



## Appeal Decision

Site visit made on 8 January 2016

**by J Dowling BA(Hons) MPhil MRTPI**

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

**Decision date: 1 March, 2016**

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### **Appeal Ref: APP/X5210/W/15/3135102 10-14 Belmont Street, London NW1 8HH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Warmhaze Ltd against the Council of the London Borough of Camden.
- The application Ref 2015/2823/P is dated 19 May 2015.
- The application sought planning permission for erection of 3 x 4 storey replacement dwellinghouses following part demolition of the existing 3 storey houses with existing front facades, side and internal structural walls being retained without complying with conditions attached to planning permission Ref 2014/3924/P, dated 19 May 2015.
- The conditions in dispute are Nos 4, 5, 6, 8, 9, 10, 11, 12 and 13 which state that:
  - The secure and covered cycle storage areas, providing 2 cycle spaces for each of the dwellinghouses, as shown on Drawings 150209-A(GA)100 and 150209-A(GA)300 hereby approved shall be provided in its entirety prior to the first occupation of any new units, and permanently retained thereafter (condition 4).
  - The lifetime homes features and facilities, as indicated on the drawings and documents hereby approved shall be provided in their entirety prior to the first occupation of any of the new residential units (condition 5).
  - Prior to the first occupation of the buildings a plan showing details of the green roof including species, planting density, substrate and a section at scale of 1:20 showing that adequate depth is available in terms of the construction and long term viability of the green roof, and a programme for a scheme of maintenance shall be submitted to and approved in writing by the local planning authority. The green roof shall be fully provided in accordance with the approved details prior to first occupation and thereafter retained and maintained in accordance with the approved scheme of maintenance (condition 6).
  - The development hereby approved shall not commence until such time as a suitably qualified chartered engineer with membership of the appropriate professional body has been appointed to inspect, approve and monitor the critical elements of both permanent and temporary basement construction works throughout their duration to ensure compliance with the design which has been checked and approved by a building control body. Details of the appointment and the appointee's responsibilities shall be submitted to and approved in writing by the local planning authority prior to the commencement of development. Any subsequent change or reappointment shall be confirmed forthwith for the duration of the construction works (condition 8).
  - No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be kept on site and adhered to throughout the construction period. The Statement shall provide for:
    - i. the parking of vehicles of site operatives and visitors
    - ii. loading and unloading of plant and materials

- iii. storage of plant and materials used in constructing the development
- iv. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
- v. wheel washing facilities
- vi. measures to control the emission of dust and dirt during construction
- vii. a scheme for recycling/disposing of waste resulting from the demolition and construction works

The Construction Method Statement shall also provide the opportunity for the developer to consult with local residents about plans for construction providing them with the opportunity to voice any legitimate concerns about the proposal (condition 9)

- The development shall not be occupied until all works to the public highway in Belmont Street, to include repaving the footway immediately adjoining the application site, have been carried out in accordance with the details approved by the Local Planning Authority or by the Council as Highways Authority pursuant to Section 278 of the Highways Act 1980 (condition 10).
- The development hereby approved shall achieve a maximum internal water use of 105 litres/person/day, allowing 5 litres/person/day for external water use. Prior to occupation, evidence demonstrating that this has been achieved shall be submitted to and approved by the Local Planning Authority (condition 11).
- Prior to construction the development hereby approved shall submit a sustainability statement demonstrating how sustainable design principles and climate change adaptation measures have been incorporated into the design and construction of the development to be approved by the Local Planning Authority. Prior to occupation, evidence demonstrating that the approved measures have been implemented shall be submitted to and approved in writing by the Local Planning Authority (condition 12).
- Prior to construction the development hereby approved shall submit an energy statement demonstrating how a 20% reduction in carbon dioxide emissions beyond Part L 2013 Building Regulations in line with the energy hierarchy has been submitted to and approved in writing by the Local Planning Authority. Prior to occupation, evidence demonstrating that the approved measures have been implemented shall be submitted and approved in writing by the Local Planning Authority (condition 13).
- The reasons given for the conditions are:
  - To ensure the development provides adequate cycle parking facilities in accordance with the requirements of policy CS11 of the London Borough of Camden Local Development Framework Core Strategy and policy DP17 of the London Borough of Camden Local Development Framework Development Policies (condition 4).
  - To ensure that the internal layout of the building provides flexibility for the accessibility of future occupiers and their changing needs over time, in accordance with the requirements of policy CS6 of the London Borough of Camden Local Development Framework Core Strategy and policy DP6 of the London Borough of Camden Local Development Framework Development Policies (condition 5).
  - To ensure that the green roof is suitably designed and maintained in accordance with the requirements of policies CS13, CS14, CS15 and CS16 of the London Borough of Camden Local Development Framework Core Strategy and policies DP22, DP23, DP24 and DP32 of the London Borough of Camden Local Development Framework Development Policies (condition 6).
  - To safeguard the appearance and structural stability of neighbouring buildings and the character and immediate area in accordance with the requirements of policy CS14 of the London Borough of Camden Local Development Framework Development Policies and policy DP27 (Basements and Lightwells) of the London Borough of Camden Local Development Framework Development Policies (condition 8).
  - In order to protect the pedestrian environment and the amenities of the area generally and to ensure the continued free flow of traffic in the area in accordance with Policies CS5 and CS11 of the London Borough of Camden Local Development

Framework Core Strategy and policies DP16, DP17, DP20 and DP26 of the London Borough of Camden Local Development Framework Development Policies (condition 9).

- To safeguard the character of the immediate area in accordance with the requirements of policy CS14 of the London Borough of Camden Local Development Framework Development Policies (condition 10).
  - To ensure the development contributes to minimising the need for further water infrastructure in an area of water stress in accordance with policy CS13 (Tackling climate change through promoting higher environmental standards) of the London Borough of Camden Local Development Framework Core Strategy and policy DP22 (Promoting sustainable design and construction) and DP23 (Water) of the London Borough of Camden Local Development Framework Development Policies (condition 11).
  - To ensure that the development contributes to minimising the effects of, and can adapt to a changing climate in accordance with policies CS13 (Tackling climate change through promoting higher environmental standards) of the London Borough of Camden Local Development Framework Core Strategy and policies DP22 (Promoting sustainable design and construction) and DP23 (Water) of the London Borough of Camden Local Development Framework Development Policies (conditions 12 and 13).
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## **Decision**

1. This appeal is allowed and the planning permission is granted for erection of 3 x 4 storey replacement dwellinghouses following part demolition of the existing 3 storey houses with existing front facades, side and internal structural walls being retained in accordance with the application Ref 2015/2823/P dated 19 May 2015 without compliance with conditions 5, 8 and 10 previously imposed on planning permission Ref 2014/3924/P dated 19 May 2015 and subject to the conditions as set out in Schedule 1 of this decision letter.

## **Procedural Matters**

2. The application form gives the site address as 10 Belmont Street. However, all the other appeal and application documents refer to 10-14 or 10-12-14 Belmont Street. I consider the correct address is 10-14 Belmont Street, London NW1 8HH and I have amended the banner heading accordingly.
3. In the decision notice the reasons given for conditions 8 and 10 both refer to policy CS14 of the London Borough of Camden Local Development Framework Development Policies. However, I note from the documents submitted with the appeal that Development Policies are prefixed with the letters DP. Policies with a CS prefix are contained in the London Borough of Camden Local Development Framework Core Strategy. Having reviewed policy CS14 and read the appeal statements I consider that the decision notice contains an error and policy referred to is from the Core Strategy and not the Development Policies. I have therefore considered the appeal on this basis.

## **Application for Costs**

4. An application for costs was made by Warmhaze Ltd against the Council of the London Borough of Camden. This application is the subject of a separate Decision.

## Main Issue

5. The main issue is whether conditions 4, 5, 6, 8, 9, 10, 11, 12 and 13 meet the tests for conditions specified in paragraph 206 of the National Planning Policy Framework (the Framework) namely that they are necessary; relevant to planning and to the development permitted; enforceable; precise and reasonable in all other respects.

## Reasons

6. The overarching reason why the appellant considers that the conditions do not meet the tests set out in paragraph 206 of the Framework relates to how the Council described the proposed development. The appellant contends that the Council have incorrectly described the development as replacement dwelling. They advocate that they are proposing extensions and alterations to existing dwellings and as a result the conditions that are the subject of this appeal are not appropriate for extensions and would not meet the Framework tests.
7. When registering an application the starting point for the Council is the application form. In addition the Council can check the plans, supporting documents and fee submitted to verify that the description of development as detailed on the application form is correct.
8. The original application form described the proposed development as 'redevelopment of the site with three dwellinghouses'.
9. The appellant has provided a copy of the covering letter which accompanied the application which described the development as 'demolition of the three existing dwellings; construct three replacement dwellings using similar materials and including stock brick and timber windows; facades remodelled to provide for larger windows but keeping the bay feature'<sup>1</sup>. Later on in the same letter<sup>2</sup> it states 'the material change in circumstances is that the three dwellinghouses are now to be demolished and rebuilt'.
10. Also submitted with the original application was a Design and Access Statement entitled 'Proposed new build basement and four storey town houses at 10-14 Belmont Street' (June 2014). The introduction to this document states that the application was for 'demolition of existing terrace of three houses at 10, 12 and 14 Belmont Street and the building of three town houses incorporating basement and four storeys at number 10 and 12 and four storeys at number 14'<sup>3</sup>. There are various other references throughout the statement to the demolition of the existing buildings and the rebuilding of the terrace.
11. Finally, I note from the covering letter that the fee that accompanied the application equated to the fee for three new dwellings.
12. On the basis of the application form, submitted documents and fee the Council described the development as 'Erection of 3 x 4 storey dwellinghouses following demolition of the existing houses' and consulted on that basis. The application was amended by the appellant in February 2015 and as a result the Council amended the description of development to 'Erection of 3 x 4 storey

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<sup>1</sup> Page 2 letter dated 11 June 2014 from KR Planning ref L/HPG/10B/10-12-14

<sup>2</sup> Page 4 letter dated 11 June 2014 from KR Planning ref L/HPG/10B/10-12-14

<sup>3</sup> Page 3 Design and Access Statement dated June 2014

dwellinghouses following part demolition of the existing 3 storey houses with the existing front facades, side and internal structural walls being retained’.

13. Although the description of the development used by the Council differs from what was detailed on the application form, given the other information submitted with the application and the fee that was paid I consider that the description used by the Council accurately reflects what was proposed. The Planning Practice Guidance (the PPG) advises that the local planning authority should not amend the description of development without first discussing any revised wording with the applicant or their agent<sup>4</sup>. However, whilst the Council did not agree the amended description with the appellant, given all the evidence that has been submitted I consider that the description used by the Council expands upon the description of development detailed on the application form; accurately reflects the information that the appellant submitted with the application and would provide clarity for consultation purposes.
14. In support of their case the appellant has cited an earlier scheme for the same site being registered by the Council as being extensions and alterations<sup>5</sup> which they consider identical to the appeal scheme. However, apart from a copy of the registration letter very limited information has been provided on this application and I note from an email supplied by the appellant that this application was withdrawn. Therefore I have afforded it very limited weight when concluding on this matter.
15. Consequently, I consider that the proposal would result in the development of new units, albeit that they are replacing existing ones and therefore the in-principle imposition of conditions 4, 5, 6, 8, 9, 10, 11, 12 and 13 at the time of the original planning permission was granted was reasonable. I will now consider each of the conditions against the tests for conditions.

#### *Condition 4 – Cycle storage*

16. Policy CS11 of the London Borough of Camden Local Development Framework Core Strategy 2010-2025 (2010) (the Core Strategy) and policy DP17 of the London Borough of Camden Local Development Framework Camden Development Policies 2010-2025 (2010) (the Development Policies) state that in order to promote sustainable travel the Council will continue to improve facilities for cyclists including increasing the availability of cycle parking.
17. For the reasons I have outlined above I consider that the proposal would result in the creation of new units and therefore I do not consider that the ‘fallback’ position suggested by the appellant exists. However, I do agree with the appellant that without the condition the cycle storage could be removed. Whilst the plans listed in the condition are also listed in condition 2, this condition does not require the provision of the cycle parking before the units are occupied or for the cycle parking to be retained for the lifetime of the development. Therefore, I conclude that in order to comply with policies CS11 and DP17 the condition is necessary and would meet the other tests for conditions set out in paragraph 206 of the Framework and therefore the condition should be retained.

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<sup>4</sup> Para 046 Reference ID: 14-046-20140306

<sup>5</sup> London Borough of Camden reference 2014/0034/P

18. Policy DP24(b) referred to by the appellant is not relevant when considering this condition as it relates to securing high quality design for new development.

*Condition 5 – Lifetime Homes*

19. The Written Ministerial Statement of March 2015 (the WMS) introduced a new approach for the setting of technical standards for new housing which comprises new additional optional Building Regulations on water and access and a new national space standard. Known as the new national technical standards they came into force on the 1 October 2015.
20. The WMS stated that in the transition period between the Deregulation Bill 2015 being given Royal Assent (26 March 2015) and the standards coming into force (1 October 2015) planning permission may still be granted on the basis of existing Local Plan policies on access, internal space and water efficiency, even though they may have a degree of conflict with the new national technical standards.
21. Policy CS6 of the Core Strategy seeks to provide a variety of housing types to meet the different groups within the borough and policy DP6 of the Development Policies requires that all housing development should meet lifetime homes standards and 10% of homes should either meet or be easily adaptable to meet wheelchair housing standards.
22. As planning permission was granted in May 2015 during the transitional period before the new standards came into force I consider that the imposition of this condition at the time that planning permission was granted met the tests for conditions as set out in the Framework. However, I agree with both parties that the condition as worded would no longer meet the requirements of paragraph 206 of the Framework.
23. The baseline requirement for new homes is compliance with M4(1) of the Building Regulations. However, subject to being able to show a need for accessible dwellings<sup>6</sup> and defining what proportion of accessible, adaptable or wheelchair user dwellings are needed<sup>7</sup> Councils can require provision of enhanced accessibility or adaptability by reference to M4(2) and/or M4(3) of the optional requirements of the Building Regulations.
24. The Council have suggested a replacement condition requiring all of the units to be designed and constructed in accordance with Building Regulations Part M4(2). Paragraph 6.41 of the Core Strategy cites that 6.4% of Camden's households include one or more people with a physical disability and that 3.4% of Camden's households include one or more frail elderly people<sup>8</sup> and meeting the needs of these groups is addressed through policies CS6 and DP6. I therefore consider that the Council have demonstrated a need for enhanced accessibility and the replacement condition would meet the test for conditions as set out in the Framework.
25. I note that the appellant considers that the replacement condition is not necessary as the houses already exist and it is requiring compliance with other regulatory regimes. However, for the reasons I have outlined above I consider

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<sup>6</sup> Planning Practice Guidance Paragraph: 007 Reference ID: 56-007-20150327

<sup>7</sup> Planning Practice Guidance Paragraph: 008 Reference ID: 56-008-20150327

<sup>8</sup> The Camden Housing Needs Study Update 2008

these to be new units and as Part M4(2) of the Building Regulations is optional I consider that the imposition of the condition is necessary.

*Condition 6 – Green Roof*

26. Policies CS13, CS14, CS15 and CS16 of the Core Strategy and policies DP22, DP23, DP24 and DP32 of the Development Policies deal with the issues of climate change, biodiversity, water run-off, air quality and the quality of materials. Although not referred to in the reason for the decision the Council with their appeal documentation have submitted a copy of Camden Planning Guidance 3 – Sustainability (CPG3) which provides detailed information on ways to achieve sustainable development. This policy and guidance is in accordance with the National Planning Policy Framework which at its heart promotes sustainable development.
27. Both the supporting text (paragraph 22.9) and CPG3 provide details of the level of information that the Council require in order to assess whether the design of green roofs and the type of planting proposed would result in a green roof that complies with the policy requirements.
28. The roof plans submitted with the application are annotated to indicate that the roof would be green and the Design and Access Statement in the sustainability section states that an 'extensive green roof will be incorporated into the roof design' and is supported by a number of indicative illustrations demonstrating how a green roof works. However, there are no specific details regarding the design or the proposed planting for this roof.
29. As a green roof is incorporated into the design the proposal would therefore comply 'in principle' with the development plan policies. However, without the submission of further site specific details the Council would not be able to assess whether the green roof proposed would be appropriate and meet the needs of the policies. Whilst it is possible to submit this detail as part of the application this was not done and therefore I consider it reasonable that the Council attached a condition requiring the submission and approval of further information.
30. I note that the appellants comments that green roofs are purchased as a system; that there would be sufficient parapet height and the submission of a generic planting species list that was used to discharge the green roof condition on the neighbouring property. However, I consider that this would still not provide sufficient information to ensure that the design of the proposed green roof and that the planting proposed would be the most appropriate for this site and would deliver the biodiversity, levels of drainage and improvements to air quality required to address climate change in accordance with the requirements of policies CS13, CS14, CS15 and CS16 of the Core Strategy and policies DP22, DP23, DP24 and DP32 of the Development Policies.
31. The condition is not a pre-commencement condition and therefore the Whitley principle is not applicable. Furthermore whilst the existing houses may be occupied, albeit that No 10 appeared to be vacant and being used as a site office when I visited the site, as I have outlined previously the proposal would result in the creation of three new units and therefore a prior to occupation condition would meet the test for conditions.

32. The appellant advocates that maintenance conditions are inappropriate. However, in order for a green roof to work the plants need to be living. I therefore consider that a requirement to maintain the plants and ensure that they are established is necessary.
33. Finally, whilst the proposed new dwellings may eventually be in individual ownership, as with the cycle storage, without the condition as worded future occupants of the units could remove/not maintain the green roof and as a result the development would then not comply with the requirements of the development plan, CPG3 or the Framework. The Council have a duty to act reasonably when taking enforcement action and if the roof was not being maintained could take action against the individual property owner.
34. Consequently I conclude that the condition is reasonable; necessary; relevant to planning and the development permitted; precisely worded and enforceable and therefore meets the test for conditions as set out in the Framework.

*Condition 8 - Appointment of qualified chartered engineer to monitor basement construction*

35. The Council have accepted that the 2 Basement Impact Assessments (BIA) submitted with the original application provide the information needed regarding the construction of the proposed basements. Condition 2 would require the development to be carried out in accordance with the BIA recommendations. As a result I conclude that the condition would not be necessary and would therefore not meet the test for conditions set out in paragraph 206 of the Framework.

*Condition 9 – Construction Method Statement*

36. Policies CS5 and CS11 of the Core Strategy and policies DP16, DP17, DP20 and DP26 of the Development Policies manage the impact of growth and development with particular regard to managing the effects of development on the road network; encouraging sustainable modes of travel for the movement of goods and workers and managing the impact of development on occupiers and neighbours.
37. The proposal would result in the comprehensive redevelopment of a tightly constrained site in a dense urban area. As a result the construction of the new units if not managed properly have the potential to adversely affect the living conditions of the occupants of neighbouring buildings, the safety of pedestrians and the free flow of traffic.
38. Therefore the requirement to submit a Construction Method Statement (CMS) is necessary; reasonable; relevant to planning and the development permitted and enforceable.
39. The condition has seven provisions, provision i and ii would manage the parking of site vehicles and loading/unloading of plant and materials. The site has no off street parking and the on-street parking to the front of the site is part of a Controlled Parking Zone which would restrict the use by non-residents during the day. The Council will therefore have control over site parking and loading/unloading of vehicles through the existing parking controls and as a result it would not be necessary to manage this through the use of a CMS.



40. However, I note from my site visit that Belmont Street is well used by residents of the local estate as a pedestrian route to Chalk Farm Road and that traffic levels on the surrounding road network are relatively high. Consequently, I consider that to ensure pedestrian safety and to minimise the effects on traffic flows, deliveries at the site should be restricted to those parts of the day when pedestrian and traffic levels are lower and I have therefore amended the wording of the condition accordingly.
41. Provision iii would manage how plant and materials used during construction would be stored at the site. As the appellant correctly points out, subject to a number of caveats Class A, Part 4 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 allows the storage of plant or machinery required in connection with consented development. However, whilst the storage of plant and machinery are listed in Class A, materials are not. As the site is tightly constrained there are very limited opportunities for the storage of materials at the site and as a result there is the potential, if this is not properly managed, that how and where they are stored may affect both pedestrian and highway safety and the living conditions of the occupants of neighbouring properties. As a result I consider this provision is necessary and I have therefore amended the wording of the condition accordingly.
42. With regards to hoardings (provision iv) the appellant advocates that the Council has control as they would need to get permission to erect hoardings from the Highway Management Team. However, I note that permission for hoardings is only required for scaffolding/hoardings that are either on or over the highway<sup>9</sup>. As the properties benefit from a front garden area the hoarding may not need to be on the highway and as a result there is the possibility if the design and location of the hoardings is not managed that this could adversely affect the safety of pedestrians using the footpath. Consequently, I consider this provision to meet the tests.
43. Provision v requires wheel washing facilities to be provided. The appellant advocates that this is not necessary as it is covered by S149 of the Highways Act 1980 which enables the Highways Authority to require people to remove anything that is deposited on the highway that would constitute a nuisance. However, whilst S149 requires things to be removed it does not prevent things being deposited on the highway. Wheel washing facilities ensure that mud and building debris from construction and demolition are not pulled onto the highway by construction vehicles and vehicles entering and exiting the site. Given the proposed works I consider that without the provision of wheel washing facilities there is the potential for debris/mud to be deposited on the highway which could affect the safety of users of the highway and therefore I conclude that the provision meets the tests set out in para 206.
44. Provision vi seeks to control the emission of dust and dirt during construction. The appellant considers that this is unnecessary as dust and dirt are controlled through Environmental Health legislation. This is reinforced by section 72 of the Guide for Contractors Working in Camden (2008) which states that under of the Control of Pollution Act 1974 (as amended) the appellant would be required to implement Best Practicable Means to mitigate dust emissions from the site. Consequently I conclude that dust and dirt emissions could be

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<sup>9</sup> Page 12 Guide for Contractors Working in Camden (2008)

- satisfactorily managed through alternative legislation and this provision would therefore not meet the tests for conditions.
45. The final provision (vii) requires a scheme for the recycling/disposing of waste resulting from demolition/construction works. Policy DP20 of the Development Policies seeks to minimise the movement of goods or materials during construction. Given the proposed works I consider that a substantial volume of waste would be generated by the proposal and therefore a scheme that manages how waste is disposed of would accord with the requirements of this policy and therefore this provision would meet the tests of paragraph 206 of the Framework.
  46. The final part of the CMS advocates that it should provide the opportunity for the developer to liaise with local residents and provide them with the opportunity to voice concerns. Whilst this may represent good practice I consider that the wording is unreasonable, imprecise and would be difficult to enforce and consequently would not meet the test for conditions and should therefore be omitted from the condition.
  47. Whilst the appellant has stated that there is no demolition involved in the scheme as defined by Shimizu, the proposal would result in demolition and building works at the site which would affect the surrounding area in the ways that are outlined above.
  48. I note that the appellant considers that policy DP26 of the Development Policies does not require a CMS. However, whilst the policy may not directly refer to the provision of a CMS it states that the Council will protect the quality of life of occupiers and neighbours by only granting permission for development that does not cause harm to amenity. This is expanded further in paragraph 26.10 which highlights that disturbance from development can also occur during the construction phase and that measures to reduce the impact of demolition, excavation and construction works must be outlined in a Construction Management Plan.
  49. The appellant refers to Secretary of State advice against the imposing of a condition to protect amenities. However, a copy of this advice has not been provided and given that a core land-use planning principle of the Framework is to seek a good standard of amenity for all existing and future occupants of land and buildings<sup>10</sup> I have afforded this statement very little weight.
  50. Finally, I note that the appellant considers that the condition is unenforceable as it seeks to control land outside the appellant's control. However, the measures required by the CMS are either achievable within the site (storage of materials, erection of hoardings and wheel washing facilities) or deal with how the site would be managed (delivery times and recycling/disposal of waste) and do not seek to control land outside of the appellants control. The condition would therefore be enforceable.
  51. In conclusion I consider that subject to the omissions and changes to wording detailed above that a condition requiring the submission and approval of a CMS would meet the tests for conditions set out in the framework and be in accordance with policies CS5 and CS11 of the Core Strategy and policies DP16, DP17, DP20 and DP26 of the Development Policies.

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<sup>10</sup> Paragraph 17 National Planning Policy Framework

*Condition 10 – Highway Reinstatement Measures*

52. The Council have advised that since planning permission was granted a Highways Works Agreement pursuant to Section 278 of the Highways Act 1980 has been signed which secures the works detailed in condition 10. As a result I conclude that the condition would no longer be necessary and would therefore not meet the test for conditions set out in paragraph 206 of the Framework.

*Conditions 11 (Maximum internal water use stipulations); Condition 12 (Sustainability Statement) and Condition 13 (Energy Statement)*

53. The appellant has forwarded a number of overarching reasons as to why these conditions do not meet the Framework tests. Firstly, as has been outlined above the proposal would result in the creation of three new units and therefore the appellants 'fallback' position that the proposal is for extensions and these conditions are therefore unreasonable holds little weight.

54. Furthermore, as detailed in paragraph 19 of this decision the WMS included a transition period during which planning permission could still be granted subject to conditions even though they may have a degree of conflict with the new national technical standards. Therefore, the imposition of these conditions at the time that planning permission was granted met the tests for conditions as set out in the Framework. I shall now deal with each of the conditions in turn.

*Condition 11 (maximising internal water use stipulations)*

55. Water efficiency is now covered by Approved Document G - Sanitation, hot water safety and water efficiency (2015 Edition) which requires a limit of 125 litres of water per person per day. However, where there is a policy that demonstrates that there is a clear need then Councils can impose a lower optional requirement of 110 litres per person per day. The PPG<sup>11</sup> states that where there are concerns about water supply the local planning authority can use conditions or planning obligations to secure mitigation. The condition as currently worded would comply with this lower requirement albeit that it splits the requirement between external and internal use.

56. Paragraph 13.24 of the Core Strategy states that Thames Water has identified that there will be a shortfall in the water supply for London within the next 30 years if measures are not taken. In order to help deliver this policy CS13 requires all development to meet the highest feasible environmental standards to reduce the effects of and adapt to climate change this includes making sure development incorporates efficient water infrastructure. This is further reinforced by policy DP23 which requires development to reduce their water consumption by incorporating water efficient features.

57. As a result I conclude that a replacement condition which would secure compliance with the optional requirement of 110 litres per person per day would be in accordance with policies CS13 and DP23 and the test for conditions set out in the Framework.

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<sup>11</sup> Paragraph: 019 Reference ID: 34-019-20140306

*Condition 12 (sustainability statement)*

58. Condition 12 requires the submission of a sustainability statement; it does not include a requirement for the development to meet the Code for Sustainable Homes (CSH). Although the WMS withdrew the requirement for new development to achieve any level of the Code for Sustainable Homes (CSH) it recognised that new homes still needed to be sustainable. Policy CS13 of the Core Strategy and Policy DP22 of the Development Policies require development to minimise the effects of and adapt to climate change and for schemes to demonstrate how sustainable development principles have been incorporated into the design. As a result the imposition of such a condition would still meet the test for conditions set out in the Framework.
59. The appellant advocates that the condition lacks precision as there are no targets for the statement to be assessed against. Section 9 of CPG3 which has been updated in light of the WMS states that new residential development will be required to submit a sustainability statement demonstrating how the development mitigates against the causes of climate change and adapts to climate change, including the relevant measures noted on page 104 of the Development Policies Document. These are not technical standards but points against which, when justifying the chosen design, the Council feel need to be considered. Rewording the condition to include a reference to these measures would make the condition precise and therefore I conclude that subject to this change that the condition would meet the tests for conditions as set out in the Framework and comply with policies CS13 and DP22.
60. Policy DP23 mentioned in the original reason is not relevant when considering this condition as it deals with water consumption.

*Condition 13 (energy efficiency)*

61. In July 2015 the Government stated that they did not intend to proceed with the proposed increase in on-site energy efficiency standards that they had announced in the WMS<sup>12</sup>. Instead energy efficiency standards are to be kept under review, recognising that existing measures to increase energy efficiency of new buildings should be allowed time to become established. Energy is therefore not covered by the national technical housing standards and Part L of the Building Regulations 2013 would still be applicable.
62. Policy CS13 (c) advocates that development should minimise carbon emissions by amongst other things ensuring that they use less energy. The requirement to submit an energy statement would therefore ensure that the development would accord with the requirements of this policy. The condition as worded currently refers to Part L 2013 Building Regulations. However, there are four sections to part L. In order to be precise the condition should refer to the relevant section, in this case L1A; conservation of fuel and power in new buildings. Therefore subject to this change I conclude that condition 13 would meet the test for conditions set out in the Framework and accord with policy CS13 and DP22 which promote sustainable design.
63. Policy DP23 mentioned in the original reason is not relevant when considering this condition as it deals with water consumption.

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<sup>12</sup> Productivity Plan Fixing the Foundations: Creating a More Prosperous Nation (July 2015)

**Conclusion**

64. For the reasons outlined above, and having regard to all other matters raised, the appeal should be allowed.

*Jo Dowling*

INSPECTOR

### **Schedule 1 – conditions**

1. The development hereby permitted must be begun no later than the end of the three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: [150209-A(GA)090, 150209-A(GA)100, 150209-A(GA)110, 150209-A(GA)120, 150209-A(GA)130, 150209-A(GA)140, 150209-A(GA)300, 150209-A(GA)301, 150209-A(GA)400, 150209-A(GA)401, 150209-A(GA)403, Basement Impact Assessment – 10 Belmont Street, Basement Impact Assessment – 12 Belmont Street and Design and Access Statement].
3. All new external works shall be carried out in materials colour and texture specified in the approved application.
4. The secure and covered cycle storage areas, providing 2 cycle spaces for each of the dwellinghouses, as shown on Drawings 150209-A(GA)100 and 150209-A(GA)300 hereby approved shall be provided in their entirety prior to the first occupation of any of the new units, and permanently retained thereafter.
5. All units hereby approved shall be designed and constructed in accordance with Building Regulations Part M4(2).
6. The development hereby permitted shall not be occupied until a plan showing details of the green roof including species, planting density, substrate and a section at a scale 1:20 showing that adequate depth is available in terms of construction and long term viability of the green roof, and a programme for a scheme of maintenance has been submitted to and approved in writing by the local planning authority. The green roof shall be fully provided in accordance with the approved details prior to the first occupation of any of the units and thereafter shall be maintained in accordance with the approved scheme of maintenance.
7. No development shall take place until, details demonstrating how trees to be retained shall be protected during construction has been submitted to and approved in writing by the local planning authority. Such details shall follow guidelines and standards set out in BS 5837:2012 'Trees in relation to Construction'. All trees on the site, or parts of trees growing from adjoining sites, unless shown on the permitted drawings as being removed, shall be retained and protected from damage in accordance with the approved details.
8. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to and approved in writing by, the local planning authority. The statement shall provide for:
  - i. Times for delivery vehicles to deliver goods and services to the site.
  - ii. Storage of materials used in constructing the development.
  - iii. The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.

- iv. Wheel washing facilities.
- v. A scheme for recycling/disposing of waste resulting from demolition and construction works.

The approved Construction Method Statement shall be adhered to throughout the construction period of the development.

9. The dwellings shall not be occupied until the Building Regulations Optional requirement of a maximum water use of 110 litres per day has been complied with.
10. No development shall take place until, a sustainability statement demonstrating how sustainable design principles and climate change adaptation measures have been incorporated into the design and construction of the development in accordance with the table set out on page 104 of the London Borough of Camden Local Development Framework Camden Development Policies 2010-2025 (2010) has been submitted to and approved in writing by the local planning authority. Prior to occupation, evidence demonstrating that the approved measures have been implemented shall be submitted to and approved in writing by the local planning authority.
11. No development shall take place until, an energy statement demonstrating how a 20% reduction in carbon dioxide emissions beyond part L1A of the Building Regulations (2013) in line with the energy hierarchy has been submitted to and approved in writing by the local planning authority. Prior to occupation evidence demonstrating that the approved measures have been implemented shall be submitted to and approved in writing by the local planning authority.