

<b>Delegated Report</b> (Non-Determination Appeal)		<b>Analysis sheet</b>		<b>Expiry Date:</b>		14/04/2022	
		N/A / attached		<b>Consultation Expiry Date:</b>		22/05/2022	
<b>Officer</b>				<b>Application Number(s)</b>			
Jaspreet Chana				2022/0644/P			
<b>Application Address</b>				<b>Drawing Numbers</b>			
232 Kilburn High Road London NW6 4JP				See draft decision			
<b>PO 3/4</b>	<b>Area Team Signature</b>	<b>C&amp;UD</b>	<b>Authorised Officer Signature</b>				
<b>Proposal</b>							
Erection of a new third floor extension on the Messina Avenue frontage to create 1 x 1 bedroom apartment, with associated works.							
<b>Recommendation:</b>		Planning permission would have been refused had an appeal against non-determination not been received					
<b>Application Type:</b>		Full planning permission					
<b>Consultations</b>							
<b>Summary of consultation:</b>		<p>Three site notices were displayed on the 26/04/2022 (consultation end date 20/05/2022).</p> <p>The development was also advertised in the local press on the 28/04/2022 (consultation end date 20/05/2022).</p>					
<b>Adjoining Occupiers:</b>			No. of responses		00	No. of objections	
						00	
<b>Summary of adjoining occupiers' consultation responses:</b>		No responses were received.					

<b>Site Description</b>
<p>The application site is an end of terrace building located on the north-eastern side of Kilburn High Road at the junction with Messina Avenue. No.232 has two frontages: one which is a four storey building which fronts onto Kilburn High Road and the other a three storey building which fronts onto Messina Avenue. The building currently comprises commercial space on the ground floor with 3 1 bedroom apartments on the first floor. The second floor comprises 1 2-bedroom apartment and 1 1-bedroom apartment. The third floor comprises 1 1-bedroom apartment. The surrounding area is a mix of residential and commercial uses. The existing character of the street is generally three storeys with mansard roof extensions. The subject site does not lie in a conservation area and is not listed. However, the site opposite (UCKG Help Centre) is a grade II listed building.</p>

## Relevant History

### 232 Kilburn High Road –

2003/1778/P - The erection of a 2nd floor side and rear extension over an existing two-storey side and rear extension to create a new self-contained flat – Granted on 07/04/2004.

2010/4346/A - Display of three internally illuminated fascia signs and two internally illuminated hanging sign on Kilburn High Road and Messina Avenue elevations to existing commercial unit at ground floor level – Granted on 21/12/2010.

## Relevant policies

### National Planning Policy Framework (2021)

### The London Plan (2021)

### Camden Local Plan (2017)

- A1 – Managing the impact of development
- D1 – Design
- D2 – Heritage
- H1 – Maximising housing supply
- H4 – Maximising the supply of affordable housing
- H6 – Housing choice and mix
- H7 – Large and small homes
- T1 – Prioritising walking, cycling and public transport
- T2 – Parking and car-free development
- T4 – Sustainable movement of goods and materials

### Camden Planning Guidance:

- Design (2021)
- Home Improvements (2021)
- Amenity (2021)
- Housing (2021)
- Energy efficiency and adaptation (2021)
- Transport (2021)

## Assessment

**A non-determination appeal was submitted and start letter received on the 18th January 2023 (appeal ref: APP/X5210/W/22/3310997). The following outlines the Councils assessment on the proposed development and the recommendation that would have been made.**

### 1. Proposal

1.1. Planning permission is sought for the erection of a third floor extension on the Messina Avenue frontage to create 1 x 1 bedroom apartment, with associated works.

### 2. Assessment

2.1. The principal considerations material to the determination of this application are as follows:

- Land use, dwelling mix and standards
- Affordable Housing Contribution

- Design
- Impact upon neighbouring amenities
- Transportation and parking
- CIL

### **3. Land use, dwelling mix and standards**

- 3.1. Self-contained housing is the priority land-use of the Local Plan. In particular, policy H1 aims to secure a sufficient supply of homes to meet the needs of existing and future households by maximising the supply of housing. Furthermore, policy H3 of the Local Plan states that the Council will resist developments that results in a net loss of residential floor space, and usually resist developments that result in the loss of more than one existing home. As the proposed development concerns an extension to the existing roof extension to accommodate one 1 bedroom unit, it is considered the dwelling would provide additional C3 use and would add to the supply of homes to meet the future housing demand. It is therefore considered that the proposed development in land use terms in itself is acceptable.
- 3.2. Policy H7 of the Local Plan seeks to secure a range of homes of different sizes in all residential development and will seek to ensure that all residential development contributes to meeting the priorities as set out in the Dwelling Sizes Priority Table. The Priority Table indicates that market housing with 2 or 3 bedrooms are the highest priority and most sought after unit size. Policy H7 defines large homes as homes with 3 bedrooms or more and small homes as units of less than 3 bedrooms. Although 1 bedroom units are considered low priority, they would increase the capacity for greater dwellings in Camden according with Policy H1 (Maximising housing supply).
- 3.3. New residential units should provide a high standard of living accommodation for the prospective occupiers whilst maintaining the amenities of the neighbouring residential properties. In line with the Nationally Described Space Standards (March 2015), a 1 bed, 1 person dwelling over a single storey should have a minimum gross internal floor area of 39sqm. The proposed additional flat would meet this space requirement (40sqm) and the development would be considered acceptable in terms of the quality of the residential accommodation to be provided. The unit would have dual aspect rooms with each of the habitable rooms benefitting from at least one window/balcony window. There is a rear terrace amenity space proposed, which would face out onto Messina Avenue and would be compliant with the London Plan minimum requirements for a 1-bedroom unit (5sqm).

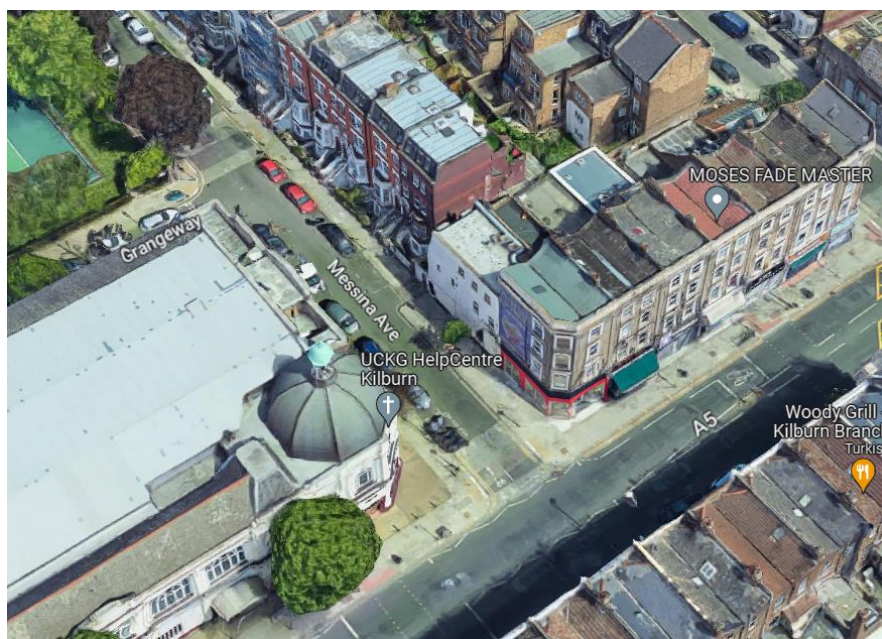
### **4. Affordable housing contribution**

- 4.1. Policy H4 of the Local Plan expects a contribution to affordable housing from all developments that provide one or more additional homes and involve a total addition to the residential floor space of 100sqm or more. This is based on the assessment where 100sqm of floor space is considered to provide capacity for one home. In developments that provide less than 10 units, affordable housing contributions can take the form of a payment in lieu (PIL).
- 4.2. The scheme relates to 1 new flat with 40sqm in total of new floor space. As this is under 100sqm, it would not need to make a contribution towards the Council's affordable housing.

### **5. Design**

- 5.1. The Council's design policies are aimed at achieving the highest standard of design in all developments. Policy D1 states that the Council will require all developments to be of the highest standard of design and to respect the character, setting, form and scale of neighbouring buildings, and the character and proportions of the existing building. Policy D2 requires all developments to preserve the character of listed buildings within the Borough, including by resisting development that would cause harm to significance of a listed building through an effect on its setting.

- 5.2. CPG (Design) guidance on mansard roof extensions states: *'a roof alteration or addition is likely to be unacceptable in the following circumstances where there is likely to be an adverse effect on the skyline, the appearance of the building or the surrounding streetscene....where the scale and proportions of the building would be overwhelmed by an additional extension/storeys'*.
- 5.3. 232 Kilburn High Road is part of a row of four storey terrace buildings which have an unbroken roofline and consistent building design and form. The building partly faces onto Kilburn High Road and then wraps around the corner and faces onto Messina Avenue. The rear element of the building which fronts onto Messina Avenue originally comprised two storeys with a flat roof. Planning permission was approved in 2013 to add an additional storey to the building. The approved scheme was to be read from the rear as a mansard style roof extension whilst adding a flush additional storey onto the Messina Avenue Elevation. Following this there is a continuation of four storey town houses with mansard roof extensions and basement levels. Directly opposite the site is a UCKG Help Centre (formerly known as 'the Grange Cinema') which is a grade II listed building (this can be seen below).



*Aerial view of site from above.*

*Scale, bulk, material and form*

- 5.4. The proposal has been amended by removing the roof extension to the front of 232 Kilburn High Road and only extending on the rear element/Messina Avenue frontage. The proposal now would involve erecting an additional storey to the existing building creating an unusual boxed extension containing one new flat. It is noted that the extension would be off a prominent corner building and would be highly visible in both short and long views. The addition of the proposed roof extension would take the building up to four storeys which would be out of keeping with the established pattern of development and in turn would be considered harmful to the rhythm of the street and the surrounding area. The current mansard style extension is set down from the main building by one storey, this would be obliterated by the proposal and prevent the original rear elevation to be read. Not only would the building appear dominant in this position but also its unusual design, height and form would appear incongruous and out of character.
- 5.5. The addition of the new roof extension would appear to be over-scaled, top-heavy, out of proportion and unsympathetic with the host building. At four storeys the roof extension would also begin to dominate the host building, which has a small and understated scale. A boxy extension, whilst sometimes seen on larger scale and grander buildings, is not appropriate within this site context as it skews the hierarchy of the building. The extension would be overly prominent and appear visible from long and short views from the public realm. This would be further exacerbated by the use of modern aluminium cladding which would be different to the existing building and the

large window openings would appear out of proportion and out of character with the host building and surrounding area. In particular the proposed cladding creates an entirely different element on top of the existing third floor extension which has been constructed in brick to match the existing building. The building as a whole begins to look piecemeal within the proposals rather than a holistically designed piece of architecture. The proposed materials are considered to be out of character with the host building and the wider area and simply serve to make the addition more prominent.

- 5.6. The existing building relates well to its immediate neighbours with an existing extension which continues the existing building rather than creating a prominent anomaly on top. The agents have stated in the planning statement that several similar examples have been approved all over London and that this would be a similar example. Officers note this point however each site is looked at and assessed on its own merits and it is not considered appropriate to accept an extension on this site in its current form and design.
- 5.7. The UCKG Help Centre formerly known as the 'the national club/the grange cinema' is a grade II listed building located opposite the subject site. The cinema site was designed (1914) to seat 2,300 people, The Grange was the largest cinema in Europe when constructed and one of very few surviving examples nationally that display cinema design. The help centre building has been designed to appear as a standalone dominant addition within the streetscene and buildings surrounding the centre almost enhance its prominence. The proposed extension will be visible in some views of the listed building. The incongruous addition is considered by reason of the resulting detrimental impact on the host building to harm the setting of the listed building.
- 5.8. Local Plan Policies D1 and D2, consistent with Section 16 (Conserving and enhancing the historic environment) of the NPPF (2021) seek to preserve and enhance heritage assets, stating that the Council will not permit the loss of or substantial harm to a designated heritage asset, including conservation areas and Listed Buildings, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss.
- 5.9. Given the assessment outlined above, it is considered that the proposed extension would result in harm to the grade II listed building. It is recognised that the proposed extension would be creating a new one bedroom unit which would add to Camden's housing need, as such, it is considered public benefit would be derived from the scheme and therefore the proposed extension although not considered acceptable on design grounds, would result in less than substantial harm to the grade II listed building.
- 5.10. The proposal would therefore not be considered acceptable. The scheme does not reflect on and respond well to the existing form, scale, design, materials and appearance of the existing building or to other similar ones along Kilburn High Road. The proposal would therefore be contrary to policies D1 and D2 of the Local Plan and Camden Planning Guidance on 'Design' and 'Home Improvements'.

## **6. Impact upon neighbouring amenities**

- 6.1. Policy A1 of the Camden Local Plan seeks to ensure that development does not cause adverse amenity impacts upon neighbours. This is in regards to sunlight, daylight, privacy and outlook.
- 6.2. The proposed extension is not considered to have any adverse amenity impacts towards UCKG Help Centre listed building due to it being set across the street from the building and the listed building in parts is taller than the proposed extension.
- 6.3. From the proposed floor plans it appears that the existing 3<sup>rd</sup> floor flat serves a kitchen bathroom and staircase which has three rear windows which face out onto the flat roof of the rear part of the building. The proposed new flat extension on the existing mansard extension would partially obscure flat 3s rear kitchen window and making it smaller which would lead to a significant loss of

light, poor outlook and overbearing impact.

- 6.4. Neighbouring sites to the south east Nos.228 and 230 Kilburn High Road have second and third floor rear windows which look out towards built up rear gardens on Messina Avenue and Gascony Avenue. It is believed that the second and third floor windows to No.228 and 230 serve bedrooms and habitable rooms and so with the proposed extension adding a level above the existing taking it to four storeys is considered to have a loss of light and overbearing impact caused to the amenities of properties 228 and 230 Kilburn High Road. Furthermore in the absence of a daylight/sunlight report being submitted and outlook visuals, the appellant has not demonstrated that the impact on neighbouring residential amenity would be acceptable. The proposal would therefore be contrary to policy A1.
- 6.5. A roof terrace is proposed adjacent to no. 2 Messina Avenue which would result in users of the terrace overlooking the windows on no. 2 Messina Avenue and allows views back towards the rear elevations of the properties along Kilburn High). Furthermore the use of the terrace is likely to create noise impacts for the flat below on the second floor. It is not considered that privacy screens would be sufficient to mitigate the impact without being unacceptable in design terms adding further harmful bulk.
- 6.6. The proposal would therefore have a significant detrimental impact on the neighbouring properties in terms of loss of light, outlook and privacy and would be contrary to policy A1 of the Local Plan and Camden Planning Guidance (Amenity).

#### Other matters

- 6.7. Photos of the site and aerial views of the site show plant equipment and a flue which slopes up from the rear of the building across the existing flat mansard roof and then up the fourth floor to the roof ridge. The proposed drawings do not show this plant equipment or flue proposed or whether the existing would be replaced. Planning permission would be needed to relocate these elements.

### **7. Transportation and parking**

- 7.1. 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 proposed 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.
- 7.2. 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. No cycle provision has been provided or shown on the proposed plans; 1 space per unit, i.e. a total of 1 space would be required, however due to site constraints there is no space for cycle parking within the site or outside the site, therefore a financial contribution for one bike hanger space can be made, this would be £720. This would need to be secured by legal agreement. Given the scale and siting of the development, it is not considered that a construction management plan is necessary in this instance.

### **8. CIL**

- 8.1. The new unit would be liable for Mayor of London's Community Infrastructure Levy (CIL) as the additional floorspace proposes new self-contained residential accommodation. This would be collected by Camden after the scheme is implemented and could be subject to surcharges for failure to assume liability.

## 9. Planning Obligations

9.1. 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:

- Car free development
- £720 Bike hanger space contribution

9.2. See section (Justification for S106 Legal Agreement) for justification for the above obligations.

## 10. Appeal Submitted on Grounds of Non-Determination

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

### Complaint about processing of the decision

10.2. The appellant was advised of officer's recommendation on 4<sup>th</sup> of October and reasons were outlined as stated by the appellant in para.6.4, they were offered the choice of withdrawal or refusal. The applicants decided to take a refusal. However it is unfortunate that due to high workloads officers were unable to put the decision through quickly.

Disagreement reason one – 'the site is on a prominent corner location and adding any extension on this site would be visible in both long and short views from Kilburn High Road and Messina Avenue'.

10.3. Please see the (Design) section above paras 5.2 - 5.5. It is also noted that in para 6.7 the appellant admits that the proposed development 'will be visible in both long and short views from Kilburn High Road and Messina Avenue...and the proposed development would be seen within the urban context of the area' this suggests that they recognise that the development will be prominent and visible within the street scene rather than blending into the street scene and appear subordinate.

10.4. The appellant raises comments in relation to Policy G1 and Policy H1 of the Councils Local Plan and the Housing delivery test, please see sections 3 and 4 above, these sections state that the council supports new housing in the borough.

Disagreement reason two – 'The design, size, scale, form and use of materials of the new extension would not be considered appropriate in this location. The extension at fourth floor level juts out from the building line, it very prominent on the roof and appears as a standalone feature which is not in keeping with the host building or the surrounding area'.

10.5. Officers acknowledge that the appellant listened to officer's earlier advice and removed the fourth floor level extension from the Kilburn High Road elevation. However the 'jut out' comment is in relation to the proposed new flat above the third floor mansard roof extension and how it juts out from the building line when looking south-west along Messina Avenue (this can be seen in the appellants statement pack in appendix E page 31 bottom left picture).

10.6. Further comments made by the appellant in regard to design in paras 6.15, please see sections 5, 4 and 6 above. Every application is assessed on its own merits. The examples included stating 2-8 Messina Avenue as having used similar material on their roof extension do not appear correct as those roofs appear as tile hung mansard roof extensions rather than using metal cladding; this is confirmed by planning history and site aerial views and site photos.

## **11. Recommendation**

### **11.1. Refuse permission**

#### **Reasons for Refusal**

- 11.2. The proposed development, by reason of its scale, bulk, location and detailed design would result in an incongruous and prominent development, which would detract from the character and appearance of the host building, the wider streetscene and the setting of the Grade II Listed Help Centre contrary to policies D1 (Design) and D2 (Heritage) of the London Borough of Camden Local Plan 2017 and CPG design guidance.
- 11.3. The proposed development by reason of its scale, bulk and location to neighbouring residential properties and in the absence of a daylight/sunlight report, would cause undue harm to the residential amenity in terms of overlooking, outlook and access to daylight/sunlight for the neighbouring residential properties (particularly, 3<sup>rd</sup> floor flat at No.232 and to Nos.228 and 230 Kilburn High Road), contrary to policy A1 (Amenity) of the London Borough of Camden Local Plan 2017.
- 11.4. The proposed terrace, due to its size, siting and scale, would have a detrimental impact on the amenities of properties along Gascony Avenue (Nos.1, 3 and 5) and Kilburn High Road (Nos.232 and 230) in regards to loss of privacy through overlooking, poor outlook and noise nuisance, contrary to policy A1 (Amenity) of the London Borough of Camden Local Plan 2017.
- 11.5. The proposal development, in the absence of a legal agreement securing car-free housing, would be likely to contribute unacceptably to parking stress and congestion in the surrounding area, contrary to Policy T2 (Parking and car-free development) of the London Borough of Camden Local Plan 2017.
- 11.6. The proposed development, in the absence of a legal agreement securing the installation costs of 1 cycle parking space, would fail to promote the use of sustainable means of travel or ensure a safe and accessible environment for cyclists contrary to policy T1 (Prioritising walking, cycling and public transport) of the London Borough of Camden Local Plan 2017.

**Recommendation:** Refuse planning permission

## **12. Suggested Conditions (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:

L100 P1, G100 P1, G101 P1 REVB, C100 P1 REVB, V100 P1 REVB, Planning Statement  
Reason: For the avoidance of doubt and in the interest of proper planning.

- 3) 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:

a) Manufacturer's specification details of all facing materials (cladding, windows, and terrace



railings) 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.

- 4) 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.

- 5) 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.

### **13. Justification for S106 Legal Agreement**

#### Car-free

- 13.1. 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.

- 13.2. 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”.

13.3. 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.

#### Cycle parking financial contribution

13.4. The proposed development, in the absence of a planning obligation to secure funding for cycling parking, would fail to would fail to promote the use of sustainable means of travel or ensure a safe and accessible environment for cyclists.

13.5. The Council, through its policies and strategies aims to encourage sustainable and active travel such as public transport, walking and cycling as the primary modes of transport for short journeys within the borough, and is committed to improving public transport, cycling and pedestrian routes in the area.

13.6. The Council would put the contribution to cycle parking towards the cost of creating one bike hangar.

#### Policy context

13.7. Policies T1 (Prioritising walking, cycling and public transport) of the Camden Local Plan 2017 are relevant. Policy A1 (Managing the Impact of development) also requires development to mitigate its impacts upon the existing transport network.

#### CIL Compliance

13.8. The requirement for the contribution is considered above and is considered necessary for the development to remain acceptable and accord with the development plan.

13.9. The Council considers that the amount of the contribution sort is proportionate and reasonable given the use and scale of the development.

13.10. It is considered appropriate to secure this via S106 agreement as it is a financial contribution.