

Affordable Housing Statement

51 Calthorpe Street
London
WC1X 0HH

23 May 2015

1 Introduction

This Affordable Housing Statement is provided in support of an application for planning permission in respect of the property at 51 Calthorpe Street, London WC1X 0HH (the "**Building**"). The application is for the reconstruction and change of use of the Building to provide 17 residential apartments, comprising six one-bedroom apartments, nine two-bedroom apartments and two three-bedroom apartments. The gross internal area ("**GIA**") of the apartments (excluding the common parts) will be 1,398.1m². The application is made on the basis that a financial contribution will be made towards the provision of affordable housing in reasonable proximity to the Building in lieu of on-site provision.

2 Policy background

Core Strategy CS6 of Camden's Local Development Framework (the "**Framework**") states that:

"The Council will aim to secure high quality affordable housing available for Camden households that are unable to access market housing by ... seeking to negotiate a contribution from specific proposals on the basis of ... the maximum reasonable amount of affordable housing under the specific circumstances of the site".

Policy DP3 of Camden's Development Policies, which form part of the Framework, further provides that:

"The Council will expect all residential developments with a capacity of 10 or more additional dwellings to make a contribution to the supply of affordable housing...

The Council will expect the affordable housing contribution to be made on site, but where it practically cannot be achieved on site, the Council may accept off-site affordable housing, or exceptionally a payment-in-lieu...

In considering whether an affordable housing contribution should be sought, whether it can practically be made on site, and the scale and nature of the contribution that would be appropriate, the Council will also take into account:

- a) access to public transport, workplaces, shops, services and community facilities;*
- b) the character of the development, the site and the area;*
- c) site size, and constraints on including a mix of market and affordable tenures;*
- d) the economics and financial viability of the development including any particular costs associated with it;*
- e) the impact on creation of mixed and inclusive communities; and*
- f) any other planning objectives considered to be a priority for the site".*

The commentary to the policy states:

"3.13 ... the Council accepts that off-site solutions will be necessary where it is not practical to include affordable housing within a market housing development, for example where the development is relatively small (up to 3,500 sq m gross)..."

3.14 In considering whether an off-site contribution is appropriate, the Council will consider the criteria set out in policy DP3, and will also consider whether:

- *physical constraints of the site or premises would make on-site affordable elements impractical for management purposes;*
- *the management or service charges of an on-site scheme would be too costly for affordable housing providers or occupiers to meet;*
- *particular costs associated with the development would require an excessively high amount of subsidy for on-site provision, but the economics of the development do not preclude making an off-site affordable housing contribution;*
- *the necessary affordable housing funding is unlikely to be secured within a reasonable timescale to enable an on-site scheme;*
- *an off-site contribution will maximise the overall delivery of housing and affordable housing.*

3.15 Where the principle of an off-site affordable housing contribution is accepted, the Council will initially seek provision of a specified amount of affordable housing on an identified site or sites. If a site cannot be identified, the Council may alternatively accept a specified amount of affordable housing on an unidentified site or sites, to be brought forward to an agreed timescale. In this situation, the Council will seek to ensure that the affordable housing is developed in reasonable proximity to the proposed market housing and so contributes to a mixed and inclusive community. A financial contribution towards affordable housing may be accepted in exceptional circumstances, for example, if:

- *no suitable affordable housing sites are likely to come forward in the short or medium-term; or*
- *the appropriate affordable housing contribution is too small to form a stand-alone development and there are no opportunities to link it to an alternative development nearby.”*

3 Appeal Decision

In August 2013, an application for planning permission was made for the reconstruction and change of use of the Building to provide 16 residential apartments (reference 2013/5445/P). The application involved a proposal to make a financial contribution in lieu of the provision of on-site affordable housing. The application was refused by Camden by a notice dated 9 December 2013 on grounds (a) relating to the proposed design of the reconstructed Building and (b) that making of a financial contribution towards affordable housing would not comply with Camden’s planning policies. The Council proposed instead that affordable housing should be provided on-site and that the most suitable unit for this purpose was Flat 1 of that scheme (a three-bedroom ground floor flat with its own entrance and a GIA 112 m²).

An appeal against this refusal was made to the Secretary of State under reference APP/X5210/A/13/2210360. The appeal was dismissed on 24 June 2014 by an Inspector appointed by the Secretary of State (the “**Inspector**”) solely on the grounds of the

proposed design. As regards affordable housing, the Inspector's decision (the "**Appeal Decision**") was that:

"The proposal comes within the circumstances where a payment in lieu of onsite provision of affordable housing would comply with policy DP3 and paragraph 50 of the Framework. I therefore conclude that the proposal would make satisfactory provision for affordable housing and would comply with LDF policies CS6, DP3 and the guidance within the Framework."

In *North Wiltshire DC v Secretary of State for the Environment* (1993) 65 P&CR 137, the Court of Appeal held that:

"If an inspector fails to have regard to what in the circumstances of the case is a material consideration which has been "placed before him"..., then his determination is exposed to challenge on the ground that it is not within the powers of the Act..."

In this case the asserted material consideration is a previous appeal decision. It was not disputed in argument that a previous appeal decision is capable of being a material consideration. The proposition is in my judgment indisputable. One important reason why previous decisions are capable of being material is that like cases should be decided in a like manner so that there is consistency in the appellate process. Consistency is self-evidently important to both developers and development control authorities. But it is also important for the purpose of securing public confidence in the operation of the development control system. I do not suggest and it would be wrong to do so, that like cases must be decided alike. An inspector must always exercise his own judgment. He is therefore free upon consideration to disagree with the judgment of another but before doing so he ought to have regard to the importance of consistency and to give his reasons for departure from the previous decision.

To state that like cases should be decided alike presupposes that the earlier case is alike and is not distinguishable in some relevant respect. If it is distinguishable then it usually will lack materiality by reference to consistency although it may be material in some other way. Where it is indistinguishable then ordinarily it must be a material consideration. A practical test for the inspector is to ask himself whether, if I decide this case in a particular way am I necessarily agreeing or disagreeing with some critical aspect of the decision in the previous case? The areas for possible agreement or disagreement cannot be defined but they would include interpretation of policies, aesthetic judgments and assessment of need. Where there is disagreement then the inspector must weigh the previous decision and give his reasons for departure from it. These can on occasion be short, for example in the case of disagreement on aesthetics. On other occasions they may have to be elaborate."

These considerations apply equally to a decision by Camden Local Planning Authority to grant or refuse planning permission for the proposed scheme. Accordingly, Camden must:

- (i) consider whether the scheme to which the current application relates is distinguishable from the scheme considered by the Inspector in any relevant respect;

- (ii) unless the current scheme can be distinguished from the appeal scheme on a relevant ground, take the Appeal Decision, and the reasons given for it, into account as material considerations; and
- (iii) if it is minded not to follow the Appeal Decision, weigh the decision and provide reasons for departing from it.

For the reasons set out below, the proposal to make a financial contribution towards affordable housing is not distinguishable from the proposal considered in the Appeal Decision in any material respect and, in any event, complies with Camden's planning policies.

4 Application of policy

4.1 Site size

As noted above, Policy DP3 provides that *"in considering whether an affordable housing contribution ... can practically be made on site, ... the Council will ... take into account ... site size, and constraints on including a mix of market and affordable tenures"*.

It is generally impractical for affordable housing to be provided on small sites because the economies of scale that are associated with the management of larger affordable housing blocks are not present. The additional administrative burden and, hence, costs involved in managing isolated units are reflected in the price housing associations are willing to pay for such units, which has a negative impact on the economics and financial viability of the development. Accordingly, the provision of a financial contribution towards offsite affordable housing will typically result in a greater overall contribution towards affordable housing in the Borough.

This is reflected in paragraph 3.13 of the commentary to policy DP3, which gives as an example of a situation in which it is not practical to include affordable housing within a market housing development, developments which are *"relatively small"*. Developments of up to 3,500m² (gross) are treated as relatively small for these purposes. Similarly, paragraph 2.69 of Camden's Planning Guidance, CPG2, *Housing* states:

"Off-site contributions are most likely to be acceptable for small sites, whereas the Council will expect contributions to be made on-site where the development is larger... Where affordable housing policy DP3 applies, we will expect on-site affordable housing contributions where 3,500 sq m (gross) or more of additional floorspace is proposed."

The GIA of the proposed scheme is 1,398.1m² (a Gross External Area equivalent of 1,747.6m²). This is less than 50 per cent of the threshold specified in the Local Development Plan and so the site in question must be treated as a small site for the purpose of policy DP3, in relation to which the provision of off-site affordable housing may be appropriate. This has been confirmed by the Appeal Decision (paragraph 17).

4.2 Economics

Paragraph 12 of the Appeal Decision notes that it was conceded that *"due to the very high market values within the locality of the appeal site, the proposed dwellings are unlikely to be affordable as part of a shared ownership scheme"* and that *"any affordable housing provided by the proposal should take the form of intermediate rented accommodation"*.

Paragraph 2.46 of Camden Planning Guidance, CPG 2, *Housing* treats intermediate affordable rented accommodation as:

“homes that households can afford with an income of £30,000 or less per year (gross)”.

The Inspector therefore held, in paragraph 17 of the Appeal Decision, that, due to the high rental levels in the area:

“the dwelling would be unaffordable to those with incomes below £30,000”.

This is equally true of the current scheme.

4.3 Creation of mixed and inclusive communities

As in the case of the scheme considered by the Inspector, two of the flats in the proposed scheme will have their own front doors. At the appeal hearing, the Council argued that this rendered it practical for affordable housing to be provided onsite. It appears that this argument was based on paragraph 3.26 of Camden’s Local Development Plan, which states that:

“The Council acknowledges that it is not usually possible for social rented housing and market housing to share the same stair/lift arrangements and communal inside spaces. This is due to the higher costs and maintenance requirements associated with the management, materials and finishes that are favoured for market housing, and the legal provisions that prevent a different service charge between market housing and affordable housing that share common service arrangements. Introducing additional entrances and stair / lift areas for affordable housing will be difficult on constrained sites, and can reduce the viability of development.”

While this policy makes it clear that onsite provision will usually *not* be practical where the layout of the relevant building is such that social rented housing and market housing must share the same stair/lift arrangements and communal inside spaces, the reverse is not necessarily true. In other words, the mere fact that affordable housing units will have independent access does not necessarily mean that service charges are not a relevant consideration.

Where a material number of affordable housing units are provided around a separate core or in a separate building on the site, it will often be the case that different service charge arrangements can be justified from those applicable to the market housing units. This is because, in such cases, there will be a genuine separation of services. The same is not true where, as in the present case, any affordable housing unit, albeit having a separate own front door, is closely associated with the market housing units.

Hence, in the proposed scheme, concierge services will be provided for the benefit of all the residents of the building. It would not be practical, for example, for the concierge to refuse to accept deliveries for the residents of any affordable housing unit or to deal with management issues related to the Building only if they involve the market housing units. Furthermore, in order to ensure that the appearance of the Building is maintained at a high standard, services will need to be provided to all the units in the Building. For example, it will not be acceptable for the windows of the market housing units, but not any affordable housing unit(s), to be cleaned on a regular basis. Similarly, gardening services will need to be provided in respect of the whole of the landscaping at the front of the Building, including

the gardens associated with the two units with their own front doors. These services will all be reflected in the shared service charge costs.

In addition, the fact that the residents of the ground floor units at the front of the building will have their own front doors does not mean that they will have no contact with the other residents of the Building. On the contrary, they are likely to use the lifts or common parts of the Building in visiting their neighbours. Indeed, the creation of a sense of community amongst all the occupiers of the Building will be encouraged and it is not appropriate to exclude certain units from this.

These obstacles were recognised by the Inspector in the Appeal Decision. Paragraphs 15 to 17 of the Appeal Decision state:

“The Council suggest that service charges for the affordable housing unit could be limited if future occupants of the dwelling did not use the concierge service (which accounts for about 50% of the service charge), and if some maintenance, such as window cleaning, was carried out by the Housing Association. I am concerned as to whether such an approach would work in practice. The appellant and future occupants of the other flats would undoubtedly be concerned that the entire building would be adequately maintained. Therefore to permit one flat to be independently maintained could be detrimental to the interests of the occupants and owners of the other dwellings within the block. I am also concerned that such an approach would socially exclude future occupants of Flat 1 from the residential community formed by occupants of the other flats at the property. Therefore this approach would not contribute to a balanced community.

The difficulty of apportioning service charges is recognised by CPG 2. This acknowledges that service charges can often be a significant proportion of overall housing costs particularly in market housing blocks. For this reason the Council does not generally seek to mix affordable and market housing on the same corridor, or sharing the same lifts, stairs or entrance lobbies. Moreover, the law states that an occupier cannot be required to pay a higher service charge to subsidise another occupier receiving the same services.”

4.4 Service charges

As noted above, paragraph 3.14 of the commentary to policy DP3 states that, in considering whether an offsite contribution to affordable housing is appropriate, the Council will consider:

“the management or service charges of an on-site scheme would be too costly for affordable housing providers or occupiers to meet”.

The anticipated annual service costs in respect of the Building are set out in Appendix 1. The charges set out in the Appendix reflect the fact that the proposed scheme will be a high quality development, targeted at the upper end of the market. This is consistent with the general regeneration of the area that is expected to occur with (a) the development of the Royal Mail's Mount Pleasant site, (b) the regeneration of the King's Cross area and (c) the opening of Crossrail and related improvements in the Farringdon area.

The Inspector's conclusions in relation to the impact of the service charge were as follows:

“The appeal site is a small site where policy DP3 recognises that the provision of off-site affordable housing may be appropriate. It would seem that the management

and service charges are too costly for an affordable housing provider. Whilst the concierge service undoubtedly adds to the level of the service charges, it is an integral part of the scheme and is referred to in the Design and Access Statement which accompanied the application. It was also a feature of a previous application in relation to the appeal site. Due to the high rental levels within the area, even if the service charges were considerably reduced, the dwelling would be unaffordable to those with incomes below £30,000. This is the target group for intermediate rented housing specified by CPG2.”

The overall service charge is not materially different from those estimated in relation to the scheme considered by the Inspector. The amount attributed to Flat 9 (which is the nearest equivalent to Flat 1 of the scheme that was the subject of the Appeal Decision) is £13,490 per annum. This is slightly less than the flat considered in the appeal scheme (£15,867), reflecting the fact that the GIA (98.7 m²) will be slightly less than the equivalent flat in the appeal scheme (112 m²). The service charge attributable to Flat 8 is £11,210 per annum. However, the differences are not material, given the Inspector’s conclusion that *“even if the service charges were considerably reduced, the dwelling would be unaffordable to those with incomes below £30,000”*.

4.5 Maximisation of affordable housing through off-site provision

As noted above, the commentary to Policy DP3 requires the Council to consider whether:

“an off-site contribution will maximise the overall delivery of housing and affordable housing”.

Paragraph 3.15 of that commentary provides that:

“Where the principle of an off-site affordable housing contribution is accepted, the Council will initially seek provision of a specified amount of affordable housing on an identified site or sites. If a site cannot be identified, the Council may alternatively accept a specified amount of affordable housing on an unidentified site or sites, to be brought forward to an agreed timescale. In this situation, the Council will seek to ensure that the affordable housing is developed in reasonable proximity to the proposed market housing and so contributes to a mixed and inclusive community. A financial contribution towards affordable housing may be accepted in exceptional circumstances, for example, if:

- no suitable affordable housing sites are likely to come forward in the short or medium-term; or*
- the appropriate affordable housing contribution is too small to form a stand-alone development and there are no opportunities to link it to an alternative development nearby.”*

The Applicant does not own any other site anywhere in the Borough that is capable of being developed to provide residential accommodation and nor does he expect to acquire any such site in the short or medium term. In any event, the appropriate affordable housing contribution would be too small to form a stand-alone development.

Nevertheless, at the Appeal Hearing, a number of alternative locations for the provision of affordable housing were identified by the Council, namely:

- the Tybalds Estate, where it is proposed to provide a mixture of new affordable and private homes; and

- the Bourne Housing Estate nearby.

In addition, since the Appeal Decision, planning permission has been granted in respect of the Royal Mail's Mount Pleasant site, which is directly opposite the Building.

There are therefore a number of nearby sites in which a financial contribution could be used to increase the amount of affordable housing in reasonable proximity to the Building, or to improve the mix of tenures available. The provision of a financial contribution is therefore consistent with the Council's policies relating to the provision of off-site affordable housing.

This was recognised by the Inspector. Paragraph 19 of the Appeal Decision states that:

"The Council identified a number of locations where the affordable housing contribution could be used. These include the Tybalds Estate where it is proposed to provide a mixture of new affordable and private homes and the Bourne Housing Estate nearby. Using the contribution in these locations would be likely to provide a greater amount of affordable housing. It would also provide greater flexibility as to the nature and size of the housing provided in that it would allow for the provision of social rented or shared ownership housing as alternatives to intermediate rented housing. It would therefore be likely to maximize the overall delivery of affordable housing in accordance with policy CS6".

4.6 Conclusion

The Inspector's grounds for concluding that the proposal considered at the Appeal would make satisfactory provision for affordable housing and would comply with Camden's policies were, in summary, as follows. Each of these applies equally to the revised scheme:

- The appeal site is a small site (significantly under the threshold of 3,500 m²) where policy DP3 recognises that the provision of off-site affordable housing may be appropriate.
- The income level required in relation to the occupants of any affordable housing units would significantly exceed the £30,000 income cap specified in Camden's Planning Guidance.
- Notwithstanding the fact that two of the units in the Building will have their own front doors, it is not practical to permit either of these units to be independently maintained as this could be detrimental to the interests of the occupants and owners of the other units.
- Such an approach would also socially exclude future occupants of any affordable housing unit from the residential community formed by occupants of the other units. It would, therefore, not contribute to a balanced community, as required by Policy DP3.
- The management and service charges are too costly for an affordable housing provider and, even if they were considerably reduced, would be unaffordable to those with incomes below £30,000.
- It is possible to identify a number of locations in reasonable proximity to the Building where a financial contribution could be used for the provision of affordable housing.

- Using such a contribution in these locations would be likely to provide a greater amount of affordable housing and would provide greater flexibility as to the nature and size of the housing provided, thereby maximizing the overall delivery of affordable housing in the area.

5 Amount of the financial contribution

The amount of the financial contribution required in respect of affordable housing is set out in Section 6 of Camden Planning Guidance CPG 8, *Planning Obligations*. Paragraph 6.9, Figure 1 states that, in the case of a market residential scheme, the amount payable is:

“£2,650 per sq m x on-site target for affordable housing”.

This is applied to the gross external area (the “**GEA**”) of the scheme. Under paragraph 6.11 of CPG 8, a multiplier of 1.25 is applied to the GIA where common areas and exterior walls have been excluded from the computation (as in the present case) to obtain the GEA. As noted above, the GIA of the scheme in the present case is 1,398.1 m². Accordingly, the GEA is 1,747.6 m².

Under paragraph 6.13 of CPG 8, summarises the on-site target for affordable housing, as follows:

- “• *assessment of capacity is based on the number of additional homes proposed and the gross floorspace addition including common areas;*
- *capacity is assessed as the number of additional homes proposed or 1 home per additional 100 sq m (gross), whichever is the greater;*
- *capacity is rounded to the nearest whole number;*
- *the on-site affordable housing target is assessed as 10% where capacity is 10 additional homes plus 1% for every further increase of capacity by 1 home, up to a target of 50% where capacity is 50 additional homes”.*

The capacity of the site is therefore 17 or 1,747.6/100 (rounded to the nearest whole number), i.e. 17, and so the affordable housing target is 17%.

The calculation is therefore as follows:

$$£2,650 \times 1,747.6 \times 0.17 = £787,293.80.$$

Accordingly, a financial contribution of £787,293.80 is proposed.

Appendix 1

Estimated service costs

	£ per annum
Porterage (wages, national insurance, uniforms and cleaning)	95,000.00
Lift repairs and maintenance	3,000.00
Boiler and CHP system repairs and maintenance (inc gas safety certificates)	4,000.00
General repairs/property maintenance (inc transfer to reserve fund)	16,000.00
CCTV maintenance	3,000.00
Fire risk and health and safety assessments	2,000.00
Gutter and downpipe clearance	2,500.00
Window cleaning	4,000.00
General cleaning and supplies	7,500.00
Electricity	3,000.00
Telephone	500.00
Gardening	3,500.00
Fire protection equipment and fire alarm maintenance and inspection	1,000.00
Pest control	2,000.00
Water charges	1,000.00
Refuse removal	3,000.00
Audit fees	3,000.00
Legal and professional fees	8,000.00
Insurance	6,000.00
Sundry expenses	1,000.00
Management fee	21,000.00
	190,000.00

Appendix 2
Breakdown between Flats

Flat	Percentage	£ per annum
1	4.9	9,310
2	6.3	11,970
3	5.5	10,450
4	5.0	9,500
5	3.6	6,840
6	4.9	9,310
7	4.9	9,310
8	5.9	11,210
9	7.1	13,490
10	5.4	10,260
11	6.6	12,540
12	6.8	12,920
13	7.2	13,680
14	5.4	10,260
15	3.9	7,410
16	3.6	6,840
17	13.0	24,700