
**Proof of Evidence of
David John Whittington
BA (Hons) DipTP MRTPI**

Appeal Reference: APP/X5210/Q/21/3276844

Site Address: 100 Avenue Road, London, NW3 3HF

Local Planning Authority: London Borough of Camden

Inquiry Start Date: 9 November 2021

On behalf of Essential Living (Swiss Cottage) Ltd October 2021

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Appendices

- Appendix 1:** Various written communications between the Appellant and the LPA prior to application submission (November 2020 – January 2021)
- Appendix 2:** London Borough of Camden Housing Delivery Test – Action Plan (August 2021)

1. Introduction

- 1.1. This Proof of Evidence has been prepared by David Whittington of Savills (UK) Limited ("Savills") on behalf of Essential Living (Swiss Cottage) Limited ("the Appellant"), in support of a Planning Appeal made by the Appellant under section 106B of the Town and Country Planning Act 1990. It is also intended to reflect the spirit of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000/1624 (see Appendix F of the PINS Procedural Guide – March 2021).

Reason for the Appeal

- 1.2. The submission of this Appeal followed the refusal, by the London Borough of Camden, as the Local Planning Authority ("LPA") of an application made under LPA reference: 2021/0025/P. This was submitted to the LPA on 4 January 2021 pursuant to S.106A of the Town and Country Planning Act 1990 ("the Act") for amendments to planning obligations within the existing S.106 Agreement dated 24 August 2015 relating to land and development at 100 Avenue Road, London, NW3 3HF.
- 1.3. The Proposal (for the amendment of the S106 Agreement), as set out on the LPA Decision Notice dated 23 March 2021, is:

Application in accordance with Section 106A, sub-sections (3) and (4), to amend clause 3.2 (and associated definitions) of S106 Agreement relating to 2014/1617/P dated 24/08/2015 (as amended by 2018/4239/P dated 04/08/2020 and 2019/1405/P dated 07/05/19) (for: redevelopment of site including a 24 storey and 7 storey building with a total of 184 residential units, 1,041sqm of retail/financial or professional services/café/restaurant and 1,350sqm of community use (summary)). The AMENDMENTS include REMOVING the requirement to provide 28 Affordable Rent units, 8 Intermediate Housing units and 18 Discounted Market Rent units (for a minimum of 15 years post completion), to be REPLACED with 18 Discounted Market Rent units in perpetuity. Modification of various relevant definitions - Disposal Viability Assessment, Original Viability Assessment and Surplus - to refer to Gross Development Value figure identified in the Financial Viability Assessment report dated 09/12/2020.

1.4. The application was refused by the LPA on 23 March 2021 for the following single reason of refusal:

- 1) *In accordance with Section 106A of the Town and Country Planning Act the planning obligation shall continue to have effect without modification. The application to modify the affordable housing obligation is refused as the original obligation is considered to serve a useful purpose which is delivering the consented amount and tenures of affordable housing. Furthermore, the proposed modification would not serve it equally well, because there would be a significant reduction in the amount of affordable housing and a loss of a range of tenures that are considered genuinely affordable. Therefore, the proposed modification to the original planning obligation would fail to meet the requirements of s106A(6)(c) of the Town and Country Planning Act 1990.*

1.5. This Proof of Evidence provides evidence, on behalf of the Appellant, in relation to planning matters including national and local planning policy and other material considerations.

Core Case of the Appellant

1.6. The Appellant's Core Case is set out within their Statement of Case dated May 2021 and in the documents that formed the original application submission to the LPA. In summary:

- *In accordance with S.106A(6) of the Town and Country Planning Act 1990, the relevant existing planning obligation continues to serve a useful purpose (to secure the maximum reasonable amount of affordable housing from the development) but that purpose would be served equally well if the obligation had effect subject to the modifications specified in the Application;*
- *That in assessing the modification, it is appropriate to consider matters that are material to the relevant obligation and not simply the obligation itself in isolation. In this case, that means the viability of the scheme in current circumstances and how this impacts upon the deliverability of a comprehensive residential led, mixed-use redevelopment scheme on brownfield land, and*

- *That the impact of affordable housing provision upon delivery of a development needs to be taken into consideration in assessing whether that provision can be amended. An affordable housing requirement that renders a scheme undeliverable, thereby also risking the full range of other planning benefits arising, does not constitute the maximum reasonable amount of affordable housing from the proposed development. As a result, the obligation is no longer fairly and reasonably related in scale and kind to the development.*

1.7. These matters are expanded upon within both this Proof and the Proof of Evidence prepared by the Appellant's second witness, Mr Gareth Turner also of Savills.

Statement of Common Ground

1.8. A Statement of Common Ground ("SoCG") dated 25 August 2021 has been agreed between the Appellant and the LPA. That SoCG sets out the following background information:

- *Site and Surroundings;*
- *Planning History for the site, dating from the original planning permission granted in 2016 under LPA ref: 2014/1617/P and including subsequent amendments to that approved development, discharging of planning conditions, discharging of legal obligations and approval of a certificate of lawful existing use to confirm implementation of the original planning permission;*
- *A further more detailed timeline of relevant events relating to planning on the Site from the time of the planning application ref: 2014/1617/P being submitted to the LPA in 2014 through to the submission and refusal of the application under LPA ref: 2021/0025/P pursuant to S106A of the Town and Country Planning Act 1990 that is the subject of this Appeal; and*
- *A summary of the legislative and planning policy framework in which this Appeal is set.*

1.9. Given the inclusion of this information within the SoCG, it is not repeated here.

- 1.10. An addendum Statement of Common Ground dated 18 October 2021 has also now been agreed between the Appellant and the LPA. This has resulted from ongoing discussions between the principal parties to narrow the scope of viability matters that remain as areas of disagreement. Specifically, this addendum SoCG confirms that all technical viability appraisal parameters, inputs and results are now agreed.
- 1.11. This is discussed further within Mr Turner's proof.

Scope of Evidence of Witnesses for the Appellant

- 1.12. I provide evidence on planning matters and the Procedural Route for determination of the Application as outlined in this Proof. I have also provided a separate Summary Proof of Evidence.
- 1.13. In addition to myself, the Appellant will call one other technical expert witness:
- *Mr Gareth Turner (Savills) provides evidence on viability matters and the reappraisal of the approved development's viability in the current context.*
- 1.14. Each witness provides a full background introduction to their expertise within their separate Proofs of Evidence. I introduce my background in **Section 2**.

Proof of Evidence Structure

- 1.15. Following the publication of the key topics by the Inspector at the Case Management Conference of 6 September 2021, my evidence is set out as follows:

Section 2:	Background and qualifications
Section 3:	Relevant background supporting the original planning application
Section 4:	The key planning considerations for this evidence
Section 5:	The overall conclusions

2. Witness Qualifications and Experience

- 2.1. I am David John Whittington. I am instructed by the Appellant, Essential Living (Swiss Cottage) Ltd in respect of the Appeal Proposal at 100 Avenue Road, London, NW3 3HF.
- 2.2. I am a Chartered Town Planner and Director of Savills (UK) Ltd, a global real estate services provider listed on the London Stock Exchange and offering a broad range of specialist advisory, management and transactional services to clients all over the world. Savills is the largest employer of Chartered Town Planners (MRTPI) in the UK. I am based within Savills UK and Global Headquarters in Central London.
- 2.3. Prior to this position, between 2004-2011, I was a Director of The London Planning Practice, an independent town planning consultancy, providing services within London and the south-east and acquired by my current employer in 2011. Prior to this, I held positions as a Planning Policy Officer and Development Control Officer in former roles at Cambridge City Council (1996-2001) and as a Senior Planning Officer at The London Borough of Camden (2001-2002) before moving to private sector planning consultancy in 2002.
- 2.4. I hold a Bachelor of Arts degree in Urban Studies and Planning and a Postgraduate Diploma in Town Planning both from The University of Sheffield. I have been a Member of the Royal Town Planning Institute since 1998.
- 2.5. I have 25 years continuous professional experience and employment within the town planning profession. The professional experience I have gained over this period has been varied, working on complex development schemes across London and the south east, both as an officer within local planning authorities and within private planning consultancies. I specialise in complex mixed use and residential developments within London and notably within Central London.

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- 2.6. I have worked on a continuous basis, since 2002, as a town planning agent within the London Borough of Camden, providing *inter alia*, advice to clients, submitting applications and appeals, acting as a witness at Public Inquires and Hearings and presenting to the LPA's Planning Committee throughout the entirety of this time.
- 2.7. Having been instructed by the Appellant to advise on the planning consultancy of this Site in 2020 and to prepare and manage the application which is the subject of this Appeal, I am fully familiar with the Site and surrounding area, and have studied the relevant national and local planning policy framework.

Declaration

- 2.8. The evidence which I have prepared and provide for this Appeal reference APP/X5210/Q/21/3276844 in this Proof of Evidence is true and has been prepared and is given in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions.

3. Background to the Appeal Submission

Wider Planning History and Development Chronology

- 3.1. The S106 Agreement to which this appeal relates is attached to Planning Permission LPA ref: 2014/1617/P ("the Planning Permission", **Core Document 5**) which was granted on 18 February 2016 by the Secretary of State following a S78 Appeal heard by Public Inquiry held in July - August 2015. The S106 Agreement itself relating to the Planning Permission is dated 24 August 2015.
- 3.2. A full planning history for the site, including amendments, discharge of planning conditions and approval of planning obligations, is provided at Section 3 of the Statement of Common Ground between the Appellant and the LPA.
- 3.3. A chronology of all planning matters for the site, including previous judicial review proceedings and progression of works to-date, is provided at Section 4 of the Statement of Common Ground between the Appellant and the LPA.
- 3.4. As noted in more detail in Section 1, the application to which this Appeal relates was submitted to the LPA on 4 January 2021 pursuant to S.106A of the Town and Country Planning Act 1990. It was determined under reference: 2021/0025/P and refused by Decision Notice dated 23 March 2021.

Present Status of the Site and Development

- 3.5. As noted at Section 4 of the Statement of Common Ground between the Appellant and the LPA, implementation of the approved development was confirmed in February 2018, demolition on site was completed in October 2019 and construction of subterranean elements of the approved development was ongoing from October 2019 until July 2020.

- 3.6. Works on-site are currently paused. This was initially in part due to the impacts of the Covid-19 pandemic but has continued beyond the most restrictive early phases of the pandemic because of the significant costs of progressing the completion of the development which is currently not viable and deliverable with the existing S106 Agreement unchanged. A summary of the Appellant's current position and reasoning is provided at paragraphs 2.21 – 2.24 of the Appellant's Statement of Case.

Context for Proposing Modification of the Existing S106 Agreement

- 3.7. The proposed modifications to the obligations are proposed to ensure that the approved development can continue to be delivered in changed financial and economic circumstances. Without modification to S106 to amend the quantum of affordable housing units, the scheme is unviable to an extent that will not permit its delivery.
- 3.8. Full details of the viability case are set out within Mr Turner's Proof and appendices plus the addendum Statement of Common Ground dated 18 October 2021. This concludes:
- The proposed modification create a deficit of £56.65m inclusive of a profit allowance of £21.61m. This compares to the existing consent which has a deficit of £70.96m inclusive of a profit allowance at £17.74m.
 - Whilst this is still a technical deficit, this demonstrates an improvement in financial performance from the current consent. The appraisal leads to an increase in net rent at current day by £900K per annum.
 - This shows that the existing scheme is not viable and justifies the proposed modification to improve viability and offer improved prospects of delivery.

- 3.9. The proposed modifications will ensure that the approved development and related environmental, social and economic benefits have materially better prospects of delivery in the changed circumstances. Without amendment, the obligations will not meet their intended purpose to deliver the maximum viable amount of affordable housing since they render the scheme is unviable to an extent that will not permit its delivery (including the retained element of affordable housing).

Pre-Application Engagement with the LPA

- 3.10. The Appellant engaged with LPA officers prior to the submission of the application that is now subject to this Appeal. This engagement included:
- *A letter dated 13 November 2020 from the Appellant to Bethany Cullen, Head of Development Management at the LPA;*
 - *A meeting between the Appellant, LPA officers and their respective advisors held on 30 November 2020;*
 - *A letter dated 10 December 2020 between myself and Bethany Cullen; and*
 - *Email correspondence between myself and Bethany Cullen in a period between 10 December 2020 and 4 January 2021 (the date that the Application was submitted).*
- 3.11. This correspondence is attached at **Appendix 1**.
- 3.12. During these discussions, LPA officers made clear their position to myself that they did not accept that an application made under S106A to reduce the quantum of affordable housing (via an amendment to an existing S106 Agreement) was an appropriate or legitimate procedural route to achieve such an amendment. Officers took the view, having taken legal advice, that such an amendment should be addressed by a variation of condition under S73, an opinion that I did not share at that time and continue not to share now.

S106A and S106B as Correct Procedural Routes for the Amendment to the Existing S106 Agreement

- 3.13. Any application to amend existing planning obligations must be made in accordance with Section 106A, subsections (3) and (4), of the Town and Country Planning Act 1990 (as amended). Where the LPA then determines to refuse the application for amendments, Section 106B of the Town and Country Planning Act 1990 (as amended) sets out the circumstances in which an Applicant can submit an Appeal of that refusal to the Secretary of State.
- 3.14. The statute does not prescribe that a S106A application can only apply to a limited scope or range of types of planning obligations, it is equally applicable to any existing obligation. It is therefore entirely appropriate for this application and Appeal to have been made and assessed in accordance with S106A(6) of the Town and Country Planning Act 1990 (as amended).
- 3.15. This is set out in more detail at Section 3 of the Appellant's Statement of Case.

Submission of S106A to the LPA

- 3.16. The application to which this Appeal relates was submitted to the LPA on 4 January 2021 pursuant to S.106A of the Town and Country Planning Act 1990. A list of all documents forming part of the Application has been provided to the Inspectorate as part of the Appeal submission pack.

Assessment and Determination of S106A by the LPA

- 3.17. The Application was determined by planning officers under delegated powers. A detailed Officer's Report was prepared setting out the LPA's assessment of the application (**Core Document 1**) and a Decision Notice (**Core Document 2**) was issued by the LPA on 23 March 2021.

3.18. The Decision Notice cited a single reason for refusal, as outlined in Section 1 and within the SoCG dated 25 August 2021, which related to the procedure that underpins the relevant application process. However, the Officers Report (**Core Document 1**) also offered up further assessment on a '*notwithstanding*' basis that considered both a wider planning balance and viability matters.

3.19. In issuing the formal decision, the LPA confirmed that the application was refused purely on a procedural basis, in that the LPA determined that the proposed amendment could not be addressed via S106A. In setting that out, the reason for refusal makes reference to 'delivering' the consented amount and tenure of affordable housing:

"The application to modify the affordable housing obligation is refused as the original obligation is considered to serve a useful purpose which is delivering the consented amount and tenures of affordable housing"

3.20. All other discussion within the published officer's report was clearly advanced as being on a '*without prejudice*' basis. My evidence sets out that these other matters, namely viability and consideration of the planning balance, should be assessed as a part of the determination as to whether modification to the existing obligation would continue to serve the original purpose of the S106 Agreement purpose equally well in the context of delivering affordable housing from a development that in its current scenario will not deliver any.

3.21. The Appeal against the Decision of refusal by the LPA, was submitted to The Planning Inspectorate on 10 May 2021, under S106B of the Act.

4. Key Planning Considerations

4.1. The Inspector issued a draft list of main topic areas which was agreed at the Case Management Conference on 6 September 2021 as follows:

- 1) Whether the planning obligation relating to affordable housing continues to serve a useful purpose;**
- 2) Whether the obligation should continue to have effect without modification; and**
- 3) If the obligation serves a useful purpose, whether it would serve that purpose equally well if it was modified as proposed.**

4.2. These topic areas reflect the content of S106A of the Town and Country Planning Act 1990 (as amended) and underpin the assessment of whether the proposed amendments to the obligations are acceptable. My evidence focuses on answering these three key issues, with reference to the evidence of Mr Turner relating to financial viability.

4.3. The Inspector also noted areas of disagreement between the Appellant and the LPA, namely whether the viability and deliverability of the approved development and the planning balance are relevant matters. I contend that these matters are relevant (not least due to the reference to delivery within the formal reason for refusal) and as such they are addressed within Mr Turner's proof (relating to financial development viability) and within my proof (relating to the planning balance) as part of the assessment of the modification of the Obligation.

4.4. Before addressing the three key topic areas above with regard to the Appeal itself, the background to S106A procedure and the specification modification that is being proposed, is considered further below.

Applicability of the S106A Procedure to this Case

- 4.5. I adduce evidence to confirm that an application pursuant to S106A of the Act (and now subsequently an Appeal made under S106B of the Act) is the correct and legitimate procedural route to allow for the amendment of an existing S106 Agreement.
- 4.6. The LPA has taken the position in their commentary at both Application and Appeal stages that S106A-B is not an appropriate mechanism. This is particularly clear in paragraphs 1.2 – 1.11 of the LPA's delegated officer's report (**Core Document 1**) and paragraphs 6.4 – 6.16 of the LPA's Statement of Case. However, this position was not explicitly cited in the single reason for refusal. The LPA accepted the application and determined the application under S106A.
- 4.7. The LPA adopts the position that any reduction in the quantum and alteration to the tenure of the affordable housing units secured by the Obligation, means that the purpose of the Obligation would not continue to serve a useful purpose as equally well, if it had effect subject to the modifications specified in the application.
- 4.8. The LPA also appears to adopt the position that the modification of an existing obligation under S106A is considered purely on the *outcome* of the amendment and no account needs to be given to the wider planning context of *why* the modification to the Obligation may be necessary, or why the Obligation needs to be made more reasonable, or to ensure that said Obligation continues to be related in scale and kind to the specific development in question and what the outcomes of making such a modification may or may not be upon the development as a whole, not just one element of that development.
- 4.9. To the contrary position, it is my opinion that it is entirely reasonable and appropriate to use the provisions of S106A to amend an existing Obligation in this manner. As previously set out in the Appellant's Statement of Case, the LPA is seeking to promote a flawed procedural point on the application, namely that the LPA is not required, as part of its consideration of the merits of the application, to have regard to matters relied upon in support and which go to the heart of the proposed modification (in this case a financial viability

appraisal prepared by Savills), but is simply required to have regard to the S.106A(6)(c) test in isolation. That position is misconceived in my opinion.

- 4.10. There is nothing either in the wording of S.106A(6)(c) or elsewhere to support an approach that wider circumstances (in this case, the viability position, appraisals and agreed the agreed viability position between the two parties) cannot or, indeed, must not be taken into account.
- 4.11. I disagree with the comment at paragraph 6.13 of the LPA's Statement of Case that the repeal in 2016 of the time limited legislation previously inserted at S.106BA of the Act, which related only to affordable housing obligations, means that the more general provision of S.106A and S.106B cannot be applied to such obligations. The focus of S106BA was to remove the 5 year bar before S106 obligations could be formally amended during a period of economic difficulty where affordable housing commitments were notably preventing the delivery of approved housing developments.
- 4.12. The repeal of S.106BA has simply removed again the opportunity for affordable housing obligations to be considered earlier than 5 years after the signing of the S106 Agreement. The time constraint is now applicable to all formal applications under S.106A; the application that is the subject of this Appeal was made in accordance with those requirements which are applicable to all obligations equally and irrespective of their content.
- 4.13. With regard to comments at paragraph 6.14 of the LPA's Statement of Case that this application forms a formal review of viability in the terms set out within the S106 Agreement, it should be reiterated that the previously agreed review mechanisms set out at Clause 3.16 of the S106 Agreement will continue to have effect irrespective of the modification now sought to Clause 3.2.
- 4.14. This means that the potential for a post-completion review of the viability of the approved development remains fully in place and the LPA retains control to review the final contribution to affordable housing post-construction. The proposed modification, intended to aid how deliverable the scheme is at a point in time, does not remove the potential for further contributions to be assessed at a later date. At Paragraphs 6.25-6.26 of the LPA's Statement of Case, the LPA has erroneously applied advice set out within the PPG

relating to viability review mechanisms and sought to apply this guidance as being applicable to a formal application made under S106A. I contend this is not a correct interpretation of the PPG in establishing the applicability of the S106A-B provisions.

- 4.15. Simply put, the LPA appears to suggest that, as a matter of principle, a modified obligation cannot serve a useful purpose equally as well if it seeks to reduce the quantum or level of planning gain or the level of benefit as *perceived by the LPA* as being derived from a specific obligation in isolation.
- 4.16. If the LPA is correct on this point there would be no scope for any decision maker (be that an LPA, an Inspector or the Courts) to interrogate, assess and satisfy itself on the underlying justification and material circumstances for a S106A modification. If this was correct then there could no effective or practical consequence of the provisions of S106A, and thus no reason for it to exist within Statute. This cannot be a correct or sound interpretation.
- 4.17. S106A is not just a set of words within Statute. It exists for a practical purpose to (if deemed acceptable by a decision maker) permit modifications of Obligations. That is its purpose. S106A exists to have a material and demonstrable effect upon S106 Agreements by allowing a developer to seek modification. Thus, by obvious extension, S106A must be allowed have a material and demonstrable effect upon the scope and nature of the development under the control of said S106 Agreement. S106A is not an isolated or self-contained statutory provision: once cannot simply ignore all other aspects of well-established planning principles, or decision making assessments in its application. Allowing a change to an Obligation under S106A-B is achievable without reliance on s.38(6) Planning and Compulsory Purchase Act 2004.
- 4.18. Taking the LPA's position, no S106 Agreement could ever be amended against an LPA's own assessment or perception of the level of benefit being altered which highlights the extreme position that the LPA has taken. S106A exists to allow changes to be sought and made after a 5 year period.
- 4.19. Given that the Statute requires an extended period of time before a S106A application can be made, it is wholly unrealistic to suggest that changes in material circumstance cannot be considered. This is why a 5 year period exists. How can any decision maker possibly reach a judgement as to whether something

serves the purpose as equally as well, if they are prohibited from examining the reasoning or justification for said change as the LPA suggests? S106A does not exist in a policy vacuum.

The Proposed Modification

- 4.20. The specific modification proposed was to alter Clause 3.2 of the S106 Agreement dated 24 August 2015 together with the relevant associated definitions within the S106 Agreement.
- 4.21. The modification is further detailed at paragraph 22 of the application document titled Planning Analysis – December 2020 and the Deed of Variation that has been submitted as part of this Appeal. This modification results in a change in the quantum and range of tenure of affordable housing to be provided by the scheme to comprise 18 Discount Market Rent (DMR) units in perpetuity.
- 4.22. The proposal relates solely to one planning obligation within the S106 Agreement which addresses the quantum and tenure of affordable housing to be provided by the development and then secured by the amended S106. Within the terms of the application under Appeal, all other obligations are unchanged and will continue to serve their existing purpose without modification if the approved development is brought forward for completion. They therefore remain unchanged as part of the package of material planning considerations associated to this development.
- 4.23. However, as part of the ongoing discussions between the Appellant and the LPA it has been agreed between the parties that some further modifications could be made through an agreed Deed of Variation. Whilst these changes do not alter the principles of the associated obligations or their intent, it is agreed that these changes result in a simplification of existing clauses.
- 4.24. A letter dated 19 October 2021 has been prepared jointly between the Appellant and LPA and sets out the reasoning for making these changes and the Inspector is respectfully requested to accept the accompanying deed of variation as part of the overall management of the S106 Agreement.
- 4.25. What is unchanged between the completion of the S106 Agreement in 2015 and the modification proposed now is that the level of affordable housing to be secured is based upon an assessment of the maximum

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reasonable amount that can be delivered without adversely impacting upon the delivery of the approved scheme. This delivery is then enshrined within the S106 Agreement to ensure the provision of affordable housing as *part of the development as a whole*.

4.26. For reference, the specific amendments to Clause 3.2 that have been proposed are as follows:

Sub-Clause	Text as per S106 Agreement dated 25 August 2015	Text if varied as per draft Deed of Variation
3.2.1	<i>On or prior to the Implementation Date to submit to the Council for approval the Intermediate Housing Scheme and the Discounted Market Rent Housing Units Marketing Plan.</i>	<i>On or prior to the Implementation Date to submit to the Council for approval the Discounted Market Rent Housing Units Marketing Plan.</i>
3.2.2	<i>Not to Implement or permit Implementation until such time as the Intermediate Housing Scheme and the Discounted Market Rent Housing Units Marketing Plan have been approved in writing by the Council as demonstrated by written notice to that effect</i>	<i>Not to Implement or permit Implementation until such time as the Discounted Market Rent Housing Units Marketing Plan have been approved in writing by the Council as demonstrated by written notice to that effect</i>
3.2.3	<i>To commence all works of construction conversion and fitting out necessary to make the Affordable Housing Units as approved by the Council suitable for Occupation as Affordable Housing and thereafter to proceed with and complete such works in a good and workmanlike manner using good quality materials to the reasonable satisfaction of the Council (as demonstrated by written notification to that effect) in accordance with the specification approved by a Registered Provider.</i>	<i>To commence all works of construction conversion and fitting out necessary to make the Discount Market Rent Housing Units as approved by the Council suitable for Occupation as Discount Market Rent Housing and thereafter to proceed with and complete such works in a good and workmanlike manner using good quality materials to the reasonable satisfaction of the Council (as demonstrated by written notification to that effect).</i>
3.2.4	<i>To ensure that the Affordable Housing Units (other than the Discounted Market Rent Housing Units) shall not be otherwise used or Occupied and shall be retained in perpetuity for no purpose other than (i) in the case of the Affordable Rent Housing Units for the provision of Affordable Rent Housing for Occupation by tenants at rental levels being in accordance with the targets set by the Regulator and (ii) in the case of the Intermediate Housing Units for the provision of Intermediate Housing for Occupation in accordance with the Intermediate Housing Scheme approved under Clause 3.2.1 above as the case may be but subject always in the case of any Intermediate Housing Unit occupied on a Shared Ownership basis to the right of the tenant of such unit to exercise its statutory entitlement to staircase up to and own 100% of the equity in such Shared Ownership Unit.</i>	<i>Deleted in full</i>
3.2.5	<i>Not to Occupy or permit Occupation of more than 40% of the Private Rented Sector Units (other than the Discounted Market Rent Housing Units) until such time as:</i> <i>(i) the Affordable Housing Units (other than the Discounted Market Rent Housing Units) have been offered by way of a transfer or demise to a Registered Provider approved by the Council for a term of no less than 125 years;</i> <i>(ii) the works of construction conversion and fitting out of the Affordable Housing Units have been completed in accordance with the requirement of sub-clause 3.2.3 hereof.</i>	<i>Deleted in full</i>

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3.2.6	<i>Subject always to clause 3.2.4, to ensure that the Affordable Housing Units (other than the Discounted Market Rent Housing Units) are not constructed, Occupied and/or used otherwise than as Affordable Housing pursuant to the objects and purpose of the Council so as to provide accommodation for households in need of Affordable Housing in accordance with the definition of the eligible persons criteria as agreed by the Government, the Homes and Community Agency (or successor bodies) or the Council from time to time.</i>	<i>Deleted in full</i>
3.2.7	<i>To procure that the Registered Provider shall not dispose of its interest in the freehold or leasehold of any Affordable Housing Units or any part thereof (except by way of mortgage) other than to any other Registered Provider registered with the Regulator or any other body organisation or company registered with the Charity Commissioners for England and Wales and approved by the Homes and Communities Agency or the Regulator or the Council.</i>	<i>Deleted in full</i>
3.2.8	<i>Following approval of the Discounted Market Rent Housing Units Marketing Plan the Owner shall actively market the Discounted Market Rent Housing Units in accordance with the Discounted Market Rent Housing Units Marketing Plan as approved for nine months or until Practical Completion of the Discounted Market Rent Units (whichever is the later).</i>	<i>No change from Existing</i>
3.2.9	<i>The Owner shall not Occupy or permit Occupation of any part of the Development until the Council has confirmed in writing that it is satisfied that the Discounted Market Rent Units have been actively marketed in accordance with the Discount Market Rent Housing Units Marketing Plan for a period of no less than 9 months.</i>	<i>No change from Existing</i>
3.2.10	<i>The Owner shall ensure that the Discounted Market Rent Units shall not be otherwise used or Occupied and shall be retained for no purpose other than for the provision of Discounted Market Rent Housing during the Discounted Market Rent Period unless otherwise agreed in writing with the Council Provided Always that this restriction shall not during the Discounted Market Rent Housing Period prevent the Owner from disposing of all or any of the Discounted Market Rent Housing Units with the burden of such restriction.</i>	<i>The Owner shall ensure that the Discounted Market Rent Housing Units shall not be otherwise used or Occupied and shall be retained for no purpose other than for the provision of Discounted Market Rent Housing unless otherwise agreed in writing by the Council Provided Always that this restriction shall not prevent the Owner from disposing of all or any of the Discounted Market Rent Housing Units with the burden of such restriction</i>
3.2.11	<i>At the end of the Discounted Market Rent Period for each of the Discounted Market Rent Housing Units the relevant unit shall no longer be subject to the restrictions on Discounted Market Rent Housing Units or Affordable Housing Units set out in this Agreement and shall revert to being a Private Rented Sector Unit and the Owner shall be free to deal with the relevant unit as it sees fit subject to the provisions of the Planning Permission and the other provisions of this Agreement</i>	<i>Deleted in full</i>

4.27. It should be noted again that as a result of ongoing viability discussions between the Principal parties there are further and consequential adjustments of related definitions that are being suggested. These are reported within the separate letter prepared between the Appellant and the LPA dated 19 October 2021.

The Inspector is respectfully requested to accept the further variations suggested as a contribution to simplification of these matters.

- 4.28. Any further amendments resulting from continued discussion between parties between now and the Inquiry itself will be reported separately and/or noted within any further Statement of Common Ground or at the opening of the Inquiry.
- 4.29. The wider range of material planning considerations that the Secretary of State considered in granting the Planning Permission are not being opened up for discussion or reappraisal at this juncture. The decision was made that the balance of material planning considerations supported approval of the scheme that was put forward at the original determination of the application. But what must be considered at this juncture is whether, in light of changed circumstances, the wide range of other planning benefits of the development as a whole secured by the Planning Permission should be lost purely on the basis of a single factor that could be remedied.
- 4.30. The proposed modification to the obligation will serve the same purpose as equally well as the current wording: it delivers affordable housing. With the modification made the scheme will continue to deliver the maximum reasonable amount of affordable housing that can be provided within the development being brought forward.
- 4.31. This approach to achieving the maximum reasonable amount of affordable housing from a development has been consistent within both Local Plan and London Plan documents since the determination of the original Planning Permission (notably Policy CS6 of Camden's Core Strategy 2010 and Policy 3.12 of the London Plan 2015) and continues to be referred to today within supplementary planning documents (specifically at paragraph 4.27 of Camden's Housing CPG January 2021).
- 4.32. As a result the purpose of the obligation is unchanged from existing and as such the modified approach will serve the same purpose equally well with the wider approved development and package of benefits associated with the Planning Permission unchanged.

4.33. In the context of the above, I now turn to the three key topic areas for the Appeal.

1) Whether the planning obligation relating to affordable housing continues to serve a useful purpose;

4.34. As an overall principle, the requirement for any planning obligation is controlled through Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) (“the CIL Regulations”). Even more specifically, Regulation 122(2) of the CIL Regulations states:

A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is—

(a) necessary to make the development acceptable in planning terms;

(b) directly related to the development; and

(c) fairly and reasonably related in scale and kind to the development.

4.35. The Decision made by the Secretary of State in 2016 resulted in the Planning Permission being granted for the development to which the Obligation relates. It was therefore required of the Secretary of State, as the relevant decision-maker, to ensure that all relevant planning obligations met the tests under Regulation 122 (“the Regulation 122 Tests”).

4.36. If an obligation no longer meets these tests then favourable consideration must be given to modification to ensure that it can continue to meet the purpose for which it was originally considered as part of the determination of a planning application. The tests of Regulation 122 do not fall away or be discounted as not applicable in considering S106A.

4.37. In granting Planning Permission, the Secretary of State determined that, *at the time the Decision was taken*, a *specific* level of affordable housing was deemed an appropriate quantum and tenure mix as a reasonable element of the proposed residential development. The Secretary of State also required review mechanisms

that might capture future monies should development viability improve. Specifically, at paragraph 43 of the Secretary of State's decision letter (**Core Document 5**) he stated that the agreed contribution:

"...comprises a policy compliant affordable housing provision having regard to the viability of the proposed scheme with the provision secured by way of a section 106 obligation; that the s106 agreement includes a review mechanism requiring the viability of providing affordable housing to be re-assessed at the end of the project (within one year after the date of practical completion of the development) and if it is found that there should have been more affordable units a mechanism is set out for adjustment by a deferred payment;"

4.38. This position was also referred to by the Inspector at paragraph 343 of his report, specifically:

"The appellant has undertaken a viability appraisal that demonstrates what is proposed is reasonable and this has been accepted by the authority. In addition, as a check, the 106 agreement requires that the viability of providing affordable housing is re-assessed at the end of the project and if it is found that there should have been more affordable housing a mechanism is set out for adjustment by a deferred payment. I consider that this viability study and method of ensuring that adequate affordable housing is provided is reasonable and necessary and related to the proposal."

4.39. These assessments and conclusions were made having regard to the relevant Development Plan policies at the time of the determination. The position was agreed by the LPA and was only accepted by the Inspector and the Secretary of State on the basis that it was a reasonable, necessary and related (to planning and the scheme) obligation.

4.40. The planning obligation for the provision of affordable housing is a legal mechanism by which the development is controlled and its effects mitigated. It compels the development to do something, specifically to make provision for affordable housing. It also obligates the development to provide a specific quantum and type of affordable housing. The proposed modification does not change this; it will continue to provide an appropriate legal mechanism that compels the development to provide affordable housing and will continue to specify a quantum and type of affordable housing.

4.41. Significantly, the provision of affordable housing helps to create mixed and balanced communities and help to provide housing for those with Identified housing need. Within Camden, there continues to be sound planning related objectives for both of these objectives.

- 4.42. The Appellant is not seeking to remove this Obligation or to remove the mechanism to deliver affordable housing and the inclusion of opportunities to review of the level of contribution, but rather modification is sought as to the specific quantum and tenure of affordable housing as they are entitled to do under S106A.
- 4.43. In considering whether the Obligation continues to serve a useful purpose, it is my opinion that any application made under S106A should have regard to whether the existing obligation continues to meet the Regulation 122 Tests, and that obviously whether the proposed modification would also meet the Regulation 122 Tests. It is my evidence that the *principle* of this Obligation to provide affordable housing, is reasonable and related to planning.
- 4.44. It is my opinion that the Obligation continues to serve a useful purpose in planning terms, in so far that it requires the provision of affordable housing as a principle of this development in line with Development Plan policy. It therefore currently complies with Regulation 122 (a) and (b).
- 4.45. However, I contend that the specific elements that govern quantum and tenure are no longer fairly and reasonably related in scale and kind to the development, as required by Regulation 122 (c) having regard to the evidence provided by Mr Turner and such that they now further inhibit development delivery. This draws my evidence to the second of the main topic areas set out by the Inspector, set out below.

2) Whether the obligation should continue to have effect without modification;

- 4.46. The *raison d'etre* of the application and subsequent Appeal is that the current specified quantum of affordable housing and tenure mix renders the scheme unviable to an extent that will prohibit future delivery of the development.
- 4.47. My opinion that the Obligation continues to serve a useful purpose in terms of providing the legal means for provision of a contribution to affordable housing from the development. But the specific detail within the Obligation needs to be reconsidered in the context of Regulation 122 (c) which requires that the Obligation must be fairly and reasonably related in scale and kind to the development. If this test cannot no longer be

met then it is appropriate that the Obligation should be subject to modification to ensure that this is corrected.

- 4.48. In any development scheme that requires the provision of affordable housing, the quantum and type of housing is derived by having regard to the relevant Development Plan Policy and also (as enshrined within the Development Plan and the NPPG) having regard to the characteristics of the site and the development itself, including the financial viability of the development scheme. It is primarily these factors that determine an appropriate level of affordable housing, which must (by inclusion within a S106 Agreement) be fairly and reasonably related in scale and kind to a development.
- 4.49. Simply put, (subject to, and within the set parameters of, policy) a more financially viable housing development scheme could normally be expected to provide more affordable housing than a less financially viable housing development scheme.
- 4.50. Since the date of the S106 Agreement, this housing development scheme now finds itself in a less financially viable position, as evidenced in detail by Mr Turner.
- 4.51. Without modification, the Obligation seeks to secure or obligate something that cannot now be delivered due to a material change in circumstance (i.e. development viability). In the simplest terms, the Obligation if unmodified, prevents and inhibits development being delivered.
- 4.52. The existing consent is unviable and there is no apparent metric that would allow the Appellant to deliver the scheme. The Appellant has provided a statement addressing this which is appended to Mr Turner's proof.
- 4.53. The updated Financial Viability Appraisal discussed in Mr Turner's evidence demonstrates the current financial conclusions and the implications of these for the maximum reasonable amount of affordable housing that the development can achieve. This appraisal continues to underpin the basis for the Obligation; the principle of securing the maximum viable level of affordable housing is unchanged.

4.54. Having regard to the FVA and Mr Turner's evidence, maintaining the current Obligation without modification will prohibit delivery of the scheme. The Obligation as it stands seeks more affordable housing than is fairly or reasonably related in scale and kind to the development.

4.55. With this modification, the scheme becomes more financially viable, to an extent that development is more likely to continue and that the development as a whole can be more likely to be delivered to a conclusion.

What would the effect be if the obligation continued to have effect without modification?

4.56. The Appeal Site represents a significant and important major development site within Camden.

4.57. It is a highly accessible, sustainable brownfield site that sits within the designated Swiss Cottage Town Centre. It is suitable for very high density development as espoused by the London Plan with regard to both good growth and making the best use of land generally under Policies GG1 and GG2, and also more specifically with regard to mixed use development in Town Centres across Policies SD6, SD7 and SD8. It is a prominent site at a key Gateway location to Central London. It is a site which is formally allocated for development by the LPA.

4.58. It is simply and obviously a highly suitable site for comprehensive redevelopment. For these and many other reasons, it is the absolute epitome of a sustainable urban development site that requires optimisation. It stands ready to make a major contribution to the delivery of new homes within Camden. This was acknowledged previously by both the Secretary of State (paragraph 54 of the Decision Letter provided as **Core Document 5**) and the Inspector (paragraph IR395 of **Core Document 5**) in determining the original Planning Permission and also by the LPA in their evidence with regard to the site's location (paragraph IR360 of **Core Document 5**).

4.59. It is now some 9 years since Essential Living acquired the site. It is 6 years since the Public Inquiry and 4.5 years since the first judicial review (of which there have been several) was disposed of. The planning process has been extremely lengthy, following the decision of the LPA to overturn the advice of its professional planning officers who recommended the original application for approval in October 2014.

This, in itself, is the key reason why this site has yet to be delivered to its optimum potential. Had LPA members accepted the officer recommendation, the development would have been completed by now with permanent residential occupiers, including affordable occupiers taking advantage of a high quality town centre mixed use development.

- 4.60. Since this time, the context for all development has changed. The UK economy has suffered seismic shifts in terms of Brexit, labour market supply, substantial construction cost increases (as recognised within the addendum SoCG dated 18 October 2021) and now the implications of Covid and a post Covid economy.
- 4.61. The affordable housing Obligation is now over 6 years since signing and with an evidential base date that goes back further to the Public Inquiry evidence date of July and August 2015. The FVA, upon which the S106 Agreement is still based, is more than 7 years old. It is not relevant to the context or circumstances of the present day, which the context within which delivery has to take place.
- 4.62. London as a whole (with the need for new homes in sustainable locations) and the citizens of Camden, do not have the luxury of available sites of this scale and quality to allow it to continue to sit idle in its current state. As it stands, this site is obviously stalled.
- 4.63. At the time that the Planning Permission was first determined in 2016, the adopted Core Strategy set an annual target for net additional housing of 815 units per annum. This compared to a London Plan target at that time of 889 units per annum (increased from a target of 595 units per annum at the time that Camden first adopted their Core Strategy in 2010).
- 4.64. As of today, the annual target for Camden set out in the London Plan 2021 (the most recently adopted Development Plan document) is 1,038 additional units per annum. Comparing the London Plan targets (the most up-to-date housing target available in both 2016 and 2021) between the time of original determination and today, this is an additional 150 residential units per annum that Camden should be providing for today even versus the position at the time that permission was first granted. The requirements for housing continue to increase and thus support for the delivery of homes from allocated sites in a Borough where developable sites are scarce should be considered positively

- 4.65. The Obligation in these regards is now dated, and fixed at a point some way back in time. This is precisely why S106A exists, to allow stalled sites a better prospect of coming forward for completion. Without modification, the site will not come forward for delivery: if the modification is allowed there is a better prospect of the site being delivered to completion.
- 4.66. Aside from the overarching importance of optimising the efficient use of scarce urban brownfield sites to ensure the delivery of the Local Plan's priority land use (housing) there are a substantial number of social, environmental and economic benefits that will be derived from this site, but which also not being delivered.
- 4.67. A full list of benefits arising from the approved development is provided at paragraphs 4.24 – 4.26 of the Appellant's Statement of Case. In the simplest terms this much wider package of benefits, which includes provision of new facilities for a local community group, will be lost if the Obligation is maintained without modification.
- 4.68. If it is accepted that development is being inhibited or stalled due to the reduced viability of the development and the effect of the current Obligation is to maintain and that level reduced level of viability to a point that it makes it much less likely that new housing will be delivered than if the modification were accepted, then I consider that, in consequential terms, the LPA's position can be summarised as follows.
- 4.69. By refusing this modification, on an in-principle objection to a reduction in quantum of affordable housing, the LPA have clearly reached view that the delivery of the full range of the substantial wider planning benefits (as set out in the Appellant's Statement of Case and fully in accordance with the principles of sustainable development at Paragraph 8 of the NPPF) are not deemed, *together*, to be as important as the *single* planning issue of affordable housing quantum and tenure, if it is to not maintained to their satisfaction in line with an Obligation drafted 6 years ago under differing circumstances.
- 4.70. The deliverability of new homes in general, the provision of affordable housing, the provision of a significantly upgraded community centre for a local group, significant public realm improvements including an enhancement of ground floor frontages that could improve the vitality of the area, an attractive development design and the potential for access to the Underground station to be approved were all noted

by the Secretary of State as factors weighing in favour of approving the Planning Permission as summarised at paragraph 52 of his Decision Letter (**Core Document 5**).

4.71. Paragraph 42 of the Secretary of State's Decision Letter states (emphasis added):

*The Secretary of State has carefully considered the Inspector's analysis of housing issues at IR371-373 and agrees (IR372) that **great weight should be attached to the housing provision proposed.***

4.72. This conclusion by the Secretary of State cites the benefits and importance of housing provision without reference to specific forms or types of housing. It immediately proceeds comments at paragraph 43 of his Decision Letter that are already noted above, namely that the specific affordable housing provision is policy compliant in the context of viability as was agreed by the LPA at that time.

4.73. Simply, the Secretary of State gave great weight to the overall provision of housing from the site and saw no reason to disagree with a position on affordable housing that was based upon viability and agreed by the Appellant and the LPA. This was factored in alongside the range of other benefits summarised at paragraph 52 of his Decision Letter; no one factor was elevated as a 'tipping point' at which the development suddenly became acceptable.

4.74. It is therefore completely at odds with the weight given to this wide range of factors by the Secretary of State for the LPA to now put this *full range of other considerations aside* in favour of a *specific* quantum and tenure of affordable housing. All of these factors formed parts of the Secretary of State's decision to approve the Planning Permission and the potential to deliver all of these factors must be given considerable weight versus simply requiring a specific quantum and tenure of affordable housing that has now been demonstrated as preventing the delivery of this scheme and associated package of benefits.

4.75. The LPA is now consistently not meeting its targets in terms of housing delivery, as acknowledged at paragraphs 5.18 and 5.19 of the LPA's Statement of Case and also agreed as common ground as per paragraphs 5.18 and 5.19 of the Statement of Common Ground.

- 4.76. This history of under-delivery is specifically acknowledged by the LPA with reference to their most recent Annual Monitoring Report for 2017/2018 which is provided as Core Document 9 appended to the Statement of Common Ground.
- 4.77. The most recent evidence of under delivery of housing is the LPA achieving a housing delivery figure of 79% of the period 2017-2020 relative to their target as measured through the Housing Delivery Test. This failure of the LPA to meet the minimum target has resulted in the LPA being required to prepare a Housing Delivery Test Action Plan dated August 2021 and which is appended to this Evidence (**Appendix 2**).
- 4.78. Putting aside the under-delivery of homes already noted above, the Action Plan also highlights that in every year since 2016/2017 the LPA has not approved enough new homes to reach the respective annual target for the relevant year. To briefly summarise the numbers of new homes approved by the LPA in each of these years as set out in the Action Plan (p.19):

Year	Total Dwelling Units Permitted (net)	Annual Housing Target	% of Annual Target Actually Permitted
2016/17	1,086	1,120	97%
2017/18	617	1,120	55%
2018/19	1,091	1,120	97%
2019/20	180	1,038	17%
2020/21	476	1,038	46%
Total (2016/17 – 2020/21 inclusive)	3,450	5,436	63%

- 4.79. This approval of new homes (or lack of approval, more accurately) has been at its lowest level in the past two years, 2019/2020 and 2020/2021, where the total net housing units approved by the LPA was 656 units versus a target during that two year period of 2,076 net housing units to be approved. This equates to only 32% of the target level of new housing being approved since 2019.
- 4.80. In this context, it is more than reasonable to conclude that in addition to the recent history of under-delivery to date this will only continue into the coming years given the lack of approvals being delivered by the LPA.
- 4.81. The Appellant has investigated the fullest range of options to deliver the approved development within their operating constraints. These are summarised within their letter provided as an appendix to Mr Turner's proof. It is only through the modification that has been proposed that the Appellant has identified a route that offers the greatest prospect of delivery.
- 4.82. As it stands, the site provides no contribution to the LPA overcoming the lack of delivery that has been exposed by the Housing Delivery Test and required the preparation of a Housing Delivery Test Action Plan. With this modification the site stands a better prospect of coming forward in the future: this has to be a more advantageous position than the site currently finds itself in today: stalled and unable to move forward
- 4.83. Working to assist the future delivery of 184 units from a stalled (yet formally allocated) site would be an appropriate, proportionate and reasonable response to overcoming a recent and ongoing history of under-delivery of new housing including affordable homes and especially where the statistics on the lack of recent approvals of residential units clearly suggest that the situation will not improve.
- 4.84. Instead, the LPA has determined that the *single* issue of affordable housing, (and the single clause in the S106 Agreement) is more important, and has more weight than *all of the other* material planning considerations and the attendant benefits of the development, *put together*.
- 4.85. The only change that is in dispute between the Principal Parties when comparing the scheme as approved and now put forward is the alteration to the specific quantum and tenure of affordable housing provided. Under the S106A application the viability has been reviewed and confirmed the maximum reasonable

amount achievable in current circumstances. This principle of the maximum level of affordable housing, subject to viability, is consistent with the previous position and also would also give a better prospect realising the other benefits associated with the Planning Permission.

- 4.86. The LPA may be disappointed that there is a reduction in affordable housing proposed at this site, however the policy test is to determine whether the scheme delivers the maximum reasonable amount of affordable housing. As already noted above, this approach has been consistent within both Local Plan and London Plan documents since the original determination of the Planning Permission (notably Policy CS6 of Camden's Core Strategy 2010 and Policy 3.12 of the London Plan 2015) and continues to be referred to today within supplementary planning documents (specifically at paragraph 4.27 of Camden's Housing CPG January 2021).
- 4.87. It is a matter of fact that in the years since permission was granted to date no housing has been delivered from this formally allocated gateway site, let alone an affordable housing unit, due in a large part to the extended planning process that has delayed delivery at this site, and the subsequent exposure to dramatic and unforeseen geopolitical and economic events.
- 4.88. No one, myself included, doubts the importance of the delivery of affordable housing in London. No one doubts that it is a key material planning consideration for all London Boroughs, However, it is but *one* material consideration, amongst *many others* of importance that relate to this development and its S106 Agreement.
- 4.89. It is a reasonable conclusion for me to reach that in choosing to refuse the proposed modification the LPA is seemingly to be willing to forgo all of the associated benefits of development, including housing delivery (in the context of under delivery), and the optimal use of brownfield urban land, than assist in creating a better more viable prospect for the development to be completed which would be achieved by supporting this modification to a single clause of the S106 Agreement. I do not believe this to be in the wider public interest, nor it is in the interest of holistic planning or decision making

- 4.90. This consideration of the wider context of any application made in accordance with S106A of the Act is not to be equated to the consideration of the 'planning balance' or planning merits in accordance within s.38(6) Planning and Compulsory Purchase Act 2004 as would be the case for a full planning application. But, for S106A to carry any weight within Statute and to serve any sort of useful purpose then there must be a consideration of the reasoning that leads to an application to modify a planning condition being made.
- 4.91. An application to modify an existing obligation is not going to be made without reason. As such, it must be necessary to consider that reasoning as part of the consideration of that application. If no consideration of those reasons are allowed then the Statute simply serves no purpose; if the reasoning for requesting a modification cannot be considered then why does the relevant legislation at S106A exist?
- 4.92. Even where, outside of the reason for refusal, the LPA have provided commentary on a 'notwithstanding' basis this has taken the very simple approach that a modification in the provision of affordable housing simply tips the planning balance against the Secretary of State's decision; as I have already set out above the provision of affordable housing was not set above the other planning benefits in the Secretary of State's decision and it was the package of benefits as a whole that led to a planning approval.
- 4.93. The LPA have adopted a narrow view of the specific S106 clause in isolation. No further consideration has been given to the impact of not modifying the clause in terms of the wide package of social, economic and environmental benefits arising from the Planning Permission, a package that is otherwise unchanged as a result of but which will not be brought forward without the proposed modification to the Obligation to provide better prospects of deliverability of the approved development.
- 4.94. However important the provision of affordable housing might be, this issue of affordable housing provision does not exist in a vacuum and cannot be considered to the exclusion of all other planning matters, including the justification submitted by the Appellant at the time of the application.
- 4.95. It is my opinion that the LPA have failed to undertake a balanced or reasoned assessment of the *proposed modification* or the context for the making of that modification. As a result there has been a failure to assess the planning implications of that refusal. It is, in my view, a narrow approach to decision making.

3) If the obligation serves a useful purpose, whether it would serve that purpose equally well if it was modified as proposed.

- 4.96. The purpose of the Obligation is to meet the Development Plan requirement of providing the maximum reasonable amount of affordable housing. This is still being met when the updated viability position is accounted for and as such the modified Obligation will continue to meet the same purpose for which it is intended.
- 4.97. The agreed financial conclusions, as set out in the addendum SoCG dated 18 October 2021 and discussed in Mr Turner's evidence, demonstrate the current position in regard to the maximum reasonable amount of affordable housing that the development can achieve. This assessment remains full square predicated upon the Development Plan requirement to establish the context in which the maximum viable amount of affordable housing can be established.
- 4.98. Simply, the Obligation if modified as proposed by the Appellant would serve the original intended purpose equally well in that it continues to secure the maximum reasonable level of affordable housing from the development as required by the Development Plan.
- 4.99. The Obligation will continue to provide an appropriate mechanism to deliver affordable housing from the site. These mechanisms continue to serve these purposes equally well when modified.
- 4.100. What the modification allows, which is not the case if the Obligation remains unaltered, is a better prospect of deliverability above the current stalled position. It is now more than 5.5 years since the Planning Permission was first given and 7.5 years since first submission of the planning application to which that Planning Permission relates.
- 4.101. The LPA have not suggested that the development can provide a greater quantum of Affordable Housing than that provided by the amendment. It is not a reason for refusal and it is not within the LPA Statement of Case.

- 4.102. As such, though the LPA have made clear in their decision-making that they are not satisfied about the quantum of affordable housing this must be viewed in the context of an agreed viability position. Given this they have no reason to seek provision of affordable housing beyond that which is agreed as the maximum reasonable amount achievable.
- 4.103. Indeed, such an approach would be unreasonable and at odds with the tests set out under Regulation 122 of the CIL Regulations. Without modification, the Obligation as a mechanism to secure the maximum reasonable provision of affordable housing would remain necessary and directly related to the development but no longer fairly and reasonably related in scale.
- 4.104. Simply, if the Obligation is inhibiting development then it is no longer meeting the tests under Regulations 122 of the CIL Regulations. The proposed modification addresses this such that an Obligation that is necessary and directly related can also remain fairly and reasonably related in scale and kind to the development given the changed circumstances in which it is now set.
- 4.105. In that context, the proposed modification ensures that the Obligation will continue to serve a useful purpose as equally well because it provides a better prospect of delivery (above the current stalled position) of the maximum reasonable amount of affordable housing from the planning permission. This can be achieved through the amended wording summarised earlier in this evidence.
- 4.106. Finally, it should be reiterated again that any modification of the level of affordable housing secured now does not remove the review mechanisms set out at Clause 3.16 of the S106 Agreement which will continue to have effect irrespective of the modification now sought to Clause 3.2. This means that the potential for a post-completion review of the viability of the approved development remains fully in place and the LPA retains control to review the final contribution to affordable housing post-construction.
- 4.107. Indeed, if the further modifications put forward jointly by the Appellant and the LPA through the draft deed of variation and explained fully within the submitted letter dated 19 October 2021 are acceptable to the Inspector then this will provide a more tightly controlled mechanism for ensuring that such a late stage

Proof of Evidence of David Whittington

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review not only takes place but can deliver an enhanced contribution to affordable housing if economic conditions improve during the construction period.

5. Conclusions

- 5.1. I provide in this section my conclusions.
- 5.2. It has been proposed to modify an existing obligation within a S106 Agreement in order to amend the specific quantum and tenure of affordable housing in an approved development. It is not proposed to remove the obligation to provide affordable housing; the S106 will be unchanged in terms of ensuring that the development provides the maximum reasonable amount of affordable housing when the viability of development is taken into consideration.
- 5.3. S106A and S106B of the Act allow for an application to be made to modify an obligation within an existing S106 Agreement subject to a period of at least 5 years having passed since the Agreement was signed. There is no differential in terms of which obligations this legislation can or cannot be applied to; all obligations, regardless of content, are eligible.
- 5.4. This is subject to an assessment of the proposed modification against the standard tests set under S106A(6) of the Act which require a consideration of whether the obligation should continue to have effect without modification, whether the obligation continues to serve a useful purpose and whether any modified obligation would serve that purpose equally well. Any obligation can be considered against these factors.
- 5.5. In this case, there is no question that the obligation continues to serve a useful purpose and no request has been made to remove it in its entirety. The modification requested will simply create a position that allows for markedly improved opportunity for delivery of the approved scheme.
- 5.6. The Appellant has been clear throughout this case that without modification this development will not be able to be brought forward for delivery. The proposed modification addresses that by ensuring markedly improved prospects of delivery than would be the case without amendment.

- 5.7. All other aspects of the S106 Agreement will be unchanged and the development will still deliver the maximum reasonable amount of affordable housing. All obligations to review the viability of the development post-construction also remain in place and unmodified, ensuring that the LPA maintains the opportunity to reassess the final contribution towards affordable housing if the viability of the development improves once construction is completed.
- 5.8. Finally, if the Obligation in its unmodified form is inhibiting development then it is no longer meeting the tests under Regulations 122 of the CIL Regulations that all obligations must be a) necessary, b) directly related to the development and c) fairly and reasonably related in scale to the development. Whilst tests a) and b) may still be met, if an obligation is now preventing development coming forward then test c) simply cannot be being met.
- 5.9. The modification that has been proposed simply to enhance the potential to deliver the approved development and its associated planning benefits from this allocated site. It does this without impacting upon the overall purpose of the existing obligation, namely the delivery of affordable housing. This Appeal should therefore be allowed.

END

Appendices

Regeneration and Planning
Culture and Environment
London Borough of Camden
5 Pancras Square
London
N1C 4AG

13th November 2020

FAO Bethany Cullen

Dear Ms Cullen,

RE: 100 Avenue Road

I am writing to you directly to offer an important update in respect of the above development, and Essential Living does so in the interest of an open and transparent dialogue with you and the wider Authority, given the public and political profile of this development.

The past six months have seen dramatic changes for us all. No-one could have foreseen or predicted the seismic changes to our society as a whole, even in February of this year. Uncertainty and unpredictability exist at all levels, not least economically.

In this context and in common with all developers, landowners and investors, Essential Living has undertaken a comprehensive review of all its activities and developments. I am sure this will be no surprise to you; it has been a critical and essential process as we, and all developers begin to adjust to a markedly changed economic environment. We have had to subject our development projects to renewed development appraisals, so that we can be clear about future forecasts for our business.

In terms of 100 Avenue Road, the below ground works are now complete, although some construction works will continue over the coming months, in particular in relation to the visual mock-up.

We have undertaken new development appraisals on 100 Avenue Road since May and the overarching conclusions on our internal appraisals and reviews are as follows:

- The scheme is technically unviable even if we were to assume 100% market rented properties
- Even excluding the extraordinary delays incurred by the project resulting from the judicial review processes, the key factors are:
 - An increase in construction costs from the viability that supported the consent (£58.3m) to the current construction cost (£108.7m) – an increase of £50.4m
 - The economic circumstances since the date of the consent have led to lesser rental growth and greater cost growth than originally anticipated

Welcome to the Future of Renting

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We would note that the original viability appraisals supporting the consent assumed that Block B would be delivered as market homes, and that the value was based on market sale. As you know, the consent includes a market rent covenant and Block B is DMR. As a result, the value the scheme generates today is no higher than the original viability suggested.

In short, the scheme has been rendered unviable in the current and likely forthcoming economic climate. For Essential Living this is, of course, a challenging moment for the site. Our *raison d'être* as a Build to Rent developer is to deliver new homes and new communities and remain invested in the long term.

We remain committed to moving the project to completion, but we must do all we can to re-establish the economic viability of this development to a level that enables the project to recommence in the short term.

To ensure the above, we feel we have no option but to submit an application via S106A to vary / amend the existing S106 Agreement. This will be accompanied by current 2020 Development Viability Appraisals prepared by Savills who have reviewed all previous studies. In light of this, the S106A will be seeking a reduction in the quantum of affordable housing that can be reasonably provided by the development at this time.

At the time that this application was first assessed by officers in 2014, it was agreed that the development met policy requirements to provide the maximum amount of affordable housing whilst ensuring a viable development that could be delivered with a range of other associated planning benefits. The relevant clause in the S106 Agreement is worded to achieve this outcome.

In proposing to modify the relevant obligation to amend the specific contribution of affordable housing that must be delivered, the intention of the obligation will not be changed. It will still ensure the maximum amount of affordable housing within a viable development that can be delivered, albeit that the specific amount is changed to reflect the very different economic circumstances in which we find ourselves today.

We are fully aware of the sensitivities surrounding such an approach both within the LPA and the wider community. It is not a route that we have alighted upon easily, but if we are to re-establish viability then it is a route that we cannot avoid.

Separately and to support the development continuing in the future, it is also our intention to submit details for the discharge of Condition 18 relating to facade materials. We will be proposing changes to the material palette including the use of Glass Reinforced Concrete (GRC). This proposal pre-dates the Covid-19 period. I would wish to re-assure you, and all stakeholders, that we are not seeking to diminish the external appearance of the building for cost saving purposes and our material selection remains as proposed at the start of the year.

Officers have previously expressed their concern to us about the suitability of GRC over re-constituted stone, but we remain convinced this is the right approach for this building. Our submission will set this out in great detail, led by our architects GRID. We have also been required to look at alternative solutions for the use of laminated glass at height in terms of a shatter risk and building regulation changes in a post-Grenfell construction era.

Welcome to the Future of Renting

We will also need to hold further discussions with the Authority in terms of the Parkland Licence which governs our use of the open space during the construction period. Given the added time needed to fully address the impacts of Covid-19 and ensure a deliverable and successful scheme, we will need to discuss this matter with your Property colleagues, but I would also express our desire that these discussions are joined up with you and your colleagues to ensure that the overall picture can be fully appreciated.

I would very much welcome the opportunity to speak with you in person (presumably online) about these matters before we make any formal submission to the LPA, in order to discuss matters in more depth. I have also copied this letter to Jonathan McClue as the case officer for the site.

I look forward to hearing from you.

Yours Sincerely,



Camilla Lesser
Development Manager

Welcome to the Future of Renting

10 December 2020

The Savills logo consists of the word "savills" in a red, lowercase, sans-serif font, positioned on a bright yellow rectangular background.

Ms Bethany Cullen
Head of Development Management
Regeneration and Planning
Culture and Environment
London Borough of Camden
5 Pancras Square
London
N1C 4AG

David Whittington
E: dwhittington@savills.com
DL: +44 (0) 20 7557 9997
F: +44 (0) 20 7016 3769

33 Margaret Street
London W1G 0JD
T: +44 (0) 20 7499 8644
savills.com

By Email only: bethany.cullen@camden.gov.uk

Dear Ms Cullen

100 Avenue Road, NW3 3HF
Ref: 2014/1617/P

Thank you again for taking the time last week to meet with Essential Living (EL) in order to discuss the status of the development at 100 Avenue Road.

We were grateful for the openness in which these matters were able to be discussed. I would also like to thank your colleagues also; we appreciate the challenges and sensitivities that lie ahead and EL appreciate the seniority and experience of all on the call.

To summarise, there are two matters being progressed. These are:

- *An application pursuant to S.106A of the Town and Country Planning Act 1990 for an amendment to planning obligations within the existing S.106 deed dated 24 August 2015, namely to alter the quantum and form of affordable housing that the development provides; and*
- *An application to discharge Condition 18 of the planning permission (as amended) in relation to the facing materials proposed for the buildings.*

In addition to the items discussed on Monday 30 November, you have previously received a letter from EL dated 13 November that set out in detail the reasons why these applications are being pursued and I will therefore not repeat these comments again here.

You were clear in our meeting that it was officers' view that the applications proposed above were not the appropriate procedural routes for addressing these matters, and that officers are of the opinion (following legal consultation) that S.73 would be the necessary procedural route for both matters.

As discussed, our view is that both of the above procedural approaches are the correct routes to take. In this context, please find enclosed legal commentary that has been prepared to address each of these points, which we are happy to share with you.

These legal advice notes (prepared by Brecher in consultation with Rupert Warren QC, Landmark Chambers) offer a clear response that an application pursuant to S.106A of the Town and Country Planning Act 1990 and an application to discharge Condition 18 of the planning permission (as amended) in relation to the facing materials are valid procedural routes.

As such, please find enclosed the following documents:

- *A Design Overview Document, prepared by GRID Architects;*
- *A Draft Financial Viability Assessment, prepared by Savills;*
- *A Legal Note addressing the suitability of pursuing a S106A Application, prepared by Brecher; and*
- *A Legal Note addressing the suitability of addressing materials through the discharging of Condition 18, prepared by Brecher.*

Given the noted sensitivities around the affordable housing and the need to make some adjustment to the provision relative to the approved scheme, I would highlight the following key elements that are detailed within the enclosed Draft Financial Viability Assessment.

Using the originally agreed Site Benchmark Value of £31m but adjusting costs and values to today's level, the approved scheme is unviable under normal commercial circumstances and this therefore justifies looking at this again in order to secure a deliverable scheme.

Indeed, as has been noted in earlier correspondence from EL even a development of 100% market housing leaves the scheme as technically unviable. But, given the costs accrued to date EL cannot leave the site idle and must find a way forward that enables delivery.

The Draft Financial Viability Appraisal therefore identifies a set of assumptions that deliver a modest technical return (albeit well below a normal commercial measure and excluding all costs to date). However, even this is only achievable if the level of affordable housing is adjusted; without doing so, even this approach will not deliver a return.

Simply, this approach provides an opportunity for EL to both deliver development and achieve a modest technical return albeit substantially below a normal commercial position and based upon terms that would not be palatable to another party assessing this on a purely commercial basis.

The proposed adjustment to the level of affordable housing allows for this technical return; without it, it is not possible.

A sale of the site to another party would also not offer that same opportunity to both deliver development and allow a technical return to EL.

As such, this adjustment to the quantum and form of affordable housing is the clearest route to delivering development to this site whilst maintaining the full range of other benefits and improvements associated with the scheme.

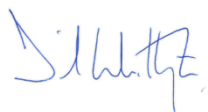
When we met, you set out a preference for further internal discussions to take place before any formal applications are made. I entirely appreciate the comments made by officers in terms of the likely wider reaction to these proposals once formal submissions are made to the LPA.

It is only correct however, that I note my overall instruction from EL is that the two applications should be submitted to the LPA before Christmas. Whilst the benefits of further discussions with officers are obviously recognised, EL must balance this with the clear commercial and programme pressures to ensure that the

progress of development on site can be restarted as soon as possible. It is difficult to overstate the overall challenges posed to EL by the current viability issues at this site.

Whilst this may not be a welcome timetable, I trust that the information provided here can be accepted as an early preview of content ahead of the formal submissions.

Yours sincerely

A handwritten signature in blue ink, appearing to read "D. Whittington", written in a cursive style.

David Whittington
Director

cc. Jonathan McClue, Principal Planner, London Borough of Camden

Nigel Dexter

From: Cullen, Bethany <Bethany.Cullen@camden.gov.uk>
Sent: 04 January 2021 17:48
To: David Whittington
Cc: McClue, Jonathan; Nigel Dexter; Jeremy Baker; Camilla Lesser; Bartlett, William
Subject: RE: 100 Avenue Road

EXTERNAL EMAIL: Be cautious when opening attachments or clicking links

Dear David,

I do hope that you had a restful break over the holidays and that your New Year has got off to a good start.

I do appreciate you emailing me to let me know that you have submitted the S106A and approval of details application. It's obviously disappointing that you have chosen to progress them despite our advice, but not a major surprise. I have asked Jonathan to locate the submissions. We will be seeking further legal advice before we start to process them.

I do have one ask, we had been holding off briefing ward members until we were 100% clear that you were going to make the application so would it be possible for you not to send the letters to members until we have done this? I would hope that we can fit this in later this week or early next. Understandably we would like an opportunity to brief them ourselves ahead of the applications being made public. We would be happy to let you know as soon as we have done this so that you can then send your letter further explaining the course of action that Essential Living has taken and why.

I can confirm that we have already briefed the cabinet member and chair of planning committee.

Kind regards

Bethany Cullen

Bethany Cullen
Head of Development Management

Telephone: 020 7974 2754



The majority of Council staff are continuing to work at home through remote, secure access to our systems. Where possible please communicate with us by telephone or email.

From: David Whittington <DWhittington@savills.com>
Sent: 04 January 2021 17:00
To: Cullen, Bethany <Bethany.Cullen@camden.gov.uk>
Cc: McClue, Jonathan <Jonathan.McClue@camden.gov.uk>; Nigel Dexter <NDexter@savills.com>; Jeremy Baker <Jeremy.Baker@essentialliving.co.uk>; Camilla Lesser <Camilla.Lesser@essentialliving.co.uk>; Bartlett, William <William.Bartlett@camden.gov.uk>
Subject: RE: 100 Avenue Road

[EXTERNAL EMAIL] Beware – This email originated outside Camden Council and may be malicious Please take extra care with any links, attachments, requests to take action or for you to verify your password etc. Please note there have been reports of emails purporting to be about Covid 19 being used as cover for scams so extra vigilance is required.

Dear Bethany

Thank you for email below, I hope you had a good break, albeit a different type of Christmas for us all.

Thank you for sharing the legal advice also attached to your email.- We also acknowledge your comments about the merits of the proposed procedural routes and that your comments below follow the position that was set out during our call before Christmas.

I would wish to reiterate that we fully appreciate the challenges to be addressed in the next weeks and months. As we have noted, doing nothing or delaying actions is not an option for Essential Living. They must commence formal application proceedings to begin to bring the site back into a commercial status.

To that end, I do need to advise that, on behalf of Essential Living, we have submitted the following to the LPA this afternoon:

1	A application under S106A to modify the terms of the S106 in respect of affordable housing provision	<i>This has been sent to the standard Camden planning email address (and the planning obligations email), as the Planning Portal does not make an allowance for such applications.</i>
2	An application to discharge the details of materials as required under condition 18	<i>Submitted via the Planning Portal in the normal manner (fee to be paid online in the normal manner)</i>

We will send a separate email to Jonathon McClue with all documentation attached, and look forward to receiving acknowledgement of their receipt in due course.

As we discussed during our online meeting, Essential Living have also been receiving a steady flow of requests from Members seeking updates. We have prepared a letter that will now be sent to Members and we attach a copy above for your information. It is incumbent upon Essential Living to set out their current status and that of the site, and to explain their course of action and this letter provides this information.

I remain grateful for your time and attention in respect of this matter.

Many thanks and regards

David

David Whittington BA (Hons) DipTP
Director
Planning

Savills, 33 Margaret Street , London W1G 0JD
Tel : +44 (0) 20 7557 9997
Mobile : +44 (0) 7717 897 465
Email : DWhittington@savills.com
Website : <http://www.savills.co.uk>



 Before printing, think about the environment

From: Cullen, Bethany [<mailto:Bethany.Cullen@camden.gov.uk>]

Sent: 24 December 2020 14:32

To: David Whittington <DWhittington@savills.com>

Cc: McClue, Jonathan <Jonathan.McClue@camden.gov.uk>; Nigel Dexter <NDexter@savills.com>; Jeremy Baker <Jeremy.Baker@essentialliving.co.uk>; Camilla Lesser <Camilla.Lesser@essentialliving.co.uk>; Bartlett, William <William.Bartlett@camden.gov.uk>
Subject: RE: 100 Avenue Road

EXTERNAL EMAIL: Be cautious when opening attachments or clicking links

Dear David,

Thanks for your email and apologies for the delay in my response.

As we advised at our meeting it is incredibly disappointing to be placed in this position. The affordable housing offer was an important component of the benefits package which the Inspector took into account when balancing the planning issues on this scheme. My own view is that if the affordable housing offer had been less then the Inspector's position may have been quite different, but of course this is something we will need to consider carefully if you choose to make an application to amend the scheme.

It is helpful to have the benefit of seeing the viability information and your legal advice in advance of a formal submission so thank you for providing this. I note that you are still intending to make an application under S106A to modify the obligation. We remain of the opinion that this is not the appropriate route. I would urge to reconsider your position on this point.

I have attached for information the advice I have received from our legal department. Our view is that the correct mechanism for making amendments of the nature proposed is S73. It is also likely that the proposed changes rely not just on amending the S106 agreement but also the plans which reinforce the need for this to be a S73 application. Added to this you have indicated to us that you intend to make amendments to the materials (replacing stone with GRC), which we do not feel can be achieved through approval of detail because the plans and supporting documents which were approved were very explicit that the material was to be stone. A S73 application would also be required to make these changes.

I hope that the above information is of assistance.

Kind regards

Bethany Cullen

Bethany Cullen
Head of Development Management

Telephone: 020 7974 2754



The majority of Council staff are continuing to work at home through remote, secure access to our systems. Where possible please communicate with us by telephone or email.

From: David Whittington <DWhittington@savills.com>

Sent: 10 December 2020 17:19

To: Cullen, Bethany <Bethany.Cullen@camden.gov.uk>

Cc: McClue, Jonathan <Jonathan.McClue@camden.gov.uk>; Nigel Dexter <NDexter@savills.com>; Jeremy Baker <Jeremy.Baker@essentialliving.co.uk>; Camilla Lesser <Camilla.Lesser@essentialliving.co.uk>

Subject: 100 Avenue Road

[EXTERNAL EMAIL] Beware – This email originated outside Camden Council and may be malicious Please take extra care with any links, attachments, requests to take action or for you to verify your password etc. Please note there have been reports of emails purporting to be about Covid 19 being used as cover for scams so extra vigilance is required.

Dear Bethany

Thank you again for your time last week to discuss the current status of the development at 100 Avenue Road.

The meeting was very helpful and you and your colleagues were very clear in regard to your views on the matters discussed.

You were clear that your preference was for your team to receive information relating to the viability of the development and the proposals for materials in advance of any formal planning applications being made.

As such, please find attached the following:

- *A covering letter, prepared by Savills;*
- *A Draft Financial Viability Assessment, prepared by Savills;*
- *A Legal Note addressing the suitability of pursuing a S106A Application, prepared by Brecher; and*
- *A Legal Note addressing the suitability of addressing materials through the discharging of Condition 18, prepared by Brecher.*

Additionally, GRID Architects have prepared a pack of information addressing the approach to materials that will form the application for the discharge of Condition 18. Due to large file sizes, these are available to download from a secure, password-protected link as follows:

Download:

<https://gridcloud.gridarchitects.co.uk/s/ttwlC9oDqUw2DFz>

Password:

100Avenue

If there are any problems with accessing this information then please let me know and alternative arrangements for sharing this information can be found.

As set out in more detail in the covering letter, our instruction from Essential Living is that the necessary applications should be made before Christmas. Therefore, these documents are provided as a preview of the intended content of those submissions.

With regards

David

David Whittington BA (Hons) DipTP
Director
Planning

Savills, 33 Margaret Street, London W1G 0JD
Tel : +44 (0) 20 7557 9997
Mobile : +44 (0) 7717 897 465
Email : DWhittington@savills.com
Website : <http://www.savills.co.uk>



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London Borough of Camden Housing Delivery Test - Action Plan

August 2021

Between 2017/18 and 2019/20 –

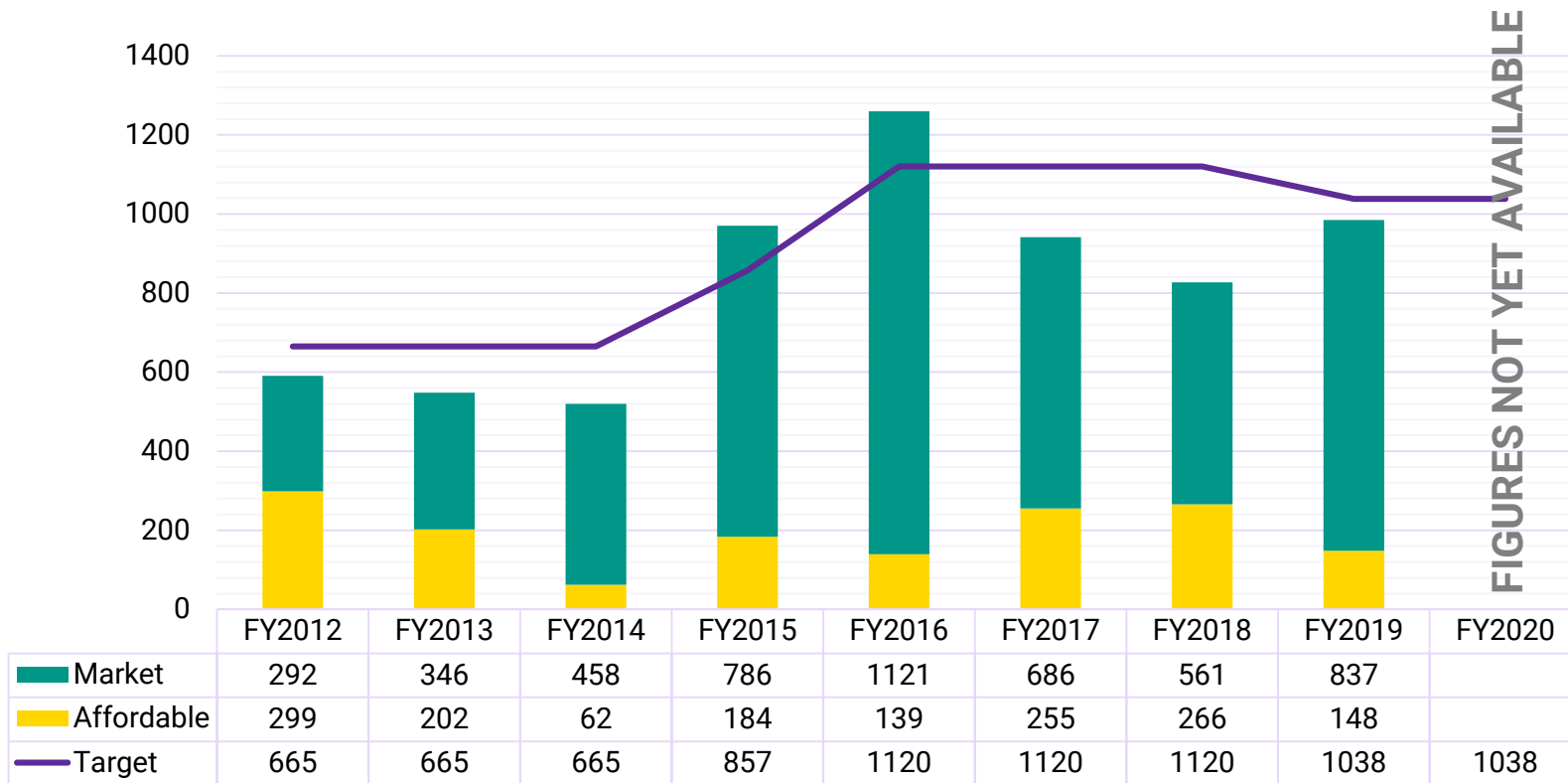
We had a target of
3265 new homes to
be built in Camden.
2568 were
delivered.



The Housing Delivery Test (HDT) is an annual measurement of housing delivery in the area of relevant plan-making authorities introduced by the government. In 2020, the measurement for Camden was **79%*** - which means that Camden has to produce an action plan and apply a 20% buffer to our 5 year housing land supply.

This action plan identifies the main issues that have affected delivery rates in Camden over the last 3 years and sets out a series of actions that the authority is, or will be, undertaking to try to address them and boost housing delivery within the borough.

*proportion of homes delivered compared to the target



This graph shows the total number (net) of self-contained dwellings completed between 2012/13 and 2019/20. This has then been broken down to show how many market and affordable units were delivered in each financial year. Figures for the 2020/21 were not available at the time that the action plan was published.

Format of the action plan



1. Understanding Camden





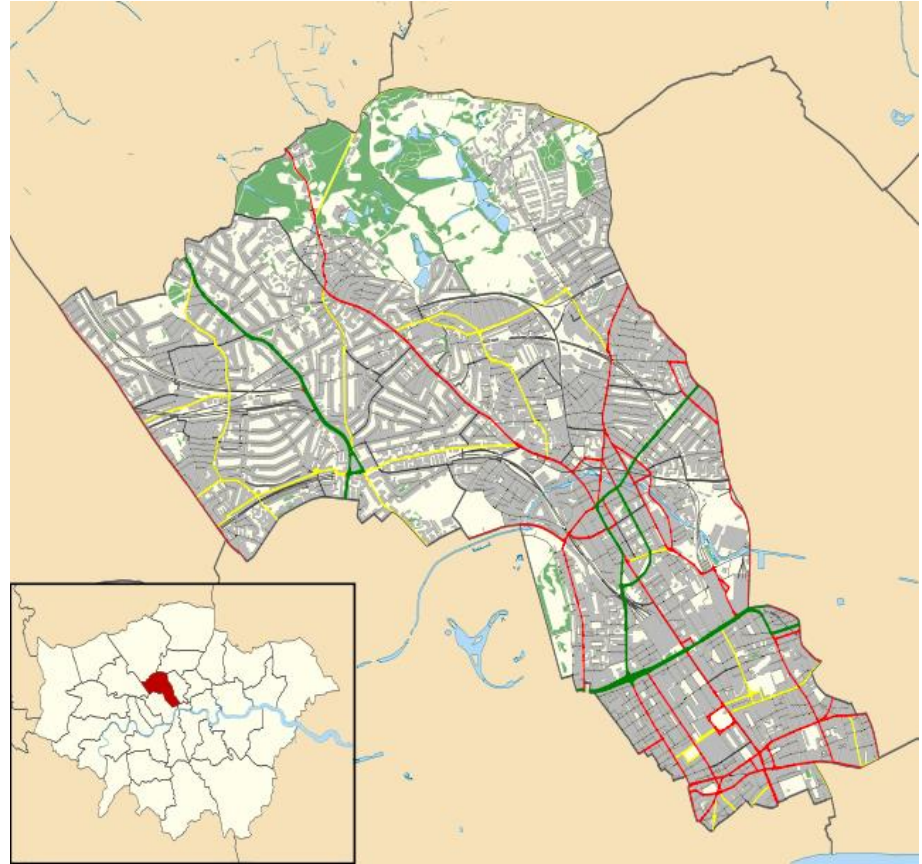
The Camden 2025 vision that the Council developed with its communities is for...

Camden to be a better borough – a place where everyone has a chance to succeed and where nobody gets left behind.

Camden is a borough of immense contrast and diversity. The borough is home to quarter of million people, a third of a million jobs, and a diverse spectrum of people and places compacted into 22sq km of central London

Business centres such as Holborn, Euston and Tottenham Court Road contrast with exclusive residential districts in Hampstead and Highgate, thriving Belsize Park, the open spaces of Hampstead Heath, Parliament Hill and Kenwood, the youthful energy of Camden Town, subdivided houses in Kentish Town and West Hampstead, as well as areas of relative deprivation.

Camden has a resident population of approximately 270,000. Camden has the 6th largest population churn in the UK, due to large migration in and outflows. In the year to mid-2019, ONS estimates total migration inflow to Camden of 40,700 people, a total outflow of 34,300, with the net effect of an additional 6,400 people. A sizeable proportion of movement is the annual transfer of students to/from Camden, both international and within the UK.



Camden is a very attractive place to live, which in turn has an impact on the cost of living. The cost of housing in Camden is amongst the highest in the country. The average (mean) house price in Camden in September 2020 was £813,155 – 3.2 times the average price for England & Wales and 1.6 times the average price for London – but down from peaking at £894,898 in July 2019. As a result, affordable housing is often cited in Camden's residents' surveys as the factor most in need of improvement in the borough.

On 1 June 2021 there were 6,363 households on the Council's Housing Register of which 66% are showing as living in overcrowded conditions and 5% are showing as severely overcrowded.

In Camden we want to make sure that new homes being built in the borough address the needs of people who have less choice over housing options first. Affordable housing products especially larger units can have an influence on a scheme's viability and in certain situations, particularly on commercial schemes, the Council has sought a lower overall number of new homes on a site to secure a greater percentage of affordable and/or larger units to help to address the housing needs of local people better.

Every part of Camden has areas of relative affluence alongside areas of relative poverty. The gap in healthy life expectancy between the poorest and richest parts of the borough is too wide – poorer citizens have a significantly shorter life expectancy than those who are better off.

Camden has one of the most dynamic economies in the UK and is home to a number of global businesses and academic/public institutions. Camden is home to the second highest number of businesses in London after Westminster and is 3rd highest in the UK. There were 36,805 enterprises registered in Camden in 2020, a 2% increase on 2019 and has grown 52% since 2008.



Knowledge Quarter Innovation District and key development sites

Camden's geographic position in central London, and the business environment developed, have enabled it to become one of the most important business locations in the country. Revised ONS estimates of Gross Value Added (GVA) show that Camden added £34.4bn to the national economy in 2018, an increase of 93% on 2008, growing faster than Central London (54%), Greater London (45%) or UK (34%).

Geographically, 60% of jobs are located south of Euston Road; almost a quarter (24%) are concentrated in the central Camden Town/ Euston/Regent's Park/Somers Town areas, while the remainder of Camden's jobs (16%) are scattered across town centres and employment sites in north and west Camden including Hampstead, Kentish Town and Swiss Cottage.

Camden's role as a key employment destination and as home to Knowledge Quarter Innovation District means that when larger development sites come forward in the borough there is pressure from developers for those sites to be used as employment land.

Camden has a rich architectural heritage, almost 50% of the land area falls within a conservation area, recognising their architectural or historic interest and their character and appearance. In addition to the large number of heritage assets there are over 280 designated public and private spaces. These spaces are critical to sustainability and wellbeing providing places to relax, socialize, enjoy sport and take part in physical exercise.

CONSERVATION AREAS &
ARTICLE 4 DIRECTIONS HERITAGE AND CONSERVATION
NEIGHBOURHOOD PLANS

You can check if your property is listed or in
a conservation area on the Council website
here or type in Conservation Areas in the
search bar on the website.

CONSERVATION AREAS

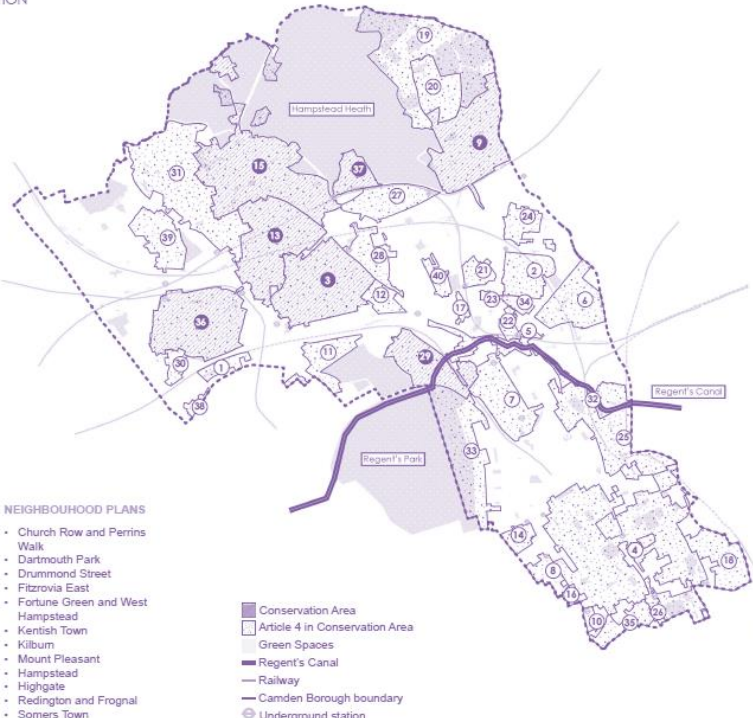
- Conservation Area
- Conservation Area with Article 4

- Alexandra Road Estate
- Bertholmew Estate
- Besize
- Bloomsbury
- Camden Broadway
- Camden Square
- Camden Town
- Charlotte Street
- Dartmouth Park
- Denmark Street
- Elsworth
- Elton
- Fitzjohns/Netherhall
- Fitzroy Square
- Hampstead
- Harway Street
- Harwood Street
- Hatton Garden
- Highgate
- Holly Lodge Estate
- Inkerman
- Jeffreys Street
- Kelly Street
- Kentish Town
- Kings Cross/ St. Pancras
- Kingsway
- Mansfield
- Parkhill and Upper Park
- Primrose Hill
- Prory Road
- Redington/Frogna
- Regent's Canal
- Regent's Park
- Roochester

35. Seven Dials Estate
36. South Hampstead
(formeley Swiss Cottage)
37. South Hill Park Estate
38. St. John's Wood
39. West End Green
40. West Kentish Town
- Article 4**
9. Only for no. 33 York Rise
13. Only for the Cottage no.
37. Only for nos. 32-66 (even)
and 72-90 (even) South Hill
Park
67 Fitzjohns Avenue

NEIGHBOUHOOD PLANS

- Church Row and Perrins Walk
- Dartmouth Park
- Drummond Street
- Fitzrovia East
- Fortune Green and West Hampstead
- Kentish Town
- Kilburn
- Mount Pleasant Hampstead
- Highgate
- Redington and Frogna
- Somers Town



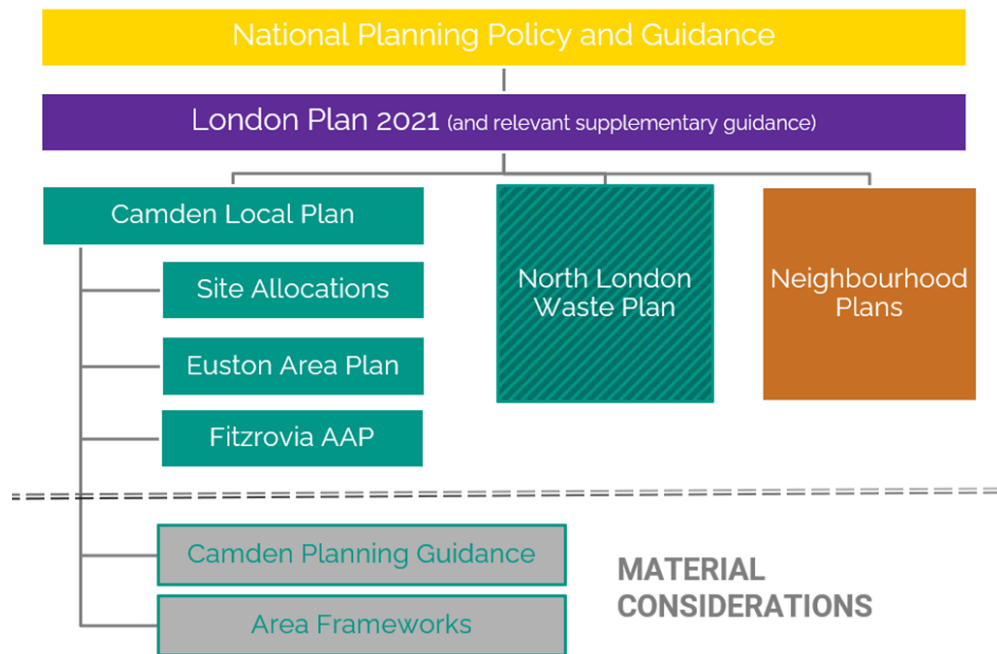
Camden also has large areas of Metropolitan Open Land (MOL) which is important to the whole of London, as well as the Borough, and provides attractive, visual breaks to the built-up area, keeping land permanently open. This designation is broadly equivalent to the Green Belt.

The cumulative impact of historic and environmental development considerations in Camden has an impact not only on the total number of development sites likely to come forward but also on options for their potential redevelopment. The Council knows that we need to make sites in the borough work harder in terms of delivering more but this needs to be balanced against safeguarding the amenity of nearby residents; the environment; and any other characteristics that make that place special.

2. Planning in Camden



Camden's Development Plan



There are a number of plan documents that need to be taken into consideration when assessing developing proposals including the recently adopted 2021 London Plan and the 2017 Camden Local Plan. Other plan documents adopted by the Council include:

- 2013 Site Allocations Plan
- 2014 Fitzrovia Area Action Plan
- 2015 Euston Area Plan

Since the Site Allocations Plan and the Euston Area Plan were adopted there have been a number of changes to the planning context and local priorities as such both Plans are currently in the process of being reviewed and updated by the Council.

There are also currently 5 made Neighbourhood Plans in the borough and 2 which have successfully passed the referendum stage and are due to be approved by the Council in the Autumn.

Camden Local Plan 2017

The Camden Local Plan was adopted by the Council in July 2017. The Local Plan is the key strategic document in Camden's development plan. It provides the basis (with other statutory development plan documents) for the Council's planning decisions and sets the framework for future development in the borough allowing the Council to manage Camden's growth to enable the delivery of its priorities and meet the needs of residents and businesses. Policy H1a in the Plan recognises self-contained housing as the priority land use in Camden.

The Plan also sets out a series of ambitious policy requirements to encourage additional homes to be provided as part of mixed use schemes and maximise the number of affordable homes being provided in the borough. Policy H2 for example requires 50% of all additional floorspace over 200sqm to be developed as self-contained housing where it meets set criteria within the Central London Area and designated centres.

There is a legal requirement for all policies in local plans and spatial development strategies to be reviewed at least once every five years to assess whether they need updating, and to then update them as necessary. The assessment should include consideration of changes to local circumstances and national policy. The Council will be undertaking an initial assessment of policies within the adopted Local Plan in late 2021 with work on a partial or full review of the Plan is anticipated to start in early 2022.

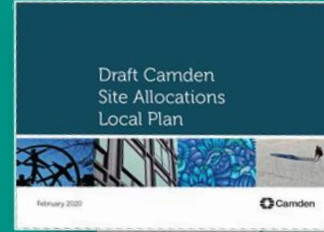


The Council has adopted a suite of supplementary planning documents alongside the Local Plan. These documents set out further detail about how the policies in the Plan should be applied. In January 2021 the Council updated the Camden Planning Guidance document for Housing. The update increased Payment in Lieu (PiL) rates for offsite affordable housing and market housing (Policies H2 and H4) and provided more flexibility for off-site provision to reduce reliance on PiL. It also reaffirmed our approach to deferred contributions (unless referred to GLA).

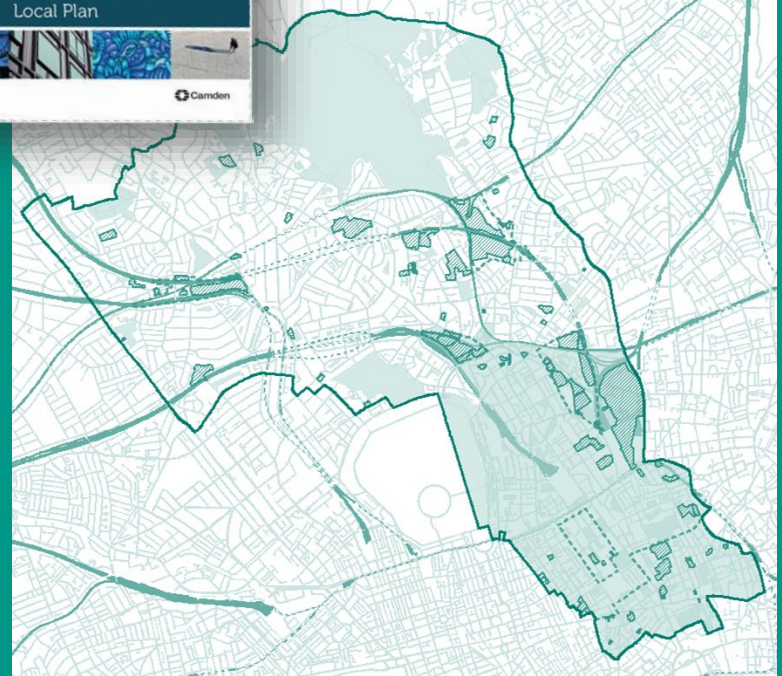
Site Allocations Plan Review:

The new Site Allocations Local Plan builds on Camden's existing Development Plan by setting out policies for how identified areas/sites should be developed in the future. Each policy is unique so that it can respond to local and site specific issues and opportunities. Policies set out things like proposed land uses, key design considerations and how many homes the site should deliver.

In preparing the Site Allocations Local Plan the Council identified and assessed over 220 sites. We decided to undertake a staged assessment of these sites to ensure that we would only need to do a more detailed analysis of sites which had the most amount of development potential. The assessment used a blend of desktop assessments, informal discussions with key stakeholders and site visits. The emerging plan allocates over 90 individual development sites throughout the borough. The majority of sites discounted through the assessment process had either recently been developed (or were due to be completed soon) or they had an anticipated capacity (net gain) of less than 10 residential units or a 1000sqm employment floorspace.



Map showing development sites and areas in Camden for more please visit:
www.camden.gov.uk/site-allocations



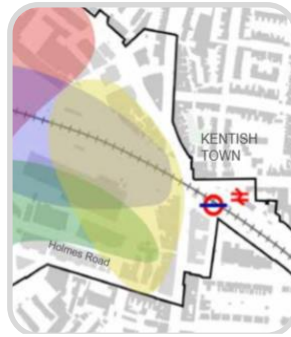
In total the plan identifies land for over 10,000 new homes (although it should be noted that some of the allocated sites in the plan already have planning permission).

Area Frameworks

Over the last few years the Council has been preparing a number of supplementary planning documents to help bring forward development in the boroughs designated growth areas.

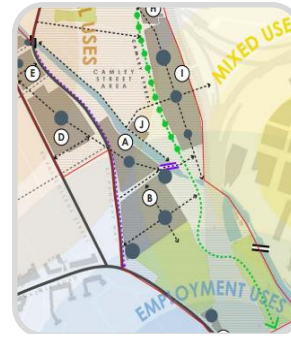
These frameworks set out a range of design/planning principles and infrastructure requirements. Local stakeholders such as residents, businesses and landowners are/have been involved in the preparation of the framework documents to ensure that principles set out within them are appropriate.

Area frameworks are a material consideration and have been used to help shape pre-application discussions and planning applications.



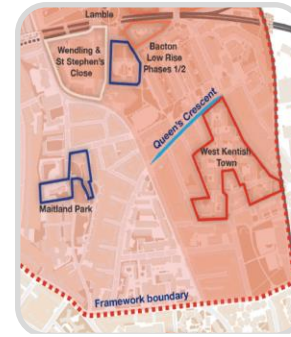
Kentish Town Planning Framework

- Adopted in July 2020
- Now a material planning consideration
- Murphy's submitted a planning application for the redevelopment of their site (land to the north of the railway) at the beginning of July 2021.



Canalside to Camley Street SPD

- Consultation on draft SPD Summer/Autumn 2020
- The consultation website was visited over 1,000 times with 370 contributions (total)
- Single Member Decision on the final version planned for Autumn 2021.



Gospel Oak to Haverstock Community Vision

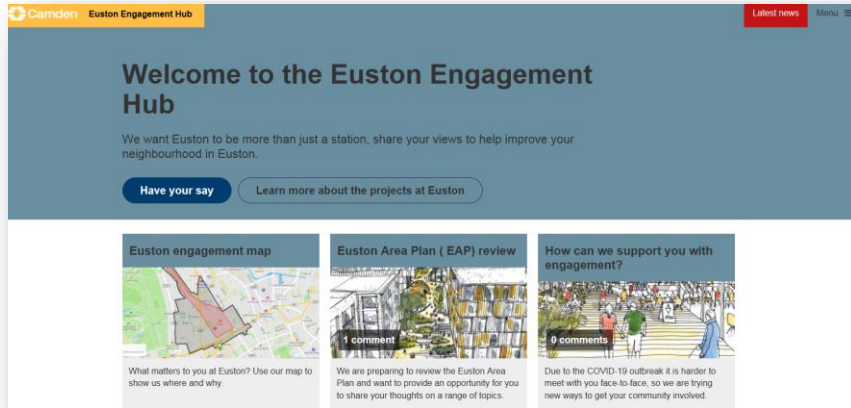
- Early engagement kicked off in autumn 2020 - consultation website was visited over 2000 times and over 400 individuals providing a response.
- Gospel Oak and Haverstock Neighbourhood Assembly (30 members)
- Consultation on Draft Vision planned for Autumn 2021



West End Lane to Finchley Road SPD

- Consultation on draft SPD February-April 2021
- The consultation website was visited over 3,500 times with over 500 contributions
- Single Member Decision on the final version planned for Autumn 2021.

Strategic Principle EAP1 in the 2015 Euston Area Plan states that between 2,800 and approximately 3,800 additional homes along with the provision of appropriate replacement homes across the plan area in a mix of unit sizes. The Plan also states that at least 75% should be provided as permanent self contained homes.



Euston Area Plan Review:

The Euston Area Plan (EAP) is the key planning document for Euston. The plan was jointly developed by Camden Council, the Greater London Authority and Transport for London and it was adopted in 2015. A lot has happened in the past five years and in order to ensure that policies reflect up to date information, constraints, opportunities and local priorities we are undertaking a partial update to the EAP. Areas of the focus for the partial update on:

- Viability and constraints
- Euston Station design
- Land use
- Sustainability
- Health and well-being

Decision making in Camden

The Planning Service at Camden work to an exceptionally high standard and consistently work pro-actively with applicants to secure high quality development that meets the aims and ambitions of the development plan and improves the economic, social and environmental conditions of the area.

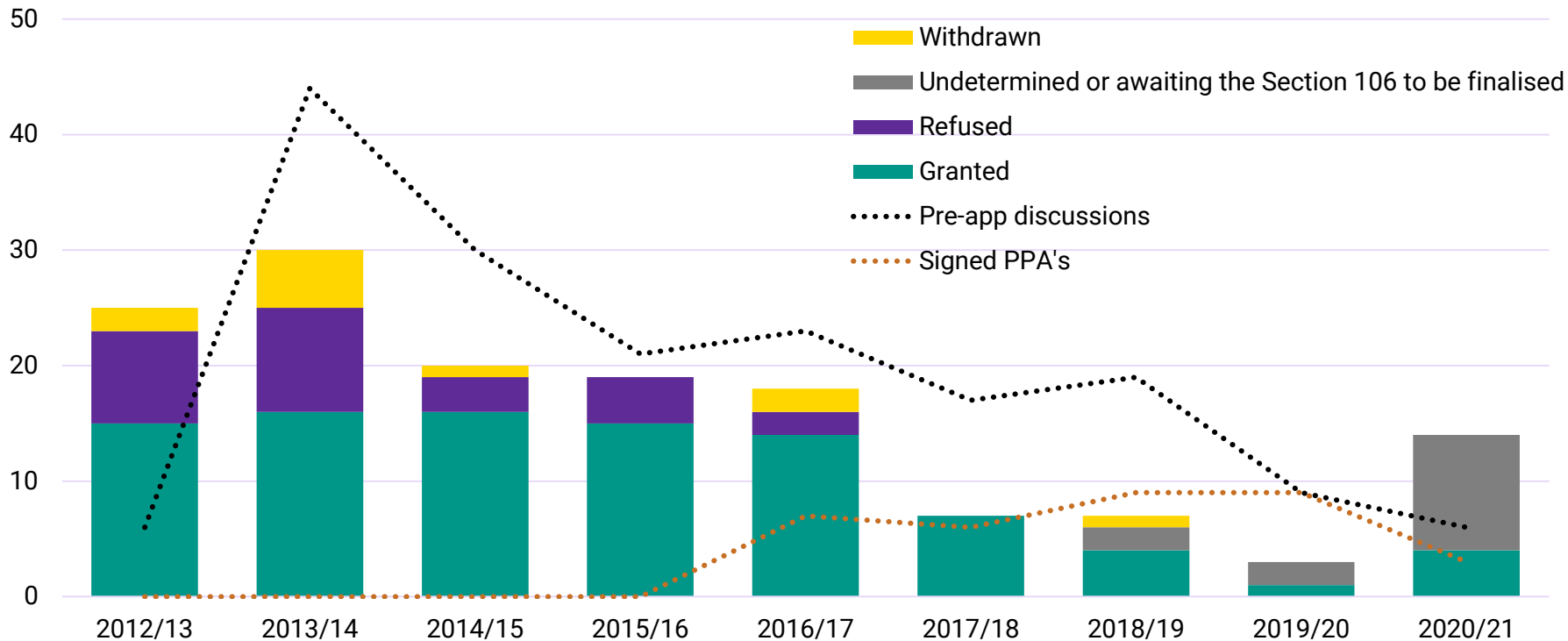
Throughout the Covid-19 pandemic the Planning Service has worked hard to ensure that applications can continue to be determined and that pre-application discussions can still take place - including the use of video conference software to host planning committees and design review panels.

Applications during the start of the pandemic slowed slightly but are now back to normal levels with 906 applications received in quarter 1 of the 2021/22 financial year. This compares with 751 received in quarter 1 of the 2020/21 financial year.



Local planning authorities should approach decisions on proposed development in a positive and creative way. They should... work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.





This graph shows the number of submitted applications, pre-application discussions and signed planning performance agreements (PPA's) for schemes that proposed a net gain of 10 or more dwellings between 2012/13 and 2020/21. The graph shows that in the last few years there has been an overall reduction in the number of submitted applications and pre-application discussions in schemes of this type. It also shows that no schemes of this nature have been refused in the last 4 years. This is mostly likely a result of an effective pre-application process including the use of Development Management Forums which allow developers to present their proposals to local residents, businesses and organisations. Whilst also allowing planning officers to hear from you what the stakeholders think about the proposal first hand.

The number of dwelling units permitted in Camden has varied a lot over the last 7/8 years. In the years 2012/13 and 2014/15 the high number of new dwellings permitted is primarily due to schemes involving student accommodation¹ coming forward in the borough and a handful larger residential applications being taken forward by the Councils Community Investment Partnership (CIP) team. ¹ Historically student units used to equate to one dwelling in terms of delivery calculations but this has now changed. The current calculation is 2.5 non-self contained units = 1 dwelling.

In the last 4 years the number of new homes being approved has fallen below the number of new homes needed to meet our housing target. This is due to a number of factors including:

- Increased number of applications for non-residential uses coming forward outside of town centres and the Central Activities Zone
- Larger growth sites taking longer to reach the application stage than expected
- Prioritising the delivery of affordable homes when negotiating new housing as part of a primarily commercial scheme (Local Plan Policy H4)

	Total dwelling units permitted (net)	Annual housing target	
FY2012/13	1596	665	+ 931
FY2013/14	1124	665	+ 459
FY2014/15	3380	665	+ 2715
FY2015/16	893	857	+ 36
FY2016/17	1086	1120	- 34
FY2017/18	617	1120	- 503
FY2018/19	1091	1120	- 29
FY2019/20	180	1038*	-858
FY2020/21	476	1038	-562
Total	9787	6212	

This table shows how the total number of units permitted (net) compares with the annual housing target for that year. *This target is the 2021 London Plan ten year target divided equally over the ten years

Planning obligations

The Community Infrastructure Levy (CIL) is a charge collected from new developments, which funds facilities such as:

- roads and transport
- education
- medical
- sport, recreation and open spaces

The CIL applies to all proposals which add 100m² of new floorspace or an extra dwelling. This includes bringing vacant building back into use. The amount to pay is the increase in floorspace (m²) multiplied by the rate in the CIL charging schedule.

In 2019, the Council consulted on plans to increase the rates in Camden for offices, research and development, and hotel uses in Central London. Residential rates were only subject to a small increase in line with building cost inflation.



Camden collects 2 types of Community Infrastructure Levy: **the Mayoral CIL and the Camden CIL.**

Having the right infrastructure provided at the right time is essential to supporting additional housing and ensuring that existing residents see the benefit of additional housing. Camden CIL is essential in helping to facilitate these infrastructure improvements. In 2019 the Council undertook a consultation exercise to determine local spending priorities for CIL - over 560 responses were received.

3. Delivering new homes



Potential delivery issues

Camden is a relatively built up borough in the inner London area and there are almost no greenfield site opportunities – other than some small scale infill sites on existing estates which means that the vast majority of new development takes place on brownfield sites that are already in some form of use. Developing a brownfield site generally means that the initial site preparation stage of a development will take longer as existing uses may need to be moved to an alternative site/or a different part of the site to enable preparation works including partial/full demolition of buildings to take place.



There are also issues where larger development sites are in multiple ownerships or there are small pieces of land blocking a larger development proposal from coming forward.

Case Study

King's Cross is one of the largest and most exciting redevelopments in London. The 67-acre site has a rich history and a unique setting. What was an underused industrial wasteland is being transformed into a new part of the city with homes, shops, offices, galleries, bars, restaurants, schools, and even a university.

The initial decision to develop the land was made in 1996 by London & Continental Railways Limited and Excel (now DHL) and they appointed Argent as a development partner in 2001. In 2006 outline planning consent was granted with early infrastructure works starting on site in June 2007.

To date 1532 units have been either completed or meaningfully commenced and there are still several development parcels to come forward with a reserved matters planning application.



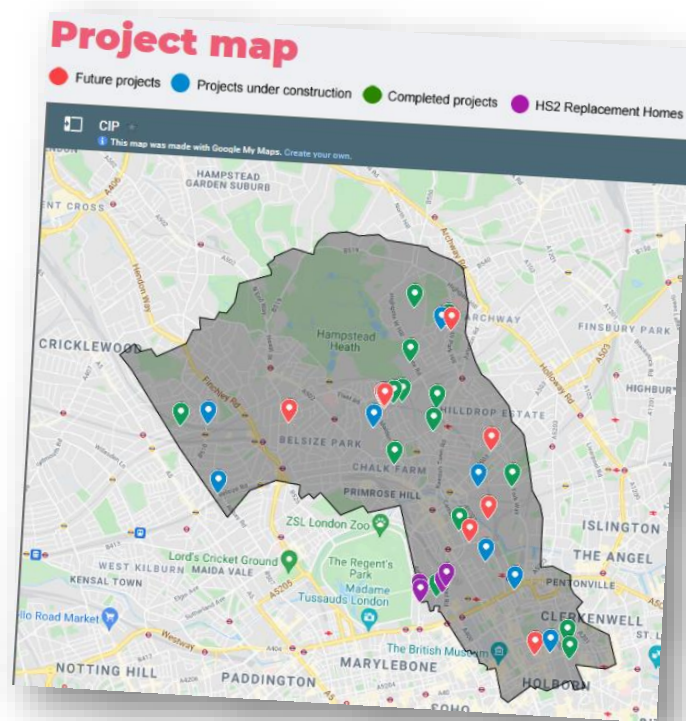
Community Investment Programme

The Community Investment Programme (CIP) is an ambitious plan by the Council to invest over £1 billion in homes, schools and community spaces in Camden. It's our answer to government spending cuts – an innovative way to continue to building in our communities despite massive reductions in central government funding.

Through the programme we're building 3,050 new homes, including 1,100 council homes and 300 at genuinely affordable Camden Living rents. We're also investing in 48 schools and children's centres and providing 9,000m2 of improved community space – the equivalent of 35 tennis courts.



CIP is helping to fund improvements to 22,500 existing council homes as part of the Council's Better Homes Programme. Each scheme is designed in partnership with residents and delivered directly by Council, this gives local people the chance to have their say and shape plans for their community.



To date we have built 975 new homes through CIP and have another 324 under construction and planning permission and cabinet approval for a further 1,000 homes.

We're also developing proposals on other sites with potential for another 2,000+ homes including two estates where we are working with residents on options. In 2020 we held our first estate resident ballot at West Kentish Town with 93% of residents voting in favour of proposals to redevelop the estate.

We've invested £165 million into schools and children's centres including the completion of three new primary school buildings. We've also built new community facilities like the St Pancras Community Centre and the Greenwood Centre - Camden's first Centre for Independent Living, run by disabled people, for disabled people. As well as refurbishing old hostels into state of the art accommodation and training facilities for homeless people.

In addition to CIP, we have built a further 99 council homes paid for by HS2, allowing tenants of blocks subsequently demolished by HS2 to move directly into right size new homes on the Regent's Park Estate and building an additional 33 council homes.

Camden Living Rent homes

The Council are currently in the process of building 300 Camden Living Rent homes to make it possible for teachers, nurses and local people earning around £30,000 to £40,000 to afford to rent in Camden. It's our way of helping people who may not qualify for a council home but who also struggle to afford the cost of renting or buying on the open market. These homes for lower rents help maintain Camden's mixed communities and provide greater security to tenants than the private rented sector.



4. Conclusions/Next steps



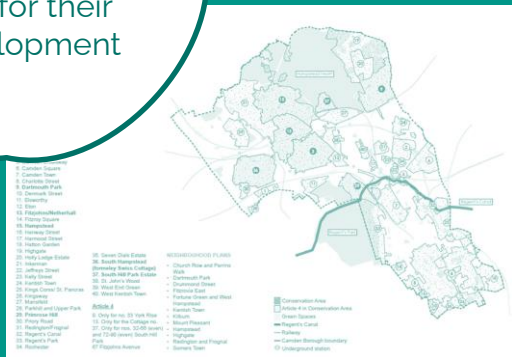
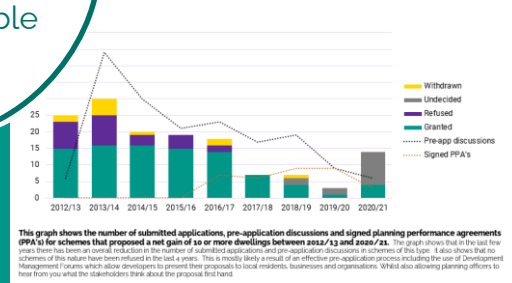
Main barriers to housing delivery in Camden

Competition for land against other more profitable land uses

The need to make sure that the types of homes coming forward are fit for purpose

Availability of sites and scope for their redevelopment

Length of time taken for applications for larger scale (strategic) development sites to come forward



Key actions going forward	Timescale/deadline	Responsibility
Resist applications for commercial developments outside of the Central Activities Zone, Knowledge Quarter and designated town centres	Ongoing	LB Camden Planning Service
Review indicative capacities for development sites within emerging plan documents.	August 2021	LB Camden Planning Service
Explore opportunities to use technology to monitor housing delivery and predict future completions more effectively.	December 2021	LB Camden Planning and IT Services
Continue to progress the review of both the Site Allocations Local Plan and the Euston Area Plan.	Ongoing	LB Camden Planning Service
Use existing relationships and networks with landowners, developers and agents to gather market intelligence and identify potential barriers/challenges to housing delivery.	Quarterly	LB Camden Planning Service
Ensure that the planning service is suitably resourced (including specialists) so that comprehensive advice can continue to be provided in a timely way throughout the pre-application and planning application process	Ongoing	LB Camden
Continue to make the case to the Government for greater support and funding to enable more local authority led house building.	Ongoing	LB Camden
Explore opportunities to use our compulsory purchase powers as a way to accelerate the delivery of key housing sites.	Ongoing	LB Camden

Planning Policy and Implementation

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