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REBUTTAL STATEMENT OF CASE ON BEHALF OF AG HOMES

**GARAGES TO THE SOUTH OF
27A WEST END LANE
WEST HAMPSTEAD
NW6 4QJ**

LPA REF: 2020/2782/P

PINS REF: APP/X5210/W/21/3282550

Site: Garages to the South of 27A West End Lane, West Hampstead – Rebuttal Statement

Client: AG Homes

Date: January 2022

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APPENDICES

Appendix 1	Copy of the Fortune Green and West Hampstead Neighbourhood Plan 2015
Appendix 2	Relevant email Correspondence in Respect to the Section 106 Agreement/S106 Agreement

SECTION 1: INTRODUCTION

- 1.1 This Rebuttal Statement of Case has been prepared on behalf of AG Homes (*"the Appellant"*) and is submitted in support of an Appeal against the refusal of planning permission by the London Borough of Camden (*"the Council"*) by decision dated 2 June 2021 in respect of an application referenced 2020/2782/P seeking the demolition of existing garages and redevelopment for residential use with associated amenity space, new landscaping, cycle store, bin store and other associated works at garages to the south of 27A West End Lane, West Hampstead, NW6 4QJ (*"the Appeal Site"*).
- 1.2 The submission of this Rebuttal Statement of Case supports the Appellant's earlier Statement of Case, dated October 2021 and follows receipt of the Statement of Case by the Council and a single third-party representation (who previously made no comment on the appealed application).
- 1.3 A draft S106 agreement (discussed below) is also appended.
- 1.4 In accordance with Planning Inspectorate (PINS) guidance this Rebuttal Statement does not seek to introduce any new material or put forward any arguments which have not been included within the Appellant's earlier Statement. This Rebuttal Statement considers and sets out the Appellant's response to the appeal case put forward by the Council and the third party.

SECTION 2: RESPONSE TO THE COUNCIL'S CASE

- 2.1 This Section of the Appellant's Rebuttal Statement sets out a response to the Council's Statement of Case. To assist, the same sub-headings are utilised as used within the Council's Statement.

Introduction

- 2.2 The Appellant has no comment on this Section other than to acknowledge the Council's assessment that this Appeal is focused on reason for refusal 1.

Summary of Case

- 2.3 The reference to two previous historical applications at the appeal site that were withdrawn is not relevant. These are not related to the current appealed application or were submitted by the Appellant. Neither were they considered against the current National Planning Policy Framework or against the current adopted Development Plan. Furthermore, the matters of concern referenced in the Council's Statement in respect of these previous applications do not relate to the reasons for refusal of the current appealed application.

Planning Refusal Notice

- 2.4 The Appellant has no comment to make on this Section.

Status of the Development Plan

- 2.5 The Council states that the Development Plan "*applying to the application sites*" [SIC] comprises the London Plan 2016, the Camden Local Plan 2017 and the Fortune Green and West Hampstead Neighbourhood Plan 2015. This is incorrect.
- 2.6 The London Plan is dated March 2021 and the Appeal Site does not lie within the Fortune Green and West Hampstead Neighbourhood Plan area. Attached at **Appendix 1** is a copy of the Fortune Green and West Hampstead Neighbourhood Plan 2015 which contains (page 9), a map of the Neighbourhood Plan area. The Appeal Site lies off the map to the south. The

Fortune Green and West Hampstead Neighbourhood Plan, is not information which should have been included within the Appellant's earlier Appeal Statement – indeed it is irrelevant to the Appeal. It is only attached in its entirety to demonstrate that the Council's assertion that the statutory Development Plan includes the Fortune Green and West Hampstead Neighbourhood Plan 2015 is wrong.

- 2.7 The Planning Policy Section of the Council's Statement of Case is confusing with the policies of the Camden Local Plan 2017 being repeated twice albeit with a different list of policies on each occasion. The reference that Policy H1 (Maximising the Housing Supply) is relevant is welcomed.
- 2.8 The Council's comments regarding the accordance of its design policies with the NPPF 2021 are noted. However, it is not the Appellant's position that the Appeal proposal is contrary to the Council's design policies.

Comments on Appellant's Grounds of Appeal

- 2.9 The Appellant welcomes the Council's acknowledgement that reasons for refusal 2, 3, 4, 5 and 6 can be overcome by the Appellant entering into a Section 106 Agreement with the Council. The Appellant has agreed with the Council to enter into such a Section 106 Agreement and a draft S106 Agreement is appended to this Statement. Full details of the draft Section 106 agreement are set out at Paragraph 2.34 below.

Reasons for Refusal

Reason for Refusal No. 1 (Design)

- 2.10 The Council's comments in respect to the quality of the flats/guidelines which forms the principal issue between the parties at the Appeal is set out at paragraphs 3.1 to 3.7. The Council's submitted Statement of Case does not provide any meaningful rebuttal to the Appellant's Appeal Statement in respect of this point confirming instead that *"The Council does not wish to add to its detailed assessment of each flat"*.
- 2.11 At paragraph 3.3 the Council acknowledges that the Appeal scheme meets the relevant space guidelines. It is then stated that Officers are of a view that the flats are unacceptably cramped

and the bedrooms at basement level would have an unacceptable outlook, however there is no further evidence to address or rebut the evidence which is contained within the Appellant's previous Appeal Statement at Section 6. Effectively, the Council's response within its Statement is to simply say that it disagrees with the Appellant's case without providing any further justification to support its refusal.

- 2.12 At paragraph 3.4 of the Council's Statement of Case in respect to the issue of outlook, the suggestion that the rooms have a "cell-like" outlook is disingenuous. The suggestion that *"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"* is misleading as it ignores (or suggests the author is simply unaware) that all of the flats and rooms meet relevant internal daylight standards and that the flats in question are oversized and have a duplex arrangement.
- 2.13 In respect to paragraph 3.5, the Council has misunderstood the purpose of the inclusion of the comments from Savills which highlights that the flats are considered to be of good quality and extremely marketable. The Council's comments about the likelihood of accommodating fewer occupiers is not considered to be of relevance.

Policies Regarding Residential Standards

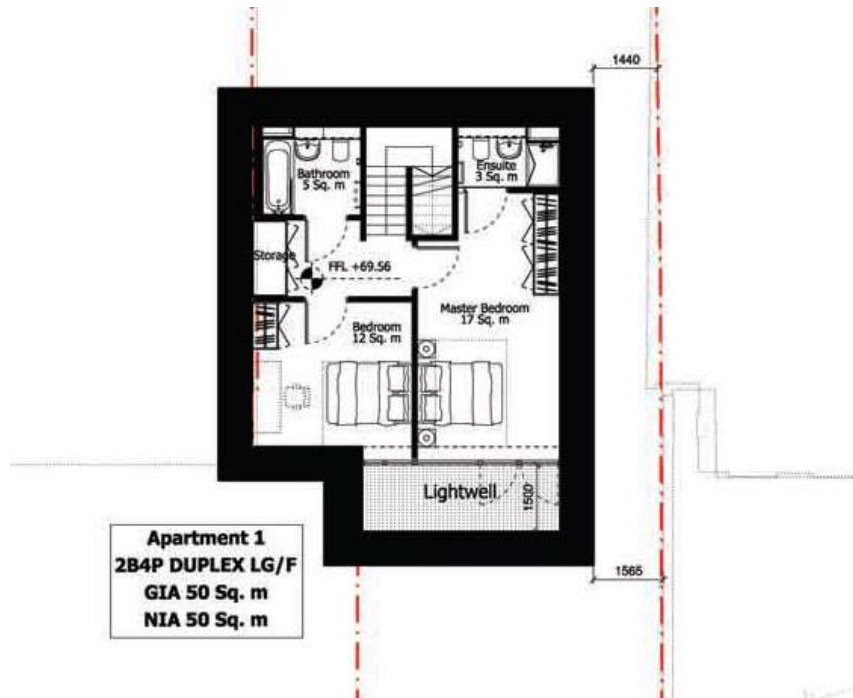
- 2.14 The Council has reiterated extracts from relevant planning policy guidance, but does not detail how the Appeal proposal is contrary to the policy extracts referenced. At paragraph 3.12 it is simply stated that the accommodation proposed is unacceptable and is contrary to the stated policies with no explanation. It is the Appellant's assertion that the Appeal proposal is wholly in compliance with all of the design documents referenced by the Council. The lack of any evidence to the contrary from the Council within its Statement of Case is considered by the Appellant to be reflective of this fact.

The Appellant's Cited Precedents

- 2.15 As the Appellant has noted (paragraph 6.35 of the Appellant's previous Statement) that any application (and any Appeal) is determined on its individual merits. However, consistency in decision making is a key tenet of the planning system, and if there are examples elsewhere within the Borough where residential applications have been allowed in similar circumstances,

this points to the acceptability of the Appeal scheme (particularly where such applications were determined at Committee - as was the case in respect to Gondar House and 26 Netherhall Gardens or on Appeal, as in the case of 142-150 Arlington Road.

- 2.16 The proposal at Gondar Gardens, which was presented to Planning Committee on 9 September 2021, features sunken rear gardens. The Council in rebuttal states that the basement outdoor area of this scheme has a depth of 2.5m and a different shape, which was noted as being able to provide a table and chairs at its widest point. A table and chairs can be provided in the lightwells of the Appeal Site. This is illustrated within the Appellant's submitted Design and Access Statement where images of tables and chairs at basement level and ground floor level are shown by way of CGIs at Section 2.7 (pages 11-13 inclusive) of the document.
- 2.17 At paragraph 6.38 of the Appellant's previous Statement it is highlighted that the amenity space of Flat 1 of the Gondar Gardens Statement is only 12.5 sqm (although much of this is landscaped and not actually usable), which was considered by both Officers and Planning Officers to be acceptable with the officer's report highlighting that Camden planning guidance is not prescriptive in respect of private amenity space. The depth of the sunken courtyard was the same as the current Appealed scheme.
- 2.18 In respect to 26 Netherhall Gardens (determined at Committee on 28 January 2021) which includes a duplex unit 1 with bedrooms at lower ground floor looking into a lightwell of only 1.5m width from the bedroom windows (circa 1m less than the scheme subject to this appeal). The Council, within its Statement of Case, (at paragraph 3.16) make comments relating to Unit 2 which is not the unit the Appellant is referring to. The plans previously submitted included the lower basement which relates to Unit 1 (an extract from the plan previously submitted with the Appellant's previous Appeal Statement is attached below). This shows a duplex unit with bedrooms at lower ground floor looking into a narrower lightwell (when compared to the scheme the subject of this appeal). This scheme was supported by officers and granted. The Council has therefore provided no response to this point made by the Appellant in its Statement of Case.



- 2.19 The Council's response in respect to Maryon House also supports the Appeal proposal. As set out in paragraph 6.40 of the Appellant's main Appeal Statement, Flat 3 in the basement of Maryon House benefitted from two small lightwell courtyards, both of which were a maximum of 2.5m deep (ie the distance from the windows - the same as the current Appealed proposal) but substantially smaller in area than that proposed in the current Appealed scheme. Furthermore, as a basement dwelling, the scheme at Maryon House was single level only and not a duplex. The Council states at paragraph 3.18 that, the larger lightwells (which is factually incorrect) combined with the acceptable level of daylight that the units will receive results in the units having an acceptable level of outlook. As such, the Council has attached weight to the units having an appropriate level of internal light as being a factor which weighs positively in respect to the issue of outlook. On the basis that the lower ground floor rooms of the current Appealed scheme (which are all associated with duplexes) have acceptable levels of light at lower ground floor level, this therefore weighs in favour of the Appeal being allowed and the Council's concerns in this respect being dismissed. The Council's comments about Units 1 and 2 of the Maryon House scheme are irrelevant. The Appellant's comments at 6.40 of its previous Appeal Statement relate to Flat 3 of the Maryon House development.

- 2.20 It is not considered that the Council's comments in respect of either 140-150 Arlington Road or 14-19 Tottenham Mews and 14 Chalcott Square satisfactorily addresses the Appellant's comments in this regard.

Conclusions

- 2.21 The Council's conclusions at paragraphs 3.21 and 3.22 state that each case needs to be considered on its own merits. This is correct however consideration of the Appealed scheme against the specific examples referenced above demonstrates that the Council's decision making in respect to the Appealed scheme is at odds with other (including from 2021) applications that have been allowed elsewhere including at Committee. Whilst it is the case that each application is determined on its own merits, it is also the case that an Applicant/Appellant should expect consistency in decision making especially where a particular arrangement has been granted elsewhere against the same Development Plan etc.
- 2.22 Again, in respect of paragraph 3.22 of the Council's Statement of Case it is not the case that the proposal has a "*cramped layout*" for the reasons demonstrated, including complete compliance with the National Space Standards.

Section 106 Reasons for Refusal

- 2.23 Paragraphs 3.23-3.53 relate to the absence of a Section 106 agreement relating to the matters covered in reasons for refusal 2-6. For the reason below the Appellant does not consider it necessary to comment on this Section.

Unilateral Undertaking/Section 106

- 2.24 Following receipt of the Council's Appeal Statement, the Appellant has entered into a Section 106 Agreement with the Council using its preferred Section 106 agreement format. This Section 106 agreement is, at the time of writing, close to engrossment and will allow reasons for refusal 2, 3, 4, 5 and 6 to be removed. Attached at **Appendix 2** is email correspondence between Elizabeth Christie of Town Legal (the Appellant's solicitor) and Janeeta Odedra, solicitor for the London Borough of Camden, which confirms the latest position as at 5 January 2022 in respect to the Section 106 agreement. The email trail confirms that all matters are

agreed in regard to the Section 106. The matter which is delaying the signature is that there is a Highways contribution figure which has yet to be confirmed by the Council. The solicitor and relevant Planning Officers are chasing the Council's Highways Team for this, but the Council's solicitor is not yet in receipt of the figure. It is envisaged, therefore, that subject to receipt of the Highways contribution figure that neither party expect to be contentious from the Council that the Section 106 can be finalised and signed within the next ten working days from 5 January 2022. In the meantime an interim version of the S106 is attached at **Appendix 2**. The email correspondence attached at **Appendix 2** confirms the Council's agreement to submission of this interim draft.

- 2.25 As such, the Appellant does not propose to make further comments on these matters at this juncture as it has been agreed with the Council that these reasons for refusal will be resolved pending the completion of the Section 106 agreement.

Community Infrastructure Regulations 2010

- 2.26 The Appellant has no comment on paragraphs 5.1-5.3.

Proposed Recommend Conditions

- 2.27 Condition 4 requires detailed drawings of all external windows and doors at a scale of 1:10 as well as samples and manufacturer's details at a scale of 1:10 of all new facing materials as well as a sample panel of all facing materials to be erected on site and approved by the Council. As identified within the Site and Surrounding Area Section, the site is not within a conservation area or adjacent to any listed buildings. As such, this level of design detail seems unnecessary to the Appellant. However, should the Inspector consider it appropriate to attach such a condition to the decision letter, the Appellant has no objection.
- 2.28 The Appellant's comments in respect to Condition 5 reflect those in respect to Condition 4 above.
- 2.29 The Appellant has no other comments in respect to the proposed Conditions.

SECTION 3: THE APPELLANT'S RESPONSE TO THIRD PARTY COMMENTS

- 3.1 This Section of the Appellant's Rebuttal Statement sets out the response to the singular third-party comment received from Mr James Coogan of Flat 27, Sycamore Court. Mr Coogan did not object to the Application.
- 3.2 The objector raises a number of comments; firstly in respect to the issue of fire safety the objection states that the exit door opens inwards when it should be outwards. This is a Building Regulations matter which is the subject of Building Control rather than Planning. However, clearly the exit door can open outwards as suggested by the objector without opening onto the pavement. This is a simple matter which can be addressed by a single condition requiring details of the front door to be approved and could be covered under the Council's proposed Condition 4 (and it is assumed if correct would be addressed through Building Control in any event). The cycle storage referenced does not obstruct the exit from the building.
- 3.3 The internal layout of the flats in respect to fire safety has been considered from the outset. It is considered that the layout of the flats represents a good design. The matters raised by the third party in respect to the layout (which the third party does not suggest are contrary to any Building Control regulation) are issues of fire safety which are covered under Building Control legislation. The proposed layout of the flats will comply with all relevant fire safety and Building Control legislation. It is noted that this is not an issue which has been raised by the Council at all as part of its evidence or is a comment which has been received by any other consultee including the statutory consultees. Notwithstanding this, if there is any concern by the Inspector in respect to this issue, the Appellant would accept a condition to be attached to the decision letter requiring details of the scheme's accordance with fire safety regulations to be submitted and approved.
- 3.4 In respect to the issue of parking, this is dealt with through the Section 106 agreement. The scheme will be a "*car-free*" scheme.
- 3.5 The Appellant is unaware of any issue of subsidence at the site. The Appealed scheme is supported by a Basement Impact Assessment which has been reviewed and approved by the Council's own Basement Impact Consultant and found to be acceptable.

3.6 Finally, it is acknowledged by the objector that *“in conclusion, I am not opposed to the safe and reasonable redevelopment of this site”*. This is welcomed by the Appellant.

SECTION 4: OTHER BENEFITS OF THE APPEALED SCHEME

- 4.1 Notably, the Council has made no comment about the other benefits which accrue from the Appealed scheme which were set out at Section 8 of the Appellant's previous statement. In particular, the Council makes no reference to the principle of the development and the "*tilted balance*" in respect to the Council's lack of five year housing supply. The Council has, in this respect and in the context of housing need, simply ignored these important material considerations. This is assumed to be because the Council has no response it can make to what are key material considerations which weigh in favour of this Appeal being allowed.

SECTION 5: SUMMARY AND PLANNING BALANCE

- 5.1 It is agreed between the Council and the Appellant that reasons for refusal 2, 3, 4, 5 and 6 can be removed via the signing of an appropriate Section 106 agreement. Notwithstanding the Appellant remains of the view that a Unilateral Undertaking would be appropriate here, the Appellant has agreed to enter into a Section 106 with the Council in order to minimise the issues between the parties. On this basis, it is only the first reason for refusal which is the difference between the Council and the Appellant. As set out in **Appendix 2**, the relevant Section 106 agreement has been agreed in principle and will be signed and issued to the Planning Inspectorate very shortly following the submission of this Rebuttal Statement. It is anticipated that this will occur within the next ten working days (from 5 January 2022).
- 5.2 Having reviewed the Council's Statement of Case it is the Appellant's view that the following points are either agreed between the Council and the Appellant or are not contested by the Council (as no response or objection has been raised by the Council in its Statement of Case).
- The Appeal Site is an appropriate location for intensified residential development. National planning policy and adopted Development Plan policies presume in favour of additional residential development at locations such as the Appeal site.
 - There is a significant need for new housing in London. This is an important material consideration, which weighs in favour of the Appeal being allowed.
 - Planning policies and decisions should promote an effective use of land in meeting the need for, inter alia, new homes. Equally, Paragraph 120 of the NPPF (2021) confirms that planning policies and decisions should promote and support the development of underutilised land and buildings, especially if this would help meet an identified need for housing where land supply is constrained.
 - The Council cannot demonstrate a five year housing land supply as such the '*tilted balance*' is engaged. Accordingly, there is a presumption in favour of this appeal being allowed.

- On this basis, it is considered that the appeal proposal does not conflict with either Policy D1 (Design) or Policy H6 (Housing Choice) of the London Borough of Camden Local Plan 2017. A high quality design is proposed with good quality living conditions and living arrangements.
- It has also been demonstrated that the proposals comply with the adopted Development Plan.
- It has been demonstrated that the Council's concerns with the application in respect to Reason for Refusal 1 are entirely subjective. The Appeal proposal meets all relevant design standards and represents good quality residential accommodation, bringing a derelict and underutilised site back into beneficial use.

5.3 On the above basis, it is considered that when weighing up all relevant planning issues and material considerations, that in the "*planning balance*" the appropriate benefits and acceptability of the scheme weigh in favour of a grant of planning permission and this Appeal being allowed.

5.4 It is therefore respectfully requested that the Appeal is allowed, and planning permission is granted accordingly.