

Date: 31<sup>st</sup> May 2017  
Our ref: 2016/1445/P  
Your ref: APP/X5210/W/17/3171930  
Contact: Rob Tulloch  
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Dear Mr Nash,

**Re: Appeal by Mr Derek Savage**  
**Site Address: 6 Stukeley Street, LONDON, WC2B 5LQ**

I enclose the Council's statement in support of the decision to refuse the above application.

The statement is divided into the following sections:

1. Proposal
2. Site and Surroundings
3. Relevant Planning History
4. Planning Policy Framework
- 6 The Council's Case and Comments on Grounds of Appeal
- 6 Other Matters
7. Conclusion
8. The Case with Regard to Section 106 Obligations
- 9 Suggested conditions

Appendix 1 Local Plan (Adoption Draft)  
Appendix 2 Council's Basement Webpage  
Appendix 3 Appeal Decision 1A Glastonbury Street  
Appendix 4 Archaeological Priority Area  
Appendix 5 Draft Section 106 Agreement

Yours sincerely,

Rob Tulloch  
Senior Planning Officer  
Planning Solutions Team



## **1 Proposal**

- 1.1 Planning permission was sought for the erection of 2x dwellings following the demolition of the existing dwelling.
- 1.2 The existing house is single storey and is identified as making a positive contribution to the character and appearance of the Seven Dials Conservation Area. The proposed houses would comprise 2x bedrooms each set over four floors including a basement and mansard.
- 1.3 The application for planning permission (reference 2016/1445/P) was submitted to the Council on 15<sup>th</sup> March 2016 and described by the Council thus:

*Demolition of an existing single storey house and erection of two four storey, 2 x bedroom dwelling houses including basement excavation.*

- 1.4 The application was registered on 11<sup>th</sup> April 2016 and refused under delegated powers on 10<sup>th</sup> August 2016.
- 1.5 The officer's report and the decision notice were submitted to the Planning Inspectorate along with the questionnaire.

The Decision Notice and some issues

- 1.6 The Council's decision refers to six reasons for refusal. The Council wishes to withdraw reason for refusal number 5 which relates to wheelchair accessibility. The Council would also like to bring to the Inspector's attention that an additional reason for refusal was omitted in error from the decision notice: this reason relates to basement development and is expanded on in paragraphs 5.47 – 5.53. The appellant has been aware of this issue throughout the application process.

## **2 Site and Surroundings**

- 2.1 The site comprises a single storey 19<sup>th</sup> century dwelling on the south west side of Stukeley Street. Stukeley Street is a narrow single lane carriageway branching off from Macklin Street then turning toward Drury Lane. As it heads south west it crosses Smarts Place where it becomes a shared surface restricting vehicular access to loading only. As it reaches the application site it becomes pedestrian only with a row of young trees leading the way to Drury Lane.
- 2.2 The site forms part of a group of modest historic buildings, nos. 2 and 4 are two storeys and no. 8 on the corner is two storeys with a mansard roof. Facing the site is Goldsmith Court a five storey modern block of flats, and heading back up Stukeley Street the buildings are larger commercial buildings of 3 to 5 storeys in a variety of uses, until the street turns toward Macklin Street where the scale reduces.
- 2.3 The site lies within sub-area 3 of the Seven Dials Conservation Area (which is also known as the Covent Garden Conservation Area). No. 6 is identified as making a

positive contribution to the character and appearance of the conservation Area alongside numbers 2, 4, 8, 10, 12 and 14.

- 2.4 The site is within the Central London Area and has a PTAL rating of 6b (Excellent). The site is also within an archaeological priority area and within local constraints for slope stability and groundwater.

### 3. Planning History

9670 - Change of use to offices for professional use for a limited period of ground floor of 6 Stukeley Street, previously used for storage, Granted October 1970.

24348 – Use as a 4 person flat – Granted April 1977.

### 4. Planning Policy Framework

#### National Planning Policy Framework 2012

- 4.1 The NPPF sets out the Government's planning policies and how these are expected to be applied. It denotes at paragraphs 6 and 7 that the planning system should contribute to the achievement of sustainable development, which has three mutually dependent dimensions: economic, social and environmental.
- 4.2 Although there is a presumption in favour of sustainable development (paragraph 14) the NPPF clearly states at paragraph 12 that the starting point for decision making is the development plan. The relevant sections are listed below:

Section 4 (Promoting sustainable transport) 29, 30, 32

Section 7 (Requiring good design) 56, 58, 61, 64

Section 10 (Climate change) 93-96

Section 12 (Conserving and enhancing the historic environment) 126, 128, 129, 131, 132, 134, 135, 137, 138

#### Development Plan

- 4.3 For the purposes of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the current development plan for the site comprises:
- The London Plan (The Spatial Development Strategy for London Consolidated with Alterations Since 2011) (adopted March 2016);
  - Camden Core Strategy (adopted November 2010);
  - Camden Development Policies (adopted November 2010)
  - Camden Local Plan (due to be adopted 26<sup>th</sup> June 2017)
- 4.4 The Appeal must be determined in accordance with the Development Plan unless material considerations indicate otherwise

#### London Plan March 2016

4.5 At the time of the decision the adopted regional plan was the London Plan which was adopted in March 2016. The following policies which are relevant to the appeal.

- 3.4 Optimising housing potential
- 3.5 Quality and design of housing developments
- 5.3 Sustainable design and construction
- 6.3 Assessing effects of development on transport capacity
- 6.9 Cycling
- 6.10 Walking
- 6.13 Parking
- 7.4 Local
- 7.5 Public realm
- 7.6 Architecture
- 7.8 Heritage assets and archaeology

#### Local Development Plan

4.6 At the time of the Council's decision, and at the time of the submission of the appeal, the Development Plan for the purposes of Section 38(6) of the Planning and Compulsory Purchase Act 2004 was the Core Strategy and Development Policies of the London Borough of Camden Local Development Framework.

4.7 The plans were adopted in November 2010 and should be given full weight. The policies of relevance to the appeal site, having regard to all material considerations, are listed below. Extracts of these policies have been provided with the appeal questionnaire.

#### Core Strategy 2010

- CS1 Distribution of growth
- CS5 Managing the impact of growth and development
- CS6 Providing quality homes
- CS11 Promoting sustainable and efficient travel
- CS14 Promoting high quality places and conserving our heritage
- CS19 Delivering and monitoring the Core Strategy
- DP2 Making full use of Camden's capacity for housing
- DP5 Homes of different sizes
- DP6 Lifetime Homes and wheelchair homes
- DP16 The transport implications of development
- DP17 Walking, cycling and public transport
- DP18 Parking standards and the availability of car parking
- DP19 Managing the impact of parking
- DP20 Movement of goods and materials
- DP21 Development connecting to the highway network
- DP22 Promoting sustainable design and construction
- DP23 Water
- DP24 Securing high quality design
- DP25 Conserving Camden's heritage
- DP26 Managing the impact of development on occupiers and neighbours
- DP27 Basements

## Local Plan 2017

- 4.8 The Camden Local Plan will replace the Core Strategy and Development Policies on 26<sup>th</sup> June 2017, at this point the Local Plan will become a formal part of Camden's development plan, fully superseding the Core Strategy and Development Policies, and having full weight in planning decisions.
- 4.9 Initial consultation on the draft Local Plan was carried out in February 2015. In June 2016 the Council submitted the Plan and supporting documents to the Secretary of State for Communities and Local Government for independent examination. Consultation on proposed modifications to the Submission Draft Local Plan took place from 30 January to 13 March 2017.
- 4.10 The Inspector's report on the Local Plan was published on 15 May 2017 and concludes that the plan is 'sound' subject to modifications being made to the Plan. While the determination of planning applications should continue to be made in accordance with the existing development plan until formal adoption, substantial weight may now be attached to the relevant policies of the emerging plan as a material consideration following publication of the Inspector's report, subject to any relevant recommended modifications in the Inspector's report.
- 4.11 The relevant policies are as follows, and the full extracts from the Adoption Draft incorporating the Inspector's modifications are to be found in appendix 1.

H1 maximising housing supply  
H4 maximising the supply of affordable housing  
H6 Housing choice and mix  
A1 Managing the impact of development  
A4 Noise and vibration  
A5 Basements and lightwells  
CC1 Climate change mitigation  
CC2 Adapting to climate change  
CC3 Water and flooding  
D1 Design  
D2 Heritage  
T1 Prioritising walking, cycling and public transport  
T2 Car-free development and limiting the availability of parking

## Supplementary Planning Guidance

- 4.12 Camden Planning Guidance documents were originally approved by the Council on September 2011. Following further public consultations the Council formally adopted amendments to the Camden Planning Guidance documents in 2013, 2014, 2015 and 2016. The current versions are below, and the relevant sections were submitted with the Council's questionnaire.

CPG1 Design – (July 2015) 3.14 – 3.26, 4.6 – 5.18  
CPG2 Housing – (May 2016) 4.20 – 4.30 5.15-5.42  
CPG4 Basements & Lightwells (July 2015)

CPG6 Amenity – (2011) - 6.1- 6.18, 7.1 – 7.11, 8.1 – 8.20  
CPG7 Transport (2011) –5.3 - 5.10, 9.4 – 9.12  
CPG8 Planning Obligations –3.3 – 3.8, 6.1-6.14

### Conservation Area Statement

Seven Dials (Covent Garden) Conservation Area Statement (adopted 1998)

London Plan Housing Supplementary Planning Guidance (2016)

### The Council's case

5. The Council's case is set out in the delegated report sent with the Questionnaire and is not repeated in full here. The following addresses the grounds of appeal.

### **Comments on appellant's grounds for appeal**

- 5.1 In stating their case, the appellant contends that the Council has no objection to a number of issues (para 4.3). This is not the Council's position.
- 5.2 In terms of the principle of redeveloping the site, the building is identified as making a positive contribution to the character and appearance of the Seven Dials Conservation Area, Development Policy DP25 clearly states that in order to maintain the character of Camden's conservation areas, the Council will "c) prevent the total or substantial demolition of an unlisted building that makes a positive contribution to the character or appearance of a conservation area where this harms the character or appearance of the conservation area, unless exceptional circumstances are shown that outweigh the case for retention" this is repeated in Local Plan policy D2 which states "The Council will seek to protect other heritage assets including non-designated heritage assets".
- 5.3 The third reason for refusal is overlooking. Whilst the wording of the reason refers to the amenity of adjoining occupiers, any overlooking would be mutual and therefore also harm the amenity of future occupiers of the appeal site. As such, it is not considered that the standard or quality of the proposed residential accommodation would be acceptable as it has not been demonstrated that future occupiers would have an acceptable level of privacy.
- 5.4 Basement development within the borough is subject to rigorous scrutiny, as such there are specific policies and supplementary guidance that deal solely with basements. Whilst the provision of a basement may be acceptable in principle it needs to satisfy the relevant policies and guidance, demonstrating that a proposed basement will not harm the structural integrity of a host building, or neighbouring buildings, or have an adverse impact on the local water environment. This has not been proven to the Council's satisfaction, nor has the basement information been independently assessed. This is clearly referred to in the delegated report, but unfortunately omitted from the decision notice in error.
- 5.5 Noise and disturbance from construction can create considerable impacts on amenity and the local transport network. The appellant acknowledges that this and suggests this

can be secured by condition. The Council's believes a section 106 agreement is more appropriate.

- 5.6 The applicant then addresses each reason for appeal separately:

Reason no. 1

- 5.7 The proposed demolition of the single storey building and replacement dwelling houses by virtue of their height, bulk, mass and detailed design would result in harm to the group of buildings which make a positive contribution to the Conservation Area, and harm the setting, character and appearance of the Conservation Area contrary to policies CS5 (Managing the impact of growth and development) and CS14 (Promoting high quality places and conserving our heritage) of the London Borough of Camden Local Development Framework Core Strategy, policies DP24 (Securing high quality design) and DP25 (Conserving Camden's heritage) of the London Borough of Camden Local Development Framework Development Policies.

*Comments on the appellant's case*

- 5.8 The site is identified in the Seven Dials Conservation Area Statement as making a positive contribution to the character and appearance of the conservation area. The appellant gives little weight to this and subsequently their assessment of the loss of a non-designated heritage asset is inadequate. The appellant states (para 4.5) that the Heritage Statement by Milan Babic Architects sets out the history and significance of the heritage asset (Conservation area), however the only reference to the building being a positive contributor is in para 2.2 of the Heritage Statement where it is dismissed as having low architectural merit. The assessment of the impact of the proposal on the designated heritage asset is limited with no assessment of the level of harm the demolition of a positive contributor would cause to the heritage asset, or any appraisal of the public benefits of the proposal.
- 5.9 Paras 133 and 134 of the NPPF state that "Where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss" (133) and "Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use." (134)
- 5.10 The appellant did submit a more detailed "Heritage Note" during the course of the application, apparently aware that demolition of a positive contributor would require some form of justification, however whilst this identifies the significance of the heritage asset more thoroughly it is still not considered to provide sufficient justification. This assessment considers that the contribution of the site to the surrounding area is limited due to the larger surrounding buildings (4.5), but does not seem to acknowledge that the character of the immediate area is formed by the small scale of the buildings in the group and the narrowness of the street and surrounding streets. It also misleadingly states that the site is not listed individually, but grouped with the neighbouring buildings

and that the contribution of the site to the conservation area stems from the contrast with the taller surrounding 20<sup>th</sup> century development (4.7).

- 5.11 The site is listed individually in the conservation area statement which explicitly refers to nos. 4, 6, 8, 10, 12, 14, the City Lit, and 20-22. These are all separate buildings of differing ages and design, and can loosely be called a group. Each building contributes to the conservation area in terms of historic value and design, although it could also be considered a group in terms of age, scale and proximity. These factors make up their contribution to the conservation area, not the contrast in scale with the new development, which makes little or no contribution to their value.
- 5.12 The heritage note correctly refers to para 134 of the NPPF and Planning Practice Guidance and that not all aspects of a conservation area will necessarily contribute to its significance, but one of the characteristics of the conservation area is its variety of styles.
- 5.13 The appellant states at para 4.6 that “Stukeley Street is characterised by a wide variety of building styles and in contrast to other parts of the conservation area there is no uniformity in the street scene whether in terms of building heights, proportions, fenestration, architectural detailing, building materials or colour” and at para 4.8 alludes to the single storey building’s incongruity amongst its larger neighbours. This demonstrates a poor appreciation of the conservation area and the immediate context. The group that the appeal site forms a part of (nos. 4-14 Stukeley Street) is indeed varied in terms of design, but the buildings share a common ancestry which can be traced back to the 17<sup>th</sup> century and it is this variety which is not only part of the character and significance of the immediate area, but is common across the conservation area reflecting its age and myriad of uses. As the Seven Dials conservation area statement explains “The special character of the Conservation Area is found in the range and mix of building types and uses and the street layout. The character is not dominated by one particular period or style of building but rather it is their combination that is of special interest.” (p. 11), furthermore the buildings on the south side at this end of Stukeley Street are largely two storey “which add contrast and interest by their lower roof lines and cottage appearance” (p.17), and when viewed in elevation in the context of its neighbours, nos. 2 and 4 Stukeley Street, the appeal site presents a coherent and balanced step down from Drury Lane.
- 5.14 The appellant concludes (para 4.13) that despite the demolition of a building that makes a positive contribution to the character and appearance of the conservation area and, with no proper justification, no harm would be caused to the significance of the heritage asset. As a footnote the appellant cites the provision of additional housing to be a public benefit, but this is contested as the site already provides housing.

#### *The Council’s case*

- 5.15 The Council’s case in relation to design and heritage is largely set out in the delegated report. The Council considers the appeal site to be an important component of an *ad hoc* agglomeration of humble, higgledy-piggledy structures of commercial origins, which apparently evolved through the 19<sup>th</sup> century.



- 5.16 The Seven Dials conservation area statement describes this part of Stukeley Street as having a “utilitarian” and “commercial/industrial feel” giving a “mews quality”. The “lower roof lines and cottage appearance” add contrast and lend interest.
- 5.17 A positive contributor is one that, while not listed, is important in its own right and makes an important contribution to the character and appearance of the conservation area. While of little design value in itself, Number 6’s small scale, among its small-scale neighbours, creates the detailed fine grain of this part of the Seven Dials Conservation Area and, as well as those neighbours, it is considered to be a positive contributor. Yet the proposal will lead to its total demolition.
- 5.18 The council will normally expect all buildings that make a positive contribution to be retained. Paragraph 138 of the NPPF states that “loss of a building that makes a positive contribution should be treated either as substantial harm under para 133 or less than substantial harm under para 134. Since there is no public benefit and the site is manifestly already in beneficial use, the tests for neither paragraph are met.

#### Excessive height and bulk

- 5.19 The proposal would triple the existing building in height, from one storey to three, greatly increasing its bulk and the sense of enclosure in Stukeley Street, to the detriment of the conservation area, which at this point is praised for its “mews quality”. Views along Stukeley Street in both directions, which are relatively wide and open owing to the lowness of buildings in this block, would be harmed by the insertion of significantly taller new buildings.

#### Loss of roof line

- 5.20 Initially, the two proposed houses were identical, merging with what is currently a prominent corner building to form a solid three-storey block across three plots. A revision has very slightly lowered one of the houses’ ridgelines, but the proposed mansards would still essentially line up with the corner building, de-emphasising that corner building and essentially homogenising the skyline. This would detract from the character and appearance of this part of the conservation area.

#### Inappropriate typology

- 5.21 The typology is also considered inappropriate for this part of the conservation area. Despite a revision in which the amount of glass is reduced and asymmetry is introduced, the design still reads as a pair of modern townhouses with large, glazed apertures, in contrast to the single modest, austere, workshop-type/mews-type buildings described in the conservation area statement. As such, the typology proposed would change from the “commercial/industrial” character of this part of the conservation area, as described above to an overtly domestic one, to its detriment.
- 5.22 As such, for the reasons stated above, the proposal would result in the loss of a building that makes a positive contribution to the of the Seven Dials conservation area without sufficient justification or public benefit and the proposed buildings by virtue of their height, bulk, mass and detailed design would harm the character and appearance group

of buildings they form a part of and would harm the setting, character and appearance of the Seven Dials conservation area.

### Reason 2

- 5.23 The proposed dwellings due to their height, bulk, mass and location would result in a harmful sense of enclosure and overbearing to adjoining residential occupiers on Goldsmith Court, contrary to policy CS5 (Managing the impact of growth and development) of the London Borough of Camden Local Development Framework Core Strategy and policy DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Policies.

#### *Comments on the appellant's case*

- 5.24 The appellant states that buildings of three storeys or more are the norm in the area and that a single storey building of 4.5m in height is atypical, and that the proposed dwellings at 8.5m in height would not be overbearing or dominant (para 4.15). It is also stated that adjoining properties would not experience significant loss of daylight or sunlight.
- 5.25 Nos. 2, 4, 6 and 8 Stukeley Street are two storeys in height, although no. 8 does have a mansard roof. However, the reason for refusal explicitly refers to a loss of amenity through a harmful sense of enclosure and overbearing rather than any loss of light.

#### *The Council's case*

- 5.26 Stukeley Street is a narrow street, approximately 6 metres at its widest between Goldsmith Court and the existing dwelling. This severely constrains significant redevelopment of the site with the need to protect the amenity of neighbouring occupiers, especially residents of Goldsmith Court directly opposite.
- 5.27 The proposal to double the height of the existing building would detrimentally impact on outlook from the habitable room windows in Goldsmith Court, creating a harmful sense of enclosure to the flats on the ground, first and partial elements of the second floor.
- 5.28 As mentioned, the group of buildings which the application site forms a part of are largely two storey, with the application site only a single storey, and due to their apparent low floor to ceiling heights outlook from Goldsmith Court is relatively unobstructed looking over the roofs of the adjacent properties, particularly the appeal site.
- 5.29 Policy DP26 states that the Council will protect the quality of life of neighbours by only granting permission for development that does not cause harm to amenity, and specifically refers to outlook (DP26 (b)). This is repeated in Local Plan policy A1, with outlook referred to at A1(e).
- 5.30 By increasing the height of the appeal site from 5.6m to over 9m the new buildings would be higher than the second floor windows of Goldsmith Court, thereby blocking views from the first and second floors. Whilst views themselves are not specifically protected, outlook is, and the physical presence of the new building at such proximity to the

windows of Goldsmith Court would undoubtedly lead to a sense of enclosure and oppression.

### Reason 3

- 5.30 The proposed dwellings would result in direct overlooking of habitable room windows on Goldsmith Court thereby harming the privacy of adjoining occupiers contrary to policy CS5 (Managing the impact of growth and development) of the London Borough of Camden Local Development Framework Core Strategy and policy DP26 (Managing the impact of development on occupiers and neighbours) of the London Borough of Camden Local Development Framework Development Policies.

#### *Comments on the appellant's case*

- 5.31 The appellant states that the existing buildings on the south side of Stukeley Street are one, two and three storeys with windows at ground, first and second floors separated from Goldsmith Court by a distance of 3.5m - 6m. The statements notes that the distance between the first and second floor windows of the proposed houses and Goldsmith Court would be less than the existing distance between the first floor windows at nos. 2 and 4 Stukeley Street, due to the narrowing of Stukeley Street as it meets Drury Lane, and that the distance between the appeal site is limited, but not unusual for a dense inner city location, where the expectation is that opposing windows may be closer to one another than more spacious suburban contexts.
- 5.32 It is not necessary to take the windows of 2 and 4 Stukeley Street into account and suggest precedent. Goldsmith court is admittedly closer to nos. 2 and 4 Stukeley Street, but was designed to prevent overlooking. The issue for consideration is whether the new dwellings would introduce new opportunities for overlooking Goldsmith Court which would result in an unacceptable loss of privacy.
- 5.33 The narrowness of Stukeley Street may have been common in the 17<sup>th</sup> century, but it is not common in central London now, in fact this is one of the characteristics of the immediate area that contributes to its unique character. It is not considered common for principal elevations to be so close to each other, particularly when opposing windows are being considered.
- 5.34 Camden Planning Guidance (CPG6 – Amenity) states that there should be a minimum distance of 18m between the windows of habitable rooms that directly face each other (7.4) and a separation of 6m falls well short of this. It is accepted that in a central London setting that a separation of less than 18m may be acceptable in certain circumstances, but in this instance the difference between what is acceptable and what is proposed is so great, and the resulting distance so short, that such a distance would irrefutably introduce an unacceptable degree of overlooking for residents of Goldsmith Court, as well as creating opportunities for mutual overlooking.

### Reason 4

- 5.35 The proposed dwellings would fail to provide four fully enclosed, secure and step free cycle parking spaces thereby failing to encourage cycling as a sustainable and efficient mode of transport contrary to Policies CS11 (promoting sustainable and efficient travel)

of the London Borough of Camden Local Development Framework Core Strategy and Development Policy DP18 ( parking standards and limiting the availability of car parking) of the London Borough of Camden Local Development Framework Development Policies.

*Comments on the appellant's case*

- 5.36 The appellant contends that it is not practical to provide external cycle storage space, or any other amenity space, due to the constraints of the site and the need to preserve the building line, and that the requirement to provide external secure storage is outweighed by the requirement to protect the character of the conservation area. However the appellant does suggest that some cycle storage could be provided internally at basement level and secured by condition.

*The Council's case*

- 5.37 Policy DP18 requires developments to meet the Council's minimum cycle standards and is supported by Camden Planning Guidance (CPG7 – Transport) which advises on design and location. Local Plan policy T1 similarly requires new development to provide adequate cycle storage and refers to the minimum standards outlined in table 6.3 of the London Plan. The London Plan requires 2 spaces per dwelling (of two or more bedrooms), as such 4x spaces would be required in total.
- 5.38 The Council accepts that external storage is not feasible, and therefore due to the constraints of the site a degree of flexibility would be reasonable. However it is clear that it is feasible for the redevelopment proposed to provide some easily usable cycle storage. The delegated report considers that reconfiguration of the ground floor could provide some cycle storage, and CPG7 advises that cycle storage should be at ground floor level in order to be accessible so that users of a development are more likely to use bicycles to travel to and from a site. Basement storage would not be policy compliant, but the provision of any cycle storage would be required in line with the relevant policies which do not appear to make exceptions for small site with the inference being that cycle storage should be considered at the beginning of the design stage.
- 5.39 If the Inspector were minded to allow the appeal details of any cycle storage would need to be secured by condition to ensure it is practical and to ensure its implementation and retention.

Reason 5

- 5.40 The proposed development would fail to provide an acceptable standard of accessibility for wheelchair users contrary to policies CS6 (Providing quality Homes) of the London Borough of Camden Local Development Framework Core Strategy and DP6 (Lifetime homes and wheelchair housing) of the London Borough of Camden Local Development Framework Development Policies. Building Regulation M4 (2) 'Accessible and adaptable dwellings' is a requirement of policy 3.8 (Housing choice) of the London Plan Minor Alterations and the proposed development has failed to meet this requirement.
- 5.41 As mentioned at the beginning of this statement, the Council no longer wishes to pursue this reason for refusal.

## Reason 6

- 5.42 The proposed development, in the absence of a legal agreement securing car-free housing, would be likely to contribute unacceptably to parking stress and congestion in the surrounding area, contrary to policy CS11 (Promoting sustainable and efficient travel) of the London Borough of Camden Local Development Framework Core Strategy (2010) and policies DP18 (Parking standards and the availability of car parking) and DP19 (Managing the impact of parking) of the London Borough of Camden Local Development Framework Development Policies.

### *The appellant's case*

- 5.43 The appellant states that the Council did not commence section 106 negotiations during the application process, but had they done so the applicant would have been likely to agree to such an undertaking.
- 5.44 However, the appellant goes on to say that prohibiting the issue of residents' parking permits could be secured by condition, and includes a decision from the London Borough of Islington as an example.

### *The Council's case*

- 5.45 Policy DP18 expects all development in the Central London Area to be car-free. The policy states that for car-free housing the Council will b) not issue on-street parking permits; and c) use a legal agreement to ensure that future occupants are aware they are not entitled to on-street parking permits. Policy T2 (Parking and car-free development) of the Local Plan requires all development in the borough to be car-free.
- 5.46 Thus, both parties are in agreement that the development should be car-free. The only issue is whether a condition or legal agreement is the most appropriate mechanism to secure this. Regardless of the practice of other boroughs, it has long been the Council's standard practice to secure car-free agreement via the section 106 process. This is supported by the relevant policies and guidance. The council's case is amplified below under section 7 regarding recommended S106 matters.

### Additional reason for refusal – Basement impact

- 5.47 As stated at the beginning of this statement an additional reason for refusal relating to non-compliance with the Council's basement policies and guidance was omitted from the decision notice in error.
- 5.48 Basement development, particularly in built up areas has the potential to affect the structural stability of a host building and neighbouring buildings, as well as local water environment. As such, policy DP27 (Basements and lightwells) requires an assessment of the scheme's impact on drainage, flooding, groundwater and structural stability, where appropriate. Camden Planning Guidance (CPG4 – Basements and lightwells) requires applicants to submit a Basement Impact Assessment (BIA) compiled by relevantly qualified individuals to demonstrate a proposal will not cause harm to the built

and natural environment and local amenity. Local Plan policy A5 (Basements) also requires the submission of a BIA.

- 5.49 As planning officers are not engineers, BIA's must be independently assessed. This procedure is outlined in CPG4 which states that "In order to provide the Council with greater certainty over the potential impacts of proposed basement development, we will expect an independent verification of Basement Impact Assessments to be funded by the applicant." (3.33)
- 5.50 CPG4 advises that independent verification will be required under certain circumstances, one of these being where the proposed basement development is located within an area of concern regarding slope stability, surface water or groundwater flow. The site is identified as being in an area of concern for slope stability and groundwater flow. The Council has chosen Campbell Reith as its single framework provider for the audit service. Further details of how BIA's are assessed is published on the Council's website and the relevant page attached as appendix 2.
- 5.51 The applicant was asked to fund the independent assessment of the BIA, but declined to do so and this is referred to in the delegated report. As such, as the Basement Impact Assessment has not been independently audited, it has not been demonstrated that the proposed development could be implemented without harm to the built or natural environment in line with the relevant policies and guidance. Therefore, the Council respectfully requests that the following reason for refusal be added.

*The Applicant has failed to demonstrate that the proposed basement development would maintain the structural stability of the building and neighbouring properties and avoid adversely affecting drainage and run-off or causing other damage to the water environment avoid cumulative impacts upon structural stability or the water environment in the local area contrary to policy CS5 (Managing the impact of growth and development) of the London Borough of Camden Local Development Framework Core Strategy and policies DP23 (Water) and DP27 (Basements and lightwells) of the London Borough of Camden Local Development Framework Development Policies.*

- 5.52 The above reason for refusal formed part of a decision to refuse permission for the erection of a three storey plus basement dwelling in the borough. The decision was appealed (APP/X5210/W/16/3165335) and the Inspector concluded that such verification would be required given the topography of the area and the fact that the basement would cover the whole site. He acknowledged that there was little point in the applicant going to the expense of commissioning an independent review once they were aware that their scheme was being refused, but that such verification could not be secured by condition as it could flag up unexpected costs which could make a scheme unviable or technically impossible (paras. 24-25). A copy of the appeal decision is attached at appendix 3.
- 5.53 Were the Inspector minded to allow the appeal, the Council would seek a condition requiring details of a suitably qualified chartered engineer, with membership of an appropriate professional body, to be appointed to inspect, approve and monitor the critical elements of both permanent and temporary basement construction works

throughout their duration to ensure compliance with a design which has been checked and approved by a building control body

## **6 Other matters**

### Archaeology

- 6.1 During the course of the appeal it became apparent that the site is within the London Suburbs Archaeological Priority Area (see appendix 4), as such there is a requirement to notify the Greater London Archaeological Advisory Service (GLAAS) of Historic England. After consultation with the Inspectorate it was agreed that GLAAS would be notified of the appeal.
- 6.2 The National Planning Policy Framework (Section 12) and the London Plan (Policy 7.8) emphasise that the conservation of archaeological interest is a material consideration in the planning process. Paragraph 128 of the NPPF says that applicants should be required to submit appropriate desk-based assessments, and where appropriate undertake field evaluation, to describe the significance of heritage assets and how they would be affected by the proposed development. This information should be supplied to inform the planning decision.
- 6.3 Development policy DP25 (Preserving Camden's heritage) states that "The Council will protect remains of archaeological importance by ensuring acceptable measures are taken to preserve them and their setting, including physical preservation, where appropriate." Local Plan policy D2 (Heritage) also states that the Council will preserve Camden's rich and diverse heritage assets.
- 6.4 If archaeological safeguards do prove necessary, these could involve design measures to preserve remains in situ or where that is not feasible archaeological investigation prior to development. If a planning decision is to be taken without the provision of sufficient archaeological information then the failure of the applicant to provide adequate archaeological information could be a reason for refusal.
- 6.5 Unfortunately no archaeological assessment has been submitted and therefore it would be premature to grant permission for development before an assessment has been carried out and duly considered by GLAAS. If the Inspector allows the appeal, a condition would be required preventing any development until a scheme of archaeological investigation has been submitted to the Council and reviewed by GLAAS.

### Affordable housing

- 6.6 The Local Plan will be adopted on 26<sup>th</sup> June 2017. Local Plan policy H4 (Maximising the supply of affordable housing) is a departure from the previous plan in that it requires an affordable housing contribution for all schemes that provide 1 or more additional homes and involve an addition of 100sqm (GIA) or more of residential floorspace. As the proposal would provide two new homes with an uplift of 139sqm (GIA) an affordable housing contribution would be required.

- 6.7 The contribution is calculated using the target floorspace multiplied by £2,650 per sqm (the level of contribution per sqm described in CPG8). Policy H4 uses a sliding scale to calculate the target floorspace. The target starts at 2% for the first 100sqm GIA of floorspace which is considered to be capacity for one additional home. This increases on a 'straight-line' basis with each additional 100sqm (i.e capacity for a further additional dwelling) increasing the target by 2%. Thus the target for a scheme with capacity for an additional dwelling (139sqm rounded to the nearest 100) would be 2% of the proposed floorspace. As the calculation relies on CPG8, which has not yet been updated to respond to the Local Plan, the target is applied to gross external area as opposed to gross internal area, so in this instance the target would be 2% of 170sqm (GEA) or 3.4sqm. Policy H4 acknowledges that smaller schemes cannot provide the target floorspace on site and requires a payment in lieu, which in this instance would be £9,010 (3.4sqm x £2,650).
- 6.8 As such, were the appeal allowed the appellant would be required to make an affordable housing contribution which would be secured by way of section 106 agreement.

#### Sustainability

- 6.9 London Plan policy 5.2 requires that all developments make the fullest contribution to minimising CO2 emissions in accordance with the energy hierarchy. LDF polices CS13 (Tackling climate change through promoting higher environmental standards) and DP22 (Promoting sustainable design and construction) and DP23 (Water) require development to incorporate sustainable design and construction methods. This is repeated in Local Plan policies CC1 (Climate change mitigation) and CC2 (Adapting to climate change) which aim to reduce borough wide CO2 emission by 27% by 2017 and 40% by 2020.
- 6.10 All applications should demonstrate that they meet sustainable design principles as noted in policy DP22. All applications must demonstrate this through the submission of a sustainability statement – the detail of which to be commensurate with the scale of the development. The sustainability statement should also demonstrate that the development is capable of achieving a maximum internal water use of 105 litres per day (5 litres for external water use).
- 6.11 if the Inspector is minded to allow the appeal, the Council would seek a condition requiring the development to achieve a maximum internal water use of 105litres/person/day, allowing 5 litres/person/day for external water use policies CS13 (Tackling climate change through promoting higher environmental standards), DP22 (Promoting sustainable design and construction) and DP23 (Water).

### **7. The Case with Regard to Section106 Obligations which are recommended should the Inspector allow the appeal.**

**The following four S016 matters are required to be secured in any planning permission.**

- 7.1 Planning obligations assist in mitigating the impact of unacceptable development to make it acceptable in planning terms. Planning obligations may only constitute a reason



for granting planning permission if they meet the tests that they are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind. These tests are set out as statutory tests in the Community Infrastructure Levy Regulations 2010 and as policy tests in the National Planning Policy Framework

### Car free housing

- 7.2 Policy DP18 states that the Council expects all development to be car free in the Central London Area to facilitate sustainability and to help promote alternative, more sustainable methods of transport. Local Plan policy T2 (Parking and car-free development) requires all development in the borough to be car-free. The requirement is also in accordance with key principle 4 of the National Planning Policy Framework (Promoting sustainable transport) and London Plan Policy 6.13 (Parking).
- 7.3 The appeal site is located in an area with excellent public transport accessibility (PTAL score of 6b). This site is also located within a Controlled Parking Zone (CPZ) which suffers from high levels of parking stress. As such the development should be secured as car free by the way of a legal agreement should the appeal be allowed.
- 7.4 A planning obligation is considered the most appropriate mechanism for securing the development as car free as it relates to controls that are outside of the development site and the ongoing requirement of the development to remain car free. The level of control is considered to go beyond the remit of a planning condition. Furthermore, a legal agreement is the mechanism used by the Council to signal that a property is to be designated as “Car Free”. The Council’s control over parking does not allow it to unilaterally withhold on-street parking permits from residents simply because they occupy a particular property.
- 7.5 The Council’s control is derived from Traffic Management Orders (“TMO”), which have been made pursuant to the Road Traffic Regulation Act 1984. There is a formal legal process of advertisement and consultation involved in amending a TMO. The Council could not practically pursue an amendment to the TMO in connection with every application where the additional dwelling (or dwellings) ought properly to be designated as car free. Even if it could, such a mechanism would lead to a series of disputes between the Council and incoming residents who had agreed to occupy the property with no knowledge of its car- free status.
- 7.6 Instead, the TMO is worded so that the power to refuse to issue parking permits is linked to whether a property has entered into a “Car Free” Section 106 Obligation. The TMO sets out that it is the Council’s policy not to give parking permits to people who live in premises designated as “Car Free”, and the Section 106 legal agreement is the mechanism used by the Council to signal that a property is to be designated as “Car Free”.
- 7.7 Further, use of a Section 106 Agreement, which is registered as a land charge, is a much clearer mechanism than the use of a condition to signal to potential future purchasers of the property that it is designated as car free and that they will not be able to obtain a parking permit. This part of the legal agreement stays on the local search in

perpetuity so that any future purchaser of the property is informed that residents are not eligible for parking permits.

- 7.8 The Car Free requirement complies with the CIL Regulations as it ensures that the development is acceptable in planning terms to necessarily mitigate against the transport impacts of the development as identified under the Development Plan for developments of the nature proposed. This supports key principle 4 of the National Planning Policy Framework: Promoting sustainable transport

#### Construction management plan

- 7.9 Due to the constraints of the site, primarily the narrowness of Stukeley Street and lack of vehicular access, it is considered that a Construction Management Plan is necessary in line with Development Policies policy DP20 (Movement of goods and materials) and DP26 (Managing the impact of development on occupiers and neighbours), Local Plan policy A1 (Managing the impact of development) and supplementary planning guidance CPG6 (Amenity), CPG7 (Transport) and CPG8 (Planning Obligations).
- 7.10 The Council considers such a plan should be secured by way of a section 106 agreement. Conditions can only lawfully be used to control matters on land within the developer's control. Many of the CMP provisions will relate to off-site requirements (particularly public highway, which is not land within the developer's control). As such, a Section 106 Agreement, rather than a condition, is the most appropriate mechanism.
- 7.11 An unacceptable condition would be one requiring loading and unloading and the parking of vehicles not to take place on the highway, as it purports to exercise control in respect of a public highway which is not under the control of the applicant. Conditions requiring works on land that is not controlled by the applicant, or that require the consent or authorisation of another person or body often fail the tests of reasonableness and enforceability. PPG (Use of Planning Conditions) Para 009.
- 7.12 It is also true that as a matter of planning practice in Camden the level of detail required and secured through a planning obligation is usually greater and more specific than through a condition. This is an important consideration in respect of a construction management plan which should be seeking to tailor requirements to managing the specific construction impacts arising from a particular development.
- 7.13 The CMP requirement complies with the CIL Regulations as it ensures that the development is acceptable in planning terms to necessarily mitigate against the transport impacts of the development as identified under the Development Plan for developments of the nature proposed.

#### Affordable housing

- 7.14 Were the Inspector minded to allow the appeal; a financial contribution would be sought in relation to the provision of affordable housing. It is not possible to secure any financial contribution by condition. PPG (Use of planning Conditions) Para 005 states that no payment of money or other consideration can be positively required when granting planning permission.

## Basement approval in principal

- 7.15 Were the Inspector minded to allow the appeal; a financial contribution would be sought for the sum of £1,800 for assessment by the Council's Highways Structural team of a Basement Approval in Principle Application. This is an application to the Council's Highways Structural team for an approval in principle of the construction of the basement (forming part of the Development) which is to be assessed by the Council with a view to ensuring that sufficient loadings are maintained at all times at the interaction of the development site and the public highway so as to ensure that the public highway is not compromised at any time during the construction phase or thereafter. As above, a financial contribution can only be secured by way of section 106 agreement.
- 7.16 The Council has provided the appellant with a draft section 106 agreement (appendix 5). It does not include the affordable housing contribution, which will be added in the next draft. As yet, the appellant has not commented on the legal agreement. The Council will update the inspector at the 'final comments' stage.

## **8 Community Infrastructure Levy**

- 8.1 If the appeal is allowed the proposed scheme would be liable for both the Mayoral CIL and Camden's own CIL as the development would result in the provision of more than one residential unit.

## **9 Conclusion**

- 9.1 Whilst housing is the priority of the London Plan and Camden's current and previous plans, it is considered that the harm of the proposal, and lack of supporting evidence, would not outweigh the provision of additional residential accommodation.
- 9.2 The scale and design of the proposed dwellings would lead to harm to the designated heritage asset where the immediate area is characterised by small scale historic buildings. Furthermore, the existing building is identified as making a positive contribution to the character and appearance of the Seven Dials Conservation Area and its loss has not been fully justified, nor is there any appreciable public benefit. Due to the fine grain of the site, any development on this site would be likely to have an adverse impact on the amenity of adjoining occupiers, and it is considered that the outlook and privacy of neighbours would be severely affected. It is accepted that some of the impacts of the scheme could be mitigated by way of condition or planning obligation, but such measures would not overcome the deficiencies of the scheme and the harm the proposal would cause. As such, the Inspector is respectfully requested to dismiss the appeal.

## **10 Suggested conditions**

- 9.1 If the Inspector is minded to allow the appeal it is recommended that following conditions should be imposed:
- 1 The development hereby permitted must be begun not later than the end of three years from the date of this permission.

Reason: In order to comply with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).

- 2 The development hereby permitted shall be carried out in accordance with the following approved plans: Design & Access statement, Heritage statement (Ref 841/2015 Rev A), Planning Statement, Daylight/sunlight Assessment (sep 2015), BIA Hydrogeology, GWPR1437, GWPR1437/BH, GWPR1437 Fig 1, GWPR1437 preliminary summary, Heritage Statement, 841/L01, JDD/SS-E3, JDD/SS-E4, JDD/SS-E1, JDD/SS-E2, M-PL-01, 841/200 Rev A, 841/201 Rev A, 841/202 Rev A, 841/203, Rev A 841/204 Rev A, 841/205 Rev A & 841/206 Rev A

Reason: For the avoidance of doubt and in the interest of proper planning.

- 3 Detailed drawings, or samples of materials as appropriate, in respect of the following, shall be submitted to and approved in writing by the local planning authority before the relevant part of the work is begun:
  - a) Details including sections at 1:10 of all windows (including jambs, head and cill), dormers and external doors;
  - b) Manufacturer's specification details of all facing materials (to be submitted to the Local Planning Authority) and samples of those materials (to be provided on site).
  - c) A sample panel of brickwork showing colour, texture, pointing and bonding

The relevant part of the works shall be carried out in accordance with the details thus approved and all approved samples shall be retained on site during the course of the works.

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policy CS14 of the London Borough of Camden Local Development Framework Core Strategy and policy DP24 of the London Borough of Camden Local Development Framework Development Policies, and policies D2 and D2 of the Local Plan 2017.

- 4 The development hereby approved shall achieve a maximum internal water use of 105litres/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.

Reason: To ensure the development contributes to minimising the need for further water infrastructure in an area of water stress in accordance with policies CS13 (Tackling climate change through promoting higher environmental standards), DP22 (Promoting sustainable design and construction) and DP23 (Water), and policies CC1 (Climate change mitigation) and CC2 (Adapting to climate change) of the Local Plan 2017.

- 5 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 and shall be retained and maintained thereafter.

Reason: To ensure 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) and DP22 (Promoting sustainable design and construction), and policies CC1 (Climate change mitigation) and CC2 (Adapting to climate change) of the Local Plan 2017.

- 6 Prior to first occupation of the development hereby approved, details of cycle storage shall be submitted to and approved by the local planning authority. The approved facilities shall be provided in their entirety prior to the first occupation of any of the new units, and permanently retained thereafter.

Reason: 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, and policy T1 of the Local Plan 2017.

- 7 No lights, meter boxes, flues, vents or pipes, and no telecommunications equipment, alarm boxes, television aerials, satellite dishes or rooftop 'mansafe' rails shall be fixed or installed on the external face of the buildings, without the prior approval in writing of the local planning authority.

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policy CS14 of the London Borough of Camden Local Development Framework Core Strategy and policies DP24 and DP25 of the London Borough of Camden Local Development Framework Development Policies and policies D1 and D2 of the Camden Local Plan Submission Draft 2016, and policies D2 and D2 of the Local Plan 2017.

- 8 The dwellings hereby approved shall be designed and constructed in accordance with Building Regulations Part M4 (2); evidence demonstrating compliance should be submitted to and approved by the Local Planning Authority prior to occupation.

Reason: To ensure that the internal layout of the buildings provide 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 and policy H6 of the Camden Local Plan Submission Draft 2016.

- 9 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.

Reason: To safeguard the appearance and structural stability of neighbouring buildings and the character of the immediate area in accordance with the requirements of policy CS14 of the London Borough of Camden Local Development Framework Core Strategy and policy DP27 of the London Borough of Camden Local Development Framework Development Policies, and policy A5 of the Camden Local Plan Submission Draft 2016.

- 10 Prior to the commencement of development a programme of archaeological investigation including the details of the suitably qualified investigating body to carry out such archaeological works as required shall be submitted to and approved in writing by the local planning authority. The development shall then only take place in accordance with such details as have been approved.

Reason: Important archaeological remains may exist on this site. Accordingly the Council wishes to secure the provision of archaeological investigation and the subsequent recording of the remains prior to development in accordance with the requirements of policy CS14 of the London Borough of Camden Local Development Framework Core Strategy and policy DP25 of the London Borough of Camden Local Development Framework Development Policies, and policy D2 of the Local Plan 2017.