

**LOCATION:** 765 Finchley Road, London, NW11 8DS

**REFERENCE:** F/02743/13

**Received:** 01/07/2013

**Accepted:** 10/07/2013

**WARD(S):** Childs Hill

**Expiry:** 09/10/2013

**Final Revisions:** 15/11/2013

**APPLICANT:** Quod

**PROPOSAL:** Section 73 material amendment application to vary condition 2 (Approved Plans) and condition 4 (Non-Residential Floorspace) pursuant to appeal decision APP/N5090/A/11/2151295 dated 19/09/11 (Barnet Planning Reference F/00070/11) for 'Demolition of existing office building and redevelopment of the site to provide a mixed use development comprising the erection of buildings between two and five storeys, to provide 80 residential units and 1402 sqm (GEA) of flexible office (use class B1) and/or community (use class D1) floorspace above a single basement level car park providing 110 car parking spaces. Associated landscaping.'

Amendments to include:

- a. reduction in commercial floorspace from 1,402sqm to 1110sqm to facilitate the provision of a private residence gym, concierge and associated welfare facilities;
- b. removal of garden annex land from site boundary as granted under appeal decision APP/N5090/A/13/2193046 dated 22/08/13 (Barnet Planning Reference F/03354/12)

**RECOMMENDATION: APPROVE THE APPLICATION SUBJECT TO:**

**RECOMMENDATION I:**

That the applicant and any other person having a requisite interest in the land be invited to enter by way of an agreement into a planning obligation under Section 106 of the Town and Country Planning Act 1990 and any other legislation which is considered necessary for the purposes of seeking to secure the following:

A. Obligations Under Existing Unilateral Undertaking

All relevant clauses and obligations as they appear within the unilateral undertaking dated 18 August 2011 attached to appeal decision APP/N5090/A/11/2151295 dated 19/09/11 shall be carried over into the new agreement. The agreement shall include securing the following:

B. Affordable Housing

The development shall include 16 Affordable Rented Units (comprising 3x1

bed, 8x2 bed and 5x3 bed) and 4 Intermediate Housing Units (comprising 2x1 bed and 2x2 bed). The applicant shall enter into formal agreement with the Notting Hill Housing Trust to deliver the Notting Hill Construction Training Initiative in relation to the affordable housing element of the scheme.

C. Education

A contribution of £237,553 Index Linked towards education provision in the borough.

D. Libraries

A contribution of £15,015 Index Linked towards libraries provision within the borough.

E. Health

A contribution of £66,824 Index Linked towards health provision within the borough.

F. Travel Plan

The applicant shall enter into a Travel Plan that seeks to reduce reliance on the use of the private car and to ensure the sustainability of the development.

G. Travel Plan Monitoring

A contribution of £5,000 Index Linked towards the monitoring of the Travel Plan for the development.

H. Amendment of Local Traffic Order

Alterations to the existing Traffic Management Order to prevent the occupants of the new development from purchasing parking permits for the Controlled Parking Zone (CPZ).

I. Legal Professional Costs Recovery

Paying the Council's legal and professional costs of preparing the Agreement and any other enabling arrangements.

**RECOMMENDATION II:**

That upon completion of the legal agreement specified in Recommendation I above, the Assistant Director of Development Management and Building Control approve the planning application reference F/02743/13 under delegated powers subject to the following conditions:

1 Time Limit

This development must be begun by the 19<sup>th</sup> September 2014.

Reason:

To comply with Section 51 of the Planning and Compulsory Purchase Act, 2004.

2 Approved Plans

The development hereby permitted shall be carried out in accordance with

the following approved plans and documents:

**Application Drawings**

PL\_98 rev A  
PL\_99 rev A  
PL\_100 rev B  
PL\_101 rev C  
PL\_103 rev B  
PL\_201 rev C  
PL\_202 rev C  
PL\_203 rev C  
PL\_204 rev C  
PL\_205 rev C  
PL\_210 rev B  
PL\_212 rev B  
PL\_213 rev B

Approved details under the following application references:

F/000163/13 dated 14/02/2013  
F/04328/11 dated 01/02/2012  
F/04515/13 dated 10/12/2013  
F/02902/13 dated 24/09/2013  
F/04167/13 dated 16/09/2013  
F/04517/13 dated 10/10/2013  
F/04797/13 dated 14/11/2013  
F/04069/13 dated 21/11/2013

**Application Documents**

Planning Statement dated June 2013 (Quod, ref: Q30191)  
Planning Addendum Statement dated November 2013 (Quod, ref: Q30191)  
Design and Access Statement dated June 2013, revised 13.11.13 (Stock Woostencroft)  
Marketing Summary and Supply & Demand Report for Proposed Office/ D1 space (Dutch & Dutch)  
Letter from Dutch & Dutch dated 13<sup>th</sup> September 2013 (received 15/11/2013)  
Letter from Martyn Gerrard dated 23<sup>rd</sup> September 2013 (received 15/11/2013)  
Energy Strategy October 2013 (WSP)

Reason:

For the avoidance of doubt and in the interests of proper planning and so as to ensure that the development is carried out fully in accordance with the plans as assessed in accordance with policies DM01 of the Adopted Barnet Development Management Policies DPD (2012) and CS NPPF and CS1 of the Adopted Barnet Core Strategy DPD (2012).

3

Restricted D1 Use

The D1 floorspace hereby approved shall be used for medical or health services within use class D1(a) only and for no other purpose (including any

other purpose in class D1) of the Schedule to the Town and Country Planning (Use Classes) Order 1987, as amended, or in any provision equivalent to that class in any statutory instrument revoking and re-enacting that Order, with or without modification.

Reason:

To enable the Local Planning Authority to exercise control of the type of use within the category in order to safeguard the amenities of the area.

4 Maximum Quantum of D1(a) Floorspace

No more than 600sqm. of the 1,100sqm. of non-residential floorspace on the ground and lower ground floors of the building hereby approved (as shown on plans PL\_100 rev B and PL\_101 rev C) shall be occupied by uses falling within use class D1(a) of the Schedule to the Town and Country Planning (Use Classes) Order 1987, as amended.

Reason:

To ensure that a satisfactory level of employment generating floorspace is provided within the development and in order to safeguard the amenities of the area.

5 Subdivision of Non-Residential Floorspace

Prior to the first occupation of the non-residential floorspace (or any part of it) on the ground and lower ground floors of the building hereby approved, details of the sub-division of the floorspace showing the location of any D1(a) floorspace shall be submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the details approved and maintained thereafter.

Reason:

To ensure a satisfactory layout within the development.

6 Hours of Opening

The non-residential floorspace on the ground and lower ground floors of the building hereby approved shall only operate between 0800 hrs. and 2000 hrs. on Mondays to Fridays, and 0800 hrs. and 1500 hrs. on Saturdays, and shall not operate on Sundays, unless otherwise agreed in writing by the local planning authority.

Reason:

To safeguard the amenities of occupiers of adjoining residential properties.

7 Electricity Sub-station

Within 3 months of the date of this permission, a full design study for the proposed electricity sub-station within the ground floor of the building shall be submitted to the local planning authority for approval in writing. The study shall indicate electro-magnetic screening, and any mitigation required for the transformer, as well as predicted electro-magnetic levels in the adjoining residential units and commercial floorspace, by reference to relevant standards and studies. The development shall be carried out in accordance

with the approved details.

Reason:

To protect the amenities of the future occupiers of the residential properties and non-residential floorspace within the building hereby approved in accordance with policies DM04 of the Adopted Barnet Development Management Policies DPD (2012), CS NPPF of the Adopted Barnet Core Strategy DPD (2012).

8 Details of Extraction and Ventilation Equipment

Prior to the occupation of the approved non-residential floorspace, details of all extraction and ventilation equipment to be used within the ground and lower ground floor of the development shall be submitted to the local planning authority for approval in writing. This shall include details of proposed measures for the mitigation of any noise related impacts. The approved mitigation measures shall be installed and become fully operational prior to the occupation of the buildings, and shall thereafter be maintained in accordance with the approved details.

Reason:

To ensure that the proposed development does not prejudice the enjoyment or amenities of occupiers of future or adjoining residential occupiers in accordance with policies DM04 of the Adopted Barnet Development Management Policies DPD (2012) and 7.15 of the London Plan 2011.

9 Drainage Details

None of the dwellings shall be occupied until drainage works to serve the development and works for the disposal of sewage have been provided on the site to serve the development hereby permitted, in accordance with details to be submitted to and approved in writing by the local planning authority.

Reason:

To ensure that the foul and/or surface water discharge from the site shall not be prejudicial to the existing sewerage system and the amenities of the area to comply with Policies 5.13 and 5.14 of the London Plan 2011.

10 Landscaping Implementation

All work comprised in the approved scheme of landscaping as approved under planning application reference F/02902/13 shall be carried out before the end of the first planting and seeding season following occupation of any part of the buildings or completion of the development, whichever is sooner.

Reason:

To ensure a satisfactory appearance to the development in accordance with policies DM01 of the Adopted Barnet Development Management Policies DPD (2012) and CS5 and CS7 of the Adopted Barnet Core Strategy DPD (2012) and 7.21 of the London Plan 2011.

11 Landscaping - Maintenance

Any existing tree shown to be retained or trees or shrubs to be planted as part of the approved landscaping scheme which are removed, die, become severely damaged or diseased within five years of the completion of development shall be replaced with trees or shrubs of appropriate size and species in the next planting season.

Reason:

To ensure a satisfactory appearance to the development in accordance with policies DM01 of the Adopted Barnet Development Management Policies DPD (2012) and CS5 and CS7 of the Adopted Barnet Core Strategy DPD (2012) and 7.21 of the London Plan 2011.

12 Architectural Details

Notwithstanding the submitted plans, within 3 months of the date of this permission, details of the following at an appropriate scale shall be submitted to and approved in writing by the local planning authority:

- i) window reveals;
- ii) brick reveals and soffits to recessed balconies;
- iii) roof parapets;
- iv) projecting balconies and balustrades and
- v) entrances to flats.

Development shall be carried out in accordance with the approved details.

Reason:

To ensure a satisfactory appearance to the development and safeguard the visual amenities of the building and surrounding area

13 Code for Sustainable Homes

Notwithstanding the plans hereby approved the 80 residential units (use class C3) in the development shall achieve Code Level 4 in accordance with the Code for Sustainable Homes (or the equivalent standard in such measure of sustainability for house design which may replace that scheme) unless a feasibility study that comprehensively demonstrates to the satisfaction of the Council that it is not feasible to achieve Code Level 4 is submitted to and approved in writing by the Council.

Should the study demonstrate to the satisfaction of the Council that it is not feasible to achieve Code Level 4 then the development shall achieve not less than Code Level 3.

No dwelling shall be occupied until a post construction assessment has been submitted to the Local Planning Authority confirming that the required Code Level has been achieved for the residential unit concerned. Within 3 months of occupation, the formal certification shall be issued to the Local Planning Authority confirming that the required Code Level has been achieved for the residential unit concerned.

Reason:

To ensure that the development is sustainable and complies with policy DM02 of the Adopted Barnet Development Management Policies DPD (2012), the adopted Sustainable Design and Construction Supplementary Planning Document (April 2013) and policies 5.2 and 5.3 of the London Plan (2011).

14 Noise from Site Plant

The level of noise emitted from all extraction and ventilation plant, substation, CHP boiler plant and non-residential uses within the development hereby approved shall be at least 5dB(A) below the background level, as measured from any point 1 metre outside the window of any room of any neighbouring property which existed at the time of this decision notice. If the noise emitted has a distinguishable, discrete continuous note (whine, hiss, screech, hum) and/or distinct impulse (bangs, clicks, clatters, thumps), then it shall be at least 10dB(A) below the background level, as measured from any point 1 metre outside the window of any room of any residential property.

Reason:

To ensure that the proposed development does not prejudice the amenities of occupiers of neighbouring properties in accordance with policies DM04 of the Adopted Barnet Development Management Policies DPD (2012) and 7.15 of the London Plan 2011.

15 Noise Report

Within 3 months of the date of this permission, a report should be carried out by a competent acoustic consultant and submitted to the LPA for approval that assesses the likely noise impacts from the development of the ventilation/extraction plant. The report shall also clearly outline mitigation measures for the development to reduce these noise impacts to acceptable levels.

It should include all calculations and baseline data, and be set out so that the Local Planning Authority can fully audit the report and critically analyse the contents and recommendations. The approved measures shall be implemented in their entirety before (any of the units are occupied / the use commences).

Reason:

To ensure that the amenities of neighbouring premises are protected from noise from the development in accordance with policies DM04 of the Adopted Barnet Development Management Policies DPD (2012) and 7.15 of the London Plan 2011.

16 Sound Insulation from non-residential uses

The development shall be constructed so as to provide sufficient air borne and structure borne sound insulation against internally/externally generated

noise and vibration. This sound insulation shall ensure that the levels of noise generated from the non-residential floorspace within the upper and lower ground floors of the building as measured within habitable rooms of the development shall be no higher than 35dB(A) from 7am to 11pm and 30dB(A) in bedrooms from 11pm to 7am.

A scheme for mitigation measures shall be submitted to and approved by the Local Planning Authority prior to occupation of this part of the development. The approved mitigation scheme shall be implemented in its entirety before any of the units are occupied .

Reason:

To ensure that the proposed development does not prejudice the amenities of occupiers of the residential properties in accordance with policies DM04 of the Adopted Barnet Development Management Policies DPD (2012) and 7.15 of the London Plan 2011.

17 Residents Only Gym

The 76sqm of gym space as denoted on plan no. PL\_100 rev. C shall be used as private facility for occupiers of the approved development and for no other purpose.

Reason:

To safeguard the amenities of surrounding residents in terms of noise and disturbance.

18 Car Parking Spaces

The car parking spaces as shown on the approved plans shall be provided prior to the occupation of the development hereby approved and shall be kept available for the parking of motor vehicles associated with the development at all times and shall not be used for any other purpose.

Reason:

To ensure that parking is provided in accordance with the council's standards in the interests of pedestrian and highway safety, the free flow of traffic and in order to protect the amenities of the area in accordance with policies DM17 of the Adopted Barnet Development Management Policies DPD (2012) and 6.1, 6.2 and 6.3 of the London Plan 2011.

19 Parking Management Plan

Prior to the first occupation of the development hereby approved a Parking Management Plan detailing the allocation of car parking spaces, on site parking controls and charges, and enforcement of unauthorised parking has been submitted to and approved by the local planning authority. The plan shall be implemented before the building hereby permitted is occupied and maintained thereafter.

Reason:

To ensure that on site car parking is adequately managed and controlled.



- 20      Cycle Parking Spaces  
The cycle parking spaces as shown on the approved plans shall be provided prior to occupation of the development and shall be kept available for the parking of cycles associated with the development at all times.
- Reason:  
To ensure that adequate and satisfactory provision is made for the parking of cycles.
- 21      Restriction of Permitted Development Rights  
Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), the mews houses within the development shall not be extended without the prior written approval of the local planning authority.
- Reason:  
To ensure that the development does not prejudice the character of the locality and the enjoyment by existing and/or neighbouring occupiers of their properties.
- 22      Hours of Construction Working  
Demolition or construction works shall not take place outside 0800 hours to 1800 hours Mondays to Fridays and 0800 hours to 1300 hours on Saturdays nor at any time on Sundays or Bank Holidays.
- Reason:  
To ensure that the proposed development does not prejudice the amenities of occupiers of adjoining residential properties in accordance with policy DM04 of the Adopted Barnet Development Management Policies DPD (2012).
- 23      Refuse Storage  
Within 3 months of the date of this decision, details of adequate enclosures and screened facilities for the storage of recycling containers and wheeled refuse bins and/or other refuse storage containers where applicable, together with a satisfactory point of collection shall be submitted to and approved in writing by the Local Planning Authority and shall be provided at the site in accordance with the approved details before the development is occupied and be permanently retained as such.
- Reason:  
To ensure a satisfactory appearance for the development and satisfactory accessibility; and to protect the amenities of the area in accordance with policies DM01 of the Adopted Barnet Development Management Policies DPD (2012) and CS14 of the Adopted Barnet Core Strategy DPD (2012).

## **INFORMATIVE(S):**

1. In accordance with paragraphs 186 and 187 of the NPPF, the Council takes a positive and proactive approach to development proposals, focused on solutions. The Local Planning Authority has produced planning policies and written guidance to guide applicants when submitting applications. These are all available on the Council's website. A pre-application advice service is also offered. The Local Planning Authority has negotiated with the applicant / agent where necessary during the application process to ensure that the proposed development is in accordance with the Council's relevant policies and guidance.

2. You are advised to engage a qualified acoustic consultant to advise on the scheme, including the specifications of any materials, construction, fittings and equipment necessary to achieve satisfactory internal noise levels in this location.

In addition to the noise control measures and details, the scheme needs to clearly set out the target noise levels for the habitable rooms, including for bedrooms at night, and the levels that the sound insulation scheme would achieve.

The council's supplementary planning document on Sustainable Design and Construction requires that dwellings are designed and built to insulate against external noise so that the internal noise level in rooms does not exceed 30dB(A) expressed as an Leq between the hours of 11.00pm and 7.00am, nor 35dB(A) expressed as an Leq between the hours of 7.00am and 11.00pm (Guidelines for Community Noise, WHO). This needs to be considered in the context of room ventilation requirements

The details of acoustic consultants can be obtained from the following contacts: a) Institute of Acoustics and b) Association of Noise Consultants.

The assessment and report on the noise impacts of a development should use methods of measurement, calculation, prediction and assessment of noise levels and impacts that comply with the following standards, where appropriate: 1) BS 7445 (1991) Pts 1, 2 & 3 (ISO 1996 pts 1-3) - Description and measurement of environmental noise; 2) BS 4142:1997 - Method of rating industrial noise affecting mixed residential and industrial areas; 3) BS 8223: 1999 - Sound insulation and noise reduction for buildings: code of practice; 4) Department of transport: Calculation of road traffic noise (1988); 5) Department of transport: Calculation of railway noise (1995); 6) Department of transport : Railway Noise and insulation of dwellings.

3. The applicant is advised that an application under Section 184 of the Highways Act (1980) must be submitted for a new heavy duty vehicular access. The access design details, construction and location will be reviewed by the Development Team as part of the application. Any related costs for alterations to the public highway layout that may become necessary, due to the design of the onsite development, will be borne by the applicant.

4. In the case where a highway tree is present in the vicinity of the proposed access road or a crossover for the development the final approval would be subject to the

detailed assessment carried out by the Environment and Operations, Crossover Team as part of the crossover application. The outcome of this assessment cannot be prejudged.

5. The applicant is advised that construction of a vehicular access/crossover may involve alterations to the existing on-street parking bays. Alterations to on-street parking bays or waiting restrictions will be subject to a statutory consultation period. The Council cannot prejudge the outcome of the consultation process. Any related costs for the alterations will be borne by the applicant.

6. If the development is required to have a Travel Plan, LB Barnet is promoting the use of Online Travel Plan Builder. A travel plan is a document produced by you which includes a package of measures designed to help and improve transport facilities and promote more sustainable modes. Every plan is specific to the development hence prior to occupation measures need to be tailored to your site.

7. Refuse collection points should be located within 10 metres of the Public Highway; otherwise, unobstructed access needs to be provided to the refuse vehicle on the day of the collection. The development access needs to be designed and constructed to allow refuse vehicles to access the site. Alternatively, the dustbins will need to be brought to the edge of public highways on collection days. Any issues regarding refuse collection should be referred to the Cleansing Department.

8. The applicant is advised that Finchley Road is a Traffic Sensitive Road. Deliveries during the construction period should not take place between 8.00am - 9.30am and 4.30pm - 6.30pm Monday to Friday. Careful consideration must also be given to the optimum route(s) for construction traffic and LB Barnet Environment and Operations department should be consulted in this respect.

9. The applicant is also advised that the development is located on a Strategic Road Network (SRN) and is likely to cause disruption. The Traffic Management Act (2004) requires the Council to notify Transport for London (TfL) for implementation of construction works. The developer is expected to work with the Council to mitigate any adverse impact on public highway and would require TfL's approval before works can commence.

10. The costs of any associated works to public highway, including reinstatement works, will be borne by the applicants and may require the Applicant to enter into a rechargeable agreement or a 278 Agreement under the Highways Act 1980.

11. Where a developer proposes to discharge water to a public sewer, prior approval from Thames Water Developer Services will be required. They can be contacted on 0845 850 2777.

12. The Community Infrastructure Levy (CIL) applies to all 'chargeable development'. This is defined as development of one or more additional units, and / or an increase to existing floor space of more than 100 sq m. Details of how the calculations work are provided in guidance documents on the Planning Portal at [www.planningportal.gov.uk/cil](http://www.planningportal.gov.uk/cil).

The Mayor of London adopted a CIL charge on 1st April 2012 setting a rate of £35 per sq m on all forms of development in Barnet except for education and health developments which are exempt from this charge. Your planning application has been assessed at this time as not liable for payment under Mayoral CIL.

The London Borough of Barnet adopted a CIL charge on 1st May 2013 setting a rate of £135 per sq m on residential and retail development in its area of authority. All other uses and ancillary car parking are exempt from this charge. Your planning application has therefore been assessed at this time as liable for a £22,410 payment under Barnet CIL.

Liability for CIL will be recorded to the register of Local Land Charges as a legal charge upon your site payable should you commence development. Receipts of the Mayoral CIL charge are collected by the London Borough of Barnet on behalf of the Mayor of London; receipts are passed across to Transport for London to support Crossrail, London's highest infrastructure priority.

If affordable housing or charitable relief applies to your development then this may reduce the final amount you are required to pay; such relief must be applied for prior to commencement of development using the 'Claiming Exemption or Relief' form available from the Planning Portal website: [www.planningportal.gov.uk/cil](http://www.planningportal.gov.uk/cil).

You will be sent a 'Liability Notice' that provides full details of the charge and to whom it has been apportioned for payment. If you wish to identify named parties other than the applicant for this permission as the liable party for paying this levy, please submit to the Council an 'Assumption of Liability' notice, which is also available from the Planning Portal website.

The Community Infrastructure Levy becomes payable upon commencement of development. You are required to submit a 'Notice of Commencement' to the Council's CIL Team prior to commencing on site, and failure to provide such information at the due date will incur both surcharges and penalty interest. There are various other charges and surcharges that may apply if you fail to meet other statutory requirements relating to CIL, such requirements will all be set out in the Liability Notice you will receive. You may wish to seek professional planning advice to ensure that you comply fully with the requirements of CIL Regulations.

If you have a specific question or matter you need to discuss with the CIL team, or you fail to receive a 'Liability Notice' from the Council within 1 month of this grant of planning permission, please email us: [cil@barnet.gov.uk](mailto:cil@barnet.gov.uk).

## **1. MATERIAL CONSIDERATIONS**

### **1.1 Key Relevant Planning Policy**

#### Introduction

Section 38(6) of the Planning and Compulsory Purchase Act (2004) requires that development proposals shall be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development

plan is The London Plan published July 2011 and the development plan documents in the Barnet Local Plan. These statutory development plans are the main policy basis for the consideration of this planning application.

Barnet's Local Plan is made up of a suite of documents, including the Core Strategy and Development Management Policies development plan documents. The Core Strategy and Development Management Policies documents were both adopted by the Council in September 2012.

Since the adoption of the London Plan in July 2011 the Mayor has adopted (in October 2013) 'Revised Early Minor Alterations' to this document. These make a number of changes to policies and other text in the 2011 London Plan. A key objective of these changes is to ensure that the London Plan is consistent with the National Planning Policy Framework. The changes to the London Plan as adopted under the 'Revised Early Minor Alterations' have been used as the basis for the assessment of this application.

A number of other planning documents, including national planning guidance and supplementary planning guidance and documents are also material to the determination of this application.

#### National Planning Policy Framework

National planning policies are set out in the National Planning Policy Framework (NPPF). This 65 page document was published in March 2012 and it replaces 44 documents, including Planning Policy Guidance Notes, Planning Policy Statements and a range of other national planning guidance. The NPPF is a key part of reforms to make the planning system less complex and more accessible.

The NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development. The document includes a 'presumption in favour of sustainable development'. This is taken to mean approving applications, such as this proposal, which are considered to accord with the development plan.

#### The Mayor's London Plan: July 2011

The London Plan (2011 and 2013) is the development plan in terms of strategic planning policy for the purposes of the Planning and Compulsory Purchase Act (2004). It promotes sustainable growth and environmentally responsive development. Relevant London Plan Policies to the determination of this application are:

- Policy 1.1 Delivering the Strategic vision and objectives for London
- Policy 2.6 Outer London: Vision and Strategy
- Policy 2.7 Outer London: Economy
- Policy 2.8 Outer London: Transport
- Policy 3.1 Ensuring equal life chances for all
- Policy 3.2 Improving health and addressing health inequalities
- Policy 3.3 Increasing housing supply
- Policy 3.4 Optimising Housing Potential
- Policy 3.5 Quality and Design of Housing Developments

Policy 3.8 Housing Choice  
Policy 3.9 Mixed and balanced communities  
Policy 3.10 Definition of affordable housing  
Policy 3.11 Affordable Housing Targets  
Policy 3.12 Negotiating affordable housing on individual private residential and mixed use schemes  
Policy 3.16 Protection and enhancement of social infrastructure  
Policy 4.12 Improving opportunities  
Policy 5.1 Climate Change Mitigation  
Policy 5.2 Minimising carbon dioxide emissions  
Policy 5.3 Sustainable Design and Construction  
Policy 5.6 Decentralised energy in development proposals  
Policy 5.7 Renewable energy  
Policy 5.9 Overheating and cooling  
Policy 5.12 Flood risk management  
Policy 5.13 Sustainable drainage  
Policy 6.1 Strategic approach  
Policy 6.3 Assessing effects of development on transport capacity  
Policy 6.5 Funding crossrail and other strategically important transport infrastructure  
Policy 6.9 Cycling  
Policy 6.11 Smoothing traffic flow and tackling congestion  
Policy 6.13 Parking  
Policy 7.1 Building London's neighbourhoods and communities  
Policy 7.2 Inclusive environment  
Policy 7.3 Designing out crime  
Policy 7.4 Local character  
Policy 7.5 Public realm  
Policy 7.6 Architecture  
Policy 7.13 Safety security and resilience to emergency  
Policy 7.14 Improving air quality  
Policy 7.15 Reducing noise  
Policy 8.2 Planning obligations  
Policy 8.3 Community Infrastructure Levy

### Barnet Local Plan

The development plan documents in the Barnet Local Plan constitute the development plan in terms of local planning policy for the purpose of the Planning and Compulsory Purchase Act (2004). The relevant documents comprise the Core Strategy and Development Management Policies documents, which were both adopted in September 2012. The Local Plan development plan policies of most relevance to the determination of this application are:

### Core Strategy (Adopted) 2012

Policy CS NPPF - National Planning Policy Framework - Presumption in Favour of Sustainable Development  
Policy CS1 – Barnet's place shaping strategy  
Policy CS3 – Distribution of growth in meeting housing aspirations  
Policy CS 4 - Providing quality homes and housing choice in Barnet

Policy CS5 - Protecting and enhancing Barnet's character to create high quality places

Policy CS6 – Promoting Barnet's town centres

Policy CS7 – Enhancing and protecting Barnet's open spaces

Policy CS8 – Promoting a strong and prosperous Barnet

Policy CS9 – Providing safe, efficient and effective travel

Policy CS10 – Enabling inclusive and integrated community facilities and uses

Policy CS11 – Improving health and well being in Barnet

Policy CS12 – Making Barnet a safer place

Policy CS13 – Ensuring efficient use of natural resources

Policy CS15 – Delivering the Core Strategy

#### Development Management Policies (Adopted) 2012

DM01 Protecting Barnet's character and amenity

DM02 Development Standards

DM03 Accessibility and inclusive design

DM04 Environmental considerations for development

DM08 Insuring a variety of sizes of new homes to meet housing need

DM10 Affordable housing contributions

DM13 Community and education uses

DM14 New and existing employment space

DM17 Travel impact and parking standards

#### Local Supplementary Planning Documents and Guidance:

Sustainable Design and Construction (April 2013)

Residential Design Guidance (April 2013)

Planning Obligations (April 2013)

Affordable Housing (February 2007 with updates in August 2010)

### **1.2 Relevant Planning History for the Application Site:**

<b>Application Ref.</b>	<b>Address</b>	<b>Description of Development</b>	<b>Decision and Date</b>
F/00070/11	765 Finchley Road, London, NW11 8DS	Demolition of existing office building and redevelopment of the site to provide a mixed use development comprising the erection of buildings between two and five storeys, to provide 80 residential units and 1402 sqm (GEA) of flexible office (use class B1) and/or community (use class D1) floorspace above a single basement level car park providing 110 car parking spaces. Associated landscaping	Refused 22/03/2011  Appeal allowed 19/09/2011 (PINS Ref: APP/N5090/A/1 1/2151295)
F/00814/12	765 Finchley Road, London,	Non-material minor amendments to planning permission reference F/00070/11 dated 19/09/2011 for the	Non-material amendment approved

	NW11 8DS	redevelopment of the site at 765 Finchley Road. Amendments include the conversion of 10 duplex units to single level flats resulting in no change to the unit and tenure mix, and associated elevational changes to windows and balconies responding to the amended internal arrangement of these units.	15/03/2012
F/00162/13	765 Finchley Road, London, NW11 8DS	Variation of conditions No.7, 8, 9, 12, 15, 16, 18 and 19 pursuant to Appeals Decision Ref: APP/N5090/A/11/2151295 dated: 19/9/2011 (Full App Ref: F/00070/11). Variation to read the wording " <i>prior to the commencement of construction works above car park level</i> " should be substituted for the wording " <i>prior to the commencement of development</i> " in conditions 7, 8, 9 and 18, the wording " <i>no development shall take place until</i> " in conditions 12, 15, the wording " <i>prior to the commencement of superstructure works</i> " in condition 16 and the wording " <i>construction work shall not begin until</i> " in condition 19.	Amendments to conditions approved 14/04/2013
F/01200/13	765 Finchley Road, London, NW11 8DS	Non-material minor amendments to planning permission reference F/00070/11 dated 19/09/2011 for the redevelopment of the site at 765 Finchley Road. Amendments include the conversion of 2 duplex units to single level flats.	Non-material amendment approved 12/06/2013
F/03354/12	765 Finchley Road, London, NW11 8DS	Variation to conditions 2 (Approved Plans) and 13 (Landscape Strategy) pursuant to appeal decision APP/N5090/A/11/2151295 dated 19/09/11 (Planning reference F/00070/11). Variation to include removal of garden annex land.	Refused 05/02/2013  Appeal allowed 22/08/2013 (PINS reference: APP/N5090/A/13/2193046)



### Relevant Discharged Planning Conditions for Application Site:

F/00163/13	765 Finchley Road NW11 8DS	Submission of details of Condition 10 (Details of Access Ramp to the Basement) pursuant to appeal decision APP/N5090/A/11/2151295 dated 19/09/2011 (Our ref: F/00070/11)	Approved 14/02/2013
F/04328/11	765 Finchley Road NW11 8DS	Submission of details of Condition 21 (Construction Method Statement) pursuant to appeal reference APP/N5090/A/11/2151295 dated 19/09/2011 (Our ref: F/00070/11)	Approved 01/02/2012
F/04515/13	Development land between 763 & 779 formerly known as 765 Finchley Road NW11 8DS	Submission of details of condition 8 (Biomass Boiler and Community Heating System), pursuant to appeal decision APP/N5090/A/11/2151295 dated 19/09/2011 (Our ref: F/00070/11).	Approved 10/12/2013
F/02902/13	765 Finchley Road NW11 8DS	Submission of condition 12 (Landscaping) pursuant to appeal decision APP/N5090/A/11/2151295 dated 19/09/2011 (Our ref: F/00070/11).	Approved 24/09/2013
F/04167/13	765 Finchley Road NW11 8DS	Submission of details for condition 15 (materials) pursuant to appeal decision APP/N5090/A/11/2151295 dated 19/09/2011 (Our ref: F/00070/11).	Approved 16/09/2013
F/04517/13	765 Finchley Road NW11 8DS	Submission of details for condition 18 (BREEAM pre-assessment) pursuant to appeal decision APP/N5090/A/11/2151295 dated 19/09/2011 (Our ref: F/00070/11).	Approved 10/10/2013
F/04797/13	765 Finchley Road NW11 8DS	Submission of details for Condition 19 (Traffic Noise Mitigation) pursuant to Appeal Decision APP/N5090/A/11/2151295 dated 19/09/2011 (Our ref: F/00070/11).	Approved 14/11/2013
F/04069/13	765 Finchley Road NW11 8DS	Partial submission of details of condition 9 (Ventilation and Extraction Equipment) in relation to the residential units only pursuant to Appeal Decision APP/N5090/A/11/2151295 dated 19/09/2011 (Our ref: F/00070/11).	Approved 21/11/2013

### Relevant Planning History for Adjoining Sites:

F/03363/12	Land at rear of 781-783 Finchley Road, Finchley Road NW11 8DN	Construction of 3 new family dwellings including 3no. off-street parking and landscaping.	Withdrawn 01/03/2013
F/03972/13	Annex land to 765 Finchley Road (rear of 1 Hodford Road), NW11 8DS	Erection of 2 new self-contained units to provide 1, two bedroom bungalow and 1, three bedroom bungalow with rooms in basement.	Refused 07/11/2013
C02856P/04	779-783 Finchley Road NW11 8DN (now known as West Heath Place)	Demolition of existing buildings and redevelopment of site to provide 57 residential units and 5 office units in a building of up to 5 floor levels (plus basement level), and a separate building comprising a one bedroom residential unit and refuse storage facility. Parking spaces for 95 cars with vehicular access from Finchley Road and Hodford Road.	Approved 07/04/2005
F/05021/10	779-783 Finchley Road NW11 8DN (now known as West Heath Place)	Amendment to planning application C02856P/04 dated 07/04/05 to comprise of 3 additional residential units to provide a total of 60 apartments and an associated reduction (of approximately 340sqm) of office space providing a total of 535sqm of office space in the building.	Approved 08/08/2011

### 1.3 Public Consultation and Views Expressed

Neighbours Consulted:	302
Replies in objection:	6
Replies in support:	0
Neighbours Wishing To Speak	1

Date of Site Notice: 25/07/2013

Date of Press Notice: 25/07/2013

The comments made can be summarised as follows:

- Consider that all applications on the site should be considered together and not as separate applications.

- The proposals do not appear to include an increase in the number of parking spaces to serve the additional 7 residential units proposed and remains at the previously approved level of 110 spaces for 80 units. This would place more pressure on parking availability on surrounding streets.
- There are a number of other developments being built and planned in the local area including the addition of 149 units at the nearby Granville Road Estate without any further places being made available at the local schools or doctors surgeries or any other infrastructure (water mains, telephone cables etc). As per comments made in relation to the original application, local schools and doctor's surgeries are already over capacity.
- Object to any further amendments to the development given the disturbance and adverse impact on quality of life already experienced by adjoining residents as a result of the development;
- There is structural damage at adjoining sites;
- The high residential density in the area has changed the quality of life for residents and already proved detrimental in every way;
- The original development failed to take into account current and potential increases in traffic, lack of street parking spaces, medical, educational and other public facilities;
- The delivery of 2 additional affordable units is unlikely to mitigate an undesirable development with negative consequences for surrounding residents;
- The extra commercial floorspace should be given to Barnet Council for a community centre to benefit Childs Hill, to counteract the detrimental effect of this dense development to be hired by community groups such as Alcoholics Anonymous, Overeaters Anonymous, Debtors Anonymous and Codependents Anonymous;
- A café should be provided within the community centre run by a small independent business paying a nominal rent to the Council with an alcohol licence (to mitigate the demolition of the Castle Pub);

Officer Response:

*Relevant planning history to the site and surroundings has been taken into account in the assessment of the proposals. A summary of relevant applications can be found in section 1.2 above.*

*During the course of the application the proposals have been amended and the original proposal for the addition 7 residential units within the footprint of the approved scheme has been omitted. These additional units would have been within the ground and lower ground floor of the development occupying space previously approved as B1 floorspace.*

*Many of the concerns raised in response to the application as summarised above relate to the impact of further residential units being added to what is considered to be an already dense development. There is now no change in the number of residential units proposed as part of the application and the total number of residential units remains as originally approved in application F/00070/11. At the time of the determination of that application, the scale and density of the development was considered acceptable. In addition, the grant of consent was*

*accompanied by a planning obligation which secured contributions towards local infrastructure to ensure that the impact of the 80 new units would not have a detrimental impact on local services.*

*The proposals subject of this application are not considered to result in significant impacts on local services and facilities above those that would be mitigated against through the obligations in the s106 planning agreement detailed in Recommendation 1 of this report.*

*The changes sought to the approved development in this application are not considered to result in the need for additional community facilities. There are existing facilities that have community use within the Childs Hill and neighbouring Golders Green wards that have the potential to be hired to local community groups. These include:*

- Childs Hill Library*
- Golders Green Library*
- Golders Green Synagogue, Dunstan Road – recently approved school with ancillary community facilities*

*Structural damage considered to result from construction works is not a material planning consideration. The resident concerned has been advised that this is a private matter not involving the Council.*

#### Amended Proposals

During the course of the application the scheme has been amended to omit the 7 additional residential units proposed and to make alterations to the development site boundary by removing the 'garden annex land' (sited to the rear of 1 Hodford Road) from the site which originally provided part of the amenity space for occupiers of the development. Further details are included in section 2.0 below.

Given the amendments made to the application a 21 day reconsultation with all previous consultees and respondents was carried out.

Amended consultation Site Notice Date: 05/12/2013

Amended consultation Press Notice Date: 05/12/2013

1 additional letter (from a previous objector) was received in response to the amended consultation. In that letter, the objector referred to all previous comments made in relation to the following applications:

- F/00070/11 and associated appeal - the original permission for the development site;
- F/03354/12 and associated appeal - the amendment to the original permission to remove the garden annex land from the development site;
- F/03972/13 - application submitted to develop the land to the rear of 1 Hodford Road/ former garden annex land to 765 Finchley Road.

#### Officer Response:

*The development of 765 Finchley Road has been approved by the Inspectorate at appeal. Therefore all issues such as the principle of the development, the scale of*

*the buildings, overlooking from the new flats, flooding, and traffic impact have already been considered to be acceptable by the Inspector as outlined within the appeal decision letter.*

*The removal of the annex land from the red line boundary of the approved development has also been approved by the Planning Inspectorate in August 2013 and as such this proposal has already been established as acceptable as outlined within that appeal decision. The development was considered to meet the amenity space requirements for the new development with the removal of this land and was found to have an acceptable impact on the character and appearance of the area and the amenities of adjoining residents.*

*Proposals for the redevelopment or change of use of the garden annex land to the rear of 1 Hodford Road are not material to this planning application. Such proposals have been considered under separate planning applications (F/03363/12 and F/03972/13) where the impacts of those specific proposals are appraised.*

*The main considerations in this case are detailed in section 3 of this report.*

#### **1.4 Statutory Consultees:**

##### Traffic and Development

No objections to the amended proposals subject to the carrying forward of relevant planning conditions and obligations as per the originally approved development (application reference F/00070/11).

##### Environmental Health

No objections subject to the imposition of conditions to control levels of noise from internal and external sources.

##### Metropolitan Police

This development has applied for compliance with the Association of Chief Police Officers (ACPO) 'Secured By Design' (SBD) Scheme. Having reviewed the submission I cannot see any amendments that would alter this compliance. I would expect the Safety & Security arrangements involving the amendments to continue to comply. SBD supports the Barnet Local Plan: Development Plan Document 2.6 Security in Design and 3.9 Secured by Design (adopted September 2012).

##### Thames Water

The application does not affect Thames Water and as such no comments are made on the application.

## **2. DESCRIPTION OF SITE AND PROPOSED DEVELOPMENT**

### Site Description and Surroundings:

The application site relates to the site known as 765 Finchley Road. The site is on the west side of Finchley Road on the corner with Llanvanor Road.

The site was previously occupied by a 1980's office building which was the former

headquarters of Smiths Industries Plc. This building has been demolished and works subject to planning permission F/00070/11 (granted at appeal 19/09/2011) are currently underway for a mixed use development consisting of 2-5 storey building comprising of 80 residential units and a mix of commercial floorspace.

The site has a frontage along Finchley Road of approximately 60m and approximately 93m to the rear boundary at its deepest point reducing to 75m to the side boundary of 18 Llanvanor Road. The site area is 0.596 hectares.

Adjoining the site to the north is the recent development known as West Heath Place (formerly 779-783 Finchley Road) with frontages onto Finchley Road and Hodford Road. This development is 5 storeys and comprises of 60 residential units and some office units (B1 use class).

The surrounding area is generally characterised by 2 storey interwar housing. The site is bounded to the south and west by two storey semi-detached houses along Llanvanor Road. Two storey detached houses line the eastern side of Finchley Road opposite the site.

Although two and three storeys is the predominant building height, there are a number of taller buildings in the area including Heathway Court (5 storeys), Portman Heights (6 storeys) and Orchard Mead (11 storeys). The Granville Road Estate is approximately 200m to the south west of the site and contains three 11 storey tower blocks.

The Local Centre of Childs Hill, is located 200m to the south of the site. This contains a number of local shops and services. Golders Green (District) Town Centre is located 650m to the north of the site.

Finchley Road is a main arterial road leading into central London. The stretch of Finchley Road to the north of the site all the way to Golders Green town centre (approximately 650m from the site) is lined by residential properties comprising mostly of large detached houses. Residential streets are located to the east and west as you turn off Finchley Road.

The site is located 0.5 miles (0.8 km) from Golders Green (Northern Line) Underground Station and 1.9 miles (3 km) from Finchley Road (Jubilee Line) Underground Station. It is also 0.8 miles (1.28 km) to Cricklewood Railway Station,

The number 82 bus runs along Finchley Road north towards Finchley and south towards Victoria. Bus numbers 13, 245, 260 and 328 run a short distance north to Golders Green Underground Station and south to Aldwych, Alperton, Shepherds Bush and Chelsea respectively.

#### Application History and Background:

Planning permission was granted on appeal (PINS Ref: APP/N5090/A/11/2151295) for the demolition of the former Smiths Industries office building and the erection of new buildings up to 5 storeys in height to provide 80 residential units (77 flats and 3

mews houses) together with 1,402m<sup>2</sup> (GEA) of B1 and D1 use floorspace.

The approved scheme comprises:

- A 5 storey block along Finchley Road (the 'Mansion Block').
- A part 2, part 5 storey building to the rear of the Mansion Block along Llanvanor Road enclosing a central communal courtyard (the 'Courtyard Block').
- A shared surface road along the western edge of the Courtyard Block leading to three 2 storey mews houses in the north west corner of the site.
- A communal garden provided on the Annex land for the residents of the proposed development.

Since the grant of planning permission several non-material amendments and an additional material amendment to the development have been approved.

The non-material amendments were submitted under several applications under Section 96A of the Town and Country Planning Act 1990. Applications F/00814/12 and F/01200/13 approved minor changes to the layout of some of the residential units within the approved scheme. These alterations did not involve a change in the total number, mix or tenure of units but changed what were originally designed as duplex units into single level units.

F/00162/13 also sought approval for non-material amendments under s96A to the approved development. These sought to alter the wording of various conditions imposed on the permission to change the trigger points for the submission of the required information so as not to unnecessarily stall commencement of development.

These non-material amendments all relate to the original application F/00070/11 approved at appeal. They do not replace this consent but are read in conjunction with it.

Application F/03354/12 was submitted in September 2012 (prior to the submission of this current application) and sought approval for a material amendment to the planning consent F/00070/11 under Section 73 of the Town and Country Planning Act 1990. This application was refused by the Council but was subsequently approved at appeal on 22/08/2013.

This material change to the permission involved the removal of land known as the 'annex garden land' from the development site which is sited on the land to the rear of 1 Hodford Road. This land was originally intended for use as a communal garden space for occupiers of the new development. On allowing the appeal, the Inspectorate considered the separation of the land from the site would not result in a deficiency in amenity space for occupiers of the development and that the impact on the character and appearance of the locality and amenities of local residents would not be affected.

As this is a material amendment to the approved development (F/00070/11), under Section 73 of the Town and Country Planning Act 1990, a new planning consent was issued (with amended conditions as appropriate) for the approved development which incorporated the change to the site boundary as described above (planning reference F/03354/12). The removal of the garden annex land has therefore already

been approved.

Proposal:

The current proposal is also submitted as a s73 application for material amendments to the original planning permission F/00070/11 and would result in the issue of a new planning consent with updated conditions attached as per recommendation 2 above.

The application essentially seeks consent for changes to the commercial floorspace within the ground and lower ground floor of the approved building. A total of 1,402 square meters of B1/D1 floorspace has been approved in the original permission. The proposals seek to reduce this quantum to 1,110 square meters (a loss of 292sqm) and to reconfigure this space into 2 separate units. The 292 square meters is proposed to be given over to ancillary space to be used in connection with the predominant residential use at the site. The space would be converted into welfare facilities to be used in association with the approved concierge space, additional residential circulation space and a private resident's gym.

When the current application was originally submitted to the LPA a greater proportion of the commercial floorspace was proposed to be lost. In addition to the conversion of 292 square meters of the B1/D1 floorspace described above, an additional 572 square meters of the approved space was proposed to be converted into 7 new residential units. During the course of the application the applicant has taken the decision to remove this element of the proposals from the application and as such there is no change proposed to the number or mix of residential units as previously approved under F/00070/11.

The submission of the current application pre-dated the approval of the removal of the garden annex land (application reference F/03354/12) in August 2013 and therefore sought approval for material amendments to original approval (F/00070/11). As such when the application was submitted in July 2013 it did not include the changes to the red line of the site to remove the annex land which were approved at appeal in August 2013. Similarly the appeal scheme did not include the changes to the commercial floorspace included in the current proposals.

As such, the applicant has taken the opportunity to incorporate the changes approved at appeal to remove the garden annex land from the red line of the development site into the current application. This ensures that all changes to the scheme are aligned into a single implementable consent. Amended plans have been submitted to reflect the amendments to the site boundary (along with the omission of the 7 residential units) and these amended plans and proposals have been the subject of a reconsultation with residents.

This application therefore seeks consent for the following material amendments to the original planning permission reference F/00070/11:

- material changes to reduce the commercial floorspace quantum to be used as ancillary residential space and private gym;
- the removal of the garden annex land.



This would result in a new planning permission for the site that would combine all previously approved amendments into a single implementable consent.

All other aspects of the approved development remain unchanged (i.e. number of units, affordable housing, design and appearance, car parking etc).

As a number of conditions pursuant to the original consent have now been discharged, additional changes to the wording of the conditions are recommended to ensure they reflect the up-to-date situation and do not require the submission of information that has already been assessed and considered acceptable.

### **3. PLANNING APPRAISAL**

#### Main Planning Considerations and Appraisal

A guidance note 'Greater Flexibility for Planning Permissions' was produced by the CLG in 2009 to set out the new procedures in relation to changes introduced to the planning system to deal more flexibly with amendments to planning permissions.

Whilst there is no statutory definition of a material minor amendment, the guidance considers the following definition by Planning and Design consultants WYG to be most appropriate:

*'A minor material amendment is one whose scale and nature results in a development which is not substantially different from the one which has been approved'. (para. 63)*

The note also provides guidance on how the LPA should determine such applications:

*'The development which the application under s.73 seeks to amend will by definition have been judged to be acceptable in principle at an earlier date. These applications should be determined in accordance with s.38(6) of the Planning and Compulsory Purchase Act 2004, but LPA's should in making their decisions, focus their attention on national or local policies or other material considerations which may have changes significantly since the original grant of planning permission, as well as the changes sought.' (para. 71)*

Although the removal of the annex land forms part of the proposed development subject of this application, the principle of this has already been accepted by the Planning Inspectorate in their decision letter of the 22/08/2013 where a full appraisal is made. In this decision letter, the Inspector makes it clear that the potential development of this land is not a material consideration in this case and that any such proposals would be the subject of applications to the LPA for consideration. There have been no material changes in policy or circumstances at the site since the appeal was allowed and as such this aspect of the proposal continues to be acceptable and comply with planning policy.

Therefore the main considerations in this case are whether the reduced quantum of

commercial floorspace and revised internal configuration of the floorspace would be acceptable by continuing to provide an adequate mix of uses at the site retaining an active frontage onto Finchley Road. In addition, whether the ancillary facilities proposed for the residential units in place of the commercial floorspace would have an acceptable impact on the character and appearance of the area and whether the development would continue to comply with the relevant planning policies.

Since planning permission was granted for the original development (reference F/00070/11) in December 2011 the Local Plan Core Strategy and Development Management Policies Development Plan Documents have been adopted by the Council. These had not been formally adopted by the Council at the time of the decision but were in draft at the time and these documents now replace the 2006 Unitary Development Plan. In addition, the NPPF was in draft at the time of the original decision and has since been adopted in March 2012.

The relevant policies are highlighted in section 1.1 of this report above. Whilst the policy framework has changed since the time of the original decision, it is not considered that the now adopted local and national policy framework significantly alters the policy context within which the original decision was made.

The approved development resulted in the loss of an employment generating site. As such, in order to comply with local policy (then contained within the 2006 UDP) the application material demonstrated to the satisfaction of the LPA that the former Smith's Industries offices had no realistic prospect of re-use for employment purposes. As such, for redevelopment of the site to be policy compliant, a mix of uses to include an employment generating B1 class use was proposed.

The approved non-residential floorspace was designed as flexible space capable of being used by more than one occupier and suitable for subdivision. A total of 1,402sqm of non-residential floorspace was approved, of which up to 700sqm could be used as D1(a) which relates to medical and health services and the remainder of the space would be B1 use class for general office.

In order to assess the impact of the reduction in quantum of commercial floorspace through the redevelopment proposals, information provided with the original application stated that when Smiths Group Plc was fully operational it employed 147 people which fell to 60 people in more recent years. The approved 702sqm of office floorspace would have had the ability to employ approximately 58 full time employees. This number is derived from the Homes and Communities Agency Employment Densities Guide (2<sup>nd</sup> edition 2010).

The D1(a) floorspace does not fall within the definition of employment generating floorspace but was included in the proposals as the employment and marketing report had evidenced a demand for this use in the local area. This provided an additional non-residential use in accordance with the policy requirements for redevelopment of employment sites to provide a mix of uses.

The Council's local plan policies relevant to employment land are CS8 and DM14. These replace similar policies previously contained within the Barnet's 2006 UDP. Policy CS8 sets out the Council's strategic policy to promote a strong and

prosperous Barnet that provides opportunity for economic advancement. Key priorities including safeguarding employment sites that meet the needs of modern business, encouraging development that improves the quality of existing employment provision and ensuring a range of unit sizes and types are provided to meet a range of business needs.

Development Management policy DM14 sets out the detailed policy requirements in relation to proposals that involve the loss of existing or the creation of new employment space. Similar to the employment policies in the 2006 UDP (EMP2 and EMP7) this policy requires that where a loss of a B class use is proposed, it will need to be demonstrated that the site is no longer suitable for employment purposes in the short, medium or long term. Where this can be demonstrated and where a suitable period of marketing has been undertaken, the priority for re-use will be a mixture of small business units with residential use.

The proposed reduction in commercial floorspace therefore needs to be assessed in this policy context. The proposed reduction in B1 office floorspace of approximately 203sqm associated with this application would reduce the number of potential employees that the site could accommodate from the previously approved level of 58 full time equivalent (FTE) employees to 41.6 FTE employees.

An updated marketing report has been submitted with the application. It provides details of the marketing campaign that has been carried out for the approved commercial floorspace. The space has been marketed for a period of approximately 6 months prior to the application being submitted in July 2013. A summary of the enquiries and interest expressed in the space is provided demonstrating there has been limited interest from both B1 and D1(a) occupiers.

The report submitted suggests that the amount of commercial floorspace being provided at the site is not likely to be fully let. This is attributed to a number of factors including the distance of the site from the tube and town centre, a lack of business presence, a lack of supporting amenities such as retail and leisure facilities in the area and availability of similar premises nearby.

Given the lack of demand as demonstrated within the marketing report submitted, it is proposed to reduce the amount of commercial floorspace by 292sqm being provided at the site in place of additional facilities to serve the residential use of the site.

Despite the proposed reduction in useable employment floorspace (and associated reduction in employees) the development would still provide an acceptable employment presence on the site (B1 office space) and an appropriate mix of complementary uses (D1(a) health facilities). This balance between non-residential and residential use at the site is considered to comply with the requirements of Local Plan policy DM14 which prioritises a mix of uses on such sites.

Information submitted with the application demonstrates that there is limited demand for employment space in this location. As such, the proposed loss of some of this space is considered to make a more efficient use of the space on-site. It is noted that a similar proposal to reduce the proportion of office space being provided at the

adjoining development at West Heath Place was recently granted consent in place of 3 additional residential units under planning application reference F/05021/10.

The non-residential space would still maintain a flexible arrangement over the upper and lower ground floors of the building with dual aspect outlook with the ability to be subdivided further to provide a range of smaller business units as promoted by policy DM14. In a letter from Dutch and Dutch property advisers (dated 13<sup>th</sup> September 2013) submitted with the application it is indicated that a number of smaller units would be more successful in this location being more attractive to local businesses. In addition the marketing report highlights that there is interest from a D1(a) health operator for approximately 600sqm of the space and the proposed reduction in overall commercial floorspace would not compromise the ability to accommodate this interested party.

It is therefore considered that the proposed material amendments to the commercial floorspace would have an acceptable impact on the ability of the site to provide opportunity for local economic prosperity in accordance with policies CS NPPF, CS8 and DM14 and would provide an appropriate balance between uses having an acceptable impact on the character and appearance of the area.

The proposed enlarged concierge and associated welfare facilities would not require any changes to the appearance of the building and as such would not have any adverse impacts on the character or appearance of the approved development. This ancillary use to the residential use on-site would not have any detrimental impacts on the amenities of surrounding residents and is considered to be an acceptable amendment to the scheme.

The proposed residents' only gym space on the lower ground floor of the building (to be sited below the concierge) would not affect the appearance of the building. It has a limited floorspace and is restricted for use by occupiers of the development only. As such it is not considered to result in an increase in comings and goings at the site or result in disturbance to local residents. Conditions have been imposed to ensure that the levels of noise are controlled to safeguard future and existing surrounding residents. This element of the proposal is therefore considered acceptable.

Local residents have expressed the need for a community hall/ meeting space to be provided at the site. The scheme does not generate its own need for a community facility and is not a policy requirement of the redevelopment of the site. The principles of the development were established at the time the original application was granted in 2011. As the current amendment proposals do not seek to increase the amount of residential development on the site it is not considered justifiable to re-evaluate this aspect of the scheme, or require additional obligations over and above the existing, that are not required as a direct result of the proposed amendments subject of this application.

There are existing community facilities in close proximity to the site that have the potential to be used by local groups. These include the Childs Hill and Golders Green Libraries, local places of worship and the recently approved primary school with associated community facilities on Dunstan Road.

It is noted there is concern that the amount of development in the area is placing undue pressure on local services and infrastructure. Each application is considered on its merits with regards to its impact on such matters. Where required, site specific mitigation is secured either as part of the planning conditions imposed on any grant of consent or through planning obligations secured through a s106 agreement. In addition, certain developments dependent on their size and nature, will now be liable to make payments towards infrastructure in the borough under the Community Infrastructure Levy Regulations.

The original permission for 765 Finchley Road was subject to a planning obligation under s106 of the Town and Country Planning Act which secured contributions towards local services and infrastructure including education, health and library services. It also included obligations to secure amendments to the local traffic order to restrict future occupiers of the development from purchasing parking permits in the controlled parking zone (CPZ) to avoid pressure on local on-street parking facilities. These obligations are to be carried forward as per Recommendation I and detailed in section 3.1 of this report. These obligations remain to satisfactorily mitigate against the pressure on local facilities as a result of the development. The amendments subject to this consent are not considered to result in any new impacts that are not already addressed through the recommended conditions and the s106 planning agreement.

In addition to the financial contributions to local services required as part of the s106 planning agreement the development is also estimated to be liable for Barnet Community Infrastructure Levy (CIL). Further detail on the estimated liability can be found in section 3.3 of this report. Any CIL payment required as a result of this development will go towards essential infrastructure and services in the Borough which may face increased pressure as a result of development in accordance with the Council's charging schedule.

The level of affordable housing is to remain as originally secured through the s106 agreement. This was assessed as the maximum reasonable amount to be delivered on site. As there is no change to the quantum of residential units, it is not considered necessary to re-evaluate this aspect of the scheme. It is still considered that the maximum reasonable amount of affordable housing is being secured as this was tested through a viability appraisal at the time the original application was considered. This is in accordance with the Council's Local Plan policy DM10.

Since the original grant of planning permission in 2011 the Council, through the Local Plan preparation process, has adopted 2 Supplementary Planning Documents relevant to this application.

The Residential Design Guide (adopted in April 2013) consolidates and updates the previous local framework for residential design which was in a number of supplementary documents which focused on improvements to the existing housing stock. The newly adopted SPD provides more detailed guidance in relation to character, density, built form, car parking and amenity space for new build developments. This consolidates earlier policies and guidance contained within the Council's SPD's and 2006 UDP policies as well as refers to national guidance on good design.

There are no significant alterations to the design, scale, layout or appearance of the development from the originally approved scheme. The aspects outlined in the Council's SPD largely carried forward previous policies and guidance. These were given full consideration at the time of determination of that scheme where it was considered the development would have an acceptable impact on the character and appearance of the area and would provide an acceptable standard of amenity for future occupiers and existing adjoining residents. There are no changes to the scheme that would alter these conclusions.

The Sustainable Design and Construction SPD (adopted in April 2013) replaces the Council's 2007 version of the document. It places greater focus on design and performance standards of buildings in accordance with the London Plan standards and Housing Design Guide. Proposals are expected to comply with the guidance set out in the Council's SPD in respect of the level of the 'Code for Sustainable Homes' (CSH) that is achieved. The SPD requires developments of the nature proposed subject of this application to achieve Code Level 4 or above.

London Plan policy 5.2 requires that residential development achieve a 25% reduction in carbon dioxide emissions when compared to a building constructed to comply with the 2010 Building Regulations. Policy 5.3 of the London Plan goes on to set out the sustainable design and construction measures required in developments.

Local Plan policy DM01 states that all developments should demonstrate high levels of environmental awareness and contribute to climate change mitigation and adaptation. Policy DM04 requires all major developments to provide a statement which demonstrates compliance with the Mayor's targets for reductions in carbon dioxide emissions.

The application is accompanied by an energy statement and a CSH pre-assessment which demonstrates that residential units within the development will achieve a code level 3 and a 20% improvement over the target co2 emissions rate with the use of a CHP system. This is in accordance with the policy requirements at the time the original decision on the application was made in 2011 but is below the current policy requirements as detailed above.

It is recognised that when the building was originally designed it was designed to achieve the policy required code level 3. As the building subject of the original permission is currently under construction it may not be feasible to make the necessary changes to achieve a code level 4. As such condition 13 requires the applicant to carry out a feasibility study, to the LPA's satisfaction, to investigate whether within the existing constraints the dwellings could achieve a code level 4. If it is demonstrated that this cannot be achieved, a minimum of code level 3 should be attained.

### **3.1 Planning Obligations**

The appeal permission APP/N5090/A/11/2151295 (our reference F/00070/11) dated 19 September 2011 is subject to a Unilateral Undertaking dated 18 August 2011

which secured the following contributions and obligations:

a. Affordable Housing

The development shall include 16 Affordable Rented Units (comprising 3x1 bed, 8x2 bed and 5x3 bed) and 4 Intermediate Housing Units (comprising 2x1 bed and 2x2 bed).

b. Education

A contribution of £237,553 Index Linked towards education provision in the borough.

c. Libraries

A contribution of £15,015 Index Linked towards libraries provision within the borough.

d. Health

A contribution of £66,824 Index Linked towards health provision within the borough.

e. Travel Plan

The applicant shall enter into a Travel Plan that seeks to reduce reliance on the use of the private car and to ensure the sustainability of the development.

f. Travel Plan Monitoring

A contribution of £5,000 Index Linked towards the monitoring of the Travel Plan for the development.

g. Amendment of Local Traffic Order

A contribution of £2,000 Index Linked to cover the cost of amending the existing Traffic Management Order to prevent the occupants of the new development from purchasing parking permits for the Controlled Parking Zone (CPZ).

h. Monitoring of the Section 106 Agreement

A contribution of £13,000 Index Linked towards the monitoring and management of the S106 planning obligations.

As per the recommendation in this report, the applicant has agreed to enter into a new section 106 agreement to ensure that the planning permission to be granted under this section 73 application will be bound by the same obligations and contributions as secured in the unilateral undertaking dated 18 August 2011.

The contribution towards the amendment to the local traffic order has already been paid and is therefore not required again. Similarly the monitoring contribution has been paid and is not required again.

Subject to the completion of the new section 106 agreement as detailed in Recommendation I of this report, the Council will need to agree to release the obligations contained in the 18 August unilateral agreement.

### **3.2 Mayor's Community Infrastructure Levy**

The Mayor of London is a charging authority for the purposes of Part 11 of the Planning Act 2008 and may therefore charge a Community Infrastructure Levy in respect of development in Greater London. The Mayor published a schedule for CIL in February 2012 and it came into effect in April 2012.

Regulation 3(2) of the Community Infrastructure Levy (Amendment) Regulations 2012 sets out when applications made under section 73 of the Town and Country Planning Act 1990 will be liable to CIL. These regulations also provide for the situation where such an application is made after a charging schedule comes into effect, in relation to a planning permission granted before the charging schedule came into effect (regulation 9(1), which inserts new regulation 128A into the CIL Regulations).

In this instance, the planning permission for 765 Finchley Road was granted before the Mayor's CIL came into effect. Under the amended CIL regulations, only additional chargeable floorspace created over and above the approved scheme as a result of the amendments will be liable for Mayoral CIL. The planning permission that will be granted as a result of this section 73 application will not be liable for Mayoral CIL.

### **3.3 Barnet's Community Infrastructure Levy**

In May 2013 Barnet adopted its own local Community Infrastructure Levy which replaced the Council's SPD's on planning obligations in relation to Health, Education and Library Services contributions to off-set pressure of additional residents as a result of development. Barnet CIL is set at £135 per sqm on all 'chargeable development' in Barnet.

Whilst there is no new floorspace that is being created by the development, there is a change in the amount of 'chargeable floorspace'. As a result of Barnet's differential charging rates, the change of B1/ D1 floorspace to ancillary residential floorspace (Class C3) results in Barnet CIL charge on the development.

In accordance with Regulation 3(2) of the Community Infrastructure Levy (Amendment) Regulations 2012 in relation to applications made under section 73 of the Town and Country Planning Act 1990 it is estimated that the development will be liable to pay approximately £22,410 in CIL contributions.

## **4. EQUALITIES AND DIVERSITY ISSUES**

The Section 149 of the Equality Act 2010, which came into force on 5<sup>th</sup> April 2011 imposes important duties on public authorities in the exercise of their functions, including a duty to have regard to:

- (a) *eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*
- (b) *advance equality of opportunity between persons who share a relevant*



*protected characteristic and persons who do not share it;*

- (c) *foster good relations between persons who share a relevant protected characteristic and persons who do not share it.*

For the purposes of this obligation the term “protected characteristic” includes:

- age;
- disability;
- gender reassignment;
- pregnancy and maternity;
- race;
- religion or belief;
- sex;
- sexual orientation.

Officers have in the preparation of this report had regard to the requirements of this section and have concluded that a decision to grant planning permission for this proposed development will comply with the Council’s statutory duty under this important legislation.

## **5. CONCLUSION**

The proposals have been evaluated against the determining policies within The London Plan (2011) and adopted Core Strategy (September 2012) and Development Management Policies DPD (September 2012).

The proposed amendments are considered to comply with the relevant national, regional and local policies and guidance. On this basis and in the context of the guidance provided in the NPPF (2011) the application is considered acceptable and is recommended for **approval** subject to the satisfactory completion of a section 106 legal agreement and the conditions recommended in this report.

**SITE LOCATION PLAN: 765 Finchley Road, London, NW11 8DS**

**REFERENCE: F/02743/13**



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