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Your ref: APP/X5210/W/21/3273816
Our refs: 2020/4709/P
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Dear Aaron Kang,

Town and Country Planning Acts 1990 (as amended)
Planning Appeal Statement (Authority)
Appellant: Mr Ardash Shah
Site: 128 Camden Road, London, NW1 9EE

I write in connection with the above appeal against the Council's refusal to grant planning permission for the erection of a two storey upwards extension and change of use of part of ground floor and first floor from shop (Class E) to residential (C3) to create a 3-bed unit.

The Council's case is set out primarily in the delegated officer's report (ref: 2020/4709/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 two-storey mid-terrace Victorian building with a retail unit at ground floor level and ancillary accommodation / storage at first floor.
- 1.2. The appeal site is located within the Camden Broadway Conservation Area and is referred to as making a positive contribution to the conservation area.
- 1.3. Planning permission for a two storey upwards extension of the building, a part change of use and other alterations in association with the creation of a 3bed flat was refused on 17th December 2020.

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

- The proposed two storey extension, by reason of its height, location and prominence would harm the pattern of historic development to the detriment of the character and appearance of the host building, neighbouring buildings and the Camden Broadway Conservation Area contrary to policies D1 (Design) and D2 (Heritage) of the 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 contribution to affordable housing, would fail to maximise the contribution of the site to the supply of affordable housing in the borough, contrary to policy H4 (Maximising the supply of affordable housing) of the 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

2019/6164/P - Erection of additional storey plus mansard roof and single storey rear extension at ground floor level; change of use of part of ground floor and first floor from shop (A1) to residential (C3) to create 2x1-bed units; shopfront alterations. **Refused 19/02/2020** on design, heritage and amenity (privacy, outlook and daylight/sunlight) grounds in addition to lack of Section 106 agreement to secure car-free housing, affordable housing contribution, Construction Management Plan (and associated support contribution)

2017/5197/P - Change of use from retail (Class A1) to restaurant/cafe (Class A3) use. **Prior Approval Required – Prior Approval Refused 20/10/2017**

2017/2874/P - Change of use from retail (Class A1) to hot food take-away (Class A5) and installation of extract ducting on rear elevation. **Refused 01/06/2017**

8400788 - Change of use from residential to shop use on first floor and alterations to ground and first floors. **Refused 22/10/1984**

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

Policy A1 Managing the impact of development
Policy H1 Maximising housing supply
Policy H4 Maximising the supply of affordable housing
Policy H6 Housing choice and mix
Policy H7 Large and small homes
Policy D1 Design
Policy D2 Heritage
Policy CC1 Climate change mitigation
Policy T1 Prioritising walking, cycling and public transport
Policy T2 Parking and car-free development

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 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)*

- 3.3. It is noted that CPG Housing 2021 has consolidated and replaced CPG Interim Housing 2019 and CPG2 Housing 2019 and the key difference relevant to the appeal is the change to how the affordable housing payment-in-lieu is calculated. The PIL is now paid at a flat rate of £5,000 per sqm (GIA) rather than £2,650 per sqm (GEA). Further detail on the revised contribution will be provided in the relevant section.**
- 3.4. The Camden Broadway Conservation Area Appraisal and Management Strategy was adopted in 2009 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 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. 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.
- 3.8. The Council’s adopted policies are recent and up to date and should be accorded full weight in accordance with paragraph 213 - 216 of the NPPF.
- 3.9. There are no material differences between the NPPF and the Council’s adopted policies in relation to this appeal.

4. Comments on the appellant’s grounds of appeal

Reason for refusal 1

The proposed two storey extension, by reason of its height, location and prominence would harm the pattern of historic development to the detriment of the character and appearance of the host building, neighbouring buildings and the Camden Broadway Conservation Area contrary to policies D1 (Design) and D2 (Heritage) of the Camden Local Plan 2017

4.1 At paragraph 8.2 of his statement, the appellant states that “there is no evidence to indicate that the building which currently sits at the rear of No.128B ever formed the side or garden elevation of no 159 Brecknock Crescent”. This is entirely true, and it is not the council’s contention that it did.

Instead, it is obvious that the current shop (128) has been built on the former back garden of the corner house next to 159 (formerly 161, now 128b after its conversion to a shop). To argue otherwise is to argue that this row of bourgeois houses was built, each with a back garden except the end one, which was furnished with a shop instead, which is highly improbable.

On any given suburban street corner, the buildings on the principal road are full height right up to the corner. There is then no development on the side street until the foot of the garden, where buildings become full height again. What is worthy of interest here is that here the usual position is reversed and the side of the houses on the lesser street face what seems to be the principal street. Filling in this gap would obscure this unusual state of affairs.

This suggests that, when laid out, St Pancras Way was the major road and Camden Road the minor road. However, over time, St Pancras Way has developed a more residential character, with Camden Road developing a more high-street character.

At some point, the fortunes of the houses on Brecknock Crescent/St Pancras Way declined to the point where someone sold the end garden to be converted into a shop, probably at the same time as they sold the ground floor to become a shop.

The appellant notes that the council has no “photographic evidence” to demonstrate a connection between the plot under 128 and the house at 161/128b. If the appellant had photographic evidence showing the presence of a three-storey building in the 1820s, the matter could be considered settled, but he does not. It is therefore safe to assert, beyond reasonable doubt, that the site originally formed the back garden of 161/128b.

4.2 At 8.3, the appellant states that the gap is anomalous. This is true. It is unusual that the side elevation addresses the major road. But therein lies the interest of the site. It is not a benefit of development to iron out unusual features of streetscape. Allowing a view of the back elevation of the buildings on Brecknock Crescent, two of which are listed, does not demonstrate a “poor relationship” and is not a failing.

4.3 At 8.4, the appellant argues that the pattern of development and the character of the conservation area are not intrinsically linked. This is not accepted. Anyone who is interested enough in the built environment to notice the unusual arrangement at this corner will find him or herself speculating about the reason for it, and considering a range of issues such as how roads are laid out, why some houses have back gardens and some don’t, the relative age of the buildings, how what was clearly built as a corner house for a prosperous family has become a chip shop, indeed what Camden Road must have been like in the 1820s. These types of matter are what make conservation areas interesting to people who are interested in the built environment. On the other hand, the appellant appears to believe that visual interest equates to a lack of coherence and is therefore to be avoided.

The appellant argues that he has seen an opportunity not for correction but for enhancement. It is clear that he has seen an opportunity, but it is not accepted that filling in this peculiar feature will enhance the conservation area. Even if consistent parapet lines were a significant part of this part of the conservation area, their imposition on secondary frontages would not be considered an enhancement. But this is not an area of great consistency, such as, say, parts of Kentish Town. The block is short, and faces blocks of different heights across the street. We can see how, through the 1820s, different small speculative developers made different estimates as to the likely value of property and the character of the area, some betting on grand buildings, most betting on more modest ones, until ultimately, Camden Road became a commercial street, having been blighted by the railway.

4.4 At 8.5, the appellant mentions graffiti. It is not accepted that the proposed two-storey extension is a proportionate response to graffiti.

4.5 At 8.6, the appellant argues that mansard roofs are traditional. In fact, these houses were built with butterfly roofs, as 118 reveals. Mansard roofs are a traditional way of *extending* houses when land values rise. There is nothing historic about the roofscape here and hence no intrinsic value in adding another mansard, beyond the applicant's search for consistency. This mansard would also struggle to relate satisfactorily to the existing mansard on 128b.

Again, the appellant equates anomaly with detriment. As has been explained above, anomaly can also be equated with visual interest and can tell a story. The appellant seeks to create a "coherent, united built front" that historically did not exist. In doing so, he will eradicate the visual manifestations of the pattern of development.

4.6 At 8.7, the appellant refers to the aesthetic side of his proposal. This is a matter of opinion. It is not denied that the proposed design is a successful replica that will be difficult to differentiate, once built. What is contested is the desirability of providing a full-height rear extension by infilling the space above this former back garden and so falsifying the pattern of development, for the reasons already outlined. It is clear that the appellant is giving weight to consistency above all other consideration.

While it is true that the prevailing height is three storeys plus mansard, it is also true that the host building is only two storeys tall. It is entirely reasonable to describe the doubling in height of the host building as a "substantial height increase".

4.7 At 8.8, the points above are indeed considered self evident. While the appellant bemoans the council's lack of "evidence" or "historic research" underlying the decision to reject the application, it is notable that the appellant has no "evidence" or "historic research" himself to support his proposal. Had the appellant any evidence that the site was not the former back garden of the corner house on Brecknock Crescent/St Pancras Way, he would have produced it.

Much of the development of London is not recorded and no amount of research can prove exactly what happened when. However, certain mechanisms and processes are universal. The means by which a street of fine town houses of 1820 turns into a street of flats above shops in 2021 is well understood, and is indeed taught at certain courses at Birkbeck.

On the overwhelming balance of probability, this site was the back garden of the corner house on the adjacent street. The appellant's scheme would erase the historic relationship between the primary and secondary frontages in a way that is not considered acceptable. Given this relationship, it would result in what would essentially be a giant rear extension to the corner house. As a result, it would fail to be a subordinate addition to the host building to the detriment of the character and appearance of the host building, neighbouring buildings and the Camden Broadway Conservation Area contrary to policies D1 and D2 of the Camden Local Plan 2017.

Since the corner house was built in the way it was (and the identical two next door to it are considered interesting enough to have been listed), the resulting structure would be out of character within the existing, legible streetscape. This would be to the detriment of the character and appearance of the host building, neighbouring buildings and the Camden Broadway Conservation Area contrary to policies D1 and D2 of the Camden Local Plan 2017.

Reason for refusal 2

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.

Please refer to section 5

Reason for refusal 3

The proposed development, in the absence of a legal agreement to secure a contribution to affordable housing, would fail to maximise the contribution of the site to the supply of affordable housing in the borough, contrary to policy H4 (Maximising the supply of affordable housing) of the Camden Local Plan 2017.

Please refer to section 5

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 and 4 of planning permission ref. 2020/4709/P, which relates to the lack of a section 106 to secure car-free housing, an affordable housing payment and a Construction Management Plan (plus associated contributions). 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 affordable housing payment to maximise the contribution of the site to the supply of affordable housing in the borough and 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 (car-free)

5.5. 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.

5.6. 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".

5.7. 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:

- 5.8. 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.3 (affordable housing)

- 5.9. The appeal scheme proposes the creation of 104 sqm (GIA) of residential floorspace. Policy H4 expects a contribution to affordable housing from all developments that provide one or more additional homes and involve a total addition to the residential floorspace of 100sqm GIA or more. Under policy H4, for developments with a capacity of less than 25 units, the affordable housing contribution is based on a sliding scale with the target starting at 2% for an additional home (at 100sqm) and is increased by 2% for each home added to the capacity. Based on the floorspace uplift (rounded to the nearest 100sqm), the affordable housing contribution would be 2% (based on a GIA of 104 sqm). Under the previous CPG, this value was then applied to the GEA which was calculated at 106.6 sqm using a standard multiplier of 1.025) before being multiplied by £2,650 (the multiplier factor to calculate payment-in-lieu for a market residential scheme) to get the required affordable housing contribution of £5,644.50. However, this approach has been superseded by CPG Housing which applies an increased multiplier of £5,000 to the target affordable floorspace based on GIA, in this case 2.08 sqm (2% of 104 sqm). This would result in an increased affordable housing contribution of £10,400.
- 5.10. The most appropriate way of obtaining the financial contribution is via a s106 legal agreement and it is understood from the appellant's statement of case that they are willing to provide the full contribution should the appeal be allowed. A draft copy of a section 106 legal agreement has been sent to the appellant and PINs will be updated on any progress at the final comments stage.

CIL Compliance:

- 5.11. 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.

Reason for Refusal no.4 (CMP)

- 5.12. 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.
- 5.13. 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.
- 5.14. 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.
- 5.15. 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.
- 5.16. 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:

5.17. 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:

- Car-free
- Affordable Housing contribution of £10,400
- 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: 2020/4709/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.

