planning
Supporting Communities

Appendix 1 – Suggested Planning Conditions

1. The development hereby permitted must be begun not later than the end of three years from the date of this permission.

Reason: In order to comply with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).

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

Design and Access Statement (prepared by C-IAN Studio, dated 15/03/2022); 102-PL-001; 102-PL-002; 102-EX-098-099; 102-EX-100-101; 102-EX-102-104; 102-PL-098-099-D; 102-PL-100-101-B; 102-PL-102-104-A; 102-PL-300-B; 102-PL-301-0; Schedule of Accommodation - Rev A (prepared by C-IAN Studio, dated 24/10/2022); Management Plan (prepared by AMS Housing, dated 14/09/2023); Varied HMO Licence Documents; Fire Risk Assessment (prepared by Five Safety Pro, dated 29/07/2023).

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

3. Notwithstanding the cycle parking shown on the approved plans '102-PL-100-101-B' and '102-PL-300-B', details of the provision to be made for cycle parking shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the site for the use hereby permitted. The cycle parking shall thereafter be implemented in full in accordance with the approved details before the use hereby permitted commences and shall thereafter be retained solely for its designated use.

Reason: To ensure adequate cycle parking is available on site and to promote sustainable modes of transport in accordance with Policy T1 of the Camden Local Plan 2017.

Appendix 2 – Site Photographs



Figure 1: Front elevation of 20 Busby Place



Figure 2: Windows serving sub-basement bedrooms (picture taken from rear patio area)



Figure 3: Bedrooms at sub-basement level showing high-level windows looking out to steps into rear patio area (see Figure 2)

Appendix 3 – Decision notice and Officer refusal report (see attached)

Appendix 4 – Officer Delegated Report for application 2024/1167/P (see attached)