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Dear Mr Thomas,

Appeal site: Middlesex Hospital Annex, 44 Cleveland Street, London, W1T 4JT

Appeal by: University College London Hospitals Charity

Proposal: Variation of conditions 2 and 3 (approved plans), 4 (accessible units), 5 (wheelchair user dwellings) and 37 (residential mix) of planning permission 2017/0414/P, dated 15/01/2018 (as amended by 2018/1584/P, dated 30/09/2019 and 2021/3088/P, dated 12/07/2021) (for: Refurbishment of and alterations to the existing former Workhouse Building (Grade II listed) and North and South Houses (fronting onto Cleveland Street) to provide residential units (Class C3); demolition of part of South House and buildings at rear of Workhouse Building and redevelopment to provide a new building comprising commercial floor space (flexible use of Class B1 / D1 healthcare) and residential units (Class C3); and associated works including opening up of Bedford Passage, creation of public open space, landscaping works, and partial demolition of front boundary wall), namely to allow an increase in the overall number of dwellings and a change in housing tenure (reduction in the number of affordable dwellings), changes to 2nd floor window on former workhouse building, changes to internal and external design of new building, including additional basement level

I refer to the above appeal against the Council's refusal to grant planning permission on 17/12/2021. The Council's case is largely set out in the officer's committee report. The report details the application site and surroundings, the proposal, relevant planning history, consultation responses and provides 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 appeal site is the Middlesex Hospital Annex site at 44 Cleveland Street, London. The site is bounded by Cleveland Street to the west, the Sainsbury Wellcome building on Howland Street to the north, UCL's Astor College student residences on Charlotte Street to the east and Middlesex House and Tottenham Mews to the south.
- 1.2. The Grade II listed former workhouse building, dating from the C18th, is located towards the western edge of the site, fronting onto Cleveland Street. The building is currently on Historic England's Heritage at Risk Register.
- 1.3. To either side of the former workhouse building, also fronting onto Cleveland Street, are two buildings known as North House and South House. Previously, behind the former workhouse, there existed two C19th wings which extended eastwards and formed a courtyard in the centre. These wings have now been demolished pursuant to planning permission reference 2017/0414/P, dated 15/01/2018 (as amended by 2018/1584/P, dated 30/09/2019).
- 1.4. The appeal site is within the Charlotte Street Conservation Area. Cleveland Street marks the boundary with Westminster City Council. On the other side of Cleveland Street is the Charlotte Street West Conservation Area (within Westminster).
- 1.5. The appeal site lies within London's Central Activities Zone (CAZ) as defined by the London Plan and is also within what is referred to as the Central London Area, as defined by the Council's Local Plan.
- 1.6. The appeal site falls within the area covered by the Fitzrovia Area Action Plan (FAAP).
- 1.7. The planning application to which this appeal relates was refused for the following reasons:

1. The proposed reduction in affordable housing, combined with the changes to the dwelling mix, the proposed management of the intermediate-rented affordable units and lack of market wheelchair user housing, would fail to maximise the supply of affordable housing in the borough and would fail to minimise social polarisation and promote the creation of mixed, inclusive sustainable communities, contrary to the aims of Policies H4 (Maximising the supply of affordable housing), H6 (Housing choice and mix), H7 (Large and small homes) and C6 (Access for all) of the Camden Local Plan 2017.

2. The proposed reduction in affordable housing would reduce the public benefits arising from the approved development to the extent that the total loss of significance of non-designated heritage assets (the now demolished wings attached to the listed former workhouse) and the less than substantial harm to designated heritage assets (the listed former workhouse and the Charlotte Street Conservation Area) would not be outweighed by the public benefits of the proposal, contrary to the aims of Policies D1 (Design) and D2 (Heritage) of the Camden Local Plan 2017.

3. *The proposed changes to the commercial cycle parking, by virtue of the location and design of the cycle parking, would fail to promote sustainable transport in the borough, contrary to the aims of Policy T1 (Prioritising walking, cycling and public transport) of the Camden Local Plan 2017.*

4. *The proposed changes to the new building, by virtue of the additional balconies on the western elevation and the changes to the plant screen at roof level, would cause harm to the setting of the listed former workhouse and to the character and appearance of the host building and the wider area, including the Charlotte Street Conservation Area, contrary to the aims of Policies D1 (Design) and D2 (Heritage) of the Camden Local Plan 2017.*

5. *The revised energy strategy, including the proposed provision of cooling to all market units in the new building and the associated increase in cooling plant and reduction in solar thermal panels, would fail to be sustainable in its use of resources, contrary to the aims of Policies CC1 (Climate change mitigation), CC2 (Adapting to climate change), CC4 (Air quality) and C1 (Health and wellbeing) of the Camden Local Plan 2017.*

6. *In the absence of an updated air quality assessment, it has not been adequately demonstrated that future occupants would be protected from exposure to poor air quality, contrary to Policy CC4 (Air quality) of the Camden Local Plan 2017.*

7. *In the absence of a Deed of Variation to the original section 106 legal agreement, the proposed development would fail to secure the same obligations (namely: Implementation and Delivery plan; Package of end-use employment and training obligations; Employment and training strategy; Employment and training contribution; Affordable housing secured on-site; Public open space contribution; Bedford Passage to be open 24 hours a day; Community involvement programme; Construction Management Plan; Construction Management Plan review fee; Demolition Management Plan; Demolition Management Plan review fee; PCE contribution; Highways works contribution; Car-free (residential and commercial); Servicing management plan; Travel Plan; Travel Plan review fee; Sustainability plan; Energy plan; Future proofing details for decentralized energy network; Carbon Offset Fund contribution; Basement Construction Plan), contrary to Policies H4 (Maximising the supply of affordable housing), C1 (Health and wellbeing), C5 (Safety and security), C6 (Access for all), E1 (Promoting a successful and inclusive Camden economy), E2 (Employment premises and sites), A1 (Managing the impact of development), A2 (Provision and enhancement of open space), A3 (Protection, enhancement and management of biodiversity), A4 (Noise and vibration), A5 (Basements and lightwells), CC1 (Climate change mitigation), CC2 (Adapting to climate change), CC3 (Water and flooding), CC4 (Air quality), CC5 (Waste), T1 (Prioritising walking, cycling and public transport), T2 (Car-free development and limiting the availability of parking), T3 (Improving strategic transport infrastructure), T4 (Promoting the sustainable movement of goods and materials) and DM1 (Delivery and monitoring) of the Camden Local Plan 2017.*

2. Planning Policy Framework

National Planning Policy Framework (NPPF) 2021 and National Planning Practice Guidance (NPPG)

- 2.1. The National Planning Policy Framework (NPPF), which was first published in 2012, was most recently updated in July 2021. The NPPF provides a national planning policy framework against which all planning applications and decisions must be made. It sets out the government's planning policies for England and how these are expected to be applied.
- 2.2. Sections 1, 2, 4, 5, 6, 8, 9, 12, 14 and 16 are most relevant to the determination of the appeal.
- 2.3. The National Planning Practice Guidance (NPPG) provides Government guidance on a number of subjects related to planning.

Development Plan

- 2.4. The current development plan in relation to the appeal site comprises the London Plan 2021, the Camden Local Plan 2017 and the Fitzrovia Area Action Plan 2014. The Council's adopted and emerging site allocations documents do not list the appeal site.

London Plan 2021

- 2.5. The current London Plan was published in January 2021. It is a strategic planning document in London. The Mayor produces the plan, which is applicable to all 32 London boroughs and the Corporation of the City of London. Boroughs' local development documents must be in general conformity with the London Plan, and it is legally part of the development plan that has to be taken into account during planning decisions.
- 2.6. Policies GG1, GG2, GG3, GG4, GG5, GG6, SD4, SD5, D1, D4, D5, D6, D7, D8, D10, D11, D12, D13, D14, H1, H4, H6, H7, H10, S2, E1, E2, E3, HC1, G1, G4, G5, G6, G7, G8, SI1, SI2, SI3, SI4, SI5, SI8, SI12, SI13, T1, T2, T4, T5, T6, T6.1, T6.2, T7, and T9 are most relevant to the determination of the appeal.

Camden Local Plan 2017

- 2.7. The Local Plan was adopted by the Council in July 2017 and replaced the Core Strategy and Camden Development Policies documents as the basis for planning decisions.
- 2.8. Policies G1, H1, H2, H4, H6, H7, C1, C4, C5, C6, E1, E2, A1, A2, A3, A4, A5, D1, D2, CC1, CC2, CC3, CC4, CC5, T1, T2, T3, T4 and DM1 are most relevant to the determination of the appeal.

Fitzrovia Area Action Plan 2014

- 2.9. The Fitzrovia Area Action Plan (FAAP) was adopted in March 2014. It sets out a vision and objectives for the future of the area, shared by the Council, key community groups and key landowners.
- 2.10. The plan sets out land use principles and identifies character areas. The land use principles and character areas feed into the identification of opportunity sites. The Middlesex Hospital Annex site (the appeal site) is identified within the FAAP as 'Opportunity Site 2' and forms part of the 'Bedford Passage' group of sites (No. 1 Astor College; No. 3 Arthur Stanley House; No. 4 Tottenham Mews Day Hospital).
- 2.11. Section 7 and pages 109-111, 114-116, 150-153 and 154 are most relevant to the determination of the appeal.

Supplementary Guidance

Camden Planning Guidance

- 2.12. Camden Planning Guidance (CPG) provides advice and information on how the Council will apply its planning policies. The documents were created following extensive public consultation.
- 2.13. The following documents are most relevant to the determination of the appeal: CPG Access for All (2019), CPG Amenity (2021), CPG Basements (2021), CPG Biodiversity (2018), CPG Design (2021), CPG Developer contributions (2019), CPG Employment sites and business premises (2021), CPG Energy efficiency and adaptation (2021), CPG Housing (2021), CPG Planning for health and wellbeing (2021), CPG Public open space (2021), CPG Transport (2021), CPG Trees (2019) and CPG Water and flooding (2019).

London Plan Guidance

- 2.14. London Plan Guidance (LPG) provides further information about how the London Plan policies should be applied. The Affordable Housing and Viability SPG is relevant to the determination of the appeal.

Charlotte Street Conservation Area Appraisal and Management Strategy 2008

- 2.15. The Charlotte Street Conservation Area Appraisal and Management Strategy was adopted in July 2008. The statement defines the special interest of the conservation area in order that its key attributes are understood and can be protected, and so that measures can be put in place to ensure appropriate enhancement. The purpose of the document is to provide a clear indication of the Council's approach to the preservation and enhancement of the conservation area. The appraisal is for the use of local residents, community groups, businesses, property owners, architects and developers and is an aid to the formulation and design of development proposals and change in the area. This document is used in the assessment of planning applications for proposed developments in the Charlotte Street Conservation Area.

- 2.16. Chapters 1, 3, 6, 7, 8, 10, 12 and 13 are relevant to the determination of the appeal. Specific reference to the appeal site is made at paragraphs 6.22, 6.24, 7.8 and 13.41.

London Borough of Camden Housing Delivery Test - Action Plan dated August 2022

- 2.17. The London Borough of Camden Housing Delivery Test – Action Plan (Appendix 1) was most recently updated in August 2022. It identifies the main issues that have affected delivery rates in Camden over the last 3 years and sets out a series of actions that the authority is, or will be, undertaking to try to address them and boost housing delivery within the borough.

Camden Planning Statement on the Intermediate Housing Strategy and First Homes (March 2022)

- 2.18. This Planning Statement was adopted in March 2022 following a formal consultation period, and sets out the Council's position in relation to the First Homes Written Ministerial Statement dated 24 May 2021. It is not considered to have any relevance to the appeal scheme.

3. Comments on the appellant's Statement of Case

- 3.1. The appellant's grounds of appeal are grouped into topics, using the Pre-Hearing Note from PINS as a guide, outlined below and addressed beneath, as follows:

- Viability of the scheme
- Whether the proposed development would harm the listed building and its setting and whether it would preserve or enhance the character or appearance of the Conservation Area
- Whether any harm to designated heritage assets is outweighed by public benefits
- Whether the proposal makes adequate provision for affordable housing
- Whether the proposed development would be sustainable in terms of resources having regard to climate change policies
- Other matters (including reasons for refusal 3, 4 and 6)

Viability of the scheme

- 3.2. The planning application to which this appeal relates ("the 2021 application") was accompanied by a Financial Viability Assessment (FVA) which sought to demonstrate that both the consented and proposed schemes are financially unviable. It should be noted that a FVA was not provided with application reference 2017/0414/P (the original permission to which the 2021 application relates). At that time, the appellant put forward a scheme which provided the 30 legacy affordable housing units and 50% of the additional residential floorspace as affordable and they did not argue that it was not viable to do so. Planning permission was granted on that basis.

- 3.3. The FVA submitted with the 2021 application was independently reviewed on behalf of the Council by viability consultants BPS, who also concluded that the consented

scheme is not able to viably deliver the planned level of affordable housing. BPS's analysis demonstrates that the consented scheme would result in a deficit of £16,472,499 (this calculation assumes a nominal Benchmark Land Value due to the £1 clause within the 2004 agreement, see paragraph 6.43 of the officer's committee report). BPS also calculated a net deficit of £8,528,180 for their "legacy scenario" (which provides 30 units of legacy housing but excludes the costs and revenues associated with the 30 legacy units from the appraisal) (see paragraphs 6.41 to 6.44 of the officer's committee report).

- 3.4. Notwithstanding the deficit that would be incurred, the Council does not consider that viability is a reason to allow this appeal. The issue of viability is not simple in respect of this case because the consented development was the outcome of extensive negotiations undertaken in good faith between the appellant and the Council to fulfil a long outstanding planning obligation for the delivery of affordable housing on this site as part of a wider development proposal. Significant weight was placed on this (resolving this matter without having to resort to enforcement action), as well as the delivery of 50% affordable housing for the additional units, when balancing all the planning issues. The Council would argue that the provision of the legacy units cannot be taken into account in terms of viability and the appellant's decision to offer 50% affordable housing on the remaining part of the scheme was merely a means of obtaining planning permission to then revise the provision downwards at a later date. The proposed amendments seek to transfer the 'risk' that they incurred on pursuing this development back to the Council, which is not acceptable.
- 3.5. The extensive negotiations between the Council and the appellant which ran over many decades and which led to the consented scheme being granted are set out below.
- 3.6. As outlined in paragraphs 6.2 to 6.5 of the officer's committee report, the application site is linked to a section 106 legal agreement, dated 01/07/2004 ("the 2004 agreement"). The 2004 agreement consolidated a number of planning obligations from earlier agreements. The first agreements dated from 1998 and they related to planning permission reference PS9604299R2, dated 19/08/1998, for a new hospital on Euston Road (Proposal I) and the provision of car parking and 2 community health facilities (a Centre for Independent Living and a Mental Health Resource Centre) at the former Odeon site on Grafton Way (Proposal II). The approved hospital building is evident on site and is today known as University College London Hospital (UCLH), 235 Euston Road.
- 3.7. The officer's committee report for application reference PS9604299R2 (Appendix 2) states at paragraph 2.2 that the hospital would be provided for the UCLH Health Service Trust by a Private Finance Initiative (PFI) scheme (where the private sector bids to undertake work on behalf of the public sector). The next paragraph notes that the new hospital would be partly financed by the disposal of surplus hospital sites, including the Middlesex Hospital Annex site (the appeal site). Paragraph 6.1 states: *"The PFI route by which the new hospital would be provided means that financing is largely dependent on values which can be achieved from other properties which become surplus to requirements..."* With regards to land use, paragraph 6.5 of the report then states: *"Policy PY51 of the Borough Plan generally looks to resist proposals to increase land for hospital use in Fitzrovia unless the proposals include*

the release of hospital land for other uses. In this case the application proposes not only a rationalisation of hospital land overall, but the release of several large sites for residential use". This highlights that housing was a key issue for the Council even at the time of the 1998 application, and the release of land to provide housing weighed in favour of the approval.

- 3.8. Later in the PS9604299R2 officer's report, reference is made again to the surplus sites that were to be sold to finance the scheme. Paragraph 6.42 states: "...The residential sites will be more valuable if they are not restricted by affordable housing requirements... It is considered that the provision of affordable housing relating to these sites can be dealt with by a unique arrangement. It is proposed that a 25% affordable housing quota for sites I, III¹, IV and VI, be cumulatively provided on the Obstetrics site within 24 months of completion of the hospital development" (emphasis added). A calculation to determine the required amount of affordable housing was set out in the legal agreement, with a backstop requirement for a minimum of 30 residential units. It is clear that the "unique arrangement", whereby the required affordable housing for each relevant site could be provided at a later date on one site, would have been financially beneficial to the applicant at the time (The UCLH NHS Trust) in terms of maximising the value of their sites. Had each of the sites for sale been required to meet the relevant affordable housing targets applicable at the time this would have impacted negatively on the site values.
- 3.9. Regarding the Odeon site (Proposal II referred to above), in 2002 an application was reported to Planning Committee with alternative proposals for the site (application reference PSX0005046). The alternative proposal was for a hospital building with 3 basement levels for car parking, and community health facilities (a Centre for Independent Living and a Mental Health Resource Centre) at ground floor level. The proposed planning obligations included the provision of the community health facilities and 1425 sqm of affordable housing to be provided off-site either at the Obstetrics site or Middlesex Hospital Annex (the appeal site). However, following the committee resolution the permission was not issued as it was not possible for parties to agree the section 106 agreement terms as the document needed to deal with the relationship of the new obligations to those in the existing 1998 agreements. The outcome was the 2004 'consolidated' legal agreement which secured, amongst other things, a minimum of 30 affordable housing units (hereafter referred to as "the legacy units") and a further floorspace requirement of 1425 sqm of affordable housing on either the Obstetrics site or the Middlesex Hospital Annex site (the appeal site).
- 3.10. The 2004 agreement required University College London NHS Foundation Trust ("The Trust") to notify the Council no later than April 2006 whether it intended the affordable housing to be brought forward on the Obstetrics site or at Middlesex Hospital Annex (the appeal site); to have made planning applications no later than April 2007; and by no later than 1st June 2010 to have handed over the affordable housing units to a housing association. In the event that there was a failure to adhere to this timetable, clause 4.2 of the 2004 legal agreement allows for the Council to serve notice on the Trust to transfer the land required to accommodate the affordable housing to the Council for a nominal sum of £1 (hereafter referred to as "the £1 clause"). Effectively this is a fall-back position for the Council; if the Trust fails to

¹ Middlesex Hospital Annex (the appeal site) is site III.

deliver the promised level of affordable homes then the land can be acquired by the Council in order for them to deliver the much-needed affordable homes instead. The issue of the £1 clause and its enforceability are a matter to be considered by the high court; a case management and costs meeting relating to this case is due to be held on 28/10/2022.

- 3.11. In 2006, The Trust nominated Middlesex Hospital Annex (the appeal site) to provide the affordable housing and at this point The Trust had appointed an architect to prepare a scheme which included provision of the full amount of the affordable housing, including that from the Odeon site (i.e. the 30 legacy units and 1425 sqm of affordable housing). They failed to meet the deadline to submit a planning application for the provision of the affordable housing required by the 2004 legal agreement; however, the Council did not take enforcement action at that stage as it was felt that negotiation with The Trust was a better approach to getting the desired outcome than formal action against another public body.
- 3.12. In 2010, applications for conservation area consent and planning permission were submitted by The Trust for redevelopment of the Middlesex Hospital Annex site (the appeal site) in order to provide the legacy units (application references 2010/2205/P and 2010/2209/C). The proposed development included 142 residential units, of which 50% were to be affordable. The accompanying Planning Statement submitted by The Trust (Appendix 3) states: *“Interpretation of the S106 has been the subject of continuing debate. However, in summary it is believed that it requires the provision of 25% of units (or a minimum of 30 units) within any proposed new development replacing the Middlesex Hospital Annex building to be affordable housing of social rented tenure... In addition to this, there is a further requirement that if the Odeon site planning permission is implemented, a further 1425sqm or 14 units of affordable housing is required”* (para 2.15-2.16). It is clear that, at this stage, The Trust were not of the opinion that the 2004 agreement had lapsed in 2009 as they were trying to fulfil their obligations under the agreement.
- 3.13. Unfortunately, the 2010 applications were not well received (more than 900 objections were submitted to the Council). The main concern was the loss of the former workhouse building. The building was listed grade II by Historic England on 14/03/2011. The wings to the rear (now demolished) were granted a Certificate of Immunity from Listing (COIL) by Historic England on 13/06/2011, which was renewed in 2016 (expiry 2021). Following the listing, the 2010 applications were withdrawn by the Council.
- 3.14. In 2013, applications were submitted by The Trust to the Council under sections 106A and 106BA of The Town and Country Planning Act 1990 to seek to modify the planning obligations attached to the 2004 agreement (application references 2013/5062/P and 2013/5050/P), namely to remove entirely the requirement for the affordable housing provision. However, both applications were refused due to the fact the requirements continued to serve a useful planning purpose (i.e. there continues to be a need for affordable housing) and no evidence was put forward to demonstrate it was economically unviable to provide the affordable housing. The officer’s delegated report for application reference 2013/5062/P (Appendix 4) states: *“In the view of officers, all of the Affordable Housing requirements in Clause 4 remain relevant as they relate to the specific impacts of the hospital scheme and the non-delivery of new*

residential units on the associated “residential sites”. The s106 exists so that the Trust can deliver a minimum level of affordable housing on a site in the area, meeting policy objectives and local expectations which formed part of the justification for accepting such an intensive development in this area and the release of other sites for potentially 100% private housing schemes” (emphasis added) (page 5). Again, it is clear that The Trust would have benefited financially (and perhaps significantly so) from the unique arrangement first proposed as part of application reference PS9604299R2, in terms of being able to defer and consolidate their affordable housing commitments; and the provision of affordable housing (albeit elsewhere and at a later date) weighed in favour of the approved development. It is also clear that, in 2013, The Trust were still of the opinion that the 2004 legal agreement was still enforceable as they took measures to try and modify the planning obligations therein (rather than going down the route they have now taken, that is, to claim the 2004 agreement has lapsed).

- 3.15. The 2013/5062/P officer’s report refers to the applicant’s supporting statement which attempted to justify why the obligation should be removed. It is noted that the statement suggests that the affordable housing obligations do not form a useful planning purpose and the affordable housing provisions could instead be secured by the proper application of current policy for a scheme of houses on the site. In response, the officer’s report states: *“The obligation serves not just a useful planning purpose it serves an essential one since in the absence of the obligation there is no mechanism or requirement to apply for permission for housing or construct any housing or affordable housing on the Cleveland St site. The site could be sold unencumbered”* (emphasis added) (page 6). The report also later clarifies the fact that: *“Further housing units in addition to the s106 quantum, which is a distinct requirement related to other schemes and sites, would inevitably have to be assessed against current mixed use, housing and affordable housing policies”* (emphasis added) (page 10). This approach was indeed taken at the time of the 2017 and 2018 planning applications (see paragraphs 3.18 and 3.19 below).
- 3.16. The 2013/5062/P officer’s report concludes: *“The (£1 clause) has not prevented the Trust from building the main hospital, progressing with other health related uses on other sites and the sale of surplus sites. It has not stalled the development of the permitted scheme which the obligation relates. The result being that the Trust has received all the benefits of the permission and the sale of sites but not delivered any new affordable housing and has therefore failed to fulfil this key obligation. The evidence cited in this report supports the council’s view that in this time, the priority and need for housing has intensified and thus it continues to serve a useful planning purpose. Indeed, it could be said to be serving a critical purpose”* (emphasis added) (page 12).
- 3.17. In their Statement of Case, the appellant repeatedly states that The Charity has not benefited from the development of the UCLH or Odeon sites, as The Charity is separate from The Trust. However, The Charity’s ultimate aim is to support The Trust and it will have purchased the appeal site with full knowledge and understanding of the 2004 agreement obligations which run with the land. The Council remains firmly of the view that the appellant, The Charity (or its predecessor, The Trust) has received all the benefits of the permission, the outcome of the planning balance made at the time which included the provision of the units, and the sale of sites and should now

fulfil their obligations with regards to the affordable housing provision. The Middlesex Hospital Annex site (the appeal site) is the only suitable site on which they can do so, hence the importance of the consented scheme to the Council and their insistence that it be built-out.

- 3.18. Following lengthy pre-application discussions, the 2017 applications (references 2017/0414/P and 2017/0415/L, granted on 15/01/2018), submitted by The Charity (following their purchase of the site from The Trust) sought finally to provide the 30 legacy units required by the 2004 agreement. The proposal provided 50 residential units in total, of which 40 would be affordable. Of those 40 affordable units, 30 represented the legacy units and the remaining 10 were provided to meet the 50% affordable housing target set out in Policy H4 of the Local Plan (i.e. to match the 10 market units being provided as part of the proposals).
- 3.19. Planning permission reference 2017/0414/P was subsequently amended by application reference 2018/1584/P (granted on 30/09/2019). That particular application provided 3 additional market housing units as well as other changes (see paragraph 6.9 of the officer's committee report). However, the development still provided the 30 legacy units and 50% affordable housing (in floorspace terms) for the remaining housing provision and was therefore policy compliant in that regard.
- 3.20. With regards to the requirement for 1,425sqm of affordable housing to be provided, this related specifically to the 2004 scheme for the redevelopment of the former Odeon site (application reference PSX0005046). However, that permission was not fully built-out and so the Council does not consider that there is a justifiable reason for the 1425sqm of affordable housing to be provided now, as the hospital never benefited from the Odeon permission to which this obligation was specifically related. The former Odeon site was later built out as the National Proton Beam Centre (permission reference 2013/8192/P, dated 22/09/2014). The committee report for the application highlights that there were no expectations for residential floorspace from this new publicly funded hospital proposal and it complied with the FAAP site guidance that had since been adopted. (See paragraph 3.51 in relation to the FAAP site guidance for the appeal site.)
- 3.21. Other obligations in the 2004 agreement have been discharged (payments were made in respect of the Centre for Independent Living and the Mental Health Resource Centre after the date on which the agreement supposedly lapsed). However, the appellant has now changed their position and considers that the 2004 agreement lapsed in July 2009 and is therefore no longer enforceable and there is no requirement for the 30 legacy units to be provided (notwithstanding the fact that this contradicts the position they have taken over the last 12+ years).
- 3.22. The evidence provided by the Council to the high court as part of the separate, but related, legal claim proves that the 2004 legal agreement is still enforceable and therefore the 30 legacy units must still be provided. The Trust (and The Charity) both previously accepted that the 2004 legal agreement remained enforceable and this is why for over 12 years they have been working with the Council to ensure that the obligations set out are met. It is regrettable that they are now trying to evade their responsibilities with regards to the provision of the 30 legacy units.

- 3.23. On the basis that the 30 legacy units are required pursuant to a separate permission / obligation (the 2004 legal agreement), they should not now be factored into viability calculations for the proposed development. This is because the relevant funds to deliver the affordable housing should have been accounted for at the time they became a requirement (i.e. pursuant to the 2004 agreement, and before that the 1998 agreement). As noted at paragraph 6.31 of the officer's committee report, the Council allowed The Trust to defer their policy commitment to providing affordable housing (which would have benefitted them greatly at the time) and it would be inappropriate for the Council to now waive this requirement, particularly against a backdrop of continued high demand for affordable housing in the borough (see later section on affordable housing need). The provision of the legacy units is a material consideration in the determination of the appeal.
- 3.24. The appellant suggests in their Statement of Case that the status of the 2004 agreement (i.e. whether it is still enforceable) and the outcome of the high court litigation are irrelevant to the determination of this appeal, as the status of the 2004 agreement does not alter the unviability of the consented scheme (paragraph 1.6.3). However, the Council strongly contends that viability is irrelevant insofar as the legacy units are required by the 2004 legal agreement and the remaining 10 units are required in order to meet the 50% affordable housing target set out in Policy H4 of the Local Plan. To revise down the affordable housing component of the scheme having obtained planning permission and commenced on site is an attempt by the appellant to transfer their risk as a developer back to the local authority. Had the Council been presented with the proposed scheme at the outset then the balance of planning issues would not have been in its favour; considerable weight was placed on the delivery of affordable homes on this site.
- 3.25. Paragraph 1.3.10 of the appellant's Statement of Case states that the section 73 application to which this appeal relates was submitted to the Council: *"...due to circumstances falling outside of the Charity's control and in order to reduce the financial losses to the Charity..."* (emphasis added). The appellant argues, at paragraph 2.5.6 of their Statement of Case, that because (in their view) the 30 legacy units are not required: *"any and all affordable housing that is comprised within the development permitted by the 2019 Permission should be subject to financial viability testing in the usual way, in accordance with the Development Plan and the NPPF."* However, as noted at paragraph 6.46 of the officer's committee report, viability cannot be reviewed to revise affordable housing requirements downwards. National Planning Practice Guidance, paragraph 009 Reference ID: 10-009-20190509, states that: *"Where contributions are reduced below the requirements set out in policies to provide flexibility in the early stages of a development, there should be a clear agreement of how policy compliance can be achieved over time. As the potential risk to developers is already accounted for in the assumptions for developer return in viability assessment, realisation of risk does not in itself necessitate further viability assessment or trigger a review mechanism. Review mechanisms are not a tool to protect a return to the developer, but to strengthen local authorities' ability to seek compliance with relevant policies over the lifetime of the project"* (emphasis added). As suggested above, if the level of affordable housing is reduced, then the planning balance needs to be reconsidered and the Council considers that the reduction in affordable housing provision results in reduced public benefits to weigh in favour of the development (see later section of this report).

- 3.26. Notwithstanding the fact the 30 legacy units are required pursuant to a separate permission / obligation, it is not the role of the Council to waive section 106 obligations to help a scheme become viable if the financial situation has changed for the worse, for whatever reason. When a developer chooses to undertake a development project, they do so knowing that there is a risk which might result in diminished profits or even financial loss and that risk should not be passed back to the public by removing public benefits which formed part of a scheme at the grant of a permission in order to make a development more viable. In this case, The Charity (and their predecessor, The Trust) have known about the obligation to provide the 30 legacy units for a long time. The fact that the costs associated with the scheme have risen during that time is not the fault of the Council. Had The Trust sought to comply with their obligations earlier, they would not be in their current position. The fact costs have risen so greatly is in part due to the long delays.
- 3.27. Further to the above, the Mayor of London's Affordable Housing and Viability SPG 2017 states: *"Affordable housing requirements are applied where they are required to make an application acceptable in planning terms. Thus, review mechanisms should not be used to reduce the base level of affordable housing contributions which are required as part of the planning permission. This would require a new or modified planning permission."* (emphasis added) (para. 3.66). Paragraph 3.35 also states: *"the application of a review mechanism should not be used as a justification for a higher profit level."* The SPG makes it clear that review mechanisms are to be applied to developments to ensure improvements in viability are appropriately considered. The effect of the appeal proposal is akin to a downward review, which is expressly ruled out in national and Mayoral guidance. Camden's CPG Housing (January 2021) is also clear that the purpose of reviews is to ensure that any improvements in viability are captured for the benefit of the public, not the other way round.
- 3.28. The appellant refers to Policy H5 J of the London Plan, which states: *"Any proposed amendments that result in a reduction in affordable housing, affordability or other obligations or requirements of the original permission should be rigorously assessed under the Viability Tested Route. In such instances, a full viability review should be undertaken that reconsiders the value, costs, profit requirements and land value of the scheme."* The policy is not saying that viability can automatically justify a reduction in affordable housing, as that ignores the issue of planning balance; instead it is saying that, if changes are proposed which result in a reduction in affordable housing, it is important to ensure that the maximum viable amount of affordable housing is still being provided.
- 3.29. The appellant notes in section 2.5 of their Statement of Case that the approved scheme has been subject to a series of circumstances beyond the Charity's control and costs have risen as a result of archaeology (exhumation of remains), conservation (works to the listed building), asbestos removal, building regulations changes and the Covid-19 pandemic. However, the appellant has not provided any commentary, either at application or appeal stage, on how they have sought to reduce costs associated with the development. The approach taken by the appellant has been to offer a reduced number of affordable housing units as a starting point, which is not acceptable.

- 3.30. The Council recognises that The Charity would suffer a considerable financial deficit if they were to provide the consented level of affordable housing at the appeal site, but this is not reason to waive the requirements of the 2004 agreement or the affordable homes secured against Policy H4. The Council considers that the Charity's situation is of its own making (or its predecessor, The Trust) due to the long delays in the delivery of the legacy units. It is also worth noting that much of the deficit is from funds already spent (the appellant's FVA states at paragraph 3.7 that demolition and the archaeology main dig have now taken place) and the Council considers that the site can now be built with relatively little undue additional financial outlay compared to the returns from the development. On this basis, the Council is not effectively "sterilising the site", as suggested in paragraph 3.1.9 of the appellant's Statement of Case.
- 3.31. To conclude this section, the appellant's Statement of Case discusses the importance of reducing financial losses to The Charity, and it states that 17 affordable housing units is the maximum threshold in terms of financial losses that The Charity can incur, but the Council questions whether it is right that the Council, another public body, should essentially incur the financial losses instead, as a result of the loss of the pledged affordable housing after so many years (see later section on affordable housing need). The Council considers that the need for The Charity to honour its obligations is of utmost importance and the unviability of the proposal is not relevant in light of the fact The Trust has benefited from the ability to defer its earlier commitments to the provision of affordable housing.
- 3.32. It is also worth stating at this point that, during the course of the 2021 application, officers held discussions with the appellant's team to try and secure 40 affordable housing units on the site somehow (see para. 6.32 of officer's report); for example, by allowing the sale of market units prior to the completion of the affordable units (to help with cash flow); allowing a change to the tenure mix (e.g. more intermediate-rented units to allow for greater income), or securing grant funding from the GLA. The appellant's team put forward alternative suggestions (e.g. an increased amount of affordable units beyond the 17 already proposed, plus a payment-in-lieu); however, ultimately, agreement could not be reached. The Council is still willing to work proactively with the appellant to help them honour their long-standing obligations under the 2004 agreement.

Whether the proposed development would harm the listed building and its setting and whether it would preserve or enhance the character or appearance of the Conservation Area

- 3.33. The former workhouse building on the appeal site is grade II listed and the Council has a statutory duty to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses, under sections 16 and 66 of The Planning (Listed Buildings and Conservation Areas Act) 1990 (as amended). The appeal site is located within the Charlotte Street Conservation Area, wherein the Council has a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of that area, in accordance with Section 72 of The Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended).

- 3.34. At the time of the 2017/0414/P application, the officer's committee report (Appendix 5) concluded that the proposed new 8 storey building to the rear of the listed former workhouse building would result in *"minor impacts to the setting of the grade II listed former workhouse and to the character of the conservation area"* (para 6.169). The harm caused was considered to be *"less than substantial"* under the tests of paragraph 134² of the NPPF, and considerably outweighed by the public benefits delivered by the scheme.
- 3.35. The Council still considers that the new 8 storey building would impact on the setting of the listed building and the character and appearance of the Charlotte Street Conservation Area. The impact on the setting of the listed building and to the character and appearance of the Charlotte Street Conservation Area is at the *"less than substantial"* end of the scale and was mostly as a result of the loss (demolition) of the historic (C19th) wings to the rear of the listed building and their replacement with a much larger, taller and more modern 8 storey building.
- 3.36. As part of the 2021 application, a number of changes were proposed to the new building, including the addition of projecting balconies at levels 6 and 7 on the western elevation of the building and an increase in the size of the roof level plant screen. Firstly, with regards to the balconies, the Council's committee report states: *"The proposed additional balconies at levels 6 and 7 are considered to compromise views of the new building between the former workhouse and North House, as they detract from the otherwise relatively plane façade. It is considered that the harm caused to the setting of the listed building and the character and appearance of the Charlotte Street Conservation Area would be less than substantial"* (para 6.60). Notwithstanding the aforementioned, paragraph 6.4.11 of the appellant's Statement of Case confirms that the appellant now proposes to remove the 2x west-facing balconies and revised plans have been submitted to that effect. On this basis, and provided the Inspector is willing to accept the revised plans, the Council does not wish to pursue this issue.
- 3.37. Secondly, with regards to the plant screen, as noted in paragraph 6.4.14 of the appellant's Statement of Case, due to a misinterpretation of the consented and approved plans, the Council does not wish to pursue the issue of the plant screen either. Reason for refusal number 4 will not be pursued at all. This will be dealt with in the Statement of Common Ground. (See also paragraph 3.94 below).
- 3.38. The 2021 application also proposed a change to the 2nd floor staircase window on the northern elevation of the listed former workhouse building. Previously, it was proposed to replace the 2nd floor window with a false sash automatic opening vent (AOV) window with a similar outward appearance to a traditional sash window. It is now proposed to replace this window with a glass louvred AOV window, which would feature 6 horizontal louvres³. It is considered that the glass louvred AOV window causes harm to the listed building as the traditional sash windows are considered to be of special interest and value to the significance of the building; and the louvred window is visible from Cleveland Street and appears at odds with the other traditional sash windows on the host building. The harm caused is considered to be less than

²The relevant text is now found at paragraph 202 of the NPPF, which was most recently updated in July 2021. The text regarding assessing the impact on heritage assets remains the same albeit with different paragraph numbers.

³ It is noted that the proposed new AOV window has already been installed.

substantial. However, the Council recognises the difficulties the appellant would face in trying to provide an AOV window in the style of a traditional sash window (e.g. fire safety testing issues etc.) and considers, therefore, that the harm caused by the window is outweighed by the specific benefits of the proposal relating to fire safety.

3.39. The chief argument presented in the appellant's Heritage Statement (the appellant's Appendix 10) is essentially that the pavilion wings were not of significance when compared to the statutorily listed part of the site. This is not in dispute, and the Council has not asserted that the loss of the pavilion wings represents total loss of significance to the site as a whole. However, the loss of the wings has still caused the total loss of non-designated heritage assets, and has facilitated the construction of a scheme which causes less than substantial harm to the setting of the retained (listed) part of the site and its contribution to the character and appearance of the conservation area of which it forms a part. When comparing the previous condition of the site (with the historic wings in situ) with the consented scheme it is clear that the consented scheme allowed a degree of (less than substantial) harm to occur on the site in order to secure the public benefits of the scheme. These benefits were not primarily the repair of the listed fabric, which any prudent owner would be expected to undertake as a matter of course, but rather the public benefits of the housing provided and the reinstatement of Bedford Passage, i.e. the benefits which were most directly linked to the demolition of the wings.

3.40. To conclude this section, the Council considers that, despite the changes put forward since the application was refused, the proposed development would still cause harm to the setting of the listed building and that the proposal would fail to preserve or enhance the character and appearance of the Charlotte Street Conservation Area, as a result of the new building at the rear of the listed building.

Whether any harm to designated heritage assets is outweighed by public benefits

3.41. At the time of the 2017/0414/P application it was concluded that the rear wings on the former workhouse building (now demolished) were non-designated heritage assets (NDHAs). Paragraph 6.168 of the officer's committee report (Appendix 5) states: "*The proposed demolition (of the rear wings) would result in total loss of significance of the NDHAs. However, in line with paragraph 135⁴ of the NPPF, the harm caused is considered to be outweighed by the wider public benefits of the scheme (i.e. the provision of housing, the reinstatement of Bedford Passage and provision of public open space etc.)*" (emphasis added). With regards to the loss of the wings, the appellant's Statement of Case states: "*These wings were demolished during the implementation of the 2019 Permission and therefore, no longer exist. Consideration of the wings in the determination of the 2021 S73 Application is irrelevant as a refusal of the 2021 S73 Application would not result in their reinstatement.*" (para. 6.2.16). Whilst this indeed may be the case, and the Inspector has only requested that the Council now consider the harm caused to designated heritage assets, the Council would like to point out that the provision of housing (including affordable housing) weighed heavily in favour of the demolition of the rear wings at the time of the original 2017 application (i.e. the loss of the wings was considered to be outweighed by the public benefits of the scheme, including the

⁴ The relevant text is now found at paragraph 203 of the NPPF.

provision of housing) and the Council is concerned that the appellant made an offer of a specific amount of affordable housing to secure planning permission, has implemented the development which has involved the demolition of the wings (thereby resulting in total loss of significance of the NDHAs), and now, having undertaken all these steps, is trying to remove a significant quantum of affordable housing that was a key factor in permission being granted in the first place. Had such a low offer of affordable housing been proposed at the time of the 2017/0414/P application (i.e. not including the 30 legacy units required by the 2004 agreement and even failing to meet the 50% target for affordable housing if the requirement for the 30 legacy units is disregarded), then officers consider it unlikely that the consented development would have been approved. (See also later comments in paragraph 3.46)

3.42. Paragraph 6.2.19 of the appellant's Statement of Case then states: "*a significantly disproportionate weight has been given by LB Camden to the value of the now demolished wings as non-designated heritage assets, in comparison to the public benefits of the whole scheme*". It is unreasonable to assert that the Council gives "*significantly disproportionate weight*" to the loss of the non-designated heritage assets "*in comparison to the public benefits of the whole scheme*" given that the Council allowed the demolition of the non-designated heritage assets on the balance of the public benefit of the whole scheme. What is in dispute is whether the appeal scheme is still delivering the same degree of public benefit. In the case *R (Hughes) v South Lakeland District Council* [2014] EWHC 3979 (Admin), HHJ Waksman noted: "*where non-designated heritage assets are being considered, the potential harm should simply be 'taken into account' in a 'balanced judgment,'*" This is precisely how the application was assessed, but the balance of the judgment has now been altered by the appellant's intention to not deliver the scheme as permitted.

3.43. Now turning to the issue of the impact on designated heritage assets (i.e. the grade II listed former workhouse building and the Charlotte Street Conservation Area), paragraph 199 of the NPPF states: "*When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance*". Paragraph 202 then guides that: "*Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use*".

3.44. The harm to designated heritage assets has been outlined above in the previous section of this report (see paragraphs 3.34 – 3.40).

3.45. The appellant has outlined the public benefits of the scheme (as they see them) at paragraphs 1.3.4 and 6.1.17 of their Statement of Case. National Planning Policy Guidance, paragraph 020 Reference ID: 18a-020-20190723, states: "*Public benefits may follow from many developments and could be anything that delivers economic, social or environmental objectives as described in the National Planning Policy Framework (paragraph 8). Public benefits should flow from the proposed development. They should be of a nature or scale to be of benefit to the public at large and not just be a private benefit. However, benefits do not always have to be visible or*

accessible to the public in order to be genuine public benefits, for example, works to a listed private dwelling which secure its future as a designated heritage asset could be a public benefit.”

- 3.46. The Council does not disagree that the proposed development would deliver economic, social and environmental benefits in line with the aims of paragraph 8 of the NPPF, although in response to the appellant’s list, the Council would like to highlight the following key points: firstly, the site has been vacant and in need of redevelopment for so long as a direct result of the delays in the delivery of the 30 legacy units required by the 2004 agreement; secondly, the delivery of additional market housing cannot be used to justify a reduction in affordable housing (which is of greater need, see next section of this statement); thirdly, the provision of 17 affordable units fails both to provide the 30 legacy units or 50% affordable housing floorspace if the 30 legacy units are disregarded. At the time of the original application, the fact the proposal was finally providing both the 30 legacy units and 50% affordable housing floorspace for the remaining residential floorspace weighed heavily in favour of the development. Officers and members were well aware of the lengthy planning history at the site and, rather than pursue the provision of the legacy units through the legal route (which the Council may now be forced to do), they were keen to work with the appellant to secure a scheme to deliver the 30 legacy units and a policy-compliant level of affordable housing for the remaining housing. The affordable housing offer was so high in the original 2017 scheme (i.e. much higher than it would normally be to meet policy objectives) because the Charity were honouring the obligations under the 2004 agreement and this, naturally, influenced the size of the building proposed. In order to provide 30 legacy units, as well as additional affordable housing to match the market housing in floorspace terms, and commercial floorspace to make the scheme viable, the new building had to be of a certain size. Whilst it might not be explicitly stated in any of its reports, it is material that such a large building was necessary in order to accommodate all that it had to achieve, i.e. the 30 legacy units, the 50% affordable housing floorspace and commercial floorspace.
- 3.47. The Council now considers that the vast reduction in affordable housing being provided (a 57.5% reduction in unit terms, partly because the appellant no longer considers it necessary to honour their obligations under the 2004 agreement), significantly reduces the public benefits of the scheme.
- 3.48. At paragraph 6.1.16 of their statement, the appellant suggests that the presumption in favour of granting sustainable development should apply, as per footnote 8⁵ of the NPPF, because the Council cannot demonstrate a 5 year land supply. However, the “tilted balance” to which the appellant refers does not apply in this case because the proposal relates to designated heritage assets, i.e. the policies in the framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed.
- 3.49. To conclude this section, the Council considers that the significant reduction in the amount of affordable housing being provided at the site (including the loss of the 30 legacy units required by the 2004 agreement) means the public benefits of the scheme are significantly diminished, to the extent that the less than substantial harm

⁵ The statement refers to footnote 7 but it is presumed that the appellant is referring to footnote 8.

to designated heritage assets is no longer outweighed by the public benefits of the proposal. The Council also strongly considers that the (albeit now irreversible) impact on non-designated heritage assets (the loss of the rear wings) should be considered as part of this appeal as the loss of the wings formed part of the justification for the approved development on the site. Permission should not automatically be granted because the damage has already taken place. The only way in which the identified harm (to both non-designated and designated heritage assets) would be considered acceptable is if the consented scheme, or such other scheme providing essentially the same benefits, is delivered.

Whether the proposal makes adequate provision for affordable housing

Quantum

- 3.50. It is proposed to increase the number of dwellings from 53 to 57, and at the same time, alter the tenure to increase the number of market units from 13 to 40 and reduce the number of affordable units from 40 to 17 (a 57.5% reduction of affordable housing in unit terms). This would be achieved by accommodating market units within the new building, whereas previously this building exclusively accommodated affordable housing.
- 3.51. As highlighted at paragraph 6.23 of the officer's committee report, Policy H4 of the Local Plan aims to maximise the supply of affordable housing in the borough and an affordable housing target of 50% applies to developments with capacity for 25 or more additional dwellings. Policies H4 and H5 of The London Plan also require 50% affordable housing on public sector land and the FAAP seeks the provision of affordable housing in the plan area, including at the Middlesex Hospital Annex site. In relation to the Middlesex Hospital Annex site (the appeal site), the first bullet point under "Land Use" on page 114 of the FAAP states: "*The Council expects this site to be used predominantly for permanent self-contained housing, particularly affordable housing...*" (emphasis added). The second and third bullet points state: "*Development will be subject to the obligations set out in the UCLH s106 agreement of July 2004 (parent permission no. PS9604299). To meet an obligation of the agreement, this site has been nominated to deliver at least 30 social rented homes and potentially a further 1425 sq m of affordable housing...*"; and: "*The established use of the site is medical / healthcare use and this use could continue subject to the s106 housing obligations referred to above being met.*"
- 3.52. In the consented scheme (pursuant to permission reference 2018/1584/P, dated 30/09/2019), 74% of the total residential floorspace (GIA) is affordable housing. The figure is so high because the proposal includes the 30 legacy units required by the 2004 legal agreement. However, as noted at paragraph 6.24 of the officer's committee report, even if the 30 legacy units are excluded from the calculation (on the basis that they are required pursuant to a separate permission / obligation), the affordable floorspace (i.e. the remaining 10 affordable units) still equates to 51.7% of the total residential floorspace (GIA), which means the 50% target for affordable housing is met.
- 3.53. The proposed revisions would result in only 31% of the total residential floorspace (GIA) being affordable, which is far below the 50% target set out in the London Plan,

the Local Plan and the FAAP. This essentially means that, not only are the 30 legacy units not being provided, but the proposal is still failing to meet the 50% affordable housing target even if the requirement for the legacy units is disregarded. The Council objects to both the loss of the 30 legacy units and the failure to nevertheless meet the 50% affordable housing target.

3.54. The background and requirements of the 2004 legal agreement, including the need to provide 30 affordable housing units at the appeal site, have been outlined in detail above. Suffice to say at this point that the 2004 agreement consolidates agreements dating back to 1998, which means that the 30 legacy units have been “owed” to the Council for at least 24 years, over which time the need for affordable housing has only grown (see below). The appellant (or their predecessor) has benefited from the permission to which the requirement for 30 units originated, and should now finally fulfil their obligation to provide the relevant affordable housing.

3.55. Regarding both the loss of the 30 units required by the 2004 agreement and the failure to meet the 50% target even if the legacy units are discounted (which the Council disagrees should be the case), affordable housing is of utmost importance in The London Borough of Camden. The supporting text to Policy H4 notes that Camden has a particularly large requirement for additional affordable homes, estimated by the Camden Strategic Housing Market Assessment (SHMA) to be around 10,000 homes for the 15-year plan period. Regarding the 50% target, paragraph 3.95 of the Local Plan states: *“To set a target for affordable housing we have estimated the level of provision likely to be viable and deliverable, taking into account the relationship between development costs, the value of market and affordable homes, the government’s intention to focus housing subsidy on boosting home ownership, the income households have to spend on housing, affordable housing need, and the anticipated housing output of the Council’s Community Investment Programme. Balancing these considerations, the Council considers that it is feasible for the borough to meet a strategic target of 5,300 additional affordable homes over the Plan period.”* The 5,300 target is based on the amount of affordable housing that can feasibly be delivered over 15 years; however, it is worth noting that the 2016 Camden SMHA (Appendix 6) estimates a need for 16,800 additional homes from 2016-2031, of which 10,200 (61%) are needed for households unable to afford to rent or buy appropriate market housing (page 11). It is informative to assess the recent delivery of affordable housing against the Local Plan target (5,300 over 15 years, or 353 per year). Over the first 5 years of the Plan period (2016/17 – 2020/21), 926 additional affordable (self-contained) homes were completed, which is only 27.2% of the 3,400 needed over 5 years (indicated by the SHMA) and 52.5% of the cumulative target of 1,765 over 5 years (set by the Local Plan). Given the extent of this affordable housing shortfall, the Council contends that very great weight needs to be given to the reduction in affordable housing proposed by the appeal scheme.

3.56. The 2017 London SHMA (Appendix 7) which forms part of the evidence base for the London Plan 2021, also highlights London’s serious housing affordability problem. It states: *“When backlog need, affordability and the likely rate of second and vacant homes are taken into account, the net requirement for new homes in London between 2016 and 2041 is estimated to be around 65,900 homes a year. Of this total, 47% would need to be ‘low cost rent’ (social rent and affordable rent) and 18% intermediate (e.g. shared ownership and London Living Rent) based on standard affordability tests”*

(para 0.20). This equates to an overall need for 65% of new housing in London to be affordable housing during the plan period.

3.57. The 2017 London SHMA states that, in August 2017, the average house price in London stood at £489,000, twice the average price of £244,000 in England as a whole (para 5.1). It also highlights that, even when adjusted for inflation, London's average house prices have more than doubled since the early 2000s and quadrupled since the mid-1980s (para 5.2); and the gap between average prices in London and in England as a whole has widened considerably in recent years (para 5.3). It notes that average private rents in London are also considerably higher than the national average, notwithstanding the fact that the VOA deliberately excludes Housing Benefit cases and so the VOA average tends to over-state the true average rent (para 5.4). Paragraph 5.5 notes that average rents rose more quickly in London than in the rest of England both before and after the recent recession. In August 2017 average rents in London were 23.4% above their January 2011 level, compared to 11.7% in the rest of England. However, annual rental growth in London has fallen in recent months, from a peak rate of 4.3% in August 2015 to 1.2% in August 2017. It notes that rents for social and affordable rents have also risen rapidly in recent years (paras. 5.6-5.7). It is clear that housing affordability in London has worsened over the years (particularly since the 30 legacy units were first required in 1998) and there continues to be very high demand for affordable housing in the capital.

3.58. The Council's Housing Delivery Test Action Plan (2022) (Appendix 1) illustrates that affordable housing delivery has declined in recent years (266 in FY2018; 148 in FY 2019; 117 in FY 2020) (page 3). The document highlights that the cost of living in the borough is high, with the cost of housing in Camden the third highest in the country. It is noted that, in March 2022, there were 7,017 households on the Council's Housing Waiting List and affordable housing is often cited in residents' surveys as the factor most in need of improvement in the borough (page 8).

3.59. The Council's Housing Commissioning and Partnerships Team (HCPT) has confirmed that the most recent figures show that there are 6936 households in housing need that have been accepted on to the Council's Housing Register, allowing them to bid for social rented / affordable rented properties that are advertised on the Council's choice-based lettings system. They note that these numbers have risen by more than 300 in the last six months to September 2022. The HCPT has also confirmed that average waiting times for social rented housing in Camden for 2021/22 are as follows:

- Studio – 2 years
- 1 bed – 2 years
- 2 bed – 3 years
- 3 bed – 6 years
- 4 bed – 9 years
- 5+ bed – 4 years

3.60. Given the extent of affordable housing need in the borough, and across the capital as a whole, the delivery of additional housing units (+4) as part of the proposed development cannot be used to justify the proposed significant reduction in affordable

housing. The Council strongly objects to the reduction in the amount of affordable housing being provided.

Dwelling mix

- 3.61. Policy H6 of the Local Plan aims to minimise social polarisation and create mixed, inclusive and sustainable communities by seeking high quality accessible homes and by seeking a variety of housing suitable for Camden's existing and future households, having regard to household type, size, income and any particular housing needs. Policy H7 aims to secure a range of homes of different sizes that will contribute to the creation of mixed, inclusive and sustainable communities and reduce mismatches between housing needs and existing supply. In particular, Policies H6 and H7 require all housing development to contribute to meeting the priorities set out in the Dwelling Size Priorities Table (DSPT) and to include a mix of large (3 bedrooms and more) and small homes (studios, 1-bed and 2-bed units).
- 3.62. The supporting text to Policy H7 notes that the DSPT is based on the Camden SHMA, considered alongside the mismatch between the need for large affordable homes (indicated by overcrowding) and supply (indicated by average number of bedrooms per household) and the cost constraints on delivering large intermediate homes (para 3.189). Paragraph 3.190 acknowledges that there is a need and/or demand for dwellings of every size; however, the Council has prioritised some sizes as high priority (primarily on the basis of a high level of need relative to supply) and it is expected that proposals should include some dwellings that meet the high priorities wherever it is practicable to do so. With regards to social-affordable homes, it is noted that the Council will give particular priority to large homes (with 3 or more bedrooms).
- 3.63. The 2016 Camden SHMA also states: *"Housing need for affordable housing comprises 10,200 homes, mainly two and three bedroom properties. This need for larger (three bedroom) housing reflects the assumption that the current needs of all overcrowded households in rented housing will be addressed over the Plan period. If larger homes are not provided to alleviate overcrowding, many households will continue to occupy their smaller homes – so these properties will not be vacated, and there will continue to be pressure from new households applying to live in 1- and 2-bedroom properties"* (emphasis added) (para. 22).
- 3.64. CPG Housing notes that there is a high level of over-crowding in existing social housing (the 2011 Census showed 19.3% of households were overcrowded based on bedroom occupancy), and there is an acute need for 4-bed homes (para. 3.36). The CPG guides that, for social-affordable rented housing, 1-bed units should make up no more than 15% of the total and 3-bed homes should make up 30% of the total, or 50% if no 4-bed units are provided (Figure 1, page 25). Paragraph 3.37 of CPG Housing also notes that, where it is not possible to achieve 50% large homes, the Council will seek a high proportion of two-bedroom homes designed for four occupiers (e.g. 2-bed-4-person units).
- 3.65. Of the 17 affordable units now proposed, 13 would be social-affordable rented and 4 would be intermediate rented. The table below illustrates the dwelling mix for the social-affordable rented units as part of each of the relevant applications at the appeal site.

Dwelling size	2017/0414/P (original application)	2018/1584/P (1st s73 application)	2021/3087/P (the appeal)
1-bed	14 (39%)	14 (39%)	8 (62%)
2-bed	8 (22%)	7 (19%)	4 (31%)
3-bed	14 (39%)	15 (42%)	1 (7%)
TOTAL	36	36	13

Table 1: Social affordable housing dwelling mix

- 3.66. The officer's committee report for the 2021 application notes that, with regards to the 13 social-affordable rented housing units, there is an over-provision of 1-bed units and an under-provision of 2-bed and 3-bed units. The 8x 1-bed units make up far greater than 15% of the total social-affordable rented housing (at 62%) and the 1x 3-bed unit makes up far less than 50% of the total (at 7%). Furthermore, all the 2-bed units are 2-bed-3-person units, rather than being designed for 4 occupiers. For these reasons the Council does not consider that the proposal makes adequate provision for affordable housing in terms of dwelling mix, particularly when compared against earlier proposals at the site which provided a higher proportion of larger dwellings and a greater mix overall.
- 3.67. In their Statement of Case, the appellant makes the case that there is a need for smaller-sized residential units (particularly 1 and 2 beds), based on the 2017 London SHMA (para. 6.1.30). However, Paragraph 3.192 of the Local Plan states: *"Between 2001 and 2011 an increase in the proportion of one-person households in Camden and a reduction in average household sizes was consistently anticipated by population projections and failed to materialise. This mismatch between expectations and outcomes suggests that projections around dwelling size requirements are fraught with difficulties, especially in the context of rapidly rising housing costs. Consequently, any more detailed percentage aims for specific dwelling sizes will be provided in our supplementary planning document Camden Planning Guidance on housing where they can be rapidly reviewed to reflect changing circumstances. Camden Planning Guidance on housing currently indicates that the Council will aim for at least 50% of social-affordable rented dwellings in each scheme to be large homes, and on the basis of mis-matches in the existing stock we expect to retain this aim."* As noted above, the proposed dwelling mix, particularly in light of the over-provision of 1-bed units and under-provision of larger units, fails to comply with the guidance in CPG Housing and is not considered to be acceptable.
- 3.68. The supporting text to Policy H7 states that, where a development involves reuse of an existing building, this may limit the potential to provide a range of dwelling sizes (e.g. due to the need to use existing staircases or lifts, or the need to respect the existing layout, or heritage features etc.) (para. 3.194). It also notes that flexibility around dwelling sizes may also be required to achieve a rational layout and the best possible accessibility arrangements (para 3.195), although this is partly in relation to ensuring vacant properties are brought back into use. However, as noted at paragraph 6.19 of the officer's committee report, the majority of new housing is being provided in the new building (rather than in the retained buildings, one of which is listed, which do present some challenges) and it was previously possible to provide a more acceptable mix of dwelling sizes on the site. In relation to affordable housing, in the consented scheme, all the social-affordable rented homes and two of the intermediate homes

would be in the new building, while just two intermediate homes would be in the South House. In the appeal scheme, *all* of the affordable housing would be in the new building. Consequently, the limitations arising in adaptations to existing buildings cannot in any way justify the poor mix of affordable housing dwelling sizes in the appeal scheme.

- 3.69. Paragraph 3.197 of the Local Plan sets out “child-friendly features” which may make a development particularly suitable for families with children (who require large homes). These include the potential to provide play space on site where children can play (open space or private amenity space); dedicated children’s play space available nearby; a number of homes with direct access to the street, private amenity space or open space; no direct access to a major road; a limited number of homes served from each internal corridor and each communal staircase or lift; and potential to provide a broad range of dwelling sizes in the development appropriate for new families with very young children and established families with older children. The following paragraph (3.198) highlights that there are relatively few opportunities in Camden for housing development that will provide more than one or two of these features; and the Council does not consider that the absence of any or all of these features justifies the omission of large homes from a development. In this case, opportunities for informal children’s play exist outside the building (on Bedford Passage and adjacent to the residential entrances) and within the new building itself. Level 3 features a communal landscaped courtyard in the centre of the building; there is another communal roof terrace at level 5 (now intended solely for use by the market housing units); and all but one of the residential units in the new build benefit from their own private balcony. The fact the building is child-friendly means there is little justification for the provision of only 1 large (3-bed) social-affordable rented unit.
- 3.70. The dwelling mix for the 4 intermediate rented units (equal numbers of 1 and 2 bed units) is considered to be acceptable, although it is worth noting that the 2-bed units are 2-bed-3-person units, which may make them less suitable for sharers than a 2-bed-4-person unit.
- 3.71. Overall, the proposed dwelling mix fails to accord with Policies H6 and H7 of the Local Plan and the DSPT and the proposals would thereby fail to minimise social polarisation and promote the creation of mixed, inclusive and sustainable communities. As acknowledged at paragraph 6.19 of the officer’s report, Policy H7 of the Local Plan does allow a flexible approach to be taken to dwelling mix, having regard to considerations such as the character of the development, the site and the area; and the site size, and any constraints on developing the site for a mix of homes of different sizes etc. However, the proposed mix is significantly worse than previous proposals at the site and is far from meeting the aims of the Dwelling Size Priorities Table and the CPG guidance. On the basis that the appeal proposal involves comprehensive redevelopment of the appeal site, the vast majority of new housing is being provided in a new building (rather than the retained buildings) and the development was previously able to provide an acceptable mix of dwelling sizes, there is no justification for the unacceptable dwelling mix now being proposed. The Inspector is therefore kindly requested to dismiss the appeal on this basis.

Tenure

- 3.72. The proposed tenure split (13 social-affordable rented and 4 intermediate rented) is considered to be acceptable insofar as it is skewed heavily in favour of social-affordable rented units (71/29 in floorspace terms), which have the greatest demand. Paragraph 3.105 of the Local Plan states: *“(The Council) will encourage a focus on social-affordable housing where a proposal falls far short of the affordable housing target (e.g. below 30% affordable)...”*

Management

- 3.73. The 13 social-affordable rented units would be transferred to a Registered Provider from the Council’s Approved Strategic Partner List (understood to be Origin), which is considered to be acceptable.
- 3.74. Regarding the 4 intermediate-rented units, the Planning Statement that accompanied the 2021 application stated at paragraph 3.2.10: *“It is important to note that 4 of the 17 affordable units are proposed to be retained by the Charity and will provide staff accommodation for the hospital at affordable intermediate rents.”* Paragraph 6.1.43 of the appellant’s Statement of Case states: *“The Registered provider (Origin) would vet applicants put forward by the hospital to ensure they met the criteria for affordable intermediate accommodation. These would be within the income band of £30,000 to £40,000 which (as stated in paragraph 6.27 of the Committee Report) accords with LB Camden’s own income banding.”* It is unclear how exactly the Charity intends the 4 intermediate-rented units to be managed; whether they will retain them themselves or transfer ownership to the Registered Provider along with the social-affordable rented units. Nevertheless, as noted at paragraph 6.29 of the officer’s committee report, ordinarily there is an expectation that intermediate-rented properties are marketed to applicants on the Council’s Intermediate Housing Register of Interest and applicants that work in health can be selected from the register for targeted marketing.
- 3.75. The Council’s Intermediate Housing Strategy (Appendix 8) provides the strategy for promoting intermediate rented housing in the borough. The Strategy highlights that much of the borough’s intermediate housing stock has been delivered through the Council’s Community Investment Programme (CIP) and that the other main supply of intermediate housing will be from section 106 agreements (paras. 6.11-6.12). With regards to access arrangements, the Strategy states: *“The Council will establish a website on which people seeking intermediate housing (IH) can register their interest, and will promote the website to teachers in Camden’s family of state schools. All providers of IH in the borough will be expected to market their units to people registered on this website and any other groups as specified by the council, in the first instance. The Council will expect providers to let Intermediate Rent units in accordance with the Priority Matrix⁶ set out in Schedule 1. The Priority Matrix has been devised to prioritise Camden residents over non-Camden residents, in recognition of the Equalities Taskforce’s objective to see the social mix of the borough maintained, and non-Camden residents who have worked in the borough for the last*

⁶ The order of priorities in the Priority Matrix is: Camden social housing tenant; Camden resident on Housing Needs Register; any other Camden resident; Non-Camden resident who has worked in the borough for the preceding 6 months.

six months over those who haven't, in recognition of the contribution that keyworkers from outside the borough make to Camden. The Council will consult with providers of Intermediate Rent units about a process for letting units that effectively matches households with a range of incomes to different rent levels, i.e. ensuring that lower rents are targeted at households with lower incomes.” (paras. 6.19 – 6.23).

- 3.76. The HCPT has confirmed that there are currently approximately 1,100 applicants registered on the Council's Intermediate Housing Register of Interest. The table below illustrates the number of people registered by bedroom size.

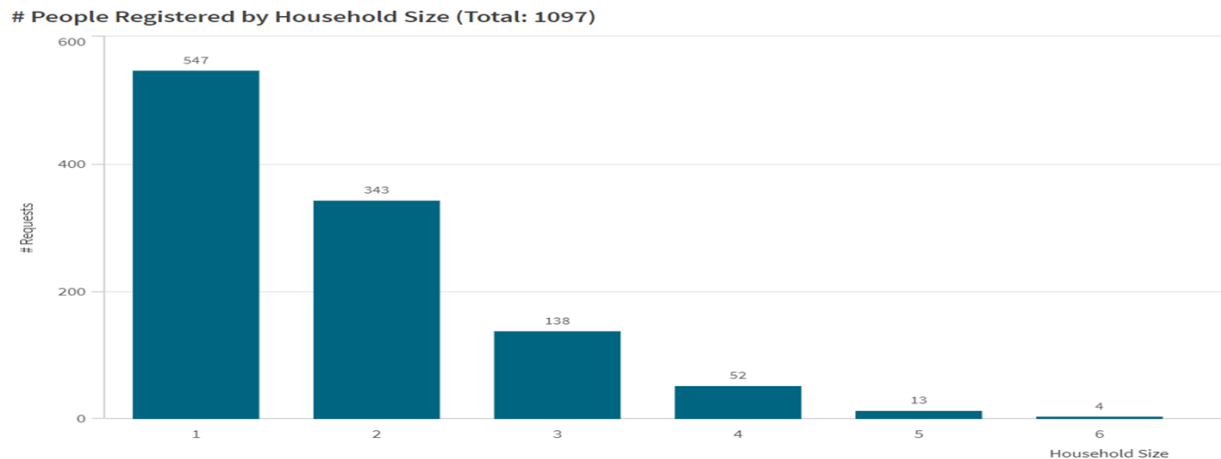


Table 2: Intermediate Housing Register – people registered by household

- 3.77. The HCPT also note that the Council is seeing a significant increase in the number of new registrations on the register over the last few months. In July 2022 the number of new registrations was 108, and in August the number rose to 131.
- 3.78. As noted, the Priority Matrix is aimed at maintaining the social mix of the borough. The appellant's proposal to put forward potential tenants themselves, rather than them being selected from the Intermediate Housing Register of Interest undermines the register and its aims, and is therefore contrary to the aims of Policies H4, H6 and H7 of the Local Plan insofar as the proposed management would fail to provide an appropriate mix of affordable housing types to meet the needs of households unable to access market housing, and the proposals would fail to minimise social polarisation and the creation of mixed, inclusive and sustainable communities.
- 3.79. To conclude this section, the Council does not consider that the proposal makes adequate provision for affordable housing. The Council objects to both the loss of the 30 legacy units required by the 2004 legal agreement and the failure to meet the 50% affordable housing target even if the legacy units are discounted (which the Council does not consider should be the case). Furthermore, the Council considers that the affordable housing provision is inadequate in terms of the proposed dwelling mix (the over-provision of 1-bed units and the under-provision of 2-bed and 3-bed units) and as a result of the proposed management arrangement for the intermediate units, which is not entirely clear, but which would not utilise the Council's Intermediate Housing Register of Interest for selecting future occupiers. The proposal is contrary to Policies H4, H6 and H7 of the Local Plan and the Inspector is respectfully requested to dismiss the appeal on this basis.

Whether the proposed development would be sustainable in terms of resources having regard to climate change policies

- 3.80. Reason for refusal no. 5 relates to the revised energy strategy. As noted at paragraph 6.5.1 of the appellant's Statement of Case, the Council's main concern initially related to the reduction in the number of solar PV panels, the switch from Air Source Heat Pumps to centralised gas boilers and the provision of cooling to all market housing units in the new building.
- 3.81. As noted at paragraph 6.5.15 of the appellant's Statement of Case, the Council has misunderstood the extent of the proposed reduction in solar PV panels as part of the 2021 application. As such, the Council does not wish to pursue this particular issue.
- 3.82. Similarly, as stated at paragraph 6.5.18 of the appellant's Statement of Case, the Council does not wish to pursue the issue of Air Source Heat Pumps (ASHP) either as the change is not as significant as first thought. ASHP was only proposed for North and South Houses initially, not for the other buildings. The move away from the use of ASHP is therefore acceptable.
- 3.83. The key issue which remains, therefore, is the provision of active cooling to the market units in the new building (25 units in total). Paragraph 6.5.2 (bullet point 2) of the appellant's Statement of Case states: *"The market residential units at Levels 4, 5, 6 and 7 of the new build are proposed to be fully air-conditioned in order to maximise their market value and to match the same level of provision as the market housing with the retained buildings."* (At the time of the original application active cooling was allowed in the retained buildings, subject to the submission of an overheating assessment to demonstrate that the cooling demand had been minimised.)
- 3.84. Policy CC1 of the Local Plan requires all development to minimise the effects of climate change and encourages all developments to meet the highest feasible environmental standards that are financially viable during construction and occupation. Policy CC2 requires development to be resilient to climate change. The policy notes that all development should adopt appropriate climate change adaptation measures, such as: (d) measures to reduce the impact of urban and dwelling overheating, including application of the cooling hierarchy. The supporting text then states: *"Active cooling (air conditioning) will only be permitted where dynamic thermal modelling demonstrates there is a clear need for it after all of the preferred measures are incorporated in line with the cooling hierarchy⁷."* (emphasis added) (paragraph 8.42).
- 3.85. The appellant's Statement of Case suggests that the cooling hierarchy has been followed. Paragraph 6.5.19 of the statement notes: *"With regards to managing heat risk, the Charity's design team applied the cooling hierarchy through the incorporation of the following measures: The specification of the glazing used which limited solar gains; and, Full openable windows and doors in order to allow for spaces to be*

⁷ The London Plan's cooling hierarchy is as follows: 1) reduce the amount of heat entering a building through orientation, shading, high albedo materials, fenestration, insulation and the provision of green infrastructure; 2) minimise internal heat generation through energy efficient design; 3) manage the heat within the building through exposed internal thermal mass and high ceilings; 4) provide passive ventilation; 5) provide mechanical ventilation; 6) provide active cooling systems.

naturally ventilated.” The following paragraph then states: “It is clear from the above that the earlier steps of the cooling hierarchy have been followed. Air-conditioning will not be relied upon as the main source of managing heat, in accordance with Local Plan Policy CC2 and London Plan Policy SI4... the provision of air-conditioning for the market units was proposed in order to maximise the market value of the units and improve the scheme’s viability position.” (paragraph 6.5.20).

- 3.86. However, section 6.2 of the appellant’s Energy Statement Update (dated 21/06/2021) states that an overheating assessment has been completed on a sample of the apartments to demonstrate that comfort can be maintained without the use of air-conditioning. On this basis, cooling is not justified as it is clearly not needed to maintain comfort. The fact it is needed to maximise the market value of the units, and to match the same level of provision as the market housing with the retained buildings, is not reason to justify active cooling within the market units, particularly because the market units in the new building would clearly represent a different offer to those in the retained heritage buildings. Further, whilst it is possible to reduce the risk of overheating in an existing building, the constraints of the building make it more difficult to prevent overheating which was acknowledged through the allowance of cooling subject to an overheating assessment. The Council strongly feels that there should not be an expectation for active cooling within a brand new building which should, and has, incorporated passive and other measures into the design to prevent overheating, and therefore this should not impact significantly on values (i.e. potential purchasers of the market units in the new building should not be deterred by a lack of active cooling).
- 3.87. The Mayor of London’s Energy Assessment Guidance (June 2022) (Appendix 9) also states: *“‘Active cooling’ should not be specified in developments where it has been demonstrated that the passive or other measures proposed have successfully addressed the risk of overheating; to avoid unnecessarily increasing a development’s energy demand and carbon emissions. In addition, it is not expected that ‘active cooling’ will be proposed for any residential developments.”* (para. 8.20). As such, all similar newly built market units across London would also not be expected to have active cooling.
- 3.88. The Council’s CPG Energy Efficiency and Adaptation also states: *“Active cooling (such as air conditioning) is discouraged, unless the applicant can demonstrate exceptional circumstances where opportunities for cooling are unable to be controlled through passive measures alone”* (para. 10.6); and: *“The Council will discourage the use of air conditioning and excessive mechanical plant because of the additional energy consumption from operating the equipment, impacts on microclimate from the warm air expelled from the equipment, and because of the competition for plant space, which could otherwise be used for other renewables or green roofs”* (para 10.8); and: *“Comfort cooling (air conditioning) should not be specified in developments where it has been demonstrated that passive or other measures proposed have successfully addressed the risk of overheating. The Council will resist applications proposing active cooling in residential developments to meet market expectations, where no risk of overheating is identified.”* (para 10.11)
- 3.89. It has been demonstrated that active cooling is not needed to maintain comfort and there are no exceptional circumstances that would warrant the use of active cooling in

the market units. Furthermore, the proposed market cooling would impact detrimentally on carbon reduction requirements by increasing carbon emissions from the development and it would reduce the potential for renewable energy generation and increase the urban heat island effect.

3.90. The proposals do not meet carbon reduction requirements (using either SAP2012 or more up to date SAP10 carbon factors) for 20% renewable energy on site, 35% CO2 reductions for non-domestic new build elements or zero carbon for domestic elements. As acknowledged at paragraph 6.93 of the officer's committee report, this is partly due to the MRI suite and its specific requirements. Paragraph 6.5.23 of the appellant's Statement of Case notes that the appellant is willing to increase the carbon offset payment (secured by the section 106 legal agreement) as mitigation against the increased carbon emissions. The appellant's Energy Statement Update shows an increase in the carbon offset payment, largely due to the reduced efficiency of the MRI facility. However, the appellant's calculations do not take into account the requirement for non-residential areas to achieve zero carbon; or the change in the carbon offset payment to £95/t (per tonne of carbon for 30 years). Using the up to date carbon factors, which assume lower carbon emissions than the SAP2012 calculations, the required carbon offset payment would increase to £326,610 (£93,765 for the residential areas and £232,845 for the non-residential areas). Taking the SAP10 total of £326,610 and the previous carbon offset requirement of £147,150 this represents an increase of £179,460.

3.91. The Council does not consider that sufficient justification has been provided for the provision of active cooling in the 25 additional market units in the new building and the Inspector is kindly requested to dismiss the appeal on this basis, in accordance with Policies CC1, CC2, CC4 and C1 of the Local Plan. Should the Inspector, however, be minded to allow the appeal, it is requested that the carbon off-set payment be increased to £326,610.

Other matters (including reasons for refusal nos. 3, 4 and 6)

Reason 3 – cycle parking

3.92. Reason for refusal no. 3 relates to the proposed revisions to the commercial cycle parking. The application proposed the relocation of the commercial cycle parking from an internal space within the basement (which utilised two tier racks, in compliance with CPG Transport) to within the external lightwell at the eastern side of the building, utilising vertical racks. As noted in the officer's report (para. 6.87), whilst the proposed revised commercial cycle parking meets the relevant London Plan standards in terms of the number of spaces, the revision represents a significant departure from and a reduction in quality compared to the consented scheme. This is because the proposed cycle parking would be external to the building and vertical racks are more difficult to use, offer little to no security and can lead to wheel damage.

3.93. Notwithstanding the above, paragraph 6.3.13 of the appellant's Statement of Case confirms that the appellant now proposes to relocate the commercial cycle parking from the ground floor external lightwell back to within the building, in order to comply with Fire Regulations. Revised plans to this effect have been submitted, which the

Council considers to be acceptable. If the Inspector is minded to accept the revised plans, the Council does not wish to pursue this reason for refusal.

Reason 4 – changes to new build

- 3.94. Reason for refusal no. 4 relates to changes to the new building, namely additional balconies on the western elevation and changes to the plant screen. As noted above (see paragraphs 3.36-3.37) if the Inspector is minded to accept the revised plans, the Council does not wish to pursue this reason for refusal.

Reason 6 – Air quality

- 3.95. Reason for refusal no. 6 relates to the absence of an updated air quality assessment and the failure to adequately demonstrate that future occupants would be protected from exposure to poor air quality. The appellant has provided an updated Air Quality Assessment (AQA) as part of their appeal submission (the appellant's Appendix 13).
- 3.96. The Council has reviewed the revised AQA. The so called 'realistic' scenario is not accepted as it uses future predictions, whereas CPG Air Quality clearly states at paragraph 3.5(b) that modelling should not predict improvements to future years (future vehicle emissions or future background concentrations). Nevertheless, the 'conservative' scenario is accepted. Table 6.2 indicates that the annual mean NO₂ will be exceeded for a number of receptors located at the front facing facades of North House and South House, which means future occupants could be exposed to unacceptably high levels of pollution. On this basis, mitigation is required in accordance with the requirements of Policy CC4 of the Local Plan and Policy SI 1 B 1) c) of the London Plan. As a minimum, filtration of NO₂ and PMs (particulate matter) should be applied to any Mechanical Ventilation with Heat Recovery (MVHR) air inlets in locations where NO₂ is over 38µg/m³. A suitable planning condition can ensure this. The appellant has agreed, in principle, to such a condition and the agreed wording will be confirmed in the Statement of Common Ground.
- 3.97. Subject to the abovementioned suggested condition, the Council does not wish to pursue this reason for refusal.

Listed building consent application reference 2022/2545/L

- 3.98. Listed building consent application reference 2022/2545/L [for: Alteration to 2nd floor staircase window to incorporate Automatic Opening Vents (AOV) for smoke extraction (retrospective)] was approved on 22/09/2022.

4. Conclusion

- 4.1. Based on the information set out above, and having taken account of all the additional evidence and arguments made, the proposal is considered to be contrary to Policies H4, H6, H7, C6, D1, D2, CC1, CC2, CC4 and C1 of the Camden Local Plan 2017.
- 4.2. The information submitted by the appellant in support of the appeal does not fully overcome or address the Council's concerns.

4.3. The Statement of Common Ground, which will be agreed and submitted to PINS by 28/09/2022, will include the following:

- Full list of suggested conditions (including details of any conditions already discharged pursuant to application references 2017/0414/P, dated 15/01/2018, and 2018/1584/P, dated 30/09/2019).
- Agreed list of drawings.
- Deed of Variation and statement regarding any strands of Reason No 7 that remain outstanding and unresolved.
- CIL compliance statement.

4.4. If any further clarification of the appeal submission is required please do not hesitate to contact Kate Henry on the above direct dial number or email address.

Kind regards

Kate Henry

**Principal Planning Officer
Planning Solutions Team**