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Your Ref: APP/X5210/W/19/3229788  
Our Ref: 2018/4156/P

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The Planning Inspectorate  
Temple Quay House  
2 The Square  
Bristol, BS1 6PN

Dear Sir/Madam,

**Town and Country Planning Act 1990 (as amended)**  
**Appeal on behalf of Lola's Cupcakes Limited**  
**Site address: 168 West End Lane, London, NW6 1SD**

I write in connection with the above appeal against the Council's refusal to grant permission for the planning application ref: 2018/4156/P for the '**Erection of a ground floor rear extension to existing mixed-use retail and cafe (Sui Generis).**'

## 1.0 Summary

1.1 The appeal site is 168 West End Lane, which is a mixed use retail and café unit arranged over the basement and ground floors. The retail and café unit is located at the ground floor level and associated storage and food preparation area at the lower ground floor level. The commercial units from 166 to 174 West End Lane are located at the basement and ground floors and the upper four floors form a purpose built block of residential flats, Canterbury Mansions forming the host building located on the eastern side of West End Lane. The site also shares a boundary with 158-164 West End Lane, 2 Lymington Road and the rear ground floor structure attached to the main building which provides the residential entrance to Canterbury Mansions on the upper floors from Lymington Road. The site is not listed but identified as a building that makes a positive contribution within the West End Green Conservation Area. The site is located within the Fortune Green and West End Lane Neighbourhood Development Area.

1.2 The planning application was refused on 03/04/2019 for the following reasons:

1. *The proposed extension by reason of its siting, height, bulk and mass would fail to be subordinate to the host building and be out of character for a group of*

*buildings that are unaltered at the rear resulting in harm to the character of the host building and the character and appearance of the West End Green Conservation Area contrary to polices A1 (Managing the impact of growth and development), D1 (Design), D2 (Heritage) of the London Borough of Camden Local Plan and policies (Design & Character) and 3 (Safeguarding and Enhancing Conservation Areas and heritage sites) of the Fortune Green and West Hampstead Neighbourhood Plan 2015.*

2. *The proposed extension, by reason of its size, height and location abutting the neighbouring windows, would result in an increased sense of enclosure, light spill, noise and loss of outlook and daylight and sunlight which would be detrimental to the living and working conditions of neighbouring occupiers, contrary to policy A1 (Managing the impact of development) of the London Borough of Camden Local Plan 2017.*

2.1 The Council's case for the decision is set out primarily in the delegated Officer's Report that has already been sent with the questionnaire and is to be relied on as the principal Statement of Case. Copies of the relevant Local Plan policies and accompanying guidance were also sent with the appeal questionnaire.

2.2 In addition to the information sent with the questionnaire, I would be pleased if the Inspector could take into account the following information and comments, as well as the associated files outlined in the appendices, before deciding the appeal.

### **3 Status of Policies and Guidance**

3.1 In determining the above mentioned application, the London Borough of Camden has had regard to the relevant legislation, government guidance, statutory development plans and the particular circumstances of the case. The full text of the relevant policies was sent with the questionnaire documents.

3.2 The London Borough of Camden Local Plan 2017 (the Local Plan) was formally adopted on the 3 July 2017. The Council's policies are recent and up to date and are the basis for planning decisions and future development in the borough. They do not differ from the National Planning Policy Framework (NPPF) 2019 or the London Plan policies in relation to this appeal. The relevant Local Plan policies as they relate to the reasons for refusal are:

- A1 Managing the impact of development
- A4 Noise & Vibration
- D1 Design
- D2 Heritage
- TC4 Town Centres

3.3 The Council also refers to the following supporting documentation in Camden Planning Guidance, the specific sections most relevant to the appeal are as follows:

#### Design CPG (2019)

- Chapter 2 Design Excellence
- Chapter 3 Heritage
- Chapter 5 Alterations and extensions in non-residential development
- Chapter 8 Recycling and Waste Storage
- Chapter 9 Building services equipment

#### CPG Amenity (2018)

- Chapter 2 Overlooking, privacy and outlook
- Chapter 3 Daylight & Sunlight
- Chapter 4 Artificial Light
- Chapter 6 Noise and vibration

#### CPG Town Centres (2018)

- Guidance for all centres, retail and food, drink and entertainment uses – Pages 4-9
- Food, drink, and entertainment uses – Page 9-15
- Centres outside of London, Town Centres West Hampstead – Pages 54 - 56

3.4 The Council also refers to the following Conservation Area Appraisal and Management Strategy and Neighbourhood Plan.

#### West End Green Conservation Area Appraisal and Management Strategy 2011

#### Fortune Green and West Hampstead Neighbourhood Plan 2015

- Policy 2: Design & Character
- Policy 3: Safeguarding Conservation Areas and Heritage Assets
- Policy 13: West Hampstead Town Centre

## **4 Relevant History**

A full summary of the planning history for the appeal site is outlined in the 'relevant history' section of the Officer's Report. Since June 2017 no changes of use to A3 have been permitted across to specific sites, However, the re-development of the site at no.156 West End Lane, directly to the south of the appeal site, which was granted planning permission on the 23rd June 2017 (ref: 2015/6455/P) for comprehensive redevelopment including flexible A1-A3 use.

## **5 Comments on the Appellant's Grounds of Appeal**

5.1 The appellant's grounds of appeal are summarised as follows:

1. Economic Benefits
2. Reason 1 – Character
3. Reason 1 – Subordinate
4. Reason 1 – Impact on conservation area
5. Reason 1 – Loss of bay architecture
6. Reason 2 – Living Conditions
7. Reason 2 – Impact on commercial storeroom at 166 West End Lane

8. Reason 2 – Impact on Canterbury Mansions
9. Reason 2 – Impact on Lymington Gardens
10. Other Matters
11. Third parties

## **6 Response to ground of appeal 1 Economic Benefits (paragraphs 4.4-4.09)**

6.1 The appellant's statement refers to paragraph 80 of the NPPF that policies and decisions should help create the conditions in which businesses can invest, expand and adapt.

Response: The Council indeed seeks to support businesses of all sizes, in particular, small sized enterprises and recognises the importance of employment generating uses, including retail. The Council will also seek to protect the vibrancy and vitality of its centres by assessing the impact of proposed town centre uses in Camden's centres. This however does not outweigh the Council's concerns regarding the harm to the neighbouring property at number 166 West End Lane, see section 3.2 of the officer's report.

6.2 The appellant's statement refers to paragraph 85a of the NPPF that town centres' long-term vitality and viability should be promoted by allowing them to grow and diversify in a way that can respond to rapid changes in the retail and leisure industries.

Response: The Council does indeed promote healthy town centres. For example, it supported the use as a mixed retail/café (sui generis) as an appropriate development within a town centre. The reason for granting permission is informative 1 in the planning permission, reference 2017/0631/P dated 29 June 2017 for the 'Change of use of ground and lower ground floor to mixed-use retail and cafe use (Class A1/A3) (Sui Generis)' (Appendix B). The Council assessed the impact and considered the use acceptable as it would not disrupt the shopping character of the street and would not harm the vibrancy and vitality of the town centre due to the balanced mix of uses. The proposed extension however and increased capacity of the café would alter the balance of the use, making a café the primary use, which would not be acceptable within this town centre location core frontage as set out in the Officer's Report paragraph 4.1. The planning permission, reference 2017/0631/P, includes condition 8 stating that any loss of retail is likely to be refused planning permission. Whilst the proposal does not explicitly include the loss of retail use, the proposal would result in the balance of mixed retail and café use as predominantly café with ancillary retail.

6.3 The appellant's statement refers to The London Plan policies regarding Town Centres, in particular, paragraph 2.70 which states that town centres "...are the most accessible locations on the public transport system and the centres of their communities....." and that "...they are key locations for a diverse range of activities, including...retail, leisure and office space..."

Response: This policy, paragraph 2.72A continues “Sensitive town centre management, including business improvement districts in appropriate locations, should seek to resolve any tensions which may result from a varied mix of uses.” The Council in accordance, supports the diversity in town centre activities and changing retail uses by allowing a mixed use but this does not outweigh the requirement to safeguard the amenities of neighbours and find a balance of uses.

6.4 The Council recognised Policy 4.8 London Plan relates to “Supporting a successful and diverse retail sector and related facilities and services”. Policy 4.8Ac states that policies and decisions should ‘prevent the loss of retail and related facilities’. The Council granted the extended operating hours of the mixed use/café whilst balancing this against the requirement to safeguard the amenities of neighbours. As set out in condition of 7 of 2017/0631/P (Appendix B) which states that ‘the use hereby permitted shall not be carried out outside the following times 07:00 to 21:00 Mondays to Sundays and Bank Holidays.’ The Council supports the diversity in town centre activities and changing retail uses by allowing a mixed use of retail/café use with extended opening hours.

6.5 The Council’s policies seek to ensure that the development of shopping, services, food, drink, entertainment and other town centre uses does not cause harm to the character, function, vitality and viability of a centre, the local area or the amenity of neighbours. The application site is within the ‘West Hampstead’ Town Centre, and forms part of a designated Core Frontage. CPG5 notes that West Hampstead has a good range of shops and services for its size, with many independent traders and a significant amount of food and drink uses. CPG5 guides that the Council will generally resist proposals that would result in less than 75% of the premises in Core Frontages being in retail use; and paragraph 3.48 guides that the Council will generally resist proposals that would result in more than 2 consecutive premises within the Core Frontages being in non-retail use, in order to prevent concentrations of uses that would harm a centre’s attractiveness to shoppers or its residential amenity. A key aim of CPG5 is to ensure that there remains a high proportion of premises in retail use to cater for the needs of the local population. If increasingly more retail units are lost to A3 uses (or mixed uses), this will inevitably undermine the retail provision on offer. The planning system cannot dictate individual occupiers of premises, but the Council can seek to prevent the further loss of A1 floor space and an over-concentration of A3 uses.

6.6 The Councils reasoning for supporting the mixed use was based on information provided that cooking on site was limited and restricted to the basement area. The use is mixed-use retail and café use (sui generis) was granted based on the understanding that there was a majority element of retail use and cooking is limited to breakfast dishes, which are usually cooked once a day in the morning and the rest of the food offered for dining at the premises is served cold, baked or reheated on site. The website for the appeal site markets itself as a bakery rather than a café, see appendix D. The extended mixed use raises concerns that the requirement for ancillary baking facilities would be increased with the additional capacity for hot food and drink to be consumed on the premises. In the change of use application, the appellant described the cooking facilities as ancillary

to the main retail and café use and the Council assessed and granted permission based on this information. The proposal would increase the unit from 112sqm by 31sqm to 143sqm with an additional 18 covers. The website describes the unit as the flagship bakery, it would follow that cooking on site would be increased due to increase in capacity to consume hot food on site. The assessment of the mixed use and the requirement to safeguard the amenities of neighbours was based on the balance between café and retail. The increase in balance towards a café with an ancillary bakery would need to be reassessed in use class terms. As stated in the reason for granting permission 'with a majority element of retail use', condition 8 of that permission and in the Officer's Report paragraph 4.1, the increase capacity of the café would alter the balance of the use, making it a primary use, which would not be acceptable in a town centre area that seeks to resist more than 25% food, drink and entertainment premises.

6.7 The Council considered the impact of parking, stopping and servicing that the development would generate as small scale in terms of uplift in café use in the planning permission 2017/0631/P. The increase to a total of 143sqm uplift in café use would warrant the submission of a delivery and servicing management plan to safeguard the impact on amenity of the neighbouring properties.

6.8 The appellant has raised new information with respect to the number of staff that would be employed as a result of the development, which was omitted from the application.

Response: The form stated that the development would not require the employment of any staff. The appellant statement asserts that 4/5 full time staff plus 4-part time workers for weekends would be required and the employment of construction staff would be required for the build. Whilst this is acknowledged by The Council that more staff may be required, the economic benefits of additional employment are not considered to outweigh the Council's concerns regarding the increase in café use and impact on amenity of the neighbouring properties.

**7 Response to ground of appeal 2 Reason for refusal 1 – character** (paragraphs 4.11-4.18)

7.1 The appellant asserts that the proposal is located on a secondary elevation providing 'back of house' services and that the existing walkway is an addition that sets a precedent for development to the rear of the site. The statement of case from Squire Heritage Consulting elaborates that the proposal is small scale and would not alter the character to the rear of the site.

Response: Whilst The Council accepts the rear elevation forms a secondary elevation we would like to make it clear that the assessment has been made regarding the alteration to the rear elevation of the Mansion Block, as unaltered. Indeed, the addition of the walkway has been set back from the rear building line, in some part, to preserve this elevation. The building is identified in the West Hampstead Conservation Area Appraisal and Management Strategy as a building that makes a positive contribution to

the Conservation Area, and the mansion blocks are identified as characteristic of the area. The CAAMS states “The mansion blocks have a uniformity that is a positive contrast to the individuality of the individualistic character of the houses.” ... “The mansion blocks have a scale and boldness of detail that gives them a solid and substantial presence,” “Details are bold and repetitive, boundaries and hedges are neat, the roofline of the blocks makes simple skylines.” “The mansion blocks have a scale and boldness of detail that gives them a solid and substantial presence.” The Council maintains that the extension would add additional bulk that would alter the rear elevation to the detriment of the unaltered rear elevation as well as obscure the vertical bay window architectural detail.

## **8 Response to ground of appeal 3 Reason for refusal 1 – subordinate (paragraphs 4.19-4.29)**

8.1 Camden’s Planning Guidance for Design, Section 5. Alterations and extensions in non-residential development, paragraph 5.12 states that proposals should assess the impacts of the scheme including ‘having regard to the scale, form and massing of neighbouring buildings’. Paragraph 2.2 of the officer’s report sets out that the proposed extension would be overly dominant with regard to the neighbouring buildings at 2 Lymington Road.

Response: The Council accepts that the proposal is a single storey extension, however, the location of the proposed extension above the existing storeroom roof would result in a one and half to two-storey structure. As identified in the Officer’s Report in paragraph 1, 2.2 and 3.4 and 3.9, it would project 7-7.5m above the rear ground floor level and project to the boundary line, exacerbating the dominance of the structure in relation to the open space of the garden to the rear of 2 Lymington Road. Whilst the projecting structure of the corridor/entrance hall serving the flats to the upper floors spans two thirds the length of the rear of the building, it terminates close to the rear building line to Lymington Road, respecting the ratio of built to unbuilt space. Whilst the appellant asserts that this dominance is mitigated by the context of the upper levels of Canterbury Mansions and the neighbouring site at 156 West End Lane, due to the difference in ground levels between this and the host building, a site visit to the rear garden of 2 Lymington Road and Appendix C photographs taken from this location, demonstrates that the proposal would result in an overbearing structure to the rear ground floor level.

8.2 The appellant has referenced that The Council has acknowledged that the scale of the host building may allow for a small addition.

Response: In this location due to the complexity of the existing situation the scope for an addition is restricted by the existing extension at basement level, to the structure forming the walkway to Canterbury Mansions, the neighbouring site levels and neighbouring windows. It is likely that the existing basement addition is the maximum that could be achieved without a detrimental impact on the neighbouring property. The form, proportions and siting of the extension above the roof of the existing basement extension results in bulk to the rear that does not have regard to the scale, form and massing of neighbouring buildings and does not outweigh the Council’s concerns regarding the increase in café use and impact on amenity of the neighbouring properties.

**9 Response to ground of appeal 4 Reason for refusal 1 – impact on conservation area** (paragraphs 4.30-4.35)

9.1 The Council's response has been addressed in paragraphs 7.1, 8.2 and 8.3 as well as in the Officer's report paragraphs 2.2, 2.3 and 2.4. The two storey extension projecting to the building line would be visible from private views along Lymington Road. Private views are important and the use of suitable materials does not outweigh the Council's concerns regarding impact on amenity of the neighbouring properties.

**10 Response to ground of appeal 5 Reason for refusal 1 – loss of bay architecture** (paragraphs 4.36-4.40)

10.1 Camden's Planning Guidance for Design, Section 5. Alterations and extensions in non-residential development paragraph 5.12 states that proposals should assess the impacts of the scheme including 'respecting and preserving existing architectural features, such as projecting bays or chimney stacks'. The appellant states that the architectural structure of the bay would be 'preserved and easily interoperated with inside the building'.

Response: The Council considers that the extension however would be constructed so that it abuts the bay window and would no longer be read as an architectural feature at this level. Were the inspector minded to allow the addition at this level, the precedent would be set for additional extensions at first to third floors.

**11 Response to ground of appeal 6 Reason for refusal 2 – living conditions** (paragraphs 4.41-4.46)

11.1 Response: Camden's Planning Guidance for Design, Section 5. Alterations and extensions in non-residential development paragraph 5.12 states that proposals should assess the impacts of the scheme including 'the effects of the proposal on the amenity of adjacent residential properties with regard to daylight, sunlight, outlook, light pollution/spillage, privacy or the working conditions of occupants of adjacent non-residential buildings.' The Officer's Report has addressed the impact on the nearest residential properties in paragraphs 3.4, 3.4 and 3.6. To clarify, The Council maintains the extension for additional seating to the café would have a detrimental effect to the neighbouring flats above the site in Canterbury Mansions in terms of light spill and noise. It would have a detrimental impact on the daylight and sunlight entering the hallway to Canterbury Mansions which would be reduced to the west facing windows. The additional café area to the rear of the site would be likely to have a detrimental impact in terms of outlook, light spillage, noise, loss of privacy, as well as the additional bulk resulting in a greater sense of enclosure to the nearest property in residential use at 4 Lymington Road.



## **12 Response to ground of appeal 7 Reason for refusal 2 – impact on commercial storeroom at 166 West End Lane (paragraphs 4.47-4.51)**

12.1 The appellant maintains that the proposal would allow daylight and sunlight through to these windows due to mirrored glass proposed within the western wall.

Response: Camden's Planning Guidance for Design, Section 5. Alterations and extensions in non-residential development paragraph 5.12 states that proposals should assess the impacts of the scheme including 'the effects of the proposal on the amenity of adjacent residential properties with regard to daylight, sunlight, outlook, light pollution/spillage, privacy or the working conditions of occupants of adjacent non-residential buildings.' In absence of specific guidance for commercial unit, The Council has referred to Camden Planning Guidance Amenity (2018) to inform the assessment of the impact of the development on the working conditions of occupants of adjacent non-residential building, in particular, with reference to Chapter 2, Overlooking, privacy and outlook, Chapter 3, Daylight and Sunlight, Chapter 4 Artificial Light, Chapter 6 Noise and vibration. The appellant has described the area to the rear of the unit at number 166 West End Lane, as a storeroom associated with the retail unit with an internal staircase and has provided photographs to illustrate this. A storeroom, due to its purpose, may not be visited regularly by staff but it the conditions of the working environment should be taken into account. The proposed extension would wrap around this part of the property and there would be a reduction in daylight and sunlight to these rear elevation windows. The Council would assert that the brick built rear elevation of the proposed extension at a depth of 3.6m beyond the bay window, together with the obscuring of the glazing to the rear windows and the additional commercial activity would reduce the amount of daylight and sunlight to the rear of the unit adversely affecting the working conditions in this unit.

## **13 Response to ground of appeal 8 Reason for refusal 2 – impact on Canterbury Mansions (paragraphs 4.52-4.54)**

13.1 The appellant maintains that the proposal would allow daylight and sunlight through to these windows due to mirrored glass proposed within the northern wall of the extension.

Response: The proposed extension would join the walkway/hallway structure at its south return as it connects to the rear elevation of Canterbury Mansions, and allows internal access to the upper levels. There are two sash windows in this south elevation that would be obscured by the proposal where it abuts the structure. Whilst the internal corridor/hallway is not a habitable room and has existing windows along the corridor that face the rear elevation of Canterbury Mansions, The Council would assert that the proposed brick built extension, together with the obscuring the glazing to these windows and the additional commercial activity would reduce the amount of daylight and sunlight to the hallway.

13.2 The impact of artificial light spillage and noise from the proposed extension for additional seating to the café has been assessed in the Officer's Report paragraph 3.5 and 3.6 and 11.1 of this statement and finds the proposal would have a detrimental effect to the neighbouring flats above the site in Canterbury Mansions in terms of artificial light spillage from the proposed roof lantern.

## **14 Response to ground of appeal 9 Reason for refusal 2 – impact on Lymington Gardens (paragraphs 4.55-4.60)**

14.1 The appellant refers to the proposal being located on a secondary elevation providing 'back of house' services.

Response: The proposal would extend the commercial use to the rear of the site. The effects of which, in terms of outlook, loss of privacy, artificial light spillage and noise trespass would not be expected to be limited to no. 2 Lymington Road. Due to the height and depth of the proposed extension, the proposal would be expected to impact the rear gardens of Lymington Road closest to the site, the closest being at number 2 on the boundary and number 4 Lymington Road 10 metres from the rear elevation of the extension.

14.2 Inspector's site visit: As a note regarding gaining access to the rear of the site at 2 Lymington Road, which appears to be run as additional rooms for the 'Charlotte Guest House', contact details of the manager can be provided on request.

## **15 Response to ground of appeal 10 Other Matters (paragraphs 4.61-4.64)**

15.1 The appellant has refers to the redevelopment of the site at 156 West End Lane in their statement, in particular at paragraph 2.8, 2.9, 4.15, 4.33, 4.34, 4.60.

Response: The permission whilst extant has not yet been implemented. Applications are assessed on a case by case basis within the existing arrangement. To summarise the approved plans in relation to the proposed site, the extant permissions' approved drawings show that the redevelopment would replace the existing boundary wall to the south of 166 West End Lane; the ground floor is car parking space closest to the rear of Lymington Road and the upper floor levels are proposed to be built in line with the rear building line of Canterbury Mansions. At second to fifth floors the areas closest to the boundary with 166 West End Lane and the appeal site would be formed by terraces & screened by timber fences.

15.2 The drafting error raised in paragraph 2.6 (2.16) in which the appellant has asked for clarification from the council. Reason for refusal 1 in which the neighbourhood plan policies appear to be incorrectly referenced.

Response: To clarify, the reason for refusal number 1 omits the policy number ("Policy 2") but includes the policy name ("Design & Character") and continues to identify "Policy 3 (Safeguarding and Enhancing Conservation Area & Heritage Sites) of the Fortune Green & West Hampstead Neighbourhood Plan 2015". The appellant has correctly identified from the policy name in the appeal statement of case paragraph 3.27. There appears to be a drafting error in the appellant's statement paragraph number here which reads 2.6 but would follow as 2.16. (The numbering in the appellant's appeal statement appears to have an omission, so I have included in brackets after the numbered paragraph referred to above).

## **16 Response to ground of appeal 11 Third Parties (para's 5.1-5.5)**

16.1 The appellant has suggested that the impact from noise from construction could be mitigated by an operating hours of construction condition.

16.2 Response: This would not overcome The Council's concerns regarding noise from the commercial operation. Should the Inspector be minded to allow the planning permission appeal, it would be requested that the conditions from the previous permission 2017/0631/P Appendix B were included. The comments received from the Council's Environmental Health team regarding the roof fan suggested that an acoustic screen is installed around the unit with one side to remain open for air discharge. A full list of suggested conditions are attached in Appendix A.

## **17 Conclusion**

17.1 Based on the information set out above, and having taken account of all the additional evidence and arguments made, it is considered that the proposal remains unacceptable in terms of the resulting height, bulk and mass to an unaltered rear elevation of the host building and the impact on amenity of neighbouring properties.

17.2 These concerns could not be fully mitigated via conditions, meaning that both aspects of this reason are maintained.

17.3 The information submitted by the appellant in support of the appeal does not overcome or address the Council's concerns. The proposal presents no benefits that would outweigh the harm identified.

17.4 For these reasons the Inspector is respectfully requested to dismiss the appeal. However, should the Inspector be minded to allow the planning permission appeal, it would be requested that conditions to secure various requirements are attached to the planning permission decision, suggested conditions are included in Appendix A.

17.5 If any further clarification of the appeal submission is required please do not hesitate to contact Leela Muthoora on the above direct dial number or email address.

Yours sincerely,

Leela Muthoora  
Planning Technician - Planning Solutions Team  
Supporting Communities Directorate  
London Borough of Camden

## **List of Appendices**

- **Appendix A: Suggested Conditions**
- **Appendix B: Planning permission for Change of use ref: 2017/0631/P 29/06/2019**
- **Appendix C: Photographs of site from 2 Lymington Road rear garden**
- **Appendix D: Lola's Bakery Website and Menu**