

Date: 28/09/2021  
Your ref: APP/X5210/W/21/3276548  
Our refs: 2020/4462/P  
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Temple Quay House  
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Dear Aaron Kang,

**Town and Country Planning Acts 1990 (as amended)**  
**Planning Appeal Statement (Authority)**  
**Appellant: MG Holdings Ltd.**  
**Site: 9 & 9A Hargrave Place, N7 0BP**

I write in connection with the above appeal against non- determination for:

Temporary change of use for the period of 3 years from Public house (Class A4) to Large House in Multiple Occupation (HMO) (Class Sui Generis) with associated alterations.

The Council's case is set out primarily in the putative decision notice and delegated officer's report (ref: 2020/4462/P) both attached. These form the Council's principal Statement of Case. The delegated report addresses the grounds of appeal therein. The appellants statement of case was considered in coming to the decision that permission would have been refused.

Permission would have been refused on the following grounds:

Reason(s) for Refusal

- 1 The existing local public house, in its current form, is considered to serve the needs of the local community. Its proposed modification would compromise and undermine the use of the existing public house and prejudice its long term retention. Therefore the public house would fail to be developed and modernised in a way that is sustainable, and retained for the benefit of the community, which in turn would fail to enhance the sustainability of communities, contrary to policies C2 (Community facilities) and C4 (Public houses) of the Local Plan (2017), the London Plan (2021) and the NPPF (2021).
- 2 Due to the undersized single bedrooms on the second floor, lack of wash basins, and the poor stacking of similar room types, the proposed development would result in sub-standard accommodation and be harmful to the amenity of future occupiers contrary to policies A1 (Managing the impact of development), H6

(Housing choice and mix) and H10 (Housing with shared facilities) of the Local Plan (2017), the London Plan (2021) and the NPPF (2021).

- 3 The proposed development, in the absence of a legal agreement to secure a car-free development, would be likely to contribute unacceptably to parking stress and congestion in the surrounding area, contrary to policies T1 (Prioritising walking, cycling, and public transport) and T2 (Parking and car-free development) of the Local Plan (2017), the London Plan (2021) and the NPPF (2021).
- 4 The proposed development, in the absence of a legal agreement securing a HMO management plan, would fail to protect the safety of neighbouring residents and the amenities of the surrounding area contrary to policies A1 (Managing the impact of development), C5 (Safety and security) and DM1 (Delivery and monitoring) of the Local Plan (2017), the London Plan (2021) and the NPPF (2021).

Copies of relevant policies from the Camden Local Plan (adopted July 2017) and accompanying guidance were 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 and S106 heads of terms and conditions that the Council respectfully requests be considered without prejudice if the Inspector is minded to grant permission. The council has drafted the S106 and is approaching the appellants to agree. The Inspector will be updated at final comments stage.

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

### **Adopted policies**

- 1.1. The Camden Local Plan was adopted on 3 July 2017. The policies cited in delegated report below are of relevance to the appeal.

### **Camden Planning Guidance**

- 1.2. In refusing the application, the Council also refers to supporting documentation in Camden Planning Guidance, also set out in the report.

### **London Plan**

- 1.3. The current London Plan was recently adopted in March 2021 the Council's decision is in accordance with this.

### **NPPF**

- 1.4. The National Planning Policy Framework (NPPF) revised most recently in March 2021.
- 1.5. 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.

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

- 2.1. 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.
- 2.2. 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.
- 2.3. 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.
- 2.4. In this case, it is necessary to secure car-free housing to ensure the development promotes healthy and sustainable transport choices and a HMO management plan to ensure that the development can be implemented without causing detrimental impact to residential amenity.

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

- 2.5. 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.
- 2.6. 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”.

- 2.7. 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:*

- 2.8. 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 (HMO Management Plan)**

- 2.9. The Council, seeks to ensure that development that has potential to impact negatively on the local environment is minimised by requiring the owner to adopt a plan for measures to be taken to ensure residents cause minimum impact and disruption to local residents. The proposal involves accommodation for 18 persons minimum. The Council needs to ensure that a HMO management plan binds to the new development in accordance with current policy and guidance. The failure to secure a management plan by S106 would result in a development that would not contribute to the creating of a mixed, inclusive and sustainable community and would have full potential to cause harm to nearby residential amenity.

The agreement would be similar to a student management plan in this respect. This would include:

- provision of a designated community contact,
- a disciplinary procedure for instances where anti social measures arise, provisions and facilities to encourage residents to recycle for example bins in rooms and communal areas which have separate waste and recycling compartments and identifying means of ensuring the provision of information to the Council and
- provision of a mechanism for review and update as required from time to time

The proposed obligation would comply with regulation 122 and carry weight because it would allow otherwise unacceptable impact to be properly managed and mitigated. It relates directly to the proposed use, and is proportionate to the scale of the proposal. A legal agreement is the most appropriate mechanism as the plan would require review mechanisms to allow it to be adapted and evolve as a living document.

### **3. Conclusion**

3.1. Based on the information set out above, including having taken account of all the additional evidence and arguments made, the proposal is considered contrary to the Council's adopted policies.

3.2. For these reasons the proposal fails to meet the requirements of policy and therefore the Inspector is respectfully requested to dismiss the appeal.

### **4. Conditions**

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

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

Yours faithfully,

**Nathaniel young**

Senior Planning Officer  
Development Management  
Supporting Communities

### **Appendix A**

#### Recommended conditions:

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) The use hereby permitted is for a temporary period only and shall cease on or before 36 months from the date of this permission, at which time the premises shall revert to their former lawful use (Class A4 Public House).

Reason: In order that the long term use of the site may be properly considered in accordance with policies DM1 and A1 of the London Borough of Camden Local Plan 2017.

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

LM-100, E100, E101, E102, E300, HMO3 Rev A, HMO5

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

4) 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.

5) Prior to first occupation, secure cycle storage shall be provided in their entirety as shown on the approved drawings, and permanently retained thereafter.

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

6) Prior to first occupation, waste and recycling storage bins shall be provided in their entirety as shown on the approved drawings, and permanently retained thereafter.

Reason: To ensure the development provides adequate waste storage facilities in accordance with the requirements of policy CC5 of the London Borough of Camden Local Plan 2017.

7) 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.