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Your ref: **APP/X5210/W/25/3360481**
Our ref: **2024/5188/P**
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Dear Sean Ernsting,

Appeal by Mr B Baker
Site: 44 – 46 Birchington Road, London, NW6 4LJ

Appeal against refusal of planning permission 2024/5188/P dated 17th January 2025 for:

Proposal: Erection of single-storey first floor extension; creation of a new dwelling above existing commercial unit

Permission was refused on the following grounds in summary:

1. The proposed roof extension would compromise the form, character and appearance of the host buildings and the wider street scene.
2. Failure to provide a legible, direct and accessible route to and from the residential units.
3. The installation of a 1.7m tall, screened pedestrian access route would result in a negative impact on the amenity.
4. No Air Quality Assessment.
5. No legal agreement securing car-free housing.

- No legal agreement securing a Construction Management Plan, CMP implementation support contribution and Construction Impact Bond.

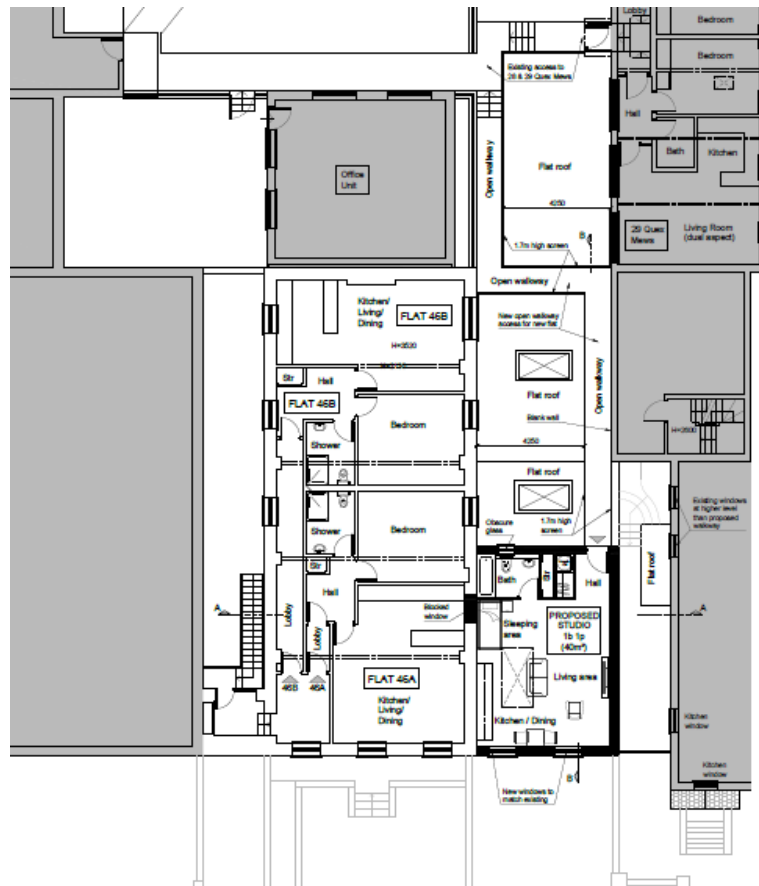
Revised drawings

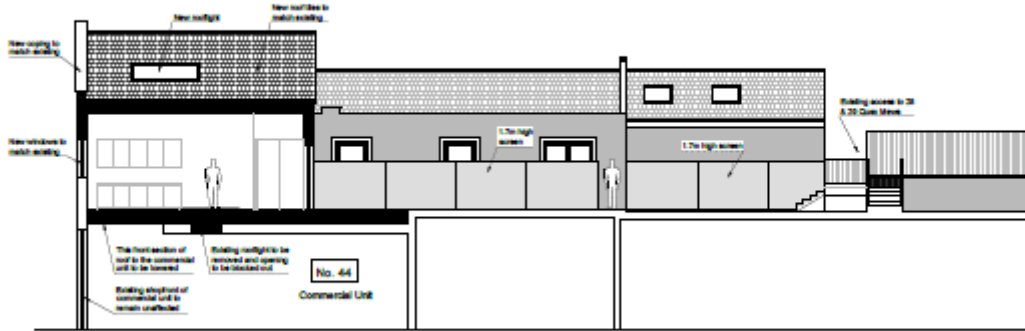
Revised drawings numbered 44BR-PP1-03 Rev A, 44BR-PP1-05 Rev A and 44BR-PP1-07 were submitted with the appeal to supersede drawings 44BR-PP1-03 and 44BR-PP1-05. These new drawings show the privacy screens adjacent to the access route removed and replaced with railings. Full details in point 4 (Access) below.

It is noted that adjoining occupiers were notified about the appeal directly and the new plans documents are available for scrutiny.

The council's statement addresses both under the relevant heading below

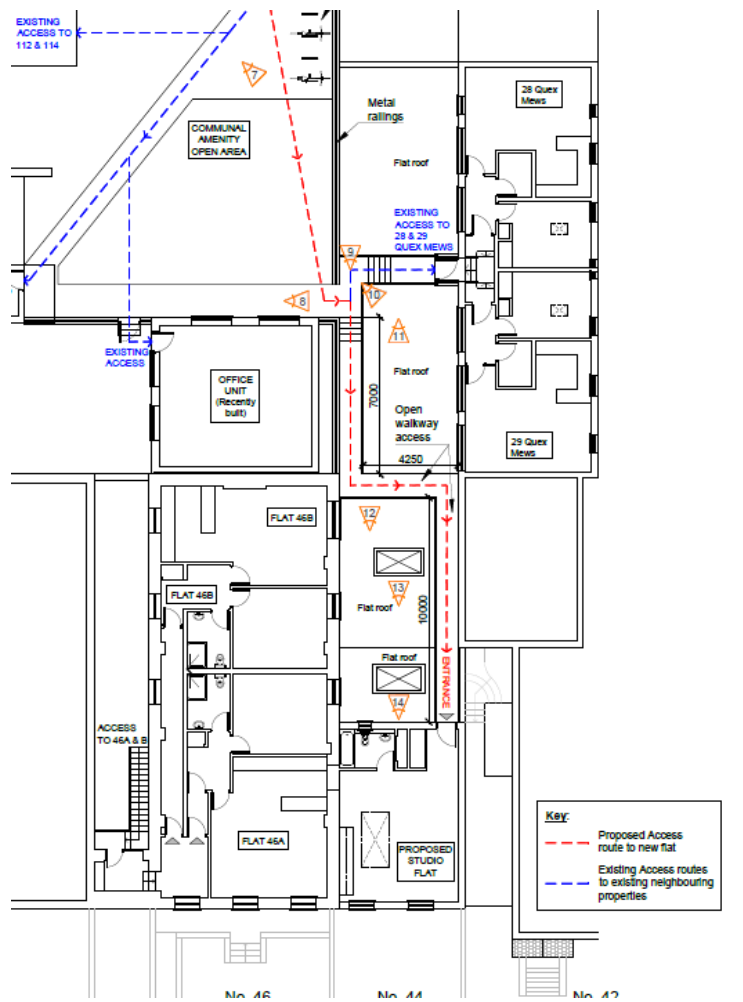
Original as submitted plans:





Proposed Section B-B
Scale 1:100

Amended Plans





Proposed Section B-B
Scale 1:100

1.0 Summary

Site and designations

1.1 44 & 46 Birchington Road are a pair of attached buildings located close to the junction of Birchington Road and Kilburn High Road. The property is located within an area characterised by mixed residential and commercial uses. No.44 is a single storey building with commercial use (Class E) at Ground Floor. It has a flat roof behind a front parapet. No.46 is a two-storey building with commercial use (Class E) at Ground Floor and two self-contained flats above at First Floor level. The upper floor residential units benefit from a separate side access through the side passageway.

1.2 The building is not listed or within a Conservation Area. The application site is in an area of poor air quality.

1.3 Planning Permission was refused on 17th January 2025 for the reasons in full below:

1) The proposed roof extension to create a new dwelling by virtue of its means of access, height, bulk and detailed design would compromise the form, character and appearance of the host buildings and the wider street scene, contrary to Policy D1 (Design) of the Camden Local Plan 2017.

2) The proposed development would fail to provide a legible, direct and accessible route to and from the residential units contrary to Policies D1 (Design) and C6 (Access for all) of the Camden Local Plan 2017 and Policy D6 (Housing quality and standards) of the London Plan 2021.

3) The installation of a 1.7m tall screened pedestrian access route would result in a negative impact on the amenity of the occupiers of 29 Quex Mews and future occupiers, contrary to Policy A1 (Managing the impact of development) of the Camden Local Plan 2017.

4) The proposed development, in the absence of an Air Quality Assessment, has failed to demonstrate that future occupants would not be exposed to unacceptable levels of air pollution and subsequently that the site is suitable for residential use, contrary to Policy CC4 (Air quality) of the Camden Local Plan 2017.

5) The proposed development, in the absence of a legal agreement securing car-free housing would contribute to parking stress and congestion in the surrounding area and fail to promote more sustainable and efficient forms of transport and active lifestyles, contrary to Policies T2 (Parking and car-free development) and DM1 (Delivery and monitoring) of the Camden Local Plan 2017.

6) The proposed development, in the absence of a legal agreement securing a Construction Management Plan, CMP implementation support contribution and Construction Impact Bond, would be likely to contribute unacceptably to traffic disruption, air pollution and be detrimental to general highway and pedestrian safety, contrary to Policies A1 (Managing the impact of development), CC4 (Air Quality) and DM1 (Delivery and monitoring) of the London Borough of Camden Local Plan 2017.

1.5 The Council's case is set out in detail in the attached Officer's Delegated Report, and it will be relied on as the principal Statement of Case. 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 could also take into account the following information and comments before deciding the appeal.

2.0 Status of Policies and Guidance

2.1 The London Borough of Camden Local Plan 2017 (the Local Plan) was formally adopted on the 3 July 2017 as the basis for planning decisions and future development in the borough. The relevant Local Plan policies as they relate to the reason for refusal are:

*D1 – Design
C6 – Access for All
A1 – Managing the Impact of Development
CC4 – Air Quality
DM1 – Delivery and Monitoring
T2 – Parking and Car-free development*

2.2 The Council also refers to supporting guidance documents. The Camden Planning Guidance (CPG) was adopted following the adoption of the Camden Local Plan in 2017. There have been no changes to the relevant policies since the application was refused. It should however be noted that a new version of the National Planning Policy Framework was published in December 2024. It is however considered that these changes to the NPPF do not impact on the assessment of this application. Other relevant documents are:

*CPG – 'Air Quality'
'Camden Clean Air Strategy 2019-2034 and Camden Clean Air Action Plan 2023/2026'*

2.3 Status of council's policies

The council's local plan policies are in process of being updated. 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 which has limited weight at this stage. The weight that can be given to

it will increase as it progresses towards adoption (anticipated 2026). It is not envisaged that there would be any material differences in relation to this appeal

There are no material differences between the NPPF and the Council's adopted policies in relation to this appeal.

3. Comments on grounds of appeal

3.1 The appellant's statement is set out in 6 main points in response to the six reasons for refusal and these are addressed below:

1. New Housing: The Appellant states that the site is sustainably located in a built-up area with access to local transport, where residential development is acceptable in principle. Providing a new home in this area, which suffers from an acute shortage of homes, has significant public benefits. The habitable rooms are generously sized and regularly shaped and benefit from good light and outlook. The daylight/sunlight assessment, submitted with the proposal, demonstrates that the proposed dwelling would benefit from adequate daylight/sunlight. The flat will provide future occupiers with high-quality internal living accommodation.

Response to point 1: It is noted that significant weight was given to the provision of additional housing when determining the application, albeit there was only one additional unit. Although the proposed scheme would provide the benefit of one additional new home, it is not sufficient to outweigh the other concerns which formed the reasons for refusal.

2. Design and Character: The Appellant believes that the enlarged gable or front elevation would appear balanced and integrate well with the surrounding buildings. The appellant asserts the formation of five windows at first-floor level would appear inconspicuous within the street scene, whilst ensuring the new windows respect the existing modulation, proportion and distance between the windows to maintain the symmetry of the host building. Given this careful design, the elevation would attract little attention from the street level. The new windows are not over scaled and are made of traditional timber sash to match existing fenestration. The building is not within a conservation area and the appellant believes the site can be adapted sympathetically to provide an additional home. The design responds to the existing form of the building (supporting an existing gable-end design) and retains the key architectural features - pitched roof, a rendered gable-end with inset timber windows.

Response to point 2: The Council considers that the streetscape in Birchington Road comprises three-storey terraces dwellings and a four-storey corner block fronting Kilburn High Road comprising a mixture of commercial at ground floor with residential on the upper levels. 44-46 currently appear as two distinct albeit attached buildings due to the pitched gable end on 46 and the flat roof and parapet on 44. The current gable end to 46 has three windows inserted at first floor and by extending the gable end to the full width of the properties an additional two windows will be inserted to serve the flat at first floor on 46. The proposed front windows would be out of sync with the existing windows in relation to their overall position in the gable end and would

appear offset. This leads to a lack of symmetry at first floor and detracts from the overall appearance of the building.

The combining of the two buildings would result in a loss of character and appearance in this part of Birchington Road. The two properties currently feature distinct rooflines and facades, which helps distinguish the buildings from each other and retains their original separate character. The buildings also act as a visual transition between the taller corner properties and the lower residential terraced dwellings to the east. By combining the two buildings into one increased façade, this separation and identity is lost and a large gable wall is introduced into this part of the streetscene. As it stands the relative height of the two buildings helps form a characteristic barrier between the taller buildings fronting Kilburn High Road and the three-storey terraced dwellings to the east. This sense of separation would be lost as a result of the proposals, to the detriment of the appearance of the host buildings and the character and appearance of the surrounding street scene. As such, the proposal would harm the character and appearance of the host buildings, and the setting, form and scale of the wider streetscene.

3. Impact on Neighbours: The Appellant states that a daylight/sunlight assessment was submitted, demonstrating an acceptable impact on the neighbouring properties. The LPA acknowledges that the extension would not harm neighbours in terms of a loss of privacy, light or outlook.

Response to point 3: The Council notes these points.

4. Access: The appellant notes the LPA's concern, raised in relation to the siting of a 1.7m high privacy screen on either side of the access route. It is accepted that the screens could negatively affect the outlook of the dwellings at 28 and 29 Quex Mews. As such, a revised set of drawings numbered 44BR-PP1-03 Rev A, 44BR-PP1-05 Rev A, are submitted with this appeal for the Inspector to consider. This alternative design, removes the privacy screens from the proposal. On closer review, it was considered that the screens were unnecessary given that they would obstruct overlooking only when persons are accessing the flat and not prevent overlooking from a habitable room, which is more invasive. It is common for windows at ground floor level, that front onto the street, to have a degree of overlooking when occupants enter a building in use as multiple flats. The comings and goings associated with a one-bedroom studio flat are also expected to be minimal. Therefore, any sense of overlooking v actual overlooking, is expected to be very minimal.

The appellant notes that the proposal is for a one-bedroom studio, likely to be occupied by a young professional. It is not family accommodation or accommodation likely to be occupied by an older person who would potentially have a different set of needs. The proposal continues an established and existing method of access (steps from the Quex Mews to the flat roof) and does not introduce a new point or method of access. The appellant does not believe that the occupant having to walk slightly further than the approved situation at 28 and 29 Quex Mews is necessarily poor design or a reason for having a substandard quality of accommodation. All occupants need to walk to and from their homes to where they are going and there is nothing undignified, inclusive or unsecure about the route to Quex Mews. The LPA seems to object to the slightly atypical situation, but this does not necessarily result in a flat that is inaccessible or provide a home that can't be enjoyed.

Response to point 4: The Council considers that as per Local Plan Policy C6 all buildings and places should meet the highest practicable standards of accessible and inclusive design so they can be used safely, easily and with dignity by all and that spaces, routes, and facilities between buildings should be designed to be fully accessible. It is considered that the extensive and unnecessarily convoluted access route from Quex Mews to the new flat does not meet the highest practicable standards of accessible and inclusive design. The total length of the access route from street level at the end of Quex Mews to the front door of the new dwelling would be approximately 46m via two sets of steps. It is noted that a majority of the proposed route is already used to gain access to other nearby flats but it is still considered that with the new addition to this route to gain access to the proposed flat, that the total route would be restrictive to future occupiers as outlined in the refusal.

The appeal submitted details of amended drawings showing the privacy screens replaced with metal railings. The original 1.7m high privacy screens are shown to be replaced with 1.1m high metal railings. It is considered that the removal of the screens and replacement with the railings would reduce the harm to the outlook of the occupiers of the neighbouring properties due to the permeability of the railings resulting in them having less of a visual impact. Although the occupiers of the new unit would be able to see into the existing units whilst accessing the property it is not considered that this glimpsed view in passing would have an unduly detrimental impact on the privacy of the existing occupiers of the neighbouring dwellings.

5. Air Quality: The Appellant submits that the site is not within an Air Quality Focus Area in the Camden Clean Air Action Plan (2022-2026). The site is in an established residential use and is located at first-floor level, which typically receives fewer pollutants from vehicle traffic than ground floor residential units. Overall, the appellant believes this proposal would comply with the development plan regarding air quality policies.

Response to point 5: The site is within the Kentish Town Centre 'Air Quality Focus Area' as identified in the two-part document: 'Camden Clean Air Strategy 2019-2034 and Camden Clean Air Action Plan 2023/2026'. Camden Council has a CPG for 'Air Quality'. This states that all of Camden is a designated Air Quality Management Area due to the high concentrations of nitrogen dioxide (NO₂) and particulate matter (PM₁₀). And that all developments are to protect future occupants from exposure to poor air quality and to limit their impact on local air quality and be at least air quality neutral.

Air quality is particularly severe along major roads through the borough, and in the south of the borough which is characterised by high levels of traffic. Policy CC4 (Air Quality) of the Camden Local Plan requires applications are submitted with a basic air quality assessment for newly erected buildings/substantial refurbishments and changes of use where occupants will be exposed to poor air quality (due to its location next to a busy road, diesel railway line or in a generally congested area). The application site is adjacent to the corner of Birchington Road and Kilburn High Road. The most recent NO₂ records at a site in this area in 2022 (Kilburn High Road near junction with Victoria Road and Quex Road) show an NO₂ level reading of 50µg/m³.

The application as submitted, without an air quality assessment failed to demonstrate that future occupants would not be exposed to unacceptable levels of air pollution and subsequently that the site is suitable for residential use

6. Car Free & Construction Management Plan: The Appellant is willing to enter into a S106 Legal Agreement or Unilateral Undertaking for these matters, should the Inspectorate be minded to allow this appeal. In this instance, it is requested that the LPA subsequently draft the S106 Agreement accordingly.

Response to point 6: The Council notes this point however the applicant has not agreed to pay the Council's costs pertaining to drafting the agreement and therefore an agreement has not been completed at this time. Please see appendix A attached. This is an email from Camden's legal assistant dated 24th March 2025 to the appellant regarding fees. PINs will be updated at final comments stage.

Justification for S106 car free and construction management plan should the appeal be allowed

Car free

As outlined within the refusal report, Policy T2 limits the availability of parking in the borough and requires all new developments in the borough to be car free. The new units would be car-free to limit the availability of both off-street and on-street parking. 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 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 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 people who live in 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".

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 a 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

CIL Compliance

The car-free requirements complies with the CIL Regulations as it ensures that the development is acceptable in planning terms to necessarily mitigate against

the transport impacts of the development as identified under the Development Plan for developments of the nature proposed. This supports key principle 4 of the National Planning Policy Framework: Promoting sustainable transport. It is also directly related to the development and fairly and reasonably related in scale .

Construction management plan

As outlined within the refusal report, a construction management plan and associated implementation support contribution of £4,194 and impact bond of £8,000 would be secured by means of a planning obligation. The most appropriate way of obtaining the contribution and bond is via a s106 legal agreement.

CIL Compliance:

The contribution is considered to be CIL compliance. It is necessary in planning terms as identified in the development plan to mitigate against the increased impact that will be generated by the development. The contribution has been calculated taking into account particular characteristics of the development, it is directly related to the development and is fairly and reasonably related in scale and kind to the development.

4. Conclusion

4.1 Based on the information set out above and having taken account of all the additional evidence and arguments made, it is considered that the proposal remains unacceptable for reasons set out within the original decision notice. The information submitted by the appellant in support of the appeal does not overcome or address the Council's concerns.

5. Suggested conditions should the appeal be allowed.

5.1 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).

5.2 The development hereby permitted shall be carried out in accordance with the following approved plans: 44BR PP1-01, 44BR PP1-02, 44BR PP1-03, 44BR PP1-04, 44BR PP1-05, 44BR PP1-06, Location Plan, Design and Access Statement (prepared by Wave Architects, dated November 2024), Daylight Availability and Daylight Impact Study (prepared by Ecodesign Ltd., dated 25 November 2024).

Or drawings numbered 44BR-PP1-03 Rev A, 44BR-PP1-05 Rev A and 44BR-PP1-07 instead of 44BR PP1-03 & 44BR PP-05 should the inspector accept revised drawings

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

5.3 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.

If any further clarification of the appeal submissions is required please do not hesitate to contact Matthew Kitchener on the above direct dial number or email address.

Yours sincerely,

Matthew Kitchener
Planning Officer