



PLANNING SERVICES

Town & Country Planning Act 1990 (as Amended)

**Town and Country Planning (General Permitted Development) (Amendment)
(England) Order 2013**

**Town & Country Planning Appeals (Determination by Inspectors)
(Inquiries Procedure) (England) Rules 2000**

**The Town & Country Planning (Determination of Appeals by Appointed
Persons) (Prescribed Classes) (Amendment) (England) Regulations 2009**

PROOF OF EVIDENCE

Jenna Litherland BA (Hons) Planning Studies, MA Planning

FOR PUBLIC INQUIRY COMMENCING ON 9 April 2014

APPEAL SITE

Utopia Village, 7 Chalcot Road, NW1 7LH 8LH

APPELLANT

Utopia Property Sales Ltd.

SUBJECT OF APPEAL

Appeal against London Borough of Camden's refusal of the prior approval application on 03/12/2013.

Proposed Development:

Change of use from offices (Class B1a) to 53 residential units (Class C3).

COUNCIL REFERENCES: 2013/6589/P

**PLANNING INSPECTORATE
REFERENCES:APP/X5210/A/14/2212605**

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INTRODUCTION

- i. I, Jenna Litherland, have prepared this proof of evidence for presentation at the Public Inquiry into the appeal. I hold a BA (Hons) degree in Planning Studies and a MA in Planning from Sheffield Hallam University.
- ii. I have over 6 years of experience in town planning in Local Government. I have been employed by the London Borough of Camden since August 2008. From August 2008 to February 2010 I worked in the Planning Enforcement Team. From March 2010 to March 2011 I held the position of Major Development Implementation Officer in the Kings Cross Team. In March 2011 I joined the West Area Development Management Team where I undertake development management work on enquiries, applications and appeals. In June 2012 I was promoting to Senior Planner.
- iii. I am familiar with the appeal site. The evidence that I have provided for this appeal is accurate to the best of my ability and I confirm that any professional opinions expressed are my own.

STRUCTURE OF THE PROOF

iv. In my evidence I provide a summary of the application which is the subject of the appeal and the process undertaken leading to the refusal. I identify and summarise the legislative and policy framework under which the Council's decision was made. I deal with the Council's reasons for refusal nos. 6-15.

v. My evidence will be divided into six sections:

Section 1: (Subject of appeal) I shall provide a summary of the planning application and the reasons for refusal.

Section 2: (Planning history) I shall provide a brief summary of the planning history relating to the site. Summarised details are set out in the Statement of Common Ground.

Section 3: (Legislation, Planning policy and guidance) I shall identify the relevant legislation, national, and local planning policies and guidance relevant to the reasons for refusal and the issues discussed in my proof.

Section 4: (Site and surroundings) I will describe the appeal site and surrounding area.

Section 5: (Assessment of proposal) I will provide an assessment of the proposed development in the context of legislation and policy in relations to reasons for refusal nos. 6-15. I will also explain that the Council is conceding reasons for refusal nos. 6-13, and 15. My colleague Steve Cardno will explain in detail assessment in relation to reasons for refusal nos. 1-5.

It should be noted that both parties agreed in principle to a s106 agreement to cover reasons for refusal nos. 1-4, as indicated in the Statement of Common Ground and without prejudice to the outcome of the appeal.

Section 6 (Conclusion) I will summarise the arguments made in this proof of evidence.

vi. In addition to myself, the Council will call one witnesses:

- Steve Cardno, Principal Transport Planner for LB Camden. Mr Cardno's evidence will support the Council's reasons for refusal nos. 1-5.

1.0 SUBJECT OF APPEAL

1.1 The appeal is against the London Borough of Camden's refusal of a prior approval application for *Change of use from offices (Class B1a) to 53 residential units (Class C3)*. (See Appendix 1 [Report and Decision Notice])

1.2 The proof of evidence herewith describes the appeal.

1.3 PLANNING APPEAL

1.4 A site notice was displayed from 18/10/2013 until 08/11/2013. 153 neighbours were notified by letter.

1.5 256 consultation responses were received during the course of the application. 237 of these responses were objections. Letters of objection were also received from the Primrose Hill Conservation Area Advisory Committee and the Gloucester Avenue Association. A copy of all representations received during the course of the application was sent to the Planning Inspectorate with the Questionnaire.

1.6 The main concerns raised by neighbouring occupiers and local groups include noise and damage to properties during construction; loss of an employment site; car parking stress; danger to pedestrian movement from increased traffic; loss of privacy due to overlooking into surrounding residential properties; increased noise from the residential use; no amenity space for new residents; poor standard of accommodation; concern over contaminated land; and that the existing site is not wholly within a B1a use.

1.7 The application was refused by officers under delegated powers on the 3 December 2014. The decision notice was issued on the same day. The reasons for refusal were as follows:

1. *The proposed development, in the absence of a Section 106 legal agreement to secure the new development as car-capped, would be likely to contribute unacceptably to parking stress and traffic congestion in the surrounding area and would not promote use of sustainable transport contrary to the National Planning Policy Framework chapter 4, paragraphs 29, 30, 35 and 39.*

2. *The proposed development, in the absence of a Section 106 legal agreement to secure associated highway works, would fail to maintain the borough's transport infrastructure to the detriment of the safety of pedestrians, cyclists and vehicles, contrary to the National Planning Policy Framework chapter 4, paragraph 32.*
3. *The proposed development, in the absence of a Section 106 Legal Agreement securing a Construction Management Plan, would be likely to contribute unacceptably to traffic disruption and be detrimental to general highway and pedestrian safety and residential amenity, contrary to the National Planning Policy Framework chapter 4, paragraph 29 and 32 .*
4. *The proposed development, in the absence of a Section 106 Legal Agreement to secure the provision and permanent retention of the cycle parking, would be likely to fail to contribute towards sustainable and efficient transport modes, contrary to the National Planning Policy Framework chapter 4, paragraph 29, 30, and 35.*
5. *The proposed development, in the absence of a Section 106 legal agreement to secure financial contributions towards pedestrian and environmental improvements in the area, would fail to mitigate the impact of the development created by increased trips contrary to the National Planning Policy Framework chapter 4, paragraphs 32 and 35.*
6. *The proposed development, in the absence of a Section 106 legal agreement securing a contribution towards the provision of public open space, would be likely to contribute to pressure and demand on existing open space in this area, contrary to the National Planning Policy Framework chapter 7, paragraph 58 and chapter 8, paragraph 73.*

7. *The proposed development, in the absence of a Section 106 legal agreement to secure affordable housing would fail to maximise the contribution of the site to the supply of affordable housing in the borough and fail to contribute towards the delivery of mixed and balanced communities, contrary to the National Planning Policy Framework chapter 6, paragraph 50.*
8. *The proposed development, in the absence of a Section 106 legal agreement securing a contribution towards educational infrastructure, would place an unacceptable strain on existing local educational resources, contrary to the National Planning Policy Framework chapter 8, paragraph 72.*
9. *The proposed development, in the absence of a Section 106 legal agreement securing the provision of an Ecology and Habitat Plan, to ensure the protection of bats and to enhance biodiversity is contrary to the National Planning Policy Framework chapter 11 paragraphs 109 and 117-118.*
10. *The proposed development, in the absence of a Section 106 legal agreement requiring the development to achieve level 3 of the Code for Sustainable Homes and to incorporate sustainability measures designed to reduce carbon emissions and minimise use of energy, water and resources, would fail to be sustainable in its use of its resources and meet the challenge of climate change contrary to the National Planning Policy Framework chapter 10, paragraphs 93 and 95-97.*
11. *The proposed development, in the absence of a Section 106 legal agreement to secure the provision of wheelchair accessible housing, would fail to deliver housing suitable for people with disabilities contrary to the National Planning Policy Framework Core planning principles, paragraph 17 and Chapter 6, paragraph 50.*

12. *The proposed development, in the absence of sufficient information on internal daylight levels, appears to fail to provide a high standard of residential accommodation contrary to the National Planning Policy Framework Core planning principles, paragraph 17 and Chapter 6, paragraph 50.*
13. *The proposed development, by reason of the condition attached to planning permission Ref: CTP/H10/12/A/5062 dated 08/05/1968 which secured windows as fixed shut and obscure glazed, will result in the provision of sub-standard residential accommodation to future occupiers contrary to the National Planning Policy Framework Core planning principles, paragraph 17.*
14. *The proposed development, by reason of its proximity to existing residential development on Edis Street, Egbert Street, Fitzroy Road, Chalcot Road and Gloucester Avenue, would result in overlooking and a loss of privacy to the occupiers of existing residential properties and an unacceptable standard of accommodation to future occupiers, contrary to the National Planning Policy Framework Core planning principles, paragraph 17.*
15. *The proposed development, in the absence of a Section 106 legal agreement to secure a contributions towards the provision of or improvements to existing community facilities, would be likely to result in unacceptable additional pressures on existing community facilities in the area, contrary to the National Planning Policy Framework Chapter 8, paragraph 70.*

1.8 One informative was included on the decision notice:

1. *You are reminded that any disturbance of the land will require a preliminary risk assessment in accordance with CLR11 model procedures for management of*

contaminated land and must include an appropriate scheme of investigation with a schedule of work detailing the proposed sampling and analysis strategy. You are advised that the London Borough of Camden offer an Enhanced Environmental Information Review available from the Contaminated Land Officer (who has access to the Council's historical land use data) on 020 7974 4444, or by email, <http://www.camden.gov.uk/ccm/content/contacts/council-contacts/environment/contact-the-contaminated-land-officer.en>, and that this information can form the basis of a preliminary risk assessment. Further information is also available on the Council's Contaminated Land web pages at <http://www.camden.gov.uk/ccm/navigation/environment/pollution/contaminated-land/>, or from the Environment Agency at www.environment-agency.gov.uk.

2.0 RELEVANT PLANNING HISTORY

- 2.1 The planning history for the application site was included in the Officers Delegated Report and for ease of reference is detailed below:
- 2.2 **2013/5111/P** Prior approval application for change of use from offices (Class b1a) to 57 residential units (Class C3) – Application withdrawn. This application included floorspace which was not considered to fall within class use B1(a) on or before 30/05/2013.
- 2.3 **2010/4019/P** Planning permission refused on 13/04/2011 for the erection of an additional storey with a curved roof for office use (Class B1) to the existing 2 storey flat-roofed element of a part-2/ part-3 storey office building. (amenity and design reasons) – This application relates mainly to unit 10.
- 2.4 **2006/0633/P** Planning permission granted on 31/03/2006 for the change of use from ground floor office (Class B1) to a fitness training facility (Class D2). – This application relates solely to Unit 8. A site visit at the time of the application confirmed that the unit was in an office use (Class B1(a)).
- 2.5 **PE9800893** Planning permission granted in 1999 for the change of use from Class B1 (recording studio) to personal training fitness gymnasium (class D2). This application relates solely to Unit 3 and was a personal permission which included a condition that on cessation of this use to unit should return to a B1 use.
- 2.6 **20728** Planning permission refused in 1975 for the change of use from offices ancillary to light industry to architects' offices.
- 2.7 **CTP/H10/12/A/5062** Planning permission granted in 1968 for the erection of a first floor addition at 7 Chalcot Road for computer stores etc. Condition 2 states: 'the new windows shall be fixed shut and glazed with obscure glass'. This permission was implemented.
- 2.8 Application **2013/5111/P** was for a similar proposal to the appeal proposal. The key difference being that the previous application included units 11 and 11a which operate as a recording studio which is outside a B1a use. As such, the proposal did not meet paragraph J1(b) of the GPDO 2013 amendment.

The applicant was advised of this and the application was subsequently withdrawn.

2.9 During the course of the application 2013/5111/P officers advised that subject to units 11 and 11a being excluded from the proposal and the completion of a S106 agreement to secure: car capped development; provision of cycle parking; a highways work contribution; and a construction management plan they would be likely to grant prior approval for the scheme.

2.10 In the time which elapsed between this application being withdrawn, submission of the appeal application and a formal decision being issued the Council obtained further legal advice from Counsel on interpretation of Class J of the GPDO 2013 amendment. As a result of this advice the Council considered that the scope of the order and the issues which could lawfully be taken into consideration was wider than initially thought.

3.0 LEGISLATION AND PLANNING POLICY AND GUIDANCE

3.1 Copies of all the relevant Legislation, Policy and Guidance listed below have already been sent as part of the Questionnaire. However for ease extracts of all the specific legislation, policies and guidance that I refer to in my proof have been appended.

3.2 Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013 (Appendix 2)

3.3 The key legislation relevant to this appeal is the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013 (the 'GPDO 2013') which came into force on 30 May 2013 and introduced Class J, which permits development consisting of a change of use of a building and any land within its curtilage to a use falling within C3 (dwellinghouses) of the Schedule to the Use Classes Order from a use falling within Class B1(a)(office) of that Schedule.

3.4 This is subject to a number of restrictions which are listed within sub-paragraph J.1 [(a)-(f)] and a subsequent condition set out in sub-paragraph J.2. The condition states that Class J development is permitted subject to the developer applying to the local planning authority for a determination as to whether the prior approval of the authority is required as to:

- (a) transport and highways impacts of the development;
- (b) contamination risks on the site; and
- (c) flooding risks on the site,

and the provisions of paragraph N shall apply in relation to any such application.

3.5 Paragraph N (8) states that the local planning authority shall, when determining an application: (*amongst other matters*)

- (a) take into account any representations made to them as a result of any consultation under paragraphs (3) or (4) and any notice given under paragraph (6);
- (b) have regard to the National Planning Policy Framework issued by the Department for Communities and Local

Government in March 2012 as if the application were a planning application.

3.6 Therefore, the GPDO 2013 requires consideration of the National Planning Policy Framework in assessing applications for prior approvals. The implications of this as fully considered in the Assessment section below.

3.7 **Explanatory Memorandum to the Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014 No. 564** (Appendix 3)

3.8 The Explanatory Memorandum to the Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014 No. 564 which was agreed by parliament on the 13 March 2014. Paragraph 4.7 is of particular relevance:

'In light of feedback on these provisions since they were enacted in 2013, the prior approval procedures in paragraph N of Part 3 of Schedule 2 to the General Permitted Development Order are amended to clarify that local planning authorities:

- *must only consider the National Planning Policy Framework to the extent that it is relevant to the matter on which prior approval is sought;*
- *may attach conditions to grants of prior approval, as long as those conditions are relevant to the matter on which prior approval is sought;*
- *may refuse the application if they are not satisfied that the proposed development qualifies as permitted development, or if they have insufficient information to establish whether the proposed development qualifies as permitted development; and*
- *may invite further information from applicants relevant to the matters on which prior approval is sought or to the question of whether the proposed development qualifies as permitted development.'*

3.9 **The National Planning Policy Framework (the 'NPPF') (Appendix 4)**

3.10 The NPPF sets out the government's planning policy for England and was issued by the Communities and Local Government in March 2012. The following Chapters and paragraphs were considered relevant to this proposal at application stage:

- Core planning principles, paragraph 17
- Chapter 4 paragraphs 29, 30, 32, 35, and 39
- Chapter 6 paragraphs 49 and 50
- Chapter 7 paragraphs 56-59
- Chapter 8 paragraphs 70, 72 and 73
- Chapter 10 paragraphs 93, 95-97
- Chapter 11 paragraphs 109 and 117, 118, 121 and 122
- Paragraphs 203-206

3.11 The NPPF provides strategic policy in relation to planning across the country. In order to appropriately apply the guidance in the NPPF it is necessary to make reference to the Development Plan. Reference should also be made to the Planning Practice Guidance which is a web based resource launched by the Department of Communities and Local Government on 6 March 2014.

3.12 The Development Plan for the area comprises the London Plan 2011 and the Local Development Framework 2010, containing the Camden Core Strategy and the Camden Development Policies. The Development Plan was only considered of relevance to this application in that it assists in interpretation and application of the NPPF including calculating relevant S106 contributions. The Development Plan is up to date and in accordance with the NPPF.

3.13 **Planning Practice Guidance published by the Department for Communities and Local Government (DCLG) on 6 March 2014**

3.14 The Planning Practice Guidance is a web-based resource to support the NPPF which will be updated continually. Of particular relevant to this appeal are the Sections on 'When is permission required?', 'Use of Planning Conditions', and 'Planning Obligations'.

3.15 Article 8 of the European Convention of Human Rights

3.16 Article 8 of the European Convention on Human Rights (which came into force in the UK under the Human Rights Act 1998) states that:

‘1. Everyone has the right to respect for his private and family life, his home and his correspondence.’

3.17 This is relevant to this appeal as the proposal would result in a serious impact on amenity and which in turn would contravene the right under Article 8. This will be expanded on in the Council’s evidence and submissions.

3.18 Local Development Framework

3.19 The Local Development Framework was formally adopted on 8 November 2010. The policies of relevance are:

LDF Core Strategy

- CS5 Managing the impact of growth and development
- CS6 Providing quality homes
- CS10 Supporting community facilities and services
- CS11 Promoting sustainable and efficient travel
- CS13 Tackling climate change through promoting higher environmental standards
- CS15 Protecting and improving our parks and open spaces and encouraging biodiversity
- CS18 Dealing with our waste and encouraging recycling
- CS19 (Delivering the core strategy)

LDF Development Policies

- DP2 (Making full use of Camden’s capacity for housing)
- DP3 (Contributions to the supply of affordable housing)
- DP6 (Lifetime homes and wheelchair homes)
- DP16 (The transport implications of development)
- DP17 (Walking, cycling and public transport)

- DP18 (Parking standards and limiting the availability of car parking)
- DP19 (Managing the impact of parking)
- DP20 (Movement of goods and materials)
- DP21 (Development connecting to the highway network)
- DP22 (Promoting sustainable design and construction)
- DP23 (Water)
- DP26 (Managing the impact of development on occupiers and neighbours)
- DP31 (Provision of, and improvements to, open space, sport and recreation)

3.20 **Supplementary Planning Guidance (CPG)**

3.21 The Council in determining the application has also, where appropriate, relied on supplementary planning guidance as set out in the Camden Planning Guidance 2011 (CPG) (updated 2013) insofar as it is material:

- CPG 2 Housing - chapters 2 and 5.
- CPG 3 Sustainability - chapters 2, 4 and 9.
- CPG 6 Amenity - chapters 8 and 11.
- CPG 7 Transport - chapters 4, 5, 8 and 9.
- CPG 8 Planning obligations - chapters 3, 4, 6, 7, 10, and 11.

3.22 **London Plan**

3.23 The local policy framework has been considered against and alongside the strategic policies set out in the Mayor's London Plan which was formally adopted in July 2011.

4.0 SITE AND SURROUNDINGS

- 4.1 The application site is located on the north side of Chalcot Road, set within a mews at the rear of the terraces on Gloucester Avenue, Edis Street, Chalcot Road, Egbert Street and Fitzroy Road. It has two pedestrian and vehicular access points one via Chalcot Road (between nos. 6 and 8) and one via Egbert Street (between nos.13 and 14). Deliveries are made using both entrances. (See Appendix 5 for the site plan)
- 4.2 It comprises a part two-storey/part three-storey building that has historically operated as a piano manufacturing workshop. The existing space is laid out with 23 units, each accommodating a separate business but with some businesses occupying several units. The site also includes a management office. Some of the units are currently vacant. The existing site has 20 car parking spaces. All units are used within use class B1a excluding units 11 and 11a which are in use as a recording studio. The appeal proposal excludes units 11, 11a and 8c.
- 4.3 The building is not listed and lies within the Primrose Hill Conservation Area.

5.0 ASSESSMENT OF THE PROPOSALS

5.1 As confirmed in the Statement of Common Ground both parties are in agreement that the site complies with the criteria set out in in paragraph J.1 (a-f) of the GPDO 2013. Therefore this will not be expanded on in my proof.

5.2 The Council's original consideration of the proposal

5.3 At the time of determining this application and up until the publications of the Planning Practice Guidance 2014, Nick Boles Ministerial Statement and the Explanatory Memorandum to the Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014 the parties disagreed that the proposal meets the Class J conditions details in paragraph J.2. J.2 states that Class J development is permitted subject to the developer applying to the local planning authority for a determination as to whether the prior approval of the authority is required in relation to:

- (a) transport and highways impacts of the development;
- (b) contamination risks on the site; and
- (c) flooding risks on the site,

and the provisions of paragraph N shall apply in relation to any such application.

5.4 Paragraph N (8) states that the local planning authority shall, when determining an application: (*amongst other matters*)

- (a) take into account any representations made to them as a result of any consultation under paragraphs (3) or (4) and any notice given under paragraph (6);
- (b) have regard to the National Planning Policy Framework issued by the Department for Communities and Local Government in March 2012 as if the application were a planning application.

5.5 It was considered at the time of issuing the decision that the Council could lawfully consider the development in accordance with the NPPF. The Council took the view that the NPPF cannot be used to assess the land use principle of the change of use as this is clearly excluded from an assessment against policy by the change being categorised as permitted development. However,

it could be used to assess all other wider issues which would be relevant to a planning application for the same proposal.

- 5.6 The key principle of the NPPF on the whole is achieving sustainable development. As such, the Council took a pragmatic approach that any prior approval applications for a change of use from class B1a to C3 which creates 10 or more units have potential to result in a significant adverse impact if sustainable development principles and measures are not secured in accordance with the NPPF. As such, the Council considered wider issues than transport, flooding and contamination for applications for 10 or more units. This also ties in with the policy threshold for securing various measures to ensure sustainable development as set out in local policy, such as affordable housing and contributions towards community facilities.
- 5.7 Considering wider issues for conversions to a single unit or a couple of units are not likely to have a strategic impact on achieving sustainable development as a whole. Therefore, for smaller scheme the only additional issues that the Council considered were impact on existing occupiers amenity if the proposal would result in significant harm which would contravene Article 8 of the European Convention on Human Rights (Right to respect for private and family life) which is entirely separate to procedural requirements of Paragraph N (See below).
- 5.8 **The Council's consideration of the proposal in light of the Planning Practice Guidance 2014.**
- 5.9 The Council has reviewed its position on this appeal in light of the ministerial statement issued by Nick Boles on the 7 February 2014; the new Planning Practice Guidance which was published by the Department for Communities and Local Government (DCLG) on the 6 March 2014; and the Explanatory Memorandum to the Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014 published 13 March 2014.
- 5.10 On 7 February 2014 Nick Boles MP issued a ministerial statement on behalf of DCLG which sought to provide clarity regarding the intention of Class J of the GPDO. Within this statement Mr. Boles states that the intention of the permitted development rights is to make it easier to convert offices to new homes. He states that this applies nationally and that local authorities have

already been given the opportunity to seek an exemption where they could demonstrate adverse economic impacts. He states that a light-touch prior approval; process has been put in place to allow any transport, contamination, and flooding issues to be addressed by councils; and that under a prior approval process, councils can still refuse an application, on these set grounds.

5.11 In the closing remarks of his statement Mr. Boles comments that *'we are also aware that some local authorities may be unclear on the correction intention of the detail provisions of national legislation for office to home conversions.'* He states that some have not applied the correctly intended tests to determinate applications for prior approval and have sought to levy developer contributions which are not appropriate (on matters unrelated to the prior approval process). He sets out his intention to update planning guidance to clarify this point.

5.12 The Planning Practice Guidance offers some clarity on the prior approval process. Of relevance it states,

5.13 *'Prior approval means that a developer has to seek approval from the local planning authority that specified elements of the development are acceptable before work can proceed. The matters for prior approval vary depending on the type of development and these are set out in full in the relevant parts in Schedule 2 to the General Permitted Development Order. A local planning authority cannot consider any other matters when determining a prior approval application.'*

(When is permission required? Paragraph: 026 Reference ID: 13-026-20140306)

5.14 *'The statutory requirements relating to prior approval are much less prescriptive than those relating to planning applications. This is deliberate, as prior approval is a light-touch process which applies where the principle of the development has already been established. It is important that a local planning authority does not impose unnecessarily onerous requirements on developers, and does not seek to replicate the planning application system.'*

(When is permission required? Paragraph: 028 Reference ID: 13-028-20140306)

5.15 *'By its nature permitted development should already be generally acceptable in planning terms and therefore planning obligations would ordinarily not be necessary. Any planning obligations entered into should be limited only to matters requiring prior approval and should not, for instance, seek contributions for affordable housing.'*

(Planning Obligations, Paragraph: 005 Reference ID: 23b-005-20140306)

5.16 It is clear from the above that the Government acknowledged that there was some ambiguity in Class J or the Order and that they intended to clarify how it should be interpreted. It was not until 13th March 2014 when the explanatory memorandum to the Town and Country Planning (General Permitted Development) Amendment and Consequential Provisions) (England) Order 2014 was published that this clarity was provided.

5.17 The Explanatory Memorandum paragraph 4.7 states:

'In light of feedback on these provisions since they were enacted in 2013, the prior approval procedures in paragraph N of Part 3 of Schedule 2 to the General Permitted Development Order are amended to clarify that local planning authorities:

- *must only consider the National Planning Policy Framework to the extent that it is relevant to the matter on which prior approval is sought;*
- *may attach conditions to grants of prior approval, as long as those conditions are relevant to the matter on which prior approval is sought;*
- *may refuse the application if they are not satisfied that the proposed development qualifies as permitted development, or if they have*

insufficient information to establish whether the proposed development qualifies as permitted development; and

- *may invite further information from applicants relevant to the matters on which prior approval is sought or to the question of whether the proposed development qualifies as permitted development.'*

5.18 In issuing this additional guidance on these matters the government is acknowledging that the wording of the original legislation (Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013) is vague and open to interpretation. As such, the Council did not act unreasonably in its original interpretation of the legislation. As soon as the Government provided clarity on interpretation of the Order the Council reviewed its position to ensure that parties did not continue with appeal work unnecessarily.

5.19 The Council has obtained further legal advice from Counsel on whether the Order, in light of the above statement and additional guidance, enables consideration of wider issues than transport, flooding and contamination. The Council has been advised that this additional statement which is now supported by guidance clarifies the intent of Class J, being that the NPPF can only be taken into consideration in relation to transport and highway impacts and contamination and flooding risks.

5.20 As such, it is considered the matters of wheelchair housing (rfr no.11); sustainability measures (ref no.10); affordable housing (rfr no. 7); contributions to public open space, educational and community facilities (rfr nos. 6,8, & 15); an Ecology and Habitat Plan (rfr no. 9); and provision of substandard accommodation (rfr nos.12 & 13) cover issues which are beyond the scope of the Order and therefore cannot be considered as part of the prior approval process. As such, the Council wish to concede reasons for refusal Nos. 6-13, and 15.

5.21 Transport and Highways Impacts

5.22 Reasons for Refusal nos. 1-5 relates to Transport and Highway Impacts of the development. These reasons could be overcome through entering into a S106 agreement.

- Reason for refusal 1 relates to secure car capped development;
- Reason for refusal 2 relates to securing a contribution towards highways works;
- Reason for refusal 3 relates to securing a construction management plan;
- Reason for refusal 4 relates to securing the ongoing provision of cycle parking; and
- Reason for refusal 5 relates to securing a financial contribution towards pedestrian and environmental improvements.

5.23 It has been agreed in the Statement of Common Ground that the Council and the Appellant will work together to agree a S106 agreement which covers reasons for refusal nos. 1-4. However, in the event that some/all matters cannot be agreed then the Council is providing evidence to demonstrate that the requirements are justified against Class J of the GPDO 2013, relevant planning policy, and meet the tests laid out in the Community Infrastructure Levy (CIL) Regulations 2010 and the National Planning Policy Framework (particularly paragraphs 203-206).

5.24 This is covered in the Proof of evidence prepared by the Council's other witness: Steve Cardno, Principal Transport Planner.

5.25 The Statement of Common Ground also confirms that both parties agree that Reason for Refusal no. 5 which seeks to secure a contribution towards pedestrian and environmental improvements can be withdrawn without resulting in harm to the transport or highway network. The Council considered this to be of concern at application stage as the proposal may result in an increase in the number of children and families using pedestrian routes and other spaces shared with cycles and vehicles particularly during school runs. This was a point raised by local residents and while the Transport Statement noted that the change of use would result in a reduction in the total number of trips at peak hours it did not address the impact of an increase in the number of children at the site and impact during the school run. Council Officers have

now analysed this matter further and consider that the impact would not be significant.

5.26 It is therefore considered unlikely that the proposed development, in the absence of a contribution towards pedestrian and environmental improvements, would have a severe impact on highway safety and local transport network. As such, it is agreed between parties that reason for refusal 5 should be withdrawn. This will be expanded on the evidence submitted by Steve Cardno, Principal Transport Planner.

5.27 **Additional Issues**

5.28 The Council considers that the proposal remains unacceptable in terms of impact on the privacy of the occupiers of the surrounding residential properties as specified in reason for refusal 14. This is explained in greater detail in the following pages.

5.29 **Reason for refusal 14 – Neighbour privacy**

5.30 Article 8 of the European Convention on Human Rights (which came into force in the UK under the Human Rights Act 1998) states that:

‘Everyone has the right to respect for his private and family life, his home and his correspondence.’

5.31 This is relevant to this appeal as the proposal would result in a serious impact on amenity and which in turn would contravene rights under Article 8.

5.32 Protection of rights under Article 8 of the Convention are relevant in planning decisions. It is the Council’s contention that the procedure set out under Class J of the GPDO does not offer the LPA the opportunity to assess the impact that the proposal would have on the residential amenity of the existing occupiers of the surrounding buildings.

5.33 As a result, it is not possible to weigh up the impact on the neighbours Article 8 rights as would normally occur in the planning regime (*as heard in Lough v FSS 2004 1 WLR 2557[Appendix 6]*). Whilst it is acknowledged that this is not a planning application, there is no mechanism to assess this mechanism set out under Class J of the GPDO. As such, an assessment has to be made

whether the harm would be so severe that it would interfere with a neighbour's Article 8 Convention rights.

- 5.34 The site is surrounded by 5 residential streets. It is considered that loss of privacy by overlooking into the rear of habitable rooms and gardens to all surrounding properties on Edis Street, Egbert Street, Gloucester Avenue, Chalcot Road and Fitzroy Road will occur. This overlooking is particularly intense to view from the site's first and second floor windows which face towards surrounding windows which serve habitable rooms. Some overlooking may also occur from ground floor windows. It is acknowledged that some windows within the site are as existing obscured and secured as such. A 1968 planning permission secures 4x first floor windows on the site as obscure glazed and fixed shut. This relates to the first floor level at the north east corner of the site, facing the rear of (approx.) 7-11 Edis Road serving Unit 2a. It is presently unclear whether the security created by this condition would apply in the event of a Class J approval.
- 5.35 In some cases there would be as little distance as 5 metres between proposed habitable room windows at the appeal site and habitable room windows at the application site. See Appendix 7 which details on a plan the unacceptable distances between the windows of the proposed flats and habitable room windows at the surrounding residential properties. Appendix 8 is also relevant as it shows photos taken at the appeal site which demonstrate the severity of the harm to amenity as a result of the proposed scheme.
- 5.36 It is acknowledged by the Council that in terms of the majority of the windows at the property, which are currently clear glazed, there is a level of overlooking from the existing office spaces to the surrounding residential properties. However, this overlooking only exists when the offices are occupied for business uses during working hours on week days only. If the use were to be converted to residential, in accordance with the proposal, the opportunity for overlooking of the residential uses would exist at all times including evening and at weekends. This would result in the surrounding occupiers having no privacy or respect for their private and family life 24 hours a day 7 days a week. Furthermore, the fact the proposal would result in the main living spaces in the existing surrounding units being overlooking by the main living space of the proposal unit in Utopia Village this would result in

a total lack of privacy and a sense of intrusion into family life. This would create a sense of complete lack of privacy for existing residents.

5.37 This is considered to significantly worsen the existing situation to the extent that it would constitute an interference of the neighbour's rights under Article 8 of the European Convention of Human Rights, the right to respect for private and family life.

5.38 The Council therefore requests that this reason for refusal is upheld. However, it is suggested that the Inspector rewords it to read,

5.39 *'The proposed development, by reason of its proximity to existing residential development on Edis Street, Egbert Street, Fitzroy Road, Chalcot Road and Gloucester Avenue, would result in overlooking and a loss of privacy to the occupiers of existing residential properties, contrary to Article 8 of the European Convention on Human Rights.'*

5.40 The reference to the proposed occupiers of the new flats has been removed from the above reasons as this does not interfere with any existing Article 8 right as the units are not yet occupied and any further occupier would have the choice whether or not they would wish to live there.

6. CONCLUSION

The appeal is against the London Borough of Camden's refusal of a prior approval application for *Change of use from offices (Class B1a) to 53 residential units (Class C3)*.

- 6.1 The Council considered that reasons for refusal nos. 1-4 could be overcome by entering into a S106 legal agreement. The appellant has confirmed that they are willing to enter into a S106 to overcome reason for refusal nos. 1-4 (Transport impacts). These matters are covered in greater detail in the Proof of Mr. Steve Cardno (Principal Transport Planner). The Council has withdrawn reason for refusal no. 5 which secured a contribution towards pedestrian and environmental improvements. This is because further analysis has demonstrated that such a contribution is not necessary to ensure the proposal would not result in harm to the transport or highway network.
- 6.2 In light of the ministerial statement issued by Nick Boles MP on the 7 February 2014, the new Planning Practice Guidance which was published by the Department for Communities and Local Government (DCLG) on the 6 March 2014 and the Explanatory Memorandum to the GPDO Order 2014 No. 564 the Council is now of the view that issues wider than transport and highways impacts and contamination and flooding risks cannot be considered under paragraph J.2 of the Order. As such, the Council is conceding reason for refusals nos. 6 (open space); 7 (affordable housing); 8 (educational infrastructure); 9 (Ecology and Habitat Plan); 10 (sustainability); 11 (wheelchair housing); 12 (daylight to proposed flats); 13 (outlook to proposed flats) and 15 (community facilities).
- 6.3 The Council considered that the proposal remains unacceptable in terms of impact on the privacy of the occupiers of the surrounding residential properties as a result of overlooking from the proposed units. This would significantly harm existing occupier's privacy to the extent that it would constitute an interference of the neighbour's rights under Article 8 of the European Convention of Human Rights, the right to respect for private and family life.

- 5.22 The Council therefore requests that this reason for refusal is upheld, albeit reworded to read,
- 5.23 *'The proposed development, by reason of its proximity to existing residential development on Edis Street, Egbert Street, Fitzroy Road, Chalcot Road and Gloucester Avenue, would result in overlooking and a loss of privacy to the occupiers of existing residential properties, contrary to Article 8 of the European Convention on Human Rights.'*
- 6.4 For the above reasons, the Inspector is respectfully requested to dismiss the appeal.

LIST OF APPENDICES (attached as a separate document)

Appendix 1	Officers report and decision notice for the prior approval application
Appendix 2	Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013
Appendix 3	Explanatory Memorandum to the GPDO Order 2014 No. 564
Appendix 4	National Planning Policy Framework 2012
Appendix 5	Site location plan
Appendix 6	Lough v FSS 2004 1 WLR 2557
Appendix 7	Plan showing distances between the windows of the proposed residential flats and habitable room windows of the surrounding properties.
Appendix 8	Photos of the appeal site