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## Appeal Decision

Site visit made on 19 June 2025

**by A M Nilsson BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 21 July 2025**

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**Appeal Ref: APP/X5210/W/25/3360481**

**44 & 46 Birchington Road, London NW6 4LJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Mr B Baker against the decision of the Council of the London Borough of Camden.
  - The application Ref is 2024/5188/P.
  - The development proposed is a new dwelling above existing commercial unit.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. I am in receipt of amended plans from the plans considered by the Council. The amended plans replace a previously proposed 1.7 metre high privacy screen with 1.1 metre high metal railings. This is in response to the Council's third reason for refusal in relation to the impact on the living conditions of occupants of adjacent residential properties in terms of outlook due to the originally proposed privacy screen.
3. As this is a minor amendment, and the Council's concerns on the original set of plans are clear in their evidence, I do not consider that their interests or those of any interested parties would be prejudiced if I take these amended plans into account. The Council have also considered the amended plans in their statement of case. Therefore, having regard to the judgement in *Holborn Studios Ltd v The Council of the London Borough of Hackney* (2018), which refined the "Wheatcroft principles" set out in *Bernard Wheatcroft v Secretary of State for the Environment* (1982), I shall therefore determine the appeal on the basis of the amended plans.

### Main Issues

4. The main issues are 1) the effect of the proposed development on the character and appearance of the area, 2) whether the proposed development provides suitable access, 3) the effect of the proposed pedestrian access on the living conditions of occupants of 28 and 29 Quex Mews in terms of outlook, and 4) whether the occupants of the proposed development would be exposed to unacceptable air quality.

## Reasons

### *Character and appearance*

5. The appeal property is a part two-storey, part single storey building located on Birchington Road which is set behind the busy commercial area of Kilburn High Road. The two-storey section of the building has a gable elevation fronting the street scene which includes three windows to the first floor and a commercial unit to the ground floor. The single storey section also comprises a commercial unit at the ground floor and has a high parapet wall above which extends to just below the eaves to the gable roof. It is above this single storey extension to which the additional residential unit is proposed.
6. Birchington Road is primarily made up of two terraces of three storey properties with basements. There are several steps leading up to the ground floor entrances which almost results in the basement levels appearing as a full additional storey and thus as four storey buildings. The building on the corner with Kilburn High Road is four storeys with a two-storey addition to the rear which forms part of the Birchington Road frontage.
7. The proposed development would add an additional floor above the existing single storey section of the appeal building. The existing gable roof would be extended across the full width of the property and result in an overall increase in its scale and height. Given the scale and height of the surrounding buildings as I have described above, the proposed development would not be out of character, nor would it appear as a dominant or incongruous addition. This has been demonstrated in the proposed street-scene elevation.
8. The proposed windows in the first floor would align with the existing first floor windows and the centralised ridge would provide a degree of symmetry to the building. Whilst this would be slightly disrupted at the ground floor, owing to the differences in the appearance of the commercial units, it would not cause harm. The use of materials to match in terms of the render and brick detailing would further assimilate the development with the remainder of the host building.
9. The Council have referred to the loss of character and appearance. Whilst the proposed development would alter the existing built environment, the building makes a limited contribution to the character and appearance of the area, and it would not be harmed by the proposed development. Despite the increase in height, it would still be of a lesser overall height than the adjacent terrace and therefore the transition to which the Council refer would remain to some extent.
10. I therefore conclude that the proposed development would not harm the character or appearance of the host property or the surrounding area. It would comply with Policy D1 of the Camden Local Plan (2017) which requires, amongst other things, that development is of high quality that respects and complements local context and character.

### *Access*

11. The proposed property would be accessed via Quex Mews to the rear. The submitted access plan shows how the access to the property would entail using existing staircases and crossing an existing flat roof. This is similar to a number of

existing properties that are situated to the rear of the site and accessed via Quex Road.

12. Occupants of the proposed property would therefore use the same access route as existing residents up to a point and then be required to walk a further 21 metres approximately to access the property.
13. From the submitted evidence, and my own observations on my site visit, the route is semi-private. Whilst it may be lengthier than the other properties, I do not consider it to be unreasonable. Similarly, I do not consider that negotiating the existing stairs is unreasonable. I do not find anything particularly undignified about the route or complex. I acknowledge that it does not provide level access or full accessibility, however given that it uses for the most part an existing route, I do not consider this to be unacceptable. I also acknowledge, as referred to by the appellant, that the unit, being a small studio flat, is unlikely to be aimed at families or those with special accessibility requirements.
14. I therefore find that the proposed development would provide an acceptable means of access. It would comply with Policies D1 and C6 of the Camden Local Plan (2017) and Policy D6 of the London Plan (2021). These policies require, amongst other things, that housing is well designed for future occupants so they can be used safely, easily and with dignity by all.

#### *Living conditions*

15. The Council refused planning permission for, amongst other things, the impact of an initially proposed 1.7 metre high privacy screen on the living conditions of occupants of 28 and 29 Quex Mews in terms of outlook. During the appeal, the appellant has submitted amended plans to change the original proposal to 1.1m high railings.
16. The Council have considered this amendment in their statement of case and commented that this would reduce the harm to the outlook of occupiers of these properties.
17. Due to their overall height and siting, combined with the visual permeability, the proposed railings would not cause harm to the living conditions of occupiers of 28 and 29 Quex Mews in terms of outlook. The very occasional passing of residents of the proposed unit would be fleeting and would not cause harm. The situation is commonplace in dense urban areas such as this.
18. The proposed development would therefore comply with Policy A1 of the Camden Local Plan which requires, amongst other things, that the amenity of neighbours is protected, including having regard to outlook.

#### *Air quality*

19. The appeal property is located within the Camden Air Quality Management Area (AQMA). I observed that Kilburn High Road, which is close to the appeal site, is a very busy road that has high volumes of traffic and includes several bus routes. Policy CC4 of the Local Plan outlines that the Council will take into account the impact of air quality when assessing development proposals, through the consideration of the exposure of occupants to air pollution. Air Quality Assessments (AQAs) are required where development is likely to expose residents to high levels of air pollution. The Policy continues that developments that introduce sensitive

receptors, such as housing, in locations of poor air quality will not be acceptable unless designed to mitigate the impact.

20. The supporting text of the policy outlines the types of development where the Council will require an AQA. Although the proposed development would not constitute one of those listed, the text goes on to say that a basic AQA will be required where occupants will be exposed to poor air quality, for example, due to its location next to a busy road. This is repeated in the Camden Planning Guidance on Air Quality (2021). An AQA has not been submitted.
21. The proposed development incorporates two windows on the front elevation at first floor level. As a studio flat, these are the main windows to the property. Due to the distance of these openings from Kilburn High Road, it would be reasonable to consider these as being affected by the air quality of this busy road.
22. The appellant sets out that the proposal is not an application for major development, and it is proposed to be 'car free'. I accept both points, however, the policy and the guidance both outline that a basic AQA will be required in the circumstances such as that at the appeal site. The fact that the development may not be a direct contributor to air pollution due to being car free does not remove the requirement to consider whether or not future residents would be exposed to unacceptable air quality as is required. Similarly, the fact that there are existing residents in the area does not overcome the requirement.
23. With reference to the recorded nitrogen dioxide being taken some distance from the appeal site, this also does not remove the requirement to comply with the policy.
24. In the absence of a basic AQA I am not presented with the necessary certainty about the air quality which future occupants would be exposed or whether any mitigation measures would, or would not, be needed to ensure future occupants are not exposed to unacceptable air quality.
25. The appellant suggests that the matter could be subject to a planning condition. The AQA establishes whether or not the air quality is acceptable for future occupants, and if it is not, whether mitigation measures can be used. It should therefore be established at the determination stage that the air quality is acceptable, as a potential negative finding on both counts at a later stage would impact on the deliverability of the development. As such, the condition would fail the test of reasonableness.
26. I am therefore unable to conclude that future occupants would not be exposed to unacceptable air quality. The proposed development would be contrary to the identified requirements of Policy CC4 of the Camden Local Plan (2017) and the Camden Planning Guidance on Air Quality (2021).

### **Other Matters**

27. The Council also set out that the proposed development would be unacceptable due to the lack of a legal agreement to secure a Construction Management Plan, associated Implementation Support Contribution and Bond, and car-free development.
28. Although the appellant states that they are happy to enter into an agreement there is not a completed legal agreement before me. However, as I am dismissing the appeal for other reasons the presence of a completed agreement could not, in any

event, lead to a different decision. There is therefore no need for me to reach a finding on these matters.

29. The Government's objective as set out in the National Planning Policy Framework (the Framework) is to support sustainable housing growth. Paragraph 11 d) of the Framework requires that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, developments should be granted planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
30. This applies to applications involving the provision of housing in situations where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years. The most recent Housing Delivery Test shows that the delivery of housing was substantially below the housing requirement over the previous three years. It therefore follows that paragraph 11 d) of the Framework is engaged.
31. In terms of the proposed development, the starting point is therefore that permission should be granted unless the adverse impacts would significantly and demonstrably outweigh the benefits.
32. In this case, the adverse impacts of the proposal in terms of the failure to ensure future occupants would not be exposed to unacceptable air quality would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. These policies include a requirement to prevent new developments from being put at an unacceptable risk from air pollution, and that decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of AQMAs, ensuring that any new development in AQMAs is consistent with the local air quality action plan.
33. The proposal does not therefore benefit from the presumption in favour of sustainable development given by paragraph 11 of the Framework.

### **Planning Balance and Conclusion**

34. Section 38(6) of the Planning and Compulsory Purchase Act, 2004 outlines that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
35. The outcome of the Framework paragraph 11 d) process above indicates that the decision should be taken in accordance with the development plan.
36. The proposed development would result in a very small increase in the Council's overall housing number and would also bring a number of additional residents to the area who would contribute to the local economy. When combined with housing delivery in the Council area being substantially below the requirement, collectively, I give these matters significant weight in favour of the proposed development.
37. However, the failure to ensure that future occupants are not exposed to unacceptable air quality attracts greater significant weight that outweighs the benefits associated with the proposed development. Furthermore, I have not been presented with a completed legal agreement.

38. The proposed development would therefore conflict with the development plan and there are no other considerations, including the Framework, that outweigh this conflict.
39. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal be dismissed.

*A M Nilsson*

INSPECTOR