



Appeal Statement

Prepared by Drawing and Planning Ltd.

March 2017

Planning Application Reference: 2015/2203/P

Address: 163 Sumatra Road, London, NW6 1PN

Planning Appeal on behalf of: Mr. Jeremy Stein

Appeal Proposal: Conversion of existing single family dwelling into 4 (2 x 1 bedroom and 2 x 2 bedroom) self-contained units with associated amenity, cycle storage and refuse provision

<u>Contents</u>	<u>Page</u>	
1.0	Introduction	3
2.0	Site and Area Analysis	5
3.0	Background to Appeal	7
4.0	Planning Policy Context	9
5.0	Grounds for Appeal	13
6.0	Conclusions	21

Appendices

- Appendix 1: Location Map
- Appendix 2: Extract from the Camden Policies Map
- Appendix 3: Photographs of the appeal site
- Appendix 4: (a) A copy of the draft decision notice for application ref 2015/2203/P*
(b) Site location map to accompany draft decision notice
- Appendix 5: A copy of the draft s106 agreement as issued by Camden Council
- Appendix 6: A copy of Camden's CPG8: Planning Obligations
- Appendix 7: Correspondence between the appellant's agent (DAP), mortgage lender (Birmingham Midshires) and Camden Council (Legal Services) in chronological order as per the following;
- (a) Initial letter from lender to agent
 - (b) Agent's email to Council regarding the lender's letter and Council's response
 - (c) Agent's response to first letter from lender
 - (d) Lender's (second) response letter to agent
 - (e) Agent's email to Council regarding lender's second letter and Council response to this
 - (f) Agent response to second letter from lender
 - (g) Third letter from lender to agent
 - (h) Email response from Camden Council Legal Services re BM third letter
 - (i) Agent response to third letter from lender

- (j) Lender fourth response letter to agent
- (k) Email response from Camden Council Legal Services re BM fourth letter

Appendix 8: 14-day Notice of Closure Letter issued by Camden Council

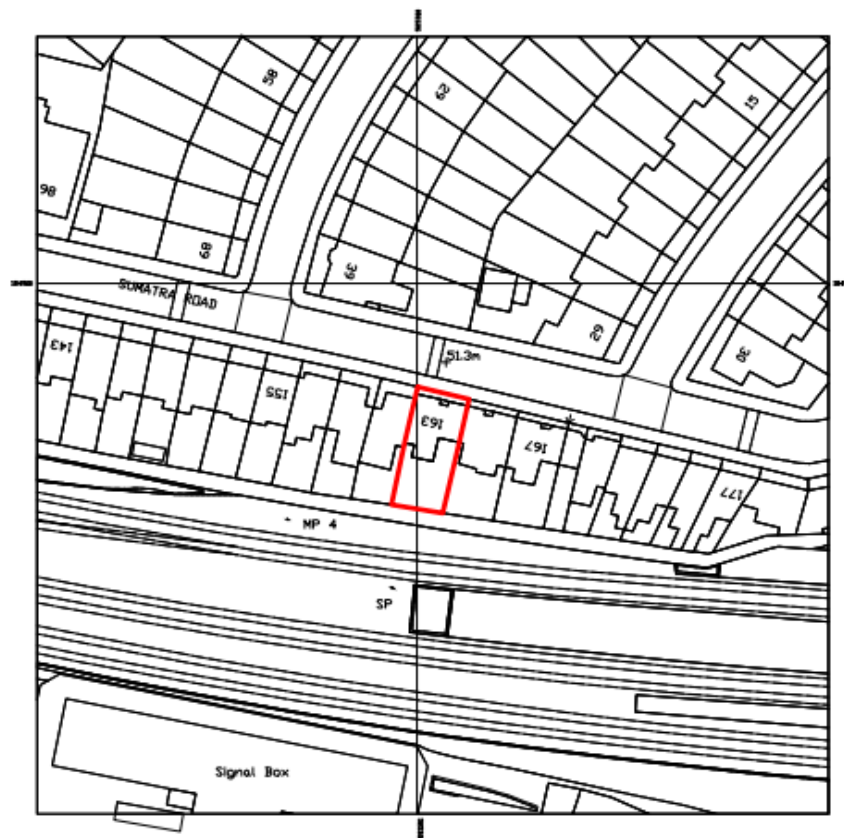
**Date of decision notice states 30th March 2017 (the date this document was last opened) as opposed to the actual date of issue on 14th October 2015 due to the document file settings.*

1.0 Introduction

- 1.1 Drawing and Planning have been asked by the appellant, Mr. Jeremy Stein, to submit an appeal on non-determination grounds against the London Borough of Camden's failure to determine application 2015/2203/P. The appeal application concerns the 'Conversion of existing single family dwelling into 4 (2 x 1 bedroom and 2 x 2 bedroom) self-contained units with associated amenity, cycle storage and refuse provision at 163 Sumatra Road, London, NW6 1PN'.
- 1.2 The appeal application should be read alongside the submitted forms, the plans (as amended), the planning, design and access statement (PDAS) and the draft Section 106 agreement. The application should be read in conjunction with the site's planning history.
- 1.3 This statement will set out the policy compliance of the proposed change of use having regard to the National Planning Policy Framework (NPPF) and the relevant Development Plan Policies at both regional and local level. This appeal serves to demonstrate the primary reason behind the significant delays and the Council's subsequent failure to determine the appeal application.
- 1.4 The primary objectives of this appeal statement are to demonstrate that:
- The Council have failed to consider the personal terms as suggested by the appellant's mortgagee which when factored by the tariff style contributions being sought, amounts to unreasonable behaviour and actions which go against the relevant statutory provisions on planning obligations;
 - The appellant had made concerted efforts to try and resolve the legal technicalities associated with the S106 agreement however the Council nor the appellant's lender have mutually come to any agreement which has ultimately left the appellant with no other option but to resolve the matter via this appeal process;
 - The Council's acceptance of the proposal, which considers the numerous extant certificate of lawfulness applications against the property for extensions under permitted development rights is evidenced by their recommendation for approval. Additionally the conversion to flats is considered to comply with the Council's relevant policies and guidance as noted in the recommendation. In

this regard the development is not considered harmful to the character and appearance of the host building or the general amenities of neighbouring residents.

- In other respects, it is suggested that the proposed development is acceptable and compliant with the relevant planning policies, whilst seeking to make efficient and effective use of an existing property in a highly sustainable location in the borough;
- The Council's legal team issued a draft decision notice on 14th October 2015, with the appeal application at that point in time being held in abeyance by the unresolved S106 issue;
- The proposal endorses Central Government Guidance contained within the National Planning Policy Framework (NPPF) together with the relevant policies contained the London Plan 2016. At a local level, the Camden Core LDF Strategy, the LDF Development Plan, The Fortune Green and West Hampstead Green Neighbourhood Plan accompanied by a suite of planning guidance documents are considered relevant.



The Appeal Site

2.0 Site and Area Analysis

- 2.1 The appeal site is located in the West Hampstead area of Camden, North West London as shown in the map opposite. The appeal property is located on the southern side of Sumatra Road, a residential street predominantly comprised of terraced Victorian/Edwardian dwellings mainly situated along the southern side of the road. The general location of the application together is included under Appendix 1 of this statement followed by an extract from the Camden's Proposals map under Appendix 2.
- 2.2 The property is characterised by a two-storey bay feature under a gable roof form on the front, accompanied by the painted façade brickwork. The rear of the host dwelling comprises of three storeys as result of the fall in land levels. The dwelling remains in use as a single family dwelling (use class C3) and benefits from permitted development rights as reflected in the planning history for the site which is covered under section 3 of the planning, design and access statement submitted with the application. For the purposes of this appeal the lawful development certificate applied for under reference 2013/6701/P should be given due weight as this demonstrates the ability to undertake works to the property without the requirement of planning consent. Works to the existing basement were also approved under application 2013/8185/P.
- 2.3 Photographs at Appendix 3 of this statement show the existing property from front and rear. There are no listed buildings which are within significant distance from the appeal site. The map extract below taken from Historic England confirms that there are no statutory listed heritage assets within proximity to the site.



Map taken from Historic England

- 2.4 From a sustainability perspective, the appeal site is within walking distance from a number of train and underground stations including West Hampstead Thameslink, West Hampstead which has both access to a railway & underground station. Mill Lane is a main east-west bus route running between main north-south routes, the A5 Shoot Up Hill & A41 Finchley Road with the B510 West End Lane running parallel. The street falls within a controlled parking zone (CPZ) and as such the dwelling provides no off-street parking serving the property. Although in addition to having vehicular access to the rear courtesy of a service road, the area also has a relatively high Public Transport Accessibility Level (PTAL) of 4.

3.0 Background to Appeal

- 3.1 The appeal application was registered by the London Borough of Camden on 1 May 2015 under reference 2015/2203/P. The application concerns the “Conversion of existing single family dwelling into 4 (2 x 1 bedroom and 2 x 2 bedroom) self-contained units with associated amenity, cycle storage and refuse provision (amended description)” of 163 Sumatra Road, London, NW6 1PN.
- 3.2 The applicant’s agent maintained in contact with the then appointed planning case officer. It was highlighted at a relatively early stage of the process that any permission given would be subject to a S106 agreement. It is important to note that the appellant does not object to securing a Construction Management Plan, a car-free development and a financial contribution towards local highway improvements. These are the three aspects the determining authority consider necessary and subject to their S106 agreement.
- 3.3 The appellant’s agent, Drawing and Planning Ltd acted as mediator between the Council (The London Borough of Camden) and the Mortgage company against which the appeal property is secured (The Bank of Scotland / Birmingham Midshires) throughout the entire application process. It is during this process that the appellant’s mortgagee have sought to add a clause to protect their best interests as will be discussed later in this statement.
- 3.4 The Council were keen to approve the application and thus issued a draft decision notice by email on 14 October 2015, expecting that the terms of the attached legal agreement would be accepted by the appellant’s lender. A copy of this draft notice is attached at *Appendix 4* of this statement.
- 3.5 It is important to note that the scheme was also amended during the course of the application at the request of the planning case officer to ensure policies were fully complied with. The amendments comprised of a change to the internal arrangements to provide 2 x 1 bed and 2 x 2 bed units following the extensions and internal alterations. Originally, the development had sought subdivision and extension of the property to create 3 x 1 bed, 1 x 2 bed flats and 1 studio unit.
- 3.6 In the absence of any reason for refusal including any draft recommendation and owing to the nature of the procedure, it is suggested that the case for non-determination relies on all matters being considered in the appellant’s statement. As such in the order of importance, the following issues will be addressed:

- ***Whether or not the Council have acted unreasonably in choosing not to amend the terms of the S016 legal agreement to reflect the personal terms of the appellant;***
- ***The impact of the proposal on the character and appearance of the area and the amenities of neighbouring residents;***
- ***The impact of the proposed development on the future living conditions of residents;***

4.0 Planning Policy Context

National Planning Policy Framework (NPPF)

- 4.1 The National Planning Policy Framework (NPPF) document sets out the Government's most up-to date vision for growth with a presumption in favor of sustainability. The Ministerial Foreword states that: *"sustainable development is about positive growth – making economic, environmental and social progress for this and future generations"*.
- 4.2 This reflects the three aspects of sustainable development—economic, social and environmental. Economically, demand for development should be met to support growth; socially, development should be considerate and not impact upon others' enjoyment of properties and areas. Environmental issues include the protection of the natural, built and historic environment.
- 4.3 Paragraph 17 of the NPPF sets out core planning principles. Of particular relevance to the development is that Councils must look to:
- "Proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs. Every effort should be made objectively to identify and then meet the housing, business and other development needs of an area, and respond positively to wider opportunities for growth"*
- 4.4 Paragraph 58 states that local planning policies and decisions should aim to ensure developments optimise the potential of sites to accommodate development. Paragraph 59 of the NPPF concerns design noting the following:

“Local planning authorities should consider using design codes where they could help deliver high quality outcomes. However, design policies should avoid unnecessary prescription or detail and should concentrate on guiding the overall scale, density, massing, height, landscape, layout and access of new development in relation to neighbouring buildings and the local area more generally”.

- 4.5 Chapter 7 is titled ‘Requiring good design’ and sets out that good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute to making places better for people.
- 4.6 Paragraph 186 states that *“Local planning authorities should approach decision-taking in a positive way to foster the delivery of sustainable development.”*
- 4.7 Paragraph 187 goes insofar as to state that *“Local planning authorities should look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible.”*

Regional Planning Policy

The London Plan 2016

- 4.8 The London Plan 2016 and the London Plan Housing SPG 2016 are both documents that have since been adopted and superseded previous versions of London Plan and its accompanying draft Housing SPG. The plan provides the Spatial Development Strategy for Greater London. Policy 7.2 is entitled ‘An Inclusive Environment’ and stipulates that:

“Applicants for planning permission should demonstrate their commitment to achieving high quality inclusive design, how their proposals ensure an accessible environment, how they have engaged with users (including for example organisations of disabled and older people) and the processes used to achieve these.”

- 4.9 Policy 7.4 is entitled ‘Local Character’ and under paragraph 7.14 of the document states:

“The physical character of a place can help reinforce a sense of meaning and civility – through the layout of buildings and streets, the natural and man-made

landscape, the density of development and the mix of land uses. In some cases, the character is well preserved and clear. In others, it is undefined or compromised by unsympathetic development. Through characterisation studies, existing character can be identified and valued, and used to inform a strategy for improving the place.”

- 4.10 Policy 7.6B states that buildings and structures should not cause unacceptable harm to the amenity of surrounding land and buildings, particularly residential buildings, in relation to privacy and overshadowing.
- 4.11 The London Plan specifies requirements which new development must meet. In respect of minimum space standards, the proposal by its current standards exceeds these requirements which are excerpted below for convenience.

Table 3.3 Minimum space standards for new dwellings⁵⁷

Number of bedrooms	Number of bed spaces	Minimum GIA (m2)			Built-in storage (m2)
		1 storey dwellings	2 storey dwellings	3 storey dwellings	
1b	1p	39 (37)*			1.0
	2p	50	58		1.5
2b	3p	61	70		2.0
	4p	70	79		

London Plan space standards taken from Table 3.3 of the plan

Local Planning Policy

Local Development Framework Core Strategy Policies (2010)

- 4.12 Camden’s Local Development Framework Core Strategy and Development Policies documents were adopted in 2010 and provide the main development guidance for the Borough. Policy CS1 ‘Distribution of growth’ states that the Council will promote:
- a) *A concentration of development in the growth areas of King’s Cross, Euston, Tottenham Court Road, Holborn and West Hampstead Interchange;*

- b) *Appropriate development at other highly accessible locations, in particular Central London and the town centres of Camden Town, Finchley Road / Swiss Cottage, Kentish Town, Kilburn High Road and West Hampstead; and*
- c) *More limited change elsewhere. Making the best use of Camden's limited land. The Council will promote the most efficient use of land and buildings in Camden by:*
- d) *Seeking development that makes full use of its site, taking into account quality of design, its surroundings, sustainability, amenity, heritage, transport accessibility and any other considerations relevant to the site;*
- e) *Resisting development that makes inefficient use of Camden's limited land;*
- f) *Expecting development that will significantly increase the demand of travel to be located in growth areas and other highly accessible parts of the borough;*
- g) *Expecting high density development in Central London, town centres and other locations well served by public transport; and*
- h) *Expecting the provision of a mix of uses in suitable schemes, in particular in the most accessible parts of the borough, including an element of housing where possible.*

4.13 Policy CS4 'Areas of more limited change' identifies those areas outside the growth centres as being those which will experience less development.

4.14 Policy CS5 'Managing the Impact of Change' applies due to the provisions outlined below:

"The Council will manage the impact of growth and development...with particular consideration given to:

- a) *Providing uses that meet the needs of Camden's population and contribute to the borough's London-wide role;*
- b) *Providing the infrastructure and facilities needed to support Camden's population and those who work in and visit the borough;*
- c) *Providing sustainable buildings and spaces of the highest quality; and*
- d) *Protecting and enhancing our environment and heritage and the amenity and quality of life of local communities.*

The Council will protect the amenity of Camden's residents and those working in and visiting the borough by:

Appeal Case Statement

- e) *Making sure that the impact of developments on their occupiers and neighbours is fully considered;*
- f) *Seeking to ensure development contributes towards strong and successful communities by balancing the needs of development with the needs and characteristics of local areas and communities; and*
- g) *Requiring mitigation measures where necessary”*

4.15 Policy CS6 ‘Providing quality homes’ has among its aims various criteria relating to the satisfactory provision of housing within the borough. These include:

- “c) *supporting the supply of additional student housing, bedsits and other housing with shared facilities providing this does not prejudice the Council's ability to meet the target for the supply of additional self-contained homes, the balance of uses in the area; and the quality of residential amenity or the character of the surrounding area;*
- d) *Minimising the net loss of existing homes;*
- e) *Regarding housing as the priority land-use of Camden’s Local Development Framework.*

The Council will aim to secure high quality affordable housing available for Camden households that are unable to access market housing by:...

- f) *Seeking to ensure that 50% of the borough-wide target for additional self-contained homes is provided as affordable housing;*
- g) *Seeking to negotiate a contribution from specific proposals on the basis of:*
 - ❖ *the maximum reasonable amount of affordable housing under the specific circumstances of the site, including the financial viability of the development,*
 - ❖ *an affordable housing target of 50% of the total addition to housing floor space, &*
 - ❖ *guidelines of 60% social rented housing and 40% intermediate affordable housing;*
- h) *Minimising the net loss of affordable housing...*

The Council will aim to minimise social polarisation and create mixed and inclusive communities across Camden by:

- j) *Seeking a diverse range of housing products in the market and affordable sectors to provide a range of homes accessible across the spectrum of household incomes;*
- k) *Seeking a range of self-contained homes of different sizes to meet the Council's identified dwelling-size priorities;*
- l) *Seeking a variety of housing types suitable for different groups, including families, people with mobility difficulties, older people, homeless people and vulnerable people..."*

4.16 Policy CS13 'Tackling climate change through promoting higher environmental standards' outlines steps to adapt to this challenge:

"The Council will require all development to take measures to minimise the effects of, and adapt to, climate change and encourage all development to meet the highest feasible environmental standards that are financially viable during construction and occupation by:

- a) *Ensuring patterns of land use that minimise the need to travel by car and help support local energy networks;*
- b) *Promoting the efficient use of land and buildings;*
- c) *Minimising carbon emissions from the redevelopment, construction and occupation of buildings by implementing, in order, all of the elements of the following energy hierarchy:*
 - ❖ *ensuring developments use less energy,*
 - ❖ *Making use of energy from efficient sources...*
 - ❖ *generating renewable energy on-site; and*
- d) *Ensuring buildings and spaces are designed to cope with, and minimise the effects of, climate change".*

4.17 Policy CS14 'Promoting high quality places and conserving our heritage' is applicable as Sumatra Road has an interesting and varied streetscape. In this context:

"The Council will ensure that Camden's places and buildings are attractive, safe and easy to use by:

- a) *Requiring development of the highest standard of design that respects local context and character;*
- b) *preserving and enhancing Camden's rich and diverse heritage assets and their settings, including conservation areas, listed buildings, archaeological remains, scheduled ancient monuments and historic parks and gardens;*
- c) *Promoting high quality landscaping and works to streets and public spaces;*
- d) *Seeking the highest standards of access in all buildings and places and requiring schemes to be designed to be inclusive and accessible;*
- e) *Protecting important views of St Paul's Cathedral and the Palace of Westminster from sites inside and outside the borough and protecting important local views."*

4.18 Policy CS18 'Dealing with our waste and encouraging recycling' outlines how the Council will make Camden a low waste borough including ensuring that developments include facilities for storage and collection of waste and recycling.

4.19 Policy CS19 'Delivering and monitoring the Core Strategy' sets out how Camden Council will deliver the vision, policies and objectives of the Core Strategy, including by measures such as planning obligations.

Local Development Framework Development Policies (2010)

4.20 Further to the Core Strategy, Camden Council also provides detailed planning direction in the form of the Development Policies document. Policy DP2 'Making full use of Camden's capacity for housing' explains that the Council will maximise supply of additional homes by utilising sites that are underused and vacant and resisting alternative development of sites considered particularly suitable for housing.

4.21 Policy DP5 'Homes of different sizes' explains that the Council will:

- a) *Seek to ensure that all residential development contributes to meeting the priorities set out in the Dwelling Size Priorities Table, including conversion of existing residential and non-residential floor space;*
- b) *Expect a mix of large and small homes in all residential developments. In considering the mix of dwelling sizes appropriate to a development, the Council will have regard to the different dwelling size priorities for social rented, intermediate affordable and market homes, and will take into account:*

- c) *The character of the development, the site and the area, including the impact of the mix on child density;*
- d) *Site size, and any constraints on including homes of different sizes; and*
- e) *The economics and financial viability of the site, including the demand for homes of different sizes.*

4.22 Policy DP6 'Lifetime homes and wheelchair homes' informs that:

"All housing development should meet lifetime homes standards. 10% of homes developed should either meet wheelchair housing standards, or be easily adapted to meet them".

4.23 Policy DP16 'The transport implications of development' aims to control:

"...movements to, from and within the site, including links to existing transport networks...[with] appropriate connections to highways and street spaces, in accordance with Camden's road hierarchy, and to public transport networks..."

4.24 Policy DP17 'Walking, cycling and public transport' advocates that:

"Development should make suitable provision for pedestrians, cyclists and public transport and, where appropriate, will also be required to provide for interchanging between different modes of transport".

4.25 Policy DP18 'Parking standards and limiting the availability of car parking' reflects an overall aim for the minimum necessary car parking provision and an expectation that development will be car free in West Hampstead, and other areas within Controlled Parking Zones that are easily accessible by public transport.

4.26 Policy DP22 'Promoting sustainable design and construction' reads as follows:

"The Council will promote and measure sustainable design and construction by:

- c) *Expecting new build housing to meet Code for Sustainable Homes Level 3 by 2010 & Code Level 4 by 2013 & encouraging Code Level 6 (zero carbon) by 2016"*

4.27 Policy DP23 'Water' reflects the Council's requirement for developments to reduce water consumption and install a number of waste-saving measures in new buildings.

4.28 Policy DP24 'Securing high quality design' reads as follows:

“The Council will require all developments, including alterations and extensions to existing buildings, to be of the highest standard of design and will expect developments to consider:

- a) Character, setting, context and the form and scale of neighbouring buildings;*
- b) The character and proportions of the existing building, where alterations and extensions are proposed;*
- c) The quality of materials to be used;*
- d) The provision of visually interesting frontages at street level;*
- e) The appropriate location for building services equipment;*
- f) Existing natural features, such as topography and trees;*
- g) The provision of appropriate hard/ soft landscaping including boundary treatments;*
- h) The provision of appropriate amenity space; and*
- i) Accessibility.”*

4.29 Policy DP26 ‘Managing the impact of development on occupiers and neighbours’ seeks to protect amenities of properties surrounding development proposals and reads as follows:

“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. The factors we will consider include:

- a) Visual privacy and overlooking;*
- b) Overshadowing and outlook;*
- c) Sunlight, daylight and artificial light levels;*
- d) Noise and vibration levels;*
- e) Odour, fumes and dust;*
- f) Microclimate;*
- g) The inclusion of appropriate attenuation measures.*

We will also require developments to provide:

- h) An acceptable standard of accommodation in terms of internal arrangements, dwelling and room sizes and amenity space;*
- i) Facilities for the storage, recycling and disposal of waste;*
- j) Facilities for bicycle storage; and*
- k) Outdoor space for private or communal amenity space, wherever practical.”*

4.30 It is considered that the proposed conversion satisfies most of the above criteria in offering a greater choice of living accommodation (ranging from larger 2 bed to 1 bed studio) in an established residential area close to but outside the town centre. As a conversion of an older property, the site is incapable of fully meeting criteria such as Lifetime Homes, but lying within a Controlled Parking Zone, would not introduce any new off-street car parking in line with Council sustainability aims.

Fortune Green and West Hampstead Green Neighbourhood Plan

4.31 The Fortune Green and West Hampstead Green Neighbourhood Plan was adopted in September 2015 and so is relevant to the consideration process.

4.32 Policy 1 is relevant to housing and recognises that development shall provide a range of housing types, to meet a range of needs with developments expected to address the need for a mix of tenures, sizes and accessibility.

4.33 The Council refer to policy 2 of the local neighbourhood plan, which is relevant to design and character. The policy supports development which positively interfaces with the street, maintains a positive contribution towards the character of buildings and structures. The policy also promotes development that is human in scale as well as having regard to the form, function, structure and heritage of its context, in addition to materials of its context.

4.34 Policy 4 concerns West Hampstead Growth Area, whilst the site does not fall within this, the site does border close to the defined boundaries of the area, which is further indication why the development should be supported, in recognition to the need to provide further homes in the area.

Camden Planning Guidance (CPG) (2011 with updates)

CPG1 Design, CPG2 Housing, CPG3 Sustainability, CPG6 Amenity, CPG7 Transport and CPG8 Planning Obligations

4.35 These documents are also material to planning applications in Camden as they inform appearance and character of developments and highlight good practice to follow in any alteration of existing housing. CPG1 – Design (updated September 2014) relates to Core Strategy Policy CS14 and Development Policies DP24 referred to above.

Appeal Case Statement

- 4.36 CPG2 Housing section 4 'Residential standards' relates to Core Strategy Policies CS5, CS6 and Development Policy DP 26. Overall the standards require *"...high quality housing that provides secure, well-lit accommodation that has well-designed layouts and rooms..."*.
- 4.37 Furthermore para 4.29 'Outdoor amenity space' requires new dwellings to include *"...access to some form of private outdoor amenity space e.g. balconies, roof terraces or communal gardens..."*. The guidance also states spaces should meet the requirements of the occupiers of the building including wheelchair accessible, located sensitively so as to be overlooked and secure, receive direct sunlight and located to the rear.
- 4.38 CPG2 Housing section 5 'Lifetime homes and wheelchair housing' states that all homes should meet Lifetime Homes Standards. Importantly in this case, *"...the standards will be applied flexibly to existing buildings, but the applicant should justify failure to meet any of the criteria...."*
- 4.39 CPG3 Sustainability recommends that *"as a guide 10% of the project cost should be spent on environmental improvements"*. Para 4.3 advises that such improvements can be achieved in retrofit of measures by way of condition, relating to features such as energy efficient lighting, windows, insulation and heating/hot water systems.
- 4.40 Section 6 outlines the variety of renewable energy technologies available, requiring that: *"Developments are to target 20% reduction in carbon dioxide emissions from on-site renewable energy technologies"*. Para 7.1 highlights that: *"The Council expects all developments to be designed to be water-efficient by minimising water use and maximising the reuse of water"*.
- 4.41 Paras 8.12 & 8.13 advocate the reuse and recycling of building materials with para 9 relating to the Code for Sustainable Homes.
- 4.42 CPG 6 Amenity identifies sensitive areas as regards sunlight, outlook and privacy and advises various design measures to reduce risk of overshadowing and overlooking, such as restricting the scale of development, installing obscure glazing and screening by walls or fencing.

4.43 CPG6 gives the following key messages:

- ❖ *Developments are to be designed to protect the privacy of existing dwellings*
- ❖ *Mitigation measures are to be included when overlooking is unavoidable*
- ❖ *Outlook from new developments should be designed to be pleasant*
- ❖ *Public spaces benefit from overlooking as natural surveillance*

4.44 Access for all changes of use, alterations and extensions to existing buildings and spaces should, where practicable and reasonable, be designed to improve access for all including features such as clear level access, wide lobbies and easy to open doors.

4.45 CPG7 Transport advises as follows: *“In order to be able to maintain car-free and car-capped developments over the lifetime of a scheme, the developer will be required to enter into a legal agreement under section 106 of the Town and Country Planning Act 1990 (as amended)”*. Para 5.19 confirms that existing parking rights will be maintained, with para 9.8 stating that: *“Cycle parking should be provided off-street”*.

4.46 CPG8 Planning Obligations outlines the requirements that can be involved in development such as that within this application without parking facilities. Such obligations facilitate the use of sustainable transport modes and minimise additional pressure on parking facilities by ensuring that new residential units are car-free and/or car-capped. Owing to the relevance of this SPG to this appeal, a copy of the document is attached at *Appendix 5* of this statement.

5.0 Grounds for Appeal

5.1 Having regard to the policy referred to in the previous section and the key issues as set out under section 3 of this statement, the following points are discussed below:

- ***Whether or not the Council have acted unreasonably in choosing not to amend the terms of the S016 legal agreement to reflect the personal terms of the appellant;***
- ***The impact of the proposal on the character and appearance of the area and the amenities of neighbouring residents;***
- ***The impact of the proposed development on the future living conditions of residents;***

Whether or not the Council have acted unreasonably in choosing not to amend the terms of the S016 legal agreement to reflect the personal terms of the appellant;

5.2 This appeal is submitted on non-determination grounds and so all matters are deemed to be relevant. However, in this circumstance the objection relates to the Council's failure to amend the S106 agreement to reflect the specific terms of one of the parties to the agreement.

5.3 The subject S106 agreement was provided to facilitate a car-free development to remove the ability for future residents to apply for Council parking permits; the provision of a Construction Management Plan, to ensure that the development could be carried out safely and with minimal impact on and disturbance to the surrounding environment and highway network, and a financial 'tariff style' contribution towards highway improvements in the borough. The contribution amount in respect to highways falls to the sum of £5,000.

5.4 The appellant's agent has acted as mediator between the Council and the appellant's mortgage lender. All parties must agree to the terms of the S106 legal agreement to enable for the relevant requirements (the appellant's 'obligations') to be legally binding. As such the appellant's lender, Bank of Scotland / Birmingham Midshires, whom have a financial interest in the property, were not content with the standardised clauses of the Council drafted legal agreement and had requested that for a replacement clause to be

inserted. The Council's legal adviser confirmed in an email with the appellant's agent on 14 April 2016 that the S106 agreement (with their own mortgage clause) is reflective of the standardised wording and is commonly accepted by lenders for cases in other situations. A series of letters were sent between the appellant and the mortgagee following their request for the clause (See Appendix 6). However, the Mortgagee were not willing, under any circumstances, to accept the terms of the agreement unless it was recognised that they, the lender would not be liable to any pre-existing breaches to their involvement to the site. The associated letters and the email from the Council's legal adviser are attached under Appendix 7.

- 5.5 The appellant had clearly reached an impasse as neither the Council nor the Mortgagee could agree to accepting the terms of the S106 agreement. A copy of the Council's template agreement is attached at Appendix 5. This has ultimately meant that the appeal application has experienced significant delay, largely to address the requirement for a clause, as originally mooted by the lender. Both parties either side of the appellant in this instance are suggesting that their own respective terms are not unreasonable and are enforceable without prejudice to either party. However, the appellant cannot advance matters any further. It is therefore appropriate that the matter, on the basis of the inability of the Council to reach a decision, is referred to the Inspectorate.
- 5.6 It is important to note that whilst the Council's template agreement addresses most situations, the Council have failed to consider the personal terms of the appellant in this case. The requests being made by the mortgagee are not deemed unreasonable in the sense that the liabilities being placed on the lender would fail to placate their own legal requirements and terms of lending. The appellant accepts the liabilities of the agreement but is asking for the terms to take account the vested interests of the lender. Given that the financial amount being considered by the agreement, which relates to the highway contributions to the sum of £5,000, represents the sole monetary requirement, the Council have failed to act in a positive and proactive manner and as such have failed to have proper regard and merit to paragraphs 186 and 187 of the NPPF.
- 5.7 The planning practice guidance is clear on the matters relating to planning obligations and states under 'Paragraph: 006 Reference ID: 23b-006-20140306' that:

“Obligations should only be sought where they are necessary to make the development acceptable in planning terms. Where they provide essential site specific items to mitigate the impact of the development, such as a necessary road improvement, there may only be limited opportunity to negotiate. Where local planning authorities are requiring affordable housing obligations or tariff style contributions to infrastructure, they should be flexible in their requirements. Their policy should be clear that such planning obligations will take into account specific site circumstances.”

- 5.8 The Council have not sought to be flexible on the wording to the agreement. The appellant has in this instance acted in compliance with the PPG (Paragraph: 027 Reference ID: 23b-027-20150326) which states that:

“Any further information required by the local planning authority, or issues raised by the applicant regarding planning obligations, should be addressed at an early stage of the planning application process. Use of model agreements does not remove the requirement for local planning authorities to consider on a case by case basis whether a planning obligation is necessary to make the development acceptable in planning terms.”

- 5.9 It is suggested that Council have acted unreasonably and further to this, non-compliant with that mooted in Paragraph: 008 Reference ID: 23b-008-20140306 of the Planning Practice Guidance, the appellant has had no other option but to advance the matter to an appeal stage.

- 5.10 It should be noted that given the limitations to amending legal agreements, as set out by the Planning Practice Guidance, these cannot be amended within 5-year period before any deed of variation can be made; it is important to address these variations in advance of any agreement being signed. In this case, the onus to be flexible is on the Council and *not* the mortgagee. The Council also needs to balance the risk, which is by all accounts low and factor this with the amounts being asked for and the relative circumstances of the case. In this instance, the amount being considered is relatively low and when factored by it being a tariff-style contribution, flexibility to the terms of the S106 agreement should be given. Not doing so amounts to unreasonable behaviour and contrary to the provisions set by Central Government.

- 5.11 It can therefore be concluded that the development can be made acceptable in planning terms as the appellant is willing to meet the financial obligations sought in addition to the other matters addressed by the S106 agreement.





The impact of the proposal on the character and appearance of the area and the amenities of neighbouring residents

- 5.12 The proposed development will not significantly alter the appearance of the building. The proposed conversion of this single dwelling into 4 x residential units also takes into account the extensions already approved under previous applications namely the single storey rear extensions at ground level and 2 dormer extensions approved under 2103/6626/P, together with the erection of 2 single storey rear infill extensions either side of the five-storey gabled projection granted under 2013/6701/P. Excavation to enlarge the existing basement including the creation of 2 lightwells to the rear and alterations to the existing rear window to create a door at ground floor level all in connection with dwelling house was also approved under 2013/8185/P. The collective visual appearance of these additions, owing to their location on the rear and out of sight from the main public vantage points and when factored by the general character would represent an appropriate level of change which does not adversely impact its surroundings. It would be pragmatic for these additions to be considered alongside this appeal proposal given their acceptability under previous applications. To add further weight to the acceptability of these additions, it is also reminded that the Council were willing to issue a draft decision approving the works to the property (Appendix 5).
- 5.13 The principle of subdivision would not conflict with neighbouring properties. It is noted that several properties along the street have already been converted from houses to maisonettes/apartments and so the works and principle of subdivision is reflective of the wider area's character. Original features of the application property including brickwork and pitched roofs would remain with minimal modern additions such as a flat roof dormer structure mirroring those already erected in the immediate vicinity. This will secure use of the existing roof voids and make best use of the site.
- 5.14 It can be concluded that the proposed works are policy compliant, conforming to the requirements to ensure that the surrounding character is maintained when balancing this

with the historical planning consents. The application is a hybrid to allow for the building to be utilised effectively without any serious harm the amenities of neighbouring residents.

The impact of the proposed development on the future living conditions of residents

5.15 As highlighted earlier the development would conform with the prescribed London Plan standards for both 1 and 2 bed units. Some of the revised plans show the units as being oversized with this being a testament to the appellant's commitment to providing good standards of accommodation to comply with policy CS6 of the Core Strategy and to serve future residents. A breakdown of the unit sizes is show shown below for convenience.

Unit	Typology	Sqm
	2 bedroom maisonette	77
	2 bedroom maisonette	84
	1 bedroom	55
	1 bedroom maisonette	81

Proposed unit sizes

5.16 The outdoor amenity provision will be retained to the rear with this being a communal area which is recognised as being a minimum standard of amenity per flat. The standards are still reflective of the newest incarnation of the London Plan.

5.17 The proposal retains accessibility for mobility-impaired users downstairs by creating step-free accommodation. This also involves wide stairways, easy to open doors and access to the rear garden and path beyond directly from the rear main and patio doors at ground floor level. Internal access is facilitated for users within the house including wheelchair users and occupiers with mobility issues. Additionally, the scheme will comply as far as practicable with the criteria set out in the Lifetime Homes standard and the associated policy DP6. Moreover, all of the flats will offer a dual-aspect living arrangement with good variations in outlook and sun-light.

5.18 Adequate storage space for waste will be provided. The flats will be given internal waste storage solutions, in particular there will be bins for pre-sorting recyclable waste before

collection by the local authority. A dedicated external surface will also be provided to cater for waste container storage bins. The refuse storage complies with the relevant Council policies and guidelines.

- 5.19 The appellant is committed to providing future occupiers of each flat with a Home User Guide to their property's functions and features to promote energy and water efficiency, and details of the availability of public transport, and proximity of schools, shops and community facilities in the locality.
- 5.20 On a final note, the sustainability of the site's location weighs in support of the development and it is anticipated that the net gain of 3 units on this the site is acceptable given proximity to local public forms of transport and the range of facilities available locally. When factored by the appellant's willingness for the development to being 'car-free', these considerations would enable for the development to be compliant with CPG7. It can be concluded that the development would apply good standards of living to all its future residents and compliant with the key themes of policy CS6.

6.0 Conclusion

- 6.1 This appeal statement is prepared against the London Borough of Camden's decision not to issue a decision and moreover, planning permission for application referenced 2015/2203/P. The appeal application concerns the conversion of existing single family dwelling into 4 (2 x 1 bedroom and 2 x 2 bedroom) self-contained units with associated amenity, cycle storage and refuse provision at 163 Sumatra Road, London, NW6 1PN.
- 6.2 This appeal demonstrates that the Council have acted unreasonably in not accepting the terms to the S106 agreement to ensure that the reasonable requests of the Mortgagee are met. The 'tariff-style' contribution is further indication as to why the Council should have accepted the modification to the standardised template agreement.
- 6.3 It has been demonstrated that the Council have not had regard to the statutory provisions in dealing with the case, which has resulted in considerable delay and ultimately the necessity for this appeal.

- 6.4 It has been appropriately demonstrated that the proposed works to the building, which include the extensions to the rear are acceptable in planning terms. The proposed development would introduce a yield of 4 no. generously sized units to the market whilst ensuring that the character and appearance of the host building is maintained. In terms of the impacts on neighbouring properties, the extension and alterations are considered appropriate and do not amount to any loss to outlook or light received to neighbouring properties.
- 6.5 In respect to proposed living environment, the sizes of the units meet the London Plan standards. In all other respects the proposed living conditions are policy compliant.
- 6.6 The development is fully compliant with National Planning Policy Framework (NPPF), the relevant policies contained within the London Plan 2015 (with further alterations) and associated policies taken from the Camden LDF Core Strategy 2010, The LDF Development policies, The Fortune Green and West Hampstead Green Neighbourhood Plan 2015 and the advice of Camden's Planning Guidance.
- 6.7 For the reasons noted in this statement it is respectfully requested that the appointed Inspector allow this appeal.

