

Date: **14/04/2025**
Your ref: **APP/X5210/W/25/3360840**
Our ref: **2024/3123/P**
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Dear Lauren Fongauffier,

Appeal by Earlspring Property Investments Ltd.
Site: Glebe House, 15 Fitzroy Mews, London, W1T 6DP

Appeal against refusal of planning permission dated 20th September 2024 for:

Proposal:

Planning Application (2024/3123/P) – *Erection of single-storey roof extension to provide 2x new residential (Class C3) units.*

Planning Permission was refused on the following grounds:

- 1. The development, by reason of its height, bulk, mass and detailed design, would be detrimental to the appearance of the host property, the streetscape and the Fitzroy Square Conservation Area contrary to policies D1 (Design) and D2 (Heritage) of the London Borough of Camden Local Plan 2017.*
- 2. 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.*
- 3. The proposed development, in the absence of a legal agreement to secure car-free housing, would be likely to promote the use of non-sustainable modes of transport and contribute to air pollution and congestion in the surrounding area and, contrary to Policies T2 (Parking and car-free development) and DM1 (Delivery and monitoring) of the London Borough of Camden Local Plan 2017.*

4. *The proposed development, in the absence of a legal agreement securing a contribution to affordable housing, would fail to meet the needs of households unable to access market housing, contrary to Policies H4 (Maximising the supply of affordable Housing) and DM1 (Delivery and monitoring) of the London Borough of Camden Local Plan 2017.*
5. *The proposed development, in the absence of a legal agreement securing a contribution to secure two long stay cycling spaces, would fail to promote sustainable transport choices contrary to Policies T1 (Parking and car-free development) and DM1 (Delivery and monitoring) of the London Borough of Camden Local Plan 2017.*

1. Summary

- 1.1. 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.

Site and Designations

- 1.2. The site comprises a post-war five-storey building which fronts onto Cleveland Street (east side) and onto Fitzroy Mews (west side). The building has retail on the ground floor and residential on the upper floors (14 one- and two-bed flats). The site falls within the Fitzroy Square Conservation Area and the boundary of the conservation area runs down the middle of Cleveland Street. To the east of the site are a terrace of 13 houses (20-32 Fitzroy Square) which are Grade II* listed and form the western side of Fitzroy Square, a private open space listed in the London Squares Preservation Act 1931. The site also falls within the Cleveland Street Neighbourhood Centre. The Borough boundary runs down the middle of Cleveland Street with the City of Westminster to the west.
- 1.3. The Fitzroy Square Conservation Area Statement para. 6.30 refers to the terraces along the east side of Cleveland Street, which are predominately three-storeys in height with small attic windows within the mansard, although there are some four-storey elements mainly south of Grafton Way. Nos.66-84 & nos.100-126 are considered to be groups that contribute positively to the character of the area, particularly no.106 which is Grade II listed and has a notably detailed shopfront. These blocks have a consistent elevational treatment and rhythm of fenestration.
- 1.4. Paragraph 6.33 of the Conservation Area Statement (CAS) notes that *"Fitzroy Mews retains its granite sett surface but has no buildings of note. The three-storey 20th century houses and offices on the eastern side take on a mews character and have large ground-floor openings with timber doors"*. The CAS also acknowledges that *"the eastern side of the mews is dominated by five-storey red brick blocks of flats which have access walkways and balconies to the rear above first floor level"*. The existing building is set back at top floor level, in order to minimise its impact on to Cleveland Street, and more importantly on the narrow Fitzroy Mews.

2. Status of Policies and Guidance

- 2.1. The London Borough of Camden Local Plan 2017 (the Local Plan) was formally adopted on 03/07/2017 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:

G1 Delivery and location of growth
H1 Maximising housing supply
H4 Maximising the supply of affordable housing
H6 Housing choice and mix
H7 Large and small homes
A1 Managing the impact of development
A3 Biodiversity
D1 Design
D2 Heritage
T1 Prioritising walking, cycling and public transport
T2 Parking and car-free development
CC1 Climate change mitigation
CC2 Adapting to climate change
CC4 Air Quality
CC5 Waste
DM1 Delivery and monitoring

- 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.
- 2.3. Additional relevant policy and guidance includes the Fitzrovia Area Action Plan and the Fitzroy Square Conservation Area Appraisal and Management Strategy (2010).
- 2.4. It should also be noted that the Council has since published a draft New Local Plan, which is currently out for consultation. Little weight can be afforded to the new plan as it is at draft stage. It is not envisaged that there would be any material differences between the existing and new plan in relation to this appeal.
- 2.5. It is also not considered that there are material differences between the NPPF 2023 and 2024, The London Plan and the Local Plan in relation this appeal.

3. Comments on Grounds of Appeal

- 3.1. The appellant's statement is set out in a 'Statement of Case' (prepared by H Planning Ltd, dated February 2025) and includes an Introduction, Site & Background information, information on a Comparable Scheme, Planning Policy Position, information on the London Borough of Camden's Housing Supply & Delivery, Justification of the Proposal, and Conclusions.
- 3.2. The 'Justification of the Proposal' section, each of the five reasons for refusal are addressed. The Council's comments on the ground for appeal will be addressed in the same manner below.

Reason for Refusal 1

- 3.3. The first reason for refusal states that the single-storey roof extension, by reason of its bulk, mass and detailed design, would be detrimental to the appearance of the host property, the streetscape, and the character and appearance of the Fitzroy Square Conservation Area.
- 3.4. Many of the items raised in the appellant's Statement of Case for this reason for refusal are outlined in Section 7 (Design & Conservation) of the Delegated Officer Report. However, the Council would like address additional arguments the appellant has included in their Statement of Case.
- 3.5. Section 7 (paragraphs 7.4 to 7.13) of the appellant's Statement of Case outlines NPPF, London Plan, and Camden Local Plan policies they claim support development that optimises the development potential of highly accessible brownfield sites to deliver additional housing. Specifically, it is outlined that the NPPF seeks to increase density in appropriate locations and provides specific support for the use of airspace above buildings for upward extensions to deliver additional homes. It is claimed that as the site comprises a highly accessible brownfield site in the Central London Area, there is strong policy support for the upward extension to deliver an additional two homes.
- 3.6. Although the Council agrees that the site is in a highly accessible location, the weight given to the delivery of two additional homes is outweighed by the negative impact the extension would have on the host building, street scene, and wider Conservation Area.
- 3.7. It is further claimed that the proposed extension, although taller than the approved extension at neighbouring Cleveland Court, would be 'shielded' by that extension thus minimising its impact on the street scene and wider Conservation Area. The Council disputes this claim and argues that even if the Cleveland Court extension does shield some views of the extension on the subject site, it would be from select views to the benefit of the appellant's case. Their argument only addresses impacts on the street scene and Conservation Area in select views looking north along Cleveland Street and not the impact of the extension on the street scene and Conservation Area when viewed looking south along Cleveland Street and east towards the subject site from Carburton Street (City of Westminster); which, in both views the extension would be overly prominent. This, coupled with the poor design of the extension, would have a harmful impact on the street scene and wider Conservation Area.
- 3.8. The appellant claims in their Statement of Case that the neighbouring approved roof extension at Cleveland Court (ref. 2021/3245/P, dated 25/01/2023) is an applicable precedent that should be given significant weight in the Inspector's assessment of the appeal. The Council maintains the position that the context of Cleveland House is different than the subject site, being located on a corner site at the junction with Grafton Way and being of a different age and design of than the subject site.
- 3.9. The appellant claims that the additional storey is acceptable given its set back from lower floors (thus reducing its bulk and mass), utilisation of matching brick cladding, and incorporating a window arrangement that matches the existing fenestration on the fourth floor. The Council refers to Section 7 of the Officer Report which outlines

why these elements of the proposal are not acceptable and form part of the reason for refusal. These reasons are repeated in the following paragraph.

- 3.10. The detailed design fails to respond sensitively to the existing building or surrounding context. The re-cladding of the existing roof level in brick and proposed brick cladding on the extension will be prominently visible and fail to respond to the materiality of the local area. The proposed window openings do not adequately respond to the arrangement of the windows on the lower levels of the building. This, coupled with the added bulk and massing, results in an incongruous addition to the host building. The proposed roof extension has not satisfactorily addressed the reasons for refusal in the previous application, which included added height, bulk, mass, and detailed design. The extension as proposed is considered poorly designed and unsympathetic to the host building and would cause harm to the wider Fitzroy Square Conservation Area.
- 3.11. London Plan Policy H1 (Maximising housing supply) sets a 10-year housing target for Camden of 10,380 additional homes from 2019/20 to 2028/29. Policy H1 states that we will seek to exceed the target for additional homes, particularly self-contained homes by (a) regarding self-contained housing as the priority land-use of the Local Plan and (d) where sites are underused or vacant, expecting the maximum reasonable provision of housing that is compatible with any other uses needed on the site.
- 3.12. Policy H1 states that we will monitor the delivery of additional housing against the housing target and will seek to maintain supply at the rate necessary to exceed the target. The DLUHC's 2022 Housing Delivery Test (HDT) is an annual measurement of housing completions. It measures whether development plan requirements (or, in some cases, local housing needs calculated by the government's standard method) have been met over the last three years. The government's most recently published figure is for 2022 when the government's measurement for Camden was 69%, which means that Camden's development plan policies are treated as being out-of-date in relation to housing proposals and the presumption in favour of sustainable development in paragraph 11(d) of the NPPF is engaged. There is a need to place great weight on the provision of housing in decision-making. The HDT test measurement demonstrates that the Council is failing to meet its housing targets, which further emphasises the need under Policy H1 to expect the maximum supply of housing from underused or vacant sites. The NPPF also indicates that applications should be granted unless their adverse impacts would significantly and demonstrably outweigh their benefits when assessed against NPPF policies as a whole, as in the case of this proposal.
- 3.13. In summary, the development is considered to cause less than substantial harm to the character and appearance of the Fitzroy Square Conservation Area. In accordance with paragraph 202 of the NPPF, the public benefit comprises of an uplift of two residential units and an affordable housing payment in lieu of £10,100, which does not outweigh this less than substantial harm identified.

Reasons for refusal 2-5 regarding S106 obligations

- 3.14 The appellant has advised that if the appeal was allowed, they would enter into a S.106 agreement to include the above heads of terms. This is accepted as addressing the reason for refusal. Otherwise, the reasons for refusal prevail. The

council's lawyer is liaising with the appellants regarding completion of a S.106 and PINs will be updated at final comments stage.

Full justification for the four S.106 requirements are set out at the end of this statement in paras 6-9 following suggested conditions, should the appeal be allowed.

Reason for Refusal 2

- 3.15 The second reason for refusal relates to the lack of S.106 agreement to secure a Construction Management Plan (CMP), CMP implementation contribution, and CMP Impact Bond. Given the location of the site in the Central London area and the limited means of access to the site, it is recommended that the development be subject to a Construction Management Plan and associated Implementation Support Contribution of £4,194 and Impact Bond of £8,000 to be secured by means of a S.106 legal agreement. This will help ensure that the proposed development is carried out without unduly impacting the operation of the local highway network or neighbouring amenity, in line with policy A1 (Managing the impact of development) of the Local Plan. In the absence of a S.106 legal agreement this would form a reason for refusal.

Reason for Refusal 3

- 3.16 The third reason for refusal relates to the lack of S.106 agreement to secure the new dwellings as car-free housing.

Reason for Refusal 4

- 3.17 The fourth reason for refusal relates to the lack of S.106 agreement to a financial contribution to affordable housing. the contribution would be £10,100 to comply with the council's policies.

Reason for Refusal 5

- 3.18 The fifth reason for refusal relates to the lack of S.106 agreement to secure a financial contribution towards provision of two long stay cycle parking spaces. Due to the lack of available space at ground floor level, and the limited size of the lift which is too small to accommodate cycles, it is recommended that a contribution of (£4,320/6 x 3 =) £2,160 be secured by means of a S.106 legal agreement towards the provision of a bike hangar in the vicinity of the site.

4 Conclusion

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.

5.17 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).

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

IP-1000, D-P-200, E-X-200, S-X-200 A, PL-099, PL-X-100 A, PL-X-101, PL-X-102, PL-X-103, PL-X-104, PL-X-105, PL-X-106, PL-104 A, PL-105 A, PL-106 A, PL-107 A, E-200 A, E-201 A, E-100 A, E-101 A, E-102 A, E-103 A, E-104 A, S-100 A, S-101 A, S-102, S-200 A, S-500 A, S-SITE-500, Design and Access Statement (including Heritage and Planning Statements) (prepared by Works, dated 20 June 2024), Daylight and Sunlight Report (prepared by Right of Ligh Consulting, dated 8 August 2023), Fire Planning Statement (prepared by FSEC, dated 19 June 2024)

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

5.19 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:

- a) Details including sections at 1:10 of all windows (including jambs, head and cill), ventilation grills, external doors and gates;
- b) Manufacturer's specification details of all facing and roof materials (to be submitted to the Local Planning Authority) and samples of those materials.

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 Policies D1 and D2 of the London Borough of Camden Local Plan 2017.

5.19.1 Before the development commences, details of the location, design and method of waste storage and removal including recycled materials, shall be submitted to and approved by the local planning authority in writing. The facility as approved shall be provided prior to the first occupation of any of the new units and permanently retained thereafter.

Reason: To ensure that sufficient provision for the storage and collection of waste has been made in accordance with the requirements of policy CC5, A1, and A4 of the London Borough of Camden Local Plan 2017.

- 5.19.2** 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

S106 Justification

6 RfR 2: Justification for S106 regrading CMP should the appeal be allowed.

- 6.1 Policy A1 states that Construction Management Plans (CMPs) should be secured to demonstrate how developments would minimise impacts from the movement of goods and materials during the construction process (including any demolition works). The appeal proposal would involve significant works due to the construction of large buildings on the site. A CMP would be required in order to address the issues around how the demolition and construction work would be carried out and how this work would be serviced (e.g. delivery of materials, set down and collection of skips), with the objective of minimising traffic disruption and avoiding dangerous situations for pedestrians and other road users. The failure to secure a CMP by S.106 would give rise to conflicts with other road users and be detrimental to the amenities of the area generally.
- 6.2 Given the location of the site, construction of the proposed development will need to be carefully managed. This would be best achieved by securing a Construction Management Plan and associated Implementation Support Contribution and Impact Bond by means of the S.106 Agreement. This will help to ameliorate the impact of construction activities on the operation of the local highway network and neighbouring amenity.
- 6.3 A planning obligation is considered to be the most appropriate mechanism for securing compliance with a CMP in this case simply because a considerable extent of the activity during construction could cause conflict with other road users and users of both carparks. It would also be detrimental to the amenity of the area and will necessarily take place outside the curtilage of the planning unit of the appeal site. Potential impacts for the proposed demolition/construction works which should be controlled by a CMP include traffic generation from removal and delivery of materials to the site. This could result in traffic disruption and dangerous situations for pedestrians and road users.
- 6.4 Under the Planning Act conditions are used to control matters on land within the developers' control. However, a CMP is designed to be an enforceable and precise document setting out how measures will be undertaken not just on site but also around the site in order to minimise as far as reasonable the detrimental effects of construction on local residential amenity and/or highway safety on the nearby roads, hence using a condition to secure the type of off-site requirements usually included in a CMP would in this case be unenforceable.
- 6.5 Conditions can only lawfully be used to control matters on land within the developer's control. Many of the CMP provisions will relate to off-site requirements, particularly public highway (which is not land within the developers' control). As such, a S.106 Agreement (rather than a condition) is the most appropriate mechanism. This is in accordance with Planning Practice Guidance which states that conditions requiring works on land that is not controlled by the applicant often fails the tests of reasonability and enforceability.

7 RfR 3 Justification for car-free S.106 should the appeal be allowed.

7.1 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".

7.2 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 purchaser(s) 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.

7.3 The car-free provision requirements comply 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 and kind as it relates to the parking provision for the site and impact on the surrounding highway network.

8 RFR 4: Justification for affordable housing S.106 should the appeal be allowed.

8.1 The appeal scheme proposes the creation of 101sqm (GIA) of residential floorspace. Policy H4 expects a contribution to affordable housing from all developments that provide one or more additional homes and involve a total addition to the residential floorspace of 100sqm GIA or more. Under policy H4, for a sliding scale target applies to developments that provide one or more additional homes and have a capacity for fewer than 25 additional homes,

starting at 2% for one home at a rate of £5,000 per sqm of new floorspace. Based on an uplift in GIA of 101sqm, the contribution would be £10,100 .

The contribution is considered to be CIL compliant. 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.

9 RfR 5 justification for cycle provision contribution S.106 should the appeal be allowed

9.1 In line with Policy T1 (Prioritising walking, cycling and public transport) of the Local Plan, it is expected that cycle parking at developments be provided in accordance with the standards set out in the London Plan. For one-bedroom, one-person units the requirement is for one space, whilst for two-bedroom units it is two spaces per unit, which gives a requirement for three cycle parking spaces. Due to the lack of available space at ground floor level, and the limited size of the lift which is too small to accommodate cycles, it is recommended that a contribution of ($\pounds 4,320/6 \times 3 =$) £2,160 be secured by means of a S.106 legal agreement towards the provision of a bike hangar in the vicinity of the site. The submitted plans indicate that cycles could be stored on the rear terraces of each unit, although as already noted it is considered that the lift is too small to comfortably accommodate cycles

9.2.1 Conditions can only lawfully be used to control matters on land within the developer's control. Cycle provision would be an off-site requirement, which is not land within the developers' control). As such, a S.106 Agreement (rather than a condition) is the most appropriate mechanism. This is in accordance with Planning Practice Guidance which states that conditions requiring works on land that is not controlled by the applicant often fails the tests of reasonability and enforceability.

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

Yours sincerely,

Daren Zuk
Principal Planning Officer