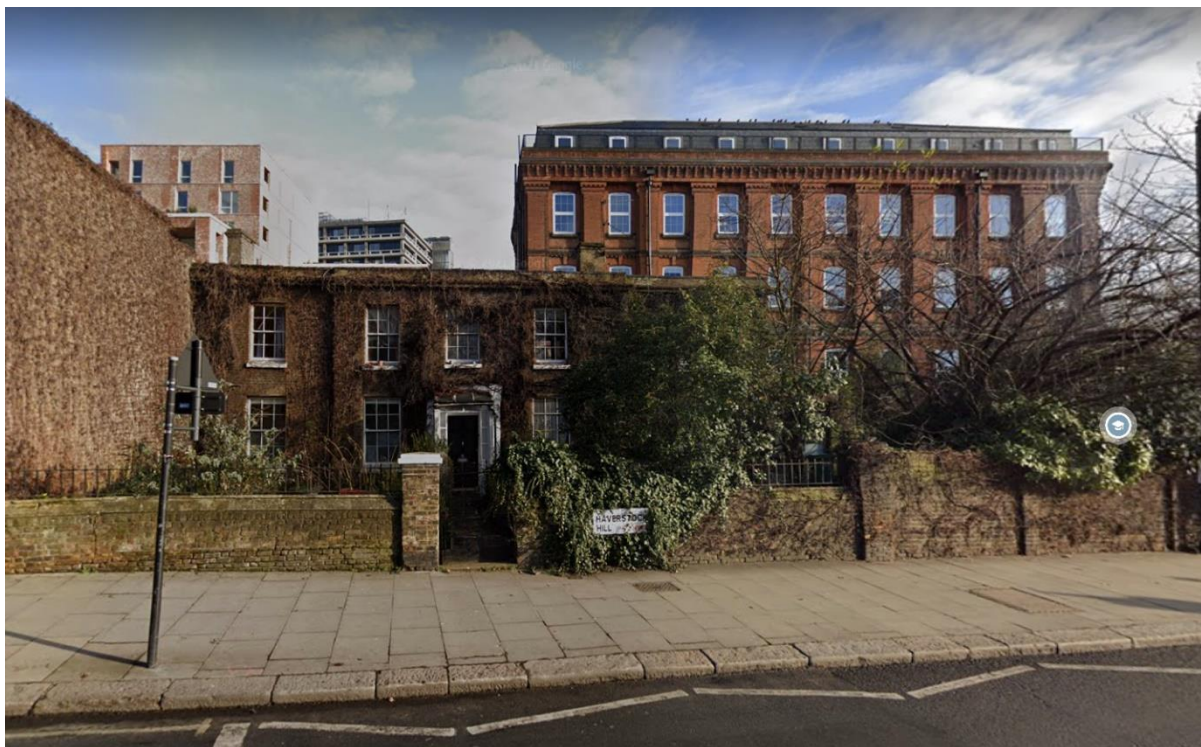


PLANNING STATEMENT IN SUPPORT OF PLANNING APPLICATION 2021/2737/P

238 Haverstock Hill, Camden



1.0 Introduction

This statement is made in support of planning application 2021/2737/P which relates to the conversion of 238 Haverstock Hill to 5 self-contained flats.

The Local Planning Authority (officer Mr J Lawlor) made the following comments on the application by email on 26 November 2021

- *The lawful use of a property would be demonstrated by an implemented planning permission, by evidence that a use has been established for a continuous period of 4 years in the case of Class C3 dwellings, or 10 years in the case of other uses.*
- *Council Tax records can be helpful as an indication of the use at a particular time, but do not demonstrate the lawful use.*

- *On the basis of our understanding of the planning history, we consider that the property at 238 Haverstock Hill was ancillary to the hybrid school and convent in 1948, when planning controls came into effect.*
- *The submitted planning application form ref 2021/2737/P describes the existing use of the property as follows: "HMO, The site has seen little use over the last 10 years and has fallen into disrepair. Parts of the building have been rented as room lets but the condition of the building prevents further occupation of this building. The building currently has 12 no HMO bedrooms rooms".*
- *The design statement dated 28-10-21 shows the property of 238 Haverstock Hill as within the red line boundary including the school.*
- *The design statement dated 28-10-21 states: "238 Haverstock Hill remained in use as the main residence of the order [the Sisters of Providence of the Immaculate Conception] until 2015. 238 Haverstock Hill was sold to the Diocese of Westminster in 2020."*
- *We have not been able to identify anything in the planning history which establishes the property as an independent residential unit or units.*
- *On that basis, a proposal to establish this as an independent residential use would attract a requirement for a payment in lieu of affordable housing under Policy H4 of the Camden Local Plan 2017.*
- *We estimate the payment in lieu required in this case to be £145,000.*
- *The full payment may not be required prior to implementation where evidence is submitted to show that the development could not viably proceed with the requirement in place.*
- *In relation to the creation of a number of separate residential units at the property, we would apply Policy H7 of the Camden Local Plan relating to the mix of small and large units.*
- *This seeks a mix of large and small units in all developments, where large units are those with 3-bedrooms or more.*
- *Paragraph 3.196 supporting Policy H7 indicates " Where a development is for the conversion of existing homes (including the creation of self-contained homes from residential accommodation that is ancillary to another use), the Council will seek to minimise the loss of market homes with 3 bedrooms, particularly where the 3-bedroom homes have access to outside space."*
- *As it stands, the proposal for 5 x 1-bedroom flats would be contrary to Policy H7.*
- *Paragraph 3.184 supporting Policy H7 indicates "Other policies in this section provide more specific provisions relating to particular types of housing as follows... housing designated for occupation by older people, homeless people or vulnerable people – see Policy H8".*
- *If you were able to agree to a restriction limiting occupation to older people (usually defined as those aged 65 or over, but we are prepared to consider adopting a restriction to those aged 55 or over), it would no longer be necessary to apply the Policy H7 requirement for the inclusion of large homes.*

- *If you disagree with our view that the property does not have lawful use as an independent residential unit or units, please provide evidence in the form indicated in the first bullet point above.*
- *We also have fundamental concerns that the basement space would not comply with Policy A1 in relation to the amenity of occupiers in terms of outlook, light and access requirements given the proposed users*
- *Either you agree to the payment and age restriction, or withdraw it pending submission of evidence of independent residential use and/ or evidence that the proposed payment would not be viable – otherwise we will refuse the application.*

These comments can be summarised as four key planning issues:

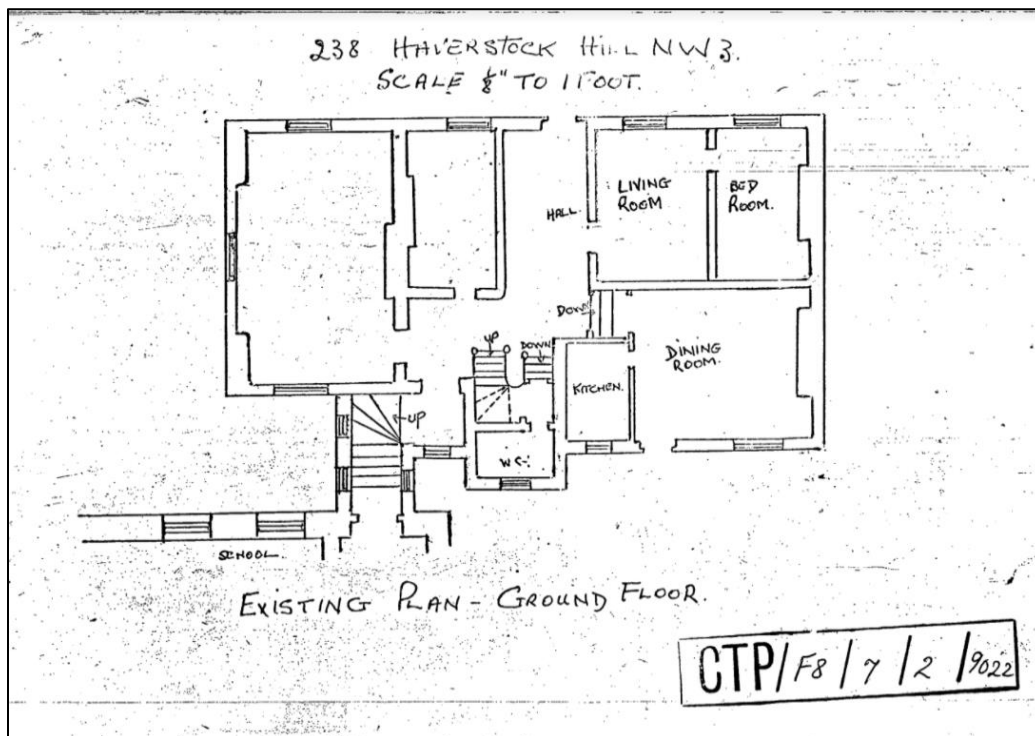
- The planning history of the site
- Affordable housing provision
- Housing mix
- Amenity standards

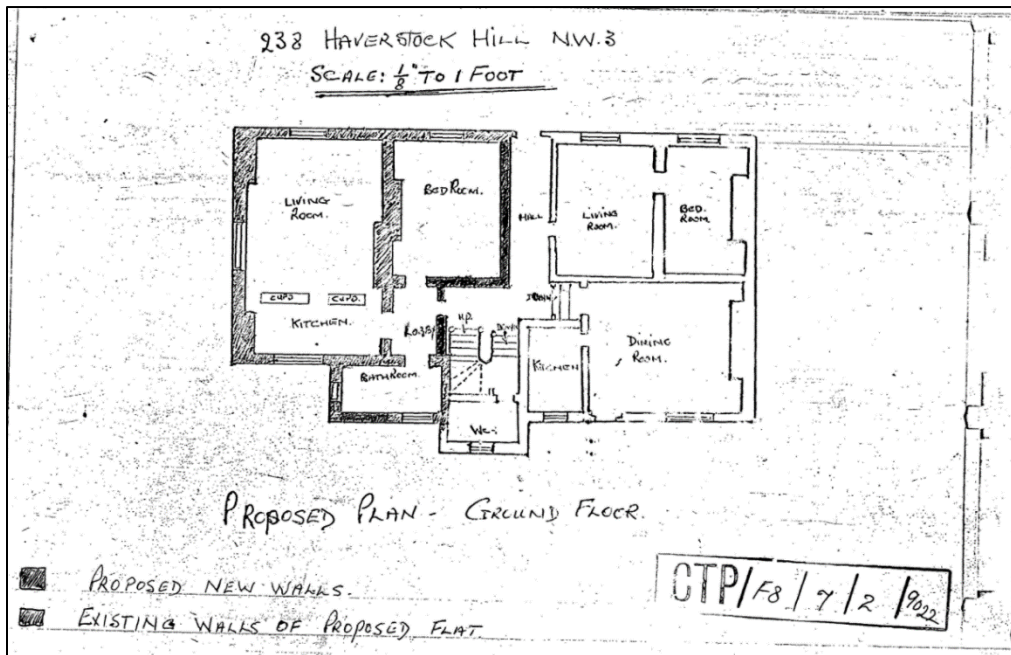
2.0 Planning History

There is no question that the building concerned has been in some form of continuous residential use for many years and that its use predates the contemporary planning system. It is not unusual for older properties to have no specific planning consent and in such circumstances the only way that this can be legally determined is through the grant of a Lawful Development Certificate. However, what can reasonably be determined in this case is that:

- The property provided residential accommodation to the school and convent in 1948
- Planning permission was granted on 19/08/1970 for the conversion of part of the ground floor to a self-contained flat under application number 9022
- Parts of the building have in more recent years been used for independent HMO purposes
- The building is in a poor and deteriorating state of repair
- The property was available for residential use by the order of the Sisters of Providence of the Immaculate Conception until 2015.

Application 9022, the grant of planning consent for conversion of part of the ground floor to a self-contained flat, clearly demonstrates that at that time one self-contained flat existed on the ground floor and that through the grant of consent a further self-contained flat was created. No planning condition was imposed restricting the occupation of the accommodation to being ancillary to the school or convent. The approved plans are shown below:





Council tax records have been requested from the Council to provide further evidence of residential occupation and these are awaited.

The starting point for consideration of the current application should be that the building has been continuously in a 'C' Class use since prior to the start of the contemporary planning system and that this is a significant material planning consideration. Whilst it may have been ancillary accommodation, at no time has it been used for a non-residential purposes, and there are no planning conditions in place that restrict its occupation.

3.0 Affordable Housing Provision

As set out in this Statement, the property is arranged over three floors including a basement and it has historically been used for a variety of residential purposes.

The property is currently vacant and in a deteriorating state of repair. The proposal seeks to convert the building into 5 self-contained residential units, with its planning history demonstrating that two self-contained flats existed in 1970. The proposal therefore represents a net increase of three over what existed at that time. The proposal will not result in any new floorspace being created. The development if granted will secure an economically viable scheme to protect the long-term condition of the property.

The Vacant Building Credit (VBC) was introduced by the Government through planning practice guidance that was published on 28 November 2014 to tackle the disproportionate burden of developer contributions on small-scale developers, custom and self-builders. The VBC policy was subsequently upheld by the Court Appeal in *R (on the application of West Berkshire District Council and Reading Borough Council) v Secretary of State for Communities and Local Government [2016] EWCA CIV 441*. The policy was not only re-introduced into the PPG but in July 2018 it was also included in the National Planning Policy Framework ('NPPF') reflecting the Government's clear intention to incentivise the development of Brownfield Sites.

The Local Planning Authority does not appear to have any supplementary planning guidance relating to application of the VBC.

Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission to be determined in accordance with the development plan unless material considerations state otherwise. The Court of Appeal in West Berkshire made it clear that neither the development plan (itself, of course, a policy) nor any other policy relevant to the matter in hand is to be applied rigidly or exclusively by the decision-maker. However, LJ Laws and LJ Treacy recognised at paragraph 20 of their judgement that a policy may overtake a development (outdated and superseded by more recent guidance).

The VBC requirement is set out in National Planning Practice Guidance (NPPG). The NPPG refers to National Policy incentivising brownfield development on sites containing vacant buildings. Where a vacant building is brought back into any lawful use, or is demolished to be replaced by a new building, the developer should be offered a financial credit equivalent to the existing gross floorspace of relevant vacant buildings when the local planning authority calculates any affordable housing contribution which will be sought. Affordable housing contributions may be required for any increase in floorspace, although in this case the development is not proposing any increase of existing floorspace.

The existing floorspace of a vacant building should be credited against the floorspace of new development. In this case the development involves the conversion of a vacant building with no overall increase in floorspace. As such, applying VBC and National Planning Policy, a 100% 'credit' should apply resulting in no requirement for affordable housing.

There are further points that are required to be addressed as set out in the NPPG. The first is that VBC does not apply to buildings that have been abandoned. The Property has not been abandoned.

The property is currently vacant, however there is no suggestion of any abandonment. The owner is seeking to secure an economically viable development that will secure the long-term protection of the property.

The NPPG provides that it may be appropriate for authorities to consider:

- whether the building was made vacant for the sole purpose of re-development; and
- whether the building is covered by an extant or recently expired planning permission for the same or substantially the same development.

The property has not been made vacant for the purpose of re-development. The property requires extensive refurbishment and it is not proposed to redevelop the site. In relation to the second point, there are no extant or recently expired planning permissions for the same or substantially the same development.

Attached to this statement is Appeal decision APP/T4210/W/19/324597 dated 8 September 2020 (**2020 Appeal**). In the 2020 Appeal, the Inspector reached the view that even though there was a pressing for affordable housing, he still applied VBC. At paragraph 22 of his decision he states as follows:

'Yet, it states in the Framework that any affordable housing contribution should be reduced by a proportionate amount (my emphasis). This seems clear to me that there is an acceptance that the level of affordable housing would be reduced where development involves re-use or redevelopment of vacant buildings on brownfield sites. I accept that paragraph 28 of the PPG provides supporting guidance, which gives the decision maker some limited discretion as to whether VBC applies. The Council has chosen to interpret this through application of the three criteria referred to earlier. It confirmed at the hearing that the appellant would not need to meet all three of those criteria in order for the building to be considered vacant. It is clear that one of those criteria is fulfilled. In relation to the other two, I am firmly of the view, in this instance, given the specific characteristics of the site and the existing planning permission on site, that they do not serve any practical purpose.'

The Inspector then goes on to state that VBC is not a blanket policy and it may not to be applicable to all vacant buildings on brownfield sites. However, this has to be read in context because in the same sentence he refers to being satisfied that the building had not been made vacant solely for the purpose of redevelopment. Clearly, the Inspector was satisfied that because the criteria in National Planning Policy and Guidance were met (and the same applies here for the reasons set out in this statement) VBC should apply. The Inspector in his decision refers to the clear statement of National Policy to be applied by Councils within the wider application of the S.38 (6) balance.

In conclusion at paragraph 25 of his decision, the Inspector states as follows:

'In not providing a policy compliant level of affordable housing the proposal would be contrary to the development plan as a whole. However, in this instance the Framework and PPG, which post-date the development plan and the Council's DCPGN and introduce the concept of VBC are a significant material consideration sufficient to outweigh the conflict with the development plan whether or not policy H4/1 is up to date'

In conclusion:

- There is a clear statement of national planning policy to be applied by councils within the wider application of the Section 38 (6) development plan balance.
- Failing to apply VBC to this development would materially undermine the intention of national planning policy to incentivise development of brownfield sites. In this case the development will secure an economically viable scheme that will protect the long-term condition of the building.
- The property has not been abandoned nor has it been made vacant for the sole intention of re-development and the property is not covered by an extant or recently expired planning permission for the same or substantially the same development.
- There is nothing in the NPPF or PPG which requires applicants to demonstrate that a proposed development would not be viable save for the application of VBC. This was also confirmed by the Inspector in the 2020 Appeal and the 2020 Appeal confirms that VBC is being applied by the Secretary of State regardless of whether there is a pressing need for affordable housing in the locality.

For the reasons set out in this statement VBC should be applied to this development and on this basis no affordable housing should be required in respect of this development. It would not be appropriate for the Local Planning Authority to attempt to restrict occupation to a particular age group as suggested by the planning case officer in these circumstances.

4.0 Housing Mix

The planning case officer has made reference to Policy H7 of the Camden Local Plan adopted in 2017.

This states that:

Policy H7 Large and small homes

The Council will aim to secure a range of homes of different sizes that will contribute to creation of mixed, inclusive and sustainable communities and reduce mismatches between housing needs and existing supply. We will seek to ensure that all housing development, including conversion of existing homes and non-residential properties:

- a. contributes to meeting the priorities set out in the Dwelling Size Priorities Table;
- b. includes a mix of large and small homes.

We will take a flexible approach to assessing the mix of dwelling sizes proposed in each development having regard to:

- c. the different dwelling size priorities for social-affordable rented, intermediate and market homes;
- d. any evidence of local needs that differ from borough wide priorities;
- e. the character of the development, the site and the area, including the impact of the mix on child density;
- f. site size, and any constraints on developing the site for a mix of homes of different sizes;
- g. the economics and financial viability of the development including any particular costs associated with it, having regard to any distinctive viability characteristics of particular sectors such as build-to-let housing; and
- h. the extent to which flexibility around the mix of market homes could secure the delivery of additional affordable housing.

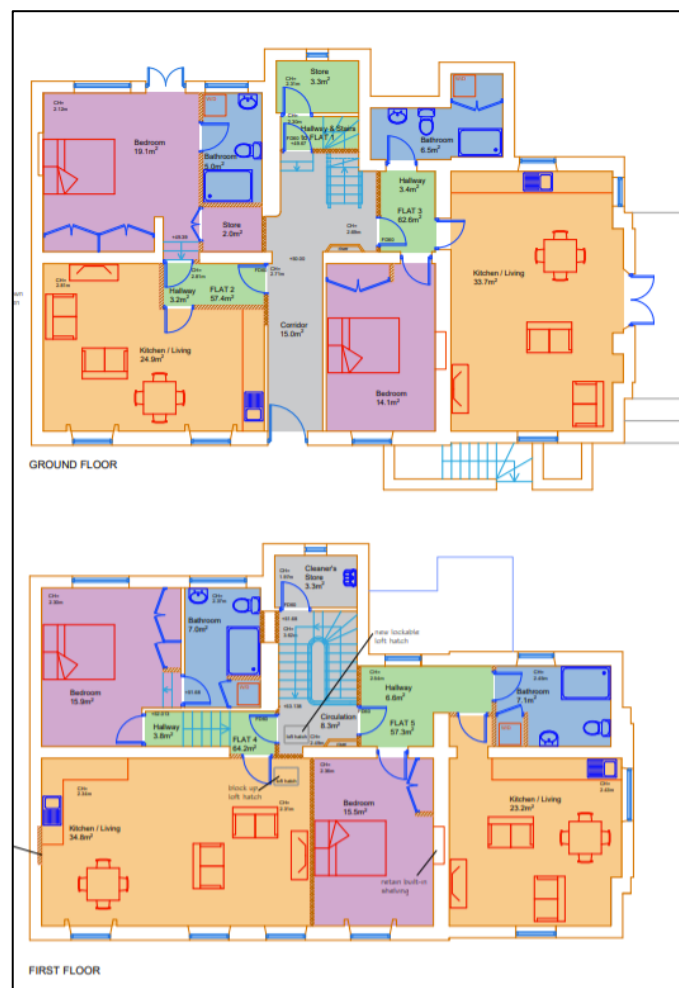
The Policy and its supporting text are clear that the constraints of any particular site and development viability – criteria f and g - will be taken into account in assessing proposals against Policy H7. It is not a blanket policy approach.

Paragraph 3.193 of the Local Plan states that '*The Council will be flexible when assessing development against Policy H7 and the Dwelling Size Priorities Table. The mix of dwelling sizes appropriate in a specific development will be considered taking into account the character of the development, the site and the area.*'

Paragraph 3.194 goes on to state that '*Where a development involves reuse of an existing building, this may limit the potential to provide a range of dwelling sizes. Issues that can arise include the*

creation of access via an existing staircase or lift, respect for the integrity of existing structural walls and patterns of windows, changes in floor level, and significant features in heritage assets (including listed buildings and conservation areas) that may restrict alterations' and paragraph 3.195 that 'flexibility around dwelling sizes may also be required to achieve rational layout and the best possible accessibility arrangements. Adjustments to the mix may be needed to satisfy design and amenity concerns, such as minimising noise disturbance between flatsthe Council is working to return vacant properties to use, and will use flexibility in Policy H7 '.

It is therefore clear from the above that Policy H7 is intended to be implemented flexibly and that the circumstances of a particular case should be taken into account, including the layout of an existing building and the viability of the development proposed. 238 Haverstock Road is an historic building and its layout limits the way in which it can be converted to self-contained Class C3 uses. As illustrated below, it includes a central stair core and corridor which severely restrict the potential to create larger units than those proposed. The proposed layout also successfully achieves vertical stacking of similar rooms where possible to ensure a good standard of amenity for future residents.



The planning case officer refers to the following paragraph of the Local Plan:

'Paragraph 3.196 supporting Policy H7 indicates " Where a development is for the conversion of existing homes (including the creation of self-contained homes from residential accommodation that is ancillary to another use), the Council will seek to minimise the loss of market homes with 3 bedrooms, particularly where the 3-bedroom homes have access to outside space.'

No 3-bedroom homes would be lost in this instance.

The property is in a poor and deteriorating state of physical repair as illustrated in the photographs at Appendix A. It is clear that it requires extensive external as well as internal repair to bring it back into use, as well as the cost of the physical conversion works. The estimated refurbishment and conversion cost is £1.4m.

In conclusion, the proposal is not in conflict with Policy H7. Rather, it will bring a vacant building, historically used for Class C purposes, back into beneficial residential use and accords with the inherent flexibility in Policy H7 which requires that the nature of the existing building and the viability of the scheme are taken into account in decision making.

Amenity standards

The planning case officer has stated that:

- *'We also have fundamental concerns that the basement space would not comply with Policy A1 in relation to the amenity of occupiers in terms of outlook, light and access requirements given the proposed users'*

Policy A1 of the Camden Local Plan is set out below:

Policy A1 Managing the impact of development

The Council will seek to protect the quality of life of occupiers and neighbours. We will grant permission for development unless this causes unacceptable harm to amenity. We will:

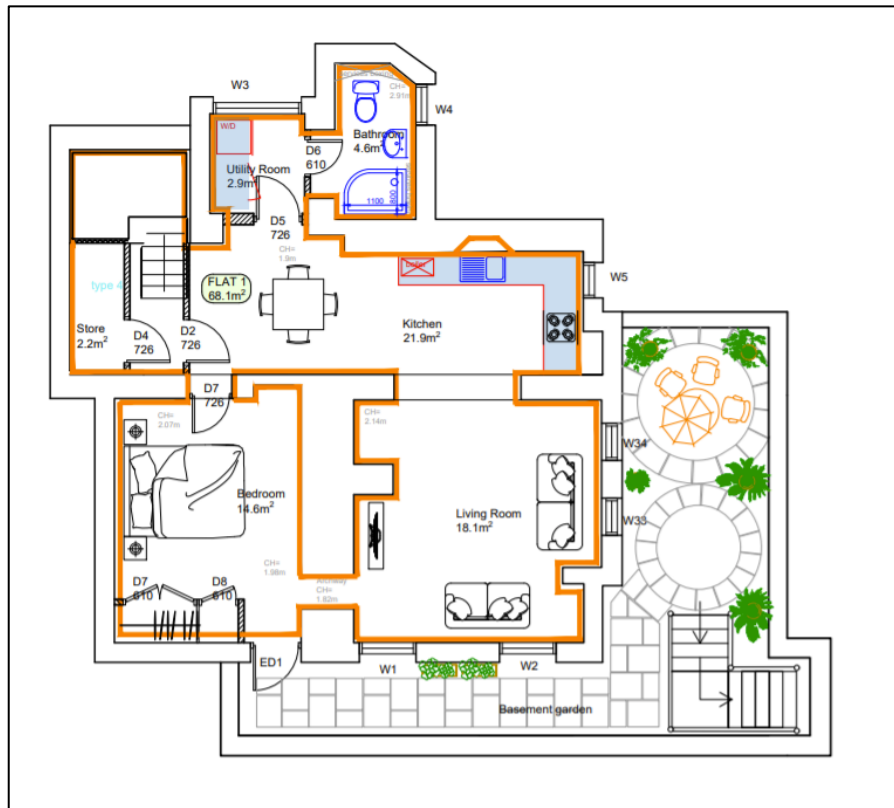
- a. seek to ensure that the amenity of communities, occupiers and neighbours is protected;
- b. seek to ensure development contributes towards strong and successful communities by balancing the needs of development with the needs and characteristics of local areas and communities;
- c. resist development that fails to adequately assess and address transport impacts affecting communities, occupiers, neighbours and the existing transport network; and
- d. require mitigation measures where necessary.

The factors we will consider include:

- e. visual privacy, outlook;
- f. sunlight, daylight and overshadowing;
- g. artificial lighting levels;
- h. transport impacts, including the use of Transport Assessments, Travel Plans and Delivery and Servicing Management Plans;
- i. impacts of the construction phase, including the use of Construction Management Plans;
- j. noise and vibration levels;
- k. odour, fumes and dust;
- l. microclimate;
- m. contaminated land; and
- n. impact upon water and wastewater infrastructure.

The planning case officer's concerns in respect of residential amenity relate only to the basement of the property which has historically been used for a variety of residential class C uses and it can therefore be assumed that the amenity standards of the other proposed apartments are acceptable. Amended

plans have been prepared to address these concerns and these are shown below. The basement apartment now includes 4 living room windows, a window to the bedroom, and a window to the kitchen/diner and utility room. The basement apartment also includes a large external amenity space. Together these amendments ensure a good standard of residential amenity, ensuring compliance with Policy A1.



Conclusion

It has been demonstrated in this report that the scheme, with the amendments included to the proposed basement unit, satisfies Policy H7 and Policy A1 of the Camden Local Plan 2017. Furthermore, the provision of affordable housing should not be required as the proposal clearly benefits from Government's Vacant Building Credit as set out in the NPPF, and as demonstrated through case law.

January 2021

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Appendix A – Photographs of the building







