

APPEAL FORM SECTION H: GROUNDS OF APPEAL 142-150 ARLINGTON ROAD

1.0 INTRODUCTION AND BACKGROUND

1.1 Barton Willmore LLP are instructed by A2 Dominion ('the Appellant') in respect of the above site. The planning application, that is the subject of this appeal, was submitted to the London Borough of Camden on 3 June 2013. The application was refused by officers under delegated powers on 20 September 2013.

1.2 A hard copy of the Council's Decision Notice has not yet been received. However, an email copy (see email of 8 October 2013) has been provided which identifies that the application was refused planning permission on 12 grounds:

- 1 The proposed development, by virtue of its height, bulk, massing and detailed design would fail to preserve and enhance the character and appearance of the Camden Town Conservation Area contrary to policies CS14 (Promoting high quality places and conserving heritage) of the London Borough of Camden Local Development Framework Core Strategy and policies DP24 (Securing high quality design) and DP25 (Conserving Camden's heritage) of the London Borough of Camden Local Development Framework Development Policies.**

- 2 The applicant has failed to provide sufficient information to demonstrate that the proposed development would ensure the provision of the maximum reasonable amount of affordable housing floorspace within the scheme, contrary to policy CS6 (Providing quality homes) of the London Borough of Camden Local Development Framework Core Strategy and policy DP3 (Contributions to the supply of affordable housing) of the London Borough of Camden Local Development Framework Development Policies.**

- 3 The applicant has failed to provide sufficient information to demonstrate that the proposed basement plant area would operate in accordance with the Council's minimum noise and vibration standards. The proposal would therefore be likely to result in harm to residential amenity and local environmental conditions in the area, contrary to CS5 (Managing the impact of growth and development) of the London Borough of Camden Local Development**

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Framework Core Strategy 2010 and DP26 (Managing the impact of development on occupiers and neighbours) and DP28 (Noise and vibration) of the London Borough of Camden Local Development Framework Development Policies.

- 4 The proposed development, in the absence of a legal agreement to secure car-free housing for the 21 residential units proposed, would fail to promote more sustainable and efficient forms of transport and would contribute to parking stress, contrary to policy CS11 (Promoting sustainable and efficient travel) of the London Borough of Camden Local Development Framework Core Strategy and policies DP17 (Walking, cycling and public transport), DP18 (Parking standards and the availability of car parking) of the London Borough of Camden Local Development Framework Development Policies.**

- 5 The proposed development, in the absence of a legal agreement securing necessary highway works, would fail to secure adequate provision for and safety of pedestrians, contrary to policies CS5 (Managing the impact of growth and development), CS11 (Promoting sustainable and efficient travel) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policies DP17 (Walking, cycling and public transport), DP21 (Development connecting to highway network) and DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Policies.**

- 6 The proposed development, in the absence of a legal agreement securing contributions towards Camden's Pedestrian, Cycling and Environmental improvement initiative for highway works in the area, would fail to secure adequate provision for and safety of pedestrians, cyclists and other vulnerable road users, contrary to policies CS11 (Promoting sustainable and efficient travel) and CS19 (Delivering and monitoring the core strategy) of the London Borough of Camden Local Development Framework Core Strategy; and policies DP16 (The transport implications of development), DP17 (Walking, cycling and public transport) and DP21 (Development connecting to the highway network) of the London**

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Borough of Camden Local Development Framework Development Policies.

- 7 The proposed development, in the absence of a legal agreement to secure a financial contribution towards educational infrastructure, would be likely to contribute to increased pressure and demand on the Borough's educational facilities, contrary to policies CS10 (Supporting Community Facilities and Services) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policy DP15 (Community and leisure uses) of the London Borough of Camden Local Development Framework Development Policies.**
- 8 The proposed development, in the absence of a legal agreement to secure compliance with the construction management plan, would be likely to contribute unacceptably to traffic disruption and dangerous situations for pedestrians, cyclists and other road users and would be detrimental to the amenities of the area generally, contrary to policies CS5 (Managing the impact of growth and development), CS19 (Delivering and monitoring the Core Strategy), DP20 (Movements of goods and materials) DP21 (Development connecting to the highway network), DP26 (Managing the impact of development on occupiers and neighbours) and DP28 (Noise and vibration) of the London Borough of Camden Core Strategy and Development Policies.**
- 9 The proposed development, in the absence of a legal agreement securing a design stage Code for Sustainable Homes Assessment (achieving Level 4) prior to works commencing on site and a post construction review, would fail to be sustainable in its use of resources, contrary to policies CS13 (Tackling Climate Change through promoting higher environmental standards), CS19 (Delivering and monitoring the Core Strategy), DP22 (Promoting sustainable design and construction), DP23 (Water) and DP32 (Air quality and Camden's Clear Zone) of the London Borough of Camden Core Strategy and Development Policies.**

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- 10** The proposed development, in the absence of a legal agreement to secure a financial contribution towards the provision of, improvement to and maintenance of public open space in the surrounding area, would be likely to contribute unacceptably to pressure on the Borough's open space facilities, contrary to policies CS15 (Protecting and improving our parks and open spaces & encouraging biodiversity) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policy DP31 (Provision of, and improvements to, public open space and outdoor sport and recreation facilities) of the London Borough of Camden Local Development Framework Development Policies.
- 11** The proposed development, in the absence of a legal agreement securing a sustainable energy strategy, would fail to be sustainable in its use of resources and take sufficient measures to minimise the effects of, and adapt to, climate change contrary to policies CS13 (Tackling climate change through promoting higher environmental standards), CS16 (Improving Camden's health and well-being) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policies DP22 (Promoting sustainable design and construction), DP23 (Water) and DP32 (Air quality and Camden's Clear Zone) of the London Borough of Camden Local Development Framework Development Policies.
- 12** The proposed development, in the absence of a legal agreement to secure compliance with the air quality assessment, would be likely to compromise the Borough's strategy to improve air quality in an area which is already known to suffer from particularly high levels of air pollution contrary to policy CS16 (Improving Camden's health and well-being) of the London Borough of Camden Local Development Framework Core Strategy and policy DP32 (Air quality and Camden's clear zone) of the London Borough of Camden Local Development Framework Development Policies.
- 1.3 Whilst the hard copy of the decision notice has not been received, the email copy (received on 8 October 2013) is dated 20 September 2013 and prior to 1 October

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2013. Accordingly, this appeal will proceed under the terms of the 'old' rules and not those introduced in October 2013.

- 1.4 The Site was previously owned by the London Borough of Camden and operated as a sports centre until December 2011. The Council took the decision to close the sports centre in July 2011. The Council subsequently marketed the Site. The marketing information included two potential residential development options: an 18 unit conversion scheme; and a 28 unit demolition and new build scheme.
- 1.5 The Appellant met with the Council in May 2012 to discuss the residential redevelopment options for the Site on the basis of the marketing information. Officers advised that their preference would be for a residential scheme that retained a substantial proportion of the existing building. On the basis of the comments received, the Appellant purchased the Site in July 2012.
- 1.6 In accordance with the National Planning Policy Framework (NPPF) (and paragraphs 188 to 190 in particular), the Appellant engaged in pre-application discussions with the Council. These took place from July 2012 to May 2013 and involved four meetings and a number of iterations to the scheme in response to comments received. A two day public exhibition was held in December 2012. Discussions were also held with the Camden Town Conservation Area Advisory Committee (CAAC) including a meeting in May 2013.
- 1.7 The pre-application discussions with officers centred on design and heritage issues, specifically the characteristics of the existing building which contribute to or detract from the significance of the building and the conservation area. This informed the scheme development and the features/ characteristics of the building that should be retained and those that any development could improve. The final pre-application meeting with the planning and conservation officer was held in February 2013. Comments from the conservation officer were forwarded by the planning case officer through email dated 15 March 2013. A comprehensive response to the pre-application proposals was requested from officers. It was envisaged that this would provide comment on matters such as affordable housing, mix and, internal and external amenity. This was not received.
- 1.8 The application for full planning permission and conservation area consent was submitted to the Council on 3 June 2013. The Council requested additional section drawings on 19 June 2013 which were provided on the same day. The application

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was confirmed as valid from 28 June 2013 through the Council's email dated 3 July 2013 with the Council's confirmation of receipt letter dated 12 July 2013 identifying the 13 week determination period as ending on 27 September 2013.

- 1.9 A number of internal consultation responses were forwarded by the case officer (see emails dated 22 July 2013, 29 July 2013, 5 August 2013 and 27 August 2013). These raised a number of matters which the Appellant wished to address through amended and additional information. We were advised that a consultation response from Housing Partnerships on housing matters had not been received by officers.
- 1.10 To allow for receipt of all consultation responses and for further discussion/ review of the matters raised through consultation responses received, the Appellant sought to agree an extension to the determination period for the application, pursuant to Article 29 Paragraph (2)(c) of The Town and Country Planning (Development Management Procedure) (England) Order 2010, through letter dated 5 September 2013. At that time, officers advised that the determination period would end on 20 September 2013, albeit the Council's validation letter stated 27 September 2013 and the Council's website identified the date as 2 October 2013. The Council advised in email dated 17 September 2013 that they would not agree to extend the time period for determination.
- 1.11 Whilst officers' comments on the extension to the determination period were awaited, the Appellant prepared and submitted amended drawings responding to the comments of the Council's highway officer and design/ conservation officer and additional information in the form of an Air Quality Assessment. These were submitted to the Council on 11 September 2013. The Council confirmed receipt through email dated 17 September 2013. Prior to this a letter dated 5 September 2013 was sent to the Council setting out the Appellant's position in respect of affordable housing provision. A response to this letter was not received.
- 1.12 The application was refused planning permission and conservation area consent on 20 September 2013. The amended drawings and Air Quality Assessment were accepted as part of the application and are cited on the decision notice. The Reasons for Refusal raise a number of matters that were not raised at the pre-application stage or during the course of officer's consideration of the application and to which the Appellant did not have the opportunity to respond. For example, several reasons for refusal refer to the lack of a legal agreement. However, it is not usual for this to be produced in isolation and the Appellant would, in any event,

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have anticipated that these matters would be addressed by way of planning condition of legal agreement.

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2.0 RESPONSE TO REASONS FOR REFUSAL

- 2.1 The Council's decision notice, provided through email dated 8 October 2013, sets out 12 Reason for Refusal. Informative 1 of the decision notice advises that Reasons for Refusal 4 to 12 inclusive could be overcome by entering in to a Section 106 Legal Agreement. The Appellant will seek to agree an appropriate agreement or undertaking with the Council. It is, therefore understood that the Council's principal objections to the scheme are set out in Reasons for Refusal 1, 2 and 3. The Council has accepted the proposed change of use and its objections are understood to relate to design and conservation matters, affordable housing provision and noise from plant.
- 2.2 The Reasons for Refusal raise new matters that were not previously discussed with the Appellant and to which the Appellant did not have the opportunity to respond.
- 2.3 The Appellant has reviewed the Reasons for Refusal and has written to the officers (see letter dated 14 October 2013) to ascertain the specific nature of their concerns. This will inform the Statement of Common Ground. A response is awaited.
- 2.4 We set out below our response to the Reasons for Refusal:

Reason for Refusal 1:

- 2.5 The Appellant has sought to work with officers to promote a scheme that would meet the Council's requirements. The scheme was subject to a number of iterations at the pre-application stage. The building at present reflects its purpose and securing effective reuse will require alteration. Residential use is the preferred use of the Council. The design of the proposals was informed by a heritage review which was agreed by the Council. The proposal seeks to retain the front and side elevations with minimal alteration. Part of the rear elevation is to be demolished and rebuilt and an extension is proposed at roof level. In addition, it is our intention to resurface the private road to the rear and agree with the Council a scheme for improvement works between Arlington Road and Camden High Street to be secured by way of S278 agreement.
- 2.6 Following the decision of the Council, we have written to officers seeking further clarification as to the basis of their objections. We would anticipate that the

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alterations to the retained front and side elevations are not contentious and for the purposes of this appeal are agreed subject, of course to detailed materials.

- 2.7 In terms of the rear elevation, this faces on to an access road and beyond that the Marks and Spencer car park and is clearly the 'back' of the building. The rear elevation is considered to make a limited contribution to this part of the conservation area and views into the Area. Any contribution is not of a degree of merit that beneficial redevelopment cannot be achieved. The proposals provide the opportunity to improve natural surveillance to the rear of the building and create a more active façade with direct access from street level.
- 2.8 When viewed from the rear, the surrounding buildings demonstrate a variety of forms and style. The service yard and car park are the dominant theme and there is little in terms of cohesion.
- 2.9 The Appellant has not sought to replicate the architecture of the original building but has instead sought to provide a contemporary design that is sympathetic, both in terms of rhythm, proportions and materials to the original buildings and those adjacent.
- 2.10 In terms of the roof addition, this part of the conservation area is characterised by a variety of roof forms. The building occupies a corner site and an increase in height, provided that it is satisfactorily designed, will not detract from the character and appearance of this part of the conservation area. The roof addition is set back from all facades by a minimum of 2 metres. Again, the Appellant has not sought to replicate the architecture of the original building but has instead sought to provide a contemporary design that is sympathetic, both in terms of rhythm, proportions and materials to the original building and those adjacent.

Reason for Refusal 2

- 2.11 The affordable housing 'offer' at the time of determination was 5 affordable rent properties as a mix of 1 one-bed, 1 two-bed and 3 three-bed apartments/maisonettes. We understand that the Council seeks the provision of an additional unit. We have sought to agree the appropriate level of provision and wrote to officers on 5 September 2013. This letter set out the Appellant's case that the constraints of the Site are such that the proposals would fall to be considered in the context of parts b), c) and f) of Policy DP3 of the Council's adopted Development

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Policies DPD (2010). No response has been received. The Appellant is a registered provider and will provide the affordable element direct. The current offer has been determined following discussions with Housing Partnership and on the basis of Policy DP3.

- 2.12 Notwithstanding the lack of a response from officers, the Appellant will seek to agree with the Council an appropriate offer and to provide the necessary S106 agreement or undertaking to secure this.

Reason for Refusal 3:

- 2.13 Concerns over noise and vibration from plant to be installed within the scheme were not raised at the pre-application stage nor during the course of the application. The Appellant has written to the Council to agree the appropriate noise and vibration levels against which the plant should be tested and the information required to address the Council's concerns.

Reasons for Refusal 4 to 12:

- 2.14 The Council has confirmed that these matters can be addressed through a S106 agreement. The Appellant will seek to work with officers to agree the relevant schemes and contributions. Any S106 contributions must of course meet the requirements of CIL regulation 122 and confirmation has been sought by letter dated 14 October 2013.
- 2.15 It is however the Appellant's view that the requirements for a construction management plan (Reason for Refusal 8), adherence to Code for Sustainable Homes (Reason for Refusal 9) and the energy and air quality strategies (Reasons for Refusal 11 and 12 respectively) should be addressed by condition pursuant to paragraph 203 of the NPPF). Likewise, in the event that agreement cannot be reached as to the form and content of a S106 agreement, an undertaking will be submitted, supported by relevant evidence.

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3.0 APPEAL PROCEDURE

- 3.1 It is anticipated that the matters outstanding between the Appellant and the Council will centre on design and conservation. The Appellant wishes to test the Council's position and examine the evidence adduced through cross examination rather than relying upon the rebuttal of written submissions. The Appellant is concerned that the Council has not articulated its position fully nor in a consistent manner.
- 3.2 Furthermore, whilst the Appellant is hopeful that agreement can be reached in respect of Reasons for Refusal 2 to 12, many of these relate to new matters and in the event that agreement cannot be reached, the Council's position will need to be tested.

BARTON WILLMORE LLP