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Date: 20th July 2020

Your Ref: APP/X5210/W/20/3247384

Our Refs: 2019/0508/P

Via email to: RT1@planninginspectorate.gov.uk

Dear Ms Day,

Town and Country Planning Act 1990

Appeal by: Miss Rachel Munro-Peebles

Site Address: 5 the Hexagon, Fitzroy Park, London, N6 6HR

This document and its appendices constitute the Council's written representations regarding this appeal. We have responded separately to the Appellant's application for its costs (their application dated 20 February 2020). We have also included a separate application for the Council's costs of the appeal (to which the Appellant will have the opportunity to respond).

1.0 Summary of appeal

1.1 This appeal is against the non-determination of a planning application (ref 2019/0508/P). Had an appeal not been submitted, the Council would have refused planning permission. The Council's non-determination decision notice which would have been issued (had an appeal not been submitted) has been prepared (dated 9 July 2020), and sets out the following putative reason for refusal:

In the absence of a legal agreement to secure a Construction Management Plan and associated implementation support contribution, the development would fail to ensure that the development can be implemented without causing detrimental impact to residential amenity or the safe and efficient operation of the highway network in the local area. The development would therefore be contrary to policies DM (Delivery and monitoring), A1 (Managing the impact of development) and T4 (Sustainable movement of goods and materials) of the London Borough of Camden Local Plan 2017 and policies TR2 and TR3 of the Highgate Neighbourhood Plan 2017.

1.2 The Council's assessment of the application is set out in the Officer's Report (Appendix A) and the decision notice is attached (Appendix B). The Council has set out the sequence of events in relation to this appeal in the rebuttal to the appellant's Costs Application dated 15th June 2020 (which has been already submitted to the Planning Inspectorate on 22nd June 2020).

1.3 The Officer's Report discusses the wider planning considerations, regarding the impact of the design on the host building and on the surrounding Highgate Conservation Area, the impact on trees, and the impact on the amenity of surrounding residential occupiers. We can confirm that there is no outstanding issue regarding these considerations, and we continue to rely on those points. We have therefore not repeated them in this appeal statement, and the Inspector is referred to the Officers Report.

1.4 This means that there is only one main contentious issue in this appeal -

whether the proposal would result in harm during the construction phase. It is perhaps even narrower, as there is an acceptance by the Appellant that the development would cause detrimental impact to residential amenity and the safe and efficient operation of the highway network in the local area. The Appellant refuses to provide a Section 106 legal agreement to secure a Construction Management Plan (CMP). It is not considered by the Council that planning conditions would be an appropriate alternative to a legal agreement, as a section 106 is required in this case to give a greater level of control which goes beyond the remit of a planning condition.

2.0 The site

2.1 The appeal site contains a two-storey detached dwellinghouse with detached side garage, situated on the south-eastern end of The Hexagon, a cul-de-sac accessed from Fitzroy Park to the north-west.

2.2 The dwellinghouse is not listed but it is situated within the Highgate Village Conservation Area. The site is located within the Highgate Neighbourhood Plan area. The site is accessed down a narrow single vehicle width lane, surrounded by trees and hedgerows. The photographs of the access lane are attached in Appendix C.

3.0 Status of Policies and Guidance

3.1 The London Borough of Camden Local Plan was formally adopted on the 3rd July 2017. The policies expressed in the reasons for refusal are: policies DM1 (Delivery and monitoring), A1 (managing the impact of development) and T4 (sustainable movement of goods and materials) of the Camden Local Plan 2017.

3.2 In the reason for refusal, the Council refers to policies in the adopted Highgate Neighbourhood Plan. The Council formally adopted the Highgate Neighbourhood Plan on 11th September 2017. The policies expressed in the reason for refusal are

policies TR2: Movement of Heavy Goods Vehicles and TR3: Minimising the Impact of Traffic Arising from New Development.

3.3 The Council also refers to supporting guidance documents within Camden Planning Guidance (CPG):

Transport (2019)

Developer Contributions (2019)

Amenity (March 2018)

3.4 A draft version of the new London Plan was published in December 2017. Following public consultation in 2018 it was considered at an Examination in Public between January and May 2019. The panel of Inspectors issued their report on 8 October 2019, with the Mayor releasing an Intend to Publish London Plan on 9 December 2019, having considered the Inspectors' report. This has been submitted to the Secretary of State, who on 13 March 2020 directed the Mayor to make a number of changes to the Plan before it can be adopted. The Mayor is currently considering these alterations and is expected to publish the final version in the coming months. While well advanced in the Plan making process the new London Plan cannot be given full weight until it has been adopted.

3.5 The Council has not referred to any specific policies in the London Plan, as the material planning considerations in this appeal are properly covered by the Local Plan. The subject of this appeal is a site-specific, development management issue. Whilst the London Plan seeks to protect amenity, the more strategic policies in the London Plan do not raise any separate issues.

3.6 The National Planning Policy Framework was published in April 2012 and last revised in February 2019. It confirms the statutory test that proposed development should be refused if it conflicts with the local plan unless other material considerations indicate otherwise. There are no material differences between the Council's adopted policies and the NPPF in relation to this appeal. The full text of the relevant adopted policies was sent with the questionnaire documents. There is no issue about the 5-year

housing land supply issue in the Borough. The Council's adopted policies are recent and up to date and should be accorded full weight in accordance with the NPPF. This appears to be a matter of agreement between the main parties.

3.7 We have referred to the relevant NPPF policies regarding the use of planning conditions and planning obligations in the discussion below.

4.0 Policy position

4.1 Policy DM1 of the Camden Local Plan ensures that the Council will deliver the visions, objectives and policies of the Local Plan by using planning contributions to mitigate the impact of development. The supporting text of policy DM1 (paragraph 11.29) says that the Council will use planning obligations to mitigate or compensate for the potential effects of developments.

4.2 Policy T4 of the Camden Local Plan seeks to promote the sustainable movement of goods and materials and to minimise the movement of goods and materials by road. The policy refers to the need for Construction Management Plans (CMPs) in certain cases.

4.3 Policy A1 seeks to protect the quality of life of occupiers and neighbours. The sub-text (c) and (i) to Policy A1 note that disturbance from development can occur during the construction phase and measures to reduce the impact of demolition, excavation and construction works must be outlined in a CMP. Paragraph 6.13 lists the reasons why a CMP may be sought and it includes developments with poor or limited access on site; developments that are accessed via narrow residential streets; developments in areas with a high number of existing active construction sites; and, developments that could cause significant disturbance due to their location. Paragraph 6.16 of the Local Plan states that "*A Construction Management Plan will usually be secured via planning obligations between the developer and the Council after an application is approved.*"

4.4 Camden Planning Guidance (Transport) describes the purpose of CMPs which is as a package of measures and practices that are required to manage the impact of the construction works of a development. The CMP must identify any potential adverse impacts of the proposals and set out the appropriate mitigation measures for those impacts. Paragraph 2.31 of CPG (Transport) states that “*CMPs are secured as a planning obligation through a legal agreement and the pro-forma must be agreed by the Council prior to commencement of work starting on site.*” CPG (Transport) also provides information on the requirement for a CMP implementation support contribution which should be secured as a planning obligation by a legal agreement and paid prior to commencement of works in order to cover the review and monitoring elements and in some instances, meetings with the developer and local stakeholders.

4.5 The whole of Chapter 5 of Camden Planning Guidance (Amenity) is dedicated to Construction Management Plans. It goes into detail as to what CMPs are – that they are technical documents which assist the Council in fulfilling its statutory duties to ensure highway safety and protect residents from the effects of noise and other environmental issues affecting amenity. CPG (Amenity) outlines that CMPs must address transport/highways and environmental health impacts, as well as any cumulative construction impacts as a result of activity from multiple sites in close proximity to one another. Paragraph 5.4 highlights that CMPs are a proactive approach to addressing problems that arise from construction and “*Their purpose is to encourage developers to work with the Council and local people in managing the construction process with a view to ensuring that problems are foreseen and addressed with appropriate mitigation.*” Paragraph 5.16 of the CPG states that “*Planning conditions can only be used to control matters within the boundary of a site. However, as the range of matters typically covered by a Construction Management Plan, particularly in relation to highways, lie outside of the site boundary, a CMP will be secured through S106 legal agreement in most cases.*”

4.6 Camden Planning Guidance (Developer Contributions) sets out why developer contributions are required and sets out the procedures for planning obligations.

Measures are required to mitigate the site specific negative impacts of development which would otherwise be unacceptable in planning terms. Paragraph 6.6 says that *“CMPs are expected to be prepared in consultation with local residents and interest groups.”*

4.7 Policy TR2 (Movement of Heavy Good Vehicles) of the Highgate Neighbourhood Plan states that developments that generate significant movement of goods or materials by road, during construction and in operation must have a CMP. The CMP should show the proposed logistics of heavy goods vehicles movements and have regard to access issues and the potential impact on the local road network in order to minimise the disruption for the local community through effective management.

4.8 Policy TR3 (Minimising the Impact of Traffic Arising from New Development) of the Highgate Neighbourhood Plan seeks to ensure that development proposals that generate significant additional traffic movements provide information on planned parking to ensure that there would be no harmful impact from additional parking on the surrounding area and transport network.

5.0 Council's Case

5.1 The Appellant submitted a planning application (ref. 2019/0508/P) on 28/01/2019 for “the erection of single storey front extension, two-storey rear extension, and single storey side and rear extension to replace existing garage; replacement of front, rear and side windows and doors and front cladding; installation of 2 x roof lights to main flat roof”. The Case Officer notified the applicant on 5th April 2019 that a CMP would need to be secured via S106 Agreement which the applicant agreed to. The Council resolved to grant planning permission conditionally subject to the signing of a S106 Agreement to secure a Construction Management Plan on the 6 September 2019. Whilst the Council considered all other aspects of the planning application to be acceptable and made a recommendation of approval, a CMP and monitoring fee was considered an essential part of the approval.

5.2 The Council's Legal team were instructed by Officers to prepare a S106 Agreement requiring the Council's standard CMP pro-forma obligations and payment of the CMP monitoring fees. The Officers also instructed the Legal team that a due reference needed to be made to consulting the Fitzroy Park Residents Association (FPRA) on a draft CMP prior to any CMP being submitted to the Council for approval. This is a standard requirement in the Council's s106 CMP obligation clauses for developments in the Fitzroy Park area. The FPRA has its own CMP Protocols which set out what is expected from developers accessing their construction site in Fitzroy Park. A copy of the FPRA CMP protocols is added in Appendix D.

5.3 The reference to the FPRA was required to be made as Fitzroy Park is a private road and the Council has used a consistent approach of referring to the FPRA consultation and / or FPRA CMP Protocol in its Section 106 agreements in relation to the previous developments to the other properties located on this road. Accordingly, clause 2.4(vii) was included in addition to the Council's standard CMP clauses in the attached S106 Agreement (Final version of the agreement agreed with and issued to the Appellant for execution in September 2019 has been amended to refer to the appeal, attached in Appendix E).

5.4 The Council's Legal team sent the draft S106 Agreement to the agent representing the Appellant at the time on 14 August 2019. The draft agreement made it clear that the mortgagee would be required to be a party to the agreement and the Council's cover email noted that "all parties with an interest in the land are required to be a party to the Agreement" and that that the Appellant had to "ensure that arrangements are in place for all parties to sign the Agreement".

5.5 The Appellant confirmed their agreement to enter into the proposed S106 Agreement and provided an undertaking to pay the Council's fees associated with preparation and monitoring of the agreement. Only after the engrossments of the legal agreement were issued, the Appellant informed the Council that their mortgage

company refused to enter into the S106 Agreement.

5.6 As set out in detail in the Council's rebuttal (dated 15 June 2020) to the Appellant's Costs Application, further negotiations followed between the Council and the Appellant, and later with the Appellant's new agent, and in December 2019 an extension of time was agreed to by the Council to allow the Appellant time to resolve the issues with its mortgagee.

5.7 The Appellant did not engage in any further discussions with the Council and the Appellant's agent informed the Council's Legal team on 28 February 2020 that the Appellant has submitted an appeal for non-determination arguing that a CMP is not necessary or if it is required then it should be secured by a condition attached to the decision notice.

5.8 The Council considers that construction has substantial potential to prove problematic at the appeal site and harm highway safety and the amenity of local residents on the Hexagon and the surrounding streets. The appeal site is located on a cul-de-sac where larger construction vehicles to facilitate the erection of extensions to the dwellinghouse would struggle to turn around. The Hexagon is a narrow, steeply sloped, private road accessed via Fitzroy Park which itself is also a constrained road. There is also limited parking along Fitzroy Park adjacent to the frontage allotments. The site has poor and limited access via the narrow, single lane of The Hexagon which is also accessed via narrow streets with limited parking or passing places for large construction vehicles.

5.9 A number of development projects in construction or with planning permission are taking place in the local area (as highlighted in the Officer delegated report). All of these developments are using or intend to use Merton Lane and Fitzroy Park for demolition and construction access. Therefore, the overall cumulative impacts in relation to construction movements, on narrow roads, are of a level whereby the numbers of heavy goods vehicle and light van movements start to create an increased impact on both the public highway network and the private road of Fitzroy

Park.

5.10 The Council's approach to securing CMPs via S106 Agreements in the Fitzroy Park area and specifically for sites in close proximity to the appeal site is evident in the following examples of the previous planning applications listed in chronological order:

- a) On the same cul-de-sac as the appeal site, a planning application at number 3 The Hexagon was granted subject to a S106 legal agreement on 21 November 2012 for "*Reconfiguration of rear (west) elevation including re-cladding, fenestration alterations and provision of sedum roof; erection of replacement front (east) elevation porch and associated alterations including landscaping works to single dwellinghouse (Class C3).*" (ref 2012/2510/P). This permission included a S106 to secure a Construction Management Plan (Appendix F).
- b) Another site in close proximity to the appeal site is 53 Fitzroy Park which also was given planning permission on 4th July 2016 (subject to a S106 Agreement) for "*Erection of a three storey single family dwelling including basement level, green roofs at first floor and roof level, solar panels at roof level and associated landscaping following the demolition of the existing part-two, part-three storey dwelling (Class C3).*" (ref 2015/0441/P). The S106 Agreement included a number of planning obligations, including a CMP and a related requirement to form a Construction Working Group with the Fitzroy Park Residents Association. The S106 is attached in Appendix G.
- c) At number 4 The Hexagon, planning permission was recently refused on 21/04/2020 (ref 2016/3252/P) for the erection of a replacement dwellinghouse. Within the reasons for refusal was the lack of

submission of a CMP via legal agreement which was required due to the constraints of the application site and nature of the proposed works. The refusal delegated report and decision notice are attached in Appendix H.

5.11 In summary, the appeal site's access constraints and the cumulative effect of construction impacts in the local area are the principal reasons for the Council's view that the CMP is essential for this planning permission to be granted.

6.0 Comments on the Appellant's grounds of appeal

6.1 The Appellant contends that there should be no requirement for a CMP due to the small scale of the development and lack of construction impacts. The Appellant proposes an additional 49sqm of floorspace. This is not a small scale householder extension. In addition, the development includes the demolition of the garage. Access to the appeal site is constrained, as it is a cul-de-sac and a steeply-sloping, narrow lane with few opportunities for large vehicles to turn around. The Council has concerns over the impact of vehicles on local amenity and over ensuring highway safety, as well as protecting residents from the effects of noise and other environmental issues affecting amenity.

6.2 The Appellant considers that there is no case requiring the preparation, approval and implementation of a CMP to be dealt with via a S106 Agreement. As set out in section 4 above, the Council's policies and guidance are clear on when and why CMPs are required and how they should be secured.

6.3 Notwithstanding the Appellant's views on the issue of whether a CMP is required, the Appellant has submitted an outline CMP, which according to the Appellant's statement has been discussed with FPRA and the owners of the neighbouring properties. The Council has not been involved in any such discussions and has not provided any comments on the outline CMP, however if it would be of assistance to the Inspector, the Council can provide comments on the document

submitted by the Appellant.

6.4 The Appellant considers that the submitted outline CMP should be secured via a condition, rather than a S106 Agreement. As stated above, Camden Planning Guidance (Amenity) and the supporting text to Policy A1 of the Camden Local Plan notes that CMPs will usually be secured via planning obligations between the developer and the Council after an application is approved. This is because the details that the Appellant proposes to cover in their CMP include measures that affect land outside of the red line site boundary (such as road closures and arrangements for deliveries) which could not be covered by a condition. The constraints of the site mean that neighbouring streets (e.g. Fitzroy Park, Millfield Lane etc.) will be impacted by an increase in construction vehicles. Furthermore, securing the CMP through a legal agreement would allow it to be a live document that could be continuously updated as required, which is more suited to its requirements.

6.5 The Appellant considers that the imposition of a planning obligation requiring the submission and implementation of a CMP would not meet the tests set out in the CIL Regulations and NPPF. Under the Town and Country Planning Act 1990 conditions may be imposed for regulating the development or use of any land under the control of the applicant. However, a CMP is designed to be an enforceable and precise document setting out how measures will be undertaken not just on site but also off site, particularly on the public highway, in order to minimise as far as reasonable the detrimental effects of construction on local residential amenity and / or highway safety on the nearby roads. As such, using a condition to secure the type of off-site requirements usually included in a CMP would be unenforceable.

6.6 A planning obligation, rather than a condition, is considered to be the most appropriate mechanism for securing a CMP in this case simply because the proposed works will involve the removal and delivery of building material and would have impacts beyond the application site. In view of this and that the appeal site's specific location (addressed in 5.7-5.10 above), it is considered that in this case the

‘construction impacts’ are suitably complicated and the level of detail the Council would seek to secure is beyond the level of detail usually found in a condition. In the interests of legal certainty, the Council considers that the CMP should be secured by planning obligation as opposed to a planning condition.

6.7 The Appellant stated that it has paid the CMP implementation support monitoring fee of £3,136, however the Council is yet to receive evidence of such payment being made. In any event, the Appellant now contends that the fee for extensions to the dwellinghouse with an uplift in floor area of 49sqm does not meet the tests set out at paragraph 56 of the NPPF as it would not make the development acceptable in planning terms. The support monitoring fee is not a standalone reason for not granting planning permission.

6.8 The implementation support contribution is required to cover the costs of Council staff time in reviewing and approving the submitted CMP, the ongoing inspection and review of the plan during the construction works, and discussions to agree any amendments during the lifetime of the construction. This can take a large amount of time and this is a cost which should be covered by the developer who benefits from the planning permission rather than the tax payer. This is in accordance with paragraph 6.15 of CPG (Developer Contributions) which states:

“Separate fees in the form of contributions payable through section 106 agreements may be negotiated where warranted and are considered necessary in planning terms and directly related to development where further costs of technical verification, inspection and ongoing supervision are likely to be incurred as a direct result of a particular development. Examples of obligations which may necessitate a contribution for implementation include construction management plans.”

The support fee requested in this instance relates to specific ongoing monitoring/management costs and so is in accordance with the *Oxfordshire County Council* case as it relates to specific ongoing monitoring/management costs. The Council has also produced an advice note on CMP monitoring fees which is attached at Appendix I.

6.9 The Council tried to continue negotiations with the Appellant in order to see if it could settle the appeal. The Council has sought an independent legal advice from Counsel regarding the appropriateness of using S106 legal agreements to secure a CMP rather than using a condition. The summary of the Counsel advice was provided to the Appellant on 15 May 2020 and we note that the Appellant has forwarded the same to the Planning Inspectorate on 27 May 2020. For the sake of completeness, and to assist the inquiry to understand the wider legal and policy context, we attach a full copy of the Advice from William Upton QC from 6 Pump Court Chambers dated 28th April 2020 (Appendix J).

6.10 Part of the reason that the Council sought legal opinion on the use of the S106 Agreement in relation to the above property was in light of the Appellant's specific reliance on the recent changes made to the NPPG (Paragraph: 023 Reference ID: 23b-023-20190901). The Counsel advice sets out that a condition could provide the mechanism for a Construction Method Statement to be submitted which includes matters such as the parking of construction vehicles, loading and unloading locations, storage of materials, wheel washing facilities, security hoardings and onsite measures to control the emission of dust and dirt during construction. However these measures are utilised to manage and mitigate construction impacts within a construction site. The condition mechanism is limited as it cannot control matters outside the Appellant's control, including the use of the highway.

6.11 The 2019 NPPF discusses the use of Planning Conditions and Obligations at paragraphs 54 to 56. The point is made in para 54 that: "... Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition." It is acknowledged that if a planning obligation is considered then it needs to meet all the tests set out in regulation 122(2) of the Community Infrastructure Levy Regulations 2010 whereby "*A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is—*

- (a) necessary to make the development acceptable in planning terms;*
- (b) directly related to the development; and*
- (c) fairly and reasonably related in scale and kind to the development.*

6.12 In terms of this appeal, the Council's position is robust in that CMPs are required as part of policies DM1, A1 and T4 of the Local Plan. The planning obligation meets all three tests of regulation 122(2). The S106 Agreement mechanism provides a legally robust and enforceable mechanism for CMPs. Section 106 agreements can require an activity to cease on a site owned by a party if an off-site requirement is not complied with. Camden Planning Guidance (Amenity) clarifies that as CMP involves matters outside the red line boundary, in particular highways, then the CMP will be secured via S106 legal agreement (paragraph 5.16).

6.13 In their statement of case, the Appellants consider that paragraph 023 of the NPPG is relevant to this appeal with regard to the S106 Agreement not being the appropriate mechanism to secure a CMP. The Appellant sought clarification by contacting MHCLG in a short email appended to their statement. The Council's position on paragraph 023 (in accordance with the Counsel advice) is as follows:

- a) Most of paragraph 023 and the related part of the NPPF deal with affordable housing, so the addition can be read simply as a confirmation that the requirement for a contribution to affordable housing from the development of a new residential annex or extension to an existing home would not normally meet the tests in CIL reg.122;
- b) There has not been any change in policy – it has always been the case that most small-scale residential additions will not need a planning obligation to make them acceptable in planning terms, and that an obligation must be 'fairly and reasonably related in scale and kind to the development'.
- c) As courts have confirmed, the PPG is not a definitive statement of government policy, and is a less formal document than the NPPF. It is intended as a broad statement in national guidance not policy and it

must therefore be considered in that light and to be applied to local circumstances in the context of the Camden Planning Guidance.

6.14 Considering the above points, the use of the S106 Agreement to secure a CMP in this case would be essential to mitigate the construction impacts of the proposal for local residents, would be related to the development to erect extensions at the site and is appropriate considering the site constraints and similar obligations required on nearby sites and in the Fitzroy Park area in general.

6.15 In Appendix 8 of the Appellant's statement, a number of conditions from other London Boroughs are highlighted. These are not considered appropriate in this appeal as they relate to other Boroughs and Camden's own policy and guidance (set out above) is clear on the Council's position with regard to CMPs.

6.16 Appendix 9 of the Appellant's statement refers to appeal examples of sites located in Camden Borough, where an Inspector has determined that a CMP requirement could be dealt with by condition. The majority of these examples pre-date the current adopted Local Plan and adopted guidance position and before the adoption of the Highgate Neighbourhood Plan and are not considered relevant for this appeal. Additionally, the three appeals referred to are confined to their own facts and do not involve the same issues in terms of the sensitive site location, which need to be considered in the current case.

7.0 Relevant appeal decisions

7.1 Notwithstanding the Appellant's submission that it is a common practice for local planning authorities to secure CMPs via a condition, it is standard practice in Camden to secure CMPs via a S106 legal agreements. This approach has been upheld on a large number of appeals and some recent examples of appeals involving

non-major single dwelling developments in Camden are set out below.

7.2 A recent example of an Inspector's appeal decision with regard to securing a CMP via a legal agreement, relates to the proposed development at 82 Fortune Green Road which involved the erection of a new dwelling (ref: APP/X5210/W/19/3225902; 3 July 2019). The appeal was allowed and the Inspector considered that a CMP would be required via S106 legal agreement as: "the proposed works would involve the removal and delivery of a significant amount of material and would have impacts beyond the application site in a predominantly residential area the construction impacts will be complicated" (para 20). The Inspector recognised that a condition would not provide sufficient control due to the amount of detail required for a CMP and a S106 obligation was the appropriate mechanism. The decision is attached in Appendix K.

7.3 Another example is the planning appeal decision in relation to the proposed development at 99 Camden Mews which involved the erection of a new replacement dwellinghouse (ref APP/X5210/W/18/3198024; 22nd November 2018). The appeal was allowed and the Inspector stated that the CMP and implementation support contribution were appropriate, and concluded in paragraph 13 that "Based on the evidence before me, these contributions would be necessary to make the development acceptable and would be directly related to the proposed development. I am therefore, satisfied that the need for a planning obligation would meet the tests set out in Paragraph 56 of the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010." The decision is attached in Appendix L.

7.4 The appeal decision relating to proposed development at 17 Boscastle Road (ref APP/X5210/W/16/3161931) in Camden also highlights the consistency with the Council's use of S106 legal agreements for securing CMPs. Whilst the appeal was dismissed, the Inspector concluded that the S106 "*contains obligations to secure the development as car free, and undertakes to submit a Construction Management Plan to prevent parking stress and congestion in the surrounding area, secure pedestrian safety and protect amenity. I consider that the provisions of the*

undertaking are necessary to make the proposed development acceptable in planning terms, having regard to reasons for refusal Nos 4 and 5, and that they otherwise accord with Regulation 122 (2) of The Community Infrastructure Levy Regulation 2010.”. Appeal decision and signed S106 legal agreement are provided in Appendix M.

8.0 Conclusion

8.1 In conclusion, the development is acceptable in planning terms, and the Council resolved at an early stage that permission could be given subject to the appropriate conditions and an obligation securing appropriate mitigation with regard to its construction impacts. The Council seeks to ensure that construction on sites such as this with narrow or restricted access and sites which are near to other construction sites are managed appropriately and that any potential negative impacts of the construction works are appropriately mitigated. It is not considered by the Council that planning conditions would be an appropriate alternative to a legal agreement, as a section 106 legal agreement has a greater level of control which goes beyond the remit of a planning condition.

8.2 The Council’s firm view is that an obligation under section 106 (rather than a condition) would secure the detailed CMP requirements (which provide the local planning authority and the appellant with certainty) on this site to an extent which is not satisfactorily achievable by a planning condition. The Council’s approach is consistent with the legal and policy framework, as confirmed by the Legal Opinion provided by William Upton QC. Accordingly the Council does not accept the Appellant’s arguments regarding the appeal.

8.3 The Inspector can see the relevant legal and policy framework in the Council’s policies, guidance, draft New London Plan and adopted London Plan policies and the advice contained in NPPF. Having regard to the Council’s submissions, the Inspector is respectfully requested to dismiss this appeal for the reason quoted on the Council’s decision notice.

8.4 If the Inspector is minded to grant the planning permission, the Council requests that the following conditions and S106 clause set out in Appendix N should be attached and the section 106 legal agreement requirements be secured in the form similar to the S106 Agreement provided in Appendix E.

If any further clarification of the appeal submissions is required please do not hesitate to contact Rachel English on the above direct dial number or email address.

Rachel English
Senior Planning Officer

List of Appendices

Appendix A – Officer delegated report

Appendix B – Decision notice

Appendix C – Photographs of The Hexagon

Appendix D - FPRA CMP protocols

Appendix E – Draft S106 Agreement

Appendix F – S106 legal agreement for 3 The Hexagon dated 21st November 2012

Appendix G – S106 legal agreement for 53 Fitzroy Park dated 4th July 2016

Appendix H – 4 The Hexagon delegated refusal report and decision notice

Appendix I - Construction Management Plan Monitoring fee advice note

Appendix J – Counsel advice by William Upton QC

Appendix K – 82 Fortune Green Road appeal decision (ref: APP/X5210/W/19/3225902);

Appendix L – 99 Camden Mews appeal decision (ref APP/X5210/W/18/3198024);

Appendix M - Appeal decision at 17 Boscastle Road (ref: APP/X5210/W/16/3161931)

Appendix N: Suggested Conditions and S106 legal obligation (below)

APPENDIX N

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 policies D1 and D2 of the London Borough of Camden Local Plan 2017.

- 3 Before the relevant part of the work is begun, detailed drawings, or samples of materials as appropriate, in respect of the following, shall be submitted to and approved in writing by the local planning authority:

a) Manufacturer's specification details of windows and doors;

b) Manufacturer's specification details of all facing materials (to be submitted to the Local Planning Authority) and samples of those materials (to be provided on site).

The relevant part of the works shall be carried out in accordance with the details thus approved and all approved samples shall be retained on site during the course of the works.

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policies D1 and D2 of the London Borough of Camden Local Plan 2017.

- 4 The development hereby permitted shall be carried out in accordance with the following approved plans: 0398 P 1100 Rev. 02, 0398 P 1200 Rev. 02, 0398 P 1001 Rev. 02, 0398 P 1000 Rev. 02, 0398 P 0200 Rev. 01, 0398 P 0100 Rev. 01, 0398 P 0010 Rev. 01, 0398 P 0001 Rev. 01, 0398 P 0000 Rev. 01, 0398 A 1101 Rev. 01, 0398 A 1102 Rev. 01, 0398 A 1103 Rev. 01., 0398 P 1300 Rev. 00, TREE PROTECTION PLAN, Arboricultural Report (Andrew Day Arboricultural Consultancy 16th May 2019), Design and Access Statement (Chris Dyson Architects 12th April 2019).

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

- 5 Prior to the commencement of construction/demolition works on site, tree protection measures shall be installed in accordance with approved drawing TREE PROTECTION PLAN. The protection shall then remain in place for the duration of works on site, unless otherwise agreed in writing by the local authority.

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.

- 6 Prior to commencement of any works on site, evidence from trial pits and details of the design of building foundations and the layout, with dimensions and levels, of service trenches and other excavations on site in so far as these items may affect trees on or adjoining the site, shall be submitted to and approved in writing by the local planning authority. The relevant part of the works shall not be carried out otherwise than in accordance with the details thus approved.

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

Section 106 Legal Obligations

Should the inspector be minded to grant the appeal, the following obligation is suggested:

1. Construction Management Plan and CMP support implementation contribution of £3,136.

The proposed form of the S106 Agreement is provided in Appendix E.