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### **APPEAL SITE**

154 Royal College Street, LONDON, NW1 0TA

### **APPELLANT**

Ashblue Investments Ltd

### **LB CAMDEN PLANNING APPLICATION**

2024/1541/P

### **PROPOSAL**

Change of use of ground floor (and basement) commercial unit to residential, erection of a ground floor rear extension, mansard roof extension and basement excavation including the insertion of a rear lightwell, all to enable use as two flats

### **APPEAL REF**

APP/X5210/W/24/3353374

## **Council Statement of Case**

## 1. SUMMARY

1.1 This Appeal Statement comprises the Council's case regarding the refusal of planning application 2024/1541/P for the 'Change of use of ground floor (and basement) commercial unit to residential, erection of a ground floor rear extension, mansard roof extension and basement excavation including the insertion of a rear lightwell, all to enable use as two flats' at 154 Royal College Street, NW1 0TA.

. The application was refused on 02/05/2024 for the following reasons:

1. *In the absence of sufficient evidence to demonstrate that the ground floor and basement cannot be used for commercial purposes, including a lack of sufficient evidence of marketing, the proposal would result in the loss of employment floorspace. It would therefore be contrary to policy E2 (Employment premises and sites) of the LB Camden Local Plan 2017. It would also be contrary to the London Plan 2021 and NPPF 2023.*
2. *The proposed change of use of the ground floor from commercial to residential and the proposed front lightwell would not be in keeping with or appropriate to the historic character and appearance of the building in the Conservation Area. The proposals would therefore fail to preserve or enhance the character and appearance of the Conservation Area and would therefore be contrary to policy D2 (Heritage) of the LB Camden Local Plan 2017. It would also be contrary to the London Plan 2021 and NPPF 2023.*
3. *In the absence of a satisfactory Basement Impact Assessment it has not been demonstrated that the proposal would safeguard structural, ground and water conditions in the area. The proposal is therefore contrary to policies A1 (Managing the impact of development), A5 (Basements) and CC3 (Water and flooding) of the LB Camden Local Plan and the Camden planning Guidance on Basements 2021. It would also be contrary to the London Plan 2021 and NPPF 2023.*
4. *In the absence of a completed S.106 agreement including the prevention of future occupiers of the new flat form obtaining on-street car parking permits, the proposal would increase on-street parking pressures, traffic congestion and air pollution and fail to encourage more sustainable modes of transport such as walking, cycling and public transport. It would therefore be contrary to policies T1 (Prioritising walking, cycling and public transport), T2 (Parking and car-free development) and T3 (Transport infrastructure) of the LB Camden Local Plan 2017. It would also be contrary to the London Plan 2021 and NPPF 2023.*

1.2 The Officer Report summarising the consultation responses and detailing the site description, planning history, relevant planning policies, proposals, planning assessment and justifying the reasons for refusal was sent with the Questionnaire. The Officer Report addresses all the planning issues. The Statement below expands upon the Council's case/reasons for refusal, suggests conditions and sets out the requirement for a S106 agreement to overcome reason for refusal 4, should the Inspector be minded to allow the appeal. Where no further comments are necessary (e.g. site description, planning history, relevant planning policies, proposals) the Inspector is asked to refer to the Officer report.

**2. SITE DESCRIPTION – See Officer Report**

**3. PLANNING POLICY FRAMEWORK – See Officer Report**

3.1 Please also note: 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.

**4. RELEVANT PLANNING HISTORY – See Officer Report**

**5. PROPOSAL – See Officer Report**

**6. COUNCIL STATEMENT OF CASE**

6.1 The relevant considerations in this case are:

- i. the loss of commercial floorspace contrary to policies for protecting economic and employment generating uses
- ii. the harm to the character and appearance of the Conservation Area arising from the change of use on the ground floor and the proposed front lightwell
- iii. the absence of a satisfactory Basement Impact Assessment to demonstrate that the basement extension would not result in adverse structural, ground and water flooding/drainage issues
- iv. the absence of a S106 legal agreement required to ensure a car free development (prevention of car parking permits) in accordance with relevant climate change mitigation and sustainable transport policies

**Reason for refusal no. 1: *In the absence of sufficient evidence to demonstrate that the ground floor and basement cannot be used for commercial purposes, including a lack of sufficient evidence of marketing, the proposal would result in the loss of employment floorspace. It would therefore be contrary to policy E2 (Employment premises and sites) of the LB Camden Local Plan 2017. It would also be contrary to the London Plan 2021 and NPPF 2023.***

6.2 The Council's case is set out in sections 2.1 – 2.5 of the Officer report.

#### Comments on the appellant's grounds of appeal against Reason 1

6.3 The comments raised by the appellant in response to the first reason for refusal are largely addressed in the Officer report. The requirement for the submission of marketing evidence to demonstrate the lack of demand for a commercial use is referenced within Local Plan policy E2 (Employment premises and sites) part a. and within the sub-text to the policy (para 5.39). Para 5.39 of policy E2 states: *'In addition to the considerations above, where a change of use to a non-business use is proposed, the applicant must demonstrate to the Council's satisfaction that there is no realistic prospect of demand to use the site for an employment use. The applicant must submit evidence of a thorough marketing exercise, sustained over at least two years. The premises should be marketed at realistic prices, include a consideration of alternative business uses and layouts and marketing strategies, including management of the space by specialist third party providers'*.

6.4 The appellant mentions that the letter from Longhill Properties Ltd demonstrates that there is no demand for the retail use of the unit. The letter does not constitute sufficient marketing evidence. The letter states: *'The above property has been available on the rental market for a long period of time, however, there has been very little interest in it due to the location and condition of the shop. The location on Royal College St, NW1 is no longer a commercial trading area in Camden. Additionally, due to the condition of the unit, the money needed to bring this unit up to trading standard is not feasible. Please let us know if you need any further information on the above matter.'* No evidence of a marketing campaign, the media which were used to market the unit or the terms or conditions which were offered, or any views which were undertaken are provided. As such, it has not been demonstrated that the unit has been marketed in accordance with the requirements of the policy and that the unit is not viable/there has been no interest in a commercial use.

**Reason for refusal no. 2: *The proposed change of use of the ground floor from commercial to residential and the proposed front lightwell would not be in keeping with or appropriate to the historic character and appearance of the building in the Conservation Area. The proposals would therefore fail to preserve or enhance the character and appearance of the Conservation Area and would therefore be contrary to policy D2 (Heritage) of the LB Camden Local Plan 2017. It would also be contrary to the London Plan 2021 and NPPF 2023.***

6.5 The Council's case is set out in sections 2.12 – 2.22 of the Officer report.

#### Comments on the appellant's grounds of appeal against Reason 2

6.6 The appellant does not put forward any comments in relation to the nature of the commercial unit in the Conservation Area. All the arguments put forward in relation to the use are on the basis of the first reason for refusal (discussed above). No arguments are put forward in relation to the history of a commercial use on the ground floor of the terrace or the nature of the historic commercial shopfront in the terrace (It should be remembered that it is noted as being a 'historic shopfront' in the Camden Broadway Conservation Area Appraisal).

6.7 Furthermore, the Council refutes the arguments put forward in paras. 27 and 28 of the appellant statement that if the commercial unit is foregone then the formation of a lightwell is acceptable. This is not a valid argument. Notwithstanding the Council's stance on the commercial unit, both in terms of its use and value to the character and appearance of the area, even if a residential unit was acceptable on the ground floor the proposed lightwell would be a harmful feature which would detract from the heritage of the site and the terrace. The building is noted as being a 'positive contributor' in the Camden Broadway conservation Area Appraisal and the Management Strategy for the Conservation Area notes: *'In all cases the Council will expect original architectural features and detailing to be retained, protected, refurbished in the appropriate manner'*.

6.8 Regardless of whether the commercial use is foregone, at the expense of residential, a lightwell (and railings) would be an anomalous on the historic terrace harmful to the significance of the building and the Conservation Area. As such, it would be contrary to the policies for upholding the character and appearance of the Conservation Area.

**Reason for refusal no. 3: *In the absence of a satisfactory Basement Impact Assessment it has not been demonstrated that the proposal would safeguard structural, ground and water conditions in the area. The proposal is therefore contrary to policies A1 (Managing the impact of development), A5 (Basements) and CC3 (Water and flooding) of the LB Camden Local Plan and the Camden planning Guidance on Basements 2021. It would also be contrary to the London Plan 2021 and NPPF 2023***

6.9 The application proposal includes a 2.5m + rear basement extension and it therefore needs to be considered in relation to policy A5 (Basements) of the Local Plan (and the Camden Planning Guidance on Basements – 2021). The assessment under policy A5 (and the Basements CPG is undertaken within sections 2.37 – 2.44 of the Officer report.

6.10 Note: It is worth noting that when the application was first submitted the proposed rear basement extension was ‘full width’. The Officer advised that policy A5 part I advises that basement proposals should ‘be set back from neighbouring property boundaries where they extend beyond the footprint of the host building’. The basement extension was duly set in from the sides where it extends beyond the footprint of the building, as can be seen on the proposed basement floor plan.

6.11 Policy A5 states: ‘In determining proposals for basements and other underground development, the Council will require an assessment of the scheme’s impact on drainage, flooding, groundwater conditions and structural stability in the form of a Basement Impact Assessment (BIA) and where appropriate, a Basement Construction Plan’.

6.12 The purpose of a BIA is to enable the Council to ‘assess whether any predicted damage to neighbouring properties and the water environment is acceptable or can be satisfactorily ameliorated by the developer’ as stated in Local Plan policy A5 on basements.

6.13 When the application was first submitted it did not include a Basement Impact Assessment (BIA). The Officer advised the agent and after three months a Basement Impact Assessment was submitted.

6.14 The Basements CPG advises that at any stage in the process experienced engineering professionals who hold qualifications relevant to the matters being considered, should be engaged undertaking the BIA process.

6.15 The Basements CPG also advises that the BIA will be subject to an independent audit to inform a decision on the acceptability of the impacts of the basement proposal.

6.16 As stated in para 6.13 above, no Basement Impact Assessment was submitted with the application and it was not until the application had been with the Council for three months that the BIA was received. Also, it was not until

the end of July that the applicant agreed to the terms and conditions of the review. The Officer assisted with the process of advising on the need for a BIA and organising the agreement between the agent and the Council's consultants for the audit of the BIA.

6.17 When the BIA review got underway the Council's consultants advised that there were significant issues with the submitted BIA and that substantial amendments and further information was needed. The appellant was advised accordingly. An email was sent to the agent to advise that there were issues with the BIA and that it would be necessary to submit an amended BIA.

6.18 Unfortunately the agent decided not to act on this advice and requested that a decision be made on the application. The email from the agent somewhat dismissively stated: *'I do not feel it fair to wait any further. Any reason for refusal based on the BIA will again be unreasonable and the subject of a cost application.'* This after the Officer assisted with the process for undertaking and submitting the BIA, reported back clearly on the shortfalls of the BIA, advised of the need to submit further information and indicated a reasonable timescale for the BIA audit to be satisfactorily completed if the requested information should be satisfactorily submitted.

6.19 The advice which was provided to the agent regarding the shortcomings of the BIA was as follows:

*'We have identified that the submission does not comply with the requirements of CPG Basement in quite a few areas. The key ones are identified below:*

- *The authors do not have the required qualifications.*
- *A number of the screening questions have answered incorrectly or not brought forward to scoping so it is not possible to confirm that the potential impacts have all been identified.*
- *There is no site investigation and the description of the ground and groundwater conditions is contradictory. Baseline conditions have therefore not been adequately established.*
- *Outline structural calculations are not presented and neither are geotechnical soil parameters.*
- *The Ground Movement Assessment does not consider all the likely ground movement that would be experienced and no justification is provided for the building damage assessment'*

6.20 The BIA Audit was uploaded onto the Planning Register on 16/10/2024 and it is attached as an Appendix to this Statement.

6.21 Sections 5.1 – 5.12 in the Conclusions section summarise each of the shortcomings above and confirm that, at the time the application was decided (as requested by the agent) *'The conclusions are not sufficiently robust and accurate and are not accompanied by sufficiently detailed amelioration/mitigation measures to support the grant of planning permission*

*in accordance with Policy A5 of the Local Plan, in respect of: maintaining the structural stability of the building, the ground and any neighbouring properties to within limits set out in the policy/guidance avoiding adversely affecting drainage and run-off or causing other damage to the water environment and avoiding cumulative impacts on ground and structural stability or the water environment in the local area.'*

### Comments on the appellant's grounds of appeal against Reason 3

6.21 The comments relating to the third reason for refusal in the appellant's case are factually incorrect. As stated above, the application was submitted without a Basement Impact Assessment despite this being a policy requirement under policy A5 of the Local Plan. The Officer facilitated the submission of a Basement Impact Assessment, which was not submitted by the applicant until three months after the application was submitted. There followed a two week period while the applicant agreed to the independent review.

6.22 The submitted BIA was unsatisfactory for multiple reasons and the amendments and further information which were required were conveyed to the agent in a helpful and timely fashion. The Officer clearly indicated a reasonable timescale for the review to be satisfactorily completed following the submission of an amended BIA addressing all the requirements. The agent declined to act on the advice from the Officer and organise an amended BIA, instead abruptly instructing the Officer to proceed to determine the application - hence the reason for refusal relating to the absence of a satisfactory BIA to demonstrate that the proposal would safeguard structural, ground and water conditions in the area.

### **Requirement for a S106 agreement (Reason for refusal 4):**

6.23 Reason for refusal 4 relates to the need for (and absence of) a S106 legal agreement to prevent future occupiers of the new residential unit from obtaining car parking permits in accordance with policies T1 (Prioritising walking, cycling and public transport), T2 (Parking and car-free development) and T3 (Transport infrastructure) of the LB Camden Local Plan 2017.

6.24 The Council's case for this item to be secured by way of a S106 agreement is set out in Section 2.32 of the Officer's Report

6.25 A planning obligation is considered the most appropriate mechanism for securing the development as car-free as it relates to controls that are outside of the development site and the ongoing requirement of the development to remain car-free. The level of control is considered to go beyond the remit of a planning condition. Furthermore, a legal agreement is the mechanism used by the Council to signal that a property is to be designated as "Car-Free". The Council's control over parking does not allow it to unilaterally withhold on-street



parking permits from businesses or residents simply because they occupy a particular property. The Council's control is derived from Traffic Management Orders ("TMO"), which have been made pursuant to the Road Traffic Regulation Act 1984. There is a formal legal process of advertisement and consultation involved in amending a TMO. The Council could not practically pursue an amendment to the TMO in connection with every application where an additional dwelling/use needed to be designated as car-free. Even if it could, such a mechanism would lead to a series of disputes between the Council and incoming businesses and residents who had agreed to occupy the property with no knowledge of its car-free status. Instead, the TMO is worded so that the power to refuse to issue parking permits is linked to whether a property has entered into a "Car-Free" legal obligation. The TMO sets out that it is the Council's policy not to give parking permits to occupiers of premises designated as "Car-Free", and the Section 106 legal agreement is the mechanism used by the Council to signal that a property is to be designated as "Car-Free".

6.26 The use of a legal agreement, which is registered as a land charge, is a much clearer mechanism than the use of a condition to signal to potential future purchasers of the property that it is designated as car free and that they will not be able to obtain a parking permit. This part of the legal agreement stays on the local search in perpetuity so that any future purchaser of the property is informed that residents are not eligible for parking permits.

#### Comments on the appellant's grounds of appeal against Reason 4

6.27 The appellant notes that the Council did not instigate a S106 agreement to prevent future occupiers from obtaining car parking permits during the course of the application. However, the cost of the Council's legal work to complete a S106 agreement must be met by the applicant and it would not have been expedient for the applicant to have expended the time and money on a legal agreement for a scheme which was going to be and has been refused for three substantive reasons.

6.28 However, given the appeal circumstances, a legal agreement drafted by the council's solicitor is being circulated to the appellant for completion should the Inspector be minded to allow the appeal. The Inspector will be updated on progress by the final comments stage. Without the S106, car parking will not be able to be restricted in the interests of the Development Plan policies for sustainable transport and efficient transport infrastructure.

## **7. CONCLUSION**

7.1 The substantive reasons for refusal (reasons for refusal 1, 2 and 3) relate to the loss of commercial floorspace without sufficient justification (in accordance with the Local Plan policy for protecting employment uses), the harm to the Conservation Area arising from the loss of the ground floor commercial use and the formation of an incongruous front lightwell and the absence of a Basement Impact Assessment to demonstrate that the proposal would safeguard structural, ground and water conditions in the area.

7.2 The fourth reason for refusal relates to the absence of a completed legal agreement to prevent future occupiers from obtaining on-street car parking permits

7.3 The Council is aware that the Inspectorate cannot allow an appeal subject to the completion of a legal agreement. The Inspector is therefore requested to dismiss the appeal outright for all four reasons.

7.4 Should the Inspector allow the appeal the Council recommends the following conditions:

## **8. 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 drawings/document:

Existing Floor Plans Basement; Ground; First; Second & Roof  
RCS.154.EX.101

Existing Front & Rear Elevations and Section A-A RCS.154.EX.102

Existing Side Elevations (1 & 2) RCS.154.EX.103

Proposed Floor Plans Basement; Ground; First; Second; Loft & Roof  
RCS.154.PR.101 B

Proposed Front & Rear Elevations and Section A-A RCS.154.PR.102 B

Proposed Side Elevations (1 & 2) RCS.154.PR.103 B

Planning, Design & Access Statement (Eade Planning Ltd - August 2024)

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

3. All new external work shall be carried out in materials that resemble, as closely as possible, in colour and texture those of the existing building, unless otherwise specified in the approved application.

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policy D1 and D2 of the London Borough of Camden Local Plan 2017.

4. Before the relevant part of the work is begun, detailed drawings, or samples of materials as appropriate, in respect of the following, shall be submitted to and approved in writing by the local planning authority:
  - Manufacturer's specification details of all facing materials (to be submitted to the Local Planning Authority) and samples of those materials (to be provided on site).
  - Proposed elevation of proposed ground floor unit /facade and proposed mansard roof (at a minimum scale of 1:50) showing dimensions, proportions, materials and treatment of windows, door and wall

The relevant part of the works shall be carried out in accordance with the details thus approved and all approved samples shall be retained on site during the course of the works.

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policy D1 and D2 of the London Borough of Camden Local Plan 2017.

5. Prior to the commencement of the development a Basement Impact Assessment shall both be submitted to and approved by the Local Planning Authority in writing. The development shall thereafter be undertaken in accordance with the approved Basement Impact Assessment.

Reason: To ensure proper consideration of the structural stability of neighbouring buildings and to safeguard the appearance and character of the immediate area in accordance with the requirements of policy A5 of the London Borough of Camden Local Plan 2017.

6. The development hereby approved shall not commence until such time as a suitably qualified chartered engineer with membership of the appropriate professional body has been appointed to inspect, check for compliance with the design (as approved by the local planning authority and building control body) and monitor the critical elements of both permanent and temporary basement construction works throughout their duration. Details of the appointment and the appointee's responsibilities shall be submitted to and

approved in writing by the local planning authority prior to the commencement of development. Any subsequent change or reappointment shall be confirmed forthwith for the duration of the construction works.

Reason: To ensure proper consideration of the structural stability of neighbouring buildings and to safeguard the appearance and character of the immediate area in accordance with the requirements of policies D1, D2 and A5 of the London Borough of Camden Local Plan 2017.

7. The development hereby approved shall achieve a maximum internal water use of 110litres/person/day. The dwelling/s shall not be occupied until the Building Regulation optional requirement has been complied with.

Reason: To ensure the development contributes to minimising the need for further water infrastructure in an area of water stress in accordance with Policies CC1, CC2, CC3 of the London Borough of Camden Local Plan 2017.

APPENDIX

Campbell Reith 'Basement Impact Assessment' for 154 Royal College Street

Project No. 14006-97

October 2024