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Roxanne Gold
The Planning Inspectorate
3C Eagle Wing
Temple Quay House
2 The Square
Bristol
BS1 6PN

Dear Ms Gold,

**Appeal site: 107
King's Cross Road
LONDON
WC1X 9LR**

Appeal by: Mr Husseyyn Guzel

Proposal: Erection of railings to the front elevation, front stairs to the basement, opening of lightwell to the front and inclusion glass glazing to the basement. Change of Use of Office Storage (Class E) to residential basement flat (C3) (Retrospective)

I refer to the above appeal against the Council's refusal to grant planning permission. The Council's case is set out in the Officer's delegated report. The report details the application site and surroundings, the site history and an assessment of the proposal. A copy of the report was sent with the questionnaire.

In addition to the information sent with the questionnaire, I would be pleased if the Inspector could take into account the following information and comments before deciding the appeal.

1. Summary

- 1.1. The application site is a three storey mid terrace property on Kings Cross Road with mansard fourth storey and basement level. The front ground floor unit is in Class E use and currently occupied by a hairdressers. The floors above are in residential use. The basement level, subject of the current application, was previously used as an office ancillary to the ground floor class E use.
- 1.2. The application site is located within the Bloomsbury Conservation Area
- 1.3. The works were carried out before the application was submitted. The subsequent retrospective application was considered unacceptable, in summary, due to the loss of ancillary commercial floor space, inappropriate railings and opening of light well and poor provision of daylight and sunlight for the basement flat. The lack of an agreed s106 in place regarding the issue of the car free development was also a reason for refusal.
- 1.4. The planning application which is the subject of this appeal was refused for the following reasons:
 1. *The loss of the office use, in the absence of sufficient justification demonstrating that the premises is no longer suitable for continued business use fails to support economic activity in Camden and result in the loss of employment opportunities within the Borough contrary to policy E2 (Employment Premises and Sites) of the Camden Local Plan (2017).*
 2. *The railings, lightwell, stairs and alterations to the front elevation glazing, by reason of their design and location, would result in an incongruous and dominant addition to the existing site which would harm the character and appearance of the Bloomsbury Conservation Area, contrary to policy D1 (Design) and D2 (Heritage) of Camden's Local Plan (2017).*
 3. *The residential studio unit, by reason of substandard outlook and daylight/sunlight results in substandard accommodation, harmful to the amenities of future occupiers, contrary to policy D1 (Design) of the Camden Local Plan (2017).*
 4. *The residential studio unit, in the absence of a legal agreement to secure the development as car free, is likely to contribute unacceptably to parking stress and congestion in the surrounding area, contrary to policies T1 (Prioritising walking, cycling and public transport), T2 (Parking and Car Parking), A1 (Managing the impact of development) and DM1 (Delivery and monitoring) of the Camden Local Plan (2017).*

1.5 Reasons for refusal 1, 2 and 3 are fully addressed in the delegated report and are not repeated here. However, reason for refusal 4 is amplified below. The appellants grounds of appeal are also addressed.

2. Status of policies and guidance

2.1. In determining the abovementioned application, the London Borough of Camden had regard to the relevant legislation, government guidance, statutory development plans and the particular circumstances of the case.

2.2. The London Borough of Camden Local Plan 2017 (the Local Plan) was formally adopted on 3rd July 2017. The following policies in the Local Plan are considered to be relevant to the determination of the appeal:

- Policy G1 Delivery and location of growth
- Policy H1 Maximising housing supply
- Policy H6 Housing choice and mix
- Policy H7 Large and small homes
- Policy E1 Economic development
- Policy E2 Employment premises and sites
- Policy A1 Managing the impact of development
- Policy D1 Design
- Policy D2 Heritage
- Policy T1 Prioritising walking, cycling and public transport
- Policy T2 Parking and car-free development

2.3 The Council also refers to supporting guidance in Camden Planning Guidance (CPG) documents. The CPG documents most relevant to the proposal are as follows: Design, Amenity, and Altering and extending your home. The Camden Planning Guidance documents were subject to public consultation and were approved by the Council on 15 March 2019 and 26 March 2018.

- CPG Design (2021)
- CPG Housing (2021)
- CPG Amenity (2021)
- CPG Transport (2021)

- 2.4 The Bloomsbury Conservation Area statement was adopted in April 2011 and defines the special character of the conservation area and sets out the Council's approach for its preservation and enhancement.
- 2.5 The National Planning Policy Framework was published in April 2012 and revised in March 2021. It states that proposed development should be refused if it conflicts with the local plan unless other material considerations indicate otherwise. 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.
- 2.6 The Council's adopted policies are recent and up to date and should be accorded full weight in accordance with paragraphs 31 – 33 and 213 of the NPPF.
- 2.7 There are no material differences between the NPPF and the Council's adopted policies in relation to this appeal.

3. Comments on appellant's grounds of appeal

- 3.1 The appellant has put forward three grounds of appeal, which will be responded to in turn:
- 3.2 (a) Change of use from ancillary office space (Class E) to residential (C3) on basement level;
- 3.3 (b) Effect on the outlook, sunlight and daylight of neighbours and
- 3.4 (c) substandard residential unit of accommodation in terms of daylight and sunlight.

Ground A: Change of use from ancillary office space (Class E) to residential (C3) on basement level

- 3.5 The appellant refers to the Council's assertion that the proposal would result in loss of employment opportunities under policy E2 of the Local Plan. The appellant goes on to argue that works to convert the basement to a residential unit was undertaken over four years previously and that it had been vacant for some time.
- 3.6 The council contends that there is no demonstration that the works had begun 4 years prior to the application and therefore they would not be immune from enforcement action. There is no mention or, more importantly, no evidence to demonstrate the works were carried out over four years previously. In fact, when looking at historical photos (Appendix B), the conversion work (which includes the light well and railings) were carried out after March 2018 and this was confirmed by Council Tax records which stated that a lower ground floor flat started paying Council Tax in February 2019. All of this information together demonstrates that the works are not immune from enforcement action.

- 3.7 The only sentence which has potential to overcome policy E2 and the change of use reason refusal within the statement is that: *However the Appellant would respond by stating that the basement of the premises has been vacant for some considerable time since the work was undertaken for the erection of the railings to the front elevation with front stairs to the basement.* The Council would argue that this sentence and the complete lack of evidence is not enough to justify overcoming this reason for refusal.

Ground B: Erection of railings and opening of lightwell

- 3.8 The appellant refers examples along King's Cross Road and Acton Street of railings and openings to the front of buildings as justification for the proposal and to paragraphs 118(e) and 123(c) of the NPPF (2019) as justification for their assertion. It is also mentioned that the railings are of high quality design compared to others in the area.
- 3.9 The council argues that first of all the design of the railings used for examples are different to the appeal site and importantly both have plinth under the railings which is a traditional facet to this feature which the proposed design did not include. Whilst it is appreciated that there are examples of railings in the area, the examples provided both have different contexts; the ones on Acton Street, are on a residential street which contains railings to the front all along the street and therefore matches with these. The railings over the road are of a non-residential institution building; the appeal site is a within a small retail frontage all of which are open. In fact all along this side of the street, which contains mostly retail units, there are no examples of these railings or lightwell openings and therefore the Council still stands by the assessment that these are incongruous. To be clear two site visits were undertaken.

Ground C: Substandard residential unit of accommodation in terms of outlook and daylight and sunlight

- 3.10 This appeal statement discusses permitted development rights and brownfield sites in relation to this site. The application site is neither on a brownfield site and only benefits from permitted development rights through a prior approval process. That was not was applied for, and under Class MA under point (f) *the provision of adequate natural light in all habitable rooms of the dwellinghouses* would still need to be assessed.
- 3.11 In relation to paragraph 5.15, if a new residential unit is being proposed then the quality of residential accommodation needs to be assessed under a planning application. Simply suggesting the site has permitted development rights (which

would require the assessment of light anyway) and therefore the quality of accommodation should not be assessed, is incorrect and false.

- 3.12 It is noted that the appeal statement has provided additional photos showing the arrangement and the amount of light getting in. They have also lifted the wall length curtain which is likely to remain down which is demonstrated in the officer report. The roof light and window are the only source of light and outlook which also remains poor.
- 3.13 There is a suggestion that there are similar arrangements in the area and therefore this should be allowed. When assessing the standard of residential accommodation the unit itself needs to be assessed and other similar developments are not used to justify substandard accommodation. Furthermore nearby residential streets that have basement flats (45-59 King's Cross Road, Frederick Street and Acton Street) are not located on this part of Kings Cross Road and the gaps between the basement window and pavement are wider to accommodate more light and outlook. These flats also have rear windows meaning they would be dual aspect which is not the case on the application site.
- 3.14 **Car free: reason for refusal 4**
- 3.15 Policy T2 of Camden Local Plan states that the Council will limit the availability of parking and require all new development in the borough to be car-free. The Council will not issue on-street parking permits in connection with new development and use legal agreements to ensure that future occupants are aware that they are not entitled to on-street parking permits.
- 3.16 No on-site parking is proposed as part of the current proposal and the proposed unit would not be eligible for an on-street parking permit. The car-free requirement should be secured by a legal agreement if the scheme is considered acceptable. In the absence of an acceptable scheme (and hence no section 106 agreement) this becomes a reason for refusal.
- 3.17 The council's legal officer is liaising with the appellants regarding an s106 agreement to overcome reason for refusal 4. should the appeal be allowed. The inspector will be updated at final comments stage.
- 3.18 Policy T2 requires all new developments in the borough to be car-free. Car-free development means that no car parking spaces are provided within the site and current and future occupiers are not issued with on-street parking permits.
- 3.19 A planning obligation is considered the most appropriate mechanism for securing the development as car capped as it relates to controls that are outside of the development site and the level of control is considered to go beyond the remit of a planning condition. Furthermore, the Section 106 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 the additional dwelling (or dwellings) ought properly 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” Section 106 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”.

- 3.20 Further, use of a Section 106 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.

Compliance with CIL reg 122

- 3.21 The proposed restriction on the development being secured as “car-free” meets the requirements of the CIL Regulations in being: (i) necessary to make the development acceptable in planning terms as identified by the relevant development plan policies; (ii) is directly related to the occupation of the residential units being part of the development; and (iii) is fairly and reasonably related in scale and kind to the residential units. This supports key principle 9 of the National Planning Policy Framework: Promoting sustainable transport.

Conditions

- 3.22 It is not considered that conditions would mitigate the impact of the development as set out above and the suggested conditions below would secure compliance with the proposal.

4. Conclusion

- 4.1 The appeal site is located within the Bloomsbury Conservation Area and the Council therefore has a statutory duty under s.72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving or enhancing the character or appearance of the conservation area. Policy D2 of the Local Plan also requires development within conservation areas to preserve or, where possible, enhance the character or appearance of the area.
- 4.2 Based on the information set out above, and having taken account of all the appellant's arguments and additional information submitted, the Council maintains that the proposal is considered to be contrary to Policies E2, D1, D2, T1, T2, DM1 and A1 of the London Borough of Camden Local Plan 2017.
- 4.3 The information submitted by the appellant in support of the appeal does not overcome or address the Council's concerns. The proposal would fail to preserve the character or appearance of the conservation area. This would fail to satisfy the requirements of the Planning (Listed Buildings and Conservation Areas) Act 1990, paragraph 196 of the Framework and would conflict with policies D1 and D2 of the Local Plan which seek to ensure that all development respects local context and character, preserves heritage assets and that public benefits convincingly outweigh any less than substantial harm when the special interest of a heritage asset cannot be preserved. Indeed, the proposal is not considered to present any public benefits that would outweigh the harm identified.
- 4.4 For these reasons the Inspector is respectfully requested to dismiss the appeal. However, should the Inspector be minded to approve the appeal, suggested conditions are included in Appendix A.
- 4.5 If any further clarification of the appeal submission is required please do not hesitate to contact Ewan Campbell on the above direct dial number or email address.

Yours sincerely,

Ewan Campbell
Planning Officer
Regeneration and Planning
Supporting Communities

APPENDIX A – Suggested conditions

Conditions

1	<p>The development hereby permitted must be begun not later than the end of three years from the date of this permission.</p> <p>Reason: In order to comply with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended).</p>
2	<p>All new external work shall be carried out in materials that resemble, as closely as possible, in colour and texture those of the existing building, unless otherwise specified in the approved application.</p> <p>Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policy policies D1 (Design) and D2 (Heritage) of the London Borough of Camden Local Plan 2017.</p>
3	<p>The development hereby permitted shall be carried out in accordance with the following approved plans:</p> <p>Site location plan, 107.201, 107.202, 107.203, 107.204 (Rev A), 107.205, 107.211, 107.212, 107.213, 107.214, Site Plan and Design and Access Statement (12/07/2021)</p> <p>Reason: For the avoidance of doubt and in the interest of proper planning.</p>

Informatives

1	<p>This approval does not authorise the use of the public highway. Any requirement to use the public highway, such as for hoardings, temporary road closures and suspension of parking bays, will be subject to approval of relevant licence from the Council's Streetworks Authorisations & Compliance Team London Borough of Camden 5 Pancras Square c/o Town Hall, Judd Street London WC1H 9JE (Tel. No 020 7974 4444) . Licences and authorisations need to be sought in advance of proposed works. Where development is subject to a Construction Management Plan (through a requirement in a S106 agreement), no licence or authorisation will be granted until the Construction Management Plan is approved by the Council.</p>
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2	<p>All works should be conducted in accordance with the Camden Minimum Requirements - a copy is available on the Council's website at https://beta.camden.gov.uk/documents/20142/1269042/Camden+Minimum+Requirements+%281%29.pdf/bb2cd0a2-88b1-aa6d-61f9-525ca0f71319 or contact the Council's Noise and Licensing Enforcement Team, 5 Pancras Square c/o Town Hall, Judd Street London WC1H 9JE (Tel. No. 020 7974 4444)</p> <p>Noise from demolition and construction works is subject to control under the Control of Pollution Act 1974. You must carry out any building works that can be heard at the boundary of the site only between 08.00 and 18.00 hours Monday to Friday and 08.00 to 13.00 on Saturday and not at all on Sundays and Public Holidays. You must secure the approval of the Council's Noise and Licensing Enforcement Team prior to undertaking such activities outside these hours.</p>
3	<p>Your proposals may be subject to control under the Building Regulations and/or the London Buildings Acts that cover aspects including fire and emergency escape, access and facilities for people with disabilities and sound insulation between dwellings. You are advised to consult the Council's Building Control Service, Camden Town Hall, Judd St, Kings Cross, London NW1 2QS (tel: 020-7974 6941).</p>

Appendix B:



Property information for

FLAT LGND FLR 107, KINGS CROSS ROAD, LONDON, WC1X 9LR

Local Authority	Camden
Local authority reference number	5194144
Council Tax band	B
Improvement indicator	No
With effect from	7 February 2019
Mixed-use property	No
Court code	None

► [What does my property information mean?](#)