

November 2013

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# Hearing Statement

Town & Country Planning Act 1990, Section 78

Appeal by Stadium Capital Holdings Limited

For the Proposed Redevelopment of land at Midland Crescent

**References:**

**Appeal A**

2013/2564/P

APP/X5210/A/13/2207580

**Appeal B**

2013/4575/P

APP/X5210/A/13/2209342



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## **Appendices**

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# 1. Introduction

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- 1.1 This appeal is made on behalf of the Appellant, Stadium Capital Holdings Ltd, against the decision made by the London Borough of Camden (LBC) to refuse planning application reference: 2013/4575/P on 17 October 2013.
- 1.2 The application sought development of the Midland Crescent site for a high quality student accommodation led mixed use scheme. It was refused planning permission under delegated powers. The reasons for refusal are set out in full on the decision notice attached in **Appendix One**.
- 1.3 Further to this, it is important to note that the application being appealed here is one of three student led mixed use schemes that we have submitted on the site. Each one has been amended accordingly each time to address concerns raised by LBC.
- 1.4 This statement addresses each of the reasons for refusal in turn.
- 1.5 Please note that further information can be found within the original planning application submitted to the LBC.
- 1.6 We refer to a number of appendices and these are attached accordingly.

## 2. Background

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### Site & Surrounding Area

- 2.1 Details of the appeal site and surrounding area can be found within section two of the planning statement submitted with the original application. A summary and additional images are enclosed below.
- 2.2 The site is a triangular piece of redundant land of approximately 0.2 ha.
- 2.3 The site has a Public Transport Accessibility Level of 6a, which is the highest possible.
- 2.4 The site does not have any buildings on it, it is not within a conservation area, nor does it have any other restrictive designations.
- 2.5 It is located within the 'West Hampstead Growth Area', and the eastern part falls within a 'town centre' (Finchley Road/Swiss Cottage).
- 2.6 An aerial photograph of the site is provided below (**Figure One**).

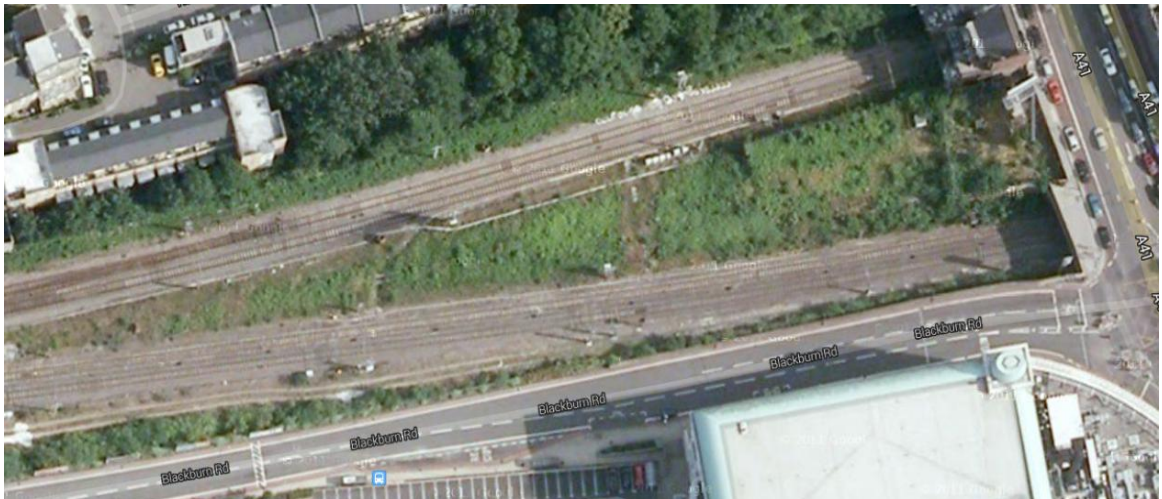


Figure One – Aerial Photograph of Site

2.7 **Figure Two** below shows the view of the surroundings buildings from Blackburn Road, which runs parallel with the site. The large O2 Centre is shown on the right, and the seven storey hotel is opposite.



**Figure Two - Existing O2 Centre, Finchley Road**

## Planning History

2.8 The table below details the relevant planning history available on the Council's website.

Application Reference	Site Address	Description of Development	Status
PWX0002163	Land at Midland Crescent	Erection of a basement plus four storey building, with retail (Class A1) and food & drink (Class A3) uses on the front part of the ground floor and office use (Class B1a) in the basement, part ground floor and three upper floors.	Granted Subject to a Section 106 Legal Agreement 25-10-2005
2008/4958/P	Land at Midland Crescent	Details of reserved matters, including siting, design, external appearance, means of access and landscaping, pursuant to the outline planning permission granted on 25th October 2005 (ref: PWX0002163) for the "Erection of a basement plus four storey building, with retail (Class A1) and food & drink (Class A3) uses on the front part of the ground floor and office. use (Class B1a) in the basement, part ground floor and three upper floors.	Granted 02-01-2009
2013/0880/P	Land at Midland Crescent	Redevelopment of the site by the erection of a four/five storey building, including double basement and communal balcony at fourth floor level to provide 138 student units (Class Sui Generis) and 1,240 square metres of flexible commercial space (Classes A1/A2/A3/A4/B1/D1 & D2).	Refused 4 June 2013
2013/2564/P	Land at Midland Crescent	Erection of a part-4 and part-5 storey building with a double level basement comprising flexible commercial space (Use Classes A1/A2/A3/A4/B1/D1 & D2) at lower basement and ground floor levels, 116 student bedrooms with communal kitchen, lounge and common room areas at upper basement to fourth floor levels and an outdoor communal balcony at fourth floor level.	Refused 31 July 2013
2013/4575/P	Land at Midland Crescent	Redevelopment of the site by the erection of a part 3, part 4 and part 5 storey building with a double level basement comprising flexible commercial space (Use Classes A1/A2/A3//A4/B1/D1 & D2) at lower basement and ground floor levels, 92 student bedrooms with communal kitchen, lounge and common room areas, and 9 residential dwellings (Class C3).	Refused 17 October 2013

## **Background**

- 2.9 Further information in relation to the applications proposed at the site is enclosed within **Appendix Two**.
- 2.10 Further to this, **Appendix Five** provides a summary note issued to the Council in July 2013, which details all of the student led schemes submitted on the site.
- 2.11 Please note, detailed information in relation to the public consultation undertaken to date is covered within the Statement of Community Involvement prepared by Quatro, submitted with the original application.

## **Reasons for Refusal**

- 2.12 The reasons for refusal are set out in full on the decision notice attached in **Appendix One**.

### 3. Appeal Proposals

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3.1 The full appeal proposals are set out within section four of the Design and Access Statement submitted as part of the application.

3.2 The description of development is as follows:

*“Redevelopment of the site by the erection of a part 3, part 4 and part 5 storey building with a double level basement comprising flexible commercial space (Use Classes A1/A2/A3//A4/B1/D1 & D2) at lower basement and ground floor levels, 92 student bedrooms with communal kitchen, lounge and common room areas, and 9 residential dwellings (Class C3).”*

3.3 The development will provide 92 student rooms, which all meet the required space and accessibility standards. 176 sq m of amenity space is also provided, with 83 cycle spaces.

3.4 Nine residential units are proposed at the front of the site on Finchley Road. All of which meet the required space and accessibility standards. 84 sq m of private amenity space is also provided, with 14 cycle spaces for use by the residents.

3.5 808 sq m of flexible commercial space is proposed as per the uses stated above.



## 4. Planning Policy

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- 4.1 A detailed list of planning policy is set out within section six of the planning statement submitted as part of the original application, and should be read in conjunction with this section of this statement.

### **National Planning Policy Framework (2012) (NPPF)**

- 4.2 The NPPF advises that the presumption in favour of sustainable development “*is the basis for every plan, and every decision*” (Foreword). At para 187, it goes on to say that “*decision-takers at every level should seek to approve applications for sustainable development where possible*”.
- 4.3 Para 14 says that, “*where the development plan is absent, silent or relevant policies are out of date, [permission should be granted] unless: \* any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or \* specific policies in this Framework indicate development should be restricted.*” (my emphasis).
- 4.4 Para 17 says that Planning should “*encourage the effective use of land...drive and support sustainable economic development*”, and para 19 goes further, and says the system should do “*everything it can*” to support sustainable economic growth, and that economic growth should be given “*significant weight*” (my emphasis).
- 4.5 The re-use of brownfield land is encouraged (para 17), and great emphasis is placed on the delivery of housing. In particular, para 49 says that a development plan policy will not be considered up-to-date if there is not a demonstrable 5 year supply of housing land.
- 4.6 Paras 59 and 60 make it clear that local planning authorities should not be over-prescriptive about design, though para 60 supports local distinctiveness. Para 65 says that permission should not be refused for buildings which are incompatible with the existing townscape, provided concerns “*have been mitigated by good design*” and there is no impact on designated heritage assets.
- 4.7 Paragraph 173 makes clear that it is important that development proposals are not rendered unviable by excessive obligations and policy burdens.

## The London Plan (2011)

- 4.8 The most recent version of the London Plan was published in its final form in July 2011.
- 4.9 Paragraph 3.1 emphasises the importance of meeting the requirements of all Londoners – *“residents, workers, visitors, and students”*.
- 4.10 Policy 3.3 of the London Plan refers to the pressing need for more homes in London and explains that the Mayor will seek to ensure that "at least" 32,210 net additional homes are provided each year, 2011-2021.
- 4.11 The boroughs are encouraged by Policy 3.3 *“to realise brownfield housing capacity”* through, inter alia, intensification, town centre renewal and mixed use redevelopment.
- 4.12 Camden's target is spelled out in Table 3.1, as an average of 665 homes per annum.
- 4.13 Policy 3.4 provides that "development should optimise housing output" and refers to a series of density ranges set out in Table 3.2. The range relevant to the appeal site is 200-700 habitable rooms per hectare, as I shall explain later.
- 4.14 Policy 3.5 seeks to achieve housing development of the highest quality, and explains this in some detail. In particular, it refers to the minimum space standards set out in Table 3.3.
- 4.15 Policy 3.8 deals with housing choice. Sub paragraph (h) acknowledges that *“strategic and local requirements for student housing meeting a demonstrable need”* is a legitimate component of housing provision. Policy 3.9 addresses mixed and balanced communities, and seeks to ensure an appropriate tenure mix, taking into account the characteristics of the neighbourhood.
- 4.16 Policy 3.52 makes two important points. First, that:
- “London's universities make a significant contribution to its economy and labour market”*
- And;
- “It is important that their attractiveness and potential growth are not compromised by inadequate provision for new student accommodation”*.
- 4.17 Secondly, it is acknowledged that new student housing provision:

*"may tend to reduce pressure on other elements of the housing stock currently occupied by students, especially in the private rented sector"*

4.18 Para 3.53 acknowledges that there can be conflict between the need to provide for more purpose-built student accommodation; the need to provide *"conventional dwellings, especially affordable family homes"*; and the desirability of securing mixed and balanced communities. No solution is proffered, though the paragraph goes on to indicate that there is merit in identifying land particularly suitable for student accommodation.

4.19 Later, paragraph 3.107 expands upon the importance to London of the higher education sector, and explains that the Mayor will support endeavours *"to plan future developments, including student accommodation ... in locations with good public transport access"*.

4.20 Table A1.2 of the London Plan refers to the 'West Hampstead Interchange Intensification Area' which the appeal site falls within. The area is defined as:

*"A significant inner London transport interchange with potential to improve connections between rail, underground and bus and to secure an uplift in development capacity through intensification"*.

4.21 The London Plan also indicated an indicative employment capacity of 100 new jobs and a minimum of 800 new homes to be delivered in the area between 2011 and 2031.

### **GLA Housing SPG (2012)**

4.22 The GLA Housing SPG was published in November 2012 and provides guidance on how to implement the housing policies in the London Plan (2011).

4.23 Even It notes that there is a need for more specialist accommodation to cater for the growing numbers of students (paragraph 3.1.7). It goes on to state London's higher education sector is an:

*"important part of London's offer as a world city" and that "specialist student accommodation makes an essential contribution to the attractiveness of London as an academic centre of excellence"*.

- 4.24 Paragraph 3.1.61 goes to state that, when considering proposals for new student accommodation, *“boroughs should not constrain provision which meets strategic as well as local needs”*.

### **LBC Core Strategy (2010)**

- 4.25 The site falls within the ‘Growth Area – West Hampstead’, and the east end of the site within a ‘Town Centre’, but it is not otherwise allocated or affected by specific Core Strategy designations.
- 4.26 Policy CS1 (Distribution of Growth) seeks a concentration of development in the growth area of West Hampstead Interchange, appropriate development at highly accessible locations particularly Finchley Road, 12,250 additional homes, and making the best use of Camden’s limited land.
- 4.27 Policy CS2 (Growth Areas) relates to development in the West Hampstead Interchange where, a minimum of 2,500 new homes and 500 new jobs are expected to be provided between 2001 and 2026. The Council therefore;

*“...expect development in the growth areas to:*

- d) maximise site opportunities;*
- e) provide appropriate links to, and benefits for, surrounding areas and communities; and*
- f) be in accordance with the Council’s aspirations and objectives for that area, as set out below.”*

- 4.28 Policy CS5 (Managing the impact of growth and development) seeks to provide high quality, sustainable development to support Camden’s population; ensure that their occupiers and neighbours are fully considered; and provide mitigation measures where necessary.
- 4.29 Policy CS6 (Providing quality homes) relates to a number of different forms of housing including student, and residential accommodation. The policy reiterates Camden’s housing target of 5,950 homes from 2007 – 2017, and part c) states that the Council will:

*“c) supporting the supply of additional student housing,...”*

- 4.30 Further to this, paragraph 6.13 of the supporting text states:

*“Over the period 2010-25, we anticipate that student housing will make up most of Camden’s supply of homes that are not self-contained. Our 15-year target is 1,500 nonself contained homes.”*

- 4.31 Policy CS7 (Promoting Camden’s centres and shops) encourages retail development as part of a redevelopment scheme in the growth area of West Hampstead Interchange. It also seeks to protect and enhance existing centres. In relation to Finchley Road/Swiss Cottage centres the Council will promote enhancements to the local environment.
- 4.32 Policy CS11 (Promoting sustainable and efficient travel) seeks to improve strategic transport infrastructure to support growth, promote car-free developments, and support provision of cycle facilities.
- 4.33 Policy CS13 (Tackling climate change through promoting higher environmental standards) seeks to reduce the effects of climate change by requiring developments to take mitigation measures.
- 4.34 Policy CS14 (Promoting high quality places and conserving our heritage) seeks to ensure that all development is of the highest standard of design that respects local context and character, preserves sensitive settings, and promotes high quality landscaping, and access.
- 4.35 Policy CS15 (Protecting and improving our parks and open spaces and encouraging biodiversity) amongst other things, this policy seeks to protect and improve sites of nature conservation and biodiversity by seeking to improve experiences to nature
- 4.36 Policy CS16 (Improving Camden’s health and well-being) seeks to reduce air pollution levels, health inequalities, and contaminated land.
- 4.37 Policy CS17 (Making Camden a safer place) seeks to tackle crime, encourage security and safety measures, require high quality design in new developments, and address the impact of food and drink establishments.
- 4.38 Policy CS18 (Dealing with our waste and encouraging recycling) seeks to increase recycling of materials by 45% by 2015, and 50% by 2020; and ensure developments include facilities for the storage and collection of waste and recycling.

### **Camden’s Development Policies 2010**

- 4.39 Policy DP1 (Mixed use development) in relation to Finchley Road town centre states:

*“...where more than 200 sq m (gross) additional floorspace is provided, we will require up to 50% of all additional floorspace to be housing.”*

And

*“The Council will require any secondary uses to be provided on site, particularly where 1,000sqm (gross) of additional floorspace or more is proposed.”*

4.40 Policy DP9 (Student housing, bedsits and other housing with shared facilities) says that the Council will support student housing providing that the development:

- “a) will not involve the loss of permanent self-contained homes;*
- b) will not prejudice the supply of land for self-contained homes, or the Council's ability to meet the annual target of 437 additional self-contained homes per year;*
- c) does not involve the loss of sites or parts-of-sites considered particularly suitable for affordable housing or housing for older people or for vulnerable people, particularly sites identified for such provision in our Camden Site Allocations Local Development Framework document;*
- d) complies with any relevant standards for houses in multiple occupation (HMOs);*
- e) will be accessible to public transport, workplaces, shops, services, and community facilities;*
- f) contributes to creating a mixed and inclusive community, and*
- g) does not create an over-concentration of such a use in the local area or cause harm to residential amenity or the surrounding area.*

*Student housing development should:*

- h) serve higher education institutions based in Camden or adjoining boroughs;*
- i) be located where it is accessible to the institutions it will serve; and*
- j) include a range of flat layouts including flats with shared facilities.”*

4.41 Policy DP12 (Supporting strong centres and managing the impact of food, drink, entertainment and other town centre uses) says that the Council will ensure that town centre uses will not cause harm to the character, function, vitality, and viability of a centre, the local area or the amenity of neighbours. Further to this it states that the Council will, in appropriate cases use planning conditions to address the following issues:

- “h) hours of operation;*
- i) noise / vibration, fumes and the siting of plant and machinery;*

- j) the storage and disposal of refuse and customer litter;*
- k) tables and chairs outside of premises;*
- l) community safety;*
- m) the expansion of the customer area into ancillary areas such as basements;*
- n) the ability to change the use of premises from one food and drink use or one entertainment use to another (within Use Classes A3, A4, A5 and D2);*
- o) the use of local management agreements to ensure that the vicinity of premises are managed responsibly to minimise impact on the surrounding area.”*

- 4.42 Policy DP15 (Community and leisure uses) says that the Council will expect developments that result in any additional need for community or leisure facilities to contribute towards supporting existing facilities or providing new facilities; and make suitable rooms available for groups to hire at a discount rate.
- 4.43 Policy DP16 (The transport implications of development) says that the Council will seek to ensure that development is properly integrated with the transport network.
- 4.44 Policy DP17 (Walking, cycling, and public transport) promotes walking, cycling, and public transport use, as well as developments that make suitable provision for these methods of transport where appropriate.
- 4.45 Policy DP18 (Parking standards and limiting the availability of car parking) in relation Finchley Road town centre it says that the Council will expect developments to be car-free; developments are also expected to meet the Council’s minimum standards for cycle parking.
- 4.46 Policy DP20 (Movement of goods and materials) seeks to minimise the movement and impact of the movement of goods and material by road through efficient freight movement, and use of rail, cycle, and water facilities.
- 4.47 Policy DP21 (Development connecting to the highway network) requires developments connecting to the highway network to ensure the use of the most appropriate roads.
- 4.48 Policy DP22 (Promoting sustainable design and construction) requires development to incorporate sustainable design and construction measures by:

*“c) expecting new build housing to meet Code for Sustainable Homes Level 3 by 2010 and Code Level 4 by 2013 and encouraging Code Level 6 (zero carbon) by 2016.*

*d) expecting developments (except new build) of 500 sq m of residential floorspace or above or 5 or more dwellings to achieve “very good” in EcoHomes assessments prior to 2013 and encouraging “excellent” from 2013;*

*e) expecting non-domestic developments of 500sqm of floorspace or above to achieve “very good” in BREEAM assessments and “excellent” from 2016 and encouraging zero carbon from 2019.”*

- 4.49 Further to this the policy says that the Council require development to be resilient to climate change by ensuring schemes include appropriate adaption measures such as:

*“f) summer shading and planting;*

*g) limiting run-off;*

*h) reducing water consumption;*

*i) reducing air pollution; and*

*j) not locating vulnerable uses in basements in flood-prone areas.”*

- 4.50 Policy DP24 (Securing high quality design) requires all developments to be of the highest standard of design, and expect developments to consider:

*“b) the character and proportions of the existing building, where alterations and extensions are proposed;*

*c) the quality of materials to be used;*

*d) the provision of visually interesting frontages at street level;*

*e) the appropriate location for building services equipment;*

*f) existing natural features, such as topography and trees;*

*g) the provision of appropriate hard and soft landscaping including boundary treatments;*

*h) the provision of appropriate amenity space; and*

*i) accessibility.”*

- 4.51 Policy DP26 (Managing the impact of development on occupiers and neighbours) says that the Council will protect the quality of life of occupiers and neighbours by only granting permission for development that does not cause harm to amenity. The factors that will be considered include:

*“b) overshadowing and outlook;*

*c) sunlight, daylight and artificial light levels;*

*d) noise and vibration levels;*

*e) odour, fumes and dust;*



f) *microclimate;*

g) *the inclusion of appropriate attenuation measures.*

*We will also require developments to provide:*

h) *an acceptable standard of accommodation in terms of internal arrangements, dwelling and room sizes and amenity space;*

i) *facilities for the storage, recycling and disposal of waste;*

j) *facilities for bicycle storage; and*

k) *outdoor space for private or communal amenity space, wherever practical.”*

4.52 Further to this the policy says that development should avoid harmful effects on the amenity of existing and future occupiers and to nearby properties.

4.53 Policy DP27 (Basements and lightwells) requires an assessment of the schemes impact on drainage, flooding, ground water conditions and structural stability where appropriate. It will need to be demonstrated that the underground development does not cause harm to the built and natural environment.

4.54 Policy DP28 (Noise and vibration) seeks to ensure that noise and vibration is controlled and managed. Development will not be granted if development generates noise pollution, or exceeds the relevant Noise and Vibration Thresholds. It states that the Council will seek to minimise the impact on local amenity from the demolition and construction phases of development, and where necessary conditions and planning obligations may be used.

4.55 Policy DP29 (Improving access) promotes ‘fair access’ and removal of barriers preventing access to facilities and opportunities.

4.56 Policy DP31 (Provision of, and improvements to, public open space and outdoor sport and recreation facilities) seeks to ensure the quantity of open space and outdoor sport and recreation facilities in Camden are increased.

4.57 Policy DP32 (Air quality and Camden’s clear zone) requires air quality assessments where development could potentially cause significant harm to air quality. Further to this it states:

*“The Council will also only grant planning permission for development in the Clear Zone region that significantly increases travel demand where it considers that appropriate measures to minimise the transport impact of development are incorporated. We will use planning conditions and legal agreements to secure Clear Zone measures to avoid, remedy or mitigate the impacts of development schemes in the Central London Area.”*

## Camden's Development Policies 2010

4.58 The Local Development Framework is accompanied by the 'Camden Planning Guidance' (CPG) which is a material planning consideration. The following CPG'S are considered relevant:

- CPG 1 Design (adopted April 2011);
- CPG 2 Housing (April 2011);
- CPG 3 Sustainability (April 2011);
- CPG 4 Basements and Lightwells (September 2013);
- CPG 5 Town Centres, Retail and Employment (September 2011);
- CPG 6 Amenity (September 2011);
- CPG 7 Transport (September 2011); and
- CPG 8 Planning Obligations (September 2011).

## Fortune Green & West Hampstead Neighbourhood Development Plan

4.65 In 2012 a Neighbourhood Development Forum (NDF) for Fortune Green and West Hampstead was established, with the purpose of drawing up a Neighbourhood Development Plan. The forum was recognised by Camden Council in May 2013. At the time of writing this statement, the plan was on its sixth draft which was published in September 2013. A final draft is expected before the end of 2013 or early 2014 with a referendum on the plan expected during the second half of 2014. This document is still at draft stage, with adoption not likely to take place until the latter part of next year at the earliest. However, from our review, it appears to be consistent with the aspirations of the development plan and assuming this remains the case a reasonable degree of weight can be attached to it.

4.66 Within the introduction to the NDF, it recognises that it has been developed to be in accordance with the NPPF, the London Plan and the Core Strategy. Crucially it notes in section 1.2 that it has been produced in accordance with the NPPF's requirement for the '*presumption in favour of sustainable development*'.

4.67 Due to the fact that the NDF has only recently been formally recognised by the Council it was not referenced and considered within the application documents. I have therefore briefly summarised the key points arising insofar as they are relevant to this appeal.

- 4.68 In respect of housing, the NDF vision outlined in section 3.2 is for the area to provide a range of housing and housing types, noting that the focus for such new development will be in the West Hampstead Growth Area.
- 4.69 In respect of design and conservation, the NDF notes that development needs to be of high quality that should fit with the existing 'styles' of the area. It goes onto note that new buildings shall fit in with the rooflines of existing buildings in the vicinity and will preserve the distinct character and appearance of the area. Further commentary on appropriate heights is provided in paragraph A4 of section 4 which notes that existing building heights are predominantly up to six storeys and that development higher than this will result in damage to the character of the area.
- 4.70 Paragraph A3 of section 4 states that proposals for larger developments need to reflect new design as well as reflecting the character of existing development.
- 4.71 In respect of the economy the NDF notes that new development should promote and support a successful local economy, with '*thriving town and neighbourhood centres*'. It goes onto note that development should protect existing jobs, as well as providing new jobs and new business through the provision of flexible space, particularly for small and micro-businesses.
- 4.72 Paragraph A14, of section 4 comments on student housing and notes that the Midland Crescent site, along with the already approved scheme at Blackburn Road will provide the area with nearly 500 student units. The NDF notes that there are not any local higher educational institutions in the defined area and therefore states that any '*additional*' [my emphasis] student housing schemes are not considered to be a priority.
- 4.73 Map 3 within the NDF identifies the Midland Crescent site as a potential development site that will contribute to the policy requirements of the West Hampstead Growth Area. The NDF goes on to identify the site as making a contribution towards the housing and job targets for the area within the text box on page 12.

## 5. Background to the Appeal Proposals

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5.1 The National Planning Policy Framework sets out the requirements for decision takers in assessing planning applications. Crucially paragraphs 186 and 187 require Planning Authorities to approach decision making in a positive way and require decision takers at every level to seek to approve applications for sustainable development wherever possible.

5.2 Paragraphs 196 to 197 of the NPPF set out how decision makers must approach applications which is as follows:

*“196. The planning system is plan-led. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. This Framework is a material consideration in planning decisions.*

*197. In assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development.”*

### Local Plan Engagement

5.3 This appeal has been subject to a significant amount of recent history, which in accordance with the spirit of the paragraphs of the NPPF started off with a plan led approach. Our client started the promotion of this site for development by engaging through the consultation process with the Council’s Core Strategy. This site was initially proposed to be designated for Site of Nature Conservation Importance by the Council. However, representations were prepared and submitted on behalf of our client which identified that this site had little value as Open Space, with the Planning Inspector noting:

*“.....the integrity of much of the site as a wildlife reserve seems to me to be fragile in view of the maintenance requirements of Network Rail that require frequent cutting back of vegetation. A recent Ecological Survey undertaken by Capita Symonds concludes that the site has low ecological value and limited potential to support protected species.”*

5.4 Paragraphs 3.83 to 3.85 of the Inspector’s Report into the Core Strategy (attached at **Appendix Three**) set out the Inspector’s full assessment of the site. The adoption of the Core Strategy left the site without any site specific designation with only the wider area

policies, the Growth Area designation of particular relevance, identified in section four of this statement applying.

5.5 The review and recognition of the sites limited value as open space and the Inspector not endorsing the Council's proposed designation means that the policies that apply to the site fully support its development potential for the following reasons:

- The site is a brownfield 'gap site' within an urban area and would therefore benefit from development with a building addressing the street frontage;
- In 2005 a significant development of four storeys was previously granted permission on the Finchley Road part of the site;
- The site benefits from the highest PTAL rating of 6a and within a designated town centre (West Hampstead/ Swiss Cottage) and is therefore a highly sustainable location, benefitting from excellent public transport links as well as a range of local amenities;
- This site is designated as falling within the West Hampstead Growth Area, with Policy CS2 d) of the Core Strategy seeking to 'maximise the potential' of development sites. The areas potential for intensification is also identified by the London Plans; and
- The site is not within a particularly sensitive location in terms of heritage assets, in an unremarkable area in terms of townscape and, in my opinion, the current undeveloped condition of the site detracts from the area.

5.6 We note that within the Inspector's Report, the Inspector makes the following comment in relation to the removal of the designation for the Site of nature Conservation Importance:

*"This does not signal any endorsement for development of the land but rather encourages a more realistic view of its future role."*

5.7 The Examination of the Core Strategy took place in January 2010 under a different national policy framework and over two years prior to the adoption of the NPPF and the introduction of the '*presumption in favour of sustainable development*'. The NPPF is a material consideration and should therefore be given full weight in the assessment of the application. By applying the NPPF principles, this site is ripe for high quality, sustainable development that maximises the opportunity that it presents.

## Consultation

- 5.8 In parallel with our clients representations to the Core Strategy, promotion of the site for development has also been ongoing through engagement with other stakeholders. **Appendix Two** sets out a chronology of the consultation undertaken with local resident's, interest groups, Ward Councillors and Council officers. Full details of the consultation and a summary of the issues arising is set out within the Statement of Community Involvement that accompanies the planning application. The site benefits, unusually for such a location, from having limited impact on nearby residential properties. There are a limited number of residential properties within the upper floors of the terraces fronting Finchley Road to the north of the site.
- 5.9 As set out within the Statement of Community Involvement, all of the main interest groups that the proposals were discussed with support/ recognise the sites potential for development. The sites further development potential is further recognised within the emerging NDF, signalling an endorsement from the NDF. Various comments and concerns were expressed about specific aspects of the proposals such as mix and type of landuse, height, design and amenity impacts. The applications that have been submitted to the Council for this site have sought to take on board all of the comments arising from the various forms of consultation. Where the applications have not been able to take on board residents comments the application documents have sought to provide justification. A specific example of this is in relation to the sites ability to more fully incorporate traditional residential units (C3 use class), which is discussed in section 7 of this statement.
- 5.10 The significant amount of pre-application consultation for this site has been exceptionally useful and very effective. Taking on board the comments received prior to submitting the application has minimised the number of objections to the proposals with only four having been received in respect of this scheme. For a major scheme in this prominent/ important location, this number of objections is clearly very low. A summary of the issues/ concerns were raised by the objections in relation to this application, which are addressed in further detail in section six and seven of this statement:
- Noise and anti social behaviour issues associated with the student use;
  - Impact on neighbouring amenity in terms of daylight/ sunlight/ air and overlooking;
  - Height; and
  - Construction and environmental issues.

5.11 We therefore consider that the public consultation undertaken for this site has been highly effective in engaging with interest groups and local stakeholders. By incorporating comments received where practical and possible this has led to minimal adverse comments from local residents at the application stage.

## 6. Reasons for Refusal

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6.1 We now address all of the reasons for refusal as listed on the decision notice, these are considered in separate sections under the following headings:

- Reason One - Design;
- Reason Two – Outlook;
- Reason Three – Overshadowing; and
- Reasons Four to 15 – Legal Agreement.

6.2 In addition to this Hearing Statement separate Hearing Statements have been submitted by Mr Gough of scheme architects CZWG, to address reasons for refusal one and two, and by Mr Ellis of Capita to address reason for refusal three.

6.3 All other issues have been considered within the planning application submission, and accepted by the Council. Details of these will be set out within the Statement of Common Ground.

### **Reason One - Design**

6.4 A separate Hearing Statement has been submitted by Mr Gough, scheme architect from CZWG to address reason for refusal one.

6.5 We provide our comments on this reason for refusal below.

6.6 The Council have identified policies CS2, CS5, CS14 and DP24 of it's Core Strategy within this reason for refusal, which are provided in full within **Appendix Four**. In summary, the thrust of these policies is as follows:

- To maximise site opportunities to meet the need for new homes and jobs within the West Hampstead Interchange Growth Area;
- To provide high quality design that supports the developments future occupants and its neighbours; and
- Securing high quality design that respects its context, character, preserves sensitive settings, and promotes high quality landscaping and access.



6.7 It is our view that the proposed scheme is fully in accordance with the policies identified in this reason for refusal for the following reasons:

- The site is unallocated and therefore presents a 'windfall' opportunity for LBC to help meet identified and undisputed need for student, residential (C3), commercial and business floorspace;
- The scheme has been designed to accord with all required internal design standards, as set out in the Statement of Common Ground; and
- The scheme is designed by an award winning design practice, CZWG, responding to challenging site constraints using an innovative design approach and high quality materials. The proposal is respectful of its surroundings and it is my view that the scheme will significantly enhance the site and local context.

6.8 We agree with Mr Gough's assessment and consider the resulting arrangement would provide a development to help meet a defined need for housing (student and traditional housing), and commercial floorspace in an appropriate location.

6.9 Whilst we acknowledge that there may be opinions in relation to design, we would suggest that Mr Gough's vast experience and award winning architecture would provide an interesting and innovative building on a difficult, underutilised site.

6.10 For the reasons set out above, we therefore do not consider the proposal to be contrary to the policies identified.

## **Reason Two - Outlook**

6.11 A separate Hearing Statement has been submitted by Mr Gough, the scheme architect from CZWG to address reason for refusal two.

6.12 We provide comments on this reason for refusal below.

6.13 The Council have stated within reason for refusal two that the proposal is contrary to planning policy CS5 and DP26 of the Core Strategy, and Development Policies 2010, which are provided in full within **Appendix Four**. In summary, the thrust of these policies is as follows:

- Policy CS5 seeks to manage the impact of growth and development. In particular we understand that the Council specifically refer to part e) of this policy, which seeks to make sure that the impact of developments on their occupiers and neighbours is fully considered; and
- Policy DP26 seeks to protect the quality of life of occupiers and neighbours by only granting permission for development that does not cause harm to amenity.

6.14 It is our view that the proposed scheme is fully in accordance with the policies identified in this reason for refusal for the following reasons:

- The proposed development is located with a designated growth area, and has a PTAL level of 6a;
- The development proposals make efficient use of otherwise redundant land, and provide uses which will benefit the borough and residents of the borough;
- In relation to Policy DP26 the proposal will satisfy the following policy requirements, outlook; daylight and sunlight; noise and vibration; odour, fumes and dust; microclimate; attenuation measures; standard of accommodation and amenity space; storage and waste disposal; bike storage; and outdoor private or communal amenity space; and
- The development proposals provide a good standard of internal and external living accommodation, with good levels of daylight and sunlight and access to amenity space.

6.15 The sense of enclosure from the rear of the properties on Finchley Road is discussed in detail in Mr Gough's statement. In summary he notes the following:

- The residents currently enjoy an unusually open outlook;
- Even with the proposed building in place an open outlook would still be achieved;
- The lowest level of residential accommodation within the Finchley Road terrace is at first floor, which means that the height of the proposed building will only read as being a maximum of three to four storeys higher; and

- The relationship is exactly the same as would be experienced by an occupant of a corner unit within any perimeter block development.

6.16 We agree with Mr Gough's assessment and consider the resulting arrangement would be typical of many urban situations.

6.17 Whilst we acknowledge that there would be some reduction in outlook experienced by occupants in neighbouring properties, they would still enjoy an unusually high level in this context.

6.18 For the reasons set out above, we therefore do not consider the proposal to be contrary to the policies identified.

### **Reason Three - Overshadowing**

6.19 A separate Hearing Statement has been submitted by Mr Ellis of Capita which responds to reason for refusal three. Reason three states that the proposal is contrary to Policy CS15 of the Core Strategy 2010, set out in full in **Appendix Four**.

6.20 Policy CS15 seeks to protect parks and open spaces, and more specifically to this case the protection of open spaces which include designated conservation sites.

6.21 It is my view that the proposed scheme is fully in accordance with policy CS5 identified in this reason for refusal for the following reasons:

- The proposed development will have no direct impacts on the designated Site of Nature Conservation Importance (SNCI), as confirmed in Mr Ellis' statement;
- Suitable management mitigation measures are proposed in order to enhance longevity and biodiversity at the SNCI, and to justify any indirect impacts created; and
- No loss of trees is anticipated.

6.22 We agree with Mr Ellis' assessment, and consider the resulting arrangement would be unlikely to impose significant impacts on the SNCI.

6.23 Whilst we acknowledge that there may be a small level of impact, we agree with Mr Ellis that, the wider benefits resulting from the proposed management/enhancement, would be significantly more beneficial for the SNCI.

6.24 For the reasons set out above, we therefore do not consider the proposal to be contrary to the policies identified.

### **Reasons Four to 15 – Legal Agreement**

6.25 All of the following reasons for refusal relate to the absence of a legal agreement. A Section 106 (s.106) is being provided in support of the appeal scheme. Each reason for refusal is addressed below.

6.26 **Reason 4** – An affordable housing financial contribution is required. Further discussions are taking place between the appellant and Council in relation to this, and the matter will be clarified within the Statement of Common Ground (SOCG), and agreed s.106.

6.27 **Reason 5** – A Construction Management Plan was produced by MAH Project Management (July 2013 Revision B) and submitted as part of the planning application. This will be secured through the agreed s.106.

6.28 **Reason 6** – A pedestrian and environmental improvement contribution of £15,100 has been calculated. A suitable contribution will be secured through the agreed s.106.

6.29 **Reason 7** – The Council support the car-free proposals, and in paragraph 7.19 of the delegated report it states:

*“The proposal would provide a car free development and the applicant is willing to enter into a car free agreement which is welcomed by the Council and TfL. The car parking proposals comply with CS11 and DP18 and are therefore acceptable.”*

6.30 This will be secured through the agreed s.106.

6.31 **Reason 8** – It is agreed between the Council and Appellant that a Delivery and Servicing Management Plan would be undertaken, and secured by the s.106. This is detailed within paragraph 9.9 of the Transport Assessment (June 2013) prepared by Tim Spencer & Co, and submitted as part of the original application.

6.32 **Reason 9** – a Student Management Plan was produced by CRM Students Student Accommodation Management (Spring 2013), and submitted as part of the planning application. In order to satisfy the Council’s reason for refusal this will be secured through the s.106.

6.33 **Reason 10** – A draft Travel Plan was produced by Tim Spencer Associates & Co, and submitted with the planning application. Paragraph 5.21 of the Transport Assessment states:

*“A draft, site specific, full Travel Plan has been developed for the development with the aim of promoting sustainable modes of travel and reducing reliance on the private car. This draft full Travel Plan is being submitted as a separate appended document alongside this Transport Assessment. Assuming planning permission is granted, the Section 106 agreement will require that a formal version of this document is submitted for approval.”*

6.34 The required travel plan will be secured through the s.106.

6.35 **Reason 11** – A public open space financial contribution of £70,840 has been calculated by the Council. This is being discussed, and will be secured through the s.106.

6.36 **Reason 12** – A community facility financial contribution of £90,160 has been calculated by the Council. This is being discussed, and will be secured through the s.106.

6.37 **Reason 13** – The s.106 proposes to address this reason by securing that:

*“no part of the student housing element of the development is to be sold as a separate self-contained unit, and the occupation of the student units should be restricted to students registered at higher education institutions that are based in Camden or adjoining boroughs, and supported by the Higher Education Funding Council for England.”*

6.38 This matter will be clarified and secured through the s.106.

6.39 **Reason 14** – An educational infrastructure financial contribution of £23,709 has been calculated by the Council. This is being discussed, and will be secured through the s.106.

6.40 **Reason 15** – The requirements of paragraph 8.19 of CPG8 (Local Procurement Code) is being discussed, and will be secured through the s.106.

## 7. Other Planning Issues

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7.1 As set out above, the NPPF requires the following:

*“The planning system is plan-led. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. This Framework is a material consideration in planning decisions.”*

7.2 The decision taker when assessing applications must therefore consider the acceptability of applications against the development plan as a whole. In the preceding section of this statement we have addressed the reasons for refusal. Below we have briefly commented on other key planning issues in the context of planning policy that need to be taken into consideration with this proposal. The decision maker must therefore look at all associated planning issues.

7.3 We deal with the following issues below in turn:

- 1) Approach to development in this location;
- 2) Landuse – residential, student, employment and commercial;
- 3) Economic benefit;
- 4) Transport/ parking/ servicing;
- 5) Quality of proposed accommodation;
- 6) Sustainability and energy; and
- 7) Air quality.

### **Approach to development in this location**

7.4 As identified above, this site is within a Growth Area designated by both the London Plan and the Core Strategy. It is therefore important to understand how decision takers have interpreted this designation. In section 2.1 and 2.2 of the Officer’s Report they state:

*“...the Council will expect development in growth areas to maximise site opportunities....this includes the redevelopment of under-utilised sites, particularly along the railway lines.”* and

*“In light of the above and given the history on the application the principle of redeveloping the site is considered acceptable.....”*

## **Landuse**

- 7.5 The application proposes residential (C3 use class), student (recognised by the London Plan as a type of residential accommodation), employment and commercial uses. All of the proposed landuses are considered to be acceptable in this location and supported by the site benefitting from being within the West Hampstead Growth Area. The Council have confirmed that the proposed uses are acceptable in principle as set out in Section two of the Officer's Report.

## **Economic Benefit**

- 7.6 The application proposals will provide a significant amount of economic benefits in a number of ways, including:

- Financial contributions forming part of the s106 of over £199,129;
- New Homes Bonus equalling approximately £772,000 per annum over 6 years (total of £4,632,000);
- 808 sq m of Community/Commercial floorspace;
- Up to approximately 125 employment opportunities within the borough;
- Construction jobs;
- Management jobs (student/ cleaning/ management); and
- An increase in Wealth Generation by approximately £971,000 per annum.

- 7.7 The above level of economic benefit is significant and, is fully in accordance with the requirements of part 7 of the NPPF which identifies the importance of the planning system's function in providing an economic role. Specifically it states:

*‘an economic role – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure.’*

## **Parking and Servicing**

### *Parking*

- 7.8 A number of concerns were expressed by residents during the consultation of the application in respect of the developments impact on the local transport network and the impact on already stressed parking provision. It is proposed that the development is car free and the Council confirms within the officer's report in section 7.19 that this is acceptable.
- 7.9 In respect of cycle parking, the scheme provides 83 spaces for the student accommodation and 14 for the residential accommodation in excess of the Council's standards. Paragraph 7.22 of the officers report confirms the level of provision exceeds the required standard and is acceptable.

### *Servicing*

- 7.10 In respect of servicing it is proposed that this will be undertaken from the loading bay adjacent to the Finchley Road frontage with approximately 3 trips per day. Paragraph 7.6 of the officers report does not raise any concerns with this approach and notes that a condition could be used to secure an appropriate delivery and servicing plan.

## **Quality of Proposed Accommodation**

- 7.11 The Council's policies require that the proposed accommodation be built to Lifetime Homes standards and that 10% of the student bedrooms be adaptable to accommodate wheelchair users. The proposal achieves these standards as noted in paragraphs 13.2 and 13.3 of the officers report.
- 7.12 In respect of the commercial elements full access to all areas is provided and in 13.4 of the officers report it is noted that a condition would be used to secure this.

## **Sustainability and Energy**

- 7.13 The sustainability strategy for the site comprises the following:
- Green roofs at 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> floor level;
  - A 'green wall' onto the north elevation;
  - BREEAM 'Excellent' rating for the student and commercial areas;



- Code for Sustainable Homes level 4;
- Provision of photovoltaic's and solar thermal technology.

7.14 This sustainability strategy would result in a reduction of carbon emissions of 34.3% and paragraph 10.4 of the officers report confirms this is in accordance with policy CS13 of the Core Strategy.

### **Air Quality**

7.15 A significant level of discussion has taken place with Council officers about air quality issues, particularly in respect of the scheme proposing residential accommodation onto the Finchley Road frontage and ensuring that this meets the required standards. Paragraph 10.6 of the officers report notes that the Council is satisfied that with the use of appropriate conditions satisfactory mitigation measures can be incorporated within the scheme to ensure that a satisfactory standard of air quality is achieved.

### **Daylight and Sunlight**

7.16 The Daylight and Sunlight assessment submitted in support of the application confirms that only one existing window of the properties along Finchley Road would fall below the BRE guidelines and that this is as a result of an existing projection from a neighbouring property.

7.17 It also demonstrates that there would be a negligible impact on daylight and sunlight on other neighbouring properties including those along Rosemont Road and Frogal Court.

### **Summary**

7.18 This section of the report briefly considers the main planning associated with this development other than the reasons for refusal. Without exception, all of the issues above are fully in accordance with development plan requirements.

## 8. Conclusion

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8.1 The NPPF states:

*“The planning system is plan-led. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. This Framework is a material consideration in planning decisions.*

*In assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development.”*

8.2 This statement has set out and explained the details for the proposed development. It has summarised the extensive history including the representations made to the Council's Core Strategy during the consultation stage which removed the open space designation for the site and the significant pre-application consultation undertaken with stakeholders and Council officers.

8.3 It has considered the application against the Council's reasons for refusal and, drawing upon the supporting statements of Mr Piers Gough and Mr Nick Ellis consider that the proposals fully accord with the identified policies.

8.4 Furthermore, and in accordance with the requirements of the NPPF set out above, we have gone onto consider the acceptability of the application against other relevant aspects of the development plan. We are firmly of the view that the application proposals sit squarely with all development plan policies for the following reasons:

- The proposals make use of an underutilised brownfield site;
- The site falls within the West Hampstead Growth Area, an area identified for intensification by the London Plan, the Council's Core Strategy and the emerging Fortune Green and West Hampstead Neighbourhood Development Plan;
- The proposed landuses are supported by planning policy at all levels;
- The scheme is designed by award winning architect Mr Piers Gough of CZWG and are considered to be of an exceptionally high quality making valuable use of a difficult site;
- The scheme will provide significant economic benefits to the area;
- Employment opportunities will be created during construction, and once built.

- 8.5 Despite having made three applications, (please see summary of applications in **Appendix Five**) that have sought to address comments made by officers at various stages, it is our view that the Council has not adopted the spirit of the NPPF in their assessment of the proposals. The Council recognise that the principle of redevelopment on the site is acceptable (section 2.2 of the officers report). They also recognise that the development potential of underutilised sites within the West Hampstead Growth Area should be maximised. However, we do not consider that officers have sufficiently worked to achieve this outcome.
- 8.6 For the reasons summarised above and considered in detail within this statement, we are firmly of the view that this application is fully in accordance with the development plan policy and sits squarely with the aspirations of the National Planning Policy Framework.
- 8.7 We therefore respectfully request that the appeal be allowed and planning permission granted.