

**MBA Planning**

**Written Representations Appeal**

**Appellant's Statement**

**Camden: 41-47 Ingham Road and 108 Fortune Green  
Road, London NW6 1DG**

**Council Reference 2019/6114/P**

**April 2020**

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## 1.0 INTRODUCTION

1. This is the appellant's statement in respect of an appeal against the Council's refusal of an application for ***Erection of additional storey at third floor level to provide additional flat, with roof terrace.***
2. The application was refused on 25 March for these reasons:
  - 1 *The proposed extension and terrace, by reason of their height, bulk, mass and detailed design would compromise the form, architectural character of the host building. The extension and terrace would result in an incongruous and discordant addition that would be detrimental to the character of the building and the area, contrary to Policy D1 (Design) of the Camden Local Plan 2017 and Policy 2 of the Fortune Green and West Hampstead Neighbourhood Plan.*
  - 2 *The proposed development, in the absence of a legal agreement securing car-free housing, would be likely to contribute unacceptably to parking stress and congestion in the surrounding area and fail to promote healthy or sustainable transport choices, contrary to policy T2 (Parking and car-free development) of the Camden Local Plan 2017.*
  - 3 *The proposed development, in the absence of a legal agreement securing a construction management plan and monitoring fee, would be likely to impact on the amenity of local residents, contrary to Policy A1 of the Camden Local Plan 2017.*
  - 4 *The proposed development, in the absence of a legal agreement, securing a contribution towards the affordable housing, would fail to contribute to housing needs in the borough, contrary to Policy H4 of the Camden Local Plan 2017.*

## 2.0 BACKGROUND

3. On 19 February 2019 the Council granted consent **2018/4870/P** for the ***Erection of additional storey to Ingham Road elevation of nos. 41-47 and part 1/part 2 storey extension to 108 Fortis Green Road, in association with addition of 3 new flats and re-configuration of the existing flats (Annexe 1).*** The pre-app for that proposal originally contained a 3<sup>rd</sup> floor projection (an extension of the flat fronting Fortune Green Road) larger than the flat that is subject of this appeal, but it was removed from the consented scheme at the Council's request.
4. The appellant disagreed with the Council about the controlled extension of the third floor and in June 2019 submitted a minor material amendment application **2019/2781/P** that sought a small flat there. This was refused and was appealed on 31 October 2019 with the PINS reference **3240346**.
5. On 5 November, the Court of Appeal issued its judgement in Finney v Welsh Ministers [2019] EWCA Civ 1868, which reversed an earlier High Court judgement and determined that minor material amendment applications could only apply to proposals consistent with the approved description of the original proposal. In this case, the description only permitted 3 flats, but the effect of the MMA appeal application would be to permit 4.

- That appeal application was thus inconsistent with the original consent description. As a result, we withdrew appeal **3240346** and resubmitted this appeal application as a planning application. The work to implement consent **18/4870** is now well underway

### 3.0 APPLICATION DOCUMENTS

- These are as follows:

Plan	Description
SO 21	Site Survey
AP 306	Permitted floor plans under construction
AP 310	Permitted elevations under construction
AP 403	Proposed third floor (no south window)
AP 406	Proposed floor plans (extra cycle parking)
AP 410	Proposed elevations
	Anstey Horne Daylight and sunlight study
	Extract from previous appeal proof of evidence

### 4.0 CONTEXT

#### General Location

- The appeal proposal's position is shown on the extract from the Council's Proposals Map below.



- The site (yellow triangle) is on the south-east side of the junction of Fortune Green Road and Ingham Road. Nos. 56-118 Fortune Green Road (east side) are within the Fortune Green Road Neighbourhood Centre (blue lines), which has a good convenience shopping offer.
- It is not in a conservation area (brown shading) and there are no listed or locally listed buildings in the vicinity.
- It has a PTAL score of 4 (good). There are several bus routes - 113 (Edgware - Oxford Circus), 82/13 (North Finchley - Victoria), 328 (Golders Green - Chelsea Worlds End) and C11 (Archway Station - West End Lane) operating within 500m from the site. West Hampstead underground station (Jubilee line) is 15 minutes' walk south of the site.

## The Site

12. The overall site comprises No. 108 Fortune Green Road and Nos. 41-47 Ingham Road, which are shown below as they appeared before work started to implement consent **4870**.



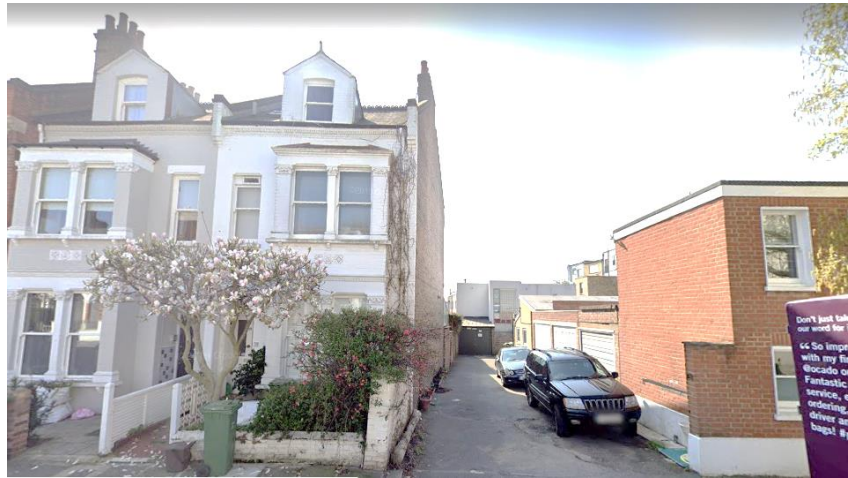
13. No. 108 was a 2-storey plus rooms in the roof Edwardian red brick building. At ground floor level it is occupied by estate agents and at first and second floor level was a 3-bed flat.
14. To the rear, Nos. 41, 43, 45 and 47 Ingham Road was a 2-storey flat roof projection a storey and a half lower than the Fortune Green building, with a 1b1p duplex at ground and first floor level (Flat 41), a 1b2p unit at first floor level with ground floor access (Flat 43) and a 1b1p unit at ground floor level (Flat 45). Note the lower floor to ceiling heights in the Ingham Road element of the appeal building, which provide 2 storeys in the same height as about one and a half storeys in the Edwardian Fortune Green Road building.
15. **Consent 4870** permits an additional upper floor over the whole site and is described below.

## The Surrounding Area

16. The location is shown in more detail on the plan below (yellow triangle).



17. Fortune Green Road is a busy district distributor. Ingham Road is a residential road with 2-storey plus pitched roof Edwardian terraced houses with dormer accommodation in the roofs. The photos below show they are separated from the appeal property (right) by a rear service road that has a number of garages and small dwellings on it.



18. The following photo shows the Fortune Green Road face of the appeal site and the entrance to Ingham Road. Note the way the white building (No110A on the plan above) opposite the appeal site turns the corner into Ingham Road at the same height as its Fortune Green Lane frontage, rising from back of pavement.



19. Opposite the site in Fortune Green road is the highly distinctive 4/5 storey blue engineering brick Alfred Court. This is a very dominant building with flats over commercial premises by CZWG. It was completed in 2010 and has greatly changed the scale, character and typical materials of the area.



20. The aerial photos below show the low key, mundane garage buildings mainly set away from the road frontage it replaced on the site and compare these with the CZWG building to illustrate the great change in scale and character.

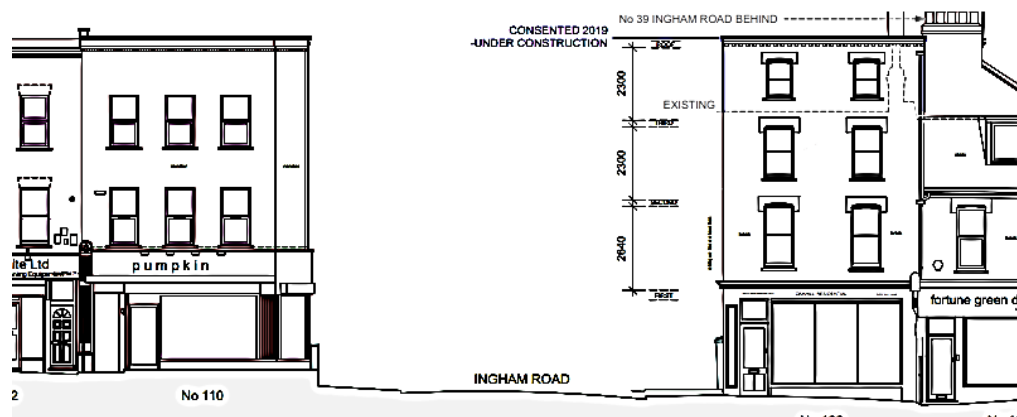


21. The appeal site is at the intersection between the higher buildings along Fortune Green Road and the lower ones in Ingham Road. The long Ingham Road face of the site makes a weak and incongruous transition between them, being well below both their eaves lines and is inconsistent with the way the building opposite No110A turns the corner.

#### 4.0 THE PERMITTED EXTENSIONS AND THE APPEAL PROPOSAL

##### The Permitted Extensions

22. **Consent 4870** was granted in November 2018 for *Erection of additional storey to Ingham Road elevation of nos. 41-47 and part 1/part 2 storey extension to 108 FG Road, in association with addition of 3 new flats and re-configuration of existing flats.*
23. The permitted Fortune Green Road face of the appeal building is shown below in the context of the existing white building on the opposite side of Ingham Road.



24. The grey dotted line 'Existing' shows that the consent raises the vertical frontage of the appeal building by a storey to match the height of the building on the opposite side of the Ingham Road junction. This is the white building in the photograph at **para 18** above. It makes the comparison between the way each turns the corner particularly relevant to this appeal.

25. The permitted flat roofed, Ingham Road elevation is shown below. The red dashed line shows the profile of the existing building. The consent is the baseline for assessing the effect of the appeal proposal.



26. Note the permitted extra storey only takes the Ingham Road element's roof to the same height as the eaves line of the 2-storey Edwardian terrace and is a storey and a half below the Fortune Green Lane element. The flat roof is incongruous in the context of the pitched roofs in Ingham Road.
27. There is an inconsistency in the permitted elevations (**Annexe 2**). A balcony extending across the full width of the rear elevation is shown in the permitted rear elevation and the floor plan (below) but that does not appear on the Ingham Road street elevation above.



28. The rear elevation also shows the scale of Alfred Court on the opposite side of Fortune Green Road. This dominant recent building dwarfs the buildings on the appeal site side of the road.

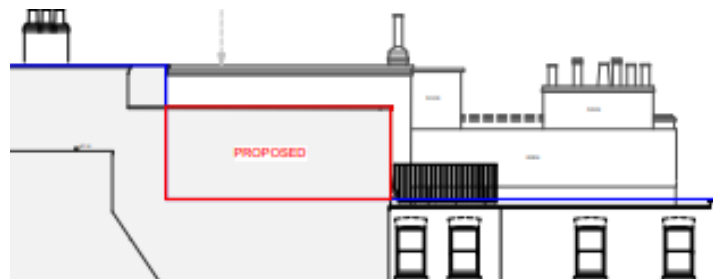
## The Appeal Scheme

29. This proposes to raise the part of the permitted part 3<sup>rd</sup> floor rear extension closest to the Fortune Green Road element of the building to create a further 1-bed flat at the rear of the 4-storey permitted Fortune Green Road building. It does not affect the Fortune Green Road element of the appeal building.
30. It is designed to reflect the way the white building on the opposite side of Ingham Road turns the corner and make an effective transition between the enlarged Fortune Green and Ingham Road faces of the appeal building.





31. Note that the appeal proposal's height remains lower than the ridge of the adjacent Edwardian terrace. It will be clad in similar slates and have similar sized dormers.
32. The proposal is also lower than the white building opposite and extends for a shorter distance along Ingham Road, as the south elevation below with the white building's profile beyond shows:



33. The proposed rear elevation shown below closely resembles the permitted one in true elevation.



34. Two windows lighting the rear of the fourth floor of the Fortune Green building are shown reduced in size. This will not reduce light in that flat to an unacceptable level because it is also lit from the Fortune Green Road face.
35. It will still have better daylight than the permitted flats on the lower floors, which have the same layout lit only by the similar windows on the Fortune Green Road frontage and the Juliette balconies at the rear.
36. It should be noted that the appeal scheme is a considerable scaling back on the pre-app scheme, which is identified in green below.



37. The appeal proposal has a maximum ridge height of 2.4m which sits circa 1.5m below the corner element to remain as a subordinate addition, being lower and just 6m in length.

### Areas of Agreement

38. The Delegated Report on the appeal refusal (**Annexe 3**) says: *Consultations...it is not considered that modest increase in the number of flats would significantly impact on local amenities, damage to buildings during building works is a civil matter.*
  - 3.3 *Whilst the site is not within a conservation area and has no heritage status, the existing building is not without merit on this corner plot largely because of its distinct roof form and profile on the Ingham Road frontage (but of course this has now been lost by the **consent 4870** development);*
  - 3.4 *There are previous consents...which allow an additional storey on the Ingham Road frontage and an enlarged third storey on the Fortune Green Road frontage. Such extensions would change the roof profile and form of this part of the building to a similar form, height and massing to the building on the opposite corner...*
  - 3.7 *An additional flat would be provided (flat 43c) under the proposals. The flat would have an area of 37sqm, which meets the minimum space standards (37sqm). The flat would have sufficient outlook and light. The flat would have external space in the form of a terrace. The amenity of the proposed flat is considered acceptable.*
  - 3.8 *There are no windows or rear gardens that would be materially affected in terms of overlooking from the proposed terrace, given its location and the location and orientation of neighbouring windows/gardens.*

- 3.9 A daylight/sunlight assessment has been submitted. Only one window serving 106 Fortune Green Road would suffer a loss beyond the BRE guidelines. The window would have 0.77 times its former value in terms of Vertical Sky Component, which is considered to be only very slightly below the BRE 0.8 guideline and is therefore acceptable.
  - 3.10 With regards sense of enclosure, the extension is not considered to be so deep or close to neighbouring properties that it would harm their amenity sufficiently to justify a refusal on grounds of loss of amenity.
  - 3.11 The proposed amendment to create an additional flat is acceptable in Transport terms, so long as it would be car-free...
  - 3.13 An additional cycle parking space would be provided which is considered acceptable in terms of cycle parking.
39. Note also that the Delegated Report and reasons for refusal do not object to proposed materials, which must therefore also be acceptable. The proposal satisfies all other national and London Plan standards.
40. We agree with and adopt all of these points.

## 5.0 PLANNING ISSUES

### Housing Need and Brownfield Sites

41. The Delegated Report accurately confirms at para 3.1 that *Residential use is the Council's priority land use and is supported.*
42. This is a brownfield site and **RNPPF para 117** says: *Planning...decisions should promote an effective use of land in meeting the need for homes and other uses... in a way that makes as much use as possible of previously developed or 'brownfield' land.* There is a national and local presumption in favour of using it to meet the need for the Council's priority land use.
43. **RNPPF para 48** says relevant policies in emerging plans can be given weight. The Inspectors' report on the shortly to be adopted **draft London Plan** increases Camden's 10-year housing target by 17% from the current London Plan - from 8,892 to 10,380 dwellings. Of these about a third are targeted on small sites (less than 0.2ha), many of which will be windfalls such as the appeal proposal.
44. The way this should be implemented is in **Local Plan policy H1 (maximising housing supply)**. **Policy H1** says: *d. where sites are underused or vacant, expecting the maximum reasonable provision of housing that is compatible with any other uses needed on the site. We will monitor the delivery of additional housing against the housing target, and will seek to maintain supply at the rate necessary to exceed the target.* From above, the target to be exceeded has now increased by 17% and the proposal seeks the maximum reasonable provision of dwellings on the site.
45. The emerging **dLP policy H2 Small Sites** says: *Small sites should play a much greater role in housing delivery and boroughs should pro-actively support well-designed new homes on small sites through both planning decisions and plan-making...: To deliver the small sites targets*

*Boroughs should apply a presumption in favour of small housing development which provide between one and 25 homes...proposals to increase the density of existing residential homes within PTALs 3-6 or within 800m of a Tube station, rail station or town centre boundary through...a) residential conversions b) residential extensions... 3) the redevelopment...of flats...to provide additional housing*

46. The inescapable conclusion is that the proposal is a windfall brownfield small site consistent with the Council's priority land use and soon to be adopted London Plan housing policy. There is a policy presumption in favour of its development.

### **Response to the Reasons for Refusal**

***1.The proposed extension and terrace, by reason of their height, bulk, mass and detailed design would compromise the form, architectural character of the host building. The extension and terrace would result in an incongruous and discordant addition that would be detrimental to the character of the building and the area, contrary to Policy D1 (Design) of the Camden Local Plan 2017 and Policy 2 of the Fortune Green and West Hampstead Neighbourhood Plan.***

47. **LP Policy D1 (Design)** states the Council will seek to secure high quality design in development. **FGWHNP Policy 2** states that all development shall be of a high-quality design which complements and enhances the distinct local character and identity of Fortune Green and West Hampstead.
48. This is not a conservation area and neither policy specifically precludes the appeal proposal - both require design judgement to be exercised and the proposal's effect is assessed against the Delegated Report's analysis of this below.
49. The Delegated Report has two paragraphs that explain **reason 1**:  
*3.5. The current proposals seek to add an additional part storey to what was previously approved on the Ingham Road terrace in the form of a shortened third storey. This extension would be mansard-style. The proposed extension disrupts the clarity and form of the consented schemes and introduces an incongruous element to the roof scape. The proposed terrace would be highly visible and would also appear incongruous and would create clutter at roof level. The proposed mansard does not comply with the Council's guidance on the design of mansards, laid out in CPG Design.*  
*3.6. Given the above, the proposals are not considered high quality design that respects the local context and character considered unacceptable in design terms, and contrary to Local Plan design policy D1 and FGWH Neighbourhood Plan Policy 2.*
50. These points fail to recognise that the existing distinct roof form is completely lost as a result of the recent consented scheme. This appeal proposal will not alter the consented roof profile of the Fortune Green Road building and will be lower and subservient to it.
51. The proposed flat will not be read as discordant or piecemeal because it has been designed to make an effective transition between the height of the Fortune Green Road element of the permitted scheme and the Ingram road element. As permitted, this storey and a half step is

over-abrupt and too blocky. It does not relate to the way the white building opposite turns into Ingham Road.

52. The permitted Ingham Road roofline is not articulated in any way – it is a dull, long horizontal because the Council asked for the appeal flat to be withdrawn from the subsequently consented scheme. The appeal proposal provides articulation by stepping down between the front and rear elements of the permitted scheme to be half a story below the roof of the Fortune Green Road element. The permitted lower element to the east (almost two thirds of the frontage) is unchanged by this proposal and remains appropriately respectful of the Edwardian terrace to the east.
53. The proposal's floor level is at eaves level of the Edwardian terrace, the top of its roof is well below its ridge line and it is slate clad to match the terrace's roof material. Its materials and scale are consistent with Ingham Road's Edwardian terraces, which have accommodation in their roofs.
54. While it has no parapet (and so may be inconsistent with the Council's advice in CPG1 in this respect) this is not a conservation area and there are no pitched roofs behind parapets in the area. It is otherwise consistent with the CPG's flat-top mansard design.
55. As well as failing to give weight to the proposal's similarity in mass to the return of the white building opposite in Ingham Road, the local change of scale that has resulted from construction of Alfred Court opposite is not mentioned in it.
56. The Delegated Report failure to assess the proposal against these points. Nor does it assess it in the light of policy on the development of small sites and the need to make full use of brownfield sites. Thus, it did not consider key material considerations and this casts doubt on its conclusion.
57. Our strong view is that the proposal is consistent with the relevant policy and the character of the local area and the development will look much better if the appeal is allowed.
58. **Reasons 2, 3 and 4 : *The proposed development, in the absence of a legal agreement securing car-free housing, would be likely to contribute unacceptably to parking stress and congestion in the surrounding area, contrary to Policy T2 of the Camden Local Plan 2017.***  
***The proposed development, in the absence of a legal agreement securing a construction management plan and monitoring fee, would be likely to impact on the amenity of local residents, contrary to Policy A1 of the Camden Local Plan 2017.***  
***The proposed development, in the absence of a legal agreement securing a contribution towards affordable housing, would fail to provide affordable housing, contrary to Policy H4 of the Camden Local Plan 2017***
59. Application **2781's** refusal reasons 4, 5 and 6 criticised lack of a s106 agreement.
60. There is a loose end because **Refusal 2781's** reason 6 requires an affordable housing contribution, even though this is not required in **Consent 4870's** S106 agreement.

61. The requirement for affordable housing is in **Local Plan Policy H4**. This was adopted in July 2017, well before **Consent 4870** was granted in February 2019 that did not require an affordable housing contribution.
62. A draft Unilateral Undertaking is at **Annexe 4** that covers these requirements.

## **6.0 CONCLUSION**

63. For all the reasons set out above, the Inspector is respectfully asked to allow the appeal.

## **Annexe 1 Consent 4870**

Application ref: 2018/4870/P

Contact: David Fowler Tel: 020 7974 2123

Date: 19 February 2019

DECISION Town and Country Planning Act 1990 (as amended)

Full Planning Permission Granted Subject to a Section 106 Legal Agreement

Address: 41-47 Ingham Road and 108 Fortune Green Road London NW6 1DG

Proposal: Erection of additional storey to Ingham Road elevation of nos. 41-47 and part 1/part 2 storey extension to 108 FG Road, in association with addition of 3 new flats and reconfiguration of existing flats.

Drawing Nos: Existing plans: 1802 S001, 1822 AP010, 1822 S012, 1802 S006 A. Proposed plans and documents: 1802 AP110C, 1802 AP106C, 1802 AP113, Planning, Design and Access Statement (October 2018) Michael Burroughs Associates, Arboricultural Report (October 2018) Tretac, Daylight and Sunlight Report (19 October 2018) Anstey Horne.

The Council has considered your application and decided to grant permission subject to the following condition(s):

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 and Policy 2 of the Fortune Green and West Hampstead Neighbourhood Plan.

3 The development hereby permitted shall be carried out in accordance with the following approved plans: 1802 AP110C, 1802 AP106C, 1802 AP113, Planning, Design and Access Statement (October 2018) Michael Burroughs Associates, Arboricultural Report (October 2018) Tretac, Daylight and Sunlight Report (19 October 2018) Anstey Horne.

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

4 The details of the following shall be submitted to, and approved in writing by, the Local Planning Authority before any work is commenced on the relevant part of the development. (a) Details of facing materials (b) Details including sections at 1:10 of all windows (including mouldings) and external doors and door frames (c) Details including materials of all balconies and roof terraces including balustrades (d) Details of the cornice with material samples if appropriate 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 and Policy 2 of the Fortune Green and West Hampstead Neighbourhood Plan.

5 A sample panel (of no less than 1m x 1m) of the facing brickwork, demonstrating the proposed colour, texture, face-bond and pointing shall be provided on site and approved by the local planning authority in writing before the relevant parts of the works are commenced. The development shall be carried out in accordance with the approval given. The sample panel shall be retained on site until the work has been completed.

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 and Policy 2 of the Fortune Green and West Hampstead Neighbourhood Plan.

6 Prior to the commencement of any works on site, details demonstrating how trees to be retained shall be protected during construction work shall be submitted to and approved by the local planning authority in writing. Such details shall follow guidelines and standards set out in BS5837:2012 "Trees in Relation to Construction". All trees on the site, or parts of trees growing from adjoining sites, unless shown on the permitted drawings as being removed, shall be retained and protected from damage in accordance with the approved protection details.

Reason: To ensure that the development will not have an adverse effect on existing trees and in order to maintain the character and amenity of the area in accordance with the requirements of policies A2 and A3 of the London Borough of Camden Local Plan 2017.

7 The approved cycle parking shall be provided in its entirety prior to the first occupation of any of the new units, and permanently retained thereafter.

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



## Annexe 2 Consent 4870 Plans (balcony space ringed)



## **Annexe 3 Appeal Application Delegated Report**

Delegated Report Analysis sheet

Expiry Date: 24/07/2019 N/A

Consultation Expiry Date: 28/07/2019

Officer/Application Number(s) David Fowler 2019/6114/P

Application Address Numbers 41 - 47 Ingham Road London NW6 1DG See

Draft Decision Notice

PO 3/4 Area Team Signature C&UD Authorised Officer Signature

Proposal(s) Erection of additional storey at third floor level to provide additional flat, with roof terrace.

Recommendation(s): Refuse planning permission

Application Type: Full planning permission

Conditions or Reasons for Refusal: Refer to Draft Decision Notice

**Consultations** Adjoining Occupiers: No. of responses 01 No. of objections 01

Summary of consultation responses: One objection has been received on the following grounds: - Massive increase in size of building and number of flats - Overuse of site - More pressure on public amenities - Damage to buildings – cracks appearing

Officer's response: See section on design, it is not considered that modest increase in the number of flats would significantly impact on local amenities, damage to buildings during building works is a civil matter.

CAAC/Local groups\* comments: No responses received.

### **Site Description**

The site is located on Ingham Road, close to the junction with Fortune Green Road. The building in question was two storeys but is currently being extended to three storeys, in line with planning permission 2018/4870/P (see below).

The site is within the Fortune Green Local Centre.

The site is not within a conservation area and there are no listed buildings or locally listed buildings on or close to the site.

## **Relevant History**

PW9902407 – 41 Ingham Road; Appeal allowed for “The demolition of a single storey garage and the erection of a two-storey extension to provide a self-contained one bed flat”. Appeal allowed 17/08/1999.

PWX0302207 – 43 Ingham Road; Appeal dismissed for “The erection of a rear second floor level mansard roof extension to provide additional habitable accommodation for a flat.” Appeal dismissed 16/12/2003.

2003/2401/P – Permission granted for “The erection of an additional storey to the Ingham Road elevation to extend a 1-bed flat to a 3-bed maisonette, together with the remodelling of the mansard roof of 108 Fortune Green Road to form an additional floor to provide 2 x 1-bed flats.” 21/11/2003.

2018/4870/P – 41-47 Ingham Road and 108 Fortune Green Road Permission granted for ‘Erection of additional storey to Ingham Road elevation of nos. 41-47 and part 1/part 2 storey extension to 108 FG Road, in association with addition of 3 new flats and reconfiguration of existing flats’ dated 19/02/19.

2019/2781/P – 41-47 Ingham Road and 108 Fortune Green Road Permission refused for ‘Variation of Condition 3 (Approved Plans) granted under reference 2018/4870/P dated 19/02/19 for Erection of additional storey to Ingham Road elevation of nos. 41-47 and part 1/part 2 storey extension to 108 FG Road, in association with addition of 3 new flats and reconfiguration of existing flats. The changes are namely to provide a mansard-style extension at 3rd floor level on Ingham Road, to provide an additional flat and a terrace at third floor level. Dated 25/09/2019.

## **Relevant policies**

NPPF London Plan consolidated with alterations 2016

Camden Local Plan 2017 H1 Maximising housing supply H4 Maximising the supply of affordable housing H7 Large and small homes A1 Managing the impact of development D1 Design T1 Prioritising walking, cycling and public transport

Camden Planning Guidance

Fortune Green and West Hampstead Neighbourhood Plan (FGWH) 2015

## **Assessment**

### **1. Proposal**

1.1. The approved application featured an additional storey on both the Fortune Green Road (3rd floor level) elevation and the Ingham Road elevation (2nd floor level).

1.2. This application seeks to erect a further storey at part 3rd floor level on the Ingham Road elevation. This extension would take the form of a mansard roof and would provide an additional flat.

1.3. There were four flats in the entire area of ownership of the applicant (41-47 Ingham Road and 108 Fortune Green Road) before the approved extension works, which will bring the number up to seven. An eighth flat is proposed as part of the current application.

## **2. Background**

2.1. An extension was proposed, as per the current application, on this part of the building at pre-application. Officers considered that this was unacceptable, and this element of the scheme was removed, and the subsequent planning application 2018/4870/P was granted.

2.2. A section 73 application (2019/2781/P) was refused for amendments to allow the extension, accommodating an extra flat, as per the current application. The applicant appealed the above decision but following the court of appeal decision (Finney vs Welsh Ministers), decided to withdraw the appeal and submit a fresh application.

2.3. The proposed extension is almost identical to that refused in the Section 73 application.

## **3. Assessment**

### **Land use**

3.1. Residential use is the Council's priority land use and is supported. The original application did not trigger the need for affordable housing as the increase in floor area was 89sqm. The current proposals would go over the 100sqm threshold, with a total increase of 126sqm. The proposed uplift would require a financial contribution towards affordable housing of £7,032.04, calculated using the formulae in Camden Planning Guidance. In the absence of a financial contribution towards affordable housing, the proposals are considered unacceptable.

### **Design**

3.2. Policy D1 of the Camden Local Plan and CPG1 (Design) are relevant to conservation and design. FGWH Neighbourhood Plan Policy 2 states that all development shall be of a high-quality design, which complements and enhances the distinct local character and identity of Fortune Green and West Hampstead.

3.3. Whilst the site is not within a conservation area and has no heritage status, the existing building is not without merit on this corner plot largely because of its distinct roof form and profile on the Ingham Road frontage.

3.4. There are previous consents (ref 2003/2401/P and 2018/4870/P – under construction) which allow an additional storey on the Ingham Road frontage and an enlarged third storey on the Fortune Green frontage. Such extensions would change the roof profile and form of this part of the building to a similar in height, form and massing to the building on the opposite corner of the Ingham Road and Fortune Green Road junction (110 Fortune Green Road). The two-storey terrace on Ingham Road has an additional storey added in a corresponding form. The height form and massing of these previous consents is considered to be the maximum the site can accommodate in townscape terms in relation to the corresponding scale of the immediate neighbours and the prevailing scale on the southernmost side of Fortune Green Road.

3.5. The current proposals seek to add an additional part storey to what was previously approved on the Ingham Road terrace in the form of a shortened third storey. This extension would be mansard-style. The proposed extension disrupts the clarity and form of the consented schemes and introduces an incongruous element to the roof scape. The proposed terrace would be highly visible

and would also appear incongruous and would create clutter at roof level. The proposed mansard does not comply with the Council's guidance on the design of mansards, laid out in CPG Design.

3.6. Given the above, the proposals are not considered high quality design that respects the local context and character considered unacceptable in design terms, and contrary to Local Plan design policy D1 and FGWH Neighbourhood Plan Policy 2.

#### **Proposed flats**

3.7. An additional flat would be provided (flat 43c) under the proposals. The flat would have an area of 37sqm, which meets the minimum space standards (37sqm). The flat would have sufficient outlook and light. The flat would have external space in the form of a terrace. The amenity of the proposed flat is considered acceptable.

#### **Amenity of neighbours**

3.8. There are no windows or rear gardens that would be materially affected in terms of overlooking from the proposed terrace, given its location and the location and orientation of neighbouring windows/gardens.

3.9. A daylight/sunlight assessment has been submitted. Only one window, serving 106 Fortune Green Road, would suffer a loss of light beyond the BRE guidelines. This window would have 0.77 times its former value in terms of Vertical Sky Component, which is considered to be only very slightly below the BRE 0.8 guideline and therefore acceptable.

3.10. With regards sense of enclosure, the extension is not considered so deep or close to neighbouring properties that it would harm their amenity sufficiently to justify a refusal on grounds of loss of amenity.

#### **Transport**

3.11. The proposed amendment to create an additional flat is acceptable in Transport terms, so long as it would be car-free. Policy T2 requires all redevelopment schemes to be car-free in order to reduce air pollution and congestion and improve the attractiveness of an area for local walking and cycling, as well as to promote healthy or sustainable transport choices. The applicant has indicated that they would be willing to enter into a legal agreement for a car-free development; however, in the absence of a legal agreement being in place at the time of determination, the lack of such agreement shall constitute a reason for refusal.

3.12. As the site is located in built up area, which is predominantly residential. Given the scale of the construction works, a Construction Management Plan and monitoring fee would be secured via section 106 agreement, were the application acceptable. The lack of such agreement shall constitute reason for refusal.

3.13. An additional cycle parking space would be provided, which is considered acceptable in terms of cycle parking.

3.14. Were permission to be granted, section 106 obligations would be secured on the following: • Affordable housing contribution of £7,032.04 • Car-free housing (Policy T2) • Construction management plan (CMP) (Policy A1) • CMP implementation support contribution of £3,136 (Policy A1). In the absence of a section 106 agreement, the failure to secure these form reasons for refusal.

## **Trees**

3.15. No trees are proposed to be removed in order to facilitate development. There is an LB Camden-owned birch tree on the highway on the Ingham Road frontage of the site in close proximity to the existing building. The tree has been previously been reduced and is reduced in size on a cyclical basis. It is considered that development could be implemented without adversely affecting the birch tree although the additional storey will be in close proximity to the crown of the tree. A condition would be attached to ensure details of tree protection are submitted to the Council, were the application acceptable.

## **4. Recommendation**

4.1. Refuse planning permission.



	<p>(c) amelioration and monitoring measures over construction traffic including procedures for notifying the owners and or occupiers of the residences and businesses in the locality in advance of major operations delivery schedules and amendments to normal traffic arrangements (if any);</p> <p>(d) the inclusion of a waste management strategy for handling and disposing of construction waste; and</p> <p>identifying means of ensuring the provision of information to the Council and provision of a mechanism for monitoring and reviewing as required from time to time</p>
<b>“the Construction Management Plan Implementation Support Contribution”</b>	the sum of £[AMOUNT IN NUMBERS AND WORDS] Indexed Linked to be paid by the Owner to the Council and to be applied by the Council for the review and approval of the draft Construction Management Plan and verification of the proper operation of the approved Construction Management Plan during the Construction Phase
<b>“Contribution for Affordable Housing”</b>	means the sum of £[AMOUNT IN NUMBERS AND WORDS] Indexed Linked to be paid by the Owner to the Council for the purpose of off-site provision of Affordable Housing in suitable locations at the Councils discretion in accordance with policy H4 of the Council’s Local Plan 2017
<b>“the Development”</b>	means the development authorised by the Planning Permission
<b>“the Index”</b>	means the All Items Group (item reference CHAW) of the Retail Prices Index published by H M Government Office for National Statistics provided that during any period where no such index exists, the index which replaces the same or is the nearest equivalent thereto (which shall be agreed by the parties or, in default of agreement, fixed by the President for the time being of the Law Society on the application of any party) shall be used
<b>“Index Linked”</b>	means increased (if applicable) in proportion to movements in the Index between the date of this Undertaking and the date the particular payment is made
<b>“the Land”</b>	means the freehold property situate and known as 108 Fortune Green Road and 41-47 (odd) Ingham Road London NW6 1DG
<b>the Planning Permission”</b>	means planning permission to be granted by the Council pursuant to the Application

### 3. INTERPRETATION

In this Undertaking (except where the context otherwise requires):

1. Reference to the masculine feminine and neuter genders shall include other genders
2. Reference to the singular include the plural and vice versa unless the contrary intention is Expressed
3. Reference to natural persons are to include corporations and vice versa
4. Headings in this Undertaking are for reference purposes only and shall not be taken into account in its construction or interpretation



5. The expression “the Owner” shall include their respective successors in title and assigns and the expression “the Council” shall include their successor in statutory function
6. A reference to a clause paragraph or schedule is (unless the context otherwise requires) a reference to a clause paragraph or schedule of this Undertaking
7. Words denoting an obligation on a party to do any act or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause permit or suffer any infringement of such restrictions
8. Where in this Undertaking a party includes more than one person any obligation of that party shall be joint and several
9. Any reference in this Undertaking to any statute or to any section of a statute includes any statutory re-enactment or modification of it and any reference to any statutory instrument includes any amendment or consolidation of it from time to time and for the time being in force

#### **4. INFORMATION**

1. The Owner owns the freehold interest in the Land and is registered as proprietor of it with Title Absolute at the Land Registry free from encumbrances other than those matters contained or referred to in the Property and Charges Register of Title Number LN53520 at the date of this Undertaking
2. The Council is the local planning authority for the purposes of the Act for the Land
3. The Council is satisfied that the Development is such as may be approved by the Council under the Act and Planning Permission granted (subject to conditions) subject to the Owner covenanting in the terms of this Undertaking

#### **5. STATUTORY AUTHORITY AND LEGAL EFFECT**

- 5.1 The Undertaking is made pursuant to:
  - section 106 of the Act; and
  - section 111 of the Local Government Act 1972
 and all other enabling powers and enactments which may be relevant for the purposes of giving validity to this Undertaking
2. The obligations of the Owner in this Undertaking are planning obligations for the purpose of section 106 of the Act and are enforceable by the Council as local planning authority
3. Subject to clause 5.4 the Owner covenants with the Council to the intent that this Undertaking shall be enforceable without limit of time (other than as expressly mentioned in this Undertaking) against the Owner and any person deriving title through or under them to the Land or any part or parts of it as if that person had also been an original covenanting party in respect of the interest or estate for the time being held by that person
4. No person shall be bound by any obligations rights and duties contained in this Undertaking and/or be liable for any breach of a covenant and/or obligations contained in this Undertaking after

they shall have parted with all interest in the Land or the part in respect of which such obligations relate or such breach occurs PROVIDED THAT they shall remain liable for any subsisting breach of covenant prior to parting with their interest

6. Nothing in this Undertaking shall be construed as prohibiting or limiting any right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Undertaking

7. Nothing in this Undertaking shall be construed as restricting the exercise by the Council of any powers exercisable by them under the Act or under any other act or any statutory instrument order or bylaw in the exercise of their function as a local authority

#### **6. CONDITION PRECEDENT**

This Undertaking shall come into effect upon the grant of the Planning Permission

#### **7. OBLIGATIONS**

The Owner covenants agrees and declares in respect of the Land as set out in Schedule

#### **8. INVALIDITY**

It is agreed and declared that if a clause or sub-clause of this Undertaking shall be deemed to be unenforceable or ultra vires the remainder of this Undertaking shall remain in full force and effect provided severance from this Undertaking is possible

#### **9. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

Nothing contained in this Undertaking shall give or be construed as giving any rights privileges powers or enforceability other than to the Council and to the specific persons executing this Undertaking as the Owner and their successors (if any) as defined in this Undertaking and the provisions of the Contracts (Rights of Third Parties) Act 1999 and any benefits or rights which could arise from it are expressly excluded to the intent that no other third party within the meaning of that Act shall have any rights of enforcement in respect of any matter contained in this Undertaking

10.1 The Owner shall indemnify the Council for any expenses or liability arising to them in respect of breach by the Owner of any obligations contained in this Undertaking

10.2 This Undertaking shall be registered as a Local Land Charge

#### **11. JURISDICTION**

This Undertaking is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales

**IN WITNESS** whereof the Owner duly executed this instrument as a **DEED** the day and year first before written

## **SCHEDULE**

The Owner covenants with the Council with the intent that these are planning obligations for the purpose of section 106 of the Act:-

### **1. Notification of Commencement**

- 1.1 to give the Council notice in writing no later than 7 days prior to the anticipated Commencement of the Development
- 1.2 to give the Council notice in writing no later than 7 days following Commencement of the Development

### **2. Contributions**

- 2.1 to pay the Contribution for Affordable Housing to the Council on or before the Commencement of Development
- 2.2 to pay the Construction Management Plan Implementation Support Contribution on or before the Commencement of Development

### **3. Car Free**

- 3.1 (i) to ensure that prior to occupying the Development the occupier is informed by the Owner of the Council's policy that they shall not be entitled (unless they are the holder of a disabled persons badge issued pursuant to Section 21 of the Chronically Sick and Disabled Persons Act 1970) to:
  - (a) be granted a Residents Parking Permit to park a vehicle in a Residents Parking Bay; and
  - (b) buy a contract to park within any car park owned, controlled or licensed by the Council.
- (ii) not to occupy or use or permit the occupation or use of the Development at any time during which the occupier holds a Residents Parking Permit to park a vehicle in a Residents Parking Bay or is permitted to park a vehicle in any car park owned, controlled or licensed by the Council unless the occupier is the holder of a disabled persons badge issued pursuant to Section 21 of the Chronically Sick and Disabled Persons Act 1970).

### **4. Construction Management Plan**

- 4.1.1 not to Implement nor allow Implementation of the Development until such time as the Council has:
  - (a) received the Construction Management Plan Implementation Support Contribution in full; and

(b) approved the Construction Management Plan as demonstrated by written notice to that effect.

4.1.2 to ensure that throughout the Construction Phase the Development shall not be carried out otherwise than in strict accordance with the requirements of the Construction Management Plan and not to permit the carrying out of any works comprised in demolition or building out the Development at any time when the requirements of the Construction Management Plan are not being complied with and in the event of non-compliance the Owner shall forthwith take any steps required to remedy such non-compliance.

**EXECUTED as a DEED by INDASTEP LIMITED**

acting by **STEPHEN FASS** a Director

in the presence of

*In the presence of:-*

*Signature of witness .....*

*Name (in BLOCK CAPITALS).....*

*Address .....*