Application N	Consultees Name	Recipient Address	Received	Comment	Response
2025/0939/P	Alice Brown	19 Bassett Street	24/05/2025 09:53:47	OBJ	The amount of affordable housing should not be reduced. The Camden Goods Yard development is damaging to the local area: it lacks a clear structure of public street space to provide a legible order. Circulation within the site takes place in the residual space around the two large blocks (B and F) that have been placed arbitrarily on the site, rather than the buildings being planned around public space requirements. This is despite the fact that the planning framework drawn up by Camden Council called for a clear strategic route through the site. Having been lumbered with this bad urban planning it is imperative that the benefit of affordable housing is retained.

Application N	Consultees Name	Recipient Address	Received	Comment	Response
2025/0939/P	A Resident	Camden	24/05/2025 17:18:00	OBJ	Camden Goods Yard – planning reference 2025/0939/P

The application is objected to on the grounds that;

1) Firstly, that the applicant's viability in support of their proposals is fundamentally flawed because it imports historical aspects of the applicants development which have already been implemented and are therefore irrelevant to the viability of future development. In so doing, the viability is flawed in planning law and this generates a perverse and irrational outcome for the provision of affordable housing on the development;

2) Secondly, should the planning authority grant a planning application on the basis of a flawed interpretation of the use of viability arguments pursuant to NPPF, not only will the outcome be perverse and irrational but it will be Anti-Competitive in law, essentially creating a scenario where only the best funded and largest developers, such as the applicant can retrospectively apply a viability argument to recover previous losses which is not a route that is commercially available for SME or other developers who cannot afford to threaten a planning authority on the basis of non-delivery of housing;

3) Thirdly, that by impliedly threatening the non-delivery of housing, which is plainly viable on the applicant's own figures, the applicant is in breach of clause 47.3 of the s.106 agreement, the applicant having elected to implement the planning consent of their own free will.

Should the planning committee support the application the implications for supporting an anti-competitive environment for developers (in which SME enterprises are operating with a clear disadvantage to large and well-funded enterprises) will be at issue in an unlawful process and open to Judicial Review of any decision.

Camden Goods Yard

Background

The applicant discloses that they purchased the entire site for £71.6 million

This was an open market transaction between a willing buyer and willing seller. The buyer acquired the site in the full knowledge of the various obligations. Moreover, the applicant chose to implement the planning consent in full knowledge of the risks.

The developer is of course not under an obligation to implement a planning consent once granted.

However, the case here is that having chosen to implement the planning consent, the applicant has not made the profit that they might have expected and is now bringing back a half-developed site with the implied threat that they will mothball the remaining site unless they get a revised consent which essentially releases them from the obligation to provide affordable housing and further allows them to sell the affordable housing as private accommodation.

Application N	Consultees Name	Recipient Address	Received	Comment	Response

By the applicant's own disclosure the balance of the development remaining site is expected to generate at least £120 million being the difference in revenue and their construction costs. The applicant's own disclosure demonstrates that the financial benefit to the applicant of this application is £150 million (such that the applicant will generate £270 million of net income from the remaining phases of the development). This is achieved by reducing the affordable housing provision on the remaining phases to just 7.5% and replacing this with market housing.
Accordingly this application is not about the viability of the remaining phases of the development but rather the applicant seeking to recover their financial losses from prior development.
The implications in law for this decision would mean that any developer can seek to retrospectively change the viability of a planning application but that this route is only open to the largest and best funded developers who can stand to mothball a development site without normal financial constraints that SME developers would be subject to (a bank).

Planning History

The planning history on shows the development was originally increased from 573 homes to 644 homes by application in July 2020. The present proposal simply appears to reallocate the housing previously consented between the affordable element and the private element.

	Original	Revision 1	Proposal
Application date	07 July 2017	23 July 2020	31 March 2025
Reference	2017/3847/P	2020/3116/P	2025/0939/P
Total units:	573	644	637
Units - private:	389	441	554
Units - Affordable:	184	203	83

Should the proposal be accepted, the benefit to the applicant is that they would succeed in;

1) increasing the private accommodation by 165 homes (an uplift of +43% against the planning consent they originally acquired and implemented); and
2) reducing their affordable housing obligation by 101 homes (a reduction in their obligation by 55%).
The impact of this commercially to the applicant is plainly significant.

The table below shows the floor areas of each of the buildings A - F, taken from the planning applications in order to demonstrate how the proposal seeks to cannibalise the affordable housing and simply replace this with private housing;

Private m2	A	B	C	D	E1	E2	F	Total
2025/0939/P		8,848	9,107	8,964	3,525	4,623		14,970 50,037
2020/3116/P		8,848	8,921	8,601	260	3,933	698	5,451 36,712
Change -	186	363	3,265	690	(698)	9,519	13,325	
Affordable m2					-			
2025/0939/P		5,448			2,612	8,060		
2020/3116/P		5,634		3,179	1,665	9,331	19,809	

Application N	Consultees Name	Recipient Address	Received	Comment	Response

Change - (186) - (3,179) - 947 (9,331) (11,749)
All m2
2025/0939/P 8,848 14,555 8,964 3,525 4,623 2,612 14,970 58,097
2020/3116/P 8,848 14,555 8,601 3,439 3,933 2,363 14,782 56,521
Change - - 363 86 690 249 188 1,576
Constructed
Buildings A and B appear to be in construction and due to complete shortly. If the affordable housing proposal is considered against the balance of the development to be built out, the provision of affordable housing is actually 2,612 m2 of the total of 34,684m2 that is remaining to be built (i.e. the totals excluding Buildings A and B which have already been delivered). In essence LB Camden are being asked to approve an affordable provision on the remaining phases of 7.5%.

Approach to viability

The applicant's approach to viability is fundamentally flawed and wrong on any commercial or logical approach and therefore is wrong in law.

Essentially the applicant seeks to carry forward their development costs (and losses) incurred to date and to argue that this causes the balance of the scheme to be unviable. This approach does not stand up to scrutiny because the costs incurred on development to date are plainly 'sunk costs'. They have already been incurred, and the outcome is known. If there is a loss, that is a commercial risk and not an issue for planning law.

Instead, the alternative and correct viability argument is that the remainder of the development only is unviable. i.e. Buildings C – F only as these is the part of the development that is at issue.

	Buildings A - B already developed	% of whole	C – F to be developed	% of whole
Private m2				
2025/0939/P	17,955	76.7%	32,082	92.5%
2020/3116/P	17,769	75.9%	18,943	57.2%
Change	186		13,139	
Affordable m2	-		-	
2025/0939/P	5,448	23.3%	2,612	7.5%
2020/3116/P	5,634	24.1%	14,175	42.8%
Change	(186)		(11,563)	
All m2	-		-	
2025/0939/P	23,403		34,694	
2020/3116/P	23,403		33,118	
Change	-		1,576	

Application N	Consultees Name	Recipient Address	Received	Comment	Response

The proposal is to reduce the affordable provision on the balance of the scheme from 42.8% to 7.5% by area. (noting that the applicant has/will deliver just 24.1% of the entire housing constructed to date as affordable).

The next question that needs to be assessed, is what, if any value should be attributed to the Benchmark Land Value ("BLV") for buildings C – F. The applicant's approach is essentially to 'bring forward' their costs and losses from earlier phases and to hide this in the viability appraisal. This is incorrect on any logical or commercial basis and wrong in planning law.

The applicant's case on viability falls over. If it is the case that the balance of the site is genuinely unviable, the BLV must be £zero. That is to say, no commercially minded developer would pay anything for the balance of the site because the value in the remainder of the site is insufficient to warrant investment. That argument holds, because if the argument is that the BLV is greater than £zero, it means that there is commercial value in the balance of the site as a development and hence the development must already be viable.

The BLV in viability explicitly should not take account of the value that a developer actually paid or the historic cost. It is the value of the land that is not yet in development that in its current form which is a cleared development site and there is no obvious existing use.

To demonstrate this and using the developers own viability study (which is rather more conservative than information in the market), the value to be derived from the balance of the scheme (C-F) is £122 million under the current consent which the applicant wishes to increase to £272 million and increase of £150 million (although this is likely to be higher in reality).

	Current 2020/3116/P			Proposed 2025/0939/P		
	Area ft2	£/ft2	£	Area ft2	£/ft2	£
Private	203,902	1,455	296,678,068	345,331	1,455	502,456,093
Affordable	152,580	305	46,536,809	28,116	305	8,575,248
Sales			343,214,876			511,031,341
Build cost	356,482	455	(162,199,379)	373,446	455	(169,918,028)
Prelims	18%		(29,195,888)	18%		(30,585,245)
Fees	10%		(16,219,938)	10%		(16,991,803)
Costs			(207,615,205)			(217,495,076)
CIL	203,902	20	(4,078,049)	345,331	20	(6,906,613)
Sales and Marketing		3%	(8,900,342)		3%	(15,073,683)
"Profit"			122,621,280			271,555,969

Therefore, it is not the case that the development is unviable. This is a case of the applicant seeking to recover its commercial 'losses' on previous phases by changing the planning outcome on an ex-post facto basis.

Application N	Consultees Name	Recipient Address	Received	Comment	Response

This is not the purpose of planning law, and it would, in my mind, be perfectly legal for LB Camden to take a similar approach although your officers will be able to advise. However, even if the applicant's case shows the balance of the scheme is unviable (which is unlikely), it would be the case that the development should include both a late and early stage review mechanism which ought to reflect the additional risk and include a penalty on the developer whould the remaining phases out-perform the expectations of the current planning consent. I.e. that in the event that the development was highly profitable, the applicant should be financially worse off. If the applicant genuinely considers the balance of the scheme is unviable, they will willingly trade the risk for greater certainty on the downside.

S106 Agreement and binding obligations

It is an implied threat being made by the applicant that absent a change in planning consent the balance of the development will not be delivered. Given the financial numbers above, the applicant can generate in excess of £120 million from the development of the next phases, it is commercially implausible that the applicant will elect to 'mothball' the site or if they do so, it will be commercially irrational. Moreover, the applicant has a reputational (and legal) risk to customers who have purchased in previous phases if they fail to complete the development.

However, it is questioned whether the s.106 agreement which is binding on the developer has been breached.

Firstly, there is a general obligation on the developer to commence the work contained in clause 47.3. Should the applicant refuse the commence the work, they are arguably in breach of contract and the remedies that flow from that, including damages and specific performance.

47.3 The Owner shall commence all works of construction and fitting out necessary to make the Affordable Housing Units suitable for occupation as Affordable Housing and thereafter to proceed with and complete such works in a good and workmanlike manner using good quality materials to the reasonable satisfaction of the Council (as demonstrated by written notice to that effect).

Secondly, the Grampian Conditions impose occupation conditions limiting the applicant from completing the private housing unless that complete a proportion of the affordable housing.

47.5 The Owner shall not Occupy or allow Occupation of more than 22% of the Open Market Dwellings until:
47.5.1 such time as 21% of the Affordable Housing Units have been transferred or demised to a Registered Provider approved by the Council for a term of no less than 125 years; and
47.5.2 the works of construction and fitting out of 21% of the Affordable Housing Units have been completed in accordance with the requirement of paragraph 47.3 hereof.
47.6 The Owner shall not Occupy or allow Occupation of more than 49% of the Open Market Dwellings until:
47.6.1 such time as 45% of the Affordable Housing Units have been transferred or demised to a Registered Provider approved by the Council for a term of no less than 125 years; and

Application N	Consultees Name	Recipient Address	Received	Comment	Response
					47.6.2 the works of construction and fitting out of 45% of the Affordable Housing Units have been completed in accordance with the requirement of paragraph 47.3 hereof. 47.7 The Owner shall not Occupy or allow Occupation of more than 84% of the Open Market Dwellings until: 47.7.1 such time as 77% of the Affordable Housing Units have been transferred or demised to a Registered Provider approved by the Council for a term of no less than 125 years; and 47.7.2 the works of construction and fitting out of 77% of the Affordable Housing Units have been completed in accordance with the requirement of paragraph 47.3 hereof. The Owner shall not Occupy or allow Occupation of more than 95% of the Open Market Dwellings until: 47.8.1 such time as all of the Affordable Housing Units have been transferred or demised to a Registered Provider approved by the Council for a term of no less than 125 years; and 47.8.2 the works of construction and fitting out of all of the Affordable Housing Units have been completed in accordance with the requirement of paragraph 47.3 hereof. Anti-Competitive The applicant is able to threaten to withhold future development, simply by virtue of its access to financial resource and is plainly doing so in order to 'bully' LB Camden to bend to its wishes. This is not a route that is open to an SME business who is reliant on debt finance and expensive capital in the market. This is important because if successful, large developers will be the only buyer of land in the market as they can acquire land can and will cherry pick parts of the development that suit them safe in the knowledge that they 'strong arm' planning authorities in the future. There is already a mechanism in planning that maintains a level playing field in which schemes which are genuinely unviable at planning stage can be consented with a reduced level of affordable housing but with a review mechanism which provides compensation in the event of a more profitable outcome which is not capped. It is then the developer's choice whether to share the risk and reward or to take the full risk and reward at the outset by providing a higher burden of affordable housing. In this case, the applicant is reversing the risk and reward by choosing to acquire and implement a planning application and then, after determining the returns are insufficient seeking a significant reduction in the s.106 obligation because they are in a financial position to do this.