

**Appellant's Final Comments for the erection of a third-floor extension on the Messina Avenue frontage to create 1 x 1 bedroom apartment, with associated works.**

**232 KILBURN HIGH ROAD, LONDON, NW6 4JP.**

On behalf of Mohammed Adil.

Date: 8th March 2023

Pegasus Ref: P21-3659 | LPA Ref: 2022/O644/P | PINS Ref: APP/X5210/W/22/3310997

Author: Ellie Liggins-Hughes

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## Document Management.

Version	Date	Author	Checked/ Approved by:	Reason for revision
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# 1. General Background

- 1.1. For the avoidance of doubt, this Appeal has been submitted by Mohammed Adil ("the Appellant"). Pegasus Group were instructed for the purpose of submitting it through the Planning Inspectorate's portal. The Appeal was made against non-determination following months of piecemeal communication from the Council.
- 1.2. These Final Comments are submitted in response to the points raised by the Council. The paragraph numbering in their Statement of Case (delegated report) is used.
- 1.3. The Appellant's position, as outlined in their Statement of Case, remains unchanged, which is planning permission should be granted for the proposed scheme. As this is an appeal against non-determination, the Council's final comments have been submitted in the form of a draft decision and delegated report. It should be noted that a number of the comments made within the Council's Statement of Case were never raised previously when the planning application was under consideration. They have only come to light after the appeal was made despite the Council having considered the planning application for six months.

## **2. Final Comments– LPA Statement of Case (Delegated Report)**

### **Section 3– Paragraphs 3.1–3.3**

- 2.1. The Council acknowledge that the submitted scheme complies with Policy H1 of the Camden Local Plan which seeks to maximise housing supply in the Borough. The Council also outline that the proposed development accords with the Nationally Described Space Standards in terms of internal floor area and the London Plan in terms of minimum requirements for external amenity space. This supports the Appellants comments made at paragraph 6.8 of their Statement of Case (SoC).

### **Reason for Refusal 1**

#### **Section 5 Paragraph 5.3**

- 2.2. The Appellant's position on the design of the proposed development and its integration within its local context is set out across Section 6 of their SoC.
- 2.3. The Council at paragraph 5.3 set out that 232 Kilburn High Road forms part of a row of terraces which have an unbroken roofline and consistent building design and form. The Appellant recognises that the roofs to the main row of terraces comprise of a similar built form and roof height, however, each terrace has greatly varied later additions to the rear. These additions have various roof heights, storeys, and use of materials. As such, it should be stressed that whilst the Appellant concurs with the Council in relation to the unbroken roof line of the frontage buildings, this statement is not applicable to the rear, where the proposed development is to take place.
- 2.4. In addition, in the wider area there is a clear variation in roofline and designs, as illustrated by the design of UCKG Help centre opposite.

#### **Paragraph 5.4**

- 2.5. The Council suggest at paragraph 5.4 that the proposed development consists of an unusual, boxed extension form. The applicant points the Inspector to paragraph 3.7 of their SoC which identifies the extension has been designed to have a flat roof to replicate the existing roof of the Site and reduce the scale of the proposed development. It is also unclear to the Appellant why the Council considers the proposals to be of an 'unusual' built form. As identified within the Appellants SoC the proposal has been designed to integrate within the context of the area, with similar built forms approved and developed in the area (such as 5 Gascony Avenue).
- 2.6. Paragraph 5.4 of the Council's case also notes that the corner location of the Site would result in the development being highly visible in both the short and long views. It remains the Appellants view that whilst the development would be seen in both long and short views, the development would be seen within the context of the area and would not be incongruous given the prominent corner location of number 232 (see paragraphs 6.7–6.8 of the Appellants SoC) and its urban/ high street location.

- 2.7. Furthermore, the Appellant disagrees with the Council's statement that the building would be out of keeping with the established pattern of development. Whilst it is appreciated that the proposed development would increase the rear-built form, the pattern of development for this row of terraces is not consistent to the rear, and in the wider area there are varying heights and architectural design resulting in an eclectic pattern of development. As a result, the appeal proposal would not be viewed as 'unusual' in the context of the setting of this area.

#### **Paragraph 5.5**

- 2.8. The Appellant details at 6.14 of their SoC that the Site meets the requirements of part a of Policy D1 of the Camden Local Plan by utilising design principles found in the area and is not considered to be over-scaled, top heavy or out of proportion with the host building which is on a prominent corner, as identified by the Council in their email on the 4th October 2022 (see Appendix A).
- 2.9. The Council in their SoC state that the host building has 'a small and understated scale'. The Appellant wholly disagrees with this statement. 232 Kilburn High Road is a prominent four storey building, with a chamfer corner and a detailed parapet. The first, second and third floors of the four-storey section of the building also have ornate window cills and lintels. It should also be stressed that the description of the site as small and understated is inconsistent with the Council's comments made to the Appellant on the 4th October, where the Site was described as *"on a prominent corner location"*.
- 2.10. The Council also state that the proposed development skews the hierarchy of the building. As set out in paragraph 5.8 of the Appellants Planning Statement, the rear extension is consistent with the building line and does not extend beyond the existing height of the Kilburn High Road frontage. As such, it is not considered that the proposed extension would skew the hierarchy of the building.
- 2.11. The use of materials has also been criticised by the Council at paragraph 5.5. The materials proposed seek to complement the area by utilising colours commonly found in this part of Kilburn High Road. The cladding ensures the proposal is viewed as a modern take of a mansard roof (a feature commonly found in this area). The Council notes that the previous extension to the third floor was constructed of brick to match the existing building. Whilst this is true, the Council fail to recognise that the previous extension is painted white, giving the appearance of this section of the building as a separate building to the four-storey section of 232 Kilburn High Road.
- 2.12. With reference to 'materials' section (paragraph 30–31) of the National Design Guide (January 2021), materials used for a building can affect how it functions and lasts overtime. The materials proposed ensure the site is practical, durable, and attractive and ensure the development is harmonious to the character of the host building and surrounding context.

#### **Paragraph 5.7**

- 2.13. The Appellant's position on the perceived impact on the Grade II Listed UCKG Help Centre formally known as 'the National Club/the Grange Cinema' is set out in their SoC paragraph 6.16.

- 2.14. It remains the Appellants position that the proposed development, the subject of this appeal, has been designed to employ design principles which are sympathetic to the setting of the listed building and surrounding area.

#### **Paragraph 5.9**

- 2.15. The Appellant has set out at paragraph 6.16 of their SoC, that the proposed design, scale and form and use of materials would not result in harm to the Listed Building. Whilst the Council do not agree with the no harm argument presented by the Appellant, they do identify the proposed development has less than substantial harm to the Listed Building. The provision of a new unit for housing in a sustainable location in a London Borough which cannot demonstrate greater than 4 years of housing land supply<sup>1</sup> in the appellants view must constitute a public benefit. Should the Inspector conclude that there is some harm then the public benefit is considered to be of sufficient weight to outweigh any perceived slight harm to the listed building.

#### **Paragraph 5.10**

- 2.16. The Council conclude Section 5 of the delegated report by stating the proposal is contrary to policies D1 and D2 of the Local Plan.
- 2.17. The Appellant details how the proposal accords to policies D1 in paragraphs 6.14–6.15 and 6.17– 6.22 and policy D2 in paragraph 6.16 in their SoC.
- 2.18. The Appellant remains of the opinion that the proposals accords with policies D1 and D2 for the reasons set out within the Statement of Case.

### **Reason for Refusal 2**

#### **Section 6 Paragraph 6.2**

- 2.19. The Appellant agrees with the Council on the conclusion that the development does not have any adverse amenity impact towards UCKG Help Centre.

#### **Paragraph 6.3**

- 2.20. The impact upon neighbouring amenity was not previously outlined as a concern by the Council in the comments to the Appellant as demonstrated in the appendices B and C of the Appellants SoC.
- 2.21. Whilst the Appellant acknowledges that the kitchen window of Flat 3s would be reduced and therefore result in some loss of light and impact upon the kitchens outlook, the proposal still provides direct natural light into the existing kitchen of Flat 3s. Furthermore, as the kitchen is on the fourth floor, the reduction of light would be akin to a garden fence projecting above a window. The Appellant understands that Camden Council consider kitchens to be habitable rooms in accordance with their Amenity SPD. However, Part 20, paragraph C. (1) of the GDPO defines habitable rooms as *"any rooms used or intended to be used for sleeping or living*

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<sup>1</sup> Paragraph 4.32 of Camden's Authority Monitoring Report 2018/19, 2019/20, and 2020/21.

*which are not solely used for cooking purposes, but does not include bath or toilet facilities, service rooms, corridors, laundry rooms, hallways or utility rooms". The kitchen of Flat 3s is solely used for cooking and, therefore, under the national legislation does not constitute a habitable room. Whilst the Appellant recognises there will be marginal loss of light to Flat 3s, given the kitchen is used for solely cooking, that kitchens under national legislation is not classified as a habitable room but nevertheless the proposal includes a window and ensures the kitchen still has access to natural daylight and sunlight. Accordingly the proposal is retaining light and outlook to the kitchen of flat 3s.*

#### **Paragraph 6.4**

- 2.22. The Council suggest that the proposed extension would have a loss of light and overbearing impact to the amenities of properties 228 and 230 Kilburn High Road. The Council also state that *"the absence of a daylight/sunlight report and outlook visuals, the appellant has not demonstrated that the impact on neighbouring residential amenity would be acceptable"*.
- 2.23. The proposal seeks to make effective use of land as supported by within the NPPF and Camden's Local Plan. The Planning Practice Guidance (PPG) at paragraph 007 states
- "All developments should maintain acceptable living standards. What this means in practice, in relation to assessing appropriate levels of sunlight and daylight, will depend to some extent on the context for the development as well as its detailed design. For example, in areas of high-density historic buildings, or city centre locations where tall modern buildings predominate, lower daylight and daylight and sunlight levels at some windows may be unavoidable if new developments are to be in keeping with the general form of their surroundings.*
- In such situations good design (such as giving careful consideration to a building's massing and layout of habitable rooms) will be necessary to help make the best use of the site and maintain acceptable living standards."*
- 2.24. The design and layout of the scheme has been considered to ensure that the residential amenity of neighbouring dwellings is not adversely impacted upon and is protected as much as possible. The drawings submitted for planning application 2012/2992/P for 230 Kilburn High Road demonstrates that the closest windows to 232 Kilburn High Road serve the staircase and hallways for 230 Kilburn High Road. The other windows serve residential units, however it is unclear what rooms these windows serve (see Appendix B). The proposed extension seeks to reflect the design of the existing character of the area and demonstrates good urban design practice by ensuring windows are not looking into habitable rooms and are orientated along the northern and eastern elevations. Moreover, the proposal seeks to ensure the development contributes towards the housing stock of Camden, a point which is identified by the Council as a positive of the scheme. As such, the Appellant opposes the statement by the Council and considers the scheme to provide adequate amenity lighting levels and accord with Policy A1 of Camden's Local Plan.
- 2.25. In addition, the rear of 232 Kilburn High Road is north east facing. The sun rises due east and sets due west. As such, the proposed extension will not negatively impact upon the residents of 230 Kilburn High Road in daylight and sunlight terms as the rear of the properties are within shadows for most of the day.



### Reason for Refusal 3

#### Paragraph 6.5

- 2.26. The Council state that the proposed roof terrace would result in the users of the terrace overlooking the windows of no. 2 Messina Avenue. Appendix C of these Final Comments demonstrates a snip from Google Earth which shows an aerial view of the Site. It is clear from this image that the proposed development does not overlook habitable windows of 2 Messina Avenue and as such the Council's comment on this matter is incorrect. The Council also state that the proposed terrace would allow views towards the rear elevations of the properties along Kilburn High Road. Whilst the Appellant appreciates that the terrace would allow views to the rear of properties along Kilburn High Road, the terrace has been carefully sited and designed to ensure that residents of the adjoining terraces of Kilburn High Road do not suffer from an unacceptable degree of overlooking. The moderate scale of the terrace ensures that there is minimum overlooking of surrounding external amenity space. Furthermore, due to the size and design of the terrace, any users would need to be actively looking (ie peering around the inside of the extension) to gain a full look of other external amenity spaces to the rear of properties along Kilburn High Road. It should also be highlighted that the rear of the properties along Kilburn High Road have an existing degree of overlooking from the roof terrace at 2 Messina Avenue. It is considered that the proposed terrace would not materially reduce privacy for these properties, particularly in the context of a town centre location.
- 2.27. At paragraph 6.5 the Council also note that the proposed terrace '*is likely to create noise impacts for the flat below*'. The Council at Policy A2 encourage developers where possible to provide some outdoor amenity space in the form of small terraces. Camden's Home Improvements SPG (2021) at 2.2.3 sets out policy for balconies and terraces. The proposed terrace accords with this SPG and has been designed of a modest scale to ensure the future residents have access to private amenity space. Given the proposal is for a one bedroom, two-person apartment, the Appellant does not consider the terrace to have any adverse noise impact for the flat below.
- 2.28. Overall, the criticism raised by the council relative to the terrace is considered completely overblown given the location of the Site.

#### Paragraph 6.6

- 2.29. For the reasons noted above, the Appellant does not agree with the Council's conclusions in regards to the proposals impact upon neighbouring residential amenities and considers the proposal to accord with Policy A1 of the Local Plan and Camden Planning Guidance (Amenity).

#### Paragraph 6.7

- 2.30. On this matter the Appellant understands that the flue equipment is not shown, and whilst these would be relocated, they do not form part of the determination of this application. If required, the relocation of the flue equipment would be pursued in a separate planning application.

## **Reason for Refusal 4**

### **Section 7 Paragraph 7.1**

- 2.31. Reason for Refusal 4 relates to the absence of a legal agreement to secure car-free parking. The Council did not engage with the Appellant on this matter during the course of the application.
- 2.32. Paragraph 5.9 of the submitted Planning Statement states that the development will be car free. The Appellant considers that a condition to prevent future occupiers from obtaining car permits acceptable for this development, and a S106 is not necessary. This matter is further discussed in Section 3 of this document.

## **Reason for Refusal 5**

### **Paragraph 7.2**

- 2.33. Reason for Refusal 5 relates to the absence of a legal agreement for installation costs of 1 cycle parking space. The Council did not engage with the Appellant on this matter during the course of the application.
- 2.34. The government's guidance on planning obligations identifies that planning obligations may only be pursued if they are necessary to make the development acceptable in planning terms and must meet the three tests as set out below:
- necessary to make the development acceptable in planning terms
  - directly related to the development
  - fairly and reasonably related in scale and kind to the development
- 2.35. Within the Council's Statement of Case, they do not discuss the location for the proposed cycle stand. Whilst it is appreciated that Policy T5 of the London Plan sets out that a minimum of 1 cycle space should be delivered at this proposed development, due to the sites constraints there is inadequate space to provide cycle parking within the site's boundaries. The Council in their Statement of Case suggest that a financial contribution should be paid for the Council to provide one bike hanger space. However, the Council fail to identify the location of such a cycle hanger therefore not abiding by two of the required tests, namely 'directly related to the development' and 'fairly and reasonably related in scale and kind to the development', set out within regulation 122 of the Community Infrastructure Levy Regulations (as amended).
- 2.36. Furthermore, the Appellant would like to highlight, that the current occupied flats at 232 Kilburn High Road are not served by cycle hangers at the site and there are a number of Sheffield bike stands and bike storage areas within proximity of the site with two located along Messina Avenue (Sheffield stand approx. 10m from the access point for the flats and a bike hanger approx. 40m from the site). Given the proximity of existing bicycle storage facilities to the site, the Appellant considers there to be no requirement for additional provision in the area as the exiting stands would be accessible to future residents.

Furthermore, the site is located in a highly sustainable area (PTAL6a) with high levels of public transport available in the area.

- 2.37. As such, given the Council request fails to meet the tests as set out in 122 of the Community Infrastructure Levy Regulations and there is ample existing provision in the area, it is considered that the proposal does not require a financial contribution towards the implementation of a cycle storage facility and although there is a slight conflict with policy, this is not unacceptable when Development Plan is read as a whole.

## **Section 8**

### **Paragraph 8.1**

- 2.38. The Appellant accepts the development would be liable for Mayor of London's Community Infrastructure Levy.

## **Section 9**

### **Paragraph 9.1**

- 2.39. The Appellant accepts the Council's proposed requirements to seek a car free development but it is considered that a Section 106 agreement is not necessary, and the requirement can be secured via a planning condition, as set out in the above comments.

## **Section 10**

### **Paragraph 10.3**

- 2.40. The Council at 10.3 have taken the Appellants comments regarding the visibility of the site from paragraph 6.7 of their SoC out of context. The comment made within the SoC identifies that 232 Kilburn High Road is a prominent corner location and so the proposed development, will be seen within this context. The Appellant did not conclude within their SoC that the development itself is prominent, nor would it not blend into the existing street scene, but quite the opposite, with the proposal seen in the wider context of the area.

### **Paragraph 10.5**

- 2.41. The Appellant has responded to the Council's comments on the design, size, scale, and form earlier within these Final Comments.

### **3. Final Comments– Suggested Conditions and S106**

- 3.1. Representations are made in these Final Comments on the proposed conditions and Section 106 agreement which were received as part of the Council's Statement of Case.
- 3.2. Condition 4: it is felt this condition is not necessary, as the development has been designed to ensure there is limited impact to the amenity of neighbouring properties.
- 3.3. As previously set out, the Appellant does not consider the requirement for a Section 106 agreement necessary to ensure the development is car free and submits that a planning condition would be more appropriate.
- 3.4. At paragraph 13.2, the Council state that a planning obligation is considered the most appropriate mechanism for securing car free development 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. Whilst the appellant understands that S106 agreements can provide clear obligations, it is not considered that a planning condition would be any less effective.
- 3.5. Paragraph 002 Reference ID: 23b-002-20190901 of the Planning Practice Guidance (PPG) on planning obligations, as set out by the Government, identifies planning obligations may only be utilised if they meet the tests that they are necessary to make the development acceptable in planning terms. As the requirement for a car free development can be made via a planning condition, the Appellant does not consider that the Council's suggestion of a Section 106 agreement to meet the planning obligations test.
- 3.6. Furthermore, Paragraph 55 of the National Planning Policy Framework makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:
  1. necessary;
  2. relevant to planning;
  3. relevant to the development to be permitted;
  4. enforceable;
  5. precise; and
  6. reasonable in all other respects.
- 3.7. A planning condition which is appropriately worded would be suitable to secure a car free development. A recent appeal (APP/E5900/W/22/3297711) was dismissed as the Inspector found that the removal of the planning condition relating to car free development would be in direct conflict with planning policy and undermine the development plans approach to deliver car free sustainable development. This demonstrates that the use of conditions to secure car free development is both appropriate and effective.

- 3.8. The Applicant in their Planning Statement stated that the development would be car free as a result of the highly sustainable location of the Site. Furthermore, it is not uncommon for Councils to define 'car free' restrictions by a planning condition. Therefore, the Applicant suggests a sixth condition pursuant to planning permission at the Site and should be read as:

*Occupiers of the residential development hereby approved shall not be entitled to hold or apply for a Residents Parking Permit or Visitors Parking Permit to allow the parking of a motor car within the administrative district of the local planning authority unless the occupier is entitled to be a holder of a Disabled Persons Badge issued pursuant to Section 21 of the Chronically Sick and Disabled Persons Act 1970 Parking Permit.*

*Any permit that is issued to or held by any occupant of the development shall immediately be surrendered to the local planning authority.*

*The restrictions and requirements of the scheme shall apply to and be communicated to all future residential occupiers of the development including successors in title as well as any person occupying the premises as a tenant or license.*

*Reason: To promote sustainable transport and to reduce pressure for on-street car parking in accordance with the requirements.*

- 3.9. The Appellant also considers the proposed requirement for a Section 106 agreement to secure funding for cycle parking to be unnecessary. As discussed previously, the Council has not identified the location of the proposed bike storage hanger and in the absence of this information it is impossible to conclude that this accords with the planning obligations tests that obligations must be directly related to the development and fairly and reasonably located in scale and kind to the development. The requested obligation fails to meet the tests and as outlined in the previous section, is not required to make this development acceptable in planning terms as there is sufficient existing provision in the local area already.
- 3.10. This Section has demonstrated that a car-free development can be secured by way of condition and the bicycle storage obligation fails to meet the tests and is not necessary. It is therefore clear that this proposal does not require a legal agreement to be acceptable in planning terms.

## **4. Final Comments– Conclusions**

- 4.1. This statement has set out the Appellant's final comments with respect to the appeal with reference APP/X5210/W/22/3310997.
- 4.2. The Appellant remains of the opinion that the proposal in terms of design, scale and bulk is acceptable in this location, and the Council's arguments against the site are contradictory between their comments to the Appellant and their SoC.
- 4.3. The additional information provided in the Council's Statement of Case raises new objections in relation to the impact upon the amenity of neighbouring properties as well as the absence of securing a legal agreement for car free development and installation costs of 1 cycle parking space.
- 4.4. These Final Comments have addressed specific points in the Council's Statement of Case and the Appellant respectfully requests that planning permission be granted for the proposed development.



## **Appendix A: 4th October Email Trail**



RE: 2022/0644/P 232 Kilburn High Road

 Jaspreet Chana <Jaspreet.Chana@camden.gov.uk>  
To:  Ellie Liggins-Hughes  
Cc:  Alex Bushell  
 You replied to this message on 05/10/2022 13:32.

 Reply  Reply All  Forward  

Tue 04/10/2022 18:50

Hi Ellie,

I sincerely apologise for the delay in coming back to you. I took your amended scheme back to our case conference today and unfortunately it was not supported.

The reasons for this are:

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

Overall, the proposed roof extension, by reason of its, design, scale, form and materials would be detrimental to the character and appearance of the host building and the surrounding area. The proposal would therefore be contrary to policies D1 and D2 of Camden Council's Local Plan 2017, Design CPG and to the National Planning Policy Framework 2021, the London Plan 2021.

Given the above we cannot support this application and the applicant can either choose to withdraw this application or take a refusal and try the application at appeal. Please let me know how the applicant would like to proceed.

Kind regards,

Jaspreet Chana  
Senior Planner  
Pronouns: She/Her/Hers

Telephone: 0207 974 1544



**From:** Ellie Liggins-Hughes <Ellie.Liggins-Hughes@pegasusgroup.co.uk>  
**Sent:** 05 October 2022 13:32  
**To:** Jaspreet Chana <Jaspreet.Chana@camden.gov.uk>  
**Cc:** Alex Bushell <Alex.Bushell@camden.gov.uk>; David Onions <David.Onions@pegasusgroup.co.uk>  
**Subject:** RE: 2022/0644/P 232 Kilburn High Road

Good afternoon Jaspreet,

That is very disappointing especially given that this form of extension in terms of scale, location and materials is common both within the immediate area and in London as a whole.

If you believe there is nothing else we can produce/amend which would address the Council's comments then please proceed with a refusal.

Kind regards,  
Ellie

**Ellie Liggins-Hughes**  
Planner

**E** Ellie.Liggins-Hughes@pegasusgroup.co.uk  
**M** 07938 484623 | **DD** 0121 272 7389 | **EXT** 3230 | **T** 0121 308 9570  
5th Floor, 1 Newhall Street | Birmingham | B3 3NH



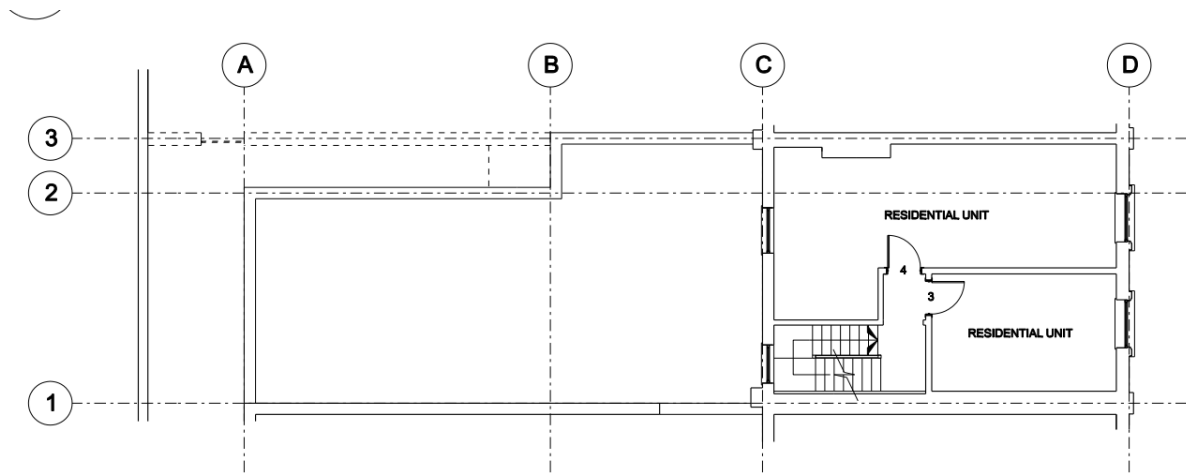
**Expertly Done.** [LinkedIn](#) | [Twitter](#) | [Instagram](#) | [Our Charity](#) | [Our Website](#)

4.5.





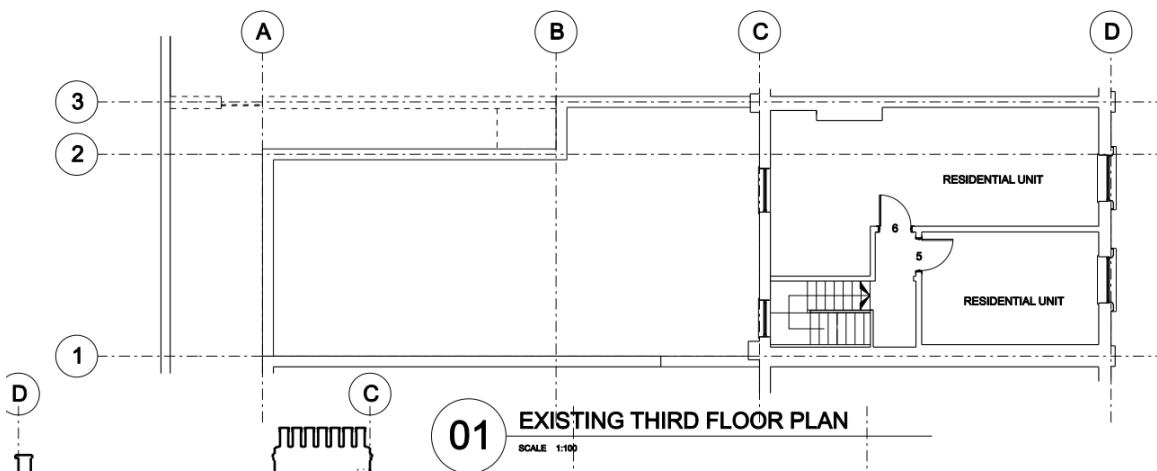
## **Appendix B: Floorplans of 230 Kilburn High Road**



**02** EXISTING SECOND FLOOR PLAN

SCALE 1:100

0 1 2 3 4 5 6  
METRES

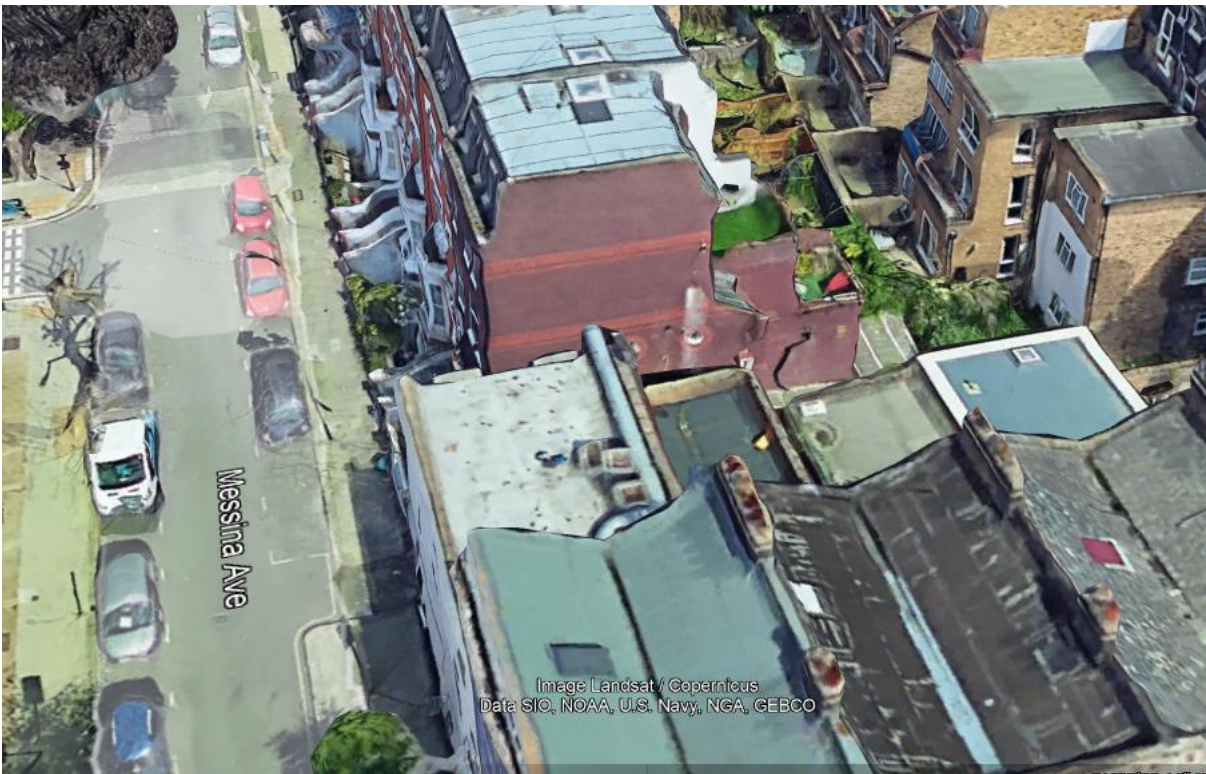


**01** EXISTING THIRD FLOOR PLAN

SCALE 1:100



## Appendix C: Google Earth Image of Site





## **Appendix D: Appeal Decision APP/E5900/W/22/3297711**



## Appeal Decision

Site visit made on 16 September 2022

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 October 2022

**Appeal Ref: APP/E5900/W/22/3297711**

**63 Cephas Avenue, Tower Hamlets, London E1 4AR**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Place2Live Limited against the decision of London Borough of Tower Hamlets.
- The application Ref PA/22/00191, dated 4 February 2022, was refused by notice dated 1 April 2022.
- The application sought planning permission for Rear basement extension and other associated works to facilitate the conversion of the existing dwelling house into 1 x 3 bed flat and 1 x 1 bed flat without complying with a condition attached to planning permission Ref PA/21/00369, dated 7 May 2021.
- The condition in dispute is No. 2 which states that: None of the residential units shall be occupied until a scheme to secure their occupation as 'car-free' has been implemented in accordance with details which have first been submitted to and approved in writing by the local planning authority. The scheme shall ensure that: i. All residential occupiers of the development (not being holders of a disabled person's badge issued pursuant to Section 21 of the Chronically Sick and Disabled Persons Act 1970 or similar legislation) including all such future occupiers, shall not apply for or hold an on-street parking permit to park a vehicle on public highway at any time within the administrative district of the local planning authority. ii. Any permit that is issued to or held by any occupant of the development shall immediately be surrendered to the local planning authority. iii. The restrictions and requirements of the scheme shall apply to and be communicated to all future residential occupiers of the development including successors in title as well as any person occupying the premises as a tenant or licensee.
- The reason given for the condition is: To promote sustainable transport and to reduce pressure for on-street car parking in accordance with the requirements of policies T6 of the London Plan, D.TR3 of the Tower Hamlets Local Plan 2031 (2020).

### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issue is whether or not the condition is necessary having regard to the delivery of sustainable development and the effect on the transport and highway network.

### Reasons

3. The appeal property is located on the corner of Cephas Avenue and Osier Street. It was granted planning permission in 2021 for a rear basement extension and other associated works to facilitate the conversion of the existing

<https://www.gov.uk/planning-inspectorate>

dwellinghouse to 1no. three-bedroom flat and 1no. one-bedroom flat. A condition was imposed on this planning consent requiring the units to be 'car-free'. This condition ultimately restricts occupants from obtaining an on-street parking permit. This is the condition in dispute.

4. Policy D.TR3 of the Tower Hamlets Local Plan (2020) states that residential development is required to be permit-free in terms of on-street car parking.
5. Policy T6 of The London Plan (2021) states that car-free development should be the starting point for all development proposals in places that are (or are planned to be) well-connected by public transport. The evidence shows that the site has a PTAL (Public Transport Accessibility Level) rating of 5 – very good.
6. The appeal site is close to Stepney Green station. I walked between the appeal site and the station and estimated this to be a less than 5-minute walk. There are also several bus stops on Mile End Road with the westbound stop almost directly opposite the junction between Cephass Avenue and Mile End Road, with the eastbound stop located next to the station.
7. Having regard to the above development plan policies, and the public transport provision, removing the condition would be in direct conflict with the development plan and undermine the approach to deliver car-free sustainable development.
8. I observed on my mid-morning weekday site visit that there were moderate levels of on-street parking. It would, however, be reasonable to assume that there would be higher levels of on-street parking at evenings and weekends when more residents will be in their homes. Without any convincing evidence either way in terms of potential harm to highway safety, removing the condition would nevertheless increase parking stress in the area.
9. Although each application and appeal should be determined on its own individual planning merits, removing the condition could be used in support of such similar cases. I consider that this is not a generalised fear of precedent, but a realistic and specific concern given the shared characteristics that will exist with other sites. Allowing this appeal would make it more difficult to resist further applications to remove such conditions, and I consider that the cumulative effect would contribute to an overall harm in terms of failing to provide sustainable developments and contribute to parking stress.
10. The appellant considers that the condition fails the tests set out in the National Planning Policy Framework (the Framework) and the Planning Practice Guidance (PPG) as it restricts the actions of individuals rather than being applicable to land or buildings. Whilst conditions cannot be used to control the actions of individuals, the condition in this case makes a clearly specified and distinct connection with the appeal property itself. The condition is therefore not unreasonable for this reason.
11. The appellant has referred to an appeal<sup>1</sup> where the Inspector considered that a condition that would have the effect of preventing an occupant from applying for a permit, took an unreasonable approach in doing so, as it impeded the actions of a person and is not a restriction on land or buildings. Although I do not have full details of the case, I acknowledge the appeal and have considered the findings in my decision. I am not, however, bound by this decision, and for

<sup>1</sup> APP/H5390/W/21/3277054



the reasons I have given above, I am satisfied that the mechanism to deliver car-free housing makes a clear connection with the appeal property and thus is not unreasonable and is relevant to planning. Additionally, the Council have also referred me to an appeal decision<sup>2</sup> where such a condition had been imposed. It would have been incumbent on the Inspector to consider any conditions they imposed against the tests in the Framework.

**Conclusion**

12. Removing the condition would therefore be contrary to the requirements of Policy D.TR3 of the Tower Hamlets Local Plan (2020) and Policy T6 of The London Plan (2021) and there are no other considerations, including the National Planning Policy Framework, that outweigh this conflict.
13. I therefore find that the condition is necessary and reasonably related to the subject matter having regard to the requirement to deliver sustainable development and the highways impacts of the development.
14. For the reasons given above, and having had regard to all other matters raised, I conclude that the condition should be retained in its current form and accordingly the appeal is dismissed.

*A M Nilsson*

INSPECTOR

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<sup>2</sup> APP/E5900/W/19/3224823



Town & Country Planning Act 1990 (as amended)  
Planning and Compulsory Purchase Act 2004

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