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Your Ref: APP/X5210/W/21/3282550
Our Refs: 2020/2782/P
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The Planning Inspectorate
Room 3/23
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

Dear Planning Inspectorate,

Garages to the South of 27a West End Lane, NW6 4QJ

Appeal on behalf of Mr AG Homes for the refusal of planning permission

The Council refused planning permission under delegated powers on 02/06/2021, Ref. 2020/2782/P

The description of development was as follows:

Demolition of existing garages and redevelopment of the site with a three-storey building (plus basement) to provide 6 residential units (Use Class C3) with associated landscaping, cycle and bin stores.

The main reason for refusal is that the development would result in poor quality homes.

There are also 5 other s106 matters.

Summary of case

The site comprises 8 single storey garages with a forecourt.

In September 2016, planning permission was granted for redevelopment for a two/ three-storey terrace to provide 3x3 bed townhouses. It is noted that the officer's report for this approved scheme refers to two previous applications for a 2-4 storey block comprising 6 units that were withdrawn following officer advice that the proposals could not be supported on the grounds of scale, bulk and the subsequent impact on residential amenity.

The overall massing and the architecture of the building of the approved scheme are very similar to the current appeal application. However, this appeal scheme is accessed via a communal entrance fronting West End Lane and the approved scheme comprised private entrance doors with two accessed from a side path adjacent to Sycamore Court car park and the third from West End Lane.

The quality of the new proposed accommodation is not acceptable. The full examination of the proposed flats' layout is set out in the delegated report and is not repeated here. It sets out a detailed analysis of the flats' defects including poor circulation, storage, dining space and external amenity space. It shows that the design of the flats is unacceptably cramped. It demonstrates that there are too many flats squeezed into the building envelope.

Statement

The council's statement is largely set out in the delegated report already sent to PINs. However, the council makes additional comments on the status of the development plan, addresses the grounds of appeal, comments in the s106 legal agreement and provides conditions should the appeal be allowed.

Planning Refusal Notice

The reasons for the refusal within the planning decision notice are as follows:

1. The proposed development, by reason of over-development through the provision of too many homes with poor quality design, would result in units with poor internal layouts and compromised levels of privacy and outlook to the detriment of future occupiers, contrary to policies D1 (Design) and H6 (Housing choice) of the London Borough of Camden Local Plan 2017.
2. The proposed development, in the absence of a legal agreement to secure a contribution to affordable housing, would fail to maximise the contribution of the site to the supply of affordable housing in the borough, contrary to policy H4 (Maximising the supply of affordable housing) of the Camden Local Plan 2017.
3. The proposed development, in the absence of a legal agreement securing an Approval in Principle, would fail to mitigate the impact of the basement works on the adjacent public highway contrary to policies A1 (Managing the impact of development), T3 (Transport Infrastructure) and DM1 (Delivery and monitoring) of the London Borough of Camden Local Plan 2017.
4. The proposed development, in the absence of a legal agreement securing car-free housing, would be likely to contribute unacceptably to parking stress and congestion in the surrounding area and fail to

promote more sustainable and efficient forms of transport and active lifestyles, contrary to policies T2 (Parking and car-free development) and DM1 (Delivery and monitoring) of the London Borough of Camden Local Plan 2017.

5. The proposed development, in the absence of a legal agreement securing necessary highway works, would fail to secure adequate provision for and safety of pedestrians, cyclists and vehicles, contrary to policies A1 (Managing the impact of development), T1 (Prioritising walking, cycling and public transport) and DM1 (Delivery and monitoring) of the London Borough of Camden Local Plan 2017.
6. The proposed development, in the absence of a legal agreement securing a Construction Management Plan (CMP) and associated contributions to support the implementation of the CMP, would be likely to give rise to conflicts with other road users and be detrimental to the amenities of the area generally, contrary to policies A1 (Managing the impact of development), T4 (Sustainable movement of goods and materials) and DM1 (Delivery and monitoring) of the London Borough of Camden Local Plan 2017.

1. Status of the Development Plan

Development Plan

For the purposes of s38(3) of the PCPA (Planning and Compulsory Purchase Act 2004), the development plan applying to the application sites comprises the London Plan 2016, the Camden Local Plan 2017 and the Fortune Green and West Hampstead Neighbourhood Plan 2015.

Adopted policies

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

Camden Local Plan 2017

G1 Delivery and location of growth
H1 Maximising housing supply
H6 Housing choice and mix
H7 Large and small homes
C6 Access for all
A1 Managing the impact of development
D1 Design
D2 Heritage
CC1 Climate change mitigation
CC2 Adapting to climate change
CC5 Waste

T1 Prioritising walking, cycling and public transport
T2 Parking and car-free development
T4 Sustainable movement of goods and materials
DM1 Delivery and monitoring

The London Plan 2021

The London Plan is the statutory Spatial Development Strategy for Greater London prepared by the Mayor of London. The current London Plan was recently adopted in March 2021. Chapters 3 (Design), 4 (Housing), and 10 (Transport) of the London Plan 2021 are most applicable to the determination of this appeal.

The Camden Local Plan was adopted in July 2017. The relevant policies in the Camden Local Plan 2017 are:

- H1 Maximising housing supply
- H4 Maximising the supply of affordable housing
- D1 Design
- A1 Managing the impact of development
- A5 Basements
- C6 Access for all
- T2 Parking and car free development
- T1 Prioritising walking, cycling and public transport
- T4 Sustainable movement of goods and materials
- DM1 Delivery and monitoring

Other relevant policy and guidance

NPPF 2021

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

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

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

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

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

The Council's adopted policies are recent and up to date and should be accorded due weight in accordance with paragraph 219 of the NPPF. There are no material differences between the Council's adopted policies and the NPPF in relation to this appeal. The full text of the relevant adopted policies was sent with the questionnaire documents.

Camden Planning Guidance (CPG)

- CPG Design (2021)
- CPG Amenity (2021)
- CPG Transport (2021)
- CPG Housing (2021)
- CPG Affordable (2021)
- CPG Energy Efficiency and adaptation (2021)
- CPG Basements (2021)

2. COMMENTS ON APPELLANT'S GROUNDS OF APPEAL

- 2.1. The principal reason for refusal is the unsatisfactory design, which would result in units with poor internal layouts and compromised levels of privacy and outlook to the detriment of future occupiers. Reasons for refusal two, three, four, five and six can be overcome by the applicant entering into a section 106 agreement with the council. As such, the Council is providing the appellant with a draft section 106 planning obligation and will update the Inspector at the final comments stage as to whether an agreement has been reached.

3. REASONS FOR REFUSAL

3.1. Reason for refusal no. 1 (Design)

- 3.2. The appellant's statement is not summarised here. However, the statement focuses on:

- how the plan form of each flat meets the internal space guidelines
- other planning approvals setting precedent.

Quality of the flats/ guidelines

- 3.3. The appeal statement examines the layout of the flats in detail, rebutting the delegated report. The council does not wish to add to its detailed assessment of each flat. Both assessments are for the Inspector to take a view. However, although space guidelines solely are met, the plans demonstrate that guidelines are guidelines - and sometimes do not achieve acceptable living accommodation in certain circumstances. Officers are of the view that the flats are unacceptably cramped, and the bedrooms at basement level would have an unacceptable outlook and it is not considered that the appellant's comments change this.
- 3.4. The basement lightwells would have a depth of 1.8m which provides a confined and cell-like outlook for future occupants. The proposal is a new-build scheme and there are no site constraints or other reasons as to why the proposed flats cannot be designed to provide well-lit and well-designed accommodation. As outlined in the planning delegated report, planning permission was granted in 2016 for a part two, part three-storey building (no basement) to accommodate 3 townhouses. The overall massing and the architecture of the building were very similar to the appeal scheme. It is clear also that there is scope to reduce the number of flats or the number of bedrooms.
- 3.5. Concerning Savils' comments appended to the appeal statement which states the flats are marketable, this does not mean that, say, a 4 person flat would be acquired for accommodating that amount of people, and it is the officers view that these flats would be likely to accommodate fewer occupiers.
- 3.6. The council reiterate that the layout is poor and cramped as set out in the officer report. The assessment takes full account of guidelines and goes further to take a common-sense approach about circulation and amenity.
- 3.7. The following sets out policies that seek to ensure that residential accommodation is of acceptable quality.

Policies regarding residential standards

The following policies seek to ensure that new development is of the best standards. The delegated report sets out how the proposed accommodation is too cramped and has poor external amenities.

- 3.8. Policy A1 (Managing the impact of growth and development) seeks to protect the amenity of Camden's residents. The supporting text of this policy in paragraph 6.3 states that:

"Protecting amenity is a key part of successfully managing growth in Camden. We will expect the development to avoid harmful effects on the amenity of existing and future occupiers and nearby properties or,

where this is not possible, to take appropriate measures to minimise potential negative impacts.”

- 3.9. Policy A1 seeks to protect the quality of life of occupiers, including with regards to visual privacy and outlook. The supporting text of this policy in paragraph 26.3 states that:

“A development’s impact upon visual privacy, outlook and disturbance from artificial light can be influenced by its design and layout. These issues can affect the amenity of existing and future occupiers. The Council will expect that these elements are considered at the design stage of a scheme to prevent potential harmful effects of the development on occupiers and neighbours. Further detail can be found within our supplementary planning document Camden Planning Guidance on amenity”

- 3.10. CPG Housing, states that:

“Proposals should achieve good dual aspect [London Housing SPG 2016 Standard 29]. Habitable rooms should also have suitable outlook.”

“Privacy – The habitable rooms of a home should provide adequate levels of privacy for the new occupier. This is set out in the CPG for Amenity. The applicant must ensure all the habitable rooms have a suitable outlook and have suitable privacy. [Local Plan Policy A1; London Housing SPG 2016 standard 28].”

- 3.11. The London Plan Housing SPG states in paragraph 2.3.40:

“Good single aspect one and two-bedroom homes are possible where limited numbers of rooms are required, the frontage is generous, the plan is shallow, the orientation and or outlook is favourable, and care is taken to mitigate the potential for overheating without the need for mechanical cooling.”

- 3.12. The accommodation provided is unacceptable and is contrary to the above policies.

The appellant’s cited precedents

- 3.13. The appellants have cited ‘precedent set’ by other approvals and officers’ comments on each are set out below.
- 3.14. It is difficult to compare sites with their constraints and all these sites are different. However, it is noted that the size of the lightwells for the 2- and 3-bedroom flats are lower at the appeal site than the sites referenced as precedents. The following demonstrates further that each case is taken

on its merits and that guidelines are just that and further assessment is required. It is not considered that these examples set a precedent for the appeal scheme.

- **Gondar Gardens ref 2021/2596/P.**

- 3.15. This approved scheme was revised to provide 2 houses and 2 flats. It was amended to overcome a previous refusal for 6 flats. The circumstances required that the new development fit into the street pattern. It was also a difficult sloped site. The basement is to provide secondary living rooms and one-bedroom; the main living areas being at ground floor level. The basement outdoor area has a depth of 2.5m which is larger than this subject appeal scheme and a different shape which was noted in the delegated report as being able to provide a table and chairs at its widest point. The Gondar Gardens site is not comparable and the flats in that scheme have better amenities than what is proposed here.

- **26 Netherhall Gardens 2019/1515/P**

- 3.16. This scheme was for extension and a new basement to provide 4 flats with roof terraces. A scheme was refused previously for redevelopment for 5 flats and an appeal was dismissed (PINs ref 3145922). The inspector noted the adverse implications of the plan form for a flat for future occupiers, however, given the very high ceiling heights and large size of the duplex apartments with good size of the outdoor space, he did not uphold the concerns about the layout of the accommodation. Concerning the later approved scheme referred to by the appellant, the quality of the proposed flats was considered to be acceptable in the site's context. The report states, Unit 1 and 2 would be single aspects (east or west) and Unit 3 and 4 would be dual aspects. Although Unit 2 is single aspect and below ground level (due to the slope of the site), it would have a large private (16.5sqm) terrace in a lightwell at the rear. The living room has two windows. The distance from the main window to the lightwell wall would be approximately 1.5m and the distance from the other window to the lightwell wall would be approximately 2.74m. The distance from the proposed bedroom window to the lightwell wall would be approximately 4m. While the outlook from the main living room window would be limited, as described, this alone was not considered sufficient to support a reason for refusal.
- 3.17. The 26 Netherhall Gardens site is not comparable and the flats in that scheme have better amenities than what is proposed here.

- **Maryon House 2016/3545/P**

3.18. This approval was for redevelopment to provide 11 flats. The floor plans are open and spacious. It is noted that the 2-bed unit at lower ground floor level (Unit 3) facing toward the front of the property looks out onto two larger deep lightwells, measuring between 2.5 and 2.7m in depth. The larger lightwells, combined with the acceptable level of daylight that the units will receive, result in the units having an acceptable level of outlook. Regarding the two units to the rear of the property (units 1 and 2), these would have lightwells at lower ground level measuring 9.7sqm and 8sqm respectively which would then also lead up to gardens at the ground floor level. Given the depth of these lightwells, 4.5m it is considered the units would achieve an acceptable level of outlook.

- **140 – 150 Arlington Road 2013/3487/P**

3.19. This application was for a change of use of an existing D2 building and extensions and remodelling to provide 21 residential units including 5 affordable housing units. The 3 basement and ground floor maisonettes would have a good level of amenity for future occupiers as the lightwell/courtyard area is much larger (3.8m in depth) than at the appeal site.

- **14 – 19 Tottenham mews and 14 Chalcot sq 2020/5633/P**

3.20. This scheme was for a 6 storey building with flats at ground level and upper floors. The lack of private amenity space was overcome by the high quality of internal amenities because of the good quality layout and outlook.

Conclusion

3.21. The above demonstrates that each case needs to be considered on its own merits. It demonstrates that schemes are assessed in detail and include mitigating factors for every issue.

3.22. It is not considered that the subject appeal has any mitigating factors to overcome the cramped layout.

S106 reasons for refusal

3.23. **Reason for refusal no 2 (Affordable Housing)**

3.24. Policy H4 expects a contribution to affordable housing from all developments that provide one or more additional homes and involve a total addition to the residential floorspace of 100sqm GIA or more. This

is based on an assessment where 100sqm of floorspace is considered to be capacity for one home. In developments that provide less than 10 units, affordable housing contributions can take the form of a payment in lieu.

- 3.25. The affordable housing target as detailed in policy H4 and its supporting text is based on a sliding scale with the target starting at 2% for an additional home (at 100sqm) and is increased by 2% for each home added to the capacity. The residential floorspace provided is c.551 sqm GIA; therefore rounded up to 600 sqm for this purpose resulting in the affordable housing target being 12% for this scheme.
- 3.26. In accordance with CPG Housing 2021, the target floorspace is then multiplied by £5,000 sqm (affordable housing payment in lieu rate) to obtain the total required contribution of £330,600.
- 3.27. The most appropriate way of obtaining the financial contribution is via an s106 legal agreement and it is understood from the appellant's statement of the case that they are willing to provide the full contribution should the appeal be allowed. A draft copy of a section 106 legal agreement has been sent to the appellant and PINs will be updated on any progress at the final comments stage.
- 3.28. CIL Compliance:
- 3.29. The contribution is considered to be CIL compliant. It is necessary in planning terms as identified in the development plan to mitigate against the increased impact that will be generated by the development. The contribution has been calculated taking into account the particular characteristics of the development, it is directly related to the development and is fairly and reasonably related in scale and kind to the development
- 3.30. **Reason for refusal no 3 (Approval in Principle - basement)**
- 3.31. The proposal would involve basement excavations close to the public highway. The Council has to ensure that the stability of the public highway adjacent to the site is not compromised by the proposed basement excavations. Were planning permission to be granted, the applicant would be required to submit an 'Approval in Principle (AIP)' report to the Council's Highways Structures & Bridges Team within Engineering Services. This is a requirement of British Standard BD2/12. The AIP report would need to include structural details and calculations to demonstrate that the proposed development would not affect the stability of the public highway adjacent to the site. The AIP would also need to include an explanation of any mitigation measures which might be required. Were planning permission granted, the AIP report and an associated assessment fee of £1,863.54 would need to be secured via

a legal agreement. The absence of such an agreement securing the AIP report and financial contribution, therefore, constitutes a reason for refusal.

3.32. Reason for refusal no.4 (car-free)

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

3.36. CIL Compliance

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

3.38. Reason for refusal no 5 (Highway works)

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

- 3.43. All the aforementioned items would, if planning permission were to be granted, be secured by a Section 106. However, in the absence of such an agreement they will constitute a reason for refusal.
- 3.44. CIL Compliance:
- 3.45. The contribution is considered to be CIL compliant. It is necessary in planning terms as identified in the development plan to mitigate against the increased impact that will be generated by the development. The contribution has been calculated taking into account the particular characteristics of the development, it is directly related to the development and is fairly and reasonably related in scale and kind to the development as it relates to mitigating impacts of the development.
- 3.46. **Reason for refusal no 6 (Construction Management Plan CMP)**
- 3.47. Local Plan policy A1 states that Construction Management Plans (CMPs) should be secured to demonstrate how developments would minimise impacts from the movement of goods and materials during the construction process (including any demolition works). The appeal proposal would involve significant works due to the construction of large buildings on the site. A CMP would be required in order to address the issues around how the demolition and construction work would be carried out and how this work would be serviced (e.g. delivery of materials, set down and collection of skips), with the objective of minimising traffic disruption and avoiding dangerous situations for pedestrians and other road users. The failure to secure a CMP by S106 would give rise to conflicts with other road users and be detrimental to the amenity of the area generally.
- 3.48. The Council would therefore want to secure a CMP, a CMP implementation support contribution of £3,136 to mitigate the impact on the safety and operation of the local road and pedestrian networks. A CMP bond of £7,500 would also be required in case the contractor fails to abide by the CMP and the Council has to take action to remediate issues. The fee would be fully refundable on completion of the works should there be no breach.
- 3.49. A planning obligation is the most appropriate mechanism for securing compliance with a CMP in this case simply because a considerable extent of the activity during construction could cause conflict with other road users and users of both car parks. It would also be detrimental to the amenity of the area and will necessarily take place outside the curtilage of the planning unit of the appeal site. Potential impacts for the proposed demolition/construction works which should be controlled by a CMP include traffic generation from removal and delivery of materials to the site. This could result in traffic disruption and dangerous situations for pedestrians and road users.

- 3.50. Under the Planning Act conditions are used to control matters on land within the developers' control. However, a CMP is designed to be an enforceable and precise document setting out how measures will be undertaken not just on site but also around the site to minimise as far as reasonable the detrimental effects of construction on local residential amenity and/or highway safety on the nearby roads, hence using a condition to secure the type of off-site requirements usually included in a CMP would in this case be unenforceable.
- 3.51. Conditions can only lawfully be used to control matters on land within the developer's control. Many of the CMP provisions will relate to off-site requirements, particularly public highway (which is not land within the developers' control). As such, a Section 106 Agreement (rather than a condition) is the most appropriate mechanism. This is in accordance with Planning Practice Guidance which states that conditions requiring works on land that is not controlled by the applicant often fails the tests of reasonability and enforceability.
- 3.52. CIL Compliance:
- 3.53. The CMP and associated contribution are considered to be CIL compliant as it ensures that the development is acceptable in planning terms to necessarily mitigate against the transport impacts of the development as identified under the Development Plan for developments of the nature proposed. It is also directly related to the development and fairly and reasonably related in scale and kind as it relates to managing impacts to neighbours and on the surrounding highways from construction at the site.

4. UNILATERAL UNDERTAKING/S106

- 4.1. The Appellant has submitted an unsigned, undated Unilateral Undertaking (UU) with his appeal statement. The Council's lawyers reviewed the same and found it did not meet our usual requirements so in order to quickly and effectively overcome the reasons for refusal, and save time on the appeal, sent the agent a draft s106 Agreement for his client to enter into. Please see **attached** for information.
- 4.2. Unfortunately, the response from the appellant's lawyer was that she considered reasons for refusal 2, 3, 4, 5 and 6 are addressed by the UU and that if the Council considers otherwise, it will set out why.
- 4.3. Accordingly the Council sets out below why it considers the UU as submitted to be defective: -

- The UU is unsigned and undated. The Council is concerned that the attestation clause for the Mortgagee is not included. The recitals while mentioning the Mortgagee, remove all reference to the Mortgagee throughout the document. The Mortgagee must sign the UU as it has a legal interest in the land and the Council would be left at risk that the obligations would not be properly secured if the Mortgagee came into possession of the property.
- There is no reference to the Planning appeal number anywhere in the document.
- The definition of “the Construction Management Plan” must include reference to Demolition currently it does not.
- The definition of Occupation date is drafted to exclude ‘occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations’ this is ambiguous and imprecise and would cause difficulty in the event the Local Planning Authority needs to enforce the UU.
- The full text and obligation in relation to the “Construction Management Plan Bond” is not included this is important as it shows how and when the Council can use the funds.
- The drawing numbers are not included within the definition of “Development” this is important as the document should be able to be read and understood separately from the decision notice.
- The Highways clause is drafted which seems to anticipate the Developer will do Highways works, however, our Highways Authority require they will undertake their own works. Therefore, the s106 requires an obligation requiring the Developer to pay the HW authority a financial contribution for the work, rather than a requirement that they will enter into an agreement with the Highway Authority at a later date for the works.
- The definition of “Implementation” includes an exclusion of “Preparatory Operations” which has several exemptions that are not acceptable to the Council. The Council’s definition of Implementation is in line with legislation, and we specifically require demolition to be included as otherwise the planning permission could be implemented with nothing to mitigate the effects within the Construction Management Plan. Temporary display notices and advertisements are not relevant to the implementation of planning permission.
- There is no plan of the site attached to the UU.
- The UU declares that it is not binding until the Implementation date, whereas it should only be clause 4 (Obligations of the Owner) that should not be binding until implementation.
- The UU does not allow for the Council to enforce on any tenants or Owner-Occupiers of the Development – the Council requires this as otherwise the car free provisions could not be enforced. This is also asking the Council not to do something which a UU is not able to do.
- The Construction Management Plan and Bond are not the Council’s standard wording, which we would prefer. The wording in the UU as currently drafted is defective because there is nothing in the document

as to how the Bond will be used and the mechanisms the Council will take. The effect is that it makes the UU imprecise, and the Council would be unable to enforce. The Construction Management Plan definition fails to cover demolition. The UU simply states the development shall not be Implemented until the Bond has been received by the Council and fails to require the Owner to pay the Bond in full on or prior to Implementation. Furthermore, the UU does not cover a breach of the Construction Management Plan in which case the Council would seek to investigate and rectify by making deductions from the Bond payment.

- The Affordable Housing Contribution is stated to be paid prior to the Occupation of the development. The Camden Planning Guidance document entitle Housing CPG 2021 states at paragraph 6.46: -

“We will generally expect financial planning obligations (payments) secured through a s106 agreement to be met (paid) when implementation of a development commences. For most financial obligations, payment upon implementation is necessary to ensure that the required infrastructure or mitigation is in place before the development is occupied, or as soon as possible afterwards. In the case of payments towards housing and affordable housing, payment upon implementation enables us to deliver affordable housing in tandem with non-residential development and market housing, maintaining the mixed-use character of the borough and mixed, inclusive and sustainable communities”

Therefore the UU should require payment on Implementation of the development rather than occupation/prior to occupation of the same in order for it to be acceptable.

- The Basement Approval In Principle clause, similar to the above, is drafted to require the Owner to pay the Council prior to Occupation. Again, this is not acceptable as the Councils general position is the financial contributions must be paid by the owner and received in full prior to or on Implementation.
- There is no mechanism to require the Owner to inform the Council when the Development is ready for occupation. The Council needs this for enforcement purposes.
- The UU has removed clause 5.4-5.8 and 5.10 of the Council's standard wording these are important administrative points as it explains the process of submission of documents and how to go about it as well as how to pay any contributions to the Council.

- There is no indemnifying clause to the Council in respect of any breach.
- There is no mechanism for interest to be accrued as is standard on any late payments.
- There is no mechanism for service of documents.

5. COMMUNITY INFRASTRUCTURE REGULATIONS 2010

- 5.1. Regulation 122 of the Community Infrastructure Levy Regulations 2010 (the “CIL Regulations”) creates statutory tests to determine whether a planning obligation is capable of being a reason for granting planning permission. Obligations must be:
- necessary to make the development acceptable in planning terms;
 - directly related to the development; and
 - fairly and reasonably related in scale and kind to the development.
- 5.2. Current government guidance on the application of Section 106 is contained within the Planning Practice Guidance (NPPG) on Planning Obligations and the Use of Planning Conditions.
- 5.3. In this case, it is necessary to secure car-free housing to ensure the development promotes healthy and sustainable transport choices, and an affordable housing payment to maximise the contribution of the site to the supply of affordable housing in the borough in accordance with policies T1, T2 and H4 of the Camden Local Plan 2017.

6. CONCLUSION

- 6.1. To conclude. The proposal provides a poor-quality layout and outlook for future occupants.
- 6.2. Based on the above the Council respectfully request the Inspector to dismiss this appeal.

7. CONDITIONS

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

8 S106 LEGAL AGREEMENT

8.1 Similarly to the above, if the inspector were mindful to allow the appeal, it is requested that the appended Section 106 Agreement (rather than the submitted UU) is used to secure the following head of terms:

- Affordable housing payment
- Construction Management Plan (CMP) and associated contributions to support the implementation of the CMP
- Construction Management Plan (CMP) and associated contributions to support the implementation of the CMP
- Approval in Principle
- Highways Contribution
- Car-free

8.2 In the event the Appellant does not agree to enter into the s106 Agreement the Council submits that the UU is not sufficient to overcome the reasons for refusal for the reasons set out above.

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

Yours faithfully,

Josh Lawlor

Senior Planner
Supporting Communities Directorate

Appendix A

Recommended conditions:

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

0390(10)099 (Rev A); 0390(15)300; 0390(15)301; 0390(15)302; 0390(15)303; PL-02; PL-03; PL-04; PL-05; PL-06; PL-07; PL-08; PL-09 (all dated Feb 2021); Design and Access statement (dated Feb 2021); Planning statement (dated July 2020); Energy and sustainability statement (dated 19/06/2020); Daylight and Sunlight Study (Within Development) prepared by Right Of Light Consulting (dated 9 June 2020); Basement Impact Assessment prepared by Ridge and Partners LLP (dated June 2020); SuDS Drainage Assessment with outline FRA prepared by Create Consulting Engineers (dated June 2020); BIA Audit Responses prepared by Ridge and Partners LLP (dated 15 October 2020) including Flood Risk Assessment prepared by Create Consulting Engineers Ltd (dated June 2020)

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

2. The development hereby permitted must be begun not later than the end of three years from the date of this permission.

Reason: In order to comply with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).

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

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

- 4 The works hereby approved are only those specifically indicated on the drawing(s) referred to above.

Detailed drawings, or samples of materials as appropriate, in respect of the following, shall be submitted to and approved in writing by the Council before the relevant part of the work is begun:

Plan, elevation and section drawings, including jambs, head and cill, of all external windows and doors at a scale of 1:10.

Samples and manufacturer's details at a scale of 1:10, of new facing materials including windows and door frames, cast masonry lintels, copings and string courses, timber panelling, opaque glazed screening, timber privacy louvres, glazing and brickwork with a full scale sample panel of all elements of no less than 1m by 1m including a junction with window opening demonstrating the proposed colour, texture, face-bond and pointing.

A sample panel of all facing materials should be erected on-site and approved by the Council before the relevant parts of the work are commenced and the development shall be carried out in accordance with the approval given.

The relevant part of the works shall then be carried in accordance with the approved details

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policy D1 London Borough of Camden Local Plan 2017.

- 5 No lights, meter boxes, flues, vents or pipes, and no telecommunications equipment, alarm boxes, television aerials, satellite dishes or rooftop 'mansafe' rails shall be fixed or installed on the external face of the buildings, without the prior approval in writing of the local planning authority.

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policy D1 London Borough of Camden Local Plan 2017.

- 6 The development hereby approved shall be constructed in accordance with the approved energy statement [Energy and sustainability statement (dated 19/06/2020)] to achieve a 40.37% reduction in carbon dioxide emissions beyond Part L 2013 Building Regulations in line with the energy hierarchy, and a 20% in carbon dioxide emissions through renewable technologies.

Reason: To ensure the development contributes to minimising the effects of, and can adapt to a changing climate in accordance with policies CC2 (Tackling climate change through promoting higher environmental standards) and CC2 (Promoting sustainable design and construction).

- 7 The development hereby approved shall incorporate sustainable design principles and climate change adaptation measures into the design and construction of the development in accordance with the approved sustainability statement (Energy and sustainability statement (dated 19/06/2020 and SuDS Drainage Assessment with outline FRA prepared by Create Consulting Engineers (dated June 2020)).

Reason: To ensure the development contributes to minimising the effects of, and can adapt to a changing climate in accordance with policies CS13 (Tackling climate change through promoting higher environmental standards) and DP22 (Promoting sustainable design and construction).

- 8 Prior to implementation of the relevant part of the scheme, detailed plans showing the location and extent of photovoltaic cells to be installed on the building shall have been submitted to and approved by the Local Planning Authority in writing. The measures shall include the installation of a meter to monitor the energy output from the approved renewable energy systems. The cells shall be installed in full accordance with the details approved by the Local Planning Authority and permanently retained and maintained thereafter.

Reason: To ensure the development provides adequate on-site renewable energy facilities in accordance with the requirements of policy CC1 Climate change mitigation of the Camden Local Plan 2017.

- 9 Prior to commencement of development full details of a biodiverse, substrate- based extensive living roof shall be submitted to and approved in writing by the local planning authority. The details shall include the following: A. detailed maintenance plan, B. details of its construction and the materials used, C. a section at a scale of 1:20 showing substrate depth averaging 130mm with added peaks and troughs to provide variations between 80mm and 150mm and D. full planting details including species showing planting of at least 16 plugs per m2. The development shall not be carried out otherwise than in accordance with the details thus approved and shall be fully implemented before the premises are first occupied. Guidance on living roofs is available in the Camden Biodiversity Action Plan: Advice Note on Living Roofs and Walls.

Reason: In order to ensure the development undertakes reasonable measures to take account of biodiversity and the water environment in accordance with policies CC1 Climate change mitigation CC2 Adapting to climate change CC3 Water and flooding.

- 10 The covered and secure storage area for 14 cycles as shown in the approved drawings shall be provided in its entirety prior to the first occupation of any of the new units, and permanently retained thereafter.

Reason: To ensure the development provides adequate cycle parking facilities in accordance with the requirements of policy T1 of the Camden Local Plan 2017.

- 11 The obscure glass and privacy screens shown on the drawings has shall be installed and permanently retained as such.

Reason: In order to prevent unreasonable overlooking of neighbouring premises in accordance with the requirements of policy A1 Managing the impact of development of the Camden Local Plan 2017.

