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Chris Ries  
The Planning Inspectorate  
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Dear Chris Ries,

**Appeal by c/o agent Sydney Wharf Ltd  
Site at 40 Parker Street, London, WC2B 5PQ**

Appeal against the Council's non-determination of planning application for change of use at third floor level from business floorspace (Class B1a) to residential (Class C3) and erection of 2 storey roof extension with terraces, in connection with creation of 6 (2x1, 3x2 & 1x3 bed) flats.

Summary

The Council's case is largely set out in the officer's delegated report dated 11<sup>th</sup> August 2014 as attached (refer to Appendix 1). The Development Control Committee report (no.15) as referred to by the appellant and which was sent with the questionnaire is not the relevant report and was sent with the Questionnaire in error given the appellants referral to it. I would be pleased if the Inspector would take into account the following comments before deciding the appeal. It is emphasised that the following comments address solely additional information submitted by the appellant in the appeal.

The Council's Development Control Committee (DCC) discussed the proposal on 02/10/2014. However, the decision was deferred as members asked officers to obtain further information for their consideration. The critical information requested however was not provided by the appellant. Owing to the lack of information submitted the Council's DCC did not consider the proposal again and the application was subsequently determined under delegated authority: - that permission would have been refused had an appeal against non- determination not been lodged.

This proposal would have been refused on 1) grounds of inadequate marketing information plus six grounds relating to S106 legal obligations including 'carfree' housing, contribution to public open space, contribution to education, inappropriate environmental sustainability measures, construction management plan and

contribution for highway footways re-pavement improvement. Please refer to the draft decision notice (appendix 1).

Reason for refusals:

- 1 The proposed demolition would result in the loss of a building which makes a positive contribution to the Redington/Froggnal Conservation Area to the detriment of the character and appearance of the Redington/Froggnal Conservation Area, contrary to policy CS14 (Promoting high quality places and conserving our heritage) of the London Borough of Camden Local Development Framework Core Strategy and policies DP24 (Securing high quality design) and DP25 (Conserving Camden's heritage) of the London Borough of Camden Local Development Framework Development Policies.
- 2 The proposed building, by reason of its excessive height, mass and bulk, inappropriate design and extent of site coverage, fails to relate to the context of the Redington/Froggnal Conservation Area, to the detriment of the character and appearance of the Redington/Froggnal Conservation Area, contrary to policy CS14 (Promoting high quality places and conserving our heritage) of the London Borough of Camden Local Development Framework Core Strategy and policies DP24 (Securing high quality design) and DP25 (Conserving Camden's heritage) of the London Borough of Camden Local Development Framework Development Policies.
- 3 The proposed residential units at basement level, by reason of their poor outlook would result in sub-standard accommodation that would fail to provide an acceptable level of residential amenity to their occupants, contrary to policies CS5 (Managing the impact of growth and development) of the London Borough of Camden Local Development Framework Core Strategy and policy DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Policies.
- 4 The Basement Impact Assessment fails to demonstrate that the proposed development would maintain the structural stability of the neighbouring properties and would not adversely impact upon the local water environment and drainage, contrary to policies CS5 (Managing the impact of growth and development) and CS13 (Tackling climate change through promoting higher environmental standards) of the London Borough of Camden Local Development Framework Core Strategy; and to policies DP23 (Water), and DP27 (Basements and lightwells) of the London Borough of Camden Local Development Framework Development Policies.
- 5 The proposed development, by reason of the layout of the residential units, fails to meet the requirement to provide any easily adaptable wheelchair accessible units and therefore is contrary to policies CS6 (Providing quality homes) and CS19 (Delivering and monitoring the Core Strategy) of the Local Development Framework Core Strategy and policy DP6 (Lifetime homes and wheelchair housing) of the Local Development Framework Development Policies.
- 6 The proposed development, in the absence of a legal agreement to secure a

contribution to the supply of affordable housing, would be contrary to policies CS6 (Providing quality homes) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Core Strategy, and policy DP3 (Contributions to the supply of affordable housing) of the London Borough of Camden LDF Development Policies.

- 7 The proposed development, in the absence of a legal agreement to secure residential units as 'car-free' housing, would be likely to contribute unacceptably to parking congestion in the surrounding area and promote the use of non-sustainable modes of transport, contrary to policies CS11 (Promoting sustainable and efficient travel) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Core Strategy and DP18 (Parking standards and limiting the availability of car parking) of the London Borough of Camden LDF Development Policies.
- 8 The proposed development, in the absence of a legal agreement to secure a Construction Management Plan, would be likely to give rise to conflicts with other road users, and be detrimental to the amenities of the area generally, contrary to policies CS5 (Managing the impact of growth and development), CS11 (Promoting sustainable and efficient travel) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policies DP20 (Movement of goods and materials) and DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Policies.
- 9 The proposed development, in the absence of a legal agreement to secure a Service Management Statement, would be likely to contribute unacceptably to traffic disruption and dangerous situations for pedestrians and other road users, and be detrimental to the amenities of the area generally, contrary to policies CS16 (Improving Camden's health and well-being) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Core Strategy and DP20 (Movement of goods and materials), DP26 (Managing the impact of development on occupiers and neighbours) , DP28 (Noise and vibration) and DP32 (Air quality and Camden's Clear Zone) of the London Borough of Camden LDF Development Policies.
- 10 The proposed development, in the absence of a legal agreement to secure contributions towards public highway works and public realm and environmental improvements would be likely to harm the Borough's transport infrastructure, contrary to policies CS11 (Promoting sustainable and efficient travel) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Core Strategy DP16 (The transport implications of development), DP17 (Walking, cycling and public transport) and DP21 (Development connecting to the highway network) of the London Borough of Camden LDF Development Policies.
- 11 The proposed development, in the absence of a legal agreement securing a design and post-construction sustainability review achieving Level 4 in a Code for Sustainable Homes Assessment and the submission and compliance with an Energy Efficiency Plan securing the measure set out in the Energy Strategy, would fail to be sustainable in its use of resources, contrary to

policies CS13 (Tackling climate change through promoting higher environmental standards) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policies DP22 (Promoting sustainable design and construction) and DP23 (Water) of the London Borough of Camden Local Development Framework Development Policies.

- 12 The proposed development, in the absence of a legal agreement securing a Public open space contributions, would be likely to contribute to pressure and demand on existing open space in this area, contrary to policies CS15 (Protecting and improving our parks and open spaces and encouraging biodiversity) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Core Strategy and DP31 (Provision of, and improvements to, public open space and outdoor sport and recreation facilities) of the London Borough of Camden LDF Development Policies.
- 13 The proposed development, in the absence of a legal agreement securing an Educational Facilities contribution, would be likely to contribute unacceptably to pressure on the Borough's social infrastructure, contrary to policies CS10 (Supporting community facilities and services) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Core Strategy and DP15 (Community and leisure uses) of the London Borough of Camden LDF Development Policies.
- 14 The proposed development, in the absence of a legal agreement securing a Community Facilities contribution, would be likely to contribute unacceptably to pressure on the Borough's social infrastructure, contrary to policies CS10 (Supporting community facilities and services) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Core Strategy and DP15 (Community and leisure uses) of the London Borough of Camden LDF Development Policies.

#### Status of the Council's policies

The full text of the relevant policies was sent with the questionnaire documents. On 8th November 2010 the Council formally adopted the Core Strategy and Development Policies documents of the Local Development Framework. These documents have been through an Examination in Public, and the appointed Inspector found the documents to be sound in a decision published on 13th September 2010. Therefore at the time of the determination of this appeal 'The Development Plan' for the purposes of Section 38(6) of the Planning and Compulsory Purchase Act 2004 was Camden Core Strategy and Camden Development Policies. In addition Camden Planning Guidance was adopted in 2011 and reviewed in 2013.

#### Observations on new issues in appellants' grounds of appeal

The appellant's statement refers to 5 headings:

**A]** Section 2 outlines the site and its context within the surrounding area;

- B]** Section 3 provides an overview of the planning history and background to the proposals;
- C]** Section 4 provides an outline of the proposals;
- D]** Section 5 examines the main planning considerations;
- E]** Section 6 draws our conclusions in respect of the proposals.

The Council raised no objections to the substantive issues discussed in sections 2, 3, or 4.

The Council seeks to address additional new information raised by the appellants in their grounds of appeal. Specifically issues related to the availability of documents and the soundness of the Council's decision in the absence of detailed information associated with the alleged temporary occupier of the 3<sup>rd</sup> floor of the appeal building.

### The Council's Comments on grounds of appeal

The grounds of appeal can be summarised as follows and are subsequently addressed beneath.

- 1.0 Land use – Loss of business floorspace - The appellant in paragraph 5.9 refer to paragraph 7.3 of the CPG *“Camden’s Core Strategy sets out the projected demand and planned supply of office floorspace in the borough. We expect the supply of offices to meet the projected demand over the plan period and as a result we may allow a change from B1 (a) offices to another use in some circumstances, such as older office premises or buildings that were originally built as residential dwellings. Our priority is for the replacement use to be permanent housing or community use. This approach is in line with policy DP13 Employment premises and sites in the Camden Development Policies;* but refers to another recent proposal at 196 Shaftesbury Ave (ref. 2012/5939 – Appendix 2) rather than the associated appeal site.
- 1.1 The Council broadly agreed with the analysis of LDF policies CS8 and DP13 and the general presumption to resist the loss of employment space subject to the submission of written evidence to support any loss of business floorspace. The Council accepted the principle of the loss of business floorspace however its elected members were not given the supporting evidence to aid their assessment and to make a determination.
- 1.2 Officers requested specific information on the behalf of the Councillors as related to the appeal site as follows:
  - a] marketing evidence and justification for the loss of employment regarding the quality of the floorspace; and more particularly the criterion set out in CPG 5, section 6.4, bullet 7 (*whether the premises currently provide accommodation for small and medium businesses*) and section 6.18 in particular regard to bullet 8 (*Where there is an existing employment use then we will require evidence that the tenant intends to move out*).
  - b] Additional drawings showing views of the extension from the east and west sides of the street;

c] Include an informative to ensure the new residents are aware of the likely occasional noise disturbance associated with neighbouring premises at 23A Great Queen Street (rear of the application site);

d] Details of the surrounding uses nearby and any modern roof extensions.

- 1.3 The Council would suggest that the requested information (Paragraphs 7.4 & 7.18) as do paragraph 7.3 are to be read in conjunction with LDF policies CS8 & DP13 rather than taken in isolation as the appellant does. The appellant did submit further drawings to indicate the respective views as required by the councillors. Unfortunately however, the remainder of the evidence was not submitted, information, which is considered to be reasonable under the circumstances to ensure the materiality of the loss of business floorspace. It is acknowledged that the original recommendation recommended planning approval for the loss of the business floorspace. However, it's the prerogative of the councillors to seek clarification and or additional supporting information to aid their assessment prior to arriving at a decision. It is within this context that the councillors sought further supporting information as noted above.
- 1.4 The Council generally agree that the appeal business floorspace are largely in compliance with those criteria as indicated in LDF DP13 CPG. However, the Council would suggest that it is reasonable for the councillors to request and be provided with information that they reasonable thought it would provide a better understanding of the circumstances of the current occupier of the appeal floorspace. The appellants' original submission and later response have been that the tenants are on a 6 months short term lease. Clearly the councillors thought this was insufficient information to which the appellant did not response. The key issue as it related to the current tenant was not submitted by appellant and owing to this fact the proposal was recommended for refusal following confirmation by the appellant.
- 1.5 The Council would not draw much comparison with 196 Shaftsbury Avenue as indicated by the appellant. Each application has to be determined on its merits and the issues and circumstances generally differ; and the similarities between the two cases are restricted to the loss of business floorspace and proximity. Accordingly, the Council would ask the Inspector to pay little regards to its inclusion.
- 2.0 Principle of residential use - The Council raised no objections in principle to the provision of residential accommodation. The Council raised no objections regarding residential amenity.
- 3.0 Design merits of the extension - The Council raised no objections to the extension or its detail design.
- 4.0 Reason for appeal - The appellant in section 6 – paragraph 6.1, states that the appeal is due to delays. As noted in paragraph 1.5 of the delegated report the delay in arriving at a decision was owing to workload but more latterly; owing to a busy committee agenda which meant that the application was only discussed in October. The appellant was informed on each occasion as to the reason for the delay in having their proposal discussed.

## Section 106 Legal agreements

5.0 Reasons for refusal 2-7 are matters of legal obligations which the appellant indicated a willingness to enter with the Council. However, in the event that some/all matters cannot be agreed in this way then the Council provide evidence to demonstrate that the requirements are justified against relevant planning policy and meet the tests laid out in the Community Infrastructure Levy (CIL) Regulations 2010 in particular Regulation 122(2) which require that for a planning obligation to constitute a reason for granting planning permission it must be (a) necessary to make the development acceptable in planning terms, (b) directly related to the development, and (c) fairly and reasonably related in scale and kind to the development, and the National Planning Policy Framework (particularly paragraphs 203-206).

### Reason 2 – Car free

5.1 *The proposed development, in the absence of a legal agreement to secure residential units as 'car-free' housing, would be likely to contribute unacceptably to parking congestion in the surrounding area and promote the use of non-sustainable modes of transport, contrary to policies CS11 (Promoting sustainable and efficient travel) and CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Core Strategy and DP18 (Parking standards and limiting the availability of car parking) of the London Borough of Camden LDF Development Policies.*

5.2 The reasons for this are to facilitate sustainability and to help promote alternative, more sustainable methods of transport. Considering the site has a Public Transport Accessibility Level of (PTAL) of 5 (very good), and is located within a Controlled Parking Zone which is considered to suffer from parking stress, the development should be secured as car free through a s106 legal agreement if the appeal were allowed.

5.3 This is in accordance with key principle 4 of the National Planning Policy Framework, Promoting sustainable transport, and policies CS11 (Promoting sustainable and sufficient travel); CS19 (Delivering and monitoring the Core Strategy); DP18 (Parking standards and availability of car parking); and DP19 (Managing the impact of parking) of the LDF.

5.4 A planning obligation is considered the most appropriate mechanism for securing the development as car free as it relates to controls that are outside of the development site and the ongoing requirement of the development to remain car free. The level of control is considered to go beyond the remit of a planning condition. Furthermore, the Section 106 legal agreement is the mechanism used by the Council to signal that a property is to be designated as "Car Free".

5.5 The Council's control over parking does not allow it to unilaterally withhold on-street parking permits from residents simply because they occupy a particular property. The Council's control is derived from Traffic Management Orders ("TMO"), which have been made pursuant to the Road Traffic Regulation Act 1984. There is a formal legal process of advertisement and consultation involved in amending a TMO. The Council could not practically pursue an

amendment to the TMO in connection with every application where the additional dwelling (or dwellings) ought properly to be designated as car free. Even if it could, such a mechanism would lead to a series of disputes between the Council and incoming residents who had agreed to occupy the property with no knowledge of its car-free status. Instead, the TMO is worded so that the power to refuse to issue parking permits is linked to whether a property has entered into a “Car Free” Section 106 Obligation. The TMO sets out that it is the Council’s policy not to give parking permits to people who live in premises designated as “Car Free”, and the Section 106 legal agreement is the mechanism used by the Council to signal that a property is to be designated as “Car Free”.

- 5.6 Further, use of a Section 106 Agreement, which is registered as a land charge, is a much clearer mechanism than the use of a condition to signal to potential future purchasers of the property that it is designated as car free and that they will not be able to obtain a parking permit. This part of the legal agreement stays on the local search in perpetuity so that any future purchaser of the property is informed that residents are not eligible for parking permits.

#### CIL Compliance

- 5.7 The Car Free requirement complies with the CIL Regulations as it ensures that the development is acceptable in planning terms to necessarily mitigate against the transport impacts of the development as identified under the Development Plan for developments of the nature proposed. This supports key principle 4 of the National Planning Policy Framework: Promoting sustainable transport. It is also directly related to the development and fairly and reasonably related in scale and kind as it relates to the parking provision for the site and impact on the surrounding highway network.

#### Reason 3 – public open space

- 5.8 The proposed development, in the absence of a legal agreement for securing contributions for public open space, would be likely to contribute to pressure and demand on the existing open space in this area, contrary to DP31 (open space and outdoor recreation) of the London Borough of Camden Local Development Framework Development Policies.
- 5.9 The NPPF seeks to secure the provision of adequate open space to meet local needs for open space. Paragraph 58 states that provision of green space and public open space should be incorporated in developments. Paragraph 73 states that high quality open spaces and opportunities for sports and recreation can make an important contribution to the health and well-being of communities.
- 5.10 The LDF Policies CS15, CPG 6 and DP31 require development to mitigate against increase demand for and use of public open spaces. The policies requires provision of 9 sqm of open space per person for residential developments providing 5 or more additional dwellings and this will initially be expected to be provided on site. Where it is not possible to provide this open space provision on site the preferred option would be to provide suitable open



space off-site. If either of the above are not practical a financial contribution to open space will be acceptable.

- 5.11 The current proposed unit mix would generate an open space requirement of 238sqm. As a payment in lieu (including all capital costs, maintenance and design/admin) the Council would expect £7,863 as financial contributions for the absence of the provision of open space for the 4 residential units. The contribution could be used to improve nearby public open space.
- 5.12 The financial contribution is based on the capital cost of providing new open space, the cost of maintenance for the first five years and the cost for the open space team to administer the contribution and design schemes. CPG6 states that all types of residential development are considered to generate requirements per occupier of 9m<sup>2</sup> (refer paragraph 11.5). The amount of the contribution has been calculated in accordance with the formula set out in the guidance.
- 5.13 Such a contribution has to be secured by S106 obligation. This contribution would be in accordance with chapters 7 and 8 of the National Planning Policy Framework: Promoting healthy communities. The National Planning Practice Guidance advises that financial contributions cannot be secured by condition (Appendix 8, PPG, Using Planning Conditions, paragraph 5).
- 5.14 CIL Compliance: The contribution is considered to be CIL compliant is necessary in planning terms as identified in the development plan to mitigate against the increased pressure on open spaces as a direct result of the extra demand created by the occupation of the development. The contribution has been calculated taking into account the particular characteristics of the development, it is directly related to the development and is fairly and reasonably related in scale and kind to the development. This supports key principle 8 of the National Planning Policy Framework: Promoting healthy communities

#### Reason 4 – Education contribution

- 5.15 The proposed development, in the absence of a legal agreement securing educational contributions, would be likely to contribute to pressure and demand on the existing educational facilities, contrary to policy CS10 (Community facilities and services) of the London Borough of Camden Local Development Framework Core Strategy.
- 5.16 Paragraph 72 of the NPPF states that LPAs should ensure that a sufficient choice of school places is available to meet the needs of existing and new communities. The London Plan states LPAs should ensure the adequate social infrastructure provision is made to support new developments.
- 5.17 Policy CS19, and Camden Planning Guidance 8 (Planning Obligations) sets out at paragraph 4.5 that “All residential development (Class “C3” of the Town and Country Planning Use Classes) including new build, change of use and conversion where the scheme results in a net increase of five or more dwelling units will normally be expected to provide a contribution towards education provision”.

- 5.18 The occupiers of the new residential units are likely to place an increased burden on educational facilities in the area and a contribution to education infrastructure is necessary to mitigate against the extra demand and increased pressure on local schools created by the occupation of the development.
- 5.19 The proposed scheme, comprising [3 x 2 bed units]  $3 \times £2,213 = £6,639$  and 1x 3 or 1 x £6,322 (+ £6,322) therefore = £12,961 as a contribution towards provision of education facilities in the borough, for which there is a pressing need in the locality.
- 5.20 Such a contribution, calculated in accordance with the formula in figure 1 of the Camden Planning Guidance would be necessary in this case due to the scale and mix of housing proposed. Such a contribution has to be secured by S106 obligation. The Planning Practice Guidance advises that financial contributions cannot be secured by condition (Appendix 8, PPG, Using Planning Conditions, paragraph 5).
- 5.21 CIL compliance: It is considered that the education contribution meets the requirements of the CIL Regulations. It is necessary to make the development acceptable in planning terms as identified by the Development Plan to mitigate against the extra demand and increased pressure on local schools created by the occupation of the development. The contribution has been calculated with reference to Guidance but taking into account the specific characteristics of the development as outlined above and accordingly the contribution is considered to relate fairly and reasonably in scale and kind to the development. This supports key principle 8 of the National Planning Policy Framework: Promoting healthy communities.

#### Reason 5 – Environmental sustainability

- 5.22 The proposed development, in the absence of measures to incorporate environmental sustainability measures in its use of energy, water and resources, including the submission of a preliminary stage assessment demonstrating that the conversion can achieve a minimum 'Level 4' overall rating, of Code for Sustainable Homes pre-assessment would fail to ensure proper standards of sustainability in the development, contrary to policies CS13 (tackling climate change) and DP22 (sustainable design and construction) of the London Borough of Camden Local Development Framework Core Strategy and Development Policies.
- 5.23 Paragraph 93 of the NPPF states that planning plays a key role in reducing greenhouse gas emissions, minimising vulnerability and providing residence to the impacts of climate change and supporting the delivery of renewable and low carbon energy. Paragraphs 96 and 97 require LPA to expect to meet local requirements to link up to decentralised energy supplies and encourages use and supply of low carbon technologies.
- 5.24 Policy CS13 sets out the Council's overall approach to tackling climate change, which includes tackling higher environmental standards in design and construction. Policy DP22 provides details of the sustainability standards. The

LDF is in accordance with Chapter 5 of the London Plan – London’s response to climate change.

- 5.25 Energy Efficiency Plan - This requires developments to make the fullest contribution to tackling climate change in the following hierarchy: firstly by minimising carbon dioxide emissions, adopting sustainable design and construction measures (be lean), secondly prioritising decentralised energy (be clean) and thirdly incorporating renewable technologies (be green). The Energy Strategy submitted broadly follows the energy hierarchy.
- 5.26 In accordance with the London Plan and CPG3 - Sustainability development should make a 40% improvement of the current 2010 Building Regulations with regard to carbon dioxide reduction targets. A full assessment of the proposed Energy Efficiency Plan is contained within the case officer’s report.
- 5.27 To summarise, combined be lean, be clean and be green measures would reduce the CO2 emissions per annum, of between 28% and 32% beyond what would be expected for a 2010 Building Regulations compliant scheme. There is a shortfall between what would be achieved and the 40% target set out in the London Plan. The applicant has not demonstrated that they have explored options to bring the CO2 reduction up to 40% beyond what is expected in the 2010 Building Regulations.
- 5.28 If this appeal were to be allowed it should be subject to a S106 agreement to secure that reasonable endeavours are made to bring the CO2 reduction up to 40% beyond what is expected in the 2010 Building Regulations.
- 5.29 An Energy Efficiency Plan is required in order to make the proposal acceptable in sustainability terms. It is necessary to secure this is undertaken, installed and maintained and the most appropriate way of doing so is by a S106 agreement.
- 5.30 Code for Sustainable Homes - A Code for Sustainable Homes pre-assessment has been provided, which confirms that a rating of ‘level 4’ would be achieved. CPG3 also requires that 50% of the un-weighted credits should be achieved in the categories of Energy, Water and Materials. 65% of the credits would be achieved in the Energy category, 67% in water and 75% in materials.
- 5.31 If the appeal were to be allowed the Council would require a post construction review to be carried out by an impartial assessment body. The Section 106 agreement would also secure the ongoing maintenance and retention of the sustainability measures. This would involve ongoing maintenance of a range of measures which may be updated or varied as agreed with the Council from time to time. This would not only be the responsibility of the developer, but that of subsequent owners and occupiers.
- 5.32 The Council consider a planning obligation would be the most appropriate tool to ensure on-going compliance with the Code for Sustainable Homes assessments. In addition, in order to ensure compliance with the measures identified in the Code for Sustainable Homes assessments, the Council’s standard procedure is to not permit occupation of the development until a

satisfactory post-construction review has been provided and any issues identified in that review have been satisfactorily addressed. Given the complexity of the requirement a S106 rather than a condition is considered the most appropriate measure to secure this.

- 5.33 CIL compliance: This obligation complies with the CIL Regulations as it ensures that the development is acceptable in planning terms to facilitate sustainable development. This supports the National Planning Policy Framework key principle to achieve sustainable development. It is also directly related to the development and fairly and reasonably related in scale and kind as it ensures that the development itself is sustainable.

#### Reason 6 – construction plan

- 5.34 The proposed development, in the absence of a legal agreement for a Construction Management Plan, would be likely to contribute unacceptably level highway footways damage and would be contrary to policy CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policies DP17 (Walking, cycling and public transport), DP18 (Parking standards and limiting the availability of car parking), DP19 (Managing the impact of parking), DP21 (Development connecting to the highway network) of the London Borough of Camden Local Development Framework Development Policies.
- 5.35 The construction is likely to have a significant impact and the management of the construction will need to be planned in order to minimise any impact on Parker Street and neighbours. This could be achieved through a Construction Management Plan (CMP) in accordance with policies CS5, CS11, CS19, DP20, and DP26 specifically paragraph 26.10, and CPG7 – Transport.
- 5.36 A planning obligation is considered to be the most appropriate mechanism for securing compliance with a CMP in this case simply because a considerable extent of the activity during construction could cause conflict with other road users or be detrimental to the amenity of the area and will necessarily take place outside the curtilage of the planning unit of the appeal site. Potential impacts for the proposed demolition/construction works which should be controlled by a CMP include traffic generation from removal and delivery of materials to the site. This could result in traffic disruption and dangerous situations for pedestrians and road users.
- 5.37 Under the Planning Act conditions are used to control matters on land within the developers' control. However, a CMP is designed to be an enforceable and precise document setting out how measures will be undertaken not just on site but also around the site in order to minimise as far as reasonable the detrimental effects of construction on local residential amenity and / or highway safety on the nearby roads hence, using a condition to secure the type of off-site requirements usually included in a CMP would in this case be unenforceable.

5.38 Conditions can only lawfully be used to control matters on land within the developer's control. Many of the CMP provisions will relate to off-site requirements, particularly public highway (which is not land within the developers' control). As such, a Section 106 Agreement (rather than a condition) is the most appropriate mechanism. This is in accordance with Planning Practice Guidance which states that conditions requiring works on land that is not controlled by the applicant often fails the tests of reasonability and enforceability. (PPG, Use of Conditions paragraph 9 – Appendix 6)

#### Reason 7 – highway maintenance

5.39 The proposed development, in the absence of a legal agreement for a financial contribution for highway footways re-pavement improvement adjacent to the site, would be likely to contribute unacceptably level highway footways damage and would be contrary to policy CS19 (Delivering and monitoring the Core Strategy) of the London Borough of Camden Local Development Framework Core Strategy and policies DP17 (Walking, cycling and public transport), DP18 (Parking standards and limiting the availability of car parking), DP19 (Managing the impact of parking), DP21 (Development connecting to the highway network) of the London Borough of Camden Local Development Framework Development Policies.

5.40 Highways works - Policy DP21 states that the Council will expect development connecting to the highway to repair any construction damage to the transport infrastructure or landscaping and reinstate all affected transport network links, road and footway surfaces following development. In order to cover the Council's cost to repair any highway damage as a result of construction and to tie the development into the surrounding urban environment a financial contribution should be required to repave the footway adjacent to the site in accordance with policy DP16 and DP21. The site also current has vehicular access from gates and a cross over on to Heath Drive. In order to ensure that the forecourt is not used for parking in the future it would be necessary to secure the removal of cross over.

5.41 The estimate for this work, prepared by the Borough Engineer is £6,000. It is considered that this amount is justified given the size and scale of the development.

5.42 The Council maintains that a payment for highways work should be secured through a Section 106 legal agreement, which will also combine as an agreement under Section 278 of the Highways Act 1980. CPG8 – Planning Obligations states that public highways works on Borough Roads are to be undertaken through a Section 106 or 278 obligations. The guidance also states that the Council will secure payment for required works by preparing an estimate (including fees) for the scheme that the developer will be required to pay before commencing development. (Paragraph 5.14). The most effective way of both securing sufficient payment and ensuring the works are carried out to the Council's procedures and standards is for a financial contribution to be paid by the developer on commencement of the development and secured by an obligation under Section 106 legal agreement. It is not possible to secure a financial contribution for highway works by condition as it relates to land outside the application site and is not under the control of the applicant. The

Planning Practice Guidance advises that financial contributions cannot be secured by condition (PPG, Using Planning Conditions, and paragraph 5 – Appendix 8).

5.43 It is not possible to secure a financial contribution for environmental improvements by condition as it relates to land outside the application site and is not under the control of the applicant. Furthermore, the Planning Practice Guidance advises that financial contributions cannot be secured by condition (PPG, Using Planning Conditions, and paragraph 5 –Appendix 8).

5.44 CIL Compliance: The contribution is considered to be CIL compliant is necessary in planning terms as identified in the development plan to mitigate against the increased impact that will be generated by the development. The contribution has been calculated taking into account the particular characteristics of the development, it is directly related to the development and is fairly and reasonably related in scale and kind to the development. It is also directly related to the development and fairly and reasonably related in scale and kind as it will provide for the new residents and mitigate impacts of the development.

5.45 The appellant has indicated their willingness to enter into a s106 legal agreement. The council will approach the appellants prior to the final comments stage with a view to finalising through s106 agreement for the inspector

For these reasons outlined above, the Council would urge the Inspector to dismiss the appeal. However, if the Inspector were minded to grant planning permission the conditions the Council would suggest are outlined in Appendix 2.

Yours sincerely,

Hugh G Miller  
Planning Officer  
Culture and Environment Department.

## **Appendix 2 - Condition(s) and Reason(s):**

1 The development hereby permitted must be begun not later than the end of three years from the date of this permission.

Reason: In order to comply with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).

2 All new external work shall be carried out in materials that resemble, as closely as possible, in colour and texture those of the existing building, unless otherwise specified in the approved application.

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policy CS14 of the London Borough of Camden Local Development Framework Core Strategy and policy DP24 and DP25 of the London Borough of Camden Local Development Framework Development Policies.

3 The development hereby permitted shall be carried out in accordance with the following approved plans [Location plan; Ex 01; Ex 02; Ex 04; Ex 05; Ex 06; PP2 00C; PP2 01D; PP2 02 C; PP2 03 C; PP2 04 B; PP2 05 B; PP2 06 A; PP2 07 A; PP2 09 A; PP2 10 A; Design & Access Statement, March 2014; Daylight and Sunlight Report, 5th March 2014; Planning Statement, Savills, March 2014; Noise Report, Report 6062/PNA Prepared: 25 February 2014; Sustainability Statement & Energy Report; Report Reference: BEC/SAVILLS/PARKER]

Reason: For the avoidance of doubt and in the interest of proper planning.

4 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 (or any part of it) is 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).

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policy CS5 of the London Borough of Camden Local Development Framework Core Strategy and policies DP26 and DP28 of the London Borough of Camden Local Development Framework Development Policies.

5 Full details in respect of the green roof in the area indicated on the approved roof plan shall be submitted to and approved by the local planning authority before the relevant part of the development commences. The buildings shall not be occupied until the approved details have been implemented and these works shall be permanently retained and maintained thereafter.

Reason: In order to ensure the development undertakes reasonable measures to take account of biodiversity and the water environment in accordance with policies

CS13, CS15 and CS16 of the London Borough of Camden Local Development Framework Core Strategy and policies DP22, DP23 and DP32 of the London Borough of Camden Local Development Framework Development Policies.

6 The lifetime homes features and facilities, as indicated on the drawings and documents hereby approved shall be provided in their entirety prior to the first occupation of any of the new residential units.

Reason: To ensure that the internal layout of the building provides flexibility for the accessibility of future occupiers and their changing needs over time, in accordance with the requirements of policy CS6 of the London Borough of Camden Local Development Framework Core Strategy and policy DP6 of the London Borough of Camden Local Development Framework Development Policies.

7 Prior to the first occupation of any new residential unit the whole of the cycle parking provision shown on the approved drawings shall be provided. The whole of the cycle parking provision shall be permanently retained and maintained thereafter.

Reason: To ensure the development provides adequate cycle parking facilities in accordance with the requirements of policy CS11 of the London Borough of Camden Local Development Framework Core Strategy and policy DP17 of the London Borough of Camden Local Development Framework Development Policies.