

<b>Delegated Report</b>		<b>Analysis sheet</b>	<b>Expiry Date:</b>	17/10/2016
		N/A / attached	<b>Consultation Expiry Date:</b>	21/10/2016
<b>Officer</b>			<b>Application Number(s)</b>	
Darlene Dike			2016/4662/P	
<b>Application Address</b>			<b>Drawing Numbers</b>	
Northern Heights 1 Trinity Walk London NW3 5SQ			Please refer to decision notice.	
<b>PO 3/4</b>	<b>Area Team Signature</b>	<b>C&amp;UD</b>	<b>Authorised Officer Signature</b>	
<b>Proposal(s)</b>				
Application under Section 106A (3) to modify a legal agreement and remove clause 4.1 (car-free housing) of the S106 associated with planning permission ref. 2009/4045/P dated 13/07/2010 (for erection of a new 2 storey, plus basement single dwelling house to the rear of 106 Finchley Road).				
<b>Recommendation(s):</b>	Refuse			
<b>Application Type:</b>	Section 106A			

Conditions or Reasons for Refusal:	Refer to Decision Notice					
Informatives:						
Consultations						
Adjoining Occupiers:	No. notified	25	No. of responses	01	No. of objections	01
Summary of consultation responses:	<p>A site notice was displayed from 23/09/2016 to 14/10/2016. A press notice was published from 30/09/2016 to 21/10/2016</p> <p>One objection was received from a resident of Langland Gardens which is summarised as follows:</p> <ul style="list-style-type: none"><li>▪ Supplying car-free schemes and supporting use of public transport are part of Camden’s policies</li><li>▪ Section 2.7 of the Parking Study submitted supports the nearby availability of good public transport means</li><li>▪ The Parking Study submitted has observed parking over a very short interval, during a period when many local residents may be away on holiday when there would be less stress for on street, resident bay and other forms of parking</li></ul>					
CAAC/Local groups comments:	<p>The Heath &amp; Hampstead Society have made the following objection:</p> <p>This condition was placed on the permission for this new house with good reason, and is similar to conditions imposed on many other permissions, in the interests of discouragement to car use. This policy, framed to reduce carbon dioxide emissions and other air pollutants, has our full support.</p> <p>This site is very well sited in relation to public transport, both underground and buses, and all the criteria relevant to this policy seem to have been met.</p> <p>Please refuse.</p> <p>The Hampstead Conservation Area Advisory Committee have also objected on the following grounds:</p> <p>HCAAC objects to this application as to its spirit and likely effect. The agreement not to seek on street parking was an important and integral part of the Consent for a dwelling on the site. Given the high PTAL rating of the site, we consider there is no requirement for car parking on or associated with it. Disabled access is also by definition impossible due to the steep incline of the alleyway and the unlikely acquisition of the property by a person sufficiently disabled in any way qualifying them for car parking allowance. It is also contrary to Camden policy re car use where a high PTAL rating for a site applies. Please note whatever is necessary to Camden department(s) to ensure no parking permit is given in relation to this address or any other that may be associated with the site or the</p>					

	<p>applicant. We consider any additional permits for Maresfield Gardens for which future application may be made should be refused on principle or subject to the greatest possible scrutiny. This would ideally apply to any Camden location close to good public transport facilities.</p>
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## Site Description

The application site comprises a new detached two storey plus basement property, in current use as a single dwelling house, located on the northern side of Trinity Walk, close to its termination on Finchley Road.

There is currently no vehicular access to the site, as access is obtained solely via the pedestrian footpath of Trinity Walk, and there is also no scope for car parking on site for this reason, and on the grounds that no parking space is available on what is essentially an infilled plot.

The site does not lie in the Central London Area but does fall within the Controlled Parking Zone (CPZ) CA-B (Belsize), and so is subject to parking controls under its traffic order.

The site also benefits from a Public Transport Accessibility Level (PTAL) of 6a, which is classified as excellent.

The site does not fall within a conservation area, nor is it listed, however the adjacent property at 106 Finchley Road is noted for its architectural and townscape significance within Camden's Local List.

## Relevant History

### APPLICATION SITE

**2009/4045/P** - Erection of a new 2 storey, plus basement single dwelling house to the rear of 106 Finchley Road. **Granted 13/07/2010 subject to S106 Legal Agreement stipulating in section 4.1 that the development must be car-free.**

### SITES IN THE BOROUGH

#### 54—55 Birkenhead Street

**2013/0677/P** - Application under Section 106A (3) to modify a legal agreement and remove clause 4.1 (car cap) of the S106 associated with planning permission ref: 2005/3924/P dated 12/04/2006 (for change of use from hotel to a mixed use comprising non-self-contained residential accommodation, training rooms and offices). **Refused 21/03/2013 and dismissed on appeal 16/09/2013.**

#### 12 Doughty Mews

**2014/2898/P** - Application under Section 106A (3) to modify a legal agreement and remove clause 1.8 (car-free housing) of the S106 associated with planning permission ref: PS9904883 dated 16/02/2001 (for change of use of ground floor from commuter car parking to one x 2 bed (3 person) self-contained flat (Class C3), involving the erection of single storey rear extension and self-contained patio garden). **Refused 03/03/2015.**

## Relevant policies

### **National Planning Policy Framework 2012**

Chapter 4 - Promoting Sustainable Transport

### **London Plan 2016**

Policy 6.1 Strategic Approach

Policy 6.13 Parking

## **Camden LDF Core Strategy 2010**

CS11 (Promoting sustainable and efficient travel)

## **Camden Development Policies 2010**

DP17 (Walking, cycling and public transport)

DP18 (Parking standards and limiting the availability of car parking)

DP19 (Managing the impact of parking)

DP32 (Air Quality and Camden's Clear Zone)

## **Camden Planning Guidance 2011**

CPG7 Transport – Chapter 5

## **Assessment**

### **1. Proposal**

- 1.1 Planning permission 2009/4045/P was consented on 13/07/2010 for the erection of a new 2 storey plus basement single dwelling house on land to the rear of 106 Finchley Road. Planning consent was permitted subject to the approved development being a car-free scheme, and this was secured by a Section 106 Legal Agreement co-signed by the applicant on 13/07/2010.
- 1.2 Details pertaining to the car-free aspect of the approved scheme are outlined within clause 4.1 of the legal agreement, which requires the owner 'to ensure that prior to occupying any residential unit forming part of the Development each new resident of the Development is informed by the Owner of the Council's policy that they shall not be entitled (unless they are the holder of a disabled persons badge issued pursuant to Section 21 of the Chronically Sick and Disabled Persons Act 1970) to be granted a Residents Parking Permit to park a vehicle in a Residents Parking Bay and will not be able to buy a contract to park within any car park owned, controlled or licensed by the Council.'
- 1.3 Under this Section 106A application the applicant seeks to remove clause 4.1 from the co-signed legal agreement, to the effect that the development will no longer be obligated to be car-free, in turn opening the opportunity for residents of 1 Trinity Walk to apply for one or more resident's parking permits. If the car free restriction is lifted, there is no limit on the number of parking permits the occupier(s) can apply for.

### **2. Assessment**

- 2.1 Within the submitted Covering Letter the applicant puts forward the following arguments:

#### Parking Stress

- the car-free obligation is unnecessary as the streets surrounding Trinity Walk do not experience parking stress, as evidenced by the supporting Parking Study submitted.
- the site's PTAL rating is high, so other nearby owner/occupiers are unlikely to own vehicles. This makes it acceptable for the resident(s) at 1 Trinity Walk to obtain a resident's parking permit, as the cumulative impact on parking stress in the vicinity would be low, given the likely low levels of car ownership in the immediate vicinity.

#### Controlled Parking Zone

- the controlled parking zone is not designed to restrict residential parking but commuter parking.

#### Character and Appearance

- the car-free obligation has no bearing on the character and appearance of the local area, and

its removal would therefore not harm the character and appearance of the area.

#### Financial Viability

- the car-free obligation is resulting in the financial unviability of the host property.

- 2.2 Within the body of their Covering Letter the applicant also makes reference to a submitted Parking Study (commissioned on their behalf) which they argue would suggest that parking demand in this specific location of the wider Controlled Parking Zone could accommodate future requested resident's parking permits.
- 2.3 The Local Development Framework was emerging policy at the time when consent for the dwelling house subject to a Section 106 Agreement was granted, and is now fully adopted such that full weight is afforded to its policies. These policies categorically support the restriction of car use in the borough and make clear that for new and accessible properties in particular, the Council will seek to make development car-free.
- 2.4 Policy CS11 makes plain that as part of its approach to minimising congestion and addressing the environmental impacts of travel the Council will minimise the provision for private parking in new developments, in particular through car-free developments in the boroughs most accessible locations. Policy DP17 supports this in stating that the Council will resist development that would be dependent on travel by private motor vehicles. DP18 goes on to state that limiting the supply of car-parking is a key factor for addressing congestion in the borough and encouraging people to use more sustainable ways to travel, and explicitly outlines that the Council will expect development to be car-free in town centres including Finchley Road, as well as areas within Controlled Parking Zones that are easily accessible by public transport. Policy DP19 furthers this in explicating that the Council will resist development that would add to on-street parking demand where on street parking spaces cannot meet existing demand. Policy DP32 highlights the need to promote higher standards of air quality within the borough, achieved in part through designating new development as car-free.
- 2.5 Camden Planning Guidance 7, on transport, further substantiates the policy position outlined within the Core Strategy and Development Policies in stating that the Council expects car-free development in the borough's most accessible locations and where a development could lead to on-street parking problems. It also makes clear that legal agreements will be used to maintain car-free development over the lifetime of a scheme.

#### Principle

- 2.6 In seeking to remove the car-free requirement from the Section 106 Legal Agreement, proposals under this application directly conflict with Council policy. The site comprises a relatively new residential property and as such is expected to be car-free. Removing the car-free element from a new build scheme in the manner proposed would be in direct contravention of Policies CS11, DP17 and DP18.
- 2.7 Perhaps more significantly, the site at 1 Trinity Walk benefits from a PTAL rating of 6a i.e "excellent". The site is very close to Finchley Road and Swiss Cottage underground stations which are less than 250m and 350m away respectively, it is also in close proximity to numerous bus services operating all around London, and is easily accessible on Finchley Road and Fitzjohns Avenue. It is noted that within the applicant's submitted Covering Letter and Parking Study the application property is given a PTAL rating of 5, however as the accuracy of the TFL database is such that the site could fall between boundaries, it has been assessed as having a PTAL rating closer to 6a. Irrespective a PTAL rating of 5 still indicates a very good level of accessibility, which

the applicant themselves acknowledges within their Covering Letter and Parking Study. The car-free requirement of the Section 106 Legal Agreement works most effectively in areas where transport accessibility is high. This site has one of the highest accessibility levels in the borough, as defined by Transport for London. As such it would be entirely contrary to policies CS11 and DP18 and CPG7 guidance for the car-free element of the scheme to be removed.

- 2.8 The site is also located within a Controlled Parking Zone (CPZ) which the Council's data shows to have a parking demand level of 1.10. This means that there are 110 parking permit holders for

every 100 on-street parking spaces available, resulting in a high level of demand for parking in this area. It is worth noting that this is one of the highest demand levels across the whole borough. The Parking Study and Covering Letter submitted contest this, arguing that parking demand in the Trinity Walk area of the wider CPZ could accommodate future requested resident's permits, should clause 4.1 of the Section 106 Legal Agreement be removed. The Council strongly disputes this as it contradicts some ten years of parking data for this area and because spot check surveys have limited weight in overcoming Council policy in the assessment of parking stress. Consequently, notwithstanding the applicant's position, it is considered that the removal of the car-free obligation from the development at 1 Trinity Walk would be wholly unacceptable. The proposal would exacerbate the existing high levels of parking stress experienced in the vicinity and so would be directly contrary to Policies DP17, DP18 and DP19 and guidance in CPG7.

- 2.9 In terms of its location the site also falls within a town centre explicitly mentioned within Policy DP18 as an area where the Council will expect development to be car-free. Lying in the Finchley Road town centre the site is well-equipped to support a car-free household, in light of its aforementioned high levels of public transport accessibility. As such the removal of the car-free element in this town centre location would be in complete opposition to Policy DP18.

- 2.10 The acceptability of proposals has been examined against the Council's policies, but as this does not address all of the arguments put forward by the applicant an attempt to do so will be made below.

#### Parking Stress

- 2.11 The Council's stance in relation to parking stress in the vicinity of 1 Trinity Walk has been outlined to some degree above however it is worth stressing that it is our view that the area does experience severe parking stress. Within paragraph 3.4 of the submitted Parking Study the applicant asserts that parking pressure in resident's permit parking bays in the vicinity of 1 Trinity Walk falls below serious parking stress levels both in the night and day. They also argue that consequently, even if resident's parking permits were allowed for more than one car this would cause no parking problems in the vicinity. The Council would refute this on the basis that, as outlined above, our data shows there is a parking demand level of 1.10, meaning there are 110 parking permit holders for every 100 on street parking spaces available, and thus very serious parking stress levels, which the provision of one or more parking permits at 1 Trinity Walk would only exacerbate.
- 2.12 The applicant goes on to argue that because the PTAL rating of the site is high, the cumulative impact of proposals on parking stress would be low, given assumed low car ownership levels in the area. The Council would counter this position by suggesting that the high PTAL rating is in itself sufficient reason for the scheme to be car-free, as supported by Policies CS11 and DP18 and CPG7 guidance. The applicant's argument is also undermined by the fact that parking stress in the area is in fact high, indicating high car ownership levels, and in turn a situation that would be exacerbated by removal of the car-free obligation from this development.

### Controlled Parking Zone

- 2.13 The applicant also argues that the CPZ is not designed to restrict resident's parking but commuter parking. The Council's response is that the demand for parking in Camden far outstrips the supply of kerbspace available and the Council seeks to maintain an active balance between the different demands – from residents, their visitors, businesses and their deliveries and customers, to access for disabled people, etc. This also needs to be balanced with the duty on the Council to keep traffic moving, avoiding unsafe and obstructive parking, and making sure there is good access for pedestrians, cyclists, buses and vehicles of all sorts. It is for all these reasons that the CPZ has been designed.
- 2.14 Alongside this is the aim of sustainability, restraining inessential traffic so that we achieve efficient movement for essential vehicles (e.g. emergency services and deliveries). In a crowded inner city we encourage people to move in the most efficient and sustainable ways possible and to help achieve this we improve conditions for walking and cycling, including making these movements safer, and improving the flow of public transport. In addition to the efficiency of our road network the use of a CPZ has clear links to minimising the wider impacts of traffic on poor air quality and on the contribution to climate change, in line with Policy DP32.
- 2.15 The Council, in balancing its duty has a number of policies that support and encourage sustainable travel options, which proposals directly conflict with. These are clearly detailed in the Core Strategy CS11 and Local Development Framework policies DP17 and DP18, which outline when and why new development would be secured as car-free in Camden. These policies are connected to but not limited to an area's designation as a CPZ, as they also encompass the wider impacts of private car use within an inner city borough. As the removal of the car-free obligation from the Section 106 Legal Agreement would conflict with these policies, the proposal is unsupportable.

### Character and Appearance

- 2.16 The applicant also puts forward the case that the car-free obligation has no bearing on the character and appearance of the area and therefore would cause no harm in this regard. The express motivation behind the designation of a scheme as car-free is to address issues of congestion in the borough and encourage people to use more sustainable ways to travel, as conveyed by Policy DP18. Proposals would fail to achieve this entirely, and would in fact have the opposite undesirable effect of encouraging car use, and so are wholly unacceptable.

### Financial Viability

- 2.17 The applicant also contends that the application of a car-free obligation has resulted in the financial unviability of the host property. The Camden Local Plan Evidence Report for Car-Free Development (February 2016) – a study commissioned by the Council which though not part of adopted policy, forms part of the evidence base for the emerging local plan - indicates however that the likely impact on a scheme being required to be car-free is between 0.48% to 3.92% of gross development value in areas with a PTAL rating of 4 and above, with the average impact on gross development value being 1.89%. This contrasts considerably with the £700,000 which is claimed by the applicant to have resulted by way of additional financing fees. It is also noteworthy that the figure of £700,000 put forward is not substantiated.
- 2.18 Attention is also drawn to findings of the Camden Local Plan Evidence Report for Car-Free Development (February 2016) that where car parking is not required to be provided as part of a scheme, this would allow for more space to deliver larger residential units and more amenity space, which would increase the likely revenues that could be generated. There would also be



cost savings associated with not delivering car parking, which in the case of basements in particular could be very significant. It is possible therefore that the losses incurred by the designation of the scheme as car-free could have been recouped somewhat in avoiding the costs associated with providing car parking. Whilst it is acknowledged that viability can vary on a case by case basis the data and findings from the Camden Local Plan Evidence Report for Car-Free Development (February 2016) do undermine the applicant's contentions regarding financial viability. Again, impacts on financial viability are merely asserted within the covering letter without any evidence provided in support, and as such these arguments should be afforded little weight.

- 2.19 As regards the data and analysis provided within the Parking Study, Camden does not support the argument as presented by the applicant to remove the car-free status of the scheme and the study provides no evidence that would change this position. Policy DP18 makes clear that 'Camden will expect development in these areas (Town Centres) to be car-free, and will resist the inclusion of general car parking unless supported by a Transport assessment or other compelling

justification'. The analysis and data provided within the Parking Study do not make a compelling case, rather they acknowledge that accessibility by means of public transport is high. Consequently, the results of the Parking Study would not be considered to outweigh the policy reasons for refusal and the Council's management of the wider impacts of private vehicle use.

### **3. Conclusion**

- 3.1 The application for a new dwelling house under reference 2009/4045/P was approved subject to the Section 106 Legal Agreement including the car-free clause 4.1. It was considered in 2010 when the application was approved that the scheme required such a clause, given its accessibility to public transport, as indicated by the site's 6a PTAL rating. It must be stressed that the need for car-free development has only become more pressing since the grant of permission in 2010. As such the Section 106 Legal Agreement that designated the residential property as car-free remains fully policy compliant.
- 3.2 The Council's position is furthered by Policy DP18 which states unequivocally that the Council will seek to ensure that developments provide the minimum necessary car parking provision. The Council will expect development to be car-free in Town Centres including that of Finchley Road, which the site falls within, and other areas within Controlled Parking Zones that are easily accessible by public transport. Removing the car-free obligation from this development would go against the explicit guidelines of DP18 and so is unsupportable.
- 3.3 Camden rejects the arguments as presented to remove the car-free status of the new house at 1 Trinity Walk and no evidence has been submitted that would change this position. The Council would lay emphasis on the clear guidance CPG7 which states that 'legal agreements will be used to maintain car-free ... development over the lifetime of a scheme' Thus the obligation securing this residential unit as car-free continues to be fully supported..

### **4. Recommendation**

- 4.1 Refuse Section 106A application.