



## Sanderson Weatherall

30 Queen Square  
Bristol  
BS1 4ND

Phone: 0117 338 1800

Our Ref: OP/ABP/200066  
08 January 2021  
The Planning Inspectorate  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol  
BS1 6PN

For the attention of the appeal case officer,

### APPELLANT'S CASE FOR APPEAL COSTS

#### Information about the claimant

**Full name:** Trustees of Micro Anvika  
**Address:** C/O Agent  
**Postcode:** C/O Agent  
**Our Reference:** OP/ABP/200066  
**Daytime telephone No:** C/O Agent  
**Email address:** C/O Agent  
**Status:** Appellant

**Agent's Name:** Mr Owen Pike MRTPI  
**Agent's Address:** 30 Queen Square, Bristol  
**Daytime telephone No:** 0117 3381813 / [REDACTED]  
**Fax:** n/a  
**Email address:** [owen.pike@sw.co.uk](mailto:owen.pike@sw.co.uk)

**Date Received** (Official use) .....

#### Information about the party being claimed against

**Full name:** London Borough of Camden  
**Address:** Town Hall, Judd Street, London  
**Post code:** WC1H 9JE  
**Status:** Local Planning Authority

#### Information about the appeal

Planning Inspectorate appeal reference number APP/ **Not yet supplied**

**Name of Local Planning Authority:** London Borough of Camden

**Description of the development:** *Change of use from vacant commercial unit that has been marketed as a flat (Class C3) to an office (Class B1).*<sup>1</sup>

Sanderson Weatherall LLP  
Registered in England Company Number OC 344 770  
Registered Office 9<sup>th</sup> Floor Central Square, 29 Wellington Street, Leeds, LS1 4DL  
VAT Number 945 6744 83  
Regulated by RICS



**Address of the site:** First Floor, 53-54 Tottenham Court Road, Fitzrovia, W1T 2EJ

### **Costs Application**

- *The unreasonable behaviour which has caused you unnecessary or wasted expense in the appeal*

The Appellant is applying for a full award of costs because of the unreasonable behaviour of the London Borough of Camden (the LPA) in not carrying out a comprehensive planning balance exercise even though it is a legislative and national planning policy requirement (Delegated Officer Report - **Appendix A** refers).

1. The Delegated Officer Report shows that the LPA has only assessed the proposed development against a limited number of housing, neighbour amenity and transport development plan policies.
2. Thus, the LPA has failed to assess the proposed development against other relevant development plan policies, including those relating to delivery and location of growth (Local Plan Policy G1), economic development (Local Plan Policy E1), quantity and location of retail development (Local Plan Policy TC1), Camden's centres and other shopping centres (Local Plan Policy TC2), town centre uses (Local Plan Policy TC4), heritage (Local Plan Policy D2) and the Fitzrovia Area Action Plan (AAP).
3. The LPA has also failed to assess the proposed development against relevant material considerations, including the National Planning Policy Framework (NPPF) (economic development policies) and Supplementary Planning Guidance (Camden Planning Guidance: Employment sites and business premises).
4. The absence of a comprehensive planning balance exercise significantly undermines the LPA's case and this view is supported by Section 70 of the Town and Country Planning Act 1990 (as amended), Section 38(6) of the Planning and Compulsory Purchase Act 2004 and the NPPF (Paras 2, 12, 47, 212 & 213).
5. The Appellant therefore contends that legislation and national planning policy are clear that numerous factors of varying significance can be taken account of in the determination of planning applications.
6. The process of 'weighing up' the relevant factors is often described as the 'planning balance'. LPAs must exercise their judgement and consider many (sometimes) conflicting issues to decide whether planning permission should be granted. This will mean examining the development plan (not a single policy in isolation) and taking material considerations which apply to the proposed development into account. These things must be properly considered otherwise the decision of whether, or not, to grant permission may be unlawful.
7. But in this case, the Delegated Officer Report neither assesses the compatibility of the proposed development against all relevant development plan policies nor does it set out how much weight it applies to each of the development plan policies it has assessed the proposed development against.
8. Consequently, it does not consider whether the conflict with Policy H3 of the Camden Local Plan (which is disputed by the Appellant) is outweighed by any potential compliance with other development plan policies and/or material considerations as well as the benefits derived from the proposed development i.e. the planning balance.
9. On this basis, the Appellant reiterates that the absence of a comprehensive planning balance exercise significantly undermines the LPA's case and has therefore caused the appeal.

- *Your unnecessary or wasted expense in the appeal (not the amount, but the kind of expense)*

1. Consultant professional fees in reviewing the LPA's decision, devising an appeal strategy, researching the case, writing the Appeal Statement of Case, submitting the appeal to the Planning Inspectorate, revising and responding to third party representations, preparing a Rebuttal Statement, attending the Planning Inspector's site visit and providing advice on the way forward following the appeal decision.



**Please sign below**

I understand that:

- a. Use of this form is voluntary, and that the Planning Inspectorate may use the information I have given for official purposes in connection with the processing of my application for an award of costs:
- b. The costs decision resulting from processing my application will be published on the Planning portal and will include relevant names but not addresses

By signing this form, I am agreeing to the above use of the information I have provided.

I have completed all sections of the form and confirm that the details are correct to the best of my knowledge  
(Please note: signature is not necessary for electronic submissions)

**Signature** MR OWEN PIKE

**On behalf of:** Trustees of Micro Anvika

**Name (in capitals):** MR OWEN PIKE

**Date:** 08/01/2020



## **Appendix List**

Appendix A – Delegated Officer Report



## **Appendix A – Delegated Officer Report**

<b>Delegated Report</b>		<b>Analysis sheet</b>		<b>Expiry Date:</b>		<b>14/05/2020</b>	
		N/A		<b>Consultation Expiry Date:</b>		19/04/2020	
<b>Officer</b>				<b>Application Number(s)</b>			
Obote Hope				2020/0640/P			
<b>Application Address</b>				<b>Drawing Numbers</b>			
First Floor, 53-54 Tottenham Court Road London W1T 2EJ				See draft decision notice			
<b>PO 3/4</b>	<b>Area Team Signature</b>	<b>C&amp;UD</b>	<b>Authorised Officer Signature</b>				
<b>Proposal(s)</b>							
Change of use from vacant commercial unit that has been marketed as a flat (Class C3) to an office (Class B1).							
<b>Recommendation(s):</b>		<b>Refuse planning permission</b>					
<b>Application Type:</b>		<b>Full Planning Permission</b>					
<b>Conditions or Reasons for Refusal:</b>		<b>Refer to Draft Decision Notice</b>					
<b>Informatives:</b>							
<b>Consultations</b>							
<b>Adjoining Occupiers:</b>		No. of responses		00		No. of objections	
						00	
<b>Summary of consultation responses:</b>		<p>A site notice was displayed on 25 March 2020 until 18 April 2020. A press notice was published on 26<sup>th</sup> March 2020 until 19<sup>th</sup> April 2020.</p> <p>No third party responses were received.</p>					
<b>CAAC/Local groups comments:</b>		<p>Objection received from the Fitzrovia Neighbourhood Association:</p> <p>"We note that the premises is registered for council tax at Band G (Local Authority Reference number: 5190129), according to the council tax record. There is no registration for business rates at this address. Therefore the premises is classed as residential use. Our association objects to this application as it would mean the loss of residential contrary to policy. For the above reasons the application should be refused.</p>					

### Site Description

The site comprises a five storey plus basement mixed use building located on the southwest side of the junctions of Goodge Street and Windmill Street. The property is not listed but is located within the Charlotte Street Conservation Area.

The site is located within the Central London Area and Clear Zone Region. The ground floor contains an ITSU restaurant (Class A5). Council tax records indicate that over the last three years the first floor was in residential use. The second and third floors consisting of self-contained flats.

### Relevant History

**2018/4674/P** - Change of use of first floor from residential (2-bed self-contained flat) (Class C3) to office use (Class B1a). Withdrawn on **15/02/2019**.

**PS9804485R4** - The general refurbishment of the building together with the creation of one additional residential flat (making three flats in total); the construction of a four storey plus basement infill extension facing Kirkman Place for part retail, part residential use; and a two storey rear extension, over the existing ground floor extension to the property, for residential use. Granted Planning permission subject to s106 agreement on **10/02/1999**.

**33745** – Planning permission for the continued use of the first floor as offices at 54 Tottenham Court Road. Refused on **27/07/1982**.

**33248 Established Use Certificate** for the use of the first floor no. 54 Tottenham Court Road as an office. **Refused** 01/02/82.

### Relevant policies

#### National Planning Policy Framework (2019)

#### The London Plan (2016)

#### Intend to Publish London Plan (2019)

#### The Camden Local Plan (2017)

DM1 Delivery and monitoring  
A1 Managing the impact of development  
E1 Promoting a successful and inclusive Camden economy  
E2 Employment premises and sites  
H1 Maximise Housing Supply  
H3 Protecting existing homes  
T1 Prioritising walking, cycling and public transport  
T2 Parking and car-free development

#### Camden Planning Guidance

CPG Housing (2019)  
CPG Amenity (2018)

## Assessment

### 1.0 Proposal

- 1.1 Planning permission is sought for the change of use of the first floor from residential accommodation (comprising of 1 x 2 bed self-contained flat (Use Class C3)) to office floorspace (Use Class B1a). No external alterations are proposed.

### 2.0 Land Use

- 2.1 The submitted Design and Access Statement states that *"we now know that it [...the property...] has only ever been marketed as a residential flat by the current landlord and it has never been used in this way, either lawfully or unauthorised"*. The agent stipulated that the development description is as used, i.e. *"Change of use from vacant commercial unit that has been marketed as a flat (Class C3) to an office (Class B1)"*. Officers note however that the agent has not specified what the current use is, rather described the use as a 'vacant commercial unit'. As such, the first consideration in the determination of this application is to establish the existing and proposed land uses, to see whether the principle of this development could be supported.
- 2.2 Reviewing the planning history, a Lawful Development Certificate was granted for the first floor of no.53 to be used as an office (ref: 33745 ), but no consent was ever given for the office use of the first floor of no.54. A subsequent planning application for the change of use of no.54 was refused (ref: 33748).
- 2.3 Whilst the agent claims that the space has never but used for residential purposes and instead was office accommodation for 15-20 staff. Valuation Reports submitted with the application (section 4.6 of the Design and Access Statement), suggest that the site was in non-residential use in April 2012, and in use as 'offices and computer room'. In 2008 the use was identified as 'ancillary space to the ground floor shop' and in 2003 it was described as a 'sales area'.
- 2.4 The Council Tax team has confirmed that records show, over the last three years council tax payments were received for the first floor of no.54. The Land Valuation Agency listed the first floor of no.54 as a residential flat (from 1st May 2013). No evidence has been submitted as part of this application to demonstrate that the space has never been occupied as residential, nor that it has only ever been marketed as residential by the current landlord.
- 2.5 Given the above, officers are satisfied that the lawful use of the first floor of no.54 Tottenham Court Road is as self-contained residential accommodation. The application therefore proposes the change of use of the residential accommodation to form office floorspace.
- 2.6 Policy H3 states that the Council will aim to ensure that existing housing continues to meet the needs of existing and future households by resisting development that would involve a net loss of residential floorspace.
- 2.7 Policy H1 states that self-contained housing is the priority land use of the Camden Local Plan.
- 2.8 Chapter 6 of CPG Housing states: *"The projected growth in the number of households exceeds the anticipated supply of additional homes. The Council therefore seeks to minimise the net loss of existing homes."*
- 2.9 The London Plan requires Boroughs to resist the net loss of housing provision unless it is re-provided to equivalent or better standard.
- 2.10 Given that the proposal would result in the loss of residential accommodation to form office floorspace, the proposal is considered to be contrary to the aims of policies H1 and H3 of the Camden Local Plan, as well as London Plan policy 3.14B. The proposal is considered to be unacceptable in principle on this basis.



### **3.0 Neighbour Amenity**

- 3.1 Policy A1 of the Camden Local Plan states that the Council will protect the quality of life of existing and future occupiers and neighbours by only granting permission for those developments that would not have a harmful impact on amenity. Such issues include visual privacy, overlooking, overshadowing, outlook, sunlight, daylight and artificial light levels.
- 3.2 The proposed office use would sit within a residential block with retail at ground floor. However this close relationship is not unusual, particularly within an urban area such as this. Office workspace is not normally associated with anti-social behaviour, loud noise or other issues that may have a significant impact on residential amenity.
- 3.3 As there are no proposed external works proposed the development would also not have a negative impact on visual privacy, overlooking, overshadowing, outlook, sunlight, daylight and artificial light levels. The proposal is therefore considered to be acceptable in terms of its impact on neighbouring amenity.

### **4.0 Transport**

- 4.1 Should office accommodation be acceptable, cycle parking spaces should be provided in accordance with policy T1 of the Camden Local Plan, CPG Transport, the London Plan and Intend to Publish London Plan (2019). No cycle storage facilities have been provided as part of this proposal, contrary to the aforementioned policy and refusal is warranted on this basis.
- 4.2 Should approval have been recommended, a S106 would have been required to ensure the scheme is 'car free' restricting parking permits for future occupiers. Given the lack of S106 agreement, this similarly represents a reason for refusal.

**Recommendation:** Refuse planning permission