

<b>Delegated Report (non-determination appeal)</b>	<b>Analysis sheet</b>		<b>Expiry Date:</b>		12/08/2022
	N/A		<b>Consultation Expiry Date:</b>		28/08/2021
<b>Officer</b>			<b>Application Number(s)</b>		
Nathaniel Young			2021/2539/P		
<b>Application Address</b>			<b>Drawing Numbers</b>		
529 Finchley Road London NW3 7BG			See draft decision notice		
<b>PO 3/4</b>	<b>Area Team Signature</b>	<b>C&amp;UD</b>	<b>Authorised Officer Signature</b>		
<b>Proposal(s)</b>					
Erection of a part 1, part 2 and part 3-storey rear extension, alterations to windows, creation of rear roof terraces at 1st and 2nd floors, creation of 5 x 1-bedroom flats.					
<b>Recommendation(s):</b>		Refuse planning permission (had an appeal not been lodged)			
<b>Application Type:</b>		Full Planning Permission			
<b>Conditions or Reasons for Refusal:</b>		See Draft Decision Notice			
<b>Informatives:</b>					
<b>Consultations</b>					
<b>Adjoining Occupiers:</b>		No. of responses	<b>01</b>	No. of objections	<b>01</b>
<b>Summary of consultation responses:</b>		<p>Site notice: 04/08/2021 - 28/08/2021</p> <p>One objection was received from the owner/occupiers of 529a Finchley Road raising the following concerns:</p> <ol style="list-style-type: none"> <li>1. Design, size and height of the proposed extension.</li> <li>2. Loss of light, outlook and privacy.</li> <li>3. Noise and disruption (from plant equipment and construction works).</li> <li>4. Noise (from new use/increase in occupiers).</li> <li>5. Impact on parking and road safety.</li> <li>6. Issues with waste collection (and increase in vermin).</li> </ol> <p><i>Officer response:</i></p> <ol style="list-style-type: none"> <li>1. Officers agree that the proposal would be of an unacceptable design. See section 5.0 (Design).</li> <li>2. Officers agree that the proposal would result in unacceptable harm to</li> </ol>			

*residential amenity. See section 6.0 (Residential amenity).*

- 3. No plant equipment is proposed and noise/disruption caused as a result of construction is not a material planning consideration. Such noise and disturbance would be subject to environmental health regulations, any breach should be reported to the Council's environmental health team.*
- 4. It is not considered that there would be a significant increase in noise and disturbance as a result of approximately 4 additional occupiers on-site (a net increase of 2 bedrooms beyond what exists). The proposed terraces are also not considered to be of a sufficient size to allow for large gatherings (and all serve 1-bedroom flats – rather than being communal for example).*
- 5. Waste would be appropriately stored within a lockable, internal, bin store which fronts Burrard Road. Waste could conveniently be collected from this store without causing disruption to neighbouring occupiers. It is not considered that waste storage or collection would result in undue harm to the surrounding area which would warrant a reason for refusal.*

## Site Description

The application site contains a three storey end-of-terrace building. The building contains a Class E commercial unit at ground floor level, and a 3-bedroom residential flat (maisonette) above, on the 1<sup>st</sup> and 2<sup>nd</sup> floor levels. The ground floor commercial unit benefits from a rear service yard which has vehicular access suitable for deliveries and servicing. This is also the case for the two neighbouring commercial units at Nos. 529A and 529B Finchley Road.

The application site is located on the south-western side of Finchley Road. It is not a listed building and is not located within a conservation area. It does however adjoin the Redington Froggnal Conservation Area (within its setting) and neighbours the locally listed 'Octogon' building (527A Finchley Road) and Parsifal College building (527 Finchley Road) to the south.

## Relevant History

### Site

2016/3869/P: Change of use from retail (Class A1) to associated cafe/restaurant (Class A3), installation of extract ventilation. Prior approval given 07.09.2016.

9401859: Change of use of the ground floor from retail (Class A1) to either a professional office (Class A2) or a general office (Class B1). Approved 27.01.1995.

9300856: Continued use of the ground floor of the premises as an office for vehicle hire purposes. Refused 17.02.1994.

9005349: Continued use of ground floor as an office for vehicle hire purposes. Approved 18.06.1992.

8700560: Change of use from retail shop to offices for vehicle hire purposes including provision of 5 "on site" car parking spaces as shown on drawing nos. RLW/40. Approved 01.07.1987.

## Relevant policies

**National Planning Policy Framework 2021**

**The London Plan 2021**

**Camden Local Plan 2017**

G1 Delivery and location of growth  
H1 Maximising housing supply  
H4 Maximising the supply of affordable housing  
H6 Housing choice and mix  
H7 Large and small homes  
C5 Safety and security  
C6 Access for all  
A1 Managing the impact of development  
A3 Biodiversity  
D1 Design  
D2 Heritage  
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 Parking and car-free development  
DM1 Delivery and monitoring

### **Camden Planning Guidance 2018-2021**

CPG Design  
CPG Amenity  
CPG Housing  
CPG Energy efficiency and adaptation  
CPG Transport  
CPG Biodiversity  
CPG Developer contributions  
CPG Air quality

## **Assessment**

**An appeal has been lodged against non determination. The grounds of appeal are summarised and addressed in paragraph 13. Should the appeal be allowed, conditions are suggested in paragraph 15.**

### **1.0 Proposal**

#### 1.1 Proposals:

- Erection of a part 1, part 2 and part 3-storey rear extension,
- Alterations to windows,
- Creation of rear roof terraces at 1st and 2nd floor levels,
- Creation of 5 x 1-bedroom flats.

#### 1.2 Revisions:

1.3 During the course of the application a number of minor amendments were submitted, these were not considered sufficient to overcome the reasons for refusal, they are as follows:

- Minor reduction in height (three storey element of rear extension),
- Minor alterations to residential access doors (side elevation),
- Change in internal layout at ground floor level (unit 1 and bin/bike stores) to facilitate extra cycle storage,
- Addition of two rear rooflights to main roof.

## 2.0 Assessment

2.1 The material considerations for this application are as follows:

- Land Use
- Affordable Housing
- Design
- Residential Amenity
- Quality of Accommodation
- Transport
- Trees and Landscaping
- Air Quality
- Sustainability and Climate Change
- Planning Obligations

## 3.0 Land Use

### Creation of residential dwellings

3.1 Policy H1 (Maximising housing supply) states that the Council will aim to secure a sufficient supply of homes to meet the needs of existing and future households by maximising the supply of housing and exceeding a target of 16,800 additional homes from 2016/17 - 2030/31, including 11,130 additional self-contained homes. It goes on to state that the Council seek to exceed the target for additional homes, particularly self-contained homes by regarding self-contained housing as the priority land-use of the Local Plan.

3.2 The provision of four additional self-contained residential units is supported in principle.

### Housing Mix

3.3 Policy H7 (Large and small homes) states that the Council will aim to secure a range of homes of different sizes that will contribute to creation of mixed, inclusive and sustainable communities and reduce mismatches between housing needs and existing supply.

3.4 It goes on to state that the Council will seek to ensure that all housing development, including conversion of existing homes and non-residential properties:

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

**Table 1: Dwelling Size Priorities**

	<b>1-bedroom (or studio)</b>	<b>2-bedroom</b>	<b>3-bedroom</b>	<b>4-bedroom (or more)</b>
Social-affordable rented	lower	high	high	medium
Intermediate affordable	high	medium	lower	lower
Market	lower	high	high	lower

3.5 The proposed development would involve the loss of a high priority 3-bedroom flat (suitable for a family and the creation of 5 x low priority, market, 1-bedroom flats. The proposal therefore fails to provide any high priority units (and removes the existing one) and also fails to include a mix of large and small homes contrary to policy H7 of the Local Plan.

## Loss of Class E commercial floorspace (and ancillary rear service yard)

3.6 The proposal also involves a reduction of Class E space from 74 sqm to 53 sqm (a loss of 21 sqm) the loss of the entire rear service yard (approx. 68 sqm). The rear service yard is vital to the proper function of the commercial unit. Without the rear service yard which has vehicular access, it is no longer possible to operate a business, such as a restaurant which would require space for deliveries, store large quantities of waste, and vehicles associated with its operation. It also prevents having a fire exit to the rear from a commercial kitchen for example.

3.7 The combined loss of useable floorspace and the entirety of the rear service yard significantly limits the potential viable uses of the existing commercial unit which currently could operate as a wide variety of uses which complement the existing shopping parade and could fill a need in the local area.

## Conclusion

3.8 The appeal proposal clearly does not optimise the site. The combination of a poor residential unit mix (all 1-bedroom flats proposed, with the loss of a 3-bedroom family sized unit) which does not meet the Council's dwelling size priorities (in accordance with the Council's dwelling size priorities table) and the loss of commercial floorspace including the entirety of the rear service yard (which is critical to the commercial unit's function) results in two reasons for refusal on land use grounds.

## **4.0 Affordable housing**

4.1 Policy H4 aims to maximise the supply of affordable housing in line with aiming to exceed the Borough wide strategic target of 5,300 affordable homes from 2016/17 to 2030/2031. We will expect a contribution to affordable housing from all developments that provide one or more additional homes and involve a total addition to residential floorspace of 100sqm GIA or more. A sliding scale target applies to developments that provide one or more additional homes and have capacity for fewer than 25 additional homes, starting at 2% for one home and increasing by 2% for each home added to capacity.

4.2 On the basis of 165 sqm GIA of additional housing floorspace proposed (based on the submitted CIL form), this would result in a requirement for 4% affordable housing. This would equate to 6.6 sqm GIA of affordable floorspace. Where developments have capacity for fewer than 10 additional dwellings, the Council will accept a payment-in-lieu of affordable housing.

4.3 The affordable housing payment in lieu rate is £5000 per sqm GIA. Therefore, the affordable housing payment in lieu would be £33,000 (6.6 sqm x £5,000). This should be secured by legal agreement. During the course of the application, officer sought agreement for an affordable housing contribution. The appellant did not agree nor acknowledge the request. In the absence of a legal agreement this forms a reason for refusal.

## **5.0 Design**

5.1 Camden Local Plan Policies D1 (Design) is aimed at achieving the **highest standard** of design in all developments, it requires development to be of the highest architectural and urban design quality, which **improves** the function, appearance and character of the area.

5.2 The drawn information is insufficient in relation to context. The neighbouring building (529A) to the north and 2 Ingham Road to the west are not shown on the floorplans or elevations. This makes it difficult to understand the impacts of the development on the neighbouring buildings.

5.3 The illustrated proposals are not deemed to be high quality design as specified within Camden Local Plan Policy D1. The massing of the extension does not respect the character of the existing building, extending with proposals at the three storey parapet height. This loses the existing hierarchy of taller buildings on the main road that step down to adjacent streets. The further stepping down from 3 storeys

to 1 storey appears random and the elevation has not been suitably composed for this prominent location. As noted above, the lack of context within the drawings prevents assessment of proposals on neighbours, which is suspected to be significant.

5.4 The detailed proposals are not high quality, and appear derived from inappropriate duplicating of features of the existing building without consideration of how these relate to the proposal.

5.5 The proposals for a red brick exterior are likely acceptable, as these fit within the typical materiality of the locality. The acceptability of the brick is reliant on provision of a sample panel that demonstrates high quality finish and drawings that illustrate the detailed proposals for the visible facades. However, the large glass and obscured glass balustrades are considered to be highly visible, incongruous features at an elevated in an environment predominantly made up of traditional materials. It is unclear why black metal railings and/or a trellis/planting were not considered.

5.6 Whilst the existing street frontage on to Burrard Road is unexceptional, the proposed development of homes does little to activate this edge at ground level with a bike store, bedroom and bin store facing the street. These are typically 'inactive' uses that will not relate well to creating a positive street environment. This edge would be better served with more doors and living spaces. This is not compliant with Policy D1 criterion f).

5.7 The internal spaces are poorly planned, with excessive circulation spaces typified by lengthy corridors. There is a general lack of any dedicated internal storage within homes. This does not provide a high standard of accommodation as set out in Policy D1 criterion n).

5.8 The open nature of the surrounding area, would be lost, the vista pedestrians experience when walking through would be infilled with an excessively scaled, bulky extension, which cascades down from the parapet of the host property to ground floor level in a poorly conceived design which does fails to meet the highest standard in design and fails improve the visual amenity of the surrounding area contrary to policy D1 of the Local Plan 2017.

### Conclusion

5.9 The proposed development, by reason of the design, scale, siting and materials represents an incongruous and excessive form of overdevelopment which would be out of keeping with the existing architectural style of the building, and as such, would cause unacceptable harm to the character and appearance of the subject property, and surrounding area contrary to policy D1 (Design) of the Local Plan (2017), the London Plan (2021) and the NPPF (2021).



**2. Revised proposed visual (dwg no. 1783/VA A)**

## **6.0 Residential Amenity**

6.1 Local Plan Policy A1 seeks to protect the amenity of Camden's residents by ensuring the impact of development is fully considered. The quality of life of occupiers and neighbours are protected by only granting permission for development that would not harm the amenity of neighbouring residents.

6.2 It is considered that there would be a significant detrimental impact to residential amenity, in particular to occupiers of Nos 529A and 529B Finchley Road.

### Daylight/sunlight and outlook

6.3 The proposed extension would create a large impermeable wall which would appear to block out a substantial amount of light and outlook to the rear windows of Nos. 529A and 529B Finchley Road (and potentially 529C-D Finchley Road). The part two, part three-storey rear extension would be sited south of the rear residential windows of the neighbouring properties, 529A and 529B, which are angled towards the appeal site. There are also a number of flank windows between the 'outriggers' of these properties which would likely experience a notable reduction in daylight and sunlight.

6.4 During the course of the application, officers requested the submission of a daylight/sunlight report. This request was ignored by the appellant. In the absence of a daylight/sunlight report being submitted (after it being explicitly requested), and outlook visuals, the appellant has not demonstrated that the impact on neighbouring residential amenity would be acceptable. As such, this results in a reason for refusal on residential amenity grounds.





### 3. Proposed development in relation to neighbouring windows

#### Overlooking and privacy

6.5 The proposed windows and balcony are not considered to afford any harmful views into neighbouring habitable windows, as such, it is not considered that there would be an undue loss of privacy.

#### Noise and disturbance

6.6 No external plant equipment is proposed and the balconies are too small to host large gatherings, as such, it is not considered that there would be a significant level of noise and disturbance.

#### Conclusion

6.7 In the absence of a daylight/sunlight report being submitted (after it being explicitly requested), and also outlook visuals (which demonstrate sufficient outlook would be retained) the appellant has not demonstrated that the impact on neighbouring residential amenity would be acceptable. As such, this results in a reason for refusal on residential amenity grounds.

### 7.0 Quality of Accommodation

7.1 Policy H6 states that in all developments the Council will encourage design of all housing to provide functional, adaptable and accessible spaces, and expect all self-contained homes to meet the national described space standards.

7.2 The quality of accommodation is considered to be unacceptable. The issues are summarised below:



7.3 Unit 3 fails to meet minimum space standards. Unit 3 is a 1-bedroom flat which fails to meet the 50 sqm minimum floorspace requirement. While the appellant has labelled the unit as a studio, it clearly isn't. A studio is a single multifunctional space (with a combined sleeping and living area), this flexibility makes up for its smaller overall size, this is not the case with unit 3, which is a 1-bedroom flat (with a separate bedroom).

7.4 Unit 5 fails to meet minimum space standards. Unit 5 is a 1-bedroom flat split over two storeys which fails to meet the 58 sqm **minimum** floorspace requirement.

7.5 Unit 5's bedroom contains no windows and has insufficient access to light and outlook. The original version of Unit 5's bedroom contained no windows and no rooflights, completely cut off from any form of light or outlook. The revised proposal has inserted a single small rooflight to the rear serving the bedroom and a single small rooflight serving the en-suite bathroom. This is not considered to adequately resolve the issue. A rooflight is not a window and it does not provide the same level of outlook a window does. It is not clear why a rear dormer window was not considered (or a front rooflight to provide additional light).

7.6 No sections have been provided in order to confirm whether the proposed residential units would all meet the minimum 2.5m floor to ceiling height (as required by the London Plan 2021).

7.7 Also, as previously stated in the design section (para 5.7), the internal spaces are poorly planned, with excessive circulation spaces typified by lengthy corridors. There is a general lack of any dedicated internal storage within homes. This does not provide a high standard of accommodation as set out in Policy D1 criterion n).

#### Accessibility

7.8 None of the proposed units appear to meet M4(2) or M4(3) requirements. It appears that some minor amendments to unit 1 (notably to the bathroom and main entrance) could have made it compliant. It is unclear why this opportunity was not taken.

#### Conclusion

7.9 The quality of accommodation is unacceptable. Units 3 and 5 in particular fail to provide an acceptable quality of accommodation, both fail to meet minimum space standards and unit 5's bedroom has inadequate access to light and outlook. The proposal also fails to provide any accessible or adaptable units (despite having a sizeable, ground floor level unit). This results in a reason for refusal on quality of accommodation grounds.

### **8.0 Transport**

8.1 The site is located on Finchley Road which forms part of the Transport for London Road Network (TLRN) and Transport for London (TfL) is the highway authority.

#### Cycle Parking

8.2 In line with Policy T1 of the adopted Local Plan, we expect cycle parking at new developments to be provided in accordance with the standards set out in the London Plan. The revised proposed plans show that 8 long-stay and 2 short-stay cycle spaces would be provided within the development (internally) at ground floor level accessed via Burrard Road. The 8 long-stay spaces appear to utilise a gas assisted two tier bike rack to overcome space issues. The 2 short-stay spaces are appropriately separated from the long-stay spaces. It appears that sufficient cycle spaces, which are adequately accessible, covered and secure would be provided. However, it is unclear how the short-stay cycles would be secured (no details of a Sheffield hoop etc) nor are there any details of the two tier rack for the long-stay cycles (or whether there is sufficient space to load and unload the cycles from the rack). It is however considered that this lack of detail could be provided by way of condition. Both the design and provision of this cycle parking would be secured by condition, if the proposed development were to be acceptable.

## Construction management Plan (CMP)

8.3 Given the scale and siting of the development, it is not considered that a construction management plan is necessary in this instance.

## Highway works

8.4 TfL may require the applicant to enter into a Section 278 agreement with them with respect to highway repaving works adjacent to the site, if they deem this necessary. No comments have been received from TfL at the time of writing this report.

## Car free

8.5 Policy T2 of the Camden Local Plan states that the Council will limit the availability of parking and require all new developments in the borough to be car-free. This would prevent the occupants from adding to existing on-street parking pressures, traffic congestion and air pollution, whilst encouraging the use of more sustainable modes of transport such as walking, cycling and public transport. To prevent the future occupants from obtaining on-street parking permits from the Council, the development must be subject to a car free agreement and this should be secured by means of a Section 106 Agreement if permission were to be granted.

8.6 As the application is to be refused, in the absence of an S106 legal agreement, this would form a reason for refusal.

## **9.0 Trees and landscaping**

9.1 Policy A3 (Biodiversity) states that The Council will protect, and seek to secure additional, trees and vegetation. It goes on to state that the Council will:

- j. resist the loss of trees and vegetation of significant amenity, historic, cultural or ecological value including proposals which may threaten the continued wellbeing of such trees and vegetation;
- k. require trees and vegetation which are to be retained to be satisfactorily protected during the demolition and construction phase of development in line with BS5837:2012 'Trees in relation to Design, Demolition and Construction' and positively integrated as part of the site layout;
- l. expect replacement trees or vegetation to be provided where the loss of significant trees or vegetation or harm to the wellbeing of these trees and vegetation has been justified in the context of the proposed development;

9.2 The proposed demolition and construction works would be carried out in close proximity to two large, mature street trees. In the absence of an arboricultural report and tree protection plan, the appellant has failed to demonstrate that the appeal proposal would not result in undue harm to nearby street trees and as such forms a reason for refusal.



**4. Street view of street trees and development site from Burrard Road.**

9.3 Although sedum offers minimal biodiversity, the inclusion of a green roof is supported in principle. A wildflower mix would be preferred. In any instance this element of the proposal is acceptable, no details have been provided, however this could be secured by way of condition if the proposal were to be acceptable.

## **10.0 Air Quality**

10.1 Policy CC4 (Air Quality) states that: the Council will ensure that the impact of development on air quality is mitigated and ensure that exposure to poor air quality is reduced in the borough. The Council will take into account the impact of air quality when assessing development proposals, through the consideration of both the exposure of occupants to air pollution and the effect of the development on air quality. Consideration must be taken to the actions identified in the Council's Air Quality Action Plan.

10.2 Air Quality Assessments (AQAs) are required where development is likely to expose residents to high levels of air pollution. Where the AQA shows that a development would cause harm to air quality, the Council will not grant planning permission unless measures are adopted to mitigate the impact. Similarly, developments that introduce sensitive receptors (i.e. housing, schools) in locations of poor air quality will not be acceptable unless designed to mitigate the impact.

10.3 After officers had requested the submission of an AQA, the appellant did at a later stage submit one. The submitted AQA prepared by Eight associates appears to meet the minimum criteria required by Policy CC4. Compliance with the measures outlined within the AQA could be secured by way of condition if the proposal were to be acceptable.

## **11.0 Sustainability and Climate Change**

11.1 Policy CC1 requires all development to minimise the effects of climate change and encourage all developments to meet the highest feasible environmental standards. Policy CC2 requires all development to be resilient to climate change and to adopt appropriate climate change adaptation measures.

11.2 Policy CC2 requires any development involving 5 or more residential units or 500 sqm or more of any additional floorspace is required to demonstrate the above in a Sustainability Statement.

-The proposal would involve the creation of 5 residential units through conversion and such would require the submission of a sustainability statement.

11.3 Policy CC2 goes on to state that: "The Council will promote and measure sustainable design and construction by:

e. ensuring development schemes demonstrate how adaptation measures and sustainable development principles have been incorporated into the design and proposed implementation;

f. encourage new build residential development to use the Home Quality Mark and Passivhaus design standards;

g. encouraging conversions and extensions of 500 sqm of residential floorspace or above or five or more dwellings to achieve "excellent" in BREEAM domestic refurbishment; and

h. expecting non-domestic developments of 500 sqm of floorspace or above to achieve "excellent" in BREEAM assessments and encouraging zero carbon in new development from 2019.

11.4 Officers requested that an energy and sustainability statement be submitted as is required by policy. This request was ignored, as such, the appellant has failed to demonstrate that sufficient measures would be adopted to minimise the effects of climate change and meet the highest feasible environmental standards contrary to policy CC1 (Climate change mitigation) and CC2 (Adapting to climate change).

## **12.0 Planning Obligations**

12.1 If the proposal was considered to be acceptable it would be the subject of a Section 106 legal agreement. Many of the obligations required have been discussed above and are included as reason for refusal. Below is a summary of the heads of terms that would be sought for a successful scheme:

- Affordable housing contribution (£33,000)
- Car-free development
- Highways contribution (to be determined by TfL)
- Energy and sustainability plan

12.2 See Section 16.0 (Justification for S106 Legal Agreement) for justification of the above obligations.

## **13.0 Appeal Submitted on Grounds of Non-determination**

13.1 The appellant's grounds of appeal can be summarised as follows and are addressed beneath. It is not considered that the appellant's statement overcomes the council's reasons for refusal.

### Principle of Development

13.2 Please see section 3.0 (Land Use). The principle of an additional four self-contained residential units is supported. The unit mix and the compromising of the existing commercial unit is not and therefore fails to optimise the site (as suggested by the appellant).

### Quality of Accommodation and Unit Mix

13.3 Please see section 3.0 (Land Use) and section 7.0 (Quality of Accommodation). The unit mix is unacceptable. It is directly contrary to Local Plan Policy H7 as it fails provide a mix of units or any high priority units (in accordance with the dwelling size priorities table). The appellant suggests that it is not feasible to have anything other than 1-bedroom units despite their being ample floorspace and the fact that the existing residential unit has three bedrooms. This is clearly incorrect, a 2-bedroom or 3-bedroom unit could easily be achieved by combining either units 2 and 3 or units 3 and 4 (and replacing the spare kitchen/living area with a bedroom).

13.4 Units 3 and 5 fail to meet **minimum** space standards and unit 5's bedroom has no window (amongst other issues), this is clearly contrary to Local Plan Policy H6. Further quality of accommodation issues are specified in section 7.0.

#### Design

13.5 Please see section 5.0 (Design). Every application is assessed on its own merits. The example given by the appellant is not considered to justify the appeal scheme.

#### Impact on neighbours

13.6 Please see section 6.0 (Residential Amenity). The onus is on the appellant to demonstrate that no undue harm would be caused to residential amenity as a result of their proposal.

#### Trees

13.7 Please see section 9.0 (Trees and Landscaping). The onus is on the appellant to demonstrate that no undue harm would be caused to trees as a result of their proposal.

#### Parking obligations

13.8 Please see section 8.0 (Transport). The appellant suggests that "it is the local authority's requirement to show that there is a pre-existing problem over and above the normal congestion" (in order to justify a car-free obligation). This is incorrect. Local Plan Policy T2 (Parking and car-free development) "**requires all new developments in the borough to be car-free.**" This is a policy requirement for the London Borough of Camden, there are no exceptions and it is a borough-wide requirement regardless of location.

#### Affordable Housing

13.9 Please see section 4.0 (Affordable Housing). The appellant suggests that because the appeal scheme is not a major development, that it is exempt from providing an affordable housing contribution. This is incorrect. Policy H4 (Affordable housing) requires all developments that provide one or more additional homes and involve a total addition to residential floorspace of 100sqm GIA or more to make an affordable housing contribution.

#### Complaint about processing of the application

13.10 The appellant would not provide all of the documentation required to properly assess the application despite it being explicitly requested by officers multiple times. Significant time was spent by the case officer and a number of internal consultees (Council officers) assessing the application and providing detailed comments.

13.11 The appellant has omitted highly relevant correspondence between the Council and themselves where detailed feedback was given, detailing the specific issues with the scheme (which led to the appellant amending the proposal) and requesting information such as a daylight sunlight report and energy and sustainability statement which is critical to the assessment of the scheme. To suggest no time had gone into reviewing the application is entirely incorrect.

13.12 The application was arguably invalid as it missed basic information such as existing and proposed sections. It is regrettable the difficulty officers experienced attempting to obtain the most basic information from the appellant. Unfortunately, due to the above, resourcing issues, and a sizeable backlog, officers were forced to focus on higher priority applications/ public inquiry related work at the time.

#### **13.0 Recommendation**



## 13.1 Refuse permission

### 14.0 Reasons for Refusal

1. The proposed development, by reason of its design, scale, siting and materials represents an incongruous and overly dominant form of development, which fails to meet the highest standard of design and causes unacceptable harm to the character and appearance of the subject property, and surrounding area contrary to policy D1 (Design) of the London Borough of Camden Local Plan 2017.
2. The proposed development would result in a significant increase in bulk and mass in close proximity to neighbouring habitable windows. In the absence of a daylight/sunlight report or outlook visuals to demonstrate otherwise, it is considered likely that the development, due to its scale and siting, would cause undue harm to the residential amenity of neighbouring residential properties (particularly, Nos. 529A & 529B Finchley Road), contrary to policy A1 (Managing the impact of development) of the London Borough of Camden Local Plan 2017.
3. The proposed development, specifically Units 3 and 5, would provide a substandard quality of accommodation which fails to meet minimum space standards, and in the case of unit 5 (bedroom), fails to provide adequate light and outlook. The proposal also fails to provide any accessible and adaptable units. In the absence of existing and proposed sections, it also has not been demonstrated that the proposed residential units would meet the minimum floor to ceiling heights (2.5m) required by policy. The proposed development is therefore contrary to policy H6 (Housing choice and mix) of the London Borough of Camden Local Plan 2017 and policy D6 (Housing quality and standards) of the London Plan 2021.
4. The proposed development would result in the loss of a 3-bedroom family sized unit while providing an unacceptable unit mix of 5 x 1-bedroom flats failing to meet the priority housing needs of the borough in terms of unit mix contrary to policy H7 (Large and small homes) of the London Borough of Camden Local Plan 2017.
5. The proposed development would result in the loss of 21sqm of floorspace comprising part of a Class E commercial unit and the entirety of its 68 sqm rear service yard critical to the function of the commercial unit. The proposed development would thus harm the vibrancy and vitality of the shopping parade by compromising the functionality of the existing commercial unit contrary to policy TC2 (Camden's centres and other shopping areas) of the London Borough of Camden Local Plan 2017.
6. The proposed development, creates 5 new residential dwellings, and as such is required to submit an energy and sustainability statement. In the absence of an energy and sustainability statement it has not been demonstrated that sufficient measures would be adopted to minimise the effects of climate change and meet the highest feasible environmental standards contrary to policy CC1 (Climate change mitigation) and CC2 (Adapting to climate change) of the London Borough of Camden Local Plan 2017.
7. The proposed development, would result in significant demolition and construction works, in close proximity to large, mature street trees. The applicant has failed to submit an arboricultural report and tree protection plan. In the absence of these documents, it has not been adequately demonstrated that sufficient measures would be adopted to mitigate undue harm to the health of the nearby street trees, contrary to policy A3 (Biodiversity) of the London Borough of Camden Local Plan 2017.
8. The proposed development, in the absence of a legal agreement to secure a car-free development, would be likely to contribute to an unacceptable increase in parking stress and congestion in the surrounding area, contrary to policies T1 (Prioritising walking, cycling, and public transport) and T2 (Parking and car-free development) of the London Borough of Camden Local Plan 2017.

9. The proposed development, in the absence of a legal agreement to secure an affordable housing contribution of (£33,000), would fail to maximise the supply of affordable housing in the borough and help meet the needs of households unable to access market housing, contrary to policy H4 (Maximising the supply of affordable housing) of the London Borough of Camden Local Plan 2017.
10. The proposed development, in the absence of a legal agreement securing an Energy Efficiency Plan and Renewable Energy Plan and a Sustainability Plan would fail to be sustainable in its use of resources, contrary to policies CC1 (Climate change mitigation), CC2 (Adapting to climate change) and DM1 (Delivery and monitoring) of the London Borough of the London Borough of Camden Local Plan 2017.
11. The proposed development, in the absence of a legal agreement to secure an appropriate financial contribution towards public highway works, would be likely to harm the Borough's transport and public realm infrastructure, contrary to policies T1 (Prioritising walking, cycling and public transport), T3 (Transport Infrastructure), A1 (Managing the impact of development) and DM1 (Delivery and monitoring) of London Borough of Camden Local Plan 2017.

### **15.0 Suggested Conditions (should the appeal be allowed)**

15.1 In addition to the s106 matters referred to above, the following conditions are recommended should the appeal be allowed:

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

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

- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:

1783/01 Rev A, 1783/02 Rev B, 1783/V1 Rev A, 1783/V2 Rev A, AQA Issue 1 dated 06.09.21, Design and Access statement Rev A

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

- 3) All new external work shall be carried out in materials that resemble, as closely as possible, in colour and texture those of the existing building, unless otherwise specified in the approved application

Reason: To safeguard the appearance of the premises and the character of the immediate area in accordance with the requirements of policy D1 and D2 of the London Borough of Camden Local Plan 2017

- 4) Before the relevant part of the work is begun, detailed drawings, or samples of materials as appropriate, in respect of the following, shall be submitted to and approved in writing by the local planning authority:

Manufacturer's specification details of all facing materials (to be submitted to the Local Planning Authority) and samples of those materials (to be provided on site).

The relevant part of the works shall be carried out in accordance with the details thus approved and all approved samples shall be retained on site during the course of the works.

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

- 5) Prior to commencement of development , full details in respect of the living roof in the area indicated on the approved roof plan shall be submitted to and approved by the local planning authority. The details shall include
- i. a detailed scheme of maintenance
  - ii. sections at a scale of 1:20 with manufacturers details demonstrating the construction and materials used.
  - iii. full details of planting species and density

The living roofs shall be fully provided in accordance with the approved details prior to first occupation and thereafter retained and maintained in accordance with the approved scheme.

Reason: In order to ensure the development undertakes reasonable measures to take account of biodiversity and the water environment in accordance with policies G1, CC1, CC2, CC3, D1 and A3 of the London Borough of Camden Local Plan 2017.

- 6) Prior to commencement of development (excluding demolition and site preparation works), full details of the 8 Long-Stay and 2 Short-Stay cycle parking shall be submitted to and approved by the local planning authority. The approved facilities shall thereafter be provided in their entirety prior to the first occupation of any part of the development and permanently retained thereafter.

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

- 7) Prior to the commencement of development (excluding demolition and site preparation works), details of waste storage and removal shall be submitted to and approved in writing by the local planning authority, and development shall be carried out in accordance with the approved details.

Reason: To safeguard the amenities of the neighbouring premises and the area generally in accordance with the requirements of policies A1, A4 and CC5 of the London Borough of Camden Local Plan 2017.

- 8) Prior to the occupation of the development, full details of screening, obscure glazing and other measures to reduce instances of overlooking and loss of privacy to neighbouring occupiers shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the details thereby approved and permanently maintained thereafter.

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

- 9) The development hereby approved shall achieve a maximum internal water use of 105 litres/person/day, allowing 5 litres/person/day for external water use. Prior to occupation, evidence demonstrating that this has been achieved shall be submitted and approved by the Local Planning Authority.

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

- 10) Prior to the commencement of any works on site, details demonstrating how trees (to be retained) shall be protected during construction work, shall be submitted to and approved by the local planning authority in writing. Such details shall follow guidelines and standards set out in BS5837:2012 "Trees in Relation to Construction". All trees on the site, or parts of trees growing from adjoining sites (including street trees and their roots), shall be retained and protected from damage in accordance with the approved protection details.

Reason: To ensure that the development will not have an adverse effect on existing trees and in order to maintain the character and amenity of the area in accordance with the requirements of policies A2 and A3 of the London Borough of Camden Local Plan 2017.

## **16.0 Justification for S106 Legal Agreement**

### Affordable housing contribution (£33,000)

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

16.2 Given the scale of affordable housing need in the borough, the Council's aspiration is that as many residential developments as possible should provide affordable housing. The Camden Local Plan Viability Study shows that there is no direct correlation between scheme size and viability, and there is no viability basis for an affordable housing threshold or a lower target for smaller schemes. Through the Local Plan process, the Council has made provision for the Local Plan to seek affordable housing from smaller schemes as an exception to the national threshold.

16.3 The affordable housing target as detailed in policy H4 and its supporting text is based on a sliding scale with the target starting at 2% for an additional home (at 100sqm) and is increased by 2% for each home added to the capacity. On the basis of 165 sqm GIA of additional housing floorspace proposed (based on the submitted CIL form), this would result in a requirement for 4% affordable housing. This would equate to 6.6 sqm GIA of affordable floorspace. Where developments have capacity for fewer than 10 additional dwellings, the Council will accept a payment-in-lieu of affordable housing.

16.4 The affordable housing payment in lieu rate is £5000 per sqm GIA. Therefore, the affordable housing payment in lieu would be £33,000 (6.6 sqm x £5,000). A planning obligation is considered the most appropriate mechanism for securing the affordable housing contribution as it relates to a payment in lieu. No payment of money can be secured by condition.

### Car-free development

16.5 Policy T2 requires all new developments in the borough to be car-free. Car-free development means that no car parking spaces are provided within the site and current and future occupiers are not issued with on-street parking permits.

16.6 A planning obligation is considered the most appropriate mechanism for securing the development as car capped as it relates to controls that are outside of the development site and the level of control is considered to go beyond the remit of a planning condition. Furthermore, the Section 106 legal agreement is the mechanism used by the Council to signal that a property is to be designated as "car free". The Council's control over parking does not allow it to unilaterally withhold on-street parking permits from residents simply because they occupy a particular property. The Council's control is derived from Traffic Management Orders ("TMO"), which have been made pursuant to the Road Traffic Regulation Act 1984. There is a formal legal process of advertisement and consultation involved in amending a TMO. The council could not practically pursue an amendment to the TMO in connection with every application where the additional dwelling (or dwellings) ought properly to be designated as car free. Even if it could, such a mechanism would lead to a series of disputes between the council and incoming residents who had agreed to occupy the property with no knowledge of its car-free status. Instead, the TMO is worded so that the power to refuse to issue parking permits is linked to whether a property has entered into a "Car Free" Section 106 Obligation. The TMO sets out that it is the Council's policy not to give parking permits to people who live in premises designated as "Car Free", and the Section 106 legal agreement is the mechanism used by the Council to signal that a property is to be designated as "Car Free".

16.7 Further, use of a Section 106 Agreement, which is registered as a land charge, is a much clearer mechanism than the use of a condition to signal to potential future purchasers of the property that it is designated as car free and that they will not be able to obtain a parking permit. This part of the legal

agreement stays on the local search in perpetuity so that any future purchaser of the property is informed that residents are not eligible for parking permits.

#### Highways contribution

16.8 The Local Plan states that works affecting Highways are expected to repair any construction damage to transport infrastructure or landscaping and reinstate all affected transport network links and road and footway surfaces following development. The Council will undertake highway works connected to a development proposal at the developer's expense in accordance with paragraph 6.11 of the Local Plan.

16.9 The Council maintains that a payment for highways work should be secured through a Section 106 legal agreement, which would also combine as an agreement under Section 278 of the Highways Act 1980. CPG Transport states that public highways works on Borough Roads are to be undertaken through a combined Section 106 and 278 obligation. The guidance also states that the Council will secure payment for required works by preparing an estimate (including fees) for the scheme that the developer will be required to pay before commencing development. The most effective way of both securing sufficient payment and ensuring the works are carried out to the Council's procedures and standards is for a financial contribution to be paid by the developer on commencement of the development and secured by an obligation under Section 106 legal agreement. It is not possible to secure a financial contribution for highway works by condition as it relates to land outside the application site and is not under the control of the applicant.

#### Energy and Sustainability Plan

16.10 Energy and Sustainability Plans seek to ensure that developments to make the fullest contribution to tackling and mitigating against climate change. Energy Efficiency and Sustainability Plans are required in order to make the proposal acceptable in sustainability terms. It is necessary to secure this as legal obligation to ensure that the works are undertaken, installed and maintained in perpetuity as agreed.

16.11 These measures are considered to be proportionate and reasonable given the scale and use of the site. This mitigation must be secured via section 106 legal agreement rather than condition in order to fully mitigate against the identified impacts.