Department for Communities and Local Government

Mr W Kumar
Utopia Property Sales Ltd
14 - 16 Great Pulteney Street
LONDON
W1F 9ND

Our Ref: APP/X5210/A/14/2212605

20 March 2015

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990
APPEAL BY UTOPIA VILLAGE SALES Ltd
UTOPIA VILLAGE, 7 CHALCOT ROAD, LONDON NW1 8LF
APPLICATION REF: 2013/6589/P

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, C L Sherratt DipURP MRTPI, who held a public local inquiry on 8 - 9 April 2014 into your client's appeal against the decision of Camden London Borough Council ('the Council') to refuse prior approval for: the change of use of Utopia Village, 7 Chalcot Road (excluding units 8c, 11 and 11a) from offices (Class B1(a)) to residential use (Class C3) to include up to fifty three dwellings, in accordance with application reference 2013/6589/P dated 9 October 2013.
2. On 4 April 2014 the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involved proposals which raise important or novel issues of development control and/or legal difficulties.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed and prior approval granted. For the reasons given below, the Secretary of State agrees with the Inspector that the appeal should be allowed and prior approval granted. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

4. At the inquiry a costs application was made by the appellant against the Council. That application is the subject of a separate decision also being issued today.
5. For the reasons at IR3 the Secretary of State agrees that the Council's decision notice should have been worded as set out in IR4 and like the Inspector he has determined the appeal on this basis (IR5).

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6. In determining the appeal, the Secretary of State has had regard to the Council's revised reason 14 for its refusal as set out at IR10.

7. The Secretary of State agrees with the Inspector's conclusions on the points considered at IR157-159.

Matters arising after the close of the Inquiry

8. The Secretary of State received representations on this case in the following letters received too late to have been considered by the Inspector: from the Mayor of London Boris Johnson dated 1 July 2014; Mr P Wagstaff dated 18 August 2014; Mr P Cowan dated 16 September 2014; a letter jointly signed by Ms M Portas, Ms J Bakewell, Ms India Knight, Mr A Bennett, Mr L Pietragnoli, Mr C Rush and Mr G Levin dated 27 October 2014; and a second letter from Ms J Bakewell dated 2 February 2015. The Secretary of State has carefully considered these representations. However, as the matters raised would not affect his decision he has not considered it necessary to circulate them to all parties.

9. Copies of these representations can be made available on written request to the address at the foot of the first page of this letter.

Legal and Policy Framework

10. The application for prior approval was made under paragraph J2 of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 ("the GPDO"), as amended by the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013 . Applications for prior approval are governed by paragraph N of Schedule 2 to the GPDO ("Para N"). Para N (b) requires the Secretary of State to have regard to the National Planning Policy Framework ("NPPF") "in so far as relevant to the subject matter of the prior approval. The application has also been considered in accordance with the Community Infrastructure Levy (CIL) Regulations 2012 as amended.

11. Class J of Schedule 2 to the GPDO ("Class J") permits change of use of a building "to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order from a use falling within Class B1 (a) (offices) of that Schedule". Paragraph J2 provides that the developer must seek a determination of whether prior approval of the local planning authority is required in relation to (a) transport and highways impacts, (b) contamination risks on the site and (c) flooding risks on the site. The Secretary of States notes that by the time of the Inquiry, it was common ground that none of these matters provided any basis for refusal of prior approval under para J2, and para N, of Schedule 2 to the GPDO: IR 26. He also notes that it was common ground that none of the limitations specified in paragraph J1 are satisfied. He further notes that IR 30 records that the key area of dispute between the parties related to the effect of the development on the living conditions on surrounding properties by reason of overlooking and loss of privacy.

Main issues

12. In those circumstances the Secretary of State agrees with the Inspector that, on the basis of the Council's one remaining reason for refusal in its revised form, the main issues are those identified at IR160:

    (a) Whether, as a matter of law, it is open to the Secretary of State to refuse an application for prior approval made under condition J.2 of Class J, Part 3 of Schedule 2 to the Town and Country Planning (General Permitted

Development) Order 1995 as amended on the ground that the permitted development would result in overlooking and loss of privacy to the occupiers of existing residential properties, contrary to Article 8 of the European Convention on Human Rights (ECHR);

(b) If so, whether the Secretary of State should do so in respect of the particular circumstances of this appeal having regard to the relationship between the appeal building and existing residential properties.

(a) Whether the Secretary of State would be entitled to refuse prior approval on the basis that a grant of prior approval would lead to a breach of Article 8 ECHR as regards overlooking and loss of privacy

13. The Secretary of State notes, and agrees with, the Inspector's observation at IR 164, that Paragraph N, which sets out the procedure for determining an application for prior approval, specifies that it is only relevant to consider the National Planning Policy Framework "so far as relevant to the subject matter of the application for prior approval". The Secretary of State agrees with the Inspector that this is clear, and does not contain any ambiguity. Its effect is that a planning authority which must consider an application for prior approval may only do so having regard to those parts of the NPPF which relate to the matters for which prior approval may be required by the authority, and may only refuse prior approval on the basis that the development is unacceptable in respect of something which falls within the subject matter of the application for prior approval. In the context of Class J, it may only consider the NPPF in so far as it relates to the three matters set out in Paragraph J2.

14. The Secretary of State also agrees with the Inspector, at IR 166-170, that the legislative intent behind Class J and Paragraph N of the GPDO is so clear that this conclusion would not be altered even if it were established, in a given case, that to grant prior approval would lead to a breach of Article 8 ECHR by reason of matters such as overlooking or loss of privacy. The Secretary of State considers that this is clear even on the basis of the wording of Class N as it stood prior to 6 April 2014. In addition, however, the Secretary of State considers that this legislative intention is confirmed by the amendment to paragraph N(8)(b) made by S.I. 2014/564, which added the words "*so far as relevant to the subject matter of prior approval*". The effect of these words is to make clear that when an application for prior approval under Class J is determined the National Planning Policy Framework can only be considered in so far as it addresses the subject matter of prior approval in question. This amendment therefore makes it clear that the Framework cannot be taken into account so far as it addresses matters outside of the subject matter of prior approval. It follows that for a planning authority to take into account a matter such as loss of privacy, or overlooking, or some other matter which relates to residential amenity, where this is not the subject matter of the application for prior approval, would run contrary to "a fundamental feature of the legislation" (per Lord Nicholls in *Ghaidan v Godin-Mendoza* [2004] 2 AC 557, at 33) and would be incompatible with its underlying thrust. Class J represents a deliberate policy choice that matters such as residential amenity should not provide a basis to refuse prior approval under Class J, because this would defeat the policy aims behind the creation of Class J. Accordingly, even if there was a case where a grant of prior approval would lead to a breach of Article 8 ECHR, section 3 of the Human Rights Act 1998 ("the HRA") does not permit an interpretation of the GPDO whereby

the matters relevant to Article 8, but outside of the subject matter of the prior approval, can be treated as a basis to refuse prior approval and so avoid the breach.

15. However, the Secretary of State *does not* agree with the Inspector that this means that, as a matter of law, the Secretary of State would be obliged to grant prior approval if to do so would lead to a breach of Article 8 ECHR. That is because the Secretary of State disagrees with the Inspector's analysis of the effect of section 6 of the Human Rights Act 1998 at IR 174 to 176. If the Secretary of State had concluded that to grant prior approval in this case would lead to a breach of Article 8, then he would be prevented from doing so by section 6(1) of the HRA. Accordingly, we will go on to consider the second of the main issues identified by the Inspector, as to whether a grant of prior approval would lead to a breach of Article 8 in this case.

(b) Should prior approval be refused in this case on the basis that the impact of the development, by way of overlooking and loss of privacy, on neighbouring residents, is such that to grant prior approval would lead to a breach of Article 8

16. At IR178 the Inspector stated that, should the Secretary of State disagree with her conclusion and instead take the view it is open to him to refuse prior approval on the basis that this would breach Article 8, then it would be necessary to consider whether such a breach would in fact occur. In those circumstances, the Inspector went on to consider this issue. She concluded at IR178 – 195 that Article 8(1) would be engaged in regard to some existing residential properties surrounding Utopia Village by reason of the serious loss of privacy and overlooking that would occur, and that in her judgment such interference would be a disproportionate response such that Article 8 would be violated (IR196).

17. Although the Secretary of State has been assisted by the Inspector's analysis, and agrees with parts of her reasoning, he disagrees with her overall conclusion both as to the engagement of Article 8, and as to whether, in the alternative, there was a breach in this case. The Secretary of State does not consider that the grant of prior approval in this case would lead to any breach of Article 8.

18. The Secretary of State begins by noting that at IR 179 the Inspector starts her consideration of this case by saying that, for a breach of Article 8 to occur, the impact upon the interests protected by Article 8 "must be far greater than may be considered to be unreasonable in the normal 'planning balance'". The Secretary of State agrees with this observation, which he considers to be relevant both to the question of whether there has been an "interference" with the right to respect for private and family life under Article 8(1), or a "lack of respect" for those interests, and also to whether, if so, that interference is justified under Article 8(2).

19. The Strasbourg court has held that there is a breach of Article 8 by reason of a decision by a State party to the Convention to permit, or not restrict, development in only a very small number of cases. As a whole the authorities show that the threshold for interference with Article 8(1) by reason of a grant of development consent is high. That is confirmed by *Lough v FSS* [2004] 1 WLR 2557, where the Court of Appeal stated that it was not every case in which a person affected by a development suffered a loss of amenity that there would be a lack of respect which required justification under Article 8(1). Rather, "the degree of seriousness required to trigger lack of respect will depend on the circumstances but it must be substantial". In considering whether a lack of respect has occurred, it is relevant to consider not only the impact on individuals but also the reasonableness and appropriateness of the measure (*Lough* paragraph 43(d)). In this regard it is relevant to consider not only the policy aims

behind the introduction of Class J but also the wider interests of the community including property developers such as the application for prior approval in this case, whose property rights under Article 1 of the First Protocol to the Convention are engaged.

20. The Inspector's critical conclusions as to the engagement of Article 8(1) are at IR 188 and 189, which must be read against the background of IR 181-187. As she points out at IR 188, overlooking of properties neighbouring the development already occurs, but at the moment this is restricted to 'typical' working hours because the offices are not occupied outside of those hours. Further, the number of properties where the Inspector considered that any impact by way of overlooking of neighbouring properties would not be large.

21. The Secretary of State does not underestimate the impacts of the development of overlooking, nor doubt that that impact will be disturbing for those properties most affected by the development. He also recognises that, though the effect of the development will be largely restricted to changing the hours during which overlooking may occur, the hours in question, at evenings and the weekends, may have special significance. Nevertheless, having regard to the need for a "substantial" interference with amenity before any question of a lack of respect for Article 8 rights will occur, he does not accept that that threshold has been crossed in this case. It is relevant to note that this is a densely occupied urban area, close to the centre of London, in which some degree of overlooking will often occur, whether in accord with current planning policies or not. In those circumstances a development which will simply increase the hours during which a small number of properties will be overlooked does not, in the Secretary of State's view, give rise to a sufficient impact on amenity so as to amount to a lack of respect for privacy under Article 8(1).

22. The Secretary of State reaches this conclusion without regard to the Inspector's observations at IR 189. At IR 189, the Inspector correctly observed that the existing office use of the site was not subject to any restriction on the hours of use, so that there is currently no legal restriction to prevent the existing office use being extended into evenings and weekends. If this were to occur, there would be an impact on neighbouring properties, by way of overlooking, that could be very similar to that which would be caused by the development. As she pointed out, that possibility must be considered when considering the extent to which the development would give rise to an interference with or lack of respect for Article 8 rights.

23. The Secretary of State notes the Inspector's conclusion that, in practice, it is "unlikely" that the existing occupiers will extend the hours of operation of their businesses. The Secretary of State does not consider it appropriate to reach any concluded view on the likelihood of this occurring, and notes that the probability of this occurring must vary according to the time period under consideration. Whatever the likelihood may be of the existing businesses extending their hours of operation, there is plainly a real possibility that some or all of the businesses at the site would extend their hours of operation over the lifetime of the residential units which are the subject of the present proposals, or that practices of employees at the site might change so that, perhaps on an occasional basis, the offices were occupied in the evenings or weekends. Were that to occur, that would in practice produce an impact on neighbouring properties that could be very similar to that of the development itself.

24. Accordingly, the Secretary of State considers that it is appropriate, when considering the impact of the development on neighbouring properties, to give substantial weight

to the possibility that a similar, or at any rate significant, impact on residential amenity might occur even if he was to refuse prior approval in this case.

25. The Secretary of State also considers that this possibility is relevant in another way, namely that it is relevant to the expectations of the current residents of neighbouring properties and so to the extent to which they can legitimately expect to be protected against development of the kind proposed, regardless of whether a change in office hours actually occurs now or in the future. Whatever the practical likelihood of an extension of office hours occurring, the current residents should already be aware, when purchasing properties or establishing their homes, not only that their properties are already overlooked by offices at the site, but that there is no legal protection against the times at which that overlooking occurs from being extended. In the Secretary of State's view that further significantly reduces the impact of the development on neighbouring properties, and the extent to which neighbours can complain of a lack of respect for their Article 8 rights.

26. In reaching the conclusion that the grant of prior approval in this case involves no lack of respect for Article 8(1), the Secretary of State has so far focussed on the actual impact of the development on residential amenity, and the expectations and situations of those who would be affected. However, it is also relevant, when considering whether there has been a lack of respect for Article 8 rights in a case such as this, to have regard to the wider interests of the community and the reasons for which Class J was enacted. They further reinforce his view that the enactment of Class J, and the grant of prior approval in this case, do not lead to any lack of respect for Article 8 rights in this case.

27. In light of the Inspector's conclusions, however, the Secretary of State has gone on to consider whether, in the event that it were concluded that there has been a lack of respect for privacy in this case, so as to give rise to an interference under Article 8(1), that interference can be justified under Article 8(2).

28. As the Inspector observes at IR 192, the reasons for the enactment of Class J of the GPDO are to some extent rehearsed in her decision. They include the primary objective of increasing housing supply at a time of national shortage. The ancillary aims were to support economic growth through this development activity and to bring underused office space back into use. The Secretary of State agrees with the Inspector that, since the offices in the present case are already in use, the aim would not be advanced *on the facts of this case*, or by permitting this particular development to proceed. However, as the Inspector notes at IR 194, the primary aim of providing additional housing undoubtedly is advanced by this development. The homes in question would indeed be provided on a brownfield site, close to urban locations and at no cost to the taxpayer.

29. Furthermore, as is clear from *Lough*, in conducting the Article 8 balancing exercise in the context of a decision by the State to grant planning permission, it is relevant to consider that any refusal of planning permission necessarily itself engages the property rights of the development under Article 1 of the First Protocol, so as to call for justification under that Article.

30. For these reasons, the Secretary of State concludes that, even if this case were to be considered simply by reference to its isolated facts, and even if, contrary to his primary conclusion, some limited interference with Article 8(1) calls for justification under Article 8(2) on these facts, that interference is justified by the planning benefits of this development, including the boost to the housing supply at a time of national need.

That is a legitimate aim, under Article 8(2). The Secretary of State therefore disagrees with the Inspector that there would be a disproportionate impact on Article 8(1) rights if prior approval is granted.

31. However, the Secretary of State considers that it is not possible or correct simply to consider this case in that way, as the Inspector did here, by weighing up whether the policy aims of the legislation are advanced on the facts of this case.

32. It is critical to the operation of Class J that it provides for a streamlined process by which a developer may obtain a right to convert offices to residential use, without having to go through the more expensive and time consuming process of applying for planning permission. The Secretary of State therefore considers that, in considering whether any interference with the Article 8 rights of neighbouring residents in this case is justified, it is relevant, and indeed necessary, to have regard to the wider aims of the legislation, rather than just to whether those aims are achieved in this particular case. The underlying purpose of Class J, to streamline the process by which planning permission for development of this kind can be obtained, would otherwise be defeated.

33. In those circumstances it is also relevant to consider the interests and expectations of the developer in this case, who has relied upon the terms of Class J in seeking prior approval in this case. Just as the purposes underlying Class J would be defeated if it were to require detailed consideration of residential impacts in every case, so too they would be defeated if developers felt unable to rely upon Class J being operated in accordance with its clear terms. That would cause unfairness to developers who seek prior approval in reliance on Class J, as well as potentially discouraging developers from reliance on Class J in the future. Whilst such considerations cannot be decisive by themselves, the Secretary of State considers that they should be accorded weight in the Article 8 balance in this case.

34. For all these reasons, the Secretary of State considers that, even if he is wrong to conclude that the impact on residential amenity in this case is not sufficiently substantial to give rise to “interference” for the purposes of Article 8(1), any such interference is justified under Article 8(2). For these reasons the Secretary of State therefore disagrees with the Inspector’s conclusion at IR 196, that Article 8(1) is engaged by reason of loss of privacy in this case, and that that interference would be disproportionate for the purposes of Article 8(2).

Balance inherent in Class J

35. Although the Secretary of State has considered the question of whether there would be a breach of Article 8 in this case on the basis of an examination of the particular facts of this case, and whether any interference with Article 8(1) can be justified on the facts of this case, he nevertheless notes that a submission was made to the Inspector by the Appellant to the effect that the balance required by Article 8 has been struck in the legislation itself, so that it is not necessary to consider, in an individual case, whether any interference under Article 8(1) has arisen, or whether, if so, that interference is justified under Article 8(2).

36. The Secretary of State also notes that the Inspector felt unable to reach any conclusion on this issue: IR 173.

37. In this regard, the Secretary of State, as the Minister responsible for the enactment of Class J, is in a different position to the Inspector. The Secretary of State takes the view that Class J itself is intended to strike a balance between the competing interests protected by Article 8, and the wider interests of the community (as well as the

property rights of developers and neighbours) including the advancement of the policy aims underlying Class J.

38. As the Secretary of State has already observed, it is fundamental to the operation of Class J that it should provide for a streamlined process by which consent can be obtained for changes from office to residential use. The prior approval regime under Class J is *deliberately* tightly drawn, so as to require prior approval only for those matters which, in the view of the Secretary of State, are most likely to give rise to significant impacts which should override the permission granted by Class J itself. The matters which are the subject of prior approval are themselves matters which could give rise to significant impacts on residential amenity of neighbours, such as impacts from parking and highways matters and impacts from flood risk.

39. In the view of the Secretary of State, it is appropriate to make provision for those kinds of impacts in the prior approval regime, because they are areas where there is a greater likelihood of unacceptable impacts, including impacts on neighbour's amenity, arising from change of use from office to residential. In the view of the Secretary of State, the likelihood of such an impact arising from matters such as overlooking is very low, and even where it does arise, the impact is likely to be relatively limited. That is, in part, because Class J does not by itself permit operational development, so that the extent of any physical overlooking of properties is very unlikely to increase by reason of a change of use. Where it does, it will in general only be because the office was not previously in use (and in that case, given the aims underlying Class J, the Secretary of State considers it positively desirable that that should occur, regardless of overlooking), or because, as in this case, of a change in the hours of use.

40. The Secretary of State considers that this expectation is illustrated, and indeed vindicated, by the facts of the present case. He notes also that this has been one of the more high profile cases of reliance on Class J, but has nevertheless felt able to conclude, on the facts, that the extent of the impact on residential amenity is limited..

41. The Secretary of State considers that the number of cases in which an issue under Article 8(1) is likely to arise, by reason of a sufficiently substantial interference with Article 8 rights, is likely to be very small. He further considers that, even in cases where it can properly be concluded that the impact on Article 8 rights is sufficiently substantial to engage Article 8(1), the impact is nevertheless very unlikely to be at the severe end of the spectrum. It is inconceivable, in the Secretary of State's view, that impacts of the kind considered in cases such as *Lopez Ostra* (1995) 20 EHRR 277 and *Guerra v Italy* (1998) 26 EHRR 357 (where the European Court of Human Rights found violations of Article 8) could occur by reason of a change of use of an existing building from office to residential use.

42. In those circumstances the Secretary of State considers that, to the extent that cases do arise where the impact of the individual development would call for consideration under Article 8(2), any limited lack of respect for Article 8 which would be occasioned by the change of use will be justified under Article 8(2) by the general aims which Class J seeks to achieve, and by the fact that it is integral to the achievement of those aims that Class J operates as intended, with a tightly drawn prior approval regime which does not permit of consideration of residential impacts arising from loss of privacy in individual cases.

43. The Secretary of State therefore considers that this is a case where it can properly be said that any balance required by Article 8 is carried out in the legislation itself. In

considering the present case the Secretary of State continues to believe that Class J is justified by the benefits which it brings about.

44. The Secretary of State has considered it appropriate to consider this case on its individual merits, for reasons already given, and because he has considered it appropriate to test his expectations about the operation of Class J by reference to the facts of this case in light of the Inspector's conclusions. Having done so, however, he does not consider it to be appropriate for the same process to be followed in each and every case where an issue is raised about whether a grant of prior approval would lead to a breach of Article 8 ECHR on grounds of interference with privacy. In future, the Secretary of State expects local planning authorities, and Inspectors hearing appeals against their decisions, to proceed on the basis that Class J is compatible with Article 8, so that the grant of prior approval in a particular case will be justified under Article 8(2) by the general benefits of the legislation, even in a case where there is a sufficiently substantial impact to raise an issue under Article 8(1).

Other matters

45. The Secretary of State agrees with the Inspector's assessment of various other matters at IR197 – 202.

Planning Obligations and Conditions

46. The Secretary of State has had regard to the signed section 106 agreement considered by the Inspector at IR154. The Secretary of State considers that the provisions in this agreement comply with regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework.

47. The Secretary of State agrees with the Inspector's assessment at IR155-156 and 203-206. For the reasons she gives, and because the Secretary of State concludes that there is no violation of Article 8 by reason of the grant of prior approval, he considers that the grant of prior approval does not require any planning conditions in this case.

Public Sector Equality Duty

48. Section 149 of the Equality Act 2010 introduced a public sector equality duty, that public bodies must, in the exercise of their functions, have due regard to the need to (a) eliminate discrimination, harassment, victimisation; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. Protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

49. Having considered the 3 specific matters referred to in paragraphs (a)-(c) of Class J.2 (transport, contamination and flooding), the Secretary of State does not consider that there would be any differential impact on protected groups as a result of a grant of prior approval in this case. The Secretary if State notes that there is a section 106 agreement in place which takes steps to meet the needs of the disabled in relation to parking.

Overall conclusion

50. The Secretary of State disagrees with the Inspector it would be impermissible in law to refuse prior approval even if it were established that this would lead to a breach of Article 8 ECHR (IR 177). However, he also disagrees with the Inspector that the grant of prior approval would be in breach of Article 8 in this case (IR 196). Therefore, he agrees with the Inspector's recommendation that prior approval should be granted in this case (IR208).

Formal decision

51. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation at IR210 and hereby allows your client's appeal and grants prior approval under the provisions of Schedule 2, Part 3, paragraph J.2 of the GPDO as amended for the change of use of Utopia Village, 7 Chalcot Road, London (excluding units 8c, 11 and 11a) from offices (Class B1a) to residential use (Class C3) to include up to fifty three dwellings in accordance with the details submitted pursuant to an application under Schedule 2, Part 3, paragraph J.2 of the GPDO, Council reference 2013/6589/P.

Right to challenge the decision

52. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

53. A copy of this letter has been sent to Camden London Borough Council. A notification e-mail or letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Julian Pitt

Julian Pitt
Authorised by Secretary of State to sign in that behalf

The Planning Inspectorate

Report to the Secretary of State for Communities and Local Government

by C L Sherratt DipURP MRTPI

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

Date 30 June 2014

Town and Country Planning Act 1990

Appeal by Utopia Village Sales Ltd

The Council of the London Borough of Camden

Inquiry held on 8 & 9 April 2014. Site Visit carried out on 24 April 2014.

Utopia Village, 7 Chalcot Road, London NW1 8LF

File Ref: APP/X5210/A/14/2212605

File Ref: APP/X5210/A/14/2212605
Utopia Village, 7 Chalcot Road, London NW1 8LF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
- The appeal is made by Utopia Property Sales Ltd against the decision of the Council of the London Borough of Camden.
- The application, reference 2013/6589/P, dated 9 October 2013, was refused by notice dated 3 December 2013.
- The proposed development is the change of use of Utopia Village, 7 Chalcot Road (excluding units 8c, 11 and 11a) from offices (Class B1a) to residential use (Class C3) to include up to fifty three dwellings.

Summary of Recommendation: That the appeal be allowed and prior approval be granted.

Procedural Matters

1. This appeal was recovered by the Secretary of State in a letter dated 4 April 2014. The reason for this direction is that the appeal involves proposals which raise important or novel issues of development control, and/or legal difficulties.

2. Various documents are referred to that are listed at the end of this report.

3. The Decision Notice (CD3) incorrectly refers to 'condition A.4 of Schedule 2 Part 1 Class A of the Town and Country Planning (General Permitted Development) Order 1995'. The prior approval application relates to Class J of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended). The Decision Notice also refers to section 60 (2B) and (2C) of the Town and Country Planning Act 1990 which is also incorrect and should be section 60 (2A). It was agreed by the main parties that this was a drafting error and should be corrected.

4. Accordingly, the decision notice should read:

Decision

Process set out by condition J.2 of Schedule 2 Part 3 Class J of the Town and Country Planning (General Permitted Development) Order 1995 (as amended)

In accordance with section 60 (2A) of the Town and Country Planning Act 1990 (as amended by section 4(1) of the Growth and Infrastructure Act 2013)

Certificate of Lawfulness (Proposed) Prior Approval Refused

5. The appeal should be determined on this basis.

6. At the Inquiry an application for costs was made by Utopia Property Sales Ltd against the London Borough of Camden. This application is the subject of a separate Report.

7. An accompanied site visit was made on Thursday 24 April 2014. During the Site visit I viewed the relationship with neighbouring properties from both vacant and occupied units in Utopia Village. In addition I viewed the development from within a number of surrounding residential properties along Egbert Street, Edis Street and Gloucester Avenue.

Background Information

8. A prior approval application (reference 2013/511/P) was withdrawn as the Council was not satisfied that all the units were occupied for purposes falling within Class B1(a) on or before 30 May 2013. The current application was submitted excluding some units.

9. The Council refused to grant prior approval for the change of use from Class B1(a) Office use to Class C3 residential on 3 December 2013 on the basis of 15 reasons for refusal as set out in the Decision Notice (CD3). Of these reasons, the Council now only seeks to defend reason for refusal 14 that relates to living conditions, but in a revised form.

10. The Council requests that the Secretary of State considers the appeal on the basis of a revised wording for reason 14 which relates to human rights. The suggested revision does not include any reference to impact on the living conditions of future occupiers of the proposed development as it is accepted, by the Council, that there would be no interference with Article 8 of the European Convention on Human Rights (ECHR) in this respect given that these units are not occupied. Any future occupier would only live in one of the units by choice and in the knowledge of the proximity of other properties. All the parties have addressed the Council's reason for refusal on the basis of this revised wording as follows:

    '*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 loss of privacy to the occupiers of existing residential properties, contrary to Article 8 of the ECHR*.'

The Site and Surroundings

11. The appeal site is situated in Primrose Hill Conservation Area, located on the north side of Chalcot Road. The appeal building, known as Utopia Village, comprises a part two and part three storey building, within which are 23 separate business units. Some remain occupied by tenants[1]. The site includes a management office. All units included within the application site are in B1(a) office use. The application excludes Units 11 and 11a which are in use as a recording studio and unit 8c used for storage in both the description of the proposed development and on the various floor plans entitled 'Area of application plan'.

12. The site is predominantly surrounded by terraces of mid 19th Century homes on Gloucester Avenue, Edis Street, Chalcot Road, Egbert Street and Fitzroy Road that are three storeys high with a raised ground floor from street level, a basement and further accommodation in the roof space. To the rear elevation the windows are staggered in order to serve the half-landing staircase area and the roof form has a butterfly profile. The site plan (CD6) shows the general pattern of development incorporating a rear projection. It should be noted that in many cases extensions have been constructed over the original projection at various

[1] Some businesses occupy or occupied more than one unit – see use schedule of units as of 30 May 2013 ((CD8).

heights, roof terraces created and extensions carried out to infill the area to the side of the projection at various heights. Not all are shown on the site plan.

13. There are two pedestrian and vehicle entrance points, one off Chalcot Road and one off Egbert Street. The existing properties surrounding the site do not have off street parking or any opportunities to do so, with the exception of 1 Fitzroy Road. Parking in the area is controlled by means of a Controlled Parking Zone. Parking near commercial units on the southern side of Chalcot Road is controlled through the use of resident permits and Pay and Display requirements.

The Town and Country Planning (General Permitted Development) Order

14. The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013 amends the Town and Country (General Permitted Development) Order 1995 (GPDO) to allow new permitted development rights. The GPDO amendment is made under sections 59, 60, 61 and 333(7) of the 1990 Act. These provisions give the Secretary of State power to grant planning permission for categories of development specified in a development order. Such development, granted planning permission under the GPDO is known as "permitted development", and the effect is that no application needs to be made to the local planning authority to obtain planning permission, although in some cases the permitted development right will require the local planning authority to give "prior approval" of certain matters.

15. Class J of Part 3 of Schedule 2 of the GPDO grants planning permission in respect of development comprising a change of use of a building and any land within its curtilage to a use falling with Class C3 (dwellinghouses) of the Schedule to the Use Classes Order from a use falling within Class B1(a) (offices) of that Schedule.

16. The Explanatory Memorandum to the Town and Country Planning (General Permitted Development)(Amendment and Consequential Provisions)(England) Order 2014[2] (the Explanatory Memorandum) (CD25) outlines the policy background explaining that the ability to change the use of premises from Class B1(a) offices to Class C3 residential will bring underused offices back into effective use and provide new homes.

17. Paragraph J.1 of the GPDO sets out the limitations when development is not permitted by Class J as follows:

    (a) the building is on Article 1(6a) land;

    (b) the building was not used for a use falling within Class B1(a) (offices) of the Schedule to the Use Classes Order immediately before 30th May 2013 or, if the building was not in use immediately before that date, when it was last in use:

    (c) the use of the building falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order was begun after 30 May 2016;

    (d) the site is or forms part of a safety hazard area;

    (e) the site is or forms part of a military explosives storage area;

    (f) the building is a listed building or a scheduled mounment.

[2] Core Document CD25

18. Paragraph J.2 confirms that Class J development is permitted subject to the condition that before beginning the development, the developer shall apply to the local planning authority for a determination as to whether the prior approval of the authority will be 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.

19. Paragraph N sets out the procedure for applications for prior approval under Part 3. I have repeated those provisions that are of particular relevance to this appeal, where under Part 3 a developer is required to make an application to a local planning authority for a determination as to whether the prior approval of the authority will be required, as follows:

    (2) The application shall be accompanied by –

        (a) a written description of the proposed development;

        (b) a plan indicating the site and showing the proposed development;

        (c) the developer's contact address; and

        (d) the developer's email address if the developer is content to receive communications electronically; [and][3]

        [(e) where paragraph (4) requires the Environment Agency to be consulted, a site specific flood risk assessment;][4]

        together with any fee required to be paid.

    [(2A) The local planning authority may refuse an application where, in the opinion of the authority—

        (a) the proposed development does not comply with, or

        (b) the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with,

        any conditions, limitations or restrictions specified in this Part as being applicable to the development in question.

    (2B) Paragraphs (3) to (6) and (8) shall not apply where a local planning authority refuses an application under paragraph (2A).][5]

[3] Added by the Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions)(England) Order 2014/564art.5(8)(a) (April 6 2014)
[4] Added by the Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions)(England) Order 2014/564art.5(8)(a) (April 6 2014)
[5] Added by the Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions)(England) Order 2014/564art.5(8)(b) (April 6 2014)

(3) Where the application relates to prior approval as to transport and highways impacts of the development, on receipt of the application, where in the opinion of the local planning authority the development is likely to result in a material increase or a material change in the character of traffic in the vicinity of the site, the local planning authority shall consult—

(a) the Secretary of State for Transport, where the increase or change relates to traffic entering or leaving a trunk road;

(b) the local highway authority, where the increase or change relates to traffic entering or leaving a classified road or proposed highway, except where the local planning authority is the local highway authority; and

(c) the operator of the network which includes or consists of the railway in question, and the Secretary of State for Transport, where the increase or change relates to traffic using a level crossing over a railway.

[(7) The local planning authority may require the developer to submit such information regarding the impacts and risks referred to in paragraph J.2. as the authority may reasonably require in order to determine the application, which may include—

(a) assessments of impacts or risks;

(b) statements setting out how impacts or risks are to be mitigated; or

(c) any operational development.][6]

(8) The local planning authority shall, when determining an application—

(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 [, so far as relevant to the subject matter of the prior approval,][7] as if the application were a planning application; and

(c) in relation to the contamination risks on the site—

(i) determine whether, as a result of the proposed change of use, taking into account any proposed mitigation, the site will be contaminated land as described in Part 2A of the Environmental Protection Act 1990(a), and in doing so have regard to the Contaminated Land Statutory Guidance issued by Secretary of State for the Environment, Food and Rural Affairs in April 2012, and

[6] Added by the Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions)(England) Order 2014/564art.5(8)(c) (April 6 2014)
[7] Added by the Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions)(England) Order 2014/564art.5(8)(d) (April 6 2014)

(ii) if they determine that the site will be contaminated land, refuse to give prior approval.

(10) The development shall be carried out—

(a) where prior approval is required, in accordance with the details approved by the local planning authority;

(b) where prior approval is not required, or where paragraph (9) (c) applies, in accordance with the details provided in the application referred to in paragraph (1),

unless the local planning authority and the developer agree otherwise in writing.

[(11) The local planning authority may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval.][8]

20. Article 4 of the GPDO permits a local planning authority to make an order restricting permitted developments. Such an order carries with it a right to compensation if an application for planning permission for development which would have been permitted development is refused or granted subject to conditions within 12 months of the direction coming into force.

21. Prior to the GPDO amendments coming into force, local authorities were afforded an opportunity to seek an exemption for specific parts of their localities. Exemptions were only granted in exceptional circumstances where local authorities could demonstrate that its introduction in a particular area would lead to the loss of a nationally significant area of economic activity or have substantial economic consequences at the local authority level which would not be offset by the positive benefits the new rights would bring. One such exemption has been made in part of Camden. Various local authorities, including Camden made unsuccessful challenges against the exemption process in the courts relating to claims against the refusal to obtain some exemptions in their respective areas. Although these did not relate to the appeal site, the judgement helpfully sets out some of the background to the consultation and the purpose of the GPDO (London Borough of Islington & others v Secretary of State for Communities and Local Government [2013] EWHC 4009) (CD28).

The Prior Approval application

22. The application, that is now the subject of this appeal, seeks prior approval for the change of use of Utopia Village to residential use to include up to fifty three dwellings. These would comprise 19 x 1-bed, 22 x 2-bed, 11 x 3-bed and 1 x 4-bed flats. 11 car parking spaces are proposed. The application was accompanied by a covering letter dated 9 October 2013 (CD 11) which provides details of the documents and plans submitted with the application (CD7). These include a Transport Statement (CD 9). Some amended plans were subsequently submitted to correct discrepancies in respect of the position, size and location of the roof lights etc (CD12). These revised plans form part of the application details.

[8] Added by the Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions)(England) Order 2014/564art.5(8)(e) (April 6 2014)

The Human Rights Act 1998[9]

23. In particular, the parties referred to sections 3 and 6, together with Article 8 of the Human Rights Act (HRA) which I repeat below for ease of reference. Article 8 states:

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

ii. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

24. Section 3 states in relation to the interpretation of legislation:

(1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.

(2) This section –

(a) applies to primary legislation and subordinate legislation whenever enacted;

(b) does not affect the validity, continuing operation or enforcement of any incompatible primary legislation; and

(c) does not affect the validity, continuing operation or enforcement of any incompatible subordinate legislation if (disregarding any possibility of revocation) primary legislation prevents removal of the incompatibility.

25. Section 6 states in relation to acts of public authorities that:

(1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.

(2) Subsection (1) does not apply to an act if –

(a) as the result of one or more provisions of primary legislation, the authority could not have acted differently; or

(b) in the case of one or more provisions of, or made under, primary legislation which cannot be read or given effect in a way which is compatible with the Convention rights, the authority was acting so as to give effect or to enforce those provisions.

[9] Document LSA1

Statement of Common Ground

26. A *revised* Statement of Common Ground (SOCG) has been produced by the Council and the appellant (ID1), dated 3 April 2014. There is agreement between these parties that the limitations specified in Class J, paragraphs J.1 are satisfied.

27. In relation to the conditions set out in paragraph J.2, the parties agree:

- J.2 (a) - 'transport and highway impacts' can be satisfied by the submission of a s106 agreement to provide a car-capped scheme, secure associated highway works, provide a construction management plan and retain cycle parking to ensure that there would be no material increase or change in the character of traffic in the vicinity of the site resulting from the development. A signed section 106 agreement has been submitted (ID6). On this basis, the Council accept that reasons for refusal 1 to 4 inclusive are satisfied. The Council submits a written proof of evidence on highway matters (LPA5A & 5B) however, in light of the agreement between the parties, no witness was called.

- J.2 (b) - 'contamination risks on the site' are not of concern. It is agreed that the appeal site is not identified / determined as contaminated land under Part 2A of the Environment Protection Act 1990, neither is it on a contaminated land register and therefore it is not considered unsafe for human health.

- J.2(c) - 'flooding risks' are low and the proposed development does not raise flood risk issues. The site is within Flood Zone 1, in an area that does not have any critical drainage problems and did not suffer from surface water flooding in 1975 or 2002.

28. Reason for refusal 5 relates to the absence of a s106 agreement to secure pedestrian and environmental improvements. The Council considered this to be a concern at application stage due to concerns that the development would potentially 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; a concern shared by local residents. The Council has reconsidered the Transport Statement and analysed this matter further and now considers that the impact would not be significant due to an overall reduction in the number of vehicle trips at peak hours. On this basis, agreement is reached and reason for refusal 5 is therefore withdrawn.

29. Reasons for refusal 6 to 13 and 15 relate to planning matters that are not referred to in paragraph J.2. It is now accepted by the Council that prior approval only allows consideration of those specified matters set out in paragraph J.2 and therefore only those parts of the National Planning Policy NPPF (NPPF) relevant to those matters can be taken into account. Accordingly it is agreed that these reasons for refusal are conceded by the Council.

30. The key area of dispute relates to the effect of the development on the living conditions of the occupiers of surrounding properties by reason of overlooking and loss of privacy. The Council considers this harm is so severe that it interferes with the existing residents rights under Article 8 of the ECHR (which came into force in the UK under the HRA). The appellant does not accept that Article 8 of the ECHR can be lawfully taken into consideration.

The Case for Utopia Village Sales Ltd

The case for the appellant is summarised below based on the statement of case, legal submissions and closing submissions

31. The Council's case is wrong in law even if the proposed development would give rise to impacts on amenity which potentially engage Article 8 of the ECHR. Article 8 is a qualified right. The implications of Article 8 being qualified (as opposed to absolute) rights were discussed by Sullivan J (as he was then) in R (OAO Malster) v Ipswich BC [2001] EWHC Admin 711 (LSA7) (at paragraphs 88 and 89), by Pil LJ in Lough v First Secretary of State [2004] EWCA Civ 905 (LSA10) ('Lough') (at paragraphs 41, 42, 45, 49) and Keene LJ at paragraph 54.

32. The Council accepts that Class J "does not offer the local planning authority the opportunity to assess the impact that the proposal would have on the residential amenity of the existing occupiers of surrounding buildings".[10] Nevertheless, having accepted the limited scope of Class J, the Council considers whether the harm would be so severe that it would interfere with a neighbour's Article 8 Convention rights and makes a finding that there would be such an interference.

33. Convention rights are given legal effect in domestic law by the provisions of the HRA. Section 1(1) of the HRA defines "the Convention rights" so as to include Article 8, which (as is stated in Section 1(3)) is set out in Schedule 1 to the Act. Article 8 (1) rights are protected against interference from a public authority. By virtue of Section 6 (1) of the Act "it is unlawful for a public authority to act in a way which is incompatible with a Convention right". Section 6(2)(b) of the Act provides that subsection (1) does not apply if "in the case of one or more provisions of, or made under, primary legislation which can not be read or given effect in a way which is compatible with the Convention rights, the authority was acting so as to give effect or to enforce those provisions."

34. Section 6(2)(b) is to be read together with Section 3 (1) which provides that "So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights."

35. The GPDO is subordinate legislation and sets out provisions made under primary legislation. The primary legislation includes Section 60 (2A) of the TCPA 1990 as inserted by Section 4 of the Growth and Infrastructure Act 2013. Reading and giving effect to Class J of the GPDO, without giving consideration to impacts on the amenities of neighbouring residents that might arise under Article 8, would not be unlawful. In other words, it would be lawful for the Secretary of State to allow this appeal even if the Council is right to contend that the proposed development would infringe neighbours' Article 8 rights.

36. To give effect to the Council's case that in law the Secretary of State has the ability to dismiss the appeal, one would have to read into (i.e add to) paragraph J.2 of the GPDO an additional item in respect of which prior approval might be required, along the lines of:

[10] See proof of Jenna Litherland at 5.32 and 5.33 (LPA 4A).

"(d) the impact on the amenities of neighbouring homes by virtue of overlooking and loss of privacy in circumstances in which Article 8 (1) of the ECHR would be infringed and not justified under Article 8(2) of the ECHR."

It might also be necessary to add to paragraph N of the Order so as to set out the procedure for dealing with such impacts.

37. No such words are found in paragraph J.2. Adding these words to J.2 would be to legislate rather than an act of interpretation of the GPDO and so would be beyond the power of the Court – see Donoghue v Poplar Housing and Regeneration Community Association Ltd [2001] EWCA Civ 595 ('Donoghue')(LSA6) (paragraphs 75 – 77 Lord Wolf CJ). This approach would be more wide ranging that just Class J which compounds the root and branch problem inherent in the Council's case.

38. The key submission is that such an 'add-in' into the reading of paragraph J.2 runs against the grain of the legislation once it is properly understood and involves importing provisions which are inconsistent with the scheme of the legislation. It would require a radical change to both primary and secondary legislation to adopt the Council's position.

39. Reference is made to Ghaidan v Godin-Mendoza 2004 2 AC 557 (Ghaidan') (LSA12) and in particular Lord Nicholls' speech at paragraph 30. In paragraphs 32 and 33 of that speech Lord Nicholls explains the boundary between permissible and impermissible interpretation under section 3 of the HRA. Impermissible interpretation, and thus legislation that is the exclusive preserve of Parliament, takes place where adding / reading in words would <u>not</u> "go with the grain of legislation" [33]. Lord Nicholls refers to the speech of Lord Rodger on this point. The passage referred to is found at paragraph 121 of the speech of Lord Rodgers in which he contrasts adding / reading in words that "go with the grain of the legislation" (permissible) with "using a Convention right to read in words that are inconsistent with the scheme of the legislation or with its essential principles…." (impermissible). Reference is also made to Lord Rogers' observations on section 6 of the HRA 1998 at his paragraphs 105, 108, 109.

40. The Council relies on the reference in paragraph N of the GPDO to the NPPF, taking the view that as the NPPF refers to residential amenity, it would be acceptable, in the context of the duty in section 3 of the HRA 1998, to treat the reference to the NPPF as bringing into play considerations concerning residential amenity.

41. This argument misunderstands the structure of the legislation, namely:

> Section 60 (2A) of the TCPA 1990 was inserted by Section 4 of the Growth & Infrastructure Act 2013. Section 60(2A) provides that the GPDO "*may require approval of the local planning authority, …, to be obtained - (a) for the use of the land for the new use; (b) with respect to matters that relate to the new use and are specified in the order.*"

Class J of the GPDO falls within Section 60(2A)(b). This is clear from reading Class J which gives permission for the change of use from Class B1(a) to Class C3 and requires an application to be made to the local planning authority as to whether prior approval will be required for specified matters that relate to the new use.

42. Once the statutory root of paragraph J.2 is understood and that prior approval can only be required in relation to the three specified matters set out in (a) to (c), it is obvious that paragraph N can only mean that the local planning authority shall have regard to the NPPF as it relates to those specified matters and nothing else. It would be nonsensical if the planning permission given by Class J (subject to the condition relating to prior approval) could be rendered nugatory by a local planning authority seeking to refuse a prior approval application on the basis of issues beyond those specified in paragraph J.2.

43. Given that an application to the local planning authority is required in all cases by virtue of the conditions applicable to Class J, the Council's approach, if correct, would mean that the local planning authority, upon receiving such an application could decide in response that although it does not consider that prior approval is required for any of the three specified matters, or that prior approval is required in respect of any of the matters and given, the local planning authority could all the same, by virtue of paragraph N(8), decide to refuse the prior approval for some completely different reasons not related to those matters. Such a notion goes against the grain of the legislation and is inconsistent with the scheme of the legislation. It is not a matter of interpretation but legislation.

44. It is submitted that in promulgating Class J of the GPDO the Government must be taken to have carried out the balancing exercise which is inherent in Article 8, being a qualified right, and concluded that it is proportionate to allow the change of use permitted by Class J even where impacts on residential amenity by way of overlooking and loss of privacy might arise – proportionate in the sense of "being necessary in a democratic society in the interests of … the economic well being of the country" and / or "for the protection of the rights and freedoms of others" – and so, Class J as constructed is compatible with the ECHR in any event as the competing interests must have been addressed in drawing up the GPDO amendment in the first place.

45. The structure of the legislation includes the ability to issue an Article 4 direction which addresses the Council's concern that the appellant's approach does not allow any room for Article 8 issues to be considered. Article 4 also deals with the Council's argument that the GPDO itself cannot have balanced the competing issues because one cannot assess residential amenity on a "generic" level. The fundamental problem with these arguments is that they do not bring into account the power given to the Council to issue an Article 4 direction.

46. The Council has the power to issue such a direction in relation to this site, if this is "necessary to protect local amenity". If the Council is correct that the development permitted by Class J would involve an infringement of local residents' Article 8(1) rights then the answer is not to prevent the structure of the legislation by adding a whole new ground upon which prior approval can be refused but rather, to issue an Article 4 direction. This is the approach referred to by Mr Boles MP in correspondence with a local resident.[11]

47. In a report to Cabinet on 26 February 2014 the use of Article 4 Directions was considered by the Council. The Cabinet's preference, in accordance with the recommendation, is for the use of targeted non-immediate Article 4 directions due to the compensation that may be payable as a result of the making of

[11] Letters to Mr Storey dated 4 & 22 November 2013 – see Mr Kennedy's Appendix (JK4b)

immediate Article 4 Directions. Delegated powers were sought to make such directions where they were supported by sufficient robust evidence. The Utopia Village application was actually used as an example to the Cabinet to demonstrate the impacts that Class J can have (ID3).

48. The making of an Article 4 Direction is the route that allows the balance to be struck between competing rights and interests, namely those of local residents and of the site owner. If following the issue of an Article 4 direction, planning permission is refused or a more restrictive grant of permission granted, then the beneficiary of what were previously permitted development rights prior to the issue of the Article 4 direction, is entitled to compensation for the depreciation in the value of the land as a result. Article 4 is part of the self same legislative structure and so there is no need at all to pervert the legislative structure by adding or reading in to it a whole new ground upon which to refuse prior approval. Instead, Article 4 should be relied upon to reconcile everyone's rights and interests. Any conceivable issue about human rights is catered for. The competing rights referred to in Lough are catered for by the substantive decision on the planning application. Once these fundamental points are understood, it is clear that the Council's approach is wrong.

49. Furthermore, it is not accepted that Article 8(2) involves weighing up the displacement of existing businesses on the appeal site to make way for residents or the effect on the takings of local businesses such as a café should the use of the site be residential rather than offices. The disproportionate balance called for by Article 8(2) does not extend to encompass such matters. Even if that is wrong, it would be dealt with under Article 4 in any event.

50. The Council refers to paragraph N (8)(b) of Class J which refers to the NPPF. Notwithstanding the arguments advanced in relation to the scheme of legislation, a further problem is that the NPPF does not set out policies that relate to the protection of existing residents' amenity as secured by Article 8. In the NPPF the only reference to such residential amenity is at paragraph 17 (4th bullet) which simply states one should "always seek to secure a good standard of amenity for all existing …..occupants of land and buildings". This core planning principle is a long way removed from the issue raised by Article 8 which is not whether existing local residents would have a "good standard of amenity" but rather whether there would be a disproportionately severe impact on their amenities (Article 8(1)), which is not justified by countervailing issues under Article 8(2).

51. It is important to understand that generic planning aspirations (such as aspiring to a good standard of amenities, or in a local planning guideline setting a rule of thumb for back to back separation distances between dwellings) are not the same as or co-extensive with Article 8(1) rights.

52. The Council's submissions are fundamentally out of step with the overall scheme of the legislation and wrong in law. The Council seeks to refuse a prior application approval made in relation to transport / highways, land contamination and flooding on something entirely different. This is impermissible because even under the extensive reach of section 3 of the HRA 1998, it is a step too far and entirely unnecessary given the availability of an Article 4 direction.

53. Should the Secretary of State disagree and conclude that it is open in law for the appeal to be dismissed in circumstances in which there would be an infringement of Article 8 then it is submitted that the proposed development would not lead to

impacts on residential amenities of sufficient severity to infringe the Article in any event.

54. The availability from existing views from windows in the buildings on the appeal site which lead to overlooking of and impinging upon the privacy of residents in neighbouring homes can best be appreciated by visiting the appeal site and looking out of the windows in question. A plan showing some of the distances between windows on and close by the appeal site and photographs from windows are contained in the evidence[12]. There are no planning restrictions on the ability to use the offices and thus to look out of the windows.

55. Not every loss of amenity involves a breach of Article 8(1). The case law puts the threshold as “severe”, “direct and serious”, “serious”, “substantial”, “excessive”, “disproportionate” (see paragraphs 25, 26, 28, 33, 42, 43, 49 of Lough (LSA10)).

56. Given the existing unrestricted use of the appeal site as offices and that the “impact” in this case is that future occupiers of the appeal building would be able to overlook and impinge upon the privacy of residents in neighbouring homes through the self-same windows as occupiers of the offices already do, the threshold for a potential infringement of Article 8 (1), as set out above, is not met.

57. If the Secretary of State concludes that the impact would be sufficiently serious so as to meet the threshold then, as the case law in Malster (LSA7) and Lough (LSA10) explains, it would fall to the Secretary of State to consider wider issues of balancing potentially competing rights and circumstances. In the appellant’s submission this would lead to the overall conclusion that there would be no infringement of Article 8.

58. To conclude, on the main issues, firstly, the Council’s case is wrong in law and secondly, the impacts do not engage Article 8.

59. Turning to some of the additional matters raised by others; firstly, the permission that is granted by Class J relates to all those parts of the building that are in Class B1 office. The definition in the GPDO confirms that a building includes any part of a building. The limitation set out in paragraph J.1(b) is therefore met.

60. In relation to highway and transport considerations, it was open to the Council to ask for more information had it considered it necessary. As it was the Council’s concerns could be overcome through a s106 agreement and on reviewing the evidence it was no longer concerned about pedestrian safety. The NPPF says at paragraph 32 that development should only be prevented or refused where the residual cumulative impacts of development are severe.

61. The proposal would, through the s106 agreement, provide a car-capped scheme with no more than 11 car parking spaces. The proposed development would result in a reduction in person trips when compared to the existing situation as demonstrated through the Transport Report (CD9). The trips generated by the proposed development are expected to have no perceptible impact on any travel mode.

[12] See Documents LPA4B, JK4B, TPR1 & TPR3.

62. It is acknowledged in the Transport Statement that the Public Transport Accessibility Level (PTAL) rating of 2, which is considered poor, provides the impression that the site is located in an area in which public transport may not be considered a desirable mode of transport due to accessibility and connectivity constraints. The PTAL rating does not take into account a number of travel modes such as walking, cycling or a person's willingness to interchange between two transport modes or travel beyond the suggested walking distances of 640m and 960m to the bus and rail services respectively. The closest London Overground station is Camden Road approximately 1.3km north east of the site.

63. Camden Town itself is located approximately 940m from the site and is therefore accessible on foot. Camden Town provides access to the same services as the nearest underground service at Chalk Farm (680m) but does not require any interchange for services travelling northbound on the High Barnet branch of the Northern Line. A number of cycle routes exist in the area as part of the London Cycle Network and access points to cycle hire points are available within a 1–2km walk. The report demonstrates that notwithstanding the PTAL rating, there is a good range and frequency of public transport opportunities available in the immediate area.

64. Trip generation rates have been extracted from the TRAVL[13] Database for the purposes of calculating the likely level of multi-modal trips that would be generated by the existing use of the site. It is anticipated that the majority of trips during peak hours would be expected to approach the site on foot having alighted public transport services. Given that Utopia Village provides office space for start-up and small to medium size companies, it is felt that private vehicle trips are likely to be greater than indicated due to the type and dynamic nature of the companies.

65. A comparison of comparable sized residential schemes demonstrates that the number of person trips during peak hours would be reduced. In any event the trips generated by the proposed development are expected to be low. In terms of the proposed development, refuse collection and deliveries would continue to use the existing site entrances. The site is in a sustainable location and would provide access to various modes of transport as alternatives to the private car with good links for cycling and walking. The Council is now satisfied that the surrounding area provides a good environment for walking and cycling.

66. The application confirms that "*the change of use of the building will not present any risk to human health or other risks from contamination as the change of use will not cause any disturbance to the ground beneath the site. There are no other contamination issues associated with the proposed change of use*." This remains the appellant's position.

The Case for the London Borough of Camden

The case for the Council is summarised below based on the statement of case, legal / closing submissions and the evidence of the Council's planning witness and the proof of evidence relating to highways.

[13] Trip Rate Assessment Valid for London.

67. The scheme for permitted development rights under Part J of the GPDO must be read to be compatible with Article 8 of the ECHR, as incorporated into domestic law in the HRA. Article 8 protects private and family life, and people's homes, from disproportionate interference. In a normal planning application the Article 8 rights of any occupiers impacted upon by the proposed development would form part of the planning balance that is carried out. However, the effect of Part J is that planning permission follows from prior approval and there is no consideration of the impact on the living conditions of adjoining occupiers, however severe and disproportionate that may be. The GPDO amendment does not do the balance. The result is not compatible with the rights protected by Article 8.

68. The GPDO, being secondary legislation, must be read under section 3 of the HRA in "*a way which is compatible with the Convention rights*". In order to achieve this, it is necessary to have regard to impacts on residential amenity within the prior approval process.

69. Lough concerned a challenge by adjoining residents to the grant of planning permission for a high residential building next to the Tate Modern. There was no issue that the proposed building would impact on the residential amenity of the occupiers of existing properties. The residents argued that their interests under Article 8 had not been sufficiently considered in the Inspector's decision. Their appeal was dismissed on the ground that the Article 8 issues had been fully balanced through the planning decision under s.78 of the TCPA.

70. The following principles emerge from Lough and the earlier case law referred to therein:

    (a) Environmental considerations may involve a breach of Article 8 as established in Loprez Ostra v Spain 1994 20 EHRR 277 ('Lopez) (LSA5). In that case, the European Court held that the state did not strike a fair balance between the town's economic interests and the applicant's enjoyment of her right to respect for her home and private and family life.

    (b) Where an individual is directly and seriously affected by environmental factors an issue may arise under Article 8 as established in Hatton v UK 2003 37 EHRR 611 ('Hatton') (LSA9). That case concerned night flights out of Heathrow airport.

    (c) Hatton also addressed the role of the national authorities and the Convention as set out in paragraphs 97 and 98 of the authority.

    (d) The question in any Article 8 case will be whether a 'fair balance was struck between the competing interests' as established in Powell and Rayner v UK 1990 12 EHRR 355 ('Powell and Rayner') (LSA4).

    (e) Direct and serious interference with a person's home can be a violation of a person's Article 8 rights; Marcic v Thames Water 2004 2 AC 42 ('Marcic') (LSA11). Marcic concerned an overflow of sewage into the claimant's house.

    (f) Article 8 does not create any absolute rights, and the requirement on the national authority is to strike a fair balance as set out in Lough (paragraph 42).

(g) The public authority has a certain margin of appreciation, and that margin of appreciation may be wide in the implementation of planning policies.

(h) The critical passage in the reasoning in Lough is paragraph 49 which reads:

> *The concept of proportionality is inherent in the approach to decision making in planning law. The procedure stated by Dyson LJ in the Samaroo case [2001] UKHRR 1150[14], as stated, is not wholly appropriate to decision making in the present context in that it does not take account of the right, recognised in the Convention, of a landowner to make use of his land, a right which is, however, to be weighed against the rights of others affected by the use of land and the community in general. The first stage of the procedure stated by Dyson LJ does not require, nor was it intended to require that, before any development of land is permitted, it must be established that the objectives of the development cannot be achieved in some other way or on some other site. The effect of the proposal on adjoining owners and occupants must, however be considered in the context of Article 8, and a balancing of interests is necessary. The question whether the permission has "an excessive or disproportionate effect on the interests of affected persons" (Dyson LJ, at p1160, para 20) is in the present context, no different from the question posed by decision makers both before and after the enactment of the 1998 Act. Dyson LJ stated, at p 1161, para 26: "It is important to emphasise that the striking of a fair balance lies at the heart of proportionality."*

71. The evidence shows that there is an interference with the adjoining residents' residential amenity by reason of the change of use from B1 to residential use. This is a question of evidence, but it turns on the level of overlooking, the intensity of the new use and the relationship between the properties. There can be no doubt on the authority of Lough that impact on residential amenity from amongst other things overlooking, can engage Article 8. It is submitted that the level of interference likely to be experienced will be sufficient to engage Article 8. It is simply not the case that in order to engage Article 8 and therefore have to do the balancing exercise that the home must be rendered at or close to "not worth living in". The facts of Lough (as well as the night flying cases) show that the test is direct and serious impact, which is clearly met here.

72. The issue that then arises is how the appropriate balance can be struck between that interference and the consideration in Article 8(2) including the social and economic benefits of providing more housing. In the case of express planning permission the balance required by Article 8 is part of the normal planning balance undertaken under s70 of the Act. In such cases there is no need for any separate Article 8 balance to be undertaken as is clear from Lough.

73. However under Part J, on the appellant's reading of the GPDO, there is no scope under the prior approval process for issues other than highways, flooding or contamination to be taken into account. Therefore impacts on residential amenity are on that basis not to be taken into account. The consequence of this is that even where there is an accepted interference with Article 8 rights, there is no

[14] LSA8

scope for a balancing exercise to be undertaken. This is plainly contrary to the legal requirements of Article 8 because there has been no striking of a fair balance between competing interests (see Lough para 42).

74. It might be argued that the balance has been struck in the GPDO itself. There is no doubt that in some issues of proportionality the requisite balance can be struck through the legislative scheme, whether primary or secondary legislation. However, that approach can not be sufficient here, because of the nature of the interests in question.

75. Firstly, Part J does not attempt to strike any kind of balance of competing interests. In stark contrast to many of the other permitted development rights in the GPDO, there is no protection of adjoining occupiers through either distance or other criteria, which would limit the scope of any change of use and therefore its potential impacts.

76. The appellant's submission that the balance is in the scheme of the GPDO and that reliance can be placed on Article 4 powers, fails to answer the incompatibility. Firstly, the Article 4 direction which the Secretary of State has approved in Camden, south of Euston Road, does not seek to protect residential amenity, but is simply about the protection of existing offices. It does not purport to meet the Article 8 issue. Secondly, any further Article 4 direction brought into effect by Camden within the next 12 months, inter alia to protect residents around Utopia Village would be subject to paying compensation to the owners of the property. This makes it completely unrealistic for an authority in Camden's position to do so.

77. Secondly, it is apparent that a change of use from B1 office to residential can have material impacts on residential amenity, in terms of increased overlooking and disturbance. The nature of a B1 user, in terms of the hours through which the buildings are occupied are likely to be completely different from those of a residential use. There are other highly material differences which are explored in evidence, but none of these can be taken into account under Part J on the appellant's construction. This can be contrasted for example with the new Part K (change of use to state schools) where noise is a matter which can be taken into account in the prior approval process.

78. Thirdly, there is no ability to balance or take into account competing interests through the prior approval regime on the appellant's construction, because any impact on residential amenity by reason of adjoining development cannot be balanced unless it relates to flooding, contamination or highway impacts.

79. Fourthly, the very nature of an impact such as this on residential amenity, is that it will be very difficult, if not impossible, to strike the balance between competing interests on a generic approach. There will be some cases of severe impact and others of much less. It is not a matter that lends itself to a generic approach.

80. For these reasons it is submitted that the GPDO itself, on the appellant's construction, does not allow a fair balance to be struck and as such, it is incompatible with Article 8. Where primary legislation can not be read down the court may make a declaration of the incompatibility. That is not what the Council is suggesting is necessary here; there is no legal difficulty in overcoming the incompatibility with Article 8.

81. Section 3(1) of the HRA requires subordinate legislation to be read and given effect in a way that is compatible with Article 8 rights. This duty rests on all courts and tribunals, and anyone else interpreting a legislative provision, including the executors and administrators (see Lester and Pinnick Human Rights Law and Practice 3rd edition para 2.3.1) (LSA 13).

82. This duty under section 3(1) is a strong one and may require the court etc to depart from the unambiguous meaning the legislation would otherwise bear ('Ghaidan' - LSA12). There is little difference or no difference in approach between Ghaidan and Donaghue (LSA6), relied upon by the appellant, although Ghaidan should be followed because it is a House of Lords and more recent case. However in this context it is not necessary to go that far because part N(8) can be read to be compatible with Article 8.

83. Under Part N(8) of the GPDO the local planning authority when determining an application for prior approval shall have regard to the NPPF as if it were a planning application. There is no legal problem with reading into this requirement that the decision maker shall have regard to the obligation for a decision to be compatible with, inter alia, Article 8 and therefore to have regard to the level of interference with Article 8 rights in determining the application. Such considerations would plainly fall within the NPPF, which itself seeks to protect residential amenity. Therefore it is no misuse of the language of N(8) to require that the decision about whether prior approval shall be granted must take into consideration any Article 8 rights and balance those against other issues in Article 8(2). Given the scope of section 3 and speeches of the Hose of Lords, there is no difficulty in interpreting N(8) to allow Article 8 considerations to be taken into account. Further, to do so, is not in any sense "inconsistent with a fundamental feature of the legislation" (Ghadian, para 33 – LSA12).

84. The evidence on the issues relevant to Article 8 is very clear:

    (a) there will be a very serious interference with local residents' enjoyment of their homes, and their privacy. There are a large number of cases of window to window overlooking of about 8 metres (m), and at least one as little as 6m. Many of the rooms in question will be living rooms and bedrooms;

    (b) there will be further impacts from noise and light pollution;

    (c) this is in contrast with the existing situation where there is very little use of Utopia Village units in the evening and weekends, when local residents most want / need privacy and to enjoy their homes;

    (d) the evidence on the other side of the Article 8 (2) balance is non-existent. The buildings are (or were until recently) fully occupied by a mix of businesses. There is no economic benefit to this change of use. Utopia village is a well used B1 site, where a large number of people are employed;

    (e) the occupiers of Utopia Village play an important role in maintaining the vibrancy of the very successful mixed economy of Primrose Hill;

    (f) It is clear that situations such as Utopia Village are absolutely not the socio-economic problem which Class J was brought in to address.

85. The impact of the development on the living conditions of the occupiers of surrounding properties by reason of overlooking and loss of privacy is addressed in detail in the proof of evidence of the Council's planning witness (Document LPA 4A – paragraphs 5.34 – 5.40). The loss of privacy by reason of overlooking will occur to the habitable rooms and gardens of properties on Edis Street, Egbert Street, Gloucester Avenue, Chalcot Road and Fitzroy Road. It was confirmed that habitable rooms are living rooms, bedrooms and kitchens. Overlooking is particularly intense from the first and second floor windows of the Utopia Village building which face towards surrounding windows serving habitable rooms. Some overlooking may also occur from ground floor windows. Some windows in the existing appeal building are obscure glazed. A 1968 planning permission secures 4 x 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 (unit 2a), facing the rear of 7 – 11 Edis Street approximately. It is unclear if the permitted development rights would retain this protection currently afforded to existing occupiers.

86. It is anticipated that 9 individual dwellinghouses would have windows facing at 8m or less and 8 dwellings with windows between 8 and 10m window interface distances. The Council accepts that it could not be sure which windows are to habitable rooms but identifies some known to be habitable rooms on a plan at Appendix 7 of the witness' proof of evidence (LPA4B). In one case, a distance shorter than 5 m between proposed habitable room windows in the appeal property and those in surrounding properties is identified (14 Egbert Street). Photographs provided (LPA4B-Appendix 8) demonstrate the severity of the harm to amenity as a result of the proposed scheme. One of the worst cases of direct overlooking would be in respect of 9 Egbert Street which would be overlooked by 3 residential units and has rear facing habitable room windows and ground and lower ground level and a roof terrace above at a distance of 8.4m (see LPA4B, Appendix 8, photos 6-8). The photos also demonstrate the intensity of overlooking available to 99 Gloucester Avenue which has a fully glazed two storey infill extension and the views from 115 Gloucester Avenue and 14 Egbert Street.

87. It is accepted that there is already a level of overlooking from the office space to residential properties. However, this overlooking only exists when the offices are occupied for business uses during working hours on week days only. In residential use the opportunity for overlooking to the existing properties would exist at all times including evenings and weekends. This would result in the surrounding occupiers having no privacy or respect for their private and family life 24 hours a day and 7 days per week, resulting in a total lack of privacy and a sense of intrusion into family life. The development would significantly worsen the existing situation to the extent that it would constitute an interference of the neighbour's rights under Article 8 of the ECHR.

88. For these reasons, if the legal argument is accepted, it is clear the Article 8 balance is firmly against granting approval here. Indeed it becomes clear that Article 8 provides an important benefit to the Secretary of State in relation to the purpose of Class J. It allows a more nuanced approach in cases where there is a serious interference with residential amenity, and there is no economic case for the change of use.

89. In relation to other matters, the Council's Delegated report (CD15) is of assistance in explaining why the Council is satisfied that those matters to be

considered under paragraph J.2 do not give rise to concerns. In relation to contaminated land, it is acknowledged that the site is known to have been previously used for piano manufacturing and possibly other chemical processing uses such as pharmaceuticals and also electrical engineering. According to the Council's contaminated land risk categorisation, land on which certain industrial processes / activities were carried out is inherently considered to present a possible risk of contamination. It is conservatively considered likely that such land would exhibit substantial areas of significantly elevated contamination levels with moderate magnitude to cause harm. Any potential contamination of the soil is only assumed and sites with past industrial use are considered 'to have potential to be contaminated'.

90. The Council accepts that purely because there is potential for land to contain contaminants, that does not determine land to be 'contaminated land' within a legal meaning under Part 2A of the Environmental Protection Act 1990. For the land to be classed as contaminated land there needs to exist a feasible 'contaminant linkage' which would present an unacceptable risk to human health.

91. The proposal does not include any construction works except internal conversions. The entire site is to remain hard surfaced with no surface landscape or gardens created. No contamination linkages will exist. There will be no ground excavations or land disturbance in any form and therefore no risk.

92. The Council produced a Proof of Evidence in relation to transport and highway considerations (LPA5A) which outlines why the proposed development would have an unacceptable impact should a s106 agreement not be secured that would address car-capping, associated highway works, require approval and implementation of a Construction Management Plan and cycle parking provision. It is accepted that these matters have been addressed in the s106 agreement that is now in place (ID6).

93. The Council's reason for refusal 5 related to the absence of a s106 agreement to secure financial contributions towards pedestrian and environmental improvements in the area to compensate for increased trips generated by developments. The London Borough of Camden generally seeks to secure such measures as a means of funding a variety of measures to make walking and cycling more pleasant.

94. The Council has accepted that the proposed scheme would generate fewer peak hour trips when compared to the existing uses on site. Further research by the Council confirms that the conditions for walking and cycling in the area are good. A Camden wide 20mph project, restricting vehicle speeds accordingly, was implemented in December 2013. Camden is also currently developing a major traffic improvement scheme for Camden Town which aims to transform the public realm, reduce traffic congestion and improve road safety which will deliver significant benefits for pedestrians and cyclists. Given these factors, a financial contribution towards pedestrian and environmental improvements would not be justified.

The Case for Mr J Kennedy

The case for Mr Kennedy is summarised below based on his statement of case, the evidence presented and closing submissions

95. Mr Kennedy is a local resident and Rule 6 party to the appeal. Whilst Mr Kennedy shares the concerns of the Council in relation to the effect of the development on his own living conditions, he also raises a number of additional grounds which are summarised below. Inquiry Documents submitted by Mr Kennedy can be found at JK1 (Statement of Case), JK4A (Proof of evidence) and JK4B (Appendices).

Ground 1 – non-compliance with Class J requirements

Ground 1(a)

96. Paragraph J.2 requires a prior approval application to be accompanied inter alia by " a written description of the proposed development". The descriotion gven is inadequate for the following reasons:

    (a) the reference to up to fifty three dwellings as shown on plans "on an indicative basis" is unacceptably vague and unspecified for a proposed development of this size; and

    (b) the plans provided with the application contain material errors, for example multiple roof lights / skylights are shown where none exist which is liable to mislead the decision maker as to the viability of the site for residential purposes and to complicate any subsequent enforcement action if the development were to proceed.

Ground 1(b)

97. One of the limitations included in paragraph J.1 is that development is not permitted where '(b) the building was not used for a use falling within Class B1(a) (offices) of the Schedule to the Use Classes Order immediately before 30 May 2013 or, if the building was not in use immediately before that date, when it was last in use'. Three of the units are excluded from the prior approval application. It is not therefore correct for the appellant to claim that the building was in use as B1(a) offices as this is only true of those units which are included in the application. It is not open to the appellant to cleave-off those parts of the building which are inconvenient to its application leaving three units, artificially as islands of "business use".

Ground 2 – insufficient and / or erroneous information submitted on the transport and highways impact of the development.

98. Paragraph J.2 requires consideration of the transport and highways impact of the development. The information submitted is noticeably poor and deficient. The Transport Report (CD9) provides no details of the author or their qualifications and consists largely of unsupported assertions and deals with the limited points it seeks to cover in a superficial way.

99. The conclusion of the Transport Report is found at paragraphs 3.14 and 3.15 which refer to the site having a 'poor' level of accessibility to public transport and a calculated Public Transport Accessibility Level index (PTAL). This is subsequently eroded through the remainder of the report where references are made to a 'relatively low' PTAL score (paragraph 3.23), the site benefiting from a 'good level of accessibility' (5.5), and the site having a 'good level of accessibility to public transport' and that 'good links via sustainable modes of transport such as walking and cycling exist (6.5). On this basis the Transport Report erroneously concludes that "it is therefore considered that both residents of the Site and their

visitors will be able to readily access the site by means other than the private car" (paragraph 5.6) (emphasis added)

100. There is no basis for this conclusion on the site's accessibility to public transport which conflicts with the PTAL calculation. The position shifts from 'poor' access, 'relatively low' access, 'good' access, 'demonstrably good' access through to 'ready' access.

101. In relation to the assessment of the traffic generation comparison of the existing and proposed use, no attempt is made to explain the underlying data in the TRAVL Database which is said to be used "for the purposes of calculating the likely level of multi modal trips that would be generated by the existing use of the site" (paragraph 4.3). No explanation is given to the selection of the seven data surveys used other than they "are trip rates for smaller residential sites". No relevant information is provided for three of the sites, two of which have fewer than half the number of residential units (14 and 22 units respectively) of the proposed development.

102. The relevance of the data in Appendix A of the Transport Report is unexplained. The data is old; it concerns sites all over London where different transport, age demographic and socio economic circumstances exist or relate to affordable housing schemes.

103. There can be no basis on which the Transport Report can conclude that the proposed development would result in a reduction of person trips when compared to the existing and that trips generated would have no perceptible impact on any travel mode. These are unsupported assertions. There is no way of assessing whether the adverse transport and highways impact of the proposed development could be satisfactorily ameliorated by the imposition of planning conditions or s106 agreement.

Ground 3 – Insufficient and inadequate information on car ownership and parking in the Transport Report.

104. The Transport Report and application fails to deal with the issue of car ownership in any meaningful way. A car-capped scheme is proposed with no more than 20[15] car parking spaces provided. No further consideration is given to the matter. The report appears to confuse or conflate the issue of the car spaces at the site with the proposal to limit parking permits for future residents. This compounds the lack of clarity and detailed information about the purported car-capped scheme. This sits in the context of a previous car-capping scheme in the immediate area being either unenforceable or unenforced. More broadly:

(a) Addressing the transport and highways impacts of a development of 53 new dwellings without dealing with car ownership and parking impacts on the site and the surrounding community is a clear and obvious deficiency in the Transport Report.

(b) The NPPF addresses parking standards for residential and non-residential development in the context of promoting a sustainable transport policy.

[15] The number of spaces provided is restricted to 11 in the s106 agreement.

(c) The appellant is obliged to deal with these issues in the context of the original application including details of the likely levels of car ownership and use of vehicles; the accessibility of the site; the phasing of vehicle use which will be different if residential uses increase in the area rather than the differing travel patterns of residential and employment; associated parking issues in the surrounding streets;

(d) The application is unsupported by any meaningful report.

Ground 4 – insufficient and erroneous information on the potential contamination risks of the site

105. Class J, condition J.2 (b) requires the local planning authority to consider contamination risks on the site. The provisions of paragraph N require the decision maker to refuse prior approval if it determines that the site will be contaminated land (paragraph N(8)(c)(ii)).

106. The NPPF stipulates that a site should be suitable for its new use taking account of ground conditions including pollution arising from previous uses and in this regard that adequate investigation information, prepared by a competent person, is presented. The Environment Agency's quick guide to the NPPF reiterates this (ID3).

107. The information concerning the contamination risks provided with the application is unsatisfactory and insufficient to enable a proper assessment of any contamination risks to be carried out by the decision maker. The appellant's position rests entirely on the unlikely assertion that the change of use will not cause any disturbance to the ground beneath the site. In addition there is some prospect that future occupiers will cause or need to cause some disturbance to the ground.

108. Nothing is said about the extent or nature of existing contamination. The site has a long history of industrial use, with the potential for contamination to exist. Uses of the site over the last 75 years include a piano and gramophone factory (paint and solvents); electrical and chemical engineering (heavy metals, chemicals, plastics, and so the rumour goes mustard gas during World War II); pharmaceutical manufacturing and laboratories (chemicals and other agents); and medical and electrical instrument manufacturing (metals, smelting and plastics).

109. The change of use may bring potential receptors closer to sources of contamination, or subject them to a more sustained exposure to those sources. Moving to a more sensitive use of the site (residential dwellings) requires at least some analysis of whether there are greater contamination risks involved in doing so.

110. Significantly, the Council's Delegated Report concerning the application states that "the site is identified as falling within an area designated as contaminated land" (paragraph 2.10(b) – CD13). An informative to the Decision Notice reminds the appellant that any disturbance of the land will require a preliminary assessment for contamination. Paragraph N of the GPDO which is applicable to Class J requires prior approval to be refused if the site is land.

111. Accordingly the prior approval should be refused either because the site is contaminated land and so the decision maker is required to do so or because

inadequate information has been supplied to assess the relevant contamination risks. It would be irrational for the Secretary of State to grant prior approval for the application in circumstances where the site is acknowledged to be contaminated land or inadequate site investigation has been carried out, in accordance with the NPPF. The Inspector and Secretary of State can have no confidence that there will be no contamination risks to future occupiers.

Ground 5 – the inadequacy of the draft s106 agreement.

112. The planning obligation arising from the executed s106 agreement would not satisfactorily address the transport and highways impact of the development as the information submitted is insufficient, inadequate and incorporates erroneous information on the transport and highways impact of the development, including car ownership and parking. It is irrational or unreasonable for the Council to find that transport and highway impacts of the development are acceptable or could be appropriately managed by the imposition of conditions. The draft s106 agreement was not made available to Mr Kennedy prior to the day of the Inquiry.

Ground 6 – on a proper interpretation of the GPDO, the Council is entitled to consider issues going beyond the three specific issues referred to in Class J, paragraph J.2.

113. Paragraph N(8) (b) does not say that the local planning authority shall only have regard to the NPPF in so far as it relates the three issues set out in J.2. That is too narrow an interpretation of the plain language of the relevant paragraph.

Ground 7 – conditions

114. Mr Kennedy suggests a number of conditions that should be imposed if prior approval is to be granted relating to:

- retention of opaque glass where it exists;
- prohibiting the use of balconies;
- control of light pollution;
- workable, enforceable and transparent restrictions on residents parking permits.

Ground 8 – Human Rights Act and Article 8

115. The stated purpose of the amendment to the GPDO is to enable vacant and under utilised commercial property to be used to increase the supply of housing stock. This is not being fulfilled by this development. Instead, fully occupied / utilised and commercially / socially valuable commercial property is being converted for short term opportunistic financial gain to the detriment of the local community and economy.

116. The lease arrangements of several commercial tenants at the Utopia Village site mean that the proposed development cannot presently proceed by way of permitted development as described because several tenants have leases which extend well beyond 30 May 2016 (the date after which Class J ceases to apply as set out in the limitations in paragraph J.1 (c) of the Order).

Impact on residential amenity

117. Mr Kennedy's proof (JK4A) describes the impact that he considers the development will have from his own property on Gloucester Avenue. Photographs are submitted from various storeys and windows of the house (JK4B – Photos A1–A7), moving up from the ground floor to the top floor – looking out from guest bathroom, siting room, hallway, bathroom, children's bathroom and children's bedroom. The photographs demonstrate how close the appeal building is to these windows. The distances between the windows to the bathrooms and living areas and windows in at least two of the proposed units will be well short of the 18 metre guideline contained in the Council's planning guidance (CPG6).

118. Photos B1-B9 are taken from flats within 111 Gloucester Avenue which show direct and close overlooking between existing and proposed habitable rooms which would be further exacerbated if the external area accessible from unit 10 were used for external residential amenity space. The access doors are shown to be retained.

119. Mr Kennedy referred to an exchange of correspondence between a local resident and Mr Nick Boles MP between October and December 2013 (JK4B). In the correspondence to Mr Boles it was explained that the net effect of the 2013 amendment GPDO is that the perfectly viable and vibrant businesses in Utopia Village will be turfed out by the landlord in order that the buildings can be converted to 53 residential units. It will not bring underused offices back into effective use. The plans will reduce the all important community mix, eradicate local employment and obliterate the daytime activity which comes predominantly from these local businesses and on which many other local businesses rely. Comment was also made on the impact of increased traffic. It was suggested to Mr Boles that whilst enjoying the first signs of economic recovery, the Government has unwittingly sanctioned plans which will drive yet another nail in the coffin of a multitude of businesses across the country.

120. In his responses, Mr Boles clarifies that the permitted development rights are subject to the prior approval process; the new permitted development rights will provide badly needed homes for local people and make a valuable contribution to easing our housing shortage; by bringing underused offices spaces back into use they will help create jobs in the construction and services industries and help regenerate our towns and centres and former commercial areas. It was recognised that in some instances businesses will be asked to relocate to other office accommodation. New homes will bring a greater resident population to our high streets, increasing footfall and supporting local shops.

121. Mr Boles explains that where local planning authorities are concerned about the impact of new permitted development rights in particular areas, they may wish to consider using an Article 4 direction which can apply to an individual property or more widely.

The case for other interested parties

122. The cases of interested parties who spoke at the Inquiry are summarised below:

Mr Selwyn

123. Mr Selwyn is a resident of Edis Street and provided a proof of evidence (Document TPR3). His proof contains a number of photographs which demonstate the proximity of Utopia Village offices to residential properties along Edis Street. Although the windows in Utopia Village presently allow the occupants of the offices to look into the kitchens, living rooms and bedrooms of houses in Chalcot Road and Edis Street, the different use for residential purposes would make it more obtrusive - existing and future occupiers would effectively be “cooking and washing up in each others kitchens, living and resting in each others living rooms, and indeed sleeping in each others bedrooms”. It would be grotesquely obtrusive and intrusive for everyone concerned and moreover would continue beyond business hours and at weekends when at present it does not.

124. The photographs are taken from the ground floor kitchen / living area and balcony (numbered 1 – 3). Photos 4 and 5 show the proximity of the rear of properties along Chalcot Road and the existing offices together with a timber ‘u’ shaped structure erected around an external staircase to offer some protection from direct overlooking when the stairs are in use. The latter four photos in the pack (10 – 14) are taken from an upper floor bedroom window.

125. Further concerns relate to the change in audio impact. At present the occupiers of Utopia village are quiet and unobtrusive and do not, for example play loud (or indeed) any music. This would change radically if the development were to proceed. There would be no night time or weekend peace at all, having a disruptive effect. There would be major light issues all along Chalcot Road and Edis Street. Sitting out on balconies in summer would become a completely different experience.

126. A serious consequence of the proposed development would be the conflict between pedestrians and vehicles arising from the many families with school age children that use Chalcot Road on their way to Primrose Hill School and the access / entrance points to and from the development on Chalcott Road.

Mr Slowik

127. Mr Slowik owns and runs a restaurant and café / sandwich bar located directly opposite Utopia Village on Chalcot Road. It is located on the walking route from the underground station to the entrance to Utopia Village and attracts a steady daily trade from the employees for breakfasts and lunch. It is estimated that some 50% of the lunchtime café trade and 20% of the breakfast trade is from Utopia Village employees. They also visit the restaurant making up perhaps 20% of the lunchtime business and about 5% of the weekday evening trade, especially in the early evening.

128. It is understood that approximately 180 people are employed by businesses on the Utopia Village site. Until recently it was almost twice that number but a large tenant has since moved. The loss of jobs would be disastorous for the business, particularly the café/ sandwich bar, which if forced to close would be the loss of a further 4 jobs plus one in the restaurant. The outside seating area would no doubt be affected during the construction phase of the development resulting in the loss of further customers.

129. A residential development is unlikely to generate the same level of business and would certainly not make up for the loss of the Utopia Village employees. Other local businesses are likely to suffer in a similar way.

130. If the new legislation was introduced to bring under-used or unused office space into new useful residential occupation and to stimulate the local economies, the opposite would be true with this development which would cause the loss of hundreds of direct jobs and dozens of indirect jobs.

Councillor L Pietragnoli

131. Councillor Pietragnoli is a local councillor and local resident. He reiterated that the development would not bring under-used office space into use. It wil result in the loss of viable businesses from the area which would not be off-set by the short term construction related jobs that would be generated. He raises concerns about the increase in traffic. Chalcot Road which is used by parents and children going to the primary school is quiet at present. Pedestrian safety will be compromised.

Councillor P Callaghan

132. As a local councillor and local resident Councillor Callaghan raised serious concerns about the impact of the development on health due to potential contamination on the land. She failed to see how the land would not be disturbed to lay water pipes etc without moving any contaminated earth. Proximity to the school and safety of pupils was also a concern.

Mr T Goodfellow

133. The proposal is driven by the desire to make money and should not be permitted to go ahead. It will increase traffic in an area used by pedestrians, put further stress on parking, change work / residential balance. No open space is to be provided. The narrow entrance is unsuitable for Heavy Goods Vehicles.

Mrs L Johnson

134. Mrs Johnson is a resident of Fitzroy Road. A written statement was submitted to the inquiry (Document TPR 6), in which she refers to comments made by the Secretary of State in April 2011, during the consultation on the 2013 GPDO amendments and makes the following points:

135. Contrary to the intention to promote the regeneration of commercial land and help bring empty commercial buildings back into productive use, in this case Utopia Village is not empty; they are in productive use serving a vibrant community. Whilst the Government wants to encourage economic growth by encouraging development to bring redundant commercial premises back into use and at the same time help tackle the need for more housing, Primrose Hill is not in need of economic regeneration as it has a thriving, mixed local economy. The premises are not redundant commercial premises but in use. The housing proposed is luxury housing which will be sold at about £1500+ per square foot. There is no mechanism to require any social housing provision.

136. Most damaging of all, the NPPF states that local planning authorities should “normally approve applications for change to residential use …from commercial buildings where there is an identified need for additional housing in that area,

provided there are not strong economic reasons why such developments would be inappropriate."

137. It is clear that there is no need for another tightly packed luxury residential development in Primrose Hill, especially in this street which has very limited site access. The only reason for change of use is to vastly increase the value of the units for the developer, whilst at the same time causing a devastating knock-on effect for the local economy with a loss of around 250 – 300 local jobs. Primrose Hill will no longer be a thriving community but instead a dead dormitory. There are therefore strong economic reasons why such a development would be inappropriate and contrary to the NPPF.

Primrose Hill Conservation Area Advisory Committee

138. Mr Phil Cowan spoke on behalf of the Advisory Committee. A written statement was submitted to the Inquiry (Document TPR 5) and reference is made to the representations made at application stage. In summary, the assessment of transport issues is incomplete and inadequate. Mitigation of an inadequately assessed problem can not be acceptable. The issues do not relate only to car parking. Transport is a service in an area like Primrose Hill. Individuals may own a car but rely on minicabs or taxis to get to work as can be observed most mornings. Similarly, shopping is delivered to the door. This is a phenomenon which reflects the economic and demographic profile of the area, and which should be expected to apply to the dwellings proposed for Utopia Village. Car-capping only addresses part of the transport problems.

139. The Advisory Committee endorses the concerns of local residents about the loss of residential amenity to habitable rooms in houses backing on to the Utopia Village site. There are several areas where houses and backland development are closely juxtaposed. Maintaining the amenities of both is an essential objective of planning in the area since its designation in 1972.

140. It is one of the tragedies of the GPDO (as amended) that it jeopardises the long standing success of the planning system in the area which has encouraged and enabled new development in backland areas and which has maintained employment uses while adding in residential accommodation. Local businesses, which have included major international architects, photographers and music impresarios have provided economic vitality which has, in turn, supported local shops and services. It is why Primrose Hill is such an economically successful area.

141. The 2013 amendments to the GPDO, despite its objectives, threaten both economic activity and the sustainability of the local economy in this area. The Advisory Committee is deeply disturbed that these fundamental matters are excluded from consideration which raises serious doubts about natural justice and due process.

Mrs Susan Sciama

142. In addition to concerns already raised by others, Mrs Sciama expressed concern about the extent of disruption that would occur during the construction phase of the development.

Mr Herman Tribelnig

143. Mr Tribelnig submitted a written statement to the Inquiry (Document TPR8). He is a local resident in Edis Street. In brief, his objections are:

- loss of office floor space and the availability of business units of varying sizes for business development and the incubation of ideas such as Newell & Sorrell who are now a global company having started out at Utopia Village;
- loss of local employment;
- unacceptable change in the future demographic of the area;
- unacceptable increase in local traffic in the area through local streets and safety implications given proximity to large primary school;
- transport assessment is lacking in detail;
- unacceptable increased pressure on on-street parking – outside the parking control period, parking problems still exist;
- unacceptable and incidental alteration to the fabric of the village character which typifies the mid 19th century town planning ideals for living and working 'cheek by jowl';
- Utopia Village is at the heart of the Conservation Area;
- Current owners have said in the past that most of the workers arrive at the site on foot from nearby residential areas;
- Enjoyment of one's home is directly related to what happens outside. Mr Tribelnig explained that his property enjoys the main living areas to the rear taking advantage of the afternoon sun. A plan accompanies the written statement which is annotated to show the existing rear extension used as a habitable room and the number of units from which overlooking would occur should the development proceed.
- The offices are usually only occupied 37 hours per week and so the occupier can enjoy tranquility at nights, weekends and bank holidays.

Mrs D Sharp

144. Mrs Sharp is a resident of Gloucester Avenue. She raises concerns about loss of privacy due to the close proximity of windows and noise and light pollution. Overlooking will be worse in circumstances where glazing is clear. The Utopia Village development is so close that conversations will be overheard.

Mrs T Coppersmith–Heaven

145. Mrs Coppersmith-Heaven is an existing tenant of Utopia Village where her business Sahara is located. Her written statement is Document TPR 7. She explains that the Utopia Village working community tends to incorporate members within the creative sectors such as architects, designers, music agents, artist management, financial advisors, fashion businesses (such as her own), writers, publishers, IT technical advisors, health trainers, lawyers etc., who represent a wide spectrum of quiet businesses which would not be suited to

working in industrial areas and instead can harmoniously co-exist with the local residential community.

146. Such small and medium sized enterprises are vital to the social, business mix and local economy of the area. Sahara is a growing business which employs over 120 people, of which 27 people are employed at Utopia Village. The company employs local interns and college leavers in first jobs on a regular basis along with working mums seeking flexible part time employment. Sahara in turn supports other local businesses in the area, estimating that on lunch sustenance alone the office spends around £70,000 per year amongst the small cafes and resaurants in the immediate area. The proposed development could become another dormitory of gentrification.

147. On the one hand the Government wishes to support independent self-employed work forces which are at the heart of the UK recovery from recession; and yet, at the same time, the Government is encouraging the transformation of this office space into new housing, forcing employers out of the very communities that house those seeking local employment. If work places such as Utopia Village continue to diminish, where will new jobs be found locally?

148. The new legislation is skewed towards landlords and developers. Utopia Village has a unique atmosphere with a small working community. Despite the growth that Sahara has seen over the past 7 years the company is now being unceremoniously turned out of its workplace because the Government has relaxed its laws and u-turned on its housing policy. The lease is about to expire. Sahara and its employees are the losers. Small, unique working communities such as Utopia Village should be encouraged throughout Britain and not compartmentalised into soulless industrial estates on the peripheries of the city.

Ms S Coppersmith-Heaven

149. In response to representations made about potential light pollution it was confirmed that the management in Utopia Village have spoke to Sahara about complaints from residents when lights have been accidently left on.

Marilyn Penayi,

150. Mrs Penayi is a resident of Gloucester Avenue and represents Gloucester Avenue Residents Group. She endorses the views expressed by Mr Kennedy confirming that over 50 years she has seem companies grow. Primrose Hill is a mixed community with a thriving school. The submitted drawings contain inaccuracies. Conversations can be heard between Utopia village and residential properties which will be exacerbated should the development proceed. The current process negates any means of consultation or a fair process.

Written Representations

151. A statement was also submitted by Steve Collis of Edis Street (TPR1). Mr Collis helpfully includes photos that show the close proximity of properties on Edis Street to Utopia Village. (The Secretary of State should note that the first floor windows that can be seen in the photographs relate to units 11 and 11a that are excluded from the application).

152. Francis Katz who is an existing tenant of Utopia Village submitted a statement (TPR2). He confirms, that like some other tenants he has a lease that extends

beyond 30 May 2016 without any landlord break clause. The appellant will not be able to exercise any permitted development rights in these units. A copy of the lease is provided.

153. Representations received during the application process are summarised in the Council's delegated report (CD15). Some 75 representations, all made against the development, were received in response to the appeal (CD38), from both local residents and tenants of Utopia Village. The key points are:

- Mix of uses in Primrose Hill is an essential part of community and character of the area;
- Loss of employment space for small businesses;
- Displacement of viable businesses;
- Noise and disturbance during construction;
- Unsuitability of roads and narrow accesses to site to accommodate construction traffic;
- Increase in traffic;
- Increased danger to school children and other pedestrians;
- No amenity space is provided for any units;
- Loss of privacy and overlooking;
- Increased noise and light pollution evenings and weekends;
- Density too high;
- Harm to conservation area;
- Concerns relating to contamination on the site;
- No social housing provision;
- Non-compliance with GPDO procedural requirements;
- Insufficient information submitted in relation to transport impacts and contamination risks.

Conditions and Obligations

154. Since the close of the Inquiry, a signed s106 agreement has been submitted (ID6). The obligations therein are considered necessary and relevant to the prior approval application being relevant to those matters on which prior approval is sought under paragraph J.2. In brief, the obligations of the owner agreement are to:

- Inform each new occupier of any residential unit that they shall be not entitled to a residents parking permit or to buy a contract to park within any car park owned by the Council (exceptions apply to holders of a disabled persons badge) – the car-capping scheme.
- Provide for not more than 11 car parking spaces within the site.

- Provide a Construction Management Plan.
- Provide 70 cycle parking spaces at an appropriate location within the property.
- Pay a Highways contribution.
- Ensure all occupational tenants enter into the s106 agreement.

155. The conditions suggested by Mr Kennedy were discussed. In response the appellant maintains that the roof areas are not within the application site and so there is no necessity to control their use.

156. Further, controls to use specific glazing to minimise light pollution, retain / use obscure glazing and require windows and roof lights to be permanently fixed shut were suggested. I agree with the appellant, that if such conditions were to be imposed requiring such details to be agreed, it would be necessary to relate them to those properties the Secretary of State considered to be seriously affected only.

Conclusions

The references in brackets [ ] relate to the cases of the parties referred to in previous paragraphs.

157. Before dealing with the main issues, I address the procedural points raised by Mr Kennedy in relation to the term 'building'. Class J relates to the change of use of 'a building'. Paragraph J.1 contains the limitation that development is not permitted if '*the building was not used for a use falling within Class B1(a) (offices) of the Schedule to the Use Classes Order immediately before 30 May 2013 or, if the building was not in use immediately before that date, when it was last in use*'. Those units within Utopia Village that are not in B1(a) office use are excluded from the application. The point is made by Mr Kennedy that some of the units within the building can not be severed in this way.

158. A building is defined in the GPDO and section 336 of the 1990 Act as including any structure or erection and any part of a building, but not plant and machinery comprised within a building. Accordingly, I agree with the appellant that Class J can apply to any part of a building. This was not disputed by the Council. It is not therefore necessary for the entire building to be in Class B1(a) office use to benefit from permitted development.

159. The proposal is not specific in that it refers to 'up-to 53 dwellings' and the layout plans are therefore 'indicative'. Class J permits the change of use to residential as a matter of principle. The number of units proposed is only relevant in my view, to the consideration of transport / highways impacts in this particular case. The Transport Assessment is based on this upper figure and so, provides sufficient information for the application (and appeal) to be considered on the basis of a threshold of 'up to' 53 units.

Main Issues

160. On the basis of the one remaining reason for refusal in its revised form, it is considered that the main issues are:

(a) Whether, as a matter of law, it is open to the Secretary of State to refuse an application for prior approval made under condition J.2 of Class J, Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) on the ground that the permitted development would result in overlooking and loss of privacy to the occupiers of existing residential properties, contrary to Article 8 of the European Convention on Human Rights;

(b) If so, whether the Secretary of State should do so in respect of the particular circumstances of this appeal having regard to the relationship between the appeal building and existing residential properties.

The principle

161. Class J already grants planning permission for the change of use from offices to residential. The decision to permit the development that is the subject of this appeal has therefore, as a matter of principle, already been made through the provisions of the GPDO (albeit subject to the prior approval process set out in paragraph J.2). No judicial challenge was made against the GPDO amendment.

162. In broad terms, the argument is that the GPDO must be interpreted to enable an appeal to be dismissed where necessary to avoid an unjustified interference of an individual's rights to respect for their home and private life under Article 8 of the ECHR.

163. The prior approval procedure does not invite the decision maker to assess whether the development would impact on living conditions in any way. On any straight forward reading of the conditions within paragraph J.2, the decision maker is simply not required to do so. Indeed, there is no dispute between the parties that the conditions set out in paragraph J.2, restrict the decision maker, when determining an application for prior approval, to the consideration of whether prior approval is required in relation to (a) transport and highway impacts of the development; (b) contamination risks on the site; and (c) flooding risks on the site [29]. This contrasts for example to amendments made to Part 1 which provide a mechanism for neighbours to be consulted and for the local planning authority to consider the impact of the increased permitted development rights for householder rear extensions on the development on the amenity of neighbours or new Part K which requires an assessment of noise [74,76].

164. Paragraph N sets out the procedure for applications for prior approval under Part 3 which includes Class J. Paragraph N(8) requires the local planning authority, when determining the application, to have regard to the NPPF as if the application were a planning application (N8(b)). It has been clarified[16] that this applies (i.e. having regard to the NPPF) only in so far as it is relevant to the subject matter of the prior approval. There is no ambiguity.

165. The Secretary of State's task in relation to the HRA is found in section 3 and section 6 of the HRA which are set out in this report [24 & 25]. The GPDO is secondary legislation. The various legal authorities referred to are clear that courts and tribunals must strive for compatibility between legislation and Convention rights, so far as possible, if necessary reading down provisions which would otherwise breach Convention rights, and reading in necessary safeguards to protect such rights. Document LSA13 is helpful in setting out the principles established - the role of the decision maker is not to find the true meaning of the provision, but to find (if possible) the meaning which best accords with Convention rights. It does not however allow the courts to override a clear decision of Parliament to legislate in a non-compliant way.

166. I have considered whether it is possible to read the provisions of Class J so that it can be given effect in a way that is compatible with Article 8 of the ECHR. Section 3 of the HRA is wide reaching but the need to effectively add an additional sub-section into the conditions set out in J.2 to give effect to the Council's approach, is, the appellant asserts, a step too far.

167. I have carefully considered the case law relating to what has been regarded as permissible interpretation. The most recent is Ghaidan. Lord Nicholls clarifies at paragraph 29 that it is "*generally accepted that the application of section 3 does not depend upon the presence of ambiguity in the legislation being interpreted. Even if, construed according to the ordinary principles of interpretation, the meaning of the legislation admits of no doubt, section 3 may none the less*

[16] Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) Order Regulation 5(8).

require the legislation to be given a very different meaning." This is further expanded upon in subsequent paragraphs, particularly paragraph 30 on which the Council rely. Both parties refer to paragraph 33 which I consider to be of sufficient importance by way of explanation on how far one may go in the application of section 3 to be repeated.

168. Lord Nicholls, in qualifying previous paragraphs about the wide ranging nature of section 3 states, at paragraph 33:

> *Parliament, however, cannot have intended that in the discharge of this extended interpretative function the courts should adopt a meaning inconsistent with the fundamental feature of legislation. That would be to cross the constitutional boundary section 3 seeks to demarcate and preserve. Parliament has retained the right to enact legislation in terms which are not Convention – compliant. The meaning imported by application of section 3 must be compatible with the underlying thrust of the legislation being construed. Words implied must, in the phrase of my noble and learned friend, Lord Roger of Earlsferry, "go with the grain of the legislation". Nor can parliament have intended that section 3 should require courts to make decisions for which they are not equipped. There may be several ways of making a provision Convention-compliant, and the choice may involve issues calling for legislative deliberation*.

169. In Donoghue, Lord Wolf CJ accepts that "*the most difficult task which courts face is distinguishing between legislation and interpretation*." He suggests that "...*if it is necessary in order to obtain compliance to radically alter the effect of the legislation this will be an indication that more than interpretation is involved*."

170. The effect of Class J is to permit the change of use from Class B1(a) office use to residential - that would not change. However, what the Council is seeking would fundamentally change the scope of those matters that can be considered under the prior approval process, as set out in paragraph J.2 of the GPDO. The NPPF is only relevant in so far as it relates to those matters set out in paragraph J.2. The effect of a development on living conditions is not a matter on which an applicant is required to make an application for prior approval and yet it could, should the Council's proposition be accepted, be refused on that basis. This would go beyond the 'grain of the legislation' which is restrictive in those matters that can be considered under this part of the prior approval process. The prior approval process would therefore be more onerous and relate to matters that are simply not referred to within this part of the GPDO and so, not addressed by the applicant [36 & 37]. That does indeed seem to be a step too far and beyond what may be reasonably construed to be permissible interpretation. Furthermore the NPPF does not offer any assistance on the circumstances that may result in a breach of Article 8 [50]. I find, for the reasons set out above, that paragraph J.2 can not be interpreted to be compatible with Article 8(1).

171. It may well be, as the appellant suggests, that the balancing exercise has been carried out already in promulgating Class J [44]. An impact assessment was prepared as confirmed in the Explanatory Note that accompanies the GPDO and Explanatory Memorandum (CD25). The Explanatory Memorandum makes reference to the ECHR. It is a matter of public record that the Statutory Instrument that introduced Class J was drawn to the special attention of the House by the Secondary Legislation Scrutiny Committee. In short, the changes

were taken forward in support of central priorities for economic and educational policy which were considered to "override concerns expressed locally."[17] It is explained that the Order relies on the enabling powers contained in section 60 of the 1990 Act'.

172. I acknowledge that Article 4 provides a mechanism for removing permitted development rights, where there is evidence to justify doing so. It is therefore a remedy available to the Council in principle which can disengage Class J. An Article 4 direction is however discretionary. The Council suggest it is problematic due to the costs implications of doing so resulting from the compensation available to the beneficiary of the permitted development rights that have been removed. Individuals are therefore reliant upon the Council making an Article 4 direction and so it does not provide a whole solution of compatibility of Class J with the ECHR, as the appellant suggests.

173. Based on the evidence before me in this appeal, I simply can not reach any conclusion on whether the Government did or did not exceed the margin of appreciation afforded to it or upset the fair balance required to be struck under Article 8 in promulgating Class J. In any event, it is for the courts to make a determination on whether a provision of primary or secondary legislation is compatible with a Convention right as set out in section 4 of the HRA (declaration of incompatibility).

174. Although under section 6(1) it is unlawful for a public authority to act in a way that is incompatible with a Convention right, section 6(2) must be considered which specifies those circumstances when subsection (1) does not apply. If the Secretary of State is acting so as to give effect to or enforce provisions of, or made under, primary legislation which may not be read or given effect in a way which is compatible with the Convention rights, then the duty in section 6(1) would not apply.

175. The permitted development rights rely on new subsection (2A) inserted into section 60 of the 1990 Act by section 4 of the Growth and Infrastructure Act 2013. This primary legislation allows development orders to provide that the local planning authority or Secretary of State may be required to determine matters that relate to the new use and are specified in the order. Those matters that require such prior approval in relation to Class J are clearly set out in paragraph J.2. They are limited entirely in accordance with the scope of the enabling provision (section 60(2A)) which states that the order may require the approval of the Secretary of State or local planning authority to be obtained (a) for the use of the land for the new use; (b) with respect to matters that relate to the new use and are specified in the order.

176. In this case, the Secretary of State would be acting so as to give effect to or enforce the provisions of section 60 (2A) and the subordinate legislation including Class J. The Secretary of State would not therefore be acting unlawfully in determining the appeal even if he would be acting incompatibly with one or more of the Convention right(s). This is a reflection of the way in which Parliamentary sovereignty has been entrenched in the HRA.

[17] 2nd Report of Session 2013 – 14 – Secondary Legislation Scrutiny Committee.

177. To conclude on the first issue, I consider, as a matter of law, it is not open to the Secretary of State to refuse an application for prior approval made under condition J.2 of Class J, Part 3 of Schedule 2 of the GPDO on the ground that the permitted development would result in overlooking and loss of privacy to the occupiers of existing residential properties, even if it may be contrary to Article 8 of the ECHR.

The impact of the development

178. Should the Secretary of State disagree and consider it is permissible to interpret Class J to enable him to consider the effect of the permitted development on the rights afforded by Article 8(1) to the occupiers of neighbouring properties, then it will be necessary to consider whether granting prior approval would result in overlooking and loss of privacy to the occupiers of existing residential properties, contrary to Article 8(1) of the ECHR. This is a matter of judgement.

179. It is clear from the case law that the impact must be far greater than may be considered to be unreasonable in the normal 'planning balance'. For example, in Lopez Ostra it was found that nuisance caused by a treatment plant reached such a level of severity, particularly as regards the health of the appellant and her family, that it made it impossible for the applicant to enjoy the amenities of her home in a normal way, preventing her from leading a normal family and private life, so that rights under Article 8 were infringed. The respondent government had omitted to take the necessary measures to ensure the practical and effective protection of the right to respect for private and family life guaranteed by Article 8(1) of the Convention.

180. In the current appeal case, there can be no doubt that the distances between proposed habitable room windows of residential units in Utopia Village and surrounding residential properties would be significantly less than the 18 metres usually considered satisfactory having regard to the development plan and the Council's planning guidance. Case law is clear that departure from a development plan does not of itself involve a breach of Article 8. In Lough, notwithstanding that the development departed from the local authority's development plan, the Inspector had struck a balance in accordance with the requirements of Article 8. This related to an appeal against the refusal of planning permission rather than prior approval where planning permission is already granted.

181. Having viewed the site I have a great deal of sympathy with the concerns of local residents. Utopia Village is in close quarters. People were visible in the offices from properties and likewise from the offices towards residential properties. The existing overlooking is in many instances direct. Whilst the hours of operation on the office use is not restricted, in practise I heard that they are not generally occupied at evenings or weekends when residents themselves are most likely to be enjoying their home. The change in character and use of the premises would undoubtedly bring about a negative change from the current circumstances and a great deal of properties would be affected. The key difference would be that the loss of privacy and overlooking would continue during evenings, weekends and Bank Holidays where residents do currently experience a reprieve [87, 123 – 125, 139, 143, 144, 150, 153].

182. From my observations on site and the evidence available the rearward projections of properties tend to incorporate non-habitable rooms such as

bathrooms and home offices, accessed from half-landings, although it was not practicable to visit every property. Further, the infill extensions, which are of various heights, seem more likely to incorporate habitable living space - 99 Gloucester Avenue and 9 Egbert Street being such examples where photographs are available.

183. The photographic evidence will assist the Secretary of State. The photos provided by Mr Selwyn (TPR3) are particularly helpful because they not only show direct views from no. 2 Edis Street but they also assist in demonstrating what the rear of the properties typically look like. The characteristic staggered windows can be seen together with various extensions, infill and roof terraces.

184. The Council provide photographic evidence from some of the units towards Egbert Street properties (LPA4B). The close relationship between existing unit 9b on the first floor and 10 on the second floor with the front windows of 14 Egbert Street, situated perpendicular to Utopia Village is clear. Habitable room windows of two separate residential units on each floor would face towards Egbert Street to replace these office units. Whilst the nearest windows on each floor may be so close that no direct overlooking would occur due to the angle, from the others there would be some overlooking, albeit at an angle, with only a distance of about 4.4m and 6.6m between windows. The relationship with number 14 Egbert Street is undoubtedly poor and sub-standard but given the angles, the level of overlooking would be limited in views to activity relatively close to the windows. The impact would not, in my view, be severe.

185. The impact on 9 Egbert Street can be seen from the photos provided by the Council (LPA4B – photos 6, 7 & 8) and was cited by the Council's planning witness as one of the worst affected properties [86]. Overlooking would occur from proposed habitable rooms at first and second floor levels from more than one proposed residential unit into existing habitable rooms at ground and lower ground floor levels and a roof terrace at first floor level at distances of approximately 8.4m. I concur with the views of the Council's planning witness that the impact on no 9 Egbert Street would be likely to be one of the most extreme identified examples, with the overlooking being direct and as close as around 8.4 m between windows. It can be seen that 11 Edis Street is known to have habitable windows in similar proximity. Views towards 99 Gloucester Avenue, although over slightly greater distances of 10.2 and 11.1m respectively are also direct and intrusive and from more than one unit. Similar distances or less would occur in a number of other instances. These impacts would be serious and excessive.

186. Although distances of 8m are recorded to roof terraces I do not consider the loss of amenity to those spaces could be categorised as severe where amenity space is also enjoyed in the lower rear garden. However in flats, where it is the only external amenity space available, the loss of privacy and extent of overlooking would be severe. It is acknowledged that the close proximity of properties could result in conversations being audible but to my mind, this would be no more so than from neighbouring properties.

187. There is currently access onto a substantial roof space at Utopia Village from units 9a and 9b. The proposed plans retain these door openings although the area is excluded from the area identified as being within the application site on the 'area of application plan'(s). If this roof area was available as future amenity

space this would cause further overlooking and intrusion towards the gardens and rear windows of properties on both Egbert Street and Fitzroy Road. Other roof areas can be accessed from the offices. A terraced area with existing railings can clearly be seen on Photos A7 and B3, B7, B8 and B9 within the appendices to Mr Kennedy's proof (Document JK4B). As before, the appellant was clear that these areas are not included in the application being omitted from the 'Area of application plans'. The deemed condition in paragraph N (10)(b) records that any prior approval is granted in accordance with the details submitted pursuant to Schedule 2, paragraph J.2, of the Town and Country Planning (General Permitted Development) 1995 (as amended). For the avoidance of doubt, these details indicate no more than 53 residential units and specifically exclude units 11 and 11(a) and 8(c), all roof spaces and roof terraces.

188. Although it is accepted that overlooking already occurs, this is currently limited to general and 'typical' working hours. Given local residents already suffer a loss of privacy during 'working hours' it could be argued that the reprieve currently enjoyed at evenings and weekends should be vigorously protected. Certainly, to suffer the close level of overlooking and loss of privacy that would result from the change of use, at all hours, would result in a poor living environment for the existing occupiers. In some instances the difference between the existing situation and the proposed use would result in a serious and excessive impact on living conditions such that an infringement of Article 8(1) would occur.

189. The Secretary of State may wish to have regard to whether he considers there is any reasonable prospect that these office units could be occupied for longer hours than is the case now [56]. Given there is no restriction on the hours of occupation, this would be possible and the occupiers of residential properties would have no protection from such a course of action. However, given the type of start up and small to medium sized businesses that have historically occupied these units, I consider the prospect unlikely. If, however, this was accepted by the Secretary of State to be a reasonable prospect, then it is unlikely, in my view, that the extent of overlooking and loss of privacy that may arise from the change of use to residential could be defined as severe, serious or excessive.

190. To conclude, in my judgement, the impact of the development some occupiers of surrounding properties would be serious and excessive such that an infringement of Article 8(1) would occur.

191. The right to respect for private and family life and home is not absolute. Interference may be justified under Article 8(2). If the Secretary of State agrees with my assessment and concludes that the development would have an excessive impact on the rights of some, it is necessary to consider if that interference is justified given the purpose of Class J. Striking a fair balance is at the heart of proportionality.

192. The purpose that Class J was introduced has already been well rehearsed. Utopia Village was not an underused or vacant office space. This is not a requirement under the limitations of Class J but is nevertheless one of its aims. It is accepted by Mr Boles in his letter to a local resident dated 17 December 2013, that there may be some displacement of existing offices (JK4B). Utopia Village has supported creative viable businesses which have and will continue to be displaced should the permitted development proceed [115, 131, 135, 136, 140, 143, 145 – 146, 153]. I share the views of the appellant that Article 8(2) balance

should not include the potential impact of the development on businesses in the surrounding area [48, 126 – 129]. Regard must be had to the fair balance that must be struck between the competing interests of the individual(s) seriously affected by the development, the owner and of the wider community as a whole.

193. Article 8 allows for interference "such as is ….necessary in a democratic society in the interests of …. the economic well-being of the country …. for the protection of the rights and freedoms of others". It is therefore legitimate to take central priorities for economic policy into consideration. Hatton clarifies that in matters of general policy, on which opinions within a democratic society may reasonably differ widely, "the role of the domestic policy maker should be given special weight". Hatton also notes that "in the particularly sensitive field of environmental protection, mere reference to the economic well–being of the country is not sufficient to outweigh the rights of others."

194. Ultimately it will be a matter for the Secretary of State to strike a fair balance between the competing interests of affected individuals and the wider community. This particular development would not bring underused or vacant office space back into use. However it would provide additional housing, one of the legitimate aims of Class J, to assist with the national shortage of housing that exists. The Ministerial Statement by Planning Minister Nick Boles delivered on 6 February 2014 concludes that these practical planning reforms are providing badly needed new homes on brownfield sites, close to urban locations and transport links, at no cost to the taxpayer.

195. The permitted development introduced by Class J is a temporary and short term measure. The interference of the Article 8(1) rights of occupiers of surrounding properties would be suffered in perpetuity to help achieve those legitimate, but short term measures, to boost housing supply. Notwithstanding the purpose and aim of Class J, the infringement of Article 8(1) rights that would occur in this case would, in my judgement, be harmful and a disproportionate response.

196. To conclude on the second issue, I find that Article 8(1) is engaged in some circumstances by reason of the serious loss of privacy and overlooking that would occur. Such interference would be a disproportionate response such that Article 8 would be violated.

Other Matters

197. I have considered the Transport Statement submitted by the applicant having regard to the submissions made by Mr Kennedy and others. It is acknowledged in the report that the low PTAL reading gives an impression that the site is located in an area in which public transport may not be considered a desirable mode of transport due to accessibility and connectivity constraints. However the PTAL rating is not the only assessment. It is clear that there are various modes of transport within walking and cycling distance of the site. I am satisfied that the site is situated in a sustainable location with facilities in Primrose Hill and Camden Town within reasonable walking distance of the site. The Council accept that the trips generated to and from the site would be reduced [27, 61-65].

198. Subject to the restriction on parking spaces within the site and a car-capping scheme, provided for in the s106 agreement, I do not consider the proposed development would increase traffic in the vicinity of the site such that pedestrian

safety would be compromised. Having regard to the NPPF the residual cumulative impacts of the development in terms of highways and traffic impacts would not be severe. Refusal of prior approval on grounds of transport would not be justified.

199. The SOCG confirms that contamination risks on the site are not of concern. Paragraph 8(c) of Class J is specific about what will be regarded as contaminated land and when the application for prior approval should be refused. Notwithstanding the concerns of interested parties, there is no evidence that the appeal site is contaminated land as described in Part 2A of the Environment Protection Act 1990(a) and neither is it on a contaminated land register [89 – 91].

200. The appellant indicates there will be no disturbance of land and so it would not create or introduce new pathways between any contaminants that may exist and potential receptors. No operational development is proposed as part of the application for prior approval. If works are required that subsequently need planning permission to facilitate the change of use to residential, then contamination could be reconsidered in light of those works. It is reasonable to determine the prior approval application on the basis of the information submitted. No ground disturbance is proposed.

201. The leasing arrangements that are still in place could potentially prevent the development permitted by Class J being implemented in those particular units concerned within the necessary timescales. However that is a private matter between the owner and tenants.

202. A number of other matters are raised by interested parties. Again, I have some sympathy with concerns that the character of the community of Primrose Hill would be derogated as a result of the proposed development and some local businesses would suffer as a consequence. Class J grants planning permission for the development subject to the three considerations set out in paragraph J.2 only. The other concerns raised by interested parties do not fall within the remit of those considerations that can be considered under the prior approval process.

Conditions

203. I do not consider any historic conditions relating to obscure glazing could be enforced should the development proceed. This development would represent a new chapter in the planning history of the site. By way of an analogy, if the office space were subject to any hours of occupation restriction, that could not possibly transpose to a residential unit. Any conditions considered necessary and permissible in relation to the prior approval application would need to be imposed on any prior approval consent.

204. There is no dispute between the parties that conditions could be imposed in relation to highways / transport, flooding and contamination. I concur. Matters in relation to highways and transport are incorporated in the s106 agreement. The Council do not suggest additional conditions in relation to these matters.

205. A condition of any approval is contained in Class J, paragraph 10(a) of the GPDO and requires the development to be carried out in accordance with the details approved by the local planning authority. These details clarify that the

development is for 'up to 53 dwellings' and do not include the external roof spaces.

206. Whether or not conditions could be imposed to seek to minimise the impact of the development on the living conditions of the occupiers of surrounding properties, through the use of specific glazing to prevent overlooking and minimise light pollution and to ensure windows are fixed shut, would be dependant on whether the Secretary of State concludes that Article 8(1) considerations can be considered as part of the prior approval process. Only if that is so could conditions relating to living conditions be considered relevant to the prior approval application and necessary.

Overall Conclusions

207. On the first main issue, I do not find that the Secretary of State is entitled to refuse the prior approval application on the grounds of the effect of the permitted development on any serious loss of privacy and overlooking that would occur to the occupiers of some properties, such that Article 8(1) would be engaged. On this basis the appeal would succeed.

208. However should the Secretary of State disagree then it will be necessary to consider the effect of the development on the living conditions of the occupiers of surrounding properties. I consider that the impact would be serious in some cases such that Article 8(1) would be engaged. If the Secretary of State disagrees and considers the impact is not so serious that Article 8(1) would be engaged, then the appeal would succeed.

209. If the Secretary of State agrees that Article 8(1) is engaged, he will need to consider if the interference is justified. I consider that the interference would not be justified as provided for in Article 8(2), to meet the policy aim of providing new homes. However, should the Secretary of State consider the interference is justified and that it would strike the right balance between the competing interests, the appeal would succeed.

Recommendation

210. That, having regard to the limited remit of Schedule 2, Part 3, paragraph J.2, the appeal be allowed.

211. Should the Secretary of State agree, then approval would be granted under the provisions of Schedule 2, Part 3, paragraph J.2 for the change of use of Utopia Village, 7 Chalcot Road (excluding units 8c, 11 and 11a) from offices (Class B1a) to residential use (Class C3) to include up to fifty three dwellings at Utopia Village, 7 Chalcot Road, London in accordance with the details submitted pursuant to Schedule 2, Part 3, paragraph J.2 of the GPDO.

Claire Sherratt

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mrs Nathalie Lieven QC	Instructed by the Council's solicitor
She called	
Jenna Litherland BA(Hons) Planning Studies, MA Planning	(Planning Witness) Senior Planner for the London Borough of Camden Council.

FOR THE APPELLANT:

Mr Christopher Katkowski QC	Instructed by Berwin Leighton Paisner
He called no witnesses	

FOR Mr J Kennedy (Rule 6 party) :

Mr J Kennedy	Local resident of Gloucester Avenue.

INTERESTED PERSONS:

Mr Selwyn	Local resident.
Mr Slowik	Local business person
Councillor L Pietragnoli	Local Councillor & local resident.
Councillor P Callaghan	Local Councillor & local resident.
Mr Goodfellow	Local resident.
Mrs Johnson	Local resident.
Mr Phil Cowan	Primrose Hill Conservation Advisory Committee.
Mrs Susan Sciama	Local resident.
Mr Herman Tribelnig	Local resident.
Mrs D Sharp	Local resident.
Mrs Coppersmith-Heaven	Tenant of Utopia Village.
Mrs Penayi	Local resident.

DOCUMENTS:

Core Documents

Appeal documents

CD1 Appeal application form.
CD2 Statement of Case.
CD3 LPA Decision Notice.

Supporting Documents

CD4 Prior approval application Notification form.
CD5 Site Ownership Certificate.
CD6 Site Plan.
CD7 Application cover letter and plans.

CD8 Tenancy and Area Schedule (with application).
CD9 Transport Assessment.
CD10 Agreed form of section 106 agreement.
CD11 List of application plans, drawings and documents.
CD12 Additional / amended plans, drawings and documents not submitted with the original application.
CD13 First Delegated Officer's Report.
CD14 Draft Decision Notice.
CD15 Second Delegated Officer's Report.
CD16 Letter from BLP to Aidan Brookes.
CD17 Letter from BLP to Aidan Brookes.
CD18 Letter from Peak District National Park Authority to DCLG.
CD19 Letter from DCLG to Peak District National Park Authority.
CD20 Letter from DCLG to DP9.
CD21 Draft Statement of Common Ground.

Additional documents on behalf of Utopia Property Sales Limited

CD22 Letter from BLP to Pritej Mistry.
CD23 Letter from Pritej Mistry to BLP.

Statutory Authorities and other authorities

CD24 Town and Country Planning (General Permitted Development) Order 2013.
CD25 Explanatory Memorandum to the Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014 No.564.
CD26 Community Infrastructure Levy (CIL) Regulations 2010; specifically regulations 122 and 123.
CD27 Article 8 of the European Convention on Human Rights.
CD28 London Borough of Islington v Secretary of State for Communities and Local Government [2013] EWHC 4009.

National Planning Policy

CD29 National Planning Policy Framework.

National planning guidance

CD30 National Planning policy guidance (extracts)

Local planning policy

CD31 Local Development Framework Core Strategy and Development Policies 2010 (CS5, CS11, CS19, DP16, DP17, DP18, DP19, DP20, DP21. DP26).
CD32 Camden's Transport Strategy 2011: Chapters 4 & 5.

Local planning guidance

CD33 Camden Planning Guidance 2011
- CPG6 Amenity – chapters 7 and 8.
- CPG7 Transport – chapters 4, 5, 8 and 9.
- CPG8 Planning obligations – chapters 3 and 10.

CD34 Primrose Hill Conservation Area Statement.

Other documents on behalf of local planning authority

CD35 Camden's Streetscape Design Manual.

CD36 Cost estimate for associated Highway Works.

Other Government publications

CD37 Written Ministerial Statement by Planning Minister Nick Boles on change of use to provide new homes published 6 February 2014.

Third party correspondence

CD38 Collated third party correspondence (in response to appeal notification)

Inquiry Documents

Statements of Common Ground

ID1 Revised General Statement of Common Ground dated April 2014.

LPA ***Documents submitted by London Borough of Camden***

LPA1 Statement of Case.
LPA2 Opening Submissions.
LPA3 Closing / Legal Submissions.
LPA4A Proof of Evidence of Jenna Litherland (Planning)
LPA4B Appendices to JL proof.
LPA5A Proof of Evidence of Steve Cardno (Transport)
LPA5B Appendices to SC proof.

JK ***Documents submitted by James Kennedy (Rule 6 Party)***

JK1 Statement of Case.
JK2-3 (No documents)
JK4A Proof of Evidence of James Kennedy
JK4B Appendices to JK proof.

TPR ***Documents submitted by Interested Parties (prior to the Inquiry)***

TPR1 Proof of Evidence of Steve Collis (including appendices).
TPR2 Proof of Evidence of Francis Katz (including appendices).
TPR3 Proof of Evidence of Tom Selwyn (including appendices).
TPR4 Proof of Evidence of Jean Christophe Slowik (including appendices).

Documents submitted by Interested Parties (at to the Inquiry)

TPR5 Written Statement of Primrose Hill Conservation Advisory Committee.
TPR6 Written Statement of Linda Johnson.
TPR7 Written Statement of Tiffany Coppersmith-Heaven.
TPR8 Written Statement of Herman Tribelnig.

UPSL ***Documents submitted by Utopia Property Sales Limited***

UPSL1 Statement of Case by UPSL.
UPSL2 Opening Submissions on behalf of UPSL.
UPSL3 Closing Submissions on behalf of UPSL.
UPSL4 E-mail and agreed draft s106 agreement.

Other Inquiry Documents submitted at the Inquiry

ID2 Environment Agency 'Quick Guide' to the National Planning Policy

Framework – planning and contaminated land.

ID3 Council report to Cabinet in relation to Article 4 directions (26 February 2014)

ID4 Appellant's application for costs award.

ID5 Council's response

Other Inquiry Documents submitted after the Close of the Inquiry

ID6 Signed section 106 agreement.

INDEX OF SUPPLEMENTAL AUTHORITIES RELATING TO LEGAL SUBMISSIONS

Statutory Authorities

LSA1 Human Rights Act 1998.

LSA2 Section 60 (2A) Town and Country Planning Act 1990 (as enacted by section 4 Growth and Infrastructure act 2013).

LSA3 Section 78 Town and Country Planning Act 1990.

Case Law Authorities

LSA4 Powell and Rayner v UK 1990 12 EHRR 355.

LSA5 Lopez Ostra v Spain 1994 20 EHRR 277.

LSA6 Donoghue v Poplar Housing and Regeneration Community Association Ltd [2001] EWCA Civ 595.

LSA7 R (on the application of Malster) v Ipswich Borough Council and another [2001] EWHC Admin 711.

LSA8 Samaroo case [2001] UKHRR 1150 (as referred to in Lough v First Secretary of State [2004] EWCA Civ 905.

LSA9 Hatton v UK 2003 37 EHRR 611.

LSA10 Lough v First Secretary of State [4004] EWCA Civ 905.

LSA11 Marcic v Thames Water 2004 2 AC 42.

LSA12 Ghaidan v Godin-Mendoza 2004 2 AC 557.

Other Authorities

LSA13 Lester and Pannick "Human Rights Law and Practice" 3rd edition, paragraph 2.3.1.

Department for Communities and Local Government

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;
The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.