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Your ref: APP/X5210/W/21/3274819  
Our refs: 2019/5075/P  
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Dear Aaron Kang,

**Town and Country Planning Acts 1990 (as amended)**  
**Planning Appeal Statement (Authority)**  
**Appellant: Ms Christine Hancock**  
**Site: 46 Inverness Street, LONDON, NW1 7HB**

I write in connection with the above appeal against the Council's refusal to grant planning permission for the erection of a two storey (plus basement) dwelling house following the demolition of the existing single storey building.

The Council's case is set out primarily in the delegated officer's report (ref: 2019/5075/P) that has already been sent with the questionnaire and is to be relied on as the principal Statement of Case. Copies of relevant policies from the Camden Local Plan (adopted July 2017) and accompanying guidance were also sent with the appeal questionnaire.

In addition, Council would be grateful if the Inspector would consider the contents of this letter which includes confirmation of the status of policy and guidance, comments on the Appellant's grounds of appeal and further matters that the Council respectfully requests be considered without prejudice if the Inspector is minded to grant permission.

## **1. Summary of the Case**

- 1.1. The appeal relates to a single-storey white rendered building on the north side of Inverness Street at the western end close to the junction with Gloucester Crescent.
- 1.2. The appeal site is located within the Primrose Hill Conservation Area and very close to the boundary of the adjacent Camden Town Conservation Area. It is not referred to as making a positive nor negative contribution to the conservation area in the Conservation Area statement.
- 1.3. Planning permission for the demolition of the existing building and replacement with a two storey (plus basement) dwelling house was refused on 22<sup>nd</sup> December 2020.

1.4. The planning application was refused on the grounds that:

- The proposed development, by reason of its siting, height, massing and design, would represent a bulky, intrusive and incongruous addition to the streetscene that would conceal the historic pattern of development, harm the setting of the two adjacent Grade II listed buildings and harm the character and appearance of both Primrose Hill and Camden Town Conservation Areas, contrary to policies D1 (Design) and D2 (Heritage) of the London Borough of Camden Local Plan 2017.
- The proposed development, in the absence of a legal agreement securing an Approval in Principle, would fail to mitigate the impact of the basement works on the adjacent public highway, contrary to policies A1 (Managing the impact of development), T3 (Transport Infrastructure) and DM1 (Delivery and monitoring) of the London Borough of Camden Local Plan 2017.
- The proposed development, in the absence of a legal agreement to secure car-free housing, would be likely to contribute unacceptably to parking stress and congestion in the surrounding area and fail to promote more healthy or sustainable transport choices, contrary to policy T2 (Parking and car-free development) of the Camden Local Plan 2017.
- The proposed development, in the absence of a legal agreement securing necessary highway works, would fail to secure adequate provision for and safety of pedestrians, cyclists and vehicles, contrary to policies A1 (Managing the impact of development), T1 (Prioritising walking, cycling and public transport) and DM1 (Delivery and monitoring) of the London Borough of Camden Local Plan 2017
- The proposed development, in the absence of a legal agreement to secure a Construction Management Plan (and associated support contribution and bond) 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, contrary to policies A1 (Managing the impact of development) and T4 (Sustainable movement of goods and Materials) of the Camden Local Plan 2017.

1.5. The Council's case is largely set out in the officer's report, a copy of which was sent with the questionnaire. In addition to this information, I would ask the inspector to take into account the following comments.

## 2. Relevant History

**9200346** - Alterations to ground floor front elevation and erection of extension at ground and first floor to existing single storey restaurant. **Refused 09/07/1992 on the following grounds:**

- The proposed extension would result in a loss of sunlight and an increased sense of enclosure to the adjoining garden, to the detriment of the amenity of the adjoining residential occupiers

- The enlargement of the restaurant in a mainly residential area would be likely to have a detrimental impact on the character and amenity of the area by reason of increased noise and disturbance.
- The proposed extension would adversely affect the character and appearance of this part of the Primrose Hill conservation area by reason of its bulk and detailed design.

### **Appeal subsequently dismissed - 09/02/1993**

**9400189** - The excavation of a basement to provide additional restaurant facilities and external alterations to the front elevation and the roof - **Refused 08/04/1994 on the following grounds:**

- The proposed ventilation extract system would be likely to result in disturbance to adjoining occupiers from noise and fumes.
- The enlargement of the restaurant in a predominantly residential area would be likely to have a detrimental impact on the character and amenity of the area and nearby residential occupiers by reason of increased noise and disturbance.

**2015/0493/P** – Erection of new 3 bedroom, two storey plus basement level dwelling, following demolition of existing building. *Withdrawn after case officer advised there was an 'in principle' objection to additional height for reasons of impact on conservation area and potentially amenity.*

## **3. Status of Policies and Guidance**

### **Adopted policies**

3.1. The Camden Local Plan was adopted on 3 July 2017. The policies cited below are of relevance to the applications.

#### **Camden Local Plan 2017**

G1 Delivery and location of growth  
H1 Maximising housing supply  
H6 Housing choice and mix  
H7 Large and small homes  
C6 Access for all  
A1 Managing the impact of development  
A5 Basements  
D1 Design  
D2 Heritage  
CC1 Climate change mitigation  
CC2 Adapting to climate change  
CC3 Water and flooding  
CC4 Air quality  
CC5 Waste  
TC4 Shops outside of centres  
T1 Prioritising walking, cycling and public transport  
T2 Parking and car-free development

T4 Sustainable movement of goods and materials  
DM1 Delivery and monitoring

### **Camden Planning Guidance**

- 3.2. In refusing the application, the Council also refers to supporting documentation in Camden Planning Guidance. The specific clauses most relevant to the proposal are as follows:

CPG Access for all (2019)  
CPG Basements (2021) – *replaced CPG Basements (2018)*  
CPG Energy efficiency and adaptation (2021) – *replaced CPG Energy efficiency (2019)*  
CPG Design (2021) – *replaced CPG Design (2019)*  
CPG Amenity (2021) – *replaced CPG Amenity (2018)*  
CPG Developer contributions (2019)  
CPG Housing (2021) – *replaced CPG Interim Housing (2019) and CPG2 Housing (2016, amended 2019)*  
CPG Transport (2021) – *replaced CPG Transport (2019)*  
CPG Trees (2019)  
CPG Water and flooding (2019)

- 3.3. The revisions to the various CPGs have no material implications for the matters relevant to this appeal.
- 3.4. The Primrose Hill Conservation Area Appraisal and Management Strategy was adopted in 2000 and defines the special character of a conservation area and sets out the Council's approach for its preservation and enhancement.

### **London Plan**

- 3.5. The London Plan is the statutory Spatial Development Strategy for Greater London prepared by the Mayor of London. The current London Plan was recently adopted in March 2021 and this has superseded the London Plan 2016 which was in place at the time of determination. However, there are no material changes that would impact on the assessment of the proposed development. Chapters 3 (Design), 4 (Housing), 7 (Heritage and Culture) and 10 (Transport) of the London Plan 2021 are most applicable to the determination of this appeal.

### **NPPF**

- 3.6. The National Planning Policy Framework (NPPF) was published in April 2012 and revised most recently in March 2021 since the application was determined. It states that proposed development should be refused if it conflicts with the local plan unless other material considerations indicate otherwise. Of particular relevance to this appeal is the NPPF 2021 update under para. 134 which states that:

*'Development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes. Conversely, significant weight should be given to:*

*a) development which reflects local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes; and/or*

*b) outstanding or innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings.'*

As outlined in the officer's delegated report, the development is contrary to CPG guidance and policies D1 and D2 of the Camden Local Plan. Therefore it is also considered contrary to para 134 of the NPPF 2021.

- 3.7. The Council's adopted policies are recent and up to date and should be accorded due weight in accordance with paragraph 219 of the NPPF. 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.

#### **4. Comments on the appellant's grounds of appeal**

- 4.1. The Appellant acknowledges at the outset that reasons for refusal 2-5 could be overcome by entering into a legal agreement which they agree to and as such the appellant's grounds of appeal focuses upon reason for refusal no.1 which is as follows:

*The proposed development, by reason of its siting, height, massing and design, would represent a bulky, intrusive and incongruous addition to the streetscene that would conceal the historic pattern of development, harm the setting of the two adjacent Grade II listed buildings and harm the character and appearance of both Primrose Hill and Camden Town Conservation Areas, contrary to policies D1 (Design) and D2 (Heritage) of the London Borough of Camden Local Plan 2017.*

- 4.2. The appellant has approached the grounds of appeal by taking each paragraph from the officer's delegated report in turn and responding to it in a tabulated format. For ease of reference, these comments shall make reference to the paragraph number the appellant has referenced from the delegated report.

- 4.3. In response to para 3.7, the appellant states the height of the building is a result of happenstance more than a purposeful design function. The Council continue to refute this claim based on the clear and typical manifestations of Victorian street layouts whereby different streets are separated by a stretch of rear garden, probably surrounded by a brick wall, which would be terminated by the flank wall of the first building on the street perpendicular. The appeal site would likely once have been a rear garden that was developed by a purposefully single storey building so as to respect this pattern. A typical Victorian street comprising terraced houses such as this would never turn the corner without a break in built form. The existing structure could quite conceivably be a boundary wall with the gate providing garden access for no.24 Gloucester Crescent.

- 4.4. At 3.8 the appellant justifies what they purport to be a partial loss of the gap. Whilst the Council's objection to the proposal stems partly from the loss of appreciation between the

two distinct streets, it is also about the appropriateness of the development for the site. Its intrusive massing resulting from additional height combined with a projecting building line, as well as its incongruous design, result in a building that appears to have been shoehorned into the gap. The public benefit mentioned by the appellant at this point i.e. one home for private market sale, is not sufficient to outweigh the harm.

- 4.5. In relation to para 3.9, as outlined in the officer's report, none of the examples provided of development in similar locations represent precedent or justification for this kind of development. They refer to development clearly ancillary to the main house rather than a new dwelling with a bold street frontage.
- 4.6. In response to paragraph 3.10, the appellant refers to heritage benefits offered to the conservation area by the proposal that would outweigh the partial loss of the view of the rear elevations. It is not clear how the appellant consider the proposed development to represent a heritage benefit. As part of the initial application, the appellant referenced the condition of the existing structure detracting from the conservation area but this is not to say its replacement with what is being proposed inevitably generates a heritage benefit. The officer's report provides detail as to why the Council do not find the proposed building to be appropriate in design and heritage terms.
- 4.7. Moving on to 3.11 and the appellant refers to sensitively repurposing a detrimental structure. The notion the structure is detrimental is purely subjective and not an opinion shared by the Primrose Hill Conservation Area statement of officers. The site could perhaps offer more to the streetscene but the proposed approach is definitely not the way to achieve this. The proposed development goes well beyond sensitive repurposing and involves entire demolition and replacements with a structure twice as tall above street level with jarring form and detailing.
- 4.8. The response to para's 3.14 and 3.15 provides justification for the form of the building which the Council considers intrusive and inappropriate. The appellant states that the composition of the façade has been orchestrated to reference and respond to the adjacent historic buildings. Whilst the side sections of the façade may have been pushed back slightly from the projecting middle section, they still project beyond the building line of the neighbouring listed building on Inverness Street which, when combined with the additional height, obscures and dominates. To clarify, there was a typo in para 3.15 picked up on by the Appellant – this should read 'the view west from Inverness Street towards Gloucester Crescent'
- 4.9. The Council would refute the Appellant's claim in response to para 3.16 that a building that is not as tall as its neighbour cannot overwhelm them. The setting of a building, in this case an adjacent single storey structure, is crucial to its appreciation. The Council has a statutory duty to protect the setting of listed buildings in particular.
- 4.10. Para 3.17's response makes reference to how the design of the building is contextually modern pieces of 'conservation architecture', responsive to its historic context. This has not successfully been conveyed through the application submission and is not an opinion shared by the Council who find the proposal harmful to its sensitive heritage setting.
- 4.11. The Council consider the appellant's claim (in response to para 3.19), that the desirability of sustaining surrounding heritage assets is the driver behind the development,

to be disingenuous. If this were the case then the scale and nature of the proposal would be different to what is being proposed.

- 4.12. The appellant's response to paragraph 3.20 returns to the argument that the building groups would remain distinct via their differing architectural forms. Whilst this may be true to a degree, the infilling of a site currently occupied by a low lying and very neutral structure with a bold and taller form of development serves to detract from the historic pattern of street development. This is of particular importance given that both neighbours are listed buildings. The proposed replacement structure in-between the two adjacent heritage assets would appear unexpected and incongruous. As stated below, the Council does not accept that the scale of the existing building is an '*accident of development*'.
- 4.13. In response to paragraph 3.21, the appellant argues the case for why the existing structure detracts from the conservation area. It is accepted the building is in a poor state of repair but it in no way stands out as an eyesore. Its patinated appearance allows it to blend into its background and allow for the adjacent listed buildings to be the focal points of the street. Its scale also allows them to be appreciated in the round, including rear and side elevations. It is not thought to appear as distinctly commercial and therefore at odds with the surrounding residential character as suggested by the Appellant. Its architecture gives away little clue as to its function but it could quite conceivably be a boundary wall with the door allowing garden access to no.24 Gloucester Crescent.
- 4.14. In conclusion, and in response to paragraph 3.22, the appellant appears to concede that the proposal would bring about less than substantial harm but that this is fully justified. The provision of a single home for market sale is not sufficiently beneficial to outweigh the clear harm the proposed development would bring about to the two adjacent listed buildings as well as the Primrose Hill and Camden Town Conservation Areas.

## **5. Section 106 reasons for refusal**

- 5.1. It is noted that the Appellant is willing to enter into a legal agreement to overcome reasons for refusal 2, 3, 4 and 5 of planning permission ref. 2019/5075/P, which relates to the lack of a section 106 to secure an Approval in Principle, car-free housing, a highway works contribution to ensure any damage to the highway is repaired, and a Construction Management Plan (plus associated contributions) to mitigate impact to residential amenity and promote the safe and efficient operation of the highway during works. As such, the Council is providing the appellant with a draft section 106 planning obligation and will update the Inspector at final comments stage as to whether an agreement has been reached.
- 5.2. Regulation 122 of the Community Infrastructure Levy Regulations 2010 (the "CIL Regulations") creates statutory tests to determine whether a planning obligation is capable of being a reason for granting planning permission. Obligations must be:
- necessary to make the development acceptable in planning terms;
  - directly related to the development; and
  - fairly and reasonably related in scale and kind to the development.

- 5.3. Current government guidance on the application of Section 106 is contained within the Planning Practice Guidance (NPPG) on Planning Obligations and the Use of Planning Conditions.
- 5.4. In this case, it is necessary to secure car-free housing to ensure the development promotes healthy and sustainable transport choices, an Approval in Principle to ensure that the excavation works can be carried out without a detrimental impact to the public highway, a highways contribution a Construction Management Plan 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 in accordance with policies A1, T1, T2 and H4 of the Camden Local Plan 2017.

### **Reason for refusal no.2 (Approval in Principle)**

*The proposed development, in the absence of a legal agreement securing an Approval in Principle, would fail to mitigate the impact of the basement works on the adjacent public highway, contrary to policies A1 (Managing the impact of development), T3 (Transport Infrastructure) and DM1 (Delivery and monitoring) of the London Borough of Camden Local Plan 2017*

- 5.5. If the appeal is allowed, the Council would seek to secure an Approval in Principle (AIP) by section 106 legal agreement. An AIP document outlines the concept for the design of a structure adjacent to the public highway, which helps to determine whether the proposed design and checking regime is robust and acceptable, so as to avoid damage to the public highway. Essentially, the AIP ensures that the structural integrity of the public highway (footway or carriageway) is not compromised by excavation adjacent to the public highway.
- 5.6. Policy A1 of the Camden Local Plan seeks to protect the quality of life of occupiers and neighbours and the policy notes that the Council will resist development that fails to adequately assess and address transport impacts affecting communities, occupiers, neighbours and the existing transport network.
- 5.7. Paragraph 2.21 of CPG Transport notes that any works which will or may affect the structural integrity of the highway require approval and inspection by the Council's Engineering Service's structural engineers. Works may be subject to a formal 'Approval in Principle' under highways legislation. Paragraph 6.7 of CPG Basements also notes that, if basement construction is immediately adjacent to the public highway or in close proximity to the edge of the public highway, then an Approval in Principle will have to be submitted to the Council.
- 5.8. A planning obligation is considered to be the most appropriate mechanism for securing the AIP because the works affect land outside of the appellant's control (i.e. the public highway) and if the works are not carried out properly this could result in damage to the public highway and subsequent traffic disruption and dangerous situations for pedestrians and road users. As noted above, conditions can only lawfully be used to control matters on land within the developer's control. Given that the AIP relates to land beyond the site boundary, using a condition to secure an AIP would be unenforceable. Furthermore, Planning Practise Guidance states that that no payment of money can be positively required when granting planning permission but that entering into a planning obligation



requiring the payment of a financial contribution is acceptable (PPG, Use of Conditions paragraph 005).

- 5.9. The Development would require the excavation and the construction of the proposed extension immediately adjacent to a public highway. The Council must assess the proposals and ensure that the structural integrity of the public highway is maintained at all times and the contribution would enable the Council's Bridges and Structures team to do this.
- 5.10. The AIP requirement is considered to be CIL compliant as it is necessary in planning terms to necessarily mitigate against the transport impacts of the development. It is also directly related to the development and fairly and reasonably related in scale and kind as it relates to managing impacts on the surrounding highways from construction at the site

### **Reason for refusal no.3 (car-free)**

*The proposed development, in the absence of a legal agreement to secure car-free housing, would be likely to contribute unacceptably to parking stress and congestion in the surrounding area and fail to promote more healthy or sustainable transport choices, contrary to policy T2 (Parking and car-free development) of the Camden Local Plan 2017.*

- 5.11. The Council's adopted policies T1 and T2 seek to limit the opportunities for parking within the borough as well as prioritise the needs of pedestrians and cyclists to ensure that sustainable transport will be the primary means of travel, reduce air pollution and local congestion. The appeal site is located within a Controlled Parking Zone (CA-D) and has a PTAL rating of 6a. Therefore, the development should be secured as car-free through via a covenant under s.16 of the Greater London Council (General Powers) Act 1974 and other local authority powers if the appeal were allowed.
- 5.12. A planning obligation is considered the most appropriate mechanism for securing the development as car-free as it relates to controls that are outside of the development site and the ongoing requirement of the development to remain car-free. The level of control is considered to go beyond the remit of a planning condition. Furthermore, a legal agreement is the mechanism used by the Council to signal that a property is to be designated as "Car-Free". The Council's control over parking does not allow it to unilaterally withhold on-street parking permits from residents simply because they occupy a particular property. The Council's control is derived from Traffic Management Orders ("TMO"), which have been made pursuant to the Road Traffic Regulation Act 1984. There is a formal legal process of advertisement and consultation involved in amending a TMO. The Council could not practically pursue an amendment to the TMO in connection with every application where an additional dwelling/use needed to be designated as car-free. Even if it could, such a mechanism would lead to a series of disputes between the Council and incoming residents who had agreed to occupy the property with no knowledge of its car-free status. Instead, the TMO is worded so that the power to refuse to issue parking permits is linked to whether a property has entered into a "Car-Free" legal obligation. The TMO sets out that it is the Council's policy not to give parking permits to people who live in premises designated as "Car-Free", and the Section 106 legal agreement is the

mechanism used by the Council to signal that a property is to be designated as “Car-Free”.

- 5.13. Use of a legal agreement, which is registered as a land charge, is a much clearer mechanism than the use of a condition to signal to potential future purchasers of the property that it is designated as car free and that they will not be able to obtain a parking permit. This part of the legal agreement stays on the local search in perpetuity so that any future purchaser of the property is informed that residents are not eligible for parking permits.

*CIL Compliance:*

- 5.14. The car-free requirement complies with the CIL Regulations as it ensures that the development is acceptable in planning terms to necessarily mitigate against the transport impacts of the development as identified under the Development Plan for developments of the nature proposed. This supports key principle 4 of the National Planning Policy Framework: Promoting sustainable transport. It is also directly related to the development and fairly and reasonably related in scale and kind as it relates to the parking provision for the site and impact on the surrounding highway network.

**Reason for refusal no.4 (highway works)**

*The proposed development, in the absence of a legal agreement securing necessary highway works, would fail to secure adequate provision for and safety of pedestrians, cyclists and vehicles, contrary to policies A1 (Managing the impact of development), T1 (Prioritising walking, cycling and public transport) and DM1 (Delivery and monitoring) of the London Borough of Camden Local Plan 2017*

- 5.15. The Council, as the local highway authority, is responsible for the quality, maintenance and safety of the borough's roads, footpaths and other adopted spaces. It will determine how highway and/or other related works should be designed and implemented, in consultation with developers, to ensure that they are carried out in accordance with Council procedures and standards.
- 5.16. In line with Local Plan Policy A1, the Council seeks to manage the impacts of the development by requiring developers to repair any construction damage to transport infrastructure or landscaping and reinstate all affected transport network links and road and footway surfaces following development.
- 5.17. As the supporting text (paragraph 6.11) to Policy A1 explains: “Highway works connected to development proposals will be undertaken by the Council at the developer's expense. This ensures that highway works, maintenance and materials adopted by the Council are constructed to an appropriate standard. This includes highway works that form part of a planning approval appropriate for adoption, including design and implementation of new routes to be adopted, owned and managed by the relevant Highway Authority. Development requiring works to the highway following development will be secured through planning obligation with the Council to repair any construction damage to transport infrastructure or landscaping and reinstate all affected transport network links and road and footway surfaces.”

- 5.18. In this case, the footway in the general vicinity of the site on Heath Brow is likely to sustain significant damage as a direct result of the proposed construction works. In addition, the existing vehicular crossover may need to be amended to ensure that access to and from the adjacent car park is not impeded or obstructed by the development. The Council would need to undertake remedial works to repair any such damage and to make any minor alterations to the existing vehicular crossover following completion of the proposed development. Thus, a highways contribution is required to pay for repairing any damage to the public highways of both Heath Brow and North End Way following construction. A cost estimate is being sought from the Council's highway engineers.
- 5.19. The Council will secure a financial contribution via a combined Section 106 and Section 278 legal agreement for the highway works that the developer will be required to pay before commencing development. This is based upon estimates of anticipated works (including fees) prepared by the Council. If in the event that the actual works cost more than originally estimated, the developer will be liable to pay additional costs (up to a maximum agreed figure). On completion of the works, the Council will certify how much money was expended in undertaking the works. If the actual works required cost less than originally estimated, for example if the public highway was not damaged as much as was estimated for, the Council can refund the applicant any unspent financial contribution.

*CIL Compliance:*

- 5.20. The contribution is considered to be CIL compliant. It is necessary in planning terms as identified in the development plan to mitigate against the increased impact that will be generated by the development. The contribution has been calculated taking into account the particular characteristics of the development, it is directly related to the development and is fairly and reasonably related in scale and kind to the development as it relates to mitigating impacts of the development.

**Reason for refusal no.5 (Construction Management Plan)**

*The proposed development, in the absence of a legal agreement to secure a Construction Management Plan (and associated support contribution and bond) 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, contrary to policies A1 (Managing the impact of development) and T4 (Sustainable movement of goods and Materials) of the Camden Local Plan 2017.*

- 5.21. Local Plan policy A1 states that Construction Management Plans (CMPs) should be secured to demonstrate how developments would minimise impacts from the movement of goods and materials during the construction process (including any demolition works). The appeal proposal would involve significant works due to the construction of large buildings on the site. A CMP would be required in order to address the issues around how the demolition and construction work would be carried out and how this work would be serviced (e.g. delivery of materials, set down and collection of skips), with the objective of minimising traffic disruption and avoiding dangerous situations for pedestrians and other road users. The failure to secure a CMP by S106 would give rise to conflicts with other

road users and be detrimental to the amenities of the area generally.

- 5.22. A CMP implementation support contribution (£3,136) will also be secured as a planning obligation by a legal agreement. This contribution must be paid prior to commencement of works. This contribution covers the ongoing review and monitoring elements of the CMP (a living document) and site inspections, meetings with the developer and local stakeholders, to ensure compliance. A CMP bond of £15,000 would also be required in case the contractor fails to abide by the CMP and the Council has to take action to remediate issues. The fee would be fully refundable on completion of the works should there be no breach. The amount of this contribution has been calculated to reflect the scale of the development and the complexity of the CMP. This level of contribution is explained on the Council's website.
- 5.23. A planning obligation is considered to be the most appropriate mechanism for securing compliance with a CMP in this case simply because a considerable extent of the activity during construction could cause conflict with other road users and users of both carparks. It would also be detrimental to the amenity of the area and will necessarily take place outside the curtilage of the planning unit of the appeal site. Potential impacts for the proposed demolition/construction works which should be controlled by a CMP include traffic generation from removal and delivery of materials to the site. This could result in traffic disruption and dangerous situations for pedestrians and road users.
- 5.24. Under the Planning Act conditions are used to control matters on land within the developers' control. 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 around the site 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, hence using a condition to secure the type of off-site requirements usually included in a CMP would in this case be unenforceable.
- 5.25. Conditions can only lawfully be used to control matters on land within the developer's control. Many of the CMP provisions will relate to off-site requirements, particularly public highway (which is not land within the developers' control). As such, a Section 106 Agreement (rather than a condition) is the most appropriate mechanism. This is in accordance with Planning Practice Guidance which states that conditions requiring works on land that is not controlled by the applicant often fails the tests of reasonability and enforceability.

#### *CIL Compliance:*

- 5.26. The CMP and associated contribution is considered to be CIL compliant as it ensures that the development is acceptable in planning terms to necessarily mitigate against the transport impacts of the development as identified under the Development Plan for developments of the nature proposed. It is also directly related to the development and fairly and reasonably related in scale and kind as it relates to managing impacts to neighbours and on the surrounding highways from construction at the site.

## 6. Conclusion

- 6.1. Based on the information set out above, and having taken account of all the additional evidence and arguments made, the proposal is considered contrary to the Council's adopted policies.
- 6.2. The information submitted by the appellant in support of the appeal does not overcome or address the Council's concerns. For these reasons the proposal fails to meet the requirements of policy and therefore the Inspector is respectfully requested to dismiss the appeal.

## 7. Conditions

- 7.1. Should the inspector be minded to allow the appeal, it would be requested that conditions in Appendix A are attached the decision.

## 8. **S106 Legal Agreement:** should the inspector be minded to allow the appeal

- 8.1. Similarly to the above, if the inspector were mindful to overrule the Council's determination, it would be requested that a section 106 legal agreement is secured including the following head of terms:

- Approval in Principle
- Car-free
- Highway works
- Construction Management Plan (and associated contributions)

Should any further clarification or submissions be required, please do not hesitate to contact Kristina Smith by the direct dial telephone number or email address quoted in this letter.

Yours faithfully,

**Kristina Smith**

Principal Planner  
Supporting Communities Directorate

## Appendix A

### Recommended conditions: 2019/5075/P

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

3. The development hereby approved shall achieve a maximum internal water use of 110litres/person/day. The dwelling/s shall not be occupied until the Building Regulation optional requirement has been complied with.

Reason: To ensure the development contributes to minimising the need for further water infrastructure in an area of water stress in accordance with Policies CC1, CC2, CC3 of the London Borough of Camden Local Plan 2017.

4. Prior to use, details shall be submitted to and approved in writing by the Council, of the external noise level emitted from plant equipment (ASHP) and proposed mitigation measures. The measures shall ensure that the external noise level emitted from plant equipment will be lower than the lowest existing background noise level by at least 10dBA (by 15dBA where the source is tonal) as assessed according to BS4142:2014 at the nearest and/or most affected noise sensitive premises, with machinery operating at maximum capacity.

Reason: To ensure that the amenity of future residential occupiers of the development are not adversely affected by noise from equipment in accordance with the requirements of policies A1 and A4 of the London Borough of Camden Local Plan 2017.

5. 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) Details including sections at 1:10 of windows (including jambs, head and cill), doors and boundary treatment;

b) Sample panel of the proposed brickwork (including main building and chamfered set-backs) to show type, colour, bond, mortar mix, joint and pointing to be provided on site;

c) Manufacturer's specification details and samples of all facing materials to be submitted to the Local Planning Authority

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 policy D1 and D2 of the London Borough of Camden Local Plan 2017

6. The development hereby approved shall not commence until such time as a suitably qualified chartered engineer with membership of the appropriate professional body has been appointed to inspect, approve and monitor the critical elements of both permanent and temporary basement construction works throughout their duration to ensure compliance with the design which has been checked and approved by a building control body. Details of the appointment and the appointee's responsibilities shall be submitted to and approved in writing by the local planning authority prior to the commencement of development. Any subsequent change or reappointment shall be confirmed forthwith for the duration of the construction works.

Reason: To safeguard the appearance and structural stability of neighbouring buildings and the character of the immediate area in accordance with the requirements of policies D1, D2 and A5 of the London Borough of Camden Local Plan 2017.

