

APP/X5210/W/22/3306789: 529 Finchley Road, NW3 7BG

Town and Country Planning Act 1990

Appeal by Mr Nick Dha

Site Address: 529 Finchley Road, LONDON, NW3 7BG

APPELLANTS FINAL COMMNETS

These are submitted by the 26/01/2023 but we start with a procedural issue.

The PINS letters states as follows:

If you have any comments on the points raised, please send 2 copies to me no later than 26 January 2023(this date has been extended). You should comment solely on the representations enclosed with this letter.

You cannot introduce new material or put forward arguments that should have been included in your earlier statement. If you do, your comments will not be accepted and will be returned to you

In response we note that this was a non determination appeal submitted a year after the end of the prescribed period (and was valid due to an EOT agreement with the LPA).

As with all non-determination appeals we had to second guess the LPA concern and now that we have these we have a limited period to reply and cannot submit new evidence.

We note that the councils has still not prepared a conventional statement of case but a draft decision and an officers report. It was also submitted late due to an agreement with PINS of the 24/1/2022 in the following terms:

Dear Deirdre Traynor

Regarding your email below requesting the extension for your statement, it has been agreed in the circumstances to extend your statement until 11 January 2023.

The third party comments will stay as 21 December 2022 as mentioned in the start letter setting out the timetable.

I have copied in the Agent for information so he is aware of the changes.

Once all deadlines have passed/ documents exchanged we will extend the final comments

Regards

Vicky Williams

LPA officers report

3.5 mix; the scheme delivers more housing in a sustainable location. See small sites policy and LPAS status as a buffer authority.

3.6/3.7: the class E space is reduced by a very limited amount: there is no evidence that the unit will not be able to function with the loss of this and the loss of the service yard: many commercial properties are serviced from the road and the LPA's position is conjecture.

Design: subjective and covered in our non determination appeal and with regard to local precedents.

At 5.8 the LPA cite the loss of the open nature of the area but this is urban Camden and there is no open space policy designation which applies to the site.

At 6.4 the LPA criticise the appellants for not submitting a daylighting report: this is now being prepared in order to narrow down areas of contention and this raises the procedural issue as to late evidence as addressed above. The LPA criticism of the appellants not engaging in the process is a little rich as it could have readily refused the application many months ago but instead has done very little until forced into an appeal.

We have described the impact on the windows in our main SOC and referred to the distances involved and that that this is urban London.

Quality of accommodation: all addressed in our main SOC.

In terms of highway works the ODR states as

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.

As the application was due for a decision in October 2021 (16 months at the time of writing these comments) it is quite clear that TFL are not going to comment. The appellants cannot see any highway related obligation which would meet the relevant tests.

Car free: agreed and see comments on the S106 below.

Sustainability and climate change: this can be a condition and does not need to be in s106 especially as such matters are now also an integral feature of modern day building regulations.

Conditions (draft)

On a more positive note these are all agreed.

S106

The appellant's position is that it will work on a unilateral obligation to deliver the A/H obligation and also the car free and we comment on the officers report as follows:

Affordable housing contribution (£33,000)

This will be in the UU.

Car-free development

This will be in the UU.

Highways contribution

There is no evidence that there will be any construction damage and this would be a civil matter.

Energy and Sustainability Plan

There is no reason as to why this cannot be a condition as noted above.

Why UU and not an agreement

We are submitting a unilateral and the reasons for this are two fold.

The first is that after a long period of time we have no faith that the LPA will respond in the time needed.

Also the costs is prohibitive and the Email received from the LPA reads as follows with our **emphasis:**

Dear Gary,

I act for the Council's planning department in relation to the Section 106 Agreement on the above appeal and understand you are the agent acting on behalf of the applicant.

In accordance with my instructions, I have prepared the attached draft Agreement for your use in the appeal.

Please note the following.

1. Completion Date

This Agreement must be completed as soon as possible and no later than 26 January. Given the time it will take the Council to issue engrossments, receive engrossments back and seal the agreement (which will not occur until payment is received), approval of the agreement should be provided as soon as possible. You will note that there are a few points left highlighted in the agreement and I endeavour to come back to you on these as soon as I am able.

2. Parties to the Agreement

All parties with an interest in the land are required to be a party to the Agreement so please check the draft to ensure all such parties have been referred to. If details change or new parties (e.g. mortgagees) are subsequently added to the title please let me know forthwith as failure to do this may prevent completion taking place prior to the deadline.

3. Legal fees and monitoring fees

Please note that your client will need to pay our costs in relation to this matter, whether or not the matter proceeds to completion. **We anticipate the costs as being £7,929.20** made up of £5,000 as to our legal fees, a one off monitoring fee of £2,917.20 (being £583.44 per head of term), and £12 for Land Registry Charges. If negotiations become protracted and costs exceed the £5,000 fee we will charge on a £350 per hour basis until such time as the matter is completed. I will provide you with an invoice when I send you the engrossment copies of the Agreement for signature, but in the meantime I should be grateful to receive your firm's undertaking that those costs will be met. I attach our standard undertaking which is to be completed and returned to me.

I look forward to receiving any comments you may have, or your approval of the draft, so that I can issue engrossment copies for signature.

Kind Regards,

Egle Gineikiene

Planning Solicitor

Corporate Services

London Borough of Camden

Telephone: 020 7974 1824

Web: camden.gov.uk

It simply does not take up to £8,000 to draft a S106 : the issues raised by the LPA are all standard matters and proforma clauses can be utilised/adapted. It is accepted that there is a cost to preparation of a S106 but a market value would be a quarter of what is being charged. This is revenue collecting and is a pertinent illustration of the issues faced by appellants in taking a scheme through the planning system

We would be grateful for a date for the submission of the UU as the star letter has this as 7 weeks from the 16 November but of course until last week we did not know the position of the LPA.