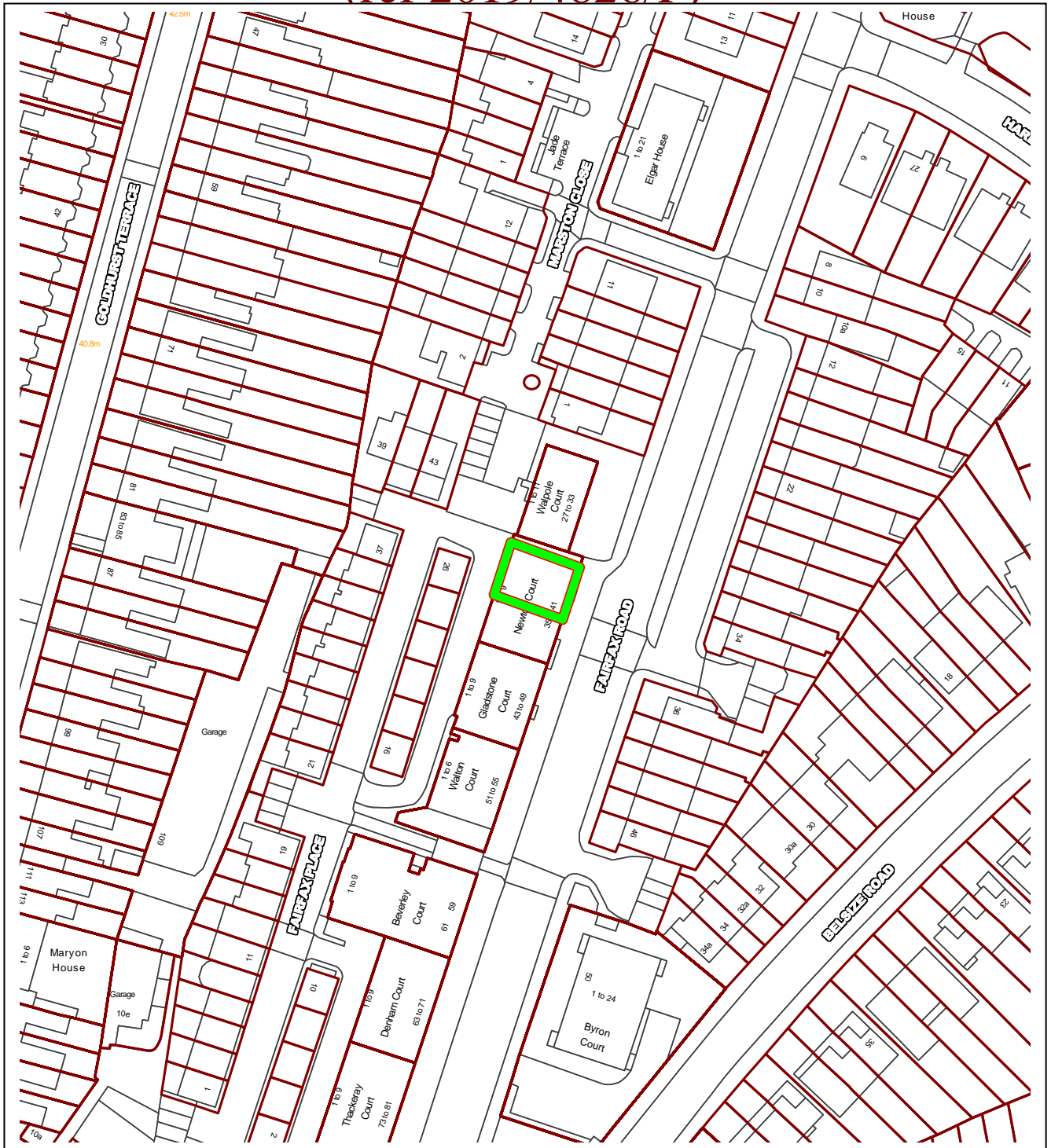


35-37 Fairfax Road, London, NW6 4EW (ref 2019/4826/P)



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Photos of 35-37 Fairfax Road



Photo 1: View of application site (nos. 35-37) from Fairfax Road (outlined in red)



Photo 2: Existing Chabad Lubavitch premises at no. 47 Fairfax Road



Photo 3: Rear service area on Fairfax Place



Photo 4: Rear elevation fronting onto Fairfax Place



Photo 4: View of lower ground floor garage area including existing air conditioning units

Delegated Report (Members Briefing)		Analysis sheet	Expiry Date:	15/11/2019
		N/A / attached	Consultation Expiry Date:	16/11/2019
Officer			Application Number(s)	
Elaine Quigley			2019/4826/P	
Application Address			Drawing Numbers	
35-37 Fairfax Road London NW6 4EW			See draft decision notice	
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature	
Proposal(s)				
Change of use of ground and lower ground floors from A1 (retail) to D1 (Community Use).				
Recommendation(s):		Grant conditional planning permission subject to s106 legal agreement		
Application Type:		Full Planning Permission		

Conditions or Reasons for Refusal:	Refer to Draft Decision Notice					
Informatives:						
Consultations						
Adjoining Occupiers:	No. notified	00	No. of responses	22	No. of objections	17
Summary of consultation responses:	<p>Site notices were displayed from 23/10/2019 outside 35-37 Fairfax Road (application site) and on Fairfax Place.</p> <p>10 consultation responses have been received from occupiers at 9 Fairfax Place, 20 Fairfax Place, 22 Fairfax Place, 25 Fairfax Place, 33 Fairfax Place, 35 Fairfax Place, 43 Fairfax Place, 49 Fairfax Road, and 2 local residents at Fairfax Place (no postal number provided) in relation to the proposal raising the following concerns:</p> <p>Community benefit</p> <ul style="list-style-type: none"> The use would not serve the needs of the entire Jewish community. They belong to a particular sect within Judaism that involves certain beliefs that are heterodox to mainstream Jewish practice and do not represent the majority of British Jews. Condition should be attached to prevent them from engaging in door to door proselytising or other outreach activities that are likely to cause nuisance or disturb the local community They should not be allowed to rent out their space to any third parties <p><u>Officer response: See Creation of D1 community use section</u></p> <p>Use</p> <ul style="list-style-type: none"> D1 uses include a number of different uses but would strongly oppose a place of worship for any religious body Current use at no. 47 the Chabad expand their activities onto the pavement and street in Fairfax Road and on to the service road behind on the Sukhot holiday a Sukkah is erected without any permission or agreement <p><u>Officer response: See Creation of D1 community use section and Other Matters section</u></p> <p>Hours of operation</p> <ul style="list-style-type: none"> Clarification of the opening hours as there are discrepancies between the information provided in the application form and the planning statement. Most shops in the northern part of the parade close by 6pm At current site after functions or religious holiday activities have finished cleaning up and removal of furniture from the service road occurs late at night. Strict conditions should be attached. <p><u>Officer response: See Residential Amenity section</u></p> <p>Layout and use of the basement</p> <ul style="list-style-type: none"> Basement floor includes a common area with couch, table tennis board and piano. The use of this room should be made very clear. Is it primarily an entertainment area which is likely to create noise to the local residents or will it be used for religious matters? Social use in the evening should be restricted so not to disturb local neighbours. <p><u>Officer response: See Creation of D1 community use section</u></p> <p>Noise</p> <ul style="list-style-type: none"> Noise from any air conditioning units should be strictly controlled in the same way as at no. 51 Fairfax Road (A3 use) <p><u>Officer response: See Residential Amenity section</u></p>					

Amenity

- Late and long hours of opening with sizeable number of people attending together with on-site catering is completely inappropriate to the neighbourhood and interferes with residents right to peace and quiet
- Concerned about disturbance from noisy air conditioning, flues etc, people leaving late at night, parking and dumping rubbish
- Residents are disturbed by air conditioning units of the Chabad at current location (no. 47) which often runs until 1am in the morning

Officer response: See Residential Amenity section

Community benefit

- Dispute claim that the application will 'benefit the local Jewish community'. In fact it will benefit only members of the Chabad Lubavitch movement who represent a tiny minority of British Jews and not the broader local Jewish community

Officer response: See Creation of D1 community use section

Refuse collection

- Rubbish needs to be collected regularly ideally during the day so as not to disturb local residents. Boxes should be recycled not be left on the ground or dumped in general rubbish bins. Strict conditions need to be applied to any consent and adhered to.
- Dumping of rubbish at no. 47 in the service road has been a problem

Officer response: See Waste section

Deliveries and servicing

- All deliveries and rubbish collection should not happen after 7pm

Officer response: See Waste section

4 consultation responses from occupiers of 38 Fairfax Road, Flat 4, 51 Fairfax Road, Flat 4, Byron Court, Fairfax Road and Flat 5, Gladston Court have been received in support of the proposal raising the following comments:

Community facility location

- It's been a pleasure and opportunity to have a community facility close to home
- Vital for the neighbourhood and out fellow human beings
- Useful addition to the mix of activities in the street

Noise

- Always quiet and doesn't bother anyone
- No issues with noise

1 comment has been received from local resident at 26 Fairfax Road raising the following comments:

Hours of operation

- Unit at 35-37 has not been open in the evenings or on Sundays. Appropriate hours should be conditioned as it is completely residential area
- Use of the back entrance to 35-37 should be conditioned that except for the hours of 08:00 to 18:00 the doors should not be used and kept locked

Officer response: See Residential Amenity section

Refuse

- Unsatisfactory nature of rubbish disposal at current premises. Bins should be kept outside the property and store should be kept locked at all times.

Officer response: See Waste section

Following the submission of the draft Management Plan, revised floor plans and additional supporting operational information 7 further letters have been received from a residents at Fairfax Place, and 9 Fairfax Place, 25 Fairfax Place, 26 Fairfax Place, 43 Fairfax Place raising additional concerns to those already detailed above:

Activity along Fairfax Road

- The businesses along this section of the retail parade are small business with low footfall. 60-80 people at the time us significantly higher volume than all those other businesses and is not appropriate for the area. Also unlike a restaurant where customers enter and leave at different times in a stagger manor the proposed use would mean that large numbers of people would be entering and leaving the premises at the same time which would be disruptive to local residents

Size and layout inadequate for a use

- Use of the premises as a synagogue is not conducive to the actual size of the premises which is intended as a retail space, residential nature of the area and the lack of dedicated parking. Inadequate in terms of security and gated entry that other synagogues have put in place which has the potential to be detrimental to the safety of the users and if put in place would likely cause discomfort to the local residents living in the vicinity.

Use of the premises

- Strongly opposed to the premises being used as a place of worship for any religious body as it is inappropriate to have a place of worship in the midst of a residential area. The conversion to the synagogue has been confirmed by the submissions from the agent
- Dishonest application as the additional information now shows a religious centre that will not shut on occasions until 10pm at night
- Proposed use appears to have shifted from that of a community centre to a place of worship which would be out of keeping with the rest of this parade of local businesses and shops
- Activities are likely to be extended by other festivals and celebrations such as weddings and bar- and bat-mitzvahs with congregants spilling out onto the pavement

Officer response: see Creation of B1 community use section and Residential Amenity section

Confirmed hours of opening

- The original submission suggested opening hours totalling 53 hours now they are suggesting a total of 85 hours. These hours are unacceptable in a residential area with so many people coming and going into the building.
- The door onto the service road should be only open from 08:00 to 18:00

Officer response: See Residential amenity section

None received

CAAC/Local groups comments:

Site Description

The site is located on the western side of Fairfax Road and comprises a four storey building that is occupied by a variety of commercial units on the basement and ground floors and residential flats above on the upper 3 floors. The ground and basement commercial unit was occupied by Posners (carpets and flooring retail shops) but has been vacant for approximately 1 year. The site is located within a parade of shops that is made up of 22 units that extends along Fairfax Road to its junction with Belsize Road to the south. There is an undercroft vehicular access from Fairfax Road to Fairfax Place that lies immediately to the west of the parade between nos. 57 and 59 Fairfax Road. This provides access to the service road that runs to the rear of the commercial buildings and residential flats that front this part of Fairfax Road. The other vehicular access to Fairfax Place is from Fairhazel Gardens to the south. The access roads not only serve the commercial units fronting onto Fairfax Road but residential properties along Fairfax Place.

The building is not listed and the site does not lie within a conservation area. The site falls within the Fairfax Road Neighbourhood Centre (outside of the Central Activity Zone). Permitted Development (PD) rights have been removed for change of use from A1 (retail) to A2 (financial and professional services).

Relevant History

There is no relevant planning history associated with the application site.

47 Fairfax Road

Planning permission was **refused** on 15/02/2012 (ref 2011/6159/P) for change of use from retail (Class A1) to hot food takeaway (A5) and installation of extract flue on the rear elevation of the building front first floor to roof level. The reason for refusal related to the unacceptable increase in late night activity, noise and disturbance and its impact on the amenity of local residents.

A number of enforcement complaints were received in 2012, 2013 and 2015 regarding the use of the premises at no. 47 where local residents advised that the shop was operating as a religious learning centre / place of worship. Following investigation it was found that the ground floor was selling religious articles and books and selling coffee which falls within the A1 retail use class so it was found that there was no contravention of the authorised use.

There have been numerous applications relating to premises within the parade seeking change of uses, The most recent include the following:

93 Fairfax Road

2019/5915/P - Change of use from retail (Use Class A1) to bakery (Use Class A3) and installation of an extraction duct to the rear **refused** prior approval on 21/02/2020. The main reasons for refusal include loss of the retail unit would harm the retail character of the neighbourhood centre, kitchen flue size and location would have a detrimental impact on the character and appearance of the host building, failure to demonstrate through acoustic survey that the equipment could operate without causing harm to the local residential environment.

69 Fairfax Road

2019/5321/P - Change of use of ground floor and basement from retail (Use Class A1) to beauty salon (Use Class Sui Generis). **Granted** on 15th January 2020

51-53 Fairfax Road

2017/4528/P - Variation of condition 4 of planning permission 2015/3916/P dated 05/04/2016 "Change of use and subdivision of mixed A1/A3 to form an A3 unit at 51. Alteration to the shopfront and the installation of an extract duct from first floor to roof level on the rear elevation" to allow customers to be on the premises between 08:00 to 21:30 on any day. **Refused** on 2017/4528/P

Planning permission was **refused** on 01/04/2014 (ref 2013/7370/P) for change of use at ground and basement levels from retail (Class A1) to a mixed use of retail and restaurant uses (Class A1/A3), including the installation of rear kitchen extract duct from first floor to roof level. The applicant appealed the decision and the appeal was **allowed** (ref APP/X5210/A/14/2216988) subject to a number of conditions relating to the operation including the hours of operation (21:00).

Relevant policies

National Planning Policy Framework (2019)

London Plan (2016)

Intended to Publish London Plan (2019)

Camden Local Plan (2017)

- C2 Community facilities
- A1 Managing the impact of development
- A4 Noise and vibration
- D1 Design
- CC5 Waste
- TC2 Camden's centres and other shopping areas
- T1 Prioritising walking, cycling and public transport
- T2 Parking and car-free development
- T4 Sustainable movement of goods and materials

Supplementary Guidance

- CPG Amenity (2018)
- CPG Community uses, leisure facilities and pubs (2018)
- CPG Town centres (2018)
- CPG Design (2019)

Assessment

1.0 BACKGROUND

1.1 The Chabad Lubavitch of West Hampstead has been based at no. 47 Fairfax Road since 2010. The Chabad House aims to provide a range of educational and outreach activities to their local community. The existing community centre is run by the Rabbi and other volunteers within the community. The community centre predominantly serves the Hasidic Jewish community but its ground floor does offer services to all parts of the community, including a café and a book shop.

1.2 The existing unit provides approximately 160 sq. m floorspace extending over the lower and ground floor level. The ground floor comprises a retail function including Judaica shop selling books and associated religious merchandise and café area and the lower ground floor comprises space for use for educational and outreach activities. Activities include wedding guidance classes, bar/bat Mitzvah preparation and study classes, children's clubs and study groups. These are run 7 days a week with opening hours of 9am to 6pm excluding Wednesday where the centre opens later until 10pm. There are currently no restrictions on the hours of operation of the use nor the number of people who attend the centre at no. 47.

1.3 Due to the restrictions in the size of the existing unit at no. 47 Fairfax Road, it is proposed to relocate the community use from the existing location to nos. 35-37 Fairfax Road (i.e. the application site) to offer improved and varied facilities within a more spacious environment.

2.0 PROPOSAL

2.1 Permission is sought for change of use of the ground floor and lower ground floor from Use Class A1 (retail) to Use Class D1 (Community Use) with ancillary retail sales. The unit would provide 151 sq. m at ground floor level and 179 sq. m at lower ground floor level totalling 330 sq. m in floorspace. The Chabad House community centre would operate in a similar fashion to the current operation at no. 47 (to remain in retail use) and would include the following activities:

- Ground floor – retail uses: Judaica shop with a window display, a small café area, social area and meeting rooms/reading rooms and offices associated with the community centre)
- Lower ground floor - religious and educational teaching: e.g. Torah studies, Hebrew reading courses, wedding guidance, bar/bat mitzvah preparation and study, lectures, Shabbat dinners and children's clubs

2.2 Due to the uses proposed at ground floor level including a shop and café, this would be available to passing members of the public.

Amendments

2.3 During the consultation period local residents highlighted discrepancies in the hours of operation of the

community facility within the submitted documents. -The applicant has confirmed that the community centre opening hours would be as follows:

Days of the week	Operating hours
Monday to Friday (excluding Wednesdays)	08:00 to 21:00
Wednesday	08:00 to 22:00
Saturday	08:00 to 21:00
Sunday	10:00 to 16:00

Table 1 (above): Proposed opening hours

2.4 Local residents also raised concerns about the current use at no. 47 by Chabad Lubavitch particularly in relation to noise and general disturbance, parking, litter and use of the exit on Fairfax Place by members. In support of the application a number of updated documents have been submitted during the course of the application including:

- A revised proposed timetable of weekly activities and additional supporting operation information
- Revised floor plans to include details of the bin store and bike area
- A management plan

3.0 ASSESSMENT

3.1 The main issues to be considered as part of the proposal are:

- Loss of retail unit
- Creation of D1 community use
- Amenity
- Waste
- Transport
- Equality
- Other matters

Loss of retail unit

3.2 The site is located within the designated Fairfax neighbourhood centre, where there are 21 commercial premises extending along Fairfax Road in close proximity to the junctions of Marston Close to the north and Fairhazel Gardens to the south. The frontage currently comprises 11 retail (Class A1) units, which equates to 52% of the frontage. Non-retail units are found at nos. 57, 63-65, 69, 75-77, 79-81, 83-85, 87 and 95a Fairfax Road. CPG Town Centres seeks to protect the retail function of Fairfax by resisting proposals that would result in less than 50% of the premises being in retail use or more than 3 consecutive premises being in non-retail use.

3.3 A desk top study of the uses within the existing parade, which include existing ground floor uses and authorised uses, shows the percentage of retail uses as 57%. The details of which are provided below:

No.	Address	Use Class	Authorised use
1	35-37	A1 (retail – interiors shop) Posners (now vacant)	A1
2	39	A1 (retail – interiors shop) Fairfax flooring	A1
3	41	A1 (retail – beauty shop) SKN	A1
4	43	A1 (retail – interiors shop) Belsize bathrooms	A1
5	45	A1 (retail – hair and beauty) Nico hair and beauty	A1
6	47	A1 (retail) Chabad Lubavitch West Hampstead	A1
7	51-53	A3 (deli) Habiba's Deli	A3 (deli/café)
8	55	A1 (retail – electronics) AT&C	A1
9	57	B1 (office) DCT8	A2
10	61	A1 (retail – interiors shop) Camerich Furniture	A1
11	63-65	A3 (restaurant) Peters Pizzeria	A3
12	69	A2 (Financial services) Regal London	Sui generis use

13	71-73	A1 (Flooring) Think Rugs Think Wood	A1
14	75-77	A3 (restaurant) Atari-Ya Sushi Bar	A3
15	79-81	D2 (Personal training and injury rehab) Performance RX	D2
16	83-85	A3 (Restaurant) Singapore Garden	A3
17	87	Sui generis (Bookmakers) Betfred	Sui generis
18	91	A1 (retail) The Bathroom Design Studio	A1
19	93	A1 (retail) Savemore supermarket (vacant)	A1
20	95	A1 (retail) Off-licence Save More Food and Wine	A1
21	95a	A3 (restaurant) Zara Cafe	A3

Table 2 (above): Existing uses within the neighbourhood centre (application site highlighted in grey)

3.4 Of the 21 units that are operating within the parade there are currently 12 units with authorised retail use (57%). On the vacation of the community facility from no. 47, the unit would continue as a retail unit (A1 use). The proposal would reduce the number of authorised A1 retail units from 12 to 11 within the parade and the percentage of retail uses within this neighbourhood centre would be 52%. The proposal would comply with the requirements of policy TC2 and would retain at least 50% A1 retail units within the parade. This would ensure a mix and balance of uses would be retained within the shopping parade for local residents. There are currently 3 retail units at nos. 35-37, 39 and 41. The proposal would change one of the units from A1 to D1. The proposal would comply with policy requirement in terms of restricting the number of non-retail units within a row as it would result in only 1 retail unit out of 3 being non-retail.

3.5 It is considered that the parade would retain a policy compliant number of retail uses following the proposed change of use and would not harm the vitality or viability of the area and would not affect its vibrant retail function. This would generally conform to the objectives of policy TC2.

Creation of D1 community use

3.6 In the introduction paragraphs to the town centre section of the Local Plan, paragraph 9.32 includes a list of uses which are commonly found in town centres and smaller shopping parades. It acknowledges that D1 uses (including community halls/centres and places of worship) are appropriate community uses in these locations. Policy C2 recognises the vital role that community facilities play in neighbourhoods to address local community needs. The proposal would comply with the objectives of these policies in principle subject to the impact of the use on the wider community in terms of noise and general disturbance, parking, and litter (see sections on Residential Amenity and Parking considerations below).

3.7 The proposed community centre would be relocated from no. 47 to nos. 35-37 Fairfax Road so the community facility would be safeguarded and retained in line with Policy C2(g). Concerns have been raised by local residents that the larger premises would be rented out to third parties. The applicant has confirmed that it would not be rented out by third parties and this has been secured within the Management Plan (see paragraph 3.19 below for further details). It is acknowledged that the proposed community centre would be for a specific community group, which could result in it serving a wider catchment; however, it is a community use itself that is being considered and recommended permission for (i.e. a use within a use class) rather than a particular occupier or user group. Local residents have requested that a condition be attached to restrict door-to-door proselytising or other outreach activities; however, officer consider that such a restriction would go beyond what could reasonably be secured to a planning permission, including the six tests (necessary, relevant to planning, relevant to the development, enforceable and precise), of planning conditions as detailed in paragraph 55 of the NPPF.

3.8 Concerns have been raised about the nature of the use and the fact that the application suggests a community use whereas the additional information submitted during the course of the application suggests that the lower ground floor would be used as a place of worship. The provisions of the D1 (non-residential institutions) use class includes a number of uses such as health centres, crèches, day nurseries, schools, art galleries, museums, libraries, places of worship, church halls and non-residential education and training centres. Each of these uses have different impacts in relation to activities associated with each use including noise and disturbance from the number of visitors coming and going, traffic generation, and parking issues. The application form that was submitted with the application states that the premises would be a used as a community centre. The information that has been submitted during the course of the application would appear to suggest some form of service of worship would take place as larger numbers of patrons will visit the premises on a Saturday morning when the Jewish community observe the Sabbath. Notwithstanding this the application must be assessed on the information that has been provided including the hours of operation, the

activities that are proposed and the number of people who would be attending which are detailed and assessed below. Other uses within the D1 use class have the potential to harm local amenity through increased noise and disturbance, parking and transport impacts. In order to ensure that the premises cannot be used by other uses within the D1 without assessment through the submission of a planning application a condition would be attached restricting the use of the premises to a community use only (i.e. any other type of D1 use would require planning permission).

3.9 The proposed ground floor uses would include a Judaica shop that would sell religious merchandise including books. A small café area would be created with a social area that would include seating areas. This would retain many of the features that an A1 retail/-cafe unit would provide. This could continue to provide a service to passing members of the local community which is welcomed. The lower ground floor would be mainly used as a meeting area defined by formal and informal seating allowing the creation of smaller meeting spaces. There is also an area identified for activities for children including a table tennis table and a common area with formal seating. Concerns have been raised that the proposed lower ground floor plan includes a table tennis table and piano that could indicate an entertaining space which could result in noise and disturbance to local residents. The annotations on the plans are indicative of the types of ancillary activities that could be carried out within this area but the main use of the premises would be for a D1 community use.

3.10 The planning application includes information regarding the proposed weekly programme. This includes daily activities with times varying between 09:00 to 21:00. It also includes the numbers of attendees which typically ranges from 15-20 people. There are some exceptions to the typically hours of operation and number of attendees. These would include:

- Wednesday evening where the centre would hold a learning course for 20-25 people which would run from 20:30 to 22:00
- Friday evenings would be a Sabbath reception class for 20-30 people which would run from 17:30 to 19:30
- Saturday morning would be the Sabbath Community for between 40-60 people that would run from 10:00 to 14:00.

3.11 The community centre would have the potential to cater for up to 80 people during the Saturday morning activity which represents a significant increase in people attending the site in comparison to the general week day activities. The proposal has the potential to harm neighbouring and local amenity and could be detrimental to parking and transport provision within the area. Therefore the appropriateness of the proposal would be subject to an assessment on residential amenity and transport implications (see sections on Residential Amenity and Transport considerations below).

Design

3.12 The proposal involves no external works. Any shopfront alterations or advertisements would require separate planning permission and/or advertisement consent and would have to be applied for through separate applications.

Residential Amenity

3.13 Policy A1 of the Camden Local Plan seeks to ensure that the amenity of neighbouring properties is protected. It states that planning permission will not be granted for development that causes harm to the amenity of occupiers and neighbours in terms of loss of daylight, sunlight, outlook and privacy.

3.14 By virtue of the development being purely a change of use with no physical alterations or extensions, it is considered that it would be unlikely that there would be an adverse impact on the amenity of neighbouring occupiers in terms of loss of daylight, sunlight or sense of enclosure.

3.15 In respect of the proposed D1 use, the Council would need to ensure that noise levels and associated disturbance from general day to day activities of the D1 use do not compromise the quality of living for nearby residential occupiers. This would be associated with the activities taking part inside the unit as well as through the coming and goings of people before and after the activities.

Hours of operation

3.16 The applicant has confirmed during the course of the application that the community centre opening hours would be as follows:

Days of the week	Operating hours
Monday to Friday (excluding	08:00 to 21:00

Wednesday)	
Wednesday	08:00 to 22:00
Saturday	08:00 to 21:00
Sunday	10:00 to 16:00

Table 3 (above): Opening hours

3.17 The hours of operation of the neighbouring commercial units within the parade that are of relevance in terms of comparison to the community centre as a non-retail use include:

	Authorised use	Hours of operation
51-53 Fairfax Road	Mixed A1/A3	Monday to Sunday 09:00 to 21:00
63-65 Fairfax Road (Peters Ristorante Pizzeria)	A3	Monday to Friday 12:00 to 15:00 and 17:00 to 23:00 Saturday 12:00 to 15:00 and 17:00 to 00:30 Sunday 12:00 to 23:00
75 Fairfax Road (Atari-Ya sushi bar)	A3	Monday Closed Tuesday to Sunday 17:30 to 22:30
79-81 Fairfax Road (Performance RX)	D2	Monday to Thursday 06:00 am to 21:00 Friday 06:00 to 18:00 Saturday 07:00 to 16:00 Sunday by appointment only
95 Fairfax Road (Savemore Supermarket)	A1	Monday to Thursday 07:00 to 23:00 Friday to Saturday 07:00 to 00:00 Sunday 07:00 to 22:30
95a Fairfax Road (Zara Café)	A3	Monday to Saturday 07:00 to 18:00

Table 4 (above): Opening hours of non-retail uses within the Fairfax Road Neighbourhood Centre

3.18 It must be noted that the application site is surrounded by a higher concentration of lower key retail uses which then leads to an area that is wholly residential and quieter in character. The D2 and A3 uses highlighted above are concentrated at the southern end of the road, nearer to the relatively busy roundabout. It is accepted that the existing A1 use within no. 51 is unrestricted, such that it could operate within its licensing hours of up to midnight on Mondays to Saturdays and until 22:30 on Sundays; however, the proposal would intensify the use of the lower ground and ground floors of the premises. It is also noted that CPG Town centres states that generally earlier closing times would be more appropriate in neighbourhood centres and residential areas. In the appeal decision on 51-53 Fairfax Road (ref APP/X5210/A/14/2216988), which was allowed for a mixed café/ restaurant use (A1/A3), the Inspector advised that the latest closing time of 21:00 would be appropriate for this site, as being more sociable time for local residents. Given the close proximity of no. 51-53 Fairfax Road to the application site and other the hours of operation for other non-retail uses within the parade, the proposed hours of use would be considered acceptable. It is acknowledged that there would be exceptions to the weekly activity times mainly relating to a Wednesday evening where a Jewish Learning Institute Course would be held for 20-25 people between 20:30 and 22:00. Due to the number of people who would be leaving the premises at this time a dedicated marshal would manage the arrival and departures of the visitors on this day. This would be controlled by a management plan that would be secured by s106 agreement (see further details in paragraph 3.19 below). This would help ensure that people enter and leave the premises quietly and do not gather outside the building.

3.19 In order to manage the day to day use of the premises a draft Management Plan has been submitted and final details would be secured via s106 legal agreement, with the ability for this to be updated and monitored as necessary. The Plan includes the details of the users of the unit, the hours of use, noise control, access and entrances into the premises, servicing and delivery arrangement, waste storage, recycling and collection and car parking and cycle parking. The ground floor retail area would be used by members of the public with the remainder of the premises only being used by members of the Chabad West Hampstead Community. The space would not be used by external third parties. A dedicated marshal (a member of staff with training and responsibility for staff, visitors and deliveries to and from the site) would manage arriving and departing visitors on the evenings with late opening hours (i.e. Wednesdays). The primary point of access into and out of the site would be through the ground floor entrance on Fairfax Road. The Plan confirms that the secondary rear access to Fairfax Place would only be used for servicing, deliveries and as a means of escape. There is a

code of conduct and complaints procedure that includes contact details and response times for complaints. This would allow residents to monitor and provide feedback regarding the use. It is considered that the measures and procedures would be likely to prevent material harm relating to noise and general disturbance if implemented.

3.20 Further conditions to control the impact of the use have been recommended including a condition restricting the amount of people within the premises to only 30 at any one time. An exemption, as included in the wording of the condition, is for up to 80 people during Saturday morning for the Sabbath community to meet. Officers consider that the provision of 80 people is only appropriate for short periods and Saturday morning for the Sabbath community meeting would be acceptable given it would be during the afternoon on a Saturday when fewer residents are likely to be at home. This would only be considered appropriate in this instance as it is once a week and it would not be suitable on a permanent or more frequent basis.

Noise

3.21 Due to the layout of the proposed community use the majority of the meeting room space would be confined to the lower ground floor level of the premises. This would help to ensure that any noise from the area where the largest number of people would congregate for meetings and activities would be minimised from the residential units above the premises at first floor level.

3.22 There are existing kitchen facilities in the lower ground floor of the premises. The applicant has advised that the kitchen would be used for the preparation-/serving of pre-prepared food, storage and refrigeration. No primary cooking would take place on the premises and a condition would be attached to ensure that this is the case. There are existing air conditioning units that serve no. 35-37 which are located at lower ground floor level in the recessed gated servicing area. The proposal would not include any alterations or upgrades to the existing equipment. Local residents have raised concerns about noisy air conditioning units being left running at the existing premises at no. 47 and are concerned about the extract system maintenance at the application site. The Council's Environmental Health team has confirmed that they have not received any formal noise complaints about the air conditioning units at no. 47 since 2012. Given that no primary cooking would take place on site and no changes are proposed to the air conditioning units already on site it would not be reasonable to attach any conditions to control the noise/smells from the existing extract equipment.

3.23 The applicant has confirmed that there would not be any audible music played as part of any of the activities. A condition would be attached to ensure that no music would be played in such a way as to be audible within any neighbouring residential properties, or adjoining highway (i.e. outside of the application site).

3.24 In order to ensure that noise transference is minimised to surrounding residential properties particularly those facing onto Fairfax Place a condition would be attached requiring the ground floor window openings to be fixed shut up to a height of 1.7m internal floor level and the lower ground floor openings to only be used in the case of emergency or for servicing between the hours of 08:00 and 19:00 (Monday to Saturday and 10:00 to 12:00 on Sundays).

3.25 Based on the above, officers consider that the proposed use would be justified subject to the recommended planning conditions and the securing of the Management Plan by s106 legal agreement. The Management Plan would outline the hours of use and numbers of visitors on site as well as how the applicant would address issues relating to noise, general disturbance and parking issues and would be a fluid document that would be updated 6 months from first occupation of the premises and would be further reviewed and updated every 12 months (following the outcome of the initial probation period).

Waste

3.26 Currently the ground floor commercial units along Fairfax Road store 1100 litre wheelie bins along the footway on Fairfax Place to the rear which is a private road that is used as a servicing area. The proposal would include the same waste and servicing arrangements from Fairfax Place. A large number of concerns have been raised by local residents regarding the management of the waste associated with the existing use at no. 47 and these complaints have been reviewed by the Council's Environmental Services monitoring officer. Every establishment which produces waste has the legal responsibility for managing it properly (Waste Duty Care). Failure to follow this can result in prosecution.

3.27 During the course of the application the plans have been revised to show two bins within the garage space at lower ground floor level where rubbish would be stored internally and then taken to the wheelie bin located to the north of site to the 1100 litre wheelie bin. Due to the concerns raised by the local residents regarding rubbish storage and its collection, it is considered appropriate to attach a condition to any permission requiring the submission of a waste strategy to ensure that the bins are stored in a secure location and are managed and collected in line with Camden's waste policy CC5.

Transport

3.28 Fairfax Road falls within the controlled parking zone (CPZ) CA-K/R that restricts parking Monday to Friday 08:30 to 18:00 with a maximum stay of 2 hours, limiting parking to local residents with parking permits during the week. These parking bays are available for the general public to park on Saturdays and Sundays. The site has a PTAL rating of 6a with excellent accessibility to public transport.

Car-free development

3.29 The development would be required to be car-free in accordance with Policy T2. This would be secured by a legal agreement if planning permission is granted, and would prevent future occupiers from obtaining on-street business parking permits. It is acknowledged that the proposed scheme does not include any car parking spaces, therefore is in accordance with policy T2.

3.30 A Transport Statement has been submitted with the application that includes the preferred methods of transport by the existing patrons of the community centre at no. 47 who would be likely to attend the new location at the application site. The results of the in-house survey suggest that 70% of visitors would walk to the site, 15% would arrive by car (approximately 11 arrivals by car), 10% by train/underground and 5% would cycle. As the majority of existing patrons would attend the new location at the application site the statement concludes that there would not be an increase in vehicle trip generation. The Transport Statement (which includes a Travel Plan section) promotes strategies to ensure that people continue to use public transport.. It is noted that the surrounding street requires parking permits which would restrict the ability of patrons parking in the local area. Due to the scale of the use and additional vehicles likely and the restrictions in place within the surrounding street, it is considered that the proposal would not lead to congestion or further parking stress.

Cycle parking

3.31 Policy T1 requires 4 secure accessible cycle parking spaces to be provided (2 long stay spaces for residents or employees and 2 short stay spaces for visitors or customers) for a community use of this size. The plans have been amended to show 4 bike stands within the premises adjacent to the kitchenette area at lower ground floor level. The dimensions of the stands are not in line with Camden's Transport guidance and would not be accessible from street level. However there would be space for the provision of 2 long stay cycle parking spaces within the lower ground floor including the storage area that fronts onto Fairfax Place which is accessible and step free. A condition would be attached to any permission requiring 2 long stay bike stands to be provided. Short stay cycle parking should be provided within the curtilage of the premises. However the site does not benefit from any external space to the front or rear. There are existing on-street cycle parking spaces within close proximity of the site on Fairfax Road in the form of Sheffield stands that would provide additional parking spaces for any short stay cyclists to the site.

Door openings

3.32 One of the existing entrance doors fronting onto Fairfax Road opens outwards onto the pavement. Normally doors would be required to open inwards to ensure they do not impede on pedestrian safety in accordance with the Highways Act 1980. The door openings are existing and there would be no changes to the external elevations of the premises as part of this application. Taking this into consideration as well as the fact that the footway width is wide enough for pedestrians to pass unimpeded at this location there would be no requirement for the doors to be changed.

Equality

3.33 Officers have had due regard to the Public Sector Equality Duty, and the duties of the Council as decision maker have been fulfilled in terms of the Equality Act 2010. The operators and users of the proposed use will share protected characteristics (religion and belief). A site already exists within the parade of shops at no. 47 to provide educational and outreach activities to a section of the Jewish community. The proposal would provide a larger premises within the same parade and would have positive impacts for the faith community and would not constrain or limit the actions of people of other denominations and faiths or the wider community. This is considered a positive benefit of the scheme and it is considered that any impacts arising from the proposal can be adequately mitigated through standard planning controls, as with any other use.

Other matters

3.34 There have been a number of concerns raised by local residents regarding the applicants and how they operate their existing premises at no. 47 Fairfax Road. It has been suggested that the use spreads onto the street and service road to the rear during certain festivals where structures are erected without seeking the required permission. The erection of a temporary structure on highways land that is owned by the Council would require the relevant licences. An informative has been attached reminding the applicant of this. Any future issues (if they occur) would be a planning or highways enforcement matter.

3.35 The requirement for security staff has been raised by local residents and the impact that this may have on local residents shopping in the parade. The employment of security staff is undertaken by the occupier-/tenant of the premises and this falls outside of the control of planning legislation.

4.0 Conclusions

The proposed change of use to include a community centre is considered to retain a vibrant shopping parade and would not harmfully impact on the vitality of viability of the Fairfax Road Neighbourhood Centre. Due to the hours of opening and the number of patrons associated with the use, it is considered that the proposal could result in some harm to the neighbouring and surrounding occupiers due to noise and general disturbance if left unmanaged. The applicant has submitted a Management Plan and a Transport Statement which indicate that the proposed use would not have an unacceptable impact subject to it operating in compliance with the submitted details. A number of condition have been suggested which would control the proposed activity and allow the Council to take enforcement action if necessary.

5.0 Recommendation

Grant conditional planning permission subject to a section 106 legal agreement with the following heads of terms:

- Car free development
- A Management Plan

The decision to refer an application to Planning Committee lies with the Director of Regeneration and Planning. Following the Members Briefing panel on Monday 11th May 2020, nominated members will advise whether they consider this application should be reported to the Planning Committee. For further information, please go to www.camden.gov.uk and search for 'Members Briefing'.

Application ref: 2019/4826/P
Contact:
Tel: 020 7974
Date: 7 May 2020

Development Management
Regeneration and Planning
London Borough of Camden
Town Hall
Judd Street
London
WC1H 9JE

Phone: 020 7974 4444

planning@camden.gov.uk
www.camden.gov.uk/planning

Planning Resolution Ltd.
Thorncroft Manor
Thorncroft Drive
LEATHERHEAD
KT22 8JB

Dear Sir/Madam

DRAFT
FOR INFORMATION ONLY - THIS IS NOT A FORMAL DECISION
Town and Country Planning Act 1990 (as amended)

DECISION SUBJECT TO A SECTION 106 LEGAL AGREEMENT

Address:

35-37
Fairfax Road
London
NW6 4EW

Proposal:

Change of use of ground and lower ground floors from A1 (retail) to D1 (Community Use).

Drawing Nos: Site location plan; Existing layout A1; Proposed layout A1; Planning Statement prepared by Planning Resolution dated September 2019; Supplemental Operational Information prepared by Planning Resolution dated March 2020; Revised timetable of classes, meetings and events at Chabad West Hampstead dated 20/12/2019; Transport Statement prepared by Caneparo Associates Ltd dated September 2019.

The Council has considered your application and decided to grant permission subject to the conditions and informatives (if applicable) listed below **AND** subject to the successful conclusion of a Section 106 Legal Agreement.

The matter has been referred to the Council's Legal Department and you will be contacted shortly. If you wish to discuss the matter please contact **Aidan Brookes** in the Legal Department on **020 7 974 1947**.

Once the Legal Agreement has been concluded, the formal decision letter will be sent to you.

Condition(s) and Reason(s):

- 1 The development hereby permitted must be begun not later than the end of three years from the date of this permission.

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

- 2 All new external work shall be carried out in materials that resemble, as closely as possible, in colour and texture those of the existing building, unless otherwise specified in the approved application.

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policy D1 of the London Borough of Camden Local Plan 2017.

- 3 The development hereby permitted shall be carried out in accordance with the following approved plans:

Site location plan; Existing layout A1; Proposed layout A1; Planning Statement prepared by Planning Resolution dated September 2019; Supplemental Operational Information prepared by Planning Resolution dated March 2020; Revised timetable of classes, meetings and events at Chabad West Hampstead dated 20/12/2019; Transport Statement prepared by Caneparo Associates Ltd dated September 2019.

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

- 4 Notwithstanding the provisions of Class D1 of the Schedule of the Town and Country Planning (Use Classes) Order 1987 (as amended), or any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order, the building shall only be used for a community centre and for no other purpose.

Reason: To ensure that the future occupation of the building does not adversely affect the adjoining premises/immediate area by reason of noise, traffic congestion and excessive on-street parking pressure in accordance with policies A1, A4, and T1 of the Camden Local Plan 2017.

- 5 The use hereby permitted shall not be carried out outside the following times 08:00 to 21:00 hours Mondays, Tuesdays, Thursdays, Fridays and Saturdays, 08:00 to 22:00 hours on Wednesdays, and 10:00 to 16:00 on Sundays.

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies D1, A1, A4 and TC2 of the London Borough of Camden Local Plan 2017.

- 6 No music shall be played on the premises in such a way as to be audible within any adjoining premises or on the adjoining highway.

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies D1, A1, and A4 and TC2 of the London Borough of Camden Local Plan 2017.

- 7 Before the use commences, details of secure cycle storage area for 2 long stay cycles shall be submitted to and approved by the local planning authority. The approved facility shall thereafter be provided in its entirety prior to the premises being occupied, and permanently retained thereafter.

Reason: To ensure the development provides adequate cycle parking facilities in accordance with the requirements of policy T1 of the London Borough of Camden Local Plan 2017.

- 8 The premises shall have no more than 30 people within the property at any one time, within the approved hours of use above, apart from during Saturday (10:00 to 14:00) when 80 would be allowed.

Reason: To safeguard the amenities of the adjoining premises and the area generally and to ensure the safety of those using the premises, in accordance with the requirements of policy A1 and A4 of the Camden Local Plan 2017.

- 9 Before the development commences, details of the location, design and method of waste storage and removal including recycled materials, shall be submitted to and approved by the local planning authority in writing. The facility as approved shall be provided prior to the first occupation of the use and permanently retained thereafter.

Reason: To ensure that sufficient provision for the storage and collection of waste has been made in accordance with the requirements of policy CC5, A1, and A4 of the London Borough of Camden Local Plan 2017.

- 10 Prior to commencement of the use hereby approved, the ground floor windows on the rear elevation facing onto the service road shall be fixed shut and non-opening up to an internal floor height of 1.7m.

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies D1, A1, and A4 and TC2 of the London Borough of Camden Local Plan 2017.

- 11 The rear lower ground floor openings of the premises leading onto the service road shall only be used in the case of an emergency or for servicing (including the removal of refuse and recycling) between the hours of 08:00 until 19:00 Monday to Saturdays and 10:00 to 12:00 on Sundays.

Reason: To safeguard the amenities of the adjoining premises and the area generally in accordance with the requirements of policies D1, A1, and A4 and TC2 of the London Borough of Camden Local Plan 2017.

Informative(s):

- 1 Your proposals may be subject to control under the Building Regulations and/or the London Buildings Acts that cover aspects including fire and emergency escape, access and facilities for people with disabilities and sound insulation between dwellings. You are advised to consult the Council's Building Control Service, Camden Town Hall, Judd St, Kings Cross, London NW1 2QS (tel: 020-7974 6941).

- 2 This approval does not authorise the use of the public highway. Any requirement to use the public highway, such as for hoardings, temporary road closures and suspension of parking bays, will be subject to approval of relevant licence from the Council's Streetworks Authorisations & Compliance Team London Borough of Camden 5 Pancras Square c/o Town Hall, Judd Street London WC1H 9JE (Tel. No 020 7974 4444) . Licences and authorisations need to be sought in advance of proposed works. Where development is subject to a Construction Management Plan (through a requirement in a S106 agreement), no licence or authorisation will be granted until the Construction Management Plan is approved by the Council.
- 3 All works should be conducted in accordance with the Camden Minimum Requirements - a copy is available on the Council's website at <https://beta.camden.gov.uk/documents/20142/1269042/Camden+Minimum+Requirements+%281%29.pdf/bb2cd0a2-88b1-aa6d-61f9-525ca0f71319> or contact the Council's Noise and Licensing Enforcement Team, 5 Pancras Square c/o Town Hall, Judd Street London WC1H 9JE (Tel. No. 020 7974 4444)

Noise from demolition and construction works is subject to control under the Control of Pollution Act 1974. You must carry out any building works that can be heard at the boundary of the site only between 08.00 and 18.00 hours Monday to Friday and 08.00 to 13.00 on Saturday and not at all on Sundays and Public Holidays. You must secure the approval of the Council's Noise and Licensing Enforcement Team prior to undertaking such activities outside these hours.

- 4 You are advised that condition 5 means that no customers shall be on the premises and no noise generating activities associated with the use, including clearing up, shall be carried out otherwise than within the permitted time.
- 5 You are reminded that filled refuse sacks shall not be deposited on the public footpath, or forecourt area until within half an hour of usual collection times. For further information please contact the Council's Environment Services (Rubbish Collection) on 020 7974 6914/5. or on the website <http://www.camden.gov.uk/ccm/content/contacts/council-contacts/environment/contact-street-environment-services.en>.
- 6 Your attention is drawn to the fact that there is a separate legal agreement with the Council which relates to the development for which this permission is granted. Information/drawings relating to the discharge of matters covered by the Heads of Terms of the legal agreement should be marked for the attention of the Planning Obligations Officer, Sites Team, Camden Town Hall, Argyle Street, WC1H 8EQ.
- 7 This proposal may be liable for the Mayor of London's Community Infrastructure Levy (CIL) and the Camden CIL. Both CILs are collected by Camden Council after a liable scheme has started, and could be subject to surcharges for failure to assume liability or submit a commencement notice PRIOR to commencement. We issue formal CIL liability notices setting out how much you may have to pay once a liable party has been established. CIL payments will be subject to indexation in line with construction costs index. You can visit our planning website at www.camden.gov.uk/cil for more information, including guidance on your liability, charges, how to pay and who to contact for more advice.

In dealing with the application, the Council has sought to work with the applicant in a positive and proactive way in accordance with paragraphs 186 and 187 of the National Planning Policy Framework.

Yours faithfully

Supporting Communities Directorate