

please reply to  
Kinetic Business Centre

29 October 2015

Your ref. 2015/5488/P  
Our ref. 587/15

BY EMAIL AND SPECIAL DELIVERY

Development Management Team  
Regeneration & Planning  
London Borough of Camden  
Town Hall  
Judd Street  
London WC1H 9JE

For the attention of Rob Tulloch

Dear Sir

PLANNING APPLICATION 2015/5488/P  
NIDO STUDENT LIVING, BLACKBURN ROAD, WEST HAMPSTEAD, LONDON NW6 1RZ

We are instructed by Builder Depot Ltd., the occupier of 14 Blackburn Road NW6 1RZ, as well as the owner of that property Hampstead Asset Management Ltd. ("HAM"), to submit representations to your Council in respect of this proposal.

Builder Depot is a builders merchant with other branches at New Southgate, Park Royal and Cricklewood. The 14 Blackburn Road branch, including its vehicular access, lies directly opposite the application site. The branch employs 20 personnel.

These representations relate principally to the likely adverse impact of the proposed intensification of use of the student accommodation upon Blackburn Road, in particular upon the respective existing and proposed uses of No. 14.

### Planning context

#### 1.0 THE PROPOSAL

#### 1.1 The description of the proposal is stated to be:

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Borehamwood  
Hertfordshire WD6 4PJ

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53 Arden Road  
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*“Erection of single storey extension at courtyard level to provide ancillary student floor space, new canopy, outdoor seating provision and elevational alterations associated with the use of the property as purpose built student accommodation.”*

1.2 It is a material consideration that on 29 September 2015 your Council rejected the applicant’s further application 001565 under the Licencing Act 2003 (attention of Shekima Ahsan) for a New Premises Licence on the sole ground of its incorrect advertisement under the Act.

1.3 The application sought permission, inter alia, for the playing of live music and  
*“the supply of alcohol 12.00 - 23.00 Monday to Thursday, 12.00 - 24.00 Friday to Saturday and 12.00 - 23.00 Sunday.”*

1.4 It is furthermore material to consideration of the current application that on 9 October 2015 the applicant company confirmed it will “reapply once we have sorted out our planning permission.”

1.5 Thus whereas the applicant’s Planning Statement confirms at para. 4.4 that  
*“it is the intention..... to allow the new structure to be used flexibly, dependent on the function or event being undertaken”,*

it is important to note the applicant’s ancillary intention to promote such functions or events accompanied by the supply of alcohol and/or the playing of live music.

## 2.0 THE APPLICATION PREMISES: PLANNING HISTORY

2.1 The planning history of the existing student building is relevant. Conditional planning permission for its erection was granted at appeal on 30 September 2010 (APP/X5210/A/10/2127151, LPA ref. 2009/5823/P).

2.2 The Inspector’s assessment of that scheme is material to the current proposal. At para. 14 of his Appeal Decision the Inspector addressed as follows the potential harm arising from it:

*“No significant evidence was put before the Inquiry to demonstrate that the introduction of 347 students into this area would be unsustainable or result in the type of harm arising from hostels.....While the potential for anti-social behaviour, and the particular life-style of students, was referred to, there is no evidence to show that the student accommodation now proposed (our emphasis) would be harmful to the living conditions of the existing or future population”.*

2.3 Whereas on 31 October 2011 your Council granted a further planning permission 2011/3893/P for amendments to the

*“planning permission granted on appeal.....namely to relocate plant, sub-station, cycle storage & student refuse store, relocation and alterations to main/servicing gates, yard and kerb, and alterations to ground floor fenestration”,*

the Inspector’s conclusions remained unaffected. Were the current proposal to be permitted it is clear from the “significant evidence” at 6.0/7.0 below that the same conclusions could no longer be reached.

3.0 14 BLACKBURN ROAD: EXISTING USE

3.1 So as to assess the impact of this proposal on 14 Blackburn Road we summarise its planning history below:

3.2 The property benefits from unconditional planning permission ref. AR/TP74453/NW` granted 1 August 1958 by the London County Council to the Express Dairy Co. (London) Ltd. for the

*“use of premises at West Hampstead Station Yard, Blackburn Road, Hampstead, as shown on Plan Regd. No. 7506 as a retail distribution depot”.*

3.3 It is material to the present proposal that no restrictions were placed upon the hours of use of the premises for that purpose and/or the traffic movements and/or the loading and/or unloading of goods in association therewith, nor the location/s where such movements and/or loading and/or unloading were to take place.

3.4 HAM having acquired the property in 2001, it leased the property to Builder Depot who have since maintained the existing lawful use of the site as a retail distribution depot with its associated traffic movements on the above-mentioned unconditional basis.

3.5 It is particularly relevant to the present proposal that lawful deliveries to Builder Depot by heavy goods and articulated vehicles take place at night-time simultaneously with the applicant’s proposed “functions or events” supplied by alcohol. The incompatibility between these uses is dealt with at 6.0/7.0 below.

4.0 14 BLACKBURN ROAD: EXTANT PLANNING PERMISSION

4.1 Furthermore on 6 January 2004 your Council granted conditional planning permission PWX0202103/R2 for the

*“Redevelopment of whole site by the erection of a 4 storey eastern block comprising two Class B8 and eight Class B1 units with associated service yard, together with a 4 storey plus basement western block comprising 8 dwelling houses and 5 self-contained flats with associated car parking.”*

4.2 The Conditions Precedent in this permission having been duly discharged, the requisite financial contributions paid under the associated S.106 Agreement for public highway works and education needs, and a material operation carried out in the form of piling, the permission was thereby implemented. Your Council duly confirmed under ref. 2011/6129/P that

*“as works have commenced on site, this permission remains extant.”*

4.3 The adverse impact of the present proposal on the amenities of residential occupiers of this scheme at such time as it is completed in accordance with that permission is dealt with at 6.0/7.0 below.

## Assessment

### 5.0 PLANNING POLICIES

5.1 In assessing the proposal the relevant development policies requiring to be satisfied are those in

- The National Planning Policy Framework (“NPPF”) updated 2015, supported by the related national Planning Practice Guidance (“PPG”) updated 2015;
- The London Plan 2015;
- The Core Strategy 2010 in the Camden Local Development Framework (“LDF”) 2010;
- The Development Policies (“DP”) in the Camden LDF 2010, supported by the related Camden Planning Guidance (CPG) updated 2015;
- The Fortune Green and West Hampstead Neighbourhood Plan (“NP”) 2015;
- The draft Camden Local Plan (“LP”) 2015.

### 6.0 PUBLIC REALM: OUTDOOR SEATING AREA

6.1 Whereas the student scheme approved 2010/2011 was set back substantially from the realigned carriageway and footway of Blackburn Road, thereby also achieving visual and physical separation from Builder Depot and its vehicular access opposite, the resulting generous and safe public realm is likely to be impacted adversely by the proposed outdoor seating area under its canopy.

6.2 In particular that proposal conflicts with NP policy 9 “Pavements & Pedestrians” requiring development that

- (i) “provides safe and wide pavements, giving the maximum possible space to pedestrians”; and
- (ii) “is set well back from the pavement, where appropriate, with the aim of giving additional pavement space.”

6.3 Whereas it was considered appropriate to set the approved building well back from the pavement with the aim of giving additional space for pedestrians, the present proposal serves to defeat that objective.

6.4 That proposal is furthermore likely to undermine the safety of the existing arrangements by bringing into close proximity the lawful night-time HGV deliveries to Builder Depot and functions/events taking place in the outdoor seating area accompanied by the use of alcohol.

6.5 Similar objections are likely to apply at such time as the scheme implemented under the extant permission for 14 Blackburn Road is completed and occupied. The night-time noise and disturbance arising from the use of the proposed outdoor seating area directly opposite is likely to impact severely and adversely upon residential occupiers, the more so with the proposed supply of alcohol and the playing of live music.

- 6.6 Such adverse conditions were never envisaged by the Appeal Inspector when assessing in his Decision the harm to amenity likely to arise from the student building proposal before him.
- 7.0 NOISE AND DISTURBANCE
- 7.1 The policies and guidance dealing with issues of noise and disturbance, including the necessary refusal of development likely to harm interests of amenity arising, are:
- NPPF para. 123 and its related PPG “Noise”, ref. 20140306;
  - Camden DP policy 28 “Noise and vibration” and its related Chapter 4 in CPG6 “Amenity” 2011;
  - Camden LP policy A4 “Noise and vibration”.
- 7.2 That such adverse impacts are a prime planning consideration is confirmed repeatedly at dismissals of appeal on that ground against refusals of planning permission for student accommodation. At Gwynedd (13.07.2012) the Inspector cited students “likely to engage in noisy or boisterous behaviour”.
- 7.3 At Charnwood (20.06.2003) the Inspector felt there was “significant evidence” to conclude that local residents suffered from “excessive disturbance and some anti-social behaviour”. Intensifying the use of the appeal site would “only add to these problems.” He did not consider that harm to local amenity could be mitigated through the use of conditions, see 8.0 below.
- 7.4 Whereas in that case the university operated a code of conduct linked to disciplinary action, the Inspector considered that students were “unlikely to have this uppermost in their minds” at the time anti-social behaviour was taking place.
- 7.5 That conclusion is particularly relevant to the present case, where the current impact of student occupation is proposed to be intensified, both externally in the outdoor seating area and internally in the extended building, with the supply of alcohol and the playing of live music.
- 8.0 THE USE OF CONDITIONS
- 8.1 Pursuant to 7.3 above, the use of conditions to control the night-time use of the proposed outdoor seating area and/or permissible attendance numbers and/or noise levels within the extended building need to be considered.
- 8.2 NPPF para. 206 specifies six tests for imposing a condition on a planning permission, the fourth of which is “enforceability”. PPG para. ID: 21a-003-20140306 states that
- “Unenforceable conditions include those for which it would, in practice, be impossible .....to remedy any breach of the condition.”*
- 8.3 As in 7.3 above, the guidance clearly applies in this case where it would be impracticable to remedy adverse night-time uses of the outdoor seating area and/or the internal spaces, having regard to the proposed consumption of alcohol and/or the playing of live music by students whose “lifestyle”and/or behaviour is described

by various Appeal Inspectors as potentially “noisy”, “boisterous” and “anti-social”, and generating “excessive disturbance”.

## 9.0 CONCLUSIONS

9.1 The application to which these representations relate proposes extensions to the existing student accommodation building, including an outdoor seating area, in which it is proposed to hold functions and events accompanied by the supply of alcohol and/or the playing of live music.

9.2 The proposal is shown to conflict with policy in

- encroaching upon existing pedestrian space and reducing the setback of the existing building, thereby undermining its existing visual and physical separation from the Blackburn Road carriageway and footway as well as the Builder Depot site opposite;
- putting at risk the safety of its student occupants in that functions and events to be held accompanied by the use of alcohol in its outside seating area are likely to coincide with the unrestricted night-time movements of heavy goods vehicles serving the Builder Depot site immediately opposite; and
- generating levels of night-time noise and disturbance likely to impact adversely upon the amenities of residential occupiers of the implemented redevelopment scheme on the Builder Depot site at such time as it is completed.

9.3 For all these reasons we ask that the application be refused.

Kindly acknowledge receipt of these representations.

Yours faithfully



Eli Abt BArch (Rand) RIBA MRTPI  
Abt Architecture & Planning