



**STATEMENT OF CASE ON
BEHALF OF IDM PROPERTIES
LTD**

**DEMOLITION OF SERVICE
STATION AND
REDEVELOPMENT OF THE SITE
FOR RETAIL AND RESIDENTIAL
SCHEME (9 UNITS)**

**SITE AT 138-140 HIGHGATE
ROAD, LONDON, NW5 1PB**

APP/X5210/A/14/2223057

2014/1692/P

KR PLANNING

NOVEMBER 2014

1 INTRODUCTION

- 1.1 This Appeal is made against the refusal of the London Borough of Camden to grant planning permission for the erection of 3 storey building to provide 3 Class A1 retail units at ground floor and 9 Class C3 residential units (5 x 2 bedroom flats, 4 x 3 bedroom flats) at first and second floor, following demolition of petrol station and MOT garage (Sui Generis) at 138-140 Highgate Road, London, NW 5 1PB
- 1.2 The Application was refused on 2 June 2014 for a total of 12 reasons. An informative on the decision letter advises that seven of those reasons can be overcome by the submission of a S106 planning obligation
- 1.3 The Appellant's Statement of Case is comprised of four chapters, with each being provided by the relevant expert as follows:
 - Stephanie Brooks, Architecture
 - Giles Quarme, Conservation
 - Ben Rose, Trees
 - Kieran Rafferty, Planning and Land Use Issues

2 SITE AND SURROUNDS

- 2.1 The site and surrounds, the local context and the area of search are all identified within the Design and Access Statement.
- 2.2 The site is occupied by a petrol station, constructed in the mid 20th century. The canopy appears to be a later addition. It is identified as a negative feature in the Conservation Area.
- 2.3 The site sits directly to the front of Denyer House, which is noted as making a positive contribution to the Conservation Area. Grove End Lodge and Highgate Road Baptist Chapel are adjacent to Denyer House and also noted to make a positive contribution. To the south of the site is an area of public open space, a vehicle repair garage and the train line viaduct.
- 2.4 The existing site is located in the Dartmouth Park Conservation Area; it is adjacent to Grove Terrace Squares public open space which comprises a linear open space dissected by Chetywnd Road and Dartmouth Park Road. The space is designated public open space and listed in the London Square preservation Act 1931. The space contains mature trees which surround and overhang the site, and provide enclosure to the surrounding road network. These make a significant contribution to the green and open character of the immediate area.
- 2.5 It is hoped that this description will be agreed in the Statement of Common Ground.

3 THE PROPOSAL

- 3.1 It is proposed to demolish the existing building, and replace in its stead:
- Retail provision of 487 sqm on the ground floor of the scheme.
 - The provision of 9 residential units on floors 2 and 3, at a mix of 4 x 3 bed and 5 x 2bed
- 3.2 The building is arranged across three floors, but using the natural cut of the land presents a two storey façade to the Denyer House.

4 LEGISLATION

- 4.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that: "If regard is to be had to the Development Plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."
- 4.2 Section 38(5) of the Planning and Compulsory Purchase Act 2004 states that: "If to any extent a policy contained in a Development Plan for an area conflicts with another policy in the plan the conflict must be resolved in favour of the policy which is contained in the last document to be adopted, approved or published (as the case may be)."
- 4.3 The Planning Act 2008 provides for an amendment to S39 of the Planning and Compulsory Purchase Act 2004, to identify neighbourhood plans as part of the Development Plan.
- 4.4 The enactment of the Planning Act 2008 provides for an amendment to S39 of the Planning and Compulsory Purchase Act 2004, to require LPA's, when complying with their S.39 duty to achieve sustainable development, to have regard (in particular) to the desirability of achieving good design.
- 4.5 S72 of the Planning (Listed Building and Conservation Area) Act 1990 requires that: special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

- 4.6 Section 106 of the Town and Country Planning Act 1990 does not restrict the types of arrangements which can be entered into: relevant general provisions are that the s.106 obligation can be used for “restricting the development or use of the land in a specified way” (s.106(1)(a)) and “requiring a sum or sums to be paid to the authority on a specified date or dates or periodically” (s.106(1)(d)).
- 4.7 The Community Infrastructure Levy Regulations 2010 prevents planning obligations being reasons to grant permission unless they are (1) necessary to make the development acceptable in planning terms, (2) directly related to the development, and (3) fairly and reasonably related in scale and kind to the development (regulation 122(2)).
- 4.8 The Enterprise and Regulatory Reform Act 2013 (Abolition of Conservation Area Consent) (Consequential and Saving Provisions) (England) Order 2013 was enacted on 1 October 2013.

5 PLANNING POLICY

- 5.1 The following national policies are applicable:
- National Planning Policy Framework
 - National Planning Policy Guidance
 - PPS5 Practice Guide

5.2 The NPPF advises local authorities to take into account the following points when drawing up strategies for the conservation and enjoyment of the historic environment:

- The desirability of sustaining and enhancing the significance of heritage assets and preserving them in a viable use consistent with their conservation;
- The wider social, cultural, economic and environmental benefits that the conservation of the historic environment can bring;
- The desirability of new development in making a positive contribution to local character and distinctiveness;
- Opportunities to draw on the contribution made by the historic environment to the character of a place.

5.3 These considerations should be taken into account when determining planning applications, and in addition, the positive contribution that conservation of heritage assets can make to sustainable communities, including their economic vitality, should be considered.

5.4 Heritage Assets are defined in Annex 2 of the NPPF as: a building, monument, site, place, area or landscape positively identified as having a degree of significance meriting consideration in planning decisions. They include designated heritage assets (as defined in the NPPF) and assets identified by the local planning authority (including local listing). A Designated Heritage Asset comprises a:

World Heritage Site, Scheduled Monument, Listed Building, Protected Wreck Site, Registered Park and Garden, Registered Battlefield or Conservation Area.

5.5 As stated in Paragraph 128, when determining applications, LPAs should require applicants to describe the significance of the heritage assets affected and the contribution made by their setting. The level of detail provided should be proportionate to the significance of the asset and sufficient to understand the impact of the proposal on this significance.

5.6 According to Paragraph 129, LPAs are also obliged to identify and assess the significance of a heritage asset that may be affected by a proposal and should take this assessment into account when considering the impact upon the heritage asset.

- 5.7 Paragraphs 132 to 136 consider the impact of a proposed development upon the significance of a heritage asset. Paragraph 134 states that where a proposal will lead to less than substantial harm to the significance of a heritage asset, this harm should be weighed against the benefits of the proposal. Paragraph 137 states that developments, which better, reveal or enhance the significance of a designated heritage asset and its setting will be looked upon favourably.
- 5.8 The national policy framework has therefore moved away from narrow or prescriptive attitudes towards development within the historic environment, towards intelligent, imaginative and sustainable approaches to managing change. English Heritage has defined this new approach, now reflected in NPPF, as 'constructive conservation': defined as 'a positive and collaborative approach to conservation that focuses on actively managing change...the aim is to recognise and reinforce the historic significance of places, while accommodating the changes necessary to ensure their continued use and enjoyment.' (Constructive Conservation in Practice, English Heritage, 2009).

National Guidance

PPS 5: Historic Environment Planning Practice Guide (Communities and Local Government, English Heritage, DCMS, March 2010)

- 5.9 Guidance is currently being drafted in order to support the NPPF. In the interim period, PPS 5: Historic Environment Planning Practice Guide, issued by the Department of Communities and Local Government in collaboration with English Heritage and DCMS in 2010, remains valid, and provides important guidelines on the interpretation of policy and the management of the historic environment.

Strategic Policy

The London Plan, adopted July 2011

- 5.10 On 22 July 2011 the Mayor of London published the London Plan, which replaced the amended version of 2004. This now constitutes the strategic Development Plan for London, and Policy 7.8, 'Heritage Assets and Archaeology' seeks to record, maintain and protect the city's heritage assets in order to utilise their potential within the community.
- 5.11 Policy 7.4, 'Local Character' requires new developments to have regard to the local architectural character in terms of form, massing, function and orientation.

- 5.12 This is supported by Policy 7.8 in its requiring local authorities in their LDF policies, to seek to maintain and enhance the contribution of built, landscaped and buried heritage to London's environmental quality, cultural identity and economy, as part of managing London's ability to accommodate change and regeneration.

Camden Core Strategy (2010)

- 5.13 The overarching principles advocated in Policies CS1 of the Core Strategy requires that developments make the best use of their sites. The appeal site is well located and easily accessible by public transport, both bus and underground services and is, therefore, capable of accommodating a greater quantum of development than at present, thereby making a more efficient use of the land. This is explicitly accepted by the Borough. Policy CS1 also promotes the development of a mix of uses in easily accessible locations in the borough to secure the most efficient use of the land.
- 5.14 Policy CS6 is a permissive policy that supports appropriate development for sites, and which identifies that the priority of the Development Plan is the provision of housing and that the LPA's expectation is that: *The housing delivery anticipated remains substantially above the 6,550 London Plan target for self-contained homes and the 8,925 target for all homes.*
- 5.15 Policy CS5 is a catchall policy that seeks to promote appropriate development, which does not come at the expense of the existing character or amenity of neighbours (not alleged by the Borough).
- 5.16 Policy CS8 is an aspirational policy and seeks to support existing industries in Camden by 'safeguarding existing employment sites and premises in the borough that meet the needs of modern industry and other employers; expect a mix of employment facilities and types, including the provision of facilities suitable for small and medium sized enterprises, such as managed, affordable workspace; and recognize and encourage concentrations of creative and cultural businesses in the borough'.
- 5.17 Policy CS11 advocates sustainable policies towards the transport needs of any development. Policy CS13 does the same in relation to tackling climate change through integration of carbon reduction technologies in major developments, and CS18 seeks to achieve the same through the reduction of waste by way of recycling.

Development Policies

- 5.18 The Camden DPD states at paragraph 1.4 that Policy DP1 helps deliver the objectives of Policy CS1 by setting out a detailed approach to mixed use developments. Policy DP1 requires the provision of mixed use developments in all parts of the Borough, including a contribution towards housing.
- 5.19 Development Policy DP2 – ‘Making full use of Camden’s capacity for housing’ seeks to maximise the supply of additional homes in the Borough to meet housing targets. This is to be achieved by ‘expecting the maximum appropriate contribution to the supply of housing on sites that are underused or vacant, taking into account any other uses that are needed on the site; resisting alternative development of sites considered particularly suitable for housing; and resisting alternative development of sites or parts of sites considered particularly suitable for affordable housing, homes for older people or homes for vulnerable people’.
- 5.20 The Core Strategy identifies housing as the priority land use for the borough and that maximising the supply of residential uses is the primary objective of the Plan. Policy CS6 seeks to maximise the supply of additional housing and to exceed the requirements of the London Plan.
- 5.21 Policy CS14 sets out the Council's objective of securing new development that promotes high quality places whilst conserving the borough's heritage.

Camden Development Plan Document (Oct 2010).

- 5.22 The Camden Development Policies DPD provides more detailed policies for development management purposes that build upon the strategic objectives set out in the Core Strategy. Policy DP2 states the Council's objective of seeking to maximise the supply of additional homes in the borough by ensuring underused or vacant sites make the maximum contribution they can and by resisting the loss of residential land to other uses.

- 5.23 Policy DP5 requires new residential development to contribute to the creation of mixed and inclusive communities by securing a range of self-contained homes of different sizes. The supporting text to the policy contains a "Dwelling Size Priorities Table" that is informed by the Council's Strategic Housing Market Assessment. In the market sector, the demand for family-sized dwellings is defined as "medium" with 1-bed dwellings "lower" and 2-bed dwellings "very high".
- 5.24 For developments including alterations and extensions to existing buildings, policy DP24 requires the Council to consider, among other things, the character, setting, context, form and scale of neighbouring buildings, as well as the character and proportions of the existing building. It also states that, in conservation areas, development should preserve and enhance the area.
- 5.25 Policy DP24 and DP26 seeks high quality design in redevelopment schemes without harm arising to identified material considerations, including neighbor amenity. DP24 is aspirational criteria based policy, of which (a) and (c) can be said to be engaged by the RfR. DP 25 is similarly criteria based, and again (a) and (b) are said to be engaged. DP26 is a development control policy, to which no allegation of harm is raised.

6 SUBMISSIONS AS TO THE MERITS OF THE APPEAL SCHEME

6.1 This portion of the statement deals with the land use issues which arise from the Borough's reasons for refusal. It is important to begin by considering the material benefits which accrue from the appeal scheme:

6.2 Policy DP 13 states that where sites are suitable for continued business use, the Council will consider redevelopment proposals for mixed use schemes provided that:

- (a) the level of employment floor space is maintained or increased;
- (b) they include other priority uses such as housing and affordable housing;
- (c) premises suitable for new, small or medium enterprises are provided;
- (d) floor space suitable for either light industrial, industry or warehousing uses is re-provided where the site has been used for these uses or for offices in premises that are suitable for other business uses;
- (e) the proposed non-employment uses will not prejudice continued industrial use in the surrounding area.

6.3 At pre-application stage, Officers were unclear as to the land use, reporting:

It is not clear what the existing use of the property is, it may be a B2/B8 use which is protected by policies CS8 and DP13, which seek to safeguard employment uses (existing employment sites and premises that meet the needs of businesses and employers). Therefore the change of use to residential and a mixed use development may not be acceptable due to the loss of B2/B8 employment floorspace.

6.4 As Garages have been defined as sui generis since the Use Classes Order was first published in 1987, so it is unclear why they were confused as to its classification but this negativity should not have been reported.

6.5 There is now common ground that the site is sui generis use. Officers opine that the text of the Development Plan (para 13.11) therefore requires that the site remain in business use, but this pedantic reading of the plan text fails to identify its purposive assessment required by the Policy. Policy DP 13 states that where sites are suitable for continued business use, the Council will consider redevelopment proposals for mixed use schemes provided that:

- the level of employment floor space is maintained or increased;

There is no B1/B2/B8 employment floorspace lost, and the level of commercial floor space is increased✓

- they include other priority uses such as housing and affordable housing;

The scheme provides for housing as part of a mixed use development. No affordable is provided, as the scheme does not surpass the threshold contained within DP3 ✓

- premises suitable for new, small or medium enterprises are provided;

Three small units are provided on the site ✓

- floor space suitable for either light industrial, industry or warehousing uses is re-provided where the site has been used for these uses or for offices in premises that are suitable for other business uses

Not applicable.

- the proposed non-employment uses will not prejudice continued industrial use in the surrounding area

Not applicable.

6.6 Despite the Development Plan urging them to do so, Officers did not consider the quality of the employment floorspace currently on-site. It is the Appellant's firm position that, when judged against the criteria provided within the CPG, the premises are no longer suitable for continued business use as the existing premises is of very low quality with the following attributes to be considered:

- Low floor to ceiling height
- Single width access bay
- Constrained servicing
- No goods lift
- No potential to expand due to proximity to residential properties
- No flexibility within the floorplate
- Isolated site
- Negative impact on the Conservation Area

6.7 Para 13.3 of the Development Plan text provides criteria upon which the qualitative assessment is to be undertaken. The Appellant notes that no assessment was made by the delegated officer despite it relating to the first sentence of the policy test:

- is located in or adjacent to the Industry Area, or other locations suitable for large scale general industry and warehousing;

The Appeal site is located within a predominantly residential area. The nearest such Industry Area would be Regis Road, some ¾ mile away. The site is wholly unsuitable for large scale industry or warehousing

- is in a location suitable for a mix of uses including light industry and local distribution warehousing;

It should be common ground that the Appeal site is wholly unsuitable for either light industrial or warehouse use

- is easily accessible to the Transport for London Road Network and/or London Distributor Roads;

The Site is highly accessible, but there good highway practice would suggest limiting access within the accelerating area of the traffic lights

- is, or will be, accessible by means other than the car and has the potential to be serviced by rail or water;

The site can only be serviced by motor vehicles

- has adequate on-site vehicle space for servicing;

The front of the site is subject to double yellow lines.

- is well related to nearby land uses;

The sui generis use is wholly unrelated to its neighbours

- is in a reasonable condition to allow the use to continue;

The existing premises is of very low quality with the following attributes to be considered as outlined at para 6.6

- is near to other industry and warehousing, noise/vibration generating uses, pollution and hazards;

No

- provides a range of unit sizes, particularly those suitable for small businesses (under 100sqm).

The total floor area of the unit is 484 sqm, provided in three smaller units.

- 6.8 The current development only provides employment for 3 people at present, and although secondary employment results from the site, this will not be lost, as these jobs occur off-site and this work will continue even if serviced from a different base. The proposed development will have the potential to significantly increase employment opportunities at the site, by the provision of the retail floorspace alongside delivery of the Borough's priority – permanent housing!

Planning Obligations

- 6.9 The Borough has advised of the need to provide planning obligations, and whilst there is no in principle objection, no evidence of need has as yet been demonstrated to assess the nominated heads against Reg 122. It is hoped that this evidence will be provided in advance of the conclusion of the Statement of Common Ground.

7 CONCLUSION

- 7.1 National, strategic and local planning policies all place strong emphasis on the need to re-cycle urban land in order to safeguard Greenfield sites and land in other sensitive areas. The proposed development successfully achieves a balance between the potentially competing objectives of development and the conservation of the environment, and thereby satisfies the goal of "sustainability". They properly maximise the use of this central "brownfield" site without giving rise to any planning problems – in particular, by avoiding compromising the living and working of adjoining residents and businesses.
- 7.2 It is considered that the proposal is acceptable in land use terms and it:
- It enables the re-use of an existing underutilised building (NPPF paragraph 17 & 51, Core Strategy CS8 and Development Policies DP2 and DP13).

- The proposal will provide much needed housing (NPPF 6, London Plan Policies 3.3 and 3.4, Core Strategy CS1 and CS6, Development Policies Policy DP2).
- The high quality design creates usable, durable and adaptive places (NPPF 7, London Plan Policies 7.4, 7.5 and 7.6, Core Strategy Policy CS14, Development Policies DP24 and DP25).
- It responds appropriately to heritage assets, namely the designated Conservation Area and nearby listed buildings (NPPF 12, London Plan Policies 7.4 and 7.8, Core Strategy Policy CS14 and Development Policies Policy DP25).
- Prudent use of natural resources through energy efficiency and renewable energy generation (NPPF 10, London Plan Policies 5.2, 5.3 and 5.7, Core Strategy Policy CS13 and Development Policies Policy DP22)
- It will provide a mix of housing units, (NPPF 6, London Plan Policies 3.10, 3.11, 3.12 and 3.13, Core Strategy Policy CS6, Development Policies DP5)
- It will provide economic benefit to accrue from the mixed use element, including the provision of local retail jobs

7.3 A design-led approach has been undertaken that has considered the local context, setting, and accessibility of the Site. The proposal would not have a significant effect on the residential amenity of adjoining occupiers in terms of loss of light, outlook or privacy and would be of an acceptable visual appearance in terms of design, scale and massing.

7.4 In providing a building of appropriate scale and mass, the proposal would preserve the character and appearance of the conservation area.

7.5 In accord with the development plan, the LPA's priority is for the provision of permanent housing, and this scheme achieves that laudable aim. The proposal is therefore the epitome of compliance with the Development Plan and it deserves the presumption in favour of its approval

