



Appeal Decision

Inquiry opened on 25 August 2010
Site visits made on 26 & 27 August 2010

**by Clive Hughes BA (Hons) MA DMS
MRTPI**

**an Inspector appointed by the Secretary of State
for Communities and Local Government**

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**Decision date:
30 September 2010**

Appeal Ref: APP/X5210/A/10/2127151

Former Mercedes Benz Garage, Blackburn Road, London NW6 1AW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Loftus Family Property against the decision of the Council of the London Borough of Camden.
- The application Ref 2009/5823/P, dated 14 December 2009, was refused by notice dated 23 March 2010.
- The development proposed is demolition of the existing building and erection of a new building of up to nine storeys providing new flexible employment space (2,110 sq m) and student accommodation (349 beds, 9,263 sq m).
- The inquiry sat for 2 days on 25 and 26 August 2010.

Application description

1. A revision to the scheme was submitted on 12 January 2010 which included a reduction in the number of bed spaces from 349 to 347. The description of the development was amended to reflect this and to provide a greater level of detail. I have used the description as set out in the Statement of Common Ground (SoCG) for this decision.

Decision

2. I allow the appeal, and grant planning permission for erection of a part five, part seven, part nine storey plus basement building providing 2,110 sq m of flexible B1 employment space at ground floor and 347 beds (39 x cluster flats and 52 x studios) of accommodation for students to upper floors (following demolition of the existing car repair garage) at the former Mercedes Benz Garage, Blackburn Road, London NW6 1AW in accordance with the terms of the application, Ref 2009/5823/P, dated 14 December 2009, subject to the conditions set out in the attached schedule.

Procedural matters

3. A planning obligation in the form of a Unilateral Undertaking (UU) was submitted by the appellants. The Council confirmed that its provisions overcome reasons for refusal Nos 3-13 (inclusive). The UU covers the following matters: construction, a waste and resources action assessment plan (WRAP), a water management plan, the use of local employment (during construction phase) and local procurement (during construction phase), a sustainability plan, a renewable efficiency and energy efficiency plan, provisions to ensure the construction of the commercial (B1) element, a service management plan, a travel plan, a student management plan including use of student
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accommodation, provisions for a car free scheme with no entitlement to residents' parking permits, provision of walkways, landscaping, and contributions towards social and community facilities, public open space, works to the highway and health care.

Main issues

4. I consider that the main issues are first, whether the proposed development would provide a suitable mix of units and households appropriate to the locality which would contribute to a sustainable, mixed and inclusive community in accordance with the relevant development plan policies; and second whether the development should make a contribution to the provision of affordable housing in the Borough.

Reasons

Background

5. The appeal site has an area of 0.4ha and is currently occupied by a building used for car storage and repairs with ancillary offices that is set behind open parking. The surrounding area comprises a mix of uses with railway lines to the north and south and commercial uses and busy main roads to the east and west. On the opposite side of Blackburn Road is a builders' merchants site which has the benefit of planning permission for residential development; it is claimed that the permission has been implemented. There are a handful of dwellings at the western end of Blackburn Road, but otherwise the land between the railway lines and the main roads is in commercial use. There are houses and flats to the north and south of the railway, with the West End Green Parsifal Road and Swiss Cottage Conservation Areas to respectively to the north and south.
6. The site itself comprises part of a larger area (17ha) identified as the West Hampstead Interchange in the London Plan and Camden's emerging Local Development Framework (LDF) as an area for regeneration. The Council's emerging Core Strategy (CS) says that the London Plan expects a minimum of 2000 new homes and 500 new jobs to be provided between 2001 and 2026, but these figures are revised downwards in the Final Schedule of Proposed Amendments (June 2010) to 800 new homes and 100 new jobs between 2006 and 2031. The CS identifies that most of this development will come forward during the latter part of the period. The Council has acknowledged that here, unlike say the Kings Cross Regeneration Area, the land is in multiple ownership and that there is no master plan for its redevelopment. This is the first site within the identified Growth Area to come forward for redevelopment.
7. The Council raises no objections to the principle of the intensification of the uses on the site. It is agreed that the redevelopment offers an opportunity to improve the appearance of the land and that the replacement employment floorspace would be beneficial in terms of the quality of the units available.

Mix of uses

8. The appeal site forms a relatively small part of the West Hampstead Growth Area identified in the emerging CS and the London Plan. The emerging CS

- acknowledges that a large scale development incorporating major interchange works will not now take place.
9. There is no policy that requires each redevelopment site within this area to provide self-contained housing. However, Policy DP9 *Student housing, bedsits and other housing with shared facilities* of the emerging LDF as set out in the Development Policies Proposed Submission (2010) requires that student accommodation does not prejudice the supply of land for self-contained homes. This goes a little further than Policy H9A of the Camden Unitary Development Plan (UDP) which only requires that there be no loss of residential floorspace. The Council considered that this proposal would result in a lost opportunity to provide self-contained housing.
 10. It was accepted at the Inquiry that the Council has achieved its housing targets over the past 7 years. The emerging CS seeks 437 self-contained homes per year; the average for the period 2002/09 has been 545 per year with the target met every year since 2004/05. The Final Schedule of Proposed Amendments to the Core Strategy (June 2010) says that the housing trajectory shows that the Council is planning to meet its target over the entire plan period. The target can be met from allocated and emerging sites. There is no suggestion, therefore, that by developing this site for employment floorspace and student housing that the targets would not be met. While these targets are not ceilings, and the Council has an expectation that the targets will be exceeded, I am not convinced that the proposed scheme would undermine the Council's housing objectives. I do not consider that there would be any conflict with Policy DP9(c) of the emerging LDF.
 11. It is also likely that the provision of student accommodation would reduce the demand for self-contained housing. The figures before the Inquiry demonstrate that across London there is a mis-match between student numbers and dedicated student accommodation, with a substantial shortfall in student accommodation. It is possible that the accommodation now proposed would enable some self-contained housing to be freed up for general needs.
 12. Aside from the absence of self-contained market/ affordable housing, there was no argument that the mix of accommodation now proposed would be unacceptable. The use of significant numbers of cluster flats, as opposed to single units, has been welcomed by the University of Westminster, a potential partner. Policy DP9(i) of the emerging LDF says student accommodation should include a range of flat layouts including flats with shared facilities. This proposal would meet that emerging policy.
 13. The final part of this issue relates to the contribution of this development to a sustainable, mixed and inclusive community. There is no dedicated student housing in the immediate area. While there are areas nearby where there are numerous houses that have been sub-divided into flats, there is no suggestion that these do not provide self-contained housing available in the general market. The surrounding area is undeniably mixed in character and in terms of land uses; there is also no doubt that the immediate area, within the West Hampstead Growth Area, will be likely to witness an intensification of uses. In the absence of any master plan, or other proposals before the Council, the scale and timing of such change is unknown.

14. No significant evidence was put before the Inquiry to demonstrate that the introduction of 347 students into this area would be unsustainable or result in the type of harm arising from hostels as set out in paragraph 2.67 of the UDP in support of Policy H9 *Hostels*. While the potential for anti-social behaviour, and the particular life-style of students, was referred to, there is no evidence to show that the student accommodation now proposed would be harmful to the living conditions of the existing or future population. I have noted the conclusions of the Inspector who determined an appeal in Chichester for 321 student study bedrooms (APP/L3815/A/09/2116026) that any section of society may include a disorderly element.
15. The site has excellent public transport links (with a PTAL rating of 6a) and the site can be approached on foot from the west, east and south so there need be no concentrations of students returning to the premises using the main access road. In addition, the UU provides for on-site management and security measures. In any case this is an urban environment; the site lies within an identified Growth Area that adjoins busy railway lines and contains a mix of uses comprising mainly commercial premises. In these circumstances I am also satisfied that 347 is not an unacceptably large number of students for the area. There are many larger concentrations in London and elsewhere.
16. Research published in "*Studentification: a guide to opportunities, challenges and practice*" identifies that while the term is often used as a term synonymous with "problems", it is important that growing student populations can yield benefits for university towns and cities. In terms of the four main dimensions of studentification as identified in the research (social, cultural, physical and economic), none of these appear to be negative in the context of this proposal. There would be no displacement of established residents as it involves a new building, although there could be longer term impacts as students often seek other accommodation in the same area after leaving dedicated accommodation. The student concentration could result in a demand for certain retail and cultural facilities; the new building would result in a physical upgrading of the environment. Any significant change in the housing stock in the area, with a potential increase in private rented accommodation, seems unlikely given the significant number of sub-divided houses that I saw in the area.
17. I conclude on the first issue that the development would provide a suitable mix of units and households appropriate to the locality. While there would be a lost opportunity to provide self-contained housing on the site I do not consider that this is harmful as the site is only a small part of a substantial Growth Area where intensification of uses is anticipated; there is no evidence to suggest that the Council's housing targets will not be achieved; and there is strong evidence of a demand for accommodation for students in the wider area. The use would be likely to make a positive contribution to a sustainable, mixed and inclusive community. This would be in accordance with the development plan policies.

Affordable housing

18. Policy H2 *Affordable Housing* of the UDP states that the Council will expect all residential developments with a capacity for 15 or more dwellings and sites of 0.5ha or more to make a contribution to the supply of affordable housing. The Council's target is 50% affordable housing in each development. Paragraph 2.19 of the UDP supports Policy H2 and explains why accommodation provided

for and designated for students does not come within the meaning of affordable housing for the purposes of the policy. The paragraph adds that affordable housing meets a specialist housing need and can reduce pressure on general housing. It goes on to say that it can therefore be exempted from the requirements of Policy H2 provided three criteria are met. These require that (i) conditions or obligations ensure that the housing costs significantly less than the cost of suitable housing in the general market in Camden; (ii) that it meets a defined specialist need; and (iii) that it cannot be subsequently let or sold as general market housing.

19. It is not in dispute that the UU ensures that criteria (ii) and (iii) are met. Criterion (i), however, is not met insofar as rent control does not form part of the UU and no such conditions were put forward at the Inquiry.
20. I have also had regard to emerging LDF and the Camden Development Policies Proposed Submission and Final Schedule of Proposed Amendments (June 2010). This includes Policy DP9 which supports the provision of housing with shared facilities provided certain criteria are met. These criteria do not mention rent controls. The Council is concerned that criterion (c) is not met. This criterion relates to sites that are considered particularly suitable for affordable housing. However, this site falls outside the scope of those defined as being particularly suitable in paragraphs 2.14 and 2.15 of the document.
21. Policy DP3 *Contributions to the supply of affordable housing* of this emerging plan is supported by paragraph 3.3 which says that the Policy does not apply to genuine student housing. The paragraph identifies a number of characteristics which distinguish student housing from other forms of housing, including "rents are not subject to public control or subsidy". This seems to be at odds with the Council's objectives for the appeal site. Although this document has not been adopted it has been through an Examination in Public and the Inspector's Report is awaited. I consider that as it is at an advanced stage and represents the Council's most up-to-date thinking that I can give weight to this emerging Policy.
22. I have also taken into account the appellants' uncontested evidence that the Council has never sought to impose rent controls on any planning permissions for student housing. I also acknowledge that if the appellants named a particular Higher Education Institution in its UU then it could give the institution an unacceptable level of control over the planning permission.
23. I have considered the details of rents charged that were provided by the parties. Perhaps unsurprisingly they are not directly comparable as the student halls include one in Northumberland Avenue, off Trafalgar Square, whereas the Council's examples of open market rents include a number of properties near the appeal site in roads such as Maygrove Road where there are numerous small properties that appear to be either in flats or multiple occupation judging by the number of bell pushes, bins and boards from letting agents.
24. Criterion (i) of Policy H2 is not met by this proposal. However, as the UU makes provision for the flats to be rented to students of an approved Higher Education Institution, which is defined as the University of Westminster in the first instance or another institution funded by the Higher Education Funding Council for England and sited in Camden or an adjoining borough, I am

satisfied that there are sufficient safeguards in place. I accept that the development would mean that there would be no self-contained housing on the site and thus no affordable housing. However, it is not in dispute that student housing contributes towards meeting overall housing targets and that there is a demand for student housing in Camden. I have also given weight to the emerging policy, which is at an advanced stage, and which does not require the provision of affordable housing on a student housing site. Also weighing in favour of the development is the fact that there is no suggestion that Camden will fail to achieve its housing targets. Taking all these factors into consideration, I conclude on this issue that the advantages of the proposed scheme outweigh the harm that would arise from the lack of affordable housing on this site.

Other matters

25. I have taken into account all the other matters raised at the Inquiry and in written submissions. Concerning traffic generation, the parking restrictions on cars owned by students is covered in the UU. The management of student arrivals and departures is recognised in the *Studentification* research as an issue to be addressed and in this case it would form part of the management plan for the development.
26. I have also taken account of the other positive benefits that would arise from the development and which were not in dispute between the main parties. In particular the development represents an opportunity to enhance the public realm of Blackburn Road and adjoining footways; it provides employment floorspace of a type for which there is a local demand; and it provides a well designed building that would result in a significant improvement in the visual appearance of the site. I have also noted the support of another major land owner within the Growth Area who has also commented on the development acting as an important catalyst and on the benefits to nearby businesses.

Conditions

27. The SoCG includes a list of 22 conditions. These were discussed in detail at the Inquiry and I intend to impose most of them albeit with a number of alterations to the wording to bring them into line with Circular 11/95. I have added a further condition identifying the approved plans for the avoidance of doubt and in the interests of proper planning.
28. Conditions concerning levels, external materials, window detailing, security measures, green roofs and landscaping are required in the interests of the visual amenities of the area. I have reduced the requirements of the condition concerning window openings as I am satisfied that the development would not have a significant impact on the nearby Conservation Areas. A ground investigation is necessary due to the previous use of the site as a car workshop. An ecology survey is necessary in the interests of any protected species in the area; the trees need to be protected due to their contribution to the appearance of the area.
29. The vehicle parking for disabled blue badge holders and the basement cycle storage area need to be protected and maintained for those uses. The loading/unloading areas need to be protected from other uses in the interests of highway safety in the area. For the same reason, details of the storage and

removal of waste materials need to be approved by the Council. In order to protect the living environment of future residents and occupiers of nearby dwellings, details of externally mounted mechanical plant and equipment needs to be approved by the Council along with details of anti vibration and sound insulation measures. Details of measures to minimise water consumption are necessary to ensure that the water supply infrastructure has sufficient capacity.

30. I have not imposed a condition regarding loading/ unloading of goods as this is covered in the UU.

Unilateral Undertaking

31. The UU relates to a wide range of matters as set out in paragraph 3 above. I am satisfied that all the matters covered are necessary and in accordance with paragraph B5 of ODPM Circular 05/2005. In particular I consider that the occupation and management of the student accommodation needs to be controlled in a co-ordinated way in the interests of future residents and occupiers of other housing in the area. The business space needs to be provided to ensure a suitable mix of uses and in order to replace the employment floorspace that would be lost. The financial contributions reflect those in the Council's adopted guidance.
32. Concerning reason for refusal No 2, this relates to the absence of a legal agreement restricting the occupation of the student accommodation to a named HEFCE-funded further education institution in the Borough or adjacent boroughs. The UU does not provide such a restriction as to do so would enable the named institution to have an unacceptable level of control over the implementation of the planning permission. As a majority of the cited institutions within Greater London are either within this or an adjacent borough I am satisfied that there is a sufficiently large reservoir of students in the vicinity to ensure that it is not necessary to name an individual institution.

Conclusion

33. I conclude that the development would provide a suitable mix of units and households appropriate to the locality. This would contribute to a sustainable, mixed and inclusive community in accordance with the relevant development plan policies. While the development would fail to accord with Policy H2(i) of the UDP, I consider that the harm arising from this is outweighed by the other considerations set out above. For the reasons given above, and subject to the terms of the UU and the conditions set out in the attached schedule, I conclude that the appeal should succeed.

Clive Hughes

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Peter Harrison QC	Instructed by Andrew Maughan, Head of Legal Services, L B Camden
He called Phillip Hughes MRTPI	Principal, PHD Chartered Town Planners

FOR THE APPELLANT:

Mark Beard of Counsel	Instructed by TP Bennett LLP
He called Grant Leggett BA	Associate Director, TP Bennett LLP

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Council's neighbour notification letter and list of recipients
- 2 Draft Unilateral Undertaking
- 3 Opening statement on behalf of the appellants
- 4 Opening statement on behalf of the Council
- 5 Higher Education institutions in Camden and adjoining boroughs; list and map (LBC1)
- 6 Location of appeal site and University of Westminster campuses (LBC2)
- 7 List of houses and flats for rent (LBC3)
- 8 Camden LDF Core Strategy Proposed Submission
- 9 Camden LDF Core Strategy Final Schedule of Proposed Amendments June 2010
- 10 Camden LDF Development Policies Proposed Submission
- 11 Camden LDF Development Policies Final Schedule of Proposed Amendments June 2010
- 12 Policy 3.7 of Submission draft of Draft London Plan pp71/72 (LBC4)
- 13 Plan showing appeal site and nearby Conservation Areas (LBC5)
- 14 Timetable for adoption of LDF (LBC6)
- 15 Letter dated 26 July 2010 from Turley Associates to PINS
- 16 Letter dated 25 August 2010 from K&L Gates LLP to Legal Department, Camden Town hall
- 17 Companies House document – current appointments report for West Hampstead Developments Ltd
- 18 Completed Unilateral Undertaking dated 26 August 2010
- 19 Closing submissions on behalf of the Council
- 20 Closing submissions on behalf of the appellants

Schedule of Conditions – APP/X5210/A/10/2127151

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 20 AP00 P1, 01 P1, 02 P1, 03 P2, 04 P1, 05 P1, 10, 30, 31; 20 AP10; 20 AE00 P1, 01 P1, 02 P1, 03 P1, 04, 05, 10, 11; 90 AP00, 01 (as amended); and visualisation IM00.
- 3) Details of proposed slab levels and building heights of the proposed development, in relation to the existing and proposed levels of the site and the surrounding land, shall be submitted to and approved in writing by the local planning authority before development commences. The development shall be carried out in accordance the approved details.
- 4) No development shall take place until:
 - a) The applicant has submitted a programme of ground investigation for the presence of soil and groundwater contamination and landfill gas for approval by the local planning authority; and
 - b) The investigation has been carried out in accordance with the approved details and the results and remediation measures (if necessary) have been submitted to and approved in writing by the local planning authority.
 - c) All approved remediation measures shall be implemented strictly in accordance with the approved details and a verification report shall be submitted to and approved in writing by the local planning authority.
- 5) The development hereby permitted shall not be commenced until an ecological survey has been carried to test for the presence of Protected or Priority Species under the 1981 Wildlife and Countryside Act and has submitted to and approved in writing by the local planning authority and any agreed remedial measures have been carried out or shall be carried as approved, unless otherwise previously agreed in writing by the local planning authority.
- 6) No development shall take place until all details of hard and soft landscaping; measures to increase biodiversity (such as bird boxes); and means of enclosure of open areas have been submitted to and approved in writing by the local planning authority. These shall include details of gradients and ramps (cross sections of any such areas shall be shown at a minimum scale of 1:20, unless agreed otherwise in writing with the local planning authority) to ensure all areas are suitable for use by all members of the community, regardless of physical ability.
- 7) No development shall take place until details of the construction, planting and management of the green roofs have been submitted to and approved in writing by the Council. The green roofs shall be implemented prior to the occupation of the building and permanently retained and maintained in accordance with the approved management scheme.
- 8) All hard and soft landscape works shall be carried out in accordance with the approved details prior to the occupation of the building. Any areas of planting which, within a period of 5 years form the completion of the

- development die or are removed, or become seriously damaged or diseased shall be replaced as soon as reasonably possible and in any case by not later than the end of the following planting season, with replacement planting of the same species and similar size unless the Council gives written consent to any variation.
- 9) The parking spaces designed to wheelchair user standards shall be provided before any part of the development is occupied and shall be retained for such use for as long as the development remains in existence. Only vehicles used by disabled blue badge parking permit holders shall be permitted to use these spaces.
 - 10) Unless otherwise previously agreed in writing with the local planning authority, no parking of vehicles or storage of materials shall be allowed in the service yard and secure parking area adjacent to the Class B1 Business units other than by vehicles of blue badge holders using the designated disabled parking bays and by service vehicles for the duration of loading and unloading of goods in association with use of the Class B1 Business units or collecting refuse.
 - 11) Works shall not commence on site until the local planning authority has inspected and approved in writing the implementation of tree protection measures set out in the approved Method Statement for the protection of trees adjacent to the site.
 - 12) Details of security measures including entrance gates to car park (appearance and controls), perimeter fencing, external lighting (including lighting of external area within the development and areas around the perimeter of the site), lighting to entrance areas, windows, entrances/exits, CCTV (including camera positions), a programme for implementation and other related measures shall be submitted to and approved in writing by the local planning authority prior to commencement of the development. The development shall be carried out in accordance with any such approved measures.
 - 13) A sample panel of all facing materials (including brickwork, panels, mesh, supports, glazing, and frames) showing the proposed colour, texture, face-bond and pointing to brickwork; seams and joints to panels; shall be provided on site and approved in writing by the local planning authority before the relevant parts of the works are commenced. The development shall be carried out in accordance with the approval given; the sample panel shall be retained on site until the work has been completed.
 - 14) Detailed drawings of all proposed window openings including details of depth of reveal, frames and any other proposed window surrounds shall be submitted to and approved in writing by the local planning authority prior to commencement of the development hereby approved.
 - 15) Notwithstanding the drawings hereby approved, the position and openings of the security gates and fencing to the service yard are not approved, but reserved for subsequent consideration. Drawings showing the position of these structures and the openings shall be submitted to and approved in writing by the local planning authority prior to commencement of the development hereby approved and shall only be carried out in accordance with any such approved details.

- 16) Before the development commences, details of the proposed cycle storage area for 175 cycles and the ramp leading to it from ground floor level (including cross sections showing clearance heights and ramp gradient) shall be submitted to and approved in writing by the local planning authority. The approved facility shall thereafter be provided in its entirety prior to the first occupation of any of the new units, and thereafter permanently maintained and retained.
- 17) Before the development commences, further details of the location, design and method of waste storage and removal (including recycled materials) shall be submitted to and approved in writing by the local planning authority and shall be provided prior to commencement of the development hereby approved and shall be permanently maintained and retained thereafter.
- 18) Before the development is occupied, details of any extract ventilating system, air-condition plant or any other externally mounted mechanical plant (including details of acoustic isolation and sound attenuation) shall be submitted to and approved in writing by the local planning authority. The development shall only be carried out in accordance with any such approved details which shall be carried out prior to occupation of any part of the development, unless otherwise previously agreed in writing with the local planning authority. The acoustic isolation and sound attenuation measures shall thereafter be maintained in effective order in accordance with manufacturers' specifications.
- 19) Noise levels at a point 1 metre external to sensitive facades shall be at least 5dB(A) less than the existing background measurement (LA90), expressed in dB(A) when all plant/equipment are in operation unless the plant/ equipment hereby permitted will have a noise that has a distinguishable, discrete continuous note (whine, hiss, screech, hum) and/ or if there are distinct impulses (bangs, clicks, clatters, thumps), then the noise levels from that piece of plant/equipment at any sensitive façade shall be at least 10dB(A) below the LA90, expressed in dB(A).
- 20) Before the development commences details of anti vibration measures and sound insulation to windows, walls, floors and ceilings, or other parts of the building (as necessary) to the proposed student accommodation against external noise and vibration from the surrounding area, including that generated from the railway, traffic and any activity associated with the permitted use of nearby land shall be submitted to and approved in writing by the local planning authority. The development shall only be carried out in accordance with any such approved details and any such sound insulation and anti-vibration measures approved shall be implemented prior to any occupation of the proposed student accommodation and shall be retained thereafter.
- 21) The development shall not be commenced until impact studies of the existing water supply infrastructure and measures to minimise water consumption have been submitted to and approved in writing by the local planning authority. These studies shall determine the magnitude of any new additional capacity required in the system and a suitable connection point. The development shall be carried out in accordance with the approved details.