

November 2019

Statement of Case

**Barrie House, 29 St Edmund's Terrace,
London, NW8 7QH**

Prepared by:

Montagu Evans LLP

On behalf of:

Kaleminster Limited

In relation to a decision by:

London Borough of Camden

Planning Application Reference:

2018/0645/P



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1. INTRODUCTION

1.1 This Statement of Case ("**SoC**") has been prepared by Montagu Evans LLP on behalf of Kaleminster Limited ("**Appellant**") in relation to the site at Barrie House, 29 St Edmund's Terrace, London, NW8 7QH ("**Site**"). A plan of the Site is attached at **Appendix 1**.

1.2 The Appellant submitted a planning application ("**Application**") to the London Borough of Camden ("**Council**" or "**LBC**") on 2 February 2018 seeking full planning permission for the following development ("**Scheme**" / "**Proposed Development**"):

"Redevelopment of existing two-storey porter's lodge and surface level car park to construct a part four, part five storey extension (lower ground, ground and 3/4 storey's) to Barrie House including excavation of a basement level, to provide 9 self-contained residential flats (1 x 1 bed, 6 x 2 bed and 2 x 3 bed units), cycle parking, refuse and recycling stores, hard and soft landscaping and relocated off-street car parking spaces."

1.3 The Application was recommended for approval by LBC planning officers. However, the Council resolved to refuse to grant planning permission at the Planning Committee on 11 April 2019 ("**Committee**").

1.4 The reasons for refusal of the Application were set out in a decision notice dated 10 May 2019. A copy of the decision notice is provided at **Appendix 2**. The six reasons stated are set out, below (emphasis added):

1. The proposed development by reason of its height, bulk, mass and location would result in **loss of outlook, an increased sense of enclosure, and overbearing impact** on the occupiers of flats in Barrie House and would fail to protect the amenity of the neighbouring occupiers contrary to policies A1 (Managing the impact of development) and D1 (Design) of the Camden Local Plan 2017.
2. The proposed development, in the absence of a legal agreement to secure an appropriate payment in lieu of **affordable housing**, would fail to maximise the contribution of the site to the supply of affordable housing in the borough, contrary to policy H4 (Maximising the supply of affordable housing) of the London Borough of Camden Local Plan 2017.
3. The proposed development, in the absence of a legal agreement to secure a **construction management plan** and an appropriate financial contribution towards implementation support, would be likely to give rise to conflicts with other road users and be detrimental to the amenities of the area generally, contrary to policies G1 (Delivery and location of growth), A1 (Managing the impact of development), T3 (Transport Infrastructure), T4 (Sustainable movement of goods and materials), DM1 (Delivery and monitoring), A4 (Noise and Vibration) and CC4 (Air quality) of the London Borough of Camden Local Plan 2017.

4. The proposed development, in the absence of a legal agreement to secure the development as '**car-free**', would be likely to contribute unacceptably to parking congestion in the surrounding area and promote the use of non-sustainable modes of transport, contrary to policies T1 (Prioritising walking, cycling and public transport), T2 (Parking and Car Parking) and A1 (Managing the impact of development) and DM1 (Delivery and monitoring) of the London Borough of Camden Local Plan 2017.
 5. The proposed development, in the absence of a legal agreement to secure an appropriate **financial contribution towards public highway works**, would be likely to harm the Borough's transport and public realm infrastructure, contrary to policies T1 (Prioritising walking, cycling and public transport), T3 (Transport Infrastructure), A1 (Managing the impact of development) and DM1 (Delivery and monitoring) of London Borough of Camden Local Plan 2017.
 6. The proposed development, in the absence of a legal agreement to secure a **Basement Construction Plan**, would fail to ensure that the proposed basement development would maintain ground stability and the structural stability of neighbouring properties in the local area contrary to policies A1 (Managing the impact of development) and A5 (Basements) of the Camden Local Plan 2017.
- 1.5 In this Statement of Case, we refer to the reasons for refusal by the same numbering system as listed on the decision notice. For example, the reason for refusal on loss of outlook, increased sense of enclosure and overbearing impact is referred to as "**Reason 1**".
- 1.6 The other reasons for refusal (2, 3, 4, 5, & 6) all relate to the absence of a legal agreement to secure specific planning obligations. These are sometimes referred to collectively in this Statement.
- 1.7 The Appellant has decided to make an appeal against the refusal of the Application ("**Appeal**").
- 1.8 Prior to the submission of this Appeal, and in the event that the Appeal is ultimately allowed, the Appellant has been liaising with LBC to prepare a legal agreement to address the **Reasons for Refusal 2, 3, 4, 5 and 6**. The agreed wording of the legal agreement is submitted as part of this Appeal and will be signed following validation.
- 1.9 This SoC provides the Appellant's case for the Appeal being allowed and full planning permission being granted for the Development. The Statement is written in accordance with Annex J of the Planning Inspectorate's Procedural Guidance for Planning Appeals in England (19 March 2019).

2. SITE AND SURROUNDINGS

Site

- 2.1 A Site Location Plan is attached at **Appendix 1**.
- 2.2 The Site is within the London Borough of Camden (LBC), located to the north of St Edmund's Terrace, at the junction with Broxwood Way that runs along the western boundary. Barrow Hill Reservoir lies to the north, with Primrose Hill beyond.
- 2.3 The existing building ("the Building" / "Existing Building") comprises an eight storey post-war modernist block, constructed in 1959, that is 'T' shape and accommodates 24 self-contained, privately owned residential flats (three per floor).
- 2.4 The main building is situated centrally within the plot, which is surrounded by hard and soft landscaping. Soft landscaping is most notable along the eastern part of the Site, comprising a landscaped garden, with a number of mature tree running along the southern boundary. There are a number of individual trees that are covered by a blanket TPO.
- 2.5 An area of hardstanding is located to the north of Barrie House, which is currently used for car parking, laid out with 14 spaces, although their dimensions fall short of recognised standards.
- 2.6 A two storey 'Porter's Lodge' is also located on the Site, along the north western boundary. It is vacant (and has been since at least 1987) and now derelict.
- 2.7 Access into the Site is afforded through a pedestrian gate on St Edmund's Terrace and a double 'in and out' vehicular driveway from Broxwood Way.
- 2.8 The Site has a number of easements which create restrictions on the land, including a lease of a small part of the land from Thames Water, along the eastern boundary.
- 2.9 The Building is not listed nor is it identified as a building of merit. The Site is not within a conservation area.

Surroundings

- 2.10 The surrounding area is characterised by a number of large residential apartment blocks, with buildings occupying the majority of their plots. The majority of the surrounding uses are residential, although the Site is in close proximity to public open spaces, including Regent's Park and Primrose Hill, which are both Metropolitan Open Land (MOL)
- 2.11 The opposite side of St Edmund's Terrace is within the City of Westminster.
- 2.12 The Site does not have any planning land use designations, although does contain trees which are the subject of Tree Preservation Orders (TPOs).

- 2.13 The Site has a Public Transport Accessibility Level (PTAL) of 1b, which is a 'low level of accessibility', although the Site is within a 5 minute walk to a bus stop (Avenue Road / St John's Wood stop) or 10-15 minutes' walk to St Johns Wood underground station (on the Jubilee Line).

3. THE PROPOSED DEVELOPMENT

- 3.1 The Scheme ("the Scheme" / "the Proposed Development") which the subject of this Appeal comprises the development of a part 4, part 5 storey extension to the Building in the location of the existing car park and following the demolition of the Porter's Lodge, which would provide nine self-contained units (1 x 1-bed, 6 x 2-bed & 2 x 3-bed).
- 3.2 The existing hard and soft landscaping would be reconfigured, with the relocation of 10 car parking spaces to the Broxwood Way boundary.
- 3.3 The footprint of the Proposed Development would be similar to that of the southern wing of the Existing Building, and would be connected to it via a four storey glass infill extension. The Scheme includes the excavation of a basement level. Cycle parking would be provided both internally, within a new store in the existing basement, and externally for visitors.
- 3.4 The Scheme's design rationale is set out in Marek Wojciechowski Architects' ("**MWA**") Design and Access Statement, which formed part of the Application, and is submitted with this Appeal.
- 3.5 In summary, the Site's constraints have been carefully considered in the design of this Scheme, to ensure that there would be no adverse impacts on adjoining properties or existing residents of Barrie House. The Proposed Development's massing and design has also been informed through various technical assessments, including daylight and sunlight. More detail on this aspect of the scheme is set out in Appellant's case against Reason 1.

4. PLANNING HISTORY AND APPLICATION CHRONOLOGY

4.1 The relevant recent planning history for the Site is set out below:

Planning Permission ref. 2011/6179/P

4.2 On 8 November 2012, planning permission was granted for the demolition of the existing Porter's Lodge and the erection of a three storey building, with basement as its replacement, for use as a single dwellinghouse (Class C3). This was not implemented, due to onerous planning conditions regarding car parking.

4.3 The principle of creating a new dwellinghouse and maximising the supply of housing, in place of the derelict Porter's Lodge was considered acceptable.

Application ref. 2018/0645/P

4.4 Prior to submission of the Application, pre-application discussions were held with LBC from April to December 2017, which included the signing, on 20 December 2017, of a Planning Performance Agreement ("**PPA**") between the Council and the Applicant.

4.5 On 6 February 2018, LBC validated the Application as follows:

"Redevelopment of existing two-storey porter's lodge and surface level car park to construct a part four, part five storey extension (lower ground, ground and 3/4 storey's) to Barrie House including excavation of a basement level, to provide 9 self-contained residential flats (1 x 1 bed, 6 x 2 bed and 2 x 3 bed units), cycle parking, refuse and recycling stores, hard and soft landscaping and relocated off-street car parking spaces."

4.6 On 2 March 2018, the Application was presented to the Camden Design Review Panel ("**DRP**"). The **DRP** minutes (**Appendix 3**) noted that "the panel finds much to admire in the proposed extension" and offered broad support to the proposals, subject to some refinement.

4.7 The Application was amended during determination, in response to consultation comments received from statutory consultees and neighbours. A summary of this evolution is set out below:

Date	Amendment	Reason
12 Feb 2018	<ul style="list-style-type: none">Air Quality Assessment (Cundall)	<ul style="list-style-type: none">Request by EHO to provide full AQA
22 May 2018	<ul style="list-style-type: none">Basement Impact Assessment (Rev 2) (Parmarbrook)Application drawings (P21A, P22A, P54, P55, P56) (MWA)Existing Site Layout (Mayer Brown)	<ul style="list-style-type: none">Response to Campbell Reith independent review of BIA (D1)Response to comments raised during Design Review Panel

Date	Amendment	Reason
		<ul style="list-style-type: none"> Further information in relation to existing parking situation
1 Jun 2018	<ul style="list-style-type: none"> Daylight and Sunlight Report (Rev 2 – 31 May 2018) (Malcolm Hollis) 	<ul style="list-style-type: none"> Updates to assessment
3 Jul 2018	<ul style="list-style-type: none"> Landscape Proposal (Rev C) (Exterior Architecture) Frontage Section for Tree Planting (1774-300A) (Exterior Architecture) Floor plans (P20B, P21B, P22B, P23B, P24B) 	<ul style="list-style-type: none"> Response to comments raised by Tree officer Response to comments raised by Tree officer Response to comments raised by Access Officer
13 Jul 2018	<ul style="list-style-type: none"> Secant Piled Retaining Wall Design (Parmarbrook) 	<ul style="list-style-type: none"> Response to Campbell Reith independent review of BIA (D2)
15 Aug 2018	<ul style="list-style-type: none"> Application Form v2 	<ul style="list-style-type: none"> To include updated ownership certificates, serving notice on Thames Water
5 Oct 2018	<ul style="list-style-type: none"> Site Location Plan (E_00A) (MW-A) Application Drawings (E20A, E21A, E22A, E23A, E24A, E25A, P20C, P21C, P22C, P23C, P24C, P25A) (MW-A) Landscape Proposal (Rev D) (Exterior Architecture) Sustainability Statement (Rev3 – 21 Sep 18) (Eight Associates); Energy Statement (Rev2 – 21 Sep 18) (Eight Associates); Arboricultural Report (24 Sep 18) (John Cromar); Overheating Analysis (Rev1 – 21 Sep 18) (Eight Associates); Ground Source Heat Pump Feasibility Study (2 Oct 18) (Cundall); 	<ul style="list-style-type: none"> Show revised red line boundary. Show revised red line boundary. Revised to shift proposed trees away from north eastern boundary Updated to confirm that potential sustainable design criteria will be adopted and the suitability of green/blue roof As above Tree Protection Measures, Tree Retention and Tree Planting plan updated showing amended tree line Setting out how the scheme has implemented passive design measures Setting out that incorporating GSHP as a renewable energy technology is not deemed appropriate for this development
23 Jan 2019	<ul style="list-style-type: none"> Preliminary Ecological Appraisal (Eight Associates) 	<ul style="list-style-type: none"> Response to request by Sustainability Officer

Date	Amendment	Reason
12 Mar 2019	<ul style="list-style-type: none">Floor plans (E21B, P21D)Isometric views	<ul style="list-style-type: none">Reflect revised red lineRequest of planning officer in advance of committee.

- 4.8 The Application was recommended for approval by planning officers and was considered by LBC Member Briefing Panel on 18 February 2019, where it was referred to the Planning Committee, following a request from one of the members of the panel.
- 4.9 The Application was initially considered at the Planning Committee on 14 March 2019, although the decision was deferred as the Committee were unable to conclude deliberation prior to the scheduled end of the meeting.
- 4.10 At the Planning Committee on 11 April 2019, the seven members who had been present at both meetings resolved by four votes against to three in favour to refuse planning permission. A copy of the Committee Report and Minutes for this Committee is provided at **Appendix 4 and 5**, respectively. A webcast of the committee can be viewed on the Council's website at https://camden.public-i.tv/core/portal/webcast_interactive/402613
- 4.11 The decision notice was subsequently issued on 10 May 2019, with the reasons set out in **Section 1** of this Statement.

Post-Decision

- 4.12 Following the issue of the decision notice, Montagu Evans notified planning officers in June 2019, of the Applicant's intention to submit this Appeal against the refusal of planning permission.
- 4.13 In anticipation of the submission of the Appeal, the Appellant and LBC agreed to prepare a Section 106 legal agreement to cover the outstanding planning obligations that formed reasons for **Reasons for Refusal 2, 3, 4, 5 & 6**.
- 4.14 During the negotiation of the S106 Agreement, the Appellant and LBC agreed a revised red line boundary for the purpose of the legal agreement, omitting an area of land on the periphery of the Application Site to which Thames Water had an ownership interest but is not required as part of the Application proposals. The Site Location Plan for the Application has not been amended.
- 4.15 The Appellant and LBC have agreed the Section 106 Agreement, which addresses **Reasons for Refusal 2, 3, 4, 5 & 6**. A completed, signed version of the Agreement will be submitted to the Planning Inspectorate, following the validation of the Appeal.

5. PLANNING POLICY AND GUIDANCE

- 5.1 Planning law requires that applications for planning permission must be determined in accordance with the Development Plan, unless material considerations indicate otherwise. To be in accordance with the development plan, a development does not have to comply with all relevant planning policy. Rather, the development should be in accordance with the development plan as a whole (*City of Edinburgh Council v. Secretary of State for Scotland* [1997] 1 WLR 1447).
- 5.2 The assessment of the Development against the development plan as a whole has been carried out using proper interpretation of the relevant planning policy. Being a point of law, interpretation of policy must not be based on what the local planning authority wants policy to say (*Tesco Stores v Dundee City Council* [2012] UKSC 13). Policy must be interpreted objectively in accordance with the language used, read in its proper context.

Development Plan

- 5.3 The Development Plan for the Site comprises the following:
- The London Plan (The Spatial Development Strategy for London Consolidated with Alterations Since 2011) (March 2015); and
 - LB Camden Local Plan (June 2017).
- 5.4 The Appeal must be determined in accordance with the Development Plan unless material considerations indicate otherwise.
- 5.5 In addition to the above, emerging planning policy is being prepared by the Greater London Authority (GLA) as part of a new London Plan. At the time of decision, the emerging Draft London Plan (issued in December 2017) was not referenced in the LBC Committee Report for the 11 April 2019 committee and therefore not considered a material consideration.
- 5.6 Following the issue of the refusal on the Application, the Mayor's suggested changes following Examination in Public of the draft Plan were published on 17 July 2019. All of the suggested changes, along with all evidence, will be considered by the Panel whose examination report is expected to be submitted to the Mayor this Autumn. Adoption is anticipated to take place in February/March 2020 according to the latest timetable¹.

Local Plan

- 5.7 The Core Strategy policies identified as being relevant in Camden Council's Reason 1, are set out below as follows.
- 5.8 Policy A1 (Managing the impact of development) states:

¹ Draft London Plan – Next Stages (retrieved 23/10/2019) - <https://www.london.gov.uk/what-we-do/planning/london-plan/new-london-plan/examination-public-draft-new-london-plan>

“The Council will seek to protect the quality of life of occupiers and neighbours. We will grant permission for development unless this causes unacceptable harm to amenity.

We will:

- a. seek to ensure that the amenity of communities, occupiers and neighbours is protected;*
- b. seek 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;*
- c. resist development that fails to adequately assess and address transport impacts affecting communities, occupiers, neighbours and the existing transport network; and*
- d. require mitigation measures where necessary.*

The factors we will consider include:

- e. visual privacy, outlook;*
- f. sunlight, daylight and overshadowing;*
- g. artificial lighting levels;*
- h. transport impacts, including the use of Transport Assessments, Travel Plans and Delivery and Servicing Management Plans;*
- i. impacts of the construction phase, including the use of Construction Management Plans;*
- j. noise and vibration levels;*
- k. odour, fumes and dust;*
- l. microclimate;*
- m. contaminated land; and*
- n. impact upon water and wastewater infrastructure.”*

5.9 Policy D1 (Design) states:

“The Council will seek to secure high quality design in development. The Council will require that development:

- a. respects local context and character;*
- b. preserves or enhances the historic environment and heritage assets in accordance with “Policy D2 Heritage”;*
- c. is sustainable in design and construction, incorporating best practice in resource management and climate change mitigation and adaptation;*
- d. is of sustainable and durable construction and adaptable to different activities and land uses;*
- e. comprises details and materials that are of high quality and complement the local character;*
- f. integrates well with the surrounding streets and open spaces, improving movement through the site and wider area with direct, accessible and easily recognisable routes and contributes positively to the street frontage;*
- g. is inclusive and accessible for all;*
- h. promotes health;*

- i. is secure and designed to minimise crime and antisocial behaviour;*
- j. responds to natural features and preserves gardens and other open space;*
- k. incorporates high quality landscape design (including public art, where appropriate) and maximises opportunities for greening for example through planting of trees and other soft landscaping,*
- l. incorporates outdoor amenity space;*
- m. preserves strategic and local views;*
- n. for housing, provides a high standard of accommodation; and*
- o. carefully integrates building services equipment.*

The Council will resist development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

[...]

Excellence in design

The Council expects excellence in architecture and design. We will seek to ensure that the significant growth planned for under "Policy G1 Delivery and location of growth" will be provided through high quality contextual design."

- 5.10 Policy D1 also provides policy on 'tall buildings' and 'public art' which are not considered to be relevant to this Appeal, and therefore not replicated above.

Supplementary Planning Guidance

- 5.11 In addition to the policy documents that constitute the development plan, weight in planning decisions must also be given to Supplementary Planning Guidance. Camden has produced a number of these, known as Camden Planning Guidance (CPG), the bulk of which were adopted in either March 2018 or March 2019.
- 5.12 Of particular relevance to this Appeal and Reason 1 is the Amenity CPG (March 2018) and Design CPG (March 2019).
- 5.13 Supplementary Planning Guidance is just that, guidance, and does not carry the same weight as policy forming part of the development plan. Appropriate weight should however be afforded to its content albeit in the context of the development plan as a whole and other material considerations.
- 5.14 LBC has not made reference to either CPGs in their reasons for refusal. For the sake of completeness however the Appellant affords appropriate weight to their content in setting out their case.
- 5.15 With regard to outlook, the Amenity CPG (March 2018) explains at paragraph 2.13 that:

"Outlook is the visual amenity enjoyed by occupants when looking out of their windows or from their garden. How pleasant an outlook is depends on what is being viewed. For example, an outlook onto amenity space is more pleasant than an outlook across a

servicing yard. Particular care should therefore be taken if the proposed development adjoins properties with a single aspect. Any unpleasant features should be screened if possible, for example with permanent landscaping."

5.16 At paragraph 2.14, the Amenity CPG notes that:

"Developments should ensure that the proximity, size or cumulative effect of any structures avoids having an overbearing and/or dominating effect that is detrimental to the enjoyment of their properties by adjoining residential occupiers."

5.17 Design CPG (March 2019) sets out (at paragraph 5.12) that proposals should assess the impacts from a design perspective and the contribution it makes to townscape character, 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;"

5.18 Both the Amenity CPG and Design CPG refer to other elements of Policy A1, which is relevant to the protection of amenity of neighbouring residents (and not referred to in the Reason for Refusal 1), including overlooking, privacy and separation distances.

London Plan 2015

5.19 Although not relied upon by LBC in the refusal of the scheme, the relevant policies of the London Plan Consolidated with Alterations since 2011 (March 2015) include:

- Policy 3.3 Increasing Housing Supply;
- Policy 3.4 Optimising Housing Potential;
- Policy 3.5 Quality and Design of Housing Developments;
- Policy 3.8 Housing Choice;
- Policy 7.4 Local Character;
- Policy 7.6 Architecture

National Planning Policy Framework ("NPPF")

5.20 The NPPF, adopted in February 2019, is a material consideration in the determination of any planning decision, including this Appeal. Paragraphs of particular relevance to LBC's reasons for refusal are as follows.

5.21 Paragraph 11 states:

"Plans and decisions should apply a presumption in favour of sustainable development.

[...]

For decision-taking this means:

(c) approving development proposals that accord with an up-to-date development plan without delay...;

5.22 Paragraph 117 states:

“Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions.”

5.23 Guidance on ‘Achieving well-designed places’ is provided in chapter 12, Paragraphs 124-132 of the NPPF. Paragraph 124 states that:

“Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.”

6. MERITS OF THE DEVELOPMENT

6.1 The key benefits of the Development include:

- a) Delivering the sustainable development of brownfield land, in line with the overarching approach to development outlined in the NPPF and the development plan;
- b) Providing a nine residential units, consistent with the strategic objectives of all tiers of planning policy, promoting residential development within accessible locations, and in providing a mix of unit sizes and types;
- c) Contributing towards LBC's affordable housing through a financial contribution of £418,912;
- d) Seeking to apply a high quality design which promotes sustainability measures throughout the building's design, construction and lifetime;
- e) Delivering high quality architecture that would be well-related to the surrounding context and the host building;
- f) Providing an opportunity to maximise the residential potential for the site by optimising density in line with the objectives of LBC and the Mayor;
- g) Contributing to the sustainable travel objectives of national, regional and local planning policy, by reducing the amount of car parking on the Site and promoting sustainable means of travel such as cycling and walking.
- h) Enhancing the quality of landscaping on Site, by removing poor quality trees, replanting and providing landscaped areas. The permeability of the Site is also to be improved.

7. APPELLANT'S CASE AGAINST REASON 1 (NEIGHBOURING AMENITY)

Reason for Refusal

7.1 LBC's **Reason 1** for refusal of planning permission states (emphasis added):

1. The proposed development by reason of its height, bulk, mass and location would result in **loss of outlook, an increased sense of enclosure, and overbearing impact** on the occupiers of flats in Barrie House and would fail to protect the amenity of the neighbouring occupiers contrary to policies A1 (Managing the impact of development) and D1 (Design) of the Camden Local Plan 2017.

7.2 LBC considers this is contrary to Policy A1 (Managing the impact of development) and Policy D1 (Design) of the LBC Local Plan.

Appellant's Case

7.3 The reason for refusal very clearly states that it is the height, bulk, mass and location of the proposed development that would result in failing to protect the amenity of neighbouring occupiers in existing Barrie House flats, by virtue of:

- Loss of outlook;
- Increased sense of enclosure; and
- Overbearing impact.

7.4 The following analysis addresses the Development's effects on each of these, establishing first the existing situation and assessing how the Development would affect the amenity of neighbouring residents in this regard.

Existing Situation

7.5 The existing Barrie House building is arranged in T-shape and extends to eight storeys above a part lower ground floor level. The building comprises 24 self-contained residential properties arranged with three apartments per upper floor.

7.6 **Figure 7.1** shows the layout of the Existing First Floor which is a typical floor for the upper levels, showing two flats within the south wings and one flat in the north wing of the building, directly adjacent to the car park and location of the proposed extension.

Figure 7.1 – Extract from Existing First Floor Plan (E_22_A), showing typical layout of Barrie House.



- 7.7 Existing flats within Barrie House are orientated west to east in the northern part of the block and north to south in the southern part of the block fronting St Edmund's Terrace.
- 7.8 All three flats on a typical floor are triple aspect, and include triple aspect living rooms situated at the tip of each wing, comprising two large sets of windows at either side and a small tertiary window on the narrower façade. Outlook is currently afforded in three directions from each property.
- 7.9 **Figure 7.2** shows the large existing windows extending along the majority of the façade of the northernmost wing, with smaller tertiary windows on the north façade. The tertiary window is present at all levels, except for ground floor flat (Flat 1) where any such tertiary window has been bricked up since before the Appellant acquired the freehold in 1982.
- 7.10 The apartments within ground to third floors within the north wing of Barrie House are known as Flats 1, 4, 7 & 10.

Figure 7.2 – Photograph from Broxwood Way showing existing Barrie House building



Effects of the Development

- 7.11 The Development seeks to extend the building on the north façade with a part-four, part-five storey block that would appear as a detached building due to the glazed core linking it to the existing building.

Loss of outlook

- 7.12 In respect of the north wing, the closest part of the existing building to the extension, the Committee Report sets out (at paragraph 14.22) that:

“The flats within the northern block have windows that face west to east that would remain unaffected by the proposed development in terms of outlook.”

- 7.13 The Appellant agrees with this statement, noting that these windows serve the same living room, which extends across the width of the entire apartment. The proposed extension, although extending beyond the building line of both facades, would not affect the principal outlook from these windows, as the new structure would only be viewed from oblique angles close to the windows.

- 7.14 In respect of the secondary (or rather ‘tertiary’) windows, paragraph 14.22 goes on to state that:

“There are small, secondary window openings centrally located within the northern elevation of this block. Three of the windows at ground, first and second floor level would be blocked by the proposed extension that would abut the window on the ground floor level and would be set away from the windows at first, second and third floor levels by 2.13m. The rooms that these windows serve are open plan living room and dining

room areas that are served by large picture windows that face west and east. Consequently the flats would still benefit from excellent dual aspect outlook and the amenity of these flats in terms of outlook is considered acceptable."

- 7.15 Following the discussion during the deferred March 2019 Planning Committee and prior to the April 2019 committee, the Appellant issued a *Summary of Proposals* briefing document to Camden Officers for inclusion within the Committee Pack, although we understand that this was not seen by members. A copy of this is provided at **Appendix 6**, which provides useful photographs and visuals illustrating the impact of the proposals on the 'tertiary windows'.
- 7.16 The Committee Report is correct in noting that any "secondary" ground floor window (Flat 1) would be blocked by the proposed extension, although it is noted that this has not been a window since before 1982 having been blocked up by a former leaseholder.
- 7.17 The windows at upper levels are not blocked up, but the outlook from these windows is affected by the Development, at first, second and third floor levels, which is situated 2.13m from the window. The obscured glazed stair core is set back from the window, ensuring that it is not completely blocked.
- 7.18 The tertiary windows provide limited existing outlook, being only 500mm wide. As noted above, this small window serves a large, open plan living space that is already served by two windows that are both approximately 3500mm in width. It is unusual for living spaces to be triple aspect, and the proposed development ensures that the properties are dual aspect, with generous outlook afforded through the larger windows, across the garden area to the rear and Broxwood Way and beyond to the west.
- 7.19 Due to the distance of the proposed extension from the south wings, any impact of the proposed development on outlook is negligible. Outlook is unaffected from one of the two principal elevations (facing south), retaining excellent levels of outlook from these properties, in multiple directions.

Increased sense of enclosure

- 7.20 None of LB Camden's development plan policies or guidance refer specifically to 'sense of enclosure'. The Council's Committee Report concludes as part of its assessment of outlook that:

"In terms of outlook, whilst the development will be clearly visible it is unlikely to result in a feeling of claustrophobia and enclosure within the rooms of the surrounding properties, which is what outlook seeks to deal with."

- 7.21 The Development's impact on neighbouring outlook is discussed above. The flats within the north wing would not experience an increased sense of enclosure from the properties as a whole. Small, isolated windows will be affected, although these serve open plan spaces that retain excellent levels of sunlight, daylight and outlook in dual aspect from two other large windows.

- 7.22 In terms of impact on the properties within the south wing, these properties would look out towards the extension from their north facing windows. Again, these flats are triple aspect, with two main aspects facing north and south. The south view would be unaffected.
- 7.23 The view to the north would experience minor change. These flats currently look out onto the existing car park, towards the Kingsland development and Primrose Hill to the north. The proposed extension would be approximately 16.5 metres from the south wing.
- 7.24 Whilst guidance stipulates a minimum separation distance of 18 metres, it is not unusual in an urban context for separation distances to be lower than this. 16.5 metres is a generous separation distance and residents would not feel enclosed by the extension, especially at upper levels which retains views over the extension, but also at lower levels.
- 7.25 At present, the right angle of the south and north wing means that existing flats are separated obliquely by only 3.8 metres at its shortest point. This relationship between existing flats has more potential for overlooking, loss of privacy or sense of enclosure than the proposed extension which is 16.5 metres from the property and is designed with opaque glazing to habitable rooms. Existing residents are likely to be aware of the proposed extension, but would not feel enclosed by it.

Overbearing impact

- 7.26 The term 'overbearing' is used to describe the impact of a development on its surroundings, particularly the neighbouring property, in terms of scale, massing and general dominating effect.
- 7.27 The proposed extension seeks to change the existing "T" shaped building into an "I" shape with a footprint that would be similar to the south wing but at a much reduced height and massing. The relationship of the extension is more subservient to building and not as dominating on the north wing as the south wing currently is. This is by virtue of the extension providing a part-four, part-five storey structure on its north facing façade, in comparison to the eight storeys of the existing building.
- 7.28 The proposed extension is shown in **Figure 7.3**, clearly showing that the extension is subservient to the existing building and does not create a general domineering effect on Barrie House due to either its scale or massing. Likewise, the building is also of a scale and massing that is appropriate to other surrounding building such as Kingsland, which is considered acceptable by the Council in its Committee Report.

Figure 7.3 – Proposed photomontage from Broxwood Way



- 7.29 It must therefore be assumed that the Council's Reason 1 refers to the impact on Flats 1, 4, 7, & 10 on the north wing and overbearing impact that the building may have on these flats, specifically the smaller windows on the north façade.
- 7.30 The impact of the proposals on these windows has been discussed at length in this Statement, in relation to other amenity tests. The proposed extension would be 2.13m from the north façade, which at first and second floor level, would result in the view from this window being blocked. The ground floor tertiary window has not existed since before 1982 and the third floor window would be partially blocked.
- 7.31 As noted in the Amenity CPG (para. 2.15), the specific view from a property (or indeed window) is not protected and this is not a material planning consideration.
- 7.32 These small windows serve open plan living / dining rooms with two other much larger windows that are unaffected by the proposals. The extension would not appear overbearing on these apartments when residents are within these rooms due to the generous existing windows and excellent light levels retained. The existing south wing, which is taller than the proposed extension, would be more prominently viewed from these living spaces.
- 7.33 The proposed extension would not be detrimental to the enjoyment of these properties by residential occupiers, as a result of the proposed development, in accordance with the relevant policies and the Amenity CPG. It is of a height, bulk, mass and location that is appropriate to the host building and surrounding buildings.

Other amenity tests

- 7.34 Policy A1 sets out a number of additional factors that are taken into account when considering the protection of amenity of surrounding neighbours.
- 7.35 In terms of daylight impact, the small tertiary windows would not meet the BRE's numeric criteria set out in the guidance. The tertiary windows at first and second floor would not meet the guidance, although these are modestly sized, and as noted previously, serve open plan living / dining areas that are also served by large rectangular dual aspect windows facing east and west. The tertiary window at third floor level would pass the BRE guidance at 100%.
- 7.36 When considering the daylight distribution test, all four living rooms within Flats 1, 4, 7 and 10, (which are between 25.8 and 28 sqm in area), would pass with 100% distribution of daylight to the room retained. The Development would not, therefore have a harmful impact on the overall daylight levels received into these rooms.
- 7.37 With respect to sunlight, the Malcolm Hollis Daylight and Sunlight Report, submitted with the Application assessed all windows relevant windows, confirming a 100% pass rate within Barrie House and the surrounding buildings. The smaller windows are north facing and there would be no material loss of sunlight to these windows. The windows on the west façade of the relevant flats were tested and all passed.
- 7.38 The visual privacy of existing residents is maintained as there are limited opportunities for overlooking between the existing and proposed residential properties. The Committee Report notes (para. 14.2) that whilst there would be a limited introduction of overlooking it is not considered that this would be to a material level given the separation distances, angles between the windows and their positions within the building.
- 7.39 Bedroom windows at all levels of the proposed extension would have a narrow field of view due to obscured panels and directional anodised aluminium fins set 500mm in front of these window openings, which should be secured by condition (see **Section 9** for proposed conditions).
- 7.40 Private terraces to the west and east of the new residential units would be integral to the building and would not create any overlooking potential. The openings to the north and south of the private terrace on third floor level would include 1.8m timber screens that would screen views from the relevant sections of the terrace towards north and south. A condition was proposed by officers to ensure that the screens are installed prior to occupation.
- 7.41 Officers also proposed a condition that would restrict the use of any flat roof areas for access and maintenance purposes only and this is agreed by the Appellant.

Conclusion

- 7.42 For the reasons set out above, the Appellant considers that Reason 1 is not a justifiable reason for refusing planning permission for this Development.

- 7.43 The Proposed Development has been carefully designed to ensure that the impact on neighbouring residents' amenity is minimised. The proposals have had regard to the relevant Policies quoted in the reason for refusal.
- 7.44 In accordance with Policy A1, the extension will protect the quality of life of neighbours and not cause unacceptable harm to their amenity, including visual privacy, outlook, sunlight, daylight and overshadowing, and the other amenity factors outlined in the policy.
- 7.45 In accordance with Policy D1, the proposals provides a high quality design that respects local character and context, that is carefully integrated into its surroundings to improve the character and quality of the area, including the host building.
- 7.46 LBC's planning officers recommended approval of the Application and concluded prior to Planning Committee, at paragraph 27.3 that:

"The proposals have been carefully designed to have an acceptable relationship with their neighbouring occupiers and would not impact on their amenity or on the amenity of any of the proposed dwellings, in terms of light, privacy or outlook. Any overlooking would be mitigated by conditions."

- 7.47 We agree with this Statement and consider that the Development preserves the amenity of neighbouring occupiers in accordance with Policies A1 and D1 of the Camden Local Plan and other material considerations.

8. APPELLANT'S CASE AGAINST REASONS 2, 3, 4, 5, & 6 (LEGAL AGREEMENT)

Reasons for Refusal

8.1 LBC's reasons for refusal 2, 3, 4, 5, & 6 state:

2. The proposed development, in the absence of a legal agreement to secure an appropriate payment in lieu of **affordable housing**, would fail to maximise the contribution of the site to the supply of affordable housing in the borough, contrary to policy H4 (Maximising the supply of affordable housing) of the London Borough of Camden Local Plan 2017.
3. The proposed development, in the absence of a legal agreement to secure a **construction management plan** and an appropriate financial contribution towards implementation support, would be likely to give rise to conflicts with other road users and be detrimental to the amenities of the area generally, contrary to policies G1 (Delivery and location of growth), A1 (Managing the impact of development), T3 (Transport Infrastructure), T4 (Sustainable movement of goods and materials), DM1 (Delivery and monitoring), A4 (Noise and Vibration) and CC4 (Air quality) of the London Borough of Camden Local Plan 2017.
4. The proposed development, in the absence of a legal agreement to secure the development as '**car-free**', would be likely to contribute unacceptably to parking congestion in the surrounding area and promote the use of non-sustainable modes of transport, contrary to policies T1 (Prioritising walking, cycling and public transport), T2 (Parking and Car Parking) and A1 (Managing the impact of development) and DM1 (Delivery and monitoring) of the London Borough of Camden Local Plan 2017.
5. The proposed development, in the absence of a legal agreement to secure an appropriate **financial contribution towards public highway works**, would be likely to harm the Borough's transport and public realm infrastructure, contrary to policies T1 (Prioritising walking, cycling and public transport), T3 (Transport Infrastructure), A1 (Managing the impact of development) and DM1 (Delivery and monitoring) of London Borough of Camden Local Plan 2017.
6. The proposed development, in the absence of a legal agreement to secure a **Basement Construction Plan**, would fail to ensure that the proposed basement development would maintain ground stability and the structural stability of neighbouring properties in the local area contrary to policies A1 (Managing the impact of development) and A5 (Basements) of the Camden Local Plan 2017.

8.2 LBC considers that, in the absence of a legal agreement, the proposed development would fail to secure:

- An appropriate payment in lieu of affordable housing (Reason 2);
- A Construction Management Plan (Reason 3);

- The development as 'car free' (Reason 4);
- An appropriate financial contribution towards public highway works (Reason 5); and
- A Basement Construction Plan (Reason 6).

8.3 This is considered, by LBC, to be contrary to policy H4 (Maximising the supply of affordable housing), G1 (Delivery and location of growth), A1 (Managing the impact of development), T1 (Prioritising walking, cycling and public transport), T2 (Parking and Car Parking), T3 (Transport Infrastructure), T4 (Sustainable movement of goods and materials), DM1 (Delivery and monitoring), A4 (Noise and Vibration), A5 (Basements) and CC4 (Air quality) of the London Borough of Camden Local Plan 2017.

Appellant's Case

8.4 A Section 106 Agreement between the Appellant, Pebbleaim Limited and LBC, has been submitted with this Appeal that would have the effect of securing these planning obligations. This is in 'final draft' form with the wording agreed between parties and awaiting signature. This is to be completed following validation of the Appeal (i.e. following the generation of a PINS reference number).

8.5 This includes:

- A policy compliant payment in lieu of affordable housing of £418,912 to be paid on or prior to Implementation;
- The requirement to submit a draft Construction Management Plan for approval prior to Implementation, including the payment of a CMP Support Contribution;
- An obligation that ensures new occupiers of the development shall not be entitled to be granted a residents parking permit or buy a contract to park within any Council car park unless they are the holder of a disabled persons badge, effectively rendering the development 'car-free'.
- A financial contribution of £10,000 towards public highway works to be paid on or prior to Implementation.
- The requirement to submit a Detailed Basement Construction Plan for approval prior to Implementation, plus post-completion reviews.

8.6 Through the agreement of a Section 106 Legal Agreement between the Appellant and the Council, Reasons 2, 3, 4, 5 & 6 have been addressed and should not prevent the Inspector from granting planning permission.

9. PLANNING CONDITIONS

- 9.1 The Appellant is prepared to accept the following planning conditions, as per draft conditions set out in the April 2019 Committee Report at Section 30 (**Appendix 4**)

10. CONCLUSION

- 10.1 The Development is in accordance with the Development Plan.
- 10.2 The Development is sustainable development, to which the NPPF presumption in favour of granting planning permission applies.
- 10.3 The Development will deliver the following benefits:
- a) Delivering the sustainable development of brownfield land, in line with the overarching approach to development outlined in the NPPF and the development plan;
 - b) Providing a nine residential units, consistent with the strategic objectives of all tiers of planning policy, promoting residential development within accessible locations, and in providing a mix of unit sizes and types;
 - c) Contributing towards LBC's affordable housing through a financial contribution of £418,912;
 - d) Seeking to apply a high quality design which promotes sustainability measures throughout the building's design, construction and lifetime;
 - e) Delivering high quality architecture that would be well-related to the surrounding context and the host building;
 - f) Providing an opportunity to maximise the residential potential for the site by optimising density in line with the objectives of LBC and the Mayor;
 - g) Contributing to the sustainable travel objectives of national, regional and local planning policy, by reducing the amount of car parking on the Site and promoting sustainable means of travel such as cycling and walking.
 - h) Enhancing the quality of landscaping on Site, by removing poor quality trees, replanting and providing landscaped areas. The permeability of the Site is also to be improved.
- 10.4 LBC planning officers recommended approval of the Application subject to conditions and a S106 Agreement, although this was refused by the Planning Committee.
- 10.5 Reason 1 (Amenity) is not a justifiable reason for refusing planning permission. The Appellant has clearly demonstrated that the Development will not result in harm to the amenity of neighbouring residents. The extension would not lead to a loss of outlook, increased sense of enclosure or overbearing development, and residents can continue to enjoy excellent levels of amenity from their existing properties, which are large properties, with a generous plan layout, which retain a dual aspect from alternative windows in the rooms/properties.
- 10.6 The Appeal Scheme is therefore in accordance with Camden's Local Plan Policies A1 and D1, as well as the other material development plan policies and guidance.
- 10.7 Reasons 2, 3, 4, 5 & 6 are included on the basis that no S106 legal agreement was signed to secure affordable housing, construction management plan, a car free development, highways contribution and basement construction plan, respectively. These reasons for refusal are all dealt with through the agreement of a Section 106 Legal Agreement between the Appellant and the Council. Reasons 2, 3, 4, 5 & 6 have therefore been addressed and should not prevent the Inspector from granting planning permission.

- 10.8 None of the reasons for refusing permission for the Development are sound or justified.
- 10.9 There are no other material considerations indicating that the Appeal should be dismissed.
- 10.10 The Appeal should be allowed and planning permission should be granted for the Development.