

Appeal Decision

Hearing held on 13 September 2016

Site visit carried out on the same day

by Jennifer A Vyse DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13 October 2016

Appeal Ref: APP/X5210/W/15/3141159

Arthur Stanley House, Tottenham Street, Camden, London W1T 4RN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr P Burroughs of University College London Hospitals Charity Trust against the decision of the Council of the London Borough of Camden.
 - The application, No 2015/0391/P, dated 22 January 2015, was refused by a notice dated 2 July 2015.
 - The development proposed is described on the planning application form as refurbishment and extension to enable a change of use from healthcare (Class D1) to a mixed use development comprising 1,976.48 square metres of residential (class C3) and 5,487 square metres of office floor space (Class B1) including a new build to the rear.
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Decision

1. For the reasons that follow, the appeal is allowed and planning permission is granted for refurbishment of the existing eight storey building and the erection of a new build element to the rear (facing Tottenham Mews) to enable a change of use from health care (Class D1) to a mixed use development comprising office floorspace (Class B1), flexible office (Class B1)/health care (Class D1) floorspace at ground floor and/or basement levels and 12 residential units (Class C3) (market units: 1 x 1 bed; 8 x 2 bed; 1 x 3 bed) (affordable units: 2 x 3 bed) and associated landscaping fronting Tottenham Mews, at Arthur Stanley House, Tottenham Street, Camden, London, in accordance with the terms of the application, No 2015/0391/P, dated 22 January 2015, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The application was amended prior to its determination by the Council. The office floor space provision was reduced to some 5,075 square metres, with a reduction also in the residential floorspace proposed to around 1,853 square metres. The scheme was also revised to allow for building to Lifetime homes standards and for a flexible B1/D1 use at ground floor level to allow for a potential GP surgery use.
 3. At the Hearing, I was also requested to consider a further amendment to allow for flexible B1/D1 use at basement levels as well as the ground floor (listed as Doc 3 below). This is a very minor revision to the scheme and makes no material difference to the nature or scale of the development proposed, or the external appearance. I am satisfied that accommodating the proposed amendment would not prejudice the interests of other parties and have
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determined the appeal on that basis. That revised description of development is incorporated into the formal decision set out above.

4. Although the application was recommended for approval, Members voted to refuse it. Of the eleven reasons for refusal set out on the Decision Notice, eight referred to the absence of a legal agreement in relation to various matters. Two others referred to the absence of a Travel Plan and the absence of a local employment/apprenticeships agreement and associated training and employment contribution. However, a draft planning obligation, in the form of a deed of agreement under the provisions of Section 106 of the Town and Country Planning Act 1990 (as amended) was submitted with the appeal to address those matters. As a consequence, those reasons for refusal were not pursued by the Council. Following the related discussion at the Hearing, minor revisions to the document were agreed and, with the consent of the parties, a signed version of the amended agreement was submitted after the event (Doc 13). The obligations secured are a material consideration in this case and are dealt with in more detail later in this Decision.

Main Issue

5. In light of the Council's position as set out above, the main issue in this case relates to whether the appeal scheme makes an appropriate contribution to the supply of new homes in the borough, having regard to the requirements of the development plan and other material considerations.

Proposal

6. Arthur Stanley House occupies a corner plot at the junction of Tottenham Mews with Tottenham Street, opposite Goodge Place, within an area of London known as Fitzrovia. It comprises an eight storey brick-faced 1960s building of little architectural merit that has been vacant for approximately 10 years. It is proposed to refurbish and redevelop the main building for use as offices and potentially a GP surgery, together with residential accommodation. A tall chimney, some ten storeys in height, together with a boiler house and temporary buildings to the rear of the main building have been demolished. Two new build elements are proposed within the space thus created: a four storey element over the existing basement fronting Tottenham Mews would provide additional residential units, with a further new five storey element above basement level behind that, providing additional office accommodation.
7. A total of 71 cycle parking spaces for the proposed office accommodation are shown, with a further 26 spaces for the residential units. No on site car-parking would be provided, the development being secured as a car-free scheme via the S106 Agreement.

Reasons for the Decision

8. The development plan for the area includes the London Plan (The Spatial Development Strategy for London Consolidated with Alterations since 2011), the Camden Core Strategy (November 2010), the Camden Development Policies (November 2010) and the Fitzrovia Area Action Plan (March 2014). The appeal site lies within the Central Activities Zone (CAZ) as defined by the London Plan and is also within what is referred to as the Central London area, as defined by the Core Strategy. (Policies in this Decision prefaced with 'DP'

are Camden Development Policies and those prefaced with 'CS' are Camden Core Strategy policies.)

9. Policy DP15 sets out that the Council will seek to protect existing community facilities by resisting their loss unless:
- a replacement facility that meets the needs of the local population has been provided; or,
 - the specific community facility is no longer required in its current use. Where that is the case, evidence is required to show that the loss would not create or add to the shortfall in provision for that specific community use and demonstrate that there is no demand for any other suitable community use on the site. Where this is successfully demonstrated, the preferred new use is affordable housing.

The Council is of the view that the first of the two alternatives is relevant in this instance and that there is no conflict with the policy. The Charlotte Street Association and the Fitzrovia Neighbourhood Association (local Associations) argued that the second criterion applies and that there is consequent conflict with the policy.

10. As set out in the officer's report, all the services previously provided at Arthur Stanley House, including orthopaedics, rheumatology, hydrotherapy pool and surgical administration were relocated in their entirety to the new University College Hospital on Euston Road in 2005/2006. Accordingly, notwithstanding that the building is currently vacant, this is not a case where the specific community services that were provided in the building are no longer required (ie the circumstances of the second of the criteria). Rather, the services continue to be required but have relocated to replacement premises nearby. I agree with the Council therefore, that it is the first of the two alternative criteria that is engaged here. Accordingly, I find no policy requirement for the appeal scheme to comprise affordable housing in its entirety and there is no policy conflict in this regard.
11. It is perhaps worth noting at this point that, in answer to my questions at the start of the Hearing, the Council confirmed, notwithstanding reference in the related reason for refusal, that policy CS10 (supporting community facilities and services) is not relevant in relation to the appeal scheme. It was also confirmed that there was no conflict with policy DP3 (affordable housing provision) a matter I deal with later on in this Decision.
12. Policy DP1 requires that, where more than 200 square metres (gross) additional floorspace is to be provided in the Central London area, up to 50% of that additional floorspace is to be housing. The Council confirmed that additional floorspace is that created through extensions or new build. My attention was drawn, in this regard, to the Council's Planning Guidance (CPG2¹) which confirms, at paragraph 2.27, that the policy requirements of DP1 are not triggered by increases in net non-residential floorspace that take place wholly within the existing building envelope. Accordingly, as set out in the committee report, the 50% requirement only applies to the new build element of the appeal scheme, not the building as a whole as asserted by the local

¹ Camden Planning Guidance 2: Housing May 2016 (Supplementary Planning Document)

associations. The committee report confirms that the development proposed not only meets, but would exceed the expectations of policy DP1 in terms of residential floorspace.

13. Policy DP2 seeks to maximise the supply of additional homes in the Borough by, among other things, expecting the maximum appropriate contribution to the supply of housing on sites that are vacant, taking into account other uses that are needed on the site and resisting alternative development of sites considered particularly suitable for housing. Paragraph 2.12 of the justificatory text to the policy confirms that, in seeking to maximise the proportion of the site used for housing, the Council will, among other things, take account of policy DP1 and whether a mixed use scheme would be appropriate; the need for other uses in the area, particularly in the Central London area; and whether the supply of additional housing falls short of the overall target of 595 additional homes per annum and the target of 437 additional self-contained homes per annum.
14. In terms of the mix of uses proposed, I have already found that there would be no conflict with policy DP1, with the quantum of housing proposed exceeding the policy requirement.
15. With regard to other uses, the CAZ is an area covering the City of London and parts of neighbouring boroughs and is identified in The London Plan as a unique area containing a cluster of nationally and internationally important activities, including the largest concentration of London's financial and business services. Policy 4.3Aa) of the London Plan confirms that increases in office floorspace in the CAZ should provide for a mix of uses, including housing, although no definition was drawn to my attention as to what a 'mix' might comprise in terms of, for example, floorspace proportions on any particular site. The development proposed comprises approximately 26% residential floorspace, with the remainder being for office use and, potentially, around 600 square metres for a GP surgery. Although concern was expressed at the Hearing that the split proposed does not equate to a mixed use development, no substantiated evidence or policy support was before me to endorse that stance. It is clear that a mix of uses is proposed, as opposed to a single use of the site. On that basis, I am satisfied that the development proposed would accord with policy 4.3Aa).
16. As to the 'need' for other uses, the Council's Employment Land Study 2014 (Doc 12) forecasts borough-wide demand for almost 700,000 square metres of new office floorspace between 2014 -2031. I am mindful, in this regard, that almost 46,000 square metres of office floorspace has been lost to residential use within the borough between April 2011- March 2014, through the grant of planning permissions, and note that a further 55,000 square metres would be lost were all the prior approvals that have been granted to be implemented. An independent review of the Fitzrovia office market by the CBRE (December 2015) confirms that demand for office space in the area has recently strengthened, with take-up in 2015 surpassing 2007 levels, making it the most active year since 2000. The CBRE also identifies a chronic level of undersupply of office floorspace within Fitzrovia, advising that historically low levels of completions in the area have severely restricted supply. There is evidence therefore, of a current imbalance between demand and supply in office space. In the absence of any substantiated evidence to the contrary, it seems to me

that there is a demonstrable demand for office space within the Central London area, which is also part of the CAZ.

17. In relation to the Council's housing figures, I am advised that the annual target for Camden has been increased by around one third. Whilst the emerging Local Plan seeks to further increase housing targets, that Plan is still at an early stage, with consultation on the 2016 Submission Draft having only been completed in April. The figures therein have not yet been tested at Examination and can therefore attract only limited weight.
18. The Council's statement confirms that sufficient identified sites are in place to exceed the identified housing targets over the next five years.² I note that the sites identified in its 2013/2014 Annual Monitoring Report, produced in 2015, include delivery of 16 homes on the appeal site in 2016/2017.³ In answer to my questions, the Council confirmed that the figure for Arthur Stanley House has remained at 16, even after adoption of the Area Action Plan. It seems to me that the delivery of 12 units on the appeal site is not wholly at odds with that estimate. It is also anticipated that the homes would be delivered within the next five years, which would accord with the expectations of the Monitoring Report. In addition, I am mindful that the delivery of even 16 units on the site would still allow for a considerable amount of floorspace on the site in an alternative use.
19. The Fitzrovia Area Action Plan was adopted in March 2014 and thus is of more recent date than the Core Strategy and the Development Policies. It identifies a range of principles, potential development sites (opportunity sites) and opportunities to provide open space and public realm improvements. Subject to complying with the principles in the Plan and relevant development plan policies, it sets out that the 14 opportunity sites could, potentially, provide over 200 self-contained homes and around 10,000 square metres of new office floorspace in the period to 2025.
20. The key land use development principles for the appeal site⁴ state that, if the established medical/healthcare uses are not required, the Council expects permanent self-contained homes to be provided, including an appropriate contribution towards affordable housing. It also states that commercial uses to reflect the character of the area may be suitable at ground floor level, with windows and entrances facing Tottenham Street.
21. As set out above, the medical/healthcare uses that were previously accommodated on the appeal site have been relocated in their entirety to an alternative location and there is no suggestion that the building is still required for such purposes. Moreover, were I to find the overall housing provision made by the appeal scheme to be appropriate, the Statement of Common Ground confirms that the 370 square metres of affordable housing proposed, which would be provided as two x 3 bed social rented homes, which are secured through a planning obligation, would accord with the provisions of policies CS6 and DP3. I have no reason to come to a different view on this, on the basis of the reasoning set out in the officer's committee report. That leaves the matter of whether the mix of uses proposed would conflict with the Area Action Plan.

² Paragraph 5.39

³ Table 8 of the Monitoring Report

⁴ Page 117 of the Area Action Plan

22. The Council's statement confirms that of the six opportunity sites identified in the Area Action Plan expected to deliver housing over the short to medium term, three either have, or are about to, deliver 64 homes.⁵ Of the other three, one of which is the appeal site, whilst no proposal is currently being brought forward for site 2 (Middlesex Hospital Annex) or site 13 (Network Building) I see that the Council's Monitoring Report anticipates some 58 homes on site 2 within the next five years. The Council's statement also confirms that some windfall sites are coming forward for housing, including 11 homes as part of a mixed use scheme nearby at 73/75 Charlotte Street. Together with the 12 homes proposed on the appeal site, these sites might, therefore, be expected to provide some 145 homes. Although there is no indication as to the potential/likely housing capacity of site 13, I am not persuaded, on the evidence before me, that the appeal scheme would, necessarily, fatally undermine the ambition of the Area Action Plan to provide around 200 additional homes by 2025.
23. I also note that the four opportunity sites that are included in the five year supply of housing sites, as identified in the Monitoring Report,⁶ which include the appeal site, are anticipated as providing in the region of 102 homes over the next five years, reducing to 98 if only 12 homes were provided on the appeal site instead of the 16 identified in the Report. That would require the other opportunity sites, plus windfall sites, to provide some 102 or more homes by 2025 to meet the Area Action Plan target. As set out below, all but one of the opportunity sites are potentially able to contribute to the development of additional self-contained homes. Again, there was nothing substantive before me in this regard to demonstrate that the Area Action Plan target would be materially undermined were the appeal scheme to go ahead.
24. The explanatory text to Principle 1 of the Area Action Plan (page 31) clearly states that, whilst thirteen of the opportunity sites are potentially able to contribute to the development of additional self-contained homes, these sites are not allocated exclusively for housing given the mixed-use character of the area. At the Hearing, two alternative ways of reading that last section were discussed: it could be read as meaning that no individual opportunity site is allocated exclusively for housing or, alternatively, it could be taken as meaning that the opportunity sites are not allocated in their entirety for housing with some, for example, identified for mixed uses, others for student housing, or just medical or business use etc.
25. In answer to my questions on this at the Hearing, my attention was directed to the Report of the Inspector who examined the Area Action Plan. The Report sets out (at paragraph 57) that although a mixed use scheme was being promoted on the Arthur Stanley House site, housing was the preferred land use, in line with the Core Strategy, with the text of the Plan being revised accordingly.⁷ In addition, however, the Inspector also specifically added further policies to the list of LDF policies directly relevant to the appeal site. Of significance in relation to the development proposed, she *added* policy DP1 which, as set out above, only requires up to 50% of any additional floorspace

⁵ Site 14 (61-63 Tottenham Court Road and 1-7 and 11-13 Goodge Street) and Sites 11 and 12 (80 Charlotte Street/Asta House)

⁶ Site 2 (Middlesex Hospital Annex Cleveland Street – 58 homes), Site 3 (Arthur Stanley House – 16 homes), Site 10 (6-17 Tottenham Court Road) and others (20 homes) and Site 14 (61-63 Tottenham Court Road and 1-7 and 11-13 Goodge Street – 8 homes)

⁷ Major Modification 49

to be provided as housing, a policy with which I have found no conflict. Also of significance, policy DP2 (which, among other things, seeks to resist alternative development of sites considered particularly suitable for housing) is not listed as a relevant policy in relation to this site. Indeed, I see from the Report of the Examining Inspector, that she specifically added reference to policy DP1 to the list of relevant policies in relation to six other of the opportunity sites, with the result that all but one site⁸ in the adopted version of the Area Action Plan include DP1 as a relevant LDF policy. None includes reference to policy DP2. It is also of note that the Council's appeal statement confirms, at paragraph 5.44, that no objection is raised to the principle of providing an element of office use as part of a mixed use scheme on the site. That position was confirmed at the Hearing. On balance, these considerations lead me towards the first interpretation of the wording, the position preferred by the appellant.

26. I fully recognise that the Council (on appeal) local Associations and local residents feel that the Area Action Plan is not ambiguous about what was referred to as the intended residential use for the appeal site. I am mindful, however, of the *Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13 judgement. Among other things, it states that:

"... policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context." (paragraph 18)

"In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse. Nevertheless, planning authorities do not live in the world of Humpty Dumpty: they cannot make the development plan mean whatever they would like it to mean." (paragraph 19)

27. The Area Action Plan is one of a number of documents that comprise the development plan for the area. In providing only some 26% of the total floorspace as residential, it might, on first reading, appear that the appeal scheme does not accord with the key land use principles for the site as set out on page 117 of the Area Action Plan. On balance, however, I am persuaded that there is no conflict with the development plan when it is read as a whole, having regard to the considerations set out above and with the policies placed into context. On that basis, I find the mix of uses proposed to be acceptable in policy terms.
28. Even had I found to the contrary, I must have regard to all material planning considerations. As set out above, whilst housing is regarded as the priority land use in Camden, the justificatory text to policy CS6 (paragraph 6.18) confirms that the priority given to housing will not override, but will be considered alongside matters including the need, among other things, to promote Central London as a national and international focus of business. I am mindful, in this regard, of very recent supplementary planning guidance published in 2016 by the Mayor of London for the CAZ (Doc 6) which post-dates the Area Action Plan. Among other things, it confirms that the Central London office market has distinct needs which should be sustained to ensure that there is sufficient capacity to meet identified demands. It advises that the requirement to accommodate residential development within the CAZ should be

⁸ Site 1 (Astor College, 99 Charlotte Street)

managed sensitively to ensure that new development does not strategically constrain the overall provision of office floorspace.

29. It was confirmed at the Hearing that no objection is raised to the potential inclusion of a GP surgery at ground and basement levels. It was also accepted by the Council, and those who took part in the Hearing, including local Associations, that some office use would be acceptable on the site. The particular concern appeared to be that only around 26% of the total floorspace would be used for residential purposes. As set out above, a significant demand for office space in the Fitzrovia area has been demonstrated. Whilst the local Associations took issue with the figures provided, no substantiated evidence was before me to undermine the case of the appellant in this regard. Moreover, the Council took no issue with the appellant's evidence on the demand for office floorspace. The recent supplementary planning guidance is a material consideration in this case. When considered alongside the justificatory text to policy CS6 I am satisfied that, even were I to have found that the development proposed did not accord with the intentions of the Area Action Plan for the appeal site, the current demand for office accommodation in the area would indicate a decision other than in accordance with the Plan.
30. All in all, for the reasons set out above, I am satisfied, on balance, that the appeal scheme makes an appropriate contribution to the supply of new homes in the borough, having regard to the requirements of the development plan and other material considerations.

Other Matters

31. The appeal site is located within the Charlotte Street Conservation Area, within the wider area of Fitzrovia, which was developed speculatively as a primarily residential area between around 1750-1770, close to the West End. The Conservation Area contains a significant residential population as well as a variety of mixed commercial uses and the Middlesex Hospital campus. It is characterised by a densely developed grid pattern of narrow streets, mews and alleys flanked by four and five storey terraces located adjacent or close to the pavement, creating a strong sense of enclosure. It includes Georgian, Regency and Victorian buildings which sit cheek by jowl with C20 terraces and buildings which tend to be of a larger scale. The Conservation Area Appraisal and Management Plan (July 2008) notes that, in its current state, Arthur Stanley House is a detractor in terms of the character and appearance of the Conservation Area and the setting of nearby listed buildings, encouraging its redevelopment.
32. It is proposed that the existing concrete 'pergola' structure on the 7th floor would be removed, with the main south and east elevations of the building to be stripped back to the concrete frame and then remodelled and refaced in brick, but with vertically proportioned windows that better reflect the character of the area. The windows are shown as being paired, with a recessed slot on every alternate pilaster to provide a vertical rhythm, which detailing would terminate at the penultimate storey in order to provide some hierarchy on the main elevations. In order to provide more architectural texture to the main elevation, the windows would also be set back within deeper reveals than is currently the case, with inset balconies on the Mews corner.
33. The infill extension proposed, which would front onto Tottenham Mews, would be set back to relieve the current 'bottleneck' at the Mews entrance off

Tottenham Street. That would improve visual links and permeability through to the proposed Bedford Passage, in accordance with the Area Action Plan. The infill block is designed to be read as three mews properties, again finished in brick. The office extension to the rear of that would be of five storeys and would not be visible from the public realm.

34. I agree with the Council that the proposed changes would represent a significant improvement over the existing situation and would help to 'settle' the building into its context of lower height and finer grain development. I am satisfied, therefore, that the scheme would enhance the character and appearance of the Conservation Area.
35. The appeal site also lies in close proximity to a number of listed buildings. The iconic grade II* BT (formerly Post Office) Tower lies near to the appeal site. Given its height, it can be seen, and thus is experienced, from much of central London, including from the appeal site. No 39 Tottenham Street is a grade II listed Georgian end of terrace house with a ground floor 'shop' on the corner of Goodge Place opposite the appeal site. It retains much of its original main elevation and part of its London roof and has a C19 corner shopfront. The Georgian terraces on Goodge Place (Nos 19-26 and 8-14) also opposite the appeal site, are grade II listed. They retain generally intact facades, railings and ironwork and, together with 39 Tottenham Street, are representative of the original Georgian character of the area. Although very different, the special interest of these listed buildings derives, it seems to me, from their history, form and appearance and, in the case of the Georgian buildings, their relationship with their immediate plots and with the street. There is no evidence before me that leads me to suppose that the appeal site, as part of the setting of those listed buildings, makes any contribution to their heritage significance. There would be no harm in this regard, as a consequence of the development proposed.
36. The local Associations were concerned about open space provision. In part, those concerns related to the existing significant underprovision of public open space within Fitzrovia. However, it is not appropriate, in the terms of a planning application, to require that new developments redress that shortfall in provision. They do, however, need to mitigate any adverse impacts arising as a direct consequence of the development proposed. In this regard, where new development is likely to lead to increased use public open space, policies DP31 and CS15 require an appropriate contribution to the supply of public open space. Where on site provision is not practical, a contribution towards the provision of additional public open space in the vicinity may be made. Where no such suitable sites are available, the policies require improvements to existing open spaces in the area. The Council's Planning Guidance (CPG6⁹) makes similar provisions. The key development principles for the Arthur Stanley House site, as set out in the Area Action Plan, also indicate that development that increases the use of public open space should provide new public open space on site. Where that is not practical, it indicates that public open space should be provided in association with the Middlesex Hospital Annex/Bedford Passage, or on an identified site in the vicinity.
37. As noted in the officer's report to the planning committee, the intention of the Area Action Plan to create open space on site would only be possible if the

⁹ Camden Planning Guidance 6: Amenity (Supplementary Planning Document)

existing building was demolished and the site completely redeveloped. In this case, however, the building is being retained. The Council is content that it is more appropriate for a financial contribution to be secured towards off-site provision, which is allowed for by the relevant parts of the development plan and related guidance. This is dealt with in more detail in the following section.

38. There was also concern about future living conditions for occupiers of some of the residential accommodation proposed in terms of sunlight/daylight and outlook. These matters are addressed in the officer's report to the committee, which takes account of amendments to the scheme designed to overcome, where possible, earlier concerns in this regard. The Council is satisfied that an acceptable standard of accommodation would be provided. I have no reason to take a different view.

Planning Obligations

39. As set out above, a planning obligation has been submitted to address various of the Council's reasons for refusal.¹⁰ Consideration of planning obligations is to be undertaken in the light of the advice at paragraph 204 of the Framework and the statutory requirements of Regulations 122 and 123 of the Community Infrastructure Levy Regulations 2010 (as amended). These require that planning obligations may only constitute a reason for granting planning permission where they are necessary to make the development acceptable in planning terms; are directly related to the development; are fairly and reasonably related in scale and kind to it; and, since April 2015, must not comprise a pooled contribution where more than five such pooled contributions have already been collected. The obligation includes a provision that the obligations will only take effect should I determine that they comply with Community Infrastructure (CIL) Regulation 122.
40. All of the obligations were explored in detail at the Hearing informed, among other things, by a letter (and attachments) from the Council dated 9 September 2016¹¹.
41. Affordable Housing: The obligation secures two x 3 bed social rented homes within the development. The provision accords with the requirements of policies CS6 and DP3 and meets the relevant tests.
42. Car Free Development: the appeal site is in a sustainable location with excellent access to shops, services and public transport. As such, pursuant to Camden policies DP18 and CS11, the development is intended to be 'car free' and no on-site car parking is proposed. Accordingly, obligations are included to ensure that both future residents and office occupiers are not entitled (unless they have a disabled persons badge) to a residents' parking permit or business parking permit, or to buy a contract to park within any car park owned, controlled or licensed by the Council, and not to occupy or use (or permit the occupation or use of) the residential and business units at any time during which the occupier holds a residents/business parking permit. The requirement would mitigate harm arising from the development and the proposal would comply with the relevant development plan policies. I consider that these

¹⁰ Doc 13

¹¹ Doc 9

obligation requirements meet the relevant tests, with the wording used in the agreement taking account of relevant legal judgements on this matter.¹²

43. Carbon Offset: Policy 5.2 of the London Plan requires that development proposals should make the fullest contribution to minimising carbon dioxide emissions. It sets out various targets that should be met on site. Where it is demonstrated that the specific targets cannot be fully achieved on site, as is the case here, any shortfall may be provided off site, or through a 'cash in lieu' contribution to be ring fenced to secure delivery of carbon savings elsewhere. To that end, the obligation secures a contribution of £27,540. The Council confirmed that the funds would be invested in a carbon offset project linked to the Council's Sustainability Plan to 2020, 'Green Action for Change', which sets out a total of 77 specific actions. Carbon reduction projects are not on the Council's list of infrastructure projects funded by CIL. Whilst the Council could not confirm which of the specific actions would benefit from the contribution, I consider, nevertheless, that the contribution does meet the relevant tests, with the Council confirming that no carbon dioxide saving project would be funded by more than five contributions.
44. Construction Management Plan: Together, policies DP20 and DP26, and the Council's CPG6, seek to manage the impact of development in order to protect the amenities of Camden's residents and to manage the transport of goods and materials in a sustainable manner. Given the constrained nature of the site and the surrounding highway network, a construction management plan, setting out the measures to be adopted in undertaking works on the site, is necessary in order to minimise, so far as is possible, impact on, and disturbance to, the surrounding environment and highway network. I am satisfied that the arrangement secured meets the relevant tests.
45. Decentralised Energy: In order to help tackle climate change through the promotion of higher environmental standards, Camden policies CS13 and DP22, supported by the Council's Planning Guidance (CPG3)¹³ require, among other things, that developments test the feasibility of connection to local decentralised energy networks. The appeal site lies close to two such networks. The obligation secures a contribution of £80,967, calculated in accordance with the advice in CPG3, to be used towards a technical, commercial and/or financial study to develop the feasibility of network expansion, and/or heating and hot water infrastructure which would allow the development to connect to an extended network. It was also confirmed that no more than five contributions would be pooled together to fund the project. I am satisfied that the contribution secured meets the relevant tests.
46. Employment and Training: Policy CS1 seeks to manage the borough's growth to make sure that its opportunities and benefits are delivered and sustainable development is achieved, with policy CS5 providing more information on the approach to managing the impact of growth and development. In addition, policy CS8 seeks to ensure that the jobs and training opportunities needed to support Camden's growing population are provided. Those policies are supported by the Council's Planning Guidance (CPG8)¹⁴ which sets out that

¹² Westminster City Council v SSCLG and Acons [2013] EWHC 690(Admin) and R oao Khodari v Kensington and Chelsea RBC [2015] EWHC 4084

¹³ Camden Planning Guidance 3: Sustainability (July 2015)

¹⁴ Camden Planning Guidance 8: Planning obligations (July 2015)

there is an identified skills gap between Camden residents and local jobs on offer, with only 23% of the workforce in Camden being resident in the borough.

47. The obligation secures a contribution of £31,500 towards employment support initiatives to assist the Council in ensuring that local residents receive training in the skills that will enable them to access the jobs created both through the construction of the development proposed and the jobs created post-construction. The amount is calculated in accordance with the guidance in CPG8. It also provides that, working in conjunction with the Kings Cross Construction Training Centre, all reasonable endeavours will be used to ensure that no less than 20% of the work force will comprise local residents. On the basis that the provisions are supported by policy and guidance and that the jobs would be directly related to the appeal scheme, I am satisfied that the provisions meet the relevant tests.
48. Local Procurement: pursuant to the same policies and guidance referred to in the preceding paragraph, the obligation also ensures that a local procurement code is put in place in relation to the provision of goods and services for the development the subject of this appeal, both during and post construction. Again, on the basis that the arrangements relate directly to the development proposed and are supported by policy and guidance, I am satisfied that it meets the relevant tests.
49. Energy Efficiency and Renewable Energy Plan: In order to help tackle the effects of climate change, policy DP22 requires that new development incorporates sustainable design and construction measures. Pursuant to that policy, the obligation secures a long term management plan to reduce carbon energy emissions for the lifetime of the development, including a requirement to provide a mechanism for review and update. Sustainability Plan: Similarly, the obligation secures a long term management plan, including a post construction review, securing the incorporation of sustainability measures in the carrying out of the development in its fabric and in its subsequent management and occupation. I am satisfied that the arrangements secured by both Plans meet the relevant tests.
50. GP Surgery: In order to enhance the sustainability of communities and residential environments, the National Planning Policy Framework¹⁵ requires that planning decisions should, among other things, plan positively for the provision of community facilities and other local services and that an integrated approach should be adopted when considering the location of community services. In addition, Camden policies CS10 and DP15 require that schemes that would create additional demand for community facilities and services should make an appropriate contribution towards such infrastructure. Policy CS16 seeks to improve health and well-being in the borough by, among other things, supporting the provision of new or improved health facilities. NHS Camden Clinical Commissioning Group confirms, in this regard (Doc 7) that the imminent loss of existing GP premises in Gower Street means that there is an urgent need to find alternative premises in south Camden, with a risk of closure if the practice cannot relocate. Despite searching over the last five years, no suitable premises have been found. There is, however, the opportunity to provide some 600 square metres of surgery space within the appeal scheme.

¹⁵ Paragraph 70

51. Since the appeal scheme would place additional demands on the practice, the relevant development plan policies are engaged. The obligation requires the developer to use reasonable endeavours to enter into an agreement for lease or a lease of floorspace within the development (not more than 600 square metres) with a GP practice tenant at a rent commensurate with other D1 use class uses in the Fitzrovia area. I therefore consider that the arrangement secured meets the relevant tests for obligations.
52. Highways: A contribution of £34,435.21 is secured towards resurfacing of the footway adjacent to the appeal site. The works have been costed and are directly related to the appeal scheme. The Council confirmed that no other contributions had been secured towards the works, which would be delivered, ultimately, through a S278 agreement. The works are necessary and I am satisfied that this obligation meets the tests in the Regulations.
53. Public Open Space: As set out earlier, where new development is likely to lead to increased use public open space, policies CS15 and DP31, together with CPG6, require an appropriate contribution to the supply of that space. Where the required space cannot be provided on site, such as the case here, a contribution towards off site provision is required. The obligation secures a policy compliant sum of £18,200 towards the improvement, maintenance and upkeep of the nearby Whitfield Gardens. Although the local Associations raised concern that the scheme was already being funded through the West End Project, the Council advised that its Highways Engineers had confirmed that no funding was in place for the works. I am satisfied therefore, that this obligation meets the relevant tests.
54. Travel Plan: the planning obligation secures the submission of a Travel Plan, which is necessary to ensure that the development proceeds without adverse impact on the transport system and to ensure that measures for encouraging sustainable travel by future occupiers of the appeal scheme are integrated into the development. It also provides for the payment of a Travel Plan monitoring fee of £6,122.
55. I am in no doubt that the requirement to provide and adhere to a Travel Plan meets the relevant tests. However, the Council was unable to provide any information about the monitoring fee. I was advised that it operates two levels of Travel Plan monitoring fees (local and strategic). Although it was suggested that this is a strategic scheme, the Council was unable to direct me to any document that sets out what the respective thresholds are, nor how the fee is calculated. I am mindful, in this regard, of the findings of the judge in *Oxfordshire County Council v SSCLG and others [2015] EWHC 186 (Admin)* that there is nothing in statute, regulation or guidance, which suggests that authorities could or should claim administration and monitoring fees as part of planning obligations.
56. There is nothing before me to suggest that the Travel Plan in this case would be particularly complex, or that it would give rise, for example, to any unusual or special circumstances requiring a bespoke means of monitoring that might place a particularly onerous burden on the resources of the Council over and above its normal functions. In these circumstances, I consider that the Travel Plan monitoring contribution has not been justified both in terms of its necessity as a means of making the development acceptable in planning terms, and also in terms of it being fair and reasonable. As such, it is incompatible

with the relevant tests and this part of the obligation does not play any part in my determination as to whether or not planning permission should be granted for the appeal scheme.

Conclusion

57. Paragraph 14 of the National Planning Policy Framework sets out a presumption in favour of sustainable development. For decision taking this means, among other things, approving development proposals that accord with the development plan. I have found, in this regard, that there would be no conflict with the development plan when it is considered as a whole and its policies placed in context. Even were I to have found some conflict, the demand for office space, and the justificatory text to policy CS6, together with the Mayor of London's recent supplementary planning guidance for development in the CAZ are material considerations that outweigh that conflict, the balance favouring the grant of permission in this instance. Either way, I consider that the proposal would represent a sustainable form of development and conclude that the appeal should be allowed.

58. I recognise this decision will be disappointing for those opposing the scheme. I am particularly mindful, in this regard, of the role that local people have to play in shaping their surroundings. However, the views of local residents and their associations, very important though they are, must be balanced against other considerations. In coming to my conclusions on the issues that have been raised, I have taken full and careful account of all the representations that have been made, which I have balanced against the provisions of the development plan and the National Planning Policy Framework, as well as relevant case law. For the reasons set out above however, the evidence in this case leads me to conclude, on balance, that the appeal should be allowed.

Conditions

59. Possible conditions were discussed in detail at the Hearing, in the light of related advice in the National Planning Policy Framework and the Government's Planning Practice Guidance. The conditions and wording used set out in the attached schedule reflect that discussion.

60. In addition to the standard time limit on the commencement of development (1), it is necessary to ensure that the scheme is carried out in accordance with the approved plans, as this provides certainty. (2)

61. Given the location of the site within a Conservation Area, in close proximity to a number of listed buildings, architectural detailing and details of external materials need to be agreed. (3, 4) For the same reason, it is necessary to prevent the addition of paraphernalia such as lights, meter boxes, TV aerials and satellite dishes, flues, vents and pipes etc to external elevations. (5)

62. In the interest of visual amenity and also in the interest of providing acceptable living conditions for future occupiers, conditions requiring hard and soft landscape details are required, together with implementation and ongoing maintenance. (6, 7)

63. In order to prevent overlooking and consequent loss of privacy for future residents, it is necessary to ensure that the windows to some of the office accommodation are fixed shut permanently and fitted with obscure glazing. (8)

64. To ensure that the internal layout of the building provides flexibility for the accessibility of future occupiers over time it is necessary, pursuant the requirements of Camden policies CS6 and DP6, to require construction in accordance with Building Regulations Part M4(2) and to ensure that one of the flats can be readily adapted for wheelchair users should the need arise. (9, 10)
65. In order to avoid pollution and to prevent increased risk from flooding, details of a sustainable surface water drainage scheme are required, together with details for ongoing management which are essential to ensure that the scheme continues to perform as intended. (11)
66. To ensure that the development provides adequate on site renewable energy facilities, in accordance with Camden policies CS13 and DP22, a condition is necessary to secure the provision of the rooftop array of photovoltaic panels shown within the document entitled 'Application Design Amendments Planning Ref: 2015/0391/P' prepared by Llewelyn Davies (5 April 2015). (12)
67. It is necessary to ensure that sufficient refuse and recyclables storage is provided on site, in order to ensure a sustainable development and in terms of providing acceptable living conditions for adjoining and future occupiers. (13)
68. Cycle parking/storage facilities are required, in order to encourage travel by sustainable non-car modes pursuant to Camden policies CS11 and DP17. (14)
69. In order to protect existing below ground infrastructure and to minimise the risks of pollution, it is necessary to ensure that prior approval is secured for details of any piling or foundations necessitating ground penetration. (15)
70. In order to provide an acceptable living/working environment for future occupiers in terms of the internal noise environment, it is necessary to ensure that the attenuation measures set out in the Planning Noise Assessment by Turley (January 2015) are implemented. (16) In order to protect the living conditions of neighbouring residents, it is also necessary to ensure that noise from all external plant and machinery is contained to limits relating to background levels. (17)
71. The Phase 1 Desktop Study Ground Conditions report identifies a nearby former garage and a brass foundry adjacent to the site as potential sources of contamination. In order to prevent harm to human health and pollution of the environment, the Report recommends a limited ground investigation. I have imposed conditions to that effect, to ensure that any site contamination, or the potential for such, is detected and remediated accordingly. (18, 19, 20)
72. Given that part of the justification for the development proposed is based on the need for office floorspace in the area, it is necessary to remove permitted development rights relating to office to residential conversions such that the planning merits can be considered should any such of use be considered in the future.¹⁶ (21)

Jennifer A Vyse
INSPECTOR

¹⁶ See Doc 14

Schedule of Conditions
Appeal APP/X5210/W/15/3141159
Arthur Stanley House, 40 Tottenham Street, Camden, London

- 1) The development hereby permitted shall begin no later than three years from the date of this decision.
- 2) Unless required otherwise by the conditions set out below, the development hereby permitted shall be carried out in accordance with the following approved plans:
SP_01-P2
P_A4_B2-P7, P_A4_B1-P7, P_A4_00-P8, P_A4_01-P7, P_A4_02-P7, P_A4_03-P7,
P_A4_04-P7, P_A4_05-P7, P_A4_06-P7, P_A4_07-P7, P_A4_08-P7, P_A4_LR-P7,
S_A4_AA-P5, S_A4_BB-P3, S_A4_CC-P3, S_A4_DD-P5, S_A4_EE-P2, S_A4_FF-P4,
S_A4_GG-P3
E_A4_01-P3, E_A4_02-P5
DET_F_01-P2, DET_F_02-P2
LFT-001-P4, LFT-002-P4, LFT-003-P3, LFT-004-P3, LFT-005-P2, LFT-006-P2,
LFT-007-P2, LFT-010-P3, LFT-011-P2, LFT-012-P2, LFT-013-P2 and LFT-014-P2.
- 3) Detailed drawings and/or samples of materials and/or manufacturer's details, as appropriate, in respect of the following shall be submitted to and approved in writing by the local planning authority before the relevant part of the work is begun:
 - i) plan, elevation and section drawings at a scale of 1:10 of all new external windows and doors, including jambs, heads and cills;
 - ii) typical details of all balustrades at a scale of 1:10 (notwithstanding the details shown on the plans hereby approved, the balustrades to the seventh floor terrace, and the inset balconies at the first and sixth floors, shall comprise black painted metal railings); and,
 - iii) all new facing materials, including window and door frames, glazing, balconies, balustrades and cladding.

Development shall be carried out in accordance with the details approved pursuant to this condition and all approved samples shall be retained on site during the course of construction works.
- 4) A sample panel of the facing brickwork (measuring at least 1.5 x 1.5 metres) showing the proposed colour, texture, face-bond and pointing that is to be used shall be provided on site and approved in writing by the local planning authority before the relevant part of the development is commenced. The development shall be carried out in accordance with the approved details and the approved panel shall be retained on site until construction has been completed.
- 5) No lights, meter boxes, flues, vents or pipes, and no telecommunications equipment, alarm boxes, television aerials, satellite dishes or rooftop 'mansafe' rails shall be affixed or installed on the external faces of the development hereby permitted.
- 6) No development shall take place until full details of all hard and soft landscaping have been submitted to and approved in writing by the local planning authority. The details to be submitted shall include: plans at a scale of 1:20 for the brown/green roofs and the amenity spaces shown at section 9.4 of the document entitled 'Application Design Amendments Planning Ref: 2015/0391/P' prepared by Llewelyn Davies (5 April 2015); the means of enclosure of all open areas and roof terraces; samples of all ground surface materials and finishes; a written planting specification clearly describing the species, plant sizes, proposed numbers/densities and giving details of cultivation and other operations associated with plant and grass establishment; arrangements for ongoing maintenance of the planted areas, including the green/brown roof(s) and shared spaces; and a timetable for implementation. Development shall be carried out in accordance with approved details.
- 7) Any areas of planting which, within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced no later than the next planting season with planting of a similar size and species, unless the local planning authority gives written approval to any variation.

- 8) The office windows from basement through to fourth floor level on the north-east elevation of the office extension hereby permitted, which face onto the lightwell between the office and residential uses, shall be obscure glazed and fixed shut prior to first occupation of the development and shall be permanently retained as such thereafter.
- 9) All residential units hereby approved shall be designed and constructed in accordance with Building Regulations Part M4(2).
- 10) Prior to commencement of development, detailed plans of Flat 6, at a scale of 1:50, demonstrating that the layout can be readily adapted for wheelchair users shall be submitted to and approved in writing by the local planning authority. Flat 6 shall not be occupied until it has been constructed in accordance with the approved layout.
- 11) No development shall take place until details of a sustainable drainage scheme have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details and timetable. The scheme to be submitted shall:
 - i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) include a timetable for implementation of the scheme; and,
 - iii) provide a management and maintenance plan for the scheme for the lifetime of the development, which shall include the arrangements for adoption of the scheme by any public authority or statutory undertaker, and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 12) Prior to first occupation of any part of the development hereby permitted, detailed plans showing the location and extent of photovoltaic cells to be installed on the roof of the building hereby permitted shall be submitted to and approved in writing by the local planning authority. The details to be submitted shall include the installation of a meter to monitor the energy output from the approved renewable energy system. The scheme as approved shall be installed and made operational prior to first occupation of any part of the building hereby permitted and shall be permanently retained and maintained thereafter.
- 13) Prior to first occupation of any part of the development hereby permitted, the refuse and recycling storage facilities intended for its occupiers shall be provided and made available for use in accordance with the details shown on plan Nos P_A4_B2-P7 and P_A4_00-P8. All refuse and recycling facilities so provided shall be permanently retained and maintained thereafter.
- 14) Prior to first occupation of any part of the development hereby permitted, the cycle storage facilities intended for its occupiers (71 spaces for the office use and 26 spaces for the residential accommodation) shall be provided and made available for use in accordance with the details shown on plan No P_A4_B2-P7. All cycle storage facilities so provided shall be permanently retained and maintained thereafter.
- 15) Prior to the commencement of any piling or foundation construction, a piling method statement shall be prepared in conjunction with relevant utility providers shall be submitted to and approved in writing by the local planning authority. The method statement shall include details of the type of piling to be undertaken and the methodology by which such piling will be carried out, including measures to prevent and minimise the potential for damage to subsurface water or sewerage infrastructure, and a programme for the works. No piling or foundation construction shall take place other than in accordance with the approved method statement.
- 16) The development hereby permitted shall be carried out in accordance with the noise attenuation measures set out at section 6.2 of the Planning Noise Assessment by Turley (January 2015) and no part of the building shall be occupied unless and until the approved mitigation measures relevant to that part have been installed.
- 17) No external plant or equipment shall be installed on the building hereby permitted other than in accordance with a detailed scheme of noise attenuation which shall previously have been submitted to and approved in writing by the local planning authority. Noise arising from fixed plant and equipment installed as part of the development hereby permitted shall be at least 5dB(A) less than the existing background measurement (LA90)

expressed in dB(A) when all plant and equipment (or any part thereof) is in operation, as measured at a point one metre from the façade of any noise sensitive premises, including those within the development, unless the plant and equipment gives rise to a noise that has a distinguishable discrete continuous note (whine, hiss, screech, hum) and/or there are distinct impulses (bangs, clicks, clatters, thumps) in which case the noise levels from that item of plant or equipment at any sensitive façade shall be at least 10dB(A) below the LA90, expressed in dB(A).

- 18) Other than as may be required by an approved scheme of remediation, no development shall take place (other than as required to be carried out as part of an approved scheme of remediation) until the following components of a scheme to deal with the risks associated with contamination have each been submitted to and approved in writing by the local planning authority:
 - i) a further limited ground investigation scheme, as recommended in section 6.2 of the 'Phase 1 Desktop Study Ground Conditions Report' prepared by URS (December 2013) in order to refine vapour inhalation risks and provide an indication of the disposal status of soils and waters.
 - ii) the site investigation results and detailed risk assessment and, based on those, a detailed scheme of remediation if such is required.
- 19) Before occupation of any part of the development hereby permitted, any remediation scheme required by condition 18 above shall be carried out in accordance with the approved details and, upon completion, a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority.
- 20) In the event that contamination is found at any time when carrying out the approved development that was not previously identified, it must be reported in writing to the local planning authority as soon as is reasonably practicable. No further development shall be carried out until an investigation and risk assessment has been undertaken in accordance with the requirements of condition 18 above and, where remediation is necessary, a remediation scheme must be prepared, also in accordance with the requirements of condition 18 above, which is subject to the approval in writing of the local planning authority. Following completion of any measures identified in the approved remediation scheme, a verification report must be prepared, which is subject to the approval in writing of the local planning authority in accordance with condition 19 above.
- 21) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) or any Order revoking and re-enacting that Order, no development within Part 3 of Schedule 2 in Class O of that Order allowing the change of use of offices to dwellinghouses shall be carried out without the grant of planning permission having first been obtained from the local planning authority.

[END OF SCHEDULE]

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr M Cassidy	Principal Planner with the Council
Mr P Mistry	Solicitor for the Council

FOR THE APPELLANT:

Mr R Harris, of Queen's Counsel	Instructed by Pinsent Masons LLP
Mr C Beard	Director DP9
Mr D Hamner	Senior Director CBRE London
Mr I Gilbey	Solicitor, Pinsent Masons
Mr J Lockerbie	Solicitor, Pinsent Masons

INTERESTED PERSONS:

Mr M Neufeld	Planning Secretary of the Charlotte Street Association and local resident
Mr L Rees	Trustee and Director of the Fitzrovia Neighbourhood Association and local resident

DOCUMENTS HANDED UP DURING THE HEARING

Doc 1	Appearances for the appellant
Doc 2	Appeal Notification letters
Doc 3	Amended description of development proposed
Doc 4	Statement of Common Ground
Doc 5	Written statement of Mr Neufeld
Doc 6	Extract from the Mayor of London's Central Activities Zone SPG (published March 2016)
Doc 7	Letter from NHS Camden Clinical Commissioning Group (1 Sept 2016)
Doc 8	Draft S106 Agreement
Doc 9	Council's response (9 September 2016), with attachments, to my pre-Hearing note
Doc 10	Extracts from The London Plan (The Spatial Development Strategy for London Consolidated with Alterations since 2011)
Doc 11	Extracts from the Council's Planning Guidance Notes (CPG1, CPG2, CPG3, CPG6, CPG7, CPG8)
Doc 12	Camden Employment Land Study Final Report (August 2014)

DOCUMENTS SUBMITTED AFTER THE HEARING

Doc 13	Completed S106 Agreement
Doc 14	Joint note relating to a condition mooted at the Hearing in relation to removing permitted development rights for office to residential conversions