

**Date: 05/04/2025**

**Appeal Refs.: APP/X5210/W/25/335493 & APP/X5210/Y/25/3359497**

**LPA Refs.: 2024/4338/P & 2024/4871/L**

**Appeal on behalf of Todd Berman**

**Site: Stables Building in the land to the rear of Hampstead Police Station, 26 Rosslyn Hill, London NW3 1PD**

**Final Rebuttal Statement Against Camden Planning Solutions Team Regeneration and Planning Statement of Case of 25/03/2025 by Edward Hodgson.**

This rebuttal statement is limited to the points made in the LPA's submission but should be read in combination with the statements already submitted as part of the Appeals as well as the documentation associated with the original planning applications. It should be noted that these Appeals relate specifically only to the proposed addition of a small, half storey mansard style roof to the already approved single storey extension (2024/0222/P).

**1.Impact on the character and appearance of the host listed building and conservation area/impact on the special architectural and historic interest of the listed building:**

The author of the LPA's Statement of Fact (3.2) somewhat gratuitously refers to the overall Stables development as a "luxury dwelling". This is revealing as at no point has the individual ever visited the property and most certainly they haven't been inside. The only "luxury" involved at the property is the over-investment we made in order to ensure the building achieved the highest levels of eco-efficiency, including state of the art materials/insulation, ASHP, solar panels and tiles, rainwater reclamation, MVHR system, etc. There's no pool, sauna, gym, media room or wine cellar: It is a fine, compact home but there is nothing luxurious about it. It is now a lovely Grade II listed family residence brought back to life from a derelict structure but with the highest environmental credentials.

Preserving this heritage site and the listed buildings in question is in itself a public benefit, one the Planning Inspector in my earlier appeal which was successful found to be a "weighty public benefit". The site in question was a dilapidated Grade II listed building which was already on the Historic Buildings at Risk register. Photos are available in the Design & Access Statement for the Stables' planning application which shows the state of disrepair. The provision of additional housing (bedrooms and amenity space) in the borough is a public benefit, responding to the critical housing shortage and the Government's and Council's stated highest priorities. Creating an A rated EPC eco-friendly home is a public benefit, reducing carbon emissions. Converting an unused brownfield site (the extension) into

residential accommodation is itself a public good, irrespective of whether it is one or two bedrooms.

NPPF, Paragraph 73 states: "Small and medium sized sites can make an important contribution to meeting the housing requirement of an area....local planning authorities should:....(b) seek opportunities, through policies and decisions, to support small sites to come forward....self-build and custom-build housing." The LPA's policy as stated is to support the creation of sustainable housing with the Pre App advice articulating very clearly: "Housing is Camden's priority land use."

It should be noted here that rather than a single integrated home this site could have easily been designed as two small independent attached homes, similar to many mews houses across London. Two bedroom homes are identified as High Priority by Camden itself so it seems odd that it was the LPA that pre-emptively required as a planning condition that the property remain as one larger home, directly contravening Camden's own assessment of high priority housing needs. The Appellant never requested or even enquired as to the feasibility of dividing the property so it seems unfair for the LPA to now argue that no additional housing is being created. There is most certainly additional housing in the form of a new bedroom and expanded amenity space irrespective of whether that meets the LPA's technical definition of a new housing unit.

Much has been made of the fact that the proposed mansard style roof will only create one additional bedroom rather than a new housing unit; however, it in fact creates a larger bedroom and significantly more amenity space. But the Council has by its own calculations of the AHC considered this proposal as creating an additional housing unit – even if not one that can be counted towards its housebuilding targets -- as can be seen in the Delegated Report (2024/4338/P) where the PO calculates the "housing units" in increments of 100 sqm. By the LPA's own calculations, the additional living space created by the proposed mansard style roof represents an additional or third housing unit. The LPA's own language is that the combined GIA of 277.9 for the Stables and the proposed extension "means there is a provision of 3 homes...." And the AHC then steps up in cost by an additional 2% to reflect the provision of more housing space. This is a real, meaningful and tangible illustration that the LPA itself places a higher value on the larger space that would be created, and that it most certainly seeks to monetise the creation of that additional space for the public benefit.

The site is entirely private with no visibility from public footpaths or roads. While there are a number of neighbours who can see the Stables from their back windows – and several have objected – nevertheless there are many neighbours who have not objected and several who have written in support of this Appeal. The fact that none of the Heath & Hampstead Society, the Hampstead Neighbourhood Forum nor the respective neighbouring Residents' Associations have objected should be taken with some consideration as they are extremely serious, highly professional and quite active organisations, all of whom are very much aware of this specific process.

Perhaps most importantly, it should also be taken into account the lack of any objections from the owners of the Police Station and the adjacent Police House, both of which are the neighbours with the clearest views of the proposed addition and both of whom are highly experienced, sophisticated property developers with a strong financial interest in ensuring the overall former Police Station site is developed appropriately. The LPA's own Delegated Report (2024/4338/P) stated: "It is accepted that the proposal would not impact on the special character or setting of the former Hampstead Police station or other nearby listed buildings."

It should be noted that there was already a successful Appeal for this same site involving the use of discrete solar slates on the outward facing roof of the Stables. In that Appeal, there were no objections but the LPA entirely disregarded written support letters from eleven neighbours, including the Hampstead Neighbourhood Forum, as well as every neighbour who could actually see the roof in question. The Appeal was successful. It was in that Appeal decision that the Planning Inspector determined that the site (not the outward facing roof but the overall Stables site) does not have "a material impact on the Hampstead Conservation Area." He wrote: "The contribution it makes to the character and appearance of the HCA is limited."

The Police Station is the host building for the Stables and the extension and will have joint access through a shared courtyard and gate leading to Downshire Hill. It is immediately in front of the Stables site and both were built at the same time in the same style. The new design of the rear of the Police Station which the Stables site faces has been approved and is outstanding: We have sought to speak the same design language, in particular with respect to our use of zinc cladding.

In point 3.10 of its Statement, the LPA argues that the extension "Considered in isolation from the listed building, in its positioning relative to the houses and gardens on Downshire Hill and (sic), it is analogous to a garden building. Given this, it would be inappropriate for it to gain bulk or an additional storey." However, this is demonstrably untrue. The neighbour immediately next to the Stables building sharing the same property wall redeveloped a single storey gym at the bottom of their garden right next to the Stables into a three storey wellness centre, including a basement, with a larger footprint (2021/1335/P), ie, a substantial increase in both height and bulk for a garden building literally 8 metres from the proposed extension.

The LPA points out that I was incorrect in characterising the Stables building as being curtilage listed. However, the Pre App states quite clearly on page 3: "Ancillary to the main red brick building is the Stable Block (which is curtilage listed) and outbuildings to the rear." I have only quoted the LPA but it is also clear that the Planning Inspector in my earlier Appeal agreed that the Stables site did not make a material contribution to the listing or the Conservation Area.

The LPA characterised the “harm” from the proposed roof as being “less than substantial”. The LPA’s Statement of Fact states, however, that “the retention of its (the extension’s) general envelope has been accepted.” But if the existing extension was so damaging to the character of the site it would not have already been approved even for a single storey extension. This is only a question of whether the addition of a small mansard style roof which results in less than substantial harm to the building should be refused. But the principle of making sympathetic changes to the existing extension structure, including changes in its shape and size, has already been agreed by the LPA with the approval of the larger single storey extension.

While only just over one metre, the additional height of the proposed mansard style roof would actually make the solar roof panels less visible to neighbours rather than more so. With the approved design for the single storey extension, the solar panels were clearly visible on the roof above the boundary wall. This can easily be seen in the design drawings which were approved by the LPA. However, by elevating the roof it will actually make the solar panels less visible for some and certainly much less visible to the neighbouring gardens given the large drop in height between the two properties. The solar panels have also been reduced in number and moved further away from the boundary wall in the proposed design compared to the approved single storey design making them less visible in particular from the neighbouring gardens.

It should be noted that in the successful Appeal regarding the solar slates on the roof of the Stables, the Appellant sought to engage with the LPA to seek some acceptable compromise solution short of removing the solar slate roof. The only “compromise” proposed by and acceptable to the LPA for the Stables roof was to cover it almost completely with solar panels. The outward facing sloping roof of the Stables is highly visible to numerous nearby properties -- unlike the flat roof of the extension -- and the LPA’s preferred and only solution in that case for the exact same site was to cover it with solar panels. This is the exact same site which makes it difficult to understand or support the LPA’s inconsistency.

The successful Appeal referenced at 4b Hampstead Hill Gardens (APP/X5210/W/21/3272103) is very much on point and relates specifically to the addition of a roof a full storey above the height of the attached host property. While that building is not itself listed, it sits in a nest of Grade II listed properties, all of whom will have a view of that addition as well as having views of those properties impeded. But the Planning Inspector was no doubt correct in concluding that not every view in a Conservation Area can be preserved or there could never be change, growth and regeneration. And that involved a site which is on a very public road in a very prominent position unlike the Stables site which is entirely private and with only limited back garden views from a small number of properties.

The design of the proposed half-storey roof addition reflects the utilitarian history of the site and seeks to avoid mimicking the Stables while also reflecting the design and materials

language of the immediate buildings, especially the large zinc cladding areas that are in the approved design for the new backing of the Police Station as well as the existing roof structure at 52 Downshire Hill, a highly visible part of the local streetscape as well as this immediate courtyard area. We have used the highest quality materials across the two structures, with the zinc clad roof providing an historical juxtaposition between the original Stables building and the redeveloped extension. There is no predominant architectural style aesthetic in this area, reflecting the incremental growth of the Conservation Area over many decades, a particular local character to which the proposed roof addition will thoughtfully contribute.

The extension is not directly in front of the Stables. It is to the far side against the wall of the property forming an L-shaped structure with the Stables building. But it is incorrect and misleading to characterise it as being directly in front of the Stables. A large gap will remain between the two upper parts of the home, allowing for visual reference of the Stables from the front, the only perspective from which the home can properly be viewed given the configuration of the site. In any event, there are no features, historic or otherwise, or design details whatsoever on the Stables that will be concealed or covered by the addition of the proposed roof. There had been a large, highly visible air conditioning unit on the upper wall which has now been removed. But nothing of heritage value at all will be lost or obscured by this addition.

The Pre-App process was seen as an opportunity to get guidance on what would be possible rather than as a proscriptive process. We would have otherwise not spent several thousand pounds on the advice as it would have been much easier simply to file for planning permission in the first instance. We nevertheless took the guidance in the Pre App and followed it extremely closely, reflecting all of the points made in the process. However, we assumed there was some flexibility as was shown with the ground floor extension application where the PO/CO suggested the footprint of the extension should not be enlarged but nevertheless allowed a longer, wider footprint in the approved application.

In the same vein, the guidance was the roof design we Pre-App'd was not appropriate so we dramatically changed the design to reflect all of the concerns that were raised. In the same way that the LPA showed some flexibility with respect to expanding the footprint of the extension, we had I believe reasonably assumed the LPA would show some flexibility with respect to the proposed mansard style roof, in particular given our responsiveness to the specific concerns raised in the Pre App. And I believe that the Pre App guidance reflected that assumption: On page 5, for example, it states: "For benefit of Hampstead Hill Mansions, the two rear windows on the first floor should be obscure glazed." There would only be first floor rear windows, of course, if there was a mansard style roof.

The Pre App was based on a significantly larger roof design. Yet the Pre App concludes: "Because of the location of the annex, most neighbours will be unaffected in terms of amenity impacts including outlook, daylight and privacy." It continues: "In some cases...due

to the distance away, the development will have no impact; in other cases...the boundary wall will ensure any impact to be minimal.” Given that assessment, it is very difficult to understand how the proposed roof which is approximately only 40% the size of that in the Pre App design could now be so contentious.

The design changes we made with respect to what the Statement of Fact refers to as a “metal box” reflect the guidance in the Pre App as well which states (page 5): “There may be some merit in a design approach that is less “historic/domestic” in nature, although still in brick. This would reflect the history of the site.” On the same note, we changed the garden design for the exact same reasoning as the Pre App guided: “Given the fact that the listed building is a stables, a utilitarian building addressing a yard, it is not considered to enhance its legibility to surround it with flower beds and walls.” The small, zinc clad mansard style roof reflects these comments specifically while also reflecting the design vernacular approved for the host Police Station as well as the roof addition at 52 Downshire Hill, immediately next door.

## **2. Absence of a legal agreement securing an affordable housing contribution (“AHC”):**

The LPA’s Appeal Statement erroneously and misleadingly states on page 4: “There are no material differences between the NPPF and the council’s policies in relation to this appeal.” There are in fact substantive, material differences which are at the heart of this element of my Appeal.

The Council imposes without statutory authority a new house building tax on small scale developments which is directly contrary to the NPPF’s guidance. The AHC which Camden Council imposes is not in any way related to the actual provision of affordable housing in the borough which is woefully behind all targets and needs and the funds raised for the AHC are not properly ring fenced in a separate account for affordable housing; no Vacant Building Credit was provided despite requests to do so and its clear applicability in this case; the AHC is sought for an extension which is quite clearly a separate development; and the NPPF very clearly states that for smaller developments the Community Infrastructure Levy is the correct mechanism for raising affordable housing funds rather than the AHC.

The Appellant paid an AHC for the original Stables development and then subsequently paid it again for the approved extension but only under duress. He repeatedly argued against the AHC to the Council’s solicitor who negotiated the S. 106 Agreement and was told quite clearly that planning approval was contingent on payment of the AHC. This was not a “contribution”: It was a tax on new housing being built in the borough which is expressly contrary to the Government’s highest priority new housing objectives – reflected in the NPPF – and Camden Council’s own stated objectives.

If Camden Council wants to raise funds for affordable housing, it already has a mechanism to do so which is the Community Infrastructure Levy ("CIL"). The NPPF clearly states that "....the levy is the most appropriate mechanism for capturing developer contributions from small development."

Camden Council is by its own admission woefully behind in the construction of new affordable housing units in the borough. It has failed to show any relationship between the AHC's it has imposed on small developments -- against the NPPF's guidance -- and the construction of new affordable homes in the borough. This is in reality simply a tax without statutory basis which directly undermines the Government's critical priority of new home building. And while there is precedent for local plans to diverge from the NPPF where there are specific local circumstances, the housing crisis is not a Camden problem but a national crisis facing every single local council; and this is not a minor divergence but rather a direct contradiction of clear language in the NPPF which also expressly provides an alternative mechanism for raising funds for social housing which Camden Council has ignored entirely.

In fact, what is essentially happening is that Camden Council is collecting the AHC's which go into the general budget for current spending in the borough rather than holding the AHC monies in a properly ring fenced account. The borough then uses those funds for current general expenditures rather than for new affordable housing. Camden keeps a ledger entry for the funds, effectively borrowing from itself, but that is purely an accounting exercise. But it is most certainly not building the affordable housing that is required within its own targets much less the Government's.

Even if the AHC was deemed appropriate, the Council failed as requested to offset the amount by a Vacant Building Credit when requested to do so. The NPPF states quite clearly: "To support the reuse of brownfield land, where vacant buildings are being reused or redeveloped, any affordable housing contribution due should be reduced by a proportionate amount." NPPF 65. Camden's Statement of Fact fails entirely to address this point that was raised in my original Appeals Statement.

In any event, no AHC was ever requested as part of this current application process. And AHC contributions were already demanded and paid for the redevelopment of the Stables building and then for the redevelopment of the single storey extension, both in the form of S. 106 Agreements. It is difficult to understand how a failure to pay an AHC that was never requested could be a valid Reason for Refusal of a planning application.

The NPPF also states quite clearly that AHC's should not be sought for extensions such as is the case with the current Appeal. However, the Council's Appeal Statement refers to the determination in APP/X5210/W/23/3320798 with respect to avoiding a "piecemeal approach" which circumvents the AHC. This disregards the earlier point that no AHC should ever have been required for the overall development in the first place but this was also not a piecemeal approach. The Stables building has been completed and occupied for almost two

years and this was recognised by the Council which has collected Council Tax on the property and was also confirmed by Camden's Planning Obligations Monitoring Team.

Nevertheless, Policy H4 of the LP points to a piecemeal approach where applications are split or separate proposals are brought forward for the same site. Here the proposals are separated by a considerable time period with the first home having been entirely completed and occupied long before the proposed extension. The Planning Inspector in that Appeal cited a tripartite test involving: 1) ownership; 2) whether the site could be considered as one for planning purposes; and 3) whether the proposals should be treated as a single development. The first two tests will almost by definition always be applicable with respect to redeveloping extensions.

With respect to the third test, however, the same Planning Officer for this application determined and made it clear to the Appellant that the proposed extension remained sui generis and required a full planning application despite the Stables property already having been converted to Residential use and fully occupied, been completed with Building Control certification and occupation, legal address provision, certification by the CIL Implementation Team, imposition of Council Tax, certification by Camden Planning Obligations Monitoring, etc. These are all very clear indicators that the proposals were not a single development and were not seen by Camden Council as a single development.

This is also the case with respect to the securing of a legal agreement for car free development: As there is already a S. 106 Agreement for car free development for the Stables property, an extension to that exact same property involving the exact same space would also logically be subject to that same Agreement. That is if they were in fact part of a single development. That is clearly not the approach that has been taken by Camden Council.

### **3. Absence of a legal agreement securing car free development:**

At no point during the planning application process was a request ever made by the LPA for a legal agreement to secure car free development of the property. It should be noted that there have already been two S. 106 Agreements completed for this property as well as two identical Monitoring Fees imposed at material cost for the exact same forecourt area.

The Refused application in this Appeal involves replacing a single storey extension with a single storey extension with a small, half storey mansard style roof. The property already has two comprehensive legal agreements in place ensuring compliance with Camden's Car Free policy.

The LPA's argument is that because the previously allowed schemes have not been fully completed they are seeking to limit "any future confusion" over this matter. However, the redevelopment of the Stables is a fully completed work. If it wasn't a completed work, why



would the LPA have negotiated and finalised a S.106 Agreement for the property – and the exact same forecourt -- in 2023. There is also a separate fully completed S. 106 Agreement for the single storey extension completed in 2024. Monitoring and AHC fees have already been paid twice over.

There has never been any disagreement or confusion over whether the S. 106 Agreement would be applicable to this property. However, requiring a third S. 106 Agreement and Monitoring Fees to be negotiated and completed at material cost would seem both unnecessarily redundant and itself quite confusing.

In any event, no car free policy agreement was ever proposed prior to the Decision to Refuse and the Appellant argues respectfully that it is neither required nor necessary given the existence of two S. 106 Agreements already ensuring compliance with the LPA's car free policy and monitoring obligations for this property.

#### **4. S. 106 matters:**

The Council notes that the reasons for refusal 2 and 3 could be overcome by entering another S. 106 legal agreement and that they had contacted me without response to address the matter. However, my written response to the LPA's email request was that it was inappropriate to seek to address the substance of the Appeal given that the process was ongoing.

However, my critical points on these matters are:

No S. 106 Agreement should be required for this application as 1) No AHC should have been imposed; and, 2) the car free development and monitoring fees should not be required as they have already been fully and adequately addressed by two prior S. 106 Agreements for the exact same property.

#### **5. Conclusions:**

We face an acute housing shortage which will only be properly resolved if we are able to redevelop the many brownfield sites across the country to create more desperately needed homes. The property which is the subject of this Appeal is unique in that it is Grade II listed but almost entirely private in its location. Yet it was left to decline to the point where it was literally falling down and in a state of near complete ruin.

The Appellant has already completed and occupied the Stables building, converting it into a compact, highly energy efficient home, one of a very small number of A rated EPC heritage buildings in the UK. He would now like to develop the extension into additional residential space and to optimise the amount of incremental housing that can be created at this location.

The Appellant is a passionate advocate for preserving our built heritage, having already invested heavily to convert the Stables into a high quality, eco friendly but compact home. The addition of two bedrooms with substantial amenity space in the extension will increase the liveable space at this home and in our community.

The site is almost entirely private with limited views from a small number of back windows. The addition of a small mansard style half storey roof will result in truly less than substantial harm to the heritage of the property, if any at all.

The Council's imposition of a new building tax which has been labelled an Affordable Housing Contribution goes directly against the NPPF's clear guidance and is entirely inappropriate as it puts sand in the gears of the homebuilding industry, in particular for small builders and self builders who are most likely to drive brownfield regeneration. The appropriate mechanism for the Council's tax is the CIL, as the NPPF clearly states.

This property has already been made the subject of two S. 106 car free policy agreements. It is an expensive process and very difficult to understand the rationale for requiring a third such agreement.

I appeal against Camden Council reluctantly but necessarily and I respectfully request the Planning Inspectorate's support in favour of all points which I have raised.